

Restorative Justice as World View

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Abstract: There is a tendency in the West to view restorative justice/approaches in terms of programmes or techniques. The definition of restorative justice as the meeting of parties to a crime or conflict to arrive at a solution contributes to this understanding because of the questions it raises: who are at the meeting, who convenes and runs it, how are human rights of defendants protected, etc. But for the indigenous peoples who have inspired several well known restorative practices, these are the natural manifestation of world views that are different from those found in most of Europe and North America. Schools attempting to introduce restorative approaches would do well to consider their cultures and to initiate cultural change as they inaugurate restorative approaches to discipline.

A decade ago I chaired the drafting committee for what eventually became the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002). One of the challenges we faced was how to define restorative justice. The Council of Europe had produced guidelines (1999) for its countries on the use of mediation, and we drew from that excellent document in a number of ways. But because the CE's guidelines addressed a particular kind of restorative programme – mediation – and not restorative justice generally, it did not offer much help in defining the broader concept.

It will not surprise you that we had trouble agreeing on a broader definition. In the end we avoided the issue by stating that the guidelines would address restorative justice *programmes*, defining those as either restorative processes or restorative outcomes. For the meaning of restorative processes we adapted the CE language: “any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters

arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.” (par. 3)

What was our justification for taking this approach? First, we needed to offer draft guidelines that Member States, NGOs and individual experts who supported restorative justice could unite behind. They would support a definition of restorative programmes, but did not agree on a definition of the larger concept itself. Second, the rationale for UN action on restorative justice was that restorative processes, being informal and often conducted out of the public’s eye, could result in human rights abuses of both offenders and victims. So the need was for guidelines on how to conduct restorative encounters that were relational and informal without violating the rights of the parties. Finally, the UN is probably the last place the restorative justice movement should ask for an authoritative and clear definition of restorative justice since its practitioners, advocates and researchers cannot offer one themselves.

Several years later, as Gerry Johnstone and I discussed the lack of consensus on definition, he recalled an idea from political philosophy called “essentially contested concepts” (Gallie 1962; Connolly 1993). These are concepts around which there is general agreement about meaning but little if any likelihood of consensus forming around a precise definition. “Democracy” is an essentially contested concept, for example. Common characteristics of essentially contested concepts are that they are viewed as positive (one wants the label), they are internally complex, and our understanding of them changes over time based on experience and developments.

We identified three basic conceptions of restorative justice that have emerged. The first is the *encounter* conception: people with a stake in a crime or misconduct come together, often with a facilitator’s assistance, to discuss what happened, how it affected them and what needs to be done about it. Victim offender mediation, conferencing, and peacemaking circles are programmatic examples of encounter. The second is the *reparative* conception: crime and misconduct cause a number of kinds of harm and a just response works to repair that harm. Restitution, in-kind services and sometimes community service are examples of this understanding. The third is the *transformative*

conception: restorative justice is more than a process and/or outcome. It offers a perspective that changes how we view ourselves, others around us, and the structures that influence and constrain us. One begins to think more relationally, for example, which results in modification of everyday behaviour and recognition of systemic injustices that must also be addressed. (Johnstone and Van Ness 2007).

There is considerable overlap between these conceptions, enough that we can say that they refer to the same basic idea, but the overlap is not complete. We can imagine an encounter that fails to repair, a reparative response that fails to transform, and transformation that does not include encounter. In general, the scopes of the conceptions are different. Encounter is the most narrowly-focused, which is one reason it is possible to draft guidelines about its use. Repair is somewhat broader in scope. And neither has the potential expansiveness of the transformative conception. Restorative justice can become a way of life, certainly a way of seeing life.

So when we speak of restorative approaches, do we have the encounter, reparative or transformative conception in mind, or some combination of the three? The definition of restorative justice that I use most frequently draws from and orders all three:

Restorative justice seeks to repair the harm caused by crime and misconduct. This is best done by the affected parties as they meet voluntarily to cooperatively find a resolution. When that happens, transformation of people, perspectives and structures can follow.

The primary conception is reparative, but there is a high value given to encounters as the best way to repair all the dimensions of harm. Finally, the definition anticipates, without prescribing, the possibility for transformation to take place.

Restorative Cultures

This is a Western, or Northern, definition. It is useful because it holds the focus of restorative justice to the level of policy and programmes. Therefore it can be integrated into existing criminal, juvenile and civil justice systems and to employment, academic and other forms of disciplinary processes without requiring society to adopt or embrace a

new worldview. That is a criticism made by those who hold to the transformative conception. The aim, they argue, should be to precede, not follow, destructive acts with restorative justice. It should be to “transform structurally violent, unjust societies into structurally nonviolent, just ones” (Gil 2006). In such societies, repair and encounter would be natural responses to wrongdoing.

It is well-known that practices reflecting some restorative values at least have been used for thousands of years and continue to be used in indigenous and aboriginal cultures today. While some of the values and practices of these cultures violate modern sensibilities, in those cultures restorative practices are not intriguing new interventions; rather, they flow naturally from a clear world view.

What is that world view? Jarem Sawatsky (2009) studied three communities that self-consciously pursue what he called “healing justice” in response to wrongdoing (healing justice is very much like restorative justice). The Hollow Water Community in Manitoba Canada consists of four villages, one of which is made up of Anishinabe or Ojibway people and the other three of Métis peoples¹. The Iona Community was founded in 1938 in Scotland but over time has become a network of Christian peace and justice activists living primarily in Britain. Plum Village is a Buddhist Monastery and training center in France founded by the Vietnamese Buddhist Monk Thich Nhat Hanh. The purpose of Sawatsky’s research was to identify what he called the “common imagination or logic” (239) of those communities, which he then contrasted with the imagination or logic of cultures in which contemporary criminal justice flourishes (238-242). He concluded that there were six major areas of difference between the two:

- The first has to do with the source of justice. In criminal justice it flows from the government and institutions of society. In healing justice it flows from the Spirit and the land.
- The second concerns the intentions of justice procedures. In criminal justice it is to observe the relevant rules and to follow established processes. In healing

¹ These are people whose parentage is mixed European and First Nations. Canada acknowledges them as an aboriginal group in their own right along with the Inuit and First Nations.

justice the procedures are more concerned with the outcome sought than with correct process.

- The third has to do with responses to harm. Criminal justice looks at it as a problem to be addressed. Healing justice responds with loving kindness to teach those who have forgotten how to act with loving kindness.
- The fourth has to do with identity. Criminal justice labels the victims, offenders and justice professionals. Healing justice focuses on helping them find their essential nature.
- The fifth refers to the place of the individual. Criminal justice focuses on the individual as an autonomous decision maker. Healing justice views the individual in the context of his/her relationships.
- The sixth addresses the response to the offender. Criminal justice responds with punishment and violence. The objective of healing justice is that offenders as well as victims (indeed all members of the community) should heal.

Contrasting the Logics: Criminal Justice and Healing Justice		
Criminal Justice		Healing Justice
Logic of states and institutions	1	Logic of creator and creation
Logic of rules and processes	2	Logic of transforming patterns (the sacred)
Logic of problem-responsiveness	3	Logic of cultivating loving-kindness
Logic of nouns	4	Logic of finding true identity
Logic of individual autonomy	5	Logic of interdependent relationships
Logic of punishment and violence	6	Logic of healing for all

Figure 1: Sawatsky's Contrasted Logics/Imaginations

Implications for Restorative Approaches

So what fate awaits restorative approaches such as encounter and repair when they are introduced into settings characterized by the logic and imagination of criminal justice? A pessimistic view is that they will change so as to reflect the existing logic and imagination. Repair will become punitive as all the harms to direct and indirect victims are punitively toted up into restitution orders that geometrically exceed the benefits gained by the offender and the losses experienced by the direct victim. Encounters will

become occasions for shame that stigmatizes rather than reintegrates. Victim offender mediation, conferencing and circles will join the penitentiary, probation, parole, and other now-familiar and too often oppressive institutions of criminal justice that were launched by good people for benevolent purposes.

Several years ago Lawrence Sherman and Heather Strang (2007) released a meta-analysis of well designed studies that compared restorative justice with criminal justice interventions. In all instances but one the impact of restorative justice on reoffending was as good as or better than that of criminal justice. The one exception was a subgroup analysis of a small number of Aboriginal young people under 18 who were sent to an Australian programme in which police officers were the facilitators. The repeat offending rate of those young people was much higher than for those who were sent to ordinary criminal courts. Why? Sherman and Strang do not draw conclusions, but a reasonable hypothesis is that Aboriginal youth believed that the “logic and imagination” of the police was significantly different from that of their own, more restorative, cultures.

But there is another possibility. It may be that in some settings restorative approaches can contribute to a cultural transformation that generates greater support for healing justice, which would in turn increase the demand for restorative practices. A number of people have suggested that schools might offer such a setting. Morrison (2003) proposes a three-level implementation strategy that begins with helping students develop competencies in conflict resolution so that they can address disputes when they first arise. The second level uses restorative justice circles to deal with conflicts that involve more people or are more entrenched. The third involves restorative justice conferences with more people -- including parents, social workers, and others -- to address serious offenses.

Hopkins (2004) agrees. It is not enough to respond to particular instances of conflict or wrongdoing, such as bullying, with a restorative intervention because the values and benefit of that intervention will not reach the school’s culture. This is a problem because the victim and the bully will both need to return to the school community and that community will not be prepared to receive them in a restorative manner.

Therefore, she suggests that the school must first become a “listening school,” a place where empathic listening is valued and listening skills are taught and modeled. Then it is reading to move to “restorative conversations” in which students are taught to effectively express their perspectives, feelings and needs with others using their listening skills. These are foundational for creating a school in which relationships are built. When those are threatened by conflict and harm, she suggests that mediation, conferencing and circles can be used to repair the harm and restore relationships.

The Claassens (2008) propose that at the beginning of the year teachers should lead their students in development of a “respect agreement”, a set of guidelines that define the classroom behaviours that everyone agrees show respect to one another. This list is eventually divided into four categories: 1) student respecting student, 2) student respecting teacher, 3) teacher respecting student, and 4) all respecting equipment and facilities. When each student and the teacher are satisfied, they sign the agreement.

The teacher helps the students learn active listening and I-messages (similar to Hopkins’ listening school and restorative conversations) so that they are prepared to use both when problems arise. The Claassens also recommend that a “four options” model of dispute resolution be explained to the students, with discussion about the relative advantages and disadvantages of each. The first option is for one of the disputing parties to decide how it will be resolved. The second is for an outside party to make the decision. The third is for an outside party to help the disputing parties make the decision. The fourth is for them to do that without outside help.

The first two options are familiar in school settings: a teacher faced with a disruptive student decides how the disruption will be handled, or sends the student to the administrator responsible for discipline to deal with. But they advise that as many decisions as possible, even those between teachers and students, be resolved using options three and four. This requires skill and patience on the part of the teacher but in the end yields better, and better-kept, solutions because both have arrived at them.

The International Institute of Restorative Practices has trained school administrators and teachers to use restorative processes in encouraging communication generally and in

dealing with disciplinary issues. Lewis (2009) offers brief case statements of ten schools in the US, Canada and UK that have adopted restorative disciplinary practices. The data presented shows a reduction in offenses and in suspensions after the introduction of restorative practices, suggesting that the school climate – at least as demonstrated in the behaviour of students, teachers and administrators – has changed.

What might that school climate look like? Following are my suggestions of what the “logic and imagination” of whole school adoption of restorative justice might be:

Contrasting the Logics: Criminal Justice, Healing Justice and Restorative Schools			
	Criminal Justice	Healing Justice	Restorative Schools
1	Logic of states and institutions	Logic of creator and creation	Logic of consensus and covenant
2	Logic of rules and processes	Logic of transforming patterns (the sacred)	Logic of effective communication
3	Logic of problem-responsiveness	Logic of cultivating loving-kindness	Logic of learning communities
4	Logic of nouns	Logic of finding true identity	Logic of emotional and relational maturity
5	Logic of individual autonomy	Logic of interdependent relationships	Logic of interdependent relationships
6	Logic of punishment and violence	Logic of healing for all	Logic of constructive responses

Conclusion

Restorative approaches to schools must include all three conceptions of restorative justice: repair of harm, encounter of the affected parties and transformation of relationships and culture. Because they are contained institutions within the broader community, it may be possible to build a world view within schools that is conducive to restorative conversations and practices. According to the sources cited in this article, this could be approached by teaching students to listen and express themselves in ways that build relationships, to use processes that focus on repair of harm through conversation, and by establishing the necessary programmatic and administrative support.

A whole school approach to restorative approaches must be supported within the larger educational structure and its surrounding police and judicial environments. This means

that laws, regulations and policies that are conducive to building a restorative culture should be viewed as important and natural steps in the process of embracing restorative approaches. These should be reinforced, or at the very least not obstructed, by the youth justice system. Ultimately, one would seek a restorative community in which restorative values and practices are understood, used and nurtured.

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