

RESTORATIVE JUSTICE: A NEW PARADIGM FOR CRIMINAL JUSTICE

We are still a long way from the time when our conscience can be certain of having done everything possible to prevent crime and to control it effectively so that it no longer does harm and, at the same time, to offer to those who commit crimes a way of redeeming themselves and making a positive return to society. If all those in some way involved in the problem tried to . . . develop this line of thought, perhaps humanity as a whole could take a great step forward in creating a more serene and peaceful society.

Pope John Paul II, July 9, 2000.

Several countries, including most notably New Zealand and Australia, have garnered international acclaim over the last decade for restorative justice initiatives in their criminal justice systems. In particular, the New Zealand invention of the “family group conference (FGC)” for youth offenders has been hailed as a pioneering model of restorative justice. Other examples of restorative justice have been piloted in other countries.

But what is restorative justice? Restorative justice is a system or practice which emphasizes the healing of wounds suffered by victims, offenders, and communities that are caused or revealed by offending conduct. With restorative justice, parties with a stake in a criminal offense (including the offender, the victim, and the communities of each) collectively resolve how to deal with the aftermath of the criminal act with an emphasis on repairing the harm from that act – the harm to the victim, to the community, and to the offender her/himself. Examples of restorative justice include FGCs, sentencing and peacemaking circles in North America, and victim-offender mediations in the United States, each of which are described below.

Criminal justice processes that are restorative share a number of characteristics that explain why they are effective in – among other things – reducing reoffending, increasing satisfaction rates, and preventing crime in the first place.

Perhaps most important, restorative justice makes the actual victims of crime central participants in the response to the crime. FGCs in New Zealand are conferences in which victims are invited to meet offenders and their families, with the police and a justice coordinator present, to discuss the crime and what should happen as a result of the crime. Victims are thereby given a voice to tell of the impact of the crime and to get their questions answered: Why were they victimized? Will they be victimized again? How will the offender put things

right? In New Zealand, victims have the right (but no obligation) to attend the mandated FGC and to tell the young offender face-to-face about the personal impact of the crime. Persons who have observed FGCs and other kinds of restorative justice conferences attest to how important this expression is not only for the victim but the offender and his/her family.

Critically, the involvement of the victim leads to a greater accountability from the offender. It is difficult for offenders to make excuses and to retreat behind a shell in the face of victims recounting the often devastating impact of the offense. Offenders more often express real remorse, which is a key step to their own journey away from crime and to the healing of the wounds suffered by victims.

Restorative justice works additionally because it gives new voices to victims, to offenders, and to community representatives. In this way, the participants – including even police – feel a greater sense of ownership in the process and of the outcomes produced by the process. This explains why researchers have found much higher levels of satisfaction with restorative justice processes than with traditional criminal justice in the courts. Victim and offender satisfaction rates in excess of 90% are not unusual.

Restorative justice programs are also a natural fit with community policing and police problem-solving, which have proven so effective in reducing crime rates in countries around the world. A key component of community policing is for the police to better understand the communities they serve. Restorative justice processes allow the police and other participants to understand in greater detail why a crime was committed in the first place. Police, working with community groups, can then use this information to target specific areas and types of offending with carefully tailored programs to reduce crime. In Wellington, New Zealand, police and the Wellington City youth justice coordinator have used information gathered from FGCs to target certain gang activity and truancy problems. The net effect has been an impressive two-thirds reduction in crime by youth offenders in Wellington City since 1996.

Another key to the effectiveness of restorative justice is its ability to accommodate cultural, ethnic, and religious diversity. Family group conferences and other kinds of restorative justice conferences, for example, can be held almost anywhere. The ability to conduct a conference at a sacred place or at the offices of a community group (with due deference to the view of the victim as to venue) can make an important difference. Even if held at a governmental office, restorative justice procedures are flexible enough to allow prayer and other types of cultural and religious accommodations.

Consensus decision-making is also very important. The hallmark of restorative justice is collaboration among those parties with an interest in the criminal offense, including victims, offenders, families of victims and offenders, community groups, and the police. Decisions are reached in FGCs in New

Zealand and restorative justice programs elsewhere as a result of the conference groups coming to better understandings and achieving collective agreement as to how the injuries that were caused and revealed by the crime can best be healed.

Because they often reveal a deeper understanding of what is needed to reintegrate the offender into the community and to restore the victim, restorative justice conferences frequently lead to the greater use of community resources (including drug/alcohol counselling and alternative education programs). In this way, restorative justice seems better at building communities and resources within the community than traditional court processes.

Restorative justice is not a panacea. Nor can it supplant completely conventional criminal court processes. But in New Zealand and elsewhere, it is a tool that has repeatedly proven to be effective.

As Father Jim Consedine, a Catholic Priest in New Zealand, recently wrote:

Restorative justice is a positive way of dealing with crime. It can lead to the transformation of people's lives. The question is – do we have the courage, the vision, and the political will to implement it? . . . The answer rests with us all.*

No one can doubt that we can do better in responding to crime, in caring for victims of crimes, and in making our communities more respectful and safer places in which to live. Restorative justice presents a new paradigm in criminal justice policy. It is a paradigm that is gaining increased acceptance around the world. That paradigm is gaining increased acceptance because the people who are involved with restorative justice and the researchers who have studied restorative justice programs know of its effectiveness and transformative potential.

Indeed, many in the United States have first hand experience with different restorative justice models. To date, however, these models have been utilized only in state and local jurisdictions. The time has come to apply restorative justice, and in particular restorative justice conferencing, to the federal criminal justice system in the United States. The first step needed is to trial a restorative justice program in a particular federal district. Success from that initial trial can then be expanded to other federal districts. With this experience, the U.S. Congress can then be asked to write into federal criminal law a mandate to use restorative justice processes and programs.

Restorative justice is a new vision, a new way of seeing criminal offenders, victims, and their communities. It can work.

* Bowen, Boyack, and Hooper, New Zealand Restorative Justice Practice Manual, at 10 (2000).