

Restorative Justice: A Movement Whose Time Has Come

by Marina Sideris with T. Richard Snyder

2014 was full of news about restorative justice. National Public Radio and the popular radio show "This American Life" aired programs exploring how schools are using restorative justice to reduce disproportionate suspension and expulsion of students of color.¹ The University of Vermont hosted an international conference in July on restorative justice and responsive regulation. In the United Kingdom, the Ministry of Justice released its third Restorative Justice Action Plan,² and supported International Restorative Justice Week in November by launching a public awareness campaign called "What Would You Do?," encouraging people to think about whether they would meet someone who committed a crime against them.³ Researchers in Ireland, Australia, and the United States argued that restorative justice processes should be available as an option for survivors of domestic violence and sexual assault.⁴ At the same time, commentators lamented the fact that restorative justice processes were not available to help heal the profound hurt experienced in communities like Ferguson, Miss.⁵

Restorative Justice is an international movement that in the last several decades has gained increasing momentum in Maine and throughout the world. But it is not new. This article, the first in a four-part series, is an introduction to the roots and philosophy of restorative justice.⁶ Subsequent articles will look at the history of the restorative justice (RJ) movement, current practice in Maine and elsewhere, and the future potential of RJ in Maine.

I Am Because You Are: Philosophy of Restorative Justice

Restorative Justice is built upon philosophies and worldviews of long-stand-



ing traditional societies that understand all of life as sacred and interconnected. This is captured in the African notion of Ubuntu: "a person is a person by and because of other people."⁷ In a similar way, the Lakotas espouse "Mitakuye Oysain," i.e., all are relatives. The biblical creation myth holds out that all people are God's children, perhaps best captured by the Jewish mystic, Martin Buber, who said, "in the beginning was the relation." The Qechua of South America, many African tribal communities, and the aboriginal peoples of Canada, New Zealand and the United States long have based their approach to justice on this basic understanding of interconnectedness.

From this understanding of interconnectedness flows the recognition that, "when one person suffers a harm, all suffer from the harm to one degree or another."⁸ In particular, when a crime is committed, it creates an inequality between the victim and the victimizer.⁹ This relational sense of being reminds us that, "We cannot drop out, kick out, or get rid of anything without literally throwing away a part of ourselves. By excluding someone, we harm ourselves and the fabric of our community."¹⁰ Instead, what is needed is restoration of the victim to a position of equality, repair of the broken relationships and trust, and reintegration of both victim

and offender back into their communities.

Restorative justice processes take many forms. But whatever the format, RJ must seek to answer five questions that Howard Zehr has called "restorative justice in a nutshell":¹¹

- Who was harmed?
- What are their needs?
- Whose obligations are those?
- Who has a stake in this situation?
- What is the appropriate process to involve stakeholders in an effort to put things right?

The first and second questions draw the focus of the conversation to the person who was harmed, as opposed to the person who committed the harm. Proponents of RJ acknowledge that crime and wrongdoing have ripple effects on society, and that the state has a legitimate interest in determining how crime, particularly, is dealt with. But, the starting point is that one person has been harmed by another, and we must understand what that person's needs now are.¹²

Next, by asking who is obligated to see to the needs of the person who was harmed, RJ seeks accountability from the person who committed the harm, not merely punishment. The framing of

obligation again draws the focus to the person who was harmed, whereas punishment focuses on the offender, largely ignoring the needs of the victim (other than, perhaps, the “need” for revenge). Obligation calls on the offender to do whatever he or she can to put things right with the victim.

Additionally, however, RJ allows for the possibility that there may be others beyond the victim who have been harmed, and others beyond the person who committed the harm who have obligations. For example, crimes and wrongdoing committed by youth and young adults may be related to dysfunctional family circumstances that need to be addressed. Crime might also be related to drug addiction, mental illness, past experience of trauma, poverty, or a combination of these. At the broader societal level, the complicity of the larger society in fostering or permitting racism, sexism, homophobia, and other forms of discrimination places obligations upon the community to work to address and counteract systemic inequality.¹³

Finally, through questions four and five, restorative justice seeks to identify and involve those who have a stake in the situation in responding to the harm done. It is in this way that RJ can hope to address not only the immediate harm caused by the offense at issue, but additional harms which may have contributed to or resulted from that offense. A collaborative approach creates greater buy-in from those involved; rather than being told what the response to the harm will be, the participants determine this themselves. A collaborative response also facilitates the goal of accountability. Having directly confronted the questions of who was harmed and what her needs are, perhaps by hearing from that person directly, the person who committed harm has a more complete and grounded understanding of the effects of her actions. Moreover, having participated in the discussion of who is responsible for attending to the victim’s needs, the offender sees a link between her actions and what she is now called upon to do. The involvement of other stakeholders in the process means that the victim’s needs are publicly recognized and known, as are other contributing harms, and as are the obligations that

are identified. There is now a network of individuals who have a vested interest in seeing that the identified needs are tended to, and who feel a greater responsibility, having been directly involved in the process, for monitoring any agreed-upon obligations.

These guiding questions recognize the interconnectedness of people living in community. Rarely are crimes or wrongs committed against total strangers.¹⁴ By and large, people harm people they know. Moreover, it is not uncommon for persons tangential to the actual harming act to be deeply affected. For example, persons who have never locked the doors of their houses now do so out of fear that they are no longer safe in their neighborhood. Thus, at a fundamental level, crime and wrongdoing “tears the fabric of society,” as the saying goes, by stressing, straining, and sometimes irreparably destroying the relationships we have with one another and the trust we feel in our neighbors and communities. Restorative justice seeks to repair those damaged relationships and restore that broken trust, to the greatest extent possible.

What Restorative Justice Offers That our Criminal Justice System Does Not

All of the above points to some of the crucial differences between restorative justice and the criminal justice system. Where restorative justice asks who has been hurt, the criminal justice system asks what laws have been broken. Where restorative justice asks what are their needs, the criminal justice system asks who did it. Where restorative justice asks whose obligations are those, the criminal justice system asks what do they deserve. By definition, the criminal justice system focuses on the person accused of committing a crime and on punishment rather than on “making things right.”

One of the major ways in which restorative justice can enhance our current practice of justice is in the treatment of victims. In the criminal justice system, a victim of crime has little direct role in the process of seeking justice, other than as a witness for the prosecution. Because a victim’s testimony is often critical to

successfully proving the state’s case, victims are commonly referred to as “cooperative” or “uncooperative,” depending on whether they satisfactorily fulfill the role the state has defined for them. This type of thinking about victims is deeply problematic and, in the worst cases, may serve to re-victimize a victim by blaming him or her for failing to make the case.¹⁵ Moreover, the assumption that a victim’s particular needs are the same as or adequately represented by the wider public interest of the State may simply be incorrect. “If we want to show that the victim’s specific injury concerns us, we must do something to heal that injury.”¹⁶

Studies of restorative justice programs reveal high levels of victim satisfaction and compelling benefits for victims. In the most comprehensive analysis to-date of RJ trial programs around the globe, the findings of such programs were rigorously evaluated for statistical significance. The resulting report, “Restorative Justice: The Evidence,” published by The Smith Institute, concluded, “such strong and consistent positive findings about victim benefits in the great majority of cases lead us to conclude that victims will generally benefit from participation [in Restorative Justice] whenever they have the opportunity to do so.”¹⁷ The Smith Institute reported several notable findings, three of which are set forth below.

One set of findings concerns victim satisfaction with the justice process. In one study, 70 percent of victims who had an opportunity to participate in an RJ conference reported satisfaction with the process, as opposed to 42 percent of those whose cases were dealt with in court. In that study, 90 percent of all victims felt they should receive an apology from the offender: 82 percent of those who participated in an RJ conference actually received one, as opposed to just 19 percent of those whose cases were handled in court. Of those who received an apology, 77 percent of the RJ-assigned victims felt the apology they received was sincere, as opposed to 41 percent of court-assigned victims.

Two studies showed striking declines in the desire for revenge when victims were given an opportunity to participate in restorative justice. One found that

20 percent of court-assigned victims (and 45 percent of victims of violent crime) surveyed after the conclusion of their cases wanted to harm their offenders, versus 7 percent of victims (and 9 percent of victims of violent crime) who had experienced restorative justice. Another study similarly found there was two-thirds less desire for revenge amongst victims who participated in RJ.

Embedded within a study of restorative justice trial programs in London was a clinical evaluation of the psychological benefits of RJ for victims of crime. There, researchers used a standardized psychological instrument to measure post-traumatic stress symptoms among 137 victims of burglaries and robberies whose cases were randomly assigned to court or RJ. Victims who were assigned to RJ consistently scored lower than the control group, both immediately after an RJ conference was held, and six months later. Results of this study suggested that it took victims 50 percent longer to return to work without RJ than if they experienced an RJ conference.

Equally promising is the capacity of restorative justice processes to effectively address future intentions and behavior of offenders. For starters, this means spelling out and monitoring what will be done to meet the obligations that have been identified. RJ processes frequently include forming a plan that all participants develop and agree to. Such a plan may detail steps an offender must take to make amends (e.g., apologize, pay restitution,¹⁸ provide service, etc.), as well as to address causes of behavior (e.g., substance abuse), and may also include steps others will take to fulfill broader obligations that were identified. The plan may set forth a timeline for completion, consequences of failing to do so, and intervention points along the way.

More broadly, can restorative justice help ensure the same behavior doesn't happen again? Although reducing crime rates or recidivism are not explicit goals of RJ, a restorative justice system may well be more effective at doing so than a punitive one. A primary rationale offered in support of incarceration is that it deters future crime. Yet, there is

substantial evidence that incarceration does not deter crime,¹⁹ or reduce crime rates,²⁰ and that jails and prisons may foment crime instead. Additionally, the lifelong stigma of being permanently labeled a criminal,²¹ and the reduced employment, earning, educational, and other capacities that result from having a criminal record, have the counterproductive effects of further marginalizing and destabilizing people who have been convicted of crimes.²² Indeed, the severe consequences of criminal conviction may actually deter people who have harmed others from coming forward and acknowledging their responsibility and liability to do something about it.²³ By putting greater focus on what harm was done and how to best put things right, and less on mere punishment, restorative justice seeks to encourage people who have caused harm to accept responsibility for their actions, while also looking for ways to strengthen the future capacity of those who caused harm to lead productive, positive lives.

Restorative justice seeks fundamental changes with respect to how we view and treat people who have caused harm or committed crimes.²⁴ On the one hand, RJ processes encourage offenders to accept responsibility for their actions, and to make amends. This is accomplished by focusing on harm and obligation, as set forth above, but also through creating a system that is not so excessively punitive as to deter people who would otherwise accept responsibility from doing so. At the same time, restorative justice calls on the community to change its attitudes towards offenders: to be willing to forgive and re-accept, rather than stigmatize and shun. By giving power and autonomy back to those who have been harmed or victimized; by creating opportunities for honest, direct communication between victims, offenders, and stakeholders; and by honoring self-determined and individualized ways to put things right, restorative justice has the potential to do just that: *restore* lives and strengthen communities.

Restorative Justice is Promising, Not a Panacea

While we have stated that the cur-

rent criminal justice system does not adequately address the needs of victims, offenders or the larger community, it is also true that Restorative Justice is not the final and full answer. The criminal justice system is the appropriate forum to address some cases, such as when the accused asserts his innocence, or does not consent to Restorative Justice. Certain categories of behavior that we label as crime do not have identifiable victims, such as some drug-related or driving offenses; in those cases, restorative justice may not be the answer. Restorative justice has been critiqued for not adequately dealing with the systemic roots of crime and wrongdoing, such as poverty, racism and sexism. It has also been critiqued for not having the resources to provide the level of psychological, financial, or other help that some victims need. These are fair critiques that demand structural and systemic responses beyond the capacity of either the existing criminal justice system or restorative justice. These limitations notwithstanding, restorative justice offers an approach to crime and wrongdoing that can better meet the needs of victims, more meaningfully hold offenders accountable, and restore the shredded fabric of a community. It is a movement whose time has come.

The Restorative Justice Institute of Maine

The mission of the Restorative Justice Institute of Maine is to promote a widespread cultural and systemic shift to how Mainers approach wrongdoing by advancing the use of restorative justice in communities, schools and correctional settings across the state.

Through public education, training, research, advocacy and by supporting the development of local restorative justice initiatives, we aim to forward a movement that builds safer and more peaceful communities from which we all benefit.

For more information on the Restorative Justice Institute of Maine, please contact Jennifer Goldman at jgoldman@rjimaine.org or call (207) 809-9971.



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Mike Penning MP. "Restorative Justice Action Plan: 2014." GOV.UK. 17 Nov. 2014. Web.

3. United Kingdom. Ministry of Justice. "This Restorative Justice Week We're Asking, 'What Would You Do?'" GOV.UK. 14 Nov. 2014. Web.

4. See, e.g., Keenan, Marie. "Sexual Trauma and Abuse: Restorative and Transformative Possibilities? A collaborative study on the potential of restorative justice in sexual crime in Ireland." School of Applied Social Science, University College Dublin, Ireland. Nov. 2014. Web. Barson, Ruth. "Innovative Justice Responses to Sexual Offending - pathways to better outcomes for victims, offenders, and the community." Centre for Innovative Justice, RMIT. May 2014. Web. Goodmark, Leigh. "Healthy Alternatives to Prosecution Can Help Victims." Op-Ed. *New York Times*. 11 Sept. 2014. Web.

5. See, e.g., Due, Jr., John D. "Restorative Justice is a Win-Win." CNN. 9 Sept. 2014. Web. Rea, Lisa. "Justice in Ferguson, Missouri: Can Restorative Justice Apply Here?" *Restorative Justice International*. 19 Aug. 2014. Web.

6. An important note on the scope of this article: We focus in this piece on how Restorative Justice can be an alternative or supplement to the current criminal justice system. This is far from the only application of Restorative Justice. In the forthcoming articles in this series, we will explore some of the other applications of Restorative Justice, such as in schools, workplaces, and neighborhoods.

7. Ubuntu, sometimes translated as "I am because you are" is the philosophy, according to Desmond Tutu, that undergirded the South African Truth and Reconciliation Commission. See Battle, Michael. *Reconciliation: The Ubuntu Theology of Desmond Tutu*. Cleveland: The Pilgrim Press, 1997. Print.

8. Sullivan, Dennis and Larry Tifft, Eds. *Handbook of Restorative Justice: A Global Perspective*. New York: Routledge, 2008. 2. Print.

9. Guest, James J. R. "Aboriginal Legal Theory and Restorative Justice." *Justice as Healing* 4.1 (1999). Web.

10. Boyes-Watson, Carolyn and Kay Pranis. *Heart of Hope Resource Guide: Using Peacemaking Circles to Develop Emotional Literacy, Promote Healing and Build Healthy Relationships*. Minnesota: Living Justice Press, n.d. 17. Print.

11. Zehr, Howard. *The Little Book of Restorative Justice*. Pennsylvania: Good Books, 2002. 40. Print.

12. Johnstone, Gerry. *Restorative Justice: Ideas, Values, Debates*. Devon, UK: Willan Publishing, 2002. 64. Print.

13. Addressing root causes of crime and systemic inequality is the explicit aim of the Transformative Justice movement, which draws on RJ principles. Much has been written on Transformative Justice and how it differs from, or is the same as or similar to, RJ. A good starting point for further reading is: Harris, M. Kay. "Transformative justice: The Transformation of Restorative Justice." *Handbook of Restorative Justice: A Global Perspective*. Dennis Sullivan and Larry Tifft, Eds. New York: Routledge, 2008. Print.

14. For example, the most recent data from

the U.S. Department of Justice shows that just 7.9 of 1000 violent crimes in 2013 was committed by a stranger. Truman, Jennifer L. and Lynn Langton. "Criminal Victimization, 2013." *U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics*. Sept. 2014. Web.

15. Howard Zehr has argued that the way our criminal justice system responds to victims amounts to secondary victimization: "Part of the dehumanising nature of victimization by crime is the way it robs victims of power. Instead of returning power to them by allowing them to participate in the justice process, the legal system compounds the injury by again denying power. Instead of helping, the process hurts." Zehr, Howard. *Changing Lenses: A New Focus for Crime and Punishment*. Pennsylvania: Herald Press, 1990. Gerry Johnstone points out that the experience of cross-examination at trial may aggravate, rather than heal, the emotional wounds a victim experienced as the result of a crime. Johnstone, Gerry. *Restorative Justice: Ideas, Values, Debates*. Devon, UK: Willan Publishing, 2002. 70.

16. Johnstone, Gerry, *supra*. 69.

17. Sherman, Lawrence W., and Heather Strang. "Restorative Justice: The Evidence." *The Smith Institute*, 2007.

18. Several studies suggest that meaningful participation in the justice process, including the ability to directly confront and express themselves to the people who harmed them, is more important to victims than restitution *per se*. See Sherman, Lawrence, *supra*. See generally the work of Mark Umbreit and collaborators in the field of Victim-Offender Mediation. See also Strang, Heather. *Repair or Revenge: Victims and Restorative Justice (Clarendon Studies in Criminology)*. Oxford University Press, 2003.

19. See, e.g., Wright, Valerie. "Deterrence in Criminal Justice: Evaluating Certainty Vs. Severity of Punishment." *The Sentencing Project*, Nov. 2010. Web. Ritchie, Donald. "Does Imprisonment Deter: A Review of the Evidence." *Sentencing Advisory Council*, April 2011. Web. Lee, David S. and Jason McRary. "Crime, Punishment and Myopia." *National Bureau of Economic Research*, June 2005.

20. "States Cut Both Crime and Imprisonment." *The Pew Charitable Trusts*, Dec. 2013. Web.

21. Maine does not have any law or procedure permitting expungement or sealing of adult criminal records. Slightly less than half the states permit some criminal records to be expunged or sealed; these laws vary by jurisdiction.

22. The ripple of effects of such marginalization on family members are also well-documented.

23. See Zehr, Howard. *Changing Lenses: A New Focus for Crime and Punishment*. Pennsylvania: Herald Press, 1990. See also Wright, Martin. *Restoring Respect for Justice. A Symposium*. Winchester: Waterside Press, 1999.

24. See Johnstone, Gerry. *Restorative Justice: Ideas, Values, Debates*. Devon, UK: Willan Publishing, 2002. 95-96.

1. "An Alternative to Suspension and Expulsion: 'Circle Up!'" *Morning Edition*. National Public Radio. 17 Dec. 2014. Radio. "538: Is This Working?" *This American Life*. WBEZ. 17 Oct. 2014. Radio.

2. Ministry of Justice and The Rt. Hon.