

RESTORATIVE JUSTICE: A CRITICAL ANALYSIS

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Abstract

Originating from the practices of aboriginal societies and various religious traditions, restorative justice has become lately a very popular but controversial topic. The longstanding debate is centered mainly on a few key elements: whether this concept should be clearly defined or viewed as an open notion, whether it should be defined as a process or as a result, whether it should contain some form of punishment, whether it should be contrasted with the retributive justice approach, and whether it should be considered as an alternative to the traditional criminal justice system or as an integrated part of it.

This paper will show how, despite the differences among restorative justice definitions, they all focus on some common elements: promoting practices inspired by indigenous and religious customs, viewing crime as a harm caused by an individual against another individual, and giving those affected by the crime a chance to participate in the process of fixing wrongdoings.

By comparing restorative justice with reparative justice and community justice, this paper will emphasize the uniqueness of this specific approach. Further, a critical analysis of some theories that explain the essence of restorative justice will be developed and a closer look at the victim-offender mediation program will be taken. Then, an analytical overview of strengths and weaknesses of restorative justice will be provided. Finally, this paper will include a few recommendations.

Key-words: *community justice, restorative justice, punishment, theories*

I. Introduction

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II. Concept of Restorative Justice

Theoretical preoccupations about restorative justice started in the 1970s when Barnett (1977) and Eglash (1977) analyzed the theory and application of restitution. It was claimed, however, that the principles of restorative justice date back to traditional societies, their initial customs, and religions (Braithwaite, 2002; Gavrielides, 2005). Barnett (1977, as cited in Fattah, 1987) replaced the paradigm of punishment with one of restitution. Thus, crime was redefined as an action committed by an individual against another individual, and not against society. In the 1980s and 1990s, Braithwaite (1989), Marshall (1985), Umbreit (1994), and Zehr (1990) developed this perspective for the field of criminal justice. According to Braithwaite's theory of reintegrative shaming, offenders respond negatively when punished

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by the state, but positively when punished by their own community. Based on this theory, restorative justice conferences were initiated in Australia and New Zealand (Lokanan, 2009). Bazemore (1997, as cited in Lokanan, 2009) observed that reintegrative shaming does not address the interests of victims. Furthermore, Marshall (1999) advocated for a necessary confrontation between offenders and victims to have the offender understand the harm he or she caused. As a result, victim-offender mediation programs propagated throughout North America, Europe, and the South Pacific (Umbreit, Abrams, & Gordon, 2006).

According to the United Nations (2003, as cited in McCluskey, Lloyd, Stead, Kane, Riddell, & Weedon, 2008: 200), restorative justice is “a problem-solving approach to crime that focuses on restoration or repairing the harm done by the crime and criminal to the extent possible, and involves the victim(s), offender(s) and the community in an active relationship with statutory agencies in developing a resolution...”. For Bazemore and Schiff (2001: 7), restorative justice is a “new way of thinking”. According to Bazemore and Walgrave (1999, as cited in Latimer et al., 2001: 1), restorative justice has also been associated with “community justice, transformative justice, peacemaking criminology and relational justice”. The restorative justice paradigm is based on the assumption that “crime is a violation of people and relationships”, rather than a “violation of law” (Zehr, 1990, as cited in Latimer et al., 2001: 1). It is a response to crime that focuses on “bilateral discussion” in obtaining “a consensus about the meaning of the offence and how to address the transgression” (Okimoto, Wenzel, & Feather, 2009: 156). Connected more to the “concept of restoration” as a “valid third alternative” (Zehr, 1990, as cited in Latimer, Dowden, & Muise, 2001: 1), restorative justice is more about “what happened, who has been hurt, and what needs to happen to repair the harm” (Zehr, 1990, as cited in McCluskey et al., 2008: 201). Through discussions among the victim, the offender, and the community, restorative justice focuses on reparation and healing, rather than punishment (Latimer et al., 2001).

Some authors defined restorative as a process (Marshall, 1985; McCold, 2004; Zehr, 2002) while others defined it as a result (Doolin, 2007). Restorative justice is defined as 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” (Marshall, 1985, as cited in Braithwaite, 1999: 5). Analyzing Marshall’s work, Gavrielides (2005: 86) observed that this author’s reference to restorative justice as a process was “not accidental”, but “carefully selected”. According to Marshall (1999), restorative justice started as an experiment and then it developed theoretically as a result of the interest of government. According to Zehr (2002: 37), restorative justice is also “a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible”. Umbreit, Coates, and Vos (2007) considered this definition remarkable for its realistic perspective on restorative justice. McCold (2004) also considered it essential to define restorative justice as a process that could generate a resolution, and not as the resolution itself. Further, Presser (2004) concluded that hoping that those involved in the process of restoration will talk is what really matters. While analyzing thirty years of practice and application of the victim-offender mediation program, Umbreit, Coates, and Vos (2004) concluded that the importance of reaching an agreement was secondary compared to the importance of having a dialogue between the parties. The same conclusion was reached in several other studies (Coates & Gehm, 1989; Umbreit & Coates, 1993; Umbreit, 1995, as cited in Umbreit et al., 2004). Moreover, it was observed that restorative justice cannot guarantee a particular result (Braithwaite, 2002).

In contrast, Doolin (2007) emphasized the importance of defining the notion by its outcomes rather than by the process itself. On this note, Bazemore and Walgrave (1999, as cited in Doolin, 2007: 429) chose to define restorative justice as “every action that is primarily oriented toward doing justice by repairing the harm that had been caused by a crime.” The key element of restorative justice is, however, to accept restoration as a main objective (Doolin, 2007). Restoration means repairing the harm caused by the crime and the notion of harm includes material, physical losses, but also psychological injuries (Doolin, 2007). By requiring offenders to participate in the process of dealing with their criminal behaviour, restorative justice asks offenders to assume and repair the harm caused (Doolin, 2007). As a result, Doolin (2007: 439-440) defined the notion of restorative justice by the following core values: undertaking “to restore and empower victims”; recognizing that “a wrong has been committed”; supporting offenders to accept responsibility and repair the harm caused while reintegrating them into the community; emphasizing a need for the presence of those who will help victims to heal and offenders to reintegrate, assessing restorative justice “in terms of the outcomes of restoration sought”; considering coercion as an option in order to extend the applicability of restorative justice; accepting the idea of

including the state in this process in order to “enforce legal safeguards” and “ensures adequate resources are available”; and viewing restorative justice as a “continuum” towards achieving restoration.

The restorative justice process requires sincerity and a genuine willingness to personally participate together with those directly affected by crime (Llewellyn and Howse, 1998, as cited in Latimer et al., 2001). It is an opportunity for offenders to take responsibility for offending behaviour and accept the consequences of their actions. It is also an opportunity for those affected by the offence and the offender to discuss how the offence harmed them, participate in establishing consequences, and begin the healing process (Latimer et al., 2001).

Despite definitional differences, restorative justice practices share at least three essential characteristics: first, they are all centered on repairing the harm suffered by a victim as a result of a particular incident; second, the process of healing is based on the intervention of the community where the wrong happened; third, they all have a common ground in religious traditions (Wheeldon, 2009).

1. Restorative Justice and Retributive Justice

Lokanan (2009) argued that restorative justice was an open and flexible concept. In developing his argument, he compared retributive justice with restorative justice. Retributive justice is based on crime (Lokanan, 2009). By committing the crime, the offender acts against the state (Lokanan, 2009). Victims, offenders, and their communities are, however, excluded from an active participation in the process of justice (Westinde, 1998). Considering numerous rules, regulations, legal terms, and procedures associated with the traditional system, victims, offenders and their community could hardly identify with this process (Westinde, 1998). The interests of the community are represented by the state which punishes the offender for breaking the law (Lokanan, 2009). By applying a punishment, the state rebalances the positions of victims and offenders within society (Maiese, 2003, as cited in Lokanan, 2009: 295, Schulhofer, 1986). Pain is the manifestation of punishment since “penal law is pain law” (Christie, 1981, as cited in Lokanan, 2009: 295). In the retributive system the victim is the state (Lokanan, 2009). Restorative justice, however, places the victim at the centre of the process (Lokanan, 2009). Crime becomes “a violation of one human being by another” (Umbreit & Coates, 1999: 45). With restorative justice approach, crime is no longer an infringement of the law or an action against the state, but an infringement of relationships, and, therefore, an action against concrete people (Lokanan, 2009). Offenders, victims, and their communities find a way to “heal and reintegrate the offender back into society” (Zehr, 1990: 210).

Lokanan (2009) supported the inclusion of punishment in restorative justice (Lokanan, 2009). Gavrielides (2005) grouped the relationship between restorative justice and punishment into two categories. The first category suggests that restorative justice should not have any connection with any form of punishment (Wright, 1996, as cited in Gavrielides, 2005: 91). The second category says that restorative justice practices should deal with an “alternative punishment” (Duff, 1992, as cited in Gavrielides, 2005: 91). In order to distinguish restorative justice from retributive justice, Gavrielides (2005: 92) has referred to “restorative punishment”, while Walgrave (2001, as cited in Gavrielides, 2005: 92) referred to the same concept as “painful restorative obligation”. Despite what it is named, the essence of punishment, as a restorative measure, is to address harm and not deterrence (Gavrielides, 2005).

Clark (2008) also noted that differences between retributive and restorative justice do not exclude a potential combination between them. In constructing this thesis, Clark (2008) used examples of international conflicts where elements of both systems were combined rather than opposed. For example, in Rwanda along with the International Criminal Tribunal there are “gacaca courts” that deal with “less serious crimes committed during the genocide” (Clark, 2008: 340).

2. Restorative Justice and Community Justice

Both restorative justice and community justice scrutinize the current justice system, reconnect individuals, advocate for similar outcomes, focus on the role of the victim, and tend to limit trust on traditional criminal justice. There are, however, essential features that characterize restorative justice. First, restorative justice is an alternative justice, while community justice works within the current criminal system (McCold, 2004). For restorative justice, crime is a violation of relationships, an action against people; while for community justice, crime is a violation of the “quality of life in a locality”

(McCold, 2004: 18), or, in other words, an action against places. In the first case, crime is no longer an infringement of law, but in the second case it is (McCold, 2004). In contrast to community justice, which operates in a neighbourhood, restorative justice operates only at the individual level (McCold, 2004). Crawford and Clear (2001: 129) also noted that “restorative justice is about cases, while community justice is about places”. The goal of restorative justice is to repair the harm done to the victim and to restore the relationship among victim, offender, and community, while community justice is preoccupied with the “quality of life” in a given neighbourhood (McCold, 2004: 20). Considering the dynamic of our modern society, restorative justice prefers to rely on personal relationships rather than geographical boundaries (McCold & Wachel, 1998; McCold, 2004). For restorative justice, the victim is an individual affected by a particular crime, the offender is the person who committed a crime and needs to take responsibility for what he or she has done, and the community is defined as family and friends of victims and offenders (McCold, 2004). Community justice operates with the concept that victims as residents live in a certain area and are highly exposed to crime, while offenders need “surveillance and rehabilitation” (McCold, 2004: 20). Restorative justice deals with the effect of a crime after it has happened, while community justice has a prevention component (McCold, 2004).

3. Other Theoretical Underpinnings of Restorative Justice

Based on restorative justice’s lack of acceptance, Pavlich (2005) expressed his doubts regarding the potential of this new philosophy to challenge traditional criminal justice. Responding to this criticism, Wheeldon (2009) argued in favour of linking restorative justice with other theories of criminology while maintaining its uniqueness. On this view, restorative justice could be connected with peacemaking criminology that seeks to achieve crime control through reconciliation rather than retribution (Wheeldon, 2009). According to the same author, the language used by the Supreme Court of Canada in *R. v. Gladue* (as cited in Wheeldon, 2009: 94) accepted the relationship between restorative justice and peacemaking criminology. In the view of Supreme Court:

restorative justice may be described as an approach to remedying crime in which it is understood that all things are interrelated and the crime disrupts the harmony which existed prior to its occurrence, or at least which it is felt should exist. The appropriateness of a particular sanction is largely determined by the needs of the victims, and the community, as well as the offender. The focus is on the human beings closely affected by the crime. (*R. v. Gladue*, as cited in Wheeldon, 2009: 94).

It was also affirmed that social disorganization, social learning, and moral development theories could be useful in establishing a strong theoretical base for the restorative justice approach (Wheeldon, 2009). By underlining the existing lack of relationships between members within particular communities, the social disorganization theory could offer not only an explanation of crime occurrence, but also could be used by restorative justice to respond to crime (Wheeldon, 2009). In Aker’s view (1998, as cited in Wheeldon, 2009: 96) the way one learns depends upon “the society, the social environment, and social interactions”. These findings could be used by restorative justice in understanding how the behaviour of one individual can be determined by the behaviour of others (Wheeldon, 2009). Kohlberg (1987, as cited in Wheeldon, 2009: 97), studied two levels of moral development: pre-conventional and conventional. The pre-conventional level refers to how, based on consequences of his or her actions, one understands these actions and conforms to a norm as a result of a potential punishment (Wheeldon, 2009). At the conventional level, individuals will consider their behaviour based on “social views and expectations” (Wheeldon, 2009: 97). Wheeldon (2009) concluded that these theories provided a framework for restorative justice within the existing justice system.

Lokanan (2009) also studied the theoretical grounds for restorative justice. In his view, the theory of social control elaborated on by Hirschi (1969, as cited in Lokanan, 2009: 290-291) applies to restorative justice. Questioning why people obey the law, Hirschi (1969, as cited in Lokanan, 2009: 290-291) observed that those individuals more attached to society will trust and conform to the law. In contrast, those who are not attached to society and do not trust the law will not conform to it and will become delinquents (Lokanan, 2009). Another theory used in restorative justice conferences, especially in those designed for juvenile offenders, was reintegrative shaming formulated by Braithwaite (1989, as cited in Lokanan, 2009: 291). There were scholars, however, who disagreed with the compatibility of shaming and the principles of restorative justice (Retzinger, 1991; Scheff, 1990, 1997, as cited in Lokanan, 2009:

291). These authors based their argument on the idea that shaming means humiliation (Lokanan, 2009). The problem with reintegrative shaming was that it did not take into account the importance of victims (Bazemore, 1997, as cited in Lokanan, 2009: 291). Therefore, Lokanan (2009) referred to Sykes and Matza (1957, as cited in Lokanan, 2009: 291) who observed that offenders have a tendency to justify their actions by their victims' behaviour. In restorative justice practices this will be avoided by confronting offenders with their victims (Marshall, 1999, as cited in Lokanan, 2009: 292). Lokanan (2009) also argued that deterrence theories relate to restorative justice (Lokanan, 2009). According to deterrence theories, some individuals are more likely to break the law when they perceive a very low risk of being punished (Lokanan, 2009). The merit of restorative justice is that it gives power to victims and their community to restore the broken relationship.

Conflict resolution is another theory related to restorative justice practices as crime is a conflict between offenders and victims within the community (Lokanan, 2009). Moore (2003: 6) developed a "continuum" of private and public forms of conflict resolution. When a conflict cannot be ignored, parties try to resolve it by using "informal problem-solving discussions" (Moore, 2003: 6). Parties in conflict rely on negotiation as a method of resolving their dispute. Negotiation is one of the most popular forms of conflict resolution for reciprocally satisfactory agreements (Acuff, 2008; Fisher & Ury, 1981; Kriesberg, 2003; Moore, 2003; Shell, 1999; Thompson, 2001; Moore, 2003; Ury, 2000; Vayryen, 1991; Weeks, 1992). According to Moore (2003), negotiation can be difficult to start or, once started, could encounter a dead-end. At this point, parties rely on mediation when they decide to be assisted in their face-to-face discussions by a third party who is not involved in the conflict (Chornenki & Hart, 2005; Cleary, 2001; Moore, 2003; Phillips, 2001). Mediation is a form of "facilitated negotiation" (Stitt, 2003: 1).

When parties lose control over outcomes, they hire lawyers to represent them, and are required to bring their dispute before a third authority, for example a judge (Moore, 2003). This is the litigious way of resolving a conflict. According to Silver (2001: 3), however, "traditional litigation in most common-law jurisdictions has become extremely cumbersome, lengthy, costly, and, to a great extent, self-perpetuating".

When parties are not able to reach a reciprocal agreement by negotiating, they rely on mediation. The advantages of mediation are: it can be used in a variety of disputes, it implies a flexible, private, and confidential process, and is based on parties' involvement (Moore, 2003; Silver, 2001). By mediating, parties in conflict maintain a high degree of control over the outcomes and are able to uphold or terminate their relationship as elegantly as possible (Moore, 2003; Silver, 2001).

Introduced and used initially in the United States to resolve disputes in the labour-management field, the practice of mediation was widely extended during the last 25 years (Moore, 2003; Simkin, 1971). For example, mediation is used today in resolving ethnic and religious conflicts, "landlord-tenant conflicts", conflicts occurring in the educational field, family conflicts, labour disputes, "corporate and commercial" conflicts, in dealing with community issues, and in resolving a large variety of "public disputes" or "policy dialogues" (Moore, 2003: 24-29). In Canada, and in the United States, mediation has been used in the criminal justice system in dealing with the relationships between victims and offenders, in settling prison crises, or in resolving complaints and conflicts in correctional institutions (Moore, 2003).

Restorative justice programs are usually delivered as conferences, circles, or victim-offender mediations (Latimer et al., 2001). In many jurisdictions in Canada, depending on the nature of the offence and the willingness of victims, if an offender admits his or her guilt, a restorative justice program may be initiated at any of the five points in the criminal justice system: police (pre-charge), Crown (post-charge), courts (pre-sentence), corrections (post-sentence), and parole (pre-revocation) (Latimer et al., 2001). Inspired by Maori, family group conferences (FGCs) were introduced in New Zealand in 1989 (Zehr, 2004). The newer *Young Offenders Act* adopted in New Zealand changed the paradigm of the juvenile justice system (Zehr, 2004; Westeinde, 1998). The new approach focuses on the involvement and responsibility of offenders' families (Westeinde, 1998). Under this act, family group conferences are used as a central solution in responding to juvenile crime, while the court system is used only as a back-up (Zehr, 2004). Family group conferences are meetings that engage victims, offenders, family members, police, probation officers, school officials, and others (Zehr, 2004; Westeinde, 1998). Participants in conferences are not only limited to victims and offenders (Zehr, 2004). Westeinde (1998) pointed out that by involving more participants, conferences increase the potential for more useful information, and, in the

end, better resolutions. As an application of the restorative justice approach, family group conferences are used today in many countries in North America, England, South Africa, and Australia.

Peacemaking circles originate from the traditions of Canadian First Nations and involve a larger number of participants than conferences (Zehr, 2004). Members of the community are asked to participate in encounters that are usually facilitated by a “circle keeper” who uses a “talking piece” to lead the discussion in a circular direction (Zehr, 2004: 306). Circles are used today in dealing with criminal matters, but they are also used in solving other forms of conflict, for example labour or religious conflicts (Pranis, Stuart, & Wedge, 2003, as cited in Zehr, 2004: 306).

4. The Victim-Offender Mediation Program

According to Umbreit et al. (2004), the victim-offender mediation program is “the oldest and widely developed” application of restorative justice. It started in 1974 in Kitchener, Ontario, and expanded to the United States, Europe, Israel, Japan, Russia, South Korea, South Africa, South America, and the South Pacific (Umbreit et al., 2004). In 2001, there were about 300 victim-offender programs in the United States and about 1,400 worldwide (Abrams, Umbreit, & Gordon, 2006). At the international level, the United Nations and the Council of Europe have recognized the importance of promoting restorative justice procedures in the criminal justice system (Umbreit et al., 2004). In 2002, the United Nations adopted the “UN Use of Restorative Justice Programs in Criminal Matters” (Umbreit et al., 2004).

There is a general agreement among scholars that victim-offender mediation programs put victims and offenders together “in order to discuss the offence and work out some sort of reparation” (Abrams et al, 2006; Umbreit et al, 2004; Wemmer & Cyr, 2005: 532). As Umbreit et al. (2004: 279) noted, the most supportive victims in mediation are “victims of property crimes and minor assaults”. Lately, however, victim-offender programs were applied even to cases characterized by a high level of violence (Umbreit et al., 2004). There are two categories of mediation, a direct one, having victims and offenders face to face, and an indirect one (“shuttle”), when a mediator caucuses with each party separately and communicates information “back and forth” (Umbreit et al., 2004: 283; Wemmer & Cyr, 2005). Indirect mediation is used especially in those cases where the victim does not agree to engage in a direct confrontation with his or her offender (Wemmer & Cyr, 2005). Taking into account the perspective of those involved in victim-offender mediation programs, Reske (1995) argued that direct mediation should not be used in cases of sexual assault, incest, and battery.

Umbreit et al. (2004) distinguished victim-offender mediation from other forms of mediation. The mediator will first meet each party individually, rather than meet them together for the first time (Umbreit et al., 2004). The role of the mediator is to obtain dialogue rather than settlement (Umbreit et al., 2004). Victim-offender mediation programs usually involved volunteer mediators (Severson & Bankston, 1995). Some scholars, however, argued that mediation could be improved if mediators had specialized training (Severson & Bankston, 1995; Umbreit, 1994). Umbreit (1993), for example, recommended specialized mediators for juvenile offenders and adult offenders. In his view, the juvenile and adult systems are different and they both require specific knowledge (Umbreit, 1993). Moreover, Amstutz (1999) stated that the training of mediators should be seen as an ongoing process. Thus, after finishing their standard training, mediators should be involved in observing mediations conducted by more experienced colleagues and then begin working as co-mediators. Severson and Bankston (1995) noted that lawyers, psychologists, and social workers usually participate as mediators and enumerated some of the advantages and disadvantages of using such professionals (Severson & Bankston, 1995). On the positive side, as mediators, lawyers will have an excellent understanding of the legal system. On the negative side, lawyers are trained to operate in a win-lose paradigm that might be incompatible with the essence of mediation (Severson & Bankston, 1995). Psychologists and social workers will have an excellent understanding of “human development and interpersonal relations” (Severson & Bankston, 1995: 688), but they risk falling onto the path of counselling parties which is not accepted in mediation (Severson & Bankston, 1995). There is, however, general agreement among scholars that mediators should be neutral (Severson & Bankston, 1995; Umbreit et al., 2004). According to the Department of Justice Canada (2002), mediators should monitor whether offenders are respecting their agreements and they should follow-up with victims who have difficulty dealing with their emotions.

Umbreit et al. (2004: 287) found that victim and offender satisfaction was high for both parties “across sites, cultures, and seriousness of offences”. The key elements linked with victim satisfaction were: a victim’s good feeling about the mediator, a fair restitution agreement from the perspective of the

victim, and the “desire to meet the offender” shown by the victim from the very beginning (Umbreit et al., 2004: 287). In addition, Davis, Tichane, and Grayson (1980, as cited in Umbreit et al., 2004: 289) found that the satisfaction of participants in mediation programs was higher than the satisfaction of those who decided to resolve their conflicts through the traditional criminal justice process. According to Umbreit et al. (2004), the majority of participants from both sides (over 80 percent) reported a high level of fairness. In terms of restitution, Umbreit et al. (2004) observed that most of the studies referred to restitution as a result of the mediation. Restitution could be viewed in a variety of forms, for example direct payments to victims, work in the community, or work for victims (Umbreit et al., 2004). Ninety percent of victim-offender meetings were to finalize agreements (Umbreit et al., 2004). In addition, 80 to 90 percent of these agreements was reported as completed (Umbreit et al., 2004). Umbreit et al. (2004) also observed that factors such as cost, time, and softer punishments provided the rationale for developing some of the victim-offender mediation programs.

From one of the first comparative studies on a Washington, D.C., victim-offender program (Schneider, 1986, as cited in Umbreit et al., 2004: 292) it was observed that the potential of having youths reoffend was lower than the potential of having youths in probation reoffend. By tracking these subjects for over thirty months, it was concluded that youths involved in this program reoffended 53 percent of the time, while youths in probation reoffended 63 percent of the time (Umbreit et al., 2004). On the same note, a longitudinal study of the Leeds Victim Offender Unit revealed that 68 percent of participants had no convictions during a two-year period following mediation (Umbreit & Coates, 1992, as cited in Umbreit et al., 2004: 193). These offenders participated in a direct mediation from 1985 to 1987 and were reported as having previous convictions in percent of 87 percent of the time (Umbreit et al., 2004).

Assessing the cost of victim-offender mediation programs is not an easy task (Umbreit et al., 2004). There are elements such as the number of cases and time spent per case that need to be considered. Costs might be influenced by some unreported expenses, for example the number of hours worked by volunteer mediators (Umbreit et al., 2004). Also, variables such as reduction of trials or decrease of incarceration time served could make a difference in terms of assessing the cost of victim-offender programs (Coates & Gehm, 1985, as cited in Umbreit et al., 2004: 295; Clarke, Valente, & Mace, 1992, as cited in Umbreit et al., 2004: 295).

Since 1974, when they were first introduced in Canada, victim-offender mediation programs spread across the country. The first case in Ontario was successful although there was not much preparation or training of the offenders, victims, or their facilitators (Zehr, 2004). Wemmers and Cyr (2005) noted that mediation for young offenders has been offered in Québec since the 1990s. Canada enhanced the importance of victim-offender mediations, through the regulations of the *Youth Criminal Justice Act* which encourages mediation in resolving conflicts (Wemmers & Cyr, 2005).

In 2006, the author of this paper visited the Burnaby Youth Custody Services Centre and witnessed one of the correctional officers sharing her enthusiasm about one of her recent work experiences. A few days before, the Centre hosted a presentation by Katy Hutchison, the author of the book *Walking After Midnight: One Woman's Journey Through Murder, Justice and Forgiveness*, a real life story about how Katy discovered the power of restorative justice in her healing process after her husband was murdered in December 1997. She became a widow, taking care of her young twins, Emma and Sam. The correctional officer witnessed the impact that Katy's presentation had on young inmates and considered that encounters like that one are making a difference in terms of rehabilitation. Katy's book vividly describes how the power of forgiveness brings freedom to someone challenged by life with a terrible violent loss. Bob McIntosh was murdered while checking on the house of his friend in the neighbourhood, where a party was hosted by his friend's teenager. A “code of silence” existed for five years among all participants at that party and made it impossible to find Bob's killer. It was an RCMP undercover operation that helped to identify Ryan Aldridge as the murderer of Bob. Katy was surprised to see that her husband was killed by a teenager like any other and soon realized that hating the offender did not contribute to her healing. Katy got involved with Ryan's rehabilitation and his parole hearing, asking for his immediate release. Katy and Ryan are now both involved in presentations offering their own story as a powerful example of how restorative justice might really work (Hutchison, 2011).

III. Strengths of Restorative Justice

In the conventional justice system, when a crime occurs and a law is violated, society primarily demands a punitive action to compensate for the loss of the victim. This system emphasizes the crime,

while the victim is viewed only as witness to a crime committed against the state (Wemmers and Cyr, 2005). Restorative justice challenges this assumption that justice is served by simply punishing the offender (Okimoto et al., 2009). Restorative justice sees crime as an action that harms people and relationships, and not as an action against the state and its laws (Barnett, 1977; McCold, 2004). This “emotionally intelligent justice” (Sherman, 2003, as cited in Wemmers & Cyr, 2005: 528) challenges conventional criminal justice which has failed to take into account the emotions of those most affected by the crime. Restorative justice is an ideology that acknowledges the victims’ suffering and gives them a voice in the decision-making process (Doolin, 2007; Wemmers & Cyr, 2005). In particular, Radzik (2009) underlined the importance of the role of victims in restorative justice practices in terms of creating a dialogue with their offenders and communities. McCold (2004: 15) observed that under the umbrella of restorative justice, the conflict created by committing the crime is “owned” by the victim and offender. Restorative justice engages victims and offenders in exchanging information and reaching a consensus (Zehr, 2002; McCold, 2004). In contrast to the punitive paradigm, which restricts the criminal procedure to the legal definition of what is pertinent and what is not, restorative justice offers the victim and the offender the possibility to explore the conflict in depth, its consequences, and the level of their culpability (Gavrielides, 2005; Wright, 1996). In addition, participants agree on how the offender will better repair the harm caused by his or her behaviour (McCluskey et al., 2008).

According to Van Ness and Strong (1997, as cited in Latimer et al., 2001), there are a number of significant advantages to the restorative justice process for both victims and offenders: victims recover through indemnification, exoneration, and healing, while offenders directly participate in developing a plan for their rehabilitation through fair treatment, self-reflection, and genuine displays of remorse. Furthermore, Llewellyn and Howse (1998, as cited in Latimer et al., 2001) stated that, through restorative justice, the community is also allowed to heal, forgive, and maintain confidence in the justice system.

Supporters claim that restorative justice brings fairness, easy access, simpler procedure, reduced costs, restitution, and no criminal stigmatization (Marshall, 1985). By proposing to repair the harm within the context of maintaining the relationship, restorative justice seeks a clear model for restitution (McCluskey et al., 2008). First, the relationship broken by the offence is the central element. Second, there is a presumption that this relationship “can and should be repaired” (McCluskey et al., 2008: 201). Third, there is a presumption that the offender “can and should be reintegrated” that becomes important not only for that individual but also for the whole community (McCluskey et al., 2008: 201).

Adversarial justice “focuses on the past”, while restorative justice “focuses on the past, present, and future” (McCluskey et al., 2008: 202). While adversarial justice is concentrated on blame, restorative justice is centered on “resulting harm” (McCluskey et al., 2008: 202). Finally, in the case of adversarial justice, deterrence is connected with punishment, while in the case of restorative justice deterrence is connected more with relationships and individual accountability (McCluskey et al., 2008).

IV. Weaknesses of Restorative Justice

Restorative justice still faces numerous challenges, especially in identifying how the objectives, concepts, and processes could be integrated within the current criminal justice system (Wheeldon, 2009). Scholars questioned if restorative justice as a theory could stand by itself or needs to be a part of traditional criminal proceedings (Gavrielides, 2005). Trying to respond to this question, Gavrielides (2005) counted three levels while classifying theories. The first level includes theories referring to “Ethics” and “Political Morality” (Gavrielides, 2005: 87). These theories teach individuals how to guide their lives and how to build their relationship with the “Sovereign” (Gavrielides, 2005: 87). The second level is broader and includes theories that deal with justice, ethics, and political morality issues (Gavrielides, 2005). The third level includes only theories dealing with specific problems, within a field, for example punishment theories (Gavrielides, 2005). This approach does not address all justice problems, nor ethics or political morality issues (Gavrielides, 2005). Gavrielides (2005) concluded that restorative justice cannot be placed in the first level of theories. Observing that restorative justice does not rely on the same understanding of punishment as retributive justice does, the author also excluded restorative justice from the third level of theories (Gavrielides 2005). In his view, restorative justice qualifies as a justice theory and should be placed in the second level. Further, restorative justice distinguishes itself from the other theories in this level by envisioning a new “restorative paradigm” (Gavrielides, 2005: 95).

Pavlich (2005) criticized restorative justice for its financial dependence on the traditional criminal justice system, while pretending to be an alternative to this system. Extending Foucault's theory of governmentality to victim-offender mediation programs, Pavlich (2005) considered that the state uses these programs only as an instrument to expand its control over people.

There is also a concern that restorative justice could be subsumed under community justice (McCold, 2004). On this note, Bazemore and Walgrave (1999) saw the need for a clear definition and vision of restorative justice. Further, Bazemore and Schiff (2001) recognized the intersection between community justice and restorative justice forming a new concept of "restorative-community justice". For these authors (Bazemore & Schiff, 2001), community justice is a broad concept under which restorative justice operates. In addition to asking the offender to repair the harm inflicted on the victim, restorative-community justice wants the offender to repair harm caused to the community (McCold, 2004). The offender is sanctioned and is required to volunteer for different community service projects (McCold, 2004). McCold (2004) criticized the restorative-community justice approach for not involving victims and offenders in the decision-making process. Zehr (2002: 57) also saw community service as "an alternative form of punishment" and not restorative justice.

Restorative justice construction builds on the idea of confrontation between offenders and victims under the protection of the community (Cohen, 2001). Such a confrontation raises issues regarding the risk of humiliating offenders instead of reintegrating them or the risk of re-victimizing sufferers instead of healing them. There are also concerns whether or not restorative justice processes hold offenders sufficiently accountable for their actions (Wemmers & Canuto, 2002, as cited in Wemmers & Cyr, 2005: 528; Zehr, 2004). According to Braithwaite (1989: 101), in order to reach the point where the offender is reintegrated back into the community, shaming needs to be followed by "words or gesture of forgiveness or ceremonies to decertify the offender as deviant", otherwise the offender is at risk of being stigmatized. Restorative justice asks offenders to sincerely apologize and admit their wrongdoing. According to Braithwaite (2002), those offenders who do not want to accept this alternative will always have the option of the traditional criminal justice system. Bennett (2006) expressed his concerns that, under these circumstances, some offenders might be tempted to choose the path of restorative justice not because they are sincerely remorseful, but to avoid imprisonment. Offenders in this situation will just pretend to cooperate (Bennett, 2006).

Bennett (2006) said that the state cannot impose remorse on an offender, pointing out that an offender forced to adopt an insincere attitude will feel humiliated. Further, Duff (1986, as cited in Bennett, 2006: 139) claimed that an apology can be accepted without questioning its sincerity as long as the offender "will refrain from crime in the future" leading Bennett (2006) to question whether or not some offenders could still obtain reconciliation while practicing insincere apologies. Moreover, studies showed that victims are not satisfied when they perceive an offender's apology as insincere (Department of Justice, 2001). In these cases, victims could view restorative justice as an escape for offenders who are interested only in avoiding pain (Mika, Achilles, Halbert, Amstutz, & Zehr, 2004).

Another concern refers to the potential of re-victimization when asking victims to interact with offenders (Wemmers & Canuto, 2002; Wemmers & Cyr, 2005). Symonds (1980, as cited in Wemmers & Cyr, 2005: 528), one of the first authors preoccupied with the concept of second victimization, underlined the idea that victims in this state perceive themselves as not "supported or accepted by others". A survey conducted in 2002 by the Québec Centre for Victim Assistance (CAVAC) concluded that workers with victim support programs are concerned about the potential risk of secondary victimization and, as a result unwilling to refer their clients to restorative justice programs (Wemmers & Cyr, 2005). Victims feel re-victimized when offenders fail to take responsibility for their offences (Marshall & Merry, 1990; Morris & Maxwell, 2001; Strang, 2002; Wemmers & Cyr, 2005). Some victims become depressed when faced with the impending confrontation with their offenders (Department of Justice, 2001). Moreover, these feelings are magnified when offenders are perceived as insincere. What matters for victims is "moral responsibility" (Wemmer & Cyr, 2005: 540). In other words, the "therapeutic effect" of restorative justice is conditioned by the responsibility of offenders (Scheff, 1998, as cited in Wemmer & Cyr, 2005: 540). As a result, this effect should be taken into account when screening offenders for referral to mediation (Wemmer & Cyr, 2005).

Some scholars noted that restorative justice pretends to center on the role of the victim in the practice of justice when, in fact, it is more offender-oriented (Mika et al., 2004). This results in victims feeling "betrayed" since they do not feel helped in dealing with their trauma, while perpetrators are perceived to be better assisted (Mika et al., 2004). Victims may also perceive restorative justice as an opportunity for offenders to escape from being punished (Mika et al., 2004). Mika et al. (2004) also pointed out the

potential risk for victims when required to assist offenders in their rehabilitation. Also, there is no victim consultation in terms of program planning, although it seems to be essential for victims and/or their advocates to be heard (Mika et al., 2004).

There might be situations when offenders could not be identified or when having victims and offenders together is not suitable, for example in cases of sexual assault (Mika et al., 2004). In terms of victims' willingness to participate in victim-offender mediation programs, the rate "varies from about 40 to 60 percent" (Umbreit et al., 2004). Among the reasons for not participating were the small meaning of the offence for some victims; the victim's desire to have the offender more severely punished; the victim's fear about meeting the offender, and the time elapsed since the crime occurred (Coates & Gehm, 1985; Umbreit, 1995, as cited in Umbreit et al., 2004: 286). In addition, a study done in Minnesota in 2002 linked the refusal of victims to participate with their belief that they will not be safe meeting the offender or with their decision to follow the advice of their friends or family to not participate, and finally, with their unwillingness to help the offender (Coates, Burns, & Umbreit, 2002, as cited in Umbreit et al., 2004: 286). Also, victims might be less interested to participate in mediation if restitution occurred or was rejected before referral to mediation (Umbreit et al., 2004).

V. Conclusion

One of the ongoing theoretical preoccupations about restorative justice is whether it should be viewed as a process or as an outcome. Scholars are also divided over clearly defining it or leaving it as an open concept.

Restorative justice places the conflict generated by a crime back in the hands of the protagonists: offenders, victims, and their communities. All of these participants are called upon to be actively involved in the process of understanding what happened and how the harm produced could be repaired. Restorative justice claims that the need of victims is better served. This goal, however, is not yet fulfilled in all cases. There are situations when, for objective or subjective reasons, victims are unable or reluctant to be involved: offenders are not identified, there is no willingness for one or more parties to voluntarily participate, offenders are not sincere, and victims fear being re-victimized. Moreover, there is still a strong need for victim relief by having them thoroughly consulted in program planning or in designing specific training from which they may benefit.

Several characteristics tend to differentiate the restorative approach from other forms of justice such as retributive or community justice. The way in which crime is perceived and dealt with represents the major difference between retributive and restorative justice. Under the retributive approach, crime is considered an act against the state, rather than an act against an individual. More recent theories, however, focus on diminishing the contrast between these approaches and argue for combining elements from both visions. For example, punishment, as a restorative measure, is seen as a tool in repairing the harm and not as a deterrence factor. Although restorative justice presents features that differentiate it from community justice, there is still a risk of losing its uniqueness by merging it with community justice. Theoretically, restorative justice may be better viewed as part of social disorganization, social learning, or moral development theories.

Another theoretical foundation for restorative justice is conflict resolution. As a call for collective resolution, restorative justice relies on conferences, circles, and victim-offender mediations. While there is a consensus on the advantages that a conflict resolution approach brings to the process, there are also safety and training concerns that need to be further addressed.

Restorative justice thinking equally attracts believers and opponents. Although this approach originally was initiated mostly for the benefit of victims, nowadays, advocates of victims argue that restorative justice is more offender-oriented. It may be that natural resistance to change among criminal justice workers is part of this concern. It may also be that restorative justice works sporadically.

In the longstanding debate on restorative justice, a number of key issues require additional research. First, there is still a need to establish whether restorative justice is based on sound criminal theoretical justice principles. Second, additional research is required to ascertain if restorative justice really reconciles relationships between the offender and the victim. Third, there needs to be further evaluation on whether there are pertinent reasons to consider retributive and restorative justice as conflicting justice practices. Finally, there is still a need to develop a more consolidated conceptual framework for restorative justice. A more feasible model should be constructed by taking into account current research achievements and pragmatically addressing all concerns expressed in the literature already. Right now, restorative justice could be an option for specific cases. A British Columbia success story fully testifies to

this. For certain, one of the main civic concerns is to avoid situations where, only for the sake of restorative justice, an offender will recite "I am sorry for my crime. Will you please forgive me?"

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Restorative justice: a contemporary south african review. A Skelton Faculty of Law University of Pretoria. M Batley Restorative Justice Centre. Pretoria. ABSTRACT Restorative justice is a well understood concept. Internationally, its theory and practice have been substantially documented, and it has withstood critical analysis. There has been a movement amongst even those that would be expected to be its harshest critics, just deserts theorists, to engage in a good faith attempt to reconcile the competing paradigms. In South Africa, restorative justice has moved from the margins to take its pl The effectiveness of restorative justice practices: a meta-analysis. JEFF LATIMER Department of Justice Canada. CRAIG DOWDEN Carleton University. DANIELLE MUISE PRA Inc. This article provides an empirical synthesis of the existing literature on the effective-ness of restorative justice practices using meta-analytic techniques. The data were aggregated from studies that compared restorative justice programs to traditional nonrestorative approaches to criminal behavior.Â A preliminary meta-analysis of programs that contained elements of restorative justice was conducted by Bonta et al. (1998) and exclusively focused on their role in reducing offender recidivism. The results revealed that these programs yielded mild reductions in reoffending (+.08).