Towards Empowerment: Embedding agency and accountability in restorative justice

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Reimagining Restorative Justice
Agency and Accountability in the Criminal Process
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Outline

- Reflections on RJ theory development
- Furthering theory through empowerment
- Agency and Accountability as benchmarks of effective RJ practice
Where is RJ theory?

- RJ theory has arguably *broadened* but not necessarily *deepened*.
- The rapid development of practice has arguably outpaced that of theory.
- Abstract notions of ‘conflict’ and ‘harm’ are not always particularly useful concepts in terms of how we view criminal justice interventions.
- Often focused on either ‘process’ or ‘outcomes’ as opposed to how these might work in tandem to effect change in individuals or in a relational sense.
Advancing RJ theory in criminal justice

- Need to refine theory to reflect how RJ is increasingly used within CJ context

- Need to theorise RJ as a ‘fully-fledged’ and mainstreamed response to offending by the courts and criminal justice system (vs restorative practices)
Unpicking RJ Theory

Three key questions:

- What is being restored, from whom and to whom?
- What is the nature of the process used to effect restoration; how such restoration can be effected in practice?
- What is the nature and form of the outcome (i.e., the restorative activity itself which follows from the agreement)?
What is being restored?

- The legalistic approach: loss or damage resulting from a breach of duty.
- The relational approach: Crime is seen as a ‘wound in human relationships’ that ‘creates an obligation to restore and repair’ (Zehr, 1990)
- Thus a moral debt needs to be restored by the offender to the victim and the community (Gehm, 1992; Sherman and Strang, 2003).
- Whither the role of the state?
What type of process can effect restoration?

- Dialogical process underpinned by direct involvement of the parties:
  - VOM / VORP
  - Restorative Policing (eg restorative cautions, ‘street’ inventions etc.)
  - Panels
  - Conferencing
  - Many other indigenous forms of justice

- Change to be engineered at an individual level (eg through reintegrative shaming, apologies, communicative punishment, procedural justice etc.)
What is the nature / form / aim of the outcome?

Offenders should accept responsibility for their actions, repair the harm done by their crime and play an active part in making things right with the victim (Zehr and Mika, 1998) through eg:

- Material redress: compensation, repair or restitution of property.
- Symbolic redress: community reparation, apologies, undertakings / promises of non-repetition; other positive steps towards future desistance.
Empowerment Theory

  - ‘a process involving mutual respect, critical reflection and group participation, through which people lacking control are given greater access, democratic participation and the ability control their lives’
- Crime and disempowerment (esp victims and broader community interests)
- Criminal justice and disempowerment
Empowering Values & Concepts

- Restoration
- Reconciliation
- Reintegration
- Apology / Forgiveness
- Community
- Respect
- Consent
- Inclusivity
- Healing
- Truth-telling
- Reparation
- Empathy
- Participation
- Trust
- Reconciliation
- Reintegration
- Truth-telling
- Empathy
Empowering Effective Practice

- Fairness
- Victim involvement
- Inclusivity
- Non-punitiveness
- Consent
- Restorative process
- Non-judgement
- Restorative outcomes
- Stakeholder Satisfaction
- Participation
- Reintegrative eShaming
- Dialogue
- Assumption of Responsibility
- Genuine remorse
- Consensus
Empowerment Theory

Process Factors

| Restorative Agency |

Outcome Factors

| Restorative Accountability |
Restorative Agency and Accountability

- **Restorative Agency**
  - Giving/allowing, ‘power to’, capacity to make choices, involvement in process
  - Broadly relates to the ‘process’ of delivering restorative justice

- **Restorative Accountability**
  - Accepting accountability for behaviour/actions and creating obligations and commitments
  - Broadly relates to the ‘outcomes’ of restorative justice
The Agency-Accountability Framework

 PROVIDES THEORETICAL CLARITY FOR:
 - Purpose and justification for RJ within CJ
 - Effective practice for the delivery of RJ within CJ

 EMPHASISES THE OPPORTUNITY TO CHANGE THAT PROVIDES INDIVIDUAL AGENCY AND ALLOWS FOR PERSONAL AND COLLECTIVE ACCOUNTABILITY THROUGH A FORWARD LOOKING PARADIGM.