

Restorative Justice Dialogue Basics

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Restorative Justice History and Growth



Centuries-Old Indigenous Practices. Most tribal-based cultures worldwide have preserved community-oriented practices for resolving crimes and conflicts that share many components with restorative justice. These include the voicing of impacts to the community and the reintegration of the offender back into the community. They also include the power of storytelling and the respected wisdom of elders. Many of these traditions, though lost through the era of colonialization, have been revitalized in recent decades as a result of the restorative justice movement.

The 1974 Elmira Case. An unprecedented justice process in Kitchner, Ontario, served as a significant catalyst for the rise of restorative justice in North America. Two teenagers, under the influence of alcohol, destroyed 22 different properties in a rural town. Mennonite Central Committee workers Mark Yantzi and Dave Worth asked Judge McConnell if the offenders could make direct apology and reparation to the victims, and the judge allowed for them to initiate this process by meeting every victim party at their front door. Out of this case, the Victim Offender Reconciliation Program (VORP) mediation model developed and spread through North American Mennonite networks, starting first in Elkhart, Indiana.

Circles and Conferencing Rise in the 80s and 90s. As the mediation model began to spread, Judge Barry Stuart of the Yukon Territorial Court adapted the Sentencing Circle as a way to honor older indigenous traditions of native communities. Meanwhile, Maori practices in New Zealand developed the facilitated Family Group Conference model to address all levels of crime with the help of family members and support people.

Restorative Justice Growth and Applications

40 Years Later... The restorative justice movement has seen worldwide expansion as well as unforeseen applications on many broad levels.

WITHIN THE REALM OF CRIMINAL JUSTICE:

Victim Offender Mediation and Conferencing
Peacemaking and Healing Circles
Restorative Panels and Accountability Boards
Victim Panels and Victim Support Groups
Reparation Crews and Community Service
Victim Empathy Classes for Offenders
Re-entry Circles and Supports for Post-Incarceration
Adapted models for DV and sexual offenses

WITHIN THE REALM OF SCHOOL PRACTICES AND DISCIPLINE:

Community-Building and Peacemaking Circles
Affective Restorative Statements to Students
Conferencing and Suspension Alternative Re-entry
Peer mediation models
Truancy prevention and intervention models

WITHIN THE REALM OF TRANSITIONAL JUSTICE:

Truth and Reconciliation Commissions (South Africa)
Indigenous, village-based courts (Rwanda, Sierra Leone)
Revisiting Unresolved Legal Cases (US Civil Rights)

WITHIN THE REALM OF CONFLICT AND DISPUTE RESOLUTION:

Intergroup / Intertribal / Interfaith Dialogue Forums
Integrative Law Adaptations of Restorative Dialogue
Parent-Teen Mediation and Family Conferencing
Workplace Setting Resolution Processes

Also, adaptations of dialogue processes have been applied to situations involving Historical Harm, Intergenerational Trauma, and Polarizing Issues.

Restorative Justice Basics

Restorative justice is an approach to justice that focuses more on the harm done than the law broken. Legal concerns are important, but relational concerns can often be minimized in a justice system that only addresses the broken law and establishes a punishment to match up to this violation against the state. But when violations to the victim and community are set in the center of the stage, responses to crime require that offenders understand the impacts of their actions and take responsibility to repair the harm done. In this light, restorative justice seeks to give balanced attention to the needs of victims, the needs of offenders, and the needs of the community. It also engages all three of these parties in ways that opens up dialogue and empowers them to be the primary players in determining appropriate resolutions.

Two Key Principles about Restorative Justice:

- Focus is on the HARM done more than the LAW broken
- Process ENGAGES and EMPOWERS main players involved:

VICTIMS

OFFENDERS

COMMUNITIES

"Restorative justice requires, at minimum, that we address victims' harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders, and communities in this process." - Howard Zehr

Since the late 1970s, research on dialogue-based restorative programs has shown higher restitution payback rates and lower recidivism rates for offenders, greater levels of satisfaction with processes and outcomes by both offenders and victims, and reduced fear and emotional strain for victims. Nearly 40 years later, restorative justice is practiced worldwide in thousands of programs and services.

Restorative Justice Basics

When moving from restorative principles to restorative practices, one key feature continues to remain in the center of a restorative justice process:



Unlike justice processes in courtrooms that tend to restrict the flow of information and communication, giving professional stakeholders the primary roles in discussion and decision making processes, restorative models tend to open up conversations between the key players who were involved in the crime, giving them the primary role to discuss things and make decisions for resolving matters. These processes are generally led by third-party helpers who guide safe, constructive communication between victim, offender and community stakeholders. Third-party helpers can be mediators, facilitators, circle keepers, and panel conveners.

Restorative justice has its roots in ancient and tribal traditions, but has risen strong on the worldwide scene since the mid-1970s. As a result of this new growth, many indigenous, community-oriented traditions have been revitalized. At the same time, these centuries-old traditions have informed a number of practices in the restorative movement including the role of elders, the inclusion of family, the reintegration of the offender, and the power of listening in circle processes. In this context of the spreading and sharing of alternative models for resolving crimes and conflicts, **four main dialogue-based models** have stood the test of time:

MEDIATIONS	PANELS
CONFERENCES	CIRCLES

Restorative Justice Dialogue

Common denominators in all four of these restorative dialogue processes include:

- Adequate preparation of parties
- Attention to the web of relationships
- Guidance by third-party helpers / facilitators
- Invitation for support people and family to be present
- The power of storytelling and listening
- The importance of being heard and understood
- Practical agreements that are created by all involved

These core features give greater attention to communication processes more than legal processes. In this light, **restorative justice prefers inclusive, collaborative, dialogue-driven processes that result in consensual outcomes.** Unlike win-lose outcomes that often result from legal processes, restorative justice emphasizes good communication and trust-building that foster win-win outcomes. The primary role of third-party helpers and conveners is not to solve problems for other people but to create the proper space in which parties can meet each other, discuss the issues, come to deeper understandings about the other party, and solve things themselves.

Typical discussion content in restorative dialogue work covers:

1. **What happened?** (the Information)
2. **Who was affected?** (the Impacts)
3. **What repairs can be made?** (the Resolution)

This outline fits well with helping parties to progress from the PAST through the PRESENT to the FUTURE. That is the main goal of restorative justice: helping all parties to reach a better future that is no longer held captive to the hard things of the past. While bringing victims and offenders together for dialogue is often viewed as the most important feature of restorative justice, it is not the main goal. **The main goal of restorative justice is to help parties move forward in life *whether or not they have face-to-face dialogue.*** There are many other ways to help victims and offenders to journey forward, and good restorative programming can adapt processes to allow any client to reach a better future. The use of community members and surrogate victims, for example, can greatly help with modified models that still ensure good restorative dialogue and restorative outcomes.

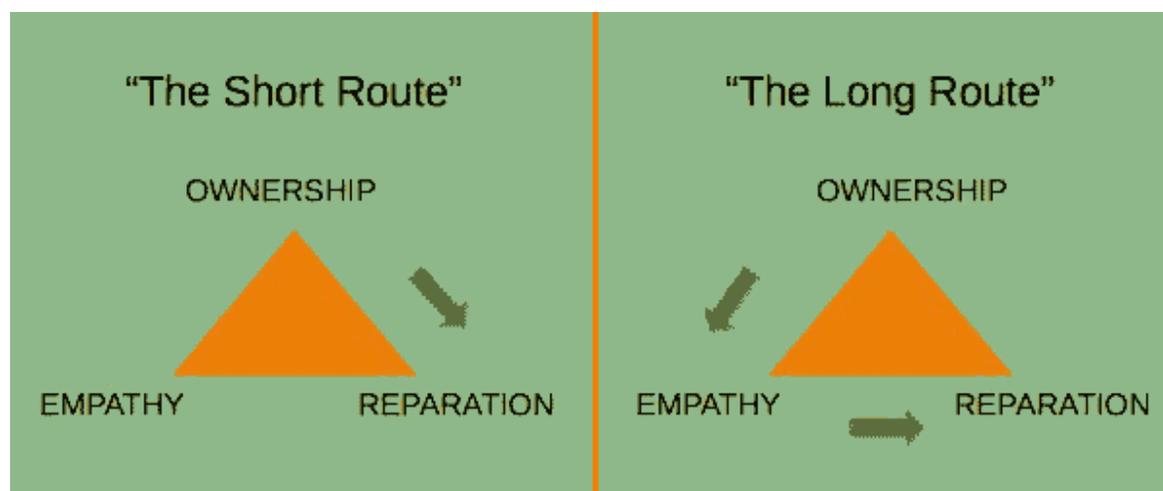
Restorative Justice Dialogue

One way to sum up the essence of a good restorative process is its capacity to integrate healing and accountability.

GENUINE HEALING + MEANINGFUL ACCOUNTABILITY

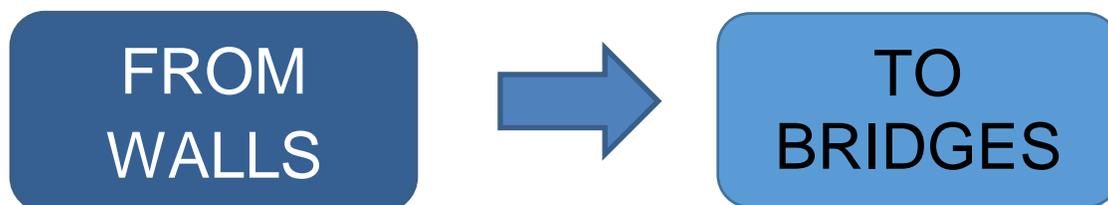
Through open communication, victims experience degrees of healing when their experience is validated. Offenders too, having often been victimized in prior situations, experience a type of healing when they are dignified in a justice process. This support does not diminish their accountability. In fact, respectful engagement of offenders heightens their internal capacity to be accountable, not in the sense of 'taking your medicine', but rather as a giving back of positives to replace the negative damage. This heightened sense of **responsibility is in truth an offender's RESPONSE-ABILITY** to make things right again with their victims. But to get to that responsive point, they have to hear and learn about how the victim was affected. Through this, offenders gain empathy and thus find greater internal motivation to make amends and not repeat violation crimes against others.

Instead of a quick fix, restorative dialogue seeks a longer route through the empathy experience, where victims and offenders see the humanity of the other, and this leads to a richer, longer-lasting reparative outcome.



Restorative Justice Dialogue

Crime creates walls of distrust between parties, and distrust makes it hard for good communication to happen. Conversely, restorative dialogue processes emphasize good and open communication as a way to rebuild trust and replace walls of negative emotional energy with bridges of trust.



LOW TRUST GOES WITH STRAINED COMMUNICATION. Because people experience lowered trust and the resulting blockage of communication, crimes and conflicts can **disempower people**. It is unfortunate when legal processes add to this experience of disempowerment when parties are kept separate and communication is restricted.

RISING TRUST GOES WITH OPEN COMMUNICATION. Alternative Dispute Resolution (ADR) processes and restorative dialogue can **re-empower people** so that they can have a stronger role in shaping better outcomes and better futures. Effective ADR models seek to raise trust levels between parties through the facilitation of good communication.

The role of mediators, facilitators, and circle keepers is to create safe spaces in which parties can have positive, empowered conversations where they speak, listen and be heard well by others so that trust can be rebuilt and relationships can be restored.

“Those who facilitate or mediate conflicts need foremost to bear witness rather than get lost in problem solving or advice giving. Bearing witness is about honoring the strength and resilience of people on a healing journey.” – Mark Umbreit

RETRIBUTIVE JUSTICE  RESTORATIVE JUSTICE

Crime defined by violation of rules	Crime defined by harm to people
Crime seen separate from harms / conflicts	Crime seen as related to harms and conflicts
State as victim	People and communities as victim
State and offender as primary parties	Victim and offender as primary parties
Interpersonal dimensions irrelevant	Interpersonal dimensions central
Offense defined in technical/legal terms	Offense seen in full context: relational, moral, social, etc.
Guilt is absolute, either/or	There are degrees of responsibility
Guilt is indelible (permanent)	Guilt is removed thru repentance/reparation
Debt paid by punishment	Debt paid by making things right
Accountability = "taking your medicine"	Accountability = taking responsibility
Blame fixing is central	Problem solving is central
Focus on the past	Focus on the future
Contestual, adversarial models normative	Dialogue and cooperation models normative
Justice tested by intent and process	Justice tested by constructive outcomes
Process alienates people	Process reconciles people
Victims' needs ignored	Victims' needs central
Offender is socially stigmatized	Offender is offered social reintegration
State monopoly on determining resolution	Victim, offender, community roles recognized
Proxy professionals are the key players	Victim and offender key players; professional help is available
Win-lose outcomes assumed	Win-win outcomes encouraged
Restitution is rare	Restitution is normal

(adapted from the paradigm distinction of retributive and restorative justice as formulated by Howard Zehr and Lorraine Stutzman Amstutz in 1998.)

A Victim-Sensitive Approach to Justice

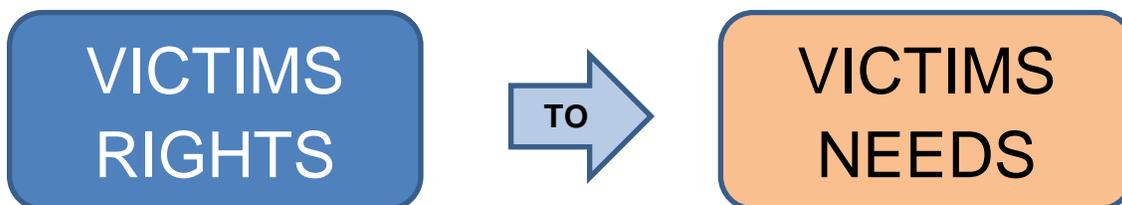
PARALLEL JUSTICE FOR VICTIMS OF CRIME

“For every reported crime, our society responds by trying to apprehend, prosecute, sanction and eventually reintegrate offenders back into productive communal life. Following the Parallel Justice framework, there would always be a separate set of responses for victims of the crime. Parallel Justice responses seek to restore victims’ safety, help them recover from the trauma of the crime, and regain a sense of control over their lives.”

“These responses would not depend on whether the offender is ever identified or convicted. In all cases, the harm experienced by victims of crime would be acknowledged and addressed separately and apart from the criminal justice process. While victims’ legal rights within the criminal justice process should be enforced, society’s obligation to provide justice to victims extends beyond the criminal justice process.”

(From the Parallel Justice website by Susan Herman, author of *Parallel Justice for Victims of Crime*; compiled by Ted Lewis)

A restorative approach to victims shifts the emphasis from...



Protective and Informative Rights are still very important. The main issue is that in the setting of supporting and guiding victims through justice process, their needs should be taken seriously to the extent that justice processes are shaped according to the best means for meeting those needs.

Restorative Dialogue may not be suited for every victim, but options for conversational and dialogue-based processes should be available to every victim. The needs of each victim will vary, but all victims deserve to identify their top needs and to discuss how those needs can best be met.