

The future of restorative justice

John Braithwaite

A great thing about the rule of law is that we have a universal right to access it, or at least we should. Whether we have been a victim of crime, of an oppressive marriage, of breach of contract or consumer deception, we have a right of access to a court of law to adjudicate that conflict. Historical research on crime and justice, the tradition in which Howard Zehr started as a young scholar, has accumulated helpfully. It has taught us the importance of the rule of law innovations that diffused from the Persian and Roman Empires and beyond. As rights of access to adjudication in courtrooms diffused, blood feuds decreased. It was no longer necessary to deal with serious disputes by confronting our adversary and by carrying a weapon in case the confrontation turned nasty.

This is one reason why European societies are so dramatically less violent than they were half a millennium ago. The rule of law also brought a rights revolution that does not solve all problems but does provide some important tests against which all forms of justice must be measured, as Ann Skelton explores in Chapter 3.

Yet during the centuries when courts of law were near universally absent, diverse informal modalities of justice were more universally present to help make up for this deficiency. Carolyn Boyes-Watson evocatively explores more recent recovery of this history in Chapter 1, as does Ali Gohar in the specific context of Pakistan in Chapter 5. Historical experience has taught us that more universal access both to the rule of law and to disparate types of informal justice (including restorative justice) is likely to be a path to justice and nonviolence. By empowering victims to be able to choose either of these options in a variety of forms, we minimize the likelihood that they will turn to redress by violence against their perpetrator, as the recent evidence on victims indicates (Arthur Hartmann in Chapter 9 and Theo Gavrielides in Chapter 8).

The sad thing about the history of the rise of the rule of law is that it created a wealthy new professional class with a class interest in strengthening the monopoly of the rule of law. Old restorative traditions were construed as barbaric or out of tune. These claims for the attuned modernity of the rule of law were sometimes uttered by men wearing aristocratic black gowns or wigs who insisted on being addressed as ‘your honour’ or ‘your worship’. They asserted authority by thumping a hammer or imploring subjects to swear oaths on bibles or other ancient religious texts. The legal profession became adept at co-opting symbols of aristocratic power and god-like power, as it extracted rents to secure the interests of its professional class.

The poor could not afford their justice. Worse than that, the poor were profoundly oppressed by the criminal justice system in every country. When the legal profession could not fight off competition from more accessible informal justice practices, it reappropriated them as expensive and professionalized mediation services. Large fees had to be paid to accredited mediation professionals to learn the craft. Carl Stauffer and Johona Turner touch upon these dilemmas in Chapter 29 and Isabel Ramirez does so in Chapter 21. Juan Tauri at the same time reminds us in Chapter 23 of pathologies that can arise from marketized models of restorative justice seeking a kind of duopolistic relationship with the state. One of the pathologies at risk is pushing aside genuinely indigenous forms of justice.

So civil society must take back some measure of justice from markets and from sovereigns. It must eke out niches for non-sovereign justice, as Guiseppe Maglione expresses it in Chapter 2. We should want our children to learn at school how to resolve disputes with each other. We should want them to do that without overly quick recourse to the sovereignty of the school principal, the youth court judge or a restorative justice professional, for that matter. I believe that there is a democratic principle at issue here. In Chapter 27, Ted Wachtel discusses this principle and other democratic practices using his experience from the schools where he pioneered restorative justice with inspiring teams of restorative pathbreakers.

This book is perhaps the most comprehensive and certainly the most up-to-date collection on restorative justice. It goes to some topics rarely addressed in earlier volumes, such as restorative justice and disability support (Jane Bolitho, Chapter 11), child sexual abuse (Karen Terry, Chapter 10), intimate partner violence (Anne Hayden, Chapter 13), health (Dan Reisel and Janine Carroll, Chapter 15) and road rage (Marian Liebmann, Chapter 16). It embraces a wider range of critiques of restorative justice than most volumes on the subject, including from some of the most distinguished and thoughtful critics of restorative justice – Gerry Johnstone (Chapter 26), George Pavlich (Chapter 30), Juan Tauri (Chapter 23) and Annalise Acorn (Chapter 25).

Furthermore, in its geographical coverage, this international Handbook is much broader than older collections. It considers restorative practices as they exist beyond Western, predominantly English-speaking, societies. The social movement for restorative justice has been good in the past at forgetting that most of the world's population lives in Asia, discussed by Wong and Lui in Chapter 20 and Gohar in Chapter 5. Africa (Skelton, Chapter 3) and Latin America (Ramirez, Chapter 21) are also hugely important for accomplishing a more just future for the world. There is great learning in this book from the diversity and from the good and bad of restorative justice across this complicated planet of ours. The application of restorative justice in Eastern Europe is another example (Matczak – Chapter 22).

It is not possible to do justice to the diversity of the 31 fine chapters in this Handbook. So I have settled for a taste of just these few themes. Theo Gavrielides admirably integrates them all in his Epilogue, in which he reminds us that restorative justice is ultimately about expanding freedom. This implies a restorative justice implemented with care and responsibility, his way of capturing the spirit of this pathbreaking Handbook. We are grateful to Theo for bringing so many voices into the conversation. Many inspiring restorative justice leaders in the past have mobilized convening power toward projects of listening, but none more widely nor in more diverse ways than Theo Gavrielides in recent years.

One great thing about the complex of lenses across this Handbook is that they show that there are many different versions of restorative justice, as Howard Zehr also points out in his Foreword. The strengths and weaknesses of these versions depend on the contexts in which they are deployed. This in turn shows the silliness of those who frame the problem with restorative justice as one of restorative justice being seen as a solution to all problems. Well, of course,

it is a good thing for access to restorative justice to be universally available for the whole range of harms from petty insults right up to genocide.

Being universally available is not the same as being universally chosen. The reasons for the struggle to universalize access to restorative justice are not so different from the reasons that the justice of the courts should be available for all manner of harms from insults up to planetary destruction. Citizens desperately need more universal access to more paths to resolution of problems that oppress them. These must be genuine ways of access rather than fictions of access to justice. In particular, citizens need access to paths that involve formal procedural guarantees and other paths that better protect rights while allowing more flexibility, informality, empowerment and creativity of response. In the great historical struggle to give citizens more options to reject or embrace, a comparative strength of restorative justice is that it is so open to variegated design, even to design by the most marginalized of societal minorities, in ways that are responsive to citizen needs. The project of exploring that design experimentalism to advance human freedom is what is so splendidly advanced by the contributors to this Handbook.