Is restorative justice punishment?

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Abstract

This article has two objectives, both of which are new. First, it presents a new framework of punishment in nine dimensions, which makes it possible to distinguish systematically between different conceptualizations of the nature of punishment. Second, using the framework, it discusses the relationship between restorative justice and punishment, showing that some cases of restorative justice constitute punishment from the perspectives of some of the punishment positions in the framework but not for others. Thus, according to some positions, restorative justice (mediation, conferences, circles, etc.) is punishment.

1 | INTRODUCTION

The present article aims to contribute to the understanding of the relationship between restorative justice and punishment by introducing a new framework of punishment in nine dimensions. This is presented in detail in Section 3. The dimensional framework presented here distinguishes between minimalist and maximalist positions within nine dimensions of punishment—a distinction that, in turn, allows us to distinguish between a large number of different positions, in fact 512 different positions, on what punishment is. A person may be a minimalist or a maximalist on punishment in all of these dimensions or a minimalist in some dimensions and a maximalist in others (in the latter case, the person holds what I will call a "mixed" position).

I begin by positioning the present article in the literature on restorative justice and punishment in Section 2. In Section 3, the dimensional approach to punishment is demonstrated in detail. This approach provides the methodological foundation for my analysis and discussion of the relationship between restorative justice and punishment. The analysis and discussion take their point of departure in Marshall's definition of "restorative justice" as follows:

a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future (Marshall, 1996, p. 37, 1999, p. 5).[1]

In addition to drawing on the existing literature on mediation, conferences, and circles—commonly highlighted as primary examples of restorative justice (see Hansen & Umbreit, 2018; McCold, 2006; Morris & Maxwell, 2001; Sherman et al., 2015; Stuart & Pranis, 2006; Umbreit, Vos, Coates, & Lightfoot, 2005; UNODC, 2020; Zinsstag & Vanfraechem, 2012)—the analysis and discussion will also draw on qualitative data produced in my own work on restorative justice in Denmark. I have practiced as a mediator in the victim–offender mediation program ("Konfliktråd") of the Danish national police since 2014. Since 2015, I have been one of two persons responsible for training the program's new mediators (for the Danish program, see Asmussen, 2014, 2015; Hansen, 2012; Henriksen, 2003; Kyvsgaard, 2016; Kyvsgaard & Ribe, 2018; Kyvsgaard, van Mastrigt, & Gade, 2018; Ministry of Justice's Committee on Victim–Offender Mediation, 2008; Rambøll, 2006; Rasmussen, 2020; Sherman, Mastrigt, Gade, Ammann, & Strang, 2020). I am also fortunate enough to have been part of a research team that has observed more than a 100 meetings in the Danish program.[2] Although we have collected quantitative data in the Danish program, I want to make it clear at the outset that the aim of this article is not to present any quantitative results. Rather, it aims to offer *new theoretical reflections* on the relationship between restorative justice and punishment. It is to reach that aim that the article draws on qualitative data from observations of restorative justice meetings and from conversations with meeting participants.

2 | RESEARCH POSITIONS

When the term "restorative justice" first began to be used in the field of criminal justice, several scholars argued that there is a radical difference between restorative justice and punishment. Subsequently, other scholars challenged this idea, highlighting similarities between the two. In this section, I characterize the earlier body of scholarly work as a "difference trajectory," as distinct from the second of these two groups, which I present as a "similarity trajectory" (although I make no claim to have covered everything that has been written within these two fields). At the end of this section, I will elaborate on how the current article represents a midway position between these two trajectories.

2.1 | The difference trajectory

The term "restorative justice" can be traced back to the 19th century (Gade, 2018), but it was not until the 1970s that it started to emerge in the field of criminal justice. The first time this happened was probably in Eglash's (1977) article, "Beyond Restitution: Creative Restitution," which is also the first text in the trajectory of difference that I trace. In that article, Eglash suggested that retributive justice is different from restorative justice. More specifically, he wrote that, while retributive justice has "its technique of *punishment for crime* [emphasis added]," restorative justice has "its technique of restitution" (Eglash, 1977, p. 91). Eglash did not go into any detail on what was meant by restorative justice. The term was used only once in the article.

Drawing on two earlier articles by Eglash (1957, 1958), as well as Kuhn's (1962) work on paradigm shifts, Barnett (1977) then proposed that restitution should become a new paradigm

for criminal justice. In so doing, Barnett initiated a paradigm thinking that was to become very important in the restorative justice literature, particularly with the writings of Zehr. Having first encountered the term "restorative justice" in Eglash′s 1977 article (see Gade, 2018, p. 30), Zehr suggested, in response to Barnett, that the new criminal justice paradigm should be termed "restorative justice" rather than "restitution" (Zehr, 1985). His argument was that punishment belongs to the old criminal justice paradigm of retributive justice—the very paradigm that, according to Zehr, should be replaced by restorative justice. Zehr′s paradigm thinking, expounded in detail in *Changing Lenses* from 1990, became highly influential among restorative justice scholars and contributed to the continued dominance of the difference trajectory in the restorative justice literature. The dominant narrative among restorative justice scholars, drawing additionally on Christie′s 1977 article "Conflict as Property," has been that current retributive criminal justice systems are flawed and should be replaced by restorative justice.

Since the early 1990s, several leading restorative justice proponents have echoed Zehr′s early claim that restorative justice differs radically from punishment (Zehr himself, however, has suggested that his early polarization between two paradigms may be somewhat misleading; see Zehr, 2002, p. 58). Umbreit, for example, wrote that restorative justice:

> represents a truly different paradigm. Restorative justice is far more concerned about restoration of the victim and victimized community than costly punishment of the offender ... [It] places greater emphasis on the offender accepting responsibility for their behavior and making amends, whenever possible, rather than on the severity of punishment (Umbreit, 1998, no page number).

Braithwaite has written that "restorative justice is one promising alternative for a future in which punishment is marginalized" (Braithwaite, 1999, p. 1729). He stated that "Punishment is a sign of weakness" (Braithwaite, 1999, p. 1729), and like Barnett, Zehr, and Umbreit, he hoped for a paradigm shift within the field of criminal justice. Braithwaite did not, however, believe that punishment could be done away with. Rather, he proposed that punishment should be used only when restorative justice had failed:

> Basically, we should try restorative justice, perhaps again and again; when restorative justice fails, try deterrence, and when deterrence fails, try incapacitation (Braithwaite, 1999, p. 1742).

Walgrave, another key restorative justice proponent, has presented a very influential argument for *why* restorative justice differs from punishment. According to Walgrave, the main difference is that punishment involves *intended* pain (see also Christie, 1981), whereas restorative justice is intended to be a constructive effort. Walgrave has explained that:

> Restorative justice is clearly different from the predominant punitive apriorism in the current criminal justice response to crime. It is neither an alternative punishment nor complementary to punishment. The crucial distinction is the intentionality. Whereas punishment is an intentional infliction of pain, reparation is an action to undo harm, which may, however, be painful (Walgrave, 2008, p. 65).

As we will see below, two things should be noted in this regard: first, that not all scholars agree that the pain of punishment has to be intended (see Section 3.1.8), and second,

that there is sometimes an intention to inflict pain on offenders in restorative justice (see Section 4.1.8).

2.2 | Similarity trajectory

The similarity trajectory developed in reaction to the difference trajectory. As early as 1996, Marshall was questioning the paradigm thinking in the restorative justice literature, stating that restorative justice

> is not an alternative paradigm that can replace the process of criminal justice. Well, perhaps in paradise, but we aren't there yet, and anyway there is no crime in paradise (there was once but they got sent to Hell, a retributive response if ever there was) (Marshall, 1996, p. 36).

Furthermore, Marshall wrote, "Ultimately there is no getting away from the fact that we are not so perfect a society that we can do without such system [of punishment]" (Marshall, 1996, p. 36).

The similarity trajectory was influenced by Duff's early research on alternative punishments (Duff, 1992). Drawing on this research, Daly (2000) was the first scholar to argue that restorative justice comprises alternative punishments rather than itself being an alternative to punishment. In her view, "punishment, broadly defined to include retributive censure, should form part of what occurs in a restorative justice process" (Daly, 2000, p. 41; see also Daly, 2002, 2013; Daly & Proietti-Scifoni, 2011). Inspired by Daly's research, Ashworth stated that:

> Even if one were to adopt a narrow definition (that only measures intended to be punitive count as punishment [a reference to Walgrave's aforementioned intentionality argument]), many restorative justice outcomes satisfy that definition inasmuch as they are known to impose obligations or deprivations on offenders (Ashworth, 2002, p. 591).

From the early 2000s, Duff also wrote about restorative justice. Like Daly, he emphasized that restoration and retributive punishment are closely interconnected:

> Our responses to crime should aim for "restoration," for "restorative justice": but the kind of restoration that criminal wrongdoing makes necessary is properly achieved through a process of retributive punishment (Duff, 2002, p. 82).

Johnstone, another key scholar of the similarity trajectory, has argued, like Ashworth, that Walgrave's intentionality argument is problematic. For Johnstone:

> If pain is an inevitable, or even highly probably, consequence of restorative interventions, then (unless one adopts a perversely narrow interpretation of the term "deliberately") somebody who purposely puts an offender through a restorative justice process, thereby causing them pain, deliberately inflicts pain on them (Johnstone, 2011, p. 91).

Thus, Johnstone, rejecting the difference trajectory, basically agrees with Daly's position:

> If both retributive punishment and restorative justice involve the deliberate imposition
> of pain, then the claim that there is a sharp distinction between them fails (to the
> extent that the distinction is drawn by reference to pain). Restorative justice, as
> Daly (2000) and others suggest, might be more accurately presented as an alternative
> form of punishment, rather than an alternative to punishment (Johnstone, 2011, p. 91).

Recently, Brooks has added new ideas to the similarity trajectory by presenting "punitive resto-ration" as a potential new form of restorative justice. For Brooks, existing forms of restorative justice "suffer from several serious obstacles, not least their relatively limited applicability, flexi-bility, and public support" (Brooks, 2017, p. 123). The problem is partly that existing forms of restorative justice are not sufficiently punitive; thus, Brooks envisions punitive restoration as a form of restorative justice that is more punitive than most current practices, but still restorative:

> Punitive restoration is restorative insofar as it aims to achieve the restoration of
> rights infringed or threatened by criminal offences. Punitive restoration is punitive
> insofar as the available options for this agreement [i.e. the agreement made at the
> restorative justice meeting] are more punitive than found in most restorative justice
> approaches, such as the option of some form of hard treatment [including brief
> imprisonment] (Brooks, 2017, p. 122).

By suggesting a more punitive form of restorative justice, Brooks wanted to promote the use of restorative justice: "Punitive restoration attempts to create a space where more offenders can be brought into a restorative approach" (Brooks, 2017, p. 133). Thus, Brooks' agenda is quite simi-lar to that of London: to bring restorative justice in from the margins to the mainstream (London, 2003; see also London, 2011).

2.3 | A midway position

This article occupies a midway position between the two trajectories outlined above. In arguing that, according to certain positions on what punishment is, some cases of restorative justice do constitute punishment, it supports the similarity trajectory. In arguing that some cases of restor-ative justice do not fulfill what certain positions consider to be necessary conditions for punish-ment, it supports the difference trajectory. In order to develop this midway position, I will discuss the relationship between restorative justice and punishment on the basis of a systematic categorization of the various conceptualizations of what punishment is using my new dimen-sional approach to punishment—an approach that distinguishes between minimalist and maxi-malist positions within a nine-dimensional punishment framework.

3 | METHODS

The methodological approach adopted is to first present the dimensional framework and then to use it to analyze and discuss the relationship between restorative justice and punishment. The analysis and discussion draw both on published research on restorative justice and (as stated) on

qualitative data from my own work on restorative justice in Denmark. The case examples selected reflect the diversity of the field of restorative justice. Some of them fulfill the statements of the various dimensions of punishment, while others do not (see Section 4.1); one of the examples constitutes punishment from the perspective of several positions on punishment established by the framework and another only for a few (see Section 4.2). The article is, as emphasized, a theoretical study that draws on qualitative data. Nevertheless, although it does not provide any quantitative results, it could provide a methodological foundation for future quantitative studies on the relationship between restorative justice and punishment, something to which I will return in Section 5.

3.1 | A dimensional approach to the nature of punishment

Even though the so-called Flew–Benn–Hart definition of punishment has been highly influential, there remains much disagreement on what punishment actually is (I will discuss the Flew–Benn–Hart definition later in this section). A dimensional approach to the nature of punishment makes it possible to distinguish between different conceptualizations of punishment in a systematic way. As presented here, the framework comprises nine dimensions, centered around the punishment statement "X punishes Y through Z." The framework's nine dimensions are listed below, together with a statement specifically related to each dimension. The addition of further dimensions to the framework, which would make it even more detailed, may also be possible. I will return to this possibility later in this section and also in Section 5.

Dimension	Statement
1. The guilt dimension	1. Y is guilty of an offense
2. The type-of-offense dimension	2. The question of whether or not Y is guilty is a legal matter
3. The experience dimension	3. Y experiences pain/unpleasantness through Z
4. The voluntariness dimension	4. It is involuntary for Y to be inflicted with Z
5. The authority dimension	5. X is a human legal authority
6. The perception-of-guilt dimension	6. X believes Y is guilty
7. The blame dimension	7. X blames Y
8. The intention dimension	8. X intends to inflict pain/unpleasantness on Y through Z
9. The self-punishment dimension	9. X is different from Y

Within each dimension, a minimalist or a maximalist position can be taken. The minimalist position in dimension number r is that "It is necessarily true that if X punishes Y through Z, then $Statement_r$," while the maximalist position is that "It is not necessarily true that if X punishes Y through Z, then $Statement_r$." In other words, the maximalist position is the negation of the minimalist position. $Statement_r$ is the statement of dimension number r. For example, as seen above, $Statement_1$ is the statement that "Y is guilty of an offense." Formalized logically, the following is the case[3]:

$$\text{According to } Minimalist_r, \Box(X \text{ punishes } Y \text{ through } Z \rightarrow Statement_r),$$

and

According to $Maximalist_r, \neg \square (X \text{ punishes } Y \text{ through } Z \rightarrow Statement_r)$

where $Minimalist_r$ is the position of the minimalist in dimension number r; $Maximalist_r$ is the position of the maximalist in dimension number r; $Statement_r$ is the statement of dimension r; and r is the punishment dimension number.

The minimalist position is more restrictive than the maximalist position in the same dimension because it requires that a specific criterion be fulfilled in order to have a case where X punishes Y through Z.[4] For example, a minimalist in dimension 1, the guilt dimension, believes that it is necessarily true that if X punishes Y through Z, then Y is guilty of an offense, while this is not the case for the maximalist, for whom it is possible that Y is guilty, but it is also possible that Y is innocent. As previously stated, a person may be a minimalist in some dimensions of punishment but a maximalist in others. For example, someone may believe that it is possible to punish the innocent (i.e., be a maximalist in dimension 1) while also believing that it is only human legal authorities that can punish (i.e., be a minimalist in dimension 5). Later in this section, I will provide examples of minimalists and maximalists in the various different dimensions, but before that, I present the punishment framework in greater detail.

Concerning the naming of the various punishment positions in the framework, I will name a specific position "$Position(n_s)$," where n lists all rs where the punishment position is minimalist or is 0 (zero) if zero rs are minimalist and where s is the total number of punishment dimensions. Thus, in a situation with nine dimensions, the position that is minimalist in dimensions 1, 2, 3, 4, 5, 6, 7, 8, and 9 will be named $Position(1, 2, 3, 4, 5, 6, 7, 8, 9_9)$, while the position that is minimalist in no dimensions will be named $Position(0_9)$. Using the same naming principle, the position that is minimalist in, let us say, dimensions 1, 2, 6, and 7 and maximalist in the other five dimensions will be named $Position(1, 2, 6, 7_9)$. In this connection, it should be noted that the order of the nonsubscript numbers in the names does not matter. For example, whenever the number "2" occurs in a name as a nonsubscript number, we know that the punishment position is minimalist in dimension 2. Thus, $Position(1, 2_9)$ and $Position(2, 1_9)$ are two different names for the same punishment position: that which is minimalist in dimensions 1 and 2 and maximalist in the other seven dimensions in a situation with nine dimensions.

The total number of punishment dimensions s is equal to the number of different statements *for each of which* at least one person believes it is necessarily the case that the statement follows from the statement "X punishes Y though Z," while at least one other person does not believe this is necessarily the case. In other words, a dimension in the framework I am advancing presupposes a disagreement between persons. I emphasize this point as it will become important later. Now, according to any punishment position $Position(n_s)$, it is the case that $\square(X \text{ punishes } Y \text{ through } Z \rightarrow C)$, where C is defined as all the statements of the dimensions where $Position(n_s)$ is minimalist. Thus, which statements C includes will differ from position to position. For example, according to $Position(1, 2_9)$, it is the case that $\square(X \text{ punishes } Y \text{ through } Z \rightarrow Statement_1 \wedge Statement_2)$. In other words, according to punishment position $Position(1, 2_9)$, it is necessarily the case that if X punishes Y through Z, then Y is guilty of an offense, and the question about whether or not Y is guilty is a legal matter.

As emphasized already, the presence of a punishment dimension in the proposed framework is conditional on a disagreement between persons. Thus for no $Position(n_s)$ is it the case that everyone agrees that $\square(X \text{ punishes } Y \text{ through } Z \rightarrow C)$. For example, not everyone agrees with $Position(1, 2_9)$ that $\square(X \text{ punishes } Y \text{ through } Z \rightarrow Statement_1 \wedge Statement_2)$. In contrast,

everyone agrees that □(*X* punishes *Y* through *Z* → *D*) if *D* is defined as all statements for which everyone agrees that □(*X* punishes *Y* through *Z* → *D*).

It is difficult, if not impossible, to know exactly which statements *D* includes, if any. However, I assume that *D* includes basic statements like "*X* exists," "*Y* exists," and "*X* does something *Z* to *Y*." Who would disagree that it is necessarily true that, if *X* punishes *Y* through *Z*, then *X* exists, *Y* exists, and *X* does something *Z* to *Y*? The reason why I have to introduce *D* can be explained by imagining a situation where a person, Sophia, claims that she holds the position on punishment that □(*X* punishes *Y* through *Z* → *E* ∧ *F* ∧ *G* ∧ *H*) where *E*, *F*, *G*, and *H* are different statements. Now, it may be the case that *E*, *F*, and *G* are all statements of specific punishment dimensions but that this is not the case for *H* because everyone agrees that □(*X* punishes *Y* through *Z* → *H*). In that case, the introduction of *D* helps us to capture the position that Sophia claims to be holding. If, however, *D* not only includes *H* but also *I*, then Sophia would agree—cf. the definition of *D*—that her position is actually □(*X* punishes *Y* through *Z* → *E* ∧ *F* ∧ *G* ∧ *H* ∧ *I*). In this connection, it should be noted that, in all cases where a person holds the position on punishment that □(*X* punishes *Y* through *Z* → *J*), where *J* is one or more statements, each statement of *J* is either one of the statements of the punishment dimensions or a statement in *D* (i.e., it is either a statement for which it is the case that everyone *does not agree* that it is necessarily the case that the statement follows from "*X* punishes *Y* through *Z*," or it is a statement for which everyone *does agree* that it is necessarily the case that the statement follows from "*X* punishes *Y* through *Z*"). This implies that we can express all punishment positions which state that □(*X* punishes *Y* through *Z* → *J*) as □(*X* punishes *Y* through *Z* → *C* ∧ *D*). Furthermore, it is the case that:

$$\text{According to } Position(n_s), \square(X \text{ punishes } Y \text{ through } Z \leftrightarrow C \wedge D)$$

where $Position(n_s)$ is a punishment position; *n* is a list of all *r*s where the punishment position is minimalist, or *n* is 0 if zero *r*s are minimalist; *r* is a punishment dimension number; *s* is the total number of punishment dimensions, and $s \geq 0$, and $s \in \mathbb{Z}$; *C* is all the statements of the punishment dimensions where $Position(n_s)$ is minimalist; *D* is all statements for which everyone agrees that □(*X* punishes *Y* through *Z* → *D*); and *C* and *D* may be 0 or more statements, and the number of statements is included in $\mathbb{Z}$.

Before I go deeper into the biconditional ↔ in the statement above, I want to use Hart's definition of punishment to concretize what we have established so far. Hart writes:

> So with Mr Benn and Professor Flew I shall define the standard or central case of "punishment" in terms of five elements: (i) It must involve pain or other consequences normally considered unpleasant. (ii) It must be for an offense against legal rules. (iii) It must be of an actual or supposed offender for his offense. (iv) It must be intentionally administered by human beings other than the offender. (v) It must be imposed and administered by an authority constituted by a legal system against which the offence is committed (Hart, 1959, p. 4; see also Benn, 1958; Flew, 1954).

In what follows, I will assume that Hart's "standard or central case" represents his position on the nature of punishment. Based on this assumption, my interpretation is that:

- element (i) in Hart's definition shows that he is a minimalist in punishment dimension 3
- element (ii) shows that he is a minimalist in dimension 2

- element (iii) shows that he is a maximalist in dimension 1 and a minimalist in dimension 6
- element (iv) shows that he is in minimalist in dimension 9
- element (v) shows that he is a minimalist in dimension 5
- in combination, elements (i) and (iv) show that he is a minimalist in dimension 8

Hart's definition does not touch upon voluntariness (dimension 4) or blame (dimension 7). This could mean that he was a maximalist in these dimensions or, alternatively, that he was actually a minimalist in these dimensions but was not thinking about voluntariness and blame when he made his definition. If we assume the former, and if my interpretation of the different elements is correct, then Hart holds *Position*(2, 3, 5, 6, 8, 9_9) in the nine-dimensional punishment framework.

At this point, I would like to elaborate more on the conditional statement "According to *Position*(n_s), □(X punishes Y through Z ↔ C ∧ D)." One way to understand this statement is to reflect on Hart's definition of punishment. According to my interpretation, Hart's definition should be understood to mean that it must be the case that, if we have a case of punishment, then that case fulfills the five elements and *also* that, necessarily, a case that fulfills all of the five elements is a case of punishment. (If the latter conditionality is not present, then Hart's definition cannot be used to determine that any cases are cases of punishment.) A similar conditionality is expressed by the statement "According to *Position*(n_s), □(X punishes Y through Z ↔ C ∧ D)."[5] This statement implies that *according to Position*(n_s), *it is necessarily the case that if M (a concrete case of incarceration, fines, restorative justice, etc.) fulfills C and D, then M is a case where X punishes Y through Z*. I will use this insight below to assess whether concrete cases of restorative justice are cases of punishment according to different punishment positions.

Hart's position on punishment, discussed above, represents only one among several punishment positions in the dimensional framework. Our next question at this point is how many different punishment positions we can choose between, given nine punishment dimensions, each with a choice between a minimalist or a maximalist position. How many distinct punishment positions, in other words, does the framework accommodate? The answer, as foregrounded at the start of this article, is 512. Why is that? The situation can be illustrated as follows:

Dimension	1	2	3	4	5	6	7	8	9
Options	2	2	2	2	2	2	2	2	2

It follows from the multiplication principle (Niven, 1965, p. 8) that, if a punishment position is the result of t choices, where the first choice is between u_1 options, the second choice between u_2 options, and so forth, then there are $u_1 \cdot u_2 \cdot ... \cdot u_t$ choices between different punishment positions. In the dimensional punishment framework, with its nine dimensions, a punishment position is the product of nine choices (because $t = s = 9$). Each of the nine choices is a choice between two options: either the minimalist or the maximalist position within the specific dimension ($u_1 = u_2 = ... = u_s = 2$). This means that, with nine dimensions, the framework contains $2 \cdot 2 \cdot 2 \cdot 2 \cdot 2 \cdot 2 \cdot 2 \cdot 2 \cdot 2 = 2^9 = 512$ different punishment positions. As already mentioned, the addition of further dimensions to the framework may be possible, meaning that we need a formula for the number of different punishment positions depending on the number of dimensions.

Based on the above, it can easily be seen that:

$$N_s = 2^s$$

where N_s is the total number of different punishment positions; and s is the total number of punishment dimensions, and $s \geq 0$, and $s \in \mathbb{Z}$.

The next question is how many punishment positions are minimalist in v number of *specified* punishment dimensions in a situation with s punishment dimensions. For example, we might want to know how many positions are minimalist in dimensions 1, 2, and 3 given that the framework comprises nine dimensions; in other words, dimensions 1, 2, and 3 are specified to be minimalist. The situation can be illustrated as follows:

Dimension	1	2	3	4	5	6	7	8	9
Options	1	1	1	2	2	2	2	2	2

Here, we only have *one* choice in dimensions 1, 2, and 3 because we know that options chosen in these dimensions have to be minimalist. In the other dimensions, we still have two choices as the aim is to find the number of positions that are minimalist in dimensions 1, 2, and 3 and *either* minimalist or maximalist in the other dimensions. Thus, using the multiplication principle, there are $1 \cdot 1 \cdot 1 \cdot 2 \cdot 2 \cdot 2 \cdot 2 \cdot 2 \cdot 2 = 1^3 \cdot 2^6 = 64$ positions that are minimalist in dimensions 1, 2, and 3 given the framework's nine punishment dimensions. Based on this calculation, it is easily seen that the formula for calculating how many punishment positions are minimalist in v number of *specified* punishment dimensions in a situation with s punishment dimensions is $1^v \cdot 2^{s-v} = 2^{s-v}$. The number of punishment positions that are maximalist in x number of *specified* punishment dimensions in a situation with s punishment dimensions can be calculated in the exact same way. This means that:

$$O_{s,v} = 2^{s-v} \text{ and } P_{s,x} = 2^{s-x}$$

where $O_{s,v}$ is the number of punishment positions that are minimalist in v number of *specified* punishment dimensions in a situation with s punishment dimensions; $P_{s,x}$ is the number of punishment positions that are maximalist in x number of *specified* punishment dimensions in a situation with s punishment dimensions; v is the number of punishment dimensions that are specified to be minimalist, and $0 \leq v \leq s$, and $v \in \mathbb{Z}$; x is the number of punishment dimensions that are specified to be maximalist, and $0 \leq x \leq s$, and $x \in \mathbb{Z}$; and s is the total number of punishment dimensions, and $s \geq 0$, and $s \in \mathbb{Z}$.

The next question is how many punishment positions are minimalist in y number of *unspecified* punishment dimensions in a situation with s punishment dimensions (by "unspecified," I mean that the y dimensions can be any dimensions in the framework). For example, in a situation with nine dimensions, we might want to know how many punishment positions are minimalist in three *unspecified* dimensions. (*Position*(1, 2, 3_9), *Position*(3, 4, 5_9), and *Position*(6, 8, 9_9) would be a few examples of such positions.) Here, our starting point is that, given nine dimensions, each with one minimalist option, we have to choose the minimalist option in three (and only three) of the nine. In how many different ways can that be done? As we make the first choice, we have a choice between nine options, while in making the second choice, we choose between eight options as the same option cannot be chosen more than once (i.e., we cannot have repetitions). Similarly, we choose between only seven options in

making the third choice because two options have been taken. Thus, the multiplication principle tells us that there are $9 \cdot 8 \cdot 7 = 504$ different ways to make three minimalist choices in different orders if we have nine punishment dimensions.

The order in which the choices are made, however, is not important. This is because *Position*$(1, 2, 3_9)$ is the same position as *Position*$(1, 3, 2_9)$, *Position*$(2, 1, 3_9)$, *Position*$(2, 3, 1_9)$, *Position*$(3, 1, 2_9)$, and *Position*$(3, 2, 1_9)$, as explained above. Therefore, the figure 504 is to be divided by the number of different ways in which the three choices can be ordered: that is, by $3 \cdot 2 \cdot 1 = 6$. Thus, the result is that $\frac{9 \cdot 8 \cdot 7}{3 \cdot 2 \cdot 1} = 84$ positions are minimalist in three unspecified punishment dimensions in a framework of nine dimensions.

Moving toward a general formula, I now multiply and divide by the same number: $\frac{(9 \cdot 8 \cdot 7)(6 \cdot 5 \cdot 4 \cdot 3 \cdot 2 \cdot 1)}{(3 \cdot 2 \cdot 1)(6 \cdot 5 \cdot 4 \cdot 3 \cdot 2 \cdot 1)} = \frac{9!}{3!6!} = \frac{9!}{3!(9-3)!}$. The number of punishment positions that are maximalist in z number of *unspecified* punishment dimensions in a situation with s punishment dimensions is calculated, of course, in the exact same way. Based on this, it is easily seen that:

$$Q_{s,y} = \frac{s!}{y!(s-y)!} \text{ and } R_{s,z} = \frac{s!}{z!(s-z)!}$$

where $Q_{s,y}$ is the number of punishment positions that are minimalist in y number of *unspecified* punishment dimensions in a situation with s punishment dimensions; $R_{s,z}$ is the number of punishment positions that are maximalist in z number of *unspecified* punishment dimensions in a situation with s punishment dimensions; y is the number of *unspecified* punishment dimensions that are minimalist, and $0 \leq y \leq s$, and $y \in \mathbb{Z}$; z is the number of *unspecified* punishment dimensions that are maximalist, and $0 \leq z \leq s$, and $z \in \mathbb{Z}$; and s is the total number of punishment dimensions, and $s \geq 0$, and $s \in \mathbb{Z}$.

By using the formula for $Q_{s,y}$ (or, alternatively, the formula for $R_{s,z}$ if that is preferred), we can calculate that, with nine punishment dimensions:

- one position is minimalist in nine dimensions (and maximalist in zero dimensions)
- nine positions are minimalist in eight dimensions (and maximalist in one dimension)
- 36 positions are minimalist in seven dimensions (and maximalist in two dimensions)
- 84 positions are minimalist in six dimensions (and maximalist in three dimensions)
- 126 positions are minimalist in five dimensions (and maximalist in four dimensions)
- 126 positions are minimalist in four dimensions (and maximalist in five dimensions)
- 84 positions are minimalist in three dimensions (and maximalist in six dimensions)
- 36 positions are minimalist in two dimensions (and maximalist in seven dimensions)
- nine positions are minimalist in one dimension (and maximalist in eight dimensions)
- one position is minimalist in zero dimensions (and maximalist in nine dimensions)

Adding the numbers above yields a total of 512 punishment positions in a framework of nine dimensions, as we had calculated using the formula $N = 2^s$. Of these positions, 510 are what I refer to as "mixed" positions (see the introduction).

The foregoing is the logic underlying my proposed new dimensional approach to the nature of punishment. The approach offers a systematic way of distinguishing between different conceptualizations of what punishment is. Below, I present examples of scholars holding the minimalist and maximalist positions in the nine dimensions. In this connection, I would like to emphasize that my aim here is solely to exemplify the existence of the various positions: other

examples could have been chosen. Methodologically, the dimensions have been identified through a literature review, in which I have added a new dimension every time I have managed to find a new statement for which at least one person believes that it is necessarily the case that the statement follows from "X punishes Y through Z," while at least one other person does not believe this is necessarily the case (see my previous remarks about the total number of dimensions of punishment). It is likely that there are punishment dimensions that I have not managed to identify, meaning that the framework is capable of further development in the future with the addition of new dimensions. This would improve the framework, making it even more detailed. Thus, I perceive the framework as a work in progress. The current version, however, is sufficiently detailed to underpin the arguments advanced in this article about the relationship between restorative justice and punishment. Furthermore, the presented formulas will continue to hold true if additional dimensions are added.

I now proceed to present examples of scholars holding minimalist and maximalist positions in the different dimensions. Later, in Section 4, I will go through all dimensions in relation to restorative justice.

3.1.1 | Dimension 1: The guilt dimension

In this dimension, the minimalist position is that it is necessarily the case that, if X punishes Y through Z, then Y is guilty of an offense. Representing this position, Quinton claims that no infliction of suffering can be properly called "punishment" if it is not of the guilty:

> Only the guilty can be punished because unless a person is guilty, unless a rule applies to him, no infliction of suffering on him is properly called punishment, since punishment is the infliction of suffering as laid down by such a rule (Quinton, 1954, p. 141).

The maximalist position, in contrast, holds that it is possible to punish the guilty as well as the innocent. Gendin writes, for example, that "while we may hope that punishment will be limited only to wrongdoers, we realize it is possible to punish by mistake persons who are not wrongdoers" (Gendin, 1967, p. 235).

3.1.2 | Dimension 2: The type-of-offense dimension

Here, the minimalist position states that it is necessarily the case that, if X punishes Y through Z, then the question about whether or not Y is guilty is a legal matter. Mabbott, representing this position, writes:

> It will be observed that I have throughout treated punishment as a purely legal matter ... It takes two to make a punishment, and for a moral or social wrong I can find no punisher ... The connection of punishment is with law-breaking and not with wrong-doing ... A criminal means a man who has broken the law, not a bad man (Mabbott, 1939, p. 154).

In contrast, Flew is a maximalist in the type-of-offense dimension. He proposes negatively that we should *not* insist that punishment is "confined to either legal or moral offences, but instead allow the use of the word in connection with any system of rules of law – State, school, moral, trade union, trade association, etc." (Flew, 1954, p. 295).

3.1.3 | Dimension 3: The experience dimension

In this dimension, the minimalist position claims that it is necessarily the case that, if X punishes Y through Z, then Y must experience pain/unpleasantness through Z or must experience "an evil" if one prefers to follow the Hobbesian tradition (Hobbes, 2008). Christie is a minimalist in this respect, writing that "punishment within the institution of law means the inflicting of pain, intended as pain" (Christie, 1981, p. 5). Geeraets also explains that punishment "causes substantial harm to an individual" (Geeraets, 2018, p. 26). He elaborates on this: "If a person is covered by insurance, the unpleasantness of being required to pay compensation is relatively small, thus making it unreasonable to interpret this as punishment" (Geeraets, 2018, p. 28). In this connection, it should be noted that punishment may be connected with various different types of pain, as argued by Hayes, who distinguishes between direct, oblique, contextual, and unrelated pains (Hayes, 2018, p. 240). Not all scholars, however, agree that punishment is necessarily painful. Gendin, for example, states:

> We cannot define the activity of punishment in terms of its subjective effects on each and every person who is punished ... If we run through the normal channels of punishment then we may say a person has been punished irrespectively of the subjective effects they have had on him (Gendin, 1967, pp. 236–237).

Thus, according to Gendin and other maximalists in the experience dimension, the "challenge of differences in impact" (Ryberg, 2010, p. 80) is not of importance in relation to the question of whether or not Y is punished.

3.1.4 | Dimension 4: The voluntariness dimension

Here, the minimalist position states that it is necessarily the case that, if X punishes Y through Z, then it is involuntary for Y to be inflicted with Z. Garvey is a minimalist in this regard. For example, in his discussion of punishment and restorative justice, he argues:

> Ideally, the offender experiences remorse and repentance [in restorative justice], and thus shoulders willingly some burden or hardship in order to make amends. Moreover, *because that burden is assumed willingly*, *it's no longer a punishment* [emphasis added]; it's been transformed into a secular penance (Garvey, 2003, p. 303).

For Hayes, in contrast, punishment may be voluntary. He gives the following example:

> A probationer, for example, may be happy to participate in unpaid work as part of her order because she wishes to make reparations for her crime ... Like

Raskolnikov, she is eager to suffer her punishment and may even look to derive something positive from it. *But that does not mean that she does not suffer* [italic in original] (Hayes, 2018, p. 239).

Thus, according to Hayes, punishment can be voluntary. As he writes, some offenders may even be eager to suffer their punishment.

3.1.5 | Dimension 5: The authority dimension

In this dimension, the minimalist position is that it is necessarily the case that, if X punishes Y through Z, then X is a human legal authority. For Hart—demonstrated above to be a minimalist in this dimension—punishment "must be imposed and administrated by an authority constituted by a legal system against which the offence is committed" (Hart, 1959, p. 4). According to Hart, pain infliction that is not administered by a human legal authority may, at best, be a "secondary case" of punishment rather than punishment in the primary sense of the word. In agreement with this position, Ashworth writes:

> It might also be argued that the very concepts of prosecution and punishment imply a notion of authority, just as the concept of a crime implies something more than a mere private wrong ... The element of public mischief is the violation of the Queen's Peace, and thus prosecution (and punishment) is a public function which ought principally to be performed by public officials (Ashworth, 1986, p. 113).

McPherson, in contrast, is a maximalist in the authority dimension. He explicitly criticizes Hart, pointing out that, if he were right, several implications would flow from this position:

> No unintentional punishment, then; no punishment by fate; no divine punishment; no self-punishment. But this is to discourage at the onset the raising of what may be substantial issues ... Self-punishment involves a strong moral element; divine punishment suggests supreme power and perfect justice; punishment by fate suggests inevitability; unintentional punishment suggests arbitrariness (McPherson, 1967, pp. 22–23).

McPherson's own position is that "Punishment can turn up in any human relationship. Lovers punish each other; parents punish their children; the State punishes criminals" (McPherson, 1967, p. 26). Similarly, Braithwaite, who sees punishment as a sign of weakness, also considers it to be something that extends beyond the domain of legal authorities. He writes:

> Weak parents, those bereft of capacities for socializing their children more civilly, are quick to resort to punishment. For example, the poorest, most struggling parents, those in the weakest position to offer their children a flourishing future, resort to punishment much more than comfortable middle-class parents (Braithwaite, 1999, p. 1729).

3.1.6 | Dimension 6: The perception-of-guilt dimension

Here, the minimalist position is that it is necessarily the case that, if *X* punishes *Y* through *Z*, then *X* believes *Y* is guilty. A minimalist in this dimension, Flew writes that punishment "must (at least be supposed to) be for an offence" (Flew, 1954, p. 293). Similarly, von Hirsch claims that "Punishing someone consists of visiting a deprivation (hard treatment) on him, because he supposedly has committed a wrong" (von Hirsch, 1993, p. 9). Quinton, in contrast, explains:

> Yet, just as it is perfectly proper to say of another "he promised to do this," whether he thought he could do it or not, provided that he *said* "I promise to do this," so it is perfectly proper to say "they punished him," whether they thought him guilty or not, provided that they *said* "we are going to punish you" and inflicted suffering on him (Quinton, 1954, p. 138).

In this connection, it should be noted that notions like "scapegoat punishment" and "collective punishment" suggest that someone may be punished without the punisher perceiving him or her as guilty (see Sprigge, 2015, p. 77).

3.1.7 | Dimension 7: The blame dimension

In this dimension, the minimalist position states that it is necessarily the case that, if *X* punishes *Y* through *Z*, then *X* blames *Y*. Zaibert is a minimalist in this dimension. He explains that:

> Purely as a logical matter, we can only punish what we find blameworthy. This of course does not mean that what we find blameworthy is indeed blameworthy; what we think is the case need not always be identical to what the case actually is (Zaibert, 2006, p. 28).

Geeraets, a maximalist here, disagrees and points out that "it is actually quite common to talk about punishing our children and pets. Although we do not morally blame our children or pets, we do punish them" (Geeraets, 2018, p. 26).

3.1.8 | Dimension 8: The intention dimension

Here, the minimalist position states that it is necessarily the case that, if *X* punishes *Y* through *Z*, then *X* intends to inflict pain/unpleasantness on *Y* through *Z*. Burgh is a minimalist in this dimension because he believes that punishment "involves the deliberate and intentional infliction of suffering" (Burgh, 1982, p. 193). Christie, similarly, underscores—as we have already seen—that punishment is "the inflicting of pain, *intended* as pain [emphasis added]" (Christie, 1981, p. 5). Walgrave also emphasizes the importance of the intention:

> The crux lies in the intention (Wright, 2003). Equating every painful obligation after a wrong with punishment is based on a mistaken "mental location" of the painfulness. It is the painfulness in the intention of the punisher what counts, not in the perception of the punished (Walgrave, 2008, p. 48).

As emphasized above, this particular minimalist position lays the foundation for Walgrave's influential argument that restorative justice is different from punishment. Some scholars, however, disagree with this minimalist position and advocate a maximalist position instead. Kolber, for example, argues that punishment also includes unintentional hardship. To support his position, he presents a thought experiment in which Purp and Fore receive exactly the same treatment but imposed with differing intentions. He writes:

> Despite the different intentions that surround their treatment, we tend to think that Purp and Fore are punished by the same amount. The mental states of their punishers (be they judges, prison personnel, legislators, voters, or some combination of all of these) do not affect the *severity* of the sentences. So long as the duration of their sentences and the conditions of the confinement are the same, we think that they receive the same amount of punishment. Thus when assessing amounts of punishment, we consider not only intentional hardships but also certain unintentional hardships as well (Kolber, 2012, p. 3).

3.1.9 | Dimension 9: The self-punishment dimension

Finally, in the self-punishment dimension, the minimalist position states that it is necessarily the case that, if *X* punishes *Y* through *Z*, then *X* is different from *Y*. As we have seen, this is Hart's position because he claims that punishment "must be intentionally administered by human beings other than the offender" (Hart, 1959, p. 4). This position implies that self-punishment does not exist or, at least, that it is not punishment in the primary sense of the word. Others disagree. Zaibert, for example, states:

> when we punish, we *do* something to the person who we blame (because we blame her), there is no reason why a person could not punish herself (Zaibert, 2006, p. 40).

4 | ANALYSIS AND DISCUSSION

Here then is the dimensional approach to the categorization of different conceptualizations of what punishment is, illustrated with examples of scholars holding minimalist and maximalist positions in the various dimensions. In what follows, I will use the framework as a methodological foundation for analyzing and discussing the relationship between restorative justice and punishment. First, I go through the statements of the nine punishment dimensions in order to discuss whether the various cases of restorative justice *fulfill* these statements. To put it differently, are the statements *true* for the various cases of restorative justice? Second, the dimensional framework will be used to discuss whether cases of restorative justice are cases where *X* punishes *Y* through *Z* if

- *X* is one or more concrete participants in the restorative justice process other than the offender(s)[6]
- *Y* is the offender(s)
- *Z* is what *X* does to *Y* in the restorative justice process

4.1 | Restorative justice and the dimensions of punishment

Before homing in on the various statements and their relationship to restorative justice, I want to emphasize that the term "restorative justice" has been used to refer to many different kinds of processes. When the term first began to be used in the criminal justice literature of the 1970s and 1980s, this was exclusively in the context of domestic criminal justice (see Gade, 2018). As the term won increasing popularity in the 1990s, however, existing practices began to be relabeled as "restorative justice." As explained by Daly:

> During the 1990s, restorative justice became immensely popular, eclipsing and over-taking other justice ideas circulating during the 1970s and 1980s—a range of restitution, reparation, reconciliation and informal justice projects (Daly, 2013, p. 357).

The increased popularity of the term coincided with both an upward and a downward expansion in its use. Expansion downward resulted in the term being used in relation to responses to noncriminal forms of misconduct, such as neighbor disputes or misconduct in schools (Johnstone, 2011, p. 145). Furthermore, "As well as shifting its focus 'downwards' from crime, the campaign for restorative justice has also looked 'upwards' from 'ordinary' crime to problems involving genocide, gruesome violence, gross violations of human rights, political oppression and historical injustice" (Johnstone, 2011, p. 149).

As explained at the start, in the present article, I use Marshall's definition of "restorative justice." As defined by Marshall, the term denotes various types of processes that bring parties with a stake in a particular offense together. These processes are found in the context of domestic criminal justice but also in the contexts of the upward and downward expansions mentioned above. Umbreit et al. (2005), McCold (2006), and UNOCD (2020) all provide comprehensive international overviews of restorative justice practices, and they all identify victim–offender mediation, restorative justice conferences, and circles as primary examples of restorative justice (see also Hansen & Umbreit, 2018; Morris & Maxwell, 2001; Stuart & Pranis, 2006; Zinnstag & Vanfraechem, 2012). As mediation, conferences, and circles are commonly identified as primary examples of restorative justice, I focus on these practices in my provision of examples of restorative justice in what follows.[7]

We now move on to discuss the relationship between restorative justice and the statements of the different dimensions in the punishment framework. In this connection, it should be noted that all the processes I use below to exemplify restorative justice are processes "whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall, 1996, p. 37, 1999, p. 5)—in other words, processes that fulfill Marshall's definition of restorative justice.

4.1.1 | Restorative justice and $Statement_1$

$Statement_1$ states that "Y is guilty of an offense." As defined by Marshall, restorative justice presupposes that an offense has been committed and thus that there is an offender (or several offenders) who is (are) guilty of having committed that offense. I refer to this person (or these persons) as Y (see my definitions of X, Y, and Z above). According to Marshall's definition, therefore, all cases of restorative justice fulfill $Statement_1$.

4.1.2 | Restorative justice and Statement₂

Statement₂ is the statement "The question about whether or not *Y* is guilty is a legal matter." In some restorative justice cases, including our penal code cases in the Danish victim–offender mediation program—in which I serve as a mediator—the question about *Y*'s guilt is a legal matter, meaning that these cases fulfill *Statement₂*. In contrast, the cases that are part of the downward expansion traced above do not fulfill *Statement₂* because the offenses in these cases are nonlegal matters such as bullying in schools or workplace conflicts (see Johnstone, 2011, p. 145 ff.).

4.1.3 | Restorative justice and Statement₃

Statement₃ declares that "*Y* experiences pain/unpleasantness through *Z*." Clearly, some cases of restorative justice fulfill this statement. As Walgrave explains in the context of victim–offender mediation:

> Being confronted directly with the suffering and harm one has caused and with the disapproval of loved ones is a severely affecting burden. Apologizing in front of others may be hard and humiliating. Experiencing pressure to make up for the harm is difficult to cope with. The process makes the offender feel a mixture of intense unpleasant emotions, such as shame, guilt, remorse, embarrassment and humiliation, which may have an enduring impact on his future life. Some offenders experience Victim–Offender mediation and compliance with the agreements as a "double punishment" (Schiff, 1999) (Walgrave, 2008, p. 47).

Similarly, in the context of conferences, Sherman and Strang have explained that:

> some critics have called shaming conferences a "soft option." Interviews with the first 548 offenders in the study [i.e. the Reintegrative Shaming Experiments (RISE)] suggest that is not how the offenders see it, especially after experiencing over an hour under the spotlight of critical examination by family, friends, victims or community representatives sitting in a circle in a private room at a police station. Led by specially trained police officers, the conferences are emotionally intense discussions of what the offender did, whether the offender is sorry, and how the offender can repair the harm caused by the crime (Sherman & Strang, 1997, no page number; see also Sherman et al., 2015).

Similarly, my experience as a mediator in the Danish victim–offender mediation program has been that it is sometimes tough for offenders to face their victims and other people affected by their crimes. This is not always the case however. I have also mediated cases where the offenders have had a calm dialog with the victims and where the offenders have subsequently told me that the meeting was a pleasant experience. This has sometimes happened in traffic cases where victims were aware that the offenders had not violated the Road Traffic Act on purpose. In other words, it is only some cases of restorative justice that fulfill *Statement₃*.

4.1.4 | Restorative justice and Statement$_4$

Statement$_4$ is the statement "It is involuntary for Y to be inflicted with Z." Voluntary participation is sometimes seen as an essential aspect of restorative justice. For example, Bolivar, Aertsen, and Vanfraechem have explained that "Restorative justice (RJ) is an approach to justice in which victim and offender *gather voluntarily* [emphasis added] to discuss the effects of the crime and to find ways to repair the harm done" (Bolivar, Aertsen, & Vanfraechem, 2013, p. 123). Others, however, believe that restorative justice includes not only voluntary processes but also "coercive sanctions" (Walgrave, 2001, p. 18), and it is clear that some of the practices which comply with Marshall's definition of restorative justice are not voluntary. Goren has explained, for example, that:

> In New Zealand, participation in the FGC [family group conference] is required of all youth who plead "not denied," a more flexible plea than "not guilty," to the offense with which they have been charged ... Participation in the FGC by the offending youngster is not voluntary (Goren, 2001, p. 143).

In Denmark, the offenders' participation in the victim–offender mediation program is supposed to be voluntary, according to the Victim–Offender Mediation Act (Act no. 467 of June 12, 2009), but it may not always be voluntary in practice. In cases with minors, for example, the mediators are required to contact the legal guardians to ask permission to offer a mediation to a young offender. As a mediator, I have—more than once—talked with parents who have told me that they would have a conversation with the young offender and that I could expect that the young offender would be willing to participate. Clearly, the young are under pressure to participate in such cases. Furthermore, the new Danish Youth Criminality Board (see Act no. 1705 of December 27, 2018) can *require* young offenders to participate in a premeeting with a mediator to discuss the possibility of a victim–offender mediation. Clearly, this also compromises the principle of voluntariness to some extent. Thus, some cases of restorative justice fulfill Statement$_4$, while others do not.

4.1.5 | Restorative justice and Statement$_5$

Statement$_5$ states that "X is a human legal authority." In the Danish victim–offender mediation program, no legal authorities are usually present in the victim–offender meetings. Other restorative justice processes do involve the presence of legal authorities, such as the Canadian sentencing circles, as explained by Linker:

> At the start of a sentencing circle an inner circle of participants is formed including a judge, prosecution and defense counsel, a court recorder, the offender and the victim and their families. The inner circle is then surrounded by an outer circle of friends, relatives, and any interested member of the community ... The judge's role is to oversee discussion and seek out answers to the following kinds of questions: What are the underlying causes of the crime? What impact has the crime had on the victim, his or her family, and the community? (Linker, 1999, p. 117; see also Stuart, 1996).

Therefore, some cases of restorative justice fulfill Statement$_5$, while others do not.

4.1.6 | Restorative justice and Statement$_6$

Statement$_6$ is the statement "*X* believes *Y* is guilty." In the Danish victim–offender program, offenders have to admit guilt (in all essential aspects) as a prerequisite for a mediation, and in my experience, the victim and the other meeting participants normally perceive the offenders as guilty. But not always. For example, after a fatal traffic accident where a young woman lost her mother, the young woman and the mother's best friend met with the man who had accidentally violated the Road Traffic Act and caused the accident. In a video about this particular meeting, at which I was the mediator, the mother's friend says: "You can't give guilt to anyone who is not guilty, and I did not see him as guilty [because he did not cause the accident on purpose]"[8] I have also on occasion experienced meeting participants changing their perception of guilt in the course of the restorative justice process. For example, I mediated a shoplifting case where the parents of some young offenders had reached a very different view of their children's guilt toward the end of the process. At the end of the meeting, one parent emphasized that the story he had heard at the mediation meeting was very different from the one he had been told at home, where his child had not shared the full story about the offense. Thus, perceptions of guilt vary in cases of restorative justice, and while some cases fulfill Statement$_6$, others do not.

4.1.7 | Restorative justice and Statement$_7$

Statement$_7$ declares that "*X* blames *Y*." In this connection, I begin by quoting Braithwaite, who explains that victims' attitudes toward offenders in restorative justice meetings vary greatly:

> Victims sometimes resent the time involved in deliberation; sometimes they experience heightened fear from meeting offenders; sometimes they are extremely vengeful, though more often I am moved by how forgiving they are when genuinely empowered with process control (Braithwaite, 2003, p. 63).

In parallel with this, I too have experienced many different attitudes to offenders among victims—as, I would add, among other participants as well. In some meetings I have mediated, victims and other meeting participants have explicitly blamed the offenders for what they did, while in others such as the meeting mentioned above with the girl who lost her mother in the traffic accident, victims have explicitly stated that they forgave the offenders for what they had done (this is explained in the video—see note 8). Thus, some cases of restorative justice fulfill Statement$_7$, while others do not.

4.1.8 | Restorative justice and Statement$_8$

Statement$_8$ is the statement that "*X* intends to inflict pain/unpleasantness on *Y* through *Z*." Certainly, some cases of restorative justice do not fulfill this statement. For example, I have mediated cases where the victims have told me that they personally did not need a meeting but that they would like to participate in order to help the offenders to move on with their life. In other cases, some participants clearly intend the meetings to be a painful experience for the offenders. This is highlighted by McDonald with the example of a conference after a fatal traffic accident:

His father [the father of Michael, who died in the accident] in particular had expressed a strong desire to punish Peter [the offender] and was eager to see that he said everything he could to make Peter feel the pain that Michael had felt and to ensure Peter felt guilty and carried that guilt with him for the rest of his life (McDonald, 2012, p. 156).

Clearly, Walgrave is wrong when he claims that there is no "intentional infliction of pain" (Walgrave, 2008, p. 65) in restorative justice. Sometimes, victims and other meeting participants do intend to inflict pain on offenders. I would add that as a mediator I too sometimes intend the restorative justice meetings to be a painful experience for the offenders. This is not because pain is my ultimate aim but because, rightly or wrongly, I believe that the experience of pain may help some offenders to stop offending. Similarly, many proponents of punishment do not see the infliction of pain as the ultimate aim of punishment. This was highlighted by Johnstone who, as we saw in Section 2, has criticized Walgrave's intentionality argument. In Johnstone's own words,

many of those who advocate and support the practice of retributive punishment do not see pain delivery as an end in itself, nor as a crude form of deterrence, but regard it as an essential component (but only one component) of a more constructive, educative and reintegrative process (Johnstone, 2011, p. 90).

4.1.9 | Restorative justice and Statement₉

Statement$_9$ states that "X is different from Y." I defined X above as "one or more concrete participants in the restorative justice process other than the offender(s)," and based on this definition, all cases of restorative justice fulfill *Statement*$_9$.

4.2 | Is restorative justice punishment?

Having discussed the relationship between restorative justice and the statements of the nine punishment dimensions, we now move on to the question of whether cases of restorative justice are cases where X punishes Y through Z. As a point of departure, I would like to return to the statement discussed in Section 3.1: "According to *Position*(n_s), $\Box(X$ punishes Y through $Z \leftrightarrow C \wedge D)$." As already explained, this statement implies that, according to *Position*(n_s), it is necessarily the case that if M (a concrete case of incarceration, fines, restorative justice, etc.) fulfills C and D, then M is a case where X punishes Y through Z. In this connection, it should be recalled that C is defined as "all the statements of the punishment dimensions where *Position*(n_s) is minimalist," meaning that C includes between zero and nine of the statements we have gone through above, depending on which punishment position we are talking about. D is defined as "all statements for which everyone agrees that $\Box(X$ punishes Y through $Z \rightarrow D)$." As previously explained, I assume that D consists of basic statements like "X exists," "Y exists," and "X does something Z to Y." I will assume that all cases of restorative justice fulfill the statements of D when X, Y, and Z are defined as above.

In discussing the relationship between restorative justice and the statements of the nine punishment dimensions, I argued that, based on the definitions I use in the present article, all

cases of restorative justice fulfill $Statement_1$ and $Statement_9$. This implies that all cases of restorative justice constitute punishment from the perspectives of the punishment positions that are maximalist in dimensions 2–8 (i.e., maximalist in seven dimensions) and *either* minimalist or maximalist in dimensions 1 and 9. We can use the formula $P_{s,x} = 2^{s-x}$ (see Section 3.1) to calculate that $2^{9-7} = 4$ punishment positions fulfill these criteria. Whether or not concrete cases of restorative justice are cases of punishment from the perspectives of the 508 other punishment positions in the framework depends on whether they fulfill *C* of the different positions, which will vary from case to case.

There are considerable variations between the characteristics of concrete cases of restorative justice. This is also true in the specific context of the Danish victim–offender mediation program, as we have seen above. To my knowledge, the meetings in this program fulfill the statements of between four and seven dimensions.[9] To give as an example a meeting that fulfilled the statements of seven punishment dimensions, I mediated a case about threat that fulfilled the statements of dimensions 1–3 and 6–9. In other words, this meeting constituted a case of punishment according to all the punishment positions that are maximalist in dimensions 4 and 5 (i.e., in two dimensions) and *either* minimalist or maximalist in dimensions 1–3 and 6–9. Thus, the meeting was a case of punishment according to $2^{9-2} = 128$ positions in the punishment framework.

The meeting can be briefly described as follows:

- *The guilt dimension*: It was a meeting between a female offender "Emma" (*Y*) and a female victim "Olivia" (*X*), whom the offender had threatened. Emma acknowledged her guilt, and the meeting clearly fulfilled $Statement_1$.
- *The type-of-offense dimension*: The question about guilt was a legal matter as threat is a penal code offense in Denmark. In other words, the meeting fulfilled $Statement_2$.
- *The experience dimension*: At the meeting, Olivia was extremely angry with Emma, and she did her best to make the meeting an unpleasant experience for her. Olivia shouted at Emma and told her all the negative effects of what she had done. This was unpleasant for Emma as she told me when we talked after the meeting. The meeting fulfilled $Statement_3$.
- *The voluntariness dimension*: Emma had volunteered to be part of the meeting, and was free to leave at any point (although she might have felt considerable social pressure to stay). I do not believe the meeting fulfilled $Statement_4$.
- *The authority dimension*: Olivia was not a human legal authority. In other words, the meeting did not fulfill $Statement_5$.
- *The perception-of-guilt dimension*: Clearly, Olivia perceived Emma as guilty, and thus, the meeting fulfilled $Statement_6$.
- *The blame dimension*: At the meeting, Olivia was explicit about blaming Emma for what she had done. The meeting fulfilled $Statement_7$.
- *The intention dimension*: In my conversations with Olivia before and after the meeting, she made it clear that she intended the meeting to be an unpleasant experience for Emma. Thus, I believe the meeting fulfilled $Statement_8$.
- *The self-punishment dimension*: Olivia and Emma were different persons. In other words, the meeting fulfilled $Statement_9$.

As an example of a meeting in the Danish program that only fulfilled the statements of four dimensions, I present one of my traffic cases. This particular meeting fulfilled the statements of dimensions 1, 2, 6, and 9, meaning that it constituted a case of punishment according to the punishment positions that are maximalist in dimensions 3–5 and 7–8 (i.e., in five dimensions) and *either*

minimalist or maximalist in dimensions 1, 2, 6, and 9. Thus, the meeting was a case of punishment according to $2^{9 - 5} = 16$ positions in the punishment framework. A brief description follows:

- *The guilt dimension*: It was a meeting between a female offender "Nina" (Y) and a male victim "Claus" (X), who Nina had knocked down with her car. Nina acknowledged her guilt, and the meeting fulfilled $Statement_1$.
- *The type-of-offense dimension*: The question about guilt was a legal matter in this case as Nina had violated the Road Traffic Act. In other words, the meeting fulfilled $Statement_2$.
- *The experience dimension*: Claus was not angry at Nina. He knew that it had been an accident and that Nina was sorry for what she had done. At the meeting, they had a calm and friendly dialog about what happened and how they had been affected. The meeting did not fulfill $Statement_3$.
- *The voluntariness dimension*: Nina had volunteered to take part in the meeting, and she was free to leave at any point. The meeting did not fulfill $Statement_4$.
- *The authority dimension*: Claus was not a human legal authority. Evidently, the meeting did not fulfill $Statement_5$.
- *The perception-of-guilt dimension*: Claus perceived Nina as being guilty of violating the Road Traffic Act. Thus, the meeting fulfilled $Statement_6$.
- *The blame dimension*: Claus did not blame Nina for what had happened. He knew it had been an accident and that Nina had not intended it to happen. The meeting did not fulfill $Statement_7$.
- *The intention dimension*: It was not Claus's intention that the meeting should be an unpleasant experience for Nina. In fact, when I called him before the meeting, he said that he personally did not need a meeting but that he would like to participate in order to help Nina move on. Clearly, the meeting did not fulfill $Statement_8$.
- *The self-punishment dimension*: As Claus and Nina are different persons, the meeting fulfilled $Statement_9$.

My aim in presenting these two meetings has been to illustrate how the dimensional approach to punishment can be used to assess whether concrete cases of restorative justice constitute punishment from the perspectives of different positions on what punishment is. I demonstrated in both cases that the meetings did constitute punishment from the perspectives of *some* of the 512 positions in the punishment framework but not for other positions. Specifically, the meeting between Emma and Olivia constituted punishment from the perspectives of 128 punishment positions, while that between Nina and Claus did so only from the perspectives of 16 positions in the framework. Those 16 positions are a subset of the 128 positions, meaning that, in the perspective of 112 punishment positions, the first of the two meetings constituted punishment, while the second did not. This is, of course, due to the differing characteristics of the two meetings.

5 | CONCLUSIONS AND FURTHER PERSPECTIVES

This article represents a midway position between the trajectories of difference and similarity in the literature on restorative justice and punishment that I traced above. On the one hand, it supports a similarity trajectory in showing that some cases of restorative justice constitute punishment from the perspectives of some positions on what punishment is. On the other, it supports the difference trajectory in demonstrating that some cases of restorative justice do not fulfill what some positions in the presented framework consider to be necessary conditions of punishment. In setting out this midway position, I have shown how the relationship between restorative justice and

punishment depends on the characteristics of concrete cases of restorative justice and also on the positions on the nature of punishment. Five questions arise at this point concerning the presented punishment framework and its potential use in relation to restorative justice and other topics.

First, what happens if new dimensions are added? As emphasized, the punishment framework is a work in progress: I may not have managed to identify all punishment dimensions through my literature review. Every time a new dimension is added, the number of punishment positions doubles, as can be calculated with the formula $N_s = 2^s$ (Section 3.1). When a dimension is added, the framework becomes more nuanced as each punishment position in the updated framework takes more dimensions into account. In this connection, it should be noted that all positions that are included in the current nine-dimensional framework will also be included in frameworks with additional dimensions. For example, $Position(2, 3, 5, 6, 8, 9_9) = Position(2, 3, 5, 6, 8, 9_s)$, where $s \geq 9$, and $s \in \mathbb{Z}$.

Second, who holds the different positions? As was illustrated in Section 3, certain scholars hold minimalist and maximalist positions in all nine of the dimensions included in the current framework. However, some of the 512 punishment positions in the framework may not held by anyone as these positions represent all the unique possible combinations of being either a minimalist or a maximalist in each of the nine dimensions. Furthermore, it is not always clear exactly what positions people hold. As discussed, Hart probably holds $Position(2, 3, 5, 6, 8, 9_9)$, but what about McPherson, who, as we have seen, criticized Hart's understanding of punishment? On the basis of his 1967 article, McPherson appears to be a maximalist in dimensions 2, 4, 5, 6, 7, 8, and 9, but it is not clear to me what his position is in dimensions 1 and 3. In this connection, I would like to mention that McPherson's is clearly one of the positions for which the meeting between Emma and Olivia constitutes a case of punishment, while Hart's is one of those for which that meeting is not punishment (at least not punishment in Hart's primary sense of the word because it did not fulfill the statement of dimension 5). Likewise, the meeting between Nina and Claus is certainly not punishment according to Hart's position, while it is unclear to me whether it would constitute a case of punishment according to McPherson (if McPherson is a minimalist in dimension 3—which remains unclear—then it would not).

Third, what is the correct punishment position? Scholars are unlikely to agree on the answer to this question. For example, I am a maximalist in the dimension of authority because I agree with McPherson that punishment may occur within the context of various human relations. How could someone attempt to persuade me to become a minimalist in this dimension? They could try to convince me with arguments referring to *the past*, for example, by arguing that I should be a minimalist because a specific authority, like Hart, has claimed that the minimalist position is the right one or by arguing that I should be a minimalist because of the specific historical tradition of perceiving punishment as the domain of state authorities. I would reply, however, that I do not consider Hart to be an undisputable authority in this matter and that I do not agree with the specific historical tradition. Someone could also try to persuade me using arguments referring to *the future*, for example, by arguing that the concept of punishment will become too vague if it is extended beyond human legal authorities. Even though I agree that the extension leads to a degree of vagueness, I do not believe that problem to be a substantial one. Given that those are my positions, I do not think anyone could convince me to become a minimalist. I suggest that punishment is an *essentially contested concept* (see Zedner, 2016, p. 4), with the potential for endless disputes between those holding the various punishment positions. Here, I take a slightly broader approach to essentially contested concepts than that presented by Gallie (1956). Unlike Gallie, I propose that concepts like punishment, which do not necessarily refer to valued achievements, may also be essentially contested: The value of punishment is highly disputed, not least among restorative justice scholars.

Fourth, what if I had chosen another definition of restorative justice? The use of a different definition would mean that the term denotes other phenomena, and discussion would then be necessary of whether those phenomena constitute punishment. I chose Marshall's definition because it may be the most frequently quoted in the restorative justice literature. There is, however, no agreement on how "restorative justice" should be defined. Several scholars have followed Marshall in defining restorative justice as a particular kind of *process* (e.g., Braithwaite, 1999, p. 1728; Braithwaite & Strang, 2002, p. 4; Dorpat, 2007, p. 236; Miller & Blackler, 2000; Van Wormer, 2003, p. 448; Zehr, 2002, p. 37), but it has also been common to define restorative justice as a *theory of justice* that underpins the kind of processes outlined by the process definitions. Van Ness, for example, writes that "Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through inclusive and cooperative processes" (Van Ness, 2005, p. 3; for other "theory definitions," see Burkhead, 2009, p. 116; Olson-Buchanan & Boswell, 2009, p. 168; Stamatakis & Beken, 2010, p. 289). Some scholars have proposed an *intention*-based definition, in which restorative justice is broadly defined as, for example, "an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational, and social harm cause by that offence" (Walgrave, 2008, p. 21; see also Bazemore & Walgrave, 1999, p. 48). Thus, several definitions of restorative justice can be categorized as either *process*-, *theory*-, or *intention*-based definitions (the distinction between *process*- and *intention*-based definitions is commonly presented as a distinction between purist and maximalist definitions, see McCold, 2000). But it is not the case that all definitions of restorative justice fall neatly within these categories. Daly, for example, defines restorative justice as "a *contemporary justice mechanism* to address crime, disputes, and bounded community conflict" (Daly, 2016, p. 21). Clearly, there is no agreement on the nature of restorative justice—just as there is no agreement on the nature of punishment. The relationship between the two is thus a highly complex issue.

Fifth, what is the potential use of the new punishment framework? The present article provides a first step toward gaining a more nuanced understanding of the relationship between restorative justice and punishment. Further research, however, is needed. In the Danish context, for example, it would be valuable to know what percentage of the meetings in the victim–offender mediation program fulfill the statements of the different punishment dimensions and what percentage of the meetings constitute punishment from the perspectives of the various positions in the framework. The new dimensional punishment framework could be used as a background for conducting such quantitative studies in the future. The potential use of the framework is, however, not limited to studies of restorative justice. One could equally well discuss whether other phenomena—such as concrete cases of incarceration or fines—constitute punishment from the perspectives of the various positions in the framework. Just as the characteristics of concrete cases of restorative justice differ, so do those of concrete cases of incarceration or fines, and not all those phenomena may constitute punishment from the perspectives of all the positions in the framework. For example, not all cases of incarceration may include experienced pain, which is a necessary condition of punishment according to the punishment positions that are minimalist in dimension 3.

ENDNOTES

[1] See Section 5 for additional definitions of "restorative justice."

[2] These meetings have been conducted in the training and trial phases of the *Konfliktråd* Impact Project: a randomized controlled trial that our team is currently carrying out in the Danish program in collaboration with the police (see Sherman et al., 2020). This collaboration with the police has provided me with important background knowledge for this article. However, it should be noted that the meetings from the Danish program that I later use as examples in this article were mediated by myself and that they were not part of the trial. The police have allowed me to describe these meetings as long as I do not reveal the identity of the participants. Thus, all names are pseudonyms, and I only describe the meetings in general terms. All meeting descriptions have been approved by the police.

[3] I use formal logic and combinatorics when developing and presenting the punishment framework. The logical operators that are found in this article can be read this way: "$\neg A$" means "not A"; "$A \wedge B$" means "A and B"; "$A \rightarrow B$" means "if A then B"; "$A \leftrightarrow B$" means "A if, and only if, B"; "$\Box A$" means "necessarily A."

[4] Please note that, whenever I refer to "a case of punishment" in this article, what I more precisely mean is "a case where X punishes Y through Z."

[5] In general, it seems to be possible to put definitions on the logical formula $\Box(K \leftrightarrow L)$. For example, take Aristotle's definition of a man as a rational animal. This definition can be formalized as $\Box(x$ is a man $\leftrightarrow x$ is an animal $\wedge x$ is rational). The logical operator "$\Box$" ("necessarily") must be included as definitions are supposed to express necessary and not contingent truths.

[6] For example, X could be the victim(s), supporters of the victim(s), supporters of the offender(s), the mediator/facilitator, or a combination of these.

[7] Thus, I will abstain from discussing other practices that have also been labeled as "restorative justice," for example, the South African Truth and Reconciliation Commission (Bell, 2002; Boraine, 2000; Skelton & Frank, 2001) and more or less traditional practices like *gacaca* in Rwanda, *mato oput* in Uganda and the Magamba spirit practices in Mozambique (Gade, 2013; Mangena, 2015).

[8] See https://www.youtube.com/watch?v=4ugw4zawgfM (accessed on November 18, 2020). The video was published by the Evangelical-Lutheran Church in Denmark in 2016, together with other videos also addressing the issue of forgiveness.

[9] This assessment is based on my own experiences as a mediator and the observations conducted by our research team (see the introduction). I cannot judge the external validity of the assessment as the cases I have knowledge about may not be representative of all cases in the Danish program (see Kyvsgaard, 2016).

DATA AVAILABILITY STATEMENT

Research data are not shared.

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