

Criminology & Criminal Justice
© 2008 SAGE Publications
(Los Angeles, London, New Delhi and Singapore)
and the British Society of Criminology.
www.sagepublications.com
ISSN 1748-8958; Vol: 8(2): 165-184
DOI: 10.1177/1748895808088993



Restorative justice—the perplexing concept:

Conceptual fault-lines and power battles within the restorative justice movement

THEO GAVRIELIDES

Independent Academic Research Studies and Race on the Agenda, UK

Abstract

Although the fast-growing literature on restorative justice is extensive, and in some regards repetitive, there is still no consensus as to the nature and extent of applicability of the restorative notion. This article claims that the restorative movement is experiencing a tension between normative abolitionist and pragmatic visions of restorative justice. It proceeds to identify six conceptual fault-lines that characterize this tension. These do not refer to various definitional positions, but disagreements that negatively affect both the theoretical and practical development of restorative justice. These tensions also encourage a power-interest battle between different stakeholders within the restorative movement including practitioners, theoreticians, researchers and policy makers. To approach these controversies, there needs to be an acknowledgment of the multidimensional nature of the conceptual problem of restorative justice and the impact it has on its application. The article attempts to get to grips with this problem, and provide a common ground for the future development of restorative justice.

Key Words

conflicts • definition • fault-lines • restorative justice • restorative movement

Introduction

Problem statement

In 'The past, present and future of restorative justice', Kathleen Daly and Russ Immarigeon summarized the different meanings restorative justice (hereafter RJ) has taken:

Over the last two decades, 'Restorative Justice' has emerged in varied guises with different names, and in many countries; it has sprung from sites of activism, academia and justice system workplaces. The concept may refer to an alternative process for resolving disputes, to alternative sanctioning options, or to a distinctively different, new model of criminal justice organised around principles of restoration to victims, offenders and the communities in which they live. It may refer to diversion from formal court processes, to actions taken in parallel with court decisions, and to meetings between offenders and victims at any stage of the criminal process.

(Daly and Immarigeon, 1998: 21)

Many have attempted to facilitate a consensual understanding for RJ. The truth is that it has not yet been possible for RJ proponents to formulate a definition to which all would be able to subscribe. Examples include Tony Marshall's definition, found in his 1999 Home Office study (Marshall, 1999), the definition developed by the 'Working Party on Restorative Justice' funded by the United Nations (UN) and directed by Paul McCold (1996), Ron Claasen's principles (Claasen, 1995) and the UN's own definition cited in Resolution E/CN.15/2002/L.2/Rev.1 Basic principles on the use of restorative justice programmes in criminal matters (United Nations, 1999).

It is not the intention of this article to criticize these projects. This would be out of place and time. Besides the space provided for this article does not allow such examination, and even if it did, the information would be repetitive of other critical analyses (e.g. Zehr and Mika, 1998; Miers, 2001; Miers et al., 2001, Walgrave, 2002). More importantly, it would seem unfair to comment on the flaws of projects that were carried out five or even ten years ago. Pretending that we know better because we enjoy the luxury of time is methodologically and logically wrong. However, this does not mean that we cannot reflect upon the general philosophy of the different approaches that have been favoured towards resolving RJ's conceptual ambiguity. This is the only way we can learn from past experiences and advance current understanding. Learning and advancing is this article's task.

Admittedly, theoretical disagreements and conflicting definitions are common phenomena in the field of criminology. Many argue that there is even disagreement as to what constitutes 'criminal law', 'criminology' or even 'crime'. RJ is no exception. However, the interest of this article is a different one, and its central contention simple. The restorative movement is currently experiencing a tension between normative 'abolitionist'

and pragmatic visions of RJ. In particular, the article pin-points six areas where conceptual tensions result in negative implications for the practice of RJ. The article warns that if the individual existence of these fault-lines is not acknowledged, then RJ's ambiguity will continue to affect its practice.

Brief history of the tension between normative 'abolitionist' and pragmatic visions of restorative justice

This article claims that the aforementioned tension accompanied RJ from its early days. There seems to be a consensus in the literature that RJ was brought back onto the criminological agenda in the 1970s. For instance, Daniel van Ness believes that the term was probably coined in 1977 by Albert Eglash (Eglash, 1977). In particular, Eglash distinguished three types of criminal justice: retributive, distributive and restorative. He claimed that the first two focus on the criminal act, deny victim participation in the justice process and require merely passive participation by offenders. The third one, however, focuses on restoring the harmful effects of these actions, and actively involves all parties in the criminal process.

Randy Barnett¹ was the first to use the term 'paradigm shift'.² In particular, he claimed that we are living a 'crisis of an old paradigm',³ and that this crisis can be restored by the adoption of a new paradigm of criminal justice—restitution (Barnett, 1977). One year later, Nils Christie⁴ claimed that the details of what society does or does not permit are often difficult to decode, and that the degree of blameworthiness is often not expressed in the law at all. He argued that the State has stolen the conflict between citizens, and that this has deprived society of the opportunities for norm-classification. In 1990, Howard Zehr claimed that the current criminal justice system's 'lens' is the retributive model, which views crime as lawbreaking and justice as allocating blame and punishment (Zehr, 1990). Zehr sees 'crime' as a 'wound in human relationships', and an action that 'creates an obligation to restore and repair' (Zehr, 1990: 181). To make his understanding of RJ clearer, he contrasted it with the retributive way of defining 'crime'. He argued that retributive justice understands 'crime' as 'a violation of the State, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the State directed by systematic rules' (Zehr, 1990: 181).

Approaches to RJ started to move away from the 'paradigm shift' language to a more pragmatic approach with John Braithwaite's 1989 *Crime, Shame and Reintegration*. There he first introduced the idea of RJ practices as complementary processes to the current criminal justice system (Braithwaite, 1989/1997). This work has been highly influential in demonstrating that current criminal justice practice creates shame that is stigmatizing. Based on the concept of reintegrative shaming, the Australian National University developed the 'Reintegrative Shaming Experiments' (RISE). Since 1995, RISE has been running in the Australian Capital Territory by

the 'Centre for Restorative Justice'.⁵ The study uses an experimental research process, which randomly assigns cases to a conference or a court hearing. There are various reports by RISE, which give evidence of the effects of diversionary RJ conferences on re-offending, as well as comparing the effects of standard court processing with a diversionary conference for a number of offences. RISE produced a rich collection of data, which explore the effectiveness of RJ conferencing by comparing re-offending patterns and the satisfaction experienced by victims who were randomly assigned to these programmes, with those who experienced the formal court system in the usual way. Projects such as RISE examine a more pragmatic vision of RJ, which is now seen as a complementary process to the current criminal justice system rather than as an alternative paradigm.

Gaps and scope for further work: objectives and organization of the article

The article argues that so far the tensions between normative abolitionist and pragmatic visions of RJ have been dealt with as a single-dimensional problem. Past projects attempted to address the different conceptual problematic aspects of these tensions with a single strike. Some even believed that this could be achieved with the coining of a consensual definition that could accommodate all of RJ's normative and practical peculiarities (McCold, 1996, 1997, 1999).

The coining of a consensual definition is not the answer to RJ's ambiguity. This article considers the aforementioned tension to be multi-dimensional, with a number of different layers each of which needs to be addressed in a different way. The literature has examined these individual conceptual misunderstandings, but only in isolation, failing to place them within the larger framework of RJ's conceptual confusion. Consequently, there has not been any ad hoc work that pinpoints the exact areas of these conceptual conflicts, or one that describes their particular substance.

The bulk of the extant literature either adds a new dimension to this tension, or disregards its existence all together. On the other hand, many critical writings take the tension as a given, and proceed to address it without analysing its particular dimensions. Arguably, the only piece of writing that attempts to approach the substance of these conceptual conflicts, but nonetheless does not deal with them as the central matter of its investigation, is James Dignan's (2002) 'Restorative Justice and the Law: The Case for an Integrated, Systemic Approach'.

The first part of this article will aim to identify the various dimensions of these conceptual conflicts to reach a better understanding of the complexity of the overall problem of RJ's ambiguity. Therefore, the analysis will not look into the various: (a) disagreements between proponents and adversaries of RJ; (b) philosophical directions or theoretical discussions taking place for or against these issues of conflict.⁶ Overall, the main objective of

the first part of the article is to give a descriptive flavour of the substance of these conflicts by providing a drop list of their main themes.

Subsequently, the second part of the article will reveal a nexus between the identified conceptual fault-lines and a silent power-interest battle that takes place within the restorative movement and affects the application of RJ. This tension concerns different types of stakeholders in RJ (e.g. practitioners, policy makers, researchers). It also refers to a professional and cultural conflict that takes place within each one of these professions. As the article will argue, this tension primarily concerns the practitioners of the field, as they may differ considerably in their background, aspirations, methodology and approach to RJ. The article will conclude that one of the factors that could aid addressing this battle and minimize the growing tension in the field is the acknowledgement of the multidimensional nature of RJ's conceptual ambiguity.

The conclusions to be drawn from this article are generalizable for the wider restorative movement, which extends beyond criminal justice (e.g. organizational conflicts, family and neighbourhood disputes, conflicts in schools and clubs). The example of RJ in the criminal justice framework is chosen as a case study for two principal reasons. First, this is the area where the RJ literature is said to be most extensive. Hence the tensions between abolitionist versus pragmatic understandings of RJ are more prominent. Second, evidence suggests that RJ was originally brought back to address primarily the deficiencies of the current criminal justice system.¹ Therefore, it is claimed that this is the area where RJ practices are most needed.

Conflicts in conception: different visions of restorative justice

Arguably, the only agreement that exists in the literature regarding RJ's concept is that there is no consensus as to its exact meaning (Harris, 1998; Sullivan et al., 1998). The truth is that only until recently the RJ literature and practice have advanced enough to create a general sense of at least what the RJ concept stands for. And again, the term 'restorative justice' is used interchangeably, and while it might mean 'restorative cautioning' to the Thames Valley police officer (Hoyle et al., 2002), at the same time, it can stand for a complete justice paradigm or a transformative model of ethics (Braithwaite and Pettit, 1990).

This article identifies six conceptual fault-lines within the restorative movement. This categorization is important for two reasons. First, the extent of the impact of each of these six fault-lines on RJ's implementation and development is not the same. The impact of these fault-lines varies according to their substance. Second, in order for the problem of RJ's understanding to be addressed properly, each fault-line needs to be treated separately. Some of these conflicts are directly related to the concept's nature as a theory, while others concern side issues of application. All in all,

these conceptual conflicts do not carry the same significance. Therefore, the way we decide to deal with their particular implications ultimately affects RJ's development.

Figure 1 illustrates these six areas of conflict. They are represented with a different circle; as the circles move inwards, the disputed conceptual issue gets narrower. At the very outside circle lays the fault-line that this article considers to be fundamental in determining RJ's role within a criminal justice context. It is vital to remember that none of these fault-lines are mutually exclusive. For example, a group that represents a conflict of the second level might also be for or against a matter of another, broader or narrower, level. They all contribute, however, to what we call the problem of understanding/defining RJ.

Restorative justice: a new paradigm or a complementary model?

The first fault-line concerns the relationship between the RJ notion and the current criminal justice system. According to the first fault-line, RJ is a complete, consistent and independent justice paradigm that has the power to stand alone, and which should replace the current one. The second argues

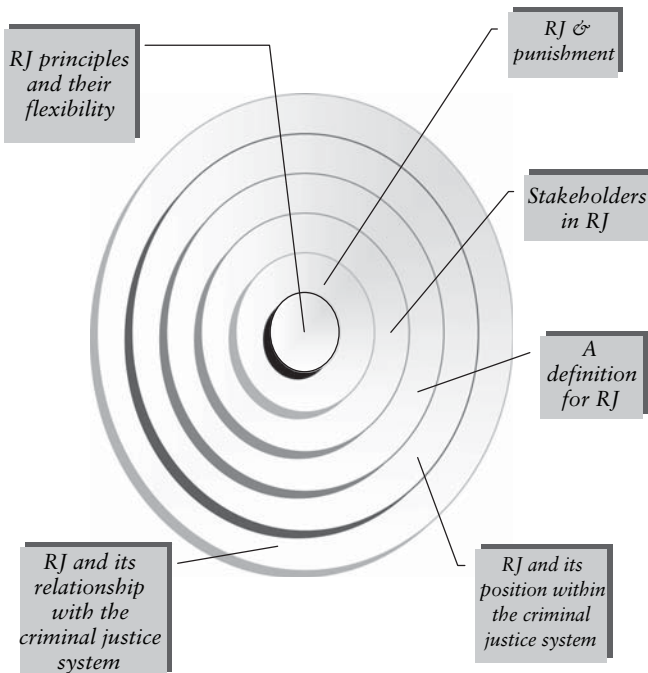


Figure 1 Fault-lines within the restorative justice movement

that RJ can exist only if supported by other paradigms namely the present justice system.

As already argued, this tension has accompanied RJ since its early days. During this period, and while the retributive and utilitarian models of criminal justice were already deep-seated, RJ advocates such as Gilbert Cantor (1976), Randy Barnett (1977), Nils Christie (1978), Ab Thorvaldson (1978) and Howard Zehr (1990) portrayed the relationship between the then emerging RJ and the existing criminal justice system as being 'polar opposites' in almost every aspect. Gilbert Cantor (1976), for instance, argued in favour of a total substitution of civil law for criminal law processes with a view to 'civilizing' the treatment of offenders. Nils Christie spoke of conflicts being stolen from the parties by the State, while Howard Zehr saw crime through the 'lenses' of a new paradigm.

Although these radical claims may now appear to be out-of-place and immature for their time, on reflection they make absolute sense. By introducing RJ as a radical concept, using exaggeration and overstatements, its proponents were hoping to make the then new concept of RJ appealing and interesting enough for writers and practitioners who knew nothing about it. However, once the excitement was over, and while RJ was leaving the phase of 'innovation' to enter the one of 'implementation', its advocates (Braithwaite, 1999b, 2003) started to talk about the need to combine its values and practices with existing traditions of criminal practice and philosophy.

Despite the extensive dialogue that has taken place both within and outside academia, this tension exists until today. Although this might appear to be understandable, what cannot be accepted is the triggering of misunderstandings and confusion, which in turn affect the RJ movement significantly. For example, many criminal justice agents who were convinced about the existence of a possible RJ threat against the status quo (and their jobs) reacted with strong opposition to governmental funding proposals (Home Office, 2003).

In 'Restorative Justice: Are We There Yet?', a leading policy maker in England and Wales said:

For some, RJ was given a huge boost, when people started talking about a whole paradigm shift. Then, it became clear to everyone that RJ is about something completely new; something that the criminal justice system doesn't do at all. Then, there were people who thought that this gave only two alternatives: either the criminal justice system or RJ, and that the latter cannot make any sense at all within the former ... I think it is a distortion of RJ to suggest that it cannot be used within prisons, or along other police practices. So, in a way, the 'paradigm shift language' made RJ look different from the criminal justice system, but ... we know that this is not theoretically true. Having said that, I don't want to jettison the 'paradigm shift language', because it is compatible with the ethos of RJ.

(Gavrielides, 2007: 158)

A place for RJ practices: within or outside the criminal justice system?

The second fault-line concerns the way RJ practices are integrated into the existing criminal justice process. On one side are the RJ proponents who argue for restorative programmes to operate completely outside of the present criminal justice system, which can remain in place, but unrelated to the restorative model (Davis, 1992). On the other side are the RJ advocates who believe that restorative programmes should be offered as fully fledged alternatives to the existing system, which can accommodate them through integration mechanisms.

The subtle but yet important difference between this fault-line and the previous one lies mainly in the fact that it does not speak of a potentially independent justice paradigm that can stand either in parallel or instead of the current punitive one, but of the way restorative practices can be implemented into or outside the existing system. Put another way, the question raised here is whether restorative programmes should be implemented as complementary processes or be separated from other criminal justice procedures, diverting cases out of the system all together.

In particular, some believe that having a restorative system of criminal practice in parallel to the current one is the only way restorative programmes can function. They argue that if integrated into current traditions of punitive philosophy, some restorative practices will be co-opted, while others will be marginalized and gradually withdrawn. The 'implementational' fault-line, on the other hand, argues that restorative programmes cannot stand alone due to a number of practical reasons such as retaining sufficient numbers of referrals to keep the practice viable. They can also create a risk of double punishment for offenders (Ashworth, 1993).

This fault-line is particularly visible in the restorative movement, and it has repeatedly led to misconceptions and disagreements. It has also created tendencies to either playing up or down differences and similarities between RJ and the criminal justice system. These are often exemplified by a reluctance from a number of RJ advocates to acknowledge that the criminal justice system comprises certain restorative elements (e.g. in the form of victim impact statements, community service and victim compensation).

A definition for RJ: outcome or process based?

The third fault-line concerns the approaches that have been adopted by different individuals and research centres while trying to formulate a definition for RJ. According to James Dignan, these approaches fall into two groups. On one side are those who 'conceive of RJ as a distinctive type of decision-making process'. On the other side are those who 'take the view that the process-based definition of RJ is at best incomplete, because it has nothing to say on the subject of "restorative outcomes", or how these might be defined and evaluated' (Dignan, 2002: 172).

Those who follow the first line, adopting a process-based definition, tend to limit the scope of restorative programmes to cases that are considered appropriate for an RJ intervention or to those in which both parties are willing to participate and abide by the ground rules. A representative example is Tony Marshall's definition: 'Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future' (1996a: 5).

However, restorative programmes may appear in different shapes and forms. As Paul McCold and Ted Wachtel (1999) put it, there are ranges of restorative practices, from 'fully restorative' to 'mostly restorative' to 'partially restorative'. By adhering, therefore, to a narrow definition that understands RJ merely as a process, we risk excluding the 'mostly restorative' and 'partially restorative' programmes.

On the other hand, those who adopt the second line of outcome-based definitions risk stretching the concept to include programmes, which though in the end result with restorative outcomes (such as compensation, community service), they might not be carried out respecting central RJ procedural rules (such as non-violent communication, effective and honest dialogue, repentance and forgiveness). In a nutshell, RJ is often stretched to fit elements that are not restorative in nature (second group), or is narrowed down to a notion that cannot take in all the essential features that characterize its thought (first group).

Stakeholders in RJ: how big should the circle be?

This fault-line concerns the numbers of the key stakeholders in a restorative process. Some believe that the key stakeholders in RJ processes are only the parties who are the most affected by the offence; that is the victim and the offender (Cantor, 1976). Others argue that the key stakeholders encompass all those who are concerned about the offence; hence the victim and the offender, all those who care about the parties' well-being (family and friends), all those who are concerned about the execution of the agreed sentence (prosecutors, judges, police) and finally all those who may be able to contribute towards a solution to the problem caused by the offence and are not related to the parties (victim support, community workers and counsellors).

The impact of this dichotomy has been considerable on RJ's implementation. Adherents to the first group usually accept Victim–Offender Mediation as the truly restorative practice, because it is the only programme that does not extend participants to anyone beyond the direct victim and offender. Conversely, supporters of the second view argue that only Family Group Conferencing and the various types of RJ circles and boards are genuinely restorative schemes, because they include the wider 'community of interest' (Morris and Young, 2000: 20).

The discussions over which group is right or wrong are plentiful, while the tension between mediation and conference practitioners is becoming

increasingly serious. The main argument against the first group is that it more or less collapses the distinction between crimes and civil wrongs, falling within the 'School of Abolitionists',⁸ which seems to fail to acknowledge that offences may have broader social implications that go beyond the personal harm or loss that is experienced by the direct victim (Duff, 1986; Lacey, 1988). The principal argument against the second group is that it creates a risk that the processes and values of RJ might be invoked to provide a cover-up not only for 'illiberal populism', but also for vigilantism and 'community despotism' (Dignan, 2002: 178).

RJ: an alternative punishment or alternative to punishment?

The fifth fault-line relates to RJ's measures and outcomes, and their relationship with the concept of punishment. Some deny that RJ measures can, in any way, be punitive (Wright, 1996: 27). Others argue that RJ is not 'alternative to punishment', but 'alternative punishment' (Duff, 1992). The argument of the first group is that restorative measures' primary purpose is to be constructive. Therefore, they are not inflicted 'for their own sake' rather than for a higher purpose (Walgrave, 1999: 146). The second group has argued that:

this purported distinction is misleading because it relies for its effect on the confusion of two distinct elements in the concept of intention. One element relates to the motives for doing something; the other refers to the fact that the act in question is being performed deliberately or wilfully.

(Dignan, 2003: 139)

The debate has been particularly interesting. To give some examples, Kathleen Daly (2000) takes RJ to be punishment, because it leads to obligations for the offender. She backs up her position with the results of a qualitative survey she carried out with young offenders who had experienced Family Group Conferencing (Daly, 1999). On the other hand, Paul McCold (1996) rejects the idea of including coercive judicial sanctions in the restorative process, as they might shift RJ to being punitive. Tony Marshall claims that coercive processes are not always achievable, and that they must be considered. However, this should be done through the criminal justice system. He argued that this is where RJ should end, and where the traditional system should take over (Marshall, 1996b). John Braithwaite believes that if a restorative process fails, it should be tried again and again; in his own words: 'RJ rewards the patient' (Braithwaite, 1999b: 6). However, he envisages not a future where punishment is abolished, but a future where punishment is marginalized (Braithwaite, 1999a). Finally, Gordon Bazemore and Lode Walgrave believe that restorative practices include both coercive actions as well as voluntary processes, and that the coercive intervention should also be reasonable, restorative and respectful (Walgrave, 1999).

The restorative principles and their flexibility

Finally, the last fault-line concerns the content and level of flexibility of RJ's core normative principles. The tension mainly refers to whether certain principles should be respected religiously, or whether practice can be carried out without adhering to them completely. Take for instance the principle of 'voluntariness'.² In simple words, the term means that the immediate RJ stakeholders (victim, offender and the community) need to decide for themselves to take part in the restorative process. However, the implementation of this principle through the different restorative programmes has divided RJ proponents between those who claim that a certain level of coercion is acceptable if RJ is to work side by side with the current criminal justice system, and those who believe that if the principle is not fully respected, then practice simply cannot continue to be called restorative.

For example, in 'Fundamental Concepts of Restorative Justice', Howard Zehr and Harry Mika (1998) attempted to provide a list of RJ principles in an effort to clarify what constitutes RJ. They explained that the impetus for their study came from fears that 'some of the programmes defined as restorative do not appear to contain some of the essential elements originally associated with RJ' (1998: 47). In particular, they feared that 'retributive and punitive programmes are simply being repackaged as RJ initiatives, a reflex of the growing popularity of the concept, and/or the availability of financial recourses' (1998: 49).

Their list of principles was composed of three major headings: (a) Crime is fundamentally a violation of people and interpersonal relationships; (b) violations create obligations and liabilities; (c) RJ seeks to heal and put right the wrongs. Under each of these headings, a number of secondary and tertiary points specified and elaborated on the general themes, providing elements that according to their opinion can address the critical components of one vision of RJ practice.

However, the content and particularly the level of flexibility of their principles differ significantly from other lists. For instance, in 'Restorative Justice: Variations on a Theme', Paul McCold recorded four principles, which he attempted to put to test. He said RJ is: (a) moralizing; (b) healing; (c) empowering; (d) transforming (McCold, 1998). Apparently, these differ from Zehr and Mika's principles. According to McCold, his principles failed to constitute a common basis for agreement among the 29 participants of his project. One of the principal causes that prevented consensus among his sample was the flexibility that these principles should/could have in practice (McCold, 1996).

Focusing again on the principle of voluntariness, Zehr and Mika claimed that in RJ: 'Voluntary participation by offenders is maximised; coercion and exclusion are minimised. However, offenders may be required to accept their obligations if they do not do so voluntarily' (1998: 51). Some others,

however, do not accept coercion in any form,³ while others do not consider the matter to be in any way different from what we encounter within existing criminal procedures. The latter group has often asked: Can it be regarded as truly voluntary, if the offender knows that prosecution may be discontinued if s/he takes part? (Erez, 1994).

Power-interest battles within the restorative movement

So far, the article has argued that the problem of RJ's ambiguity is multi-dimensional, and identified six conceptual fault-lines that seem to exist within the restorative movement. It has also argued that each of these conceptual tensions exerts a different influence upon RJ's application and theoretical development. Examples were given to support this claim. However, it is still unclear as to how exactly these different visions of RJ relate to the power-interests battle that this article also claims to exist among different RJ stakeholders.

The correlation between the conceptual fault-lines and the tension between different professionals in the restorative movement mainly concerns individuals and organizations that deal with RJ at the practical level. This refers to the practitioners and their public or private employers, the policy makers and the trainers. On various occasions, however, the battle extends beyond the field of practice and reaches RJ's theoretical discussions and research. These tensions are intensified and the battle is exacerbated as the conceptual fault-lines continue to exist.

The relationship between conceptual tensions and power battles is not one way. On the contrary, the conceptual fault-lines feed the power battle and vice versa. The power conflicts taking place within different professional circles encourage and advance the already existing conceptual differences. For example, research evidence has suggested that the disagreements in the RJ conception seem to be reflective of how people come to learn about it (Home Office, 2003). For example, some practitioners may come from a practice-oriented approach (Umbreit and Zehr, 1996; Morris and Maxwell, 1998), while others might have a more academic focus (Sherman et al., 2000). Research has also noted a number of differences that are experienced in the outcomes and processes of RJ practices that are carried out by professionals with and without a criminal justice background, and again between paid staff and volunteers (Victim Support, 2003).

To give some examples, conceptual conflicts can affect communication between practitioners (e.g. Victim-Offender Mediation and Family Group Conference colleagues) and between practitioners and their organizations/employers (e.g. in terms of primary goals pursuit). The same has been observed regarding communication between programme-designers and their organizations/employers. For instance, the practitioners tend to change the designed programme to fit in with their funders' agenda (Liebmann and Masters, 2001). This is particularly true for RJ programmes run by

organizations in the voluntary and community sector, which is dependent on fund raising.

Moreover, research has found that due to conceptual tensions, the same restorative programme may be implemented by different organizations of the same criminal justice system and still bear enormous differences (e.g. Victim–Offender Mediation carried out by ‘Mediation UK’ and Victim–Offender Mediation carried out by ‘Crime Concern’).⁴ On the other hand, conceptual misunderstandings seem to affect funding applications. Funding bodies tend to misunderstand the purpose, extent or character of proposed restorative projects, while different practitioners and organizations may abuse the concept to attract resources specifically allocated to RJ. This pretence on behalf of these applicants cannot always be detected since funders are not equipped with a comprehensive schema that would have laid down the sine qua non standards and principles of RJ practices. On top of this confusion, conceptual conflicts seem to have affected the primary and secondary parties’ level and quality of participation. Research has shown that due to misconceptions, victims and offenders have false hopes about RJ processes and sometimes their outcomes. This usually leads to disappointment or unwillingness to participate (Home Office, 2003).

In addition, what also seems to have been affected by this tension is the way evaluation and research are carried out. For example, evaluators tend to follow funding bodies’ understanding of RJ, aiming to reach the targets that were set according to these priorities. David Miers, for instance, in his international study for the Home Office concluded that without a clear and comprehensive understanding of RJ, ‘both analysis and evaluation are hampered’ (2001: 88).

The truth is that evaluation has traditionally been associated with the question of ‘what works’, and therefore it generally aims to prove or disprove the predefined targets of the given organization that is funding it (let that be public or private). However, this question is relative and to a great extent misleading, as it can involve virtually anything in the appropriate conditions. That is why many researchers and evaluators have insisted that the approach should change from ‘what works’ to ‘what exactly happened’ (in certain specific instances) (Marshall and Merry, 1990: 20).

As a general rule, evaluators should not be concerned with the policy decision that will eventually follow their work or whether to continue with the given programme or action. This is primarily a political decision that involves a number of moral and ideological factors that the researcher may attempt to clarify but cannot decide. That is why a good evaluator focuses on collecting information relevant to all the identifiable aims, which different parties may have. For these reasons, the ‘what happened’ question is more appropriate than the ‘what works’ one, as it adapts research techniques to the exigencies of different kinds of information.

Overall, the inconsistency between uses and understanding of RJ appears to have resulted in a lack of a co-ordinated campaign that could have put RJ onto the criminal justice policy and statutory agendas sooner

and more drastically. For instance, the contribution of most national (Restorative Justice Consortium, 2002) and international (United Nations, 1999) documents on RJ principles has been heavily burdened by conceptual tensions which inter alia attached an abstract nature to their principles, making them difficult to be identified in practice, and vice versa, to see practice reflected in them. On the other hand, definitions that have been developed to address these conceptual conflicts seem to have faced their own deficiencies, falling within one of the conceptual fault-lines.

Concluding remarks

The argument of this article is very simple. Despite the immense literature on RJ and the numerous efforts that have been carried out at national, regional and international levels to reach a common understanding about RJ's nature and applicability, the confusion persists. This conceptual tension does not only exist between adherents and opponents of RJ. As the analysis of this article has illustrated, the confusion also exists within the restorative movement itself. People working in this movement have different visions of RJ; some tend to fall within the abolitionists' school of thought while others have a more pragmatic, limited understanding and expectations from the RJ conception. The article identified six of these tensions; but as the movement expands the tensions are bound to increase and/or deteriorate. The examples provided are only illustrative of the various visions of RJ and should not be treated as exhaustive of the disagreements that characterize the field.

The various examples that were provided in the second section of the article illustrated that this conceptual tension is not merely an academic observation, but has had several negative theoretical and practical implications for RJ. In particular, these refer to the level of communication and collaboration between RJ stakeholders, funding procedures, research and evaluation, programme designs and parties' expectations. Practitioners are often brought in confrontation with other practitioners; funders are brought against practitioners, practitioners against theoreticians, researchers against practitioners and vice versa, researchers and evaluators against other researchers and evaluators and private organizations against public bodies. In short, the conceptual tensions encourage the carrying out of different professional battles within the movement, while at the same time these battles are feeding the conceptual tensions. A vicious circle is thus created.

The question that this article puts forward for reflection is whether RJ can ever break out of this vicious circle. It seems from the arguments of this article that the answer will depend as to whether we believe that the conceptual problem will ever be resolved. To this end, theoreticians, practitioners, policy makers and researchers within the field will need to

acknowledge the multidimensional nature of the problem. They urgently need to stop treating RJ's ambiguity with sterile or single-layered approaches such as definitions. The identification by this article of the different fault-lines and conceptual levels that comprise RJ's definitional tension explains why single-dimensional approaches should be avoided. The article also takes the first step towards an appropriate methodology. The next step will be to go deeper into the substance of these conceptual tensions with follow-up research and analysis. In this way, RJ stakeholders will learn more about the identified six tensions and attack them individually, gradually bringing equilibrium into the movement and the various professional and power interests that are at stake.

Notes

This article does not represent government policy, and the views expressed are solely those of the author.

- 1 See his 1977 article with John Hagel, where they argued for the abolishment of criminal law, and its replacement with the civil law of 'torts'. They suggested that restitution constitutes a new paradigm of justice, one that is preferable to criminal justice (Barnett and Hagel, 1977).
- 2 Barnett defined 'paradigm' as 'an achievement in a particular discipline which defines the legitimate problems and methods of research within that discipline' (Barnett, 1977: 300).
- 3 One of the most influential books on 'paradigm changes' is by Kuhn (1970). There, Kuhn claimed that paradigms can replace another, causing a 'revolution' in the way we view and understand the world. What can cause such a change is a 'paradigm crisis'.
- 4 Nils Christie is considered a leading proponent of the 'Informal Justice' movement. After 'Conflicts as Property' (1978), he published *Limits to Pain* (1981), where he showed the connection between the 'theft of conflicts' that he advanced in the article, and the use of punishment.
- 5 See <http://www.aic.gov.au/rjustice/rise/>
- 6 For an analysis of RJ's philosophical background see Gavrielides (2005).
- 7 According to Braithwaite (2002), the first contemporary scheme that included restorative elements was a 1974 victim-offender reconciliation programme in Ontario, Canada.
- 8 The central contention of Abolitionism is that: 'events and behaviours that are criminalized only make up a minute part of the events and behaviours that can be so defined', and that crime is not the object, but the product of crime control philosophies and institutions (de Haan, 1987).
- 9 This term is preferred by the Restorative Justice Consortium and the majority of RJ authors.
- 10 'The conference is voluntary. It will take place only if the victim and the offender agree to participate. All parties are free to withdraw from the restorative justice process at any time' (New Zealand Government, 2004).
- 11 For example, see the procedural guidelines of the 'MARS' project in Southampton, UK.

References

- Ashworth, A. (1993) 'Some Doubts about Restorative Justice', *Criminal Law Forum* 4(2): 277-99.
- Barnett, R. (1977) 'Restitution: A New Paradigm of Criminal Justice', *Ethics: An International Journal of Social, Political, and Legal Philosophy* 87(4): 279-301.
- Barnett, R. and J. Hagel (1977) *Assessing the Criminal: Restitution, Retribution, and the Legal Process*. Cambridge, MA: Ballinger.
- Braithwaite, J. (1989/1997) *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.
- Braithwaite, J. (1999a) 'A Future Where Punishment is Marginalised: Realistic or Utopian?', *UCLA Law Review* 46(4): 1727-50.
- Braithwaite, J. (1999b) 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', *Crime and Justice: A Review of Research* 25: 1-127.
- Braithwaite, J. (2002) 'Setting Standards for Restorative Justice', *British Journal of Criminology* 42(3): 563-77.
- Braithwaite, J. (2003) 'Principles of Restorative Justice', in A. von Hirsch, J.V. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, pp. 1-20. Oxford: Hart Publishing.
- Braithwaite, J. and P. Pettit (1990) *Not Just Deserts: A Republican Theory of Criminal Justice*. Oxford: Clarendon Press.
- Cantor, G. (1976) 'An End to Crime and Punishment', *The Shingle (Philadelphia Bar Association)* 39(4): 99-114.
- Christie, N. (1978) 'Conflicts as Property', *British Journal of Criminology* 17(1): 1-15.
- Christie, N. (1981) *Limits to Pain*. Oslo & Blackwell, Oxford: Norwegian University Press.
- Claasen, R. (1995) *Restorative Justice Principles and Evaluation Continuums*. Clovis, CA: Fresno Pacific College, National Centre for Peacemaking and Conflict Resolution.
- Daly, K. (1999) 'Does Punishment have a Place in Restorative Justice?', paper presented to the Australia and New Zealand Society of Criminology Annual Conference, Perth, February.
- Daly, K. (2000) 'Revisiting the Relationship between Retributive and Restorative Justice', in J. Braithwaite (ed.) *Restorative Justice: Philosophy to Practice*, pp. 33-54. Aldershot, USA, Singapore, Sydney: Ashgate/Dartmouth.
- Daly, K. and R. Immarigeon (1998) 'The Past, Present, and Future of Restorative Justice: Some Critical Reflections', *Contemporary Justice Review* 1(1): 21-45.
- Davis, G. (1992) *Making Amends: Mediation and Reparation in Criminal Justice*. London: Routledge.
- De Haan, W. (1987) 'Abolitionism and the Politics', *Howard Journal of Criminal Justice* 26(1): 1.
- Dignan, J. (2002) 'Restorative Justice and the Law: The Case for an Integrated, Systemic Approach', in L. Walgrave (ed.) *Restorative Justice and the Law*, pp. 168-91. Cullompton: Willan.

- Dignan, J. (2003) 'Towards a Systemic Model of Restorative Justice: Reflections on the Concept, its Context and the Need for Clear Constraints', in A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, pp. 135–57. Oxford: Hart Publishing.
- Duff, A. (1986) *Trials and Punishments*. Cambridge: Cambridge University Press.
- Duff, A. (1992) 'Alternatives to Punishment—or Alternative Punishments?', in W. Cragg (ed.) *Retributivism and Its Critics*, pp. 43–69. Stuttgart: Franz Steiner.
- Eglash, A. (1977) 'Beyond Restitution: Creative Restitution', in J. Hudson and B. Galaway (eds) *Restitution in Criminal Justice*, pp. 91–129. Lexington, MA: DC Heath & Company.
- Erez, E. (1994) 'Victim Participation in Sentencing and the Debate Goes on', *International Review of Victimology* 3: 17–32.
- Gavrielides T. (2005) 'Some Meta-Theoretical Questions for Restorative Justice', *Ratio Juris* 18(1): 84–106.
- Gavrielides, T. (2007) *Restorative Justice Theory and Practice: Addressing the Discrepancy*. Finland: HEUNI.
- Harris, K. (1998) 'Reflections of a Sceptical Dreamer: Some Dilemmas in Restorative Justice Theory and Practice', *Contemporary Justice Review* 1(1): 57–69.
- Home Office (2003) *Restorative Justice: The Government's Strategy*. London: Home Office.
- Hoyle, C., R. Young and R. Hill (2002) *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*. York: Joseph Rowntree Foundation.
- Kuhn, T.S. (1970) *The Structure of Scientific Revolutions*. Chicago, IL: Chicago University Press.
- Lacey, N. (1988) *State Punishment*. London: Routledge.
- Liebmann, M. and G. Masters (2001) 'Victim Offender Mediation in the UK', in the European Forum for Victim Offender Mediation and Restorative Justice (ed.) *Victim–Offender Mediation in Europe*, pp. 337–69. Leuven: Leuven University Press.
- McCold, P. (1996) *Restorative Justice Delphi Process round 3*. Bethlehem, PA: The Working Party on Restorative Justice of the Alliance of NGOs on Crime Prevention and Criminal Justice of the United Nations.
- McCold, P. (1997) *Restorative Justice: An Annotated Bibliography 1997*. Monsey, NY: Criminal Justice Press.
- McCold, P. (1998) 'Restorative Justice: Variations on a Theme', in L. Walgrave (ed.) *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research*, pp. 19–53. Leuven: Leuven University Press.
- McCold, P. (1999) 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to Walgrave', paper presented at the 4th International Conference on Restorative Justice for Juveniles, Leuven, Belgium, October.
- McCold, P. and T. Wachtel (1999) 'Restorative Justice Theory Validation', paper presented at the 4th International Conference on Restorative Justice for Juveniles, Leuven, Belgium, October.

- Marshall, T. (1996a) *Restorative Justice: An Overview*. London: Home Office.
- Marshall, T. (1996b) 'The Evolution of Restorative Justice in Britain', *European Journal on Criminal Policy and Research* 4(4): 21–43.
- Marshall, T. (1999) *Restorative Justice: An Overview*. London: Home Office, Research Development and Statistics Directorate. First published in 1996.
- Marshall, T. and S. Merry (1990) *Crime and Accountability: Victim–Offender Mediation in Practice*. London: HMSO.
- Miers, D. (2001) *An International Review of Restorative Justice*. London: Home Office Policing and Reducing Crime Unit Research Development and Statistics Directorate.
- Miers, D., C. Hale, M. Maguire, A. Netten, T. Newburn and S. Uglow (2001) *An Exploratory Evaluation of Restorative Justice Schemes*. London: Home Office.
- Morris, A. and G. Maxwell (1998) 'Restorative Justice in New Zealand: Family Group Conferences as a Case Study', *Western Criminology Review* 1(1). Available at <http://wcr.sonoma.edu/v1n1/morris.html>
- Morris, A. and W. Young (2000) 'Reforming Criminal Justice: The Potential of Restorative Justice', in H. Strang and J. Braithwaite (eds) *Restorative Justice: Philosophy to Practice*, pp. 11–33. Aldershot, USA, Singapore, Sydney: Ashgate/Dartmouth.
- New Zealand Government (2004) *Information on Court-Referred Restorative Justice*. Wellington: The Department for Courts. Available at <http://www.justice.govt.nz/pubs/courts-publications/118-restorative-justice.html>
- Restorative Justice Consortium (2002) *Statement of Restorative Justice Principles*. London: RJC.
- Sherman, L.W., H. Strang and D.J. Woods (2000) *Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE)*. Canberra: Centre for Restorative Justice.
- Sullivan, D., L. Tifft and P. Cordella (1998) 'The Phenomenon of Restorative Justice: Some Introductory Remarks', *Contemporary Justice Review* 1(1): 7–20.
- Thorvaldson, A. (1978) *The Effects of Community Service on the Attitudes of Offenders*. Cambridge: University of Cambridge.
- Umbreit, M. and H. Zehr (1996) 'Restorative Family Group Conferences: Differing Models and Guidelines for Practice', *Federal Probation* 60(3): 24–30.
- United Nations (1999) *Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*. General Assembly. Vienna: United Nations.
- Victim Support (2003) *Restorative Justice: The Government's Strategy July 2003: Response by Victim Support*. London: Victim Support.
- Walgrave, L. (1999) 'Community Service as a Cornerstone of a Systemic Restorative Response to Juvenile Crime', in G. Bazemore (ed.) *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, pp. 129–55. Monsey, NY: Criminal Justice Press.
- Walgrave, L. (2002) *Restorative Justice and the Law*. Cullompton: Willan.
- Wright, M. (1996) *Justice for Victims and Offenders: A Restorative Response to Crime*, 2nd edn. Winchester: Waterside Press.

- Zehr, H. (1990) *Changing Lenses: A New Focus for Crime and Justice*.
Scottsdale, PA/Waterloo, ON: Herald Press.
- Zehr, H. and H. Mika (1998) 'Fundamental Concepts of Restorative Justice',
Contemporary Justice Review 1(1): 47–55.
-

THEO GAVRIELIDES was the Human Rights Adviser of the Strategy Development Division of the UK's Department for Constitutional Affairs. He is now the Head of Policy of Race on the Agenda (www.rota.org.uk) and the Director of Independent Academic Research Studies (www.iars.org.uk). He is a human rights and restorative justice expert and has published widely in both fields.

