



Defining Restorative Justice

An excerpt from “A Policy Discussion Paper on the Development of a Young Adult Restorative Justice Conferencing Program in Victoria” Jesuit Social Services released in 2005. pg 44-47

It is important to define what is meant by restorative justice. We suggest that it may be appropriate to name the young adult model “restorative or community justice conferencing” to reflect the young adult target group and the higher priority given to restorative aims in the young adult program over the family decision making priority of the juvenile justice group conferencing program operated in the Children’s court.

There is no single agreed definition of restorative justice. Definitions tend to reflect the backgrounds, spiritual and other beliefs, cultural and social mores of the individual or community. Some definitions have changed over time as key advocates of restorative justice re-evaluate their previous positions in the light of new findings, experience and objectives.

Restorative justice has traditionally been defined by drawing a comparison with retributive justice which views crime as a violation against the state and focuses on administering an appropriate and proportionate penalty on the wrongdoer. In comparison, restorative justice views the crime as a violation of people and relationships and seeks to repair the impact of the harm caused through public acknowledgement of wrongdoing and acceptance of responsibility to make things right. A more current view is that both approaches are in agreement that wrongdoing must be addressed but differ on the best way to respond.

Restorative justice is viewed as a new approach or “lens” through which crime and our response to crime may be viewed. Advocates speak about a new paradigm, which is based on common principles, values and philosophy that are reflected in new models of restorative justice such as conferencing and circle sentencing. Howard Zehr believes that these principles can be articulated and offers his working definition of restorative justice as “ **a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible**”¹ Tony Marshall in his document “Restorative Justice An Overview” prepared for the Home office in the United Kingdom, uses a similar, less specific definition which has been widely quoted in which he states that “**Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.**”²

Both these definitions of restorative justice imply that a face-to-face meeting must occur for restorative justice to take place. An alternative “maximalist” definition used by

¹ Howard Zehr The little book of restorative justice. Good Books 2002 Pg 37.

² Restorative Justice An overview by Tony Marshall Home Office United Kingdom 1999 Pg 5



Gordon Bazemore would extend restorative justice to include **any action that is orientated to “repairing the harm that has been caused by crime”** such as community service projects. Bazemore in his work “*Balanced and Restorative Justice for Juveniles*” has argued that restorative justice is a **new paradigm** in comparison to the treatment and punishment philosophies dominant in most juvenile justice systems, that focus solely on the offenders needs and punishment of their deeds, in which the focus is on crime as causing harm and justice is a matter of repairing the harm. It offers a completely new vision for the participants and stakeholders in the criminal justice system redefining roles and creating new opportunities of participation for the victim and communities of concern affected by the victim and the offender.³ A similar focus on the need to maintain best practice bedded in restorative values and philosophy has led to the creation of *Principles of Best Practice Standards in Restorative Justice* that seek to define best practice restorative justice processes that apply to any model of restorative justice.⁴

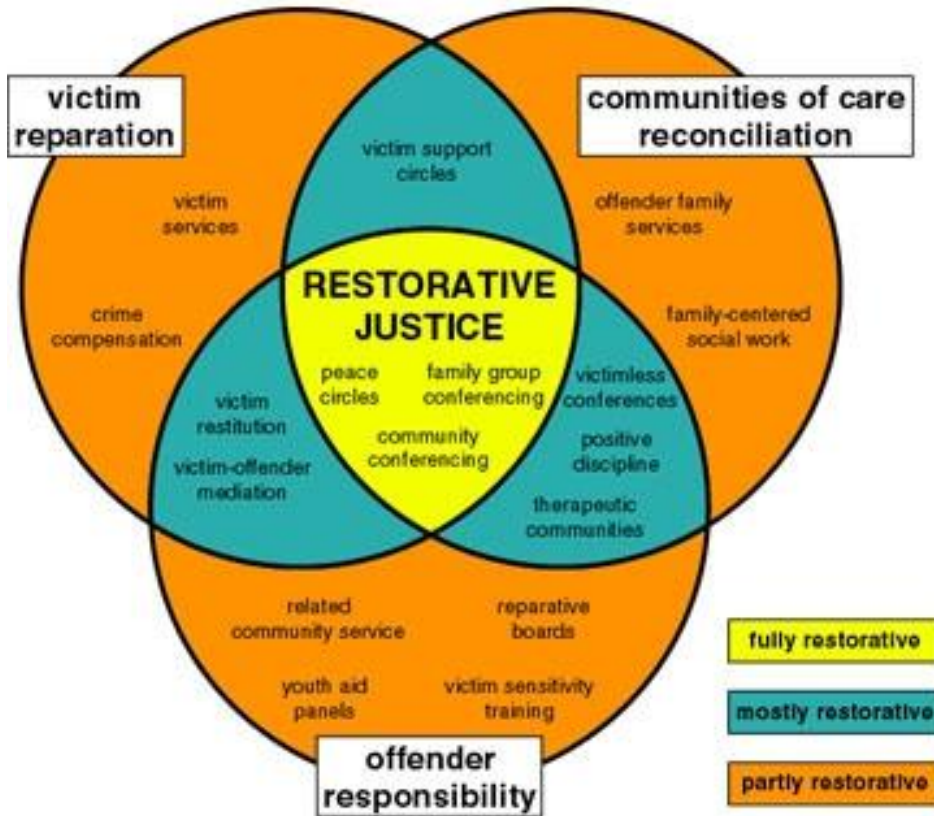
Whether restorative justice is separate from the treatment and punishment philosophies that preceded its emergence is debatable. It exists as a diversionary option within a dominant correctional system that seeks primarily to correct the offender with actual or potential loss of liberty by various degrees. There are advocates of restorative justice that claim the correctional system is contaminating the communal base and the distinct approach of restorative justice and hence advocate complete separation from the criminal justice system. However, the majority of advocates support some form of integration of restorative justice into the criminal justice systems accepting that the competing philosophies dominating the operation of these systems will inevitably impact upon the operation of restorative justice programs and, *visa versa*, hoping that restorative justice approaches will over time influence the dominant existing correctional approaches.

Paul McCold has suggested a diagrammatic approach that provides for a continuum of approaches from **partially to fully restorative** by using a Venn diagram at the intersection of three circles that involve “victim reparation, offender responsibility and community of care reconciliation”. Programs that include all three elements would be considered fully restorative, such as conferencing. (See Figure 1 below)

³ *Balanced and Restorative Justice for Juveniles* University of Minnesota August 1997

⁴ See Ministry of Justice New Zealand, *Draft Principles of Best Practice for Restorative Justice Processes in the Criminal Court* May 2003.

Figure 1 Typology of Restorative Justice Methods-Provided with permission from Real Justice USA. Copyright Paul McCold and Ted Wachtel, 2003



It is also useful in defining restorative justice to identify what it is *not* in respect of aims, practices and processes. Howard Zehr argues that restorative justice is not about forgiveness and reconciliation. These may be by-products of the process, but they must remain the prerogative of the participants and no restorative justice process can determine these outcomes. He also argues that restorative justice is separate from various models or techniques such as Truth and Reconciliation Commissions or Conferencing, which may change over time. He also asserts that restorative justice is not primarily dealing with less serious offences nor focusing on one party such as aiming to reduce recidivism or diverting the offender from harsher options. These aims are examples of systems limiting the reach and potential of restorative justice through misunderstanding its capacity to deal with serious offences and where one party's interests predominate over another.

Moore and McDonald⁵ argued that restorative justice has its origins in all the worlds' spiritual and cultural traditions of justice. They make a distinction between *principles* which are based in values and objectives, *programs* which are the nuts and bolts in

⁵ Transforming Conflict by David B Moore and John McDonald 2000.



putting the principles into action in a service delivery system such as the criminal justice system, and *processes* which tell you how to go about running a conference or mentoring program. Their focus as trainers is on the integrity of the processes and spreading the technology of conferencing across human service endeavours.

The roots of restorative justice can be found in the spiritual and cultural traditions of all peoples of the world. This may complicate a search for a definition but the rediscovery of these roots of restorative justice helps people to identify with the process and draw inspiration from their connections to these traditions. From this perspective, a recent publication has noted, **“Restorative Justice with its principles of repentance, forgiveness and reconciliation⁶ is instead a deeply spiritual process. It is never the easy way out: neither for the offender, the victim, nor their community. It requires all of us to come to grips with who we are, what we have done or not done, and what we can become in the fullness of our humanity. It is about doing justice as if people mattered: it addresses the need for a vision of the good life and the common good. To borrow the title of a recent study, the restorative approach is concerned with restoring the moral bond of community”⁷**

In *“Making Things Right” A vision for Criminal Justice⁸*, Peter Norden SJ outlines the Christian perspective on restorative justice where the focus is on better outcomes for offenders, victims and their communities. Restorative justice is more than programs that bring offenders and victims face to face. The key element is on healing the harm to the offender, victim and their surrounding communities.

With this in mind, below is our proposed definition, which aims to be inclusive of many program ideas such as mentoring for young offenders and support services for victims.

“Restorative justice seeks to heal the impact of offending and make things right for victims, offenders and their respective communities.”

⁶ Given Howard Zehr’s comment above it may be more appropriate to refer to these principles as potential outcomes or by products of restorative justice processes.

⁷ The Spiritual Roots of Restorative Justice Edited by Michael Hadley State University of New York Press 2001

⁸ Norden Peter Father Making Things Right, A Vision for Criminal Justice