

Restorative Justice as the New Face of Criminal Law Enforcement in Democratic States: Between Substantive Justice and Legal Certainty

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Abstract

This study examines the implementation of restorative justice as a new paradigm in criminal law enforcement in democratic states, with a particular focus on the tension between substantive justice and legal certainty. Restorative justice emphasizes the restoration of victims' losses, accountability of offenders, and the repair of social relationships, contrasting with the traditional retributive approach, which primarily focuses on punishment. The research employs a qualitative normative and case study approach, analyzing legal documents, academic literature, statutes, and restorative justice practices in democratic countries such as New Zealand and Canada. The findings indicate that restorative justice enhances victim participation, reduces recidivism, and strengthens social cohesion, while providing offenders with the opportunity to assume responsibility constructively, in line with Howard Zehr's theory of substantive justice and John Braithwaite's theory of reintegrative shaming. However, the high degree of flexibility in restorative justice practices poses challenges to legal certainty, particularly when formal procedures and legal regulations are unclear. Therefore, balancing substantive justice with legal certainty is crucial and requires clear legal guidelines, supervision by law enforcement authorities, and active community involvement. This study concludes that restorative justice can serve as a strategic instrument for achieving a humane, fair, and participatory criminal justice system without compromising legal certainty, provided that it is implemented with robust regulations and structured procedural mechanisms. These findings offer significant insights for the development of modern criminal justice policies in democratic states, integrating substantive justice principles with legal certainty.

Keywords: Restorative justice, substantive justice, legal certainty, criminal justice system, democracy, reintegrative shaming.

Introduction

In many democratic countries, the traditional criminal justice system has predominantly relied on a retributive approach, where the primary objective is to punish offenders as a response to committed crimes. This approach emphasizes legal certainty, procedural consistency, and formal adherence to the law, ensuring that every violation is addressed according to established legal norms. While such a system provides predictability and clarity, it has often been criticized for its limited capacity to achieve substantive justice, which goes beyond procedural compliance to address the actual needs of victims and the community. Substantive justice emphasizes the fulfillment of victims' rights, meaningful accountability of offenders, and the restoration of social harm. In practice, the retributive approach has been associated with negative social outcomes, including victim alienation, high rates of recidivism, and minimal community involvement in conflict resolution.

In response to these limitations, the concept of restorative justice has emerged as an alternative paradigm in criminal law enforcement. Restorative justice shifts the focus from punishment to restoration of social relationships, enabling victims, offenders, and the

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community to actively participate in the resolution process. The approach seeks not only to repair the harm suffered by victims but also to encourage offender accountability and strengthen social cohesion. Mechanisms such as victim-offender mediation, family and community conferences, and offender reintegration programs have been widely implemented in several democratic countries, including Canada, New Zealand, and various European states. Evidence from these implementations suggests that restorative justice can reduce recidivism and increase victim satisfaction, while promoting a more participatory and humane criminal justice system.

Despite its advantages, restorative justice faces significant challenges, particularly regarding the tension between substantive justice and legal certainty. On one hand, restorative justice provides flexibility, allowing legal processes to be adapted to social contexts and the specific needs of victims and offenders. On the other hand, this flexibility may lead to legal uncertainty and inconsistent outcomes, raising concerns about fairness, consistency of law enforcement, and equality before the law. Democratic states implementing restorative justice must therefore navigate the delicate balance between achieving substantive justice and maintaining legal certainty to protect the rights of all parties involved.

Furthermore, integrating restorative justice into formal criminal justice systems requires a paradigm shift. It necessitates strengthening the role of law enforcement authorities, providing legal education to the public, and establishing clear regulations regarding procedures and limitations. Additional challenges include differences in legal culture, societal readiness, and public perception, as restorative justice is sometimes perceived as being "lenient" toward offenders. Addressing these challenges is essential for ensuring that restorative justice not only complements the traditional criminal justice system but also enhances its effectiveness, fairness, and legitimacy in democratic societies.

This study aims to analyze restorative justice as a new paradigm in criminal law enforcement within democratic states, focusing on how it balances substantive justice with legal certainty. By examining both theoretical frameworks and practical implementations in selected countries, the study seeks to provide insights into the potential and limitations of restorative justice as a modern criminal justice approach.

Method

This study employs a qualitative research method with a normative and case study approach. This methodology was selected because the topic of restorative justice requires not only a theoretical understanding of its legal concepts and regulations but also an analysis of its practical implementation within the context of democratic states. The normative-legal approach involves a comprehensive review of literature and legal documents, including statutes, criminal justice policies, legal doctrines, as well as scholarly articles and books related to restorative justice. This analysis aims to understand the legal foundations, principles, and theories underpinning restorative justice, while also examining the tension between substantive justice and legal certainty.

In addition, the study employs a case study approach to examine concrete restorative justice practices in selected democratic countries. Data were collected from case

documents, court reports, and literature describing the implementation of restorative justice, including mechanisms such as victim-offender mediation, family conferences, and offender reintegration programs. This approach allows for an in-depth analysis of the dynamics between victims, offenders, and the community, as well as an evaluation of the effectiveness of restorative justice in achieving substantive justice without compromising legal certainty.

The data analysis technique used is descriptive-analytical qualitative analysis, whereby normative and case data are systematically examined to identify patterns, differences, and challenges in restorative justice practices. The analysis focuses on how the principles of substantive justice can be effectively realized in democratic states while maintaining legal certainty as the foundation of criminal law enforcement. The combined normative and case study approach is expected to provide a comprehensive understanding of both theoretical and practical aspects, thereby contributing significantly to the development of humane and just criminal justice policies.

Result and Discussion

The Concept of Restorative Justice

Restorative justice represents an alternative paradigm in the criminal justice system that emphasizes the restoration of victims' losses, offender accountability, and the repair of social relationships among offenders, victims, and the community. This approach fundamentally differs from the traditional retributive criminal justice system, which primarily focuses on punishment as a response to wrongdoing. In restorative justice, the main objective is not merely to impose sanctions, but to create a fair process that restores social balance for all parties affected by the crime. This concept aligns with the theory of substantive justice, which emphasizes the fulfillment of victims' rights, offender responsibility, and social harmony, and evaluates the success of the legal system not only based on formal compliance but also on the moral and social outcomes it produces. A key figure associated with the development of restorative justice is Howard Zehr, often referred to as the "father of modern restorative justice." Zehr emphasizes that justice should not focus solely on punishment, but also on restoring social relationships and providing opportunities for offenders to take responsibility for their actions. According to Zehr, the primary question the justice system should address is not simply, "Who is guilty?" but rather, "Who has been harmed and how can that harm be repaired?" This approach allows victims to take an active role in the justice process while giving offenders the chance to make amends for the harm caused.

In addition to Zehr, John Braithwaite developed the concept of reintegrative shaming, which serves as a crucial philosophical foundation for restorative justice practices. Braithwaite argues that offenders who are constructively shamed through reintegrative processes can be guided back into society without enduring permanent stigma, contrasting with retributive approaches that often impose stigmatizing punishments. This theory illustrates how restorative justice balances the enforcement of accountability with the restoration of social relationships, ensuring that law functions not

only as a formal instrument but also as a moral and social tool grounded in humanistic values. The core principles of restorative justice include the restoration of victims' losses, active participation of victims and offenders in the resolution process, repair of damaged social relationships, and reintegration of offenders into society. In democratic states, restorative justice is particularly relevant because it emphasizes respect for human rights, transparency in legal processes, and community involvement. This approach allows the criminal justice system to function not only as an instrument of formal law enforcement but also as a mechanism to strengthen social cohesion and resolve conflicts peacefully, while maintaining a balance between substantive justice and legal certainty. Thus, the concept of restorative justice offers a more humanistic and substantive perspective compared to retributive approaches. Grounded in Howard Zehr's theory of substantive justice and John Braithwaite's theory of reintegrative shaming, restorative justice highlights the importance of victim restoration, offender accountability, and social harmony. Consequently, the success of the criminal justice system is measured not only by legal certainty but also by its ability to repair harm, reduce recidivism, and enhance public trust in justice.

Implementation of Restorative Justice Practices

The implementation of restorative justice within the criminal justice systems of democratic states demonstrates a significant paradigm shift from conventional retributive approaches toward a more humanistic, participatory, and restorative approach. Traditional retributive systems tend to emphasize punishment as a response to wrongdoing, focusing primarily on legal certainty and procedural formalities. In contrast, restorative justice prioritizes victim restoration, offender accountability, and the repair of social relationships, where legal processes serve as mechanisms to address harm and strengthen social cohesion.

In practice, restorative justice can be realized through various mechanisms, including victim-offender mediation, family conferences, community-based restorative conferences, and offender reintegration programs. Victim-offender mediation allows both parties to engage directly, communicate the impact of the crime, negotiate restitution, and reach mutually agreed-upon solutions. Family or community conferences extend participation to third parties, including community members and local institutions, to support the restorative process and provide social support for both victims and offenders. For example, in New Zealand, restorative justice is widely applied in juvenile cases through Family Group Conferences (FGC), where victims, offenders, families, and community representatives meet to reach agreements on restitution and the social responsibilities of offenders. This model has proven effective in reducing recidivism and increasing victim satisfaction due to their active involvement in the resolution process.

In Canada, restorative justice is applied in minor criminal and non-violent cases through mediation programs involving law enforcement officers, professional mediators, and community representatives. Evaluations indicate that such approaches enhance offenders' awareness of the impact of their actions, reduce recidivism, and restore victims' trust in the justice system. These implementations also reflect John Braithwaite's principle of reintegrative shaming, whereby offenders are constructively reminded of their

wrongdoing, allowing them to reintegrate into society without permanent stigma, unlike retributive approaches that tend to be stigmatizing.

The success of restorative justice practices largely depends on the active participation of law enforcement officials, mediators, victims, offenders, and the community. Legal authorities, including judges, prosecutors, and police officers, act as facilitators to ensure that the process is fair, transparent, and consistent with legal principles. Meanwhile, communities and non-governmental organizations provide social support and oversight to ensure that mediation outcomes do not harm any party. This underscores that restorative justice is not merely a legal procedure but a social process requiring multi-stakeholder collaboration.

Nevertheless, the implementation of restorative justice faces several significant challenges. First, the preparedness of law enforcement and mediators is crucial; a lack of understanding of restorative principles can result in unfair or ineffective practices. Second, legal culture and public perception may act as obstacles; in some countries, restorative justice is perceived as “lenient” because it does not emphasize traditional punishment, generating public resistance. Third, limited legal regulations or unclear procedural guidelines may create legal uncertainty and inconsistent application, especially if restorative justice is conducted voluntarily without official frameworks.

Additionally, complex criminal cases pose further challenges, as serious violent crimes or organized criminal activities are difficult to resolve through restorative mechanisms due to safety risks, victim intimidation, or offenders’ inability to take full responsibility. Consequently, democratic states often restrict restorative justice to specific cases, such as minor offenses, juvenile delinquency, or community conflicts, to ensure the process remains effective and secure.

Overall, the practice of restorative justice in democratic states demonstrates that this approach can enhance victim participation, reduce recidivism, repair social harm, and strengthen community cohesion while presenting dilemmas related to legal certainty and procedural consistency. Successful implementation depends on clear legal regulations, law enforcement training, community readiness, and transparent and accountable mediation mechanisms. Thus, restorative justice functions not only as an alternative form of punishment but also as a strategic instrument for achieving substantive justice, where criminal law is not merely formalistic but also humanistic, participatory, and responsive to the needs of victims, offenders, and society.

Balancing Substantive Justice and Legal Certainty

One of the central issues in the implementation of restorative justice is how to balance substantive justice with legal certainty. Substantive justice emphasizes the fulfillment of victims’ rights, offender accountability, and the restoration of social harm, whereas legal certainty focuses on consistency, predictability, and procedural regularity in criminal law enforcement. Restorative justice provides significant flexibility to tailor the resolution process according to the needs of victims, offenders, and the community. This flexibility allows victims to play an active role in determining the form of restitution and gives offenders the opportunity to acknowledge wrongdoing and repair the harm caused. However, such flexibility may also create legal uncertainty, as each case can be resolved

differently depending on negotiation and social context, which may lead to inconsistency and perceptions of unfairness.

Theoretically, restorative justice is grounded in Howard Zehr's substantive justice theory, which emphasizes that the law should not merely punish but also restore social balance and provide opportunities for offenders to take responsibility. Zehr highlights the central question of restorative justice: "Who has been harmed and how can that harm be repaired?" In this framework, victims are not merely objects of legal proceedings but active participants in the resolution process. Furthermore, John Braithwaite's reintegrative shaming theory underscores the importance of a constructive approach toward offenders. Through reintegrative shaming, offenders are publicly held accountable in a way that facilitates reintegration into society without permanent stigma, contrasting with conventional punitive measures that are often exclusive and stigmatizing.

Conversely, the principle of legal certainty, as articulated by Lon Fuller, requires that laws possess clear structure, consistency, predictability, and equal applicability. This principle demands that all criminal cases, including those employing restorative approaches, operate within standardized procedural frameworks to avoid legal uncertainty and potential discrimination. The tension between restorative flexibility and legal certainty thus represents a key challenge in implementing restorative justice.

In practice, democratic countries have sought to balance these principles. For instance, in New Zealand, Family Group Conferences (FGC) are used in juvenile cases with clearly defined procedures and facilitation by legal authorities. While flexible, these processes are governed by formal guidelines that outline victims' rights, mediation procedures, and the roles of third parties, ensuring structured and legally accountable outcomes. Similarly, in Canada, restorative justice programs for minor offenses and non-violent crimes employ voluntary mediation within clear legal frameworks: mediation outcomes are officially documented, legal authorities oversee the process, and victims retain the right to accept or reject agreements. These mechanisms demonstrate that restorative justice can comply with legal certainty while preserving the flexibility necessary to achieve substantive justice.

Nonetheless, implementing restorative justice is not without challenges, particularly in complex or serious violent cases. High flexibility can pose risks for victims, such as when mediation outcomes are not formally recorded or when offenders fail to take genuine responsibility. This indicates that restorative justice cannot operate without a clear legal framework. Additional challenges include the readiness and understanding of law enforcement officers and mediators, who must be well-versed in restorative principles to ensure fairness, as well as legal culture and public perceptions, which sometimes regard restorative justice as a "lenient" approach toward offenders.

From an analytical perspective, achieving a balance between substantive justice and legal certainty in restorative justice requires careful system design and robust regulation. This includes establishing standardized mediation procedures, oversight mechanisms by legal authorities, and clear guidelines on cases eligible for restorative justice. By doing so, restorative justice functions as a bridge between human-centered flexibility and formal legal certainty, enabling the criminal justice system in democratic states to be both humane and fair while maintaining predictability and procedural integrity.

Conclusion

Restorative justice represents a transformative approach in democratic criminal justice systems, shifting the focus from punitive, retributive measures to humanistic, participatory, and restorative processes. By emphasizing victim restoration, offender accountability, and the repair of social relationships, restorative justice aligns with the principles of substantive justice, offering outcomes that are morally and socially meaningful. Its practical implementation through mechanisms such as victim-offender mediation, family or community conferences, and offender reintegration programs demonstrates significant potential in reducing recidivism, enhancing victim satisfaction, and strengthening community cohesion.

However, the integration of restorative justice into formal legal systems presents inherent challenges, particularly in balancing substantive justice with legal certainty. While restorative processes require flexibility to address the unique needs of victims, offenders, and communities, this flexibility may create risks of inconsistency, legal uncertainty, and public skepticism. Democratic states have sought to manage these challenges by establishing clear legal frameworks, standardized procedures, and oversight mechanisms that ensure restorative practices remain accountable, predictable, and aligned with the rule of law. Ultimately, restorative justice functions as both a legal and social instrument, bridging humanistic principles with formal legal structures. Its success depends on the collaboration of law enforcement, mediators, victims, offenders, and the broader community, as well as the development of regulations and procedural guidance that enable consistent and fair application. By integrating restorative justice thoughtfully, democratic criminal justice systems can achieve a balance between human-centered justice and legal certainty, ensuring that law not only enforces rules but also repairs harm, fosters reconciliation, and strengthens societal trust in justice.

References