

THE LITTLE BOOK OF

*Restorative
Justice*



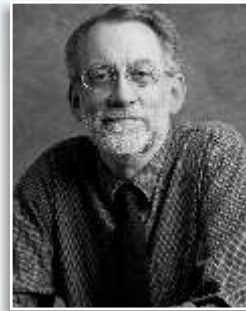
Howard Zehr

with

Ali Gohar

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The Pushto, Urdu and Persian (Dari) version of the hand book by the same authors are under publications.

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Preface

The original version of *The Little Book of Restorative Justice*¹ was written primarily for a North American audience. As Ali Gohar and I began to work together, he felt that the book would have value in his home context not as a blueprint to be implemented there, but as a catalyst for a discussion about justice and values in the Pakistani-Afghan context.

To simply present the book as originally written did not seem quite appropriate for this purpose. However, to try to fully adapt it would probably result in something artificial and inappropriate as well. We concluded that it was best to acknowledge the book for what it was originally intended, but make some adaptations and additional commentary for the Pakistani-Afghan audience.

I have, therefore, in collaboration with Ali Gohar made only minor changes in the primary text. We have then inserted Ali's commentary or additions in boxes with italicized text.

I am pleased to have this opportunity to be part of what I hope will be a multi-directional dialogue about justice. It is through sharing ideas that we learn and grow. Indeed, some of Ali's suggestions have caused me to modify some of my own basic concepts. In that sense, my willingness to share this material is some what selfish: I have much yet to learn.

As I told an international audience recently, we are all on a journey here. The road to a justice that restores is long, with many curves, dead-ends and unknowns. Moreover at least in the West we are very early on this journey. We need all the help from each other that we can get.

Salaam

Dr. Howard Zehr October, 2003

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1 *An Overview*

How should societies respond to wrongdoing? When a crime occurs or an injustice is done, what needs to happen? What does justice require?

Whether we are concerned with crime or other offenses, the western legal system has profoundly shaped our thinking about these issues - not only in the western world but in much of the rest of the world as well.

The western legal or criminal justice system's approach to justice has some important strengths. Yet there is also a growing acknowledgment of this system's limits and failures. Victims, offenders and community members often feel that justice does not adequately meet their needs. Justice professionals - judges, lawyers, prosecutors, probation and parole officers, prison staff - frequently express a sense of frustration as well. Many feel that the process of justice deepens societal wounds and conflicts rather than contributing to healing or peace.

Restorative justice is an attempt to address some of these needs and limitations. Since the 1970s, a variety of programs and approaches have emerged in thousands of communities and many countries throughout the globe. Often these are offered as choices within or alongside the existing legal system. Starting in 1989, however, New Zealand has made restorative justice the hub of its entire juvenile justice system. Whether it will live up to this promise remains to be seen but in many circles today, restorative justice is considered a sign of hope and the direction of the future.

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Restorative justice began as an effort to deal with burglary and other property crimes that are usually viewed (often incorrectly) as relatively minor offenses. Today, however, restorative approaches are available in some communities for the most severe forms of criminal violence: death from drunken driving, assault, rape, even murder. Building upon the experience of the Truth and Reconciliation Commission in South Africa, efforts are also being made to apply a restorative justice framework to situations of mass violence.

These approaches and practices are also spreading beyond the criminal justice system to schools, to the workplace and religious institutions. Some advocate the use of restorative approaches such as circles as a way to work through, resolve and transform conflicts in general. Others pursue circles or “conferences” as a way to build and heal communities. Kay Pranis, a prominent restorative justice advocate, calls circles a form of participatory democracy that moves beyond simple majority rule.

In societies where western legal systems have replaced and/or suppressed traditional justice and conflict-resolution processes, restorative justice is providing a framework to re-examine and sometimes re-activate or adapt these traditions.

Punchayat in the Sub-continent and jirgah in pukhtoon communities are traditional circle approaches that show much promise from a restorative perspective.

Although the term “restorative justice” encompasses a variety of programs and practices, at its core it is a set of principles, a philosophy, an alternate set of “guiding questions.” Ultimately restorative justice provides an alternative framework for thinking about wrongdoing. In an earlier book, I called this “changing lenses.”²

²Changing Lenses: A New Focus for Crime & Justice (Scottsdale, PA, USA: Herald Press, 1990/95)

Why this *little book*?

This *Little Book* does not try to make the case for restorative justice. Nor does it try to explore the many implications of this approach. Rather, this book is intended as a brief description or overview of restorative justice. Although it will outline some of the programs and practices of restorative justice, the focus of this book is especially on the principles or philosophy of restorative justice.

The Little Book of Restorative Justice is intended for those who have heard the term and are curious about what it implies. It is also intended for those who are involved in the field but are unclear or losing track of what they are about. It is a small effort to help bring clarity about where the restorative justice “train” should be headed and, in some cases, to nudge the train back onto the track.

Such an effort is important at this time. Like all change efforts, as restorative justice has developed and spread, it has sometimes lost its way. With more and more programs being termed “restorative justice,” its meaning often has been diluted or confused. Under the inevitable pressures of working in the real world, restorative justice has sometimes been subtly co-opted or diverted from its principles.

The victim advocacy community has been especially concerned about this. Restorative justice claims to be victim-oriented, but is it in reality? All-too-often, victim groups fear, restorative justice efforts have been motivated mainly by a desire to work with offenders in a more positive way. Like the criminal system it aims to improve or replace, restorative justice may become primarily a way to deal with offenders.

Others wonder whether the field has adequately addressed offender needs from a restorative perspective. Do restorative justice programs give adequate support to offenders to carry out their obligations and to change their patterns of behavior? Do they adequately address the harms that may have led offenders to become who they are? Are such programs becoming just another way to

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punish offenders under a new guise? And what about the community: is it being adequately encouraged to be involved and to assume its obligations to victims, to offenders, to its members in general?

Past experience of change efforts in the justice arena warns us that sidetracks and diversions inevitably happen in spite of the best intentions. If change advocates are unwilling to acknowledge and address these diversions, their efforts may end up much different than intended. In fact, their “improvements” can turn out to be worse than the conditions that they were designed to reform or replace.

One of the most important safeguards against these sidetracks is attention to core principles. If we are clear about principles, if we design our programs with principles in mind, if we are open to being evaluated by these principles, we have much greater possibilities for staying on track.

Put another way, the field of restorative justice has grown so rapidly and in so many directions that it is sometimes difficult to know how to move into the future with integrity and creativity. Only a clear vision of principles and goals can provide the compass we need as we find our way along a path that is inevitably winding and unclear.

This book is an effort to articulate the restorative justice concept in straightforward terms. However, I must acknowledge certain limits to the framework I will lay out here. I am often considered one of the founding developers and advocates of this field; even though I have tried hard to remain critical and open, I come with this bias. Moreover, in spite of all efforts to the contrary, I write from my own “lens,” and that is shaped by who I am: a white middle-class male of European ancestry, a Christian, a Mennonite. This biography and these (as well as other) interests necessarily shape my voice and vision. Also, even though there is a something of a consensus within the field on the broad outline of these principles of restorative justice, not all of what follows is uncontested. So what follows is my “take” on restorative justice; it must be tested against the voices of others.

Although Ali and I have made some minor adaptations in this edition, and Ali has inserted additional commentary in italicized boxes, we also recognize that this book was originally written in a North American context. The terminology, the issues raised, even the way the concept is formulated reflect to some extent the realities of this setting.

With this background and qualifications, then, *what is restorative justice?* So many misconceptions have grown up around the term that I find it increasingly important to first clarify what, in my view, restorative justice is *not*.

Restorative justice is not....

- *Restorative justice is not primarily about forgiveness or reconciliation.*

Some victims and victim advocates react negatively to restorative justice because they have the impression that the goal of such programs is to encourage or even coerce them to forgive or reconcile with offenders.

As we shall see, this is not a primary principle or focus of restorative justice. It is true that restorative justice does provide a context where this might happen. Indeed, some degree of forgiveness or even reconciliation does occur much more frequently than in the adversarial setting of the criminal justice system. However, this is a choice that is entirely up to the participants. There should be no pressure to choose this option.

In “high context” or communal settings, processes of forgiveness are more often central to resolve the wrong. The offender is forgiven with the help of community elders. Governments then usually respect these decisions of the victim and the community. In the western legal system, however, forgiveness processes are more

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sideline to justice and offenders are usually required to complete their punishment even if forgiven.

Although there is a phrase “forgive and forget” in western culture, many teach that forgiving does not involve forgetting: “remember and forgive,” some say. In Eastern culture, forgiveness and reconciliation often do require one to forget.

- *Restorative justice is not mediation*

Like mediation programs, many restorative justice programs are designed around the possibility of a facilitated meeting or encounter between victims, offenders and perhaps community members. However, an encounter is not always chosen or appropriate. Moreover, restorative approaches are important even when an offender has not been apprehended or when a party is unwilling or unable to meet. So restorative approaches are not limited to an encounter.

Even when an encounter occurs, the term “mediation” is a problematic description. In a mediated conflict or dispute, parties are assumed to be on a level moral playing field, often with responsibilities that may need to be shared on all sides. While this sense of “shared blame” may be true in some criminal cases, in many cases it is not. A victim in a rape or even a burglary does not want to be known as a “disputant.” In fact, they may well be struggling to overcome a tendency to blame themselves.

At any rate, to participate in most restorative justice encounters, a wrongdoer must admit to some level of responsibility for the offense, and an important component of such programs is to name and acknowledge the wrongdoing. The neutral language of mediation may be misleading and even offensive in such cases.

Although the term “mediation” was adopted early on in the field, for the above reasons it is increasingly being replaced by the terms such as “conferencing” or “dialogue.”

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- *Restorative justice is not primarily designed to reduce recidivism*

In an effort to gain acceptance, restorative justice programs are often promoted or evaluated as ways to reduce repeat crimes.

There are good reasons to believe that in fact such programs will reduce offending. Indeed, the research thus far centering mainly on juvenile offenders is quite encouraging on this issue. Nevertheless, reduced recidivism is not the reason for operating restorative justice programs. Reduced recidivism is an expected byproduct, but restorative justice is done first of all because it is the right thing to do: victims' needs *should* be addressed, offenders *should* be encouraged to take responsibility, those affected by an offense *should* be involved in the process, regardless of whether offenders “get it” and reduce their offending.

In many high context cultures, crime is considered first of all to be a violation of traditional law and of religious values. Community elders may establish the offender's obligations even if he himself does not accept them. The rules governing this may be written but may also be an unwritten code.

- *Restorative justice is not a particular program or a blueprint*

Various programs embody restorative justice in part or in full. However, there is no “pure” model that can be seen as ideal or

Restorative
Justice is
a compass
not a map

simply implemented in any community. We are still on a steep learning curve in this field; the most exciting practices that have emerged in the past years were not even on the “screen” of those of us who began the first programs, and many more new ideas will surely emerge through dialogue and experimentation. Also, all models are to some

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extent culture-bound. So restorative justice should be build from the “bottom up,” by communities in dialogue and experimentation. Also, all models are to some extent culture-bound. So restorative justice should be build from the “bottom up,” by communities in dialogue assessing their needs and resources and applying the principles to their own situations.

Restorative justice is *not a map* but the principles of restorative justice can be seen as a *compass* pointing a direction. At minimum, restorative justice is an invitation for dialogue and exploration.

In traditional societies, however, restorative justice may be embedded in a complete verbal code of life.

- *Restorative justice is not primarily intended for “minor” offenses or first-time offenders*

It may be easier to get community support for programs that address such cases. However, experience has shown that restorative approaches may have the greatest impact in more severe cases. Moreover, if the principles of restorative justice are taken seriously, the need for restorative approaches is especially clear in severe cases. The “guiding questions” of restorative justice may help to tailor justice responses in very difficult situations. Domestic violence is probably the most problematic area of application and here great caution is advised.

- *Restorative justice is not a new or North American development.*

The modern field of restorative justice did develop from case experiments in several Mennonite communities in the 1970s. Seeking to apply their faith as well as their peace perspective to the “real world” of criminal justice, Mennonites and other practitioners in Ontario, Canada, and later in Indiana, U.S.A., experimented with victim-offender encounters that led to

programs there and became models for programs throughout the world. Restorative justice theory developed initially from this practice.

However, the movement owes a great debt to earlier movements and to a variety of cultural and religious traditions. It owes a special debt to the Native people of North America and New Zealand. The precedents and roots of this movement are much wider and deeper than the Mennonite-led initiatives of the 1970s. Indeed, they are as old as human history.

In some parts of the world, modern government structures have taken away from communities the power to resolve disputes and wrongdoing. Yet, in many places, traditional structures are still working effectively. In the tribal arrangements of some areas, for example, major crimes are settled by community elders and family problems are effectively resolved by family elders, male and female.

- *Restorative justice is neither a panacea nor necessarily a replacement for the legal system*

By no means is restorative justice an answer to all situations. Nor is it clear that it should replace the legal system, even in a more-or-less ideal world. Many feel that even if restorative justice could be widely implemented, some form of the western legal system (ideally, a restoratively-oriented one) would be needed as a backup and as guardian of basic human rights. Indeed, this is the function that the youth courts play in the restorative juvenile justice system of New Zealand.

Most restorative justice advocates agree that crime has not only a public dimension but also a “private” dimension; more accurately, this might be termed a societal dimension as opposed to a more local and personal dimension. The legal system focuses on the public dimensions, i.e. on society's interests and obligations as represented by the state. However, this approach

downplays or ignores the personal and interpersonal dimensions of crime. By focusing on and elevating the latter “private” dimensions of crime, restorative justice seeks to provide a better balance in how we experience justice.

- *Restorative justice is not necessarily the opposite of retribution*

For those who are acquainted with my earlier book, *Changing Lenses*, this may come as a surprise. The contrasting models that I outlined there retributive justice vs. restorative justice have been widely adopted in the field. Those charts remain a useful analytical or critical tool, but on the philosophic or theoretical level, I no longer see restoration as the polar opposite of retribution. More on that later.

Restorative justice is concerned about needs and roles

The restorative justice movement originally began as an effort to rethink the needs and roles implicit in crimes. It was concerned about needs that were not being met in the usual western justice process. Those involved in this movement were also concerned that the prevailing understanding of legitimate participants or “stakeholders” in justice was too restrictive. Restorative justice expands the circle of stakeholders those with a stake or standing in the event or the case beyond just the government and the offender to also include victims and community members.

In high context cultures, family members and sometimes even community elders may take the responsibility for making things right. They may also take responsibility for offender's and victim's rehabilitation and for reconciliation between families.

Because this analysis of needs and roles was the origin of this movement and because the needs/roles framework is so basic to the concept, it is important to start there. As the field has developed, this “stakeholder analysis” has become more complex and encompassing. The following discussion is limited to some of the core concerns that were present at the beginning of the movement and continue to play a central role. It is also limited to “judicial” needs: those needs of victims, offenders and community members that might be met, at least partially, through the justice process.

The following analysis examines the “judicial needs” of victims, offenders and communities by comparing it to the failures of the western legal system. Because they are by nature more restorative, traditional systems often address these needs more effectively.

For example, in these contexts where elders oversee the process, the community supports and empowers the victim, providing them with information and safety. Victims and offenders are both encouraged to tell their stories and elders investigate the situation to identify root causes.

Offenders or their families are encouraged to come forward and to take responsibility to compensate the family of those victimized. The community also takes responsibility for the rehabilitation and reintegration of both offender and victim.

Victims

Of special concern to restorative justice are the needs of crime victims that are not being adequately met by the criminal justice system. Victims often feel ignored, neglected, or even abused by the justice process. This results in part from the legal definition of crime, which does not include victims: crime is defined as against the state, so the state takes the place of the victim. Yet victims often have a number of specific needs from a justice process.

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Due to the legal definition of crime and the nature of the criminal justice process, the following four types of needs seem to be especially neglected:

1. *Information.* Victims need answers to questions they have about the offense, why it happened and what has happened since. They need “real” information, not speculation or the legally-constrained information that comes from a trial or plea agreement. Often this requires direct or indirect access to offenders who hold this information.
2. *Truth-telling.* An important element in healing or transcending the experience of crime is an opportunity to tell their story of what happened. Indeed, it is often important to retell this many times. There are good therapeutic reasons for this: part of the trauma of crime is the way it upsets our views of ourselves and our world, our life-stories. Transcendence of this experience means “re-storying” one's life by telling the story in significant settings, often where it can receive public acknowledgment. Often too it is important for them to tell this story to the ones who caused this harm and to have them understand the impact of their actions.

Three day mourn in case of death is a good example, when the secondary victim tells the story to any new comer and feel themselves right.

3. *Empowerment.* Victims often feel like control has been taken away from them by the offense control over their property, their body, their emotions, their dreams. Involvement in their own case as it goes through a justice process can be an important way to return a sense of empowerment to them.
4. *Restitution or vindication.* Restitution by offenders is often important to victims, sometimes because of the actual

losses but just as importantly, because of the symbolic statement implied. When an offender makes an effort to make right the harm, even if only partially, it is a way of saying "I am taking responsibility, and you are not to blame." Restitution, in fact, is a symptom or sign of a more basic need, the need for vindication. While the concept of vindication is beyond the scope of this booklet, I am convinced that it is a basic need that we all have when we are treated unjustly. Restitution is one of a number of ways of meeting this need to even the score. Apology may also contribute to this.

The theory and the practice of restorative justice have emerged from and been profoundly shaped by an effort to take these needs of victims seriously.

Offenders

A second major area of concern that gave rise to restorative justice is *offender accountability*.

The criminal justice system is concerned about holding offenders accountable but what is meant is making sure offenders get the punishment they deserve. Little in the process encourages offenders to understand the consequences of their actions or to empathize with victims. On the contrary, the adversarial game requires offenders to look out for themselves. Offenders are discouraged from acknowledging their responsibility and are given little opportunity to act on this responsibility in concrete ways. The "neutralizing strategies" the stereotypes and rationalizations that offenders often use to distance themselves from the people they hurt are never challenged. Unfortunately, then, the sense of alienation from society felt by many offenders is only heightened by the legal process and by the prison experience. So for a variety of reasons the legal process tends to discourage responsibility and empathy on the part of offenders.

Restorative justice has brought an awareness of the limits and negative byproducts of punishment. Beyond that, however, it has

argued that punishment is not real accountability. Real accountability involves facing up to what one has done: it means encouraging offenders to understand the impact of their behavior - the harms they have done - and to take steps to put things right as much as possible. This accountability, it is argued, is better for victims, better for society, better for offenders.

Offenders have other needs beyond their responsibilities to victims and communities. If we are to expect them to assume their responsibilities, to change their behavior, to become contributing members of our communities, restorative justice assumes that these needs must be addressed as well. This subject is beyond the scope of this little book but the following is suggestive of the areas of need:

Offenders need from justice:

1. Accountability that
 - addresses the resulting harms,
 - encourages empathy and responsibility,
 - and transforms shame.³
2. Encouragement to *personal transformation*, including
 - healing for the harms that contributed to offending behavior,
 - opportunities for treatment for addictions and/or other problems,
 - enhancement of personal competencies.
3. Encouragement and support for *integration* into the community.
4. For some, at least temporary *restraint*.

³ Shame theory, though controversial, has emerged as an important topic in restorative justice. In his pioneering book, *Crime, Shame and Reintegration* (Cambridge, UK, John Braithwaite argues shame that stigmatizes pushes people toward crime. Shame may be "reintegrative," however, when it denounces the offense but not the offender and opportunities are provided for the shame to be removed or transformed.

Community

Community members have needs arising from crime and they have roles to play. Restorative justice advocates such as Judge Barry Stuart and Kay Pranis argue that when the state takes over in our name, it undermines our sense of community.⁴ Communities are impacted by crime and in many cases should be considered stakeholders as secondary victims. Community members have important roles to play and may have also responsibilities to victims, offenders and to themselves. Community involvement in a case can provide a forum to work at these things while strengthening the community itself. This topic too is a large one; the following suggests some areas of concern:

Communities need from justice:

1. Attention to their concerns as victims.
2. Opportunities to build a sense of community and mutual accountability.
3. Encouragement to take on their obligations for the welfare of their members, including victims and offenders, and for the conditions that promote healthy communities.
4. Community also want assurance of not to repeat the same and preventive actions.

Much more could be and has been written about who has a stake in a crime and about their needs and roles. However, the basic concerns about needs and roles of victims, offenders and community

Restorative Justice focuses on needs more than deserts	members outlined above continue to provide the focus for both the theory and practice of restorative justice. In short, the legal or criminal justice system centers around offenders and deserts making sure offenders get what they <i>deserve</i> . Restorative justice is more focused on <i>needs</i> : the needs of victims, the need of communities, the needs of offenders.
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⁴ See, for example, their chapters in *Restorative Community Justice: Repairing Harm and Transforming Communities* (Anderson, U.S., 2001)

II Restorative Principles

Restorative justice is based on a simple idea

Restorative justice is based upon an old, commonsense understanding of wrongdoing. Although it would be expressed differently in different cultures, this approach is probably common to most traditional societies. For those of us from European background, it is the way many of our ancestors (and perhaps even our parents) understood wrongdoing.

- *Crime is a violation of people and of interpersonal relationships.*
- *Violations create obligations.*
- *The central obligation is to put right the wrongs.*

Underlying this understanding of wrongdoing is an assumption about society: *we are all interconnected*. In the Hebrew scriptures, this is embedded in the concept of *shalom*, the vision of living in a sense of “all-rightness” with each other, the creator and the environment. Many cultures, however, have a word that represents this notion of the centrality of relationships: for the Maori, it is communicated by *whakappa*; for the Navajo, *hozho*; for many Africans, the Bantu word *ubuntu*. Although the specific meanings of these words vary, they communicate a similar message: all things are connected to each other in a web of relationships.

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In Islam, all Muslims are brothers and sisters The Quran says that "the believers are naught else than brothers" (49:10). *So making right with each other is a clear divine instruction to every Muslim.*

In Pushtoon culture, aziz-wali, the Pushtoon code of life, captures this sense of interconnectedness.

The problem of crime, in this world view, is that it represents a wound in the community, a tear in the web of relationships. Crime represents damaged relationships: damaged relationships are both a *cause* and an *effect* of crime. Many traditions have a saying that the harm of one is the harm of all - a harm such as crime ripples out to disrupt the whole web. Moreover, wrongdoing is often a symptom that something is out of balance in the web.

When things are out of balance, fear and insecurity results. The community needs the restoration of peace and security and preventative measures for the future.

Interrelationships imply mutual obligations and responsibilities. It comes as no surprise, then that this view of wrongdoing emphasizes the importance of *making amends* or "putting right;" indeed, making amends for wrongdoing is an obligation. While the initial emphasis may be on the obligations owed by offenders, however, the focus on interconnectedness opens the possibility that others especially the larger community may have obligations as well.

Even more fundamentally, this view of wrongdoing implies a *concern for healing* of those involved: victims, but also offenders and communities.

Restorative pPrincipals

In traditional cultures, this view is embedded in traditional law and custom. Crime is often seen as an infraction of divine law first of all, then traditional law, finally of state law.

Making right such violations gives offenders a chance for internal healing through forgiveness and security, easing the threat of revenge. The victim's respect is also restored. This provides healing and security for all.

Translated into justice terms, this understanding may be better understood in contrast to the “legal” or criminal justice understanding of crime:

Two Different Views

Criminal Justice

- Crime is a violation of the law and the state.
- Violations create guilt.
- Justice requires the state to determine blame (guilt) and impose pain (punishment).
- *Central focus: offenders getting what they deserve.*

Restorative Justice

- Crime is a violation of people and obligations.
- Violations create obligations.
- Justice involves victims, offenders and community members in an effort to put things right.
- *Central focus: victim needs and offender responsibility for repairing harm.*

The differences in these two approaches might be boiled down to the three central questions asked in the search for justice:

Three Different Questions

Criminal Justice

- What laws have been broken?
- Who did it?
- What do they deserve?

Restorative Justice

- Who has been hurt?
- What are their needs?
- Whose obligations are these?

In an oft-quoted passage from Christian and Jewish scripture, the prophet Micah asks the question: “What does the Lord require?” The answer begins with the phrase, “to do justice.” But what does justice require? As we have seen, western society’s answer has focused on making sure offenders get what they deserve. *Restorative justice answers differently, focusing first of all on needs and associated obligations.*

The Quran says "O believers, if you fear Allah He will provide you with a criterion (to judge between right and wrong)" (8:29). The great philosophy and poet of the sub-continent, Allama Iqbal, says in one of his poems that human beings are created to heal the pain of each other. Otherwise, angel's supplications to God is for better than human beings.

The Appendix provides a statement of restorative justice principles and their implications based directly on the concept of wrongdoing outlined above. For our purposes here, however, this simple concept helps understand why needs, roles and obligations are so essential to restorative justice.

Three Pillars of Restorative Justice

One way to understand restorative justice is explore the implications of three central concepts or pillars: *harm and needs*, *obligation and engagement*.

3 Pillars of Restorative Justice

- *Harms & needs*
- *Obligations (to put right)*
- *Engagement (of stakeholders)*
- *Restorative justice focuses on harm*: Restorative justice views crime first of all as harm done to people and communities. Our legal system, with its focus on rules and laws, and with its understanding that the state is the victim, often loses sight of this reality. Concerned primarily with making sure offenders get what they deserve, the legal system considers victims at best a secondary concern of justice. A harm focus, on the contrary, implies an inherent concern for victims' needs and roles.

For restorative justice, then, justice begins with a concern for victims and their needs; it seeks to repair the harm as much as possible, both concretely and symbolically. This victim-oriented approach requires that justice be concerned about victims' needs even when no offender has been identified or apprehended.

While our first concern must be the harm experienced by victims, the focus on harm implies that we also need to be concerned about harm experienced by offenders and communities. This may require us to address the root causes of crime.

No one better know than the community the root causes of a crime, committed within community. The goal of restorative justice is to provide an experience of healing to all concerned. This focus on harm means includes an emphasis on reintegration and follow up for both victims and offenders.

- *Wrongs or harms result in obligations. Therefore, restorative justice emphasizes offender accountability and responsibility. The legal system defines accountability as making sure offenders are punished. If crime is essentially about harm, however, accountability means offenders must be encouraged to understand that harm, that is, to begin to comprehend the consequences of one's behavior. Moreover, it means they have a responsibility to make things right in so far as possible, both concretely and symbolically.*

As we shall see, the first obligation is the offender's but the community and society have obligations as well.

- *Restorative justice promotes engagement or participation. The principle of engagement suggests that *the primary parties affected by crime victims, offenders, family members, members of the community are given significant roles in the justice process*. These “stakeholders” need to be given information about each other and to be involved in deciding what justice in this case requires.*

Any conflict in our culture stop communication and give an access to the pot stirrer. Rikhthinee (victim offender comes face to face to make the things clear) in the women folk make many things clear; prevent further conflict.

In some cases, this may mean actual dialogue between these parties, as happens in victim offender conferences, to share their

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stories and to come to a consensus about what should be done. In others it may involve indirect exchanges, the use of surrogates or other forms of involvement. The principle of engagement implies involvement of an enlarged circle of parties as compared to the traditional justice process.

So restorative justice is constructed upon three simple elements or “pillars:”

- *Harms and related needs*
(*of victims, first of all, but also of communities and offenders*)
- *Obligations* that have resulted from (and given rise to) this harm
(*offenders' but also communities'*)
- *Engagement* of those who have a legitimate interest or stake in the offense and its resolution
(*victims, offenders, community members*)

Here, then, is a skeletal outline of restorative justice; although it is inadequate by itself, it provides a framework upon which a fuller understanding can be built.

Restorative justice requires, at minimum, that we...

- *address victims' harms and needs*
 - *hold offenders accountable to put right those harms,*
 - *and involve victims, offenders and communities in this process.*
-

The “who” and the “how” is important.

All this suggests that *who* is involved in the justice process, and *how* they are involved, is an important part of restorative justice.

Process the “how”

Our legal system is an adversarial process conducted by professionals who stand in for the offender and the state, refereed by a judge. Outcomes are imposed by an authority law, judges, juries who stand outside the essential conflict. Victims, community members, even offenders rarely participate in this process in any substantial way.

Although restorative justice usually recognizes the need for outside authorities and, in some cases, imposed outcomes, it prefers *processes that are collaborative and inclusive* and, to the extent possible, *outcomes that are mutually agreed upon* rather than imposed.

Restorative
Justice prefers
inclusive,
collaborative
processes and
consensual
outcomes.

Restorative justice usually acknowledges a place for the adversarial approach and the role of professionals and recognizes an important role for the state.⁵ However, restorative justice emphasizes the importance of *participation by those who have a direct stake* in the event or offense: that is, those who are involved, impacted by or otherwise have a legitimate stake or interest in the offense.

⁵ The role of the state is most contested in situations where minority groups have felt systematically oppressed by the government (e.g. in Northern Ireland) or where the state is viewed as having co-opted restorative justice while implementing it from the “top down”. The latter has been a particular concern of community and indigenous groups, for example, in New Zealand and Canada

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A direct, facilitated, face-to-face encounter with adequate screening, preparation and safeguards is often an ideal forum for this involvement, at least in some cultures. As we shall see shortly, this can take a variety of forms: a meeting between victim and offender, a family group conference, a circle process. A meeting allows victims and offenders to put a face to each other, to ask questions of each other directly, to together negotiate how to put things right. It provides an opportunity for victims to directly tell offenders the impact of the offense or to ask questions. It allows offenders to hear and begin to understand the effects of their behavior. It offers possibilities for acceptance of responsibility and apology. Many victims as well as offenders have found it to be a powerful and positive experience.

Before face-to-face meeting, pre-meetings and preparation are essential. In high context cultures, the role of the “pot-stirrer” (A person, who takes personal benefit from the conflict interested to make the conflict more violent rather than settlement or resolution) is very common. The selection of the right mediator or facilitator is very important and the kind of person required varies with the culture.

An encounter direct or indirect is not always possible and in some cases, may not be desirable; in some cultures, a direct encounter may even be inappropriate. Even in such cases, however, efforts should be made to provide maximum *exchange of information* between and *involvement* of the stakeholders.

Stakeholders the “who”

Stakeholders
include
victims
offenders
and
communities
of care

The key stakeholders, of course, are immediate victims and offenders. Members of the community may be directly affected and thus should also be considered immediate stakeholders. In addition to this immediate circle, there are others who have varying degrees of stake in the situation. These may

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include family members, friends or other “secondary victims;” offenders' families or friends; or other members of the community.

In traditional societies, the roles of religious, community elders, victim, and offender families members play vital role.

Who is the community?

Controversy has arisen within the restorative justice field about the meaning of community and about how to actually involve the community in these processes. The issue is particularly problematic in cultures where traditional communities have been so eroded as in much of western society. A number of commentators have expressed concern about the dangers of using “community” as an abstract concept or about how to guard against abuses by the community. A discussion of these issues is beyond the scope of this book but a few observations may be helpful.⁶

In practice, restorative justice has tended to focus on “communities of care” or micro-communities. There are still communities of place, where people still live nearby and interact with each, but there are also networks of relationships that may not be geographically defined. For restorative justice, the key questions are 1) who are those in the community who care about these people or about this offense and 2) how can we involve them in the process?

It may be helpful to differentiate between community and society. Restorative justice has tended to focus on the micro-communities of place or relationship that are directly affected by an offense but often neglected by “state justice.” However, there are larger concerns and obligations that belong to society beyond those

⁶ An overview of this debate may be found in Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates* (William, U.K., 2002), 136ff. This book provides a helpful overview and analysis of the debates and critical issues in the field of restorative justice.

who have a direct stake in a particular event. These would include concerns for safety, human rights, and general well being of its members. Many would argue that the government has an important and legitimate role in looking out for such societal concerns¹

Restorative justice aims to put things right

We have discussed so far the needs and roles of stakeholders. More needs to be said, however, about the *goals* of justice.

Addressing harm

Central to restorative justice is the idea of making things right or, to use a more active phrase often used in British English, “putting right.” As already noted, this implies a responsibility on the part of the offender to, as much as possible, acknowledge the wrongdoing and take active steps to repair the harm to the victim (and perhaps the impacted community). In cases such as murder, the harm obviously cannot be repaired; however, symbolic steps, including acknowledgment of responsibility or restitution, can be helpful to victims and are a responsibility of offenders.

Putting right implies reparation or restoration or recovery but these “re-words” are often inadequate. In severe wrongs, there is no question of repairing the harm or going back to what was before. As Lynn Shiner, the mother of two murdered children, told me, “You build, you create a new life. I have a couple of pieces from my old life that I have fit in.” It involves a journey toward healing, though many victims are ambivalent about the term “healing” with the sense of finality or termination that it connotes. This journey belongs to victims no one else can do it for them but an effort to put right can assist in this process.

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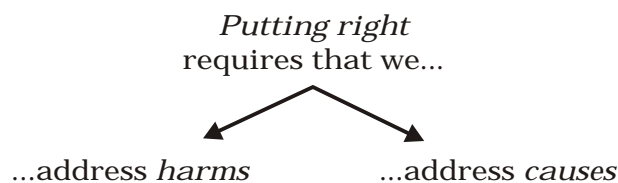
The obligation to put right is first of all the offender's but the community may have responsibilities as well to the victim, but also perhaps to the offender. For the offenders to successfully carry out their obligations, they may need support and encouragement from the wider community. Moreover, the community has responsibilities for the situations that are causing or encouraging crime. Ideally, restorative justice processes can provide a catalyst and/or a forum for exploring and assigning these needs, responsibilities and expectations.

Addressing causes

As this suggests, putting right requires that we address the harms but also the *causes* of crime. Certainly victims often want this: they want to know that steps are being taken to reduce such harms to themselves and others.

It is no accident that family group conferences in New Zealand, where restorative justice is the norm, are expected to develop a consensus on a plan that include elements of both reparation and prevention. These plans must speak to the victims' needs and offenders' obligations for these needs but they must also speak to offenders' needs in order to change their behavior.

Offenders have an obligation to address the causes of his or her behavior but they often cannot do this alone. And there may be larger obligations beyond those of offenders, e.g. for the social injustices and other conditions that cause crime or create unsafe conditions. So others may have responsibilities as well: families, the larger community, society as a whole.



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Offenders as victims

This emphasis on addressing harms and causes may require us to explore the harms that offenders themselves have experienced.

Studies show that many offenders have indeed been victimized or traumatized in significant ways. Many others at least perceive themselves to have been victimized. These harms and/or perceptions of harms may be an important contributing cause of crime. In fact, Harvard professor and former prison psychiatrist James Gilligan has argued that all violence is an effort to achieve justice or to undo injustice.⁷ In other words, much crime may be a response to an effort to undo - a sense of victimization.

A perception of oneself as victim does not absolve responsibility for offending behavior. However, if Gilligan is right, neither can we expect offending behavior to stop without addressing this sense of victimization. In fact, punishment often reinforces the sense of victimization. Sometimes it is enough to simply acknowledge an offender's sense of victimization; sometimes this perception must be challenged; but sometimes the damage done must be repaired before an offender can be expected to change his or her behavior.

In traditional societies, particular problems are caused by the lack of justice and treatment opportunities as well as social pressures

This is a controversial topic and, understandably, especially difficult for many victims. Too often it sounds like an excuse rather than an explanation. Moreover, it is difficult to explain why some people who are victimized turn to crime and others do not. Nevertheless, I am convinced that any attempt to reduce the causes of offending will require us to explore offenders' experiences of victimization.

⁷ Violence: Reflections on a National Epidemic (Random House, U.S., 1996).

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In this exploration, instead of the loaded language of victimization it may be more helpful to use the language of *trauma*. In her book *Creating Sanctuary*, psychiatrist Sandra Bloom makes the point that unresolved trauma tends to be re-enacted; if it is not adequately dealt with, trauma is re-enacted in the life of those who experience the trauma, in their families, even in future generations.⁸

Medically speaking, psychological trauma (upset, shock, pain, suffering) refers to wounds, shocks and harms as a response to stressful situations or events. If severe, it may create "post-traumatic stress disorder." The effects include uncontrollable memories that are stored deep within the brain and can affect thought and behavior in many different and disturbing ways.

Trauma is a core experience not only of victims but also of many offenders. Much violence may actually be a re-enactment of trauma that was experienced earlier but not responded to adequately. Society tends to respond by delivering more trauma in the form of imprisonment. While the realities of trauma must not be used to excuse, they do help to understand and they must be addressed.

In traditional societies, community norms may contribute to trauma through the influence of shame. Victims may feel shamed and this may lead to revenge as a way to restore honor. Both male and female rape victims suffer humiliation for the rest of their lives and the shame may affect their children as well.

⁸ *Creating Sanctuary: Toward the Evolution of Sane Societies* (Routledge, U.S., 1997).

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In summary, an effort to put right the wrongs is the hub or core of restorative justice. Putting right has two dimensions:

1. addressing the harms that have been done, and
2. addressing the causes of these harms, including the contributing harms.

Since justice should seek to put right, and since it is victims who have been harmed, *restorative justice must start with victims.*

However, restorative justice is ultimately concerned about the restoration and reintegration of both victims and offenders as well as the well-being of the entire community. *Restorative justice is about balancing concern for all parties.*

Restorative justice encourages outcomes
that promote *responsibility*,
reparation and *healing* for all.

Restorative justice balances concern for all

A restorative lens

Restorative justice seeks to provide an alternate framework or lens for thinking about crime and justice.



Principles

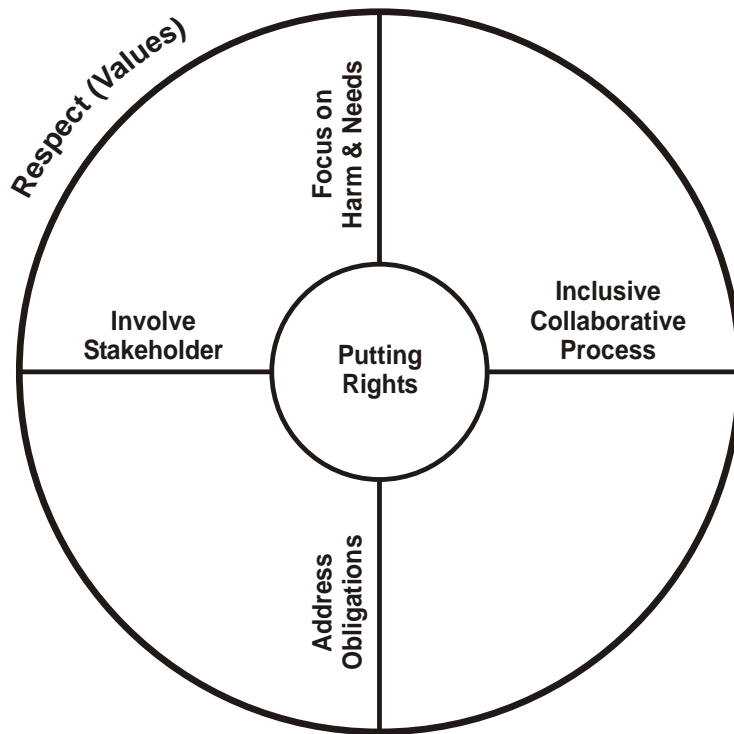
This restorative lens or philosophy might be described as having five key elements or principles:

Five Principles of Restorative Justice

Restorative justice...

1. *Focuses on harms and consequent needs.
(victims', but also communities' and offenders')*
2. *Addresses obligations resulting from those harms.
(offenders' but also families', communities' and society's)*
3. *Uses inclusive, collaborative processes.*
4. *Involves those with a legitimate stake in the situation.
(victims, offenders, families, community members, society)*
5. *Seeks to put right the wrongs.*

We might diagram restorative justice as a wheel. At the hub is the central focus of restorative justice: seeking to put right the wrongs and harms. Each of the spokes represents the four other essential elements outlined above: focusing on harms and needs, addressing obligations, involving stakeholders (victims, offenders, communities of care), and, to the extent possible, using a collaborative, inclusive process.



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To use an image that is more organic, we might diagram restorative justice as a flower. In the center is the central focus: putting right. Each of the petals represents one of the four remaining elements.



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Restorative justice in a traditional system

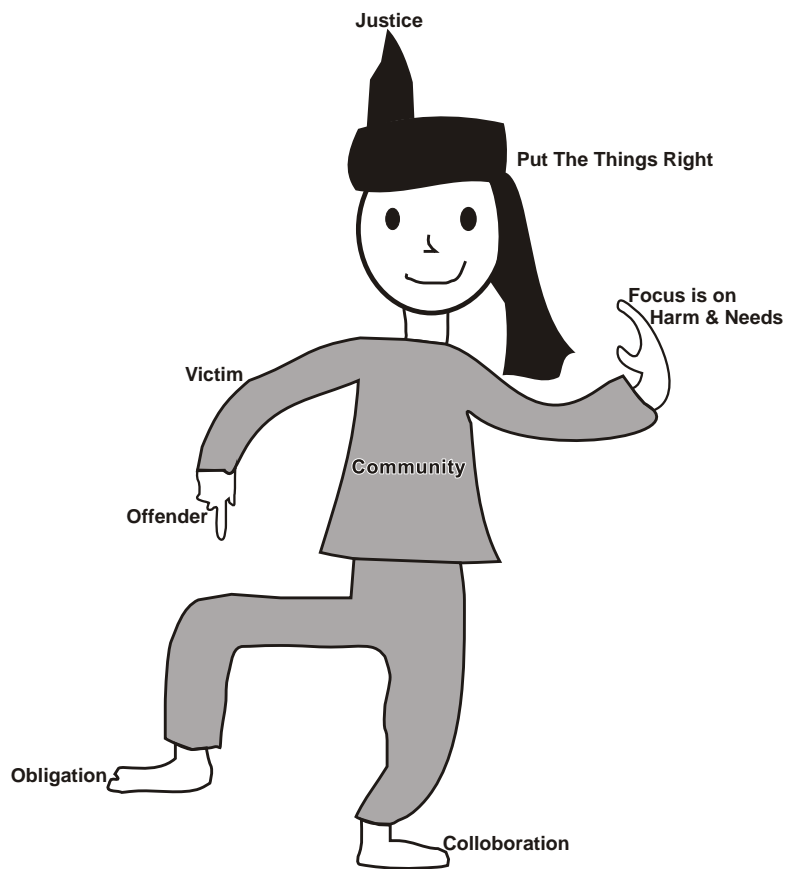


Diagram by: Asma Ali

Restorative Principals

Values

The principles of restorative justice reflect a number of underlying *values*. Too often these values are unstated and taken for granted. However, to apply restorative justice principles in a way that is true to its spirit and intent, we must be explicit about these values. Otherwise, for example, it might be possible to use a restoratively-based process to arrive at non-restorative outcomes.

The principles of restorative justice - the hub and spokes - must be surrounded by a rim of values in order to function.

The principles that make up the restorative justice flower must be rooted in values in order to flourish.

The principle of restorative justice is the principle of human honor. The change begins internally with the offender accepting the obligation and working together with the victim and the community to make things right. This creates a collaborative environment and brings honor to the victim, the community and also to the offender. Generally people then feel that justice has been done. The value of honor is a central one here.

During the return march from the victories of Makkah and Hunayun, the Prophet ﷺ (May peace of Allah be upon him) said to some of his companions, "We have returned from the lesser holy war to the greater holy war." And when one of them asked, "What is the greater holy war," the Prophet replied, "It is the war against the soul (Nafs)."

*When I turned back from the outer battle
I set my face toward the inner battle
we have returned from the lesser Jihad
we are with the prophet in the greater Jihad*

(Jalal ud-din Rumi, Mathnavi-e-Ma'annavi 1:1386-7)

According to the Quran, every human soul has three inclinations. One is the inclination towards doing wrong, evil,

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sinful acts, termed Nafs-i-Ammarah (12:53). Another is the inclination toward realization and repentance, i.e. to realize one has done wrong and to repent or reproach oneself for it, termed Nafs-i-Lawwamah (75:2). The third is the inclination towards doing good and righteous deeds, termed Nafs-i-Mutmainnah (89:27). This is also called the "soul at peace" because satisfaction and peace of mind are the natural outcomes of doing good and righteous deeds.

Underlying restorative justice is the vision of *interconnectedness* noted earlier: we are all connected to each other, and to the larger world, through a web of relationships. When this web is disrupted, we are all affected. The primary elements of restorative justice - harm and need, obligation, taking responsibility, participation, reintegration - derive from this vision.

But this value of interconnectedness must be balanced by an appreciation for "*particularity*": although we are connected, we are not the same.⁹ Particularity is about appreciating diversity. It is about respecting the individuality and worth of each person. It is about taking seriously specific contexts and situations. Justice must acknowledge both our interconnections and our individuality. The value of particularity reminds us that context, culture and personality are important.

Much more could and should be said about the values underlying restorative justice. In fact, perhaps one of restorative justice's greatest attributes is the way it encourages us to explore our values together.

Restorative Justice is respect	Ultimately, however, it comes down to one basic value: <i>respect</i> . If I had to put restorative justice into one word, that would be it: respect for all, even those who are different than us, even for
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⁹ I am indebted here to Jaren Sawatsky for his important (yet unpublished) work on the values underlying restorative justice.

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those who seem to be our enemies. Respect reminds of us of our interconnectedness but also our differences. Respect reminds us that we must balance concern for all parties.

If we pursue justice as respect, we will do justice restoratively. If we are aware of the rights of self and others, will respect these rights. We will extend respect, get respect.

If we do not respect others and their rights and needs, we will not do justice restoratively, no matter how earnestly we adopt the principles.

The value respect underlies restorative justice principles and must guide and shape their application.

Defining restorative justice

How, then, should restorative justice be defined? Even though there is general agreement on the basic outlines of restorative justice, those in the field have been unable to come to a consensus on a specific definition. Some of us question the desirability of such a definition; while we recognize the need for principles and benchmarks, we worry about the arrogance and finality of establishing a rigid definition. With these concerns in mind, I will offer this suggestion as working definition:¹⁰

¹⁰ This is an adaption of Tony Marshall's definition: " Restorative Justice is a process whereby all parties with a stake in specific offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."

Definition of restorative justice

Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible.

The goals of restorative justice

In her excellent handbook, *Restorative Justice: a Vision for Healing and Change*, Susan Sharpe has summarized the goals and tasks of restorative justice like this:

- *Restorative justice programs aim to...*
- *put key decisions into the hands of those most affected by crime,*
- *make justice more healing and ideally, more transformative, and*
- *reduce the likelihood of future offenses.*

Achieving these goals requires that...

- *victims are involved in the process and come out of it satisfied,*
- *offenders understand how their actions have affected other people, and take responsibility for these actions,*
- *outcomes help to repair the harms done and address the reasons for the offense (specific plans are tailored to the victim's and the offender's needs), and*

- *victim and offender both gain a sense of “closure,”¹¹ and both are reintegrated into the community.*

Guiding questions of restorative justice

Ultimately restorative justice boils down to a “new” set of questions we need to ask when a wrong occurs. These guiding questions are in fact the essence of restorative justice.

Guiding questions of restorative justice¹²

1. *Who has been hurt?*
2. *What are their needs?*
3. *Whose obligations are these?*
4. *Why has this happened?*
5. *Who has a stake in this situation?*
6. *What is the appropriate process to involve stakeholders in an effort to put things right and prevent its recurrence?*

¹¹ The word “closure” is often offensive to victims, especially of severe crime. It seems to suggest that all can be put behind, the book closed, and that is not possible. However, the word does capture a sense of being able to move forward that restorative justice aims to make possible.

¹² To editor: some suggest that we should print these as a bookmark or pull-out insert to go with the book or maybe on the back cover.

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If we think of restorative justice as a particular program or set of programs, we soon find that applications are limited. For example, the forms of victim-offender conferencing being used for “ordinary crimes” may have little direct application in cases of mass, societal violence. Without careful safeguards these models of practice may be downright dangerous if applied to situations like domestic violence.

As a set of guiding questions, however, restorative justice is applicable to a wide range of situations. The Guiding Questions of Restorative Justice can help us to reframe issues, to think “outside the box” that legal justice has created for society.

To give just one example, these guiding questions are causing some defense attorneys in the US to rethink their roles and obligations in death penalty cases. “Defense-based victim outreach” is emerging as an effort to incorporate survivor's needs and concerns in the trial and outcome by giving them access to the defense as well as the prosecution. This approach also seeks to encourage defendants to take appropriate responsibility in these cases. A number of plea agreements have been reached that were based on victims' needs and allowed offenders to accept responsibility.

For another example, victim advocates are deeply concerned about the dangers of victim-offender encounters in situations of domestic violence. These concerns are legitimate: there are profound dangers in an encounter where the pattern of violence continues or when cases are not being carefully monitored by people trained in domestic violence. Some would argue that encounters are never appropriate. Others, including some victims of domestic violence, argue that encounters are important and powerful in the right situations and with appropriate safeguards. But whether or not encounters are appropriate in domestic violence, the “guiding questions” of restorative justice can help us sort out what needs to be done without getting stuck in and limited to - the question, “What does the offender deserve?” When faced with a new situation or application, I often turn to these questions as a guide.

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The Guiding Questions of Restorative Justice, in fact, might be viewed as restorative justice “in a nutshell.”

Restorative justice has high acceptance in high context situations where victims and their families forgive offenders if he or she admits guilt and takes responsibility. Enmity and revenge that has gone on for generations can be ended in days, leading to forgiveness and forgetting. In the famous Pustho song, “The verbal wrong needs verbal repair.”

Restorative justice signposts

As we begin to think of practical applications of the restorative justice, another guide is provided by the following ten principles or “signposts.” These principles can be of use in designing or evaluating programs. Like the Guiding Questions, they may be useful in crafting responses to specific cases or situations.

Restorative justice signposts

You are doing justice restoratively when you ...

1. Focus on the harms of crime rather than the rules that have been broken,
2. Show equal concern and commitment to victims, offenders, and their families, involving all in the process of justice,
3. Work toward the restoration of victims and families, empowering them and responding to their needs as they see them,

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4. Support offenders while encouraging them to understand the harm they have done, accept and carry out their obligations,
5. Recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable,
6. Provide opportunities for dialogue, direct or indirect, between victim and offender as appropriate,
7. Find meaningful ways to involve the community and to respond to the community bases of crime,
8. Encourage collaboration and reintegration rather than coercion and isolation,
9. Give attention to the unintended consequences of your actions and programs, and
10. Show respect to all parties - victims, offenders, family and community members, justice colleagues.

Harry Mika & Howard Zehr, 1997¹³

¹³ These were originally published as bookmark, available from Mennonite Central Committee, Box 500, Akron, PA 17501. Adapted here to reflect the importance of families.

Restorative Practices

The concept or philosophy of restorative justice emerged during the 1970s and 80s in the United States and Canada in conjunction with a form of practice that was then called the Victim Offender Reconciliation Program (VORP). Since then that approach has been modified and renamed, new forms of practice have appeared, and older programs have sometimes been reshaped or at least renamed as restorative. The following is an attempt to sketch the outlines of the main approaches or practices that have emerged so far within the western criminal justice field.

Be aware, however, that these applications in the criminal justice arena are by no means the whole picture. Schools have become an important arena for restorative practices. While there are some similarities to restorative justice programs for criminal cases, the approaches used in an educational setting must necessarily be shaped to fit that context. Restorative approaches are also being adapted to the workplace and to larger community issues and processes. Again, there are similarities to the models outlined below but also important differences. And while the discussion is still often more theoretical than practical, restorative justice has become part of the dialogue about how to do justice after large-scale, societal conflicts and wrongdoing.

For those who come from societies closer in time and culture to “traditional” ways in Africa and Asia, for example, or in North American indigenous communities restorative justice often serves as a catalyst to re-evaluate, resurrect, legitimate and adapt older, customary approaches. During colonization, the western legal model

often condemned and repressed traditional forms of justice that, although not perfect, were highly functional for these societies. Restorative justice can provide a conceptual framework to affirm and legitimate what was good about those traditions and, in some cases, develop adapted models that can operate within the realities of the modern legal system. In fact, two of the most important forms of restorative justice—family group conferences and peacemaking circles—are adaptations (but not replications) of these traditional ways.

Restorative justice is also providing a concrete way to think about justice within the theory and practice of conflict transformation and peace building. Most conflicts revolve around, or at least involve, a sense of injustice. Although the field of conflict resolution or conflict transformation has acknowledged this somewhat, the concept and practice of justice in this field has been fairly vague. The principles of restorative justice can provide a concrete framework for addressing justice issues within a conflict.

For example, after taking a restorative justice course in the Conflict Transformation Program at Eastern Mennonite University, several African practitioners returned to Ghana to continue working with a protracted conflict there. Drawing upon the restorative justice framework, they were able for the first time to address the justice issues in the conflict using the traditional community justice process. As a result, the peacemaking process came unstuck and began to move forward.

The restorative justice field is becoming too diverse to capture in any simple classification. The following, however, is an attempt to provide a brief overview of some emerging practices within the *western criminal justice* arena.

Core approaches often involve an encounter

Three distinct models have tended to dominate the practice of restorative justice: victim offender conferences, family group conferences, and circle approaches. Increasingly, however, these models are being blended; family group conferences may utilize a circle and new forms with elements of each are being developed for certain circumstances. In some cases, several models may be used in a single case or situation. A victim offender encounter may be held prior to and in preparation for a sentencing circle, for example.

All of these models have important elements in common, however. Because of their similarities, they are sometimes grouped together as different forms of *restorative conferences*.

Each of these models involves an encounter between key stakeholders – victim and offender at minimum, and perhaps other community and justice people as well. Sometimes, if an encounter between a “matched” victim and offender is impossible or inappropriate, representatives or surrogates may be used. Sometimes letters or videos are used in preparation for or in place of a direct meeting. In some circumstances, “shuttle diplomacy” may take the place of a direct meeting. All of these models, however, involve some form of encounter with a preference for face-to-face meetings.

These encounters are led by facilitators who oversee and guide the process, balancing concern for all the parties involved. Unlike arbitrators, conference or circle facilitators do not impose settlements. Each model allows an opportunity for participants to explore facts, feelings and resolutions. They are encouraged to tell their stories, to ask questions, to express their feelings and to work toward mutually-acceptable outcomes.

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Ron Claassen, a long-time restorative justice practitioner, puts it like this. For resolution of any type of wrongdoing, three things have to happen:

- The wrong or injustice must be acknowledged.
- The “equity” needs to be restored.
- Future intentions need to be addressed.

An encounter provides an opportunity for the wrongdoing to be articulated by victims and acknowledged by offenders. Outcomes such as restitution or apology help to even the score, i.e. restore the equity. Questions about the future Will the offender do this again? How do we live together in the same community? How do we move ahead with life? often must be discussed. All of the restorative conferencing models provide for such questions to be addressed through a facilitated encounter.

In each of these models, victim participation must be entirely voluntary. In each, a prerequisite is that the offender acknowledge, at least to some extent, his or her responsibility; conferences are not normally held if the offender denies guilt or responsibility. Efforts are made to maximize the offender's voluntariness as well certainly conferences should not be held if the offender is unwilling. However, it is only realistic that there is often some pressure on the offender, e.g. to choose between “lesser evils.” Interviews with offenders suggest that it is difficult and frightening to face the one they have harmed. Indeed, most of us would try to avoid our obligations if we could!

In traditional societies, the community plays a key role in establishing and carrying out the obligation.

With the exception of the New Zealand Family Group Conferences, described below, these models are usually used on a discretionary, referral basis. For lesser offenses, it is possible for referrals to come from the community, e.g. a school or religious institution. Some referrals may come from the parties themselves. Most referrals, however, come from within the justice system with the exact referral point varying with the case and the community. Cases may be referred by the police, by the prosecutor, by probation, by the court, even by prisons. In the case of a court referral, it may be after adjudication but before sentencing; the judge then takes the outcome of the conference into account in the sentence. However, in some cases or jurisdictions the judge orders restitution and asks that the amount be established through a restorative conference. The agreement then becomes part of the sentence and/or the probation order. Current programs for victim-offender encounters in cases of severe violence are often outside the formal justice system and designed to be initiated by the parties themselves, most commonly by victims.

Models differ on the “who” and “how”

While similar in basic outline, then, the models differ on the number and category of participants and in some cases, the style of facilitation.

Victim Offender Conferences

Victim offender conferences (VOC) involve primarily victims and offenders. Upon referral victims and offenders are worked with individually. Then, upon their agreement to proceed, they are brought together in a meeting or conference. The meeting is put together and facilitated by a trained facilitator who guides the process in a balanced manner.

Family Group Conferences

Family group conferences (FGC) enlarge the circle of primary participants to include family members or other individuals significant to the parties. Because this model has tended to focus on supporting offenders in taking responsibility and changing their behavior, the offender's family and/or other relevant people from the community are especially important. However, the victim's family is invited as well. In some circumstances and especially when the FGC is empowered to affect the legal outcome of the case a justice person such as police officer may be present.

Two basic forms of family group conferences have gained prominence. One model that has gained considerable attention in North America was initially developed by police in Australia based in part on ideas from New Zealand. Often this approach has used a standardized, "scripted," model of facilitation. Facilitators may be authority figures such as specially trained police officers. This tradition or approach has given special attention to the dynamics of shame and actively works to use shame in a positive way.

The older model of FGCs and the one with which I am more familiar originated in New Zealand and today provides the norm for juvenile justice in that country. Because this model is less well-known than VOCs or Circles, at least in the United States, I will describe it a bit more thoroughly than the others.

Responding to a crisis in the welfare and justice system for juveniles, and criticized by the indigenous Maori population for utilizing an imposed, alien colonial system, New Zealand revolutionized its system in 1989. While the court system remains as a backup, the standard response to most serious juvenile crime in New Zealand today is an FGC.¹⁴ Consequently, Family Group Conferences can be seen as both a system of justice and as a mode of encounter in New Zealand.

¹⁴ The youth justice system in New Zealand is designed to divert offenders in less serious cases out of the system; this is sometimes done in conjunction with an informal victim offender conference

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Conferences are put together and facilitated by paid social services personnel called Youth Justice Coordinators. It is their job to help the families determine who should be present and to design the process that will be appropriate for them. One of the goals of the process is to be culturally appropriate, and the form of the conference is supposed to be adapted to the needs and cultures of the victims and families involved. This is not a scripted model of facilitation while there is often a common overall progression in the conference, it is to be adapted to the needs of the parties. An element common to most conferences, however, is a family caucus somewhere during the conference. Here the offender and family retire to another room to discuss what has happened and to develop a proposal to bring back to the victim and the rest of the conference.

Like the mediator in a VOC, the coordinator of a FGC must seek to be impartial, balancing the concerns and interests of both sides. However, he or she is charged with making sure a plan is developed that addresses causes as well as reparation, holds the offender adequately accountable and is realistic.

While the community is not explicitly included, these conferences are more inclusive than VOCs. Family members of the offender are an essential part and play very important roles indeed this is seen as a family empowerment model. Victims may bring family members or victim advocates. There may be a special attorney or youth advocate present and other caregivers may be there. In addition, since the police play the role of prosecution in New Zealand, they must be represented.

Family group conferences, New Zealand style, are not designed simply to allow for the expression of facts and feelings and to develop restitution agreements. Because they normally take the place of court, they are charged with developing the entire plan for the offender that, in addition to reparations, includes elements of prevention and sometimes punishment. Even the actual charges may be negotiated in this meeting. Interestingly, the plan is intended to be the consensus of everyone in the conference victim, offender, police can all block an outcome if they are unsatisfied.

Family Group Conferences, then, enlarge the circle of participants to include family members or other significant people and perhaps justice officials as well. At least in the New Zealand form, they may involve a family caucus as part of the conference and the facilitator may have an enlarged role and perhaps less “neutral” role compared to the VOC facilitator. FGCs sometimes called community or accountability conferences - are being widely experimented with and adapted in a number of countries.

Circles

Circle approaches emerged initially from First Nation Communities (Red Indian) in Canada. Judge Barry Stuart, in whose court a circle was first acknowledged in a legal ruling, has chosen the term Peacemaking Circles to describe this form. Today circles are being used for many purposes. In addition to sentencing circles intended to determine sentences in criminal cases, there are “healing circles” (sometimes used as preparation for sentencing circles), circles to deal with workplace conflicts, even circles designed as forms of community dialogue.

Circle processes arrange participants in a circle, passing a “talking piece” around the circle to assure that people speak one at a time, in order of their seating in the circle. A set of values or even a philosophy is often articulated as part of the process values that emphasize respect, the value of each participant, integrity, the importance of speaking “from the heart,” etc. One or two “circle keepers” serve as facilitators of the circle. In indigenous communities, elders play an important role in leading the circle or offering advice and insight.

Circles consciously enlarge the circle of participants. Victims, offenders, family members, sometimes justice officials are included, but community members are essential participants as well. Sometimes these community members are invited because of their connection to or interest in the specific offense or the victim and/or offender; sometimes they are an ongoing circle of volunteers from the community.

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Because the community is involved, discussions within the circle are often more wide-ranging than in the other forms. They may address situations in the community that are giving rise to the offense, the support needs of victims and offenders, the obligations that the community might have, community norms or other related community issues.

Although circles initially emerged from small, homogeneous communities, they are today being used in a variety of communities, including large urban areas, and for a variety of situations besides criminal cases.

This is not the place to discuss the many forms or the relative merits of each model. What is important here is that all of the above are forms of encounter. They can be differentiated, however, by the numbers and categories of stakeholders who are included and by somewhat different styles of facilitation. Again, these forms are increasingly being blended so that differences may be becoming less significant.

It is also important to note that not all restorative approaches involve a direct encounter, and not all needs can be met through an encounter. While victims have some needs that involve the offender, they also have needs that do not. Similarly, offenders have needs and obligations that have nothing to do with the victim. Thus the following typology includes both encounter and non-encounter programs.

Models differ on their goals

Another way to understand the differences between approaches is to examine their goals. These might be placed into three categories:

Alternative or diversionary programs

These programs usually aim to divert cases from, or provide an alternative to, some part of the criminal justice process or sentence. Prosecutors may make a referral, deferring prosecution and ultimately dropping it if the case is satisfactorily settled. A judge may refer a case to a restorative conference to sort out elements of the sentence such as restitution. In some circle processes, the prosecutor and judge may join the community in a circle designed to develop a sentence tailored to the needs of the victim, offender and community. In Batavia, New York, a long-standing restorative justice program works first with victims of severe crime, then with offenders to develop alternative pleas, sentences and even sometimes bail agreements. In New Zealand, of course, conferences are the norm and courts are the alternative.

Healing or therapeutic programs

Increasingly programs are being developed to provide restorative approaches such as conferences in the most severe kinds of crimes violent assault, even rape and murder. Often the offender in these situations is in prison. In most such encounter programs, involvement is not designed to impact the outcome of the case. Often, in fact, offenders explicitly agree not to use participation in this process as part of a parole or clemency appeal. With appropriate preparation and structure, such encounters have been found to be powerful, positive experiences for victims, offenders and their families, regardless of who initiates them.

Not all programs in this category involve direct encounters between “matched” victims and offenders. Some of these may be seen as a form of victim-oriented offender rehabilitation; as part of the treatment process, offenders are encouraged to understand and take responsibility for what they have done. Victim-impact panels, where groups of victims are given an opportunity to tell their stories to offenders, may be part of this process. Other programs offer multiple-session, in-prison seminars that bring victims, offenders and sometimes community members together to explore a variety of topics and issues, for the benefit of both.

Transitional programs

A relatively new arena for restorative programs has developed around offender transitions after prison. Either in half-way houses or in prisons, programs are being designed around victim harm and offender accountability in order to help both victims and offenders as the offender returns to the community.

One of the most interesting models is the Circles of Support and Accountability (CSA) developed in Canada to work with released sex offenders. In much of the U.S. and Canada, sex offenders who serve out their sentences are released into communities with little support for the offender and with great fear by the community and by victims. These offenders (hopefully, ex-offenders) are often ostracized by the communities that know them best so they move on to another community. Given this, their rates of recidivism can be high. Circles of Support and Accountability gather a circle of people ex-offenders, community members, even victims of similar offenses to not only support these offenders but to hold them accountable. Initially the interaction is intense with daily check-ins, strict guidelines for what the person can do and where he can go. Working with him to take responsibility for his behavior while putting necessary support in place, they have been successful in reintegrating ex-offenders while allaying community fears.

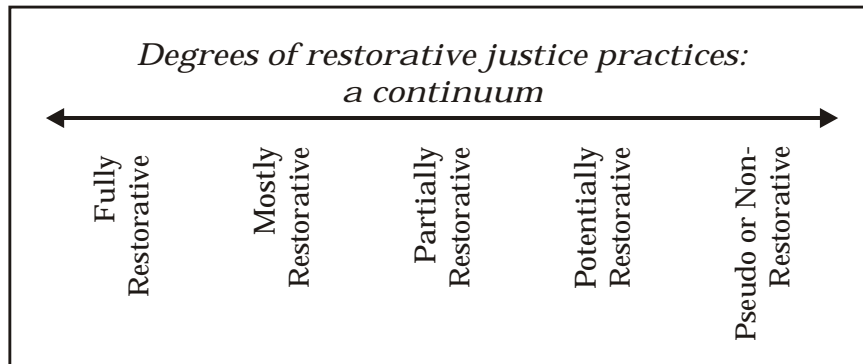
A restorative continuum

Most of the encounter models above would be considered fully restorative: they meet all of the criteria laid out in the guidelines for restorative justice that I outlined earlier. But what about other approaches that claim to be restorative? Are there other options within the restorative framework?

¹⁵ See Paul McCold, "Towards a Holistic Vision of Restorative Juvenile Justice : A Reply to the Maximalist Model." in *Contemporary Justice Review*, 2000, Vol. 3(4), pp. 357 - 414, for a discussion of definitional issues and restorative justice criteria. McCold's view is based on the Marshall definition cited earlier.

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It is important to view restorative justice models along a continuum from fully restorative to not restorative, and with several points or categories in between.



Key questions include:

- *Does it address harms, needs and causes?*
- *Is it adequately victim-oriented?*
- *Are offenders encouraged to take responsibility?*
- *Are all relevant stakeholders involved?*
- *Is there an opportunity for dialogue & participatory decision-making?*
- *Does it address causes?*
- *Is it respectful to all parties?*

While conferencing or encounter programs may be fully restorative, to only offer such approaches would not be very restorative. What about victims in cases where offenders are not apprehended or offenders are unwilling to take responsibility? In a restorative system, services would start immediately after a crime to address victim needs and involve them, regardless of whether an

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offender is apprehended. Thus victim assistance, while it cannot be seen as fully restorative, is an important component of a restorative system and should be seen as at least partially restorative. Victim impact panels, without matching victims and offenders in a specific case, allow victims to tell their stories and encourage offenders to understand what they have done. These are an important part of a restorative approach and can be seen as partly or mostly restorative.

Similarly, what happens when an offender is willing to take steps to understand and to take responsibility, but the victim is unavailable or unwilling? A few such programs have been developed (e.g., offering opportunities to learn from victims and to do symbolic acts of restitution) but more should be available. While perhaps not fully restorative, these programs would play an essential role in the overall system of justice.

Offender treatment or “rehabilitation” programs provide an interesting case for the continuum above. Offender treatment can be seen as part of prevention and offender reintegration, thus have some kinship with restorative justice. However, as conventionally practiced, many treatment or rehabilitation have little that is explicitly restorative. They could, however, and some do, by organizing treatment around understanding and taking responsibility for the harm and, as much as possible, giving attention to victim needs. Depending on how it is done, offender treatment may fall into the potentially, partly or mostly categories. Similarly, offender advocacy, prisoner re-entry programs or religious teaching in prison are in themselves not restorative; however, they may play an important role in a restorative system, especially if reshaped to include a restorative framework.

In my view, community service falls into the “potentially restorative” category. As currently practiced, community service is probably best seen as an alternative form of punishment, not restorative justice. In New Zealand, however, community service often is part of the outcome of a family group conference. All in the group have participated in developing the plan, the work is connected to the offense as much as possible, and within the plan are specifics

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about how in the community and family will support and monitor the agreement. Here it has potential for being seen as repayment to or a contribution to the community, mutually agreed upon by all participants. With this kind of re-framing, community service may have an important place in a restorative approach.

Then there is the category of “pseudo” or “non-restorative.” With the popularity of the term, many things are being termed restorative that are not. Some of these might be rescued. Others cannot. The death penalty, which causes additional and irreparable harm, is one of the later.

4 *Is it either/or?*

In my earlier writings, I often drew a sharp contrast between the “retributive” framework of the legal or criminal justice system and a more restorative approach to justice. More recently, however, I have come to believe that this polarization may be somewhat misleading. Although charts that highlight contrasting characteristics illuminate some important elements of the two approaches, they also mislead and hide important similarities and areas of collaboration.

Retributive justice vs. Restorative Justice?

For example, philosopher of law Conrad Brunk has argued that on the theoretical or philosophic level, retribution and restoration are not the polar opposites that we often assume.¹⁶ In fact, they have much in common. A primary goal of both retributive theory and restorative theory is to vindicate through reciprocity, by “evening the score.” Where they differ is in what effectively will right the balance.

Both retributive and restorative theories of justice acknowledge a basic moral intuition that a balance has been thrown off by the

¹⁶ “Restorative Justice and the Philosophical Theories of Criminal Punishment” in the *Spiritual Roots of Restorative Justice*, Michael L. Hadley, editor. (Albany, NY: State University of New York Press, 2001 pp. 31 - 56.

wrongdoing. Consequently, the victim deserves something and the offender owes something. Both approaches argue that there must be a proportional relationship between the act and the response. They differ, however, on the currency that will fulfill the obligations and right the balance.

Retributive theory believes that pain will vindicate, but in practice that is often counterproductive for both victim and offender. Restorative justice theory, on the other hand, argues that what truly vindicates is acknowledgment of victims' harms and needs combined with an active effort to encourage offenders to take responsibility, make right the wrongs and address the causes of their behavior. By addressing this need for vindication in a positive way, restorative justice has the potential to affirm both victim and offender and help them transform their lives.

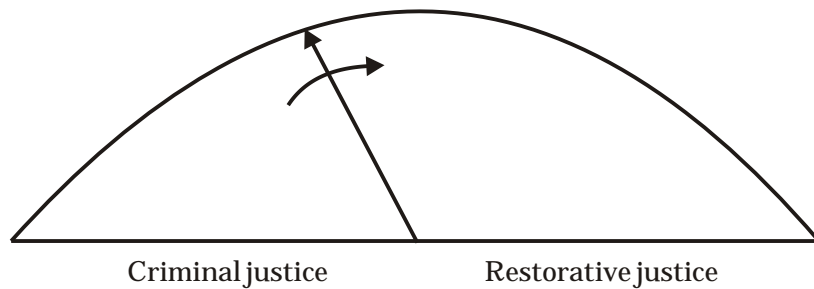
Criminal Justice vs. Restorative Justice?

Restorative justice advocates may dream of a day when justice is fully restorative but whether this is realistic is debatable, at least in the immediate future. More attainable, perhaps, is a time when restorative justice is the norm while some form of the legal or criminal justice system provides the backup or alternative. Attainable, perhaps, is the time when all our approaches to justice are restoratively-oriented.

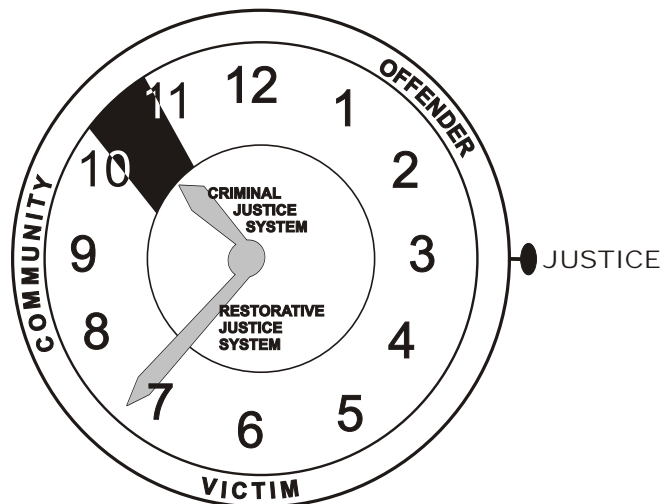
Society must have a system to sort out the "truth" as best it can when people are denying responsibility. Some cases are simply too difficult or horrendous to be worked out by those with a direct stake in the offense. We must have a process that gives attention to societal needs and obligations that go beyond those of the immediate stakeholders. We also must not lose those qualities that the legal system at its best represents: the rule of law, due process, a deep regard for human rights, the orderly development of law.

Is it either/or

Real world justice might best be viewed as a continuum. On the one end is the western legal system model. Its strengths - such as the encouragement of human rights - are substantial. Yet it has some glaring weaknesses. At the other end is the restorative alternative. It too has important strengths. It too has limits, at least as currently conceived and practiced.



A realistic goal, perhaps, is to move as far as we can toward a process that is restorative. In some cases or situations, we may not be able to move very far. In others, we may achieve processes and outcomes that are truly restorative. In between will be many cases and situations where both systems must be utilized and justice is only partly restorative.



Meanwhile, we can dream of a day when this particular continuum is no longer relevant because both ends of the continuum rest on a restorative foundation.

Restorative justice is a river

Some years ago, while living in Pennsylvania, my wife and I set out to find the source of the Susquehanna River that flows through that state. We followed one of its two branches until, when the stream was but a tiny trickle, we ourselves found behind a farmer's barn where a rusty pipe stuck out of the hill. Fed by a spring, the water fell from the pipe into a bathtub that served as a watering trough for cattle. It spilled over the bathtub, spread out along the ground, then formed the stream that eventually became this mighty river.

It is, of course, debatable whether this particular spring is *the* source there are others in the vicinity that could compete for that honor. And at any rate, this stream would not be a river if not fed by hundreds of other streams. Nevertheless, this river and this spring has become my personal metaphor for the restorative justice movement.

The contemporary field of restorative justice started as a tiny trickle in the 1970s, an effort by a handful of people dreaming of doing justice differently. It originated in practice and in experimentation rather than in abstractions; the theory, the concept, came later. But while the immediate sources of the modern restorative justice "stream" are recent, both concept and practice drew upon traditions as deep as human history and as wide as the world community.

For some time the restorative justice stream was driven underground by our modern legal systems. In the last quarter century, however, that stream has resurfaced, growing into a widening river; restorative justice today is acknowledged worldwide by governments and communities concerned about crime. Thousands of people worldwide bring their experience and expertise

to this river. This river - like all rivers - exists because it is being fed by numerous tributaries flowing in from around the world.

Some of the feeder streams are practical programs such as those being implemented in many countries throughout the world. The river is also being fed by a variety of indigenous traditions and current adaptations which draw upon those traditions: Family Group Conferences adapted from Maori traditions in New Zealand, for example, sentencing circles from aboriginal communities in the Canadian north, Navajo Peacemaking Courts, African customary law, *punchyat* in Indo-Pakistani culture or *jirgah* in Pakistani-Afghan culture. The field of mediation and conflict resolution feeds into that river as do the victims rights movements and alternatives to prison movements of the past decades. A variety of religious traditions flow into this river.

While the experiments, practices and customs from many communities and cultures are instructive, none can or should be copied and simply “plugged into” communities or societies. Rather, they are examples of how different communities and societies have found their own appropriate ways to find justice as a response to wrongdoing. Their approaches may give us some fresh ideas with which to start. While these examples and traditions may not provide blueprints, they may serve as catalysts for ideas and directions.

This context-oriented approach to justice is a reminder that true justice emerges from dialogue and takes into account local needs and traditions. This is one of the reasons why we must be very cautious about “top down” strategies for implementing restorative justice.

The argument presented here is quite simple: justice will not be served if we maintain our exclusive focus on the questions that drive our current justice systems: What laws have been broken? Who “done” it? What do they deserve?

Real justice requires, instead, that we ask questions such as these: Why has this happened? Who has been hurt? What do they need? Whose obligations and responsibilities are these? Who has a

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stake in this situation? What is the process that can involve the stakeholders in finding a solution that repairs harm and prevents.

Real justice requires, instead, that we ask questions such as these: Why has this happened? Who has been hurt? What do they need? Whose obligations and responsibilities are these? Who has a stake in this situation? What is the process that can involve the stakeholders in finding a solution that repairs harm and prevents recurrence? Restorative justice requires us to change not just our lenses but our questions.

Above all, restorative justice is an invitation to join in a dialogue so that we may support and learn from each other. It is a reminder that all of us are indeed interconnected.

Conflict Transformation & Restorative Justice

A Comparison of Two Fields

Lisa Schirch, Howard Zehr & Ali Gohar, October 2003

<i>Muslim Approach to Justice & Peace</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
<p>Where did these fields come from?</p> <div style="border: 1px solid black; padding: 5px;"> <p><i>The real Shoora (decision of state governance) practice came in the holy prophet (pbuh) time with his four caliph, when they decide the issues of the state on consensus basis, then Ijmaih and Ijtihad were followed by the religious scholars till date. Traditionally speaking Sulha in Middle East, PUNCHAYAT in sub-continent, and JIRGAH in the PUKHTOON (Afghan)</i></p> </div>	<p>Began gaining momentum as a field of study and practice in early 1980s, building on the previous work of indigenous peace processes, religious teachings about conflict and violence, peace movements, peace researchers, and community activists starting mediation centers.</p> <p>Built upon but expanded the conflict resolution field, a “mid-range theory,” by placing conflict in a larger context, both chronologically and social/economic/politically.</p>	<p>Began as a field of practice in the 1970s and a theory in the 1980s. Initially built upon the fields of conflict resolution, offender restitution, and alternatives to prison, victim services and Christian theology. However, it has much deeper roots in indigenous practices, various religious traditions, feminist theory, etc. - Originated in criminal justice but was quickly applied to other arenas such as schools, churches and the workplace.</p>

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<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
<i>community, where the conflict transformation/governance and socioeconomic system, is in practice from thousand years before. Still its history is not known.</i>	<i>Jirgah decision is based on the Quranic teaching, as it mentioned, "O, believer's seek help and guidance from God with patience and prayer", the servant of God, non-violent direct action was very active against the social evils/practices & struggle for independence in early 1930-40's. Theoretically it started in early 30's strategically and practically in mid 30 and 40's.</i>	<p>Developed as a "mid-range theory" although various critical perspectives (e.g. "transformative justice") are pushing it to expand its framework of application and analysis.</p>
		<p><i>In the tribal set up Jirgah was and is full-fledged governing body of respectable elders, religious leaders for running, day today affairs, and resolution of all sort of conflicts. Its membership is restricted to respectable elders with sound character & reputation, and familiarity with the tradition and religious values.</i></p>

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<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
<p>What are the assumptions about the human nature made by many in this field?</p> <p><i>Apart from other religion Islam is based on justice and peace, real justice will atomically leads to sustainable peace. As Hazarat Umer the second caliph after the holy prophet famous saying is, if a dog died of hunger between Dajla & Firat rivers (two rivers in Iraq while he was ruling from Makkah (Saudi-Arabia) he claims himself responsible for it.</i></p>	<p>People engage in conflict when they perceive that their material, social, and cultural human needs are threatened or violated.</p> <p>Humans can switch from a paradigm where “I meet my needs at the expense of others” to a framework that links each person's human needs to the needs of others.</p> <p><i>Words and weapon made the conflict possible. Unfamiliarity of one own right and not respecting others made the conflict worse. Due to I and you identity, opposite to western, we Vs them identity, in Pak-Afghan culture made the people also engage</i></p>	<ul style="list-style-type: none">• All people seek and deserve respect• Most people are capable of and respond to empathy• When properly guided, supported and safeguarded, people and communities are capable of finding solutions to their problems.• Shame is a basic emotion that can be used for good or ill but cannot be ignored.• An offense is often a symptom of a larger problem and dysfunction.

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
	<p><i>in conflict, you are because of me. I am (ego) superior, you have no value. Further made the conflict more destructive.</i></p>	<p><i>Shame & guilt in traditional culture is for victims until and unless not equalized by taking revenge, while in the west shame is for the offender. In the individualistic societies living people less care about others. While in communal life people live for others, what other will say/think about me, is the main cause of prolong enmities. As one of the wise man Pustho quotation is even our marriages is not between the two individual but between two families. Because of the family, true interaction with each other on the basis of relationship takes place.</i></p>

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<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
<p>What are the basic values that are shared by many in this field?</p>	<ul style="list-style-type: none"> • Belief in the interconnectedness of all • Empowerment of self and other • Recognition and respect for the needs of the “other” • Creating processes to ensure everyone's basic human needs are met. (e.g. structural justice) 	<ul style="list-style-type: none"> • Belief in the interconnectedness (shalom) of all but also the uniqueness of each • Empowerment of self and others • Importance of respect and a care-response • Centrality of needs and responsibilities
	<div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;"><i>Fear of Allah, love with humanity & all living creatures, to make self-life hard and tough to ease other lives are three things most important for a Muslim to live according to the teaching of Islam.</i></p> </div>	<div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;"><i>O mankind! We (Allah) created you from a single (pair) of a male and female, and made you into nations and tribes, that you may know each other (not that ye may despise each other) verily the most honoured of you in the sight of Allah is (he who is)</i></p> </div>

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
	<p>1) <i>S a b r</i> (patience) when a Muslim face misfortune bad time, not to curse God/fate, or others, rather to be accountable to himself and look what he did wrong as God is not cruel to his creature that is his/her own acts, made him so.</p> <p>2) <i>Shukkar</i> thankful to God in good time and praise to him for his kindness, not giving credit to himself for the good and bad refers to luck.</p> <p>3) <i>I j i a z</i> (h u m i l i t y o f lowliness) it is given to the human being, to adopt humility to God first and then to his creatures. Always consider other above than self</p>	<p><i>the most righteous of you, Al Quran (49; 13) those who, if we establish them in the land, establish regular prayer and give regular charity, enjoin the right and forbid wrong. Quran (22:41). Jirgah punish the offender to provide justice to the victim his family and tribe, and prevent other for the same type of crime repetition</i></p>

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
<p>What does their practice look like?</p>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><i>consider other above than self.</i></p> <p><i>Seeds go beneath the soil give birth to nice and beautiful flowers. Human being is created all similar with no distinction of Arab to Ajam, color, and creeds. Casts have no value.</i></p> </div> <ul style="list-style-type: none"> • All stakeholders in a conflict engage in a process that includes information gathering and sharing experiences about the issue in conflict, and developing creative options for addressing the problem. • Processes include 	<ul style="list-style-type: none"> • Core processes often include an encounter between victims, offenders and community members to understand the harm and accompanying obligations and together fashion a response. • A variety of partially restorative practices

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
	<ul style="list-style-type: none">• facilitated meetings, dialogues, mediation, negotiation, or conciliation.• Process occur at all levels: between individuals, in organizations, communities, regions, nations or internationally.• Processes are sometimes based within the structure of the state (court-based mediation and international diplomacy) and other times outside the state structure (community mediation centers, grassroots dialogues, etc)	<p>attempt to address components, e.g. victims' judicial needs, offender accountability, or healing.</p> <ul style="list-style-type: none">• Often, but not always, associated in some way with a formal justice process or system. <div style="border: 1px solid black; padding: 5px;"><p><i>In Jirgah before bringing parties face to face needs a lot of efforts, shuttle diplomacy and taming. Even then victim and offender are not come face to face. Jirgah members takes, waaq (empower the jirgah members to decide on their behalf) keep machalqa (money, or any other type of</i></p></div>

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
	<ul style="list-style-type: none"> • No offenders and victims are identified. Groups work collaboratively towards constructive ways of addressing the conflict under the unstated pretext that there is “shared blame” for the conflict. 	<p><i>assets from both side, for the reason that if any side not accept the decision, machalga will be confiscated by jirgah) and then decide. Allah commands justice, the doing of good, and liberality to kith and kin and he forbids all shameful deeds, and injustice and rebellion.</i></p> <p><i>Al-Quran(16:90)</i></p>
	<p><i>Invite (all) to the way of the lord with wisdom and beautiful preaching: and argue with them in that are best and most gracious. Al-Quran (16:1250) hujra (community center) are the place where the jirgah meeting for any issue took place in pukhtoon culture.</i></p>	

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
What are the fundamental assumptions or principles?	<ul style="list-style-type: none">• Conflict can be a constructive experience of mutual needs satisfaction by increasing the capacity of individuals, groups, and nations to meet needs of self and other.• Creative win-win solution to meeting human needs of all stakeholders is best done in participatory processes where all parties contribute to information gathering and sharing and join in brainstorming possible solutions.• Conflict has material, social,	<ul style="list-style-type: none">• Offenses involve harms.• Harms imply obligations• A justice process should seek to “put right” by addressing harms and causes.• This is best done through a participatory, inclusive, collaborative process involving victims, offenders and relevant community members. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"><p><i>Harm and needs of a single individuals is extended to families and tribes. Pot stirrer, rumors, backbiting make the</i></p></div>

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
	<p>and symbolic dimensions. Each dimension needs to be addressed in the process.</p>	<p><i>situation worse. Control of youngster become big problem for the victim family elders. Jirgah members also try to wait for the cooling down emotions stages/time, and then starts their efforts for settlement.</i></p>
	<p><i>Word conflict has always been taken in negative/ destructive manner in Pak-Afghan set up. Problem is the word for minor conflict, while for major bad / enmity is most commonly used. Women mostly used the word resthenee (to make the position/problem clear) after that relationship or enmities starts. Setting in jirgah, mediation, parties are bound to face, win - win, win lose, give and take, or no lose no win</i></p>	<p>Causes, Harms, needs, obligation and prevention all are taken into consideration and address at the same time.</p>

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
What type of situations do they address?	<div data-bbox="660 636 933 779" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><i>situation, and accept it with open heart and mind.</i></p> </div> <ul style="list-style-type: none"> • All types of conflicts: interpersonal, group, community, international • Conflicts where there is no clear separation between “victims” and “offenders” because more than one individual or group in the conflict perceives themselves to be a victim and more than one individual or group has taken part in offensive behavior. • Conflicts where there is no clear 	<ul style="list-style-type: none"> • Originated to address situations where wrongs had been identified, often by a justice process, and offenders admitted some responsibility; however, also has application where the above are only partially present. • Increasingly, restorative conferences and circles are being used to address problems where there is no individual harm or offender.

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
	<p>outside authority to apply legal frameworks to determining the identities of victims and offenders, particularly in developing countries without sufficient infrastructure or internationally, where the U.N. is not often able to apply international law effectively.</p>	<ul style="list-style-type: none"> • If it true that all conflicts involve perceptions of injustice, the “guiding questions” of restorative justice may have application to many conflicts¹.
	<p style="text-align: center;"><i>In the traditional set up multiple law applies at a time, in Pukhtoon context, traditional law,</i></p>	<p style="text-align: center;"><i>Offender did not accept his mistake neither takes responsibility due to the family or tribe members wanting or shame. If a person openly accept his mistake, he is forgiven whatever the nature of the crime is, criminal justice system also respect their decisions.</i></p>

Guiding questions of restorative justice:

1. Who has been hurt?
2. What are their needs?
3. Whose obligations are they?
4. Who has a stake in this situation or event?
5. What is the appropriate process to involve these "stakeholders" in fashioning a "solution" i.e. in putting things as right as possible (by addressing harms / needs and causes.

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
	<p><i>(rawaj) shiria law (Muslim law) criminal justice system British i n h e r i t e d system/amended after 1947,FCR, PATA, FATA laws all works at a time according to the situation and nature of crime. In the communal justice system the c o m m u n i t y members know victim, offender needs and the causes, decide according to traditional or religious law acceptable to the parties. While criminal justice system is depend on evidence, and arguments with less involvement of the victim or his family.</i></p>	

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
<p>What type of situations do they address?</p>	<ul style="list-style-type: none"> • Disputants, stakeholders, parties in conflict, etc.; i.e. neutral terms needed to encourage shared responsibility <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;"><i>Some of the terms common in our culture are enemies, oppositions etc</i></p> </div>	<ul style="list-style-type: none"> • Victims, offenders; i.e. “labels” often needed initially to make moral statement, create safety for victims, and reflect the terminology of referring justice structures. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;"><i>Vvictims needs are much higher and need immediate attention, but offender is also vicitimised in majority of the cases, to such an extent that he/she commits minor or major crime, jirgah member don't give attention to it in majority cases, but some of the wise elders with in the jirgah avoid bad and inflmearity name for offender.</i></p> </div>

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
<p>What contributions do they make to the other field?</p>	<ul style="list-style-type: none"> • The concept of “shared blame” or mutual responsibility. • A focus on the social/economic/political roots and context of harms and conflicts. • A deep analysis of the causes of conflict as well as the role of time, both past and future. • An expanded range of intervention options 	<ul style="list-style-type: none"> • An appreciation of the fundamental role of justice/injustice in conflict • A specific concept of justice compatible with a peacemaking framework • An understanding of the meaning and importance of accountability • An understanding of the dynamics of shame in conflict and justice.
	<p><i>As compare to western model forgive but not forget, communal conflict decision in traditional set up is on the basis of forgive and forget / reconciliation</i></p>	<p><i>Respect of the traditional and religious system a n d commitmetment of prevntiive measures in future.</i></p>

A Comparison of Two Fields

<i>Religious & Traditional Approach</i>	<i>Conflict Transformation</i>	<i>Restorative Justice</i>
	<p><i>not only the victim but between the families and tribes. Compensation to the victim is made. Even relation is established through intermarriages after development of friendship and reconciliation.</i></p>	<p><i>Bring confidence of the community on their elders. Real transformation of the conflict from enmity to friendship / relationship takes place. Easy, speedy, cheap justice can be achieved at the doorstep in a short time.</i></p>

Appendix

Fundamental Principles of Restorative Justice

Howard Zehr & Harry Mika

- 1.0 Crime is fundamentally a violation of people and interpersonal relationships
 - 1.1 Victims and the community have been harmed and are in need of restoration.
 - 1.1.1 The primary victims are those most directly affected by the offense but others, such as family members of victims and offenders, witnesses and members of the affected community, are also victims.
 - 1.1.2 The relationships affected (and reflected) by crime must be addressed.
 - 1.1.3 Restoration is a continuum of responses to the range of needs and harms experienced by victims, offenders, and the community.

Fundamental Principals of Restorative Justice

1.2 Victims, offenders and the affected communities are the key stakeholders in justice.

1.2.1 A restorative justice process maximizes the input and participation of these parties - but especially primary victims as well as offenders - in the search for restoration, healing, responsibility and prevention.

1.2.2. The roles of these parties will vary according to the nature of the offense as well as the capacities and preferences of the parties.

1.2.3 The state has circumscribed roles, such as investigating facts, facilitating processes and ensuring safety, but the state is not a primary victim.

2.0 Violations create obligations and liabilities

2.1 Offenders' obligations are to make things right as much as possible.

2.1.1 Since the primary obligation is to victims, a restorative justice process empowers victims to effectively participate in defining obligations.

2.1.2 Offenders are provided opportunities and encouragement to understand the harm they have caused to victims and the community and to develop plans for taking appropriate responsibility.

2.1.3 Voluntary participation by offenders is maximized; coercion and exclusion are minimized. However, offenders may be required to accept their obligations if they do not do so voluntarily.

- 2.1.4 Obligations that follow from the harm inflicted by crime should be related to making things right.
- 2.1.5 Obligations may be experienced as difficult, even painful, but are not intended as pain, vengeance or revenge.
- 2.1.6 Obligations to victims such as restitution take priority over other sanctions and obligations to the state such as fines.
- 2.1.7 Offenders have an obligation to be active participants in addressing their own needs.

2.2 The community's obligations are to victims and to offenders and for the general welfare of its members.

- 2.2.1 The community has a responsibility to support and help victims of crime to meet their needs.
- 2.2.2 The community bears a responsibility for the welfare of its members and the social conditions and relationships which promote both crime and community peace.
- 2.2.3 The community has responsibilities to support efforts to integrate offenders into the community, to be actively involved in the definitions of offender obligations and to ensure opportunities for offenders to make amends.

Fundamental Principles of Restorative Justice

3.0 Restorative Justice seeks to heal and put right the wrongs

3.1 The needs of victims for information, validation, vindication, restitution, testimony, safety and support are the starting points of justice.

3.1.1 The safety of victims is an immediate priority.

3.1.2 The justice process provides a framework that promotes the work of recovery and healing that is ultimately the domain of the individual victim.

3.1.3 Victims are empowered by maximizing their input and participation in determining needs and outcomes.

3.1.4 Offenders are involved in repair of the harm insofar as possible.

3.2 The process of justice maximizes opportunities for exchange of information, participation, dialogue and mutual consent between victim and offender.

3.2.1 Face-to-face encounters are appropriate for some instances while alternative forms of exchange are more appropriate in others.

3.2.2 Victims have the principal role in defining and directing the terms and conditions of the exchange.

3.2.3 Mutual agreement takes precedence over imposed outcomes.

3.2.4 Opportunities are provided for remorse, forgiveness and reconciliation.

3.3 Offenders' needs and competencies are addressed.

- 3.3.1 Recognizing that offenders themselves have often been harmed, healing and integration of offenders into the community are emphasized.
- 3.3.2 Offenders are supported and treated respectfully in the justice process.
- 3.3.3 Removal from the community and severe restriction of offenders is limited to the minimum necessary.
- 3.3.4 Justice values personal change above compliant behavior.

3.4 The justice process belongs to the community.

- 3.4.1 Community members are actively involved in doing justice.
- 3.4.2 The justice process draws from community resources and, in turn, contributes to the building and strengthening of community.
- 3.4.3 The justice process attempts to promote changes in the community to both prevent similar harms from happening to others, and to foster early intervention to address the needs of victims and the accountability of offenders.

Fundamental Principles of Restorative Justice

- 3.5 Justice is mindful of the outcomes, intended and unintended, of its responses to crime and victimization.
 - 3.5.1 Justice monitors and encourages follow-through since healing, recovery, accountability and change are maximized when agreements are kept.
 - 3.5.2 Fairness is assured, not by uniformity of outcomes, but through provision of necessary support and opportunities to all parties and avoidance of discrimination based on ethnicity, class and sex.
 - 3.5.3 Outcomes which are predominantly deterrent or incapacitative should be implemented as a last resort, involving the least restrictive intervention while seeking restoration of the parties involved.
 - 3.5.4 Unintended consequences such as the co-optation of restorative processes for coercive or punitive ends, undue offender orientation, or the expansion of social control, are resisted.

Selected Reading

General introductions to restorative justice

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- Wright, Martin. *Justice for Victims and Offenders* (Waterside Press, UK., 2nd ed., 1996).
- Zehr, Howard. *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, US, 1990/95).

For restorative justice website and a more extensive bibliography, see <http://www.restorativejustice.org>.

Related books by this author

Doing Life:
Reflections of Men and Women
Serving Life Sentences
(Good Books, 1996)

Transcending:
Reflections of Crime Victims
(Good Books, 2001)

The authors

Howard Zehr directed the first victim offender conferencing program in the U.S. and is one of the developers of restorative justice as a concept. His book *Changing Lenses: A New Focus for Crime and Justice* is considered a classic in the field. His other publications include *Doing Life: Reflections of Men and Women Serving Life Sentences*, *Transcending: Reflections of Crime Victims* and *The Little Book of Restorative Justice*. Forthcoming in fall, 2003, is *The Little Book of Family Group Conferences, New Zealand Style* (with Allan MacRae).

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