

Restorative justice

The promise and the challenges

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Restorative justice has come to mean many things. Most of us who work in this field agree that it provides an alternative way of viewing criminal justice and a different way of shaping a legal system to deal with crime. It is also a fresh way of responding to harm and wrongdoing in other—noncriminal, nonlegal—contexts. While the primary focus of restorative justice theory and work has

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been in the criminal justice arena, its principles and practices are being implemented outside that system. It is being adapted for use in schools, places of work, and churches, and it provides general principles to guide the work of living together in community.

Although the language of restorative justice is relatively recent, practices of restorative justice are not new. Restorative justice was practiced in Indigenous cultures around the world until their traditions were stifled as

a result of western colonialism. Many of these communities are now seeking to reclaim traditional responses to harm and crime, and we in the West have learned much about processes and principles of restorative justice from the wisdom of these Indigenous traditions.

Prevailing approaches to criminal justice

Typical North Americans are taught that the prevailing legal system here—“the rule of law” administered by the state—was created as a “humane” alternative to a system relying on vengeance, in which those injured or their relatives and friends (if they were powerful enough) imposed sanctions on—exactd revenge against—those who offended. Our system of retributive justice—punishment, proportionate to the crime, imposed by the

state for the benefit of the society—is an alternative to a system that can lead to endless cycles of revenge.

The early legal systems that formed the foundation of western law recognized that offenders and their families need to settle with victims and their families; crime was considered an offense against the community, a breach of societal peace and a disruption of relationships. Elaborate codes prescribed restitution not only to restore the community's peace but also to compensate victims and their families.

This understanding of crime shifted in the aftermath of the Norman invasion of Britain. By the end of the eleventh century, William the Conqueror and his successors had developed a notion of crime as an offense against the state rather than against the individual. This system named the king as the victim of any crime, and the actual victim lost significance. The criminal justice system became focused on upholding the laws of the state (which stands in for the actual victim) rather than on repairing the harm done to the individual or the community.

A society's legal justice system reflects and shapes that society's character. The Norwegian criminologist Nils Christie, in his 1981 book *Limits to Pain*, discusses state-administered punishment as a way that society communicates values. "In penal law, values are clarified through a gradation of the inflicting of pain. The state establishes its scale, the rank-order of values, through variation in the number of blows administered to the criminal, or through the number of months or years taken away from him. Pain is used as communication."

The emergence of alternatives

In recent decades, many have come to see this prevailing legal system, built on the notion of justice as punishment and crime as an offense against the state, as lacking in a number of areas. New models for doing justice have started to emerge, focusing on principles and values that contribute to the well-being of our communities. Christie's alternative to this system of penal justice is "participatory justice." The approach he proposes conveys values through a process of communication between those directly affected by the conflict, rather than through an end result of the state inflicting pain on an offender.¹

Christie highlights an issue that has brought restorative justice to the forefront: the stakeholders in any justice process must be involved in resolving the conflict. Reorienting criminal justice to focus on stakeholders means rethinking our ideas about primary victims and about consequences for the offender. Victims have been neglected in our current legal system, and offenders, although they are locked up in record numbers, are not being held accountable to the person they harmed or to the community of which they are members. Restorative justice (or participatory justice, in Christie's terminology) works out of an alternate value system; it isn't just about another way of punishing offenders (or inflicting pain on them, in Christie's formulation).

The earliest use of the term *restorative justice* seems to come from Albert Eglash in 1958. Eglash distinguishes restorative justice from retributive justice and distributive justice, and he defines it as focusing on the "harmful effects of offenders' actions and actively invol[ing] victims and offenders in the process of reparation and rehabilitation."² Howard Zehr's seminal book on restorative justice, *Changing Lenses*, describes crime as "a violation of people and relationships. It creates obligations to make things

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right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance."³ This definition has continued to expand as practices and processes continue to be implemented in new contexts.

Models of participatory justice seek to build healthy communities. Restorative justice provides a framework for looking at justice through a set of values that includes (but is not limited to) respect, relationships, responsibility, and accountability to one another.

The current practice of restorative justice has been informed by concerns of people within the victim community who saw restorative justice as an offender-driven model that, like the justice system, ignored the needs of victims. Practitioners of restorative justice have worked to address those concerns and seek ways to balance the needs of victims and offenders as well as

the well-being of communities. A key conviction of restorative justice holds that a just response to harm or wrongdoing must (1) work as much as possible to repair the harm; (2) encourage taking appropriate responsibility for addressing needs and repairing the harm; and (3) involve those affected by harm or wrongdoing, including communities, in the resolution.

Restorative justice in biblical perspective

For those of us working at restorative justice out of a faith perspective, biblical texts present challenges, challenges that cannot be addressed here. But the Bible also offers rich resources. In the Hebrew scriptures, justice aimed to restore wholeness to the person harmed and to the community. Communities were to function in a state of shalom, a social peace understood as more than the absence of conflict and instead as encompassing right relationships within that community. Shalom, as Old Testament scholar Perry Yoder puts it, is a biblical vision “of what ought to be and a call to transform society.”⁴ Yoder identifies three aspects of shalom that are relevant for restorative justice: shalom can refer to a material and physical state, to relationships, and to moral behavior. Restorative justice practitioners dare not limit shalom to any one of these meanings; if our work is to transform society, we must keep these three linked in all we do.

Programs of restorative justice

Much restorative justice work in North America began through Victim Offender Reconciliation Programs (VORP) initiated in Mennonite communities. Community-level crimes were referred to these programs which brought victims and offenders together (with a trained mediator) to talk about what had happened and the impact it had had, and to make agreements about how to put things right. Thirty-five years later, these programs continue and have expanded to work with victims and offenders in crimes of severe violence. A significant difference is that victims initiate these dialogues rather than having them happen through referral by the legal system. About thirty states in the United States now have statewide programs of Dialogues in Crimes of Severe Violence; most dialogues take place in prisons between victims and incarcerated men and women, with mediation.⁵

Another newer approach to restorative justice is widespread use of circle processes. These include re-entry circles for offenders coming out of prisons, and Circles of Support and Accountability for high-risk offenders to ensure that they don't fall between the cracks as they seek to reintegrate into communities where they are not welcomed with open arms.

Family Group Conferencing and Family Group Decision-Making were first used in Australia and New Zealand, largely at the urging of the Maori community which was reclaiming its traditional processes. These processes bring together victims and offenders not just for a dialogue but for decision-making in all

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aspects of the case. FGDM has also been implemented in child welfare cases to empower families and children to make decisions based on their own strengths and history; this process removes the veil of secrecy often present in such cases.

Schools and universities have become strong proponents of restorative approaches to discipline as ways to rebuild community in campus housing and other contexts. Restorative justice practices are transformative ways to deal with cases that would otherwise go through traditional judicial processes.

Faith communities have embraced restorative justice to work at congregational conflict and also to deal with thorny issues—of sexual abuse, for example. Restorative justice practices are healthy ways of providing support and creating accountability in such situations.

One project of restorative justice to which Mennonite Central Committee has been giving leadership is the Return to the Earth project. Through this effort the remains of more than 110,000 culturally unidentifiable Native Americans are being repatriated to federally recognized tribes for burial. These remains have been housed in universities and museums across the United States. Lawrence Hart, Cheyenne peace chief and retired Mennonite pastor, views this repatriation as a restorative justice issue, given the complicity of Christians in forced removals and massacres of Native Americans. It is an opportunity to right at least one of the wrongs.

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Challenges restorative justice faces

One danger confronting the field of restorative justice is that its practices will be adopted in the absence of an understanding of—or commitment to maintaining—the values framework on which the practices rest. The concept of restorative justice is at risk of being coopted and diluted by having its processes used within a system that remains punitive and adversarial (winners and losers, good guys versus bad guys) rather than being reoriented by a different set of values.

Practitioners of restorative justice must also be aware of the danger of implementing cookie-cutter approaches. Communities need to be able to find ways to build on their own strengths in order to develop lifegiving ways to meet the challenges created by harm and crime.

Who gets to define restorative justice? Although there is no single clear definition within the field, current western understandings have largely been white, middle class, and male dominated. As more practices and processes of restorative justice emerge, it is critical that the contributions of other voices provide the framework for a broader understanding of restorative justice.

S. Y. Bowland and Hassan Batts are calling those of us in the dominant culture not to continue moving forward until traditionally marginalized voices are fully incorporated into the restorative justice work we are doing:

If the canons in the literature of restorative justice do not represent the voices, values, opinions and lived experiences of the people and communities it seeks to use its practices, then who is restorative justice really seeking to benefit? How does restorative justice include the perspective of the African American and the African American experience? Who are the individuals presenting the concepts of restorative justice and where are the concepts being presented? Any field of study must find a way to incorporate the voices of those who have been historically absent from and in the knowledge, research, theory, practice and application of the field of study. Restorative justice is no exception. It is a great place to create a model of success in this effort.⁶

These words present a challenge that practitioners of restorative justice must take up as we look to the future.

Notes

¹ Nils Christie, *Limits to Pain* (Oslo: Universitetsforlaget, 1981), 94.

² Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice*, 4th ed. (New Providence, NJ: LexisNexis, 2010), 21–22.

³ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, PA: Herald Press, 1990), 181.

⁴ Perry B. Yoder, *Shalom: The Bible's Word for Salvation, Justice, and Peace* (Newton, KS: Faith and Life Press, 1987), 5.

⁵ According to researchers at the University of Minnesota Center for Restorative Justice and Peacemaking, “The most frequently stated reasons of victims and family members for meeting with the offender were: to seek answers to lingering questions about the crime; to let the offender know of the impact of the crime; to have more human interaction with the offender; and to advance their own healing process. The most often stated reasons given by offenders for meeting were: to apologize to the victim; to help the victim’s healing process; to help in their own rehabilitation and healing; and to provide the victims with more information about themselves. After the dialogue, the majority of victims and family survivors reported the process led to personal growth and healing. Both victims and offenders were satisfied with the programs” (Mark S. Umbreit, et al., “Victim Offender Dialogue in Crimes of Severe Violence: A Multi-Site Study of Programs in Texas and Ohio,” December 1, 2002; <http://courtadr.org/library/view.php?ID=2527>).

⁶ S. Y. Bowland and Hassan Batts, “Re-centering: Restorative Justice towards the Elimination of Racism and Oppression,” workshop presentation, January 2013.

About the author

Lorraine Stutzman Amstutz works as Restorative Justice Coordinator for Mennonite Central Committee U.S. She has been involved in the field of restorative justice for many years and co-chaired the international Victim Offender Mediation Association (VOMA) for seven years. She is co-author of *The Little Book of Restorative Discipline for Schools: Teaching Responsibility, Creating Caring Climates* (Good Books, 2005), and the author of *The Little Book of Victim Offender Conferencing: Bringing Victims and Offenders Together in Dialogue* (Good Books, 2006), both in the Little Books of Justice & Peacebuilding series. Lorraine speaks and conducts trainings on issues of crime and justice, restorative justice, and conflict transformation. She lives with her family in Akron, Pennsylvania.