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A Critical Evaluation of the Transformative Nature of Restorative Justice for Offenders, When Used Within Traditional Criminal Justice Processes.

Bethany Winters

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¹ **Bethany Winters** is a recent graduate of Criminology and Sociology from Northumbria University, Newcastle. Bethany achieved first class honours and holds a strong interest in criminal justice alternatives.



Abstract

Purpose

This essay conducts a critical evaluation of the transformative nature of restorative justice for offenders when used within traditional criminal justice processes. The potentiality of transformation extending from restorative practices is then sought within the system of England and Wales. The purpose of this essay is to highlight the potential of a reparative justice philosophy by evidencing where the system of England and Wales is failing.

Approach/Originality

Findings are sought by review of academic literature and research evidence. The unique approach taken by this essay adds value to the field of restorative justice research. The author assesses the transformative nature of restorative justice for offenders by identifying indicators of desistance resulting from or within the practice. These indicators of desistance are evidence of a redemption narrative within participants, and signals of reintegrative shaming within the practice. Whilst restorative justice is rightfully victim-centred, it is unnecessary to neglect the potentiality of desistance from crime.

Findings

It is discovered that whilst restorative justice is transformative for all parties, the co-option of the process into the justice system of England and Wales stunts such success. There is, however, hope for system philosophy development, or the instigation of societal change by restorative justice.

Keywords: Restorative Justice, Offender Transformation, Reparation, Criminal Justice, Desistance



Introduction

Criminology has traditionally concerned itself with why people commit crime (Laub and Sampson, 2001). More recently, however, theories of desistance have developed with suggestions that the causes of a criminal lifestyle are often distinct from the factors that lead to its cessation (McNeill et al. 2012). Research on desistance understands inner personal transformation as essential to its success (Laub and Sampson, 2003; Maruna, 2001; Laub and Sampson, 1993). Key turning points in life are paramount in causing a shift in the offender's identity, from a self-reflection of criminal to one of husband, father or working man with the newfound means to play an alternative role in society (Laub and Sampson, 2001). Similarly, an aim of restorative justice (RJ) is to transform offenders into pro-social members of society (Sullivan and Tifft, 2001). Therefore, it follows, that RJ may be particularly successful at inspiring desistance within its participants.

Nevertheless, this essay cannot be as simple as determining whether RJ inspires offender transformation. Potentiality cannot be understood as actuality. Recently, England and Wales have shown great interest and invested into RJ (Hoyle and Rosenblatt, 2015). However, the existing philosophy and culture of the justice system presents a challenge to its potentiality (Hoyle and Rosenblatt, 2015; O'Mahony, 2012; McCold, 2000). With no paradigmatic shift, we risk finding ourselves back where we began, at 'nothing works' (McCold, 2000; Daniels, 2013).

The aim of this work is to determine the transformative nature of RJ for offenders when used within traditional criminal justice processes. It will do this by drawing upon two interwoven indicators of offender transformation: the development of a redemption narrative, and reintegrative shaming. Both will be sought within the principles of RJ and compared to traditional criminal justice processes. The paper will then evaluate the actual practice of RJ within the criminal justice system (CJS) of England and Wales to uncover the extent to which offender transformation is given the opportunity to occur. Finally, this paper seeks to consider the transformative nature of RJ in a more expansive manner so as not to neglect the victim-centredness of the practice, and to grasp its full potential.

The paper will unfold in the following order. First, a literature review to reveal existing research and knowledge regarding the transformative nature of RJ, and the relationship between RJ and recidivism. It will also define and explore the redemption narrative and reintegrative shaming. The next section explains

the methods used to carry out this project. Following this, the paper will document findings of redemption narratives and reintegrative shaming within restorative practices. Once uncovered, the paper will discuss these findings alongside the implications of restorative use within traditional criminal justice processes. It will justify a concern with offender transformation within a victim-centred practice, consider the transformative nature of traditional justice processes, and ponder the broader implications of RJ. Finally, this paper will close with a summary of what has been discovered.

Literature Review

RJ is an alternative response to crime that intends to embody a less destructive and more effective approach (Johnstone, 2001). Whilst it is widely defined as a criminal justice practice centred around harm reparation (Liebmann, 2007), certain scholars view its goal as the transformation of the participant's self-perception and their capacity to relate to others (Sullivan and Tifft, 2001). It has been defined as "...a set of principles, processes, and programs that is geared to foster personal healing [and] the healing of communities..." (Sullivan et al, 2006:403). Stories such as that of Peter Woolf's (The Forgiveness Project, N.D.) demonstrate the potential of RJ to initiate "common humanity [between victim and offender], empathy... and inner resolution..." (Johnstone and Van Ness, 2007: 16). Sullivan and Tifft (2001:155) label this as transformation from the "power-based self" to the true self "of peace and gentleness". The transformative conception of mediation is additionally fantasised by Bush and Folger (1994). Mediation can develop and integrate empowerment and recognition within participants, the result being profound moral growth (Johnstone, 2001). Simplified, transformation in this essay describes "life-impacting epiphanies" (Maruna, 2016: 294).

A redemption narrative is a term used to describe an offender's changed self-perception, from one which identified with past offences to a new pro-social sense of self (Maruna, 2001). The principal components of the redemption narrative are a discovery of one's true self, generative motivations, and a sense of agency (Maruna, 2001). Moreover, Braithwaite's (1989) reintegrative shaming theory expresses a response to crime composed of disapproval regarding the offender's actions as opposed to themselves as individuals. This acceptance, rather than stigmatisation, of the individual intends to welcome the offender back into society, to reintegrate them, whilst disapproval of the crime encourages the offender to take responsibility for their actions (Liem and Richardson, 2014). Both Maruna's (2001) redemption narrative

and Braithwaite's (1989) reintegrative shaming are active within the journey to desistance (Liem and Richardson, 2014). This signals that instigating offender transformation can hold a lasting impact upon the individual and therefore crime rates and the CJS.

Whilst several studies have documented the potential of imprisonment to inspire a redemption narrative within offenders (Jewkes, 2011; Bullock et al. 2019), these investigate experiences of long-term prisoners. The high rates of recidivism resulting from short-term prison sentences suggest otherwise (Johnston and Godfrey, 2013). Moreover, Bullock et al. (2019) find maturation supported by the interactions of program participation as a prominent catalyst for the development of redemption narratives. Evidently, those serving short-term sentences will be unlikely to mature within short time frames, nor do they hold access to prison programmes (Trebilcock, 2016). Furthermore, a reprimanded aspect of imprisonment is that of psychological assessment (Crewe, 2011) as well as the deprivation of autonomy (Sykes, 1958). Psychological assessment deprives one of control over their own identity, requesting that prisoners mould themselves into the requirements of the psychological assessment system (Crewe, 2011; Goffman, 1961). To refer to Maruna's (2001) components of the redemption narrative, deprivation of autonomy acts to oppose the necessary ingredients, and one might speculate that a deprivation of control over one's identity cannot inspire discovery of the true self.

The Impact of RJ upon Recidivism

Existing research has celebrated a connection between RJ and recidivism (Latimer, Dowden and Muise, 2005; Sherman and Strang, 2007; Strang et al. 2013; Sherman et al. 2015). Latimer, Dowden, and Muise's (2005) study determined the effectiveness of RJ through a measurement of subsequent recidivism amongst other variables. In a comparison to traditional justice responses, RJ was found to be significantly more successful in inspiring recidivism in its participants. A similar study uncovered evidence that RJ conferencing reduced the frequency of offending for two years afterwards (Sherman et al. 2015). However, it is suggested that any effect of RJ upon recidivism is short-term.

Moreover, in an aim to discover the best practice of RJ with focus upon its consequent recidivism, Sherman and Strang (2007) discovered that its success is dependent upon the participant. The overriding conclusion was that RJ "substantially reduced repeat offending for some offenders, but not all" (Sherman and Strang, 2007:4) when used as a *substitute* for traditional justice methods. In this study of face-to-face conferencing

and court-ordered restitution, it was unearthed that RJ has paramount impact upon recidivism when there is a personal victim that can meet with the offender face-to-face; and when the offence was violent. The enhanced experience of RJ for violent offenders is echoed by Strang et al. (2013) and Sherman et al. (2015) alongside reference to repeat offenders. This increased benefit from RJ is attributed to empathy and shared values between participants as a product of RJ (Strang et al. 2013). Furthermore, in support of a face-to-face meeting rather than a court-ordered process, Strang et al. (2013) reference the significance of the restorative principle that is consent. It is, however, worth centring the limitation of self-selection bias here (Sherman and Strang, 2007). In which RJ and its positive influence upon recidivism may be attributed to the offender's desire to change and thus their consent to taking part. As a result, the competence assigned to RJ is potentially misplaced.

Despite rigorously covering the relationship between RJ and recidivism, these studies present an objective analysis. Indeed, the quantification of recidivism is a realistic method if one is to *statistically measure* the success of restorative programmes. However, these studies present meta-analytical approaches in which a sole reoffence deducts from the percentage of effectiveness held by the programme. Although recidivism follows from offender transformation, it is worth querying the extent to which these studies have measured the transformative nature of RJ. There exists a difference between the termination of offending and desistance from crime (Laub and Sampson, 2001; McNeill et al. 2012). As discussed above, Sherman et al. (2015) informs that the influence of RJ upon recidivism is short-term. Yet, to recall the descriptions of personal transformation, it is not coherent that "life-impacting epiphanies" (Maruna, 2016: 294) or transformation to the true self "of peace and gentleness" (Sullivan and Tifft, 2001: 155) would have a short-term impact. This doubt is strengthened by the concept of desistance as a journey, the road to desistance (Matza, 1964; Laub and Sampson, 2001; McNeill and Weaver, 2010). This journey is not linear but characterised by relapse and wrong turns. The juxtaposition of this against the use of recidivism rates to determine the success of RJ leaves an open space for an alternative measurement. Thus, this essay seeks to evaluate the *transformative nature* of RJ for offenders. Transformation does not mean that one immediately strays from a life of crime. The beginning of the journey may be quite a distance from the end (McNeill et al. 2012).



Methodology

To determine the transformative nature of RJ for offenders, this paper will draw upon secondary research that has identified evidence of a redemption narrative or reintegrative shaming within RJ. As indicators of desistance (Liem and Richardson, 2014), findings of a redemption narrative and reintegrative shaming suggest the potential result of offender transformation. The paper will then draw upon research and discussions regarding the actual implementation of RJ within England and Wales. This will pose as an evaluation of the extent to which it utilises its potential transformative nature.

Methods used were a selection of secondary sources that investigated a relationship between desistance and RJ, followed by a thematic analysis. A library database search of 'restorative justice and desistance' was carried out and thirteen sources were selected, analysed, and deductively coded with pre-set themes 'redemption narrative' and 'reintegrative shaming'. The sources were subsequently narrowed to nine relevant pieces that referred to these indicators of desistance. The actual implementation of RJ within England and Wales has been illustrated through O'Mahony's (2012) 'Restorative Justice and Youth Justice in England and Wales' and Hoyle and Rosenblatt's (2015) 'Looking back to the future: Threats to the success of restorative justice in the United Kingdom'. These articles were selected due to their compatibility with this paper. They provide the exact analysis required: delving into the actual reality of the implementation of RJ.

This research paper takes a qualitative approach. Such decision was made considering the complexity surrounding the concept of a 'transformative nature'. A qualitative lens allows for this concept to be interpreted (Bryman, 2016; Weber, 1947). It creates a space for principles of the redemption narrative or reintegrative shaming to be identified within expressions of RJ experiences or descriptions of the practice. Whilst recidivism is often quantified (Latimer, Dowden, and Muise, 2005; Sherman and Strang, 2007; Strang et al. 2013; Sherman et al. 2015), this paper is concerned with the experience of RJ participants and the impact of such upon their inner self.

Indeed, full satisfaction of an interpretivist philosophy may have been achieved using primary data (Bryman, 2016). To directly discuss transformative experiences, redemption narratives, or reintegrative shaming with RJ participants would provide this study with explicit responses to its exploration.

Unfortunately, such approach was unobtainable due to limited resources and the authors restricted access to participants.

Findings

Redemption narrative

Research investigating the instigation of redemption narratives within offenders by RJ is positive. RJ principles including involvement of the community, interpersonal relationships, storytelling, voluntary participation, and dialogue have been illuminated as catalysts for the development of a pro-social identity. Restorative circles specifically are praised by Petrich (2016) through which community involvement signals to offenders that they are cared for and valued, thus prompting self-reflection and cognitive transformation (Maruna et al. 2004). What is more, within restorative circles, participants “speak from their mental, physical, emotional and spiritual dimensions of being” (Petrich, 2016: 401-402), they tell their story. Upon exposure to the redemption narratives of others, the offender receives a demonstration of their own transformative potentiality. Through retelling and reanalysing one’s story, restorative circles provide the opportunity to delve into one’s past and to discover redemptive qualities already owned. Such aids the development of a new self-identity which aligns with their current story (Petrich, 2016). This is well coordinated with the component of redemption narratives that is a discovery of one’s true self (Maruna, 2001; Petrich, 2016). Furthermore, the voluntary aspect of RJ allows the offender to feel control over one’s life (Petrich, 2016; see also Claes and Shapland, 2016), another principal component of the redemption narrative (Maruna, 2001). Moreover, the principle of generativity is exercised through the interpersonal relationships developed within the restorative process (Petrich, 2016).

Additionally, Maruna (2016: 294) praises restorative conferencing, noting that the development of a redemption narrative is an “explicit aim”. The significance of this conferencing is the dialogue it supports between victims and offenders. This provides the offender with an opportunity to rehearse any newfound redemptive narrative (Maruna, 2016). Similarly, a study of victim-offender mediation discovered offender shifts in thinking consistent with the concept of a pro-social self-narrative (Claes and Shapland, 2016). However, it was noted that this shift occurred before the individual’s involvement in restorative practices. Nevertheless, the interactions, topics discussed, and words of the victim reinforced this shift in thinking.



Such corroborates the study of Maruna (2016), in which restorative processes are praised for allowing the rehearsal of the new redemption narrative.

Reintegrative shaming

Validating this support for the transformative nature of RJ is findings of Braithwaite's (1989) reintegrative shaming within the process. RJ was arguably intended to be transformative as it was built under the influence of Braithwaite's (1989) reintegrative shaming theory (Maxwell and Morris, 2004; Young and Gool, 1999). Its aim is to "separate the person of the offender from the offence that individual has committed, in that sense shaming the offence, but not the offender" (Claes and Shapland, 2016: 314). Evidence of the success of this goal being attributed to RJ can be found in the following quote from an offender participant in victim-offender mediation:

"You know who the first person was who addressed me as Akran [his name], my mediator." (Claes and Shapland, 2016: 314).

Whilst all criminal justice interventions may be perceived as instigators of shame through disapproval of one's actions, the principle of dialogue between victim and offender and the reparative philosophy of RJ implies intent to ensure that the emotional outcome is reintegrative (Harris et al. 2004). Offering the option to make reparations signals a perception of the offender as human with the capacity to become impacted by the harm they caused (Harris et al. 2004). The uniqueness of RJ relates to the process of managing the shame caused to prevent negative reflection upon the individual's self (Harris et al. 2004). In other words, supporting a dialogue between victim and offender with the aim of making repairs acts as an opportunity for "moral redeemability" (Maruna, 2016: 295). The offender is shamed, made accountable and to face their victim, but on the basis that the issue and the shame will be resolved (Harris, 2006a).

Findings of Braithwaite's (1989) reintegrative shaming theory within RJ practices is indicative of its transformative nature. However, the utilisation of shame, even that of 'reintegrative' shame, within criminal justice procedures has been deemed "risky and potentially counter-productive" (Maxwell and Morris, 2004: 139). Findings of a study linking restorative conferencing and recidivism, or RJ induced transformation, illuminated the salience of remorse as an emotive outcome (Maxwell and Morris, 1999). However, others have responded by highlighting the interconnectedness of the emotions guilt, remorse, and shame (Harris et al. 2004). Restorative family group conferencing has been found to instigate higher

levels of shame within the offender when compared with court cases (Harris, 2006a). Whilst shame is detrimental to the transformation of self, the conferencing was also discovered to instigate higher levels of reintegration (Harris, 2006a). Such findings are supportive of the interconnectedness of remorse and shame, suggesting that heightened emotional experiences such as that within RJ connect the offender with their actions. However, by avoiding definition of the individual by this they can use this experience as a springboard for change.

Discussion

It would be satisfying to conclude here that RJ has demonstrated the potential to be transformative for offenders through findings of its use of reintegrative shaming and encouragement of redemption narratives. However, RJ has not been applied to the CJS in all its principles. Rather, in England and Wales development towards this restorative approach has been labelled partially restorative and thus cannot be held up against successful programmes elsewhere (O'Mahony, 2012). This is well illustrated by O'Mahony's (2012) disappointment regarding the use of restorative programmes as diversionary tools or alternative youth justice responses centred around minor offences and first-time offenders. For example, police cautions were replaced with restorative final warnings to respond to first-time low-risk offences by young people. The restorative nature of the final warning is constituted by the invitation of all affected parties in which police officers can mediate discussion regarding the harm caused (O'Mahony, 2012). Yet, Hoyle (in O'Mahony, 2012) discovered that involvement of the victim was seldom achieved. A lack of victim involvement was also discovered within youth offender panels (Rosenblatt, 2015). An example of which was the mediator leading rather than offering control to participants (Hoyle and Rosenblatt, 2015). This undermines the praise placed upon offender storytelling and victim-offender dialogue by Maruna (2016). The reality of RJ within England and Wales removes the opportunity for the offender to rehearse a redemptive narrative or to build a pro-social relationship (Maruna, 2016; Petrich, 2016). Therefore, Maruna's (2001) redemptive component of generativity does not exist here.

Rosenblatt (2015) further identified neglect of the community's role within the youth offender panel. It is suggested that legislative requirements are met by placing community members within the process. However, they act as mediators rather than a representation of support and acceptance of the offender (Hoyle and Rosenblatt, 2015). Once again, the celebration that RJ with community input promotes



participant self-reflection and cognitive transformation (Petrich, 2016; Maruna et al. 2004; Claes and Shapland, 2016) is not recognisable. The lack of community involvement and mediator control discredits the attribute of reintegrative shaming (Braithwaite, 1989).

Furthermore, recidivism studies highlighted the success of RJ for violent and prolific offenders. Yet Hoyle and Rosenblatt (2015; O'Mahony, 2012) document the use of restorative practices to target only low-level offences. This meagre implementation of RJ reflects the government's stubborn penal philosophy. It is warned that criminal justice programs often fail due to poor implementation, and that increasing the use of restorative programs is useless until restorative principles are acknowledged and adopted (Young and Hoyle, 2003; Hoyle and Rosenblatt, 2015).

According to McCold (2000) and what he labels the purist model of RJ, this merging of RJ with the traditional CJS is detrimental to its success. RJ was intended to remove power from the state and to place it into the hands of victims and thus should exist independently from the traditional system (Herman, 2004; McCold, 2000; Zernova and Wright, 2007). The purist model deplors that the co-option of RJ into the traditional justice system disregards its voluntary principle, as remorse and forgiveness may be coerced by the state (Zernova and Wright, 2007). It is worth considering how transformative a coerced practice can be. For example, O'Mahony (2012) writes of the youth restorative disposal which has been utilised by police to save time on lesser offences. This involves an arguably involuntary (or done for convenience) apology between the offender and victim (O'Mahony, 2012). A practice that is unlikely to inspire anything along the lines of personal transformation. To refer to Maruna's (2001) components of the redemption narrative, voluntary partaking in RJ is necessary to provide the offender with a sense of control within their life.

What is more, in cases where restorative principles are adhered to and participants experience personal transformation, it is worth querying the extent to which this transformation can be maintained if the process exists within the punitive CJS. The traditional justice system is characterised by the stigmatisation of offenders (Braithwaite, 2000). Reference to the pains of imprisonment above present this argument well. If immersed in a system through which control of one's identity is lost, a brief session through which a sense of identity is regained is unlikely to counter the weight of anonymity and control in prison. Moreover, the moulding of RJ into traditional criminal justice processes includes the sharing of culture. For example, use of the term 'offender' (Schur, 1971; Willis, 2018). Through this labelling of the individual



the CJS detracts its own success to promote key components of desistance such as a pro-social sense of self and thus the opportunity for reintegration (Willis, 2018). However, there does exist hope through the maximalist argument that implementation of RJ within the traditional system can act to reorientate its approach from retributive to restorative (Bazemore and Walgrave, 1999). It is theorised that strengthening faith in RJ has the capacity to influence doubt around retributive philosophy, to gain widespread support, and thus influence legislative change (Daniels, 2013). Subsequently, transforming the entire CJS. Restorative processes have been written into the Youth Justice and Criminal Evidence Act (1999), which creates “...a sense that the ice is melting...” (Daniels, 2013: 307).

However, RJ originally emerged from the Victim’s Movement (Bazemore and Walgrave, 1999). Thus, this discussion may be deemed to overlook its purpose to centre the victim, provide them with an active role in the process and to address their needs that are often disregarded by the traditional system (Herman, 2004; Johnstone, 2001). By this definition, its pivotal principle is to repair the harm that has *already* been caused rather than to address potential future harm (Strang and Sherman, 2003; Morris and Young, 2000). Nevertheless, the impact of RJ upon recidivism is still sought as it remains ambiguous (Dandurand and Griffiths, 2006). To reduce crime and reoffending exists as a central aim of the justice system (Ministry of Justice, 2016), thus evaluation of this potentiality within alternative responses to crime is essential. Regardless, to satisfy the offender-centred critique of this essay, the transformative nature of RJ for victims will be considered.

Psychological reparation or transformation for victims is of greater importance than reparation of physical or material injury (Zehr, 2005). As a result, the face-to-face meeting between victim and offender is far more beneficial to victims in comparison to the offender-centred traditional justice processes (Johnstone, 2001). This is well illustrated by the case of Bud Welch through which the all-round transformative nature of RJ is illuminated. Although not an official practice of RJ, Welch voluntarily met with the father of his daughter’s murderer (Timothy McVeigh), shared expressions of the pain they suffered, and established a connection through mutual experience (Sullivan et al. 2006). This meeting was the catalyst for Welch’s personal transformation, who then became the transforming agent in McVeigh’s father (Sullivan et al. 2006). This demonstration of a restorative based approach supporting victims in their envisioning of a new un-wounded self suggests that RJ is not just transformative for the offender, but for victims as well as others that have been impacted by the harm.

RJ is evidently successful in its ability to transform. However, it does not own this skill in solitary. There are alternative justice interventions that deserve attention for this regard. For example, arts-based projects for offenders are newly celebrated in their incitement of alterations to one's thinking patterns (Bilby et al. 2013). A study linking arts interventions and desistance discovered that the intertwining of the arts with criminal justice acts as a tool with which one can manage their sense of self and identity (Bilby et al. 2013). What is more, art was identified as a catalyst for change, or transformation. Participant Jamie expressed that:

"[Art is] relaxing and therapeutic, an opportunity to be someone else really." (Bilby et al. 2013: 21).

Such is reflective of Maruna's (2016) emphasis on a tool with which one can rehearse their redemption narrative. However, RJ is arguably unique in that it holds the potential to be transformative on a wider level. It has been argued that the philosophy of RJ can be expanded beyond addressing single harms that have occurred between individuals (Sullivan and Tifft, 2001; Harris, 2004; Schweigert, 2002). The needs-based approach can be utilised to address wider social-structural harms (Sullivan and Tifft, 2001). Harms that occur between individuals often carry deeper "societal patterns of racism, sexism, classism, addiction, homophobia, violence, repression/control and dependence" and a "complicated web of community and socio-economic forces" (Dyck, 2000: 242-244 cited in Harris 2006b). The unpacking of this through RJ is promising of a more widespread comprehension of structural inequality and thus "wholeness justice" (Breton and Lehman, 2001: 117-119). This idea is well illustrated through novel 'Native Son', in which a victim's boyfriend communicates with her offender. Through this he develops a comprehension of the social pressures of racism faced by the offender and their role in the offence (Sullivan et al. 2006). This might be promising if it were not for the need to drastically change the co-option of RJ at individual level.

Conclusion

This paper has uncovered the potential of RJ to instigate personal transformation within offenders. The importance of which is the relation between personal transformation and desistance from crime. However, the co-option of RJ into the traditional CJS in England and Wales has resulted in an unsuccessful partially restorative approach. The implication is that RJ must exist independently of other practices if it will not singlehandedly influence the entire system philosophy. This essay may be criticised for twisting a victim-centred response to crime into an evaluation of its transformation of offenders. Nevertheless, it

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has also been discovered that RJ can be transformative of any party that is emotionally wounded by the harm. Indeed, RJ is not unique in its ability to inspire personal transformation. However, it is arguably unique in its potential to transform society.



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