

Restorative Justice: International Trends

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Restorative justice is a growing international movement within the fields of juvenile and criminal justice. It is different from conventional justice processes in that it views crime primarily as injury (rather than primarily as lawbreaking), and the purpose of justice as healing (rather than as punishment alone). It emphasises accountability of offenders to make amends for their actions, and focuses on providing assistance and services to the victims. Its objective is the successful reintegration of both victim and offender as productive members of safe communities.

Procedurally, restorative programs value the active participation of victims, offenders and communities, often through direct encounters with each other, in an effort to identify the injustice done, the resultant harm, the proper corrective steps, and future actions that can reduce the likelihood of future offences. The Working Party on Restorative Justice, established by the United Nations Alliance of Non Government Organisations on Crime Prevention and Criminal Justice in New York, has adopted Tony Marshall's description of restorative justice as "a process whereby the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future." The Working Party added to this description a series of fundamental principles that emphasise the community-based, educational, and informal dimensions of restorative justice.

The growing presence of restorative programs has led to increasing consideration of what a restorative justice system might look like. Initially, this question has addressed how restorative responses might be incorporated with conventional approaches, but more recently it has also taken the form of exploring the extent to which restorative values might permeate the entire official and informal response to crime.

Programs identified with restorative justice can be roughly divided into two categories: those that provide restorative *processes*, and those that provide restorative *outcomes*. Examples of the former include victim offender mediation/reconciliation, family group conferences, victim-offender panels, sentencing circles, and community crime prevention. Examples of the latter include restitution, community service, victim support services, victim compensation programs, and rehabilitation programs for offenders. A fully restorative system would be characterised by both restorative processes and outcomes.

There is a close connection between restorative justice and indigenous and informal responses to crime. In some cases, this connection is direct: Family group conferences and sentencing circles have been based on

indigenous practices and incorporated in criminal justice settings. In other cases, the connection is more conceptual: The practice of thinking of crime as injury and the appropriate response to crime as healing characterises many indigenous cultures. Consequently, there has been a significant interest in restorative justice circles to learn from and to “make room for” indigenous traditions in responding to crime.

Restorative justice is not without its critics. Some are concerned about the inefficiency of incorporating such relational processes in the context of the justice system. Others worry that informal processes will result in significant due process violations (in particular the right to equal protection of the law, the right to be protected from cruel, inhuman and degrading treatment or punishment, the right to be presumed innocent, the right to a fair trial, and the right to assistance of counsel). Still others argue that in many societies, urbanised and atomised communities are not likely to be able to play the role anticipated by a restorative justice model.

I realise that some of you are familiar with restorative justice, and in particular with the diversity of thought within the general outline I have just presented. For others of you restorative justice is a term you may have heard, and you may associate it with particular programs such as family group conferencing and community conferencing, but you are unfamiliar with the extent to which restorative thinking is influencing criminal justice practice around the world. For still others, it may be a completely unfamiliar topic.

So what I would like to do in this paper is two things: first, briefly define and restorative justice, and second, describe some of the new ways restorative justice is being implemented and developed around the world.

1. What Is Restorative Justice?

Restorative justice is not a program like conferencing or victim offender reconciliation/mediation, although those programs reflect restorative processes. It is not a particular outcome, although there are sentences like reparation and community service that are associated with restorative justice. Restorative justice is a different way of thinking about how we should respond to crime as victims, as offenders, as law enforcement or judicial officials, as the community at large. To use Edward de Bono's term, it is a new “pattern of thinking,” a new understanding of crime. Crime is far more than lawbreaking; it also causes injuries to victims, communities and even to offenders. Three fundamental principles, and four key values, of restorative justice follow.

Principle 1: If crime is more than lawbreaking, then justice requires that we work to heal victims, offenders and communities who have been injured by crime. We are used to thinking in terms of *criminal law* and *civil law*. Civil suits are brought in the name of the victim and their purpose is to provide redress to that victim. Criminal cases are brought in the name of the government, and their purpose is to uphold the authority of laws enacted by government for the good of society.

Restorative justice accepts the importance of criminal law, but resists a distinction between civil and criminal remedies and interests. Instead, it asserts

that as we deal with those who have violated the criminal law, we must work to heal those who have been harmed by those criminal acts.

Principle 2: If crime is more than lawbreaking, then victims, offenders and communities should have opportunities for active involvement in the justice process as early and as fully as possible. Virtually every aspect of our criminal justice system seems to reduce victims, offenders and communities to passive participants. The active participants are the professional players: the police, judges, attorneys, corrections professionals and others who manage the process. Restorative justice affirms efforts to enable victims and offenders to participate in meaningful ways as early in the process, and as fully, as possible.

Principle 3: If crime is more than lawbreaking, then we must rethink the relative roles and responsibilities of the government and the community. In broad terms, let me suggest that in promoting justice, government is responsible for preserving a just order and the community for establishing a just peace. In political rhetoric, "order" is used as a synonym for public safety. We hear cries for law and order to end crime on our streets. But safety can be achieved in other ways. When there is peace, there is safety. That peace need not be imposed (as order is) but instead can grow dynamically within the community. Peace involves a community commitment to the well-being of its members and to helping resolve conflicts among them. It also requires that the members of that community respect community interests even when they may conflict with individual interests.

Order is not the same as peace. Order can suppress conflict, but not resolve it. On the other hand, peace may not be just. The norms and values of a community are not inherently right, even though they are widely held. A safe society, in restorative justice thinking, is the result of government and the community playing their parts in upholding a just order and establishing a just peace.

Those are the three principles. What do restorative programmes appear to esteem, to value, as we observe them in operation? I suggest there are four key values of restorative justice.

The first value is encounter. Restorative programmes place a high value on the parties to the crime -- the victim, the offender, and perhaps the affected community -- actually meeting with each other. Unlike joint presence in court, in which the parties may be aware that the other is there but not given a chance to interact, restorative encounters are (at least figuratively and usually literally) face-to-face. During the course of that meeting, each person is given the opportunity to speak, to tell the story of the crime from their own perspective. They are able to talk about the things that concern them. They may become emotional. The purpose of the meeting is for the parties to develop understanding -- of the crime, of the other parties involved, and of the steps needed to make things right. The meeting concludes with an agreement that is both particular to this dispute, and achievable by the parties. The harm done cannot be undone, but steps -- particular steps -- can be taken toward redressing it.

A second value of restorative justice is reparation. Reparation means making amends, and it can be by paying money, in-kind services, returning or

replacing property, or in any other way agreed to by the parties in the course of an encounter. In a sense, of course, full reparation is always impossible. But the point of reparation is not that time has been turned back, but that a debt has been paid. A restorative response is more concerned with repairing harm than with punishment which ignores the need and obligation to make reparation. It also attempts to reduce the likelihood of future harms, and this means that incarceration or other restraint may be required to restrain exceptionally high-risk individuals. But the criminal justice process must maximise the likelihood of timely reparation to victims even as it attempts to manage the potential risk that offenders pose to society. Too often this is treated as an either/or proposition. Restitution is imposed in "lightweight" cases in which the sentence will be probation anyway. Or restitution is added on to prison sentences but little effort put into making it possible for the offender to pay.

The third value of restorative justice is reintegration. By reintegration I mean the re-entry of a person -- it could be a victim or an offender -- into community life as a whole, contributing, productive person. This means more than simply tolerating the person's presence or making room for them. It requires establishing relationships that are characterised by respect, commitment and intolerance for -- but understanding of -- deviant or irrational behaviour.

Usually when we speak of reintegration we think of the needs of offenders. But offenders are not the only ones who need reintegration. Victims may need it as well. Their needs are different and their moral positions in relation to the crime are certainly different. But both often share the common problem of stigmatisation. The community can treat each as an outcast. Each may find that others around them are threatened because of the fear they engender in others.

The last value is participation. A characteristic of restorative programmes is that the direct participation of all parties is made relevant because the purpose is to arrive at an agreement that will bring resolution. In such a context, hearing how the crime has affected the victim becomes relevant because it helps gauge the extent of harm. Hearing why the offender did the crime is relevant because it answers questions the victim may have, and because it helps everyone understand what led to the crime, and hence what steps toward peace are indicated. Hearing the observations of community representatives, or family members, is relevant because they are also affected by the crime and because they are persons who will play key roles in the reintegration process.

There are many more opportunities for direct participation in a restorative process than in the formal justice system. But even there more could be done to permit relevant, voluntary participation by those who have been affected by crimes.

2. Current Developments Internationally

New Zealand is well known in restorative justice circles for its development of family group conferencing and for the inclusion of this program in legislation. The significance of the first is that conferencing provided an

alternative approach to victim offender reconciliation/mediation as a restorative process. The significance of legislative inclusion of conferencing was that it demonstrated that restorative processes need not be marginally applied or “added on,” but that they can be formally integrated into a comprehensive criminal justice response by replacing other mechanisms such as court hearings. These dual developments -- innovation and integration -- continue to be reflected in virtually every continent. In preparing this paper I contacted a number of people who are quite familiar with restorative justice developments to ask what they see happening in their regions of the world. An almost universal response was that there was too much happening to be able to give a comprehensive assessment (followed then by a list of developments). The developments that follow are drawn from their reports and from my own observations, and need to be seen as only a part of what is actually happening in this vibrant world-wide movement.

a. Innovation in Restorative Programming

There is 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. Here are some examples of that activity:

1. *circle sentencing* was adapted from Native American practices. The victim and offender, together with family or other support group members as well as community representatives, meet to discuss not only the offence and its aftermath but also the underlying causes that contributed to the crime in the first place. As with victim offender reconciliation/mediation and conferencing, there are rules of procedure, one of which is that participants sit in a circle and speak in turn as the conversation works its way around the circle. The objective is to arrive at a resolution which redresses harm and reduces the likelihood of future offences. Like other restorative processes it is entered into voluntarily and only after the offender has admitted the truth of the facts that led to his or her arrest.

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.” For example, in Belgium some judges have suggested such prison mediation as a condition of release of the prisoner. 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. It is also done with general groups of victims and offenders in other places. Prison Fellowship International has designed such a program and tested it with great success in Texas (a second test will take place shortly in New Zealand). The purpose of these meetings of unrelated victims and offenders is to help each in their healing process by having 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* are a new program developed in Canada for serious sexual offenders (often guilty of paedophilia) who are being released into fearful communities at the conclusion of their sentences. These are individuals who are released at the conclusion of their sentences (because of their risk and high profile they were not paroled) and consequently do not receive support or structure other than surveillance by police. The circles are formed by members from the faith community 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 concern, 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 in which prisoners come to facilities that are run by volunteers and other prisoners. The philosophy of these prisons is that crime is the refusal to love, and that the solution to crime, then, is to teach people how to love. The teaching is done by example and apprenticeship. The role of the family and of the community is respected, which eases the process of reintegration into the community. Known by the acronym of the original Brazilian model (APAC), these have now spread into Ecuador, Argentina, Chile, Peru, and the US. The program in the United States has added a victim component by incorporating victim/offender panels discussed earlier.

5. *Mediation being done at many phases of the justice process.* Mediation programs are run by police prior to charge (such as the Wagga Wagga model of conferencing in Australia, the Thames Valley project in England, and the Leuven mediation project in Belgium). Probation officers in Austria and the Czech Republic run them. 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.

6. *Restorative process used to resolve conflict between citizens and the government.* Canada is designing a program that will test dispute resolution measures in cases of conflict 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.

b. Integration of Restorative Approaches in the Justice System

There are a number of signs that restorative approaches are being incorporated into mainstream criminal justice in different jurisdictions around the world.

a. *legislative action* is being used in a number of countries for several purposes: (1) 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); (2) 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); (3) to guide and structure restorative programs (e.g., community corrections programs in many states in the US); and (4) to protect the rights of offenders and victims (e.g., Czech Republic statute concerning settlement of a criminal case requires victim consent).

b. *funding and staff for programs*. 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 marginalized 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.

c. *jurisdiction-wide planning*. 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. The jurisdictions I know of which have done this have only recently completed their plans; it remains to be seen whether the collaborative approach is successful in gaining support for implementation.

d. *expansion of programs* I mentioned earlier that the kinds of restorative programs are expanding, but the number of programs is also expanding. It has recently been estimated that there are 500 restorative programs and projects in Europe, and at least that many in the US. A Canadian survey of restorative programs and projects in that country resulted in over 100 listings. These numbers suggest that restorative programs are being integrated into the justice system.

f. *acceptance by intergovernmental bodies*. One result of the expanding acceptance of restorative justice is that it is increasingly appearing in debate and discussion at the international level.

(1) For the past two years a Council of Europe committee of experts has been researching and drafting a Recommendation on the Use of Mediation in Penal Matters. This will shortly be presented to the Committee of Ministers for debate and adoption.

(2) The European Union has just funded creation of the European Forum on Victim Offender Mediation and Restorative Justice. The purpose of this forum will be to gather those involved in the use of mediation and other restorative programs to exchange knowledge and experience, to consider mutual co-operation in penal mediation, and to conduct international, comparative research in mediation.

(3) The Tenth UN Congress on the Prevention of Crime and Treatment of Offenders (which will be held in the year 2000) has included restorative justice as one of its four substantive topics. The Discussion Guide, which it has prepared to help guide preparatory meetings, gives a detailed definition of restorative justice and encourages debate on particular issues relating to its implementation such as whether it would be useful for the UN to adopt a series of basic principles on the use of restorative processes in criminal cases. Further evidence of the UN's interest in restorative justice comes in the United Nations International Handbook on Justice for Victims, which 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."

(4) The recently-approved Rome Statute for an International Criminal Court contains a number of 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.

g. continuing exploration of the criminological, theological, and philosophical foundations of restorative justice. 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 theologians.

(1) Gerhard Mueller, the well-known North American criminologist, recently noted that restorative justice could very well be a unifying theory for the fields of criminology and victimology. For many years, he suggested, 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 that will 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

somehow by requiring offenders to “pay for” their wrongdoing, and (d) punishment should not make the offender a “worse” person.)

Whether they are right, this recent scholarly effort suggests that restorative justice is moving from the margins of criminology into the mainstream, and it is doing so as an alternative to traditional approaches rather than as a new but subsidiary concept.

(2) Justice is a theologically rich concept. The development of restorative justice has included theological reflection by some of its proponents (for the most part individuals from certain Christian traditions). This year there will be two significant attempts to explore the spiritual roots of restorative justice in a number of religious traditions. In August, religious scholars of the Islamic, Buddhist, Hindu, Sikh, Jewish, and Christian traditions, together with experts in Chinese religions and Native American spirituality, met with restorative justice practitioners to explore how restorative thinking and behaviour is rooted in those traditions. This project, sponsored by the Centre for Studies in Religion and Society at the University of Victoria in British Columbia, Canada, will culminate in a series of papers to be published as a book in 1999. Later this month, the Hamlin Law School in Minnesota will conduct a conference on Restorative Justice and Religious Traditions that will feature presentations by members of some of these same traditions on the theological frameworks for restorative justice in their traditions together with a description of restorative activities that have been undertaken by members of those traditions.

Conclusion

Restorative justice is still a relatively young movement, but one with promise. The broadening use of its programs and practices, together with its increasing acceptance within criminal justice structures, suggest that it is likely to remain a part of international criminal justice for decades.

Whether it becomes a leading philosophy in criminal justice systems or remains an interesting but marginalized collection of programs will depend on how projects and research underway now are received. In particular, it will be important for its advocates and practitioners to learn from experience and evaluation, and to make necessary adjustments, so that as our understanding of restorative justice grows, so will the potential of its programs.