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# 1<sup>ST</sup> INTERNATIONAL SYMPOSIUM ON RESTORATIVE JUSTICE AND HUMAN RIGHTS

2012, June 2nd-7th, Skopelos island, Greece



## ABSTRACTS

## **Aristotle on the Philosophy of Restorative Justice and Human Rights**

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The objective of the paper is twofold. First, to identify the philosophical foundations of restorative justice principles as they are debated in the teachings of Aristotle and translated into modern reality. Second, to introduce Aristotle into the history of restorative justice, as a pioneer in the restorative justice international movement. A solid philosophical and historical foundation for restoration justice is needed if contemporary practices are to be taken seriously for policy making and justice reform internationally. The Aristotelian tradition of liberal and consequentialist thought, and the historical effects that supported these teachings will form the basis of our arguments.

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## **High risk behaviour in schools: applying conflict resolution**

Elaine Joubert

*University of South Africa, South Africa*

South Africa is not unfamiliar to the concept of violence. Violence has infiltrated our communities, schools, households and even sporting events. In South Africa, a retributive and punitive approach is usually adopted when dealing with misbehaviour in schools. Despite the abolition of corporal punishment in 1996, more than 50% of schools still administer it. Punitive methods take the form of expulsions, suspensions and detention. Restorative justice can be examined as a possible solution to protect, promote and restore the right to dignity of the victims of misbehaviour in schools (the importance of acknowledging dignity is also embedded in the South African Constitution). A case study will be used as an example to illustrate how the principles of restorative justice can be applied during conflict resolution or victim offender mediation in South African schools. Even though restorative justice is a time-consuming process at first, in the long run a restorative culture can evolve in schools that can be to the benefit of the school community as a whole.

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## **Humanity through Circle**

Dr. Evelyn Zellerer

*Founder, Peace of the Circle, Canada*

Since the Universal Declaration of Human Rights (1948), there is recognition that the inherent worth, dignity, equality, freedom and inalienable rights of every human being is the foundation for justice and peace. How do we actually realize human rights and co-create justice and peace for all? How can we honour the great diversity and differences among us, and connect with one another in a generative way, even when there is conflict or crime? In this paper, I explore human rights, restorative justice, and circles, as concepts and in practice. This exploration includes the interrelationship and synergistic potential between human rights, restorative justice and circles from different perception points. I explore human rights as values and restorative justice as a platform on which these values can actualize in the world. I specifically focus on the contribution of Circle as an effective restorative process and as a powerful application to transform and strengthen people, families, communities, organizations, and nations. Circles represent a fundamental shift in how we can connect with one another and they open up new possibilities for us to realize human rights.

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## **International justice and peace today**

Prof. Christodoulos Yiallourides

*Panteion University, Greece*

The quest for justice and peace in the world and in international affairs has been a recurrent demand of humanity from the ancient times. It continues to exist at the level of the global society now - despite not proving to be a successful venture. From the birth of the modern state in the last three hundred years, to the creation of a more globalized yet tense international community, the quest for global justice has related itself to the singular and universal implementation of international laws. But what happens today and has happened in the past is that there has been a selective implementation of justice and law, that depends on the willingness and the power of the ruling states to implement international justice and international law. This selectivity is a fact deriving from the anarchical international system, even though there have been instances of implementation of international law in cases where there was a blatant breach and violation of peoples' and individuals' rights, as in the aftermath of the breakup of Yugoslavia. Respectively, peace in the era of globalization is breached not only by the exercise or the threat of armed violence but also at the level of "structural violence", meaning the pauperization of large population groups by hunger, unemployment, lack of housing and medical care, and illiteracy. In an era where human rights are global in scope with international bodies tasked with their propagation as well,

large swathes of the human population are still deprived of their fundamental rights. Possible links between humanitarian law and restorative justice principles and philosophy are also addressed.

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### **Is Lady Justice (Color) Blind?**

#### **Zero Tolerance, Restorative Practices and the Rights of Minority Youth in School**

Prof. Mara Schiff

*School of Criminology and Criminal Justice, Florida Atlantic University, USA*

There is considerable evidence that punitive zero tolerance disciplinary policies in schools result in the overuse of suspension, expulsion and disciplinary referrals for school-based youth. The impacts of such policies are disproportionately felt among minority students, resulting in what is being called the “school-to-prison pipeline” in the U.S. and elsewhere. Moreover, recent research suggests that the offenses for which minority youth are typically penalized are considerably more “subjective” than the violations recorded for their white peers. This disproportionate use of harsh disciplinary sanctions for minority youth violates the educational, social and civil rights of young people, ostensibly to promote “safer” schools and correspondingly higher academic achievement. As an alternative disciplinary response, restorative justice approaches in schools are designed to encourage youth to accept accountability for their actions, make amends to those harmed and, ultimately, to successfully stay in school. Such approaches are gaining considerable attention as a “best practice” for reducing suspension, expulsion, disciplinary referrals and subsequent school-related arrests (Morrison et al, 2005; Stinchcomb et al, 2006).

This paper addresses how harsh, punitive and non-restorative discipline marginalizes and criminalizes the behavior of minority youth and how the use of restorative practices can promote far fairer, more just and inclusive outcomes. The paper will first review the use and impacts of zero tolerance and other punitive disciplinary sanctions on minority youth. It will then examine the use of restorative justice as an inclusive alternative strategy with the promise of preserving individual and collective student rights.

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### **Relationality in Human Rights: Four Rights Proposed**

Prof. Susan Sharpe

*Advisor on Restorative Justice, University of Notre Dame, USA*

Restorative justice is commonly touted as beneficial because of the space it creates for apology, for narrative, for participation in decisions about amends, and for the negotiation of future relationship. This paper posits that the strength and consistency of benefit arising from these features of restorative justice point to an overlooked relational dimension of human rights. That is, in addition to having inherent dignity and basic freedoms to be protected against violation, human beings also should be understood to have

relational rights, the preservation of which is important to recovery from the damage caused by criminal or other violation. The paper argues that each of these features of restorative justice might be considered a right worthy of protection, and that such rights can be preserved without compromising the voluntariness that undergirds restorative justice.

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### **Restorative justice and clinical education – a win/win situation?**

Prof. Richard Grimes

*Director of Clinical Programmes, University of York, UK*

The impact of restorative justice (RJ) has been extensively monitored and documented. Whilst views may vary as to the exact nature of the measurable outcomes there is general acceptance that RJ does make a difference. Satisfaction levels of RJ participants are reportedly high, reoffending rates are often reduced, where reoffending does occur it is frequently at a lower point of seriousness and the cost of delivering RJ is substantially less than more traditional forms of criminal justice intervention. This paper will take a RJ conferencing model and graft on to it an overtly educational component. This sees the involvement in RJ facilitation by staff and students at one of the UK's leading law schools. The educational angle involves the development of legal literacy on the part of RJ participants and the clinical education of law students through a form of experiential learning.

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### **Restorative justice: "Old win in a new bottle" and the human rights axiom**

Prof. John Winterdyk

*Centre for Criminology and Justice Research, Mount Royal University, Canada*

"A revolution is occurring in criminal justice. A quiet, grassroots, seemingly unobtrusive, but truly revolutionary movement is changing the nature, the very fabric of our work." Justice, as most of us know it, is premised on Calvinistic notions that have been shown to be relatively ineffective. RJ is not about adding new programs or modifying our old ones, but it is about how do we best reorient how we think about crime and justice. While RJ is premised on the fundamental assertion of restoring or repairing harm as much as possible to the victim/community, we are calling for fairness over accountability and punishment. Yet, there is little in the current CJS that allows for the offender to embrace and acknowledge their responsibility. The presentation will focus on the necessary shift of human rights within the new paradigm context and explore how this might best be evaluated.

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## **Restorative justice, Police and Human Rights: The citizens' trust hypothesis**

Ioannis Karagiozos

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The concept of Restorative Justice draws its roots from ancient times; however, its problematic created during the nineties an international movement and a unique regulatory theory which premises new intervention strategies and practices with new tools and new reformatory methods of dispensation of justice. More specifically, as a general rule, Restorative Justice offers a practical alternative justice through the development and enforcement of formal and informal practices that complementary and alternative compared to traditional regulation under the legal systems and especially in criminal justice.

In Greece, Restorative Justice appears in institutional level the last decade and its practices apply formally or informally complementary also as alternative solutions. It applies in a series of crimes which are foreseen by the Greek Penal Code as well as in civil and commercial affairs. The practice of mediation comprises the basic expression and instrument of restorative justice and it is foreseen by the Greek Law through a series of modern enactments. However, except for the institutionalized practices it is possible the informal mediation by the Police and through its institutions, in order the defendant and potential parties to resolve their disputes by avoiding judicial actions.

This article analyzes the level of informal mediation as an effective police practice of restorative justice, the role it can play through mediation to resolve certain disputes in civil institutions which are provided and may be solved by alternative forms of redress, prospects for reform of the institutional role of the police, with new tools, new perspectives and criteria. In addition a twofold model "Police-mediation", highlighting the parameters to enhance public confidence in informal mediation cases the police to resolve civil disputes or lack thereof and circumvention of their legal rights through the existing institutional framework provided by the practice of mediation.

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## **Rights and Restoration in Canada: Law, Practice and Theory**

Prof. Brenda Morrison

*Centre for Restorative Justice, Simon Fraser University, Canada*

Canada's legal structure, constitution and charter is grounded in a human rights framework, signed in 1982, making Canada a constitutional democracy. In 1996, sentencing provisions aligned with this framework in changes to the Criminal Code of Canada (e.g. Section 718.2), which includes the provision of reparations for harm done to victims and the community, and the promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims and to the community. Likewise, the 1989 UN

Convention on the Rights of the Child was signed by Canada in 2010 (along with 193 other countries) and is reflected in the Youth Criminal Justice Act (e.g. Articles 2, 3, 6 and 12). This paper will review these legislative developments in the context of research and development in the practice of restorative justice in Canada, as called for by the Daubney report "Taking Responsibility", following the Green Paper issued by the House of Commons in 1987. Current practice will then be examined within the theoretical framework of responsive regulation motivational postures as well as social value orientation.

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### **Rule of Marginalized Community: Integrating Frames of Restorative Justice and Human Rights**

Prof. Judah Oudshoorn

*Conestoga College, Canada*

The aim of this paper is twofold: (1) an analysis of the overrepresentation of aboriginal people in Canadian prisons will highlight the failure of law to treat all members of society equally, thus exposing limits to rule of law. (2) For this reason, a proposal will be put forward that criminal law must find a way to be accountable to aboriginal communities, which have, past and present, been at the margins of Canadian society. This paper humbly suggests a complement to rule of law – rule of marginalized community. That is, in order to promote equality, rule of law must be married with a version that gives communities more power in shaping law and, as such, justice outcomes. Taking as its vantage point a theoretical exploration of the intersection of human rights and restorative justice, a framework will be established whereby marginalized communities have voice in establishing just societies.

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### **Social Transformation through restorative justice processes**

#### **– A case study of Traditional Leaders in Ixopo**

Dr. Marelize Schoeman

*University of South Africa, South Africa*

Restorative justice is in line with the African ethic and humanistic philosophy of *ubuntu*, which encompasses issues of human dignity and respect within the understanding that an individual's humanity is interconnected with the dignity and humanity of others. The same values and principles that underpin restorative justice are embodied in the African philosophy of *ubuntu*. In South Africa restorative justice principles are entrenched in our laws and judicial system but westernisation and industrialisation resulted in acculturation, eroding traditional values and created a state of anomie. In this paper it is proposed that restorative justice processes can be used to revive an *ubuntu* worldview thereby promoting social transformation. Traditional leadership in rural communities is entrenched in the history of South Africa and other African countries. Such leaders act as governors of their communities and are tasked to ensure

the social welfare of the community. They also serve a judicial function, thus play an important role in justice and crime prevention in a community. A case study done in the Ixopo, Amakosi area, South Africa will be used to illustrate how the training of traditional leaders in restorative justice principals is used to counteract the erosion of moral and social codes in society.

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### **The Criterion of Reciprocity**

Ben Lyon

*IARS and Register of Restorative Practitioners, UK*

The successes claimed for Restorative Justice are usually in relation to a single meeting and we will examine whether this can be the sole basis for behavioural change and healing, or what other forces may be at work. I will use with the effects and emotions reported by the participants of RJ as a platform to explore the human traits that may have been brought into operation by restorative processes. In particular whether RJ works through our affinity to reciprocal altruism as a successful conflict resolution strategy for individuals, kin and group.

If there is a sound, scientific basis for restorative practice then there may be implications for the future development and practice of restorative justice, for the practitioner, the criminal justice system and legal policy makers. It could be that the presence of an evolutionary inheritance for mediated settlements implies that its provision becomes a “human right” and therefore an entitlement. Likewise, if RJ is a compelling answer to criminal behaviour should it be imposed, on all concerned?

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### **The nexus between Rights and Restorative Justice, using a case example of an organisation ‘C’**

Robert E. Mackay

*Restorative Justice Forum Facilitator, Edan Consultancy, Australia*

This paper addresses two questions. The first is theoretical: What is the relationship between rights and restorative justice? The answer to this question leads to the second, pragmatic question: Can we pursue restorative aims when access to redress has been limited or denied? This is explored through a case example. In the face of the challenges that this case example presents in the face of these challenges to practice, I question whether rights theories are a necessary but insufficient foundation for restorative justice. I will argue that if we are concerned with the restorative principle of justice, in the current state of Western legal traditions at least, it will be difficult to meet this criterion without a strong foundation of human rights. However, in practice, that foundation may not provide for the fulfilment of rights, and even if it could, legal systems cannot always achieve justice. So the issue for the practitioner is, absent a strong rights foundation, what can be done? If we broaden our context and see justice as a servant of



peacemaking, restorative practitioners can explore means of promoting peace, which may include the promotion of human rights.

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### **The Teachings of Restorative Justice**

Prof. Gerry Johnstone

*Professor of Law, University of Hull, UK*

Restorative justice is conventionally characterised as a set of (experimental) social practices for handling crime and related social problems. However, it might also be characterised as a set of teachings or doctrines. If we characterise restorative justice thus, a range of interesting questions can be posed. To whom are these teachings addressed? What do they concern? How coherent are they? How hard would it be to follow the teachings of restorative justice? Would it be prudent to follow these teachings? Would it be ethical? What are the sources of the teachings of restorative justice? This paper first argues for the characterisation of restorative justice as a set of teachings and then sketches some preliminary answers to such questions.

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### **Universal Justice and human rights: A dilemma of global utopia**

Mersilia Anastasiadou

*Centre of Eastern Studies, Panteion University, Greece*

The concept of peace, liberty, democracy and justice were identified in humanity's pursuit of life, liberty, and happiness as essential values underlying this quest – the quest for an improved life. Kant's conception of 'perpetual peace' as a route for humanity to eliminate contradictions and conflicting phenomena that lead to wars and to replace it with peace and harmony in the world continues to define the contemporary concept of peace. This idealism was also expressed by Francis Fukuyama in his "End of History" when he wrote about justice and liberal democracy as the only lasting political ideology after the fall of the Soviet imperium with US hegemony acting as the guardian of that ideology. Fukuyama's dialectical approach appears to have been utopian (in retrospect). However, as this paper argues, justice and liberal democracy as universal goods did not achieve their aims, especially in parts of the world characterized by religious and social unrest and socio-cultural contradictions. In this sense, there is a dilemma in terms of the utopian ideals espoused and the global reality that followed and still follows. The reality emerging in the past two decades after the collapse of USSR contradicts Fukuyama's utopian ideal of liberal democracy spreading around the world. This expectation was utopian primarily because liberalism and democracy are western type values and systems that cannot be implemented automatically in every culture and part of the world. We cannot witness only the absence of justice and rule of law worldwide but there is also a chasm of socio-

economic inequality that could eventually lead to an increasing threat for world peace. The stronger powers continue to dominate the weak in parts of the world despite globalization and the declared worldwide force of justice and rule of law.

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### **Where Conflict Resolution Meets Restorative Justice**

Prof. Maria Hadjipavlou

*Department Of Social and Political Sciences, University Of Cyprus, Cyprus*

The inter-disciplinary field of conflict resolution both theoretically and in an applied fashion has developed out of the need to challenge the traditional theories and methods in solving problems whether at the international, local, institutional or the inter-personal levels. My presentation will focus on the use of conflict resolution in international conflicts and its conversation with restorative justice and feminist theory. What are the underlying assumptions about international conflict from a conflict resolution and feminist perspectives? Why such an approach gives emphasis on societal attitudinal changes toward the Other and why relationship building are important factors in restoring traumatized communities which are in a conflict system? How do issues of power asymmetries and security issues being addressed? There is a lot of similarity in the application and tools used by both Restorative Justice and Conflict resolution. Both support unofficial processes where the grievances of both sides are addressed and mutual recognition of harm done to the other. The need for apology and reconciliation processes as well as truth commissions have been used as alternative tools as well as conflict resolution workshop skills training in putting the foundations for a peace culture and social-political change. I would suggest that a conversation among disciplines, theoreticians and practitioners is of paramount importance in rebuilding traumatized communities. During the discussion I will make reference to my empirical and experiential work in the context of Cyprus.

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### **WORD. Women Offenders Rehabilitation and Development**

Vikki Robertson

*Jewel & Esk College, Scotland*

WORD is a ground breaking project in Edinburgh aimed at engaging with women in prison and maintaining contact in the Community upon liberation. The project aims to prevent the cycle of reoffending primarily by influencing behavioural change using a multi-agency approach. WORD supports women who have an offence linked to the misuse of drugs and alcohol residing in the City of Edinburgh. This report describes the experiences in bringing this unique project to life. It is a practice based account and reflection by Jewel & Esk College.

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