

What is Restorative Justice?

Definitions

The primary purpose of restorative justice is to restore justice.

Justice does not reside solely within the domain of the criminal justice system. Justice is a basic human need in every social formation, including families, schools, communities, organisations, civil society and the state.

The need for justice arises when people harm one another unjustly. Often this occurs when they see others as a threat to their interests or use someone as an opportunity to achieve their purpose. Injustice occurs when people treat others solely as a means to their ends. As such an injustice violates the values of respect, of relationship and of responsibility for others.

Restorative justice needs to address the beliefs which underpin the public's attachment to retribution – denunciation of harm, respect for and vindication of the victim and some concrete evidence of the offender paying for transgression. Restorative justice processes must, then, include accountability for harm, ensure that the full truth of the harm is disclosed and addressed, take steps to repair the victim's loss or hurt and to protect the victim and community from further harm. Justice is achieved when respect, just social relations and responsibility for others are restored.

People live and are shaped through relationships. They are members of families, communities, organisations and societies all of whom have norms or expectations of what is acceptable behaviour. When harm occurs, it creates a breach in how people are expected to live together. These breaches of norms reduce trust and cohesion. An effective justice process addresses issues of relationship by offering an opportunity for trust to be regained. If the obligations of those who harm others are observed, the community accepts them back as full members and offers them the support that they need to comply with their norms.

Processes that restore responsibility:

- Focus on the harms and the needs that arise from an injustice;
- Assume that obligations are incurred when an injustice has been perpetrated;
- Enable people responsible for the harm to make themselves accountable for these obligations to those directly harmed;
- Enable those who have been harmed to explain this to those responsible for the harm;
- Enable those responsible for the harm to put right the wrong, to repair the damage or loss and to make amends;
- Enable those responsible for the harm to commit to avoiding further harm.
- Enable the community to take responsibility for accepting persons who have committed to making amends and supporting them to do so.

People who have been harmed have the opportunity to regain respect when their story is listened to and their needs are addressed. People who have harmed others can regain respect when they take responsibility for their actions and their harmful consequences.

Johnstone and Van Ness (2007:19) state that “respect means not only treating all parties as persons with dignity and worth, but also as people with wisdom and other valuable contributions to offer.” This means that in restorative justice people are respected both a priori as human beings and because of their potential to deal with the conflicts in their lives. What distinguishes restorative justice from other processes of justice is the participation of ordinary people.

The active participation of those most affected by an injustice is required to understand the full meaning of the harm to each party and to address the needs that arise from the harm for each party.

There are some important questions that can only be answered by the parties meeting and entering into dialogue. To enhance the quality of the participation and the likelihood of positive outcomes it is necessary to design and facilitate a process which enables the parties to move on from a harmful experience through the satisfaction of their needs.

Restorative processes are a series of practices designed and performed to achieve the restoration of justice. They can take many forms depending upon the context of the injustice and the parties involved.

Restorative processes require the active agency of all parties and do not depend solely upon the expertise of the facilitator. Restorative practices are more than the use of communicative methods, techniques and skills required both to facilitate and to participate in restorative justice processes. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

For these practices to work they should be infused with restorative values. Influenced by Braithwaite (2003) this model distinguishes between values which override restorative justice and prevent it from becoming oppressive and those that are specific to the process and outcomes of restorative justice. The former include conformity to human rights, the rule of law, proportionality of response to harm, and equality of opportunity. Values are further distinguished between those that are a defining core of restorative justice and those that guide the process as principles of practice.

The core restorative values include responsibility, relationship and respect¹.

Each of the values affirm human worth and agency and reduce the tendency to objectify human beings when addressing social and political issues. These

¹ Taken from Zehr (2009)

values provide a foundation on which to build a set of restorative principles which inform the restorative practices.

The key principles of practice include:

- 1. Diversity: The process should be designed and delivered to be inclusive of and responsive to the parties affected by the harm as opposed to assessing whether the parties are suitable to the process.*
- 2. Participation: The facilitator is committed to enabling all parties to meet their needs.*
- 3. Equity: The process must be fair.*
- 4. Interdependence: The parties need each other to meet their needs.*

The practices which restore justice include storytelling, the expression of emotion, and dialogue. These practices enable the truth to emerge and empathetic connection between the parties that leads to agreement on what action needs to be taken to address the harm. Each of these practices needs to be facilitated skilfully by a committed and competent worker. This requires high quality training and effective supervision of staff.