

THE HANDBOOK OF VICTIM OFFENDER MEDIATION
An Essential Guide to Research and Practice
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INTRODUCTION:
Restorative Justice Through Victim Offender Mediation

One of the significant international developments in our current thinking about crime is the growing interest in restorative justice. At a time when the public debate around issues of crime and punishment is driven largely by political leaders embracing the conventional liberal solutions of the past, restorative justice offers a fundamentally different framework for understanding and responding to crime and victimization in society. Restorative justice emphasizes the importance of elevating the role of crime victims and community members, holding offenders directly accountable to the people they have violated, restoring the emotional and material loss of crime victims, and providing a range of opportunities for dialogue, negotiation, and problem solving, whenever possible, that can result in a greater sense of community safety, conflict resolution, and closure for all involved.

In contrast to the offender-driven nature of our current system of justice, restorative justice focuses on three client groups: crime victims, offenders, and community members. It represents a growing international movement with a relatively clear set of principles, and guidelines for practice, though at this point in its development still lacking a comprehensive plan for broad implementation as a new paradigm that might fully replace our current systems of juvenile and criminal justice.

Unresolved Issues Facing the Justice System

Restorative justice policies and practices have emerged in direct response to unresolved issues facing juvenile and criminal justice systems throughout the free Western world. In the United States, these unresolved issues have had an enormous impact on public policy, individual and community attitudes, and the quality of justice experienced by the individuals most directly affected.

At a time when the emphasis on retribution is increasing, contradictory impulses between punishment and rehabilitation perplex correctional policymakers and practitioners. One such contradiction reflects a lack of clarity regarding the basic purpose of sentencing. Is it meant to rehabilitate and change offender behavior? Are criminal sentences meant to deter others from committing crime? Should the purpose of sentencing be to incapacitate criminals or remove them from circulation in society for a set period of time? And other conflicting goals contribute to confusion about what courts are trying to achieve. Victims of crime feel increasingly alienated by our current system of justice. Even though the justice system exists precisely because individual citizens have been violated by criminal behavior, crime victims have virtually no legal standing in American courts. The crime is against "the state" and state interests drive the process of meting out justice. Individual crime victims and representatives of victimized communities are on the sidelines, with little, if any, opportunity for input. Crime victims frequently feel twice victimized—first by the offender and then by the criminal justice system that their tax dollars are paying for. For many crime victims, their encounter with the justice system results in increasing frustration and anger as they realize that they are being largely ignored and are often not even provided with information about the process, court date changes, or the final disposition of the case. Rarely do criminal justice professionals take the time to listen to the fears and concerns of crime victims and then seek their input and invite their participation in holding the offender accountable.

The failure of ever-harsher punishments to change criminal behavior is another problem facing our nation's juvenile and criminal justice systems. If severe punishment and incarceration were effective, America should be one of the safest societies in the world. Despite the common perception among many citizens that the United States is too lenient on criminals, the fact is that more Americans are locked up in prisons, per capita, than in any other developed nation in the world except Russia. Furthermore, sentences in the United States are far in excess of those in other democratic Western nations, and it is the only developed nation that still routinely employs capital punishment. Finally, the skyrocketing cost of corrections—and incarceration specifically—is driving a growing number of legislatures and policymakers to reconsider the wisdom of the current retributive system of justice, which relies heavily on the incarceration of offenders while largely ignoring the needs of crime victims.

What Is Restorative Justice?

Restorative justice is a victim-centered response to crime that gives the individuals most directly affected by a criminal act—the offender, their families, and representatives of the community—the opportunity to be directly involved in responding to it caused by the crime. Restorative justice is based on values that emphasize the importance of providing more active support assistance to crime victims; holding offenders directly accountable to the people and communities they have violated; restoring emotional and material losses of victims as much as possible; providing a range of opportunities for dialogue and problem solving among interested crime victims, offenders, families, and other support persons; offering offenders opportunities for personal development and reintegration into productive community life; and strengthening public safety through community building.

Restorative justice provides an entirely different way of thinking about crime and victimization (Van Ness & Strong, 1999). The prevailing retributive justice paradigm regards the state as the primary victim of criminal acts and casts victims and offenders in passive roles; restorative justice, by contrast, recognizes crime as first and foremost an activity directed against individuals. It assumes persons most affected by crime should have the opportunity to become involved in resolving the conflict. The goals of restorative justice—allowing offenders to take direct responsibility for their actions, and helping victims move beyond their sense of vulnerability to achieve some measure of closure—stand in sharp contrast to the conventional focus on past criminal behavior and increasing punishment. Restorative justice attempts to draw on the strengths of both offenders and victims, rather than dwelling on their weaknesses. While denouncing criminal behavior, restorative justice emphasizes the need to treat offenders with respect and to reintegrate them into the larger community in ways that can lead them to engage in lawful behavior. It represents a truly different paradigm based on the following values:

1. Restorative justice is concerned far more about restoration of the victim and the victimized community than about the evenhanded punishment of the offender.
2. Restorative justice elevates the importance of the victim in the criminal justice process through increased involvement, information, and services.
3. Restorative justice requires that offenders be held directly accountable to the person or community that they victimized.
4. Restorative justice encourages the entire community to be involved in holding the offender accountable and promoting a response to the needs of victims and offenders.
5. Restorative justice places greater emphasis on having offenders accept responsibility for their behavior and make amends, whenever possible, than on the severity of punishment.
6. Restorative justice recognizes community responsibility for social conditions that contribute to offender behavior.

In a very real sense, the theory of restorative justice provides a blueprint for the future by drawing on the wisdom of the past. In the Norman invasion of Britain in the eleventh century, a major shift occurred as people turned away from the prevailing view of crime as a victim-offender conflict. William the Conqueror's son, Henry I, issued a decree securing royal jurisdiction over offenses (robbery, arson, murder, theft, and other violent crimes) against the "king's peace." Prior to this decree, crime had been a matter between individuals, and an emphasis on repairing the damage by making amends to the victim was well established.

Restorative justice also draws on the rich heritage of many recent justice reform movements, including community corrections, advocacy, and community policing. The principles of restorative justice are consistent with those of many indigenous traditions, including the Native American, Hawaiian, Canadian First Nation, and Maori cultures. These principles are also consistent with and emphasized by nearly all of the world religions.

Many of these principles can also be seen in the pioneering work of the Australian scholar John Braithwaite, who addresses issues of crime, shame, and reintegration. Braithwaite (1989) argues for "reintegrative shaming," a type of social control based on community condemnation of wrongdoing, but with opportunities for the reintegration of the wrongdoer back into the community. He notes that in societies with low crime rates, people do not mind their own business, there are clearly understood limits to deviance, and communities have a preference for handling their own problems. Braithwaite argues for principles of justice that emphasize the personal accountability of offenders, active community involvement, and offender reconciliation and reaffirmation of principles that are deeply embedded in the restorative justice paradigm, with its emphasis on mediation and dialogue when possible.

The distinction between the old paradigm of retributive justice and the new paradigm of restorative justice has been most clearly articulated through the pioneering work of Howard Zehr at the Conflict Transformation Program of Eastern Mennonite University in Virginia, as summarized in Exhibit I.1. Whereas retributive justice focuses on punishment, the restorative paradigm emphasizes accountability, engagement of the parties most affected by the crime in responding to its impact, and repair of the emotional

physical harm caused, to the greatest extent possible.

Exhibit I.1 Paradigms of Justice

Retributive	Restorative
1. Crime defined as violation of the state	1. Crime defined as violation of one person by another
2. Focus on establishing blame, on guilt, on past (did he/she do it?)	2. Focus on problem solving, on liabilities and obligations, on future (what should be done?)
3. Adversarial relationship and process normative	3. Dialogue & negotiation normative
4. Imposition of pain to punish and deter/prevent	4. Restitution as a means of restoring both parties' goal of reconciliation/restoration
5. Justice defined by intent & process: right rules	5. Justice defined as right relationships and outcomes
6. Interpersonal, conflictual nature of crime obscured, repressed; conflict seen as individual vs. the state	6. Crime recognized as interpersonal conflict; value of conflict is recognized
7. One social injury replaced by another	7. Focus on repair of social injury
8. Community on sideline, represented abstractly by state	8. Community as facilitator in restorative process
9. Encouragement of competitive, individualistic values	9. Encouragement of mutuality
10. Action directed from state to offender <ul style="list-style-type: none"> • victim ignored • offender passive 	10. Victim & offender engaged in the process <ul style="list-style-type: none"> • victim rights/needs recognized • offender encouraged to take responsibility
11. Offender accountability defined as taking punishment	11. Offender accountability defined as understanding impact of action and helping decide how to make things right
12. Offense defined in purely legal terms, devoid of moral social, economic and political dimensions	12. Offense understood in whole context-moral, social, economic, political dimensions
13. "Debt" owed to state and society in the abstract	13. Debt/liability to victim recognized
14. Response focused on offender's past behavior	14. Response focused on harmful consequences of offender's behavior
15. Stigma of crime irreparable	15. Stigma of crime reparable through restorative action
16. No encouragement for repentance & forgiveness	16. Possibilities for repentance & forgiveness
17. Dependence upon proxy professionals	17. Direct involvement by participants

How Widespread Is Restorative Justice?

The initial conceptualization of restorative justice began in the late 1970s and was first clearly articulated by Zehr (1985). At that time, the discussion of this new paradigm was based largely in North America, with a small additional network of academic practitioners in Europe. But at the time, restorative justice was not being considered seriously by the mainstream of criminal justice policymakers and practitioners.

Governmental and Organizational Support

By 1990, an international conference supported by NATO funds was convened in Italy to examine the growing interest in restorative justice throughout the world. Academicians and practitioners from a dozen countries (Austria, Belgium, Canada, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Turkey, and the United Kingdom) presented papers related to the development and impact of restorative justice policies and practice. International interest in restorative justice has continued to grow. In 1992, the New Zealand Ministry of Justice issued a working paper on restorative justice for serious consideration as a federal policy. During 1997, a group of scholars in North America, Europe, and the South Pacific (Australia and New Zealand) interested in restorative justice met in the United States and Belgium to examine this emerging theory further. Increasingly large international restorative justice conferences have been convened in subsequent years.

In the United States, the pace of interest in restorative justice has picked up in recent years. The restorative justice practice of victim-offender mediation (VOM), which began in the late 1970s, is now quite widespread. The American Bar Association (ABA) has played a major leadership role in the area of civil court mediation for more than two decades. After many years of little interest in mediation, the ABA in the summer of 1994 fully endorsed the practice of victim-offender mediation and recommended its use in courts throughout the country.

In January 1996, the U.S. Department of Justice convened its first national conference on restorative justice, bringing together policymakers and practitioners from all over the country. This was followed by five Department of Justice-sponsored regional restorative justice conferences during 1997 and 1998. Thousands of restorative justice information packets have been sent to the Center for Restorative Justice & Peacemaking at the University of Minnesota, the Community Justice Institute at Florida A & M University, and related organizations in response to requests from correctional officials, policymakers, and practitioners.

Perhaps one of the clearest expressions of the growing support for restorative justice is the National Organization for Victim Assistance's monograph endorsing "restorative community justice" (Young, 1995). During the early years of this movement, victim advocacy groups were skeptical. Many still are; however, growing numbers of victim support organizations now actively participate in the restorative justice movement.