

# Restorative Justice in Practice: Does it Have a Future in Criminology?

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## Faculty Introduction

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Meghan Koza's paper addresses the lack of consensus on what restorative justice is. Restorative justice is increasingly popular as an alternative to the retributive practices that have long defined criminal justice, especially in the US. This popularity is not confined to academic settings, as there is increasing appeal to restorative justice in legislative and other reform efforts as well as in the pages of scholarly publications. Koza argues that this lack of clarity threatens to undermine and taint well-intentioned efforts to improve the way we respond to criminal wrongdoing in this country.

## Abstract

A lack of a clear definition of restorative justice shared between criminologists and criminal justice practitioners creates unique issues for policy creation and implementation. Existing papers on the benefits of restorative justice usage were also included to showcase how beneficial restorative justice is as an alternative justice approach. Studies included concluded that allowing "restorative justice" as a concept to exist without a clear meaning creates major problems: it complicates efforts to enact it into legislation; allows practitioners' biases to implement restorative program implementation, especially in relation to racism; and allows practitioners to restructure programs to fit their goals, even if the goals align with the current conventional system instead.

Over the past two decades, criminologists have adopted a greater number and variety of theories. In today's field of criminology, the rehabilitative approach to the criminal justice system has brought about alternative approaches to achieving justice, including restorative justice – an approach focusing on recentering victims in the process and ensuring equitable and just treatment of all parties. However, researchers and practitioners alike have adopted a multitude of different conceptions of restorative justice to guide theorizing and program implementation. This lack of scholarly consensus on what restorative justice means threatens its future in criminology. Because restorative justice lacks a clear definition, just about any practice or philosophy (no matter its defining characteristics) can be referred to as a “restorative approach.” This renders the term “restorative justice” meaningless. It also makes room for the label “restorative justice” to be co-opted in ways that undermine public trust in programs labelled as such, potentially damaging public support for alternative approaches within the criminal justice system more generally.

In this paper, I will be discussing the lack of agreement as to what programs qualify as “restorative,” where in the criminal justice process it is appropriate to use these methods, who deserves to benefit from a restorative approach, and why a lack of clearly defined guidelines provides the perfect opportunity for the introduction of systematic biases and program manipulation. The main upshot of this discussion is that criminal justice reform and practice would benefit from conceptual clarity. We seem to have good reason to pursue restorative justice as an alternative to the familiar retributive model in response to criminal wrongdoing, but it's difficult to know what this claim amounts to, let alone to justify it and implement the alternative, without first knowing what “restorative justice” even means.

It will be important, at the outset, to have a working definition of “restorative justice” before us; however, this proves to be difficult since there are multiple definitions to be found in literature. Let's begin with the definition used by the state of Colorado. This state defines restorative justice as a grouping of “practices that emphasize repairing the harm to the victim and the community caused by criminal acts” (Definitions, 2016; Pavelka, 2016, p. 10). As leader in restorative justice pro-

visions in both their Criminal and Juvenile Codes, Colorado's definition is especially important, since it currently serves as the largest existing example in the United States to other states that may implement restorative legislation in the future. To Symeonidou-Kastanidou (2019, p. 1), a professor in criminology, restorative justice is a way to "resolve the conflict between offenders and victims by redressing the harm within a voluntary and organized process," in other words, restorative justice is simply resolving issues between a willing victim and their offender, in an organized manner with no reference to specific ideals necessary to the process. To Daly, a criminologist and professor of sociology, it is a

meeting (or several meetings) of affected individuals, facilitated by one or more impartial people. Meetings can take place at all phases of the criminal process—prearrest, diversion from court, presentence, and postsentence—as well as for offending or conflicts not reported to the police. Specific practices will vary, depending on context, but are guided by rules and procedures that align with what is appropriate in the context of the crime, dispute, or bounded conflict (2016, p. 21).

These and many other definitions in the literature share three main characteristics. First, restorative justice practices are implemented in response to some form of damage, particularly criminal acts that have been committed. Second, a major focus of restorative justice is harm to the community, not just the victim. Focusing on the community's healing not only strengthens ties between victims and their neighbors, but also ensures that offenders are able to be welcomed back into the community, which aids in lowering their risk of reoffending. Third, there are specific practices typically involved in restorative justice approaches, such as the meetings between victims and offenders facilitated by outside parties referenced by Daly. For the purposes of this discussion, we can take these core aspects and define restorative justice as a process, occasionally a discussion between a victim and their offender facilitated by an impartial party, aimed at restoring a victim and their community to the state they were in prior to a crime committed against them and, often, also at identifying and addressing the root causes of the offender's conduct. In order to be effective, this process must be voluntary for the victim and offender to participate in, must follow the rules and be implemented by an impartial party, and be an appropriate response to

the crime or other damaging offense. As we shall see, however, even this working definition needs clarifying, as key notions like “restoration” lack a uniform meaning. But it’s useful as a starting point.

### **Restorative Justice and its Cited Benefits**

Despite the lack of a commonly accepted definition, programs given the label “restorative justice” have been successfully implemented, with many documented benefits for victims, offenders, and communities alike. One type of benefit for victims is mental. For example, victims report reduced symptoms of post-traumatic stress disorder (PTSD) and increased satisfaction with the justice system, including an increased sense of fairness. These go hand-in-hand with structural benefits for all parties, such as an increase in victim restoration through financial restitution or punishments perceived as “fair” by all parties involved, increased expressions of empathy and guilt from offenders, and reductions in reoffending and criminal justice expenditures (Angel, 2005; Braithwaite, 2007; Sherman & Strang, 2007). When Doak & O’Mahony (2014) evaluated findings of prior research, they determined that satisfaction rates were increased for those who had gone through restorative procedures versus those who did not. For example, 79 percent of victims whose cases were handled by mediation were satisfied with the results of the process compared to 57 percent who went through the conventional system (Umbreit & Coates, 1993), 97 percent of victims who partook in restorative process were satisfied; whereas 81 percent of those who did not were (McCold & Watchell, 1998), and 70 percent of those who went through conferences were satisfied as compared to 42 percent who went through the traditional court system (Sherman et al., 2005). Those who committed the offenses were also found to be far more likely to be satisfied with the outcome of restorative procedures than those who went through the court system, due to feeling involved in the outcome, whether or not it was the outcome they wanted (Maxwell et al, 2004; Doak & O’Mahony, 2014).

Braithwaite (1996) notes that the restorative model has been found to restore dignity, empowerment, and social support for victims and offenders alike. Increased control over the justice procedures reinstates a form of control over their life that was lost when the crime was committed, either by or against them. Usage of the model has also been

found to decrease prison sentences, prison overcrowding, prison costs, and wait time for the achievement of justice, benefitting not only the victims and offenders, but the criminal justice system more generally (Symeonidou-Kastanidou, 2019). For many, the lack of a “true definition” does not matter, because research on restorative justice and its implementation continues to illustrate that it is highly successful, beneficial to all parties involved, and is superior to the conventional system in a variety of ways. However, this ignores serious problems, both now and in the future, that threaten this success.

### **The Lack of Scholarly Consensus**

The lack of consensus shows itself quickly in comparing the working definitions used by influential restorative justice theorists. According to Braithwaite (1996), restorative justice simply means to restore victims, offenders, and the community via a more victim-centric justice system. To Lemley & Russell (2002), it is the fulfillment of the obligation to make things “right” through direct participation of victims, offenders, and communities to gain reparations for the victim and proper reintegration for victims and offenders back into their community. Miller & Hefner (2015), however, uses the concept of restorative justice in their work to focus on issues central to procedural justice, such as how the perception of fairness in the process for those involved is more important than the actual outcome. There is very little in common between these three conceptions, besides the concept of “restorative justice” and the vague notion of “restoring” victims, offenders, and their impacted community to their original state. Making matters worse, criminologists rarely clarify other key notions used in discussions of restoration, such as what is “right” or “just,” or even what victim-centric procedures may look like in the criminal justice context.

When researchers observe and policymakers attempt to implement new legislation, one of the most important aspects of the process is also one of the most basic: ensuring that key concepts not only have clearly laid out definitions, but also that these definitions overlap with lay understanding. In order not to separate actual usage from theoretical origins, we must guarantee that the public, or at least practitioners within the same field, can understand exactly what processes, procedures, ideals, and end results are at issue in relevant research, policy, and debate. This

foundational necessity, at present, seems lost on criminal justice practitioners pursuing restorative justice as a new possibility to improve the justice system and to decrease prison spending and mass incarceration. As it currently stands, there is a major lack of scholarly consensus on a definition of “restorative justice.” There is disagreement about, among other things, (i) what does or does not count as restorative justice; (ii) whether it should or must be implemented in the same way on a global scale; (iii) whether and how it might be combined with other forms of justice; (iv) the range of procedures and results referred to as “restorative;” (v) whether it is appropriately used in contexts outside of the criminal justice system (e.g., school punishment); and (vi) which forms of analysis and which fields are appropriate for settling these disputes (Daly, 2016).

Lack of consensus is also apparent when we look at how restorative justice has been put into practice. There are four main models used in restorative justice practices currently implemented:

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mediation, community reparative boards, family group conferencing, and circle sentencing (Bazemore & Umbreit, 2001,

p. 6). Each model revolves around involving victims, offenders, and their communities (friends, families, neighbors) in the service of four key goals: (i) restoring the victim’s mental, financial, or physical state; (ii) providing consequences to the perpetrator, whether that is through physical labor or financial means, to aid in victim and community restoration; (iii) facilitating communication between all parties to prevent future occurrences of similar incidents from the offender, in particular, and in the community, more generally; and (iv) achieving the first two goals in a way where all parties involved see the selected consequences as fair and just.

The first two models, victim-offender mediation and community reparative boards, require meetings between victims (or stand-ins if victims do not feel comfortable attending), offenders, their supporters, and justice officials to determine how to restore the victim to their pre-offense state. However, the last two models, family group conferencing and cir-

cle sentencing, are derived from dispute resolution and healing practices of Maori, Aboriginal Canadian, and Native American traditions that aim to heal and restore the entire community without sole attention on victim restoration. (Bazemore & Umbreit, 2001; Gross 1999). Unlike punitive justice, which prioritizes punishment as the primary way for offenders to “pay” society back, restorative justice emphasizes process rather than “results.” This means that if restorative justice is used outside of the court system, consequences are more likely to consist of financial restitution, community services, or actions that directly aid the victim, rather than a form of incapacitation. The fact that these different models and inspirations are conceptualized under the rubric of “restorative justice” reflects the lack of agreement about what that term means.

### **Problems with Policy**

When a concept cannot be defined in an agreed upon manner, it then becomes near impossible to properly enact it into legislation, especially since doing so requires communication of implementation rules and guidelines. Sliva & Lambert (2015) studied all legislation prior to March 2014 that contained a set of terms that included “accountability,” “community-based,” and “restoration” to determine how restorative justice policies had been enacted across the country. These findings were then coded by (i) the level of support for restorative justice that was provided in the statutes and (ii) where in the justice process these programs and procedures could be provided (diversionary/presentencing, intermediate/with sentencing, post-sentencing). The level of support consisted of three-tiers: (i) ideological support, where a statute references restorative practices as an option without providing structure for implementation, (ii) active support, where states provide both support for potential usage and some structure for implementation, and (iii) structured support, where the statute encourages or mandates usage of the restorative justice procedures while also providing significant structures for implementation. What they found was that 43 percent of the existing statutes were solely ideological in nature, or only acknowledged the existence of restorative justice, whereas 36 percent were structured support and 27 percent were active support statutes. Moreover, although it appears that a decent amount of legislation provided ample structure for implementation, they were only from seven states.

This highlights one consequence of the severe lack of consensus. Had criminologists determined what “restorative justice” specifically refers to, structured support and active support statutes would more likely be a larger portion of legislation. However, without a clear definition, use of vague support will remain more prevalent in policy than true structure, due to lack of understanding between practitioners and policymakers.

One worry about a lack of structural support and encouragement is that implementation of ideological policies and practices can lead to implicit biases restricting participation in alternatives to normal practices. In a study done by Payne and Welch (2015), an examination of intermediate and high school punishment practices revealed just how much racial discrimination could cause a school to stand by punitive discipline, such as detention, suspension, or expulsion. Each participating school’s likelihood of implementing restorative justice practices were examined alongside its student population demographics (including race, economic status, and delinquency rates). These researchers were specifically interested in examining restorative justice use in schools through the lens of the racial threat perspective — “a critical macro level explanation for greater social control, which predicts that the spatial presence of a high ratio of Blacks will intensify public punitiveness because of the perceived political, economic, or criminal threat that a relatively large minority population presents to the White majority” (Payne & Welch, 2015, p. 543). The study’s results were exactly as they expected: no matter how many other demographic factors were present in a school, the presence of a large Black student population resulted in a significantly decreased likelihood that the school would use any form of restorative practices, even when they were available as an alternative to the normal, punitive methods.

Payne and Welch's findings are not unique—they mirror systemic racism present in the US criminal justice system, particularly when drugs are involved. No matter where one starts in American history, racialized views of crime have always been prevalent, oftentimes with intention of harming Black Americans as a sort of “revenge” for accessing life improvements. For example, in the 13<sup>th</sup> Amendment, people who are incarcerated are explicitly exempt from the legal protections against slavery. This loophole led to the birth of Jim Crow laws in the American South



to control the limited rights granted to Black Americans, laying the groundwork for the mass racialized legal interactions and incarceration of today. According

to Alexander, mass incarceration itself is a “race-making institution” since “the

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process of being made a criminal is, to a large extent, the process of ‘becoming’ Black” in the United States (2012, p. 200). Since the War on Drugs began in 1971, racial disparities within the criminal justice system have worsened to the point where most Americans immediately picture a Black man when told to imagine the typical drug user and trafficker (without being given any other characteristics) (Burston, Jones, & Robertson-Saunders, 1995; Alexander, 2012). Alexander argues that American citizens advocate for more punitive and harsh measures when a perceived offender is Black, a disparity that also exists in contexts of restorative justice implementation.

Like Payne and Welch, Rodriguez (2005) examined individual-level and community-level characteristics in an area to determine if they had a relationship with how practitioners selected juveniles to participate in restorative programs. In Maricopa County, Arizona, for example, Black juveniles were significantly less likely to be selected for restorative programs than White juveniles. This, too, was explained in terms of the racial threat perspective. Practitioners viewed communities with more racial/ethnic diversity to be more violent and juveniles from them as more “responsible” for their delinquency, which makes them less “deserving” of reintegration. Since restorative justice as a philosophy exists to be a more “just” approach than the retributive, carceral model, situations like these are dangerous to its mission. If safeguards against implicit and explicit biases are not built into its implementation, restorative justice is at risk of full co-option into the conventional system. Development of such safeguards begins at the level of defining what restorative justice is.

Wood & Suzuki (2016) noted that without a formalized definition, there is no way to truly determine the commonality between all programs considered “restorative.” The continued expansion of what one may

consider to be “restorative justice” continues to exacerbate the lack of understanding. Originally, conferences and victim-offender meetings were understood to be restorative processes, but because of the diffusion of both understanding and situational application (from court systems to schools, workplaces, and even as a way to respond to institutional abuse), restorative justice has continued to turn into more of an umbrella term for many different procedures, rather than a specific approach within the criminal justice context. Without ensuring that others in the field truly know what is being conveyed, there is no way to guarantee that everyone is referencing the same concept.

Lack of clear meaning also allows opportunity for practitioners to restructure programs to meet the goals they believe to be “correct,” even if they are counter to the mission of restorative justice. Restructuring without oversight allows for the focus to shift to offenders, rather than ensuring that the needs of victims are met and centered throughout the entire process (Choi, Bazemore, & Gilbert, 2012). Since correctional officials prioritize efficiency in case completion and achievement of end results over quality throughout the process, victims are often harmed in the process, since their healing becomes secondary to offender rehabilitation (Wood & Suzuki, 2016, p. 155-156). Policy guidelines, formulated from a shared understanding of the practice, are necessary to ensure the prioritization of victim and offender needs, access to healing, and a space for understanding. This would help to prevent practitioners rushing through programs, or even refusing to implement them without consequences, simply because they don’t understand or disagree with restorative procedures.

### **The Benefits are Overshadowed by Unaddressed Issues**

Although the benefits of restorative justice continue to appear promising, there is no guaranteed future for this model if theorists and practitioners do not settle on clear definition for key terms, programs, values, and implementation procedures. Conceptual analysis precedes effective practice.

Consider again the specter of bias. Even if a practitioner may believe that they are handling programs in an unbiased manner, subconscious and conscious racial biases may bleed into interactions with racial/eth-

nic groups they may discriminate against (Karp & Frank, 2016). So long as criminologists state that restorative justice is an alternative to the current system aiming to solve issues such as mass incarceration and systemic racism, it is destined to fail if race-based problems in implementation are not acknowledged.

The current trend, where restorative justice is applied almost exclusively to juvenile and petty-offense cases is also a problem. As determined by Miller & Hefner (2015), restorative justice has been found to be extremely beneficial in providing procedural justice to victims of severe violence, especially when sexual or intimate in nature, due to the shift in focus from the protection of offenders' rights to an equal emphasis between their rights and the victim's wants and needs. Scholarly consensus on its definition can resolve issues based around offense-severity application; if criminologists define restorative justice as applicable to crimes of varying severity, rather than only what is considered "low-level," then exclusion of violent crimes from reform efforts would be more difficult. But there is also another danger that must be avoided. So long as we lack a clear understanding of what "restorative justice" means, practitioners and researchers alike may continue to expand the range of what programs and processes fall under it, eventually watering down what it means for a procedure to be "restorative." If the justice system does not formulate a definition to guide future programs and policies, then there is a large possibility that court-ordered processes will require victim presence, while lacking victim-centricity, and will focus on the program's results rather than participants' perceptions of fairness, continuing to water down what it means for justice to be "restorative." Worse, this would undermine core values, such as making the victim whole, that are often key to the model's attractiveness as an alternative to the retributive status quo.

## **Conclusion**

As criminologists continue to strive for improvements in society's response to crime and victimization, it is necessary that future legislation, programs, and procedures are derived from clearly defined ideas. This is especially true for reform efforts that fall under the banner of "restorative justice." A lack of shared understanding regarding what "restorative justice" means leaves the concept vulnerable to implementation by politicians and practitioners who aim to take advantage of its lack

of meaning in implement traditional methods while telling the general public that they are “progressive.” It makes research into its effectiveness difficult. And it risks withdrawal of public support for alternatives to the punitive model. Although the survival of restorative justice is not fully dependent on how it is understood, key components of its adoption, implementation, and evaluation are undermined without a shared understanding.

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### *Student Biography*

Meghan Koza graduated from Sam Houston State University in May 2022 with a Bachelor of Science in Criminal Justice and minor in Sociology. She has been the treasurer for the National Association of Blacks in Criminal Justice (NABCJ) since Fall 2021 and an active member of the Alpha Phi Sigma Criminal Justice Honor Society since Spring 2021. In July 2021, Meghan started research on restorative justice with faculty members in the Department of Criminology, quickly using prior interest in prison reformation to dedicate herself to examining alternative justice approaches. This helped Meghan determine her final paper topic for her Philosophy of Crime and Justice class – a paper that Dr. Mitchell-Yellin of the Department of Psychology & Philosophy encouraged her to continue improving. Meghan returns to SHSU in the fall as a master's student in criminology and plans to continue researching alternative justice mechanisms.