

Theory

Afrocentric Restorative Justice

by Morris Jenkins, Ph. D.

The criminal justice system is criticized as being ineffective in its dealing with crime, the needs of the victim and the rehabilitation of the offender. There is constant tension between the individuals who believe in the "get tough" approach to crime and others who believe rehabilitation is the better approach. Critics of both the juvenile and criminal justice systems argue that "nothing works." Many crime prevention advocates and citizens claim that "tough on crime" approaches do not reduce crime and in fact may increase crime and the number of individuals caught up in the system. The "tough on crime" advocates claim that the rehabilitation of offenders is a waste of time and money.

The tension between these two approaches is very apparent in the African American community. People feel victimized by both offenders (many of whom are African American) and by the perceived and real discrimination that occurs throughout the criminal justice system. Even though the community members feel victimized by "criminals," many in the Black community feel that submitting a fellow brother or sister to the criminal justice system may be an inappropriate response. Other community members believe that severe laws and harsher punishments are the answer to delinquency and crime problems in the community. Not only is the community under siege, but also criminal activities are counter-productive to racial progress.

Because most of us are trained to deal with disputes and conflicts from a Eurocentric perspective, all of us, White and Non-white, tend to be individualistic in our approach to dealing with problems, including crime. The criminal justice system focuses on punishing and/or rehabilitating the offender. Victims' rights advocates focus on the restoration of the victim. This Eurocentric approach is dominant in the restorative justice process in this country. Using an Afrocentric theory as the foundation for the restora-

tive justice process ensures that its focal point will be the community.

Culturally Specific Theories Explain and Respond to Crime: The Case of Afrocentric Theory

Traditionally, male-centered and Eurocentric criminological theories have been used to explain criminal behavior. The foci of these explanations for Black criminality have typically included genetic inferiority, culture of poverty, or racial oppression. These explanations reflect many of the biases that society holds towards African Americans. Unfortunately, they also help shape criminal justice policies. These theories are taught in educational institutions where future policy makers and criminal justice professionals internalize them

Afrocentric and Eurocentric theory differ in four fundamental principles; these fall in the areas of cosmology (worldview), axiology (values), ontology (nature of people), and epistemology (source of knowledge). From the Eurocentric perspective, the dominant worldview focuses on control. Key values include materialism and individualism. People are fundamentally competitive, operating in a "dog eat dog" world. Knowledge is derived through the scientific method. From the Afrocentric perspective, however, worldview focuses on the "oneness with others." Relationship with the community is valued. There is a belief in the goodness of people and that individuals work together. Spirituality provides a primary source of knowledge.

Afrocentric theory is a culturally specific approach that can be used to both explain why the harm occurred and as a foundation for a restorative justice response to the harm., suggesting the need to explore offending from an African-centered ideology. The crux of Afrocentric theories about black criminality is that structural pressures, combined with dysfunctional Eurocentric cultural adaptation to those pressures, play out as unacceptable behavior in African American communities.

After exploring a social problem through an Afrocentric lens, the remedy or solution of the problem should be grounded in an "African-centered" approach. The primary focus is not retribution for the criminal act, the rehabilitation of the offender to a perfect Eurocentric citizen, or even the compensation of the victim. The Afrocentric approach does not ignore these concerns; however the liberation of the community is its primary concern. A true understanding of one's culture is needed to achieve emancipatory literacy: the ability to conceptualize the world in ways consistent with one's history and to apply that knowledge as one's personality and situation requires.

Redefining Community

The term community has various meanings and connotations within the culture of the United States. Under the law, community is defined by geographic boundaries. The village, town, city, state and the country have identifiable boundaries and each represent an aspect of the term community. Within towns, some-

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VOMA Connections

VOMA Connections is published four times a year by the International Victim Offender Mediation Association.

The Mission of VOMA is promoting and enhancing restorative justice dialogue, principles, and practices. Our mission will be achieved only with a commitment to full diversity and equality of participation for all people. VOMA holds this commitment as central in its work.

VOMA welcomes contributions, including short articles, literature reviews, case studies, program news, and other interesting information. Photos and graphics are also welcome.

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Views expressed within VOMA Connections are those of the authors and not necessarily those of VOMA.

Publishing Schedule

<i>Issue</i>	<i>Submissions Deadline</i>
#21 October, 2005	Sep 15
#22 January, 2006	Dec 15
#23 Apr, 2006	Mar 15

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Mini-Grant Report

Restorative Justice: A Report from El Salvador

by Wanda Joseph

With the support of a mini-grant from the Victim Offender Mediation Association, I traveled to El Salvador with the SHARE Foundation for eight days at the end of March 2005. The focus of the SHARE delegation was the commemoration of the 25th anniversary of the assassination of Archbishop Oscar Romero. SHARE Foundation has worked in El Salvador since 1981, accompanying and supporting the people as they fled the death squads and providing spiritual, physical, and financial support as they rebuilt their lives and communities after the war. They continue the work to help communities find means to reclaim basic human rights, fundamental civil liberties, and degraded environments.

As a VOMA grant recipient, I saw El Salvador through the lens of Restorative Justice. I carried with me the usual questions within the restorative justice framework:

- What harm has been done?
- What will it take to repair the harm?
- How are the offenders held accountable?
- What are the mechanisms for offenders to learn skills and competencies to re-integrate in the community?
- How has the community been affected? How is the community participating in the healing?

El Salvador

What I found in my journey through El Salvador was a stark and brutal reality. I also discovered generosity, hope, and faith in people who know that their lives are in God's hands.

Throughout the week we heard the stories of a people struggling to repair the harm of centuries of grinding poverty and a decade of horrific civil war in the 1980s when 75,000 civilians were killed. In 1992, Peace Accords brought an end to the war and made important changes in the political system, including the creation of the Truth Commission and institutions to defend human rights and promote judicial reform. The Accords were less successful at creating any meaningful economic reform. The Salvadorans talked of economic bullets that have replaced the

physical bullets of the violent war. They said it was harder to recognize the bullets but people die just the same. One of the Salvadorans told us that they do not have an economy in El Salvador, but an economic disaster.

What I Witnessed

The Truth Commission offered an opportunity for the beginnings of healing; naming the harm done was one of the first steps toward restorative justice. The Truth Commission, mandated to investigate serious human rights violations, reported its findings on March 15, 1992. It determined that 85% of the civilian deaths were the responsibility of the government military and paramilitary under their control. According to the report, 5% of the deaths were attributed to the opposition forces; FMLN and 10% were undetermined. The Commission recommended that those identified as human rights violators be removed from government and military posts, as well as recommending reforms of the Salvadoran armed forces (ESAF) and the judiciary. Five days later, on March 20, however, the Salvadoran National Assembly approved amnesty from criminal prosecution for all those implicated in the Truth Commission report. Among those freed were the ESAF officers convicted in the 1989 Jesuit murders and those responsible for the assassination of the beloved Archbishop Oscar Romero. This amnesty law was a stunning blow to the process of healing for the Salvadoran people.

I had the opportunity to talk with one of the delegation's leaders about the possibilities for restorative justice on the local level for community problems such as theft, assault, and vandalism. I described the practice of victim offender mediation with juveniles referred by the circuit court in my Michigan community. Speaking through an interpreter, I tried to describe our program as clearly and simply as possible. When I mentioned that we work with youth in trouble with the courts, a shocked look crossed her face. I remembered immediately the stories of the villagers that I had heard earlier in the week. To be in "trouble with the law" brought painful images of death squads, of being taken away by the police or military or paramilitary for the "crime" of helping the poor, or in the case of one of our guides, going to warn the priest of death threats against him. I assured her that I was talking about teens who had

committed crimes and were on probation in a more benevolent system. Still, there seemed to be little connection with her reality.

As we explored it further, she described her experience with community justice: Most people in El Salvador are poor and police protection is only for the very rich. The police do not investigate crimes. Why would I go to the police, she asked. A woman can be murdered and dismembered and left by the road; there is no intervention by the police or courts, no investigation, no response, no outrage. Our leader asked me, do you think the police would listen if I tell them my home was broken into? Over and over again the message to the poor of El Salvador by those in power in their government and by the international community: You are of no value.

What I Learned

My experience in El Salvador shaped a different set of questions:

- How does an entire nation heal from soul deep trauma?
- Where is justice when the ones named responsible for horrendous crimes against whole communities are granted immunity by the powers that be?
- How is restorative justice possible when large segments of the nation are considered insignificant?

In those short eight days I was blessed to capture some brief glimpses of the courageous work of Salvadoran communities and their partners through the SHARE Foundation for repairing the harm and for healing:

- Standing by the Monument to the Memory and the Truth, a wall with the names of those murdered and "disappeared" during the war: "We open the wounds so that the story can be told." A woman from the village of Chalchuapa described the brutal massacre of her neighbors. "We experienced the terror in our flesh, only now (25 years later) are

*Resources***New Resources for the Practice of Justice Processes**

by Russ Immarigeon

Meta-Analysis

Canadian researchers Jeff Latimer, Craig Dowden, and Danielle Muise have written an important article that assesses the effectiveness of restorative justice programs in terms of victim satisfaction, offender satisfaction, offender compliance with restitution requirements, and offender recidivism. In brief, the authors reviewed 22 studies that evaluated 35 restorative justice programs, finding that they were more effective than probation, incarceration and other traditional sanctions in improving victim and offender satisfaction, increasing offender compliance in paying restitution to victims, and reducing offender recidivism. In this new study, which can be found in the June 2005 issue of **The Prison Journal** (Sage Publications, Inc.), the authors note several research problems that may temper the value of their report. For example, a "self-selection bias" exists because restorative justice participants are voluntary, participants in comparative programs are often mandated, and mandated treatment skews procedural and outcome findings. Also, criminogenic factors such as antisocial peers, substance abuse, criminogenic communities, poor self-control or self-management, personality and family dynamics, and low educational or occupational achievement are not sufficiently addressed in typical restorative justice processes. The authors argue that restorative justice processes and rehabilitation programs can complement one another. They observe, however, that, despite a valuable level of effectiveness, restorative justice programs do not have as strong an impact on recidivism as "psychologically informed treatment." They also report that, because they lacked the appropriate data, they could not assess the impact of such variables as facilitator background, education or training. Limited data also prevented them from assessing the impact of offenders' criminal history, the use of restorative justice in cases involving serious vs. non-serious offenses, or the influence of the relationship between victims and offenders (strangers vs. non-strangers).

Sullivan & Tift

In 2000, Dennis Sullivan and Larry Tift wrote a 46-page pamphlet, **Restorative Justice as a Transformative Process: The Application of Restorative Justice Principles to Our Everyday Lives** that argued for a needs-based approach to

justice ("In needs-based social arrangements, it is believed that one should have access to resources and receive benefits in accord with one's needs, taking into account the resources of the community or the collectivity (e.g., family or work-group") to that expands and goes beyond the standard restorative justice process that responds to crimes or harms in personal terms, such as apology, forgiveness, and reconciliation. This pamphlet was subsequently expanded to the first edition of **Restorative Justice: Healing the Foundations of Our Everyday Lives** (Willow Tree Press, 2001), which not only examined the "tremendous possibilities of restorative justice," but also extended "the boundaries of restorative justice to include harms and conflicts in all areas of our lives: our families, our schools, our places of worship, where we work." Now, a second edition of this volume, also entitled **Restorative Justice: Healing the Foundations of Our Everyday Lives**, has been published by the Criminal Justice Press. This significantly updated volume maintains its emphasis on a needs-based approach to restorative justice, but it increases its illustrations of such an approach in practice, while incorporating much of the recent research and theoretical literature on restorative justice that has appeared since 2001. Copies of this book are available for \$30.00 from Willow Tree Press, PO Box 249, Monsey, NY 10952, www.criminaljusticepress.com.

Community-Managed Programs

The New Zealand Ministry of Justice recently published evaluations of two community-managed restorative justice programs. Judy Paulin and Venezia Kingi, the chief researchers for these studies, report that these programs – located in Rotorua and Wanganui – are but two of 19 such programs that will conduct over 1,000 conferences in the island nation of approximately four million people. Both of these programs operate under the eight principles of effective restorative justice established by the Ministry of Justice (and reported elsewhere in this issue). By and large, the programs seem to be meeting the challenges of these principles. The evaluators also found that victims and community members routinely participate. A more difficult matter, however, is whether the programs reduce recidivism. No clear outcome is evident on this matter. The programs are nonetheless gaining professional acceptance, although of-

fender compliance with restorative justice elements is relatively low. The researchers suggest some approaches to improving current practice, including the following:

- obtain victim's informed consent before proceeding to restorative justice meetings;
- explicitly inform victims and offenders that sentencing judges is allowed to change agreed-upon plans;
- clearly assign monitoring responsibilities;
- keep victims informed of offender progress and compliance;
- provide additional support when necessary for the safety of all participants; and
- establish regular supervision and training for program staff.

Both of these evaluations provide information about each program's history, governance structure, resources, and funding arrangements, as well as information about staff roles, referral processes, and the restorative justice process. Copies of these reports – **The Wanganui Second Chance Community-Managed Restorative Justice Program: An Evaluation** (2005) and **The Rotorua Second Chance Community-Managed Restorative Justice Program: An Evaluation** (2005) – are available from the New Zealand Ministry of Justice (PO Box 180, Wellington, New Zealand) at the following websites:

www.justice.govt.nz/pubs/reports/2005/wanganui-community-managed-restorative-justice

and

www.justice.govt.nz/pubs/reports/2005/rotorua-second-chance-community-managed-restorative-justice/index.html.

VOMA members and readers of this publication are urged, where possible, to order these and other restorative justice resources through the amazon.com link available on the VOMA website at www.voma.org. Items purchased in this manner return a small percentage to support VOMA's work.

Best Practice

New Zealand Groups Issue Guidelines on Best Practices for Restorative Justice Processes

by the New Zealand Ministry of Justice and the Restorative Justice Network

*(Editor's note: The following article is divided into three parts, which can be given the abbreviated terms, "Introduction," "Principles," and "Statement." In 2004, all three parts were published together as one document. The New Zealand Ministry of Justice prepared the first two parts and the New Zealand-based Restorative Justice Network wrote the third. The latter two parts of this article, the "Principles" and the "Statement," are each introduced by their separate corporate authors, the Ministry of Justice and the Restorative Justice Network. Occasionally throughout this article, **VOMA Connections** has added text, often within parentheses, that clarifies the text that follows for non-New Zealand readers of this publication. No substantive terms or passages have been altered. The original text contains footnotes, which have been moved up into the main body of the text to fit the format of this publication. These footnotes are either incorporated into the text or bracketed or placed within parentheses. Otherwise, only stylistic changes have altered the original text. This article is reprinted with permission.)*

Part I: Introduction

The need for guidance on the use of restorative justice processes is increasingly recognized. Although some concern has been expressed that such guidance may inappropriately restrain restorative justice practice (which is constantly developing and changing), there is also recognition that there are some fundamental principles that should always be upheld. If these principles are not recognized and endorsed, restorative justice as an alternative response to offending and victimization may potentially be placed at risk.

The overall agreement that exists about best practice in restorative justice is illustrated by the two documents presented in this article. The **Principles of Best Practice for Restorative Justice Processes in Criminal Cases** were prepared by the Ministry of Justice following a consultation process with restorative justice practitioners in 2003. The **Statement of Restorative Justice Values and Processes** was prepared by restorative justice providers, in 2004, through the Restorative Justice Network. Although written from different perspectives, the documents reflect an internal consistency about the values and principles that should inform restorative justice practice. The decision to publish the **Principles**

and **Statement** together demonstrates the collaborative working relationship between the government and community that is vital for the continued development of restorative justice in New Zealand.

It is hoped that this article will be a valuable resource for all those working with, or participating in, restorative justice processes. This includes victims, offenders, community members, Judges, court staff, defense counsel and restorative justice providers.

What is Restorative Justice?

Restorative justice is both a way of thinking about crime and a process for responding to crime. [New Zealand Restorative Justice Trust (2000). *New Zealand Restorative Justice Practice Manual*, p. 13.] It provides "an alternative framework for thinking about wrongdoing" [Zehr, Howard (2002). *The Little Book of Restorative Justice*. Intercourse, PA: Good Books, p. 5] which, along with the values and principles underpinning this framework, suggests new ways of responding to offending and victimization. Although restorative justice processes are not unique to Maori, they have strong alignment with Maori values such as reconciliation, reciprocity and *whanau* (extended family) involvement.

There is no agreed definition of restorative justice processes. A number of definitions have been suggested, most of which focus on a process that involves all those affected by an offense and aims to repair the harm caused by the offending. The following is one of the many working definitions that have been developed:

*"Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible". [Zehr, Howard (2002). *The Little Book of Restorative Justice*. Intercourse, PA: Good Books, p. 37.]*

There is no one way that restorative processes should be delivered. Instead, "the essence of restorative justice is not the

adoption of one form rather than another; it is the adoption of *any* form which reflects restorative values and which aims to achieve restorative processes, outcomes and objectives". [Morris, Allison (2002). Critiquing the Critics: A Brief Response to Critics of Restorative Justice. *British Journal of Criminology*, 42: 600.]

Further discussion of the values, outcomes, and objectives of restorative justice is provided throughout this article.

Restorative Justice in New Zealand

The application of restorative justice principles and practices in New Zealand as a response to offending and victimization began with the introduction of Family Group Conferences for young offenders through the Children, Young Persons, and Their Families Act 1989. Over the 1990s, similar principles and practices began to be applied on an ad hoc basis to cases involving adult offenders. However, it was not until the passage of the Sentencing Act 2002, the Parole Act 2002, and the Victims' Rights Act 2002 that there was any statutory recognition of restorative justice processes in the formal criminal justice system.

Together, these three Acts:

- give greater recognition and legitimacy to restorative justice processes
- encourage the use of restorative justice processes wherever appropriate
- allow (and require) restorative justice processes to be taken into account in the sentencing and parole of offenders, where these processes have occurred.

Although restorative justice processes can operate in a variety of ways at different stages in the criminal justice system, pre-sentencing conferencing in the District Court appears to be the most common restorative justice process operating in New Zealand. Restorative justice programs that are currently in operation across the country include:

- a court-referred restorative justice process being piloted by the Minis-

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try of Justice in four District Courts (Waitakere, Auckland City, Hamilton, and Dunedin)

- 17 community-managed restorative justice programs funded through the Crime Prevention Unit
- a number of local community groups who receive referrals from the court, but primarily rely on community sources for funding.



Part II: Principles of Best Practice for Restorative Justice Processes in Criminal Cases

The (eight best practice principles that follow) provide guidance for how restorative justice processes should be used in the criminal justice system. The Principles were developed following a consultation process in 2003 with restorative justice providers, the judiciary, relevant non-government organizations and others working with, or participating in, restorative justice.

Care has been taken to insure that the Principles protect the inherent flexibility of restorative justice processes, but also provide clear guidance about the use of these processes in a safe and appropriate way. The eight fundamental principles that have been identified should always underpin restorative justice practice in criminal cases.

The Principles focus on the use of restorative justice processes pre-sentence, and do not apply to the use of these processes after sentencing. However, the Principles are likely to be broadly applicable to the use of restorative justice processes at any point in the criminal justice process, as well as in other sectors. (The Principles do not apply to family group conferencing, which is legislated for in the Children, Young Persons, and Their Families Act 1989.)

The Principles are part of a broader Ministry of Justice work program to facilitate the continuing development of restorative justice processes in New Zealand. Further work is (being) undertaken to identify appropriate funding arrangements for restorative justice processes, as well as on a range of other issues that have been identified through the 2003 consultation (for example, the use of restorative justice processes in cases of family violence and sexual violence).

1. Restorative justice processes are underpinned by voluntariness

Participation of the victim and offender must be voluntary throughout the restorative justice process

A restorative justice process cannot take place without the informed consent of the victim and the offender. Neither the victim nor the offender should feel coerced into giving their consent and both have the right to withdraw consent at any time (including during a conference). Facilitators should end the process if either the victim or the offender indicates their unwillingness to continue. The offender's consent to participate should be obtained before the victim is contacted. (In many cases, Victim Advisers, who are responsible for informing the victim of the progress of the court case, will have informed the victim of the possibility of a restorative justice process when seeking their consent to pass their contact details on to the restorative justice provider.) Both victims and offenders may require independent advice (for example, legal advice for an offender or advice from a victim support agency for a victim) before agreeing to participate.

Outcomes must be arrived at voluntarily and reflect the agreed view of the victim and offender

Outcomes must be developed and agreed by the victim and offender (as the primary participants) without coercion. Facilitators must insure that the victim and the offender understand what has been agreed to, including what is required for agreed outcomes to be completed. Reaching agreement on outcomes should not be the sole focus of the restorative justice process.

2. Full participation of the victim and offender should be encouraged

The victim and offender are the primary participants in the restorative justice process

Although there may be many other people who participate in the restorative justice process (for example, members of the community), the interaction between the victim and offender is at the center of the process. Other participants should encourage the victim and offender to participate at a level at which they feel comfortable. For example, the victim or offender may prefer that a support person speak for them at certain times.

Victims must determine their own level of involvement in the restorative justice process

While the offender's presence and participation in a restorative justice process is always required, victims should not be pressured to participate in the process or personally attend a conference. Although full participation by the victim is the ideal, some programs allow restorative justice processes to proceed so long as the victim agrees to the process taking place and the victim's views are represented (for example, through a facilitator, Victim Support worker, family member, or friend, who must be able to adequately express the views of the person they are representing; the victim must also be informed of what took place). If a victim does not wish to participate in a restorative justice process in any way, it should not take place.

Where a case involves multiple victims and offenses, each victim must be given the choice about whether to participate in that process and, if so, whether they would prefer a joint or separate conference. That one victim does not agree to a restorative justice process taking place should not prevent a process being undertaken for other victims to address the harms caused by the offense(s) committed against them. The facilitator(s) should work these issues through with victims at the pre-conference stage (see principle 3).

The "community" should be represented during the restorative justice process

What is meant by "community" is likely to differ from case to case. It will most often include support people for the victim and offender (for example, a friend, family member or community support person) but could also include others affected by the offense. A balance is required between all relevant people attending the conference, and not overloading the conference or overwhelming participants. Facilitators should always encourage victims and offenders to have support people present at the conference. The attendance of community members at the conference should be discussed with the victim and offender at the pre-conference stage.

"Professionals" (police officers, probation officers, and defense counsel) may attend a restorative justice conference, but on a carefully prescribed basis

"Professionals" have a significantly different role in a restorative justice process to that usually played in conventional court processes. They may (but are not required to) attend a conference. If they do attend, they may offer advice and support

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but are not parties to any agreement and should not dominate discussion. Facilitators should discuss the attendance of “professionals” with the victim and offender at the pre-conference stage. Consent of the victim and offender to their attendance may be required. Neither defense counsel, nor their client, should make direct contact with the victim before or after the conference (for example, to seek agreement to a restorative justice process taking place).

3. Effective participation requires that participants, particularly the victim and offender, are well informed

Participants in restorative justice processes must be well prepared for the conference

Pre-conference meetings should be held with participants, particularly the victim and offender. Participants will typically require information on the nature of the process, including the procedures to be followed, who will be there and ground rules; realistic options for dealing with the offense; the benefits and risks to them of participating; limits to confidentiality; and their role and rights in the process. The defense counsel, probation officer and police officer (if they plan to attend the conference) should also receive information about their role, and how this differs from conventional court processes.

Participants must have reasonable expectations of the process and outcomes

Participants must be realistic about what can be achieved through the restorative justice process. In particular, both victims and offenders must be aware that how a court ultimately deals with an offender may or may not reflect agreements made in a restorative justice process. The facilitator(s) should discuss participants' expectations during the pre-conference meeting.

4. Restorative justice processes must hold the offender accountable

The offender must acknowledge responsibility for the offense before a case can be referred to, or accepted for, a restorative justice process

A case should not be referred to, or accepted for, a restorative justice process unless an offender has acknowledged responsibility for the offense. A plea of guilty, which may be accompanied by an agreed Statement of Facts, will provide

the clearest indication of an offender's acknowledgment of responsibility. It may sometimes be appropriate for a restorative justice process to be undertaken after an offender has changed their plea from not guilty to guilty. Providers and facilitators should be aware of, and put in place appropriate measures to mitigate, the additional risks to the victim and offender when restorative justice processes are undertaken in cases where a guilty plea has not been entered (for example, participation by the offender in a restorative justice process may inadvertently be treated as an admission of guilt; questions may also be raised in later hearings about what was said at the conference) or when there has been a change in plea.

Agreed outcomes should provide an appropriate and realistic response to the offending

There are no outcomes that must always result from a restorative justice process. Instead, outcomes should reflect what participants think can be done to put right the offending. This will depend on a range of factors, including the needs of the victim and offender and circumstances of the offending. Agreed outcomes should be fair, realistic, achievable, and credible, and be able to be completed within an identified, appropriate timeframe (in most cases, within a maximum of six months and in all cases as quickly as possible). [When considering the extent to which any offer, agreement, response, or measure to make amends should be taken into account in an offender's sentence, the court must consider whether or not it is genuine and capable of fulfillment, and whether or not it has been accepted by the victim as expiating or mitigating the wrong. Where possible, therefore, these factors should be considered as agreements are reached.] To the extent possible, participants should try and insure that agreed outcomes are not overly harsh or overly lenient. The court may be more likely to confirm agreed outcomes if they are not significantly out of line with current sentencing practice.

Agreed outcomes must be monitored

Conference participants should develop a conference plan that clearly identifies agreed outcomes and their timeframes and includes specific information on monitoring arrangements. The plan should be signed by the victim, offender, facilitator(s), and the person(s) responsible for monitoring. If a judge receives an agreed plan that does not identify who is responsible for monitoring each agreed outcome, he or she may request that inquiries be made about the availability of

such a person before deciding how that case should be dealt with.

Action should be taken when an agreed plan breaks down

The most appropriate way to address lack of compliance with a plan will largely depend on how the case has progressed through the court. [For example, the conference may agree that certain outcomes will be completed before sentencing, the case may have been adjourned to allow a plan to be completed, the offender may have been ordered to come up for sentence if called upon, or agreed outcomes may have become part of an offender's sentence.] Conference participants should discuss what action should be taken if a plan breaks down as well as the status of agreed outcomes if they are not reflected in the offender's sentence or in any other way that the court chooses to deal with the offender. The victim should always be informed if the plan breaks down.

The court should be informed about what took place in the restorative justice process

The restorative justice provider (or facilitator) should prepare a report on the restorative justice process before the case returns to court. The report should be as succinct as possible and provide an accurate reflection for the court of what took place. Although there is no standard format for these reports, basic information to meet the needs of the court will include when the conference was held, who attended and in what capacity, what process was followed (including pre- and post-conference), what outcomes were agreed and how these will be monitored. The court should also be informed if the process only took place in relation to specific victims or offenses in cases involving multiple victims.

Care will always be required to protect privacy and confidentiality when preparing the report (for example, the victim's home address should not be identified). It will usually be the restorative justice provider's responsibility to insure that the report is forwarded to the appropriate people (for example, the victim and offender, police prosecutor, offender's counsel, probation officer (if applicable), and Victim Adviser (if applicable)).

The restorative justice process should only respond to the offense(s) that is the subject of the original referral

Although offending disclosed at the conference that has not come to the atten-

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tion of authorities before may be relevant to the appropriateness of an agreed plan (for example, where the conference discovers that other offending has taken place to finance a drug addiction, the plan should also identify steps to address that addiction.), it should not be specifically addressed in the current process, if only because the victim(s) of that offending will not usually be present. Some offenses will be sufficiently serious (for example, violent or sexual offending or when someone's safety or well-being continues to be at risk) that the Police should be informed. Participants, particularly the offender, should be aware that the Police may be informed if other offending is disclosed. Where there are multiple victims, the restorative justice process should only address the effects of the offense(s) committed against the victim(s) participating in that process.

5. Flexibility and responsiveness are inherent characteristics of restorative justice processes

Restorative justice processes should be guided by restorative justice values

Best practice requires that particular steps always be undertaken in a restorative justice process (for example, a pre-conference meeting). However, within those requirements, restorative justice processes should be flexible and responsive to the needs of participants, particularly the victim and offender. Restorative justice values provide an underpinning framework within which flexibility and responsiveness can be exercised. These values include:

- physical and emotional safety of participants
- respect and dignity for all involved
- safeguarding of offenders' and victims' rights
- balance and fairness
- voluntariness
- transparency (of process and outcomes), and
- empowerment of participants.

Restorative justice processes must be appropriate and responsive to the culture of participants

Facilitators should identify whether participants, particularly the victim and offender, would like particular cultural practices or needs to be accommodated within the restorative justice process. A range of

strategies can be used to insure that restorative justice processes respond to the culture of participants. These include:

- seeking advice from *kaumatua* (elders) or cultural advisers (who may attend a conference if necessary)
- using facilitators of the same ethnicity as participants
- ensuring that facilitators are aware of and know how to accommodate participants' cultural practices
- using an interpreter
- holding the conference at a culturally significant venue (e.g. a *marae*), and/or
- ensuring that participants are aware of cultural differences and how these may or may not be accommodated.

Although the victim's preference should usually prevail, discussion and negotiation will be required when the victim and offender are of different cultures or have different preferences about how their cultural practices or needs should be reflected.

Decisions about how the restorative justice conference will operate, including arrangements for when and where it will be held, should be responsive to participants

The arrangements for, and procedures at, a restorative justice conference should respond as much as possible to the wishes of participants, particularly the victim and offender. This includes the order of proceedings at the conference, the use of particular ceremonies such as *karakia* (prayers) and the conference time and venue. (Although there may sometimes be restrictions on the venue, for example, if the offender is in custody.) Although the victim's preference should usually prevail, facilitators should try and resolve conflicts about these issues between the victim and offender through discussion and negotiation.

6. Emotional and physical safety of participants is an over-riding concern

Restorative justice processes should be safe for participants at all times

Participating in a restorative justice process has potential risks for the victim and offender that must be carefully managed. The restorative justice process should be discontinued at any time if the facilitator(s) consider it inappropriate or unsafe to continue. If a conference is adjourned or stopped, reconvening and continuing

with the conference at a later date may be possible in some cases. Facilitators should discuss their concerns with participants at the time the concerns arise. The court will need to be informed if the process is discontinued.

The privacy and confidentiality of participants must be protected and respected to the extent possible

Personal information (for example, a victim's contact details or an offender's criminal history) is always private to the individuals concerned and must not be disclosed without their consent. (New Zealand law) imposes a range of obligations on restorative justice providers in respect of the collection, storage, and use of personal information. This includes, for example, taking reasonable security safeguards to protect against loss, unauthorized access, use, modification or disclosure, and other misuse.) Restorative justice processes always take place in private and the consent of participants will be required for non-participants (for example, observers such as media representatives) to attend. Information about what occurred during the restorative justice process may be disclosed to non-participants but only with participants' consent.

Facilitators must make participants aware of the limits to confidentiality before a conference is held (for example, judges may refer to the conference report in open court and the disclosure of other offending may be reported to the Police). While there may be agreement before the conference to respect confidentiality, participants need to be aware that this agreement cannot be legally enforced.

Participants may require some form of follow-up after the conference

Follow-up with participants after a conference, particularly the victim and offender, will usually be required. This should be appropriate to the needs of the individuals concerned (and may therefore be minimal in some cases). Purposes of follow-up include:

- to gain feedback on the effectiveness of the process
- to check that conference plans are being carried out and to keep the victim or offender informed, and/or
- to insure that both the victim and offender are "okay" following the conference and determine whether either party requires support or assistance from other agencies.

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Methods of follow-up can vary and may include a conference evaluation form, phone call, letter, home visit, and/or the convening of another conference. Other justice sector personnel (for example, the Victim Adviser) may also be in contact with the victim in accordance with their responsibilities under the Victims' Rights Act 2002.

7. Restorative justice providers (and facilitators) must insure the delivery of an effective process

Robust internal management systems are required that include appropriate and transparent procedures and processes. (These principles assume that restorative justice processes will be delivered by a provider group rather than a sole practitioner. Some of the requirements identified under this principle may therefore be less applicable to sole practitioners than provider groups.)

Appropriate and transparent procedures and processes are required that:

- screen potential facilitators at the time of their initial appointment and select facilitators appropriate to the case that has been referred (for example, having regard to the particular circumstances/ characteristics of the victim and offender)
- monitor the performance of facilitators and address performance issues
- insure regular supervision and training of facilitators, including debriefing, peer review and professional supervision
- maintain the safety of participants and the provider, and
- manage complaints.

High-quality facilitators are critical to an effective restorative justice process

Facilitators should act in accordance with restorative values and demonstrate competencies in the following areas:

- **Skills:** highly developed communications skills (including an ability to maintain and encourage dialogue with a wide variety of people), an ability to manage strong emotion and conflict, and an ability to deal with diversity in terms of class, culture and gender.
- **Knowledge:** a good understanding and knowledge of local cultures

and communities (including the community services and organizations that may be useful in developing or carrying out the potential plan), an understanding of the criminal justice system and restorative justice processes, and knowledge of victim and offender issues (for example, potential trauma experienced by victims after an offense).

- **Personal qualities:** honesty, openness and accountability, integrity, respect for people including those who are different, the ability to be objective and not take sides, professionalism and self-awareness (including an ability to identify when they are not able to act impartially and to critique their own performance).

Facilitators should not be aligned with the victim or offender or be an employee of a justice sector agency, for example, the Police. A co-facilitation model may be appropriate to enhance the safety and control of the conference, enable one person to facilitate while the other takes notes and prepares a draft conference plan, and to allow immediate debriefing after the conference.

Evaluation and review of restorative justice processes should be supported and encouraged

Formal evaluation of programs (for example, to determine the effectiveness of different models and practices) should be supported and encouraged wherever possible. Restorative justice providers should also monitor their own practice on an ongoing basis, with a view to modifying and improving their practice where required.

8. Restorative justice processes should only be undertaken in appropriate cases

The use of a restorative justice process in a particular case must be carefully considered

A range of factors should be taken into account when considering whether a case is appropriate for a restorative justice process (for example, after a judge has adjourned a case to allow that possibility to be investigated). These factors include:

- the type of offense
- the willingness of the victim and offender to participate, and
- participants' suitability, including their maturity and ability to partici-

pate effectively and in a voluntary capacity.

A case will proceed through conventional court processes if it is not considered suitable for a restorative justice process (or if either the victim or offender do not give their consent to the process taking place). The restorative justice provider should inform the court that a restorative justice process could not be undertaken, but not provide the reason(s) for this. (Providing the court with the reason for a process not going ahead may place additional pressure on the victim and offender and be inconsistent with the voluntariness of the process. Relevant information about the offender's motivation may be included in pre-sentence reports, where appropriate.)

The use of restorative justice processes in cases of family violence and sexual violence must be very carefully considered

The use of restorative justice processes in family violence and sexual violence cases will not always be appropriate. The particular dynamics of family violence and sexual violence, including the power imbalances inherent to this type of offending, can pose significant risks to the physical and emotional safety of the victim. Family violence offending, in particular, is often cyclical and reflects deeply entrenched attitudes and beliefs. Offenders may be more manipulative and have offended seriously and repeatedly. A one-off intervention may therefore not be effective or safe. Where a restorative justice process does take place, providers must insure that facilitators possess the specialized skills and experience required to facilitate these cases and that additional safety and support measures are in place. Advice from those knowledgeable in responding to family violence and sexual violence should always be sought.

Particular consideration should be given to the appropriateness of restorative justice processes when the victim is a child or a young person

The age and maturity of the child or young person will often determine the appropriateness of a restorative justice process in a particular case and the extent of their participation (for example, very young victims may not attend the conference). Parents/caregivers should be fully involved in the process, including giving their consent to the process taking place, and participating with, or for, the child. There will be inevitable power imbalances arising from an adult offender and young victim. Therefore, if a restora-

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tive justice process does take place, restorative justice providers and facilitators must take particular care to insure that the child or young person is safe and supported and understands what is taking place.

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Part III: Statement on Restorative Justice Values and Processes

The Restorative Justice Network is an informal association of community groups and agencies throughout New Zealand involved in offering restorative justice services. Although it has now gained government sanction through the passage of groundbreaking legislation, restorative justice in New Zealand has always been firmly anchored in the community sector. The first restorative justice community group was founded in Auckland in 1995, followed by several others elsewhere in the country.

From the outset, community providers have been conscious of the need to develop processes to monitor and improve facilitation practice. Such processes initially focused on prompt debriefing by co-facilitators after the conference, with key practice issues being referred to plenary group meetings for further debate. As the number of more experienced facilitators grew, various types of supervision arrangements were also devised. With the rapid increase of the number of restorative justice providers, however, each working independently in different communities and with differing models of facilitation, the issue became more pressing of how good or bad practice could be measured and regulated.

Discussion of this issue took place at the first national *hui* (meeting) of the Network in 2002. Some believed the time had come for the establishment of a national accreditation body, which could prescribe acceptable standards of practice. Others argued that restorative justice processes were still too new and culturally diverse to implement formal or monochrome accreditation procedures, and that while minimum standards were important, room must be left for cultural and contextual variation.

After wide-ranging dialogue and discussion over two years, the Restorative Justice Network opted for a values-based approach of defining standards of practice. Such an approach, the Network believes, permits flexibility of practice while at the same time furnishes precise and

workable guidelines for determining whether specific processes are truly restorative in effect. In June 2003, the Network adopted the following statement, intended to be used in conjunction with the Ministry of Justice's Principles of Best Practice. Both documents complement and enrich each other and together provide an important regulatory framework for restorative justice practice in this country.

1. INTRODUCTION

- Restorative justice is a generic term for all those approaches to wrongdoing that seek to move beyond condemnation and punishment to address both the causes and the consequences - personal, relational, and societal - of offending in ways that promote accountability, healing, and justice. Restorative justice is a collaborative and peacemaking approach to conflict resolution, and can be employed in a variety of settings (home, business, school, judicial system, etc.). It can also use several different formats to achieve its goals, including victim-offender dialogue, community or family group conferences, sentencing circles, community panels, and so on.
- For the purposes of this document, "restorative justice" refers to a process whereby those affected by an incident of wrongdoing come together, in a safe and controlled environment, to share their feelings and opinions truthfully and resolve together how best to deal with its aftermath. The process is called "restorative" because it is concerned primarily with restoring, insofar as is possible, the dignity and well being of those harmed by the incident.
- From this it follows that justice processes may be considered "restorative" only inasmuch as they give expression to key restorative values, such as respect, honesty, humility, mutual care, accountability, and trust. The values of restorative justice are those values that are essential to healthy, equitable, and just relationships.
- It cannot be emphasized too strongly that process and values are inseparable in restorative justice. For it is the values that determine the process, and the process that makes visible the values.

If restorative justice privileges the values of respect and honesty, for example, it is crucially important that the practices followed in a restorative justice meeting exhibit respect for all parties and give ample opportunity for everyone present to speak their truth freely. On the other hand, as long as these values are honored, there is room for a diversity of processes and a flexibility of practice.

- It is this emphasis on deep human values and virtues on the one hand, and flexibility of practice on the other, that affords restorative justice such cross-cultural utility. Different cultural and ethnic communities may employ different processes in order to actualize common restorative values and achieve similar restorative outcomes.
- For this reason, "best practice" does not just refer to a prescribed process or set of procedures to be followed by facilitators. Crucially, it also behooves all involved to:
 - recognize the values and virtues that inspire the restorative justice vision;
 - understand how these ideals find expression in concrete standards of practice;
 - identify the skills practitioners need in order to initiate and guide interactions that express restorative justice values;
 - affirm that restorative justice values and principles should shape the nature of relationships between restorative justice providers and all other parties with a stake in the field, including government agencies which contract restorative justice services from community providers.

2. CORE RESTORATIVE JUSTICE VALUES

The vision and practice of restorative justice are shaped by a number of key values that distinguish restorative justice from other, more adversarial approaches to justice and conflict resolution. The most important of these values include:

- **Participation:** Those most affected by the incident of wrongdoing

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ing - victims, offenders, and their communities of interest - ought to be the principal speakers and decision-makers in the process, rather than trained professionals representing the interests of the State. All present in a restorative justice meeting have something valuable to contribute to the goals of the meeting.

- **Respect:** All human beings have inherent and equal worth irrespective of their actions, good or bad, or of their race, culture, gender, sexual orientation, age, beliefs or status in society. All therefore deserve to be spoken to and treated with respect in restorative justice settings. Mutual respect engenders trust and good faith between the participants.
- **Honesty:** Truthful speech is essential if justice is to be done. In restorative justice, truth entails more than clarifying the facts and establishing guilt within strict legal parameters; it requires people to speak openly and honestly about their experience of offending, their feelings, and their moral responsibilities.
- **Humility:** Restorative justice accepts the common fallibility and vulnerability of all human beings. The humility to recognize this universal human condition enables victims and offenders to discover that they have more in common as flawed and frail human beings than what divides them as victim and victimizer. Humility also enables those who recommend restorative processes to allow for the possibility that unintended consequences may follow from their interventions. Empathy and mutual care are manifestations of humility.
- **Interconnectedness:** While stressing individual freedom and accountability, restorative justice recognizes the communal bonds that unite victim and offender. Both are valued members of society, a society in which all people are interconnected by a web of relationships. Society shares responsibility for its members and for the existence of crime, and there is a shared responsibility to help restore victims and reintegrate offenders. In addition, victim and offender are uniquely bonded to-

gether by their shared participation in the criminal event, and in certain respects they hold the key to each other's recovery. The social character of crime makes a community process the ideal setting to address the consequences (and causes) of the offense and to chart a restorative way forward.

- **Accountability:** When a person deliberately inflicts wrong on another, the perpetrator has a moral obligation to accept responsibility for having done so and for mitigating the consequences that have ensued. Offenders demonstrate acceptance of this obligation by expressing *remorse* for their actions, by making *reparation* for the losses inflicted, and perhaps by *seeking forgiveness* from those whom they have treated disrespectfully. This response by the offender may pave the way for reconciliation to occur.
- **Empowerment:** All human beings require a degree of self-determination and autonomy in their lives. Crime robs victims of this power, since another person has exerted control over them without their consent. Restorative justice seeks to re-empower victims by giving them an active role in determining what their needs are and how these should be met. It also empowers offenders to take personal responsibility for their offending, to do what they can to remedy the harm they have inflicted, and to begin a rehabilitative and re-integrative process.
- **Hope:** No matter how severe the wrongdoing, it is always possible for the community to respond in ways that lend strength to those who are suffering and that promote healing and change. Because it seeks not simply to penalize past criminal actions but to address present needs and equip for future life, restorative justice nurtures hope - the hope of healing for victims, the hope of change for offenders, and the hope of greater civility for society.

3. RESTORATIVE JUSTICE VALUES IN PRACTICE

Most restorative justice processes involve a meeting or "conference" between the victim, offender, and other members of their immediate and wider community.

For such a gathering to be truly restorative in character, the processes employed must evidence key restorative justice values. Many of the values-based processes listed below are, in fact, relevant to all levels of relationship in the restorative justice field - between individual facilitators, within and between Provider Groups, between Provider Groups and other community agencies and funding bodies, and between Provider Groups and the State.

A conference process may be considered "restorative" if it:

- **Is Guided by Competent and Impartial Facilitators:** To insure that the process is safe and effective it should be guided by neutral, impartial, and trusted facilitators. The participants should understand and agree to the process that the facilitators propose, and the facilitators should strive to deliver on expectations created by them in the pre-conference process. Pre-conference preparation should be undertaken with all who will attend the conference.
- The process is **not** restorative if the facilitators do not insure that power imbalances are managed appropriately and that interactions between the parties are effectively facilitated, or if the facilitators impose opinions or solutions on participants or allow any other party to do so.*
- **Strives to be inclusive and collaborative:** The process should be open to all parties with a personal stake in what has happened. Such participants should be free to express their feelings and opinions, and to work together to resolve problems. Justice professionals, such as police and legal counsel, may be present, but they are there to provide information rather than to determine outcomes.

*The process is **not** restorative if key participants are required to remain silent or passive, or where their contribution is controlled by professionals, who intrude their own agenda.*

- **Entails voluntary participation:** No one should be coerced to engage or remain in the process, or be compelled to communicate against their will. Restorative processes and agreements should be voluntary. Reaching agreed out-

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comes is desirable but not obligatory; a well-managed process itself has value for the parties, even in the absence of agreements.

*The process is **not** restorative if the participants are present under duress or are expected to speak or act or decide on outcomes in ways contrary to their desires.*

- **Fosters an environment of confidentiality:** Participants should be encouraged to hold in confidence what is disclosed at the conference and not to pass it on to parties who have no personal stake in the incident. While the commitment to confidentiality cannot be absolute, since there may sometimes be compelling legal or ethical or cultural considerations that override it, in every other situation what is shared at a conference should be confidential to those in attendance.

*The process is **not** restorative if information disclosed in confidence is relayed to people who were not present at the conference so as to inflict further shame or harm on the person who, in good faith, disclosed it.*

- **Recognizes cultural conventions:** The process should be appropriate to the cultural identity and expectations of the participants. No one should be required to participate in a forum that violates their cultural or spiritual convictions.

*The process is **not** restorative if it is culturally inaccessible or inappropriate to the key participants or if it significantly inhibits the ability of participants to speak freely and truthfully.*

- **Focuses on needs:** The process should foster awareness of how people have been affected by the incident of offending. Discussion should aim to clarify the emotional, material and consequential harm that has been suffered and the needs that have arisen as a result.

*The process is **not** restorative if it is preoccupied with allocating blame or shame rather than addressing the human consequences of the incident, especially for the victim, or if it focuses solely on monetary compensation without*

regard to the value of symbolic reparation, e.g., apology.

- **Exhibits genuine respect for all parties:** All participants should be accorded fundamental respect, even when their prior behavior is condemned as blameworthy. The process should uphold the intrinsic dignity of everyone present.

*The process is **not** restorative if the participants engage in personal abuse or show contempt for a participant's ethnic, cultural, gender or sexual identity, or if they refuse to listen respectfully when others are speaking, for example, by constantly interrupting.*

- **Validates the victim's experience:** The victim's feelings, physical hurts, losses, and questions should be accepted without reproach or criticism. The wrong done to the victim should be acknowledged and the victim absolved of any unjustified blame for what happened.

*The process is **not** restorative if the victim's experience is ignored or minimized or trivialized, or if victims are made to shoulder undue responsibility for what occurred, or are pressured to forgive.*

- **Clarifies and confirms the offender's obligations:** The offender's obligations to the victim and to the wider community should be identified and affirmed. The process should invite, but not compel, the offender to accept these obligations and should facilitate identification of options for their discharge.

*The process is **not** restorative if the offender is not held accountable for what happened and for addressing the consequences of their wrongful actions or is forced to assume responsibility involuntarily.*

- **Aims at transformative outcomes:** The process should aim at outcomes that meet present needs and equip for the future, not simply at penalties that punish past wrongdoing. Outcomes should seek to promote the healing of the victim and the reintegration of the offender, so that the former condition of both may be transformed into something healthier.

*The process is **not** restorative if the outcomes are irrelevant to the*

victim or aimed solely at hurting the offender

- **Observes the limitations of restorative processes:** Restorative justice is not a substitute for the criminal justice system; it is a complement to it. It cannot be expected to meet all the personal or collective needs of those engaged in it. Participants should be informed of how restorative processes fit into the wider justice system, what expectations are appropriate for the restorative justice process, and how restorative outcomes may or may not be taken into account by the court.

*The process is **not** restorative if it is exploited by participants to achieve unfair personal advantage, or arrives at manifestly unfair or disproportionate outcomes, or ignores considerations of public safety, or attempts to subvert society's interest in having criminal offending dealt with in an open, fair, and just manner.*

4. CORE VALUES IN THE RESTORATIVE JUSTICE COMMUNITY

Restorative justice values should underpin all relationships between people working in the justice domain with a restorative justice purpose. The values identified above can assist the advancement of the restorative justice movement in New Zealand if those engaged in the movement, whether in the community or within government agencies, endeavor to deal with one other through conscious application of restorative values.

Restorative values should govern relationships within and between community groups. They should also shape relationships with government agencies, with those who exercise funding or administrative roles, in relationships with judges, victims' advisers, restorative justice coordinators, the police, probation and prison officers, and so on. The cause of restorative justice is advanced when all such partners treat each other restoratively.

A primary restorative value is respect. Mutual respect engenders trust and good faith between people. The Restorative Justice Network recognizes the special role it has been given in the criminal justice system, and members of the Network will strive to undertake it diligently, giving respect to those in the system we deal with, thus earning their trust to the benefit of the movement.

Constructing Victims' Rights: the Home Office, New Labor, and Victims

by Paul Rock, *Oxford University Press*. \$150, 583 pages (2004)

review by Russ Immarigeon

Paul Rock, a sociologist at the London School of Economics, writes large, broadly descriptive, contemporary histories of often quite specific criminal justice topics. Over the past 30 years, Rock has studied debt defaulters (**Making People Pay**, 1973), Canadian crime victim initiatives (**A View from the Shadows**, 1986), the rise of victim support in England and Wales (**Helping Victims of Crime**, 1991), the social world of witnesses and professionals in an English Crown Court (**The Social World of an English Crown Court**, 1993), the reconstruction of the Holloway women's prison in London (**Reconstructing a Women's Prison**, 1996), practical and political responses to post-homicide bereavement (**After Homicide**, 1998), and, most recently, crime victim rights in England and Wales (**Constructing Victims' Rights**, 2004). Most of these volumes remain in print from Oxford University Press.

Rock's method is simple. He compiles massive amounts of contemporary (or historical) documentation, including articles, internal and external memos, official and research reports, testimony at public hearings, news clippings and written notes from face-to-face interviews with key respondents. He pinpoints certain themes and organizes separate chapters around illustrative sub-categories of these themes. And then he writes, at considerable length. Rock's prose is alternatively clear and convoluted. But he produces a wealth of valuable information that is worth pouring over.

Rock started his research for **Constructing Victims' Rights** in mid 1998 and completed it in late 2001. The study is a general effort to track developments in the way politicians and governmental officials, as well as various interest groups, spoke about crime victims and their rights at the start of a new century. In Rock's words, this volume "illuminates a critical change in political talk about victims' rights that took place inside the bowels of the Home Office at the beginning of this century. It explores processes as they emerged and contributed to that change, and, in particular, the very disparate representations of victims that were to take shape and coalesce inside policy-making. It explains how victims so represented came to acquire a special pragmatic significance within Whitehall and Westminster that bore few of the

marks of mass public campaigning or moral agitation for victims as victims (indeed, very little such campaigning at all took place during the period, although campaigns for other causes or for very particular sub-groups of victims certainly made their mark) or of the new ideological moralism that was said by a number of criminologists and others to be driving the politics of criminal justice and victims in the West. And by implication, it touches on the repertoire of selves and identities which the criminal justice system permitted victims formally to assume, linking the State to private subjectivity." (p. xii)

More specifically, Rock investigates such matters as the organization of governmental agencies that address crime victim issues, the victim as consumer, the victim and human rights, the victim and compensation, the vulnerable or intimidates victim, and the victim and race. Most importantly, at least for the purpose of this review, he also examines the victim and reparation, or the integration of victim perspectives into the restorative justice practices and policies that emerged during the 1980s and 1990s.

In England and Wales, interest in restorative justice during these two decades was a separated by a lull in interest. Moreover, as Rock shows, the nature or intent of restorative justice also shifted. Throughout, however, Rock finds disappointingly little influence, or integration, of victim perspectives. In short, victims or even victim lobby groups were infrequently asked about or included in proposals or planning for various restorative justice initiatives. This was doubly unfortunate because Victim Support, led for many years by Helen Reeves, an important figure who we in this country should know more about, was not unsupportive of restorative justice initiatives. Victim Support's approach was careful and cautious, thinking it worth exploring but mindful of the need to distinctly incorporate victim needs.

Rock seems skeptical of much of the bravado expressed by restorative justice advocates. He dismisses former Home Office official and Mediation UK director Tony Marshall's definition of restorative justice, which, for better or worse, is actually one of the clearer ones. He wonders, rightfully, about the many divergent forms and practices of restorative justice.

He observes, "(T)he revival of restorative justice (in the 1990s) had little directly to do with interests or wishes of the victim clearly expressed or conventionally defined. It was a creature of different impulses. There had been no swelling of demand for reparation or mediation from victims or from the organizations that represented them, although the occasional victim might have sought to meet an offender, such as a murderer, to better understand his action. It was simply taken for granted that victims would or should somehow wish to play their part in doing good to the offender. When restorative justice first began to spread across England and Wales in the 1980s, Victim Support reflected that 'No one actually knows what victims of crime think about the idea of participation by offenders...Reparation has, however, been presented as a course of action which would be in the victims' best interests...' And, twenty years later, Susan Herman of the American National center for Victims of Crime claimed that restorative justice in the United States was not led by the practitioners or by victims' groups but by penal reform groups, offender groups, and academics who were persuaded that offenders had been mistreated. In restorative justice as elsewhere, victims remained the pragmatic construction of others." (pp. 290-91)

Rock, it should be emphasized, is taking a look at reparation (and other matters in this volume) strictly from victim (or at least victim advocate) perspectives. While his report shows the complexity of these matters, a full history, of restorative justice for instance, is more complex still. Nonetheless, in the United States, no study of victim rights, victim services, victim reparation, or restorative justice is of comparable depth or worth. This is unfortunate, because beyond the expectations or theoretical projections of one initiative or another there exists a rich, untapped amount of information that could usefully inform the evolving nature, subjectivity, and strengths of victim- and restorative justice-oriented reform initiatives.

*Copies of **Constructing Victims' Rights** are available from Oxford University Press, 2001 Evans Rd., Cary, NC 27513, (800) 445-9714.*

Kathleen Daly on Restorative Justice

Sociologist Kathleen Daly recently delivered an insightful presentation that covered a range of important topics: social justice; racial and gender aspects of restorative justice processes; general, community or indigenous support for restorative justice; research about various forms of restorative justice; and "contested" issues in the practice and politics of restorative justice, including its appropriateness in cases that involve physical or sexual assault.

Social Justice

Restorative justice advocates often argue for restorative justice's ability to change the people and communities involved in restorative justice processes. Daly cautions against an overemphasis on "nirvana stories." The ability of restorative justice initiatives to "repair the harm" or "restore community" may well depend on the quality of program designs, implementation, and fiscal, familial and community-based resources. In this re-

gard, she recommends reading the work of social workers Joan Pennell and Gale Burford, who worked with indigenous communities in Newfoundland (see Pennell's website:

<http://social.chass.ncsu.edu/jpennell>).

Race and Gender

Daly cautions that race- and gender-related aspects of justice are often seen as antagonistic with one another, each serving different sets of interests and each, potentially at least, conflicting with the other, for attention, for scarce resources, for constructive outcomes. She observes that "race and gender politics may be especially antagonistic in cases of family and sexual violence."

Research Results

Daly has invested her time heavily in several major research projects. In 1998, for instance, she observed 89 "youth justice"

conferences in the state of South Australia. Among her conclusions were the following:

- fairness is easier to achieve than restorativeness;
- offenders' desires to repair their harms are limited, as are victims' capacities to view offenders positively;
- sincere apologies are hard to achieve; and
- conferences have positive results when they succeed according to the way they are planned.

Kathleen Daly's paper is entitled "Seeking Justice in the 21st Century: The Contested Politics of Race and Gender" and a full copy is available electronically from the website of the Center for Restorative Justice at the Australian National University: www.gu.edu/school/ccj/kdaly.html.

RJ in El Salvador *continued from page 3*

we beginning to feel peace. Thank you for listening to my lament."

- The Maryknoll Lay Missioner described her work in mental health with survivors and returning refugees: She told of La Quesera massacre where 600-1000 had been killed over ten days by the military. The story was not generally known by the outside world. The trauma had been so devastating the survivors did not talk of the massacre until 20 years later. In the past year, the survivors observed and participated in the exhumation of the remains of many of their loved ones who were killed in the massacre. An artist and theologian from Costa Rica guided a project of helping the survivors paint a mural on the hill where they will eventually re-inter the remains. In the three-panel mural, the first panel describes life before the repression and war. The middle section commemorates the terrible times of the war, the massacre and includes Archbishop Romero because he suffered with the people. The third section portrays the present including the exhumations. The art-

ist and the people chose to portray the victims as smiling skeletons, "spirits happy to now be part of telling the truth about the awful criminality of war."

- The priest's account of accompanying survivors of the bombing of their city, Chalatenango, in the mid 80s, when they returned to reclaim their destroyed land: "On returning they wrote the names of their family members who had been murdered on pieces of paper. By the fire, remembering the tremendous suffering, they released the memory to be transformed. Looking at their faces, I saw their hope...We prayed for the 3000 dead and for the soldiers who had killed them. One of the women said, 'Let us continue in love'."

As I heard at the Monument to Memory and the Truth: "Here, where great suffering and great love meet, we are standing on holy ground."

The Challenge Ahead

At the University of Central America where the six Jesuit priests and their housekeeper and her daughter were killed, we were challenged to "go back

and tell your people there is not justice, there is no liberty as long as the poor suffer. As long as there is rampant corruption, there can be no justice. What has been taken from the poor has not been restored."

I return to my work with mediation and training in northwest lower Michigan (USA) with gratitude to VOMA for helping to make this journey across miles and cultures possible. I return with a renewed appreciation for the possibilities for healing and transformation that restorative justice offers and a deeper awareness of the tremendous obstacles facing all who work for balanced and restorative justice.

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Afrocentric Restorative Justice

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times there are areas identified by geographic boundaries that are identified as communities. These neighborhoods are considered communities by both the legal and political structures, as well as by extra-legal definitions. The concept of community policing, for example, assumes that there are distinct boundaries that make a community.

Community is also defined by culture. Individuals belong to various communities defined by their ascribed and achieved positions within society. For example, lawyers are members of the "bar community" and medical doctors are members of the "medical community." This community identification is as strong, and sometimes stronger than the bonds that occur within a geographic community. In the United States, because of the concept of race, there are various racial and ethnic communities. Many times these communities extend past the boundaries of the geographic communities. The bonds within these communities may also be as strong as the bonds in a geographic community.

Within certain cultures, community also includes one's history and heritage. Within these communities, ancestors are a vital component of the community. The adage "if you don't know where you came from, you won't know where you are going" is applicable to cultures that subscribe to this component. Again, the bond between these individuals and their ancestors can be as strong as the bonds in a geographic community. In addition, certain cultures have an additional or other spiritual component to their understanding of themselves and their comprehension of the concept of community.

Because community may encompass all of these definitions, a paradigmatic shift should occur in the understanding of community. Community is a "socio/cultural environment" in which one physically, mentally and spiritually resides. Within the "socio/cultural environment" there are individuals who are (or perceived as) oppressors and other individuals who are the oppressed, though these labels may change depending upon the circumstances. In addition, the environment itself is (or perceived as) the oppressor or the oppressed.

Because most criminal offenses tend to be intra-racial, a culturally (in this case race) specific definition of community would be appropriate. However, since the Afrocentric approach to restorative justice includes the concept of spirituality, the defi-

Group Dimension	Eurocentric Model of Justice (The current legal system)	Enculturated Model of Justice (Usually culturally sensitive but not culturally specific)	Afrocentric Model of Justice (Culturally Specific)
Cosmology (Worldview)	Control of others. Decisions should be made by a third party (i.e. Judges and legal system)	Individual involved in the "process" make decisions. Victim needs and offender responsibility dominate.	All parties make decisions equally. Community has the same voice as offender and victim.
Axiology (Values)	Individualistic/Materialistic. What benefits the individual is important.	Quasi-individualistic. Relationship between victim and offender is primary.	Communal Orientation. Relationship with the community is primary.
Ontology (Nature of People)	Humans can be good or bad. Humans who are bad need to be punished	Humans are good, but there are some bad "seeds" that need to be treated or rehabilitated	Humans are naturally good. Community should support everyone.
Epistemology (Source of Knowing)	Self; validation through the scientific method. Strictly secular	Self and spirit is secondary	Spiritual Source is primary

Cultural Justice Model Overview

inition of community should include one's history and heritage, as well as one's religious or spiritual belief. In this approach, all community members, oppressed or oppressor, are responsible to not only current members of the community, but also to the ancestors that preceded him/her.

Reduction of "State" Participation

With its roots in individualism, the Eurocentric approach to dealing with crime ultimately means that the individual is responsible for his or her actions; the system must reform the individual, or the "individual" must compensate another "individual." It also assumes that the voice of the community is the same as the voice and values of the state. Unfortunately, this system wrongly assumes that the broader community voice represents the African American community. The result is mistrust of the criminal justice system by many African-Americans. The recent events covered by the mainstream and popular media, including the O.J. Simpson trial, the Susan Smith situation in South Carolina, the Charles Stuart fiasco in Boston and the Rodney King trials, have highlighted this mistrust.

If the state or agents of the state remain a dominant participant in the restorative justice process, African-Americans will continue to mistrust the process. The restorative justice process will be perceived as simply an expansion of the social control mechanism of the criminal justice system. In addition, the participation of the state as a dominant player is contrary to both the restorative justice and Afrocentric primary focus on the

community. Agents of the state could be participants; however they should not act out their roles, or be perceived as doing so, as criminal justice or legal professionals.

Education and Training

Education and training on racism and culturally specific approaches to restorative justice must occur in both formal and informal educational settings. Within higher educational settings, criminal justice, pre-law and other majors in the social sciences are taught the dominant, and typically Eurocentric, theories on crime and delinquency. The voices of communities, practitioners, and scholars of color, especially African-Americans, are usually not heard. The exposure to restorative justice, coupled with alternative culturally specific theories to crime, in formal educational institutions would allow for more academic debate and research that would test the viability of both restorative justice and Afrocentric theories. This would also lead to more participation of African Americans and others within the restorative justice movement. Training sessions should include exercises and workshops that not only identify personal and participants' biases, but methods to determine both the facilitators' and participants' grounding in Afrocentric (or other culturally specific) theory. The addition of an Afrocentric perspective will enhance intercultural communication and increase the tolerance for alternative worldviews.

Afrocentric Restorative Justice*continued from page 15*

One example of an Afrocentric process that is transferable to a restorative justice process would be "rites of passage." Under the "tough guy" scenario, the primary "community-based" socialization agent is the criminal justice system, more specifically detention centers, jails and prisons. In other words, the rite of passage for many young African-American males into the Eurocentric culture occurs in prison. Ritualism is a process that is not only used in traditional African cultures; it is an integral aspect of the American legal culture. For example, the trial is a ritualistic process that follows a procedure that must fall within the guidelines of the court's rules. There is a script that all of the players must follow and the judge is the director of the ritual. The concept of ritual is also important under the Afrocentric restorative justice paradigm. Within this framework, the ritual dictates that participants move from their positions in the dispute to a situation where they can discover each other's interest and come to a resolution. In addition, the essential "spiritual" components are an integral part of the process. Because of the existence of "rites of pas-

sages" programs in many communities, restorative justice professionals could receive training in this area.

Research

Current research methods under the Eurocentric perspective scholars omit or marginalize the indigenous worldviews of people of color. Even within the Eurocentric research framework, using multiple or "triangulation" approaches are assumed to lead to more reliable and valid conclusions. This suggests that including Afrocentric perspectives in research will lead to increased reliability and validity. Due to cultural differences and other concerns, an Afrocentric approach to restorative justice will at minimum enhance the value of research for African American constituencies. Participatory research from an action perspective could also engage African American offenders, victims and other community members and thus become a valuable tool for the recruitment of African American facilitators.

Studies have shown that restorative justice has been successful from the viewpoint of both victims and offenders. However, additional research is needed, using an Afrocentric approach to measure

whether Afrocentric values are present in the restorative justice process and to determine its effectiveness. The addition of the Afrocentric perspective to the existing research can only improve society's understanding of restorative justice. This approach will also ensure that community liberation will be the primary focus in the Black community as well as in other disenfranchised communities in the United States.

Conclusion

The use of Afrocentric theory is one culturally specific approach that could be used in the African American community. Also, culturally specific approaches can be used in non-Black communities. Hopefully, this article will spur a debate on culturally specific (as opposed to culturally sensitive) programs in the restorative justice movement. The addition of alternative perspectives, including an Afrocentric approach, will only enhance the concept of restorative justice.

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