

# Restorative justice: benefits and limitations



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Systems of Restorative Justice have been utilized around the world for many centuries, examples can be found in many civilizations throughout history. In recent times there have been numerous concepts and reinventions of what many believe or feel is the modern restorative justice model of today. This essay will consider some of the strengths and critics of restorative justice, with a focus on some of the latest research and studies. The vast majority of early studies concluded and indicated that the type of restorative justice model, that each examined, was achieving good positive results and appeared to be a viable alternative to incarceration. Later studies however appear to place limitations on these findings and many question the definition and cultural context of restorative justice, concluding that there could be limited merit in the application of restorative justice in modern society. This apparent shift in the thinking of the true efficacy of restorative justice raises many more questions that will need to be addressed with the primary question “ what is restorative justice?” Until a comprehensive and unified definition is developed and all studies and reviews are truly comparative, there may only be limited reliability in the findings or conclusions of any research or study. What is restorative justice? Does it work? Who does it benefit? Is it relevant today? Can it be used for all forms of offending? These are just a few of the many questions that require some form of answer to establish the efficacy of restorative justice in today’s society. There are as many supporters as there are critics of the use and efficacy of restorative justice around the world (Daly, 2002). A mixture of restorative justice style paradigms have been in existence and utilized as a method of penalty or reparation in many cultures around the world for many years. The wide spread use has resulted in many styles, forms and types of

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restorative justice being developed, redeveloped and conceptualized throughout the centuries. Several paradigms are still evolving even today. Progression from the early retribution style practices, to the use of the circle process has been the key component in some cultures. The early use of the circle process by the indigenous people of Canada (Department of Justice Canada, 2000) was one of the first primal steps to what is now developing and considered by many to be the modern form of restorative justice. The circle process of mediation has many forms but the basic principle is a conference style meeting or discussion in a non threatening environment that involves all the relevant parties, victims and offender.

The modern concepts of restorative practices, which have evolved from the original circle process, characteristically contain a focus which promotes mutual understanding, respect, acknowledgement and a mutually agreed resolution between the victim and the offender. However there are many who believe that there are some major problems with the modern concept of restorative justice. In a recent study Kathleen Daly (Daly, 2002) highlights the myths that are portrayed by many who advocate the success of restorative justice and who promote the concept as being a successful modern ideology. Daly (Daly, 2002) also suggests that those who promote these myths may be endeavouring to reform the justice system and therefore are accentuating these myths which may also be in part politically motivated to maintain the funding for restorative justice. The view of possible political motivation promoting positive reviews is also expressed in by White (White & Perrone, 2005). What is evident is that there is a lack of reports, studies and information covering the failures of restorative justice.

The vast majority of evidence highlights the positives and as suggested by Daly (Daly, 2002) thereby giving the appearance of success for restorative justice. In a 2010 thesis Roberts (Roberts, 2010) evaluated the methodology of how the evaluation of restorative justice practices is conducted. The thesis highlighted the considerable differences in results and outcomes primarily related to the different types of paradigms assessed and in use around the world.

The main concerns that regularly appear in most critical reviews and studies focus on the issues related to the lack of a recognised singular definition of restorative justice and how evaluations are conducted (Walgrave, 2011). Around the world there are literally hundreds of definitions each specific to their own culture, ideology and political will. Many discussions have been focused on comparing community justice to restorative styles endeavouring to answer, “ are they the same or different?” (McCold, 2004). This lack of continuity or agreement raises concerns as to the legitimacy or efficacy of many if not all studies and research and the outcomes reported (Walgrave, 2011). Braithwaite (Braithwaite, 2007) pointed out that political desires can also be influential on the application of restorative justice principles. Negative findings on the use of restorative justice or if the public perceived that there was a breakdown in law and order by the overuse of restorative practices, there could be a reduction in political support for restorative justice. There however appears to be an element of strength when restorative practices are implemented within the education system (Shaw, 2007), in particular with the very young.

The practice of restorative justice has found some merit within the education system, however the success is qualified. In 2007 a report on restorative type practices in Australian schools (Shaw, 2007) highlighted some of the success with these practices and principles in initiating some cultural change within the school environment. The study also found there was considerable support for restorative type practice when actively utilized in facilitating bullying, alienation and harassment situations as well as the reintegration of marginalised students in the school system. Further support for the application of restorative justice style practices within the youth justice system (Hayes & Hayes, 2008), concluded that with the requirement for the offender themselves to meet face to face and speak to the victim imparted a strong influence on the outcome. The requirement for the offender to speak to the victim without another person representing them was seen as a strong reinforcement to the offender of their unacceptable behaviour. A recent study however, conducted in the United Kingdom observed a single student participating in restorative practices to address behaviour problems. The study concluded that restorative practices had no overall effect on improving the students behaviour despite isolated qualified success (Standing, 2012). The study also highlighted a major issue that could have contributed to the failure of the restorative practices. The inability of all sectors of the school staff, in a whole of school approach, to actively and positively engaging in the process created gaps in the continuity thereby reducing the positive outcomes. This result reinforces the necessity for all parties to be willing and dedicated to achieving the desired outcome.

Despite some reports and studies showing that there is potential for restorative justice to be successful, as shown in the Victorian schools study (Shaw, 2007), there is however a distinct possibility that the merging of 2 or more of the numerous paradigms, community justice and restorative justice, may lead to uncertainty, ambiguity and misinterpretation thereby creating a doubt in the efficacy of either (McCold, 2004). In other studies the face to face benefit or disincentive to the victim is considered and investigations (Stubbs, 2009) have shown that the impact on the victim in sexual assaults, where they are required to face the offender may create more problems for the victim and be far from beneficial as a restorative practice. Apologies (Choi & Severson, 2009) appear to be the main criteria that many practitioners of restorative justice promote and the actual impact on the victim may not be as favourable as most believe. One study that had appeared to report a positive conclusion (Okimoto, Wenzel, & Feather, 2012) supporting restorative justice however examination of the results showed a tendency favour the offender rather than the victim. The victims of crime are still peripheral to the justice system and feel intimidated and can find the offender has no remorse and that the apology is insincere (Choi & Severson, 2009). Some offenders have been observed making positive assertions, promises and apologies with the desire simply to obtain a reduction or dismissal of punishment only to later reoffend with no remorse or consideration for the affirmations previously made (Walgrave, 2011).

Recidivism is an area of concern as was demonstrated and highlighted by Pranis (Pranis, 2004). Despite what appeared at first to be a successful use of restorative justice in a case involving theft the youth offender apologised

to the elderly victim and promised not to reoffend. However the victim later became aware of another incident involving the same youth and requested another face to face meeting with the youth offender. The victim reinforced the disgust at the offender's lack of respect for the victim and the disappointment of broken promises previously made. The victim requested the offender reaffirm the promises, maintain contact with the victim and refrain from further offending (Pranis, 2004). The offender showed great remorse and has remained free from offending post the second meeting. This success however relied heavily upon the very strong character and tenacity of the original victim which would probably not be replicated in the vast majority of situations. The outcomes for some processes appear to be offender orientated with very little consideration for the needs of the victim. There has been a consistency demonstrated in many studies reporting positively how effective restorative justice practices have been found. These positives may be creating a mistaken attitude to the effectiveness of restorative justice. Choi (Choi, Bazemore, & Gilbert, 2012) highlights the lack of negative reviews and reinforces some of the problems, as demonstrated within this essay, that may result from the overabundance of positive results.

In conclusion the questions proposed at the beginning of this essay will still need to be carefully examined in other forums. What is restorative justice? There is no simple answer. Does it work? In very limited and qualified situations. Who does it benefit? It appears to favour the offender in the majority of situations. Is it relevant today? Many would suggest that it is more relevant. Can it be used for all forms of offending? Agreement appears to support limited use within targeted offending. With no widely accepted

definition and the lack of a standard paradigm, comparisons and the true evaluation of the strengths and critics of restorative justice may remain a contentious issue for many years to come. There appears to be a growing amount of information available that indicates that the use of restorative justice has only limited effectiveness, primarily with youth, and the use of restorative justice in the adult realm may have no measurable efficacy. There is much ambiguity and contradiction in the use of restorative justice, much of which will need to be rectified to allow the advancement of the principles. The strengths and success of current restorative practices must largely rest with the facilitators, whilst allowing the academics to solve the dilemmas in definition and paradigm.