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Restorative v. Retributive Justice: Themes from *How to Get Away with Murder*

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Introduction

Despite the prominence of crime drama, representations of restorative justice (RJ) are few and far in between in popular culture. Instead of asking the typical guiding questions of retributive approaches (what laws have been broken, by whom, and what punishment they deserve), restorative justice asks what harms have been suffered, by whom, and who has the ability and responsibility to address them.^{1,2} One exception to this lack of television representation, however, is in Shondaland's *How to Get Away with Murder* (2014–2020), created by Peter Nowalk. In Season 6, Episode 7, "I'm the Murderer" (written by Nowalk, Laurence Andries, and Daniel Robinson), lead character and lawyer Annalise Keating (Viola Davis) is assisted by several of her students, including Gabriel Maddox and Asher Millstone, in the case of the murder of an orphaned Black sixteen-year-old young man. Ryan Fitzgerald is shot dead in class at his Catholic high school by his closeted gay teacher, David Golan. At first, it is suggested that David shot Ryan in self-defense, under the mistaken belief that Ryan was about to wield a gun. It transpires that Ryan knew about David's sexuality, providing a motive for the shooting. Ryan's grandparents, David, his work colleague Ms. Maloney, and several of Ryan's schoolmates take part in a restorative "hearing," somewhere between a traditional hearing and the practice of restorative conferencing. This is where defendants, victims, and the community come together to share experiences and ultimately agree on a resolution that is acceptable to all.

In this chapter, we follow Virginia Braun and Victoria Clarke and undertake a reflexive thematic analysis of the episode's transcript.^{3,4,5} As a product of *Shondaland*, we would expect *HTGAWM* to give voice to those who have traditionally been systematically “othered” and to center the experiences of minority groups. In the context of a criminal justice system otherwise shown to be desperately flawed and discriminatory, it is perhaps unsurprising that RJ is heralded by Annalise as “the future” of criminal justice. RJ philosophy is to restore ownership of the justice process to those directly involved in the crime, and its practice is precisely about using emotionally and contextually rich dialogue to “un-other” and reach shared understandings and resolutions. This chapter provides an analysis of how the restorative ideal and its practices are represented in *HTGAWM*, highlighting a complex range of intersecting issues including the meaning of “justice,” idealized notions of victims and offenders, race, and internalized homophobia.

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Background

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Restorative Justice (RJ)

Traditional “retributive” criminal justice is focused on the triad of establishing which state-defined criminal law was broken, by whom, and what punishment or “retribution” they deserve. Such an approach relies on the clearcut attribution of guilt/innocence and rebalancing the scales of justice by ensuring that, without prejudice, the punishment balances out the crime committed. The primary focus is therefore punitive and centered on the offender. Its application is top-down, through the hierarchy of the courts where offenders can be “othered,” while victims and those

around them can feel forgotten and overlooked. This conception of criminal justice is prevalent in television drama, which in turn reinforces the retributive “ideal.”

In contrast, through an RJ lens, crime is seen as relational, resulting from “a breakdown of pre-existing relationships between victims, offenders and the community,” “the abuse of pre-existing relationships among offenders and the community,” or “the creation, however brief, of a coercive relationship between the offender and the victim, where none existed before.”⁶ Consequently, justice is about restoring relationships between victims, offenders, and communities. As such, RJ is focused on addressing the “conflict” or “harms” in and around experiences of crime⁷ and can be described as primarily concerned with identifying the following: 1) what harms were suffered, 2) by whom, 3) how to prevent and repair them, and 4) who has the obligation/ability to do so.^{8,9} Rather than enforcing retributive hierarchies, the RJ philosophy rests on the empowering values of “agency” and “accountability”¹⁰ and the role of community in understanding and “resolving” crime, rather than “solving” it.

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Culture and Crime Drama

Storytelling of crime and criminality is enabled through highly structured narrative functions rooted in the literary traditions of early 20th century detective fiction.¹¹ While the formulaic nature of crime drama offers a sense of linearity and tacitly engages with consequentialism, the diversity of styles present within the genre—such as “cozy,” “gritty,” “noir”—suggest that their function is perhaps more complex.¹² They allow for the expression of socially constructed ideas such as justice, transgression, retribution, and civic life in a way that speaks to a wide range of audiences.¹³

The enjoyment, and indeed popularity, of crime drama encourages viewers to engage with their own ethical frameworks, giving them a reflexive function whereby audiences allow their own moral attitudes to be reflected and reinforced.^{14,15} However, mediated storytelling can also reflect attitudes that perpetuate stereotypes, where complex social issues are condensed into something that is more easily understandable in order to support a narrative.¹⁶

The success of crime drama writers in apportioning morality or blame convincingly is linked to gendered and racialized ideas about perpetrators and victims,^{17,18,19,20} and the extent to which power, status, and intellectual authority are imbued within a character is dependent upon their function in the drama.²¹ However, crime dramas also have the capacity to play an agenda-setting role by focusing attention on a particular issue and capturing public attention.²² As a consequence, crime drama is both transgressive and conservative, both challenging and reinforcing public ideas in the service of dramatic narrative.²³

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Television Representations of Restorative Justice

Our investigation of scholarly and news media databases revealed that portrayals of RJ in popular culture, including film and television, are few and far in between. Possibly for this reason, there is little to no literature examining these portrayals. More broadly, we identified examples of the representation of restorative practices in art,²⁴ whereby art is seen to “mediate, enhance and make tangible new understandings of the notion and practice of justice”.²⁵

Television portrayals such as the one in *HTGAWM* enable the communication of, and wide public engagement with, the complexity that lies behind the social/relational experience of crime for “victims,” “offenders,” and their communities. They can help develop better understandings

of how these experiences relate to social justice “across social, racial, political and economic boundaries.”²⁶ This episode of *HTGAWM* is thus a vehicle through which to engage the public in the rationale behind a vision of justice that goes beyond simplistic understandings of crime/retribution and is focused on meaningfully repairing harm and relationships in their social settings.

The analysis that follows examines how the restorative ideal and its practices are represented in Season 6, Episode 7 of *HTGAWM*. It highlights a complex range of intersecting issues including the meaning of “justice,” idealized notions of victims and offenders, homophobia, and racism. Direct quotations from the visual text are presented with reference to the approximate time signature.

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Themes from *How to Get Away with Murder*

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What Is Restorative Justice?

First, we address the overall purpose and the key features of RJ as portrayed in Season 6, Episode 7. The purpose of RJ is construed primarily as a process oriented toward healing. It aims to help those affected by the crime, and as Annalise’s student Gabriel says, to “move on and heal” (00:05:22) by coming to accept or reconcile themselves with what has happened. The healing and beneficial effects of RJ are further highlighted by contrast effects of the traditional court system. As Annalise describes it to the victim’s grandparents, the traditional trial leads to inevitable “secondary victimization,” a criminological term meaning the trauma victims experience by engaging with the criminal justice system. As she says, the trial “won’t be David’s

[the defendant], it'll be Ryan's [the victim]," whose "entire life [will be] raked over the coals in court," including "arrests for fighting, drug use" and "rumors that he hurt his mother" (00:11:33).

The traumatizing effects of a traditional trial are further contrasted with the empowering experience of RJ, portrayed as a participatory process where victims, their loved ones, and offenders reconstruct events and the harms suffered. Making one's voice heard is depicted as cathartic for all involved and thus valuable in itself. Urging the victim's grandparents to engage in the process, Annalise's student Asher emphasizes the importance of speaking out by sharing his personal experience of losing his father: "Instead of talking about it, we [the family], we blamed each other, and it spread like cancer, to the point where we still don't talk. Speaking your mind even if it's all anger, grief and rage... it can help." (00:10:57). Similarly, Gabriel describes the traditional justice process as a waste of public money, while emphasizing the value of speaking out to the defendant: "[If] you speak about your pain, you can teach people. Take this tragedy and make it mean something." (00:07:09) Through dialogue, both parties are able to reconstruct the meaning of events and begin to learn to cope, even where grief remains. Additionally, all parties contribute to defining the terms of resolution (e.g., sentencing), an empowering exercise even if, as noted below, this differs little from the outcome of a traditional trial.

At the same time, a common perception of RJ as a "soft" option is presented but then challenged throughout the episode. This misconception is presented primarily through Asher's voice, who asks why this defendant should benefit from "a more cushy trial" (00:05:39). However, the challenge of facing the victims and engaging in meaningful conversations about what happened is made clear through David's initial reluctance to take part, Annalise's concern that he will attempt to harm himself, and David's statement that "I would much prefer to go to

jail for the rest of my life than to explain how we all got here today” (00:28:15). In addition, at the end of the process, David is sentenced to the same twenty-five years in prison he would have gotten regardless. As such, RJ is shown to be a demanding process that does not necessarily lessen sentences but ultimately aims toward healing. In contrast, the traditional court system may deliver retribution but does so through a process that sidelines both victims and offenders, removing their voice and agency in the resolution of the crime.

The overall portrayal of RJ in this episode is that of a progressive alternative to traditional criminal justice. The RJ process is heralded by Annalise as a much better use of public money than any trial she has even been involved with. This is unsurprising, as the show portrays Annalise’s inability to “heal” from her own victimization (a history of sexual abuse, child loss, intimate partner violence) in the context of a desperately flawed criminal justice system. As the episode progresses, Annalise’s team persuades both the defendant and the victim’s grandparents of the benefits of engaging in the RJ process, and the audience witnesses the cathartic effects of the restorative encounter between all parties. Finally, the sentencing judge concludes that RJ aims to “help repair the harm done to victims and families” and that if it “brought even a little solace to the Fitzgerald’s loss,” he considers it “time well spent” (00:30:30). As Annalise says, we are encouraged to see RJ as “the future of the criminal justice system” (00:03:36).

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Emotional Expression as Restoration

One of the key aspects of RJ practice portrayed in this episode is the facilitation of dialogue to arrive at a shared understanding of what happened. It is in doing so that all parties learn to cope

with and move on from the harms suffered in and around the experience of crime. Central to this practice is the expressing and acknowledging of emotions. This is done in several ways throughout the episode. Emotion is portrayed as both the motivation for the crime (David says, “when Ryan came into the class that day... I had hate in my heart for him.” 00:28:15) and for the practice of RJ (Annalise says, “Expressing grief is a part of this process, now it’s time for you to express yours.” 00:27:51). Indeed, as the facilitator plainly states: “Emotion is the point of the process” (00:14:26). Emotion is therefore understood as both an enabler of the process of restoration and as catharsis for everyone involved.

The cathartic function of the expression and acknowledgement of emotions plays a wider narrative role that embeds the theme of RJ within the broader story arc of the series. The expression of emotion highlighted by the use of RJ is presented in contrast to the secrecy and restraint that surrounds the main characters following their own involvement in murder. The courtroom scenes, in which characters’ emotional states are clearly and concisely stated, act as a blueprint for the main characters to then express their own tightly held emotions about their part in the murder that serves as catalyst for the entire series. RJ, while presented as a theme to a single episode, serves as a plot device whereby the main characters can explore their own guilt and fear. In doing so, they express the transgressive and conservative qualities of crime drama as a genre, as the transgression of committing murder and not being brought to justice is balanced against the pain and suffering that the characters experience as a result.

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Race, Racism, and Insecurity

While this is implicit, it is significant that David is a white male authority figure, and Ryan is a young Black male. The context suggests that Ryan is a vulnerable child, which explains his behavioral problems, but instead of receiving support from David, he was perceived as dangerous. Consequently, while not explicitly acknowledged in the dialogue of this episode, it is implied that Ryan is not just a victim of David's actions but of wider systemic racism, which creates the conditions for a child to be perceived as a threat and shot dead. In contrast, David embodies the power and privilege to which Ryan is "a threat." As noted in other work²⁷, while gender and race are not explicitly acknowledged in the dialogue, the storyline and its framing means that race and the structural aspects of race discrimination and oppression are nonetheless overtly represented. Furthermore, the racialized assumptions about Ryan's dangerous character are exacerbated by a backdrop of fear of crime in the context of gun violence and high school shootings in the US as his teacher and murderer, David, illegally kept a gun hidden in the classroom "due to his fear of a high school shooting" (00:05:30). In this way, race, racism, and the climate of insecurity created by gun violence all provide context to explain how and why the crime took place.

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Sexuality, Shame, and Homophobia

Sexuality, shame, and homophobia play a key role in shaping events and blur the victim-offender dichotomy. It is a fellow staff member at the school, Ms. Moloney, who apologetically and with considerable emotion "outs" David during the restorative "hearing," revealing his sexuality as an open secret in the workplace, known to Ryan and a source of personal shame for David. Ryan's bullying of David thus takes on a new significance. In the scene that immediately

follows David's outing, Annalise confronts him with the question of whether he was "sleeping with [the] boy" (00:15:03), drawing the link between homosexuality and pedophilia, a well-established homophobic trope. The same link is made by Ryan's grandmother, who asks David, "did you do this because you're homosexual? Did you think Ryan was too, did you try to...?" (00:25:59), implying he may have shot Ryan to cover up child sexual abuse. It is thus against this background of latent homophobia that David's feelings of shame are articulated—shame for being gay and the shame of being closeted—and that Annalise requests David be put on "suicide watch."

The need for experienced facilitators is thus highlighted, vis-à-vis prejudice and situations where shame may be unbearable, or used to coerce and intimidate. Nonetheless, RJ enables David to articulate his feelings of shame, reflect on how they influenced his perception of Ryan, as well as feelings and actions toward Ryan, and ultimately apologize for his actions from a place where he himself can better make sense of them. He notes that his hate for Ryan was not due to his behavior in class, but because Ryan knew about his homosexuality: "The thing that I've... most hated about myself... That I'm [gay]... And what character is lacking in me that I didn't have the courage to stand up to a sixteen-year-old boy and say, 'Yes, I'm gay'? Instead, I let hate take over and... I'm not sure if it's the reason that I pulled the trigger, but I'm sure that it was a part of it." (00:28:15). Thus, David admits that this double shame, for being gay and for feeling ashamed, motivated his actions. He is therefore shown to be a "victim" of homophobia, in part internalized, in part perpetrated by Ryan and the wider community around him. In this way, the narrative demonstrates that understanding this crime and healing from its impacts cannot be achieved without acknowledging and understanding the role sexuality, shame, and homophobia played in shaping circumstances and individual actions. It also highlights the

importance and value of including the wider community in the RJ process, as well as the necessity that all parties are open to listening and self-reflection as preconditions to arriving at shared understandings of events and harms suffered.

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Conclusion

The overall portrayal of RJ in this episode is that of a progressive alternative to traditional criminal justice. Throughout, the healing effects of RJ are highlighted by contrast to the secondary victimization caused by the traditional court system. The aims and contours of RJ practices are explained in the classroom, and thus to the audience, and demonstrated as the narrative unfolds. Throughout, we are invited to reconstruct the meaning of events alongside victims, the wider community, and the perpetrator, who begins the process of healing, even where grief remains. Through this process of reconstruction, the cathartic function of the expression and acknowledgement of emotions embeds the topic of RJ within the broader story arc of *HTGAWM*. The episode both demonstrates the importance of emotional expression in the context of RJ, while expressing the transgressive and conservative qualities of crime drama as a genre. At the same time, the themes of racism, insecurity, and homophobia all provide context to explain how and why the crime took place. On one level, the inclusion of these structural themes gives substance to the value of including the wider community in proceedings and reflecting on the community's role in both creating the preconditions for and arriving at a resolution for the harms suffered. At the same time, these themes are key to the exploration of the meaning of justice in this episode and in *HTGAWM* more broadly. Thus, this episode brings the precepts of

RJ to a wide audience, demonstrating its potential as an alternative to retributive justice, to enable healing by “un-othering” victims, perpetrators, and their communities.

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