

Introduction to Restorative Justice

While the following information has been written as a background resource for teachers, it can be used as a student resource.

What is restorative justice?

Restorative justice can be defined as a process to repair the harm that arises from an offence or incident. The restorative justice process can be used between any two people or groups where harm has been caused, but this introduction will focus on its implementation and application on youth and in the criminal justice system.

Restorative justice and the criminal justice system

It's called a criminal justice *system* because, like all systems, it works in part by using classification and predetermined actions.

When a crime is committed and a charge is laid, it must be assigned to a particular classification, or offence, under the Criminal Code or other legislation or regulations. There are many types of offences, covering everything from theft to murder in the first degree. While this makes charging offenders straightforward, it can also lead to the forcing of an individual into a category for which the offence committed is not entirely suitable.

Once a person has been convicted of an offence, a judge has a certain set of predetermined actions, or sentences, from which to choose. The range of possible sentences is predetermined by legislation and regulations - prison, community service, etc. While most of these actions give a judge a fair amount of leeway in choosing an appropriate sentence, it is still a limitation, and in some cases what may be an appropriate sentence for an offender in the judge's opinion is simply not available to her.

Restorative justice has no limitations or classifications. Rather, it seeks to bring about a situation where the offender is held accountable for his actions, the harm inflicted upon the victim is properly recognized, and a process of healing is begun.

One way to illustrate the difference between restorative justice and criminal justice comes from David Moore, an Australian facilitator and trainer in restorative justice. He says that society tends to two extremes when it comes to regulation. One extreme punishes offenders to send a message that crime is unacceptable. The other extreme is to support offenders through treatment or counselling. Moore

proposes a middle ground between these two extremes - "between an ethic of justice and an ethic of care"¹ - and this balance is what restorative justice is all about.

The nature of restorative justice: the series of "threes"

While various groups and academics have defined and identified the nature of restorative justice, all include the ideas of one of the pioneers of restorative justice, Dr. Howard Zehr, detailed in his influential work, *The Little Book of Restorative Justice*. On his blog², Dr. Zehr offers a concise summary of restorative justice in what he calls "a series of 'threes'".

3 assumptions underlie restorative justice:

- When people and relationships are harmed, needs are created
- The needs created by harms lead to obligations
- The obligation is to heal and "put right" the harms; this is a just response.

3 principles of restorative justice reflect these assumptions:

A just response...

- acknowledges and repairs the harm caused by, and revealed by, wrongdoing (restoration);
- encourages appropriate responsibility for addressing needs and repairing the harm (accountability);
- involves those impacted, including the community, in the resolution (engagement).

3 underlying values provide the foundation:

- Respect
- Responsibility
- Relationship

3 questions are central to restorative justice:

- Who has been hurt?
- What are their needs?
- Who has the obligation to address the needs, to put right the harms, to restore relationships? (As opposed to: What rules were broken? Who did it? What do they deserve?)

3 stakeholder groups should be considered and/or involved:

- Those who have been harmed, and their families
- Those who have caused harm, and their families
- Community

¹ David Moore, with Lubica Forsythe, *A New Approach to Juvenile Justice: An Evaluation of Family Conferencing in Wagga Wagga* (Wagga Wagga, New South Wales, Australia: Centre for Rural Social Research, Charles Stuart University, 1995), p. 257.

²Adapted from <http://emu.edu/now/restorative-justice/2009/04/20/restorative-justice-and-peacebuilding/>

3 aspirations guide restorative justice:

The desire to live in right relationship...

- with one another;
- with the creation;
- with the Creator.

Youth and restorative justice

In addition to its general benefits, restorative justice has specific benefits when it comes to youth. For example, because restorative justice emphasizes being held accountable for one's actions; by doing so, and in some cases coming face to face with the victim, it can be a transformative experience for a youth, and prevent repeat offences. If the offence is dealt with entirely through extrajudicial measures, a youth may not receive a criminal record, and avoid the accompanying stigma and restrictions (employability, travel abroad, etc.). This also benefits the community, as it no longer has the safety and financial liability of a repeat offender, and gains an asset of a valuable and contributing member.

In the past, imprisonment was a common punishment for youth convicted of a crime. Since the implementation of the Youth Criminal Justice Act (YCJA) in 2003, many youth who are non-violent, first-time offenders have been redirected into measures external to the criminal justice system, some of which use restorative justice methods and principles as part of their process.

A Youth Justice Committee, for example, sometimes uses restorative justice principles. A YJC is a standing body of volunteer community members who bring together the youth in question, the youth's parents, the victim or victims, and other community members, in order to collectively determine the best course of action for the youth. Another body that incorporates the restorative justice process is the Restorative Conference, which is similar to a Youth Justice Committee but is convened for a specific case. Both can deal with youth at three different stages: pre-charge, post-charge, and post-sentence.

How and where is restorative justice implemented?

Besides criminal justice situations where youth are involved, restorative justice can be used in many ways, and in many places. Here are just a few examples.

- **VOM (Victim-Offender Mediation) or VORP (Victim-Offender Reconciliation Program)** - A meeting between a victim and an offender, moderated by a trained mediator.
- **Family Group Conferencing** - In restorative justice, Family Group Conferencing works in a way similar to Victim Offender Mediation, except in this case the family members of the offender and of the victim also participate in the process.

- **Community Justice Forum** - Community members gather with members of the justice system (law enforcement, etc.) to discuss ways to address flaws, both real and perceived, in the criminal justice system, and how to make communities safer and healthier. Restorative justice procedures and principles play a strong role.
- **Circling (Peacemaking Circles/Healing Circles/Sentencing Circles/Releasing Circles)** - These are most commonly seen in Aboriginal communities, where an offender who is a member of a particular band meets with victims and other band members. In fact, many restorative justice principles have their origins in traditional Aboriginal justice practices.
- **Victim/Ex-offender Assistance Programs** - After the restorative justice process, both victims and offenders can receive support from these programs. For victims, the goal is to repair the harm caused by the crime; for the offender, to take responsibility for the actions that caused the harm.
- **Surrogate Victim/Offender Restorative Justice Dialogue** - used in a case where the victim does not want to meet with the offender. Instead of meeting with the actual victim, a “surrogate” victim is brought in to represent the victim. This surrogate has been briefed on the actual victim, and participates in the dialogue as an advocate for the victim. Such surrogates are able to convey the impact of such an offence as if they were the victim. (The surrogate system can also be done with a surrogate offender. This may be helpful for victims who want to experience the restorative justice process but are not willing to have a face-to-face meeting, or preparing a victim for such a meeting. However, the surrogate offender variation is less common.)

Restorative justice practices and processes are being used in many places - schools, businesses, nursing homes, Aboriginal communities - anywhere there is potential for harm being done and a need to repair it.

Restorative justice in practice

The following is an outline of how the restorative justice process can work in the context of youth justice³. Practices can and do vary - this is an example of one process.

For youth offenders, the restorative justice process may happen at one of two points in time: pre-charge or post-charge. When the police arrest a youth for an offence, they may decide to refer the youth to a Youth Justice Committee first (pre-charge) or they may lay one or more charges and refer the youth to the Crown prosecutor, who can then refer the youth to a Youth Justice Committee (post-charge).

Usually, the restorative justice process starts with a coordinator, who meets with both victim and offender separately beforehand. The coordinator explains to both parties how the process works, and

³ Adapted from http://www.youthjusticecommittee.ca/index.php?pr=How_We_Do_It

then reviews the case specifics to decide whether it is suitable for the restorative justice process. If everyone agrees to the process - victim, offender, and coordinator - the coordinator will then assign the case to a facilitator.

The facilitator then meets separately with both victim and offender to talk about the case details, and to prepare all the participants as much as possible for the process. The facilitator may ask the youth if she is attending school or has a job, which may play a part in the restitution process. The victim may be asked to come up with an itemized list of damages.

The facilitator may also invite other people to the conference whose input may be helpful, such as an Elder from the local First Nation, the counsellor from the youth's school, or the police officer handling the case.

Everyone who participates in the conference signs a participation agreement, which binds all the participants to an oath of confidentiality. Anything said in the conference cannot be shared or discussed with any outsider, and no part of what is said can be used in court against the youth.

In the conference itself, the facilitator introduces everyone and then asks each of the participants to speak in turn, while the others listen. The youth offender describes her offence and what she did. The victim then speaks, and describes what effects the offence had on him or her, including the feelings experienced as a result - fear, anger, etc.

Once everyone has spoken, the facilitator helps the group come up with a resolution agreement. This is a way agreed upon by everyone present to repair the damage or harm caused by the offence. For example, the youth might be required to do community service, provide financial compensation, participate in mandatory counselling, or agree not to have any contact with a certain group. The resolution agreement is very specific, so that none of it can be misinterpreted. It cannot be something that the youth is incapable of doing, or makes the youth's failure a certainty.

If the youth completes the requirements of the resolution agreement successfully, what happens depends on whether the case is pre-charge or post-charge. With pre-charge cases, the youth is not charged with the offence. With post-charge cases, the charge is dropped.

Learning more

There is much more to learn about restorative justice and its application beyond this brief introduction. The following links may be useful for further information on restorative justice in general, or as it is applied to youth. For the latest versions of these links, visit johnhoward.ab.ca.

Alberta Restorative Justice Association - an excellent resource for materials, books and video
<http://arjassoc.ca/>

Alberta Restorative Justice Association - Restorative Justice Programs in Alberta
<http://www.arjassoc.ca/pages/programs/alberta-programs.php>

Restorative Justice Online - a major online resource for everything concerning restorative justice
www.restorativejustice.org

The Centre for Restorative Justice at Simon Fraser University
<http://www.sfu.ca/crestorativejustice/index.html>

Restorative Justice - Department of Justice Canada's fact sheet
<http://www.justice.gc.ca/eng/pi/pcvi-cpcv/res-rep.html>

Restorative Justice in Canada: what victims should know
(Prepared by the Canadian Resource Centre for Victims of Crime)
<http://www.crcvc.ca/docs/restjust.pdf>

The Youth Criminal Justice Act: A Step Forward for the Advocates of Restorative Justice
<http://www.sfu.ca/cfrestorativejustice/fulltext/charbonneau.pdf>

Victim Offender Mediation Association
<http://www.voma.org/links.shtml>

Community Justice Forum: Canadian Resource Guide
<http://www.rcmp-learning.org/restjust/docs/ccap0001.htm>

Department of Justice Canada - Restorative Justice Page
<http://www.justice.gc.ca/eng/pi/pcvi-cpcv/res-rep.html>

Restorative Justice Online
<http://www.restorativejustice.org>

"Restorative Justice: A Vision for Healing and Change" by Susan Sharpe
A book available from the Mediation and Restorative Justice Centre, Edmonton
<http://mrestorativejustice.ca/documents-publications/a-vision-for-healing-and-change/>

Alberta - Provincial Restorative Justice Programs and Services
A list maintained by Correctional Service of Canada, includes contact information and links to sites
http://www.csc-scc.gc.ca/text/restorativejustice/crg-eng.shtml#_Toc289176149

Restorative Justice Program - developed by The Society for Safe and Caring Schools and Communities
Includes downloadable resources on RESTORATIVE JUSTICE, including lesson plans
http://www.sacsc.ca/Restorative_Justice.htm#Resources

Stories of restorative justice
<http://www.restorativejustice.org/press-room/02personal/stories-of-restorative-justice>



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