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## **Four Challenges in the Future of Restorative Justice**

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**Abstract**

Restorative justice (RJ) emerged in the late 1970s as an alternative to conventional youth and criminal justice practices. Since this time, RJ has experienced rapid growth in theory and practice. At the same time, much of this growth has come from expansion in lower-end criminal justice responses to crime, and in the increasing use of the term “restorative” for a widening host of practices and interventions. RJ has also faced problems related to its increasing institutionalization, resulting in divergence from earlier aims and goals. In this paper, we set forth what we see as the four biggest challenges facing the future of RJ, namely problems related to definition, institutionalization, displacement and relevance of RJ practices. We follow with discussion of possible future directions of RJ.

***Keywords***

Restorative justice; international, victims, offenders

## **Introduction**

That restorative justice (RJ) has a future seems fairly certain after almost forty years of development, growth, and institutionalization in virtually all western countries and in a large number of other states around the world. Far from being a radical prescription for the ills of the criminal justice system however, as practiced today RJ functions less as an alternative to criminal justice practices than as an alternative sanction within them (Dünel, Horsfield, and Păroșanu, 2015; Shapland, 2003; Zernova, 2006). The earlier visions and promises of many RJ advocates have given way to a decidedly more instrumental and institutional host of RJ practices. Following trends in criminological research and crime policy, RJ research has become decidedly more “evidence-driven” (Sherman and Strang, 2007; Umbreit, Coates, and Vos, 2007). RJ practices have also increasingly become administered from the “top down” (Crawford and Newburn, 2002; Dzur, 2003) and facilitated by police or justice professionals (O'Mahony and Doak, 2009; Richards, 2010). The goals of RJ as reflected in most of the current literature are no longer those of criminal justice transformation as much as they are goals of program improvement and efficacy, development of theory, and discussion of policy and implementation.

RJ has not changed the world in terms of what Thorburn (2005) has called its “impossible dreams,” but neither has it failed as have so many other “good ideas” of criminal justice reform or crime control. Fifty years from now, the idea that something good can potentially come out of an offender, a victim, and other parties sitting down together to discuss harms caused, accountability, and ways to make amends will still seem like a good idea to many people. Yet at the same time, it is not at all clear what RJ will look like fifty, or even twenty years from now. Primarily, it is impossible to know what larger trends in criminal justice will emerge. However, RJ’s past growth and development, as well as its current practices, suggest trajectories in the future that will likely bring it into increasing conflict with many of its core aims (at least historically), as well as present problems, if

perhaps less in terms of its growth, then more in terms of quality of practice and its overall function in criminal justice systems.

In this paper we address what we see as the most immediate challenges facing the future of RJ, particularly within its use in Anglophone countries.<sup>i</sup> Specifically, we see four significant problems or challenges – definition, institutionalization, displacement, and relevance. Each of these overlap, but each also poses what we see as distinct conceptual, theoretical, and/or practical (i.e. applied) challenges or problems likely to define RJ in the foreseeable future. Following analysis of these problems, we conclude with a discussion of likely directions or possible redress for each of these challenges or problems.

### **Problems of Definition**

The problem of the definition of RJ is, as Daly (2016, this issue) notes, a “vexed problem.” Daly notes several reasons why this is the case, but we wish to focus on one particular aspect of that we see as the most problematic for the future of RJ. Since its inception, RJ has grown significantly in terms of its use, but it has also become increasingly hybridized and diffuse. Beyond the numerous variations in conferencing, the term “restorative” is now applied to a host of practices – community reparation boards, surrogate victim (or offender) meetings, community service, etc. It is also now used in myriad settings such as schools, prisons, and workplaces, and applied to a variety of contexts including not only criminal justice, but transitional justice (i.e. truth and reconciliation commissions), institutional responses to abuse, and so on.

Thus, while the use of restorative conferencing has grown, so has the definition of “restorative justice” continued to expand and to be applied to a widening host of practices beyond conferencing or other types of face-to-face meetings between victims, offenders and other parties. It is this expansion we wish to focus on. Debates about proper definitions of RJ are not new,<sup>ii</sup> but much of these debates have focused on the “purist” vs. “maximalist”

positions (c.f. Dünkel et al. 2015), where purists have argued that RJ is a “process” that involves key stakeholders to address the aftermath of crime (Marshall, 1999; McCold, 2000), while maximalists have argued that RJ is an “option” that encourages outcomes to repair harms caused by crime (Bazemore and Walgrave, 1999; Walgrave, 2008).

Yet these debates are almost twenty years old. In this time, the use of what people call “restorative justice” has clearly exceeded the purist position in representing something more than conferencing or other meetings between victims, offenders, and other parties. On the other hand, neither has RJ emerged into a more “fully-fledged” systematic response to crime as set forth in the maximalist positions of those such as Walgrave (1995). Rather, what seems apparent is that the term “restorative” has continued to expand and to be applied to a growing number already existing and new innovative programs, a problem we see in terms of the growing plasticity of the concept of RJ itself. Below, we give three examples of this plasticity, which we see as emblematic of the increasing hybridity of RJ that is expanding so wide as to make the term potentially meaningless.

The first example is the use of RJ in prison settings. Since the late 1990s numerous “restorative” prison programs have been implemented within English speaking countries. With few exceptions however, such programs do not include the use of conferencing between victims and offenders. Rather, such programs tend to be oriented on RJ “principles” towards goals of offender empathy and remorse (Liebmann, 2007; Lovell, Helfgott, and Lawrence, 2002), resolution of conflicts within the prison (Edgar and Newell, 2006; Swanson, 2010), and use of prison work for the making of amends to the community (Gavrielides, 2011; Gray and Wright, 2011). Some programs such as the Sycamore Tree Project do include surrogate victims in their curriculum curriculum (Prison Fellowship Australia, n.d.), but by and large what is called “restorative justice” within prisons is something very different than outside of prisons. Dhami et al. (2009, p. 434) note, for example, that RJ should be “used to improve

prisoners' experiences of imprisonment which may result in an increase in prisons' utility in terms of their efforts to reduce crime via these alternative strategies." Hurley (2009, p. 17) argues that the movement into the use of RJ in prison settings represents an emerging view within RJ that "embraces the concept of offender-oriented restorative justice," a view that "reflects the needs of offenders and victims along with emphasizing the fact that the offender must make amends, change, and engage in rehabilitative efforts."

It is not difficult to see the "language" of RJ in these goals. At the same time, it is also not difficult to see these goals as embedded in either crime reduction strategies or correctionalism, not (as we have learned over so many years from RJ literature) the goal of the restoration of harms. Indeed, the notion of an "offender-oriented" RJ, without the inclusion of a victim as a *subject*, and not merely an object of offender rehabilitation or change, reflects an almost total reversal of many earlier RJ critiques of state criminal justice practices as "offender focused." To suggest that conferencing – a practice that involves primary stakeholders towards the goals of victim redress and offender accountability – and prison rehabilitation or compliance programs can both be subsumed under the banner of "restorative justice" severely conflates the distinct aims and practices of each.

The second example we give is the increasing re-branding of community service as "restorative" or as a means of repairing harms to the community. Such rebranding has occurred within prisons, but also within community corrections, where in many cases there appears to have been little change to programs that involve the use of offenders for menial work, often in stigmatizing settings or conditions (Elliott, 2007). As used within the prison setting, there are numerous examples of prison work being cited as an example of RJ (c.f. Gavrielides, 2011; Liebmann, 2007; Lovell, Helfgott, & Lawrence, 2002), but very few examples of such work being performed in ways that are distinct from other forms of prison work. In the case of the Inside Out Trust program in the UK, for example, an evaluation of

the program found that the Trust “developed prison projects based on restorative justice principles” in several UK prisons between 1994 and 2007, including “activities as repairing bicycles, refurbishing wheelchairs, upgrading computers and producing Braille and large print books for charities, both in the UK and in poorer countries” (Gray and Wright, 2011, pp. i, 1). However, little of this work was conducted outside of prison workshops. Nor did this work in any way involve victim input or redress. Rather, the label “restorative” was applied because prisoners apparently found the work meaningful, and the outcomes of such work were oriented towards social benefits for others. While these may be important goals, there is nothing to distinguish them as “restorative” per se in that prison work itself has been widely lauded as reintegrative for offenders and as having social benefits for communities for over two centuries.

Similar problems extend to the use of community service as “restorative” outside of prisons. As a community sanction, service work has been readily subsumed into successive social logics of punishment – first in the early 1970s as an alternative to incarceration, then as a means of offender reintegration in the late 1970s, as an intermediate punitive sanction in the 1980s early 1990s, and increasingly as a “restorative sanction” since this time. Again, there are few examples in the literature of program redesign or reorientation of community service as “restorative,” (c.f. Wood, 2012) and far more that suggest such programs have been merely rebranded as “restorative” for their purported means by which offenders can “make amends” to the community.

The final example we give is the recent implementation of the Australian Defence Forces (ADF) “Restorative Engagement Program” as a means of redress for victims of harassment and abuse.<sup>iii</sup> This program allows for victims (and a support person of their choice) to meet with an ADF representative in a facilitated conference to offer an account of harms caused to them and explain the impacts of these harms. It also allows for the ADF



representative to acknowledge harms for allegations deemed “plausible” by the Taskforce (Australian Defence Force (ADF), 2014). According to the ADF (2014, p. 2, emphasis in the original), “The Framework is underpinned by the best practice principles and values of restorative practice and mediation. These principles and values include ‘*do no further harm*’, confidentiality, and privacy.” Such goals, broadly defined, are in line with much RJ literature, but of course what is missing is the offender, the ability of victims to address the offender, and the goal of offender accountability that is generally recognized as central to RJ practices (Braithwaite and Roche, 2001; Zehr, 2002)

It is not yet clear whether this program is helpful for victims. However, the larger point is not whether this or other “restorative” programs or practices are useful or effective towards their particular aims. Rather, our question is this: *what is the common thread that ties them together?* What are the identifiable shared aims, goals, processes, and outcomes? The three examples we have discussed – RJ prison programs, “restorative” community service, and the ADF’s “restorative engagement program” – all have distinctly different goals. The first tends to be largely oriented towards offender rehabilitation, compliance, and reintegration; the second towards the making of amends towards the community; and the third towards victim redress.

All of these fit nicely within more traditional RJ aims, but only in piecemeal. In this respect, the obvious question becomes *what makes such programs restorative?* If the goals of RJ prison programs are largely around those of offender empathy, compliance, and reintegration, what makes such programs distinct from other similar “non-restorative” programs, for example programs that use the concept of thinking errors to address cognitive distortions, including distortions about the reality of harms caused to others? Or again, what exactly is being “restored” in the ADF’s “restorative engagement program” where victims can hear an apology from an ADF representative but never have the chance to directly

address the offender or have voice in offender accountability? How is such a program distinct from “non-restorative” institutional responses to abuse where institutions admit harms and even perhaps make amends, but those who directly caused the harms are absent from the process (and often from accountability)?

It is our contention that as the scope of RJ continues to grow to include an increasing number of “restorative goals” or “outcomes,” many of these (including those we have discussed) can just as easily be subsumed into different “non-restorative” frameworks with little or no difference in practice. This is not a comment on the quality or effectiveness of such programs, but rather on the increasing plasticity of the concept itself in application. In terms of the problem of definition, the future of RJ as we see it depends significantly on whether a focus on *interactions* between parties who have caused harm and those who have been harmed remain central to such a definition, or whether RJ continues to expand into piecemeal programs and outcomes where the difference between “restorative” and other types of programs becomes increasingly blurred.

### **Problems of Institutionalization**

RJ originated in response to critiques of traditional criminal justice systems (Chiste, 2013; Daly, 2013). These included critiques of justice practices as “retributive” (Zehr, 1990); as lacking meaningful redress for victims (Barnett, 1977; Eglash, 1977); and as being “offender focused” without a meaningful way of allowing offenders to admit harms, make amends, and successfully reintegrate into their communities (Braithwaite, 1989; Christie, 1977). As such, much of the early focus of RJ was on developing practices that offered an alternative to formal criminal justice practices. Yet in the almost forty years since, this has not happened. On the contrary, most RJ programs have been institutionalized within conventional criminal justice systems, often coupled with diversionary practices or as an alternative sanction within them (Shapland, 2003; Zernova, 2006).

The institutionalization has occurred for numerous reasons. Primarily, as Daly and Proietti-Scifoni (2011) have noted, RJ approaches such as conferencing tend to be a viable option only after an offender has been adjudicated. Daly (2006) notes that RJ generally lacks any “fact-finding” mechanisms, and thus is dependent upon the criminal justice system for this function. Also, while many early RJ programs in the US were developed outside of formal criminal or youth justice systems, the need for sustained funding and growth has made them more dependent upon alignment with or inclusion in these systems (Jantzi, 2004). In the case of Australia and New Zealand, RJ was implemented as part of state youth justice practices (Joudo-Larsen, 2014; Maxwell, 2013). Also, as RJ practices have developed over time, they have frequently become more attuned to victim and offender needs that cannot be met immediately though conferencing – victim support services, for example, or offender treatment and “wrap-around programs” (Acorn, 2004; Daly, 2002). Finally, most RJ programs are dependent upon youth or criminal justice systems for ensuring compliance with conferencing agreements (Umbreit, Coates, and Vos, 2008; Urban, Markway, and Crockett, 2011). Today, there are very few RJ programs that do not in some way work within or depend on youth and criminal justice systems.

The institutionalization of RJ practices has allowed for its growth and increasing acceptance as a more “mainstream” alternative sanction. Yet the question of whether RJ ideals can effectively be achieved within youth and criminal justice systems has been one of significant debate and focus in the literature (c.f. Aetsen, Daems & Robert, 2006; Archibald & Llewellyn, 2006; Clairmont & Kim, 2013). Research has demonstrated several significant problems related to the increasing institutionalization of RJ. Perhaps the most frequently cited problem is the risk of RJ goals and “best-practice” being co-opted for other institutional or system goals and outcomes (Fattah, 2004; Hudson, 2007). Such co-option may take the form of victims being used to enhance offender rehabilitation or desistance (Hoyle and Young,

2002; Walgrave, 2004; Zehr, 1995). Choi, Gilbert and Green (2013) examined victims' perceptions in victim-offender mediations in the US and found that victims were often marginalized because some of them did not receive preparation for the meeting, were pressured to behave in a certain way (such as to accept apologies), or felt threatened by offenders and their supporters. Similarly, Zernova (2007) also found in interviews with Family Group Conferencing participants in the UK that a majority of participants felt the process was offender-centered and focused mainly on offender rehabilitation and desistance.<sup>iv</sup>

Co-option of RJ may also take the form of program goals such as case processing, growth, and efficiency, over the needs of victims and offenders (Umbreit, 1995). Research on RJ practitioners has found that they are frequently pressured to deliver RJ within a limited timeframe (Gavrielides, 2007; Jones and Creaney, 2015). Consequently, tasks that are necessary to meet the needs of victims and offenders may be compromised in practice. Another problem is the lack of adequate preparation, especially for victims, in terms of achieving restorative goals (Choi, Bazemore, and Gilbert, 2012). In observing victim-offender mediation programs in the US, Gerkin (2008, p. 242) suggested that without victims possessing an understanding of the goals of RJ to some degree, it was difficult to achieve restorative outcomes because victims had difficulty viewing "the situation through a restorative lens." Moreover, such lack of preparation can also lead to victim absence. Research on a police cautioning program in Thames Valley demonstrated that some victims refused to participate due to lack of interest, others did so due to lack of understanding of what was involved in the process (Hill, 2002; Hoyle, 2002). In other words, there may be a relationship between victim participation rate and level of victims' understanding on the process details that should be established through preparation (Zinsstag, 2012).

Aside from the problem of co-option, the institutionalization of RJ has led to the increased inclusion of gatekeepers such as judges or police officers that may not be familiar

with, or even opposed to RJ principles. Numerous studies have found cases where gatekeepers either impede the referral process for RJ programs (Campbell et al., 2006; Shapland, Robinson, and Sorsby, 2011), or disrupt conferences (Hoyle, 2008). This results in difficulty of RJ programs obtaining referrals even where cases are considered appropriate based on practical experiences.

Finally, problems in the institutionalization of RJ highlight the power of institutions to legitimize and even implicitly define the term “restorative” through program design and implementation, through the setting of goals and indicators of “success,” and through funding. On a systemic level, the most obvious problem is one set forth by Pavlich (2005), who has noted the apparent paradox between RJ’s alternative conceptualization of “harm” on the one hand, and the acceptance of crime as defined by state criminal justice systems on the other. Harm is what the state says it is, and this in turn structures how both offenders, but in particular victims, are able to engage with or are excluded from restorative processes – the types and nature of offenses that may be considered appropriate for RJ, the level of expected compliance or amends from offenders and subsequent redress (or even recognition and participation) for victims, and so on.

On a jurisdictional or program level, the power of institutions to define what is “restorative” may or may not be in the best interests of victims or offenders, particularly where program benchmarks and key indicators of success take precedence over best practice. Hoyle’s and Rosenblatt’s (Hoyle and Rosenblatt, 2016, this issue) comparison of RJ programs ten years ago and today in the UK illustrates a key problem in this respect, namely that while institutionalization may lead to the “growth” of RJ legislation and programs, this does not necessarily translate into the development and implementation of lessons learned or of better practice. On the contrary, it may lead to more entrenched and entangled practices where definitions of “success” (or even re-definitions of RJ) are subsumed into system goals.

## **Problems of Displacement**

The third problem we discuss is one we call “displacement.” By this term we mean the degree to which RJ has moved into previously existing informal or diversionary forms of youth and/or criminal justice. The use of RJ in some countries such as the UK has displaced or been coupled with practices of cautioning young offenders (Hoyle and Rosenblatt, 2016, this issue). In the US, a large amount of the growth of RJ has come in terms of replacing, or being coupled with diversionary programs, particularly for youth offenders (Bazemore and Schiff, 2005; Umbreit, Coates, and Vos, 2004). While RJ practices have been implemented, and in some cases legislated, in all Anglophone countries, the growth of RJ has come largely in the “shallow end” of the criminal justice pool in terms of lesser offenses and/or youth offending (Hoyle and Rosenblatt, 2016; Shapland, 2014) with the exception of New Zealand and some Australian states.

For many such cases there are still legitimate victim needs and possibilities for offender accountability. Yet RJ practices are also used in cases where they are not necessarily needed - where there is no identifiable victim, where victims choose not to participate, or where harms are at best negligible (Doak and O'Mahony, 2006; Hoyle, Young, and Hill, 2002; Karp, 2001). Some research has moreover found that the use of RJ has expanded lower end criminal justice system processes through net widening (Hudson, 2002; Skelton and Frank, 2004).<sup>v</sup>

It is thus not clear how much of RJ's “growth” reflects the emergence of new programs or practices in lieu of other formal or informal sanctions, and how much this growth reflects the addition of RJ to already existing criminal justice system practices and interventions. It is clearer that the integration of RJ into criminal justice systems has largely been in terms of post-adjudicative or diversionary practices (Daly and Proietti-Scifoni, 2011; Shapland, 2003), and in these contexts, such “displacement” has more frequently resulted in RJ not as an “alternative” as much as an “addition” to existing practices or sanctions (fines,

community service, diversion or probation orders, and so on) (Shapland, 2003; Zernova, 2006). Thus, while RJ practices have in some cases displaced less formal justice practices, they have generally not in turn replaced many of the “informal” requisite conditions attached to cautions, diversion, or community supervision as much as become a part of them.

### **Problems of Relevance**

Maruna (2011, p. 667) has referred to the predominant focus on youth and lower end offending as the “ghettoization of restorative justice.” We have mentioned this above in terms of the problems of displacement, and Maruna is hardly the only one to question RJ’s continuing relevance in the 21<sup>st</sup> century, particularly in Anglophone countries where its growth has come largely in relation to youth and/or less serious offenses (Hoyle and Rosenblatt, 2016, this issue; Shapland, 2014). There has been some movement towards its use for more serious violent offenses, but this remains the exception rather than the rule (Miller, 2011; Umbreit, Bradshaw, and Coates, 2003).

The continued relevance of RJ is related as well not only whether it can move beyond an “alternative punishment” for lessor or youth offenses, but in relation to many of its older alignments with social justice issues – alignments that have generally faded over time as RJ has become more established within criminal justice system and moved in practice towards program improvement and efficacy, and in research towards empirical verification and development of theory. In its inception, RJ was seen by many people as a promising means of addressing not only problems of victim exclusion and offender accountability, but also meso and macro social problems as they intersected with criminal justice. These included a focus of many early RJ supporters on prison abolition (Ruggiero, 2011), as well as racial and gender equality (Cunneen, 1997; Daly, 2000; Gavrielides, 2014; Stubbs, 2014; Tauri, 2009). In relation to the latter, one of the early leading scholars and pioneers of RJ, Mark Umbreit (1998, Concluding Remarks para. 3) argued almost two decades ago that one major risk

facing the RJ movement then was that “concern for the overrepresentation of people of color in our juvenile and criminal justice systems could easily be lost with a hasty and exclusive focus on restorative interventions.”

But since this time, RJ literature and research has been largely inattentive to problems of race and ethnicity in its own practices, as well as within criminal justice practices more broadly. The exception to this is the focus that has been given to indigenous justice within RJ literature. Some proponents have argued that RJ is rooted in part within indigenous justice practices (Consedine and Bowen, 1999; Pranis, 2005), and/or that it may be more culturally appropriate for indigenous people (MacRae and Zehr, 2004; Maxwell et al., 2004). Yet these claims have been contested both in terms of the notion that RJ is predicated on indigenous justice practices (Blagg, 2001; Daly, 2002; Tauri, 2014; Tauri, 2009) and that it is more culturally appropriate or effective for indigenous victims or offenders (Cunneen, 1997; Kelly, 2002; Moyle and Tauri, 2016, this issue).

Outside of Indigenous peoples, RJ research and practitioners have been mostly silent on questions of how restorative programs may or may not be culturally appropriate or relevant for other racial and ethnic minorities (Daly and Stubbs, 2007; Gavrielides, 2014). Scholars have raised concerns over the degree to which RJ may represent a white or Eurocentric view of view of justice (Cunneen, 2003; Daly, 2002; Tauri, 2014). Daly and Stubbs (2007, p. 157) note “There are few empirical studies of how gender and other social relations (such as class, race, and age) are expressed in RJ practices,” and indeed their focus on gender, particularly where it intersects with race, ethnicity, indigeneity, and social class only further complicates the problem of the lack of RJ practice and research into these problems.

Problems of racism, discrimination, and overrepresentation in western criminal justice systems are endemic. As recent events in the US and other countries have shown, there is a



widespread sense within Black, Latino, Indigenous and other communities that the criminal justice system is racist in practice (i.e. policing, sentencing, and so on) and reflects in a larger sense the social stratification and marginalization of racial and ethnic minorities. The Black Lives Matter movement in the US, which has emerged in part as a result of the continued police shootings of unarmed Blacks (but more broadly as a social movement focused on addressing the systematic violence and discrimination towards Blacks) reflects the degree to which many such communities have a deeply internalized sense of marginalization and injustice. While RJ literature and research has not been silent on the *problem* of social marginalization, neither has it (with a few exceptions) looked either empirically or critically at how questions of race, gender, and social class intersect with what have traditionally been seen as “core” RJ values – victimization and victim redress, offender accountability and reintegration, and community empowerment and efficacy.

Pavlich’s (2005) critique of RJ as on the one hand offering an alternative conceptualization of crime as “harms,” but on the other hand being beholden to state definitions of crime is probably nowhere more relevant than in the racialized bifurcation of criminal justice. With a few exceptions, RJ theory and research in western countries has done little in terms of conceptualizing the state as an “offender” in this regard. Yet this is not only a theoretical problem. In their research on community justice, Clear and Karp (1999) argued that community level justice programs are likely to fail where community dimensions related to structural factors such as segregation, poverty, unemployment, and so on are not taken into account. There is little evidence that RJ practices attempt this or even give attention to this in any widespread sense. It is impossible to know without any focused empirical research on these questions, but our larger point is that given the massive amount of research done on RJ, the relative *lack* of research or focus on these questions strongly suggests it is not a priority.<sup>vi</sup>

The question of the continued relevance of RJ is not one of whether or not its practices can remedy structural inequality or systematic discrimination. No criminal justice program or intervention can achieve such a task, and in terms of social reform criminal justice policies are generally poor vehicles for social transformation. The lack of attention to issues of race, gender, and social class within RJ research on its *own* practices is not an indictment of any failure to solve structural problems as much as it is a critical oversight of how social stratification and cultural differences may in turn structure social interactions within restorative processes – in terms of imbalances in social and cultural capital among participants; in terms of cultural differences in rituals of apology, accountability and amends; and indeed in terms of who may be included or excluded from RJ as an “alternative” justice practice. It is not a coincidence that serious violent crime is socially concentrated along these trajectories, and as we argue below, the continued relevance of RJ depends significantly on whether or not it is able to encapsulate and address these more cogently within its practices.

## **Discussion**

In this final section we note what we see as possible “futures” of RJ given its recent past and current practices. We also offer what we see as some very tentative prescriptions for the problems we have identified.

First, we see the problem of definition as one that is unlikely to change in the near future. For better, and for worse, RJ has become an appealing “brand” that is being applied to an ever-increasing scope of programs and practices. Given the ideological implosion that is occurring in the US and elsewhere (particularly with of policymakers) of the tough on crime policies that have dominated criminal justice policies over the last quarter century or more, RJ represents an attractive alternative to the vacuum left in the wake of this implosion.

Yet as an “alternative,” RJ is not currently well-poised within western adversarial criminal justice systems, particularly in Anglophone countries, to fill this vacuum. Primarily,

as noted above, most RJ practices are post-adjudicative or diversionary – in essence lacking any agency regarding the identification and investigation of crimes, the arresting of offenders, and the adjudication of offenses, and so on. Until it is potentially able to do so (as was envisioned in its earlier development as a more comprehensive alternative to criminal justice practices), it is in our estimation more correct to think of RJ (as Daly has noted in this issue) as a “justice mechanism,” not as any comprehensive alternative to current justice practices. Following on this, we envision that RJ will continue to “grow,” but not necessarily expand in terms of its functions in criminal justice system practices. Rather, following recent trends, it is more likely that the term “restorative” will continue to be applied to a growing host of already existing and new innovative practices that may have noteworthy goals, but that at the core do not involve meetings between victims, offenders and other vested parties that come together with the respective aims of redress, accountability, and the making of amends.

While definitions are likely to remain problematic, RJ practitioners and researchers have at the same time produced a significant amount of work on the problems related to the institutionalization of RJ within criminal justice systems. This research paints a picture of significant challenges facing restorative conferencing. It also provides more concrete and realistic avenues through which RJ can continue to “grow,” at least in terms of the quality of programs and restorative processes. As we discussed above, a number of significant studies on RJ (those beyond the use of satisfaction surveys) have found that victims in particular *do not* find restorative processes as meaningful or “victim-focused” as is frequently set forth in more idealistic accounts of RJ (Choi, Bazemore, and Gilbert, 2012; Choi, Gilbert, and Green, 2013; Zernova, 2007). At the same time, these studies tend to suggest that reasons for this are not insurmountable *at* the jurisdictional or program level. In this regard, we see problems of institutionalization far less “vexing” than those of definition, particularly where research suggests that smaller changes such as adequate participant preparation (Gerkin, 2008),

efficient and flexible referral processes (Laxminarayan, 2014; Zernova, 2006), rigorous convenor training and competence (Choi and Gilbert, 2010; Rossner, Bruce, and Meher, 2013; Urban, Markway, and Crockett, 2011), and follow post-conference follow through or support with both victims (Maxwell et al., 2004; Morris and Maxwell, 1998; Wagland, Blanch, and Moore, 2013) and offenders (Shearar and Maxwell, 2012; Walgrave, 2011) may have significant positive impacts for RJ conferences and outcomes. This does not mean that such problems are easily solved; institutional change is notoriously difficult. Rather we mean only that research over the past two decades in particular has set forth a fairly clear agenda on how RJ conferences and outcomes can be more readily improved for victims and offenders within institutional frameworks.

Finally, problems of displacement and relevance are two sides of the same coin. Given RJ's growth in the "shallow end" of criminal justice, often for lesser offenses or youth offenders, its role as a viable crime control policy is limited for the reason that most less serious youth or first time offenders tend not to reoffend, regardless of the intervention used. This does not negate the importance of RJ for victims in such cases. However, it does raise the question of why RJ is frequently assumed to be more effective or appropriate for such cases. There is some research that suggests RJ may in fact work better with more serious offenders (Hayes, 2005; Sherman, Strang, and Woods, 2000; Strang et al., 2013), and it is used with more frequency for such cases in Germany and other European countries (Dünkel, Grzywa-Holten, and Horsfield, 2015; Zinsstag, Teunkens, and Pali, 2011). Given the significant amount of criminological literature that has consistently found a smaller number of more serious persistent offenders being responsible for a majority of serious offending, it is not clear why there has not been more systematic research into the ability of RJ to potentially reduce such offending.<sup>vii</sup> In their systematic review of restorative conferencing, Strang et al. (2013, p. 48) noted that, "banishing RJC to low-seriousness crimes is a wasted

opportunity. If governments wish to fund RJ at all, this evidence suggests that the best return on investment will be with violent crimes, and also with offenders convicted after long prior histories of convictions.” If this is in fact true (although their review limits the number of studies they consider according to several criteria), the relevance of RJ towards addressing and reducing more serious reoffending should be obvious. At the very least, it raises the question of *why* RJ is not being used or assessed more systematically for more serious offending.<sup>viii</sup>

RJ’s continued relevance in the 21<sup>st</sup> century also demands that its practices and theory begin to take seriously problems of social marginalization as they structure criminal justice processes and in turn impact restorative processes. The problem of race (including ethnicity and indigeneity) is paramount, but this intersects in wicked ways with problems of gender and social class. What such redress might look like is beyond the scope of this paper (although certainly demands significant attention). However, many of the early arguments made by RJ supporters and advocates were predicated on the design of a more just and more effective system of justice – for victims, for offenders, and for communities – and on the premise that the state itself was in significant ways complicit if not outright responsible for barriers to these goals. Over more than three decades, RJ practices have afforded victims (however imperfectly) more participation, more redress, and more agency than what existed prior, and offenders more opportunity to make amends in meaningful ways. At the same time, this has come with an eschewal of focus on structural drivers of marginalization in favour of a focus on individual harms and redress, where crime is set forth in conferences or meetings not as a social relation but merely as a violation of the social contact that must be redressed.

Yet the first fifteen years of the 21<sup>st</sup> century has seen an explosion of anger and angst around the historical reconfiguration of criminal justice practices as “the new Jim Crow” (Alexander, 2011), as a new “carceral continuum” between the ghetto and the prison

(Wacquant, 2001), and as a refined mechanism of colonial oppression and subjugation (Agozino, 2004; Tauri and Porou, 2014). It is thus not surprising that many new social movements are focused on the problem of criminal justice as a primary means of social segregation and social marginalization. Yet RJ research and programs are lagging behind these movements, particularly in the investigation of where restorative practices may in fact be useful in addressing these problems, or alternatively where they may be contributing to them. One setting where RJ has made inroads is in its growing use in schools as a potential redress to the school to prison pipeline (particularly where such programs replace zero-tolerance policies that criminalize students), although as Schiff (2013, January) notes there has been little rigorous empirical analysis of the impacts of these programs. There are also examples of RJ programs aimed more directly at the need of offenders and victims within minority communities, for example the Restorative Justice for Oakland Youth program, which has as one of its core goals the reduction of racial disparity in the criminal and youth justice systems. These are promising avenues where RJ has been able to conceptualize problems of state harm in ways that can be at the very least confronted *within* the scope of restorative practices. But these are exceptions, and if RJ is to remain relevant in terms of its most core goals of meaningful redress for victims, accountability and reintegration for offenders, and community involvement and cohesion in justice practices, it must begin to seriously grapple with the stratified realities of crime and criminal justice where offending and victimization are more than the sum and effects of individual choices.

### **Concluding Remarks**

In several ways the problems we define and prescriptions we offer are contradictory. We note the problem of the plasticity of the concept of RJ on the one hand for example, but we argue that to remain relevant in the 21<sup>st</sup> century RJ must develop new ways of addressing problems of race, gender and social class within its own practices. At the same time, as we

make clear, the wide diversity of what is called “restorative justice” today is in many ways disparate, if not contradictory. The primary aim of our paper is not to try to reconcile these disparities, or set a new agenda for RJ. We assume that what is called “restorative justice” will continue to expand, and with it the disparities and even contradictions of theories and practices.

This becomes problematic when the concept itself begins to become everything to everybody. In this vein, scholars such as Daly (2014) and Graham and White (2015) have suggested a larger encompassing term, “innovative justice,” may be more appropriate as it allows for disparate goals and practices while recognizing these as distinct from or even challenging of conventional justice practices. We agree that the term “restorative justice” is being stretched to its conceptual limits. We do see innovative and potentially effective possibilities for the programs or practices we have discussed (i.e. prison programs, the ADF’s use of mediation, etc.) and others, each with their own aims and goals, and each with distinct groups of participants. We want to make clear that we do not disparage such innovation, nor do we dismiss it as unimportant because it does not involve a victim, an offender, and other parties in dialogue towards the restoration of and accountability of harms.

Following this, most of our identification of problems and discussion of prescriptions have at their core the implicit assumption that “restorative justice” is in fact distinct from other even “innovative” practices that do not involve meetings between victims, offenders and other vested parties. We do not say this in any attempt to provide a yet better definition of RJ, but on the contrary as a recognition that if RJ is to have any conceptual clarity or difference, then there must be some demarcation between what is, and what is not “restorative justice.”

As such, our prediction is this. RJ has a future. We do not know what that is however. It might be one where the term and its corresponding practices pancake into so many

practices and meanings that as RJ continues to “grow,” it becomes ever-thinner in its differences between “non-restorative” programs, practices and theories of justice. This is not necessarily a negative to the degree that RJ can function as an impetus for further innovative practices, but it also very well may lead to the gradual dissolution of RJ into anything more than a meme for victim redress, offender reintegration, or community crime-control. On the other hand, if RJ *is* to be conceptualized as a distinct set of practices involving face-to-face interactions between victims, offenders, and other parties, it must contend with problems of its increasing institutionalization, which we see as perhaps the most immediate means in which RJ can “grow” in terms of better meeting goals of victim needs and redress, and offender accountability and reintegration.

The last problem, relevance, is the one that is the murkiest for us. As a viable means of crime control, RJ needs to move beyond its displacement of other informal or low-intervention justice practices for youth or less serious offenders into more serious offenses or offenders. For better or worse, RJ has taken on the gambit of reducing recidivism as a means of legitimization and relevance, and in this context it must now more convincingly demonstrate this effectiveness or risk being dismissed by policy-makers as another failed attempt at crime reduction. This is in many ways a Faustian bargain insofar as reoffending is related to variables and contexts outside the auspices or purviews of RJ practices. Nevertheless, with this gambit RJ must now more convincingly demonstrate this effectiveness or risk being dismissed by policy-makers as another failed attempt at crime reduction

In terms of relevance, RJ must also contend with and be able to speak meaningfully in practice and theory to problems of bifurcated justice, particularly along racial, ethnic, and indigenous lines. In terms of criminal justice reform, the gross inequalities that currently exist will almost certainly continue to dominate public discourse and policy debates in the near



future, not only in the US, but also Australia, Canada, New Zealand and the UK. We do not know what role, if any, RJ will have in confronting or addressing these problems. We do suggest, however, that its viability and relevance as an “alternative” justice practice predicated on the recognition and restoration of “harms” will lessen if it continues to ignore the social stratification of justice in a reflexive sense – in its own practices, in ways in can possibly confront these problems, and in ways in which it may be however unwittingly reproducing these social relations.

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<sup>i</sup> We limit our discussion to Anglophone countries for two reasons. Primarily, countries such as Australia, Canada, Ireland, New Zealand, the UK, and the US have adversarial systems of justice, as opposed to many other European countries that do not. RJ thus tends to be used as a post-adjudicative practice in these countries, whereas in countries that use inquisitorial systems (i.e. Germany, Sweden, etc.) RJ may more frequently be used prior to or as part of court processes (Dünkel, Grzywa-Holten, and Horsfield, 2015). Also, Anglophone countries are generally those where RJ has had the longest and most comprehensive development and implementation.

<sup>ii</sup> See for example volume 1, issue 7 of the *Contemporary Justice Review*, for a good example of debates between purists and maximalists.

<sup>iii</sup> See

<http://www.defenceabusetaskforce.gov.au/Outcomes/Pages/DefenceAbuseRestorativeEngagementProgram.aspx>

<sup>iv</sup> For other research on the question of how the institutionalization of RJ may negatively impact victims, see Choi, Bazemore and Gilbert (2012).

<sup>v</sup> However, Prichard (2010) found that there was no evidence of net-widening in the RJ program in Tasmania, Australia, although there was a significant increase in detention orders.

<sup>vi</sup> There are a few exceptions. Rodriguez (2005; 2007) and Baffour (2006) has looked at the efficacy of RJ programs for young Latino offenders as well as the role that ethnicity and other structural factors may place in reintegrative processes for young offenders in RJ programs.

<sup>vii</sup> There is some debate among RJ scholars and practitioners as to whether reducing reoffending should be a primary focus of RJ (c.f. Gavrielides, 2007; Robinson & Shapland, 2008; Zehr, 2002).

<sup>viii</sup> Here we do wish to note that certain categories of offending such as sexual violence and domestic violence present significant and unique problems for RJ in terms of the dynamics of meetings between victims and offenders.