

Victims and offenders in restorative justice: findings from empirical research

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Introduction

Across the world, a growing social movement advocates restorative justice for those affected by crime, victims and offenders alike. Restorative justice as a paradigm embraces a wide range of procedures recommended for a wide range of criminal justice settings. All of them propose that restorative justice (RJ) will do better than conventional justice at reducing repeat offending and at repairing the harm that crime causes to victims.

There are a great variety of forms and applications of RJ in use today. Beginning with the wholesale reform of the New Zealand juvenile justice system in 1989, RJ is most commonly used these days with young people, often in connection with low-level offending. But its principles can be seen at work at the other end of the spectrum of conflict in the resolution of communal violence in truth and reconciliation commissions, and in other settings too, addressing emotions in post-conflict societies. These include the resolution of divisions between warring factions and their reintegration into mainstream society and the articulation of victims' grievances following prolonged conflict.

RJ, in the form of community conferences, has been advocated in Northern Ireland as a way of dealing with the distress to victims caused by amnesties granted to combatants. Such meetings can, at least theoretically, apply the same forces that are at work in the RJ conferences now much used in the justice system. However, I understand that the use of RJ here has been limited to some use by paramilitaries as an alternative to physical punishment and, more conventionally, some pilot projects in youth conferencing, along the same lines as its use in Australasia. While there are good reasons for theorising that RJ could be very effective in the resolution of long-standing community conflicts in Northern Ireland, and equally good reason for thinking that it may have considerable benefits compared with physical punishment, I will limit my comments to what we have found out through our empirical work on the effects of RJ in the criminal justice system.

How do we know what we know about the effects of RJ?

Many claims have been made by RJ advocates about its effectiveness in reducing re-offending and in healing victims, but there has been a dearth of empirical work to test these claims. The research that has been done is often marred by poor design, leading

to selection bias so serious that little can be made of the findings. RJ often can be shown to ‘work’ splendidly, but what is lacking in many of these studies is information about the counterfactual: what would have happened without RJ?

Succumbing to the temptation to test RJ only with offenders who are remorseful, who are ‘deserving’ and who seem likely to respond to a second chance dooms the project to success. Such offenders may well never have reoffended no matter how they were treated by the justice system, and a far simpler, less costly intervention may well have had the desired effect. What we seek is evidence about when RJ works better than conventional justice. We would not realistically expect it always to do so, but instead we seek to discover when and how best to use it.

For that we need the rigour of a research design on the medical model of testing new drugs and surgical procedures, where all eligible cases are randomly assigned to RJ or no RJ, with equal probability of receiving either ‘treatment’. Across enough cases, individual differences such as age, employment, education and extent of prior offending, will ‘wash out’ between the two groups, so that we can be confident that any difference emerging between them can be attributed to the presence or absence of RJ.

What do we know about the effects of RJ?

When we think about what we want RJ to do for offenders, the answer is clear. We want them to offend less. There are strong theoretical reasons, and some empirical findings, that lead us to think that RJ may be more effective than conventional justice in reducing re-offending. Both Braithwaite’s¹ re-integrative shaming theory and Sherman’s² defiance theory underpin the practice of RJ, while research over many years has supported Tyler’s³ procedural justice theory that people who believe they have been treated fairly are less likely to re-offend. So we have some ideas about the conditions under which reoffending will be reduced, as well as a normative concern that offenders should perceive the law and the justice system as legitimate.

When we think about what we want RJ to do for victims, the answer is: whatever victims want from the justice system. It is only in relatively recent times that victims have been asked what that might be. For centuries before they had been the forgotten third parties in a system with only two players: the defendant and the state. But when victims are asked what they want,⁴ they respond almost uniformly as follows:

- they want more information about the progress and outcome of their case,
- they want more participation in the way their case is dealt with,
- they want fairer and more respectful treatment,

¹ Braithwaite, John (1989), *Crime, Shame and Reintegration*, Cambridge: Cambridge University Press

² Sherman, Lawrence W (1993), ‘Defiance, deterrence and irrelevance: a theory of the criminal sanction’, *Journal of Research in Crime and Delinquency* 30:445-73

³ Tyler, Tom (1990), *Why People Obey the Law*, New Haven CT: Yale University Press

⁴ See for example Strang, Heather (2002), *Repair or Revenge: Victims and Restorative Justice*, Oxford: Oxford University Press.

- they want material reparation for the material harm they have suffered, but
- above all they want emotional restoration and an apology for the harm they have experienced.

It is against these measures that RJ should be compared with conventional justice when we look at its effectiveness for victims.

Research findings

On the benefits of RJ for victims, the evidence points unequivocally to its superiority compared with conventional justice for victims who wish to participate. The evidence about the effects on offenders, as indicated by their reoffending behaviour, is far more mixed. In my accompanying presentation I include some slides of what we know so far and how factors such as race, gender, offence type and social context interact with RJ, making its effects highly variable.

Conclusion

RJ as a new paradigm in justice is in its infancy. In those places where it has taken root it tends to be used for dealing with young offenders rather than adults and is often restricted to those who have committed crimes at the less serious end of the spectrum. Research evidence to date indicates that this may not be the most effective use of the intervention. It is resource-intensive to do RJ well and we need to ensure that it is used where it is most likely to make a difference. The outcomes in our research to date give good indications about where that is most likely to happen. It also warns us that RJ effects are difficult to predict. We should not assume that its effects are always benign; rather we should ensure that any RJ programme is subject to careful monitoring and measurement on a limited basis before it is scaled up to mainstream practice.

RJ is powerful medicine and should be treated as such. Let's not allow extravagant claims for its benefits undermine its longterm use. It is no magic bullet but has the potential to be a highly significant additional tool in crime reduction and crime prevention.