

# LA3A7-15 Restorative Justice

**21/22**

**Department**

School of Law

**Level**

Undergraduate Level 3

**Module leader**

Amanda Wilson

**Credit value**

15

**Module duration**

10 weeks

**Assessment**

100% coursework

**Study locations**

University of Warwick main campus, Coventry Primary

Distance or Online Delivery

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## Description

### Introductory description

Restorative justice is a widely applied, yet not fully-fledged, alternative justice mechanism. In focusing on the contextual and ethical realities of wrongdoing and its repair, RJ draws attention to the limitations of conventional approaches. In response, it offers a different way of doing justice that is claimed to better meet the needs and interests of those affected by wrongdoing. This is given effect through the facilitation of dialogic exchanges between victims, perpetrators and communities. This module examines the theory and practice of RJ in the criminal justice setting and critical issues in the field.

### Module aims

The principal aims of this module are to critically examine both the conception and application of restorative justice in the criminal justice setting through a combination of theoretical questions and applied case studies.

RJ raises a number of important conceptual issues with respect to different meanings of 'justice' and 'restoration', the relationship between formal and informal justice, and intersectional concerns—in particular, race and gender. Underlying these issues are key theoretical questions that invite interrogation: how should we understand the relation between retributive punishment

and RJ? What does it mean to be doing restorative justice in criminal justice settings? How can RJ give effect to healing? Further questions of a practical nature are also raised by RJ. At present, it remains an adjunct or supplement to conventional criminal justice. What are the implications of this adjunct positioning for its practice? Is this problematic? And, if so, how might it be overcome?

Case studies are utilised to help students both deepen their understanding of the theoretical issues and concepts, and to appreciate the practical challenges that arise in the implementation of RJ. Case study topics likely to be covered include: youth family conferencing; adult victim-offender mediation and community conferencing; Indigenous RJ; and RJ in the prison.

## **Outline syllabus**

This is an indicative module outline only to give an indication of the sort of topics that may be covered. Actual sessions held may differ.

This is an indicative outline. Below is a list of topics that are likely to be covered (though actual sessions held may differ).

**Week 1: Introduction.** We begin with an overview of the module. The topics covered, readings, Moodle pages, learning outcomes, feedback and modes of assessment will all be explained as will the critical perspective that informs the module. In simplified terms, this module privileges the experience and perspectives of marginalised persons. The theoretical concepts we will explore challenge accepted legal concepts that fail to take into account social, historical, cultural and ethical positions. Following the overview, we turn to consider a simple yet contested question: what is restorative justice? In exploring this question we examine key standpoints, debates and challenges in the field.

**Week 2: Criminal Justice.** This week, we look at the relationship between criminal justice and RJ. Starting with the retributive-restorative contrast put forward by early proponents, we go on to explore how this contrast has been challenged by some and maintained by others. We engage with the following theoretical questions: how should we understand the relationship between RJ and criminal justice? What does it mean to be doing RJ in criminal justice settings? We problematise the adjunct status of RJ, its subservience to law and cooption in theory and practice.

**Week 3: Moral Psychology.** Having established that RJ remains vulnerable to retributivist ethics and that it lacks a clear theoretical foundation, this week we consider what RJ really is about in ethical-theoretical terms. We explore this through the moral psychology of RJ—that is, moral and psychological concepts that characterise the ethics of violation and its repair. Key concepts we explore here include: guilt; shame; authentic responsibility; forgiveness; healing and reconciliation/repair. Testimonials from perpetrators and victims/survivors will be drawn on to help illustrate these concepts.

**Week 4: Case Study: Conferencing and Mediation.** This week we examine the first of three case studies of applied restorative justice. We begin with an introduction to the most extensively applied restorative justice practice: conferencing. We look at the aims, key components and stakeholders involved in this practice before exploring its application to young people. Its application to adults is then examined through the documentary film 'The Meeting' which documents an adult conference that took place between a perpetrator and survivor of a serious crime. In the seminar, we will critically analyse the film in terms of the moral psychology at play and gender concerns.

Week 5: Cast Study: Indigenous Practices. It is often claimed that RJ practices either draw from or have roots in Indigenous justice processes. These claims are patronising and offensive to Indigenous peoples. We begin this session by taking these concerns seriously, exploring key differences between Indigenous justice and RJ and the limits of state-controlled, top-down RJ practices for Indigenous persons. In particular, we examine the extent to which RJ can give effect to healing. Circle sentencing is drawn on as a case study to examine these issues in more depth.

Week 6: Reading Week (no lecture or seminar)

Week 7: Case Study: Prisons. This week we explore the application of RJ in the prison setting. An ex-perpetrator will be invited to speak about their personal experience of RJ. The RJ practice lead for Her Majesty's Prison and Probation Service will then speak about their experiences of facilitating RJ conferences involving victims/survivors, perpetrators and the community. They will also discuss some of the restorative practices that have been implemented within the prison environment to respond to inter-prisoner and staff-prisoner conflict.

Week 8: Gender. In this session, we return to gender concerns raised in previous weeks and examine them more fully. We begin with an exploration of feminist engagement with RJ. We then look at the ways in which RJ is both gendered and gendering and how it fails to take difference on board. The appropriateness of RJ for gendered crimes, in particular domestic violence and sexual offences is also explored.

Week 9: Race. Building on some of the critical issues discussed in Week 5, this week provides a more intensive treatment of race and, with it, colonisation. Following a critical examination of RJ practices as racilised, we turn to consider calls to decolonise RJ. We explore what this might look like from different perspectives, paying particular attention to the views of Indigenous scholars.

Week 10: The future of RJ. To end, we bring together the theoretical questions, critical issues and challenges discussed over the past 10 weeks and consider the future of RJ. Is it possible for RJ to be viewed as anything other than an adjunct to criminal law and justice? Could RJ ever become a fully-fledged alternative to punishment? If so, what would it need to mount a proper challenge to retributivist ethics? Can RJ attend to the needs and interests of marginalised persons? Or is it destined to repeat the experience of conventional criminal justice?

## Learning outcomes

By the end of the module, students should be able to:

- To understand the various ways in which RJ has been conceptualised in the field.
- To understand the nature and limits of conventional justice responses to wrongdoing and its repair.
- To consider the moral psychology of RJ and the concepts that underlie it such as shame, guilt, responsibility and forgiveness, and how these relate to restoration, healing and repair.
- To understand the nature and extent of practical applications of RJ in the criminal justice system both nationally and globally, and the challenges of implementation.
- To understand critical issues in the field such as issues of gender and gendering, race and calls to decolonise RJ.
- To consider the ways in which RJ is impacted by the institutional setting in which it is embedded on the level of theory and in practice.

## Indicative reading list

What follows is merely indicative:

- Braithwaite, J (1989) Crime, Shame and Reintegration
- Cook, KJ (2006) 'Doing Difference and Accountability in Restorative Justice Conferences'
- Cunneen, C (2002) 'Restorative Justice and the Politics of Decolonization'
- Daly, K and Stubbs, J (2006) 'Feminist Engagement with Restorative Justice'
- Gavrieldes, T (ed) (2018) Routledge International Handbook of Restorative Justice
- Johnstone G and Van Ness D W (eds) (2007) Handbook of Restorative Justice
- Johnstone, G (2011) Restorative Justice: Ideas, Values, Debates
- Pavlich, G (2005) Governing Paradoxes of Restorative Justice
- Stauffer, J (2015) Ethical Loneliness: The Injustice of Not Being Heard
- von Hirsch, A et al. (eds) (2003) Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?
- Walgrave, L (ed) (2002) Restorative Justice and the Law
- Walker, MU (2006) Moral Repair: Reconstructing Moral Relations after Wrongdoing
- Weitekamp, EGM, Kerner, HG (eds) (2002) Restorative Justice: Theoretical Foundations
- Zehr, H (1990) Changing Lenses: a new focus for crime and justice
- Zehr, H and Teows, B (eds) (2004) Critical Issues in Restorative Justice

## Research element

Research essay (see Assessment).

## Interdisciplinary

RJ is by its nature a highly interdisciplinary field. Accordingly, this module draws on a range of disciplines including:

- law
- socio-legal studies
- ethics and philosophy
- moral psychology
- psychoanalysis
- intersectionality
- feminism
- (post)colonialism
- critical criminology
- critical realism
- social science

## International

RJ is a global justice mechanism. Readings and other module materials will be drawn from a range of international perspectives. Key case studies will also explore the application of RJ in

colonial jurisdictions (Australia, Canada and New Zealand).

## Subject specific skills

Upon successful completion of this module, students should be able to:

- Demonstrate a sophisticated knowledge of the key theoretical issues and concepts in RJ and its practical application in the criminal justice context.
- Demonstrate an understanding of the ethical and emotional dynamics at play in RJ processes.
- Demonstrate an appreciation of critical issues for RJ as well as its contributions and challenges.
- Engage in debate about the relationship between RJ and criminal justice.
- Undertake advanced research on RJ related issues in the UK and abroad.

## Transferable skills

This module contributes to the following transferrable skills:

- Effective verbal and written communication
- Effective listening
- Advanced critical thinking and evaluation
- Independent learning
- Time management and organisation
- Capacity to undertake advanced, independent research
- Personal and professional values and enrichment

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## Study

### Study time

Type	Required
Lectures	9 sessions of 2 hours (12%)
Seminars	9 sessions of 1 hour (6%)
Private study	123 hours (82%)
Total	150 hours

### Private study description

Private study activities may include (but are not limited to): independent reading and learning; seminar preparation; staying on top of Moodle announcements, materials and activities; consultations with lecturer/seminar leader; preparation and execution of assessment tasks; evaluating feedback.

## Costs

No further costs have been identified for this module.

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## Assessment

You must pass all assessment components to pass the module.

Students can register for this module without taking any assessment.

### Assessment group A

	Weighting	Study time	Eligible for self-certification
Assessment component			
Research Essay	100%		Yes (extension)
The research essay questions will be provided later in the Term. The essay is designed to develop independent research skills, while still fine tuning general writing and comprehension ability.			
Reassessment component is the same			

### Feedback on assessment

Interim feedback:

Students will have the opportunity to obtain feedback on an outline of their research essay before final submission.

Final feedback:

Research essays will be marked on Tabula and feedback provided as standard.

Note: for transparency and consistency, students will be provided with a rubric for the essay.

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## Availability

### Courses

This module is Optional for:

- ULAA-M300 Undergraduate Law

- Year 2 of M300 Law
- Year 3 of M300 Law
- ULAA-M105 Undergraduate Law (3 year) (Qualifying Degree)
  - Year 2 of M105 Law (3 year) (Qualifying Degree)
  - Year 3 of M105 Law (3 year) (Qualifying Degree)
- ULAA-M106 Undergraduate Law (4 year) (Qualifying Degree)
  - Year 2 of M106 Law (4 year) (Qualifying Degree)
  - Year 3 of M106 Law (4 year) (Qualifying Degree)
  - Year 4 of M106 Law (4 year) (Qualifying Degree)
- ULAA-M104 Undergraduate Law (Year Abroad)
  - Year 2 of M104 Law (Year Abroad)
  - Year 4 of M104 Law (Year Abroad)
- ULAA-M108 Undergraduate Law (Year Abroad) (Qualifying Degree)
  - Year 2 of M108 Law (Year Abroad) (Qualifying Degree)
  - Year 4 of M108 Law (Year Abroad) (Qualifying Degree)
- Year 3 of ULAA-ML33 Undergraduate Law and Sociology
- Year 2 of ULAA-M10A Undergraduate Law with French Law (Qualifying Degree)
- Year 2 of ULAA-M10C Undergraduate Law with German Law (Qualifying Degree)
- Year 3 of ULAA-M110 Undergraduate Law with Humanities (3 Year)
- Year 3 of ULAA-M113 Undergraduate Law with Humanities (4 Year) (Qualifying Degree)
- Year 2 of ULAA-M115 Undergraduate Law with Social Sciences (3 Year) (Qualifying Degree)

This module is Option list A for:

- Year 4 of ULAA-M10A Undergraduate Law with French Law (Qualifying Degree)
- Year 4 of ULAA-M10C Undergraduate Law with German Law (Qualifying Degree)
- Year 4 of ULAA-M113 Undergraduate Law with Humanities (4 Year) (Qualifying Degree)
- Year 3 of ULAA-M115 Undergraduate Law with Social Sciences (3 Year) (Qualifying Degree)

This module is Option list B for:

- ULAA-ML34 BA in Law and Sociology (Qualifying Degree)
  - Year 3 of ML34 Law and Sociology (Qualifying Degree)
  - Year 4 of ML34 Law and Sociology (Qualifying Degree)
- Year 4 of ULAA-ML33 Undergraduate Law and Sociology