

Encyclopedia of Law & Society: American and Global Perspectives

Restorative Justice

Contributors: Michael L. Hadley

Editors: David S. Clark

Book Title: Encyclopedia of Law & Society: American and Global Perspectives

Chapter Title: "Restorative Justice"

Pub. Date: 2007

Access Date: December 08, 2014

Publishing Company: Sage Publications, Inc.

City: Thousand Oaks

Print ISBN: 9780761923879

Online ISBN: 9781412952637

DOI: <http://dx.doi.org/10.4135/9781412952637.n598>

Print pages: 1313-1316

©2007 SAGE Publications, Inc. All Rights Reserved.

This PDF has been generated from SAGE knowledge. Please note that the pagination of the online version will vary from the pagination of the print book.

<http://dx.doi.org/10.4135/9781412952637.n598>

Restorative justice is the popular term for wideranging principles, practices, and programs that aim at healing the harms caused by conflict and crime. It is a philosophical and spiritual approach rather than a codex or set of procedural rules. This means that proponents can agree on its processes and outcomes without necessarily assenting to all the principles. This alternative justice paradigm regards crime as not so much an offense against the state and its legal statutes as a violation of people and relationships and a disruption of the peace of the community.

Where conventional justice procedures focus primarily on the offender in an essentially adversarial and retributive system, restorative justice focuses on the dynamic interrelationships among the three major constituents of conflict or crime: victim, offender, and community. In this context, community may mean the local “neighborhood” in which one lives, or the “community of interest” where one’s special values reside (tribe, mosque, parish, ethnic group), or even society as a whole.

Where conventional justice focuses on questions of guilt or innocence, and on the determination of appropriate punishment and pain, restorative justice recognizes the inherent ambiguity of criminal offenses, and it responds more creatively and flexibly in dealing with such matters as sentencing, restitution, rehabilitation, and conflict resolution. As Daniel Van Ness and Karen Strong explain, “Crime presents a point of crisis in the lives of individuals and communities that [p. 1313 ↓] can draw people from different backgrounds together to design a restorative response” (1997: 87). In short, restorative justice is collaborative and inclusive, and it engages all the stakeholders in a process of fostering accountability, creating understanding, and restoring harmony.

Focus and Principles

Restorative justice addresses a unique set of questions: what harms occurred, who was harmed, and how can matters be made right. In doing so, it renounces vengeance and punishment as a means of ensuring social conformity and control. It distinguishes between the offense and the offender, respects each stakeholder in the conflict, and considers no one a “throw-away person.” Adherents insist on the priority of public

safety. For that reason, they accept prisons and jail as a means of temporary restraint, even if, in the case of dangerous offenders, this involves long-term incarceration.

A growing canon of literature attests to the social, moral, and personal satisfaction that the restorative approach engenders in all participants. Empirical evidence suggests that restorative justice “works” and can meet its objectives. Emerging in the 1970s as isolated grass-roots criminal justice initiatives based on reconciliation and reintegration, rather than on retribution, it has become an international movement promoting both criminal and social justice. In 2002, the United Nations adopted the Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

The term *restorative justice*, first recorded in 1977, refers to restoring a peace and harmony that a criminal act has broken; it means restoring the social balance that had been subverted by some violation of human relationships. The meaning of restoration has expanded to include reincorporating traumatized individuals into their communities, thus restoring their sense of well-being and personal integrity.

Transformative Justice

An important branch that strongly supports these processes nonetheless finds the term *restorative* inadequate. Because nothing can make something “unhappen,” so the argument runs, nothing can ever be the same again once some violation has occurred. Indeed, in cases where the violation occurs among already dysfunctional groups and relationships, there is no preexisting peace or balance to restore. Further, restorative justice can be too easily co-opted by correctional institutions, thus becoming codified by government authorities and losing all flexibility.

Proponents of this view urge the use of the alternative term *transformative justice*. This is not merely a disagreement about terminology, but about substance. Crime, in this view, has its origin prior to the actual act of violation. It is rooted in the seedbed of social injustice. Crime is therefore not a disruptive event slicing into a broad spectrum of preexisting social equilibrium, but a symptom of underlying social disorder. The violation signals instead an opportunity and challenge for transformative healing of the whole body politic. In short, transformative justice supporters argue that restorative

justice supporters fail to consider structural injustice and overlook imbalances between mainstream society and the marginalized. What is required, the critique argues, is a complete transformation of all relationships. Most observers regard the “transformative” and “restorative” schools as simply variations on a common theme. Mark Umbreit and colleagues conclude: “Conceptual thinking about restorative justice continues to evolve as do attempts to develop processes grounding those concepts and principles into practice” (2002: 19).

Roots in Faith Traditions

Restorative justice has spiritual roots in major faith traditions. This is so despite the fact that tribal or literalist interpretations have obscured the original claims of restoration and reconciliation and tend to insist on punishment and revenge. At root, according to the redemptive view of faith traditions, human beings inhabit a moral universe that evokes an integrated moral response from the whole person. As part of that moral universe, one understands human beings as, variously, “children of God,” created in “God's image,” or endowed with the “Buddha nature.” All persons, in other words, are inherently valuable moral beings connected [p. 1314 ↓] not only to one another but also to all of creation. The aboriginal salutary expression “All my relations” captures the notion of the utter interdependence and interrelatedness of the individual in the created order.

These beliefs lend depth and historical continuity to restorative justice views on the centrality of relationships in justice theory. By extension, spiritual traditions regard truth and justice as relational concepts as well. They regard faith as a life “path” or “journey,” a comprehensive lifestyle that deepens as one matures. Central to the journey—and hence central to the practice of restorative justice—is ongoing transformation: of perspectives, structures, situations, and persons.

Special initiatives throughout the world have drawn on diverse faith traditions. Among these, aboriginal spiritual and cultural traditions, such as Maori, Gitsxan, Cree, and Navajo, are particularly influential in determining the architectural dynamics of the processes. They embrace a broad range of creative approaches: circle sentencing,

community holistic circle healing (the Hollow Water Project), sweat lodge (Okimaw Ochi Healing Lodge), elder-assisted hearings, and Navajo peacemaker courts.

Drawing on these and major faith traditions, though not restricted to them, pioneers have evolved Victim-Offender Mediation Programs (VOMP), Victim-Offender Reconciliation Programs (VORP), and Family Group Conferencing. VOMP is a salient example of a successful program: it engages some 300 communities in the United States, throughout Canada, and in some 700 communities in Europe. Circles of Support and Accountability (COSA) enhance public safety and reduce risk of reoffense of sex offenders.

Stages of Use and Countries Involved

Restorative processes can complement and influence judicial outcomes at any point in the spectrum of corrections systems: from diversionary programs prior to the onset of court procedures to courses in anger management and nonviolent communications during any period of a given sentence. Some prisons, like Grendon (UK), integrate these processes into their programs. Six Belgian prisons have begun “restorative detention” projects. Any stage of conflict resolution, even in the case of violent crime, permits the engagement of three core principles of restorative justice: (1) repentance (which involves remorse and a radical change of life values), (2) forgiveness (which involves renouncing the moral right to anger), and (3) reconciliation (which involves valuing the active principle of community). Offenders confront four basic dimensions of reconciliation: accepting moral judgment, genuinely empathizing with their victim, appreciating the restorative options offered, and changing their way of life by committing to a new morality. The processes minister to victims' needs as well: the need for information and reassurance, for support and vindication, for validation, and for empowerment in reaching closure.

Varieties of jurisdictions worldwide have pioneered restorative justice processes. Characteristic are the Genesee County Sheriff's Office (NY), Thames Valley Police (UK), Royal Canadian Mounted Police, New Zealand Youth Court, Minnesota Department of Corrections, Provincial Court of Saskatchewan, and the Correctional Service of Canada.

Since the early 1980s, for example, the Genesee County Justice Programs in New York have successfully resorted to community service sentencing as a means of deterring through education; they have also offered intensive victim assistance. In the case of serious and violent felonies, they have provided for presentence diversion. Significantly, these programs involve multidisciplinary teams in such initiatives as “Justice for Children” and “Justice for Women,” as well as focusing on Community-Offender Conciliation Conferences. Even in cases of serious and violent crime, they have been offering processes for victimoffender reconciliation.

The Thames Valley Police, the largest police force in Britain, has undertaken similar pioneering programs and has even engaged in restorative processes to resolve internal grievances in the workplace. Drawing on the New Zealand experience with conferences, police in the city of Wagga Wagga, New South Wales (Australia), established the “Wagga Wagga Model.” This involves conferences organized and run by police officers as a means of diverting offenders from the court system. Legal professionals in Chiba Prefecture (Japan) run a rehabilitation center to provide conferencing services for juvenile offenders and their victims. Restorative principles are used in addressing antibullying campaigns [p. 1315 ↓] in schools in Japan, Canada, and Germany, and they are triggering interest in Russia and Poland. Truth and Reconciliation Commissions, of which South Africa's is the most famous, engage restorative principles to heal the aftermath of national political trauma.

Community and Academic Initiatives

Citizens' advocacy associations play a significant role as well. For example, Murder Victims Families for Reconciliation (MVFR, Atlantic, VA) provides information about the needs of victims' families and the concerns of those who are opposed to capital punishment. The Center on Crime, Communities, and Culture (NY), an initiative of the Open Society Institute, aims at reducing reliance on punishment and incarceration as the response to social and economic inequality. It supports the reintegration of former prisoners into the community by promoting education, training, and policy change. Victims Voice, a program run by the Mennonite Central Committee (Manitoba), facilitates empowerment and healing for victims of homicide and other serious crime. It facilitates meetings between lifers in prison and the victims' families. The Restorative

Justice Coalition (William Head Institution, Canada) is a prison-based educational association of inmates and members of the outside community. An annual highlight is its in-prison public symposium, to which it invites participants and guest speakers from victim groups, the judiciary, police, schools and universities, and, of course, prisoners themselves.

Centers for teaching, research, and law reform are proliferating worldwide, with varying emphases. Examples are the Center for Restorative Justice and Peacemaking and the National Restorative Justice Training Institute (University of Minnesota); Institute for Economic and Restorative Justice (NY); Centre for Restorative Justice (Simon Fraser University, Canada); European Forum for Victim-Offender Mediation and Restorative Justice; Transforming Conflict: A Centre for Restorative Justice in Education (UK); and the Centre for Restorative Justice at the Australian National University.

Such initiatives and perspectives, whether academic, professional, or community based, provide persuasive evidence of the effectiveness of restorative justice values. They are redefining the principles and practice of the predominant adversarial justice systems.

Michael L.Hadley

<http://dx.doi.org/10.4135/9781412952637.n598>

See also

- [Aboriginal and Indigenous Peoples, Legal Systems of](#)
- [Emotions and Criminal Justice](#)
- [Juvenile Crime, Courts, and Corrections](#)
- [Mediation](#)
- [Prisons and Jails, Criminology of](#)
- [Punishment and Sentencing Alternatives](#)
- [Religion, Law and](#)
- [Sex Offenders](#)
- [Truth Commissions](#)
- [Victimology and Victim Services](#)
- [Victims' Rights](#)

Further Readings

Cayley, David. (1998). *The Expanding Prison: The Crisis in Crime and Punishment and the Search for Alternatives* . Toronto: House of Anansi Press.

Centre for Justice and Reconciliation . (2006). "Restorative Justice Online." <http://www.restorativejustice.org>.

Consedine, Jim. (1995). *Restorative Justice: Healing the Effects of Crime* . Lyttelton, NZ: Ploughshares.

Hadley, Michael L., Ed. (2001). *The Spiritual Roots of Restorative Justice* . Albany, NY: SUNY Press.

Hamline Dispute Resolution Institute . "Symposium." *Hamline Journal of Public Law and Policy* 25 (2004). 235–400.

Johnstone, Gerry. (2003). *A Restorative Justice Reader: Text, Sources, Context* . Cullompton, UK: Willan.

Sharpe, Susan. (1998). *Restorative Justice: A Vision for Healing and Change* . Edmonton: Edmonton Victim Offender Mediation Society.

Sullivan, Dennis, ed. , and Larry Tifft, eds. (2006). *Handbook of Restorative Justice: A Global Perspective* . London: Routledge.

Umbreit, Mark, Robert B.Coates, and BettyVos. (2002). *The Impact of Restorative Justice Conferencing: A Review of 63 Empirical Studies in 5 Countries* . St. Paul, MN: Center for Restorative Justice and Peacemaking.

Van Ness, Daniel, and Karen HeetderksStrong. (1997). *Restoring Justice* . Cincinnati, OH: Anderson.

Weitekamp, Elmar G. M., ed. , and Hans-Jurgen Kerner, eds. (2003). *Restorative Justice in Context: International Practice and Directions* . Cullompton, UK: Willan.