



Restorative Justice in English Law: Examples and Challenges

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Abstract

Restorative justice in English law is a new approach in the judicial system that, instead of focusing solely on punishing the offender, seeks to repair damaged relationships between the offender, the victim, and society. This concept includes compensation, restoration, compensation, reconciliation, atonement, community service, mediation, and payment of damages. This approach helps reduce the rate of crime among adolescents, reduce the negative effects of crime on the lives of victims, and promote a sense of responsibility and social solidarity. The present study aims to examine and analyze the concept of restorative justice in English law, its examples, and the challenges it faces. This study was conducted using a descriptive-analytical research method and using library and documentary resources. First, the sources related to the concept of restorative justice, relevant laws and regulations in England, as well as studies and research conducted in this field, were examined and analyzed. Then, using the content analysis method, practical examples of restorative justice in the English judicial system were examined and analyzed, as well as the challenges facing its implementation. Research shows that restorative justice, particularly in the form of programmes such as Youth Offending Teams (YOTs) and Victim Support, has had positive results. This approach has helped to reduce crime among young people, reduce recidivism rates and increase the sense of security for victims. However, challenges such as public disapproval, resource constraints and cultural and social contradictions still stand in the way of the expansion of restorative justice in the UK.

Keywords: Restorative justice, criminal justice, UK law, examples, challenges

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Introduction

Restorative justice in English law is a new approach to the justice system that, rather than focusing solely on punishing the offender, seeks to repair damaged relationships between the offender, the victim and the community. This concept includes reparation, reparation, compensation, reconciliation, atonement, community service, mediation and compensation. In other words, restorative justice seeks to balance the harm caused by the offender by providing support to the victim and requiring the offender to make reparation, with the help of the community if necessary. Restorative justice is important as an alternative method to the traditional justice system, especially in cases where the crime is minor or related to juveniles. This approach helps to reduce the crime rate among juveniles.

The processing of this research is of great necessity and importance, because restorative justice, as a new approach, can play an effective role in reducing crime and rebuilding damaged relationships. By carefully examining the examples and challenges of restorative justice in the UK, this research helps to provide practical solutions for improving and expanding this approach in the country's judicial system, and ultimately, the results of this research can be used as a model for other countries to use restorative justice in their judicial systems.

In this research, a descriptive-analytical research method has been used. In this research, first, using library and documentary resources, information related to the concept of restorative justice, relevant laws and regulations in the UK, as well as studies and research conducted in this field, has been collected. Then, using the content analysis method, practical examples of restorative justice in the UK judicial system, as well as the challenges facing its implementation, have been examined and analyzed. The sources used in this research include books and scientific articles related to the concept of restorative justice and English criminal law, laws and regulations related to restorative justice in England, reports and official documents of governmental and non-governmental organizations related to restorative justice in England, and studies and research conducted in the field of restorative justice in England.

1. The conceptualization of restorative justice in English law

Despite the lack of clarity in the literature on the understanding of restorative justice, scholars argue that the concept is rich and diverse in meaning and application. However, there is a gap between theory and practice, and since “practice without theory is blind, and theory without practice is meaningless” (Morrison, 2015), defining restorative justice is essential, especially given that the concept is now being embraced in other sectors such as education.

1.1 Definition of restorative justice

The term “restorative justice” is relatively new and has different meanings depending on the country, state and community in which such programs exist. The definition of restorative justice in English law includes things like reparation, reparation, compensation, reconciliation, atonement, restitution, community service, mediation and compensation. In other words, restorative justice is seen as balancing the harm caused by the offender; therefore, the harm is balanced by providing support to the victim and requiring the offender to make reparation, with the help of society if necessary (Gailey, 2010). One of the most widely cited definitions is that of Tony Marshall: “Restorative justice is a process in which all parties involved in a particular crime come together to collectively resolve how to deal with the consequences of that crime and its implications for the future” (Marshall, 1996). But scholars such as Gordon Bazemore and Lloyd Walgrave argue that for proponents of this definition, restorative justice is simply a diversion. They argue that restorative justice should be much more than that; their goal is a fully-fledged restorative alternative. From this perspective, Marshall’s definition seems to them both too broad and too narrow. Too narrow, because restorative justice cannot be limited to a single process: the main distinguishing feature of restorative justice is an attempt to repair the harm caused by a crime. That is why they include in the term not only face-to-face meetings between interested parties in a particular crime, but also a wide range of services provided to victims, whether the offender is involved or even known to the system or society. That is why they propose a much simpler definition: “restorative justice is any action that is primarily aimed at doing justice by repairing the harm caused by a crime” (Bazemore and Walgrave, 1999). We could say that the definition provided by the European Association for Victim-Offender Mediation and Restorative Justice is somewhere between the two: “a process of responding to crime, based on repairing, as far as possible, the harm caused by the crime to the victim, holding the offender accountable, and facilitating communication between them, subject to the consent of both”. Thus, more punitive approaches were the choice of policymakers who were under great pressure from the public to do something about the apparently rising crime rates (although everyone should now know that this approach is not working either!). They did not listen to Christa Pelican (1992): “The cessation of the use of force and violence cannot be taught by the use of force”, nor to Lud Walgrave (1994): “We do not think that revenge, even when guided within a legal framework, is a good basis for a civilised social response”. It must be stated that the restorative justice

response leaves retribution and rehabilitation behind. This response takes place in the social context of community empowerment, focusing on the damages, repairing the harm done, seeking satisfied parties and placing the victim as the central figure in the whole process. We now have theorists who make the whole matter a little more confusing. For example, Anthony Duff argues that the retributive and restorative paradigms are not incompatible. According to him (2002), the kind of reparation that criminal wrongdoing necessitates is properly achieved through the process of criminal punishment. In other words, offenders should be repaid, punished for their crimes, but the fundamental aim of such punishment should be to achieve reparation. Hence his motto 'restoration through reparation'. All we have wanted to do is to show the diversity of this concept in English law, which is still evolving. This is not a field of unanimity and there is debate today about many aspects of restorative justice. But practitioners and academic researchers have recently come to realize that there are important underlying principles upon which what some see as a new paradigm of justice can be more fully developed.

2.1 The origins of restorative justice in England

Restorative justice has been the dominant model of criminal justice for most peoples throughout human history. The laws of primitive societies, unlike those of modern societies, for most crimes provided monetary assessments as compensation to the victim, not as punishment for the offender (Schiffer, 1970). As primitive societies became more stable, they became more property-oriented, and compensation and reparation for the victim became more developed. A major change occurred in the ninth century in the Frankish Empire, where compensation was replaced by a fine imposed by a court against the offender and paid to the state rather than the victim (Gillein, 1935). This change marked the beginning of the state's monopoly on criminal punishment, and by the end of the twelfth century, the erosion of restorative justice was complete (Schiffer, 1970). Despite this erosion and the diminishing role of the victim, the concept of restorative justice has survived through the centuries. Despite the growing interest in offender reform, which was accompanied by a decline in attention to the victim, some philosophers and legal reformers repeatedly emphasized the importance of restorative justice, reparations, and compensation (Thomas More, James Wilson, Cesare Beccaria, Raffaello Garofalo, Jeremy Bentham, Enrico Fry, to name just a few). Margaret Fry, a British reformer, is partly responsible for the revival of reparations and compensation. Her efforts led to the establishment of state victim compensation programs in the early 1960s in New Zealand and the United Kingdom, which served as models for many other countries. These reparations and victim compensation schemes can be considered the forerunners of restorative justice. At this time, support for restorative justice began to grow in a unique period of convergence between emerging philosophies of justice and political, social, and cultural movements. As the victims' movement grew stronger and drew attention to the need to address the suffering caused by crime, victims of crime began to demand a broader role in the justice process and demanded that the outcome of the process be more focused on the victims (Aartsen and Peters, 1995). Advocates of community-based policing criticized the ritualistic and often harmful approaches of the professional model of law enforcement and promoted more problem-based interventions based on partnerships with community groups and citizens. The Norwegian criminologist Nils Christie published his seminal article "Conflicts as Property," in which he introduced the idea of "conflict ownership": the relationship between victim and offender was said to involve a personal conflict that was stolen by the state. The women's movement gained influence and articulated a feminist critique of patriarchal justice that called for a more caring and conciliatory system (Harris, 1990). Strong critical positions were also advanced regarding individual treatment or social welfare models of juvenile justice, which were criticized for disregarding legal rights and focusing on the individual needs of offenders while ignoring the multiple needs of crime victims and communities (Walgrave, 1994). At the same time, "just punishment" perspectives came under growing theoretical criticism. (It should be noted that, as early as 1921, Breeny wrote: "The government spends vast sums of money on the intensive cultivation of dangerous and criminal offenders and then returns them to society more fearful than ever.") In this atmosphere, what is commonly known as the Kitchener "Mennonite Model" in Ontario emerged, and was considered a pioneer in programs that brought offenders into face-to-face meetings with their victims to explore interpersonal reconciliation and develop a plan for reparation. The story is simple but worth telling. In 1974, after a Saturday night vandalism attack in the small town of Elmira, two young men were arrested and pleaded

guilty to twenty-two counts of willful destruction. The probation officer assigned to prepare their pre-sentence reports was a member of the Mennonite Church. Perhaps influenced by the church's strong tradition of pacifism, he suggested to the judge in his report that "there might be therapeutic value in these two men." "There should be a young man who can personally confront the victims of his numerous offenses." To his surprise, the judge agreed. He ordered a month's detention to give the convicted couple the opportunity to meet with the victims and assess their damages, which they did. A month later, the judge ordered a fine for each, placed them under supervision, and as a condition of the supervision order, ordered that each young man pay restitution to the victims. At the time, no one had the slightest idea that this humble experience would be recounted and retold as the "Elmira Case" in countless articles, lectures, and conference presentations (see below for its impact in Great Britain). The probation officer and his colleagues continued to think about the experiment, tried to refine the process, and eventually proposed a program in 1975 as the Victim/Offender Reconciliation Project (VORP). A few years later, it became the Victim/Offender Reconciliation Program (Gaily, 2010). Until then, mediation had only been used formally or semi-professionally for international and labor relations and in some civil justice matters (mainly divorce). The 1980s saw not only the first victim-offender mediation projects, but also the first community mediation programmes for neighbourhood disputes, conflict resolution training classes for schoolchildren, the beginning of a major expansion in the use of mediation in civil justice cases, and the formation of a voluntary umbrella organisation called the Voluntary Organisations to represent these new media and advocacy initiatives. Initiatives in reparations and mediation have since been named mediation in the UK. Victim-offender mediation began in individual cases when probation officers or social workers perceived opportunities in the normal course of their work. They were exceptional practitioners, generally motivated by their religious beliefs to promote reconciliation and to seek alternatives to what they saw as the destructive punitive approach inherent in criminal justice. The backlash against the retribution system was not new, but had until then been expressed simply in general support for the exclusion of offenders, generally juveniles, from the criminal justice system, either by diversion from prosecution (through police cautions) or by diversion from prison sentences to other inter-media rehabilitation orders, such as other inter-media rehabilitation schemes. The most extreme representation of this movement in academic thought was 'abolitionism' (Marshall, 1996). In other words, the programmes they described (Harding, 1982; Wright, 1977) contained an essential element of financial compensation or services in exchange for the harm done. As a result, the concept appealed to supporters of punishment, who were attracted to the idea of "paying" criminals for what they had done, as well as to advocates of rehabilitation, who saw in restorative justice (limited to "mediation" at the time) the possibility of helping criminals grow through a deeper understanding of the effects of their actions.

3.1 Legal changes relating to restorative justice in the UK

Initially there was no specific legislation for restorative justice in England (more so than in many other European countries). As a result, all criminal justice mediation (or conferencing) has taken place in the 'shadow of the law', driven by local initiatives and personalities, rather than because of it. However, this vacuum has changed in relation to the youth justice system. It should be noted that this is the area where change usually occurs first, in most countries. As announced, since their election in May 1997, the Labour Party (Tony Blair) has introduced the Crime and Disorder Act (1998), which reformed the organisation of the youth system and introduced a range of new provisions, and the Youth Justice and Criminal Evidence Act (1999), which introduced another new provision and extended the scope of restorative justice in the UK. The Crime and Disorder Act introduces a specific reparation order which allows courts to order young people to carry out practical reparation activities, either directly to victims or to the community at large. Action Plan Orders are also introduced by the Act: this is a three-month order which aims to engage the young person in various activities and/or place them under specific conditions. Reparation is expected to be an important component of these orders. Finally, the supervision order (which previously existed) has been amended to include the option of making reparation as part of the activities carried out under it. The Act also introduces a two-stage system of reprimand and warning. Any young person guilty of a minor offence will receive a reprimand. A more serious first offence or a second minor offence will require a warning. Any subsequent offence should result in prosecution (what people say: 'three strikes and you're

out'). This is another stage where the Government wishes to see reparation as a key response. The Youth Justice and Criminal Evidence Act introduces a mandatory order, the referral order, for young offenders appearing in court for the first time who have not committed an offence likely to result in detention. The young person is referred to a young offenders panel which determines the content of the order. This can include: the offender, their immediate family or carers, other supporters of the offender, the victim(s) and their supporters and three people from the community. The aim of the meeting is to facilitate frank discussion about what has happened, how people have been affected and what needs to happen to make amends and prevent any further offending. This all sounds more like a family group conference and has been described by the government as the first introduction of restorative justice into the court itself. However, the lack of firm guidance on how to integrate restorative processes into the system has led to a number of problems. Some of these problems are considered very problematic, particularly in relation to the need for sensitive and meaningful assessments with victims. A number of issues contribute to this, including the government's priority of reducing delays in dealing with young offenders. The Labour Party made promises before winning the 1997 general election, some of which are rooted in 'old' ways of thinking, for example the idea of 'toughing up' and speeding up the criminal process; this has advantages in terms of conventional justice, but does not give the victim the opportunity to decide whether to participate in mediation, for example, nor the mediators the opportunity to arrange a meeting. This 'fast food' version (the 'McDonaldisation of mediation', as M. Ambright (1999) puts it) seems to deprive the whole process of its most important restorative elements (Gailey, 2010).

2. Examples of restorative justice in English law

Restorative justice in the UK is increasingly seen as an alternative to the traditional justice system, aiming to rebuild relationships between offenders, victims and the community. Rather than focusing solely on punishing the offender, this approach emphasises efforts to make amends to victims and to prevent future offending. Restorative justice plays a particularly important role in cases where the offence is minor or involves young people. One of the most important examples of restorative justice in the UK is the YOTs programme, which helps young people who have committed offences to understand their responsibilities for the offence they have committed and to seek ways to make amends. These teams usually include counsellors, social workers, police and other professionals who work together to rehabilitate and rehabilitate young people. According to published reports, studies have shown that this type of approach has significantly helped to reduce the rate of crime among young people and reduces the likelihood of them reoffending (Youth Justice Board, 2022).

Furthermore, "Victim Support" is another institution that plays an important role in the implementation of restorative justice in the United Kingdom. This organization helps victims of crime to experience restorative processes and feel that they are receiving some kind of compensation or repair for their emotional and psychological harm. This process usually involves meetings between the victim and the offender, in which the offender is made aware of the effects of his crime on the victim and tries to make amends. A study conducted in this field by the "Restorative Justice Council" shows that around 85% of victims feel that after participating in such processes, they are in some way more at peace and that the negative effects of the crime on their lives have been reduced (Restorative Justice Council, 2021).

In certain cases, restorative justice is also used in the United Kingdom for more serious crimes, although this type of use is more limited. For example, in some cases of murder or serious violence, restorative processes help the offender to gain a deeper understanding of the impact of their crime on the victim and society. This approach is particularly important in long-term sentences or prisons, as it helps the offender to understand their moral and social responsibilities, rather than simply serving time (Shapland, 2011).

Therefore, restorative justice in the UK is recognized as a new approach in the justice system that has been able to bring significant positive results, especially in reducing the rate of recidivism among adolescents and young people. This system helps both parties involved in the crime - the offender and the victim - to benefit from a constructive and restorative experience. This helps to reduce conflicts and tensions in society and promote a sense of responsibility and social solidarity.

3. Challenges Ahead of Restorative Justice in English Law

Restorative justice in the UK, as a new approach in the judicial system, despite its advantages, faces several challenges that can affect its effectiveness and expansion. One of the biggest challenges is the general lack of acceptance of this approach by all judicial institutions and some authorities. Some judges and officials of the judicial system still do not trust this approach and prefer to use traditional methods of punishment. For example, research has shown that some judges and lawyers are reluctant to use it in judicial processes due to doubts about the effectiveness of restorative justice (Shapland, 2011). This leads to restorative justice being seen as a complementary option rather than an alternative in some cases. Another challenge is the limited financial and human resources needed to implement restorative justice. Organizations such as the Restorative Justice Council and Victim Support need adequate financial resources to provide these services, but in many cases, there are insufficient government budgets and human resources to implement these programs on a large scale. According to reports, some projects are currently facing a lack of resources, which limits their ability to provide services to a larger number of victims and offenders. Another important challenge is the cultural and social contradictions that may arise in the restorative justice process. For example, in some cases, victims may be reluctant to meet and talk to the offender for cultural or social reasons or may not feel comfortable with this process. However, for restorative justice to be successful, both the victim and the offender need to be prepared to participate in this process (Braithwaite, 2002). This is especially challenging in societies with greater cultural and climatic diversity. Another major challenge in implementing restorative justice is monitoring and evaluating its effects. While early research has shown that restorative justice can help reduce recidivism and repair relationships, more rigorous evaluations to measure the long-term effects of this approach are not yet fully available. For example, the Youth Justice Board in the UK has reported that while restorative justice projects have been successful in reducing youth crime, more research and evaluation are needed to accurately assess their effectiveness on a larger scale and in different settings (Youth Justice Board, 2022). Finally, there are challenges related to accountability and rebuilding social structures. Many critics believe that restorative justice may not be able to fully restore social responsibility or produce desirable outcomes in the face of more serious crimes. For example, in more serious crimes such as murder or serious violence, some victims and their families feel that restorative justice cannot compensate for the harm caused and that more traditional punishments are needed (McCold, 2004). It should be noted that although restorative justice in the UK is recognized as an effective tool in reducing crime and repairing harm, it still faces significant challenges that require greater coordination between different judicial institutions, increased financial and human resources, and greater public acceptance of the approach.

4. Conclusion

The concept of restorative justice in English law, despite its diversity in meaning and application, has received attention in recent years. Restorative justice emphasizes reparation for the victim, holding the offender accountable, and community participation in the process of restoration. Tony Marshall's definition describes it as a process in which interested parties in a crime come together to resolve its consequences. However, some scholars believe that restorative justice should go beyond this definition and include broader measures. In England, restorative justice is rooted in historical traditions. In primitive societies, reparation was considered the main method of dealing with crimes. Over time, the state took on a major role in punishment, but the restorative concept was revived at various times. For example, in the 1960s, victim compensation programs began in Britain. In the 1970s, with the Elmira case in Canada, a new model of victim-offender mediation was formed, which emphasized direct confrontation between the victim and the offender and attempts to make amends. In the 1990s, legal reforms in the UK formalised the path of restorative justice. The Crime and Disorder Act (1998) and the Youth Justice and Criminal Evidence Act (1999) expanded mediation and reparation programmes into the youth justice system. These laws introduced new methods, such as reparation orders and young offenders' panels, which help involve the community and victims in determining how reparation should be provided. Despite these developments, restorative justice remains an evolving field, and there is disagreement among theorists and policymakers about the extent and manner of its implementation.

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