

# **UNDERSTANDING RESTORATIVE JUSTICE AS A CONCEPT OF JUSTICE:**

## **What is Restorative Justice?**

Defining restorative justice can be elusive because it is a philosophical framework or a way of thinking about crime and conflict, rather than a distinct model or system of law. It goes beyond how we think about crime and conflict, to how we think about ourselves collectively as a society, how we respond to crime and how we restore the balance after a crime has been committed.

Following are some other definitions of restorative justice:

Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future.

**Tony Marshall**

In short, restorative justice is a process through which remorseful offenders accept responsibility for their misconduct to those injured and to the community that, in response allows the reintegration of the offender into the community. The emphasis is on restoration: restoration of the offender in terms of his or her self-respect, restoration of the relationship between offender and victims, as well as restoration of both offenders and victims within the community.

**John Haley**

Restorative justice "holds that criminal behavior is primarily a violation of one individual by another. When a crime is committed, it is the victim who is harmed, not the state; instead of the offender owing a 'debt to society' which must be expunged by experiencing some form of state-imposed punishment, the offender owes a specific debt to the victim which can only be repaid by making good the damage caused."

**Zehr, 1990**

Restorative justice provides a very different framework for understanding and responding to crime. Crime is understood as harm to individuals and communities, rather than simply a violation of abstract laws against the state. Those most directly affected by crime -- victims, community members and offenders -- are therefore encouraged to play an active role in the justice process. Rather than the current focus on offender punishment, restoration of the emotional and material losses resulting from crime is far more important.

**Mark Umbreit**

In general, all restorative models focus on holding the offender accountable in a more meaningful way, repairing the harm caused by the offence, reintegrating the offender into the community, achieving a sense of healing for both the victim and the community. Components of restorative justice that may exist in one community may not exist in others. There are however, broad parameters or principles within which almost all restorative justice initiative fit.

**What is the difference between restorative justice and our current justice system?**

Restorative justice, then:

- Is a different way of thinking about crime and our response to crime;
- Focuses on the harm caused by crime: repairing the harm done to victims and reducing future harm by preventing crime;
- Requires offenders to take responsibility for their actions and for the harm they have caused;
- Seeks redress for victims, recompense by offenders and reintegration of both within the community;
- is achieved through a co-operative effort by communities and the government.

The best way of highlighting these principles is by contrasting them with the existing court-driven adversarial system.

### *Adversarial System*

- Crime is defined as a violation of rules, and a harm to the State
- Victim is inhibited from speaking about his/her losses and needs
- Offender, victim and Community remain passive and have little responsibility for resolution
- Community's role is limited
- Restitution is rare
- Controlled and operated by the state and professionals who seem remote
- Offender is blamed, stigmatized and punished

### *Restorative Justice*

- Crime is seen as a harm to the victim and communities
- Victim is central to the process of defining the harm and how it might be repaired
- Offender, victim and community are active and participate in the resolution resulting from the restorative forum
- Community is actively involved in holding the offender accountable, supporting the victims and ensuring the opportunities for offenders to make amends
- Restitution is normal
- Overseen by the state, but usually driven by communities
- The long term protection of the public mandates a focus on the methods of problem solving that include the reintegration of the offender into the community and preservation of his dignity

- Repentance and forgiveness are rarely considered
- Assumes win-loss outcome
- Repentance and forgiveness are encouraged
- Makes possible win-win outcome

### **Who are the parties to the process?**

Viewed through a restorative justice lens, "crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance."

### **What are the benefits for me?**

**The Victim:** Restorative justice recognizes that as a victim, you have distinct needs. Restorative justice will provide you with an opportunity to:

- Express your feelings and ask questions
- Have your experience, your feelings, concerns and suffering acknowledged
- Develop some understanding of the offender's motivation for committing the offence
- Say how the harm done by the incident might be repaired

**The Offender:** Crime hurts victims, communities and offenders and creates an obligation to make amends. Restorative justice will provide you with an opportunity to:

- Take responsibility for your action in a safe environment
- Be an active participant in determining how you may begin to repair the harm done
- Hear first-hand how your behavior has affected people
- Ask for help with problems that may have contributed to the wrongdoing

**The Community:** Crime affects everyone, and we need to work together to repair the harm and create safer communities. Restorative justice actively involves community members by providing an opportunity to:

- Take responsibility for, and actively participate in, achieving justice in your community
- Focus on the cause of crime and do something about them
- Support the victim and ensure there are opportunity in the community for the offender to make amends

We deserve to have our needs met within the justice system. We deserve to have an opportunity to take part in a process that will help to repair the harm caused by an offence, prevent crime, and create safer communities.

Restorative justice is not a replacement for current system. A restorative approach will, however, help meet needs that are not often met by the current system. Reducing recidivism, increasing victim satisfaction and public confidence in the system take enormous effort over many years. It will require smarter, more effective ways of making our communities safer.

### **How does the restorative justice process work?**

Restorative justice can come in many forms, depending on the circumstances of the case, the point in the system, in which a restorative option is invoked, and the traditions and preferences of the communities that adopt restorative alternatives.

The real essence of restorative justice is in the face-to-face meeting between the victim, offender and members of the community. During the course of that meeting each party is given an opportunity to tell the story of the crime from their own perspective, and talk about their concerns and feelings. The meeting helps the parties to develop an understanding of the crime, of the other parties, and of the steps needed to make amends. The meeting concludes with an agreement outlining how the offender will make reparation. Reparation can include monetary payment, service to the victim, community service or any other measure agreed upon by the parties.

In the current criminal justice system, victims frequently feel frustrated and left out of their own cases, except perhaps for being witnesses. Restorative justice recognizes that victims have many needs. They need an opportunity to speak about their feelings and to have the power restored to them that has been taken away by the experience of the offence; they need recognition of the pain and suffering they have endured; and they also need to understand the offender's motivation for committing the a crime. Restorative justice recognizes these needs, and allows for victim involvement in determining how those needs can best be met.