



Lady Justice Statue, Source, CC0 1.0 Public Domain.

Exploring alternatives in criminal justice

The intersection of restoration and punishment

JOHANNE DALAGER

As an alternative to the traditional system of formal judicial sentencing, restorative justice has gained prominence in the field of criminal justice. Thom Brooks offers a distinctive perspective on merging punitive measures with restorative principles within the criminal justice framework. He argues that his concept of punitive restoration paves the way for expanding the implementation of restorative principles globally. This article sheds light on the foundational principles of restorative justice and explores punitive restoration, as articulated by Brooks, highlighting its potential for contemporary criminal justice.

Thom Brooks is an established scholar and author, known for his contributions to law, politics, and philosophy. With publications in the field of criminal justice, immigration policies, and punishment, he holds a prominent position in legal and political philosophy, currently as Professor of Law and Government at Durham University. During our interview, the American-British professor passionately articulates his aim to create a unified theory of punishment that integrates the principles of deterrence, retribution, and rehabilitation. He aspires to transcend the fragmented perspectives on punishment by bridging theory and practice into a cohesive framework. Through this endeavour, he seeks to not only elucidate the complexities inherent to the justice system but also to offer tangible solutions that resonate with both theoretical rigor and pragmatic necessity. Bridging the two is crucial, according to Brooks, to sustain the public confidence while implementing the restorative principles globally.

“ My view is, if restorative justice is about restoring people, if it’s about addressing these criminogenic factors that make a criminal future and reoffending more likely, and we want to address those problems, then every option should be on the table.



Thom Brooks, photo provided by Thom Brooks.

Navigating the global landscape of criminal justice systems, unveils a tapestry of complexities, as each local context presents its own set of challenges, defining the framework for the implementation of restorative principles. However, Brooks identifies three cross-cutting themes in the context of the Western world; the issue of public confidence, the efficacy of crime reduction mechanisms within the system, and the management of financial resources and costs.

The restorative process

In the pursuit of a more equal and efficient justice system, restorative justice has emerged as promising alternative to formal sentencing. Brooks defines the practice as “[..] an informal process that promotes healing between victims, offenders, and the community and addresses the wrong done in an individually targeted way.” Rooted in the principles of reconciliation and dialogue, restorative justice seeks to engage all stakeholders in the process through inclusive, collaborative processes (Marshall 1996: 37). The restorative process can take the form of victim-offender mediation, conferences including relatives and community members, and the more extensive restorative circles, all resulting in a written outcome agreement determining a further plan of action (United Nations Office of Drugs and Crime 2020: 24-33). Lastly underlining the potential, Brooks refers to UK Home Office reports demonstrating numbers of greater victim and offender satisfaction, reducing recidivism up to 25%, and saving 9 times the costs (Restorative Justice Consortium 2010: 1-4).

Thom Brooks explains, how the framework of restorative justice in domestic cases repudiates the use of ‘hard’ sanctions such as coercion or prison. Thus, limiting the applicability of the process to certain categories of criminal misconduct. Brooks elaborates the need for sanctions for instance if an offender fails to meet the commitments outlined in the restorative meeting or retracts their confession during subsequent trial proceedings. “My view is, if restorative justice is about restoring people, if it’s about addressing these criminogenic factors that make a criminal future and reoffending more likely, and we want to address those problems, then every option should be on the table.”

Integrating retribution and restoration

To comply with the boundaries of ‘traditional’ restorative justice, Thom Brooks has conceptualised a variant with a punitive angle. The process of punitive restoration incorporates suspended sentencing, where consequences are imposed after six months, if the offender has not honoured the terms agreed upon in the restorative contract. In addition, it enables a new range of sanctions in relation to therapy and behavioural treatment, which according to Brooks might be necessary for a more successful and extensive restoration. Furthermore, this would incite the offender to comply with the terms of the restorative contract and heightening the sincerity in the meeting. By doing so, increasing the sense of restoration and community engagement, and lower the actual use of prison sentencing.

“My idea is, in making a backup which threatens with possible prison to do the restorative contracts, we might be able to give more people restorative contracts. And if restorative justice was used in more cases, and more people were doing them, then fewer people will be going to prison.”

While he argues for the significant value of punitive restoration, he notes that it is not appropriate for the most serious offences, including treason, domestic violence, and murder cases. As this would undermine the goal of winning over the public confidence when implementing restorative principles in the justice systems.

Punitive restoration integrates the tailored healing of victim and offender by involving the affected community in a restorative framework. Brooks articulates, how punitive restoration along with a holistic understanding of offences paves the way for a more inclusive societal cohesion and open for wider implementation of restorative justice principles.

“Not seeing criminal justice in this holistic, integrating fashion that involves the community is a big problem. Restorative justice as a model helps us think about this. And I think punitive restoration is my example about how we can have a restorative framework that could be applied more widely, that applies different purposes for sentencing at the same time, and can address the problems of criminal justice that are true in the United States, United Kingdom, and I would expect happen in different forms, to different degrees, in other countries, and maybe even yours, to some degree.”

Bibliography

Marshall, Tony F. 1996. “The evolution of restorative justice in Britain”. *European journal on criminal policy and research* 4 (4): 21-43.

Restorative Justice Consortium. 2010. “What does the Ministry of Justice RJ research tell us?”. *Restorative Justice Consortium February 2010*. Online available at: [https://restorativejustice.org.uk/sites/default/files/files/RJC%20summary%20of%20ministry%20of%20justice%20research\(1\).pdf](https://restorativejustice.org.uk/sites/default/files/files/RJC%20summary%20of%20ministry%20of%20justice%20research(1).pdf).

United Nations Office on Drugs and Crime. 2020. “Handbook on Restorative Justice Programmes”. 2nd edition. *Criminal Justice Handbook Series*. United Nations Office on Drugs and Crime: Vienna. Online available at: https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf.



About the author

Johanne Dalager is a bachelor's degree student in the Anthropology programme at Aarhus University. Specifically interested in alternative thinking, generative ways of bridging between differences, and holistic conflict management. She is the intern at Aarcon this spring semester.

[Connect on LinkedIn here](#)