ARTICLE

On Lode Walgrave's concerns about the meaning of 'restorative justice': a response from Tanzania

*Julena Jumbe Gabagambi**

1 Introduction

Defining restorative justice has often been problematic because authors have come up with different interpretations. Lode Walgrave (this issue) has offered a good appetiser on restorative justice and what the concept entails. Walgrave reasoned that the paradigm was meant to apply to punishable matters only, but reality on the ground reflects that it can be applied in many more settings, such as schools and workplaces. It is against this backdrop that the following article reflects on Walgrave's concerns by indicating some of their strengths but also weaknesses. Walgrave presents a historical background of restorative justice by indicating that the paradigm's roots are going back to Navajo and Maori communities. Such evidence, however, does not consider the African restorative justice practices which might not have been named as such but are what is currently being referred to as restorative justice. Thus, in reflecting about the contentions around what the paradigm entails, African contributions on the development of restorative justice should be considered with an understanding that Africa has oral histories which might not have been exposed to some of the authors who have written on restorative justice. Another challenge revolves around defining when restorative justice started to be used. Facts remain that restorative justice was in place in almost all communities around the globe only to be replaced with the conventional justice system (Peacock, 2023).

It is to this end that Roche (2001) argues that as fake goods might tarnish the good image of a product's brand, the same might happen to restorative justice if a proper meaning of the concept is not given. As the contestations go on, Johnstone and Van Ness (2007a) argue that it is better to continue the debate on what restorative justice is, but to do so in a manner that is in line with the agreed principles of restorative justice. These principles include respect, voluntarism, neutrality, safety, accessibility and restoration (Restorative Justice Council, 2012). However, Walgrave (this issue) thinks that not all conflict resolutions require the use of restorative justice because some issues are by definition not meant to take the 'restorative justice' route, rather, only criminalisable matters that use criminal procedures are to be considered.

* Julena Jumbe Gabagambi is a Senior Lecturer in Law at the University of Iringa, Iringa, Tanzania.
Corresponding author: Julena Jumbe Gabagambi at Julena.8@gmail.com.

The International Journal of Restorative Justice 2023 vol. 6(3) pp. 426-439
doi: 10.5553/TIJRJ.000188

In contrast, Zehr (1995) purports that restorative justice involves a radical renovation and is not meant for just reforming the criminal justice system – rather, it is a way of transforming the entire legal system, family lives, political practices, and the conduct of people at work. On his side, Braithwaite (2003) adds that restorative justice is meant to be applied against injustices of all types; the restorative paradigm should not be understood as one aimed at just reducing criminalities, because such an understanding would impoverish its core mission. He clarifies that restorative justice is meant to offer practical guidance on how communities can take part in resolving conflicts that affect their well-being.

Pranis (2007) asserts that the development of restorative justice should be able to accommodate new practices that can be considered to be restorative. Pranis's thinking aligns with Johnstone and Van Ness (2007) who reiterate that despite the growing recognition of restorative justice around the globe, its meaning has been vaguely understood by people, including by academics. Walgrave (2008) and (2023), nevertheless, maintains that restorative justice is an option used after the commission of a crime that seeks to repair relational, social and individual harm caused by the wrongful act. And, indeed, there is a general understanding among restorative justice proponents that the paradigm is meant to change the way societies respond to crimes and related forms of troublesome behaviour (Johnstone & Van Ness, 2007b). Still, the relational view of justice is grounded in the idea that when wrongdoing takes place, not only is the victim harmed, but also the connections with others in the community (Boudreau, 2013). Unsurprisingly, restorative justice advocates generally accept that crime is not only a violation of the law, but that it also undermines human relationships (Zernova, 2007).

From an African perspective, lives are communally and socially lived; hence, communities are built on a sense of cooperation; social ties permeate everything from weddings and burials to conflicts. It is from this kind of cooperation that the concepts of *Ubuntu* (Mangena, 2015: 1) and *Utu* (humanity) (Nyerere, 1998: 77-80) emanate, from South Africa and Tanzania respectively, because the terms mean that a person is a person because of other human beings. Hence, in the case of African cultures, the meaning of conflict resolution is unique, and emphasis is placed on the restoration of communal ties and relations after a conflict.

Indeed, building peace and social harmony in communities is the main goal of African conflict resolution mechanisms and traditions (Ademowo & Nuhu, 2017). Surely, if criminal justice systems are meant to spend billions of dollars to deal with anger and hatred, then the system might remain as it is. But if the aim is to have safe and peaceful societies, then another way of dealing with wrongdoing has to be looked at (Reilly, 2019). It is to this end that we learn about Africa's practices, whereby conflicting parties in Africa eat or drink from the same bowl and dance together after the resolution of conflicts or disputes. Again, these are powerful symbols indicating that African systems and mechanisms are aimed at restoration of communal relations (Gabagambi, 2020). Surely, Mangena (2015) adds, the roots of restorative justice are deep in Africa and the concept is incomplete if it lacks the *Ubuntu* concept and the element of African Indigenous justice system. Hence, the understanding of what restorative justice is depends on the kind of narratives that

one has been exposed to about what this paradigm entails, as well as on which restorative practices one has witnessed (McCold, 1998).

Apart from the definition dilemma, there has been further confusion regarding who coined the term 'restorative justice'; the majority believes it was Albert Eglash (Maruna, 2014), but contrarily, Skelton provides evidence that the term has roots in German (2005). Both understandings ignore the oral evidence of the use of restorative justice in Africa.

However, albeit oral, restorative justice was and remains an African reality. Indeed, as Omale argues, the conversation on restorative justice cannot be complete without touching on African practices (Omale, 2006). For instance, the Kinga of Tanzania practiced *lugono*, that is, restorative justice, whenever there was a conflict and, in the end, all parties had to eat and celebrate together, marking the end of a conflict (Ilomo, 2013). Thus, the documented claims that restorative justice was introduced by the Maori or Navajo (Walgrave, this issue) misses information from African restorative justice practices before colonialism. Indeed, restorative justice practices can be traced to pre-colonial and Indigenous practices of conflict resolution around the globe (Weitekamp, 1999). According to Weitekamp and Parmentier, this confusion on the origin and meaning of the restorative justice concept could have been avoided if researchers had carried out a deep analysis on its history (2016: 142).

2 Is restorative justice applicable to criminal matters only?

Walgrave (this issue) reasons that restorative justice should not be extended to cover other issues which are not criminalisable, such as conflicts in schools or workplaces, because, to him, that approach will make restorative justice impossible to research and vague. He questions extending restorative justice to cover schools' disciplinary committees, given that, in his opinion, the paradigm is meant to cover criminalisable matters which qualify for criminal procedures. In other words, in his article, Walgrave refutes the use of restorative justice in schools or in workplaces, because the nature of such conflicts is to follow disciplinary rules and not criminal procedure rules.

One the one hand, I agree with Walgrave that disciplinary issues are less serious than criminal matters. However, on the other hand, the principles and values of restorative justice can still be used in workplaces or schools, because a student who misbehaves towards a teacher in class, for example, has to be disciplined by the school authorities, parents and other teachers. Walgrave argues that this should not be called restorative justice; the European Forum for Restorative Justice defines restorative justice as

> an approach for addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved (European Forum for Restorative Justice, 2021: 11).

The reason for calling such actions in schools as restorative justice revolves around the fact that there must be a good relationship in the classroom between the teacher and a student; the failure of this could result in the students finding it difficult to grasp important points from the teacher. Restoration of relations between the two, thus, is of paramount importance. To learn from Ryan and Ruddy (2015), the application of restorative justice in school settings is meant to be an alternative to the traditional ways of disciplining students, such as suspensions or exclusion. Such practices might lead to more harmful experiences than the intended aim of reshaping the offender.

Moreover, there are students who might be going through tough times in their families, and the place where they can openly tell their problems is at school. Therefore, when done properly, restorative justice practices in schools can lead to healing, and may also prevent students from committing further offences (Wadhwa, 2016). This would mean that restorative justice practices could be used preventatively. Indeed, restorative justice can also be seen as a preventative approach in tackling issues that could be criminalized if measures are not taken at the earliest stages. It is important to note that restorative justice practices are mostly accepted for their role of restoring healthy relationships and for the purpose of empowering individuals and their communities (Morrison and Ahmed, 2006). That is, restorative justice assesses students' manners via relational restoration (McCluskey, Lloyd, Kane, Riddell, Stead & Weedon, 2008). Its emphasis is on meeting students' needs instead of punishing them (Vaandering, 2010).

Walgrave suggests that we should avoid mixing all goods in one box called 'restorative justice' when some might belong to other boxes. As mentioned earlier, according to him, the application of restorative justice only relates to criminalisable matters that call for criminal procedures and nothing else. And despite having given a good clarification on what amounts to criminalisable matters, it remains indisputable that restorative justice is not a *new* approach of handling criminal matters. It is rather a revival of the justice mechanisms that were in place before the modern conventional justice system was edified around the globe (Weitekamp, 1999). In fact, restorative justice re-emerged to respond to the marginalisation of direct stakeholders, especially victims who were forgotten, as well as offenders who were not made to account for their actions. Similarly, the community's involvement in the process was slowly negated compared to the situation before the emergence of the conventional justice system (Zehr, 2005).

Restorative justice shifts justice roles from the state to individuals who in actual sense own the conflict (Christie, 1977). Hence, the need to have them in the process of finding a response to a criminal wrongdoing (Umbreit, 1994: 162). And the fact that a conflict does not involve professionals such as police, courts or prisons and another setting is used, does not make an act less criminal. It only means that there is a paradigm shift: instead of having everything dealt with by the state and its criminal justice organs, other means can be used to tackle criminal acts. Johnstone and Van Ness (2007) suggests that the involvement of the community in solving conflicts is important because the task of conflict resolution cannot be left to the professionals and the state only. Importantly, the community

should share their views on how to end conflicts affecting them (Johnstone and Van Ness, 2007b).

In the case of Africa, most ethnic groups have their own ways of handling criminality without following the procedure that Walgrave suggests. Among the Maasai of Tanzania, when a person murders another, the first reaction is to report the incident to the elders. Once that is done, the offender's clan must approach the deceased family with eight cows and ask for forgiveness, then the offender's clan has to find, within the period of one year, 39 cows in cases where the deceased is a woman and 49 cows where the deceased is a man. In cases like this, the process involves the whole clan for the reason that when the dispute is not settled according to their customs, calamities befall the whole clan. After the expiration of one year, the victim and the offender's sides meet, and the cows are presented to the deceased family followed by celebration and reconciliation (Gabagambi, 2022). The *Gacaca* courts in Rwanda succeeded in resolving many conflicts by using the Indigenous practices. *Gacaca* are meadows where people would sit and deliberate on what led to the conflict, about the consequences and how to heal the injured individuals, how to help perpetrators ask for forgiveness and be accepted back into society. Facts indicate that *Gacaca* courts resolved around two million cases whereas the International Criminal Tribunal for Rwanda dealt with one hundred cases (New Times Reporter, 2012).

In Kenya, Indigenous practices may be legally used to resolve criminalisable matters such as murder – which is contrary to Walgrave's suggestion of abiding with criminal procedure in handling criminal matters. Article 159 of the Kenyan Constitution allows the use of customary laws in courts of law. As practiced, customary laws do not follow criminal procedures as Walgrave envisions in this issue, yet conflicts are resolved and communal relations are restored. Actually, some of the colonialists knew that Africans had rich customs but continued to preach their laws at the expense of African laws (Hamilton, 1935).

Surely, to date, Kenyan courts have proved that customary laws, though not following the criminal procedures to the dot, can still be used in resolving conflicts. For instance, Judge Edward Muriithi, from the High Court of Kenya at Kabarnet, in the case of *Nelson Kandie v. R*,[1] heeded the joint application by the accused and the complainant where the accused had grievously assaulted the complainant and the matter had been dealt with by family members. The Director for Public Prosecutions informed the court that he had no objection to the reconciliation plan among the conflicting parties. Thus, the Judge discharged the accused – that is, criminal procedures were set aside even though the matter was criminalisable.

Among the Baganda of central Uganda, there is a practice known as *Kutawulula*, meaning 'unravelling'. A person who, for instance, witnesses others fighting in their community has a duty of first intervening and separating the fighting parties, then has another role of ensuring that those people are reconciled. In this way, the parties are called with their families and friends for a session to discuss the root cause of their fight and how to bring it to an end (Sentongo & Bartoli, 2012: 14). This is not a matter of institutionalisation of conflicts; rather, each individual has a

1 Criminal Appeal No.22 (2017).

role to ensure that peace reigns in the community instead of leaving the matter in the hands of the police or courts. Hence, the existence of strong communal relations prevails.

In Ghana, the country used to have the *Kima* system of dispute resolution before the advent of colonialism, whereby whenever community members had conflicts, the matter had to be reported to either the clan leader, the subsection leader or the chief. Having summoned the parties to the conflict, the chance was given for each to tell his or her story. Thereafter, a decision was made by the *Kima* (a hierarchical system made of elders in the community). The decision was meant to unite the disputants and not to cause more enmity: it was imperative for the leaders to ensure that the offender paid compensation and asked for forgiveness. Once that was done, then the parties had to eat from the same bowl and, when necessary, dance together as a sign of total forgiveness and unity (Azebre, 2012). This culture of eating or drinking something in the course of resolving a conflict seems to be a common feature in Africa and demonstrates that Africans wanted a happy ending to conflict resolution.

Such a view has been supported by Commonwealth ministers of Justice at their meeting in Sri Lanka in November 2019. The ministers agreed to study restorative justice mechanisms by taking cognisance of the Indigenous and traditional practices of each country member (Africa Feeds, 2019). Indeed, the Commonwealth's suggestion seems to be working in Kenya. For instance, in the case of *R v. Juliana Mwikali Kiteme and 3 others*,[2] in the High Court of Kenya at Garissa, the accused persons were charged with murder for violating Sections 203 and 205 of the Kenyan Penal Code, Chapter 63.[3] After several court adjournments, the prosecution counsel informed the court that there were new developments because the families of the deceased and the accused persons agreed to settle the matter using Kamba customs and the accused paid live stocks (cows) according to their customs which was accepted by the deceased family. Then the court terminated the criminal proceedings and discharged the accused. This is another example that shows that Indigenous justice procedures are capable of resolving criminalisable matters.

Now, a challenge comes in defining what justice is and under what circumstances and situations we can say that justice has been served. Tella (2014: 1) opines that the idea of justice is perceived differently depending on one's systems of tenets and moral codes. Others think of justice as a happiness that people in society wish to have and that this could only be found in a society that is just. Again, happiness is a controversial concept. One thing can make one happy and the other unhappy. It is, thus, impossible to have a society that can claim to be working to the point of satisfying every member of the society. What is important is to try to strike a balance (Kelsen, 1960: 3). Hence, the minimum requirement is that justice revolves around determinations of rights according to the rule of law (Pollock, 1895). That

2 Criminal Case No.10 (2017).

3 Section 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder and Section 204 provides for the punishment of murder: any person convicted of murder shall be sentenced to death.

said, there are two different lenses in viewing what justice is: whereas the conventional justice system views pain infliction as justice, restorative justice considers justice as healing broken relations.

With regard to the usage of restorative justice, imposing a limitation that it should be used only after the occurrence of an offence, as suggested by Walgrave, does not sound as a good proposition. Indeed, the aim of the law is to prevent an offence from happening. It is necessary to apply restorative justice to deter others from escalating whenever there is a possibility of doing so. It is to this end that one supports the application of restorative justice in schools and in the workplace. It is clear that at times employees might start with a minor argument that may lead to a serious offence. Therefore, instead of waiting for an occurrence of an offence, means should be devised to ensure that even acts that are deemed to be less serious should not be treated lightly; rather, restorative justice practices should take their course in meeting the needs of the parties. According to Macready (2009), restorative justice emphasises mutual respect, the use of dialogue to ensure fair processes, a balance between structure and support, and a commitment to building relationships rather than strictly focusing on misbehaviour.

A study that was conducted in the United States indicates that restorative justice is an approach that is meant to transform the community (Hammond, Fronius, Sutherland, Guckenburg & Petrosino, 2020: 296). The reason as to why some schools in the United States are resorting to restorative justice is the associated effects of suspension and expulsion, which in reality leads to increased risk of anti-social behaviour that in the end may lead to imprisonment – the so-called 'school-to-prison' pipeline. González (2015) avers that the use of restorative justice in K-12 schools in the United States is meant to bring together all stakeholders to tackle issues and construct good relationships instead of just controlling students' misbehaviour through punitive exclusionary approaches. Thus, teachers, students and community members are taken through professionally guided restorative justice practices, the aim being to divert people from the punitive justice system so as to reduce recidivism (González, 2015). Studies indicate that restorative justice has recently gained credence as a preventative measure in ensuring that the school community is healthy and interconnected (Brown, 2017).

Another study that was conducted in Australia and New Zealand showed how a long-known practice of expulsion and suspension of students from schools lead the 'perpetrators' to be a burden to the community, and does not help in achieving educational aims; indeed, expulsion does not help the offending student to account for his actions, unlike when one is made to understand the impact of the harm caused to the victim and the community (Varnham, 2008). To repair the harm that results from such a violation, schools should practice 'participatory, deliberative democracy'. Walgrave challenges this approach with the belief that restorative justice in schools is not the same as that applied in the context of criminalized acts. He argues further that restorative justice in education is meant to be educational, but in criminal matters it is to deal with social life and public order. It is to this end that Walgrave wonders if the same concept of restorative justice should be used in school settings. However, there have been incidents, for instance in the United States, where children shot and killed other children – had these children been

brought up with the understanding of how to handle conflicts using restorative justice practices, they could have maintained public order and avoided unnecessary deaths. What happened in such American schools disrupted public order. Indeed, acts committed in schools as well as in other non-criminal-justice settings call for a restorative justice approach that can enhance parties' relations and prevent crime.

Some conflicts may be considered trite, but if not handled properly they might lead to serious offences. Indeed, even though restorative justice was first applied within the criminal justice context, the truth is that all social systems in which there are human relationships experience dispute that need restoration. For example, family disputes or workplace disputes need restoration for a peaceful society to be achieved; if these disputes are ignored at the micro level, they may metamorphose into serious criminal problems at the macro level. Hence, an endeavour to bring the parties to deal with conflicts at school or at work could be called restorative justice if the end result is restoration and reparation.

3 Coercion acceptable in restorative justice approaches or not?

In this issue of *The International Journal of Restorative Justice*, Walgrave argues that restorative justice should prioritise reparation and restoration and adds that respectful encounters in themselves are not yet 'restorative justice'. I differ from Walgrave on this. If respect, dignity, and inclusion are not guiding values and central to restorative justice, and the only areas of priority are restoration and reparation, it follows that restorative justice processes run a high risk: reparation might be made but, if one is not respected in the process of reparation, it might cause more harm than when the parties involved have sincere respect towards one another. The aforementioned European Forum for Restorative Justice manual provides the values and principles of restorative justice and insists on observing them for the process to be termed as such (2021: 12). More importantly, the United Nations' 2030 Agenda for Sustainable Development stresses inclusivity in all issues that involve peace and justice in order to attain sustainable development (UNDP, 2023). Human rights treaties, both regional and universal, also stress respect. Hence, restorative justice is incomplete without respect and inclusivity at its core. Restorative justice practices require that all who are affected by the wrongdoing take part in the processes and are made to understand that all human beings are of value and have the capacity to handle matters that concerns them. In order to achieve such a goal, such processes should allow stakeholders to feel safe and respected and be able to speak without fear (European Forum for Restorative Justice, 2021).

Claims that victim-offender dialogues may work in the interest of the offender instead of meeting the victim's needs are true to the extent where the victim is not given the time to air his or her concerns on how the actions of the offender affected him or her – that is, when such dialogues are not driven by the restorative justice agenda. Pemberton (2019) and Wemmers (2020) argue that some victims might feel that the offender's interests are prioritised over theirs, which might lead to

re-victimisation. But as long as both offenders and victims are willing, and the environment is conducive, they ought to be able to hold a dialogue on issues surrounding the offence.

Moreover, Walgrave suggests that a form of coercion is acceptable if voluntariness is not possible. This argument, though attractive, deviates from an elementary principle of restorative justice – notably, voluntariness. Restorative justice practitioners should be able to inform parties about the restorative justice option, but not using coercion because that would amount to applying conventional criminal justice practices. Perhaps people should be made to understand that restorative justice is a mechanism that is applied once parties, either on their own or upon being made aware of the benefits of restorative justice, decide to apply restorative justice (Daly, 2016). There are times where one might want to use restorative justice while the state's relevant organs do not take that route to justice. In such a scenario, though, while the state exercises the power to coerce individuals to take the route that it deems fit, justice may not be experienced by the parties themselves. A good example can be drawn from Tanzania in the case of *Juma Faraji Serenge alias Juma Hamisi v Republic*[4]:

> To the best of my knowledge, other than in cases of minor assault in which a court can promote reconciliation under section 176 of the Tanzanian Criminal Procedure Code and such minor cases, a complainant is not allowed to withdraw a criminal case for whatsoever reason.

What happens is that the real complainant in all criminal cases, especially felonies, is the state. The victims of such crimes are nominal complainants. And the state, as the complainant, is not allowed to withdraw any such cases on the ground that the victim has forgiven the accused as happened in the *Juma Faraji* case, or for any such other reason. The state is only allowed to withdraw a criminal case under Section 87A of the Criminal Procedure Code or to enter a *nolle prosequi*, that is, when it has no evidence against the accused or on some ground of public interest.

One might inform Walgrave about the use of elders in African communities whose status lead offending parties to obey their calling and advise on ending conflicts amicably because it is understood that elders aim at restoration of broken relations (Kariuki, 2015). The respect given to elders in Africa is what makes one attend a meeting; so, it is not a form of coercion but a normal respect that is expected from any community member (Mbele, 2004). This kind of respect could be derived from the social capital theory which insists that the trust, bond and social ties enable such groups of people to co-exist together. However, it might be perceived that in such cases too, the principle of voluntariness would be violated. African restorative justice practices might in some situations use a kind of social pressure to make an offender comply so that he or she cannot be excluded from the community. Among the Kinga of Southern Tanzania, if one refused to participate in the negotiation and the victim suffered any hurt, the community would assume that it was the offender who had caused the hurt. As Walgrave argues, the world is

4 HC Kenya Misc. Criminal Appeal No. 42 (2007).

not a zoo full of good people only. More importantly, regarding Walgrave's thinking that the aim of using some form of judicial coercion is to ensure that the rights of stakeholders are upheld, his concerns are taken care of in restorative justice encounters: parties are able to understand the process, especially the offender's need to take responsibility for causing harm and their need to repair the consequences. Restorative justice encounters do not coerce the offender. Rather, direct and indirect victims receive compensation and where necessary reparations are encouraged to heal the wounds. (*Beneficiaries of the late Norbert Zongo v Burkinafaso*)[5]; in such a situation, the guilty party is in the process of being helped to account for his or her actions.

Indeed, what Walgrave envisions – that is, upholding the rights of stakeholders – could be what has been the practice at the African Court on Human and Peoples' Rights. One could argue that not all restorative justice practices are well carried out and therefore might not achieve the desired results of restoration, reparation and healing; for instance, the remedies offered by the African Court play a healing role; hence, they are deemed to be a rescuer of those whose justice was put at stake. This can be evidenced from the case of *Alex Thomas v. Tanzania*.[6] The applicant claimed that the respondent state caused undue delay in considering his request to review the decision of the Court of Appeal. Moreover, the applicant was not given the right to defend himself because the trial was conducted in his absence, even though the Court was informed that he was sick and had to attend hospital. The Court opined that Article 7(1) (c) of the African Charter and Article 14(3) (d) of the International Covenant on Civil and Political Rights (ICCPR) require that an accused person be present to defend him or herself. From the restorative justice perspective, that would have been excluding the victim, which is against the principle of inclusion.

Therefore, I argue that the practice of the court in Alex's case shows that the conventional justice system to some extent devalues the inclusion of the main stakeholders in the criminal justice system. In this case, Alex was an offender who turned out to be a victim of state actions by being excluded in the trial. The applicant therefore, among other things, sought reparations. The African Court awarded compensation to the applicant and other indirect victims whose lives had been affected because of the applicant's time in prison. Compensating indirect victims within a restorative justice lens is important because the process is applied to the main stakeholders and others who are indirectly harmed. It is further reiterated that crime does not only harm the primary victims, but also others who are closely related to them and even the community at large.

In some instances, judicial coercion to enforce reparative or restorative measures may bring additional challenges because it might not be in tune with restorative justice values which insist on restoration of the victim and reintegration of an offender.

5 Application No. 013/2011, African Court on Human and Peoples Rights, 12 (TZ).

6 Application No. 005 of 2013, African Court on Human and Peoples Rights (Tanzania).

4 Conclusion

Walgrave's argument for a clear definition of what constitutes restorative justice is important. Many scholars have defined the concept differently, thus causing confusion to readers, practitioners, researchers and those teaching restorative justice. Nevertheless, the debate and the confusion on what the paradigm is should be embraced, because it is through this push and pull that we can come to fruitful debates around what restorative justice is. Walgrave provides the incentive to generate more conceptualisation on the process and thus clarify some issues that might have been overlooked. He makes points both in tune and divergent from an African understanding of restorative justice. For instance, the idea that restorative justice emerged from the practices of the Maori and Navajo relies heavily on written literature, whereas African traditions are or were mostly oral, and as such we could miss the Continents' representation as far as the development of restorative justice is concerned. African restorative justice cannot in any way leave out relational and societal issues, because those are the bedrock of peace in our communities.

This article commends Walgrave's work in exhuming what others might have thought settled, thus creating room for unintended confusion. Restorative justice is capable of accommodating almost every situation as long as the parties involved are made aware of the benefits and risks, and they decide on their own free will to take the restorative route. Judicial coercion as envisioned by Walgrave might be used if the African ways of coercing are applied: though Africans might not think of coercion in their practices, the community grows up knowing what is expected of everyone and what is not, as well as the consequences of deviating from the accepted norms. This way of life automatically 'forces' and 'coerces' individuals to participate in communal processes, including restorative justice, without the use of governmental coercion. As argued elsewhere in this article, there might be many boxes all labelled restorative justice; instead of looking at the boxes with a confused eye, we should view the boxes as growth of the paradigm that has attracted application in almost every area of our lives. This should not shock and confuse us. The paradigm is the revival of what was sought to be not working in criminal matters because justice could be found in courts of law only where the criminal procedures are upheld. Nevertheless, restorative justice can be used in any situation, as long as the values and principles of restorative justice are taken into consideration as the boxes keep expanding. Whatever is done by human beings, be it in schools or at workplaces, revolves around the door of social and relational facets of life, because human beings will always be relational – be it in good or bad times; hence, a cure to broken relations is mending them in a constructive way instead of via a destructive route.

References

Ademowo, A. & Nuhu, A. (2017). Indigenous knowledge and conflict management in Africa: a study of proverbs use in conflict management among Hausas of Northern

Nigeria. *International Journal of History and Cultural Studies*, 3(4), 36-44. doi: 10.20431/2454-7654.0304004.

Africa Feeds (2019). *Commonwealth law ministers to take action on access to justice*. Retrieved from https://africafeeds.com/2019/11/08/commonwealth-law-ministers-to-take-action-on-access-to-justice/ (last accessed 24 September 2023).

Azebre, A. (2012). Indigenous Mechanisms of Dispute Resolution among the People of Adaboya Traditional Area, https://www.modernghana.com/news/534448/indigenous-mechanisms-of-dispute-resolution-among.html (last accessed 16 October 2023).

Boudreau, A. (2013). *Relational theory and critical race theory as social practice in school: the restorative approach* (MA Thesis). Mount Saint Vincent University, Canada.

Braithwaite, J. (2003). Principles of restorative justice. In A. von Hirsch, J.V. Roberts, A.E. Bottoms, K. Roach & M. Schiff (eds.), *Restorative justice and criminal Justice: competing or reconcilable paradigms?* (pp. 1-20). Oxford: Hart Publishing.

Brown, M. (2017). Being heard: how a listening culture supports the implementation of schoolwide restorative practices. *Restorative Justice: An International Journal*, 5(1), 53-69. doi: 10.1080/20504721.2017.1294792.

Christie, N. (1977). Conflict as property. *British Journal of Criminology*,17, 1-15. doi: 10.1093/acprof: oso/9780199673612.003.0018.

Daly, K. (2003). Mind the gap: restorative justice in theory and practice. In A. von Hirsch, J.V. Roberts, A.E. Bottoms, K. Roach & M. Schiff (eds.), *Restorative justice and criminal Justice: competing or reconcilable paradigms?* (pp. 219-236). Oxford: Hart Publishing.

Daly, K. (2016). What is restorative justice? fresh answers to vexed question. *Victims and Offenders*, 11(1), 10-11. doi: 10.1080/15564886.2015.1107797.

European Forum for Restorative Justice (2021). *Manual on restorative justice values and standards for practice*. Retrieved from https://www.euforumrj.org/en/values-restorative-justice (last accessed 20 August 2023).

Gabagambi, J. (2020). A comparative analysis of restorative justice practices in Africa. *Globalex* (New York University Law School). Retrieved from https://www.nyulawglobal.org/globalex/Restorative_Justice_Africa.html#_ENREF_25 (last accessed 23 August 2023).

González, T. (2015). Socializing schools: addressing racial disparities in discipline through restorative justice. *Journal of Law and Education*, 41(2), 281-335.

Hamilton, R. (1935). Criminal justice in East Africa. *Journal of the Royal African Society*, 34(134), 20-21.

Hammond, S., Fronius, T., Sutherland, H., Guckenburg, S. & Petrosino, A. (2020). Effectiveness of restorative justice in US K-12 Schools: a review of quantitative research. *Contemporary School Psychology*, 24, 295-308. doi: 10.1007/s40688-020-00290-0.

Ilomo, F. (2013). *African Religion: A Base for Interfaith Dialogue Today*. Dar es Salaam: Dar es Salaam University Press.

Johnstone, G. & Van Ness, D. (2007a). The idea of restorative justice. In G. Johnstone & D. Van Ness (eds.), *Handbook of restorative justice* (pp. 1-3). Cullompton: Willan Publishing.

Johnstone, G. & Van Ness, D. (2007b). The meaning of restorative justice. In G. Johnstone & D. Van Ness (eds.), *The handbook of restorative justice* (pp. 5-19). Cullompton: Willan Publishing.

Kariuki, F. (2015). Conflict resolution by elders in Africa: successes, challenges and opportunities. Retrieved from http://kmco.co.ke/wp-content/uploads/2018/08/Conflict-Resolution-by-Elders-successes-challenges-and-opportunities-1.pdf (last accessed 27 September 2023).

Kelsen, H. (1960). *What is justice? Justice, law and politics in the mirror of science*. Berkeley: University of California Press.

Macready, T. (2009). Learning social responsibility in schools: a restorative practice. *Educational Psychology in Practice*, 25(3), 211-220. doi: 10.1080/02667360903151767.

Mangena, F. (2015). Restorative justice's deep roots in Africa. *South African Journal of Philosophy*, 34(1), 1-11. doi: 10.1080/02580136.2014.940572.

Maruna, S. (2014). The role of wounded healing in restorative justice: an appreciation of Albert Eglash. *Restorative Justice: An International Journal*, 2(1), 9-23. doi: 10.5235/20504721.2.1.9.

Mbele, J. (2004). The elder in African society: the view from folklore and literature. *Journal of Intergenerational Relationship*, 2(3-4), 53-60. doi: 10.1300/J194v02n03_05.

McCluskey, G., Lloyd, G., Kane, J., Riddell, S., Stead, J. & Weedon, E. (2008). 'I was dead restorative today': from restorative justice to restorative approaches in school. *Cambridge Journal of Education*, 38(2), 199-216. doi: 10.1080/03057640802063262.

McCold, P. (1998). Restorative justice - variations on a theme. In L. Walgrave (ed.), *Restorative justice for juveniles: potentialities, risks and problems for research* (pp. 19-53). Leuven: Leuven University Press.

Morrison, B, and Ahmed, E. (2006). Restorative Justice and Civil Society: Emerging

Practice, Theory, and Evidence, *Journal of Social Issues*, 62(2), 209-215. doi:10.1111/j.1540-4560.2006.00447. x.

New Times Reporter (2012, April 11). *Gacaca courts achieved their objectives*. Retrieved from https://www.newtimes.co.rw/section/read/51568 (last accessed 18/8/2023).

Nyerere, J. (1998). Leaders must not be masters. In E.C. Eke (ed.), *African philosophy: an anthology* (pp. 77-80). Oxford: Blackwell.

Omale, J. (2006). Justice in history: an examination of African restorative traditions and the emerging restorative justice paradigm. *African Journal of Criminology and Justice Studies*, 2(2), 42-47.

Peacock, R. (2023). Restorative justice and access to justice: critical reflections of the global North-South divide. *The International Journal of Restorative Justice*, 6(2), 192-193. doi: 10.5553/TIJRJ.000161.

Pemberton, A. (2019a). Time for a rethink. Victims and restorative justice. *The International Journal of Restorative Justice*, 2(1), 13-33.

Pollock, F. (1895). Justice according to law. *Havard Law Review*, 9(5),296-306. doi: 10.2307/1321452.

Pranis, K. (2007). Restorative values. In G. Johnstone & D. Van Ness (eds.), *Handbook of restorative justice* (pp. 59-72). Cullompton: Willan Publishing.

Reilly, J. (2019). *Bad law: rethinking justice for a postcolonial Canada*. Victoria: Rocky Mountain Books, 38-45.

Restorative Justice Council (2012). *Principles of restorative justice*. Retrieved from https://restorativejustice.org.uk/sites/default/files/resources/files/Principles%20of%20restorative%20practice%20-%20FINAL%2012.11.15.pdf (last accessed 17 October 2023).

Roche, D. (2001). The evolving definition of restorative justice. *Contemporary Justice Review*, 4, 341-353.

Ryan, T. & Ruddy, S. (2015). Restorative justice: a changing community response. *International Electronic Journal of Elementary Education*, 7(2), 258-259.

Sentongo, S. & Bartoli A. (2012). Conflict resolution under the Ekika system of the Baganda in Uganda. In M. Mutisi & K. Sansculotte-Greenidge (eds.), *Integrating Traditional and Modern Conflict Resolution: Experiences from selected cases in Eastern and the Horn of Africa*. Durban: Accord. Retrieved from http://chede.org/chede/

wp-content/uploads/2012/11/Africa-Dialogue1.pdf#page=14 (last accessed 18 October 2023).

Skelton, A. (2005). *The influence of the theory and practice of restorative justice in South Africa with special reference to child justice*. South Africa: University of Pretoria.

Tella, M.J. (2014). *Justice and law*. Leiden: Brill Nijhoff.

Umbreit, M. (1994). Crime Victims Confront Their Offenders: The Impact of a Minneapolis Mediation Program, *Research on Social Work Practice* 4(4)162.

United Nations Development Programme (2023). Goal 16, Peace, Justice and Strong Institutions. Retrieved from https://www.undp.org/sustainable-development-goals (last accessed 27 August 2023).

Vaandering, D. (2010).The Significance of Critical Theory for Restorative Justice in Education. *Journal of Education Pedagogy and Cultural Studies, 32(2)*, 16-17. doi:10.1080/10714411003799165.

Varnham, S. (2008). Keeping them connected: restorative justice in schools in Australia and New Zealand-What Progress? *Australia & New Zealand Journal of Law and Education*, 13(1), 71-72. doi:10.3316/aeipt.182711.

Wadhwa, A. (2016). *Restorative justice in urban schools: disrupting the school-to-prison pipeline*. New York: Routledge.

Walgrave, L. (2008). *Restorative justice, self-interest and responsible citizenship*. London: Routledge.

Walgrave, L. (this issue, 2023). Concerns about the meaning of 'restorative justice'. Reflections of a veteran. *The International Journal of Restorative Justice*, 6(3). doi: 10.5553/TIJRJ.000182.

Weitekamp, E. (1999). The history of restorative justice. In G. Bazemore & L. Walgrave (eds.), *Restorative juvenile justice: repairing the harm of youth crime* (pp. 75-102). Monsey: Criminal Justice Press.

Weitekamp, E.G.M. & Parmentier, S. (2016). Restorative Justice as a healing justice: looking back to the future of the concept. *Restorative Justice: An International Journal*, 4(2), 142-145. doi: 10.1080/20504721.2016.1197517.

Wemmers J.A. (2020). Restorative justice: how responsive to the victim is it? *The International Journal of Restorative Justice*, 3(1), 30-37.

Zehr, H. (1995). *Changing lenses: a new focus for crime and Justice* (3rd ed.). Scottsdale: Herald Press.

Zernova, M. (2007). *Restorative justice: ideals and realities*. London: Ashgate.