

Seminar series themes

Contestation

Researching RJ

Restorative Justice is an essentially contested concept (Gallie 1962; Connolly 1993). It is unlikely that there will ever be one agreed definition. Like democracy, for example, it is seen as a good thing, but is internally complex and changes over time and in different contexts.

It is difficult to research outcomes of Family Group Conferences and RJ - for example using RCTs when stake-holders are reluctant to randomly allocate.

Psychology / psychotherapy

Restorative approaches can be therapeutic

Restorative Justice is grounded in social interdependence theory. Social interdependence theory has its origins in Gestalt Psychology and Lewin's Field Theory.

The core principles of counselling psychology provide insights into how restorative practices work.

RJ, and related practices of conflict resolution and deliberative democracy have much to contribute to human flourishing and community cohesion.

The autonomous self does not have to be set in opposition with notions of interdependence and reciprocity, provided that autonomy is seen as enabled by nurturing human relationships and a just social infrastructure.

Philosophical perspectives

The concept of transformative restoration is logically paradoxical. The terms encounter and reparation better capture what would seem to be the core functions of restorative justice.

Can any educational process (restorative or otherwise) truly 'transform' people and social structures and should education aspire to such transformations in the first place?

As argued by Aristotle, it is not obviously apparent there is a natural state of 'positive' emotion that educational processes can restore pupils to. Social and emotional aspects of learning should involve helping pupils to learn through various painful and pleasant sentiments (including shame) so that they can moderate these where necessary.

Within the philosophy of law, there are questions about whether justice concerns universal equity, equity according to need, or equity according to contribution. What model of justice are RJ proponents leaning into?

Legal perspectives

The public need to have confidence in the criminal justice system, which means that they feel protected, and that they trust the state to provide punishment for a crime. If they don't feel confident, they may take the law into their own hands.

RJ works in certain cases that are not too serious where the offender has accepted responsibility for the crime, and where it is advantageous (for example because of someone's age) to keep them out of the CJ system.

There are practical challenges for RJ that need to be fully thought-through and taken into account. Offenders must not be able to use if disingenuously to get out of punishment, and victims must not be re-victimized.

The key restorative device in the New Zealand Youth Justice system is the FGC. These are mandatory for virtually all youth offender case. FGC, not the court, determines the manner in which the offending should be addressed. Full decision-making power is therefore devolved to the community in which the offending took place.

The advantages of restorative justice processes have to do with bringing home wrongdoing in a personal way to the offender himself so that consequences and accountability are foremost. They meet the needs of victims and prevent reprisals and revenge. They restore some peace to communities after terrible things have happened.

There are those who argue that there is a lack of consistency, and therefore a lack of fairness in restorative practice, which relies on the willingness of victims to participate in a restorative meeting, and in the degree of reparation that is needed in each individual case.

There is a danger of victims feeling pressurised, and of them being construed as mere props in efforts to rehabilitate offenders

Culture and Context

Cultural Perspectives

Cultural processes affect the implementation of peer mediation processes

There are several indigenous models of Restorative Justice throughout the world, all with different names and focussing on different aspects.

There is a contrast between criminal justice and healing justice, such as that used in peaceful communities such as those identified by Sawatsky (2009) in Iona Scotland, Manitoba Canada, and Plum Village, a Buddhist Monastery in France

In Northern Ireland, there is a tendency to see 'my violence as provoked' and 'your violence as unacceptable'. There is a need to move beyond this, restoring the enemy to someone who is capable of dialogue.

Three concepts – encounter, reparation and transformation. The primary concept is reparative in Western cultures, but transformative in indigenous cultures (i.e. it is proactive and not reactive, and encompasses the whole of life). Restorative Justice cannot be narrowed to a set of techniques and procedures without losing the essence of its powerful indigenous roots, and therefore its efficacy.

Restorative justice needs to be transformative within a wider social, cultural and political culture that values equity, diversity and interdependence.

The contexts of schooling and looked after settings

Schools are unique within society and produce their own set of challenges for Restorative approaches

A primary motivation for teachers, policymakers and senior school managers to take up restorative approaches is that they address behaviour difficulties, and can be seen as part of an enhanced discipline policy. There is often less interest in the more whole-school transformative aspects. Some teachers fear that they are being asked to relinquish authority.

Little attention is paid in teacher education to the kinds of relationship that support learning: most teacher education seems to be concerned with teaching curriculum, by which is meant subjects.

Implementing comprehensive peacebuilding seems to be especially challenging where poor and racialized students are clustered in under-resourced schools, and constrained by standardized curriculum and testing.

Formal scripted approaches of Restorative Justice in Care Home settings have limited impact, and make relationships between young people and staff problematic. The principle of voluntarism is compromised where staff are expected to engage in restorative practice.

Research carried out in care homes found that staff sometimes felt that young people were '*paying lip service*' to the approach to avoid a sanction, or that they did not have the capacity to participate meaningfully. Some young people are not in the same home long enough to form the relationships and attachments that make RJ more likely to succeed.

There is a need for realistic anticipation of the degree of cultural transformation required to fully support approaches that offer some form of empowerment to students in schools

There is a need to reassess power relations between teachers, other adults in schools, and students

In order for restorative justice to be effective, schools must be dominated by cooperative learning and constructive conflict resolution. Teachers can engage with pedagogies that teach these skills, for example by setting up academic controversies during lesson times, and teaching students how to work through them.

Minnesota has used Restorative measures in schools to reduce suspensions, youth offending and behaviour referrals

The merit of restorative practices may become most evident if proponents of it restrict themselves to modest and specific claims about its educational potential.

Punitive and restorative forms of behaviour management can co-exist in schools provided there is clarity about which system is to be used when.

More research is needed to understand why promising democratic peacebuilding pedagogies are so rare, especially in under-resourced public schools serving diverse populations, and what can be done about it in national and international contexts.

Social Justice and Transformation

Social Justice

Restorative Justice fits within the field of justice as a whole. Justice involves ensuring that benefits are distributed justly (distributive justice), the same procedures are applied fairly to all members (procedural justice), everyone is perceived to be part of the same moral community (moral inclusion), and any wrongs suffered are righted (restorative justice).

Disproportionate numbers of marginalised and minority groups experience the criminal justice system.

Zero tolerance policies increase referrals to the criminal justice system and create a 'school-to-prison pipeline'. These systems are more likely to be perceived as unjust by young people and their families.

Resolution of conflict is difficult where there is asymmetry of power, and where the effects of the conflict are felt more by one side than the other.

There are some problematic assumptions within the RA community, for example the implicit assumption that involvement of the victim is a 'good thing' and that it is necessary to return conflict to the people most directly involved is not always well-grounded.

Thought needs to be given to the use of RA with children with SEN or autism, and those who are influenced directly or indirectly by alcohol or drug use.

Rather than focussing entirely on bad apples, we should look at a combination of dispositional features of an individual (bad apple) situational factors (bad barrel) and systematic institutional power structures (bad barrel makers).

Restorative justice will have little impact on reducing crime as long as it remains the case that the majority of victims of crime are victims of white-collar crime and unreported domestic violence.

A feminist critique is a robust one, restorative justice might return family violence to being a private matter rather than a social problem whose dimensions are profoundly public. The same can be said for bullying in schools.

Transformation

Restorative justice seeks to repair the harm caused by crime and misconduct. This is best done by the affected parties as they meet voluntarily to cooperatively find a resolution. When that happens, transformation of people, perspectives and structures can follow.

Restorative approaches to schools must include all three conceptions of restorative justice: repair of harm, encounter of the affected parties and transformation of relationships and culture.

There are questions about what are we restoring to. To an idealised notion of cohesive societies in which everyone took responsibility for their own actions within communities of care and accountability? This probably never existed and so cannot be re-established.

Some schools are beginning to transform relationships using these methods.

Restorative Justice is about restoring a community in which conflict is non-destructive, or restoring conflict to a non-destructive level

Restorative Justice needs to combine both processes for dealing with misbehaviour and more proactive changes in culture. Restorative justice can be both remedial and preventative.

Much of the actual practices described as 'transformative' and/or 'pro-active' might be more aptly characterised by a much older word - education.

It is important to distinguish between "negative peace" —cessation or avoidance of direct, physical violence, which does not resolve underlying conflict causes— and "positive peace" —the presence of democratic relationships and structures for handling conflict constructively and justly, to address causes and eliminate systemic as well as direct forms of violence.