

# **Restorative Justice: the Concept**

## *Movement Sweeping Criminal Justice Field Focuses on Harm and Responsibility*

"A revolution is occurring in criminal justice. A quiet, grassroots, seemingly unobtrusive, but truly revolutionary movement is changing the nature, the very fabric of our work."

These are the opening words in a recent publication of the National Institute of Corrections (NIC) characterizing the combined community and restorative justice movements. Author Eduardo Barajas Jr., a program specialist for NIC, goes on to observe that the changes extend beyond most reforms in the history of criminal justice: "What is occurring now is more than innovative, it is truly inventive . . . a `paradigm shift.'"

The restorative justice movement has come a long way since probation officer Mark Yantzi and co-worker Dave Worth first pushed two shaking offenders toward their victims' homes in Elmira, Ontario, in 1974. Who could have imagined, when we began our version of victim/offender mediation -- the Victim Offender Reconciliation Program, or VORP -- in Elkhart, Ind., several years later that we were at the vanguard of a movement with the potential to revolutionize justice?

### **Crime as Harm**

As Barajas' observation above implies, restorative justice is not a matter of adding some new programs or tinkering with old ones. Instead, it involves a reorientation of how we think about crime and justice.

At a recent consultation of restorative justice and rehabilitation specialists sponsored by the NIC Academy, participants agreed that two ideas were fundamental: restorative justice is harm-focused, and it promotes the engagement of an enlarged set of stakeholders. Most of restorative justice can be seen as following from these two concepts.

Restorative justice views crime, first of all, as harm done to people and communities. Our legal system, with its focus on rules and laws, often loses sight of this reality; consequently, it makes victims, at best, a secondary concern of justice. A harm focus, however, implies a central concern for victims' needs and roles. Restorative justice begins with a concern for victims and how to meet their needs, for repairing the harm as much as possible, both concretely and symbolically.

A focus on harm also implies an emphasis on offender accountability and responsibility - in concrete, not abstract, terms. Too often we have thought of accountability as punishment -- pain administered to offenders for the pain they have caused. Unfortunately, this often is irrelevant or even counterproductive to real accountability. Little in the justice process encourages offenders to understand the consequences of their actions or to empathize with victims. On the contrary, the adversarial game requires offenders to look out for themselves. Offenders are discouraged from acknowledging their responsibility and are given little opportunity to act on this responsibility in concrete ways. The "neutralizing strategies" -- the stereotypes and rationalizations that offenders use to distance themselves from the people they hurt -- are never challenged. So the sense of alienation from society experienced by many

offenders, the feeling that they themselves are victims, is only heightened by the legal process and the prison experience.

If crime is essentially about harm, accountability means being encouraged to understand that harm, to begin to comprehend the consequences of one's behavior. Moreover, it means taking responsibility to make things right insofar as possible, both concretely and symbolically. As our foreparents knew well, wrong creates obligations; taking responsibility for those obligations is the beginning of genuine accountability.

## RESTORATIVE JUSTICE SIGNPOSTS



We are working toward restorative justice when we:

- I. Focus on the harms of wrongdoing more than the rules that have been broken;
- II. Show equal concern and commitment to victims and offenders, involving both in the process of justice;
- III. Work toward the restoration of victims, empowering them and responding to their needs as they see them;
- IV. Support offenders while encouraging them to understand, accept and carry out their obligations;
- V. Recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable;
- VI. Provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate;
- VII. Involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community bases of crime;
- VIII. Encourage collaboration and reintegration, rather than coercion and isolation;
- IX. Give attention to the unintended consequences of our actions and programs; and
- X. Show respect to all parties, including victims, offenders and justice colleagues.

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The principle of engagement suggests that the primary parties affected by crime -- victims, offenders, members of the community -- are given significant roles in the justice

process. Indeed, they need to be given information about each other and to be involved in deciding what justice requires in this situation. In some cases, this may mean actual dialogue between these parties, as happens in victim/offender mediation or family group conferences, to come to a consensus about what should be done. In others, it may involve indirect exchange or the use of surrogates. In any eventuality, the principle of engagement implies involvement of an enlarged circle of parties as compared to the traditional justice process.

At the risk of oversimplifying, the restorative justice and the traditional justice approach -- retributive justice -- might be summarized as follows:

### **Retributive Justice**

#### *Crime*

is a violation of the law, and the state is the victim.

#### *The aim of justice*

is to establish blame (guilt) and administer pain (punishment).

#### *The process of justice*

is a conflict between adversaries in which the offender is pitted against state rules, intentions outweigh outcomes and one side wins while the other loses.

### **Restorative Justice**

#### *Crime*

is a violation or harm to people and relationships.

#### *The aim of justice*

is to identify obligations, to meet needs and to promote healing.

#### *The process of justice*

involves victims, offenders and the community in an effort to identify obligations and solutions, maximizing the exchange of information (dialogue, mutual agreement) between them.

To put restorative justice in its simplest form: crime violates people and violations create obligations. Justice should involve victims, offenders and community members in a search to identify needs and obligations, so as to promote healing among the parties involved.

### **Widespread Interest**

Today's interest in restorative justice at the national level follows several decades of innovation and experimentation at the community and state levels. Victim/offender mediation programs have sprung up in at least 300 U.S. and Canadian communities. The Minnesota Department of Corrections has on staff a restorative justice planner who is working innovatively to help communities in that state develop new restorative approaches. Vermont has rethought the concept of probation, designing a "reparative probation" system for nonviolent offenders. Native American and Canadian communities are finding ways to put into operation some of their traditional approaches and values; these approaches also are being seen as part of a restorative justice framework. In academic and consulting fields, too, numerous restorative justice institutes and programs are emerging.

This interest in restorative justice is not limited to North America. Hundreds of victim/offender mediation programs have developed in European countries; Germany, Finland and England, for example, have many such programs. South Africa is writing a new juvenile justice code

*Retributive vs. Restorative Justice*

RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
<b>Problem</b>	
defined narrowly, abstractly, a legal infraction	defined relationally, as a violation of people
only legal variables relevant	overall context relevant
state as victim	people as victims
<b>Actors</b>	
state (active) and offender (passive)	victim and offender primary, along with community and state
<b>Process</b>	
adversarial, authoritarian, technical, impersonal	participatory, maximizing information, dialogue and mutual agreement
focus = guilt/blame	focus = needs and obligations
"neutralizing strategies" encouraged	empathy and responsibility encouraged
<b>Outcome</b>	
pain, suffering	making things right by identifying needs and obligations; healing; problem-solving
harm by offender balanced by harm to offender	harm by offender balanced by making right
oriented to past	oriented to future

incorporating restorative principles. In New Zealand, restorative justice has served to guide and help shape the family group conference approach which is now the basis of that country's entire juvenile justice system.

## Deciphering Terms

"Restorative justice" is a term which quickly connects for many people and therein lies both its strength and its weakness. Many professionals, as well as lay people, are frustrated with justice as it is commonly practiced and are immediately attracted to the idea of restoration. Restorative justice intuitively suggests a reparative, person-centered, common-sense approach. For many of us, it reflects values with which we were raised. As a result, the term has been widely embraced and used in many contexts.

But what do we mean by "restorative justice?" Will the term be used simply as a new way to name and justify the same old programs and goals? Many programs can be compatible with restorative justice if they are reshaped to fully account for restorative principles. If they are not reshaped as part of a larger restorative "lens," however, at best they will be more of the same. At worst, they may become new ways to control and punish.

All this is not to say that there is such a thing as "pure" restorative or retributive justice. Rather, justice should be seen as a continuum between two ideal types. On the one end is our Western legal system. Its strengths -- such as the encouragement of human rights -- are substantial. Yet it has important weaknesses. Criminal justice tends to be punitive, conflictual, impersonal and state-centered. It encourages the denial of responsibility and empathy on the part of offenders. It leaves victims out, ignoring their needs. Instead of discouraging wrongdoing, it often encourages it. It exacerbates rather than heals wounds.

At the other end is the restorative alternative. Victims' needs and rights are central, not peripheral. Offenders are encouraged to understand the harm they have caused and to take responsibility for it. Dialogue--direct or indirect -- is encouraged and communities play important roles. Restorative justice assumes that justice can and should promote healing, both individual and societal.

Criminal justice usually is not purely retributive. On the other hand, we rarely will achieve justice that is fully restorative. A realistic goal is to move as far as we can toward a process that puts victims, offenders and members of the affected community -- and their respective needs and roles- at the center of our search for a justice that heals.

## Reference

National Institute of Corrections. 1996. Community Justice: Striving for Safe, Secure and Just Communities. LIS Inc. (March).

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