

ARTICLE

Fertile restorative ambiguities

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1 For regular definitional revolutions

Had physicists been polled in 1904 on how to define energy, many divergent conceptualisations would have been proffered. An obscure young Albert Einstein might have replied that he was not sure yet but was interested in the thought experiment of redefining energy as mc^2 . No one, including Einstein, would have proffered the most fertile possible definition, but physics benefitted from contested conceptualisations. There is a view of science that progress depends on a consensus on consistently defined definitions of concepts. Ask twenty scientists of robotics what a robot is today, and you may get twenty different answers. Ask biologists what an organism is, and you will get diverse views. Definitional dissensus at the critical frontiers has not held back robotics or biology from breakthroughs at levels that elude social science. Digital conceptualisations might have served science well, figuring in definitions of what a computer was during the twentieth century. The era of quantum computing has arrived to transcend the digital foundations of what computing is with breakthrough foundational conceptualisation.

In social science today, big thinkers and theory builders operate in a different way than in the past. When they seek to lay foundations for their theories in what their field already knows, the facts any theory should fit, many go to Google Scholar to search out systematic reviews. They scan for propositions that might come to stake a claim as potential foundational knowns. This is a good practice. It is different from the search practice for seeking inductive empirical foundations before Google Scholar, before the decades when systematic reviews and the Campbell Collaboration took off.

One of the ways to reconstruct restorative justice theory might have as a starting point interrogating systematic reviews by putting the word ‘meta-analysis’ or ‘systematic review’ into Google Scholar in combination with the words ‘restorative justice’. Based on qualitative observational experience of restorative justice, and wide reading, the assiduous theorist might then enter into Google Scholar concepts that are candidates for their theory, like procedural justice, narrative therapy, transformative mediation, motivational interviewing and concepts mentioned by Lode Walgrave in this issue of *The International Journal of Restorative Justice*, like authoritative parenting versus authoritarian, punitive

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parenting, or positive schooling. That is not to say that all this social science reading will provide most important answers. Indeed, we might go so far as to say that as useful as this strategy is as a starting point, it is akin to scoping a concept by looking it up in Wikipedia or with help from generative AI. Doing that can be one of many forms of valuable initial scoping, based as wikis are on the minds of diverse and conscientious contributors. Initial scoping is all it is, however. Theoretical breakthroughs involve breaking out from much of that consensual understanding.

The best theorists, like Einstein, move beyond all kinds of plurally responsive and evidence-based scoping. We do well to read discursive exegesis, unpacking and reconfigurations of the evidence. This is because we want to range widely, critically, across conceptualisations of our proposed theoretical building blocks. As my colleague, Yan Zhang, argues, we might be unwise to dismiss restorative justice in China as ‘not restorative justice’ because it is so captured by the Communist Party in the way it promotes ‘harmony’ as part of the move away from China’s ‘Strike Hard’ policy (Zhang, 2022). We should not refuse to read the theorising of Confucius, when, uniquely among influential ancients, Confucius emphasised keeping as many justice disputes as possible out of courts of law, by relying instead on gentle, healing, relational justice. Zhang is persuasive that we do well to instead see Chinese restorative justice as a ‘discourse in the making’, from which positive as well as negative lessons might be drawn. We can jump off the horns of the dilemma of essentialising Chinese restorative justice, or on the other hand, of dismissing it. We can learn from the greater impact of restorative practices in reducing Chinese imprisonment rates, impacts that cannot be observed in the West (Zhang & Xia, 2021). We can ponder some of the empowerment of Indigenous justice in China that in certain ways runs deeper than in the West, and more.¹

2 Applying Lode Walgrave to the interpretation of meta-analyses

We learn best from meta-analyses when each of them clearly defines the parameters for including research in the analysis as instances of the theoretically relevant concept. This is where Lode Walgrave and I share core agreement on what is required for science to progress; this is actually Lode’s central, invaluable message, one that we should embrace.

Very often we learn most, however, when separate meta-analyses use different clear definitions. We learn when revealingly disparate conclusions are reached as the definitions of inclusion criteria are varied. This is one reason for my qualifications in response to the balanced, elicitive reflections of my admired friend Lode. What social science needs is moments of disambiguation of concepts into crystal clear definitions, yet also many moments of bold, variegated ambiguations. It helps to include variegation in how precise its operationalisation is. This is because we know empirically from test-retest studies of reliability and validity that even with measuring compliance with the law itself, sometimes broad and vague conceptualisation of what compliance with the law means has higher reliability and

1 See Zhang’s (2022) discussion of Indigenous De Gu mediation in China.

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validity than narrow and precise conceptions of compliance with rules (Braithwaite & Braithwaite, 1995). In the face of the socio-legal evidence, philosophers and lawyers continue to embrace the legal fiction that precise definitions of rules always make for greater reliability or validity. Lode Walgrave's key argument is that good methodology is based on good conceptualisation. 'Good research on restorative justice must describe unambiguously the object of its investigation' (Walgrave, this issue). I agree. My qualifications simply go to the following suggested tweak of Kathleen Daly, who is approvingly quoted by Lode Walgrave: 'Without a definition [replace with "*definitions*" plural] of RJ that can be applied and assessed empirically, we are bobbling on a raft in a sea of hopes and dreams' (Daly, 2022: 33).

Many of us reject narrowing the application of those definitions to the criminal legal system. Lode Walgrave has been a leader in actively nurturing young restorative scholars to research these domains. With environmental regulation, restorative justice has relevance to inspections and civil legal processes, as well as to criminal processes. Many educators reject narrowing the conceptualisation of restorative justice to criminal offending in schools or disciplinary problems like forms of bullying or sexual harassment that may or may not be criminal. They seek restorative justice that addresses wider challenges in addition to these. They want restorative justice in schools, or restorative practices, if they prefer to so define them, to also have the social justice objective of improving educational outcomes, especially for disadvantaged minorities; for example, the sub-objective of reducing punitive suspensions and expulsions from education, especially for the truly disadvantaged.

That said, in the case of restorative justice in criminal justice, I know of eight meta-analyses (discussed in more detail in Braithwaite [2021]) that reach a surprising degree of similarity of conclusions from their aggregative contributions. Although there are inconsistent results among individual studies, the overall effect sizes across different meta-analyses, utilising different conceptions of restorative justice, and different methodological strictures, come up with similar crime prevention effects – significant, yet sometimes small, often modest, statistically significant effects. For many restorativists (including me), crime prevention is not as important as some other outcomes such as suicide associated with injustice systems. These eight meta-analyses with divergent inclusion criteria say different things about other outcomes, with some showing high cost-effectiveness and higher victim benefits than offender benefits (e.g. on PTSD and diverse other victim impacts; see Strang, Sherman, Mayo-Wilson, Woods & Ariel, 2013). Lloyd and Borrill (2020) is a systematic review that shows significant victim PTSD benefits but does not measure reoffending effects; other meta-analyses do not address these kinds of outcomes at all.

3 Flight from ambiguity

University of Chicago anthropologist Donald Levine's (1988) perspective is that social science disciplines are overly timid about learning from playing with ambiguity: scholars retreat too soon in a 'Flight from ambiguity'. Let me proffer a

seemingly banal illustration from mainstream criminology. ‘The imprisonment rate’ might count as a concept so simple that it has been defined consensually in the eyes of criminologists. As a consequence, criminologists argue that some scientific consensus about the effectiveness of imprisonment has been enabled. The imprisonment rate is also an important concept, clear and ‘bread and butter’ for criminologists. Today nutritionists suggest we should consume less bread and butter. In definitions of the imprisonment rate, however, do unsentenced defendants who are on bail count as part of the imprisoned population, or do they not, or should unsentenced suspects count differently if they are housed in a police lock-up or a jail rather than a prison?

Two distinguished quantitative criminologists made an important theoretical and empirical advance by ambiguating ‘the imprisonment rate’ around this distinction. Charles Loeffler and Daniel Nagin (2022) published a more quantitatively sophisticated systematic review than many predecessors, yet one that came up with rather similar outcomes that are now a part of the familiar criminological consensus. This is that most studies fail to find a significant effect of the postconviction imprisonment rate on crime rates. Some do to a degree show that more imprisonment is associated with less crime, particularly with data from Scandinavian prison systems or other contexts with high investments in rehabilitation; some other studies find that more imprisonment is associated with increased crime. This is the familiar consensus – most studies showing no significant effects, and some showing effects but in opposite directions. Overall conclusion: the postconviction imprisonment rate may never play a big role in explaining the crime rate.

The most interesting thing this systematic review does, however, is ambiguate the ‘imprisonment rate’ concept into pre-sentence defendants occupying cells and post-sentence prisoners. Loeffler and Nagin find that high rates of unsentenced imprisonment in most studies are associated with significantly increased crime. Results for pre-sentence prisoners rather unambiguously show that more imprisonment results in more crime. It is only with post-conviction imprisonment that there is an ambiguous mix of studies showing that the imprisonment rates make no difference to the crime rate, though they can make it a bit worse or a bit better, depending on which study you look at. From my *Macrocriminology and Freedom* perspective (Braithwaite, 2022), this means that on a planet where many countries have 50 per cent or more of their prison populations unsentenced, getting those unsentenced defendants out of prison is the low-hanging fruit for reducing crime, while at the same time increasing freedom and justice.

This journal reported research on how a restorative justice programme in Bangladesh made a useful contribution to reduce unsentenced imprisonment (which accounted for 74 per cent of the Bangladesh prison population before 2014) (Braithwaite, 2015). At quite low cost, this programme quickly succeeded in the release of at least 8,000 unsentenced prisoners and helped the government of Bangladesh move towards becoming a low-imprisonment society,² with its policy

2 The Bangladesh imprisonment rate per 100,000 was 45 in 2014 and 46 in 2022, declining from a peak of 59 in 2008 (World Prison Brief, 2022).

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of cutting its imprisonment in three years by 15 per cent and by 50 per cent for the number of women and children in prison. That was an important social justice outcome for scholars who commend social justice (or perhaps domination reduction, to be more theoretically precise) as an objective for a restorative justice intervention. My theoretical hypothesis here continues to be that social justice and restorative justice are empirically correlated (Braithwaite, 2003). That is refutable by new and better research than was available in 2003. To my knowledge, critics of the ‘incipient holism of justice’ hypothesis have not since then collected the data to refute it. It is a theoretical position that should of course be revised, however, when such data are discovered, as they might well be.

It would bore readers to juxtapose my previously expressed views on the definition of restorative justice, which tend to embrace ‘espresso’ definitions like Lode Walgrave’s that are hybrids of restorative process and core restorative values. Nor will I juxtapose views on the relationship between explanatory theory as ordered sets of propositions about the way the world is and normative theory as ordered sets of propositions on the way the world ought to be.

Defending theoretical propositions on the merits of the concept of restorative capital might also not be important here. This is quite a different matter from the conceptualisation of restorative justice. We might simply make the same point about it: empirical work on different conceptions of capital is needed. A first step can be theoretical ambiguation of the concept of capital and its explanatory power. The definitional distinction is rather clear between financial capital (which is about money) and human capital (which, in the hands of economists, is about human attributes like educational attainment). Moving on to different conceptualisations of social capital, the definitional distinctions become more ambiguous, as illustrated by the divergent theorisations of collective efficacy in the writings of the leading psychologist of social capital, Albert Bandura, compared with collective efficacy in the work of criminologists like Robert Sampson, and in how a new generation of criminologists like Patrick Sharkey take the concept (Braithwaite, 2022: 361-368; 609-613). Then there is empirical merit in distinguishing recovery capital as a form of social capital more tightly coupled to rehabilitation and desistance effects for crime and substance abuse (another great contribution to social science validated by Groshkova, Best and White [2013]). Finally, I hypothesise that restorative capital might also be distinguishable due to its emphasis on relational emotional capabilities, as opposed, for example, to the more instrumental interventions to prevent crime in Sampson’s conception of collective efficacy. Then perhaps Sharkey’s more grassroots democratic community empowerment conception blurs this divide. These theoretical reflections again might be proven wrong and, therefore, should be jettisoned. I submit that good science in the factor analytic tradition is what is needed to test the factorial structure of social capital, and/or the clustering of capital variables, or clusters of types of people as opposed to types of variables, in ‘normal science’ ways. This is bound to look very different from the empirical clustering or the factorial structure of types of justice, as illustrated by the correlated but different facets of procedural justice, which are usefully separable yet correlated and incipiently holistic with restorative justice and other important kinds of justice.

A final point about why social scientists should resist the flight from ambiguity is that it is important for definitions of a concept like restorative justice to remain open to empirical contestation. Consider the controversial proposition that forgiveness should be a core restorative value. One good argument against that is that forgiveness does not empirically occur in most Western restorative justice. I do not review the rapidly growing, yet well-traversed, literature on forgiveness. The point that matters here is that a definition that made forgiveness a necessary condition for restorative justice would mostly define it out of existence in the West. On the other hand, it becomes increasingly apparent that Westerners are a peculiar minority of the planet in how unforgiving they are. For example, empirical study of hybrids of contemporary Western thought on restorative justice and shura/jirga traditions of Central and South Asia, and former parts of the ancient Persian Empire, reveals consensus among restorative practitioners that forgiveness is vital and recurrent. In North-West Pakistan, for example, forgiveness has been found to be almost universal as an outcome and a defining ideal of justice. The evidence seems to favour the non-Western side of this argument. Forgiveness is good for people, being preventive of suicide, poor mental health, and it saves lives in other ways. If lives are a desired thing to restore, then perhaps forgiveness should be a core restorative value. Empirically, forgiving people also enjoy hearts that pump more healthily and have happier marriages. Of course, there can and should then be a feminist critique that strengthening marriage strengthens patriarchy and must be contested. If we believe that domination prevention is a fundamental value, then this contestation, and the way it drives definitional ambiguity, is something to embrace.

4 On contemplating coups

Diverse fine scholars will doubtless respond to other aspects of Lode's thoughtful contribution on these fundamental questions. It is a wonderful service to our intellectual journeys for Lode to raise his provocations. He can be proud of his decades of helping to create the conditions he worries about today. At the same time, he should take pride in contesting that accomplishment today with the provocations in this Special Issue. Those of us who are attracted to a broader conception of a social movement for restorative justice might congratulate criminology for being so central to inventing and testing philosophies and practices that have richer, wider applications today. Restorative environmental justice is mostly not criminal justice, yet it is something that Lode lauds. Environmental justice institutions matter in being more fundamental to our survival than criminal justice.

The biggest diffusion is to educational institutions. By 2017, 30 per cent of K-12 schools in the United States had a restorative justice programme according to the U.S. Department of Education records; by 2022 that had doubled to exceed 60 per cent (Wang, Kemp & Burr, 2022: 16). A particularly exciting thing is that these and other data reveal that adoption of restorative justice through positive schools

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programmes is wider and deeper in non-White and inner-city schools.³ While criminology can be proud of doing significant 'research & development' relevant to this, many of us hope that there will be more fertile soil for restorative criminal law in a future society where judges, prosecutors, police and lawmakers have learned about restorative justice during an education that opens their minds to restorative ways of living as opposed to a punitive approach to education, to family life, to workplace discipline, international relations and more. Restorative justice in commanding heights in corporate and state institutions is more likely to flourish when the citizenry views restorative justice as a way of living that embraces restorative rituals of everyday life, as an alternative to the shout or the strap. Our

- 3 Baltimore was an important site of restorative justice innovation in the early 1990s. Today much of the Baltimore restorative justice action is less white and more centred around work in schools. The Positive Schools Center is led by Baltimore African American school principals. It also trains community-based 'violence interrupters', locals who are street workers, in restorative practices. It likewise trains the University of Maryland police in restorative practices, who also have responsibility for policing the non-university community of the City of College Park. Their most inspiring innovation is in schools. One of their schools is the only place I have found a school that is doing something that takes on the full social justice challenge of implementing the idea of youth development circles (Braithwaite, 2001). The Positive Schools Center transcends those ideas with insights and praxis far in advance of those thoughts from two decades ago. Their contemporary insight is that, before children in some truly disadvantaged communities can be supported to achieve their career ambitions, restorative education must allow them to discover their own path to believing that they can have career ambitions. Significant feminist leadership for the restorative justice movement comes today from the Erin Levitas Initiative for Sexual Assault Prevention associated with the University of Maryland Law School. Erin Levitas had been accepted for admission to the law school but died in circumstances connected to her sexual assault victimisation in high school. She wanted in her law career to contribute on preventing sexual assault. The Levitas Initiative is driven by the evidence-based analysis that high school sexual harassment is a gateway to high school sexual assault, which is a gateway to sexual assault in higher education, workplaces and the wider adult community. The idea is that early restorative prevention and learning in schools will therefore be effective prevention that closes the early pathways to gendered violence. These Baltimore grassroots programmes blur the distinction between better, more empowered schools and more empowered communities. Adults who have no children in these disadvantaged schools are actively encouraged to join in the community problem-solving led from the schools and to use school facilities. It may be that most hope for discovering better ways to prevent crime and promote justice among the truly disadvantaged (Wilson, 1987) of Baltimore, who experience crime rates as high as they get in the United States, is by their learning from restorative justice that emanates from seeding grassroots problem-solving in the hands of centres like the Positive Schools Program and the Levitas Initiative.

error was to start the social movement in the wrong place with the justice system.⁴ Even though it might have been better if more of the research funding had been concentrated on education than on criminal justice, we can still be satisfied that worthwhile things were done with criminal justice 'research & development' towards making the criminal injustice system a bit less unjust, a bit more effective, and laying a foundation for something more transformative for the future.

Perhaps we should consider righting our wrongs by fomenting a coup within *The International Journal of Restorative Justice* to remove all criminologists from our Editorial Board 😊. Educational institutions and peacemaking institutions for armed conflict may be more important for the intellectual imagination and concrete

4 We can also recognise that these developments have more complex histories than the criminological narrative that restorative justice reaches take off at the hands of figures like Howard Zehr, whose initial interests were in criminal (in)justice. Howard's early work was profound and influential. Ted and Susan Wachtel were also starting to lay foundations for their restorative schools in Pennsylvania, and foundations for what was to become the International Institute for Restorative Practices, in 1977. Family group conferences for advancing both child protection and youth justice developed in New Zealand and then diffused to Australia not as 'restorative justice' but as 'family group conferencing'. As Lode Walgrave points out, Indigenous histories of justice innovation are vastly older still and dimly understood in Western scholarship. More importantly, they remain underappreciated for their pre-colonial separations from restorative justice (Tauri, 2009), even as Indigenous insights from Africa and Asia to the Americas have so enriched restorative thought. Around 1991, New Zealand and Australian leaders of the movement independently came to the conclusion that it made sense for family group conferencing to go with the North American brand 'restorative justice', so innovation in the Antipodes, which was quite different from North American innovation, could contribute to a global social movement for restorative justice. Many New Zealand judges, notably the New Zealand Chief Justice of the Youth Court, Mick Brown, who was a Maori elder, were influential in these early Antipodean conversations about the vices and virtues of submitting to the North American brand. One kind of innovation that was important in Australia from the 1980s was with what later came to be called 'restorative justice' for corporate crime (Parker, 2004); again, during these early experiments in regulatory restorative justice, restorative justice was not initially how they were described. In many ways, the 1980s and early 1990s were a period when New Zealand and Australia made particularly rich contributions to what came to be known as a global social movement. Without calling what they were doing as 'restorative justice', their experiments fitted most of the competing definitions of restorative justice proffered from the North during the 1990s and 2000s. Just as Yan Zhang (2022) argues for China today, in New Zealand and Australia during the decade around both sides of the turn of the century, restorative justice was a 'discourse in the making' that mattered. There was a green environmental justice Restorative Cities movement that pre-dated the different kind of Restorative Cities movement that initially grew in Europe out of restorative justice. Mainstream criminologists now embrace the green Restorative Cities movement quite independently of restorative justice because of a considerable volume of quantitative criminology confirming that cities with more trees, cities where abandoned blocks are turned into mini-parks or vegetable gardens with shade, achieve lower crime rates and improved mental health compared with treeless cityscapes. Many of us are opinionated about these matters, yet authoritative historiography on separate but related strands of the complexity of restorative evolution is yet to be researched. In tribute to Yan Zhang, I hope a definitive history might be subtitled *Restorative discourses in the making*.

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progress encouraged by the journal than institutions of criminal justice.⁵ Criminologists could perhaps be banished to publish in criminology journals!

The trouble with such a coup, as a counter-provocation to our beloved Lode, is that so much of the most profound wisdom about restorative justice still rests in the minds and hearts of Lode Walgrave and those who follow the aspect of his thought in contention here. We can embrace criminologists while recognising that for all the injustice criminal legal institutions can fester, they are not as important as failed punitive modalities for settling international conflicts that might cascade to ecocide and genocidal razing of entire human civilisations by nuclear weapons. We can be convinced about how important it is to transform criminal injustice systems that are such major drivers of poverty, racism and suicide in all countries, while conceding that education institutions are even more important to these outcomes because most of us spend so many years coping with the injustices of education institutions for ourselves, our peers, our descendants. Lode Walgrave agrees that restorative justice ideas and innovations may have something to contribute to reinvigorating many institutions. Hence, let us mend this dispute in a restorative peacemaking between Lode's provocations and its counter-provocations, perhaps over a Belgian beverage. Such rituals always prove effective in restoring our embrace on the Advisory Board of *The International Journal of Restorative Justice*, despite the way criminological training has corrupted us 😊.

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5 My forthcoming book argues that 'restorative diplomacy' helps with survival of humans and other species when it is an alternative to stigmatisation, shouted name-calling and shooting at enemies. This is a 2024 book, *Simple solutions to complex catastrophes: dialectics of peace, climate, finance, and health*.

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