

Restorative Justice as Direct Democracy and Community Building

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Restorative justice responses to crime promote acceptance of responsibility, repair of harm, healing, and rebuilding of relations among victims, offenders, and communities. Practices have evolved from victim-offender mediation to family group conferencing, sentencing circles, and various types of citizen panels that transfer some decision-making authority from government to victims and offenders, their family, friends, and other supporters, and community members¹. Research shows that restorative justice practices are, by important criteria, successful. Participants are pleased with processes and outcomes, agreements on offenders' responsibilities are reached, and reparation plans are carried out by offenders². However, there have been few efforts to estimate long-term effects on offenders or communities.

In addition to these positive effects, restorative justice can function as a forum for direct democracy and as a way to develop communities. To see why that is so, various often asked questions need answers. How does restorative justice differ from the rehabilitative idea of individualized sentences, diversionary strategies that are used in juvenile and adult courts, and intermediate sanctions that fall between prison and regular probation? Why would victims and community members want to participate? Why should restorative justice work better than conventional criminal justice responses? How should initiatives and their success be evaluated?

Democratic processes and consensus outcomes are central to restorative justice practices. Everyone who feels affected by crime can participate in deciding consequences and all decisions are based on consensus. Thus, the idea of democracy is respected in its essential form. Instead of

authoritarian decision-making by a judge or representative decision-making by a jury, restorative practices emphasize direct democracy that is not based on majority rule.³ Majority rule decision-making encourages parties to underline differences, to belittle the other position, and to recruit a large number of supporters. If the only goal is to outvote the other party, there is no need to seek common ground or to understand the other position. When the majority rules, interests of minority groups are seldom addressed and many feel ignored and alienated—which means that they have little reason to participate in such processes.

Consensus decision-making requires that participants respect and listen to one another in order to find a unanimous solution. Decisions are more likely to be based on consideration of facts and understanding of the situation of others than on pre-established ideological positions, and to incorporate multiple perspectives and needs. When consensus must be sought, everyone has an equal opportunity to express views and an equal weight in decision-making—which means that everyone has a concrete reason to participate. The idea of restorative justice encompasses a positive commitment to reflection and inquiry, through questioning and discussion, in contrast to doing things because of dogmatic customs or mandatory rules.

I. Clarifying Differences

To many people it is unclear how restorative justice practices differ from sanctions that are routinely ordered by criminal courts: restitution, community service, participation in drug or alcohol treatment, diversionary plans for juveniles that might require letters of apology, jail visits, anger management classes, and the like. People are confused, since these responsibilities are regularly included in agreements that are reached in processes based on restorative justice

principles. We believe that the difference is not so much in the sanctions, but in the values in which they are based on, the processes by which they are determined, and their intent. The following comparison, adopted from an unpublished paper by Dennis Maloney and Neil Bryant⁴, summarizes core distinctions in values.

DIFFERENCES IN VALUES

CONVENTIONAL CRIMINAL JUSTICE

RESTORATIVE JUSTICE

Crime Prevention

Deterrence: If sentences are severe enough and there is widespread awareness of them, people will be deterred from committing crimes.

Crime Prevention

Sense of Community: If people work to build a better community, their investment in the place and the people will prevent them from committing crimes.

Emphasis

Reactive: Most resources come in to play after a crime has occurred. The purpose is to investigate the offense, locate an offender, prove guilt, determine punishment, and manage risk.

Emphasis

Preventive and restorative: What can be done to build the bond of all citizens with their community? What responsibilities should the offender take to restore the victim and return peace to the community?

Clientele

Offender-focused: The primary client is the offender, who, in addition to punishment, receives legal counseling, needs and risk assessments, educational and job training, and residential treatment services.

Clientele

Victim and community-focused: Needs of victims and communities determine offenders' responsibilities. Crime prevention strategies are designed and steered by community members.

Accountability

Institutional: The offender is accountable to complete sanctions imposed by the government. Legislative bodies determine an array of accountability measures.

Accountability

Personal: Accountability means making things right with the victim and the community. Offenders complete restorative duties that are determined by those who were directly affected by crime.

Process

Status-based: Employed professionals and experts make decisions; the victim and the offender can be heard in limited ways.

Process

Consensus-based: the victim, the offender, and community members together make decisions with the system. Everyone is equally valued and must agree on the decision.

Since restorative justice responses are based on different values from those underlying

typical intermediate sanctions or diversion programs, their aims and goals are also different. While conventional sanctions and programs focus on punishing offenders or fixing their bad habits, restorative justice responses focus on repairing harm and building relationships among the victim, the offender, and the community. Take, for example, community service. Community service as punishment can deliberately humiliate and degrade offenders without any intent to teach new skills or build social capacities. One common form of public shaming, for example, is the highway banks where groups of guarded offenders clean trash in eye-catching gear far away from communities. Community service is restorative if offenders work in a community with other community members in projects that are valued by that community. Offenders can contribute to the common good and be proud of their work in such projects as Habitat for Humanity, where they build houses side by side with other community members and are treated with the same respect as are others.

II. Producing Collective Effects

Restorative justice not only promotes individual accountability of offenders, but also collective accountability of communities. While offenders need to be responsible for their choices that harm others, communities need to take responsibility for social conditions that are linked to crime. Offenders have to find ways to repair the harm, and citizens have to find ways to improve and strengthen their communities. We believe that community ties and collective commitment are developed through restorative justice practices, since every participant has a stake in success and most will not want to let the others down.

The premise is that communities are strengthened when people have more opportunities

to interact, create personalized relationships, establish support networks, and exercise informal social control. Completion of the restorative agreement no longer rests solely on the offender's shoulders, but becomes a community matter, and as a result, community members regularly want to help the offender to complete his agreement. Likewise, they offer emotional, and often also material, support to the victim. When all the facts of the crime as well as past histories and current circumstances of the victim and the offender are open to discussion, ordinary people seldom view crime as an isolated incident. They draw connections to other collective problems and patterns of life, and want to address them as well.

Besides the direct and short-term goal of repairing the harm caused to the victim and the community, restorative justice encompasses an indirect and long-term goal of building communities. Borrowing from the terminology of the community development literature, we believe restorative justice builds social capital. Social capital can be defined as the social good embodied in the structure of relations and shared values among people, and thus differs from human capital (individual skills, knowledge) and physical capital (material improvements).⁵ When there is social capital, community members do favors for each other. Social capital is working when you can ask your neighbor to help carry out an old refrigerator, when your neighbor blows snow from your driveway or mows your front lawn without mentioning it, or when your neighbor offers to keep an eye on the house while you are on vacation.

Social capital provides support through relationships, but also creates informal social control. Informal social control is conventionally, but too narrowly, described to include block-watch groups, neighborhood patrols, property marking, community meetings, and such. These activities typically are initiated formally and externally by government or by organizations outside

the communities. They tend to focus on individual failures and produce conformity to community norms by negative collective pressure, while they could instead focus on individual assets and produce conformity through a shared sense of responsibility for community conditions. We see the promise of informal social control in connections that arise naturally and internally within the communities—in networks of relationships, which help to create, understand, and monitor community norms and values.

This does not suggest that it makes sense to try nostalgically to return to a time when everyone knew all his or her fellow residents in a village or neighborhood. As Robert J. Sampson has pointed out, we no longer rely on that kind of community to satisfy our private or personal needs, such as psychological support, religious nourishment, or deep friendships. Rather, “local community remains essential as a site for the realization of common values in support of social goods, including public safety, norms of civility and mutual trust, efficacious voluntary associations, and collective socialization of the young.”⁶

Informal social control is working when you can comfortably tell neighborhood kids to quit fighting, to stop harassing your dog, or to pick up the trash they dropped on the sidewalk. This exercise of informal social control is possible only because social capital was built earlier when you routinely said “Hi” to the same kids and asked how they were doing, complimented their new haircut or bike, bought lemonade from their kiosk, or offered them a ride to their soccer practice.

III. Why Participate in Restorative Justice Initiatives?

Many people suspect that victims and community members will not want to participate in restorative justice practices. Why would a victim want to meet the person who hurt her and

“create a relationship” with him? And why would restorative justice be more successful than most crime prevention and community justice initiatives that have had serious difficulties in involving community members? We believe that the concept of direct democracy is central here.

In recent years victims have gained many rights in the criminal process. They receive more information in every phase of the process and may give statements that can affect bail, sentencing, and parole decisions. However, it is clear that the victim and the offender remain in opposite and, often, hostile positions. Indirect dialogues typically emphasize distance and difference rather than encourage respect for the other party or understanding of his or her situation. These dialogues often fail to help the victim to reach beyond anger and to move forward. More importantly, the victim (or the offender) has no direct power to participate in decision-making. Likewise, community members who often feel strongly affected by crime have no right or opportunity to make their viewpoints known in a criminal case.

Both victims and community members have three powerful reasons to participate in restorative justice processes. First, they receive first-hand information about the crime—what did the offender think, plan, and do? Many victims discover that they were a random target, that they were not observed or stalked before the crime, and that the offender will not harm them again. Participants gain personal information about the offender and the crime, which helps to reduce their fears.

Second, victims and community members can tell the offender how the crime affected their lives. This is in itself a positive way to express feelings, fears, and frustrations. An important part of victims’ healing is that they can tell their story and that they are listened to respectfully.

Third, victims and community members can decide what happens next. They are able to

suggest responses that best fit their needs and offenders' capabilities. Participation in decision-making gives them back a sense of control in life which was taken away by the crime.

In an unpublished paper, Ronald Earle has presented a set of questions that can be used to assess criminal justice programs from a restorative justice perspective.⁷ In a nice way they summarize our earlier discussion:

- Does everyone affected win?
- Is community understanding of the problem increased?
- Are efforts of different groups, categories, and disciplines of people combined?
- Is direct benefit provided to the victim?
- Is confrontation of the offender's negative behavior integrated with encouragement to positive behavior?
- Is volunteer involvement increased?
- Are values of community better understood, strengthened, and expressed?
- Is interaction among government agencies, elected officials, community organizations, and community members achieved?

If restorative justice is understood as helping to create safer neighborhoods through interaction, dialogue, and respect for difference, it is a promising way to find methods to improve safety in ways that expand freedom and promote tolerance⁸. And it will do this better than do methods that enhance surveillance, restrict movement, mandate conditions, rely on confinement, or in other ways separate people.

IV. Evaluation Challenges

Evaluations of sentencing options and programs tend to focus on the question, What works? It is

commonly accepted that programs that target offenders should be assessed by their effects on offenders. Likewise, it is generally agreed that programs can be said to work only if they reduce recidivism, which is routinely defined as offenders' rearrest during or after the program.

Programs work even better if they reduce recidivism more effectively and at lower cost than other comparable initiatives.

But it would be a mistake to use recidivism as the main measure of restorative justice practices. One core idea is to tailor offenders' responsibilities to the needs of victims and communities. Another core idea is to build social capital and informal social control, which together decrease crime. If offender recidivism is reduced, we believe it occurs through collective, not individual, mechanisms—new relationships, community responsibility, and increased social support and control.

Thus, restorative justice initiatives' effects on victims and communities should be measured first, and offender recidivism only second. Success is achieved if victims, communities, and offenders experience benefits, and offender recidivism does not increase. Restorative initiatives are working if victims and communities gain, as long as offenders do not commit more crimes than comparable offenders who receive conventional criminal sanctions.

It is fairly easy to think of ways to measure restorative justice practices' effects on individual victims and offenders. Victims can be asked, for example, about the following: restitution or other compensation received, reduced fear of crime, reduced anger, benefits of being able to express feelings and to participate directly, benefits of meeting the other parties personally, new relationships created, keeping in touch with other participants or asking their help in another matter, and being able to leave the incident behind or to think less often about it.

Similar questions can be posed to offenders. In addition, we should want to know if restorative justice processes alter offenders' lives in other ways. For example, are offenders more likely to attend and finish school, hold jobs, participate in community activities, enjoy stable relationships, and avoid new crimes?

Estimating any initiatives' effects on communities is a challenge. Concepts of social capital and informal social control are hard to define and measure. Personal connections, support networks, collective monitoring, socialization to shared values, and other processes through which neighborhood effects might operate are difficult to define, identify, and document.

At the level of neighborhood social organization, the amounts of informal social control and residents' willingness to intervene have connections with crime. Data from the Project on Human Development in Chicago Neighborhoods⁹ show that neighborhoods with high levels of collective informal social control of children have substantially less juvenile delinquency, such as gang fights, graffiti, and peer-group disorder than do otherwise demographically similar neighborhoods in which informal social control is weaker. The amount of social capital and informal social control is often estimated by asking the following questions: can you get help from your neighbors (e.g., borrowing items, watching children or pets, solving problems, other acts of kindness), how often you socialize with your neighbors (e.g., visiting homes, having parties), would your neighbors intervene in certain situations (e.g., kids fighting or painting graffiti, someone breaking into your house or selling drugs), and how satisfied you are with your neighborhood (e.g., plans to move out, positive characteristics).¹⁰

Although research has established the connection between collective social organization and crime, it has been unable to answer the crucial question: how to create and increase positive

interaction, social capital and support, and informal control in neighborhoods? We believe that restorative justice can do this, although the experience in other fields has not been particularly promising. Various community crime prevention initiatives have shown little or no success in mobilizing communities: “Much of the effort to alter the structure of communities in order to reduce crime has not been noticeably successful or sustainable.”¹¹

Obstacles to community building have been hard to overcome— neighborhood infrastructures that obstruct civic participation; residents’ frustration with short-lived programs that swiftly come and go; conflicts among different residential groups; poor relations between governmental agencies and residents; agency culture and hierarchical organization; and bureaucratic boundaries between city, county, and state departments that prohibit true partnerships among them.

Results in the field of community development have not been much better. It seems that efforts to generate strong, close relationships among neighbors seldom succeed, and initiatives should instead focus on creating structures for natural interaction.

Another common problem is lack of direct resident participation. Research consistently shows that community development corporations are more successful in representing residents’ interests than in involving them directly in key decisions.¹²

There have been no comprehensive evaluations of restorative justice initiatives’ effects on communities. However, there are many reasons to expect that restorative practices will work better than do most other community building efforts. First, restorative justice processes are based on direct participation and transfer decision-making authority from criminal justice agencies to ordinary people. This is crucial, since the majority of victims, offenders, and their supporters

are economically and socially among the least powerful members of American society.

Restorative justice redistributes responsibility and power to them.

Second, restorative justice processes are based on consensus decision-making and dialogue that value respect, diversity, and tolerance.

Third, restorative justice processes look for concrete solutions to concrete problems. As such, they are more likely to engage people than general community meetings that discuss broader social or safety matters in a particular community.

Fourth, although restorative justice processes follow from a specific crime, they do not limit discussions to narrow incident-related topics. Instead, connections to larger community issues are encouraged. Participants often take collective responsibility for social problems in their community.

Fifth, restorative justice processes offer personal, visible, and tangible support for victims and offenders.

Sixth, restorative justice processes reduce distance between different groups of people—victims, offenders, their families, community members, and criminal justice professionals. Conversations based on equal voice, personal stories, and mutual respect are a natural and spontaneous way to create new relationships.¹³

V. Conclusion

Restorative justice processes carry great potential to turn negative incidents of crime to positive opportunities to create new relationships, build communities, enhance citizens' participation in matters that affect them, and strengthen grass roots democracy. The potential is as yet

unrecognized by most criminal justice agencies, and as a result, is largely unrealized and unstudied. This may not change soon. Restorative justice challenges widely accepted ideas of universal and linear processes; written rules and guidelines that could be applied equally to everyone; and blueprints and scripts that emphasize techniques more than values.

However, at the same time, there is a common trend in other fields to move from power-based structures and practices to relationship-based structures and practices. Examples include alternative dispute resolution in law, quality management in business and industry, capacity-building emphasis in social services, and new organizational strategies in schools. The main idea is that disputants, workers, customers, or students no longer are motivated by fear, power, or authority. Instead, their motivation is based on an opportunity to interact and create relationships, find and affect solutions, gain skills and respect, and take and give responsibility.

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