

Restorative Justice in the Legal Landscape

Inns of Court – James E. Doyle Chapter

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I. Introduction to Restorative Justice

- A. Overview of Restorative Justice
 - a. Retributive & Restorative Traits
 - b. Distinguishing from traditional punitive justice systems
- B. Definition and Key Principles
 - a. Restorative justice (RJ) refers to a framework for addressing harm that focuses on healing, accountability, and the restoration of relationships, whether at the individual or community level (Zehr, 2002).
 - b. Emphasis in the RJ process is on repairing harm, involving harmed parties (crime victims), responsible parties (responsible parties), and affected communities (Van Ness & Strong, 2014).
 - c. Restorative justice offers a potential solution by providing an alternative to punitive measures, allowing for more individualized, context-sensitive responses to crime (Braithwaite, 2002).
 - d. Key stages
 - e. Criminal, civil, and judicial contexts
- C. Historical Context
 - a. Origins
 - b. Evolution into a formalized movement in criminal justice systems globally
 - c. RJ as a Paradigm Shift

II. Core Components of Restorative Justice

- A. Emphasis on Accountability
 - a. Responsible party accountability through admission of responsibility, empathy, and understanding the impact of their actions (Braithwaite, 2002).
 - b. Goal: To restore responsible party's moral responsibility and reintegrate them into the community (Sherman & Strang, 2007).
- B. Repairing Harm
 - a. Focus on addressing the healing of harmed parties rather than punishment of responsible parties (Zehr, 2002).
 - b. Active role for harmed parties (victims) in the process, offering them a voice and role in how repair is made. The process is aimed at repairing harm caused by criminal behavior through dialogue and mutual agreement rather than punitive response measures.
- C. Involvement of Stakeholders
 - a. Harmed parties, responsible parties, families, and communities all actively involved in the justice process (Van Ness & Strong, 2014).
 - b. The concept of circles or conferences as a method to foster dialogue among stakeholders (Morris & Maxwell, 2001).

III. Limitations in Traditional Justice Systems

A. Limited Focus on Victim Healing

- a. Traditional criminal justice design and structural resource limitations
- b. Crime victims often feel sidelined, and their experiences are not fully acknowledged during legal proceedings.
- c. Research shows that crime victims in punitive systems report high levels of dissatisfaction and unresolved emotional trauma (Sherman & Strang, 2007).

B. Lack of Communication Between Harmed Parties and Responsible Parties

- a. In traditional justice systems, crime victims rarely interact directly with responsible parties, preventing dialogue that could lead to mutual understanding and resolution.
- b. The absence of communication further reinforces a sense of alienation between the two parties and an othering of both.
- c. Restorative justice processes create space for both parties to communicate and address the harm caused.
- d. Evidence of interactions in promoting empathy and healing (Latimer & Kleinknecht, 2000).

C. Inadequate Accountability and Repair of Relationships

- a. Traditional systems focus on punishing the responsible party, often at the cost of repairing the relationship between the harmed party and the community.
- b. Lack of genuine accountability, as responsible parties typically do not acknowledge the harm they have caused.
- c. The failure to address the relational aspects of crime leads to cycles of alienation, anger, and, often, recidivism.
- d. Restorative justice emphasizes responsible party accountability through direct acknowledgment of harm and steps to repair it, fostering personal responsibility (Braithwaite, 2002).

IV. Restorative Justice Practices/Models

- A. Victim-Offender Dialogue/RJ Dialogue: Structured meetings where crime victims and the responsible parties engage in direct communication, allowing victims to express their needs and responsible parties to take responsibility (Latimer, Dowden, & Muise, 2005).
- B. Family Group Conferencing: Involves family members, school officials, individual/structural support system, and community representatives to resolve conflicts. Commonly used in juvenile justice (Morris & Maxwell, 2001).
- C. Community Conferencing: Community-led meetings where stakeholders collectively determine the appropriate response to an offense (Braithwaite, 2002).
- D. Sentencing Circles: Restorative justice circles bring together victims, responsible parties, and community members to discuss the impact of the crime and ways to repair the harm.

V. Restorative Justice in Practice

A. Restorative Justice in Criminal Justice Systems

- a. Overview of how RJ is implemented in courts, probation, and correctional facilities
- b. Diversion Programs

- i. Restorative justice has typically offered alternative solutions for first-time responsible parties, youth in the juvenile justice system, and those involved in low-level offenses, diverting them from the formal criminal legal system.
- ii. Expanding RJ diversion pathways to address adults and higher-level offenses.
- iii. These diversion programs focus on rehabilitation and community reintegration, reducing the burden on the criminal justice system and offering a more restorative path for responsible parties (Latimer & Kleinknecht, 2000).
- c. Impacts on Individuals: Reduces recidivism but also helps prevent the long-term negative effects (“collateral/civil consequences”) of incarceration and social stigmatization.
- d. Community Courts/Community Restorative Courts
 - i. Dane Co. CRC
 - ii. Dane Co. Community Court – BJA program

B. Restorative Justice in Juvenile Justice

- a. Juvenile justice systems increasingly adopting RJ practices for rehabilitation and reintegration
- b. Examples
 - i. New Zealand’s Family Group Conferences (Latimer et al., 2005).
 - ii. Colorado Legislation and Implementation

C. Restorative Justice in Civil Matters

- a. Restorative Mediation
- b. Restorative responses as a result of civil settlement
- c. Restorative responses as the vehicle for civil settlement

D. Restorative Justice Processes Internationally

- a. Canada
- b. South Africa
- c. Ireland

VI. Benefits of Restorative Justice

- A. Higher Satisfaction Rates for Both Harmed Parties and Responsible Parties
- B. Procedural and Outcome Fairness
- C. Recidivism Rates
- D. Cost-Effectiveness
- E. Benefits For Victims
- F. Benefits For Responsible Parties
- G. Benefits For Communities

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