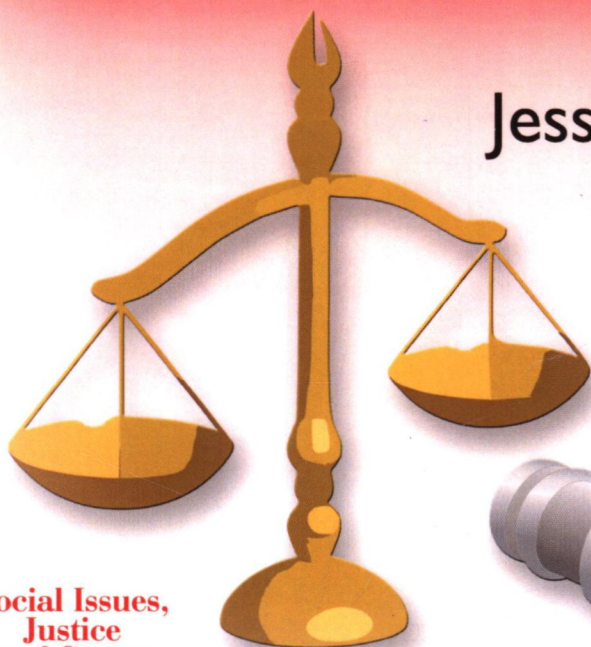


Restorative and Transitional Justice

Perspectives, Progress and
Considerations for the Future

Jessica Evans
Editor



**Social Issues,
Justice
and Status**

NOVA

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**JESSICA EVANS
EDITOR**

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PREFACE

The concept of justice covers a broad spectrum of human existential issues, and is defined according to established relationships that always put the human person as reference. Restorative justice and transitional justice fall into the wide range of attempts to explain and address injustices by seeking accountability, finding adequate sanctions that are proportionate to harm, rehabilitating the offenders, and restoring victims or even reaching an informal negotiated settlement. The authors of this book provide new research in the study of restorative and transitional justice.

Chapter 1 – Principles of Restorative Justice (UNESCO, 2002) have been integrated within educational contexts around the globe over the past two decades in response to burgeoning legal, policy and practice discourses. This chapter explores the authors' scholarship and practice-based insights evaluating and implementing Restorative Justice (RJ) programming within Canadian education contexts. Barriers to effective implementation across systemic levels include relations of power and knowledge transfer inherent in hierarchical institutions. This dominant structure is a counterforce that negatively impacts the realization of RJ principles that emphasize the central role of voice and participation of students, survivors and victims of harm in all RJ processes. In response, arguments are developed for a for a transdisciplinarity approach to RJ that enables a shift from rhetoric to social justice action. A transdisciplinary philosophical and theoretical framework) has been found to establish the foundation for decolonizing RJ and traditional relations of power and identity in education contexts.

Chapter 2 – Professional practitioners are bound by codes of ethics. When a complaint is made, a process is triggered which parallels legal processes. Codes of ethics then become a reference point for determining guilt or

innocence within a grievance process. Investigatory mechanisms used by bodies regulating professionals utilise elements which resemble the justice system, including an evidence gathering phase, prosecution, judgement, and sentencing. These functions are generally performed without the level of skills, training or safeguards associated with the legal system. The basic mode is an adversarial one, and judgements often fall within the rationale of a punitive ethos.

In this chapter a critique is firstly presented regarding the current means by which grievances are processed by relevant regulatory bodies. Alternatives approaches to addressing complaints about professionals are presented (with especial reference to health professionals), referencing restorative justice, alternative dispute resolution, therapeutic jurisprudence and other dialogical processes. The authors explore the potential for processing grievances using methods and values which are focused on the needs of the parties to the grievance (including the wider community), reconciliation and restitution, with the goals of ‘right relationships’ rather than ‘right rules’.

Chapter 3 – Restorative justice has emerged as a way of addressing harm by empowering both victims and offenders through the mediation of the community, and providing them the opportunity to address the needs that have arisen as a result of harm or violent conflict. It leads offenders to account to the victim and the community. This model of justice has become the thinking framework, with the ambition to “civilise” the Western criminal legal system, by substituting guilt and punishment with responsive responsibility and by replacing the adversarial principles of the criminal justice system with systemic restorative practices that emphasise reparation, restitution and reintegration. And restorative justice is sometimes referred to as a component of transitional justice which reflects contemporary ways of dealing with the aftermath of large scale human rights violations and related-crimes, in forging a pathway to reconciliation and nation-building. While these two justice paradigms have gained ground in their ability to address the aftermath of violence, they have been insufficient in pursuing the goals of justice in circumstances whereby social injustices have not been addressed. This chapter explores the perspectives of restorative and transitional justice; progress achieved, and at the same time, assesses their relationship with social justice where their future would lie. The main argument laid out is that the future of restorative and transitional justice rests upon their ability to integrate social justice in their agenda for a more effective conflict prevention and resolution, reconciliation and peacebuilding in transitional societies.

Chapter 4 – While communist regimes massively repressed religious communities and practice, there has been little discussion if and how religion affects transitional justice in general and lustration in particular – a mechanism that limits the political participation of former communist actors. Building upon earlier quantitative analyses, this study uses in-depth interviews with religious elites to show that the members of societies within different religious traditions complied to differing degrees with their countries' former regimes, affecting their likelihood of supporting lustration. The Orthodox and Catholic Churches played different roles in both communist regimes and in post-communist upheavals such as the Velvet and Rose Revolutions while the Muslim traditions affect lustration negatively. These traditions differently influence the values that determine receptivity to the kind of justice implied by lustration.

Chapter 5 – Despite a lively debate about its application, restorative justice today is the proposal of a new model of justice, which implies that the author of the violation, the community and even the victim, are considered resourceful and, therefore, calls for managing the conflict itself, according to different levels of responsibility. In this perspective, all the parties involved in the conflict may contribute to the identification and maintenance of resolution. One of the elective strategies of this approach, especially in juveniles, is the mediation that, besides being an operational tool, it is the driving force for introducing a cultural gap, by a paradigm of justice of the type, "sanction", to a "reparative". Mediation is not configured, as well as restoring an ideal/initial condition, but that which is "restored" is the possibility that the parties take upon themselves the responsibility for the incident and its management. The success of "mediation" is thus given the skills with which all parties face autonomously the managing of the conflict or dispute that has involved them. The Restorative Paradigm, introducing the reference to shared responsibility among all the parties, implies the possibility of increasing the level of social cohesion and is, therefore, of interest to all citizens, not only those involved in the dispute. Through the constructs of Community-holder and Social Cohesion, the present work intends to present the conceptualization of Dialogical Mediation and its practical application in the Italian territory. By means of some practical examples in a specific urban context, they will be presented to community practices that let you take action in anticipation of the interactions that generate conflict or social exclusion. In psychology, this concept developed in line with theories from the twentieth century onwards, which focus on the symbolic exchange that takes shape in the interaction between speakers through the use of language, which is understood as the

process of constructing the meaning of social action. Some of these concepts are also located in discursive psychology and critical psychology.

Chapter 6 – In analysing many of the gruesome African post-civil wars have always acknowledged the evil that the females were subjected to. In Northern Uganda, women were both victims and weapons of war. Despite the fact that Uganda's justice system adopted the Truth and Reconciliation Commission (TRC) to prosecute sexual violence (SV) as a national crime, rape continues to be a weapon of war. As a result, there are traditional and contemporary barriers to access SV justice in many African states, including Uganda. Issues regarding SV including sexual assault justice in post-civil war society has remained very sensitive. Beyond the fact that it may lead to stigmatization, the social deficit of this is yet to be deconstructed in Uganda. The dysfunctional systems of justice process cannot be seen as agency of reward. This system is usually expensive to service and maintain. This is coupled with the loss of faith syndrome in judicial systems by the SV victims. As a combination of weak judicial systems and social and economic impediment limit the prospects of a SV, this study assesses gender justice in the post-civil war Uganda. It focuses on Uganda for a variety of reasons, among which is that Uganda is the first African state to adopt TRC in 1974, and, from a gender perspective, the 1995 Constitution of the Republic of Uganda is acclaimed as being one of the only two gender-sensitive constitutions in Africa. This chapter has broader implications, as it raises questions about the relevance of the regime of justice on the victims and the perpetrator and draw lessons from this experience.

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Chapter 1

**RESTORATIVE JUSTICE EDUCATION,
POLICY AND PRACTICE:
TRANSDISCIPLINARY REFLECTIONS
ON MENTAL HEALTH IMPLICATIONS**

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ABSTRACT

Principles of Restorative Justice (UNESCO, 2002) have been integrated within educational contexts around the globe over the past two decades in response to burgeoning legal, policy and practice discourses (McCluskey, Lloyd, Stead, Kane, Riddell & Weedon, 2008; Moore, 2014; Vaandering, 2011). This chapter explores the authors' scholarship and practice-based insights evaluating and implementing Restorative Justice (RJ) programming within Canadian education contexts (Moore, 2014; Moore & Mitchell, in press). Barriers to effective implementation across systemic levels include relations of power and knowledge transfer inherent in hierarchical institutions. This dominant structure is a counterforce that negatively impacts the realization of RJ principles (Moore & Mitchell, 2009, 2011; 2012; UNESCO, 2002) that emphasize

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the central role of voice and participation of students, survivors and victims of harm in all RJ processes. In response, arguments are developed for a for a transdisciplinarity approach to RJ that enables a shift from rhetoric to social justice action. A transdisciplinary philosophical and theoretical framework (Mitchell & Moore, 2015a, b) has been found to establish the foundation for decolonizing RJ and traditional relations of power and identity in education contexts (Moore & Mitchell, in press).

Keywords: restorative justice, education, transdisciplinarity, decolonization, mental health

INTRODUCTION

Restorative Justice integrated into education settings can effectively emphasize the links among mental health, human rights, and academic achievement when it is built upon a transdisciplinary framework that accounts for the interconnection among systems, relationships and individual well-being (Moore & Mitchell, 2007, 2009, 2011a, b, in press). This is a critical and complex systems perspective that underlines qualities of agency and competency, and respect for gendered, cultural, and subjective perspectives (Mitchell and Moore, 2015 a, b). In educational contexts Restorative Justice and a transdisciplinary lens helps to decolonize (Cunneen, 2002; Breton, 2012) relations of power and identity in the same instance that mental health, safety and climates of care are promoted. This is crucial shift towards appreciating the social-cultural systems of inequity that have perpetuated a silencing minoritised voices--including Black and First Nations young peoples in Canada. In Canada, and other so called post-colonial nations, discourses that deny the greatest causes of suffering also perpetuate elevated rates of expulsion from school and the over representation of minoritised young people in contact with mental health services, social services and juvenile justice systems (Pon, Gosine and Philips, 2011; de Finney, Dean, Loiselle & Saraceno, 2011). Building upon this critical conceptual framework, this chapter presents a secondary thematic analysis of findings from a 2013 school-based Restorative Justice study in Canada. The dataset included a systematic review of legal and policy documents, and qualitative and quantitative results contributed by 300 participants from 60 schools in 14 rural and urban contexts Canada. This multifaceted evidence-based investigation aimed to ascertain leading practices for successful implementation of Restorative Justice in education and uncover barriers to effective practice (Moore, 2014).

As a scholar and mental health professional, with experience in education, justice and community-based practice contexts supporting children, young people, their families and caregivers, I author this chapter from a critical pedagogical standpoint and commitment to translate professionally-based knowledges into theoretically and pedagogically congruent research and teaching programs. This process is a product of adopting the Greek term *praxis* to delimit my translation of theoretical knowledge to practice and social justice. Praxis is a term commonly seized by critical educators inspired by Paulo Freire's (1970, 1999) teaching and learning philosophy. This term is defined as any activity that combines theorizing with practice, and thought with action, for emancipatory purposes. Secondly, a *transdisciplinary* point-of-view has shaped my scholarship in response to the fragmentation and disciplinary myopia encountered in academia, justice, education and mental health services (Mitchell, 2003, 2007, 2013; Mitchell & Moore, 2012, 2015a,b; Moore and Mitchell, 2008, 2009, 2011a, b; Moore, 2004, 2008, Moore, Tulk & Mitchell, 2005). Leavy (2011) astutely acknowledges that transdisciplinary research practices have emerged within the context of "a confluence of extraordinary changes within and beyond the academy" (p. 36).

In Canada, there is a building urgency that can no longer be ignored regarding provision for, and promotion of, child and youth mental health services. Recent Canadian reports from Children's Mental Health Ontario (CMHO) confirm that 70% of mental health issues emerge at adolescence and it follows that education settings are most often the venue in which the first signs of struggles with mental health, physical health, and behavioural and relational health appear (CMHO, 2015). Still, the provision of mental health has been narrowly defined by some as diagnosis, interventions focussed on medication or referral to agencies that are separated from educational systems. Where therapeutic interventions for children and young people are concerned educational systems, protection and youth justice services are most often restrained influenced by modernist medical-model frameworks (Moss & Petrie, 2002) that strive for control through neat categorization and oversimplification (ie: normal or abnormal; health or sickness; right or wrong; good or evil). When considering alternatives, it also appears reasonable to adopt an ideology based upon congruent theoretical and empirical understanding of how children grow through complex and contextualized interactions within their families and their communities (Hassett & Stevens, 2014; Christensen & James, 2000; James & Prout, 1997). Appreciating the role of complexity makes it possible to abandon cause-effect thinking (Hassett & Stevens, 2014) and make room for new knowledge formation. The

increasingly globalized debate about mental health interventions among all professionals working with children offers perhaps the most salient context for arguing for a continued evolution of school-based interventions for resolving conflict, particularly when educational systems begin to intersect with youth criminal justice systems. By advancing a pluralistic, multi-systemic appreciation of adult-child power relations within and across education and justice contexts, the move towards more effective interventions is posited for all programs framed with pro-social principles for mediating mental health and youth criminal behaviors (Moore & Mitchell, 2009, p. 28-29).

TRANSDISCIPLINARY STANDPOINT

The transdisciplinary standpoint that frames this chapter is an integrated conceptual approach that holds *praxis* as a minimum standard (Moore, 2008; Moore & Mitchell, 2009; Moore & Mitchell, 2011a) while affirming that transdisciplinarity is “a way of knowing that will be essential in the 21st and later centuries” (Koizumi, 2001, p. 219). The most critical problems humanity faces today are complex problems, observe Apgar, Argumedo and Allen (2009, p. 255), and they contend our times are “characterized by high levels of uncertainty, multiple perspectives and multiple interlinked processes from local to global scales.” British sociologist and childhood theorist Alan Prout (2001, p. 19) echoed these concerns when he observed we “live with the knowledge that modernity’s project of rational control has limits. The mood is more cautious and reflexive about the status of our understanding, more aware of the complexity of nature and society, more alert to the unintended consequences of our social actions and less sure of our social institutions.” Further linking childhood theories to complexity Hassett and Stevens (2014) invite praxis that holds a deep appreciation of “how complex adaptive systems work and to envisage the world of children as a web of possibilities” (p. 111).

Professional practice with children and young people can capture these epistemological and methodological shifts while aiming to resolve complex social problems in educational contexts. Such approaches are increasingly being mirrored in academic literature related to the social sciences, climate change, humanities, healthcare, and traditional scientific journals under this rubric of ‘transdisciplinarity’ (Brown, Harris & Russell, 2010; Giroux & Searls Giroux, 2004; Holmes & Gastaldo, 2004; Koizumi, 2001; Leavy, 2011; Mitchell, 2013; Nicolescu, 2002; Russell, 2000; Visser, 1999). Arguing in this discourse, Freirean critical pedagogues Giroux and Searls-Giroux (2004, p.