

AN INTRODUCTION TO RESTORATIVE JUSTICE

What is Restorative Justice?

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What is restorative justice? Some believe that the term "Restorative Justice" was first used by Albert Eglash in articles he wrote in 1958, as he described three kinds of criminal justice: retributive (based on punishment,) distributed (based on therapy to the offender,) and restorative (based on restitution.)¹ Many scholars cite indigenous practices as the basis of our contemporary view of restorative justice. These practices often focus on maintaining community peace by addressing wrongdoing. Community members value relationship, inclusivity, and reintegration as goals in working to create justice after wrongdoing.

Restorative justice scholar and educator Dan Van Ness identifies a group of early adopters of restorative justice, including Howard Zehr, Mark Umbreit, and Ron Classon. Professor Zehr often describes restorative justice by comparing the questions that conventional processes ask to those posed by Restorative Justice.

Questions Asked: Conventional vs. Restorative Justice

Modern Criminal Justice Processes	Restorative Justice
What happened?	What did each person experience happening?
What rule was broken?	What were you thinking at the time?
Who did it?	Who was affected and how?
What is the punishment under the rules?	How can you make it right?
How will the person who did it be punished?	What do you need to help next time?

¹ Daniel W. Van Ness and Karen Keetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* (New York: Routledge, 2015) 23-24.

Practices Associated with Restorative Justice

It helps to understand what restorative justice is by looking at the practices often associated with restorative justice. These include two popular practices: the encounter between the victim and offender and a talking circle that provides a format to discuss wrongdoing. Restorative justice explorers Van Ness and Gerry Johnston include the "*encounter*" as a critical point in the restorative justice process. The encounter brings together the victim and offender in a dialog. Facilitated by a trained practitioner, the participants are prepared to engage in conversation. More inclusive than a criminal proceeding, the meeting allows those affected by wrongdoing to communicate the harm and their resulting needs. Van Ness indicates that the purpose of the encounter is to identify the injustice, make things right, and set future intentions.

Whether the encounter takes the form of a facilitated discussion between the victim and offender (Victim Offender Conference) or a facilitated discussion between a youthful offender, their family, friends, and community (Family Group Conference), it provides an opportunity to create multiple coexisting narratives and allow for a productive expression of emotion. The encounter provides an opportunity for an apology and may be central to reintegration.

The other restorative justice practice that many restorative programs adopt is the *talking circle*. In a talking circle process, the participants pass a designated object, "a talking piece," around a circle. Everyone has an equal

opportunity to speak since only the person with the talking piece talks. Circles have been used in the United States as part of re-entry programs and in the U.S. and Canada for sentencing. Another use of circles in restorative justice is the circle of support and accountability that have been developed in some areas to decrease the potential for re-offending, particularly by sex offenders.

Principles of Restorative Justice

Restorative justice practitioners can lose sight of the theoretical underpinnings that lead to their adoption. Zehr cautions us to remember that restorative justice is not a singular practice or program but a group of principles and values, capable of application to many practices and situations. In *Changing Lenses*, he articulates these principles that underpin restorative practices.² Unlike some visions of restorative justice that limit applications to wrongdoing, this conception of restorative justice as a set of values and principles creates a wholly different approach to conflict and is broad enough to guide the healing work of a restorative lawyer. These principles allow us to abandon a binary oppositional-based approach to conflict, defined by sides and assumptions about objective needs. These inclusive processes permit uncertainty while celebrating our collective ability to imagine resolutions that extend beyond a fixed,

Zehr's Principles of Restorative Justice

- Focuses on the harms and needs (Of the victims, communities, and offenders)
- Addresses obligations resulting from those harms. (Offenders, but also communities' and society's.
- Uses inclusive, collaborative processes.
- Involves those with a stake in the situation. (Victims, offenders, community members, society.)
- Seek to put right the wrongs.

² Howard Zehr, *Changing Lenses, A New Focus on Crime and Justice*, (Scotsdale, Pennsylvania, 2005) 29.

predetermined capacity. These processes create opportunities to increase community resilience because they encourage growth beyond punishment and beyond resolving the presenting conflict.

Values of Restorative Justice

In addition to the five principles that define restorative justice, creating new ways of thinking with an eye towards healing and restoration, Zehr identifies values consistent with restorative justice that may guide our work: respect, responsibility, relationship, repair and reintegration. If these values, alongside the five principles are kept central to any process, the activity will be more restorative.

RJ: You'll know it when you see it!

In 1964 Supreme Court Justice Potter Stewart included in his written opinion in *Jacobellis v. Ohio* his way to evaluate whether or not a film was pornography. "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description and perhaps I could never succeed in intelligibly doing so. But *I know it when I see it...*" The same can be said for restorative justice and restorative practices. It may be hard to succeed in providing a simple definition-but you know it when you see it!

When I've seen restorative justice guiding a process or providing the foundation for an environment--it's not hard to miss! Relationships and opinions are valued—and collaboration seems natural. Hierarchies (and power) disappear and the participants work with one another. No one jumps in to advise, recommend, or demand. Respect is obvious. And when the process is NOT fully restorative—the participants recognize that and keep working on

moving the process to become more restorative! About any process can be made more restorative and I have found that my work takes the most meaning when I explore that potential.

