

## **Theme 2: Restorative Justice, Society and Culture**

The field of Restorative Justice as an academic discipline and as a global practice movement is relatively young (early 1970s) with its contemporary origins rooted in experiments in alternative criminal diversion in Canada. However, in many ways it is simply a re-enactment of ancient practices of justice not too far distant in each of our own cultural traditions, but eclipsed by our current Western justice system. Restorative Justice is concerned with right relationships and the revitalization of community and collective harmony after a breach of violence. It is a justice that demands *accountability* (recognizing the harm and taking responsibility), making clear that no act that destroys human dignity goes unnoticed. However, along with this accountability it creates an avenue for *reconstruction* (equalizing power and addressing future intentions through restitution, reparations and reconciliation). Instead of a justice system that is obsessed with apportioning blame and shame, and administering punishment and isolation, restorative justice seeks to heal the harms of victims, rehabilitate offenders and reintegrate both of them into community networks of support as a safeguard of justice. Ultimately, restorative justice is concerned about the well-being or the ‘common good’ of all society. In restorative justice terms, the well-being of society at large would require three clusters of human needs. First, it requires autonomy and freedom of choice. Second, it requires safety, security and order. Third, it requires meaningful relationships and human connection. It is simple, but never easy.

### **Living Justice: The Evolving Field of Restorative Justice**

**Carl Stauffer, PhD.<sup>1</sup>**

What is ‘Justice’? Is it a universal code of right and wrong behaviour and the subsequent penalties for acting outside of those norms? Is it a philosophy – a set of cultural values and ethics that make up a social contract? Is it a lifestyle – a way of being and doing that defines our relations and existence as humans? The concept of Justice has often been hijacked and distorted in the realms of historical interpretations, political imaginations, and religious meaning making systems. Forms of state-sponsored revenge and violent atrocities have often been committed in the name of justice. Those who work within the dominant western justice paradigm often lose perspective of what it is they are truly working for in the midst of the daily hustle and bustle of administering “justice”. This is partly due to the fact that our current western justice system is a modernist experiment – a product of the age of scientific enlightenment which presents itself as universal and thereby claims to supersede the in-context idiosyncrasies of cultural forms of justice. An indigenous First Nation’s chief from Canada captured this idea well when he said, “***You can’t be the healer when you yourself are the disease.***” It is critical that we grapple with, and explore the definitions and understandings of justice and how these extrapolations have been utilized and applied in the past, in the present and with an eye

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on the future. In this presentation, the notions of retributive and restorative justice approaches will be contrasted and their expressions of practice in society and culture will be further explored.

### **Re-framing the Justice debate:**

In order to open a more substantially rigorous dialogue about what constitutes justice in the human experience, it is essential that we redefine, or shall I venture to say expand, what we understand the core aims of justice to be:

- ❖ **Justice is realised in a the human, relational context of networked societies, not only in a legal procedures and court protocols.**
- ❖ **Justice is attained through actions of restitution and reparations, not only through rulings or interpretations of legal theory and codes of law.**
- ❖ **Justice is completed through restoration and rehabilitation, not only through isolation and punishment.**

### **Comparing Punitive & Restorative Justice systems:**

It might be useful to contrast our current justice system which is often termed “retributive” (punitive) and this expanded definition of justice which could be referred to as “restorative” (transformative).

<b>Punitive Justice:</b>	<b>Restorative Justice:</b>
<b>Focuses on establishing blame / guilt</b>	<b>Focuses on establishing harms, needs and responsibilities / obligation<sup>2</sup></b>
<b>Requires the infliction of pain</b>	<b>Requires the expression of bounded / limited shame</b>
<b>Administers isolation and punishment</b>	<b>Administers reparations and rehabilitation</b>
<b>Results in alienation &amp; ‘woundedness’ – a broken society</b>	<b>Results in re-integration &amp; healing – a whole society</b>

While I am aware that this kind of extreme categorization tends to push any debate into exaggerated dualistic thinking, I have partaken in this exercise of polemics in order to break through the hegemonic influence of our current justice system and the values that it promotes and allow for an alternative, descriptive language of justice to emerge.

In its best form, I believe justice should be *restorative* in nature. The field of Restorative Justice as an academic discipline and as a global practice movement is relatively young (early 1970s) with its contemporary origins rooted in experiments in alternative criminal diversion in Canada. However, in many ways it is simply a re-enactment of ancient practices of justice not too far distant in each of our own cultural traditions, but eclipsed by our current Western justice system. Restorative Justice is concerned with right relationships and the revitalization of community and collective harmony after a breach

<sup>2</sup> Zehr, H. (1990). *Changing Lenses*. Scottdale, PA: Herald Press.

of violence. It is a justice that demands *accountability* (recognizing the harm and taking responsibility), making clear that no act that destroys human dignity goes unnoticed. However, along with this accountability it creates an avenue for *reconstruction* (equalizing power and addressing future intentions through restitution, reparations and reconciliation). Instead of a justice system that is obsessed with apportioning blame and shame, and administering punishment and isolation, restorative justice seeks to heal the harms of victims, rehabilitate offenders and reintegrate both of them into community networks of support as a safeguard of justice. It is simple, but never easy.

A comprehensive definition of restorative justice might be: "...a broad term which encompasses a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to re-establish mutual responsibility for constructive responses to wrongdoing with our communities. Restorative approaches seek a balanced approach to the needs of victim, wrongdoer and community through processes that preserve the safety and dignity of all."<sup>3</sup>

### **The Historical Origins of Restorative Justice:**

In many ways restorative justice is simply a re-enactment of ancient practices of justice not too far distant in each of our own cultural traditions, but eclipsed by our current Western justice system. Until the time of the western European Middle-Ages, as best as we can understand it, justice was facilitated by local elders at a village or community level and was mediated by cultural customary law and collective mores established over hundreds of years. Many of these frameworks of justice were rooted in spiritual cosmologies which gave order and explanation to the existential relationships between the Divine and humanity, as well as the "cause and effects" of human action and other unexplainable life phenomena. For the most part, these traditional justice processes involved elaborate systems of reciprocity, both in the material and symbolic form of restitution and reparations. The following is a brief list of examples of these kinds of justice systems:

- Ancient Israel: Mosaic Law
- Sumer: Code of Ur-Nammu (c. 2060 BC)
- Babylon: Code of Hammurabi (c. 1700 BC)
- Rome: Twelve Tables (449 BC)
- Europe: Ireland, Germany, England (496-600 AD)

There are many formulations of hybrid models of indigenous and contemporary justice being surfaced and applied currently – a sampling of these models are as follows:

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<sup>3</sup> Retrieved from the web 07/23/2011. [http://en.wikipedia.org/wiki/Restorative\\_justice](http://en.wikipedia.org/wiki/Restorative_justice)

- **North America: First Nations Communities** – North American indigenous groups are using what they have traditionally called “Circles” to deal with unwanted criminal activity and social deviation in their communities. Circles are communal gatherings guided by community elders (called “circle keepers”) that provide an egalitarian process by which all participants have an opportunity to speak and participate in consensus decision-making. Circles are used for dialogue, truth-telling, sentencing, healing and reintegration conversations in the community.
- **New Zealand/Australia: Maori Justice** – New Zealand is the first country to adopt a completely restorative justice process called Family Group Conferencing for dealing with its juvenile offenders. The process is fashioned after customary Maori practices of justice and involves the meeting of the victim and family, the offender and family, community elders, social workers, and police /probation officers.
- **Africa: Gacaca, Fambul Tok** – In Rwanda (Gacaca Courts) and in Sierra Leone (Fambul Tok) parallel hybrid justice and healing processes have emerged at a local community level in order to complement and challenge the various international transitional justice efforts in these post-genocide/war settings.
- **Afghanistan: Jirga Process** – a traditional deliberative justice process is being resurrected at a local level to make decisions about political matters, gender issues, community development projects and police-community safety/security issues.

## **A Historical Shift in the Application of Justice:**

Western historical narrative (some would say ‘urban legend’) has it that the idea of deviant behavior being seen as offense against the State (an institutional entity) and not the victim (another human being) is a relatively new phenomenon. Although there were geographic kingdoms covering vast regions of Europe and rulers who held power over large numbers of people through village taxation decrees, justice was not centralized. It remained a localized happening embedded in a web of networked relationships at a village level. It was situated within close proximity to a community of people that were intimately connected and interdependent on each other. However, one king in particular (Henry I) decided to make a decree that all crimes committed at a local level were in fact crimes against the King’s court and that all criminals needed to be tried in a court hearing before the King who now became judge.

“Following the Norman invasion of Britain in 1066 A.D. William the Conqueror’s son, Henry I, detailed offenses against the “king’s peace.” By the end of the 11<sup>th</sup> century, crime was no longer perceived as injurious to persons, but rather was seen as an offense against the state.”<sup>4</sup>

This laid the foundations for our current western justice system with its focus on the dyadic relationship of the offender and the State, leaving out the vital, empowering

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<sup>4</sup> Source: [http://en.wikipedia.org/wiki/Restorative\\_justice](http://en.wikipedia.org/wiki/Restorative_justice)

elements of the process that give voice and participation to the victim(s) and the communities. There are various interpretations of this action and the enormous shift that it brought in the administration of justice. The constructivist explanation for this 'shift' relies on the analysis that the localized village justice of that time had become entirely too arbitrary and difficult to control and that the decision to centralize justice in the King's court was serving the function of efficiency in the execution of fair and impartial hearings and more standardized sentencing. The de-constructivist explanation would point to the solidification of power and empire in that the greedy King Henry I had most likely taxed his subjects to the maximum and was afraid of a rebellion if he were to increase his demand for more tariffs. Instead, by bringing all offenders to book in his court and with the majority of offenses being those of lesser consequence, primarily settled with fines, he was able to pad the State coffers with each fine made payable to the King.

### **Restorative Justice as an Alternative Practice:**

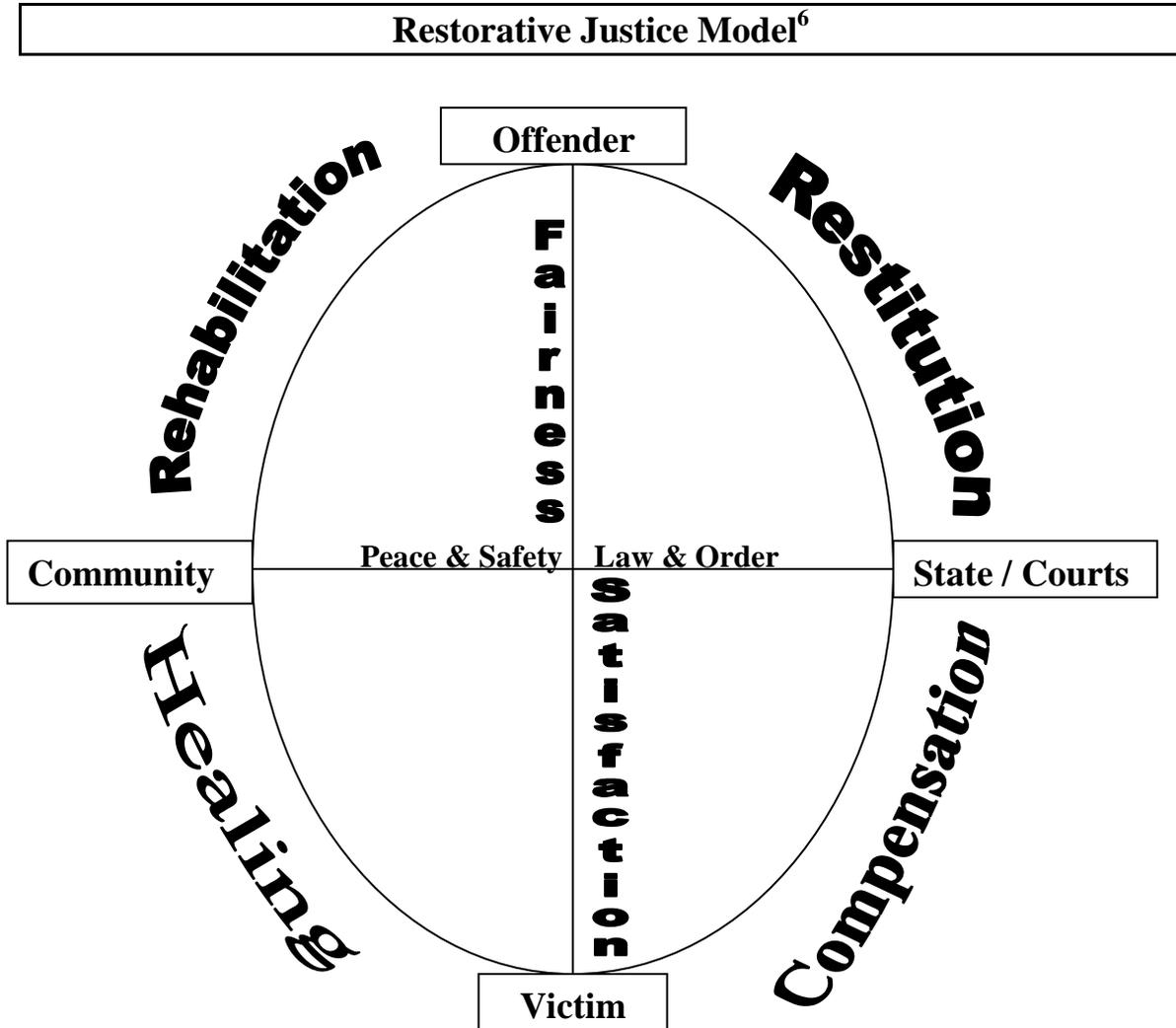
The contemporary restorative justice movement is attempting to provide the necessary corrective to bring back a holistic justice, one that gives agency to the victim(s) and the community as well as the offender and the State. In this way, restorative justice inhabits four essential values and processes of genuine human justice – **Encounter, Amends, Reintegration, and Inclusion.**<sup>5</sup> It has been said that the Restorative Justice process is "*Putting a Human Face on Crime and Violation.*" What is meant by this? There are at least three (3) principle 'pillars' that underpin any Restorative Justice practice:

- ❑ **Acknowledgement of the injustice** – Acknowledgement means that those who have committed a wrong against another must be ready to confess and take responsibility for their breach of relationship. As one victim of rape stated it, "*I needed the guilty to say he was guilty in order for me to be declared innocent.*"
- ❑ **Equity must be restored** – Equity refers to the uneven power imbalance that has occurred as a result of the offence. The offender has taken power from the victim by force. The victim needs to feel empowered again. This need for empowerment is well articulated in the gripping words of one survivor of attempted murder, "*The eyes are the window of the soul, the last time I looked into the eyes of my offender there was violence, evil, destruction and death. If I could have the chance to look into his eyes again, and ask him if he would do it again. And if he didn't flinch and was able to reassure me, and I could see the change in his eyes, then the programme [victim-offender conferencing] would be doing me a great service.*"
- ❑ **Future intentions must be addressed** – Future intentions speak of what is often called reparations or restitution. Statistical research indicates that restitution required from the offender by the court can only boast of a 30-50% success rate whereas it is now very clear that through structured victim-offender interactions

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<sup>5</sup>Skelton, A. and Batley, M. (2006). *Charting Progress, Mapping the Future: Restorative Justice in South Africa*. Pretoria: Restorative Justice Centre and Institute for Security Studies.

restitution success rates jump to 70-80%. Many offenders, given the opportunity, are willing to try to “make things right.” As one offender put it, “*You don’t know what it is like to be only known for the worst thing you have ever done in your life.*”



### Restorative Justice Applications:

- Victim-Offender Mediation
- Family Group Conferences
- Restorative Conferencing / Circles
- Community Restorative Boards / Panels
- School / University Campus Models
- Circles of Support and Accountability
- Transitional and Indigenous Justice Processes

<sup>6</sup> Adapted from Justice Fellowship.

## **Restorative Justice Benefits:**

### ***It holds offenders accountable for their wrongdoing.***

- (a.) By having to confront the indisputable human cost of their actions, and thereby see the victimised parties as real people with real needs;
- (b.) By the opportunity to meet the victim and their family in a setting in which feelings and fears can be expressed and questions asked;
- (c.) By taking responsibility for the criminal act by having the opportunity to ask forgiveness of the victim and their family and having to take an active role in forming an acceptable restitution plan;
- (d.) By having the chance to interrupt a criminal lifestyle and become a productive rather than dependent member of society; and
- (e.) By having an alternative to confinement / imprisonment.

### ***It provides the forum where victims and their families can be healed, empowered to speak and be heard, and have influence in the process of justice and reparations.***

- (a.) By having a direct part in the settlement of the offence and receiving restitution in symbolic and /or material compensation;
- (b.) By changed attitudes and the choice to offer forgiveness;
- (c.) By the opportunity to meet the offenders in 'safe-space' in which feelings and fears can be expressed and questions answered;
- (d.) By the opportunity to affect the life of the offenders who often need a positive and personal influence in their lives.

### ***It gives opportunity for the community to play a role in the rehabilitation of the offender(s) and the healing of the victim(s) as well as be empowered to take control of their own needs for safety and security.***

- (a.) By having the opportunity as communities to offer visitation, counselling, employment, housing, and other reintegrating social services;
- (b.) By enhancing the problem-solving and conflict management skills of community members; and
- (c.) By providing a model of self-governance, and civic and community volunteerism.

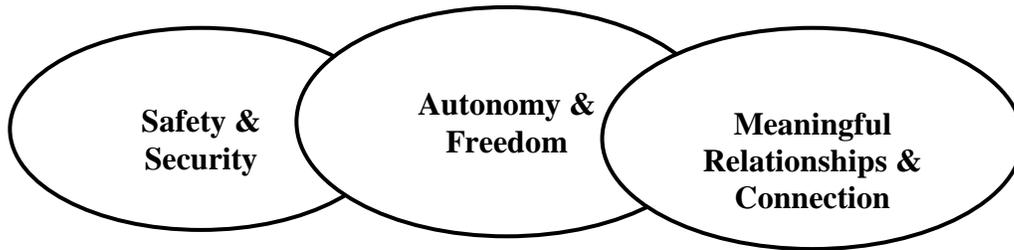
### ***It benefits the State by enhancing its own administration of justice and public safety, providing a diversionary alternative to an already overloaded justice system, and saving costs by reducing recidivism and incarceration rates.***

- (a.) By augmenting community and public safety through the reduction of recidivism and by proactively dealing with crime;
- (b.) By expanding the diversionary alternatives to the criminal justice system in general and the incarceration specifically thereby alleviating the burden of an overcrowded system; and
- (c.) By cost effectiveness and economic gains that result from resolution and restitution, which are more productive and less expensive than confinement, probation and/or increased community crime.

## **Restorative Justice at a Macro Level:**

On a collective or corporate level, restorative justice takes on a comprehensive approach to **restoring harmony, order and well-being**. What does human well-being mean? In

essence it involves three elements. Each of these is essential for society at large, the community as well as the individual.



Focusing on these three pieces of the ‘puzzle of justice’ requires a radically different paradigm shift from the current mind-set of our justice and correctional systems. Our current system claims to be fulfilling three major objectives. These are:

**Deterrence** – Even in countries where the criminal justice system is well resourced and considered quite effective, crime rates continue to soar. In the United States of America, where the death penalty is administered in many states, violent crime and homicide continue to grow in numbers.

**Rehabilitation** – Statistics are very clear, prison sentences do not reform offenders. In fact, most prison inmates believe they become “victims” of the state or the criminal justice system. Instead of experiencing or feeling the real impact of their wrongdoing on others they continue to rationalise and minimise the consequences of their crimes.

**Incapacitation** – Research indicates that in our lifetime, 98% of all prison inmates will be released into our cities and communities. They will be our neighbours, fellow students, church members and co-workers. The real question here is how do we want them, when they are return, to be re-integrated back into our society? Do we want them angry, bitter and resentful? Or taking responsibility, willing to go through genuine rehabilitation and finally healing? The challenge is before us – how will we respond?

### **Restorative Justice Successes:**

Statistics show that restorative justice programs enjoy success rates for reaching agreements and fulfilling restitution plans as high as 90 to 93%. Other studies indicated that up to 70% of the victims believed the offenders were adequately punished. 65 % of the offenders who participated in these types of meetings felt that having to face the victim was just as much, if not more of a “punishment” than going to court and/or jail. 79% of the victims and 78% of the offenders believed justice had been served in their cases. A research study conducted in 1992 that analyzed programs in four different areas in the U.S., found a 22% recidivism rate among juvenile offenders who participated in restorative justice programs, as opposed to a 34% recidivism rate for those who did not participate.

## **Critical Frontier Issues in the RJ Field:**

- 1. Defining the Field** - Is restorative justice a movement or a technical, professional discipline?
- 2. Standardization issues** - What criteria should be utilized to measure the success of restorative justice? How does one monitor and evaluate the practice and ethics of the field? How could the field of restorative justice be accredited without losing its creative/innovation edge?
- 3. Intergenerational justice** – How can we build (legislate and institutionalize) justice for the next generations?
- 4. Areas of future research in the restorative justice field:**
  - Collective remembering without revenge (Restorative Justice & Trauma)
  - Restorative Justice and social change (Nonviolent Strategic Action)
  - Restorative Justice and building Community – (Social capital – bonding, bridging and linking)
  - Designing Culturally appropriate / Hybrid models