

Fall 11-14-2011

An Exploration of the Promise of Restorative Justice: How This Concept Improves the Traditional Criminal Justice System

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AN EXPLORATION OF THE PROMISE OF RESTORATIVE JUSTICE:
HOW THIS CONCEPT IMPROVES THE TRADITIONAL CRIMINAL
JUSTICE SYSTEM

By

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A Research Paper

Submitted in Partial Fulfillment of the Requirements for the Master of Arts

Department of Criminology and Criminal Justice in the Graduate School

Southern Illinois University Carbondale

November 2011

RESEARCH PAPER APPROVAL

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November 10, 2011

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GENERAL INTRODUCTION

The criminal justice system could improve if the concept of restorative justice was introduced into its system and put into practice regularly. The prominent goal of this paper is to assert the above described statement consistently; all descriptions in this paper are constructed to explain the benefit of introducing restorative justice and its practice into our society, especially in our criminal justice fields.

It is about time that people should wake up to the fact that we often overlook the critical and important point in such a developed and complicated society that the current criminal justice system still has some probability for development particularly for crime victims. For example, although many of us eat various kinds of meat in our daily lives, only some people know the process of killing animals. It is easy to look at packaged meats that are sold at grocery stores, but it is almost impossible for the public to observe how to kill those animals and pack them. Crime victims are in quite similar circumstances. They have been ignored by public attention, the government, and criminal laws, and most people, including even some victims, do not know how victims should be treated or how victims can even express their true sentiment toward their offenders.

Sometimes, our society drapes this critical and important process and makes these hidden victims' emotions less visible to the public. The modern criminal justice system has come at the expense of restricting victims' personal vengeance (Takahashi, 2003). Under the criminal laws, the person

who breaks the law is regarded as an offender or a criminal. This kind of person is denied his/her freedom because of breaking the law. After that, this person gets treatment or supervision from public organizations including the police, court, penitentiary, and the probation office. As we can see, in this system, there is no space for victims to participate in the offender's actual treatment and punishment even though they are obviously the most affected people in the criminal case.

The victims' rights movement started in the United States around the 1970's to focus on the hope and needs of ignored victims (Tobolowsky, Gaboury, Jackson, & Blackburn, 2010). This movement emerged after gaining the influence of the Civil Rights Movement and coinciding with some other minorities' rights movements. Around the same time, the first victim offender dialogue was conducted for two juvenile offenders and their victims in Ontario, Canada, in 1974 (Van Ness & Strong, 2010). Moreover, in 1989, the New Zealand government decided to establish one new criminal justice treatment method named Family Group Conferences (Schmid, 2002). This treatment comes from the traditional Maori tribe's culture and introduces a participation of family and community members into the actual treatment.

Restorative justice regards crime not as a violation against the government or laws, but as a violation against humanity and human relationship. In addition, this concept advocates victims' participation into the criminal justice system, if they desire. This is totally different from retributive justice and personal revenge. It is a positive approach that considers crime

among all affected people.

Chapter one indicates the main goals and objects of restorative justice. It explains the goals and objects of restorative justice using three different perspectives. These are the benefits of restorative justice for victims, offenders, and the community. The second chapter introduces the overview of restorative justice and some typical treatment methods. In addition, it includes some empirical evidence of restorative justice treatment and the limitation of this practice. The final chapter explains how restorative justice can improve the traditional criminal justice system.

Overall, this paper is not just the fruit of personal study; however, it could be a motivating power and starting point for conducting advanced restorative justice practices in correction settings in the future; furthermore, it could reinforce the recognition of victim advocacy to establish a more reasonable criminal justice system.

CHAPTER 1: THE THREE CRITICAL BENEFITS OF RESTORATIVE JUSTICE

Introduction of Chapter 1

Implementation of the concept of restorative justice has the possibility to improve our traditional criminal justice system. Restorative justice brings a clear advantage to criminal justice fields and the people involved in the criminal justice process. From the restorative justice perspective, crime is not a violation against criminal law and government, but is a violation against human beings and human relationships. Hence, restorative justice programs mainly focus on recovery and reconciliation of the harmful aftereffects of criminal behavior (Zehr & Mika, 1997; Bowen & Consedine, 1999; Marshall, 1999; Miller, 2011).

Various practices have emerged from the concept of restorative justice, and many use the application of reintegrative shaming theory which was established by Braithwaite (Uggen, 1993; Hay, 2001; Meadow, 2007; Murphy & Harris, 2007). Although elements of restorative justice practices date to the 1970s', the first officially recorded restorative justice program, named Victim Offender Reconciliation, occurred in 1974 in Ontario, Canada, and involved two juveniles and their victims (Zehr, 1990; Van Ness & Strong, 2010). Since then, there has been significant growth, and restorative justice programs continue to expand to new parts of the world. Currently, the practice of restorative justice is applied narrowly by direct intervention in a single criminal case and broadly in complicated cultural and historical conflicts among ethnic

groups.

In August 2002, the United Nations Economic and Social Council adopted Basic Principles on the use of the Restorative Justice Program in Criminal Matters (Dandurand & Taylor, 2006, Umbreit & Armour, 2010). This signified the belief that restorative justice practices can be one of the promising ways to deal with crimes and international conflicts (Van Ness, 2010). In addition, in 2005, the declaration of the Eleventh United Nations Congress started to recognize the importance of the concept and procedures of restorative justice as an alternative to traditional prosecution (Dandurand & Taylor, 2006). These United Nations' decisions show the obvious possibility of restorative justice programs for our international society.

This chapter identifies the main goals and objectives of restorative justice. The chapter also describes benefits of restorative justice for crime victims, crime offenders and our society. Restorative justice, both in theory and practice, shows promise of a new direction for justice by which modifications of criminal justice systems can lead toward a much more ideal approach.

Benefits of Restorative Justice Practice for Crime Victims

The original conception of restorative justice focused mainly on crime victims. John Braithwaite contends that, "restorative justice means restoring victims, a more victim-centered criminal justice system, as well as restoring offenders and restoring community" (Braithwaite, 2003, P. 56). Essential features in restorative justice treatment are pursuing the reconciliation of

criminal harm and restoring immediate human relationships through dialogue and mediation between crime victims and offenders. According to Achilles and Amstutz (2008), crime victims can meet their offenders directly or indirectly in restorative justice settings. Additionally, restorative justice treatment can specify the actual needs of victims.

It will help to illustrate some of the difficulties with traditional criminal justice processing that can be overcome with a restorative justice model by describing a case that garnered considerable media attention and public outrage in Japan.

On April 14th, 1999, a woman and her eleven month old baby were killed by an 18 year old male juvenile in Hikari City, Yamaguchi Prefecture, Japan. (Under the Japanese criminal law, all under 20 years old are treated as minors). This offender killed her after he intruded into her room. In addition, he also committed necrophilia as part of a ceremony for resurrection. He killed the woman's baby who had started crying just after the violence against his mother, hanging the infant after flinging him onto the floor. The crime generated considerable public outrage, and media accounts reported the bereaved husband and father of the victims urging judges to 'please let him be excused by death penalty. If it is impossible, please let him be free from incarceration, because I want to kill him as soon as possible.' The Supreme Court in Japan made the final judgment in 2008 of a capital sentence. The entire process of justice in this case remains controversial in Japan. The relevance of this case to restorative justice is not based on the long

protracted process on the issue of capital punishment. Although this case is extremely hard to generalize because of the momentousness, the point is that this case highlights the frustration of the victims' family and the perceived lack of justice resulting from his feeling essentially ignored by the criminal justice system. The man's emotions seem a natural response of a bereaved person. Justice cannot allow him to exact personal revenge against his family's killer; modern criminal justice systems are implemented so that government can resolve such heinous offenses throughout society (Takahashi, 2003).

Fundamental to the social contract, in organized society, legal jurisprudence is the process by which governments resolve disputes and maintain public order (Beccaria, 1819). Besides, Beccaria (1819) emphasizes "the laws only can determine the punishment of crimes; and the authority of making penal laws can only reside with the legislator, who represents the whole society united by the social compact. No magistrate then, can, with justice, inflict on any other member of the same society punishment that is not ordained by the laws" (P. 20). Although, his concept influenced modern criminal laws and criminal justice systems, victims and other affected people, except crime offenders, started to be excluded by government and criminal justice system.

Zehr (1990) describes the process by which this has evolved, "Eventually the state claimed partnership, then ownership, until finally, for harms and conflicts termed crimes, the state had a monopoly on justice. In that process, the victim of crime was redefined, with the state becoming the

legal victim. Victims were abstracted and individuals became peripheral to the problem or the solution” (P. 122). The way in which justice has evolved to exclude victims is a concern to others, too. For example, Vivien Stern emphasizes that we need to recognize the victim as the most harmed object; we should try to make sure the offender is taking appropriate responsibility of his/her own crime (Bowen & Consedine, 1999). In short, the modern criminal justice system is not enough, especially for victims.

The method that could enable us to modify the existing criminal justice system while overcoming current limitations is restorative justice. Restorative justice does not promote personal vengeance. Instead, restorative justice brings the human element back into the process, making certain that the resolution to the crime includes all of the people involved as much as possible. Next, the benefit of restorative justice for victims will be described from two different standpoints: (a) the crime victim rights and remedies, and (b) the restoration of their criminal harm.

Crime Victim Rights and Remedies

The role of the victim in the process appears to have diminished over time to coincide with the way criminal justice systems grew in complexity and became bureaucracies. For quite a while, it has been evident that crime victims have been ignored by the government and criminal justice systems in many countries. In the United States, the first national conference on crime victim rights and remedies was held in 1973. After that, in 1982, President Ronald Reagan convened a Task Force on Victims of Crime. This national

force has taken an important role to develop crime victim rights and remedies so far in this country (Tobolowsky, Gaboury, Jackson, & Blackburn, 2010).

Currently, the following three types of victim rights are most common: (a) getting economical and psychological support; (b) getting some information about their offender; and (c) receiving opportunities mentioning their opinion toward courts or parole boards before the official decision. These victim rights are already introduced in many countries and regions. However, victim rights and remedies still present some problems. One of them is the problem of the relationship between crime victims and offenders.

Without an official restorative justice practice, it is difficult for concerned victims to meet and contact their offenders in any formal procedure. Generally, victims are contacted and efforts are made to include them in the process only when they are a viable witness whose testimony is required. In many situations, victims can obtain only very limited information about their offender, such as the day of a parole hearing or the likely release date. Prosecutors, judges, and parole boards do not tell victims much about the criminal case or the offender's disposition, even if they are the immediate victims; as a result, they continue to feel unsafe.

When restorative justice programs are in place, the situation for victims is quite different. Victims might meet their offender directly, so they can talk about their crime and its reason and background with offenders. This is not a forced interaction; some crime victims prefer never to meet their assailants because to do so would harm their mental and/or emotional wellbeing. Even

with highly motivated victims, there is some risk that they can experience secondary trauma from their dialogue, so restorative justice practices give victims certain opportunity to meet their offenders if it is desired. This benefit is regarded as one epoch-making progress for crime victim rights.

The interaction might be a single meeting to help both sides understand the motivations and consequences of the offense. The interaction between victim and offender might be more, too. In Family Group Conferences, which originated in New Zealand in 1989, victims can make an official agreement with their offenders (MacRae & Zehr, 2004). This type of agreement can stipulate restitution from offenders, in which case it can be regarded as an official compensative contract between victim and offender. This type of agreement also enables offenders to understand more personally the actual effect of their crimes on their victims. It is worth noting that economical compensation, or restitution, is not without some potential difficulties as offenders can use this agreement to minimize their culpability to reduce the effect of their crime. This treatment is merely a means for reaching an agreement, then the ideal capability for restoration is lost.

Restoration of Victims' Criminal Harm

Next, the restoration of victims' criminal harm is the most critical issue for most crime victims. Many previous studies indicate the influence of restorative justice practice on the restoration of victimized harm. For example, Marshall mentions that almost 75 percent of all crime victims who participated in treatment felt clear satisfaction, and they found the greatest benefit from a

direct meeting between victims and offenders (1999). In addition, some studies examine the effectiveness of the restorative justice method to treat traumatic stress and symptoms of Post Traumatic Stress Disorder (PTSD) (Achilles & Amstutz, 2008; Sherman & Strang, 2007). Sherman and Strang examine the empirical evidence of the restorative justice practice in England and 36 other countries and find that restorative justice treatment decreases the symptoms of PTSD and the desire for retaliation among crime victims (2007). Furthermore, this type of treatment helps victims to feel a sense of fairness in the process. Umbreit and his colleagues reviewed studies in the United States, finding that overall, about 95% of victims reported a perception of fairness associated with restorative justice treatment, and they also provided some positive evidence for restitution and repayment of harm for victims (Umbreit, Vos, Coates, & Lightfoot, 2006).

Miller conducts longitudinal qualitative research about the power of restorative justice dialogues between victims and violent offenders, and she points out quite an interesting trait of crime victims. According to Miller, "Most victims express no hatred for the offenders... Several expressed pity for the offenders, and others expressed hope that offenders would proceed with a better life and make better choices" (2011, P. 190). In addition, Zehr (1990) contends that the interests of most crime victims are not retributive, but more restorative and tolerant than most of us imagine. These studies indicate victims' important voice about restorative justice practice that does not emerge in quantitative studies.

In terms of measuring the effect of restorative justice practice for crime victims, it is quite difficult to measure the general benefit because every crime event involves different background settings, causal reasons, and human relationships. However, there are some possibilities to regard this type of practice as a method with potential to realize gains and restorative benefits for victims.

Benefit of Restorative Justice Practice for Crime Offenders

There are two viewpoints to identify the benefit of the restorative justice treatment for crime offenders. The first advantage is to prevent offenders' subsequent recidivism and reoffending. If treatment reduces the risk of recidivism or reoffending, one logical interpretation is that this type of treatment has a positive impact. The second advantage of treatment is to promote offenders' internal growth. If restorative justice treatment provides a beneficial stimulus to enhance a productive, law-abiding life for crime offenders, we can also regard these circumstances as a clear benefit.

Many studies examine the effectiveness of restorative justice practice for reducing the risk of recidivism. Bonta and his colleagues found that restorative justice practices oriented toward community service reduced the risk of recidivism; however, they did not find an effect for one specific type of victim offender dialogues called Victim Offender Mediation and apology (Bonta, Wallace-Capretta, Rooney, & Mcanoy, 2002). Ward and Langlands (2009) identified that restorative justice treatment is more effective for low risk offenders rather than high risk ones to reduce the risk of reoffending. In terms

of drug or substance offenders, a recurrent finding is that the relapse risk is reduced after the restorative justice treatment (Sherman & Strang, 2007). Overall, most studies show positive effects of restorative justice helping to decrease the risk of reoffending and to prevent recidivism.

Reintegrative shaming theory provides us the clear mechanism how restorative justice practices can prevent recidivism for offenders who participate in treatment. The founder of reintegrative shaming theory, Braithwaite, says society that has the function of reintegrative shaming for crime offenders might keep a low crime rate compared to the society in which offenders routinely experience long-lasting stigmatization. Reintegrative shaming is a kind of social element existing in our community and society. According to Hay (2001), “reintegrative shaming is contrasted with stigmatization, which is... to forgive offenders or affirm the basic goodness of their character and thus reinforce their membership in the community of law-abiding citizens. Stigmatization can be seen essentially as shaming in the absence of reintegration” (P. 134). Braithwaite regarded this reintegrative shaming as one of the critical elements of his integrated theory. The most effective shaming to prevent recidivism is coming from offenders’ intimate persons, like their family members, friends, or community members (Braithwaite, 1989; 2000). Some restorative justice practices can involve these kinds of intimate networks of people as participants into the actual treatment. Some encouragement or reintegrative shaming from those influential close contacts is likely to have a greater effect on offenders rather

than any direction and education from courts or corrections officers. Therefore, restorative justice programs give us positive future visions that these types of methods based on reintegrative shaming theory promote reintegration into community and support reducing the risk of offenders' reoffending and recidivism. The detailed evidences of restorative justice programs are described in chapter two.

The second advantage is the effectiveness of restorative justice practices to promote offenders' internal growth. Offenders' internal development includes shaming, consciousness of guilty, and sympathy. Jackson conducted one study to measure the ability of guilty, shaming, and sympathy of crime offenders after obtaining specific treatment. According to his findings, many participants indicate internal development; in particular, female participants tend to acquire significant personal growth in positive ways from restorative justice treatment (Jackson, 2009). Additionally, Latimer and his colleagues reported restorative justice treatment led to offenders' satisfaction and compliance with restitution (Latimer, Dowden, & Muise, 2005). These findings provide supporting evidence that restorative justice practice promotes offenders' internal development.

Furthermore, Australia conducted one nationwide experiment on restorative justice practice using reintegrative shaming theory and one specific type of restorative justice treatment, Family Group Conferences. This experiment, called the RISE (Australian Reintegrative Shaming Experiments) project, included cooperative work between Australian National University

and Australian government. The research design of RISE involved random assignment of the offenders into two groups: a treatment and a control. In terms of the significant structural characteristics of RISE, Tyler and his colleagues (Tyler, Sherman, Strang, Barnes, & Woods, 2007) state that the main purpose of RISE is to evaluate the effectiveness of restorative justice conferences for re-offending. All participants of the RISE program were randomly assigned to either receiving traditional prosecution and a court process or being treated through restorative justice conferences.

The stimulus for the treatment group in this experiment involves a police officer in the role of facilitator in the restorative justice program. In addition, high rated crime victim's participation is also one prominent characteristic of RISE. According to Strang and Sherman (2006), about 90% of all crime victims agreed to attend their Restorative Justice treatment in the end. The way of taking random assignments adds to the reliability of this experiment, so it has the appropriate condition for theory testing.

Tyler and his colleagues tried to measure the effectiveness of restorative justice conferences for crime offenders by using RISE data. They especially focused on reducing the risk of reoffending and providing psychological benefit. In this experiment, the members of the control group acquired traditional prosecution instead of restorative justice treatment. According to their results, there is no empirical evidence of restorative justice treatment for reducing the risk of reoffending. However, they did find two psychological benefits for crime offenders. These are the feeling of

reintegrative shaming and procedural justice (Tyler, Sherman, Strang, Barnes, & Woods, 2007). Daly also summarized the result of the RISE project and found that Restorative Justice conferences in RISE tend to promote the crime offenders' compliance (2000). As you can see, while no solid empirical evidence was found, positive psychological outcomes of restorative justice were in fact discovered.

Although the evidence is not yet conclusive, research findings are sufficient to support a belief that we may expect restorative justice dialogues to provide a positive effect on many offenders. Restorative justice programs provide the opportunity for offenders to consider and overcome their own personal histories, including any traumatic experience or victimization from when they were younger. This is valuable because a significant number of offenders have had a past traumatic experience or victimization, and many do not recognize the effect of their own severe victimization on their antisocial behavior automatically (Deadman & MacDonald, 2004; Masters, E. R, 2004). Also they, especially felony offenders, tend to not cultivate their ability of empathy. The process of restorative justice dialogues with victims has some possibility to promote offenders' notification of their own experience in the past. Finally, restorative justice holds promise for compelling offenders to offer real apologies to their current victims.

Benefit of Restorative Justice Practice for the Communities

In addition to victims and offenders, the greater community or society is another target of restorative justice. The relationship between a single crime

event and society is more difficult to reconcile because crime generally tends to be refused and unaccepted by community members. Community members can acknowledge outrage and advance a call for retribution, but they also prefer to remain disengaged in any involvement with either the offender or the victims. The consequences are not productive, which is precisely why reintegrative shaming theory and restorative justice practice requires involvement of the community. Braithwaite contends that restorative justice can help to repair the community, which contributes to a lower crime rate in the community (1999). According to Braithwaite (1993), “nations with low crime rates and periods of history where crime is more effectively controlled, are those where shaming has the greatest social power” (P. 1). This section will explain three benefits accrued from targeting society in restorative justice: (a) the benefit for community members; (b) the benefit for criminal justice administrators; and (c) the benefit for the more broad community than beyond the concept of individual and the visible community.

First, in terms of the benefit of restorative justice practice for community members, Umbreit highlights how the community that is empowered with Restorative Justice provides the public health to community members and explains how this helps to guide the future directions of the criminal justice system (2010). The participation of community members in treatment can change the value of each community member. They can obtain new perspectives to interpret the crimes that have happened in their community as their own problems, not other people's problems. This change is a critical

benefit for the community, and we can understand this type of treatment is a trigger to make strong local communities.

The next benefit is for public organizations. In particular, for criminal justice administrators, restorative justice helps them integrate the power of crime victims into offender's treatment. This enhances traditional criminal justice systems by bringing new attention to experiences and perceptions of victims to procedures previously focused almost exclusively on offenders. Sherman and Strang (2007) emphasize the cost effectiveness of restorative justice treatment. They find that restorative justice practice can be conducted with lower cost than traditional probation treatment at the community level. It is quite important to consider the relationship between cost and benefit as well as to capitalize on a new resource, namely the inclusion of victims in the process and treatment.

Finally, one of the most progressive goals of restorative justice is advancing traditional criminal justice. Restorative justice treatment is a problem solving method. Restorative justice can treat not only small crime-related problems in the local community, but also chronic and serious cultural conflicts (Van Ness, 2002). These broad functions constitute a real advantage. The specific laws and current elements of the criminal justice system cannot always deal with various matters such as repairing harm and reconciliation of human relationships. However, restorative justice treatment has the possibility to deal with such various and universal matters because this treatment focuses on human interactions and is community oriented. As

examples, in the in the chronic conflicts of South Africa and Rwanda, people took these types of methods to deal with their conflicts. These experiences illustrate how restorative justice can reach beyond cultural differences and borderlines of nations. Such experiences might be the reasons why the United Nations regards this treatment as a promising treatment in our future, and they established one clear guideline of restorative justice in 2002 (Van Ness & Strang, 2010). It is easy to imagine that the general interests and recognition of the benefit of restorative justice internationally will develop in the future.

Conclusion of Chapter 1

Restorative justice treatment can address the severe emotion of crime victims as well as provide some satisfaction to crime victims while at the same time the offenders are held accountable for their actions and given an opportunity for self-improvement. This treatment also has the capability to reduce the specific harm of traumatic stress and PTSD. For crime offenders, it promotes a guilty feeling, personal betterment, facilitates reintegration into the community, and thereby reduces recidivism or reoffending. Furthermore, in the community, it can reinforce the power of community to maintain the safety and a peaceful environment. All of these advantages of restorative justice are connected with each other. A cohesive healthy community is more likely to have a low crime rate. Overall, this way of thinking helps to build a strong community and society.

In conclusion, restorative justice treatment has the function to bring

physical, mental, and spiritual well-being to people. In 2007, when I was a probation officer, I participated in the meeting of crime victims who lost their family members by crime, and I met many crime victims there. They have various needs in their daily living, and I recognized their dissatisfaction with the current Japanese criminal justice system. The correction and rehabilitation system in Japan does not yet embrace restorative justice. Crime victims routinely struggle to cope with unfamiliar crime offenders and often feel responsible, blaming themselves for the crime incident. I heard crime victims say, "I do not want to get something from offenders. Somehow, I just want to meet our offenders." They also said meeting with the offenders could help alleviate their pain. Honestly, I am not sure restorative justice treatment is the best for all crime victims, but it is likely to help many victims be able to move on with their lives.

The potential growth as a result of restorative justice treatment also seems real for crime offenders. Meeting with their victims and discussing their crime could bring benefit to crime offenders. It is easy to imagine that the forgiveness from crime victims and acceptance from the community will provide encouragement for crime offenders while allowing them to move forward in personal growth. In addition, for offenders who have had their own experiences of abuse or victimization, restorative justice treatment provides a great opportunity for them to overcome those negative experiences. This benefit is also the salvation of restorative justice treatment. The empirical studies are still developing, especially the effectiveness beyond the current

law and cultural differences. Restorative justice is a method of treatment that, along with guidance from reintegrative shaming theory, holds great promise for improving criminal justice systems and creating safer communities.

CHAPTER 2: OVERVIEW AND VARIOUS COMPONENTS OF RESTORATIVE JUSTICE

Introduction of Chapter 2

To establish a new social policy successfully, there must be a substantial amount of social demand, a foundation from which to develop, and appropriate theoretical rationale to justify the change and guide the initiative. These elements completely match the current situation and make it feasible for restorative justice to gain prominence in the criminal justice field. The theme of chapter 2 is components of restorative justice. This chapter provides an overview of restorative justice, including the main concept, methods, theoretical framework, empirical evidence, and limitations. It is important for future development that current limitations be understood. In addition, this chapter synthesizes the concept, practice, and theory of restorative justice.

Foundational Concept of Restorative Justice

Restorative justice is the unique concept in criminal justice fields. It does not regard crime as a violation against criminal laws and government, but rather offending constitutes a violation against humans and human relationships. Moreover, the process of restorative justice provides a unique and promising opportunity for all the parties concerned to consider one specific crime, its harm, and ways in which to move forward.

According to Zehr (1990), although, victims and offenders essentially need to have the opportunity for healing, our modern criminal justice system

doesn't advocate this opportunity. In addition, the modern criminal justice system sometimes encourages offenders to deny their responsibility of crimes. Restorative justice is both a profound and ambiguous concept. Zehr emphasizes the vision of restorative justice as one that watches our society by using a new lens (Zehr, 1990). In addition, some researchers view that restorative justice is the movement to revive traditional ways of considering crime in our society that was lost after the establishment of modern criminal laws and systems (Umbreit & Armour, 2010; Bowen & Considine, 1999).

One of the most accepted definitions of restorative justice is that "restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future" (Marshall, 1999, P. 5). The most common misunderstanding about restorative justice is that it is totally opposite from retributive justice (Daly, 2001; Zehr, 2002). Shaming and offender accountability are critical elements of restorative justice, but reconciliation and reintegration to the community are also highly valued. Zehr criticizes that Restorative Justice is not simply the opposite of retributive justice; he emphasizes that restorative justice is not a remedy that can easily alter current legal systems (Zehr, 2002). Several scholars emphasize that restorative justice is not an opposite concept of retributive justice, but rather complimentary; both have a place in criminal justice.

Restorative justice regards crime as a personal issue, so it could support the current criminal justice system that was established after

exclusion of victim participation and personal emotion for vengeance. Zehr (1990) mentions:

Private justice is characterized as private vengeance, often uncontrolled and brutal. Modern public justice, in contrast, is controlled justice: more humane, more balanced, less punitive... Reality is more complex than this conventional picture would imply. Private justice was not necessarily private and did not necessarily involve vengeance. (P. 98)

This statement does not necessarily encourage private vengeance, but merely indicates that Zehr learned from many victims through restorative justice practices.

Braithwaite emphasizes that in terms of the setting of restorative justice programs, ordinal citizens respect more sufficient and impartial rights rather than court mandates (1999a). Braithwaite advocates active responsibility of citizens. Braithwaite (1999a) says:

Active responsibility means taking responsibility. In a healing circle, most citizens in the circle are not passively responsible for any wrongdoing; they are certainly not held responsible for criminal wrongdoing. Yet, the hope so often realized is that they will take active responsibility for solving the problem. This is part of the ambition of putting the problem rather than the person in the center of the circle. In the most moving conferences, participants take active responsibility for confronting structural

problems like racism in a community. (P.232)

Furthermore, Braithwaite (2002) praises that the model of restorative justice is the most dominant way for all world's people in human history so far.

Victim Offender Mediation, Conferences/ Family Group Conferences, and Circles comprise the three main ways in which restorative justice is implemented. Reintegrative shaming theory, as conceptualized by John Braithwaite (Uggen, 1993; Hay, 2001; Meadow, 2007; Murphy & Harris, 2007), is the most prominent framework to guide how restorative justice can work in our society and actual treatment settings. This chapter identifies methods of restorative justice in practice and explains reintegrative shaming theory. Empirical evidence of the efficacy of restorative justice, both strengths and limitations, is also presented.

Comprehensive Methods of Restorative Justice

Victim Offender Mediation, Family Group Conferences, and Circles are three basic methods of restorative justice in practice. All of these methods have different foundations and characteristics. In addition, some advanced or integrated treatments started in various fields not only in the criminal justice area. Recent restorative justice programs have expanded to include restorative art, an apology letter bank (Umbreit & Armour, 2010), and correctional education programs based on Restorative Justice, all of which may be promising programs for the future.

Victim Offender Mediation

Victim Offender Mediation is the direct meeting based restorative justice

treatment between victims and offenders. The main purpose of Victim Offender Mediation is to repair the harm caused by an offense and to restore the damaged personal relationships. One of the first examples of Victim Offender Mediation occurred in Ontario, Canada, in 1974, when a judge decided to have a meeting between two robbery offenders and their victims before the final judgment (Umbreit, 2007; Van Ness & Strong, 2010). The initial situation and effect of the experience has been described by Van Ness and Strong (2010) as follows:

In the course of the conversation, they agreed that prison or probation would probably not have the kind of effect on the defendants that meeting the victims, listening to their stories, apologizing, and paying restitution would have. Although the judge was initially resistant to the idea, he ended up ordering that the young men do this as a condition of probation. The results of the meeting were sufficiently positive that judges continued to order this process from time to time. (P. 26)

In the United States, the first victim offender mediation happened in 1978, in Indiana (Umbreit, 1995; 2007). Currently, Victim Offender Mediation is conducted all over the world, with more than 1,200 programs operating in 2005 (Umbreit & Armour, 2010). This method of restorative justice typically involves face-to face mediation between the offender and the victim, and the objective is to recover and move beyond the harm generated by the offensive incident. Therefore, the main focus of this method is the victims' need and

resolve. As a matter of course, victims get to decide whether to participate in Victim Offender Mediation. In addition, trained volunteer community members usually take the role as facilitators of a Victim Offender Mediation.

Victim Offender Mediation has some unique characteristics compared to other kinds of mediations. According to the description by Umbreit and Armour, “although many other types of mediation are largely settlement driven, victim-offender-mediation is primarily dialogue driven, with the emphasis upon victim healing, offender accountability, and restoration of losses” (2010, P. 128). Therefore, the role of facilitators is quite important in Victim Offender Mediation. Facilitators have to notice not only victims’ actual needs and opinions in advance for the mediation setting, but during the dialogue they also have to be aware of the verbal messages and non-verbal cues of the victims (Umbreit & Armour, 2010).

In terms of victim’s satisfaction, overall, most Victim Offender Mediation related studies indicate positive results. Besides, many studies also indicate offender’s positive feed back about Victim Offender Mediation dialogue. Umbreit and his colleagues focus on one juvenile offender’s development after Victim Offender Mediation dialogue. Victim Offender Mediation reformed this offender’s attitude significantly to positive direction (Umbreit, Coates, & Vos, 2008). Although this method did not deal with felony cases until the mid-1990’s, this is changing gradually as positive outcomes in felony cases are identified in several locations—New York, Wisconsin, Alaska, Minnesota, Texas, Ohio, and British Colombia (Umbreit, Coates, & Vos, 2008).

Conferences/ Family Group Conferences

Another form of restorative justice is Conferences/ Family Group Conferences. This method originated in New Zealand, where crime and criminal justice posed serious social problems in the 1980s (Schmid, 2002). According to Schmid, the Maori people, particularly youth, were disproportionately represented among all offenders in New Zealand, and most of them showed some symptoms of maladjustment with the western culture oriented criminal justice system. Research linked their maladjustment to a disconnection with the Maori culture in which offenders are not sanctioned separately from their community. Instead, the Maori address the reason of crime and future prevention methods together. In 1989, New Zealand government established *The Children, Young Persons and Their Families Act*, and introduced a new treatment method using Maori tradition. This epoch decision by the government of New Zealand introduced Family Group Conferences to the world arena for juvenile, except for extremely serious or minor offences since the established act above. Family Group Conferences thrive in New Zealand today as the preferred method of resolving juvenile delinquency cases (Umbreit & Zehr, 1996). The practice of Conferencing is fairly common in Australia today, too and includes considerable empirical evidence related to the important effect of Braithwaite's reintegrative shaming theory (Umbreit, 2000).

Perhaps the clearest definition of Conferences is provided by Maxwell and Hayes (2008):

Both conferencing and restorative justice processes also emphasize addressing the offending and its consequences in meaningful ways, reconciling victims, offenders, and their communities through reaching agreements about how best to deal with the offending, and trying to reintegrate or reconnect both victims and offenders at the local community. (P. 92)

The process is simple and logical: the victim, offender, their family members, and supporters congregate in the conference room to talk about one specific crime event for which the offender was responsible. First, the offender presents his or her view of what happened and why, and his or her perceptions of the effect for the victim. Second, the victim talks about the experience and effect. Other members can add to the statements. After all participants have spoken, a discussion is facilitated in an attempt to reach agreement on how the offender might best proceed to make amends, to restore, and reconcile the harm of the victims.

The restorative justice purpose of conferencing is similar to victim offender mediations, with the significant addition that family members also can participate (Marshall, 1999). The explicit differences between Victim Offender Mediation and Conferences are identified as follows: (a) the process is facilitated, not mediated; (b) Conference participants include not only the victim and offender but also their families or supporters, sometimes referred to as their community of care; (c) while many victim offender mediation programs emphasize the importance of pre-encounter preparation of the

parties in individual meetings, conferences are usually conducted with minimal if any preparation of the parties (Van Ness & Strong, 2010).

Circles/ Peacemaking Circles

The third method in which restorative justice is widely implemented is called Circles/ Peacemaking Circles, a practice based on the native Canadian and American culture and tradition. Pranis (2008) describes as follows:

Peacemaking circles also draw heavily on contemporary concepts of dialogue and consensus building. Peacemaking circles, by melding the best of ancient and contemporary concepts, aspire to approach conflict in ways that achieve the same outcomes as the ancient sacred space of circles: respect for every voice, improved relationships, and stronger connections to the larger community. (P. 121)

Similar in purpose, Victim Offender Mediation and Family Group Conferences, Circles is quite unique at the point that this treatment permits community members' participation (Marshall, 1999; Umbreit & Armour, 2010; Van Ness & Strong, 2010). All participants gather together in big circles, hence the name, to talk about crime and future directions. This method is also sometimes called a Peacemaking Circle, and is applied to resolve cultural conflicts and community problems (Pranis, 2008). For example, a community Peacemaking Circle can be not only an opportunity for giving peer-counseling, but also it makes participants more responsible for their own behavior. Minnesota Department of Corrections emphasizes the effectiveness of

Circles even for the correctional officers to manage stress and improve prison workplace environment. (Pranis, 2006; Furlong, C., Restorative Justice coordinator in the Minnesota Department of Correction, personal communication, Oct 12, 2011).

The domain of disputes in which Circles are used is much broader than Victim Offender Mediation and Family Group Conferences, so many of the areas in which it applies are outside of the criminal justice fields. Circling method has some positive possibilities to improve the current criminal justice system in several means, and the details of these possibilities are addressed in next chapter.

Other Methods of Restorative Justice Practice

This part introduces three types of recent restorative justice initiatives: restorative art, apology letter bank, and restorative justice based correctional education.

In restorative art programs, offenders create an art project for the community as compensation for the harm they created. Often the projects include a function too, such as providing beautiful park benches or fixing walls that have been vandalized with graffiti. One organization in Chicago called Precious Blood Ministry of Reconciliation conducts the action of restorative art for probationers and parolees (Kelly, D., personal communication with the director of Precious Blood Ministry of Reconciliation, July 6, 2011). Restorative art can serve as an indirect bridge between the community and offenders, who volunteer their services to help the community.

Next, the apology letter bank is conducted by some official correction organizations. The Minnesota model is the most common so far; the Minnesota Department of Corrections established a victim advocate section which includes an apology letter bank. Incarcerated offenders are provided with the opportunity, and encouraged to write letters which are received centrally at the apology letter bank. The letters are distributed on to their victims; rather, victims are notified that the letter exists and the decision of receiving it depends on the will of victims. Umbreit and Armour praise this new system as a historic victim assistance system (2010). Chris Furlong, a Restorative Justice coordinator in Minnesota Department of Corrections mentions:

Offenders who write an apology letter turn it in to their case worker who screens it, returns it with suggestions. This process is frustrating for the offenders, but we seek to do no more harm to the victims. Eventually, it comes to our office for final approval, and it is stored in a file here. Victims have the option to be informed if an apology letter is present. They may also choose whether or not to receive it and if so, how they wish to receive it. These three processes seek to serve the victim in ways the criminal justice system does not normally. (Furlong, C., personal communication. Retrieved from her description, Oct 4, 2011)

Apology letter bank can be a bridge between victims and offenders if victims need it. Although, apology letters do not provide face-to-face

communication, they can be recognized as a precious opportunity for victims and offenders to share their feeling and opinion. This method is a suitable program as a first step of restorative justice practice in correction settings because this way is beneficial for the victims who are interested in victim offender mediation and dialogue indirectly without any interruption from others including lawyer and governmental organizations. However, this type of letter has the risk to be bait for offenders who are watching for positive evaluation for obtaining early parole. Moreover, it is hard for the management side to measure or check the offenders' actual feeling of expiation and apology about their offending before distributing to their victims. In Ohio correction's apology letter bank program, the management side is encountering the hurdle that many offenders do not accept their own fault on their criminal cases. Eventually, this tendency is an obstruction to expand the apology letter bank program in Ohio (Davis, M. G., personal communication with the administrative assistant at the office of victim services in the Ohio Department of Correction, July 8, 2011).

Within institutional settings there are many types of correctional treatment methods based on restorative justice, including prison-based Victim Offender Mediation, Conferences before parole board, and Peacemaking Circles. The third innovation is a new education method that practitioners use to supplement practices like Victim Offender Mediation and Conferences. For instance, the Department of Correction in Ohio has one advanced teaching program (Davis, M. G., personal communication with the administrative

assistant at the office of victim services in the Ohio Department of Correction, July 8, 2011). The main components of this program are (a) giving lectures about crime victims, (b) providing some information about restorative justice treatments, and (c) having the opportunity to consider offenders' own internal/external problems about the relationship with their victims. Offenders can understand victims' struggles and get preparation for the actual restorative justice treatments that will happen in the future. They also have group discussions about these lectures, so it promotes a peer-counseling effect among offenders.

Theoretical and Cultural Background of Restorative Justice

There is no doubt, reintegrative shaming theory is the most prominent theory that uses the concepts of restorative justice to explain a response to crime that can help victims, communities, and offenders. John Braithwaite presented this theory in his book called *Crime, Shaming and Reintegration*, published in 1989. According to this theory, reintegrative shaming could be the motivating power to shape low crime rates in society. Offenders are more likely to deter reoffending after obtaining reintegrative shaming from intimate people like family members and respected people rather than getting guidance or treatment from public authorities like court and criminal justice related institutes (Braithwaite, 1989; 2000). This is the main statement of reintegrative shaming theory, and restorative justice treatments based on this theory can generate society's positive feeling including victims, promote offenders' pro social attitude, and make a stronger community. He also

argues that shaming without reintegrative element is merely stigmatization, and stigmatization only carries the risk of excess leniency which, in turn, may promote reoffending acts.

Braithwaite says, “reintegrative shaming communicates disapproval within a continuum of respect for the offender: the offender is treated as a good person who has done a bad deed. Stigmatization is disrespectful shaming: the offender is treated as a bad person... Whereas reintegrative shaming is forgiving – ceremonies to certify deviance are terminated by ceremonies to decertify deviance” (Braithwaite, 2000, P. 282). Braithwaite mentions that the most important aspect of reintegrative shaming is where it comes from. The rationale Braithwaite gives is that we do not tend to regard judges’ opinion as quite beneficial for our actual lives because we think a judge usually gives us advice from such a high position. In addition, we will never meet him again. On the other hand, we do respect the opinions of family and intimate friends who have a strong influence on our daily lives (Braithwaite, 2000).

As it is already largely known, reintegrative shaming theory is one of the most prominent integrated theories in the criminal justice field. In fact, Braithwaite explained some strong relationships between his theory and other traditional criminal justice theories. Reintegrative shaming theory integrates several theories: labeling theory, social disorganization theory, sub-cultural theory, opportunity theory, and learning theory, into one specific theory. The relationship of two critical elements of the reintegrative shaming theory and

other criminal justice theories will be further explained.

Braithwaite explains the critical problem of stigmatization using labeling and sub-cultural theory. In the specific criminogenic sub-culture, anti-social behavior might be considered by criminals as a normative behavior. Eventually, the society that only stigmatizes promotes the risk of anti-social behavior and empowers the criminogenic sub-culture to be more attractive for stigmatized people (Braithwaite, 2000). Braithwaite (2000) explained this mechanism using the example of school children:

A delinquent subculture of children who have been similarly rejected by the status system of the school can proffer a collective solution to that status problem. The subculture of school failures may value contempt for property and toughness rather than control of aggression. The very values against which disrespected children fail can be the basis for respect in a delinquent subculture. (P. 287)

Braithwaite also emphasizes that the two essential elements for reintegrative shaming in the community are interdependency and communitarianism. First, interdependency indicates a certain condition of humanity where people support and care for each other constantly. His most typical example of interdependency is the family bond. According to Uggen, after restorative justice, the next best theory able to explain the concept of interdependency is Travis Hirschi's theory of social control (1993). In fact, it is possible for us to identify some similar elements to interdependency in the

bond to society that Hirschi proposes as the mechanism of social control: the concepts of commitment and attachment which are two of four foundational elements of social bond in Hirschi's control theory. The main point of this theory is to see social bond as the key element for delinquent control. For instance, if social bonds do not develop and are broken by something, juveniles tend to choose delinquency because delinquency is regarded as rewarding for them (Braithwaite, 1989). Braithwaite's interdependency is quite similar to the above two elements of social bonds at the point that there is a strong relationship between human relationship and criminal behavior including delinquency. Braithwaite emphasizes that the firm interdependency within the family is the most effective element to cause reintegrative shaming (Hay, 2001). Therefore, Braithwaite emphasizes that reintegrative shaming received from family and intimate friends is the ideal way to reduce the risk of reoffending.

Second, communitarianism indicates a certain circumstance of society, consisting of three essential components in this concept. These are a) deep and dense interdependency, b) mutual responsibility and custody, c) the attitude to regard the benefit of the group as more important than the benefit of the individuals. The community that has these three elements is the best for reintegrative shaming, and Braithwaite introduces Japanese society as an example of the ideal society. The most explicit criminological theory to indicate the concept of communitarianism is the social disorganization theory. Some criteria are similar to some elements of a high crime rated community.

Cullen and Agnew emphasize urbanization and residential mobility as the two elements which have the risk to eventually make an infirm communitarianism (2011).

In offering a level of criticism, Uggen argues that “communitarian and interdependent cultures reduce aggregate criminal activity. In a homogeneous society such as Japan, an island nation sharing a normative consensus opposing crime, he argues that informal shaming processes are the principal cause of low crime rates” (1993, P. 489). On the other hand, Napoleon used a metaphor to express the circumstance of Western society: “Like the movement of billiard balls, human beings in the Western model of reality act in isolation, independently colliding and rebounding. It is a model of the cause-effect linear interactions of individualistic worldviews in which the self is discrete and separate from the whole” (Napoleon, 2004, P.35).

To date, there are not many empirical tests of reintegrative shaming theory. The reasons could be based on the complexity of this theory itself and the difficulty of defining each of its elements. Some theory testing research of this theory and the results will be briefly discussed next.

Braithwaite and Makkai (1994) provide an interesting finding about the function of reintegrative shaming in daily living. Examining nursing homes, they tried to identify the relationship between the attitude of inspectors and the emotional feeling of the nursing homes’ managers toward inspectors. Braithwaite and Makkai’s hypothesis is that inspector’s reintegrative shaming attitude is more likely to promote managers’ legitimacy and compliance. They

prepared experimental and control groups, and the experimental group attained inspectors' reintegrative shaming approach or tolerant attitude. On the other hand, the control group faced inspectors' punitive and rigorous approach. Basically, there is one background social bias in this test because the managers of nursing homes are money-centered people, considering how to reduce cost while increasing revenue. Finally, they found one clear result from this test. The emotional feeling of the managers depends on the attitude of the inspectors (Losoncz & Tyson, 2007). This test indicated that inspectors with a tolerant attitude had a positive effect on the managers' attitude about their management way in aftermath. Overall, this finding supports Braithwaite and Makkai's hypothesis.

A second test measured the effect of reintegrative shaming among family members (Hay, 2001). Hay measured the effect of reintegrative shaming in the relationship between parental attitude and child delinquency. His data is collected from 197 adolescents who live in a single urban area in a Southwestern state of the US; all participants belonged to a single high school located in the central part of the area. The reason he focuses on one specific school is its racial/ethnic diversity and socioeconomic status. Eventually, he found a strong relationship between parental sanctioning and adolescent delinquency among family members. When the family has firm interdependency, children tend to feel strong reintegrative shaming from their delinquency (Hay, 2001). Moreover, according to another similar study, when the mental distance between parents and children is close, children tend to

feel stronger reintegrative shaming. Besides, this tendency often emerges for female children (Losoncz & Tyson, 2007). These findings emphasize the importance of the parent and child relationship, and specifically the importance of interdependency among family members.

The last type of restorative justice studies measure the effect of reintegrative shaming in the process of criminal justice. This test can be seen in two different studies. Harris conducted a substantial survey including 900 drunk drivers. He measured the contrast of effectiveness between restorative justice treatment and the traditional criminal justice punishment, and found no clear difference (Harris, 2006). The second study, which also focused on drunk drivers, tried to measure the effectiveness of two distinct treatments, traditional prosecution and reintegrative shaming related treatment (Tyler, Sherman, Strang, Barnes, & Woods, 2007). In both studies, all members of the experimental group received Family Group Conferences as a method of restorative justice because many drunk driving cases do not include actual victims, and victim participation does not matter in giving reintegrative shaming in this method. Tyler and colleagues analyzed the data of RISE for this study. As it is addressed in the prior chapter, RISE takes random assignments to divide objectives into two groups. In this study, the number of offenders was 730 in total, and they were interviewed between 1995-1997 after their treatment in either court or restorative justice conferences. 377 people experienced a restorative justice conference, and 353 people received traditional prosecution in court out of 730 interviewees. They found no

significant difference in terms of offenders' recidivism, but some positive psychological effect of reintegrative shaming for the offenders, specifically for their internal growth. The person who receives reintegrative shaming related treatment tends to have two positive effects: feelings of reintegrative shaming and procedural justice (Tyler, Sherman, Strang, Barnes, & Woods, 2007). As we can see from these findings, it is not easy to measure the clear effectiveness of RST.

Empirical Evidence of Restorative Justice Practices

There is a lot of research to test empirical effects of restorative justice treatment all over the world. In particular, many reintegrative shaming theory related tests that measure the effects of restorative justice have been conducted in Australia and New Zealand. This part indicates the evidence of restorative justice treatment without taking into account the types of each treatment. There are two categories here: the evidence for victims and the evidence for offenders.

The most frequently focused issue about victims is their satisfaction after participating in the restorative justice dialogue. Almost all studies indicate that restorative justice promotes the victims' satisfaction (Braithwaite, 1999; Van Ness & Strong, 2010; Umbreit & Armour, 2010). Each study has the original measurements, questions, or ways to specify victims' satisfaction. Additionally, in American and Canadian analysis, victims who desire to participate in the meeting are more likely to feel satisfaction in restorative justice (Umbreit, 2001).

Sherman and Strang tested the effects of restorative justice to repair harm. According to their findings, the victims who participated in restorative justice are more likely to reduce the symptoms of PTSD and the feelings of retaliation. In addition, restorative justice promotes victims' forgiveness compared to the traditional court based process (Sherman & Strang, 2007). Armour and Umbreit (2006) identified that the victims who participated in restorative justice programs were 2.6 times more likely to have the feeling of forgiveness than other victims.

Overall, Strang and Sherman praise there is no negative effect of restorative justice so far, and they emphasize the hardest point for victims is the lack of communication with their offenders (Strang & Sherman, 2007).

In terms of considering the effects of restorative justice for offenders, the effects for recidivism is the most frequent issue; nevertheless, many studies indicate the positive effects of restorative justice for offenders' recidivism or reoffending (Braithwaite, 1999; Bonta, Capretta, Rooney, & Mcanoy, 2002; Hayes, 2005).

Hayes conducted a test to measure the effects of restorative justice treatment for each type of crime, and he found this treatment is effective to reduce the risk of reoffending especially for violent offenders, but he also found it does not work for property offenders (Hayes, 2005). Although, Tyler and his colleagues tested using data from Australia, they did not find any effects of Conferences for reoffending drunk drivers (Tyler, Sherman, Strang, Barnes, & Woods, 2007). One study that focuses on juveniles indicates

positive results. According to the meta-analysis of Umbreit, juveniles who participated in restorative justice treatment are 32% less likely to commit reoffending (Umbreit & Armour, 2010). A few studies found the positive effects of restorative justice related treatment for offenders' compliance and compensation (Goren, 2001).

Two of three studies indicate positive effects of restorative justice programs for internal development of offenders. For instance, it promoted the feeling of offenders' procedural justice (Daly, 2001; Tyler, Sherman, Strang, Barnes, & Woods, 2007). Notably, Tyler and his colleagues measured offenders' internal growth using the data from RISE and taking random assignments. According to their results, the experimental group that received restorative justice treatment is more likely to show offenders' positive attitude from procedural justice compared to the control group with traditional prosecution (Tyler, Sherman, Strang, Barnes, & Woods, 2007). The rest of the study that was conducted by Jackson conveys that the restorative justice program does not cause offenders' internal changing; furthermore, this study emphasizes the difficulty to change certain emotional feelings of offenders (Jackson, 2009).

Limitations of Restorative Justice Practices

Restorative justice treatment methods do have the capability of improving criminal justice systems, but it is difficult to alter traditions that are institutionalized in most systems. One of the obstacles to change is the voluntary aspect of participants of these types of practices. Most restorative

justice programs respect the voluntary will of participants (Zehr & Mika, 1997; Marshall, 1999; Latimer, Dowden, & Muise, 2005), with the exception of some mandatory programs like New Zealand's Family Group Conferences in its juvenile justice system. Voluntary participation is an important feature to avoid re-victimization and the decline of participants' attitudes (Umbreit, 1998). Besides, Braithwaite articulates that "a programme is not restorative if it fails to be active in preventing domination" (2002, P. 565). Therefore, establishing official Family Group Conferences related Act in New Zealand is really unique, and we can regard this policy as one drastic change that was created by various elements of its society.

As long as restorative justice treatments require participants' voluntariness, it is impractical that these types of treatment will supplant traditional criminal justice systems. Marshall (1999) emphasizes the difficulty to replace traditional criminal justice system with restorative justice practices because of the structural limitation of restorative justice ways. The criminal justice system often has to use force for dealing with specific problems, so voluntary treatment has limitations occasionally.

The next limitation is the quality gap of treatment based on trained facilitators. The existence of trained facilitators is important at all restorative justice programs, but their skills and advantages are not stable. At the Australian Family Group Conferences, trained police officers usually take a role of facilitator. On the other hand, at many Victim Offender Mediations in the United States, trained as opposed to professional in addition to volunteer

community members take the role of facilitator. In fact, the appropriate role and characteristics of facilitator are still a controversial issue. Although, this vague trait about facilitator causes flexibility to restorative justice treatment, this trait brings some troubles about the quality and reliability of facilitator as well. According to Umbreit and his colleagues, “some of the reported problems are a result of insufficient attention to training volunteers and monitoring their performance” (Umbreit, Vos, Castes, & Lightfoot, 2006, P. 299). This is just one example of facilitator related limitations.

Conclusion of Chapter 2

It is vital to acknowledge the fact that good treatment programs must be guided by a framework based on appropriate concepts and theory. Conceptual frameworks do not guide procedural action by themselves, but theoretically-based methods implemented and rigorously evaluated are needed to transform theory into action. Merely having treatment methods without grounded theory will not likely be successful, nor have much persuasiveness and are difficult to generalize to other locations. However, restorative justice has all of these three elements, so it should be regarded as a well-balanced concept.

As I mentioned in the section on limitation, restorative justice practices need participants' voluntary will. Therefore, it is impractical for this type of treatment to replace the current criminal justice system, but restorative justice treatment can reveal some important points that were abandoned by modern criminal law and justice systems.

CHAPTER 3: RESTORATIVE JUSTICE IMPROVES TRADITIONAL CRIMINAL JUSTICE

Introduction of Chapter 3

This chapter mainly focuses on how restorative justice improves the traditional criminal justice system. First and foremost, the conceptual framework of reintegrative shaming theory and the restorative justice methods of treatment that have shown to be effective in reducing crime and improving lives of offenders and victims may have wider possibilities for implementation as well as result in a larger positive effect on traditional criminal justice systems. Currently and internationally, restorative justice methods are regarded as one of the most promising ways to deal with complicated criminal justice matters. This is what the victim rights movement and cultural traditions worldwide encourage and advocate. In addition, the restorative justice method is recognized as a way for handling international problems and serious ethnic conflicts. In this chapter, there are three perspectives to explain the influence of the restorative justice movement on traditional criminal justice systems.

Restorative justice practice adds some positive changes to criminal justice settings. The most typical finding is the importance of our attitude that tries to consider crimes as only problems for those people who are immediately involved. The improvement shown for restorative justice helps to underscore the longstanding difficulty in traditional criminal justice systems of largely ignoring crime victims and the relevance of punishing offenders by

government officials via laws but outside of community involvement. Although this one step at recognizing an institutional problem and potential solution is small, it could be regarded as one strong revolutionary start for traditional criminal justice settings.

The second perspective is the considerable influence of the restorative Circles in the criminal justice field. Restorative Circles represent a kind of restorative justice model in which participants, including the offender, victim, and some community members typically make a circle to talk about the specific criminal case and its solution. From school and workplace studies, this method is receiving remarkable attention as a desirable expedient to promote a constructive and peaceful environment. Moreover, Circles treatment has started to be acknowledged as an appropriate way for maintaining a positive environment among inmates and providing benefits on officers' mental health.

As a last perspective, to build an open criminal justice system to the public is critical improvement caused by restorative justice practices. Although many researchers and practitioners emphasize the importance of offenders' rehabilitation using social resources and community support, it is not easy to construct it effectively. However, in some restorative justice programs, community members can participate in the actual treatment to solve the crime related problems in their community. They recognize that crime and delinquency is a part of our community problem, and they also can consider what can be done for preventing future crime and delinquency.

Braithwaite contends that such findings may promote a firm and safe community with low crime rates (1989; 2002).

Restorative Justice Brings Beneficial Options to Criminal Justice

The following examples indicate the feature of a multifaceted criminal justice system after introducing restorative justice methods:

- Victims can get the opportunity directly to meet their offenders;
- Victims can talk about the harm or detail of their victimization with their offenders;
- Family members and others can participate in the dialogue process;
- Community members can participate in some types of restorative justice treatment;
- Criminal justice organizations can get one additional alternative to handle offenders.

The biggest development after partaking in restorative justice is providing the opportunity and rights for concerned victims to meet their offenders. As I mentioned in the prior chapter, modern criminal laws came at the expense of the people actually affected by the crime, who were replaced by the authority of government and laws (Takahashi, 2003). Under the traditional criminal justice systems except at some court and parole hearings where prosecutors deem in a factor in the case, it is almost impractical for crime victims to meet their offenders to talk about their harm and victimization. Hence, the victim's positive participation associated with introduction of restorative justice is quite an epoch-making incident not only for our criminal

justice system but also for those involved.

Sherman and Strang try to measure the effect of face-to-face victim offender dialogue. According to their findings, “from a crime victim’s perspective, restorative justice conferences create a successful interaction ritual for renewing commitment to group morality... The apologies offered in RJ are perceived by victims as sincere, as a further indication of a successful interaction ritual” (2005, P.391). Besides, the following three examples talk about the internal status and some real attitudes of crime victims.

Zehr (2001) conducts direct interviews with many crime victims, and he presents victims’ emotional status and actual struggling using the descriptive method. He emphasizes that many victims do not really want severe revenge despite our general anticipation. According to one of the interviewees, “sometimes it was kind of scaring me that I wasn’t angry. I was angry to an extent, but I never felt rage. I feel strongly that if I take on anger, it will overpower my ability to go on and to put my pieces together for me and my family. That’s more important than being angry” (P. 42). As you can see, this example clearly shows that the victim is not seeking retribution.

In June 2011, one murdered victim’s family did a presentation at the conference on restorative justice in Raleigh, North Carolina. Her name is Therese Bartholomew. She lost her younger brother by murder and struggled with the aftermath of that victimization (Bartholomew, 2009). That incident happened in South Carolina where there was no official correction based restorative justice treatment at that time. However, she never gave up and

tried to conduct restorative dialogue with the offender while (s)he was in the prison. Eventually, hers became the first case of restorative dialogue in the South Carolina prison system. The reason why she wanted to meet the offender was simple. She wanted to talk to her brother's killer not only as a victim's family but also as a person. Overall, she emphasizes the benefit of restorative dialogue for her own life, and she suggests that correction based restorative justice dialogue should become more common (Bartholomew, T., personal communication, June 9, 2011).

Miller conducts one study with Kim Book and her organization called Victims' Voices Heard. This study focuses on a direct interview with actual victims who participated in victim offender dialogue. Kim Book is the founder of her non-profit organization in Virginia and the mother of a murder victim. Miller and Book's collaborative research obtained some important findings from this study: victim offender direct dialogue is suitable for felony cases, most crime victims are lenient rather than punitive, and victims can obtain positive effect and some healing from their dialogue (Miller, 2011). These findings obviously indicate the positive possibility of restorative justice treatment for many crime victims who are interested in victim offender dialogue.

In terms of the participation in restorative justice treatment for family member and community member, it is easy to explain the mechanism of the positive effect of this treatment using some elements of Family Group Conferences. This type of treatment emerged in New Zealand and Australia.

As I stated in chapter two, this method includes in the treatment not only the victim offender dialogue, but also the family members and some community members in the treatment. Simply put, there are three advantages in this treatment for our criminal justice system. First, offenders theoretically can obtain reintegrative shaming from Family Group Conferences, so their reoffending risk is going to decrease because of the mechanism of the reintegrative shaming theory. Next, in some kind of ethnic groups like Maori tribes in New Zealand, family involvement is quite a natural way for preventing crime and delinquency (Umbreit, 2000). Offenders can feel that they are not alone and have many support members. Third, community members recognize crime as not just somebody's problem or matter, but a part of our community's problem. This perspective promotes the quality of each community, and eventually, it causes low crime rates.

Finally, in terms of the benefit of restorative justice treatment for our criminal justice system, it creates significant improvement in the following: (a) the quality of offenders' treatment; (b) the countermeasure of prison overcrowding; (c) the decrease of financial burden on criminal justice related budget.

First, restorative justice treatment provides obvious benefits for the quality of criminal justice treatments for offenders. Currently, some specific programs like relapse prevention education, human communication skills training, and psychological evidence based programs like cognitive behavioral therapy, are regarded as common ways for preventing offenders'

reoffending and recidivism.

However, victim centered correction education needs to be further developed. Because in much victim related education, victims are not included, and also, many of them still depend on the leading of correction officers and primitive educational materials. In addition, offenders can deny and ignore this kind of education because it is hard for them to imagine actual victims' struggling and needs after being victimized. In fact, traditional victim related education without victim participation is limited. Therefore, introducing actual victims into criminal justice treatment brings almost revolutionary development on criminal justice treatment for the offenders.

Second, restorative justice practices could provide an alternative to incarceration, so we can regard this type of treatment as one of the countermeasures of prison overcrowding if it works effectively. Actually, New Zealand's Family Group Conferences deal with all juvenile cases except limited minor offences and serious felonies like murder. Family Group Conferences are conducted before juvenile court process, and trained police officer takes an important role as a facilitator of this treatment. Finally, the juvenile court decides the final judgment after reviewing the result of each Conferences cases (Umbreit, 2000; Schmid, 2002; MacRae & Zehr, 2004). In this system, Conferences are taking dual roles for juveniles. One is the role of screening measurement whether the juvenile needs incarceration or not, the other is the role of specific treatment including family member and some community members if necessary.

Third, the cost effectiveness of restorative justice is advantageous. Practically, the positive evidence about cost effectiveness can be a huge propulsive force of policy making and persuading the needs of specific new systems. Farrington and his colleagues emphasize the importance of focusing on the cost effectiveness of correctional policy. In addition, they show the plan to conduct a specific analysis as a part of their project called the Campbell Collaboration Crime and Justice Group (Farrington, Petrosino, & Welsh, 2001). They regard restorative justice as one of the prominent correctional interventions in future criminal justice settings.

Sherman and Strang study the cost benefit of restorative justice treatment and state the benefit of this kind of treatment as an alternative way of incarceration. Moreover, their unique finding is the benefit of restorative justice treatment for decreasing victims' mental health related budget. According to their study, restorative justice treatment decreases the symptoms of crime related post-traumatic stress symptoms (PTSS), and "at £ 35,000 per year for each offender in custody, even a 10 % reduction in custodial population in favour of an RJ alternative could yield substantial cost savings. The evidence that RJ does as well as custody is admittedly modest, but consistent... The effects on RJ on PTSS may have substantial impact on long-term health costs" (Sherman & Strang, 2007, P. 86). Furthermore, Braithwaite states that the New Zealand government succeeded in saving multi million dollars after introducing official Family Group Conferences system and the result of closure of many juvenile institutions; nevertheless,

he mentions that systematic evidence of cost effectiveness of restorative justice is limited.

As many studies mention, the cost related issue is important. However, cost effectiveness should not be the first priority for the concept of restorative justice because if it always focuses on the cost, this concept loses its real meanings and principles.

Circling Method has High Potential in Criminal Justice Practice

As I introduced briefly in chapter two, the Circles/ Peacemaking Circles method is a kind of restorative justice practice that is based on the North American traditional cultural and reconciliation method (Pranis, 2005; 2008). In a safe environment, participants make a circle and talk about the solution of specific problems. This way has a high potential to improve traditional criminal justice methods. According to Pranis (2005), the significant strength of the circling method is to generate new understandings of their matter and probabilities for getting solutions from all participants' wisdom. In addition, this method can grasp the meaning of crime related problems more broadly compared to traditional criminal justice treatments. Hence, this way also can deal with ethnic and regional conflict. The following are possible improvements of the criminal justice system after introducing Circles:

- Promoting peacemaking and pro social environments among inmates;
- Promoting peacemaking and positive regional environments among probationers and parolees in community settings;
- Promoting appropriate stress management for correction officers.

In the correction institutes, maintaining a well-organized and pro social environment is important because a harsh and anti-social environment naturally promotes inmates' undesirable behavior. Eventually, as Zehr mentions, inmates have the risk to become more serious criminals through the incarceration experience (1990). Therefore, it is beneficial to make an appropriate correctional environment through the Circles/ Peacemaking Circles. In addition, this method is also suitable for solving the problems about human relationship among inmates.

Recently, the Circles/ Peacemaking Circles is being developed especially for schools. The reason is that this method is good at decreasing the risk of bullying, and it also promotes a positive school and classroom environment. Amstutz and Mullet (2005) mention the restorative justice approach is essential for students in school because students can consider how they can deal with the harm and problems that they cause, and this approach teaches the way to take responsibility for themselves. In addition, Costello, Wachtel and Wachtel (2010) point out the quite interesting structural function of circles resulting in why it really works for students. "The circle represents a fundamental change in the relationship between students and authority figures. It creates a cooperative atmosphere in which students take responsibility for their actions. Students respond because they feel respected and realize that what they say matters" (P. 85). This structural element of circles can adjust to correction circles for incarcerated people. Both settings need to use limited resources and participants for treatment, and this

similarity means that it could be possible to apply the evidence and study of school based restorative practice to correction settings.

There are not many studies about the Circles/ Peacemaking Circles toward probationers and parolees. It is difficult to interpret the community based Circles/ Peacemaking Circles the same as the school and correction based ones because the structure and the circumstance of participants are totally different. As I introduced in the prior chapter, in Chicago, there is an organization named Precious Blood Ministry of Reconciliation that is conducting community based Circles, especially for juveniles and young offenders (Kelly, D., personal communication with the director of Precious Blood Ministry of Reconciliation, July 6, 2011). They manage various community based Peacemaking Circles for probationers and parolees in their community. The main facilitator is its trained staff, and this facilitator supports the flow of circles. In addition, some community supporters usually participate in the Circles. They are discuss diverse and flexible topics; for example, *what can I do for changing our community?; how do I handle my stress?; how do I manage my life?; and so on.*

It can bring much healing to participants, and it can also be an important opportunity for participants to confirm their current situation. On the other hand, it is not easy to maintain the consistency of contents and members' attendance because it is based on voluntary participation.

The Circles/ Peacemaking Circles also cause some benefits to correction officers. Kay Pranis who had worked for over 10 years as a

restorative justice advocate in the Minnesota Department of Correction recommends conducting Circles/ Peacemaking Circles for correction officers (Pranis, 2006). She believes this type of practice can make officers' minds and values more broad. According to Pranis, in terms of introducing restorative practices into the correction system, the hardest part is the way to make correction officers ready to begin. Because most officers believe that their duty is to accommodate and educate crime offenders, many officers tend to regard victims as none of their concern. Therefore, Pranis recommends giving the opportunity of restorative justice treatment to those officers as a first step to be familiar with the concept of restorative justice (Pranis, K., personal communication, June 10, 2011).

Officers' Circles experience has an additional benefit that is promoting officers' appropriate stress management. Correction officers frequently encounter strong and severe stress in their duties. In addition, some daily strict discipline like confidentiality obligation increases their stress and frustration. According to my own experience as a correction officer in Japanese corrections, stress related officers' mental health problems including suicide are regarded as a serious problem. Moreover, Pranis mentions that in the US, correction officers' high amount of stress and their unique role sometimes become a risk for domestic violence (Pranis, K., personal communication, June 10, 2011).

Circles/ Peacemaking Circles offers one answer to deal with these problems. This type of treatment is one opportunity for communication and

peacemaking even for correction officers. Furthermore, officers can become familiar with the concept of restorative justice through the officers' Circles while at the same time polishing their skill as a facilitator.

Closed Criminal Justice System Opens for the Public

Similarly to Braithwaite's reintegrative shaming study and Australian RISE experiment, there are many studies that focus on the relationship between community and restorative justice methods. However, it is hard to find the studies that mainly focus on community members who participate in restorative justice treatment. This part tries to indicate how restorative justice improves community issues. The following three elements are desirable points about this topic:

- Community members regard crime as their own or intimate problem;
- Promoting strong and safe community based on reintegrative shaming theory;
- Reinforcing the community system and support network for victims and offenders.

Basically, Family Group Conferences or circles include some community members as participants, and in these treatments, community members are regarded as important stakeholders just like victims and offenders in the meeting. For example, Family Group Conferences already established its own treatment process. Under the process of this conferences system, all participants need to know the details of each criminal case, causation, the opinions and feelings of victims, offenders' opinions, and so on.

So, community members need to listen to this information, and also, they have the opportunity to express their opinion as a community member. This experience could change the way they view crime. Sometimes community members may find deep and profound crime causation between offender and victim even in objectively ridiculous criminal cases. Similarly to ancient biological criminologists, some community members may start to think criminals are no different from themselves.

The possible changing of community members might bring some development to communities, for instance, the spirit of helping one another and anticrime measures. In addition, this development is going to be more prevalent gradually. Eventually, as Braithwaite emphasizes in his theory, restorative justice practices have a bright vision to develop a firm community that has no fear against crime, has no stigmatizing tendency, and has interdependency and communitarianism (Braithwaite, 1989; 2000). Then, this community can maintain low crime rates.

Conclusion of Chapter 3

In terms of talking about the effect of restorative justice practice, it is easy to take descriptive evaluation rather than objective evaluation. Probably, one of the reasons is that the concept of restorative justice, and many variables in this concept are not suitable to indicate using objective data and numerical data because many variables include conceptual meaning and elements; the real degree of many variables depends on each person's value and life experience. For example, it is practical to indicate the reoffending

rates and the term of sobriety for repeat drug offenders. However, it is hard to indicate how to restore the harm, the amount of reintegrative shaming. In addition, the personal value of participants determines the amount of satisfaction and accomplishment during treatment. These characteristics might be a hurdle to developing a restorative justice movement in criminal justice fields.

Although this is a paraphrasing of my prior statement, traditional criminal justice can obtain various advantages if it introduces the concept and treatment of restorative justice. Especially, no criminal justice policy can establish a direct dialogue system between victim and offender after emerging modern criminal laws. Restorative justice practices should be more analyzed and sophisticated to inform the actual effect and future possibility by using appropriate methods. It needs to be more widely discussed to obtain more advocates.

GENERAL CONCLUSION

After the emerging What Works Movement around the 1980's, America and some western countries started to place a new emphasis on the evidence based criminal justice policy. Therefore, most new criminal justice policies established to deal with specific issues using huge background research and empirical evidence. For instance, the electronic monitoring system for crime offenders using GPS started to deal with over crowding in prisons and financial problems. In addition, the three strikes law was enacted to be a break of recidivism and unbounded reoffending by chronic offenders. Eventually, the evidence based criminal policy became a standard in recent criminal justice fields.

However, it is difficult to interpret the concept of restorative justice and its practices using an evidence based concept because it is almost impossible to measure the critical point of restorative justice that regards crime as affected peoples' problems. It means that the most important element of restorative justice practice is quite subjective because of the inherent characteristics.

At the beginning, restorative justice started as a kind of new perspective in criminal justice, and it just tried to promote the victim centered criminal justice system. This concept is still expanding in various fields, not only in the criminal justice field. First of all, Zehr created a concept of restorative justice from his experience of victim offender dialogue as a member of a Mennonite community. In addition, Braithwaite started to advocate this concept using his

integrated theory called reintegrative shaming theory, and then the tiny concept of restorative justice obtained a firm and strong backbone. Moreover, many cultural tradition based practices expanded the meaning of restorative justice. Finally and currently, the concept of restorative justice covers broad circumstances, handling from one personal criminal case to the complicated international ethnic conflict. In short, restorative justice is a sustainable and still developing concept, and this concept gives huge hope and possibility to the criminal justice and all crime related persons.

This paper explained (a) the main goals and object of restorative justice; (b) the overview and some concrete features of restorative justice; (c) the way of improving for traditional criminal justice by using restorative justice. The restorative justice movement is not major yet in whole criminal justice fields even if it is expanding gradually in several settings. Especially, it is quite harder to introduce restorative justice into the complicated and already well-structured criminal laws and traditional criminal justice system rather than in mere supposition. Therefore, restorative justice and its treatments should be improved upon while recognizing the limitations of its development practically and consistently.

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Research Paper Title:

An Exploration of the Promise of Restorative Justice: How This
Concept Improves the Traditional Criminal Justice System

Major Professor: Kimberly Kempf-Leonard