

**Restorative Justice and Desistance: A Quantitative and Qualitative Analysis of Restorative
Justice Programming for Youth**

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Mount Royal University is located in the traditional territories of the Niitsitapi (Blackfoot) and the people of Treaty 7 which includes the Siksika, the Piikani, the Kainai, and the Tsuut'ina, and the Îyârhe Nakoda. We are situated on land where the Bow River meets the Elbow River, and the traditional Blackfoot name of this place is Mohkinstsis, which we now call the City of Calgary. The City of Calgary is also home to the Métis Nation.

Abstract

Dissatisfaction with traditional forms of crime control in the context of youth offending has led to the exploration of alternative paradigms such as restorative justice. This study outlines restorative justice as both a theory and set of penal policies before discussing its practices. Also, this study examines the relationship between restorative justice and desistance. Desistance is both an outcome measure of restorative justice as well as a paradigm of its own. This study finds that restorative justice practices produce desistance across a range of practices and contexts regarding youth offenders. Differential effectiveness, long touted as a pitfall of restorative justice research is also addressed. This study finds that despite variations in restorative justice practices as well as differences in the offenders that participate in them, overall, restorative justice has statistically significant effects of the production of desistance. This research also outlines a more qualitative understanding of how restorative justice mechanisms work with young offenders in producing desistance. Concepts such as reintegrative shaming, the role of dialogue, systems, of support, and procedural justice are described. This research concludes by offering suggestions for research in the future, such as the effect of socio-economic status on restorative justice outcomes, a greater degree of variation in sample size, and a focus on conducting and citing randomized trials. Further use of restorative justice as well as further research into its implementation and data collection is encouraged, as well as a need to examine the applicability of restorative justice in minority contexts.

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Restorative Justice and Desistance

Restorative justice and desistance are both relatively new paradigms within the discourse of crime control. Both are reflective of the general feeling that traditional forms of justice, mostly retributive in nature, are not entirely adequate for crime control and only perpetuate criminal and antisocial attitudes. Legislative examples that echo this sentiment include *The Children, Young Persons and Their Families Act* (1989) in New Zealand, the *Justice (Northern Ireland) Act* (2003) In Northern Ireland, and the *Youth Criminal Justice Act* (2003) in Canada. Each act of federal legislation is an acknowledgement that traditional forms of justice are not always adequate in cases of youth offending.

Recidivism during precharge and/or postcharge is a well-researched and well-discussed topic, however, consensus does not always exist. While many studies argue in favour of restorative approaches in producing desistance (Morris, 2002), some bodies of work have questioned the validity of restorative justice's ability to produce effective results in terms of reoffending (Ward & Langlands, 2009), even going so far as to warn that restorative justice may do more harm than good (Levrant et al., 1999). Restorative justice is known for its facilitation of procedural fairness and increasing offender satisfaction; however, this research is focused on desistance as it is the key outcome measure that leads to perceptions of community safety, economic viability, and community support (Wong et al., 2016).

The reintegration of offenders into communities and the development of prosocial attitudes and lifestyles are often at the forefront of the discussion about preventing recidivism, and perhaps there is no greater need for functional penal policies than in the discussion of facilitating desistance in young people. As has been noted, young people are much more likely to re-offend once they have been convicted in the year prior to their 21st birthday (McAra &

McVie, 2007). In the United Kingdom, almost three-quarters of prisoners under 18 years of age are reconvicted within one year of their release (Ministry of Justice, 2013, as cited in Marsh & Maruna, 2016). Crucial to understand is that the experiences of young people in those early years of their lives are strong predictors of future behaviour.

Those involved in the criminal justice system are aware of the benefits of restorative justice approaches for victims as well as communities, but this research intends to develop further understanding when it comes to youth offenders and the applicability of diversion programs and facilitating a desire to desist. This research brings together qualitative and quantitative studies from various areas of focus and analyzes how elements of the restorative process incentivize and/or affect desistance for youth offenders. While much of the empirical and theoretical bodies of work emerged mainly from Europe and the United States, restorative justice in a Canadian context is limited. This research does not intend to make restorative justice practices “offender-centric”, but rather intends to discuss restorative justice through a holistic lens that may provide important answers for crime control and penal policy implementation for young offenders in a Canadian context.

Methodology

This research is of primarily exploratory design. By being exploratory, the research design will help in the investigation, analysis, identification of issues, and further research aims. As a still-emerging paradigm of crime control relative to previous traditional forms of justice, an exploratory research design for restorative justice is applicable as it intends to “break new ground and yield new insights into a topic for [future] research” (Babbie, 2009, p. 93). An extensive literature review will allow synthesis in the research, providing a thorough and

comprehensive knowledge base of desistance, Restorative Justice practices, and its psychological mechanisms for youth offenders and young adults.

Secondary data collection will be accessed through databases like Public Safety Canada, Statistics Canada, the Mount Royal University Library databases, CanLii, Google Scholar, social science journals, and governmental and non-governmental reports. Reference pages in published sources will be analyzed in search of further sources. The data collected and presented in this article will be both empirical and theoretical.

Keywords include desistance, restorative justice, retributive justice, recidivism, reoffending, criminal justice, victim-offender mediation, peacemaking circles, youth crime, retributive justice, speciality courts, peacemaking circles, victim impact panels, family group conferencing, restorative policing, reintegrative shaming.

Peer-reviewed articles and bodies of work that pertain to restorative justice, recidivism, desistance, and further outcome measures will be strongly considered, especially those with randomized trials and control groups. Meta-analyses are considered as these studies are extremely comprehensive in terms of quantitative data and seek to synthesize existing data. Meta-analyses also prevent bias. Empirical and theoretical research on youth between the ages of 12-18 and young adults between the ages of 18-21 will be considered. Research from any country with restorative justice programs will be considered, ensuring that research has been translated into English and the studies have strong methodological rigour.

Data relating to adult offenders will be mostly excluded as this thesis is primarily focused on youth, one exception may be considered when the research pertains to younger adults between the ages of 18-21. Empirical data collected before 1995 will not be included in the

research as more contemporary studies exist. Research published in a language without a translation into English will not be considered.

Once the raw data has been collected, the aim will be to analyze the data in such a way that there is a clear understanding of the mechanisms that underlie restorative justice practices, and how those mechanisms contribute to the outcome measure of desistance in young offenders. Prosocial lifestyles and the cessation of offending will be understood in the context of the type of restorative justice practice that the youth offender received and/or took part in. Ultimately, quantitative data will be analyzed to determine whether the research can be grounded in empirical knowledge, and qualitative research will be analyzed to create a more subjective understanding of how restorative justice practices and the mechanisms that underlie them are receptive or not receptive to youth and young offenders.

Limitations of the research design may include the reliance on secondary data, a lack of quality empirical sources, and a lack of consistency and error checking. A distinct limitation of studies in restorative justice is the inherent self-selection bias due to the nature of restorative justice practices. A core principle of restorative justice is that participation should be voluntary. This may create situations where offenders that choose to participate may differ in their desistance attitudes already compared to those who do not choose to participate. A careful analysis of the research will try to mitigate this limitation.

What is Restorative justice?

Over the last 50 years, Western societies have devoted a significant amount of attention to the restorative justice movement. While restorative justice has roots in Indigenous and ancient cultures (Hass-Wisecup & Saxon, 2018; Gavrielides & Winterdyk, 2011), it saw a significant revival in the 1970s in discourse pertaining to the criminal justice system and its outcomes.

Gavrielides & Winterdyk (2011) attribute articles from Christie (1977), Eglash (1977), and Barnett (1977) as being particularly important in those years when alternative measures to practical justice were being considered.

Continuing from the 1970s, the 1980s saw further attention towards the restorative justice movement through works such as *Crime, Shame, and Reintegration* by John Braithwaite, as well as legislation in New Zealand mandating the use of restorative justice approaches to youth delinquency. Following that, a rapid and growing discontent with the deterrence model that dominated contemporary justice systems, particularly in the lack of cost-effectiveness and deterrence produced (Tyler et al., 2007) only drew more eyes to restorative justice. The diagram below¹ provides a useful illustration of some differences between the most common paradigms of justice:

¹ Note. From *Lecture 1* [Lecture Handout], by D. King, 2019, Mount Royal University D2L.

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	RETRIBUTIVE JUSTICE	REHABILITATIVE JUSTICE	RESTORATIVE JUSTICE
Definition of Crime	Violation of Law	Wrongful Prohibited Act cause by Deficits in Individuals	Violation of One Person by Another
Concept of Harm	Harm to Society's Norms and Values	Maladaptive Individuals	Physical and/or Psychological and/or Interpersonal
Primary Purpose	Protect Society and Deter Future Offences	Address Risk Factors in Offenders	Victim Support and Healing
Key Players	State and Offender	Offender	Victim, Offender, and community
Means	Punishment	Treatment	Safe Dialogue and Accountability
Main Process	Adversarial	Assessment and Intervention	Restitution, Reconciliation and Restoration
Desired Outcome	Safer Society and Reduced Crime	Reduced Recidivism (Re-Offending) by Offender	Repair the Harm Done to Victims and Hold Offenders Accountable

Note. From *Lecture 1* [Lecture Handout], by D. King, 2019, Mount Royal University D2L. Reprinted with permission. It is important to define restorative justice as both a theory and a set of penal processes. Restorative justice is largely practice-driven rather than theory-driven (Ward et al., 2014), and it is difficult to encompass a single definition to understand restorative justice (Tomprowski, 2011). Nonetheless, it is important to ground the concept in theory before discussing its processes. Van Ness & Strong (2015) write “restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders” (as cited in Hass-

Wisecup & Saxon, p. 4). Restorative justice has often been described as a normative theory of justice (Ward et al., 2014; Maruna, 2016) due to the processes facilitating a need for what should be done or what is morally right according to societal norms.

Restorative justice has also been described as a ‘changing of the lens,’ in that its premise and processes deviate from the traditional ethos of justice (Maruna, 2016). In Zehr’s (1990) discussion of restorative justice and retributive justice, Zehr iterates that instead of seeing crime as a form of a contest between individual and state, restorative justice asserts that:

Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for a solution which promotes repair, reconciliation, and reassurance. (as cited in Maxwell & Morris, 2001, p. 3)

Christie (1977) echoes this sentiment when he famously wrote that restorative justice intends to return conflict resolution to its rightful owners i.e., victims, communities, and others affected by a crime. Beyond what restorative justice can do for victims and communities, questions are now asked of restorative justice to effectively produce desistance in a way that the deterrence and rehabilitation models could not (Maruna, 2016).

While Zehr (1990) intentionally links retributive justice theory and conventional penal policy as a way of distinguishing restorative justice from both, Daly (2002) is keen to make a distinction between retributive justice and policies synonymous with the criminal justice system i.e., prosecution, court trials, and sentencing. Daly (2016) describes how restorative justice is a justice *mechanism* rather than a type or theory, commonly referring to the retributive vs. restorative juxtaposition as “nonsense” (p. 15) and asserting that restorative justice is an activity that facilitates transformation in individuals within or outside the conventional justice system.

Ultimately, the debate of what restorative justice should be understood as is beyond the scope of this paper. What is important to this paper is the recognition that restorative justice is a shift in thinking. It is the opportunity to apply new and creative ways to address delinquency through its practices and psychological mechanisms. It is a social movement as well as a penal policy where a greater focus on harm and subsequent needs are appreciated and are at the forefront of decision-making.

Restorative Justice Practices

Restorative justice practices are thematically linked (Ward et al., 2014). A unique element of restorative justice is in its applicability to function at all points of the criminal justice system as well as outside of it. From a public policy standpoint, practices share some characteristics including the identification of key stakeholders, the promotion of accountability in offenders, meeting the needs of crime victims, the empowering of communities, and ensuring public safety (Hass-Wisecup & Saxon, 2018). Outside the justice system, restorative justice has been used in settings such as schools, local communities, and workplaces, and in all contexts, a creative process is used to repair harms and repair relationships (Schiff, 2018). While restorative justice cannot and should not be limited to these listed practices, the most common processes throughout Canada and the wider world are victim-offender mediation, conferencing, and circles.

Victim-Offender Mediation

Victim-offender mediation (VOM) presents an opportunity for the victim of the crime and the offender to have a meaningful dialogue with each other facilitated by a mediator in a setting designed to be safe and respectful. The victims can choose to participate directly or be represented by someone else or in writing (Tomprowski, 2011). For juvenile offenders, the parents are more often present than not (Morris & Maxwell, 2001). While some victim-offender

mediation exercises are primarily concerned with restitution, restitution can be secondary to dialogue and building relationships in a safe space (Morris & Maxwell, 2001). The process is designed to invoke emotion among offenders including remorse, shame, and empathy. While Victim-offender mediation may offer much, there are still risks involved in its implementation for offenders. Hansen & Umbreit (2018) describe some of the challenges of victim-offender mediation for offenders that equally apply to victims as well:

[O]ffender participation in the mediated session itself was sometimes impeded by victims dominating the discussion and lecturing offenders, offenders feeling pressured to approve an agreement that they did not agree with, and offenders generally lacking an understanding of the mediation process. (p.4)

The origins of VOM can be traced back to the Kitchener experiment in 1974 in Kitchener Ontario (Canada). Two young adults were charged with 22 offences during a vandalism spree (Tompsonowski, 2011). The probation officer of the two youths was asked to find a different solution and partnered with the Mennonite Central Committee. It was decided that the most appropriate way to alleviate the anger of the community as well as provide a meaningful experience for the two youths would be face-to-face reconciliation where restitution can be determined (Hass-Wisecup & Saxon, 2018). The Kitchener experiment would mark the beginning of the Victim Offender Reconciliation Project (VORP), as well as mark the first example of non-retributive justice in a contemporary context (Chatterjee & Elliott, 2003).

Victim-offender mediation is often the most-used restorative justice practice in Europe (Lauwaert & Artsen, 2015) and is now commonly offered in both precharge and post-sentence contexts across Canada. The Restorative Opportunities Program in Canadian prisons provides an example of how VOM can work with federally sentenced offenders (Tompsonowski, 2011). The

Community Justice Initiative in Langley, British Columbia has 35 years of experience and continues to offer Victim-offender mediation to youth and adults.

Peacemaking Circles

The creation and permeation of peacemaking circles are usually attributed to Indigenous peoples in North America (Coates et al., 2003). In a modern context, circles can take various forms and are designed to be appropriate for varying situations, groups, and cultures (Hass-Wisecup & Saxon, 2018). In Canada, circles have varying involvement in the formal justice system. Circles are commonly characterized as being completely voluntary and can have participant involvement beyond just the victim and the offender. The facilitation of the circle is managed by a circle keeper(s) who acts as a support system, as well as introduces a talking piece to the group which indicates who may speak in turn (Hass-Wisecup & Saxon, 2018). Rituals are important to the circles, and ceremonies are usually conducted at the beginning and/or the end of the exercise (Coates et al., 2003).

In addition to being a voluntary process, circles should be inclusive environments that encourage participation and investment (Hass-Wisecup & Saxon). An interest-based approach underlies circle practices. This means that the circle will examine how the interests of the accused, as well as the victim, can be met in a way that is holistic, creative, and beyond traditional forms of punishment and deterrence.

Sentencing circles are perhaps the most common or well-known form of Circles (Tompsonski, 2011). These circles typically work with formal justice agencies and criminal justice professionals, and they bring together individuals from these organizations and the community to develop a sentencing plan. These sentencing plans offer consensus-based solutions that are designed to be proportionate and reasonable. At the Calgary court center (Calgary,

Alberta Canada), there is a unique Indigenous courtroom in the shape of a circle designed to mimic the design of a teepee. The court exists to provide a restorative solution to Indigenous offending in a sentencing context.

In addition to sentencing circles, healing circles are also common. They are typically designed to provide support for a victim and help with recovery (Hass-Wisecup & Saxon, 2018). One of the more comprehensive analyses into healing circles was done in the Hollow Water First Nation community in Manitoba (Canada) whereby victims, offenders, and the wider community were involved in the circle process. While there were many benefits of the healing circle, such as enhanced involvement and understanding in the justice process, many who participated had negative experiences as well (Coates et al, 2003), so it is important to recognize that circles are not appropriate for all.

Conferencing and Restorative Policing

During the 1980s in New Zealand, Indigenous Māori dispute resolution techniques were being increasingly used to resolve disputes with young offenders. These techniques emphasized a balanced community as well as collective responsibility for individual actions (Hass-Wisecup & Saxon, 2018). These practices, combined with a crisis in the juvenile justice system and acknowledgement of the importance of family in the juvenile justice process, would result in the *Children, Young Persons, and Families Act* in 1989. The Act was a novel and marked departure away from the welfare and justice models that existed in the English-speaking world (Maxwell & Morris, 2006), and instead focused on repairing harm, reintegrating offenders, and restoring balance in communities.

In addition to the *Children, Young Persons, and Families Act* in New Zealand, the establishment of the ‘Wagga Model’ was established in Australia in the 1990s. The model was

designed to integrate restorative justice practices with police work. The police used family group conferencing like that established in New Zealand in the 1980s as a framework for addressing youth delinquency in communities and diverting young people away from the formal justice system (Hass-Wisecup & Saxon, 2018). Stemming from formal practice, police agencies have adopted a restorative approach commonly referred to as restorative cautioning (Chatterjee & Elliot, 2003). Restorative cautioning is a form of street diversion used to prevent the “socially disabling” (Hass-Wisecup & Saxon, 2018, p. 199) effects of traditional prosecution. Common-law countries, such as Canada and New Zealand have been seen to be at the forefront of these models due to the discretion afforded to them by the state in contrast to those countries that classify as civil law jurisdictions (Clamp, 2019).

In the *Canadian Youth Criminal Justice Act* (YCJA) restorative justice processes are not mandated, however they are strongly encouraged. The Act introduced extrajudicial measures, which can be defined as “measures outside the formal court process (Government of Canada, 2021). Extrajudicial measures can include taking no further action from a police officer, a caution, a referral, a Crown caution, and/or an extrajudicial sanction. As previously mentioned, extrajudicial measures give the police greater discretion in responding to young offenders. Conferences can be an integral element of extrajudicial measures, and often include all the stakeholders of an offence with the goal of reintegration and restitution. Conferences can be held at any point during the criminal justice process and include family group conferences; multi-disciplinary conferences; community accountability programs; and youth justice committees (Hillman et al., 2004).

Restorative Justice and Desistance Links

While the term recidivism implies a focus solely on reoffending, desistance is slightly different in that it aims to understand not only reoffending but also the permeation of prosocial lifestyles and the processes associated with crime-free behaviour (Lauwaert & Aertsen, 2015). For restorative justice, desistance has not always been the primary goal of practices, but rather, as Lauwaert & Aertsen call “a happy side effect” (2015). While Maruna (2016) distinguishes restorative justice from desistance, drawing attention to restorative justice being a set of practices while desistance is a behavioural term relating to the cessation of offending and “self-transformation” (p. 290), the author also focuses considerable attention on discussing how the two paradigms are related.

There is a clear relationship between the two paradigms in the acknowledgement that the cessation of offending and the permeation of a prosocial lifestyle involves complex and emotional shifts in an individual. Not only that, both paradigms acknowledge that the cessation of offending involves communities, complex social networks, and a myriad of interpersonal relationships. Moreover, both paradigms ask, “how does change work?” and are inherently future-orientated (Horan, 2015). This future-orientated approach may lend weight to why the desistance paradigm, and restorative justice, are often referred to as ‘positive criminology’ (Maruna, 2016; Walgrave, 2016).

Central to the desistance paradigm is the building of human and social capital. Human capital refers to individual skills and competencies that allow someone to operate competently in the social sphere. Social capital refers to the network of people and institutions which contribute to prosocial behaviour that often breaks down because of delinquent and stigmatizing behaviour. Lauwaert & Aertsen (2015) point out how restorative justice works to facilitate human and social

capital in an offender. For example, restitution is an opportunity to build human capital. In addition, reintegrative techniques and the involvement of important family members and close networks of people can provide social capital by promoting value in those relationships.

Perhaps the most relevant link between restorative justice and desistance is around the concept of redeemability (Maruna, 2016). For the desistance paradigm, individual (subjective) determinants are often seen as the most important factor in determining desistance (Barry, 2010), and one of those individual determinants is one's belief in the ability to be accepted as a worthwhile individual. Maruna and LeBel (2012) speak to the importance of belief in redeemability:

Desisting from crime is a difficult process, especially for those who are deeply entrenched in criminal networks and living in disadvantaged circumstances. Successfully changing one's life in such circumstances requires a tremendous amount of self-belief, and this is made highly difficult, if not impossible, when those around a person believe the person will fail. (p. 68, as cited in Lauwaert & Aertsen, p. 15)

This subjective change from the offender's perspective (LeBel et al., 2008), from a person who may have felt undesirable with a sense of stigma, to someone who is worthwhile, is also a tenet of restorative justice practices particularly through its normative exercises. The emphasis on denouncing and shaming the act and not the offender, and shedding harmful labels is recognized in both paradigms as a goal for both the offender and the larger community (Maruna, 2016).

Can Restorative Justice Be Applicable for Reducing Delinquency in Youth?

This paper will now explore whether restorative justice practices facilitate the reduction of offending in youth. It should be acknowledged that recidivism is only one part of the

desistance framework, however, for policymakers, quantitative data tends to lend more weight than subjectivity, therefore, it is important to analyze restorative justice in this context even though it does not tell the whole story of restorative justice. Suzuki & Wood (2018) outline 3 rationales that are commonly used for the justification of restorative justice for young people including: (1) young people generally commit less serious crimes than adults, (2) young offenders are considered less culpable than adults, and (3) young offenders are seen as less cognitively capable than adults.

In Wilson et al.'s (2018) meta-analysis of 60 unique studies, the restorative justice practices used were diverse but primarily included face-to-face dialogue, police cautioning, conferencing, and restitutive teen courts. While the meta-analysis found small to moderate reductions in delinquency by way of victim-offender mediation, family group conferencing, and circle sentencing, perhaps the most promising finding of Wilson et al.'s (2018) study is that cautioning and diversion programs had the overall largest mean effect on young people, particularly those who are first-time offenders and those who are low-risk. While the authors acknowledge that the sample size was small, the finding is still statistically significant. In addition, the authors note that perceived fairness in the justice system facilitated by the various restorative justice practices contributed to less supportive attitudes toward delinquency. Although Wilson et al.'s (2018) study presents promising findings, the inconsistency, and methodological weaknesses prevent a definitive answer to the recidivism question.

Wong et al.'s (2016) meta-analysis of 21 studies ranging from 1990 to 2015 pertaining to diversion and evaluation presents a mixed but overall optimistic outlook for the applicability of restorative justice in a youth delinquency context. However, it is noted that those studies which have relatively weak methodology presented a more statistically significant reduction in

recidivism than those studies where the methodology is stronger. Wong et al. note that the results should be taken with skepticism due to the overall quality of the literature used throughout. Of the studies, only three used random assignment to treatment and comparison groups, while the rest were quasi-experimental designs. Moreover, 86% of the studies used in the meta-analysis were from non-peer-reviewed sources. One surety found throughout the analysis is that the ethnic composition of the sample had a significant and constant effect. The authors note that the significance of Caucasian youths being more receptive to diversion may lie in the established fact that minority youths are treated more harshly by criminal justice systems (Wong et al., 2016). Consistent with Wilson et al. (2018), the authors recommend that rigorous research with appropriate comparison groups are conducted in the future to combat this inconsistency in restorative justice reporting.

Hobson et al. (2022) conduct an interesting meta-analysis of 31 studies whereby the findings of a Rapid Evidence Assessment commissioned by the Metropolitan Police Service in London, England could be applied to a restorative justice police response to youth violence. Drawing from evidence in the study, Hobson et al. (2022) assert that not only does restorative justice have a place within the context of reducing delinquency in young people for less serious offences, as was evidenced by Wilson et al. (2018), but also in addressing serious offences and harmful sexual behaviour through re-sensitization. This finding is seen in earlier research by Sherman et al. (2015) where randomized trials of restorative justice conferencing were conducted, and restorative justice was found to reduce recidivism for serious offenders. The Hobson et al. study also presents findings for the benefits of restorative justice implementation in schools and points to a positive effect on the school-to-prison pipeline that disproportionately affects students who experience inequality.

Perhaps the most pertinent takeaway from Hobson et al.'s study is the emphasis on a whole-system approach to tackling youth crime. The greatest reductions in offending are seen through integrative partnerships from multiple agencies and institutions. As institutions, Police and schools can play a significant role in reducing recidivism when combined with family involvement and civic engagement. If the attention to a young person is consistent and collaborative, then there is much more of a likelihood that restorative justice programming will be successful.

Differential Effectiveness

A potential pitfall of restorative justice studies has been the concept of differential effectiveness which has sometimes been attributed as being a reason for mixed results in research (Bergseth & Bouffard, 2012). Differential effectiveness has been attributed in two contexts – the differential effectiveness in the type of restorative justice intervention, and differential effectiveness depending on the static and dynamic factors of the individual offender.

In light of this, Bouffard et al. (2017) conduct a study to understand differential effectiveness in the type of restorative justice intervention. 284 juveniles were referred to restorative justice programming and a comparison was made to 267 juveniles who experienced traditional justice system programming. Among those 284 juveniles that were referred to restorative justice programming, they were again divided into juveniles who experienced different forms of restorative justice interventions; these include direct interventions, such as victim-offender mediation and conferencing, and indirect interventions such as an intervention that does not involve face-to-face contact between the victim of a crime and the offender but through a third party. Community panels and reparative boards are also discussed.

Bouffard et al. concluded that not only was restorative justice programming generally more effective at producing recidivism among juveniles when comparing restorative justice referrals to traditional justice processing, but the authors also found lower levels of restorative justice interventions (indirect interventions) reduce risk more so when compared to traditional court processing. This offers credence to the idea that restorative justice can be more effective at reducing recidivism relative to traditional forms of justice even if the intensity of programming is relatively low.

In addition to differential effectiveness in the type of restorative justice intervention, differential effectiveness based on moderations in offender static factors is also an area that has been touted for further research. Bergseth & Bouffard (2012) conduct a study to examine restorative justice interventions on varying offenders and risk levels based on demographic factors and prior offences. Demographic factors include gender, age, and race. Youth were referred to restorative justice programs and measures were taken to create accurate comparison groups with similar demographic and offending statistics that were referred to traditional youth courts.

Bergseth and Bouffard found that even after controlling for group differences, restorative justice referral provided a longer survival time (period of no offences) than did a referral to traditional programming such as youth court across all categories by an average of 10.5 months. Despite acknowledging some limitations, such as the lack of other control variables like socioeconomic status, education level, and community level variables, as well as the relatively small sample size and as well as the homogeneity of the sample, the results provide a level of consistency when speaking to the applicability of restorative justice in a diverse range of contexts.

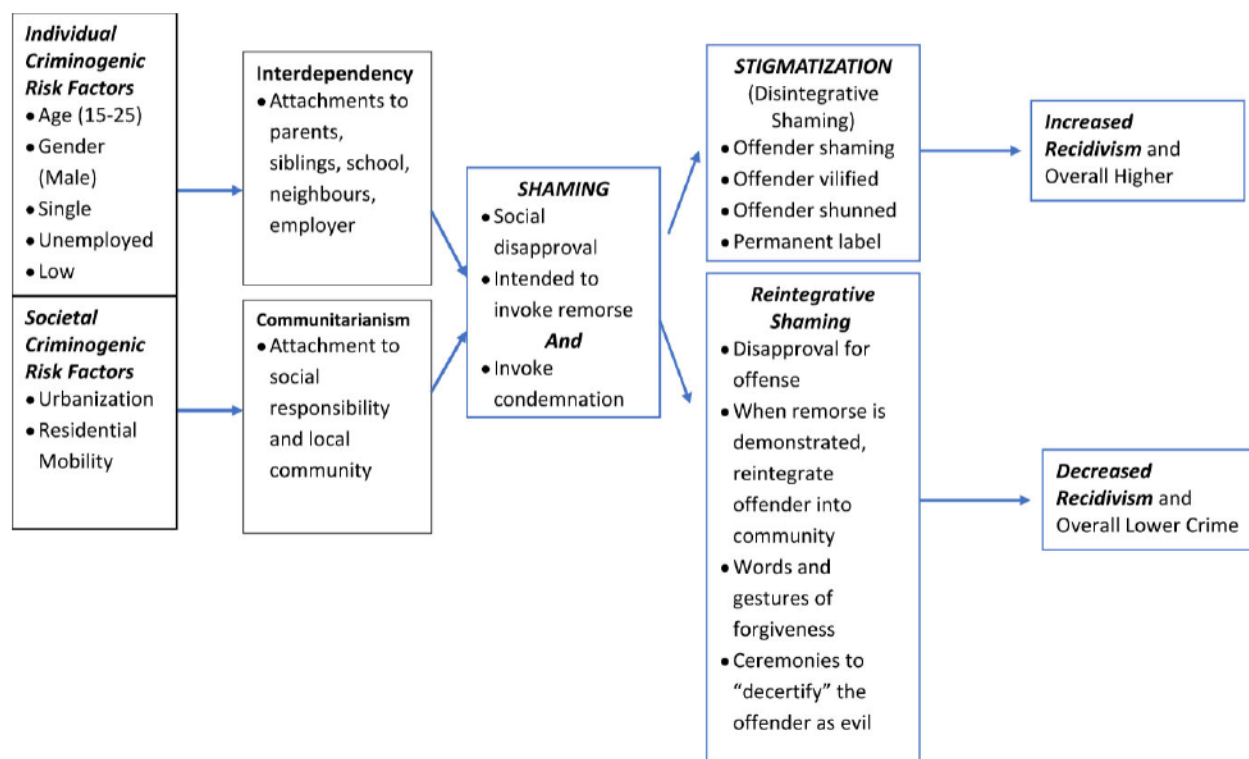
While the study from Bergseth and Bouffard (2012) presents promising findings, the sample characteristics are not necessarily representative of all populations, and this is acknowledged in their stated limitations. One notable absence, and even more so if we want to ground this paper in Canadian interests is the absence of analysis on Indigenous young offenders. While not a Canadian article, Little et al. (2018) conduct a study where the dependent variables of reoffending within two years, offending severity, and time to reoffence, were compared between Indigenous and non-Indigenous young offenders after restorative justice conferencing in Australia. Like Canada, Australia is experiencing a significant overrepresentation of Indigenous people in the justice system and is too exploring alternatives to traditional methods.

After controlling for characteristics and ensuring appropriate matching, the results showed that across all measures young Indigenous offenders are more likely to re-offend within two years and have a shorter survival time compared to non-Indigenous youth that experienced restorative justice. While restorative justice can operate within this context and provide many benefits for Indigenous offenders and victims the practices associated with restorative justice do not address the underlying risk factors that Indigenous people face due to the lasting effects of colonialism including socioeconomic difficulties, substance misuse, and poor education levels. Ultimately, the authors argue that while restorative justice may have a place in the discourse surrounding Indigenous overrepresentation in Australia, without addressing the underlying causes of overrepresentation it is unlikely that it is the much sought-after fix to a substantial and pressing issue. This sentiment is likely to be true in a Canadian context as well.

How Does Restorative Justice Invoke Desistance? A Qualitative Analysis of Desistance

Reintegrative Shaming

In 1989, John Braithwaite, an Australian criminologist, wrote *Crime, Shame, and Reintegration*. Braithwaite argued that stigmatizing shaming that is so often purported by conventional justice systems is criminogenic, and instead believed that “potent [reintegrative] shaming directed at offenders is the essential necessary condition for low crime rates” (1989, p. 4, as cited in Chatterjee & Elliot, 2003, p. 355). Braithwaite draws on inspiration from other theories to develop a theory that addresses criminal subcultures, interdependency, and communitarianism (Hass-Wisecup & Saxon, 2018). The flowchart below outlines the basic premise of Braithwaite’s reintegrative shaming theory:



Note. From *Lecture 8* [Lecture Handout], by D. King, 2023. Mount Royal University D2L.

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According to Zhang (2004), Braithwaite's reintegrative shaming consists of two parts: (1) shaming of the deviant act, so that the offender and those close to the offence understand its evil in relation to morality, and (2) reintegration of the transgressor into the ongoing community/family network. The shaming of the deviant act is done in a way that does not intend to label the offender. Labelling has been shown to stigmatize young offenders and push them further toward delinquent subgroups (Bernburg et al., 2006). Instead, the shaming "couples the disapproval of the delinquent act with forgiveness, which allows the transgressor to continue his membership in the community" (Zhang, 2004, p. 439). The reintegration aspect engages a reconnection with the "social ties within which they live [which] creates a set of interpersonal expectations that they are committed to following in the future" (Tyler, et al., 2007, p. 555).

The reintegrative nature of the restorative justice processes battles against what Maruna (2001) called the 'condemnation script' whereby that person becomes convinced that [t]hey will have a narrative or story to explain and justify their offending and the impossibility of change" (Chapman & Murray, 2015, p. 49). The separation of offender and offence combined with the shaming of the offence and attentively handling the feelings of shame and guilt can prevent the condemnation script which can create stigma, depression, and helplessness.

Empirical studies of the effects of reintegrative shaming have been hard to come by. Hay (1998) attributes this to a lack of clarity in the variables and concepts the theory is trying to measure. In Marsh and Maruna's (2017) analysis of conferencing experiences with youth justice agencies in Ireland, the use of shaming in a reintegrative way had a lasting impact on young offenders, particularly those offenders who had committed more serious crimes. Young offenders in the program mentioned how before their experiences with conferencing, they felt as though they were detached from their crime in a way that shed accountability and remorse.

Remorse has been shown to be an important part of producing desistance (Choi et al., 2011). After the conferencing, which involved family members, victims, and support officers, the young offenders became more in touch with their actions and consequences (Marsh & Maruna, 2017) which in turn produced desistance. For some, while the effect was not instant, reintegrative shaming “planted that seed” that would result in prosocial behaviour (Marsh & Maruna, 2017).

The Role of Dialogue

One of the most unique and constructive elements of restorative justice is the ability to have a narrative with others, and it has been shown that giving young offenders a voice throughout the justice process can be a factor in encouraging desistance (Hayes et al., 2011). The applicability of mediated dialogue has been used in cases of hate-motivated offences (Coates et al., 2006), sexual violence (McGlynn et al., 2012), and serious violent offences (Umbreit et al., 1999). The diversity in applicability of dialogue speaks to how the “[h]uman dialogue of telling, listening and sharing may have tremendous potential for healing even in the most conflictual circumstances” (Umbreit et al., 1999, p. 339).

Dialogue in restorative justice typically follows a couple of stages as outlined by Coates et al. (2006). Usually, the victim or affected parties start by telling their version of events, asking questions of the offender, and describing the harm felt by the offence. Next, the focus is typically on how the offender can amend the harm through reparation and/or restitution, as well as determining further solutions such as education or further programming for the offender.

For an offender, meeting those who are affected by an offence and having an open discussion about harms and needs can be transformative. Usually, young offenders who participate in dialogue do so because they seek closure, learn valuable lessons, and accentuate that they were truly sorry (Abrams et al., 2006). In terms of psychological elements, narratives

between offender and victim encourage responsibility and accountability, which Hansen and Umbreit describe as being a core need (2018). Young offenders can feel significantly empowered if given the opportunity to tell their stories which is important for building confidence in their ability to control the variables that affect them and change (Moyer et al., 2020).

Hearing victims' voices is equally transformative for an offender. Youth offenders that participated in victim-offender mediation sessions reported that the most meaningful part of the process was reliving the offence from the victim's perspective (Abrams et al., 2006). This event triggered psychological elements of shame and remorse and addressed in such as a gambling addiction, a substance abuse problem, and helping with depression.

It is important to note that having a victim present, if the crime does involve a victim, increases the chance of dialogue being transformative for an offender (Hayes et al., 2011). However, realizing that victims cannot always attend restorative justice processes is also important to acknowledge. Also, while dialogue presents opportunities, there are also potential negative effects as well. Hayes et al. (2011) note that offenders should be assessed before participation to ensure they can communicate coherently otherwise there is a risk of further harm.

Procedural Justice

Closely related to reintegrative shaming and the interactionist nature of its focus is the concept of procedural justice. Procedural justice is part of the process-based theories of regulation whereby there is a belief that interactions with agents of the justice system as well as experiences with the law those agents represent can influence moral obligations and behaviour (Augustyn, 2015). Procedural justice as described by Barnes et al. (2015) is "broadly defined as the fairness and respectfulness of the legal process itself and is viewed as something independent

and distinct from the fairness of the decision or outcome that results from the legal process” (p.

1). Barnes et al. (2015) outline an excellent graphic for understanding the various aspects of procedural justice in legal areas:

Element	Definition
Procedural Justice	The degree to which the decision-making process itself is considered fair; consists of the following 6-8 elements:
1. Representation	The degree to which citizens are able to present their side of the dispute; consists of the following two elements:
Process Control	The degree to which citizens are able to exercise some control over the decision-making process
Decision Control	The degree to which citizens are able to influence and control the final decision that results from the process
2. Consistency	The degree to which the procedure mirrors those used with other citizens and at other times
3. Impartiality	The degree to which the procedure operates without regards to irrelevant biases such as race and gender
4. Accuracy	The degree to which the procedure uses the most accurate information available when making its decisions
5. Correctability	The degree to which citizens are able to appeal the results of the procedure to some higher authority
6. Ethicality	The degree to which citizens are treated respectfully and as valued members of the society

Note. From *Are restorative justice conferences more fair than criminal courts? Comparing levels of observed procedural justice in the reintegrative shaming experiments (RISE)* [Table 1], by Barnes et al., 2015, <https://journals-sagepub-com.libproxy.mtroyal.ca/doi/epub/10.1177/0887403413512671>

Fewer positive views about the justice system processes and its agents are predictive of a greater likelihood for reoffending behaviour (Augustyn, 2015). A lack of respect and the undermining of authority can contribute to non-compliance and the breaking of legal rules. This concept is even more salient in the case of young people, who often experience sensitivities towards respect and fairness at a greater degree than adults (Woolard et al., 2008). It has been

shown that if a young offender feels that an interaction with a police officer has been disrespectful or unfair then that offender will lean towards noncompliance in future engagements (Penner et al., 2014). In addition, if a young offender has a negative experience of court, and the agents of the courtroom including the judge, lawyers, and clerks as well as a negative experience with the general atmosphere, then that young person is more likely to view the entire legal system including the laws that shape moral norms as illegitimate (Greene et al., 2010). Incarcerated youth describe traditional incarceration as a system that propagates disrespect, lack of opportunities to participate, and a lack of trust (Enujiokwe et al., 2023).

In contrast, positive perceptions of procedural justice are associated with higher levels of compliance with the law and desistance from offending (Wilson et al., 2018). In the context of restorative justice, there is a belief that restorative justice is more likely to facilitate procedural justice throughout restorative justice practices than traditional court processes due to an increased focus on the quality of treatment and quality of decision making (Barnes et al., 2015).

Respect is an underpinning of restorative justice practices, and it cannot be understated the effect of being treated with respect can do for an individual particularly in a process that can evoke feelings of deep shame, humiliation, and fear. It has been shown that youth who participated in family group conferencing had a greater respect for authority when they themselves are shown respect (Sherman & Barnes, 1997).

In addition to respect, being given the option to participate and have an active role and voice in proceedings as is common in restorative justice practices can greatly increase perceptions of procedural justice (Penner et al., 2014). For young people who have participated in restorative panel meetings, while aware that they could not change the outcome of their

hearing, they valued being respected and claim they felt as though they could participate and be heard at a greater extent than they could in traditional youth courts (Lacey, 216).

Critically, procedural justice, as evidenced by Penner et al. (2014), has been shown to have an effect in reducing delinquency in youth independent of other risk factors such as substance use and delinquent peers. Tyler (1990) also found that a belief in the legitimacy of the law stemming from procedural justice has an independent effect on future compliance. These findings lend weight to the view that procedural justice must be encouraged and sought, and restorative justice must continue to be used as alternative for traditional criminal justice sentencing for youth regardless of context or settings.

Systems of Support

Another consistent element of effective restorative justice is the systems of support that can develop and are often present at its practices. Just as weak social bonds can create conditions conducive to reoffending, strong systems of support can build social capital for a young person through relationship building, feedback generation, and opportunity creation (Chapman & Murray, 2015). Chapman & Murray's (2015) qualitative study of 20 youths committed to circles of support and accountability in Northern Ireland describes the process of building social capital for young repeat offenders, and how systems of support through family, peers, and social workers resulted in the development of prosocial behaviour, and perhaps, more importantly, the belief that one could change for the good. In addition, the building of social capital through networks is shown to elicit greater degrees of social trust (Chapman & Murray, 2015), and greater degrees of social trust has been shown to be a factor in preventing crime (Boeck et al., 2006).

Perhaps the closest system of support for a young offender is the immediate family as well as close peers. Involvement from the family unit in a process such as family group conferencing promotes what Hass and Wisecup (2018) call ‘constructive shaming.’ Like reintegrative shaming discussed previously, constructive shaming is a mechanism that, instead of focusing solely on the shame and humiliation of the offender, constructive shaming from a family-unit point of view aims to address the shame and humiliation of the entire family. This process strengthens bonds within the family and promotes accountability in the offender.

Walker et al. (2015) draw attention to family group conferencing and note the importance of parental involvement in the juvenile justice system in an emotional as well as practical sense. The authors advocate for the increased use of family involvement in criminal justice processes as the findings of this study point to the fact that the more emotionally supported a young person is throughout the criminal justice process by a parental figure there is more likelihood that that young person will maintain desistance.

Systems of support do not always imply that close family and friends are present at the processes, and sometimes it is the facilitator or administrator of the restorative justice practices that offer the offender something psychologically valuable or cognitively transformative. A young person will not possess the mental maturity of an adult and as a result, may find the restorative justice process difficult to endure without guidance. Even as teenagers develop into young men, an emotional connection between them and a facilitator, mediator, and/or social worker can provide levels of acceptance (Mizel & Abrams, 2020) which helps make them feel comfortable with the process and develop an emotional connection. The behaviour and language of a facilitator/mediator can have a lasting effect on youth throughout conferencing and interviewing processes (Hansen & Umbreit, 2018; Riley and Hayes 2018). In addition to an

emotional connection, a positive relationship with a facilitator/mediator has also been shown to elicit a sense of procedural fairness throughout the justice process (Suzuki & Yuan, 2021).

Marsh and Maruna (2016) describe the relationship that can develop between offender and facilitator/mediator as the “therapeutic alliance,” whereby prosocial relationships are developed between youth and the justice agency worker over a period of time. An example of the therapeutic alliance can be seen in Marsh and Maruna’s (2016) study of conferencing for youth offenders in Ireland. The authors tell the story of a young man named Kieran who changed his life due to the ongoing relationship between him and his conference worker:

Part of the youth conference plans was meeting the worker, that was the first part of change for me. I had seeds planted in my head and watered through the years that the person knew me. That person also pointed out the problem that I had that I didn’t know. There was a lot of things to do with not feeling worthy, that was a really big thing. That person helped me to deal with that. (p. 384)

Support from the victim of the crime can also build human and social capital in an offender (Lauwaert & Aertsen, 2015). Claes & Shapland (2016) echo this sentiment in their description of inmate interactions with victims of crime in Europe, with one of the interviews particularly telling:

It was a strange feeling. The responses of the victim motivated me not to re-use again. She wanted me to stay clean, to have a good life, not to fall back and rob again. (Bart)
And why was that strange for you? (Respondent) Because you don’t expect such a response from your victim. She was almost more concerned about me than for the money she lost. You don’t expect something like that in mediation, I thought she would be very angry, maybe shouting at me, I don’t know, and me just apologizing, if she would let me

of course. But she was very compassionate, very interested in me as a person, and she wanted good things for me.

Offenders develop clarity regarding their past actions and begin to understand the consequences of their offences particularly when it comes to developing empathy for their victims in a process that Choi et al. (2011) describe as ‘humanization.’ This process can offer extra motivation for ex-offenders to maintain prosocial behaviour as they construct new meanings for their experiences.

Conclusion

Restorative justice certainly holds significant promise for creating desistance in young offenders. The quantitative analysis conducted throughout this paper demonstrates that statistically significant conclusions can be drawn from the data that does exist. Further quantitative research is needed to fully comprehend the effects of restorative justice programming and its variations particularly research comprised of randomized trials. This paper makes suggestions for further research such as the effect of socioeconomic status on the effectiveness of restorative justice programming as research in this area is incredibly fraught. Moreover, variations in diversity in population groups that are used for restorative justice studies should be sought as restorative justice research tends to be comprised of small population groups with limited heterogeneity.

Whether restorative justice ‘planted that seed’ for good in an individual’s mind or had an immediate impact from the first initial encounter, subjectively, it is clear to see the benefits of restorative justice through the stories of the individuals that participate in them. The more humanistic approach to justice, and the mechanisms that comprise restorative justice such as reintegrative shaming, dialogue, support systems, and procedural justice, generally provide

something far more valuable to a young person than the psychological effects of arrests, prison, and parole.

What this paper has shown is the enormous potential in the diversity of restorative justice. From small crimes and the application of restorative policing to face-to-face dialogue between victims of serious crimes and the perpetrators of such crimes, restorative justice certainly has more applicability than some may suggest. While this paper has generally argued and described the positive effects of restorative justice and its effect on desistance, it should be acknowledged restorative justice is not a blanket solution to reducing youth crime and, in some contexts, it is hard to argue for its applicability.

Restorative justice should not be seen as an antidote to systemic social and structural issues despite its ability to create human and social capital in individuals. The understanding garnered in this research is that restorative justice is most effective when it is one part of a whole system approach to reducing delinquency and should be used in conjunction with institutions and agencies. In a Canadian context, referrals to restorative justice should continue to be implemented and should increase in frequency. Greater record keeping across organizations and institutions should also be implemented to supplement understanding and encourage further research. A greater understanding of restorative justice's place within minority contexts, particularly Indigenous contexts, is certainly warranted.

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