

A Restorative Future for Juvenile Justice?

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Howard Zehr has given us the analogy of photography in his explanation of how restorative justice differs from retributive justice.¹ The difference between the two is not simply that they use different programs, but that they approach crime differently. Just as the lens we use shapes what we see when we peer through the camera, so the paradigm or pattern of thinking we use shapes our response to crime. What we need to do, he has argued, is change from a retributive to a restorative lens.

It was only a few years ago that restorative justice conferences were like small gatherings of amateur photographers, each with his or her restorative lens, crouched around the first flower of Spring. There was really only one "restorative" program at that time, and discussion centred around what were then called victim offender reconciliation programs. Most presentations addressed the mechanics of those programs: the role of the mediator, the kinds of cases best suited for VORP, how to get funding, how to get cases referred, how to recruit and train volunteer facilitators, and (such was the extent of our optimism) how to avoid being co-opted by a system that hardly even noticed us at the time.

In 1990, John Conrad wrote the concluding chapter in a collection of papers about restitution and reconciliation. His assignment, like mine, was to reflect on the future. He began with what was at the time conventional wisdom about the limits of restorative justice. "We cannot foresee the day when murderers will apologise and be reconciled with their victims' families, nor is there a role for VORP in the disposition of major drug dealers. This is a program that primarily relates to the situations created by forgers, thieves and burglars."²

After only a decade we can see that what was considered unthinkable in 1990 is in fact reality today. I have spoken with survivors of homicide who have met with their loved-one's murderer in a reconciliation or mediation process. I have spoken to drug dealers who denied that their crime had victims until they met with surrogate victims who confronted them with the multiple harms that come from addiction and impairment.

If the 1980s were early Spring, we are now well into Springtime. Restorative justice theory has begun to mature and its programs are proliferating. But it seems just as risky today as it did for Conrad in 1990 to speculate about the future of restorative justice. Whether we approach the question as would-be prophets (here is what that

¹ Howard Zehr, *Changing Lenses: A New focus for Crime and Justice* (Herald Press: Scottdale, PA, 1990) 178-181

² John Conrad, "Concluding Comments: VORP and the Correctional Future", in *Criminal Justice, Restitution and Reconciliation*, edited by Burt Galaway and Joe Hudson, (Criminal Justice Press: Monsey, NY, 1990) (227-36) p. 230. Conrad did cautiously suggest that VORP and community service be given some "risky innovations," such as use in cases of drunk driving, recidivist property offenders and fledgling juvenile gangsters in urban centers. He also noted that future collections of papers would undoubtedly show how VORP and community service could be applied to additional categories of offender (235).

future will be) or as advocates (here is the future we would like to see), it is very possible that the limits of restorative justice that seem obvious today will be obliterated by restorative practice tomorrow. In other words, our own limited understanding of the possibilities of restorative justice constrains our vision of how it can and should shape society's response to crime. Sometimes our restorative lens is a zoom lens rather than one that gives us the full panorama.

Nearly all anthologies on restorative justice conclude with a chapter on the future. The authors of those chapters generally outline challenges facing restorative justice and recommend areas for future action.³ There are interesting common themes in these:

³ For example, Conrad called for cautious attempts at innovation in the use of reconciliation and community service measures. He emphasised the importance of evaluation not only to record success or failure, but also help explain why. What kinds of persons succeeded? Failed? What kinds of programs succeeded? Failed? With whom did they succeed or fail? Design the research, he argued, to assist policymakers in developing new models. (Ibid., at 234-235.)

In 1996, Alan Harland identified a number of issues inhibiting successful marketing of restorative justice within the public and criminal justice communities. (Alan Harland, "Towards a Restorative Justice Future," in *Restorative Justice: International Perspectives*, ed. Burt Galaway and Joe Hudson (Criminal Justice Press: Monsey NY, 1996), 505-516)

Key among them was the need to gain clarity on the goals of restorative justice. "Crime control" would be an attractive goal to the public, he suggested, or at least less likely to produce public opposition, although he wondered whether crime control was really a major goal of most restorative advocates. Those advocates more frequently raised "reparation to victims" as their goal, but while there is an intuitive appeal to restitution, he questioned whether reparation should or could really take priority over the traditional goals of criminal justice. "Reparation to the community," another goal appearing frequently in restorative rhetoric, raised a number of questions for Harland. What community was harmed? In what way was that community harmed? How can that harm be quantified with any precision? Does the sanction imposed actually repair that particular harm for that particular community? "Reconciliation", while admirable and even highly beneficial to the parties, was "probably among the least intuitively marketable parts of the restorative justice goals package." (509) "Restoration of offenders" was problematic because it could be easily confused with (and discarded as) a recycled version of old concepts of rehabilitation and therefore rejected as coddling criminals and weak on crime. (507-511)

There were other areas needing further development (e.g., how to deal with disparities in sanctions, how to responsibly estimate the increased and decreased costs that would attend adoption of restorative justice, how to market restorative justice's benefits in reducing fear of crime, and how to define with precision the roles and responsibilities of all parties at all stages of the criminal justice process). (511-514) Harland concluded that all these could be summarised in two key questions: "What exactly is restorative justice, and in what ways does it most significantly improve upon what we do now?" (515)

Three years later, Lode Walgrave and Gordon Bazemore used their chapter to argue that restorative justice was conceptually superior to either just deserts or rehabilitation and then outline an agenda for research and further reflection. This agenda included six key points: First, clarify the definition and normative theory of restorative justice. Second, develop restorative justice as a systemic alternative to conventional contemporary practice. Such a system would need to be more than simply a collection of existing informal responses. It would need to recognise and overcome the difficulty of establishing a restorative response in a system and society that do not accept restorative justice. It would need to come to terms with the use of coercion, as well as with the limitations of restorative justice.

Third, conduct research on intermediate outcomes of restorative justice for victims, communities and offenders. They warned that this is not a simple matter, since it would require making certain that the impacts being measured followed from truly restorative processes, that the outcome measures are genuinely restorative, and that the societal contexts in which restorative justice can be implemented are identified.

Fourth, explore the limits of restorative justice in relation to crime seriousness, coercivity, public security, and rehabilitation.

Fifth, develop strategies for improving the quality and range of restorative interventions

the need for a normative definition of restorative justice, the need for evaluation tools to measure the right things in the right way, the need to be realistic about the limitations of restorative justice, and the need for marketing strategies to launch restorative justice into the formal structures. There has been progress in many of these areas, although of course much more needs to be done.

I considered using this talk to review that progress, and issuing a new, updated challenge. But I think that instead I will approach the topic of the future differently. The organisers asked me to comment on the role that we can expect restorative justice to play within juvenile justice. Will it replace or supplant juvenile justice? Will it be incorporated within juvenile justice as merely an important part? Will it exist as an official or perhaps unofficial alternative to juvenile justice?

These are excellent and important questions. I would like to set the scene for them by exploring three underlying questions. First, what evidence do we have that restorative justice will have a role at all in juvenile justice? Second, what is likely to determine the future role of restorative theory and practice within juvenile justice? Third, what framework can we use for analysing the kind of role that it might have?

Why Restorative Justice Will Have A Role in Juvenile Justice

Michael Tonry, in a paper called "The Fragmentation of Sentencing and Corrections in America," begins as follows: "After a quarter century of changes, there is no longer anything that can be called 'the American system' of sentencing and corrections. As recently as 1975, there was a distinctively American approach, usually referred to as indeterminate sentencing, and it had changed little in the preceding 50 years."⁴ In the past quarter century that consensus has fragmented into four competing conceptions of sentencing --indeterminate, structured sentencing (e.g., guidelines), risk-based sentencing and restorative/community justice.

His reason for including restorative justice in this group of four is relevant to our discussion. "A fully elaborated system exists nowhere," he points out, "but there is considerable activity in many States, and programs based on community/ restorative principles are beginning to deal with more serious crimes and criminals and to operate at every stage of the justice system, including within prisons."⁵ It is "spreading rapidly and into applications that a decade ago would have seemed visionary. These include various forms of community involvement and emphasise offender accountability, victim participation, reconciliation, restoration and healing as goals (though which goals are emphasised and with what respective weights vary widely)."⁶

And finally, develop strategies for enhancing acceptability of restorative justice. They suggested that this would require confronting the political and public opinion challenges to restorative justice. It would entail a "moral influence" strategy to make restorative justice *stronger*, in order to construct a vigorous countervailing power against punitive movements, to make restorative justice practice and research *more visible*, and to *take public and professional concerns seriously*, recognising that "thinking about crime and making criminal justice policy is, in many ways, a non-rational endeavor." (Lode Walgrave and Gordon Bazemore, "Reflections on the Future of Restorative Justice for Juveniles," in Gordon Bazemore and Lode Walgrave, eds., *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (Criminal Justice Press: Monsey, NJ 1999) 359-394, at 370-394)

⁴ Michael Tonry, "The Fragmentation of Sentencing and Corrections in America," a paper from the Executive Sessions on Sentencing and Corrections, (National Institute of Justice: Washington DC), September 1999, p.1.

⁵ p. 3.

⁶ p. 4.

In other words, while restorative justice is less developed conceptually than other competing purposes of sentencing, and although its proponents have not fully agreed on its fundamental goals, its demonstrated ability to function within all phases of the justice process and to address serious offences and offenders makes it a player in the US in the debate over sentencing policy.

This is true outside of the US as well. Restorative justice programs and policies are proliferating at a remarkable speed around the world. It is this growth that suggests to me that restorative justice will play a role within juvenile justice. I would like to briefly review some of the developments that have taken place in the past few years, and do so by organising them into two basic categories: those that demonstrate **innovation** in restorative programming, and those that suggest the **integration** of restorative thinking and practice into the overall criminal justice response.

Innovation in Restorative Programming

We see a great deal of innovation in restorative programming. In some instances programmes are truly “new” and in others they are creative adaptations of something that existed before in a different form or context. There the “innovation” lies in appreciation of and openness to **adapting** responses from other cultures.

1. Examples of restorative programs that started as indigenous practices include conferencing and circles, although other indigenous processes could serve as candidates as well. What becomes apparent, however, as we attempt to “transplant” those indigenous practices into different cultures, is that they change in significant ways, but still yield restorative results. Our work is more *adaptation* than *replication*. And that recognition opens up many possibilities for creativity.

2. *Victim-offender encounters in prison* are taking place in the US, Canada, England, Belgium and the Netherlands. In some instances this involves victims meeting with their offenders in a kind of “post sentencing mediation.” It is being used in Texas with prisoners on death row and the survivors of their homicides. In other instances the meetings involve groups of unrelated victims and offenders. This is done with sexual assault victims and offenders in Canada and England.

Sometimes these meetings involve “unrelated” groups of victims and offenders. Prison Fellowship International is using such a program, the Sycamore Tree Project, in several countries. The purpose of these meetings is to help each group in their healing process by giving them the opportunity to ask and answer questions they might never have been otherwise able to address. In some instances this is necessary because the actual victim or offender is unknown or unavailable. In other instances it may be a preparatory step toward a meeting of the person with their own victim or offender.

3. *Circles of support* have been developed in Canada to work with serious sexual offenders (often guilty of paedophilia) being released into fearful communities at the conclusion of their sentences. Because of their risk and high profile, these individuals were not paroled and consequently do not receive support or structure other than surveillance by police. The circles are formed by members from faith communities who enter into a “covenant” with the released offender relating to accountability and support. The purpose of the program is to increase safety of the public by establishing a reintegration plan with the offender and holding him accountable for pursuing it, by regularly monitoring the behaviour of the offender and notifying police when necessary, and by ensuring that community resources needed by the offender are made available.

It also works to secure the safety of the offender by offering a forum for community members to voice their concerns, by intervening with community members when necessary, and by working with the police and other authorities to provide protection and services as needed.

4. *Unique prison regimes* have developed in Latin America and elsewhere in which prisoners volunteer to stay at facilities run largely by volunteers and the prisoners. The regimes establish a particular spiritual or cultural ethos that involves learning through example and apprenticeship. A model with which I am familiar is known by the acronym of the original Brazilian model (APAC), now also in Ecuador, Argentina, Peru, and the US. The philosophy of APAC is that crime represents the refusal or inability to love. The solution to crime, then, is to teach offenders how to love and to encourage them to do it. The goal is not rehabilitation, but transformation through spiritual and social renewal. The prisoners' families and the community are incorporated into the programming, which eases the process of eventual reintegration. The United States program has incorporated victim panels and an emphasis on repairing the harm of previous crimes as a means of assuming responsibility for one's choices.

5. *Mediation is being done at many phases of the justice process.* Mediation programs are run by police prior to charge (such as in the Wagga Wagga model of conferencing in Australia, the Thames Valley project in England, and the Leuven mediation project in Belgium). They are run by probation officers in Austria and the Czech Republic. Parole officers in Canada occasionally conduct them. All this is in addition to the rich tradition of community-based mediation programs that seem to be more prevalent in common law traditions.

It should be noted here that the term "mediation" is used in distinct ways in different cultures. In some European countries mediation is essentially a form of shuttle diplomacy in which the victim and offender may never meet, but during which restitution is negotiated. In other parts of the world, its meaning is much closer to conciliation, in which offenders and victims come together to solve their problem rather than have a third party negotiate the agreement. These are significant differences, and they must be kept in mind in evaluating the possibilities and problems of official involvement in restorative processes. It is probably easier conceptually to think of an official in the criminal justice system – with its coercive powers – helping negotiate restitution and community service than it is to think of that same official adopting the neutral and supportive role of a victim offender reconciliation/mediation facilitator, conference facilitator, or circle keeper.

5. *Restorative processes are being used to resolve conflict between citizens and the government.* Canada is designing a program that will test dispute resolution measures in cases of conflicts between prisoners and staff. Fresno, California has used a form of dispute resolution to deal with allegations of police brutality. Bishop Desmond Tutu has described the Truth and Reconciliation Commission in South Africa as an expression of restorative justice. New Zealand has appointed a tribunal to provide redress for violations of the Treaty of Waitangi in 1840 between the Queen and the (indigenous) Maori chiefs. This process, which has resulted in several very large financial settlements from the government to particular tribes, has been characterised by steps which go far beyond negotiation of restitution to attempts – by all accounts impressive steps – at cultural reconciliation.

Integration of Restorative Approaches in the Justice System

Those are examples of innovation. In addition there are a number of signs that restorative approaches are being incorporated – integrated – into mainstream criminal justice in different jurisdictions around the world.

1. *Legislative action* is being taken in a number of countries for several purposes. One is to reduce legal or systemic barriers to the use of restorative programs (e.g., New Mexico legislation permitting use of indigenous concepts of law and justice in juvenile proceedings; or the use of Local Councils (formerly Resistance Councils) in Uganda). Another is to create a legal inducement for using restorative programs (e.g., French “Measure of reparation” which establishes that reparation to the victim is to receive the same priority in juvenile justice as rehabilitation of the juvenile and Sri Lanka’s requirement of mediation efforts before filing certain criminal charges. A third is to guide and structure restorative programs (e.g., community corrections programs in many states in the US). A fourth purpose is to protect the rights of offenders and victims (e.g., Czech Republic statute concerning settlement of a criminal case requires victim consent).

2. *Funding and staff for programs is expanding.* In most jurisdictions, restorative programs start out as a model or pilot program, usually funded on a short-term basis for purposes of testing the effectiveness of the program. Although the program may be successful, it will remain marginalised by inadequate funding unless it receives a steady and substantial infusion of funds. As the number of restorative programs is increasing around the world, governments are increasingly providing resources, either in the form of paid staff persons or by offering grants to local governments. Belgium, for example, has adopted a “Global Plan” to fight unemployment and to change certain aspects of criminal justice. Municipalities receive funding for program staff if they agree to help carry out certain penal sanctions and measures such as policed-based mediation.

3. *Jurisdiction-wide planning is incorporating restorative principles in a systemic framework.* Another approach to integration of restorative programs is to conduct system-wide planning. This has been done at the state and provincial level in North America, and on a national level in some European countries. The purpose of the exercise is to involve criminal justice professionals and members of the community in a process that leads to a plan for implementation and expansion of restorative approaches.

4. *Programs are expanding.* I mentioned earlier that the kinds of restorative programs are expanding; their number is also expanding. Mark Umbreit has reported that there are 500 mediation programs and projects in Europe, and over 300 in the US. A Canadian survey of restorative programs and projects in that country resulted in over 100 listings. These numbers are approaching the kind of critical mass that Michael Tonry has noted.

5. *Intergovernmental bodies are taking note of restorative justice.* One result of the expanding acceptance of restorative justice is that it is increasingly appearing in debate and discussion at the international level. Just over a month ago, the Committee of Ministers of the Council of Europe adopted a recommendation on the use of mediation in penal matters, culminating a three-year study effort. The European Union has funded creation of the European Forum on Victim Offender Mediation and Restorative Justice, whose purpose is to exchange knowledge and experience, to

consider mutual co-operation, and to conduct international, comparative research in mediation. The Tenth UN Congress on the Prevention of Crime and Treatment of Offenders, to be held in Vienna in April 2000, will consider "fairness to victims and offenders" -- meaning restorative justice -- as one of its four substantive topics. The UN's International Handbook on Justice for Victims notes that "the framework for restorative justice involves the offender, the victim, and the entire community in efforts to create a balanced approach that is offender-directed and, at the same time, victim-centred. Victim compensation has become a key feature of restorative justice in many developed countries." Finally, the Rome Statute for an International Criminal Court contains a number of arguably restorative provisions, including creation of a victim and witness unit, authority for the Court to hear and consider the personal interests of victims when appropriate, a mandate to establish principles relating to restitution and other reparation to victims, and a mandate to establish a trust fund for the benefits of crime victims and their families. (It should be noted that some explicitly restorative features were also considered and rejected, with the most troubling being the exclusion of restitution among the list of penalties that might be imposed by the ICC. It is unclear why the Court should establish principles relating to restitution and other reparation to victims when those are not available as sanctions.)

6. *Exploration of the criminological, theological, and philosophical foundations of restorative justice continues.* Any theory of criminal justice needs to be well grounded. A sign of the increasing interest in and integration of restorative thinking is the extent to which it is being taken seriously by criminologists, philosophers and members of religious traditions.

Gerhard Mueller, the well-known North American criminologist, recently observed that restorative justice could very well be a unifying theory for the fields of criminology and victimology. For many years there has been an intuitive sense that these two fields need not conflict, but there has not been a conceptual or theoretical basis for their unification. Restorative justice, with its comprehensive objectives and inclusiveness of parties, may very well offer such a vehicle.

Philosopher Conrad Brunk has argued in a paper to be published next year that restorative justice may actually do a better job of answering four fundamental concerns about criminal justice than the traditional theories of retribution, deterrence, rehabilitation and restitution. (The four concerns are (a) that it should protect as much as possible innocent citizens, (b) that offenders should receive their just desert, (c) that the injustice of the underlying criminal offence should be redressed by requiring offenders to "pay for" their wrongdoing, and (d) punishment should not make the offender a "worse" person.)

Justice is not just a topic for criminologists and philosophers. It is also a theologically rich concept. The development of restorative justice theory has included theological reflection by some of its proponents (for the most part individuals from certain Judeo-Christian traditions). Recently there have been significant attempts to explore the spiritual roots of restorative justice in a number of religious traditions. One brought together religious scholars of the Islamic, Buddhist, Hindu, Sikh, Jewish, and Christian traditions, as well as experts in Chinese religions and Native American spirituality together with restorative justice practitioners to explore how restorative thinking and behaviour is rooted in those traditions.

These are just some examples of innovation and integration in restorative justice. They convince me that restorative justice has moved from the margins of juvenile justice and criminal justice toward the mainstream. It remains to be seen whether it has done so as an alternative to traditional juvenile or criminal justice approaches, or as a new but subsidiary aspect of those systems.

Determining the Role of Restorative Theory and Practice in Juvenile Justice

More than a decade ago, James Q. Wilson and Richard J. Herrnstein considered possible explanations for crime rate fluctuations throughout 150 years of American history. They noted intriguing correlations: crime fell during the nineteenth century, a period associated with tremendous social upheaval, and it rose in the 1960s and 1970s, a period of unprecedented prosperity. Why might this have happened? They looked at what else took place during these times, and from that developed the hypothesis that cultures that value self-restraint will experience lower crime; those that value self-expression will experience higher crime. The Second Great Awakening, the Sunday School movement, the temperance movement, and the YMCA movement all took place during the nineteenth century and each placed a high value on self-restraint.

They also applied that hypothesis to the significant rise in crime that took place during the 1960s and 1970s in the US to see whether it offered an explanation. Using popular articles on childrearing as their database, they found that beginning in the 1920s the character trait of children considered most desirable shifted from self-restraint to self-expression. By the 1930s, articles on character development had given way entirely to articles on personality development. They suggested that this shift bore delayed fruit in the rising crime rates of the 1960s and 1970s, having been suppressed earlier because of the Second World War and the small number of crime-prone-aged males before that date.⁷

Wilson and Herrnstein are political conservatives. Lawrence Friedman, a legal historian, is not, but he has drawn similar conclusions:⁸

In my view, the "crime problem" flows largely from changes in the culture itself; it is part of us, our evil twin, our shadow; our own society produced it.... Perhaps--just perhaps--the siege of crime may be the price we pay for a brash, self-loving, relatively free and open societyFor this reason, I fear, we are likely to bump along more or less as we are. The siege of crime and all the misery it brings, both to those who commit it and those who are victimized, is a high price to pay for our liberty. It is a cost that is badly and unfairly distributed. But for now, at least, there may be nothing to do but grit our teeth and pay the price.⁹

Friedman bases this disheartening conclusion on an exhaustive study of nearly four centuries of American history, tracing the development of crime and punishment through three distinct cultures: the colonial period, the nineteenth century and the twentieth century. He draws four major themes from this review of American criminal justice. The first is that crime must be viewed as a social phenomenon: that "judgments about crime,

⁷ James Q. Wilson and Richard J. Herrnstein, *Crime and Human Nature* (New York: Simon and Schuster, 1985), pp 420-437.

⁸ Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993)

⁹ pp. 464-65.

and what to do about it, come out of a specific time and place."¹⁰ Second, the history of crime and punishment is inextricably linked with power: criminal justice history is "a story about the dominant *morality*, and hence a history of power."¹¹ Third, our views of crime and punishment have changed as our notions of freedom have changed: "American history is, in a way, a history of more and more freedom."¹² Finally, increasing freedom has brought with it increased crime: "the culture of mobility and the culture of the self . . . have brought with them, like pests imported on exotic cargo, side effects of crime and social disorganization."¹³

His thesis explains why freedom-demanding American people incarcerate more people per capita than virtually any other nation on earth. Rising crime and rising fear of crime are the results of individual freedom that Americans insist on and will not give up even as his historical review might suggest that a more community-focused, self-sacrificing society would experience a reduction in crime. Crime is simply the price of personal freedom.

Friedman shows that such a culture will increasingly demand government coercion as a balance to the personal freedom it also demands.¹⁴ (Of course, the call is always for the government to coerce **others** while leaving **us** free!) He doubts that government will be able to do much to "solve" the crime problem. "The sad fact is that no amount of tinkering, no amount of jail building or amendments to penal codes will do the trick, at least not in this society."¹⁵ He believes this is so for at least two reasons: first, we are unwilling to adopt the draconian measures that would be necessary, because (and this is his second point), crime is a part of our very culture, "our evil twin, our shadow."¹⁶ Public policy will always reflect, not reform, our corporate culture.

Friedman's analysis resonates with a restorative perspective. But restorative justice theory is more optimistic. Public safety grows from more than governmental force; it emerges from caring communities, from *shalom*. Restorative justice requires a paradigm shift from a world in which law enforcement and prisons are the norm for handling conflict to one in which self-restraint, sacrifice and reconciliation are the norm.

Friedman says that public policy will always reflect our culture. Restorative justice advocates believe that policy and practice help shape that culture. This is the critical issue to us as we consider the future of juvenile justice. If restorative thinking can transform culture, then juvenile justice might well become restorative. If it cannot, then restorative interventions will be at most interesting, important, but limited parts of a system rooted in values that are not restorative.

A Framework for Analysing the Role of Restorative Justice in Juvenile Justice

Let me suggest a framework for thinking about what it means for "juvenile justice to become restorative," for assessing changes made within the system and planning new changes. Such a framework should recognise that change is incremental; we do

¹⁰ p. 6.

¹¹ p. 10.

¹² p. 12.

¹³ p. 14.

¹⁴ pp. 456-463.

¹⁵ p. 464.

¹⁶ Ibid.

not progress immediately from one system to another completely different one. It should also recognise that all systems are hybrids; even the most retributive or rehabilitative systems are likely to have some restorative elements, and even the most restorative system will have some retributive or rehabilitative elements. That is because systems exist in political, legal and economic realities and hence always incorporate values, programs, even habits inconsistent with any single concept of justice. So at what point could we call a system "restorative," whether it is one that is changing incrementally or one that has been established on the rubble of its predecessor as the result of a major shift in a nation's policies and programs? Does a system which is 50% restorative qualify as a restorative system? Does one that is 75%? How about one that is 25%?

Let me put it another way. Does restorative justice, one of Tonry's four competing conceptions of sentencing and corrections, need to annihilate the other three in order for us to say that juvenile justice has become restorative? If so, then we can probably agree that juvenile justice will never become restorative although restorative justice will play an important part in juvenile justice theory and practice. But perhaps it is not necessary for restorative thinking to obliterate the other conceptions. We could agree that in a *restorative system*, the values and principles of restorative justice will be predominant and competing values and principles will be sufficiently subordinate that the system's outcomes will be more restorative than anything else. How might we conceptualise such a system? We would need to begin by defining terms that are fundamental in criminal or juvenile justice systems: crime and punishment.¹⁷ When restorative justice writers say that crime is "harm" they are describing the aftermath of crime, not defining an act. A definition of crime would help us understand what behaviour should be criminalised according to restorative theory. Nawal Ammar has proposed the following definition: "Crime is an act that is disruptive to the social fabric of society and that results in injuries to victims, communities and the offenders themselves."¹⁸ I suggest the following slight modification: *Crime* is an act that is disruptive of the social fabric of society, resulting in injuries to victims and/or communities and often to offenders as well.

What about the response to crime, the punishment that should follow? In a restorative framework punishment must contribute to reparation.¹⁹ So *reparative punishment* means the formalised steps taken by the offender to heal the wounds of crime or make amends for wrongdoing. "Formalised steps" are those done as part of a state-supervised process.

¹⁷ By punishment I do not mean retribution, in the sense of retributive justice, but sanction. There is a risk that using this term will confuse rather than clarify, since it carries retributive justice connotations. However, failing to use it can also confuse, at least in this context, because "crime and punishment" has come to mean "an offence and its official consequences." Howard Zehr has written of the tension created by vocabulary: "If we speak language that the system understands, the language of punishment, the punitive may come to overshadow the restorative. If we refuse to speak the language of punishment, chances are that we will remain marginal, a non-essential for 'minor' cases." Zehr, at 233.

¹⁸ Nawal H. Ammar, "Restorative Justice In Islam: Theory and Practice", paper presented at "Spiritual Roots of Restorative Justice" a workshop conducted in Sorrento, BC, Canada 16-23 August, 1998, p. 3.

¹⁹ Reparation can be made in other ways besides reparative punishment. For example, the offender may make non-formalised reparation, or the government or an NGO might provide victim services.

Another term used by restorative advocates that needs definition is the word *peace*, the outcome toward which restorative justice aspires. I define *peace* as the cooperative dynamic that exists among mutually-respectful people.

We have defined four terms: restorative system, crime, punishment and peace. We can now use these definitions to describe what we mean by a just process. A *just process* has three components: First, crime is followed by reparation (meaning victim services and reparative punishment). Second, victims, offenders and communities participate in determining and implementing the reparative punishment. Third, they do so in such a way that all parties make peace.

Assuming for a moment that these definitions are acceptable, all would agree that a system that incorporates all three of those components should be described as restorative. No system will fully incorporate all three, however. In fact, we could hypothesise a number of different systems by configuring diverse aspects of these three.

Consider, for example, the first component of a just process: Crime is followed by victim services and reparative punishment. What happens when no offender is caught? The interest of the victim and of society in vindication may not be met, but the victim's interest in reparation could still be met through the provision of victim services. Or the offender may be caught and engage in a reparative punishment. Alternatively, the offender might be caught and punished in a non-reparative way, with the victim receiving victim services. Crime could be followed by punishment alone, or if the offender is not apprehended and convicted, by nothing at all. Those latter two alternatives are what commonly happens today.

Each of these options is listed in Figure 1 with shading illustrating the extent to which each marks a progressive departure from a fully just process. How down the list are we willing to go and call the system restorative?

[Please insert Figure 1 about here]

Consider the second component of a just process: Victims, offenders and communities participate in establishing and implementing the reparative punishment. Here again we can see that there could be gradations in systems in terms of their compliance with this component. Figure 2 lists the possibilities and using shading suggests how each successive one moves away from a fully restorative system.

[Please insert Figure 2 about here]

Similarly, we can see that there are gradations in potential compliance with the third component: All parties make peace.

[Please insert Figure 3 about here]

Bringing all three of these figures together in a single presentation helps illustrate the point that our choice is not between a restorative system and a non-restorative system (Figure 4).

[Please insert Figure 4 about here]

There are multiple configurations possible, and each configuration requires a judgement when assessing its "restorativeness."

[Please insert Figure 5 about here]

Figure 5 represents a fully restorative system. Victims receive support from the moment of crime and are vindicated and their damage repaired through reparative punishment. All parties participate in the process leading to this conclusion, and the result is that all of them make peace with the others. I think it would be pretty non-controversial to claim this as a restorative system. But what if not all of these are achieved? Is there something that we could call a "moderately restorative" system?

[Please insert Figure 6 about here]

Figure 6 is one possible way to represent a moderately restorative system. Either the victim receives services or the offender engages in reparative punishment as the result of a process in which one or the other participated. The result is that either the offender or the victim makes peace with the community. The situation this figure represents is when the victim or the offender is unable or unwilling to be involved. For example, if the offender is not caught, the victim may receive assistance through victim services, participate as fully as possible in the decisions that are made about the case, and be reintegrated into the community. Alternatively, if the victim is unknown or refuses to co-operate after the crime, the offender may still engage in a reparative punishment resulting from a process in which he or she participates, in such a way that the offender and the community make peace.

[Please insert Figure 7 about here]

In Figure 7 we see a system which is willing to use coercion in imposing punishment, but only punishment that is reparative. Although the victim, offender and community have not participated in the process in meaningful ways, some sorts of steps are taken to reduce stigmatisation or isolation of the victim or the offender. While few restorative justice advocates would aspire to this model, it is one that respects the reality that some offenders and victims will be unwilling or unable to participate in either the resolution of the case or in the reconciliation or mediation processes that would lead to peace with the other parties.

A restorative justice system will need to have available multiple options for each of the components in order to deal with the divergent circumstances presented to it. A restorative justice system will even have programs that are identified with current justice systems, such as places for incapacitation of offenders who pose a danger to others. The presence of these options should not lead us to reject the system as antithetical to restorative justice -- it is the frequency and reasons for usage of those options that will determine the restorative nature of the system. These figures are labelled "minimally," "moderately," and "fully" restorative, and these terms remind us that moving from where

we are now to a minimally restorative system would be tremendous progress, but failing to progress beyond that would not be cause for celebration.

Conclusion

Restorative justice programs and thinking have now expanded throughout the world. This expansion shows no signs of letting up, and while there is always need for caution in making claims about a restorative future, there does seem to be evidence that the future of juvenile justice will at least include restorative elements.

Public attitudes will play a key role in determining how much of juvenile justice will be restorative. In some countries, highly publicised but atypical cases have produced sea changes in criminal and juvenile justice policies. It is important to be adept at interpreting and informing public opinion. The community-based nature of restorative justice should assist restorative advocates in understanding the concerns of the public and in shaping messages about restorative justice that address those concerns.

One way of tracking the progress of restorative justice within a system is to use a framework of the sort proposed in this paper to assess the "restorativeness" of the system. The availability of restorative programs is only one indicator; far more important is the importance given to those programs in actual usage. In restorative systems, the values and principles of restorative justice will be predominant and competing values and principles will be sufficiently subordinate that the systems' outcomes will be more restorative than anything else.

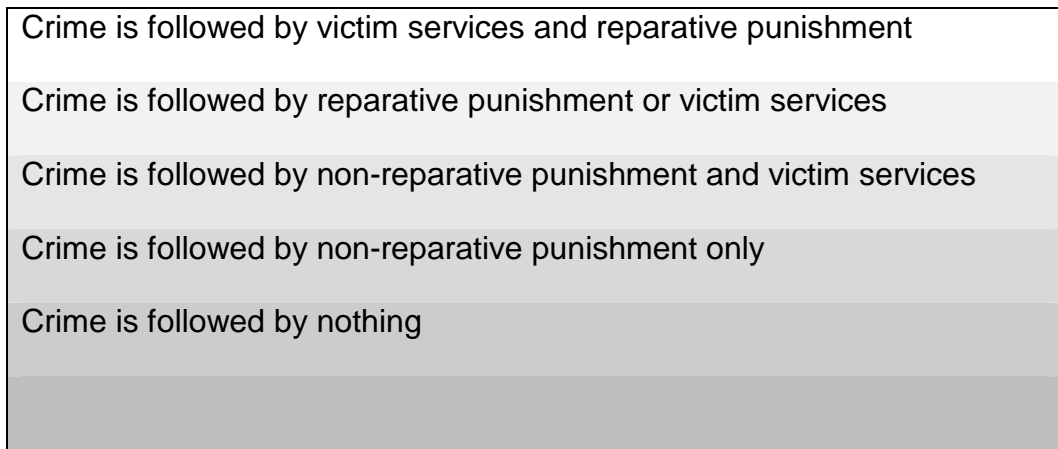


Figure 1

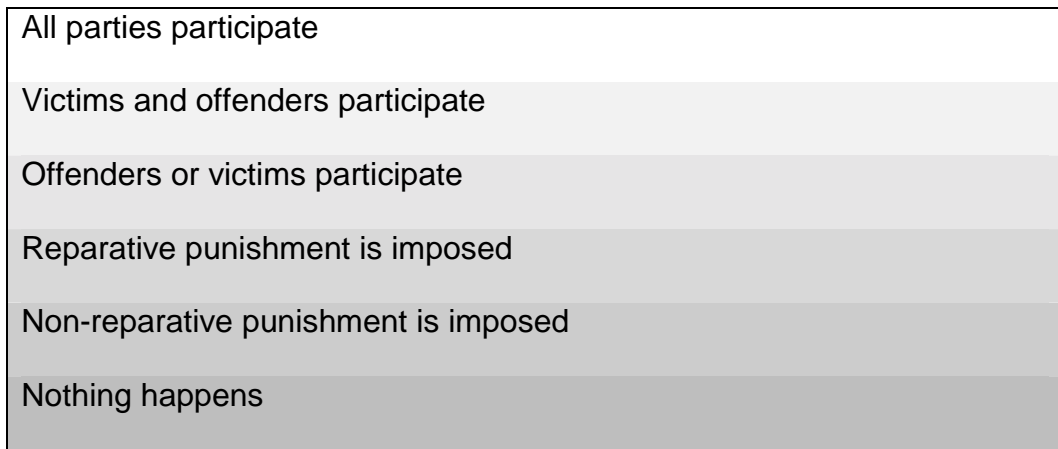


Figure 2

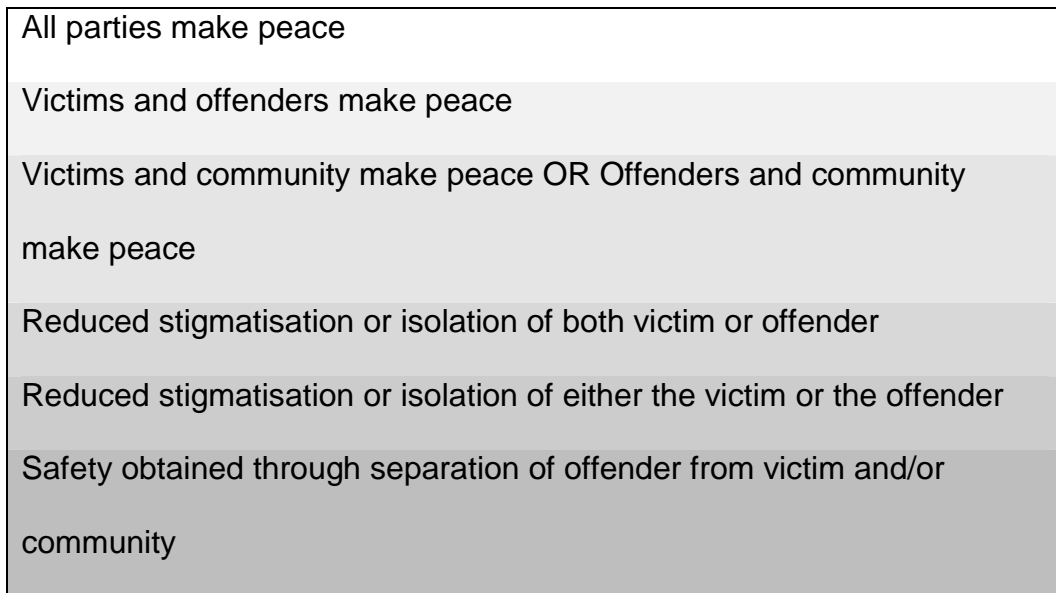


Figure 3

Crime is followed by victim services and reparative punishment	All parties participate	All parties make peace
Crime is followed by reparative punishment or victim services	Victims and offenders participate	Victims and offenders make peace
Crime is followed by non-reparative punishment and victim services	Offenders or victims participate	Victims and community make peace OR Offenders and community make peace
Crime is followed by non-reparative punishment only	Reparative punishment is imposed	Reduced stigmatisation or isolation of both victim or offender
Crime is followed by nothing	Non-reparative punishment is imposed	Reduced stigmatisation or isolation of either the victim or the offender
	Nothing happens	Safety obtained through separation of offender from victim and/or community

Figure 4

Fully Restorative System

Crime is followed by victim services and reparative punishment	All parties participate	All parties make peace
Crime is followed by reparative punishment or victim services	Victims and offenders participate	Victims and offenders make peace
Crime is followed by non-reparative punishment and victim services	Offenders or victims participate	Victims and community make peace OR Offenders and community make peace
Crime is followed by non-reparative punishment only	Reparative punishment is imposed	Reduced stigmatisation or isolation of both victim or offender
Crime is followed by nothing	Non-reparative punishment is imposed	Reduced stigmatisation or isolation of either the victim or the offender
	Nothing happens	Safety obtained through separation of offender from victim and/or community

Figure 5

Moderately Restorative System

Crime is followed by victim services and reparative punishment	All parties participate	All parties make peace
Crime is followed by reparative punishment or victim services	Victims and offenders participate	Victims and offenders make peace
Crime is followed by non-reparative punishment and victim services	Offenders or victims participate	Victims and community make peace OR Offenders and community make peace
Crime is followed by non-reparative punishment only	Reparative punishment is imposed	Reduced stigmatisation or isolation of both victim or offender
Crime is followed by nothing	Non-reparative Punishment is imposed	Reduced stigmatisation or isolation of either the victim or the offender
	Nothing happens	Safety obtained through separation of offender from victim and/or community

Figure 6

Minimally Restorative System

Crime is followed by victim services and reparative punishment	All parties participate	All parties make peace
Crime is followed by reparative punishment or victim services	Victims and offenders participate	Victims and offenders make peace
Crime is followed by non-reparative punishment and victim services	Offenders or victims participate	Victims and community make peace OR Offenders and community make peace
Crime is followed by non-reparative punishment only	Reparative punishment is imposed	Reduced stigmatisation or isolation of both victim or offender
Crime is followed by nothing	Non-reparative punishment is imposed	Reduced stigmatisation or isolation of either the victim or the offender
	Nothing happens	Safety obtained through separation of offender from victim and/or community

Figure 7

Bibliography

Nawal H. Ammar, "Restorative Justice In Islam: Theory and Practice", paper presented at "Spiritual Roots of Restorative Justice" a workshop conducted in Sorrento, BC, Canada 16-23 August, 1998

John Conrad, "Concluding Comments: VORP and the Correctional Future", in *Criminal Justice, Restitution and Reconciliation*, edited by Burt Galaway and Joe Hudson, (Criminal Justice Press: Monsey, NY, 1990) (227-36)

Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993)

Alan Harland, "Towards a Restorative Justice Future," in *Restorative Justice: International Perspectives*, ed. Burt Galaway and Joe Hudson (Criminal Justice Press: Monsey NY, 1996)

Michael Tonry, "The Fragmentation of Sentencing and Corrections in America," a paper from the Executive Sessions on Sentencing and Corrections, (National Institute of Justice: Washington DC), September 1999

Lode Walgrave and Gordon Bazemore, "Reflections on the Future of Restorative Justice for Juveniles," in Gordon Bazemore and Lode Walgrave, eds., *Restorative Juvenile Justice: Repairing the Harm of Youth Crime* (Criminal Justice Press: Monsey, NJ 1999) 359-394

James Q. Wilson and Richard J. Herrnstein, *Crime and Human Nature* (New York: Simon and Schuster, 1985)

Howard Zehr, *Changing Lenses: A New focus for Crime and Justice* (Herald Press: Scottdale, PA, 1990)