

RESTORATIVE JUSTICE IN MINNESOTA AND THE USA: DEVELOPMENT AND CURRENT PRACTICE

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I. DEFINITION

Restorative justice has emerged as a different framework for guiding responses to crime at all levels of the criminal justice system. Howard Zehr identifies three concepts as pillars of this framework: 1) Restorative justice focuses on harm. 2) Wrongs or harms result in obligations. 3) Restorative justice promotes engagement or participation (Zehr, 2002). Restorative justice, then, encompasses responses to crime that move toward understanding, acknowledging and repairing harm. Achieving understanding, acknowledgment and repair requires direct participation of victims, offenders and affected communities in the process of justice. Since harm is the central problem in a restorative framework, restorative justice requires a response that does no deliberate further harm.

In the restorative framework mutual responsibility is the loom on which the fabric of community is woven. Crime represents a failure of responsibility, clearly on the part of the offender and sometimes on the part of the larger community. Restorative justice aims to re-establish mutual responsibility.

Restorative justice focuses the response to crime on healing for all the wounds associated with the crime. Consequently, any action that moves toward healing for anyone affected by a crime - victim, friends and family of the victim, affected community members, offender, offender's family and friends – in a way that consciously minimizes any further harm is restorative.

II. HISTORY – MINNESOTA

Restorative justice has ancient and widespread roots. Processes that focused on repair of harm and acknowledgement of wrongdoing were a part of most ancient cultures and are still practiced today among many indigenous people around the world. Many of us use such practices in our families and social communities. However, the formal justice system in Western societies in the late 20th century was not based on the philosophy of restorative justice. Several streams of change have influenced and informed the contemporary movement to shift the basis of the formal justice system to a restorative one. The *feminist movement* raised questions about male models of justice that are rule-based but not sufficiently contextual or caring. The *victims' movement* illuminated the woeful lack of attention to victim needs and interests. The shift in social work from a *deficit orientation to a strengths orientation* challenged basic assumptions in criminal justice practices. The *alternative dispute resolution movement* in the legal field offered new models for working through conflict. In the field of business the *movement toward flattening hierarchies and empowering workers* marked a shift from relying on 'power over' for the desired ends to using 'power with'. The *communitarian movement* suggested that active community participation in decisions affecting community life is an essential element of a healthy society. The growing *movement for recognition of indigenous understandings and ways of life* has provided a conceptual framework of inter-relatedness and practical models for community based responses to wrong-doing. The restorative justice framework is consistent with all these streams of change and gains energy and insight from the work in those fields.

In the 1980's restorative justice in the U.S. existed in a few small programmes doing victim offender mediation. Those were generally operated by faith based groups working in partnership with local justice agencies. Minnesota had two programmes in the 80's – one operated by a private not-for-profit agency

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(Minnesota Citizens Council on Crime and Justice) and one within a county corrections agency. Other programmes existed that were consistent with restorative values (restitution, respectful community service, victim services) but they were not clearly articulated as restorative programmes based on a conscious philosophy of healing as justice.

In 1989 a not-for-profit community agency doing work on justice issues in Minnesota began advocating restorative justice as appropriate public policy. In 1990, in collaboration with St. Paul Area Council of Churches, the Minnesota Citizens Council on Crime and Justice sponsored a statewide conference on restorative justice. The idea was still very marginal and only attracted a small number of justice professionals. However, in the early 90's the Minnesota Department of Corrections created an ad hoc committee to study restorative justice and determine whether the Department should take any action regarding restorative justice. Minnesota had a history of innovative criminal justice policy, including the development of the first community corrections programme in the United States in the 1970's. The interest in restorative justice was not based on any particular problem or crisis but on an on-going interest in promoting progressive corrections policy. In December of 1992 the ad hoc committee organized another statewide conference on restorative justice. This conference attracted major leadership in corrections from across the state. The recommendations from the conference discussions led to the creation of a position a year later at the Department of Corrections dedicated to promoting restorative justice.

The Minnesota Department of Corrections had a national reputation for leadership in the field of corrections. Consequently, the creation of that position gave legitimacy across the U.S. to restorative justice as a public interest, not just a private, faith-based interest.

Key characteristics of Minnesota's approach:

1. The position of Restorative Justice Planner, though located within the Department of Corrections, was created with a broad vision. The job description for this position specifically calls for working with law enforcement, courts, social services, education and community groups – not just with corrections. The scope of the job gave permission to invest time in fields other than corrections. The development of parallel activities and interest in education, police and neighborhood organizations has created a powerful momentum for the vision of restorative justice.

2. The position is fully focused on promoting and supporting change and does not involve operating a programme or providing direct service.

3. The position was not accompanied by mandates. All the work of the Restorative Justice Initiative involves voluntary participation by agencies and organizations. Because ownership and commitment are critical elements of a restorative approach, mandates could undermine the fundamental values.

4. While the vision of the position is clear, there has been a great deal of strategic freedom which has allowed the restorative justice initiative to respond to unexpected opportunities. There has not been a fixed plan of action nor emphasis on particular outcomes. Flexibility in the pathway has contributed enormously to the success of the proliferation of efforts outside of corrections.

5. The Restorative Justice Initiative does not rely on positional authority but relational influence. Staff promote system and community wide change, without the use of formal authority or statutory power, by engaging all stakeholders in a voluntary, respectful process of examining an alternative vision and allowing local control over the decisions to make change, the specific path of change and the pace of change.

The work of promoting restorative justice in Minnesota began with public education to any interested group – probation officers, lawyers, police officers, civic groups, church groups, college students. Initially public education was conducted primarily through public speaking and dissemination of written materials. Later the availability of videos and websites added helpful tools. Early, positive coverage in newspaper stories helped spread the message of restorative justice to the general public.

The emphasis of the public education was on the philosophical framework, the value structure, rather than specific implementation strategies. The assumption of this approach was that the philosophy is the foundation and that within that philosophy there might be many different ways to develop practices. Each

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community has to determine how to put those values into practice to fit its unique circumstances. Knowledge of the underlying philosophy is essential to being able to respond to changing circumstances.

Public education is generally done in an interactive format using questions posed to the audience to elicit, from their own life experience and common sense, the basic ideas of restorative justice (Pranis, 1998). The following questions are used:

- What are the forces shaping our behavior such that most people do the right thing most of the time? Which of those forces are the most powerful?
- When you have been victimized or unfairly treated, what were your feelings and what did you need?
- If we had a good process in the community to resolve conflict and harm what would we want to be the characteristics of that process?

My experience in conducting that exercise with a variety of audiences (lawyers to inmates to church groups) is that every group produces the same basic list for each question and the answers are consistent with restorative values. That experience gives me confidence that the public has a natural understanding of and support for restorative justice.

Wherever people responded to information with interest and a desire to develop local programmes or practices, the Department of Corrections staff helped to organize and facilitate local planning groups to lead change toward a restorative vision. Change was based on voluntary participation by both professionals and community members. No legislation was enacted to enable restorative approaches. The specific practices were assumed to be legal under existing statutes because, although they were not mentioned in statute, they in no way violated those statutes.

The major existing restorative practice in 1994 when the position began was victim offender mediation. But probation officers, based on restorative values, began to identify other ways to move toward restorative goals, including:

- putting more emphasis on restitution,
- designing community service that involved offenders in work valued by the community,
- providing opportunities for victim input into community service assignments,
- finding for more ways to involve community members and
- providing more information to victims about offender compliance with conditions of probation.

One probation office designed a community intervention process with offenders based on a widely used chemical dependency intervention model. Community members sit with the offender and discuss how his behavior affects everyone and what is needed to get him and the community back on track.

Later in 1994 a visitor from Australia introduced family group conferencing to Minnesota and in 1995 several police departments established family group conferencing as police diversion programmes for youth. In 1995 circle sentencing was introduced from Canada and in 1996 the first community based circle sentencing project working with both juveniles and adults was established. In 1996 the Vermont reparative board model was introduced and a neighborhood of Minneapolis established a neighborhood board programme to address quality of life offenses (vandalism, soliciting prostitutes, public urination, low level drug possession) committed by adults.

Rural communities, suburban communities and inner city neighborhoods have designed and implemented various adaptations of victim offender mediation, group conferencing, reparative boards and peacemaking circles as programmes working in partnership with the justice system. In some jurisdictions the justice system itself has worked to infuse restorative justice principles throughout the work of the organization. In Minnesota prisons interested staff have found ways to incorporate restorative principles into the function of the prison.

The Restorative Justice Initiative of the MN DOC has worked closely with individual citizens, community groups and professionals in the system to nurture the growth of restorative justice.

III. WHAT ARE THE PRACTICES? WHAT DOES RESTORATIVE JUSTICE LOOK LIKE ON THE GROUND?

An eighty-year-old woman, disturbed by noises in the middle of the night, discovered a masked man wielding a crow bar attempting to force his way into her house. She called the police and they found the perpetrator nearby. The victim accepted the opportunity to meet face to face with the young man, who had pled guilty to the offense, to tell him how the crime had affected her life and to participate in deciding how he should make amends. The offender also agreed to participate. A trained facilitator met with both parties separately to hear their stories and explain the process. When the parties came together the elderly woman described the emotional trauma which was heightened by the recent loss of her husband. The offender apologized and agreed to pay the costs of an alarm system for her as well as the cost of replacing the door. He promised the woman that he would not do it again. Some months later the woman read in the local paper that the same young man had burglarized a local business. She called the facilitator and asked to meet with the young man again. She was very upset that the young man had not kept his word to her. With some trepidation the young man agreed to meet with her. At their second meeting the elderly woman repeated again and again, "How am I going to know you won't do this again?? How am I going to know you won't do this again? How am I going to know you won't do this again?" Finally, they agreed that he would call her on the phone every week to reassure her that he was not getting into trouble. Two years later he was still crime free since that incident – the longest time he had gone without committing a new offense.

A sample of images of restorative justice in action:

- With the support of a community circle, a young man, who stole his father's credit card and charged over \$1,000 in goods, apologizes to his father, turns over his federal and state income tax refunds to his dad and does community service at a local church. His dad says, "I got my son back."
- Inmates from a woman's prison help build a Habitat for Humanity home for a family.
- A young woman who stopped dancing for years after a traumatic rape rises from her chair and dances gracefully around the room after a face to face meeting with the perpetrator.
- Under the guidance of a community circle and local probation, a dozen adolescents do home repairs worth \$12,000 on a house they vandalized. The victim stops by to observe their work and they share the excitement of their accomplishments with him.
- A woman in her 70's, whose daughter was raped and murdered over twenty years ago, travels hundreds of miles to speak to groups of inmates in adult and juvenile prisons and offers hope that they can change.
- Women inmates listen to a panel of adolescents describe the impact on their lives of having Mom in prison.
- After sharing stories of pain, connecting to one another and to a sense of common fate, neighborhood residents become involved in establishing a transitional house for sex offenders in their neighborhood and defend it from an attempt by the city to close it.
- Surviving family members of a victim provide input at a parole hearing, express their concerns and are provided with support that was not available at the time of the crime many years earlier.
- A suburban financial consultant, arrested for soliciting a prostitute in an inner city neighborhood, meets with neighborhood residents to discuss the impact of his behavior and then provides service to the neighborhood by conducting financial classes and counseling for inner city residents. He continues to offer free classes after his required community service hours are completed.
- The stepfather of two juveniles arrested for attacking him discloses for the first time to the mediator his own childhood sexual victimization after a victim offender mediation session reveals that the adolescents' behavior was triggered by memories of earlier victimization by their biological father.

Because restorative justice is a philosophy to guide all activities in response to crime, it is not a fixed set of practices. However, there are several practices that have emerged under this philosophy that exemplify the philosophy and are often the core of efforts to build a more restorative system. The practices which bring victims and offenders or victims, offenders and community members together in a facilitated dialogue to determine what is needed to repair the harm and build a better future are those generally associated with restorative justice. Many other practices, by working with just offenders or just victims, also work toward the vision of restorative justice by supporting victims, involving offenders in repairing harm, increasing offender awareness of responsibility or other restorative goals but may not involve a face to face dialogue between the victim and the offender.

A. Face to Face Restorative Practices - Various Models (Pranis, 2003)

Victim offender dialogue/mediation/conferences. The classic victim-offender mediation model involves a victim and an offender meeting in a facilitated process in which each party has the opportunity to talk about what happened and ask questions. Emotions are allowed to be expressed within a respectful atmosphere. Most mediations result in a consensus agreement about activities the offender will undertake to meet the needs or expectations of the victim.

Restorative group conferences. This model is based on the family group conference introduced in the U.S. in 1994 from Australia. It is an adaptation of a traditional Maori process for resolving community problems. In this process the victim, victim supporters, offender, offender supporters and a facilitator engage in a dialogue to explore what happened, how each of them has been affected, and what needs to happen to make things as right as possible. The facilitator may use a script to guide the dialogue. Every participant has an opportunity to speak to the issues and the agreement. Expressing emotions is encouraged. Again, agreements about the obligations for the offender are by consensus of all participants.

Peacemaking circles. Based on American Indian talking circles, the peacemaking circle process involves the victim, victim supporters, offender, offender supporters and interested community members in a structured dialogue about what happened, why it happened, what the impact is, and what is needed to repair the harm and prevent it from happening again. Participants sit in a circle without tables or other furniture. An object, called a talking piece, circulates in order among participants who speak only when they are holding the talking piece. The use of the talking piece reduces the role of the facilitator and eliminates cross-talk or interruptions because the talking piece designates who may speak while all others listen. The process may involve separate circles for the victim and offender before all parties are brought together to determine an action plan to address the issues raised in the process. By consensus the circle may develop the sentence for the offender and may also stipulate responsibilities of community members and justice officials as part of the agreement.

Community boards or panels. In this model a small number of trained community members meet with an offender to talk about what happened, how it has affected the victim and the community and to determine activities to be undertaken by the offender to address restorative goals. Some panels involve victims, others get input from the victim.

These models are relatively fluid and are continuously being adapted to meet particular circumstances or to take advantage of a technique learned from another model. Some restorative group conferencing models include community members who were not directly attached to the event. Some victim offender mediation sessions encourage participants to bring supporters and allow them to speak at some point in the process. Some group conferencing programmes use a talking piece for the agreement phase of the process but not for other phases.

All of these processes require admission by the offender of the charge or some portion of the charge. Victim participation is always voluntary and offender participation is typically voluntary or represents some level of willingness relative to other options. These processes can be used for hearing victims' stories and for determining obligations of offenders at many different points of the justice system: informal diversion, formal diversion, post-charge-pre-adjudication, and post adjudication as part of the sentence. The peacemaking circle process can be used for the adjudication itself as a sentencing circle. In the United States referral to a restorative process by the justice system is optional.

There is great variety among states and localities in the implementation process and choice of models. In some states a model may be relatively standardized and in others each group or community designs its own unique approach consistent with the philosophy of restorative justice. In Vermont community boards, initiated by the state Department of Corrections, are in every county and the model is similar throughout the state. In Colorado a common group conferencing model is used in many communities around the state, but each programme is locally initiated.

In Minnesota programmes have developed from grass roots organizing around the philosophy and vary considerably in the specifics of implementation. These face-to-face programmes have been initiated by a wide variety of people – probation officers, judges, prosecutors, community activists, victims, police, faith

communities, non-profits. Local restorative justice programmes have been initiated in many different ways. Here are a few examples:

1. Example 1: Victim/Citizen Initiated Partnership with the Justice System

A single man living in an older, middle class suburban neighborhood returned home from a birthday celebration to find his home in a shambles - food stuffs from the refrigerator on the floor and walls, every mirror and light fixture broken, a stereo stolen - a mess. When informed that the perpetrators were neighborhood kids, he was alarmed to realize he didn't know them and resolved to be involved in working with them. He was initially rebuffed by the prosecutor's office which informed him that they were interested in "consistency, not creativity." Subsequently, the case was moved to the Community Corrections Department, who referred it to the victim offender meeting programme and the victim got an opportunity to meet with and then work with the juveniles.

As a result of his experience he became very interested in the broad scope of restorative justice and decided that his community needed to be involved.

He began dialogue with key leaders in the schools, churches, community corrections, city government, the judiciary and police. He convened those interested and began the process of education and reflection on restorative justice, a vision for their community and possible steps toward that vision. Because of his life long interest in and commitment to young people, students were recruited to participate and have been an integral component of the group.

Members of the group arranged speaking engagements at various churches to raise awareness in the larger community. They recruited volunteers to become trained as facilitators for family group conferencing. A small grant was obtained to support efforts to apply restorative justice in the schools.

The group continually assessed its membership and sought to add missing voices or perspectives. The group often opened meetings with discussion of an object brought by one of the members as a metaphor for justice. This reflective activity has been useful for keeping the group connected to its underlying values and purpose.

The formation of the group was initiated by a citizen. The Community Corrections Department has provided staff support for some of the activities because of its mission to involve community and develop restorative approaches.

About six months after the group was organized the Community Corrections Department approached the group to explore their interest in trying the peacemaking circle process for a case from their community. The Council said, "yes." The Dakota County Community Corrections Department in collaboration with the DOC Restorative Justice Initiative facilitated training and technical assistance for the Council as they proceeded with the case. Again students participated in all stages of the process, including students who have been in trouble.

In the planning stage for a second case handled by the Council, involving several juveniles and multiple victims, conflict arose among various participants of the Council. The relationship between justice system professionals and other community members is not an easy one. A healing circle was held at the completion of that case to work through the conflict and try to learn from one another.

Because of the work of the Council, the local school district created a staff position to develop wider use of restorative planning for behavior problems in the schools. The police department has become more responsive to the use of restorative processes as a result of the Council work.

Council meetings are open to all interested persons. Decisions are made by consensus of those in attendance. The Council has struggled in its relationship with the prosecutor's office. Originally, the local police department sent cases for diversion directly to the Council. Later the police agreed to send all cases through the prosecutor's office which would then decide whether to send it to the Council. That change resulted in a dramatic reduction in cases coming to the Council. Some Council members felt that there was a significant loss of local control in that shift and that it undermined an important principle of restorative justice regarding community empowerment.

2. Example 2: Programme Initiated by the Police Spreads to Other Parts of the Community

A police department in a suburban community decided to try family group conferencing because they were so frustrated by the lack of significant consequences in the juvenile cases they were sending to the county attorney's office to be prosecuted. A veteran officer of the department attended training and was very skeptical of the process. Nevertheless, he tried the process and found it to be so impactful, especially for victims, that he began to use it for nearly all juvenile offenses asserting, "In 25 years of policing, I've never found anything this effective". He later became a trainer in family group conferencing and a national leader in restorative justice. He continually improved and expanded the programme, using it for offenders with multiple offenses and felony-level offenses. He worked with the local school district, encouraging them to use group conferencing as a school discipline strategy. Later he introduced peacemaking circles to the community and began referring some cases to peacemaking circles. After several years of success within the police department he organized a community justice council to involve community members in a partnership with the police department to manage restorative efforts in the community.

3. Example 3: Programme Initiated by a Coalition

In a Minneapolis inner city neighborhood a City Council member, Hennepin County probation officers and the neighborhood organization worked together to establish a reparative panel programme to address low level quality of life crimes in the neighborhood. A grant from a supportive state agency funded an extensive planning process involving key stakeholders in designing a programme for their neighborhood. They researched various models and chose the reparative panel model from Vermont in which community volunteers meet with offenders to discuss the crime and determine what the offender will do to make amends to the neighborhood. An Advisory Board of stakeholder representatives provides on-going guidance to the programme.

In addition to the use of these face-to-face processes at the front end of the system, all of these processes can be used when an offender is returning to the community after serving a period of incarceration. Reintegration into the community is always a critical time for the community and the offender and is often a difficult time for the victim as well. These processes allow an opportunity for dialogue about fears, concerns and hopes, provide input into conditions which might be a part of the release plan, and can develop support plans to maximize the possibility of successful re-entry so that new victims are not created.

B. Non Face-to-Face Restorative Practices

In many cases it will not be appropriate or feasible to have a face-to-face meeting between the victim and offender. However, efforts toward the goals of repairing harm to the victim, offender and community and encouraging offenders to take responsibility are still possible and are clearly within the restorative vision. These practices often involve working just with the victim or with the offender. Additionally, not all harm can be repaired by offenders alone. Often community or government resources are needed in addition to offender efforts, so offenders may not be involved at all in some restorative practices that serve victims' needs, such as victim reparation funds provided by government or victim support activities provided by the community.

Victim services provide information and support to victims, acknowledging the harm the victim has experienced and reconnecting the victim to the community. *Victim reparation funds* help repair the financial harm to victims. *Community support for victims* – One of the primary responsibilities of the community in the restorative framework is to rally around victims. In Billings, Montana, a Jewish family was the victim of a hate crime. Someone threw a brick through their living room window and painted swastikas on the house. A neighbor hung a Star of David (a symbol of the Jewish faith) in their window as a sign of support for the family. Subsequently, the Billings newspaper printed a half-page Star of David and people all over the city cut out the Star of David from the paper and hung it in their windows to support the family. The offender was never caught but the community sent a clear message of support for the victim and the behavior stopped.

Community service, if designed to be work that is valued by the community, gives the offender a sense of accomplishment and involves the offender in repairing harm to the community. Creative community service projects involving inmates in institutions have given them a way to repair harm to the community while locked up. *Restitution* involves the offender in direct repair of the harm to the victim. *Apologies and apology letters* are restorative if they are sincere and clearly take responsibility for the harm done. They help repair harm by restoring a sense of what is right and wrong and affirming that the victim is not responsible for the hurt or loss. As in any restorative practice the victim has a choice about whether to receive an apology.

Several restorative practices bring victims and offenders together, but not the victims and offenders of the same incident, so they are not face-to-face in the same sense as the practices described above. *Victim impact classes or panels* for offenders on probation or in prison increase offender understanding of the impact of their behavior, an important component of taking responsibility. These classes or panels also provide an opportunity for victims to tell their story, an important part of the healing process for many victims. *Victim offender groups* - generally involving victims and offenders impacted by serious crimes and meeting weekly for 10 – 12 weeks in a prison - provide opportunities for offenders to learn about the impact of victimization in an even deeper way than the impact classes. Similarly, they provide victims with an opportunity to share their story in a more personal process. Citizens, Victims & Offenders Restoring Justice Project, a pilot programme in a Minnesota prison, brought together surviving family members of murder victims, inmates serving time for murder or manslaughter and citizens to share the anger, pain and grief that resulted from criminal acts in their lives. Over a period of 12 weeks each participant shared his/her story. Victim participants impressed on inmates that healing from violent crime is a long and painful process and that they may never fully heal. Offenders expressed deep remorse and acknowledged responsibility for their crimes.

Taking responsibility and making amends, core components of the restorative vision, are often part of *treatment programmes or cognitive skills programmes*. Consequently, many of these programmes contribute to restorative goals as long as the means of achieving those goals are consistent with restorative values. Any practice that diminishes the core self of the victim or offender or is disrespectful of human dignity would not be restorative.

Restorative practice for professionals in the justice system may be as ordinary as *carrying the values of restorative justice into all interactions with offenders and victims*. It may be answering the phone with compassion and patience when an angry victim is calling about the case, or it may be routinely asking questions of the offender to prompt offender awareness such as: Who was harmed by your actions? What could you do to make it right?

The *involvement of community volunteers* in victim services or programmes to support offenders making amends or making changes in their lives is also a restorative practice. Volunteer assistance to victims and offenders reconnects them to the community fabric. One of the harms of crime is the disconnection and isolation that result from crime for both victims and offenders. By giving of themselves, volunteers help mend the tear in the community fabric caused by the crime.

C. Restorative Practices in Justice Systems Management

Restorative practices encompass more than the ways that professionals or community members might work with victims and offenders. Very important management practices and infrastructure within organizations support personnel in implementing restorative practices in their direct work with offenders or victims. Restorative management practices include training staff in restorative justice, job descriptions that prioritize restorative justice, policies that support restorative goals and performance measurement systems that give weight to expectations consistent with restorative philosophy. For example, when an offender owes money for fines, fees and restitution, which is paid first? Systemic restorative practice puts the restitution first (Maloney, Bazemore and Hudson, 2001).

IV. RESTORATIVE PRACTICES BEYOND THE JUSTICE SYSTEM / INFLUENCES BEYOND THE JUSTICE SYSTEM

Everything described above in restorative practices relates to the criminal justice system. These practices also have application in many other settings. A model of punishment for wrong-doing similar to the justice system is common in schools, workplaces, communities and families. Because all the same problems with the model arise in those settings, the philosophy of restorative justice has moved beyond the criminal justice system to other sectors where people are searching for a more constructive way to respond to harm – a way that does no further harm and that seeks learning and long term resolution.

A. Restorative Measures in Schools

The Minnesota Department of Children, Families and Learning promotes restorative measures in K-12 schools as an alternative to suspension or expulsion and as a classroom management tool to prevent small problems from becoming major flare-ups (Karp and Breslin, 2001). Peer mediation, group conferencing and

peacemaking circles are used to resolve conflicts or behavior problems between students and sometimes between students and staff.

1. Snapshots of Restorative Measures in Schools

- A tenth-grade student was referred to circle for attendance issues. In addition, he had been in trouble for smoking. During the second circle, he told a story about how he had not felt comfortable in school since he had been expelled the fall of his eighth-grade school year for the remainder of that year. No one at the high school had any idea how traumatic the experience had been for him until both he and his mother talked about it in the circle. He told the members that this was the first time since the eighth grade that he felt anyone at school had really tried to understand where he was coming from.
- A student in an elementary school threatened to “burn the school down” following recess. This incident occurred soon after the events in Littleton, Colorado, and his anger sparked fear among his classmates. The teacher requested a circle of understanding for the students. The next day, the entire classroom participated in a circle. Many of the students reported experiencing nightmares as a result of the student’s threat. During the circle, students expressed their feelings about how the threats had impacted them. The students also reflected on how their behavior had an effect on the student and how they were responsible, to a degree, about what happened to him. At the conclusion of the circle, the boy agreed to make changes in his behavior by: 1) not swearing or threatening others, 2) thinking before speaking and 3) walking away when he was mad to cool down and then talk it out later. He also agreed to write an apology letter to his classmates. His classmates agreed to make changes in their behavior by: 1) being nicer to him, 2) not telling lies about him, 3) not teasing him, 4) playing with him so he would have more friends, 5) being his partner in class, 6) helping him make new friends, 7) sticking up for him in a good way, 8) forgiving him and giving him a second chance, and 9) playing basketball with him after school.
- A teacher requested a Circle of Understanding with a student after he yelled at the student for not completing his homework. The teacher wanted to repair the harm done to the student out of anger and frustration. In the circle, the student’s mother said, “Welcome to being human”. The student said, “We all can do better and I’m ready to do my part”. The teacher had the courage to admit his mistake and seek help in repairing the harm through the circle.
- A student made derogatory comments to three others about their race. Through the circle process the victims explained what the comment reminded them of: an uncle being shot by a white man who called him the same name as he was shooting him, a movie that has “those people dressed in white doing mean things to us,” and another victim said, “it hurt my heart badly and I need to do something about it.” The offender explained that he then understood what he said was wrong. The students became friends and play together daily.

In addition to addressing specific conflicts peacemaking circles are used to address more generalized climate problems of the entire classroom such as bullying or scapegoating. Peacemaking circles are also used as a prevention measure to help elementary students cope with emotional events such as a teacher or other students leaving or a trauma experienced by a class member. One elementary classroom did a healing circle for a classmate whose infant sister died.

On several college campuses restorative practices are an alternative to the traditional discipline process.

B. Restorative Approaches to Child Welfare

In the field of child welfare there is widespread use of models based on the New Zealand family group conference method. Sometimes called family group decision making, that process involves the family in designing a plan to address the safety of children in the family. This process did not develop within the philosophical framework of restorative justice but is increasingly recognized as restorative in its approach. In Canada peacemaking circles have been used to determine outcomes in child welfare cases.

C. Restorative Approaches in the Workplace

A recent international conference on restorative practices offered intensive training and workshops on using restorative practices in the workplace. Several social service organizations and a juvenile corrections facility have begun using group conferencing and peacemaking circles in the workplace to deal with staff conflict or performance problems. Staff at a residential programme for juveniles in Minnesota participated in a one and a half day peacemaking circle to work through the anger and hurt that resulted from a workers’

strike and the choice by some workers to cross the picket line. The circle helped the organization move past the anger and re-focus on helping young people - the mission of the agency.

In Minnesota, prison staff are using restorative practices to address staff conflict and worker dissatisfaction at many different levels. In a peacemaking circle with the warden and the watch guard, requested by a front line corrections officer to share his frustration with management practices, the officer acknowledged his own responsibility in the difficult relationship. The officer left the circle with a renewed sense of hope that his voice could be heard without acting out. Longstanding anger and resentment have been aired and common ground reasserted through the use of peacemaking circles between the top administration team and the lieutenants in that prison. Respectful truth-telling in restorative processes is transforming an atmosphere of fear and helplessness to one of hope and shared responsibility.

D. Other Uses of Restorative Approaches

In Minnesota an ad hoc group representing various health related professional regulatory bodies of the state (for example, the Minnesota Board of Family Practice) is meeting to explore using restorative approaches to resolve complaints against members of those professions.

In an Oregon apartment complex, a planned eviction was averted by using a peacemaking circle for the problem tenant and other tenants to work through the issues prompting the proposed eviction. The Methodist Church has begun training bishops to use the circle process to respond to conflicts within congregations.

Members of an immigrant community struggling with conflicts between the “old way” and the “new way,” between men and women, and between young and old are coming together in peacemaking circles to listen respectfully to one another’s anger, pain and hope.

In many settings outside the justice system, restorative practices are being used to respond to conflict or harm by engaging those most impacted in working out a resolution that repairs the harm where possible and moves toward healing for all parties.

V. WHAT ARE THE CHALLENGES FACING RESTORATIVE PRACTICE?

Balancing the need for flexibility and responsivity and the desire to standardize. The process of creating restorative responses to crime is necessarily holistic, circular, shaped by those closest to the problem, responsive to the specifics of the situation (not universal) and messy (Pranis, 1997a). At the same time there is a need to describe and quantify what is happening to be accountable to the larger society and ensure fairness and appropriateness.

Maintaining a focus on victims’ needs and concerns. Very often victims are not involved or are brought into the planning and implementation of restorative practices as an afterthought (Achilles and Zehr, 2001). It takes great vigilance to avoid slipping into the habit of framing everything around offenders (Pranis, 1997a). For example, people often begin with the question, “For what kinds of offenses is restorative justice appropriate?” That question centers on the offender. What happens if we ask, “For what kinds of hurts is restorative justice appropriate?”

Staying true to the values of the new paradigm. Any new way of doing work faces a strong tendency for older, familiar patterns to reassert themselves. Over time key elements of practice may become blurred or erode. Time pressures, lack of a sense of competence in the new way, lack of training, resistance to change – all of these factors can cause practitioners to take short cuts or do it the old way.

Reducing dependence on professionals. Several decades of referring more and more community problems to professional services (e.g. police, social services) have eroded community skills and sense of efficacy in handling community problems (Pranis, 1997b). Many lay people do not speak up, or they defer to professional opinions, waiting for the experts to solve the problem. Professional skills and knowledge have an important contribution to make, but they are only one source of information and resources. Community insight, skills and resources can make a much greater contribution than is currently the case.

Using the full capacity of restorative processes. Many programmes deal only with first time offenders and very low-level cases, which might be more readily resolved in an informal community or family process and

should not enter the criminal justice system at all. Restorative processes have the capacity to deal with very difficult situations, and, because they are generally more time intensive, using them for primarily low level offenses fails to take advantage of their full potential in improving community life.

Integrating values into technique. In restorative justice, how to be with people is as important as what to do with people. Actions are not independent of core values. Specific techniques, formulas for action, are subject to contextual determination and cannot be rigidly set. Yet as a culture we do not have much patience for discussions of values. Neither do we give much thought to how we can intentionally apply values on a daily basis to guide decisions within a span of options available (Pranis, 1997a). Criminal justice professionals frequently say, "Just tell me what to do". Action without understanding the underlying values can produce results contrary to the intention.

Sufficient referrals. In many community based programmes, we find the paradox of unused community capacity to handle cases side by side with an overloaded system that does not take advantage of that capacity. Even in jurisdictions sympathetic to restorative programmes, it is a challenge to provide a steady flow of referrals. The habits and momentum of the system are difficult to modify to create a non-standard channel for cases. Many programmes whose services are primarily delivered by community volunteers find that they spend more time trying to get referrals than they do in maintaining their volunteer corps.

Creating a workable interface with an adversarial system. Restorative processes build relationships and trust. Truth telling is considered essential to developing effective solutions. If a person who reveals information out of trust is then thrust into an adversarial process that threatens harm or feels very disrespectful, the person will understandably experience a sense of betrayal of the trust extended (Pranis, 1997a). Issues of confidentiality are very thorny in practice.

Creating appropriate systems of community accountability and government accountability. Communities are not always fair and even-handed and government structures are not always responsive to legitimate community needs and interests. How do we ensure that community based processes honor restorative values such as equality, fairness, and the intrinsic worth of every human? How do we ensure that the formal justice system shares responsibility and power with the community while protecting individual rights of both victims and offenders? Restorative justice requires a relationship of mutual responsibility between communities and formal government, but we lack clear mechanisms for responding to a failure of responsibility on the part of the community or formal government in these processes.

Openly articulating a commitment to compassion and love in our work. Ironically, love and compassion are thought of as soft, when in fact it takes much more courage to speak of love and compassion than to speak of hate and vengeance in public discourse. Compassion and our capacity to connect as human beings are at the core of restorative philosophy. Accountability is a natural by-product of healthy love. If we love someone, we know it does harm to his/her soul to harm others and that the way to heal the soul is to take responsibility and to make amends. Healthy love is the environment most conducive for a wrong-doer to take full responsibility and to make the changes necessary to make sure it won't happen again. Healthy love does not excuse behavior or run away from responsibility. Walking the path of compassion is extremely hard work – it's not for the faint of heart.

VI. TRENDS

Interest and awareness of restorative justice are steadily growing. Nine years ago when I started my job at the Minnesota Department of Corrections there were only a handful of people who had heard of restorative justice. A recent poll in Minnesota indicates that 1 in 5 adults in Minnesota has heard the term 'restorative justice.' The number of books and articles in the criminal justice field about restorative justice has mushroomed in the past several years. Though far from being mainstream practice, restorative justice can no longer be ignored by any serious student of criminal justice.

For the most part practitioners have been at the forefront of this movement in the U.S. rather than academicians and theoreticians. It was Howard Zehr's direct experience in doing victim offender mediation that led to the theory he describes in *Changing Lenses*, the foundational book of the current restorative justice movement.

Developments in the field have sometimes defied the expectations of restorative justice practitioners themselves. The early victim-offender mediation practitioners assumed that victim-offender mediation would never be used in cases of serious violent crime. However, several victims of serious crime, wanting something to help them move on in their lives, insisted on the opportunity to meet with the offender. Facilitating face to face meetings in cases of severe violence is now a growing area of practice and research with formal programmes in at least nine states.

Another unanticipated development is the realization that implementing restorative practices with victims and offenders challenges traditional organizational structures. Management practices toward employees in most organizations trying to implement restorative approaches are not consistent with the fundamental democracy of restorative practices and the emphasis on relationship building as the pathway to desired behavior. Restorative justice is prompting deep self-reflection at personal and organizational levels as practitioners recognize that the values of restorative justice apply to all aspects of our lives and require us to live them as well as use them with victims and offenders. Healing processes are needed for front line workers who have often felt powerless and discounted in their organizations.

Practitioners in some areas are beginning to explore the potential of restorative practices to address larger social harms such as racism and bias. The experience of the Truth and Reconciliation Commission in South Africa suggests a possible role for restorative justice in acknowledging and healing the historic trauma that contributes to the struggles of African American and Native American people in the U.S.

Restorative justice practices in the justice system are generally appended to the mainstream system and supported by discretionary or soft money. To move past being a novelty for a few cases to become a normal way of doing business in the justice system, it will be necessary to shift resources more systemically and infuse all activities and functions of the justice system with restorative values.

Although still only impacting a small percentage of cases in the criminal justice system, restorative justice philosophy is energizing a wide range of activities across the United States toward a vision of wholeness for all those harmed by crime. The restorative justice movement is very dispersed in leadership and activity. It has many of the characteristics of a grassroots movement, although there is significant government involvement in some places. Without large amounts of money, high profile leadership or a marketing plan, the movement has, nevertheless, spread across the country in justice systems and is now influencing other fields such as education and social services. There is a remarkable level of coherence and focus in the movement, in spite of the lack of a national voice or organizing infrastructure.

VII. CONCLUSION

The restorative justice movement is deeply rooted in values of interdependence and non-domination. Holding those values in healthy balance requires continuous dialogue with deep listening. Honoring each individual as a unique and indispensable part of the larger whole supports people in acting on behalf of their own well-being in balance with the well-being of others. The task of restorative justice is to create spaces in which people can experience one another through heart and spirit and can access their own capacity for wisdom and healing through relationships with others.

A colleague from education, after listening to several people discuss restorative justice, said, "Oh, I get it. It's like 30 years ago when we threw a bottle out the window, we thought we threw it away. Then the environmental movement taught us: There is no "away". Wherever we throw it, it is still part of us. Restorative justice says the same about people". The restorative justice movement calls for mindfulness about our connections and our impact on one another. That is the basis for healthy living in our families, schools, neighborhoods, workplaces and in the justice system.

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