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Disciplinary Brief

## RESTORATIVE JUSTICE

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### Introduction

Professor Wolterstorff's lucid and perceptive account of a Christian conception of justice and rights provides an excellent framework for locating the distinctive concerns of restorative justice theory and practice, as well as for helping navigate some of the current debates in the field, especially around the appropriate boundaries and scope of restorative justice. Particularly helpful is his distinction between "first order" and "second order" justice, for it serves to reinforce the central principle of restorative justice – namely, that justice interventions following criminal or similarly harmful episodes should not be thought of, or restricted to, retributive punishments, reprimands or censures aimed at publicly marking the wrong done and upholding the norms of society. Rather they should be understood, more fundamentally, as second-order attempts to *restore* first-order justice in its holistic sense, to make things right again and open up a new future for the participants. This, after all, is how divine justice typically functions in Scripture. [ 1 ]

In a moment, I will offer a detailed explanation of what the term "restorative justice" refers to. But, by way of introduction, typically it describes a facilitated, face-to-face dialogue between victims and offenders that aims to explore the actual harm perpetrated by the offending and to determine what should be done practically to demonstrate accountability for the harm done and to promote healing and repair. [ 2 ] It is a voluntary and flexible process that enables the participants to encounter each other as full and complex human beings, not simply as legal ciphers, and to focus on what is needed for their personal and relational recovery. It turns on the premise, memorably expressed by John Braithwaite, that "because crime wounds, justice must heal, as long as justice is understood relationally". [ 3 ] Though not intended as a theological observation (Braithwaite is a secular theorist), it is hard to miss its resonance with the key biblical texts and themes cited by Wolterstorff.

### Christian Origins

The ease with which it is possible, at least for me, to build connections between Wolterstorff's framework and restorative justice is because of the formative role biblical notions of justice and reconciliation – mediated through the beliefs and practices of the Anabaptist peace church tradition – played in the emergence of the modern restorative justice movement in the early 1970s. This theological contribution is often misunderstood or minimized or completely elided from secular

accounts of the origin and distinctive features of the movement. But it is surely significant that the earliest architects of restorative justice theory and practice were Christian peace activists intentionally striving to put their spiritual and ethical beliefs into practice in the public arena. One might even say that the biblically informed theology of peace and justice to which they subscribed served as midwife at the birth of restorative justice in the modern era and without the influence of such core Christian values and beliefs, the central tenets of restorative theory might not have emerged with such clarity and conviction. [ 4 ]

This is not to say that Christianity can claim exclusive proprietary rights to the restorative justice ideal. There are precedents and parallels in other cultural and religious traditions as well. Moreover, as the modern restorative justice movement has grown and spread, it has been molded by a wide array of influences and disciplinary interests, ranging from indigenous dispute resolution practices to the feminist ethics of care, from relational sociology and positive psychology to affect theory, organizational psychology and the insights of modern neuroscience. Instead of a single taproot sinking ever deeper into its theological point of origin, the restorative seed sprouted a fibrous or tangled root system, fanning out in all directions to draw sustenance from sundry sources of knowledge and experience. This has given restorative justice since its inception a dynamic or synthetic quality, which remains a singular strength.

Yet notwithstanding its heterogeneous character, the first people to articulate modern restorative justice philosophy and practice did so in the context of a particular Christian faith tradition, guided by distinctive theological beliefs and commitments. Arguably the legacy of this influence is evident in the emphasis placed on accountability, relational repair and human transformation that characterizes much of the wider contemporary restorative movement.

## Indigenous Worldviews

It is also evident, I believe, in the congruence that exists between restorative justice and indigenous ways of seeing the world. There are clear resemblances between restorative justice processes and the mechanisms used in traditional societies for addressing harm and restoring balance, and not a few observers have attributed the emergence of restorative justice directly to the inspiration of indigenous ways of doing justice, especially in North America and New Zealand. The truth is more complex than that. But the striking similarity or overlap between the two approaches could be explained in terms of the overt role given to spiritual values and beliefs in first shaping restorative justice.

In both biblical and indigenous worldviews, there is an instinctive recognition that doing justice in the face of transgression is a deeply spiritual undertaking. It is not simply a matter of assessing facts, determining blame, and allocating penalties. It is also about addressing the loss of what Māori of New Zealand call *mana* or spiritual dignity caused by the offence, a lifting of the shame inflicted, a repairing of the rupture caused to the fabric of the community, a cleansing of the land from impurity, and a restoring of order and balance to the cosmic domain which interconnects all things. While such numinous convictions are largely foreign to the modern secular mind, they are by no means foreign to the Bible or to the biblical conception of justice that inspired the first pioneers of restorative justice.

## Two Orders of Justice

Wolterstorff explains that there is a fundamental distinction between the kind of justice that orders the way everyday life

functions in society, and the justice that applies when there has been a substantial failure to act justly requiring a corrective response. However, the traditional terms philosophers use for these two forms of justice – distributive justice and retributive justice – he considers to be unsatisfactory, partly because neither “distribution” or “retribution” adequately captures the full range of what each sphere entails. Instead, he coins the concept of “first-order justice” to describe the type of justice that consists of agents acting justly in their ordinary affairs and “second order justice” to refer to just ways of responding to violations of first order justice, whether those violations take the form of interpersonal wrongdoing or social injustice.

Biblical terms for conveying first-order justice include *righteousness*, which describes right-living in its broadest sense, and peace or *shalom*, which describes a flourishing in all the dimensions of our relational existence: with God, with one’s fellow human beings, with the environment and with one’s own self. Biblical terminology for second-order justice includes the language of *judgment*, *justice* and *justification* (or righteousness-restoring action).

When people today hear the word “justice”, they usually take it to refer to second-order interventions (involving the police, courts, prisons, punishments, and so on). But first-order justice, Wolterstorff notes, is structurally more basic, for “if there were no such thing as first-order justice and injustice, there would be no such things as second-order justice and injustices”. Accordingly, “only if one understands first-order justice can one understand second-order justice”. I take this to mean both that (i) second-order actions presuppose a normative understanding of how things *ought* to be in our personal and social relationships and (ii) that in responding to violations of that normative order, justice responses should aspire to restore a just ordering of affairs and relationships. This is where restorative justice has something important and distinctive to offer.

## Why “Restorative” Justice?

While there is no universally agreed definition of restorative justice, and the legitimate scope of its application is widely debated today, there remains something recognizably distinctive about a *restorative* way of construing and addressing personal and social harms, something that sets it apart from the more familiar retributive or therapeutic ways of doing so. This distinctiveness lies, in my view, in its peculiar *combination* of values, processes, and intended outcomes. This threefold combination means that the most helpful way to attempt to define or capture the meaning of restorative justice is to ensure that all three components are included in the formulation. My attempt to do so is as follows:

Restorative justice involves a voluntary, relational process whereby those with a personal stake in an offence or conflict or injustice come together, in a safe and respectful environment, with the help of skilled facilitators, to speak truthfully about what happened and its impact on their lives, to clarify accountability for the harms that have occurred, and to resolve together how best to promote repair and bring about positive changes for all involved.

Each element of this definition requires further elaboration, but importantly the definition incorporates the distinctive *process* of restorative justice (a facilitated dialogue between those directly involved in harmful events), its undergirding relational *values* (including freedom of choice, respect, truthfulness, accountability, and equal concern), and the envisioned goals or *outcomes* of the practice (the clarification of what happened in the past and its impact, and

collaborative decision-making about how best to promote repair and achieve positive changes in the future for all involved). This integration of values, processes, and goals is sometimes expressed as a series of foundational principles, and while there is no unanimity on how best to define restorative justice, there is a broad agreement on its core principles.

The first person to use the term “restorative justice” to describe this way of addressing crime was Mennonite criminal justice historian and activist Dr Howard Zehr, in the early 1980s. The suitability of the label has not been without its critics, however. Many object to the adjective “restorative”, since it seems to imply an attempt to recover some prior state of equilibrium or harmony, as though the clock can be turned back and the past retrieved. But there are some losses that can never be made good, such as the loss of a life, and there are many situations in which seeking to reinstate the past would serve to entrench systemic injustices or power imbalances that need to be challenged and changed, not restored.

Others object to the perceived narrowness of the term “justice” and its binary, and often arbitrary, distinction between victims and offenders. To achieve real justice, they insist, requires more than inserting a new procedure into the existing retributive system and its controlling assumptions. The entire system requires transforming, and the values, principles and practices undergirding the restorative justice need to be applied across the full range of social and institutional life.

Despite such misgivings, the name restorative justice has stuck. It has resonated with people all over the world, possibly because it suggests that justice is about achieving concrete change. Justice is not about upholding abstract principles or legal doctrines or human rights standards or moral codes or metaphysical beliefs. True justice *changes* things on the ground: it *rectifies* past wrongs, *repairs* present harms, and *restores* wellbeing and future safety. Or, to use Wolterstorff’s language, it aspires to establish or re-establish first-order justice in which people treat each other with the respect and dignity they are due, both as fellow citizens and fellow human beings.

## Rights and Restorative Justice

Unlike many Christian thinkers today, Wolterstorff sees great merit in using the language of “rights” to explicate the demands of justice. He notes that while Christian critics of rights talk often protest that it stems from the eighteenth century Enlightenment and serves to undergird modern secular individualism, its seedbed, in fact, can be traced back to medieval Christendom, which in turn, one might add, was influenced by biblical convictions about human dignity and the nature of covenantal relationships. [ 5 ] He then draws a basic distinction between externally *conferred rights* (including those conferred by the law) and intrinsically *non-conferred rights* (those which stem from being the sort of creature the rights-bearer is). Justice entails respecting these rights. It involves recognising the intrinsic worth of the rights bearer and rendering them what is their rightful due. Injustice involves a failure to respect the dignity and morally legitimate rights of others. Once again these considerations can help elucidate the work of restorative justice.

In the growing number of jurisdictions that recognise and employ restorative justice processes, they typically operate within the constraints and protections imposed by the wider justice system. Amongst other things, this helps ensure that the participants’ conferred legal rights are safeguarded. While some critics have claimed that restorative justice undermines due process and erodes respect for the rule of law, there is no empirical evidence to support that. Indeed research in New Zealand has shown that those who have participated in restorative justice often end up feeling more confident in the existing justice system than before, precisely because the system has allowed them the chance to

address their psychological and emotional needs through a restorative process in a way the mainstream system cannot.

Earlier I characterised restorative justice as a distinctive *combination* of values, processes, and outcomes. I also noted that the qualification “restorative” often creates misunderstanding because some take it to imply an attempt to reinstate the past, which is neither possible (people are forever changed by the harmful event they have experienced), nor desirable (past arrangements may have been unhealthy or unjust). While some jettison the word for alternative designations, like *relational* justice or *transformative* justice or *non-adversarial* justice, there is good reason to retain the term restorative because, properly understood, it illuminates all three components that make restorative justice distinctive.

## Values

In terms of *values*, restorative justice seeks to restore respect, dignity and peace to relationships that have been damaged by wrongdoing. To be the object of intentional malice is often experienced by victims as a fundamental act of disrespect, a failure to value the sufferer’s intrinsic worth, identity, legitimate rights and feelings, as though these things don’t really matter. Such disrespect can only be remedied by a restoration of respect, by a clear acknowledgement on the part of the person responsible for the contemptuous behaviour that the victim did not deserve to be treated as they were and that their rights, feelings and interests *do* indeed matter, every bit as much as their own. It is often said that “respect” is the primary restorative justice value and the key to its transformative power.

## Process

In terms of *process*, restorative justice restores agency, ownership, and decision-making power to those directly affected by the harmful event – victims, offenders, their families and supporters, and the wider community. Victimization is also commonly experienced as a form of disempowerment, a loss of control over one’s life and security and a disconnection from those who have failed to provide protection or care. This feeling of disempowerment is often exacerbated by participation in the criminal trial process over which victims have no control and that renders them passive spectators on their own suffering. A similar disempowerment is experienced by defendants, whose case is presented on their behalf by paid advocates and who passively await the trial’s outcome of verdict and sentencing. By contrast, rather than deferring all responsibility to the state or to legal professionals, restorative justice aims to restore instrumental power to the immediate participants in resolving the harm.

## Outcomes

In terms of *outcomes*, by striving to repair the harms caused by the crime, restorative justice seeks to restore wellbeing to the individuals affected *and* to restore the relationship between them to a just condition. Both goals are crucial and inseparable. Individual wellbeing is promoted by trying to meet the needs of moral repair, such as having one’s voice heard, one’s experience validated, one’s story verified, one’s integrity or innocence vindicated, and one’s intrinsic value affirmed. Yet because human beings are irreducibly *relational* creatures, as the biblical creation stories affirm, none of this can happen apart from restoring the relationship between the parties to a just condition, that is to a condition in which both sides recognize the rights, dignity and legitimate interests of the other.

To speak of relational restoration in this connection does not necessarily imply the reconciliation of formerly estranged parties: the participants may not have known each other before the event occurred. Nor does it mean the advent of personal warmth or intimacy between them in the future: the two parties may agree never to see each other again. Rather it means that the nature of the relationship between them, as fellow citizens and fellow human beings, as well as co-participants in the harmful episode, is *restored to a rightful state*, that is, to one marked by equality of concern, dignity, freedom from deceit or coercion, and at least minimal social trust.

## Emergence of a Movement

"It's no accident", Wolterstorff writes, "that all the great social justice movements of the twentieth century, struggling against one or another form of systemic injustice, employed the language of rights: women's rights, labor rights, civil rights, on and on". Another example is the victims' rights movement, which emerged in the 1970s, and which has contributed to the shaping of restorative justice agenda over the past 50 years. Other social change movements have also done so. But even more significant is the way restorative justice itself has grown into a global social change movement.

## Diversification of the Restorative Movement

Initially the concept of restorative justice was used solely with respect to criminal justice concerns, and there are still theorists and practitioners who insist the phrase should only be used for responses to criminalizable actions. But the semantic field of the term has expanded considerably over recent years and now includes a range of discursive and peace-making practices beyond the criminal justice system as well – in schools, families, workplaces, human services providers, voluntary associations, community groups, businesses, governance bodies, and regulatory agencies.

As a result of this expanded field of application, it has become routine in the literature to speak not only of restorative *justice* but also of restorative *practices*, restorative *organizations*, restorative *communities*, restorative *regulatory systems*, restorative *leadership*, even of restorative *cities* and restorative *societies*, and to view them as different faces of the same diamond, as varied applications of the same values, principles, and relational philosophy, as distinct manifestations of a grander social movement for a more inclusive, peaceful, and participatory democracy.

On this understanding, restorative justice is more than a novel approach to crime control or a new set of victim-sensitive justice practices. These things are but the tip of a very large iceberg, a project aimed at the creation of interpersonal relationships and societal institutions that conscientiously foster human dignity, equality, freedom, mutual respect, human rights, democratic participation and collaborative governance – or first-order justice.

## A Unifying Vision of *Shalom*

Although some criminal justice advocates complain that restorative justice is losing its precision and focus by being identified with a wide range of peacemaking practices, others regard this snowballing effect as a logical and positive consequence of its undergirding ideals, values and principles. Arguably the comprehensiveness of this larger restorative vision was encoded in the DNA of the approach, for it calls to mind the biblical notion of *shalom* that directly informed the

first experiments in victim-offender reconciliation.

As noted earlier, *shalom* in the Bible means more than the absence of conflict and violence. Rather it denotes the positive presence of harmony and wholeness, of health and prosperity, of integration and balance. It is a state of soundness and flourishing in all the dimensions of one's existence – in one's relationship with God, with others in society, with the wider created order, and with one's own self. *Shalom* is where everything is as it ought to be, a condition of "all-rightness" in every department of life. It thus combines in one concept the meaning of both justice and peace, which are inseparable ingredients of first-order justice.

This all-encompassing biblical concept of *shalom* had a hugely formative role in shaping the original vision and practice of restorative justice. But as restorative justice has become increasingly secularized and institutionalized as simply an additional therapeutic practice bolted on to the existing criminal justice system, the larger vision of seeking *shalom* has steadily declined.

Carolyn Boyes-Watson makes a similar point in her recent account of the origins and future of restorative justice. She expresses extreme pessimism about the future of restorative justice as a technocratic or managerial solution to the inadequacies of current criminal justice system, as is currently favoured by legislators and policymakers. She is much more optimistic, however, about its future in the new wave of restorative justice activism that is engaging with issues of oppression, discrimination, economic injustice, and environmental abuse. Here there is no separation between politics and ethics, between justice and spirituality, head-thinking and heart-thinking, individual transformation and societal change. The goal is not just to resolve individual conflicts over past harms but to build an all-embracing and enduring just peace.

Boyes-Watson traces this holistic aspiration back to the unifying vision of *shalom* and to the "essentially spiritual and ethical understandings of 'right relationship'" that Howard Zehr originally identified as the touchstones of the restorative justice paradigm, as well as to the movement's original goal of building the "beloved community", not simply of forging a more efficient and effective criminal justice system. [ 6 ] All this, once again, invites us to see restorative justice as a set of second-order of actions guided by the vision of restoring first-order justice in its richest and most inclusive sense.

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## End Notes

- [ 1 ] Christopher David Marshall, *Beyond Retribution: A New Testament Vision for Justice, Crime and Punishment* (Grand Rapids: Eerdmans, 2001). This book argues that the first Christians exhibited an understanding of justice as a power that heals, restores, and reconciles and that this understanding ought to drive a Christian contribution to criminal justice debate today. See also idem, *Compassionate Justice: An Interdisciplinary Dialogue* (Eugene OR: Cascade Books, 2012).
- [ 2 ] For an excellent brief description by the person often called “the grandfather of restorative justice”, see Howard Zehr, *The Little Book of Restorative Justice* (Intercourse PA: Good Books, 2002).
- [ 3 ] John Braithwaite, *Restorative Justice and Responsive Regulation* (New York: Oxford University Press, 2002), 80. Braithwaite is one of the foundational theorists of restorative justice, best known, perhaps, for extending its principles and practices into the wider regulatory sphere.
- [ 4 ] I trace this story in my essay, “Restorative Justice”, in *Religion Matters: The Contemporary Relevance of Religion*, ed. Paul Babie and Rick Sarre (Singapore: Springer Nature, 2020) 101-118. This Disciplinary Response draws directly from this longer essay, which explores the often-overlooked contribution of religious faith to the shaping of restorative justice.
- [ 5 ] Christopher Marshall, *Crowned with Glory and Honor: Human Rights in the Biblical Tradition* (Telford/Scottdale, PA.: Pandora Press/ Herald Press, 2001). This book shows that despite the strikingly limited use of rights-language in traditional Christian sources, the modern notion of human rights is deeply, and uniquely, grounded in the central themes of the biblical story.
- [ 6 ] Carolyn Boyes-Watson, “Looking at the Past of Restorative Justice, Normative Reflections on its Future”. In *Routledge International Handbook of Restorative Justice*, ed. Theo Gavrielides (London & New York: Routledge, 2019), 7-20. This essay provides a helpful brief overview of where the field has come from and where it is going.

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