

# **Restorative Justice in the Legal Landscape**

## **Inns of Court – James E. Doyle Chapter**

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Presenter: Jonathan Scharrer

### **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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