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Retributive and Restorative Justice

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Abstract The emergence of restorative justice as an alternative model to Western, court-based criminal justice may have important implications for the psychology of justice. It is proposed that two different notions of justice affect responses to rule-breaking: restorative and retributive justice. Retributive justice essentially refers to the repair of justice through unilateral imposition of punishment, whereas restorative justice means the repair of justice through reaffirming a shared value-consensus in a bilateral process. Among the symbolic implications of transgressions, concerns about status and power are primarily related to retributive justice and concerns about shared values are primarily related to restorative justice. At the core of these processes, however, lies the parties' construal of their identity relation, specifically whether or not respondents perceive to share an identity with the offender. The specific case of intergroup transgressions is discussed, as are implications for future research on restoring a sense of justice after rule-breaking.

Keywords Retributive justice · Restorative justice · Transgressions · Status/power · Values · Identity

Rule-violations and transgressions can take many forms, from the most heinous crimes to rather trivial breaches of norms, from mass killings to the refusal to greet somebody with due politeness. Whatever the exact nature of the transgression, the victims are not only deprived of something that is considered due to them (their life, property, respect, etc.), but also an agreed-on rule, law, or norm is violated. Therefore, even when it is possible to give back to victims what they have lost and undo the harm done to them, there remains the fact that a rule-violation has occurred. The transgression itself, if intentional and blameworthy, is an injustice that victims and observers (perhaps also the offender) usually feel needs to be dealt with, beyond restitution of the victim's losses.

In the criminal justice system, in Western societies at least, the primary means of dealing with the injustice implied in a transgression is punishment. Courts impose punishment on offenders; once a punishment is imposed, justice is often considered done. Of course, seeking justice is not the only possible goal of punishment. Philosophers commonly distinguish between consequentialist and retributivist justifications for punishment (see Duff 2001), which crudely correspond to the motives of behavior control (reducing the reoccurrence of the offense through incapacitation, deterrence, or rehabilitation) and justice restoration, respectively (Vidmar and Miller 1980). These different punishment goals have also been confirmed empirically among lay people (e.g., Carroll et al. 1987; De Keijser et al. 2002; McFatter 1978, 1982). Yet, evidence suggests that justice restoration, not behavior control, is the dominant motivation underlying people's calls for punishment (Carlsmith et al. 2002; Darley et al. 2000; McFatter 1982). The relevant research, however, considers only one specific notion of justice restoration: *retributive justice* or just desert. According to this notion, an offender, having violated rules or laws, deserves to be punished and, for justice to be reestablished, has to be punished in proportion to the severity of the wrongdoing.

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In recent decades, a movement emerged—first at grass root levels among practitioners disenchanted by the existing criminal justice system, then taken up by academics—which challenged the assumption underlying the existing criminal justice system that punishment of the offender is sufficient, or even necessary, to restore justice after criminal offenses. The alternatives that have been put forward are now commonly referred to as *restorative justice* (Bazemore 1998; Braithwaite 1999). The various models, heterogeneous as they are, typically regard transgressions as conflicts that need to be given back to their rightful owners for them to resolve: offenders, victims, and their respective communities (Christie 1977). In practice this means the affected parties are directly involved in the justice process. In a deliberative interaction, they are given voice to vent their feelings, present their side of the story, and ideally come to an agreement about the hurt the offense has caused, the offender's responsibility, and what can be done to restore a sense of justice. Such measures can include direct compensation to the victim, compensation or services to victims of similar offenses or to the wider community, as well as meaningful punishments to the offender that benefit the victim, the community and, through facilitation of moral transformation, potentially the offender (Bazemore 1998). While punishment can be, and often is, part of restorative justice practices, it is not central. Crucial for proper restorative justice is a process of deliberation that places emphasis on healing rather than punishing: healing the victim and undoing the hurt; healing the offender by rebuilding his or her moral and social selves; healing communities and mending social relationships (J. Braithwaite 1998, 2002).

If, as we assume is the case, restorative justice actually aims to rebuild a sense of justice (and not only modify behavior), then it poses an interesting challenge to the psychology of justice. Existing research on issues of justice following rule-breaking has largely focused on the role of punishment, in an area that is called, quite tellingly, retributive justice research (Darley 2002; Feather 1999; Hogan and Emler 1981; Tyler et al. 1997; Vidmar 2000; Vidmar and Miller 1980). This domain of research commonly addresses issues of how and why people want to punish offenders, and it has been found that justice is a prime motivation (e.g., Carlsmith et al. 2002). How does restorative justice fit in with these findings if it considers punishment neither necessary nor sufficient to restore justice? How does restorative justice serve a sense of justice after transgressions if it does not operate solely through the imposition of punishment? Can we distinguish different psychological (or lay-philosophical) notions of justice, a retributive and a restorative notion? What factors and conditions determine whether people subscribe more to a retributive or restorative notion of justice?

As we will see, these are not only academic questions. People, under different circumstances, differ in their preparedness to engage in restorative justice practices when these are offered as an alternative or complement to traditional court processes; and when people *have* engaged in restorative justice processes they often exhibit varying levels of satisfaction (Strang 2002). However, in order to open this question up to psychological inquiry, we want to abstract from specific restorative versus retributive practices, and even from the criminal domain altogether (to which restorative justice is by no means restricted; Braithwaite 2002; Roche 2006). The question for psychologists is whether different notions of justice guide responses to transgressions and which psychological factors and concerns determine people's justice notion. We will take a distinctly social-psychological perspective on this issue and assume that people's notion of justice following a transgression depends on how they construe their relationship to the offender and interpret the incident. Ultimately, we will argue that people's sense of identity in the given context will affect their adoption of either a retributive or restorative notion of justice.

The remainder of this article is organized as follows. We will first revisit the notion of restorative justice as it has been advanced in recent decades, specifically in criminology and law, and review existing research. We will then systematically develop our own framework: we will (a) distinguish between justice and behavior control motivations following transgressions, (b) clarify what exactly justice has to accomplish after transgressions, (c) differentiate between status/power and value concerns underlying justice motivation, (d) analyze how retributive and restorative responses differentially address these two concerns, and (e) identify how different notions of self and identity could be implicated in the two justice processes. We will then discuss implications of our conception for intergroup transgressions before concluding with implications for further research.

Seeking Justice After Rule-breaking

The Restorative Justice Movement

While our investigation will not be concerned with a particular practice or tradition of restorative justice but rather seek to establish a psychological concept of restorative justice, this concept will nonetheless have some grounding in the criminal justice practice and research. The modern Western criminal justice system strongly features principles of objectivity and consistency, in that an impartial judge or jury deliberates a case on the basis of all available evidence and applies the law based on its text, accepted

interpretation, and common practice. However, because crime is considered the domain of the state, there is only a limited role for the stakeholders themselves; for victims and offenders to present their side of the story, express their feelings, ask and answer questions important to them, or offer an apology or forgiveness. Out of frustration with the formal court-based justice system, practitioners began in the 1970s to experiment with alternative practices and ideas (e.g., Peachey 1989). In the 1990s, these were conceptualized more programmatically as restorative justice. Due to the post-hoc nature of the concept, restorative justice subsumes a number of different notions and there is not necessarily consensus about its definition.

One early intellectual basis of restorative justice is Christie's (1977) view that offenses are to be considered as conflicts that rightfully belong to victims and offenders, and that these parties ought to participate in its resolution. Criminal justice institutions and law professionals steal those conflicts from the affected parties and rob them of their opportunity, their right and duty, to learn and grow through their conflicts. Notably, Christie (1977, p. 8) contends that the "big loser is us – to the extent that society is us. This loss is first and foremost a loss in *opportunities for norm-clarification*". This understanding of offenses as conflicts is a prevailing motif in restorative justice. It is reflected in what has become a frequently cited definition of restorative justice as "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 1999, p. 5). In line with this definition, prototypical restorative justice practices involve assembling the parties affected by the offense, face to face, to discuss and resolve the injustice. For example, this can take the form of victim–offender mediation, a mediated discussion between victim and offender in a safe and structured setting; family conferences that also involve family, peers, or supporters of victim and offender; or circle sentencing, where other members of the community furthermore represent wider interests (Bazemore and Umbreit 2001).

Beyond this procedural element "of bringing together all stakeholders in an undominated dialogue about the consequences of an injustice" (Braithwaite 2002, p. 12), restorative justice has also a distinct value frame that, foremost, places emphasis on healing rather than punishing (Braithwaite 2002; Braithwaite and Strang 2001). While in practice it can also involve punishment of the offender, restorative justice promotes more constructive punishments as alternatives to the mere infliction of suffering on the offender such as incarceration. Restorative punishments are more constructive and meaningful in that they oblige the offender to do something for the victim (or, alternatively, to victims of similar offenses), provide some service to the community, or take part in an educational program (Bazemore 1998). However, while these alternative punishments may be more conducive to its aims, the idea of restorative justice should not be reduced to their application alone. At the core of restorative justice is a dialogical process geared toward making offenders accept accountability for the harm they have caused (as well as its repair), show remorse, and offer an apology, while victims are, at least implicitly, encouraged to overcome their resentment and offer forgiveness (Retzinger and Scheff 1996; Roche 2003; Strang 2002; Zehr 1985).

But does it work? As far as its crime-control potential is concerned, the evidence suggests that, relative to court processes, restorative justice programs tend to reduce re-offending, but with considerable variation between offence types and contexts (Braithwaite 2002; Latimer et al. 2005; Strang et al. 2005). Clear conclusions are often hampered by the problem of self-selection, when offenders and victims are given the choice to participate in restorative justice programs in addition, or as an alternative, to a court process (Latimer et al. 2005). Methodological rigor would demand a random allocation to experimental conditions (e.g., restorative justice versus court process) and to analyze the participants' data accordingly, irrespective of whether they actually completed the allocated treatment (Sherman et al. 2005; Strang et al. 2005). For our discussion, however, self-selection is not so much a problem but rather a question of interest. Why is it that some victims and offenders are willing to participate in restorative justice programs while others are not? And once they have experienced the restorative justice alternative, why do some fail to complete the program? Why are some victims and offenders more satisfied than others?

Generally, the evidence suggests that victims feel more satisfied with restorative justice programs compared to court processes (Latimer et al. 2005; Sherman et al. 2005; Strang 2002; Strang et al. 2005). The high level of satisfaction seems to be a result of victims' greater level of participation in the process rather than their being satisfied with the reparation (Beven et al. 2005). Victims seem to place less importance on material restoration than "emotional restoration" (Strang 2002). However, there is also evidence showing a consistent minority of victims who feel dissatisfied with the restorative justice process (Strang 2002). Similarly, victims' willingness to take part in restorative justice varied between 36 and 92% in the different conference programs reported by Strang et al. (2006). So far, there is little known about the factors that predispose victims to restorative justice processes. When are victims favorably oriented toward dealing with an injustice by restorative means? Similar questions could be asked for the perspectives of offenders and community stakeholders (see Braithwaite 2002; Roberts and Stalans

2004); however, our focus will largely be on the victim's perspective.

Although we have thus far traced the notion of restorative justice only in the criminal justice arena, it has in fact found applicability and appeal in a variety of transgression contexts, from bullying at school to corporate regulation, post-conflict intra-national reconciliation, and international relations (Braithwaite 2002; Roche 2006). We will therefore address our research question at a more general level, where all forms of transgressions—whether criminal or interpersonal—can be responded to in restorative or punitive ways. Our theoretical discussion is not limited to current restorative practices but abstracts from them. Nor are we only concerned with those criminal transgressions that have typically been considered for restorative programs, but we accept that the type and meaning of a transgression could be a relevant factor. We will conceptualize restorative justice as a psychological or lay-philosophical understanding of justice and investigate when it, rather than retributive justice, motivates responses to rule-breaking.

Two Psychological Conceptions of Justice

People have a variety of goals that motivate responses to rule-breaking (e.g., De Keijser et al. 2002). Generally, it can be argued that any response to rule-breaking can have two objectives (Vidmar and Miller, 1980): (1) *behavior control*, in the sense of securing future compliance with the rules; and (2) *justice restoration*—the term we prefer over Vidmar and Miller's (1980) "retribution" that is rather one-sided in light of the present paper.

Both objectives can be pursued by different means, referred to here as punitive and constructive means. For *behavior control*, deterrence (specific deterrence of the offender, or general deterrence of the wider public) and incapacitation (confining the offender) are clearly punitive means; offenders are unilaterally penalized or deprived of liberties. In contrast, rehabilitation (training and re-education of the offender) means that, while offenders are expected to take steps for their better adjustment to society, they are provided with assistance and support to learn new skills, expand their behavioral repertoire, and change attitudes. Rehabilitation can thus be characterized as a more constructive means toward behavior control, where both parties (offenders and reactors) work together.

Aside from behavior control, *justice restoration* aims at re-establishing some moral order and sense of justice. Again, however, we contend this can take a punitive or a constructive form. First, justice could be re-established by the mere unilateral meting out of punishment. This is retributive justice or the notion of just desert, succinctly captured by Carlsmith et al. (2002, p. 284): "[W]hen an individual harms society by violating its rules in some normatively unallowable way, the scales of justice are out of balance, and sanction against the individual restores this balance. ...[T]he perpetrator deserves to be punished in proportion to the past harm he or she committed". This is the notion that mainly underlies the conventional Western criminal justice systems and has been the focus of most psychological research on justice after transgressions (Darley 2002; Feather 1999; Tyler et al. 1997; Vidmar 2000). It is important to understand that, for retributive justice, the punishment per se, or the suffering and humiliation it implies for the offender, restores the justice. The offender, having violated accepted rules and disturbed the moral balance, deserves to be punished. The punishment is considered necessary and sufficient for the restitution of justice. The punishment can be imposed unilaterally. The offender does not have to agree to it nor show contrition or remorse about her actions. Indeed, in his philosophical-normative account of just desert, Von Hirsch (1993) argues that punishment must not seek to elicit such internal states in the actor. While empirically there is some evidence that an offender's remorse can lead to more lenient punishment (see Vidmar 2000), conceptually remorse is not essential for retributive justice.

In contrast, restorative justice represents a more constructive form of justice restoration (Walgrave 1995). As discussed, restorative justice understands an offense as a conflict between victim, offender, and community that needs to be resolved in interaction between those parties. In practice, both victim and offender are therefore given a voice to express their views and emotions. Based on a proper understanding of what the extent of the harm is, restorative justice is geared toward making the offender take responsibility and accept accountability for his actions, and express a sincere apology to the victim. The victim is (at least implicitly) encouraged to express willingness to forgive the offender and show respect to the offender as a human being generally capable of redemption and moral transformation (Govier 2002). Further, both parties then decide together, bilaterally, on what is a suitable punishment for the offender and/or a suitable compensation for the victim. Consistent with this, we argue the main issue in restorative justice, as a constructive form of justice restoration after rule-breaking, is gaining a shared understanding of the harm the offense has done and the values it violated. Justice is restored when the relevant principles and values that have been violated by the offense are re-established and re-validated through social consensus (see Sherman et al. 2005).

It should be emphasized again that we have now redefined retributive and restorative justice as two *psychological, or lay-philosophical, notions of justice*. We contend that, depending on the circumstances, people may have different

notions of justice—different views about the essence of justice after rule-breaking and therefore how it ought to be restored (Wenzel and Thielmann 2006). Retributive justice is restoration of a sense of justice through the imposition of punishment, in form of adjudication or revenge; restorative justice is restoration of a sense of justice through renewed value consensus.

Restitution, Compensation, and Censure

In order to further clarify our conceptualization of retributive and restorative justice, it is worthwhile investigating what exactly it means when people seek justice after rule-breaking. This is because, occasionally, we find the term restorative justice used in a sense different from ours, namely as the restoration of an earlier state of affairs: restitution, the undoing of a harm, or compensation (van Prooijen 2004; Schroeder et al. 2003). Indeed, these are also elements of restorative justice practices that are often cited as distinguishing it from the punitive, traditional criminal justice model. However, as discussed, it is not that punishment cannot be part of restorative justice practices (unless perhaps in some abolitionist understanding of it; see Duff 2001). We want to emphasize that restorative justice is not to be confused with compensatory justice (Darley and Pittman 2003).

Transgressions against rules, norms, or principles usually (except perhaps in victimless offenses, such as self-mutilation) involve a violation of entitlements that are implied in the rule, norm, or principle. These can include entitlements to certain outcomes, or distributive entitlements in the widest sense (see Lerner 1991; Wenzel 2004); or they can be procedural entitlements to fair decision-making procedures and fair treatment (see Cropanzano and Ambrose 2001; Lind and Tyler 1988; Sunshine and Heuer 2002). For example, a thief may have attempted to steal jewelry that legitimately belongs to the victim (according to accepted property rights), thus disregarding and violating the victim's entitlement to own and dispose of property as he wishes. Or, an employer may have used discriminatory hiring practices that violated an applicant's entitlement to equal opportunity or bias-free consideration of her job application. One possible response to these transgressions is to demand that the harm to the victim be undone and the victim's entitlements be reinstated. In other words, restitution is required that reestablishes distributive or procedural justice. The jewelry may be returned to the victim of theft; the candidate's job application may be reconsidered and the employer may be asked to revise her recruitment procedures.

In some cases, an appropriate response to the transgression may demand that the offender compensate the victim for the loss of not only the material but also perhaps the emotional value of those goods. The stolen jewelry may have had particular emotional value to the victim, and if the thief has already sold the stolen item, additional compensation may be required to replace that emotional loss. In these cases, the victim experienced some deprivation, loss, or harm that cannot be undone but that may be balanced out by some equivalent gain. That is, the harm is somehow valued (usually in monetary terms) and distributive justice or equity is reinstated in kind, so to speak.

However, while transgressions can be violations of distributive and procedural norms, people may find the mere re-establishment of distributive and procedural justice insufficient to restore justice. This is particularly so when intention, or gross negligence, and blame are attributed to the transgressor (Darley and Pittman 2003). When the offender is considered to have knowingly and intentionally violated a rule, norm, or principle, without any other justification, blame is attributed to the offender (Shaver 1985), further contributing to the experience of injustice beyond the violation of distributive or procedural entitlements (Mikula 2003). Mere restitution may not be adequate even as a response to negligent acts that result in a distributive or procedural injustice (Okimoto and Tyler 2007). Hence, the restitution of a pre-offense state of affairs may not be regarded as sufficient. Rather, the rule-violation is itself an injustice that needs to be addressed, beyond any distributive and procedural injustices implied (Tyler and Smith 1998). People usually feel justice demands that the offender be punished, above and beyond a possible restitution or compensation to the victim (Darley and Pittman 2003). As Heider (1958, p. 267) put it:

> What is necessary is that the deeper sources of [the offender's] actions, the sources that impart the full meaning to the harm and that most typically have reference to the way [the offender] looks upon [the victim], should be changed.

Generally, we can say what is deemed necessary is an undoing of the moral-symbolic meanings of the offense (we will discuss two possible meanings in the next section). In the widest sense, these are undone through *censure*. In declaring the rule violation as wrongful, as something that should not have happened, censure in effect annuls the moral-symbolic meaning of the offense.

Both retributive and restorative justice entail censure, but with quite different understandings of its operation. In retributive justice, censure takes the form of punishment that is unilaterally imposed on the offender. In contrast, restorative justice involves self-censure of the offender, who accepts the harm done, takes responsibility, and expresses remorse. More precisely, whereas in retributive justice censure is a one-sided affair, in restorative justice

censure is a collective effort shared between victim, offender, and community. In retributive justice, moral meaning is restored through assertion against the offender; in restorative justice, it is restored through consensus with the offender. The latter reflects what Hudson (1998) called, with reference to Habermas' discourse ethics, a "dialogic" morality in restorative justice. It reflects a communitarian view of restorative justice that morality is essentially a social product of a shared community and interdependence (Braithwaite 1989). It may also reflect postmodern positions of restorative justice that reject the idea of universal and objective truths, instead assuming that morality and community need to be open to different views and be continuously negotiated anew (Pavlich 2001).

Our discussion focuses on transgressions where the intent and responsibility of the offender is clear. In this case, restitution or compensation are generally not sufficient to restore justice after transgressions; rather, a response is required that undoes the moral-symbolic meaning of the rule violation itself. However, this is not to mean that restitution and compensation are dispensable here. Failure to repair distributive or procedural injustices (if they are repairable) could be considered to perpetuate the transgression, and this might annul or discredit any form of censure. Moreover, restitution and compensation might, under certain conditions, have additional symbolic meaning beyond the material restoration of distributive and procedural justice. Indeed, Okimoto (2007) demonstrated that compensation efforts by representatives of the group to which the offender belonged reaffirmed the victim's membership value and identification with the group. Where compensation is expressly imposed against the offender's will it might have punitive meaning, and where it is agreed on bilaterally it might have restorative meaning, in each case carrying communications of censure.

Symbolic Implications of Transgressions: Status/Power and Values

As we have seen, the quality of the censure response differs between retributive and restorative justice, and with it, the implied constitution of morality as quasi-objective and neutral versus subjective and social. We argue further that censure in retributive versus restorative justice primarily addresses *different* moral-symbolic implications of transgressions. What exactly are the moral-symbolic implications of transgressions that require a response beyond the restoration of distributive and procedural fairness? In the philosophical, sociological, and psychological literature, we often find two themes. These are not always clearly separated and, indeed, may be inextricably intertwined; however, at least analytically, they can be distinguished.

Namely, transgressions can be regarded as threats to status/power on the one hand, and threats to shared values on the other hand (see Tyler et al. 1997; Vidmar 2000).

First, it may be argued that offenders, through violating a rule or law, take advantage of their victims and the wider community; they put themselves above others and assume a position of superiority and power. Offenders disrespect victims and their rights, and they disrespect the community and its laws. They express low regard for victims and communities who therefore feel humiliated; they exploit victims and communities who therefore feel disempowered. Hence, one major symbolic meaning of transgressions is the implied status/power relation. As Murphy and Hampton put it (1988, p. 25):

> One reason we so deeply resent moral injuries done to us is not simply that they hurt us in some tangible or sensible way; it is because such injuries are also *messages* – symbolic communications. [...] Intentional wrongdoing *insults* us and attempts (sometimes successfully) to *degrade* us – and thus it involves a kind of injury that is not merely tangible and sensible.

In psychology, Heider (1958) similarly emphasized the symbolic implications of a transgression in terms of power and status. As a response to harm or injury, in particular when they regard the implied power/status relation as illegitimate and undeserved, victims seek revenge to restore their honor and their self-image (see also Bies and Tripp 1996; Vidmar 2000). More recently, Miller (2001) argued that feelings of disrespect were often at the heart of experiences of injustice, and retaliation was the victims' attempt to reassert themselves in order to restore their self-image and identity. Victims' anger as a response to their demeaning treatment also "serves a self-presentational function ... [by establishing an] identity as a strong and determined person who demands respect and does not tolerate unjust treatment by others" (Miller 2001, p. 541). In short, transgressions symbolically (if not actually) imply an offender's usurpation of power and status, and the disempowerment and degradation of victim and community. Responses to the transgression may, in turn, be attempts to restore the power and status relation, through taking power/status away from the offender and reasserting the power/status of victim and community.

Second, it can be argued transgressions are a violation of values that underlie the rules or laws that have been broken. Specifically, transgressions are a violation of values that are expected to be shared between offender and victim due to their shared membership in a relevant community. The deliberate violation of these values can imply that the offender questions them, challenges their validity, or undermines the consensus that lends validity to the values. In his classic text, Durkheim (1964) argued similarly that

crime is contrary to what he called common conscience: presumably shared sentiments that constitute and derive from the social cohesion in a collective. Or, as Vidmar (2000, p. 42) puts it: "An offense is a threat to community consensus about the correctness – that is, the moral nature – of the rule and hence the values that bind social groups together". As a transgression can be regarded as a challenge to essential identity-defining values of a relevant social community, responses to the transgression may aim to restore and reaffirm the validity of those values.

While symbolic implications of transgressions in terms of status/power and value can be conceptually distinguished, they are not necessarily independent from each other. Specifically, when a transgression expresses disregard or contempt for the values held by the victim and supposedly shared within the community, the transgression may also be interpreted as communicating low regard or disrespect for the victim and community, inasmuch as these values define the identity of victim and community. Conversely, when a transgression is perceived as lowering the victim's status and/or power, this may also be seen as violating shared values of equality or respect; that is, values that prescribe how much status and power people are due. In fact, it can be noted that Tyler et al.'s (1997) relational model, which similarly emphasizes the importance of the symbolic meaning of transgressions for people's motivation to respond to an injustice, subsumes under the notion of "group value" both the values held by a relevant group and the value (i.e., status, respect, reputation) of a group and/or the members within the group (Tyler et al. 1996; Tyler and Smith 1999). However, we argue that status/power and value implications of a transgression can be theoretically differentiated and that this is useful for the explanation and prediction of different notions of justice invoked in responses to transgressions.

Retributive and Restorative Justice Addressing Symbolic Implications

Retributive justice is the reestablishment of justice through unilateral imposition of punishment on the offender consistent with what is believed the offender deserves. Such a response could be sufficient for the restoration of a status/power relation that a transgression has disturbed. A unilateral punishment means that offenders have to endure suffering against their will. The imposition of punishment in the name of justice means that offenders are powerless and the suffering means that their status is lowered. The punishment can be unilateral; the offender need not be persuaded by the punishment and need not show any remorse or contrition. In fact, if offenders accepted their punishment as deserved, as something they have brought upon themselves, the punishment might effectively be considered self-imposed and its status/power reduction effect might be neutralized. Hence, if a transgression is primarily viewed as the usurpation of power by the offender and as a humiliation of victim and community, then the imposition of a punishment on the offender may be a means of demonstrating and restoring the power/status of victim and community. This argument is consistent with empirical evidence suggesting that the humiliating nature of a provocation leads to greater retaliatory aggression (Murugesan and Sears 2006). Likewise, norms of honor have been found to explain cultural (and subcultural) differences in aggressive responses to insults (Nisbett and Cohen 1996), while personality differences in one's preoccupation with one's self-image (narcissism) help explain individual differences in aggression-proneness (Baumeister et al. 2000).

In contrast, restorative justice is the reestablishment of justice through a renewed value consensus, through the reaffirmation of values violated by the transgression. Obviously, this justice notion speaks directly to the value implications of the offense. If a transgression is primarily seen as the violation, questioning, or undermining of values that are presumed to be shared in the relevant community, then the most effective undoing of the incident should be the offenders' re-endorsement of those values. The offender should be brought back into a consensus about community values. The renewed consensus provides social validation of those values (Turner 1991). Indeed, the offender's re-endorsement in the form of remorse and apology could contribute more to the validation of those values than the preaching of the righteous who "knew better all along" (Alexander and Staub 1956; Vidmar 2000). Of course, this should be the case only, or in particular, when the apology is sincere and not coerced. Restorative justice, which engages the affected parties in a dialogue, a process of mutual respect and equal voice, encourages offenders to take responsibility for their actions and offer an apology, toward the reestablishment of a consensus between the parties. It should therefore be an effective response to a transgression that is primarily seen in terms of its value implications (see Sherman et al. 2005).

Hence, in general, the interpretation of a transgression as a threat to status and power should lead to a preference for the retributive justice notion, whereas its interpretation as a threat to shared values should lead to a preference for restorative justice. However, we grant the issue could be more complicated. First, it is possible that punishment, as part of retributive justice, could also serve to restore values. For instance, from a punishment-as-communication perspective (Duff 2001), it has been argued that the imposition of punishment communicates to offenders (and the wider community) that the offense was wrong and violated

important principles or values. As Kahan (1998, p. 615) puts it, "What a community chooses to punish and how severely tell us what (or whom) it values and how much." This corresponds to the Durkheimian social-functional view that punishment serves to re-assert the collective conscience and cohesion in a group (Vidmar 2000). Yet, we contend that punishment per se is unlikely to be an effective means for re-establishing value consensus. Except in the improbable event that the offender accepts the "lesson" of the punishment and becomes a "better" person because of it, the social consensus the punishment may express is only suboptimal. Punishment amounts to an attempt to enforce community values which may only increase the offender's resolve to resist (Brehm and Brehm 1981). Considering the power and status implications of punishment, offenders are unlikely to agree with those who humiliate or disempower them (Braithwaite 1989). Hence, there remains at least one party that does not share in the consensus supposedly expressed by the punishment: the offender. The uncertainty persists as to why people like the offender do not appear to share in the community's values, potentially continuing the threat to the values and identity of the group. However, this uncertainty can be reduced if the punishment is understood as a psychological exclusion of the offender from the community (e.g., as apostates; see Vidmar 2002; see also the black sheep effect; Marques and Paez 1994). If offenders are no longer regarded as members of the community (symbolically, by withholding from them rights members typically have, or physically, by locking them away), their dissent no longer causes uncertainty or threat to the value consensus (see Turner 1991), although the consensus has then a reduced range. Hence, in terms of a reaffirmation of values toward the *rest of the group*, there is some scope for retributive justice to address value implications of a transgression.

Conversely, there could be other options than punishment for restoring a status/power relation. For example, in a restorative process, offenders could offer an apology and ask for forgiveness. The offenders' admission of wrongdoing signals that their appropriation of power was illegitimate and annuls it. Their concession that they owe the victims/community an apology amounts to an acknowledgment of rights and an expression of respect for them. As forgiveness can only be granted by victims (perhaps by the wider community on their behalf; see Govier 2002), the offenders' request for forgiveness subjects them to the victims' (or community's) will and control. By granting forgiveness, victims (and/or the community) can assert a moral superiority, and their "magnanimity emphasizes [the offender's] inferiority" (Heider, 1958, p. 269). Having said this, empirical evidence suggests that narcissistic individuals who greatly value self-respect and have a strong sense of entitlement

are less likely to show forgiveness (Exline et al. 2004). And, whereas an apology and a request for forgiveness can be ambiguous in their meaning (are offenders sincere or are they only mocking victims even further?), the meaning of punishment and imposed suffering is unambiguous. Hence, punishment might be considered a necessary response to a transgression that is primarily viewed in terms of its status/power implications.

Further, it has been argued that because of the voice restorative justice practices give to victims and the wider community (to express their hurt and to suggest ways of dealing with the incident), restorative justice entails an element of empowerment (Braithwaite 2003; Zehr 1985). So, again it would appear that aspects of a restorative justice process are also capable of addressing status and power concerns. However, this empowerment through a restorative process really applies all around to victims, communities, and offenders; it sets restorative justice (but also other forms of mediation and dispute resolution outside the courts) apart from more traditional criminal justice systems where the power lies mainly in the hand of a third party or legal authority. This has less to do with an empowerment of victims and communities *relative* to offenders in order to reverse a power differential caused by the transgression.

Consistent with this discussion, we predict that the restorative justice notion is primarily salient when the transgression is regarded as a violation of community values, whereas the retributive justice notion is primarily salient when the transgression is regarded as disempowerment or humiliation of victim and community. Although some elements of restorative justice might also address the status/power imbalance brought upon by the transgression, and the mere punishment of retributive justice might also go some way to address an implied value threat, retributive justice more typically (and more effectively) restores a status/power balance while restorative justice more typically (and more effectively) restores a values consensus.

Retributive and Restorative Justice as a Function of Social Identity

Concerns about status/power versus values may be a reflection of a more fundamental issue, namely the conception of the relationship between the affected parties in terms of self and identity. Specifically, we assume the endorsement of a retributive versus restorative justice notion depends on whether or not offender and victim are regarded as sharing membership in the relevant community or inclusive group (Wenzel and Thielmann 2006). The argument is, firstly, based on a more detailed analysis of

the two underlying psychological motivations of status/power versus value restoration.

Status and power are inherently relative or competitive. A person/group has high status in relation to another, lower-status party; and it has power insofar as it has power over somebody else. When a transgression is interpreted as the offender's illegitimate appropriation of status and power, victims or communities have framed their relationship to the offender essentially as an antagonistic, negatively interdependent one (see Sherif 1966). If, through their actions, the offender is perceived to have gained status or power over the victim, the offender's gain in status/power is the victim's loss. This implies that victims distinguish psychologically between themselves and the offender, as between self and non-self (Turner 1981). If they were to regard themselves and offenders as members of the same group, a competition over status and power would be less likely, as they would focus more on what they have in common than on what separates them. Indeed, as members of the same group they could even have power through powerful other in-group members (Turner 2005). Conversely, a transgression is more likely to be interpreted as a threat to one's status or power when one conceptualizes oneself as different from the offender. Assuming that retributive justice is primarily motivated by status/power concerns, this justice notion should therefore be more salient when the involved parties are perceived to have *different* identities.

In contrast, values are valid insofar as they are shared within a relevant social category (Haslam et al. 1996; Turner 1987). A transgression should only be interpreted as a violation of shared values when one expects the offender to hold and live by the same values. If an offense is interpreted as inconsistent with one's values, then this should only lead to uncertainty and, thus, the motivation to seek consensus, when one expects the offender to agree on those same values (McGarty et al. 1993). Put differently, one should only want to seek consensus and agreement with the offender when consensus and agreement can indeed reaffirm the validity of the values. If there is no expectation to agree on the same values, then agreement does little to validate one's values. In line with self-categorization theory (Turner 1987), the expectation to agree is based on the view that one shares a relevant social identity. Likewise, the motivation to reduce disagreement and achieve consensus is based on a sense of shared identity. Assuming that restorative justice is primarily motivated by value concerns, this justice notion should therefore be more salient when the parties share a relevant social identity.

Research by Wenzel and Thielmann (2006) provides initial support for these predictions. In two correlational studies involving offenses with non-specific victims (tax evasion and social security fraud), there was evidence that the endorsement of a "just desert notion of justice" (retributive justice) was a better predictor of sanctioning decisions when respondents indicated a relatively low level of identification in terms of the relevant social category that includes the offender and themselves (national identity). In contrast, the endorsement of a "value reaffirmation notion of justice" (restorative justice) predicted sanctioning decisions only when respondents indicated a strong level of identification with the relevant inclusive category. These findings support our reasoning: restorative justice seemed more relevant to participants' responses when they identified strongly with the category that included the offender, whereas retributive justice was psychologically less relevant under these conditions.

Hence, we argue a retributive notion of justice is more likely salient when respondent and offender lack a common identity, whereas a restorative notion of justice is more likely salient when they share a common identity. This is mainly so because when the affected parties lack a shared identity (i.e., they see each other as different individuals and construe the context as *inter*personal, or they see each other as members of different groups and construe the context as *inter*group) they are more likely to perceive each other as negatively interdependent in terms of status and power, and react predominantly to the status/power implications of a transgression. In contrast, when they share a social identity (i.e., they construe the context as *intra*group) they are more likely to perceive each other as positively interdependent in terms of the validation of shared values, and they react more out of a concern for values and the restoration of identity.

The importance of social identity can be restated in two further, though related, ways. First, at the beginning of this article, we referred to a common understanding of the restorative justice model as aiming at the healing of communities and mending of social relationships. This immediately raises the question of what this community is and what those relationships are. Do victim and offender see themselves as part of the same community, and do they see each other as engaged in some social relationship worthy to maintain? Does the offender want to be part of the wider community as the victim sees it? Does the victim want the offender to be part of their community? The way the two parties define their social identity in relation to each other should provide answers to these questions, and it should indicate whether the parties can and want to affirm their identities through rebuilding a consensus about identity-defining values. Second, to see their values recognized, victims might want the offenders to accept responsibility and acknowledge the harm and wrong done. When victims do not think they share a group identity with the offender, they might be more inclined to resort to a coercive process of trying to impose their views on the

offender by means of punishment and intimidation, believing that only this process will have an effect on outgroup members (Haslam 2004; Reynolds and Platow 2003). In contrast, victims who perceive to share a relevant social identity with offenders are more likely to think they are open to reason and argument, to processes of persuasion and influence, which seem essential to the dialogical morality of restorative justice.

We acknowledge that the role of social identity could be more complicated due to the fact again that status/power relations and group values are not completely independent from each other. Concerns about status/power could also occur in *intra*group contexts (where parties refer to a common identity) when a member's status or standing is defined with reference to consensual, identity-defining value dimensions (e.g., intergroup attraction: Hogg 1993; leadership: Hogg and van Knippenberg 2003; Turner and Haslam 2001; distributive justice; Wenzel 2004). Likewise, value concerns might also be possible in interpersonal or *inter*group contexts (where the parties do not refer to a common identity) when individuals or groups derive a sense of pride or status from their identity-defining values, specifically when these are favorably compared to others' values. These interdependencies between status/power and value processes are interesting and challenging, but they do not diminish our main argument that a sense of a common identity underlies the concern for presumably shared values and thus a restorative justice notion, whereas status/power concerns come to the fore when the affected parties lack a sense of common identity.

Retributive and Restorative Justice in Intergroup Contexts

The preceding discussion suggests a rather pessimistic view for transgressions in intergroup contexts (if we consider a restorative justice option a good thing), but this is worth analyzing in more detail. In intergroup contexts, where the offender is regarded as a member of a salient outgroup, it would seem as if, by definition, the affected parties lack a common identity. Hence, they would be more likely to endorse retributive justice, revenge, and punishment (rather than restorative justice). Indeed, there is evidence that members tend to endorse stronger punishment toward outgroup offenders than ingroup offenders (Graham et al. 1997; Kerr et al. 1995; Sommers and Ellsworth, 2000; but see Feather 1999; Vidmar 2002). This is consistent with the argument in the literature that aggressive conflicts tend to be more severe or have greater escalation potential in intergroup than interpersonal contexts (e.g., Meier and Hinsz 2004; Mummendey and Otten 1993).

However, it is generally acknowledged that people can identify with groups at different levels of inclusiveness (Gaertner and Dovidio 2000; Turner 1987). Thus, while victim and offender may identify as members of different groups at one level (e.g., in terms of their ethnic background), they may also identify with a more abstract group to which they both belong (e.g., their nation). This means the fact that, in intergroup contexts, offenders and victims regard themselves as members of different groups does not preclude the possibility that they also see each other as sharing membership in another, more abstract group. Research has shown that when members of different groups identify with a higher-order, inclusive group, their notions of entitlement are based on the perceived values of that shared group (rather than on sub-group interests; Wenzel 2002), and acceptance and legitimacy of authority decisions are based on relational concerns about fairness and respect (rather than on the favorability of the decisions for their sub-group; Huo 2003; Huo et al. 1996). Similarly, the intergroup quality of a transgression does not rule out that the affected parties adopt a restorative notion of justice. Indeed, Wohl and Branscombe (2005) showed that members were more willing to forgive an outgroup that committed atrocities against their own group when they regarded both groups as part of a more inclusive group.

While restorative justice is thus a possibility even in intergroup contexts due to people's capacity to identify simultaneously with a more abstract social category, there may still be arguments that responses could here be less restorative and more punitive compared to interpersonal or intragroup contexts. First, while people can identify simultaneously with groups at different levels of inclusiveness (i.e., two differently inclusive groups can both be central to one's self), there is a certain "functional antagonism" between two differently inclusive self-categorizations as to their psychological salience in a given situation (Turner 1987). An attribute that defines the difference between two groups in a given context is less likely to be seen as a similarity that defines their common identity in terms of a more abstract group, and vice versa—except when the two groups are considered similar at a higher level *because* of their differences, such as their complementarities (Haslam 2004). For example, when victims define their ingroup as holding relevant values different from the offender group, this is incompatible with the view that they, as members of the inclusive category, subscribe to the same values. Hence, value restoration would be less of a concern and restorative justice less likely endorsed as a justice notion. This would be the case unless victim and offender groups are defined as holding different values but both subscribe, for example, to tolerance as the value defining their more inclusive, common identity. As tolerance means acceptance or appreciation of difference, there is no functional antagonism between self-categorizations at both levels

(rather, there needs to be subgroup difference for tolerance to have any meaning). Restorative justice could here still be endorsed, with the aim of restoring the shared value of tolerance toward value differences.

Second, when the parties affected by a transgression identify simultaneously with their sublevel ingroup and a more abstract social category inclusive of the offender group, their subgroup's consensus might imbue the violated value with sufficient validity for members to claim that their ingroup's values are representative and normative of the inclusive group generally (ingroup projection; Mummendey and Wenzel 1999; Wenzel et al. 2003). In a way, the ingroup does not consider itself as positively interdependent with the outgroup for the validation of shared values. Rather, the ingroup considers its values as valid for the inclusive category and, thus, the outgroup as deviant or subversive. Indeed, due to its deviance the offender group might be considered to deserve greater punishment than if there were no sense of shared inclusive identity. Consistent with this argument, Wenzel and Thielmann (2006) found that a value restoration notion of justice was positively related to calls for punishment only when the norms and values of the inclusive category were considered clear and consensual. In contrast, the value restoration notion of justice was positively related to alternative, more restorative forms of punishment when the norms and values of the inclusive category were considered to be diverse, in flux, and in constant need of renewed consensus.

To sum up, intergroup transgressions involve parties with different salient identities who thus tend to see each other as negatively interdependent with regard to their status and power; intergroup transgressions will thus more likely elicit notions of retributive justice. Restorative justice is a possible response to the extent that the affected parties simultaneously define themselves in terms of a superordinate category that includes them all. However, due to functional antagonism between self-categorizations at different levels of inclusiveness, a sense of a relevant shared identity may (under certain circumstances) be reduced as long as subgroup identities remain salient. Moreover, when the affected parties simultaneously identify at subgroup and inclusive levels, group members may project their subgroup's values onto the inclusive category and regard the offender group as deviant with respect to those values. Even when the involved groups refer to a shared inclusive identity, intergroup transgressions can thus lead to more punitive responses.

Conclusions

In this article, we have outlined a social-psychological approach to lay people's notions of justice after rule-breaking. Whereas most previous research has focused on a retributive, or just desert, notion of justice and people's desire to punish offenders in order to restore justice, our approach takes up the challenge that the recently advancing philosophy and practices of restorative justice mount to such a narrow view. While a variety of practices tend to be subsumed under the banner of restorative justice, our psychological conceptualization identifies as its defining element a striving for consensus (on harm, responsibility, and values) as necessary to restore justice. The seeking of consensus implies a dialogical morality, where all the affected parties have a voice in an open dialogue that is geared toward reaffirming what are considered shared and identity-defining values of their community.

The community referred to in restorative justice is understood in the widest possible sense and can also be a "community" of two individuals as, for example, in a close relationship. It thus refers to a *psychological* group or category that the victim and offender perceive themselves to be members of in a given social context. In our view, the salience and definition of a shared group identity are central to people's endorsement of a restorative justice notion. To the extent that the affected parties believe they share an identity in terms of a common group, they will expect to share the same values. When these values are violated by a transgression, victims will be motivated to reaffirm the values through social consensus and, correspondingly, endorse a restorative justice notion. Conversely, when the parties lack shared identification with a relevant inclusive group, they will more likely see each other as negatively interdependent in terms of status and power. Victims will tend to interpret a transgression as an illegitimate appropriation of status and power and will seek to undo their humiliation and disempowerment through the imposition of punishment on the offender and subscribe to retributive justice.

This is the basic argument we have advanced in this article, together with a discussion of some theoretical complexities surrounding it. We want to conclude by pointing to some omissions and implications. First, the analysis put forward in this article focused on rather cognitive appraisals of the meaning of transgressions. However, it is clear that injustice is an affective experience, involving a variety of emotions (e.g., see Feather 2006; Kristjánsson 2005; Mikula et al. 1998; Weiner 2006). These different emotions could be differentially related to, or predictive of, the endorsement of retributive and restorative justice notions, but such an analysis is beyond the scope of this article.

Second, we have considered retributive and restorative justice foremost in terms of their subjective appropriateness or morality. However, victims and observers may also

have expectations as to whether a certain form of justice can be realized or is likely to be effective in a given situation, and such expectations could also affect the adoption of a certain justice notion. For example, when they see (or anticipate) that an offender does not seriously engage in a restorative process and does not intend to accept responsibility for the offence, they may endorse a more retributive notion instead (Gromet and Darley 2006). Indeed, victims and observers (as it has been suggested for regulators; Ayres and Braithwaite 1992) may generally want to start with a cooperative restorative approach, but when this fails turn to a more retributive one.

Third, our theoretical analysis focused on the prediction of rather abstract, lay-philosophical notions of justice after rule-breaking. From these we need to distinguish concrete actions that people can take, such as punishment, revenge, apology and forgiveness, which, although typically featuring to a different degree in retributive and restorative practices, may in fact have multiple functions and meanings. For example, we briefly discussed the possibility that punishment can help restore values as well as status/power; that an apology and forgiveness can communicate status/power in addition to contributing to a value consensus. Future research should specifically focus on the shades of meaning of these concrete acts (e.g., Eaton et al. 2006; Frantz and Bennigson 2005).

Fourth, we do not conceptualize the endorsement of retributive and restorative justice as individual difference variables that are stable across incidents and situations, as punishment goals are usually conceptualized and measured, for instance (e.g., De Keijser et al. 2002; but see Orth 2003). Instead, our approach emphasizes that the endorsement of a certain justice notion depends on situational factors, on situationally relevant and salient self-definitions and corresponding interpretations of the specific incident. However, individual differences could of course affect the meaning we give to the situation and to ourselves. For example, individuals with greater power motivation (McClelland 1987), when victimized, could be particularly concerned about losing power or being seen as powerless and weak. They might be more likely to endorse retributive justice and attempt to reassert their power by punishing and diminishing the offender. Likewise, individuals with a narcissistic personality (Raskin and Terry 1988), characterized by a sense of superiority and inflated self-esteem, might be more likely to interpret a transgression against them as a personal insult and choose retribution to reassert their positive sense of self (Baumeister et al. 2000; Bushman and Baumeister 1998, 2002). Similarly, an authoritarian personality has been described as "an excessive concern with power and status" (Myers 2005, p. 345) and, as a consequence, could predispose people to interpret an offence primarily in terms of its status and power implications and to

favor retributive justice and punishment (e.g., see Carroll et al. 1987; Feather 1996; Gollwitzer 2004).

More specifically, right-wing authoritarianism (Altemeyer 1988) can be interpreted as a cluster of conservative values (e.g., conformity, tradition, security; Feather 1996) which, in part, define who has or should have status and power in society. When a transgression violates and apparently questions those prescribed status and power relations (e.g., legitimate authority), retributive justice is likely to be more strongly endorsed (see Feather 1998, 2002; Vidmar 2000). Indeed, individual value preferences are another variable likely to affect how people evaluate and respond to transgressions and victimization (Feather 1996, 1999). Consistent with our approach, Braithwaite (2000) found in the context of school bullying that parents' endorsement of security values (e.g., protection of interests and status; V. Braithwaite 1998) was positively related to their support for punitive strategies for dealing with bullying, whereas the endorsement of harmony values (e.g., concern for equality, mutual respect, peace; V. Braithwaite, 1998) was positively related to their support for dialogic strategies for dealing with bullying.

Finally, although we deliberately developed a theory that abstracts from particular contexts, we must not lose sight of its implications specifically for the legal system in which restorative justice originally emerged and continues to grow as an alternative paradigm. We need to consider how our approach can inform the design of a fair, satisfactory, and effective legal system. Above all, we must test our theoretical predictions in the legal field and develop empirical approaches that are effective despite obvious practical constraints. However, as indicated earlier, what has been a constraint in research testing the relative effectiveness of restorative justice, namely the self-selection of participants (Latimer et al. 2005), can be considered a research opportunity in the realm of our theory. Given the option, when and why are people willing to participate in restorative programs, and when and why are they not? Does the psychological meaning they attribute to the transgression, and/or their perceived identity relation with the other party, affect that decision? Next to survey methodologies, more powerful experimental designs could here, for example, involve an intervention directed at eliciting a sense of shared identity prior to participants' decision to take the restorative option or not. Similarly, it could be investigated whether the theoretically proposed factors and processes affect perceptions of justice and satisfaction of those who actually participated in restorative justice; parallel studies could be conducted in the conventional court system.

To conclude, the present framework promises to provide for a fruitful research agenda. It suggests a social-psychological conceptualization of restorative justice and, thus,

helps to open up this largely neglected justice notion to psychological inquiry. Eventually, it should lead to insights about the potential and limits of restorative justice, about the conditions under which restorative justice is considered appropriate, or which need to be established first before it is considered appropriate. Such insights might help to promote ideas and practices of restorative justice in criminal justice as well as social regulation, individual-level counselling, and group-level peace-keeping.

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