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Reweaving the Fabric of Society: Restorative Justice in the United States

Kenneth H Fox, Hamline University

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Kenneth H. Fox

The conflict management field in the United States, as in other parts of the world, continues to evolve and expand, influencing all sectors of American society. Mediation, arbitration and other forms of “alternative” dispute resolution are now considered an ordinary part of court process. Private businesses and public organizations increasingly use innovative and collaborative conflict management strategies to address difficulties that arise in the workplace. Conflict education and non-punitive disciplinary processes are increasingly finding their way into schools and universities across the United States. This evolution in how to address conflict is also apparent in the American criminal justice system. In the field of criminal justice, restorative justice programs and processes are slowly changing the way many Americans conceptualize and respond to crime.

This article provides an overview of restorative justice practices in the United States. It offers a brief history of the field, articulates its underlying values, and describes its primary forms of practice. The purpose of this article is to introduce readers to an emerging and important way to re-think how citizens relate to one another and to the “state” when crime occurs.

What is Restorative Justice?

Restorative Justice is a particular approach to addressing crime and wrong-doing. Sometimes called “transformative justice” or “peace-making criminology” (Galaway & Hudson; Sullivan, Tifft, & Cordella), it is built on a philosophy of healing and social inclusion and articulates a set of principles and practices that are directed to create a more civil, participatory society (Sullivan and Tifft). According to Howard Zehr, a founding figure in the modern restorative justice movement, “restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible”(Zehr, p. 130).

A “restorative” approach to crime stands in stark contrast to traditional Western societies’ “punitive” views of wrongdoing and criminal justice. In the modern era, “justice” has become a concept owned and controlled by the state, and has increasingly been built on the principle that retribution is the appropriate response for acts committed against the state (Braithwaite). “Retributive theory holds that the imposition of some form of pain will vindicate” or “even the score” when a crime is committed (Umbreit, 2005). Frequently, the pain imposed is in the form of deprivation of liberty –typically prison – and even loss of life.
In contrast, a “restorative” view of justice argues that what really vindicates crime “is acknowledgement of victims’ harms and needs, combined with an active effort to encourage offenders to take responsibility, make right the wrongs [they have committed], and address the causes of their behavior” (Umbreit, 2005, p. 257). Thus, restorative principles present a different view of justice than what is traditionally held.

Zehr identifies four areas where traditional and restorative justice approaches differ, as represented in the following table:

<table>
<thead>
<tr>
<th>Traditional Criminal Justice</th>
<th>Restorative Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime is a violation of the law and the state</td>
<td>Crime is a violation of people and relationships</td>
</tr>
<tr>
<td>Violations create guilt</td>
<td>Violations create obligations</td>
</tr>
<tr>
<td>“Justice” requires the state to determine blame (guilt) and to impose pain (punishment)</td>
<td>“Justice” involves victims, offenders, and community members in an effort to put things right.</td>
</tr>
<tr>
<td>The central focus of the criminal justice process is the offender “getting what they deserve”</td>
<td>The central focus of the restorative justice process is determining the victim’s needs and the offender’s responsibility for repairing the harm done.</td>
</tr>
</tbody>
</table>

As is clear from this table (Zehr), a traditional criminal justice system focuses on guilt and punishment. In contrast, a restorative criminal justice system focuses on harm and repair. Put differently, a conventional criminal justice system focuses on three primary questions: (1) What laws have been broken?; (2) Who did it?; and (3) What do they deserve? (Umbreit, 2005). These questions reflect a deeper belief about crime. From this approach, crimes are seen as violations of abstract rules controlled by the state. The focus of the criminal justice system is on finding the perpetrator, and doing what is necessary to “even the score.”

In contrast, a restorative perspective of justice focuses on three very different questions: (1) Who has been hurt?; (2) What are their needs?; and (3) Whose obligations are these? These questions reflect a fundamentally different belief about crime: criminal acts harm people and create needs that must be addressed. Stated differently, the restorative approach to justice stands on three underlying concepts or “pillars” (Zehr). The first pillar focuses on the harm that crime does to people and communities. Unlike a traditional criminal process where the abstract “state” is the victim, restorative justice places the actual victim (including the community affected by the crime) in the center of the process. In doing this, restorative justice also focuses on the harm done to the victim and community, as a result of the crime, seeking 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” (Zehr, p. 23). Thus, rather than victims and community members being side-lined in the criminal process, they take a central role. The justice system is re-oriented away from a focus on the “state” to directly address specific victim and community needs. Some have even argued that restorative justice is a form of insurgency, to the extent that citizens are empowered to actively engage in the criminal process in ways traditionally reserved to the state (Sullivan and Tifft).

Zehr’s second pillar of restorative justice focuses on the obligations that arise when crimes occur. Where traditional criminal justice systems focus on punishing the offender, this second pillar of restorative justice emphasizes offender accountability and responsibility, including the importance of the offender understanding the nature and impact of the harm that he or she has caused. This is not to say that traditional criminal justice systems ignore an offender’s obligations to a victim. However, such “obligations” are traditionally seen in terms of financial restitution. Restorative justice considers such economic measures important, but not sufficient. It also considers the human impact of crime – the sense of personal violation, confusion, anger and loss that victims and communities often experience. Thus, beyond economic obligations, restorative justice seeks to repair the social and emotional harm done to victims and communities.

Zehr’s third pillar of restorative justice focuses on the principle of “engagement.” This principle suggests that “the primary parties affected by crime – victims, offenders, members of the community – are given significant roles in the justice process” (Zehr, p. 24). In other words, the criminal justice system should intentionally “engage” or actively include in the justice process those stakeholders who have been affected by a crime. In contrast, traditional criminal justice processes place primary focus on the offender and prosecutor, as agent for the “state.” Others affected by crime, including victims and the larger community, are often relegated to the secondary role of witness or outside observer (Zehr).

These three key concepts or “pillars” – harms and needs, obligations, and engagement – reflect the deeper and distinct philosophic orientation of restorative justice toward crime. Restorative justice views communities and society as a complex fabric of human and social interconnections. From this perspective, criminal acts do more than violate rules of the state. They also damage – some say “tear the fabric of” – individual and societal connections, even beyond the people directly involved in the criminal episode. Thus, the goal of a restorative approach to crime is to repair the harm done by criminal acts, which includes repairing the “torn fabric” of community.

The example of a single home burglary illustrates these principles of justice. If one home is burglarized, the character and wellbeing of an entire neighborhood can change. The victims may feel personally violated. Their house may have been damaged and property stolen or destroyed. They may be afraid ever to be alone in the home again, since reminders of the criminal act will always remain. In addition, neighbors whose houses were not broken into also may no longer feel safe in their homes. They may begin
locking doors that were always open in the past. They may view strangers with greater suspicion. An entire neighborhood may experience a sense of isolation and fear of an impending threat. The “fabric” of the community has been torn.

A traditional approach to justice would have the offender arrested, prosecuted and imprisoned. The victim may testify at trial. Others might observe the proceedings. The offender might be ordered to pay restitution. Very little more will occur. Nothing in this system addresses the human impact of the criminal act. There is little opportunity for the victim or community to heal from the impact of the crime. Moreover, for the offender, the crime was against some abstract “state” rather than fellow human beings. In contrast, a restorative approach to justice focuses explicitly on the human dimension of crime, providing opportunities for victims, offenders and communities to engage one another in a process of addressing harms and needs, moving the community toward social healing.

**Historic Foundations of Restorative Justice**

The modern restorative justice movement can be traced to the mid to late 1970s. In general, European nations “have clearly outpaced American policy development and implementation in support of restorative justice practices, with Austria having established the first national policy commitment in the world to broad implementation of victim-offender mediation in 1988” (Umbreit, 262). Nevertheless, the concept of a “restorative” approach to justice is now well established in North America as well.

Despite the relative novelty of restorative justice programs in modern courts, restorative justice finds its roots in a number of much older societies and belief traditions. Restorative justice has been “the dominant model of criminal justice throughout most of human history for perhaps all the worlds’ peoples” (Braithwaite 2002, p. 5). Evidence of some of the earliest restorative practices can be found among ancient civilizations as diverse as Arab, Greek, Roman, and Germanic traditions. It can also be found among many of the world’s religions (Winfree). Many of these traditions continue through today. For example, the African concept of *ubuntu* reflects a restorative approach to justice. It embraces the “principle of caring for each others’ well-being … and a spirit of mutual support. … Ubuntu means that people are people through other people. It also acknowledges both the rights and the responsibilities of every citizen in promoting individual and social well-being.” (Louw, p. 161).

Similar to the African experience, other indigenous cultures have long embraced restorative practices, including North America’s First Nations, traditional inhabitants of New Guinea, Australia’s Aboriginal and Islander communities and the Maori of New Zealand (Winfree). For example, in North America, the Navajo (Indian) nation has long followed a distinctive peace-making process that reflects a number of restorative values. Traditional Western legal systems rely on professional third parties who tend to use rationalistic and impersonal ways to reach a “just” decision. In contrast, the Navajo legal system is a much more relational and dialogic process. It acknowledges social norms as part of a “life way” – that is, part of the deeper nature of human relationships as reflected in concepts such as “solidarity,” “interdependence,” “mutuality,” “respect,” “compassion,” and “sharing” (Zion). These are words not often associated with a
traditional criminal justice system. These are also words that reflect a non-violent and non-authoritarian approach to justice -- concepts that are re-emerging through modern restorative justice practices.

**Forms of Restorative Practice**
Restorative justice is a philosophic orientation toward criminal justice. As a result, its principles can be reflected in a broad range of practices. Among the major forms of restorative practice are: victim-offender mediation programs (VOM), also referred to as victim-offender dialogue programs (VOD); family group conferencing; “circle” processes; and truth commissions (also known as truth and reconciliation tribunals).

**Victim-Offender Mediation (or Dialogue)**
In many respects, the modern restorative justice movement began in the 1970s with Victim Offender Reconciliation Programs (VORP). These programs bring victims and offenders together with a trained mediator/facilitator “to talk through what happened [related to the criminal episode] and to decide together what yet might happen.” (Umbreit 2006, p. 52). The process of how victims and offenders come together has evolved over the last three decade. So, too, has the name. What began as victim-offender reconciliation programs (VORP) has evolved into Victim Offender Mediation (VOM), Victim Offender Dialogue (VOD) and more recently Victim Offender Conferencing programs (VOC). However, certain key process characteristics have not changed. First among them is a direct, face-to-face, facilitated encounter between victims and offenders. It is through this direct encounter that the values of restorative justice find expression.

Victim offender encounters have always had a trained community member who serves as a facilitator or mediator to support the process. In earlier VORP programs, the mediator or facilitator also served to represent the community. More recently, other representatives of the community might also be present, giving voice to those “stakeholders” who were also affected by the criminal behavior. Also, where earlier programs involved only the victims and offenders, now, programs often include support persons for the victim and, on occasion, the offender as well.

A second process characteristic is an intentional focus on establishing a safe environment for participants. Victims have already been victimized by the criminal act. From a restorative perspective so, too, have offenders. Thus, it is critical that the participants not be subjected to further harm. Moreover, the degree to which the parties are “ready” for their encounter will influence the possibility that “something good will come out of the encounter.” (Umbreit, 2006, p. 55). This often means adequate preparation before the parties ever meet. Such preparation can include providing emotional and other forms of support, talking with the participants about what is the best setting for the encounter, and explaining the process to remove its mystery, among other activities.

A third process characteristic is the voluntary nature of participation. Consistent among programs is a belief that it is a victim’s right to decide whether or not to meet with the offender. “A major value undergirding this commitment is prevention of re-
victimization.” (Umbreit, 2006). This can be problematic where there is institutional pressure (subtle or overt) for victims to participate. In the same way that voluntary victim participation is important, so, too, is voluntary offender participation. While offender participation may be less “voluntary” to the extent that it offers them the lesser of evils (such as extended jail time), it is still important that offenders be offered the choice of whether or not to participate in such encounters.

A final process characteristic is follow-up. From early on, victim offender programs have recognized that the face-to-face encounter is not all that happens. The encounter needs to occur in an appropriate context. This can mean adequate preparation of the participants before the encounter, as discussed above, and follow up after the encounter(s). Such follow up may include keeping track of agreed-upon restitution, referrals to social services and other forms of on-going support.

Research on victim offender programs reveals a number of positive outcomes that reflect restorative values. Victims report, among other things, a renewed sense of empowerment and satisfaction from active involvement in the process (Umbreit, 1994). They also report that the experience of meeting with the offender humanizes the experience of justice, helping alleviate “the fear I would have as a victim because I got to see that they were real people, diminishing the fantasy of what they would be like” (Umbreit, 1994, p. 97). In the context of humanization, victims also value the ability to express their opinions and emotions to the offender, and they report experiencing a sense of healing. Beyond the victims, there is evidence of offender rehabilitation. In the context of juvenile offenses, “…juvenile offenders often fail to grasp the effects of their criminal acts. Mediation appears to offer them an opportunity to experience empathy for and awareness of other people’s feelings, and this awareness is a crucial part of growing up and becoming a socially responsible adult” (Umbreit, 1994, p. 97).

As of 2000, the Center for Restorative Justice and Peacemaking had identified victim offender mediation programs in at least 42 of 50 states in the United States alone (Umbreit, 2000). At the same time, the international Victim Offender Mediation Association had identified over 1,200 programs worldwide. Some programs are administered by courts, some by the state Attorney General’s office, and some by private non-profit organizations. All, however, provide an alternative for victims and offenders to address crimes at a human level.

**Family Group Conferencing**

A second form of restorative practice is family group conferencing (sometimes called family group decision-making). Introduced in New Zealand in 1989, this form of restorative practice focuses primarily on matters involving child welfare and protection, juvenile and domestic violence (Pennell). While some youth crimes involve victims from outside the household, criminal cases involving child welfare and protection typically involve maltreatment within a family. This requires a different approach to address criminal behavior.
While variations to family group conferencing exist, the process works to involve not only the victim and the offender, but also their family members, friends and other supporters (referred to as “communities of care”) (Maxwell). Depending on the program and the nature of the case, the process can also include police officials, social welfare agencies, lawyers, youth court representatives, probation officers and other institutional actors.

Joan Pennell describes a typical family group conferencing (FGC) process as follows:

Over a three- to four-week period, a FGC coordinator works with the family to organize their conference: identifying who is ‘family group,’ strategizing on how to keep the process safe, and making practical arrangements for holding the conference. Likewise the service providers require preparation around how to take part in the conference in a respectful and helpful manner. The invitations are purposely skewed toward family group members to reflect the many sides of the family and to ensure that family far outnumber the professionals. If necessary, the services of a translator are secured so that the conference can be held in the language of the family group.

The structure of the conference places the family group at the center of planning. The opening emphasizes the family’s culture, possibly through a prayer, a statement from a senior family member, or simply seating themselves in a circle. After the FGC coordinator reviews the process and introductions are completed, the group turns to the concerns to be addressed. Rather than placing the onus on survivors to disclose their maltreatment, the involved protective authorities such as child welfare, correctional services, and police report on what has happened and what issues need to be addressed in the plan. So that the family group has sufficient knowledge for planning, other information providers may present on relevant topics such as substance abuse and domestic violence as well as the services available.

Once the family group is clear about the areas of concern from the perspective of the service providers and aware the relevant resources, all of the professionals including the conference coordinator leave the room. This private time provides the opportunity for the family group to develop their sense of concern and to formulate their own plan for resolving the concerns. Notably, the Newfoundland and Labrador study (Pennell & Burford, 1995) found that the main way in which family groups reached their decisions was through consensus — a process of building a common understanding and reaching a collectively agreed upon plan (Barber, 1984). On completing this task, the family group invites the coordinator back into the room to review the plan and to ensure that it includes clear steps and a system of monitoring and evaluating the implementation of the plan. Then the involved mandated authorities are asked to approve the plan, preferably at the conclusion of the conference or shortly thereafter.

While the plan is being carried out, the protective services remain responsible for monitoring the safety of family members. With the plan in place, though, the family group and involved community organizations work with the authorities to protect and
assist family members. If the plan become unfeasible or unhelpful or the family’s situation changes dramatically, a FGC can be reconvened (Pennell).

Thus, the purpose of family group conferencing is to bring together those people and institutions that are affected by the criminal behavior as well as those who can serve as a support network to ensure positive change. Because the process is participatory, the victim and offender are actively engaged with other stakeholders in working through what happened, what the impact was, and what needs to be done to repair the harm. Research suggests that such processes can hold offenders accountable for their offenses in ways that give them constructive opportunities to make amends to their victims. Research also suggests that victims and offenders alike rate family group conferencing highly on a scale of fairness and on outcome satisfaction (Pennell, p. 100).

**Circle Processes**
A third form of restorative practice is the “circle process.” The term “circle process” refers both to the physical and philosophic framework that underlies this practice. Paradoxically, circle processes use structure (sitting in a physical circle) to create the possibility for freedom (the qualities created by the circle): “Freedom to speak our truth, freedom to drop masks and protections, freedom to be present as a whole human being, freedom to reveal our deepest longings, freedom to acknowledge our mistakes and fears; freedom to act in accord with our core values” (Pranis, p. 11).

The idea of using “circle” processes to address conflicts can be traced back to a time “when everyone in the community was important, when survival depended upon resolving differences in ways that reinforced relationships and strengthened connections to the larger community” (Stuart, p. 121). As these community values re-emerge, so does the importance of using circle processes to address crime.

Circle processes are used in a wide range of settings and for a variety of purposes. In the United States, modern circle processes began in the criminal justice system, often in the place of formal criminal sentencing. Instead of a judge determining what should be the punishment for a crime, the court might convene a sentencing circle, which would include the victim, offender, members of the community affected by the crime, and the judge him or herself as well as a “circle keeper” who facilitates the circle process. In a manner somewhat like family group conferencing, the circle participants engage in a process of understanding the nature and harm caused by a crime and determining what is the appropriate way to repair the harm. However, there are important differences between family group conferencing and circle processes, which are revealed by the circle process itself.

Participants sit in a circle on chairs with no tables. The physical circle “symbolizes shared leadership, equality, connection, and inclusion. It also promotes focus, accountability and participation from all” (Stuart, p. 121). On occasion, objects that have symbolic meaning to the group will be placed in the center of the circle as a focal point to remind participants of their shared values. The circle process itself is highly structured
and is maintained by a facilitator or “circle keeper.” The process involves a form of opening and closing ceremony, specific guidelines for interaction that are designed by the participants themselves, but always include the use of a “talking piece” (an object handed from person to person, designating who may speak), and a commitment to consensus-based decision-making. These elements are designed to create a “space” in which participants can feel safe to be at their most authentic self.

One of the more important dimensions of circle processes is its focus on relationship-building. Half the time of a circle may be spent “in creating the foundation for deeply honest dialogue about the conflict or difficulty that existed before the dialogue began” (Stuart, p. 13). This deeper conversation allows the emergence of a common wisdom. This wisdom, in turn, can lead to a more holistic and constructive way to address the harm, needs, and obligations that arise from crime.

The success of circle processes in the justice system has lead to its use beyond criminal sentencing. Circles are used to facilitate the re-entry and re-integration of people who have been incarcerated back into the community. Circles are also used to address conflict in schools, workplaces, social services, religious institutions, and neighborhood groups, among other settings. This spread of the circle process in the United States was not strategic. Instead it has been spontaneous and organic, often spread by those who have experienced the process themselves.

**Truth Commissions**

The fourth form of restorative practice is found in truth commissions, also known as truth and reconciliation commissions. Where the first three forms of restorative practice tend to focus on individual offenses, truth commissions address gross human rights violations and massive trauma that directly impact whole societies, including atrocities such as genocide. Unfortunately, human experience is not immune from mass atrocities that affect entire communities. Recent memory brings to mind the horrors of Liberia, Rwanda, Serbia, Sierra Leone, Somalia, and South Africa, among others. These are not isolated acts by individuals against one another or against the state. Often they are large scale acts orchestrated by, or made on behalf of the state itself. Thus, the question of what “justice” means is elevated to a new level of magnitude and complexity.

In the wake of civil wars or organized acts of violence and massive human rights violations, how does a community (re)establish the rule of law and (re)build civil society? How does a society break the cycle of violent retribution that opens new wounds and perpetuates the divisions that lead to atrocities in the first place? Increasingly, governments and leaders are turning to restorative principles to guide the transition from chaos to a more orderly society that is capable of healing.

Since the early 1970s, nearly 30 truth commissions have been established around the world to address human rights abuses and to aid in social transition from chaos to greater social order. Truth commissions are generally understood to be "bodies set up to investigate a past history of violations of human rights in a particular country -- which can include violations by the military or other government forces or armed opposition
forces” (Hayner, p. 558). While such commissions need not reflect restorative principles, many do.

Social healing is a complex process. Among the essential elements of healing that must be addressed following massive trauma are the following:

1. the re-establishment of the victim’s equality of value, power, esteem (dignity)…
2. relieving the victim’s stigmatization and separation from society. …
3. repairing the nation’s ability to provide and maintain equal value under law and provisions of justice. …
4. asserting the commitment of the international community to combat impunity and provide and maintain equal value under law and the provisions of justice and redress (Daniele, p. 343).

These elements reflect a restorative, rather than punitive, concept of justice. As a result, institutions established to aid in the process of social healing, such as truth commissions, similarly reflect restorative justice principles.

Perhaps the best known truth and reconciliation process is the one that took place in the wake of South Africa’s apartheid era. In 1995, the South African government of national unity adopted the Promotion of National Unity and Reconciliation Act to address the atrocities and human rights violations experienced under apartheid laws. The purpose of this act was “to provide a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans irrespective of colour, race, class, belief or sex.” (Truth and Reconciliation Report of South Africa Vol. 6 at 3).

South Africa chose a restorative path because, as stated in the final report, “A nation divided during a repressive regime does not emerge suddenly united when the time of repression has passed. The human rights criminals are fellow citizens, living along side everyone else, and they may be very powerful and dangerous. … If they are treated too harshly – or if the net of punishment is cast too widely – there may be a backlash that plays into their hands. But their victims cannot forgive and forget. … Thus, we have trodden the path urged on our people by the preamble to our founding Act, which called on ‘the need for understanding but not for vengeance, a need for reparation but not retaliation, a need for ubuntu but not victimization.” (Truth and Reconciliation Report of South Africa Vol. 2 at 7, 8).

Conclusion
Just like other forms of constructive conflict response, restorative justice is a movement that continues to evolve and expand. Its practices are found in an ever-expanding range of settings, transforming traditional conceptions of “justice”. More importantly, its philosophy of healing is finding resonance as a way to mend, if not strengthen our complex social fabric.
References


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1 Kenneth Fox is a professor of business, director of conflict studies and senior fellow of the Dispute Resolution Institute at Hamline University in St. Paul, Minnesota (USA).

2 Not all programs support direct in-person encounters. In England, for example, some programs practice a form of “shuttle diplomacy” where the mediator travels between the victim and offender. See, Umbreit, Supra, at 55.
