Restorative Justice Philosophy: Application with Reentry Processes
By Dr. Michael J. Gilbert

Achieving Justice, Improving Public Safety and Developing Livable Communities where Formerly Incarcerated People are:

Welcomed Home,
Assisted in forming “Pro-Social” Relationships, and
Encouraged and supported as they build New Lives and Careers within the Law.
If Crime Hurts…

**Justice Should Heal**

- Those harmed
- Those who caused harm
- Their communities
- *Making crime less likely.*
Unfortunately Legal Justice Imposes…

- Coercive controls
- Punishments of the “Guilty”

Increases incentives and pressures toward deeper involvement in criminal conduct.

The opposite of what we want.
Formal Legal Justice Systems

View crime as a violation of law which is an offense against the state.
Modern Justice System

- Asks
  - Was a law broken?
  - Who broke the law?
  - What punishment do they deserve?

- The “Social Benefits” of Punishment
  - “Rehabilitation” or “Habilitation”
  - “Incapacitation”
  - “Deterrence”
    - General
    - Specific
Modern Justice System

GOVERNMENT

Order

RETRIBUTION

Fairness

COMMUNITY

VICTIM

Offender
DETERRENCE THEORY

Underlying Premises

- Punishment is accountability
- Punishment reduces offending
- Punishment Prevents Crime
Yet, Evidence Does Not Support these Assertions

- High rates of recidivism persist
- High crime areas remain that way for generations
  - Despite
    - The most punished residents
    - Intensive police presence
    - Aggressive enforcement
    - Intensive community supervision
    - Collateral impacts on those with a “criminal” label.
- Highest crime areas in any city:
  - Have the most deprivations and most formerly incarcerated.
The Justice System Is Needed, But It Does Not…

- Repair Harms to Victims,
- Heal Communities,
- Resolve Conflicts

Create More Livable and Peaceful Communities

Achieving these Goals Requires More than the Capture and Punishment of Offenders.

Restorative and Community Justice Provide Tools that Focus Directly on These Goals.
STREET CRIME PERSISTS....

In the same areas, generation after generation because:

*The adverse social conditions in which residents live have REMAINED UNCHANGED.*
TRADITIONAL JUSTICE SYSTEMS DON’T WORK WELL – CERTAINLY NOT AS ADVERTISED.

Expensive
Ineffective
Often Counter Productive

*May Produce*

*Injustice in the Name of Justice*
Some Basic Questions to Contemplate:
The Future of Justice Rests on the Answers

- What is justice?
- What makes a person or a society “just”?
- Are crimes violations of law or harms to people and relationships?
- What does justice require?
  - Legal Guilt and Punishment…
  - Healing of Victims…
  - Personal Accountability to those harmed…
  - Ending or Reducing Injustice and Inequality…
- Who owns justice?
- Does justice require a formal justice system?

Is “Earned Redemption” Possible for Offenders?
Each of these Questions is Rooted In The…

Theory and Philosophy of Justice
And Goes to the Heart of Any Society.

Who Are We as a People?

How We Live Together in Peace with Respect and Dignity?
It is Clear that Justice is...

- **NOT** Synonymous with the Criminal Justice System.
  - “Criminal Justice” is Reactive to Violations of Law.
  - “Criminal Justice” is Coercive.
- “Justice” refers to Balance, Fairness, and Equity in Society
- “Justice” is Collaborative, Relational, Proactive, and Prevention Oriented.
- “Justice” sees our Common Humanity and the Common Good.
- “Justice” Encompasses the Structure of Society.

- Traditional Justice Systems **Cannot** by Themselves:
  - Create a Just Society
  - Produce Public Safety or “Justice”
- Traditional Justice Systems May Produce Injustice.
- Traditional Justice Systems Rarely Address:
  - *Institutional Injustices*
  - *Structural Inequalities*

We need to Rethink what Justice Means, Requires and How It is Attained.
At its Core “Justice” is Relational

It is about how we:

- Live in “Right Relationship” with one another.
- Live together in peace with respect and dignity for one another despite our differences.
- Live in ways that hold one another accountable as people and communities to “make the wrongs right.”

How do we set the stage for the formerly incarcerated to “own-up” to their past acts, make amends to those they have harmed and their communities, earn redemption and regain standing as a full citizen?
RESTORATIVE AND COMMUNITY JUSTICE ARE BOTH RELATIONAL FORMS OF JUSTICE

Restorative Justice (victim centered)

*Healing Harms by Individuals or Groups to others.*

Community Justice (neighborhood centered)

*Repairing harm caused by adverse quality of life conditions.*

Relationship and dialog with people who are different than us is fundamental to forming and maintaining safe, just, equitable and civil societies.
Two Types of Relational Justice

**Restorative Justice**
- Healing the harms caused by crime.
- Equal concern for both victims and offenders.
- Work toward restoration of the victim or victim’s.
- Support and encourage offenders to understand, accept, and carry out their obligations.
- Opportunities for dialogue between victims and offenders.
- Involve the community.
- Reintegration of victims and offenders.
- Strengthen residents capacity for governance and collective actions.

**Community Justice**
- Promote social justice and ethics of care in the neighborhood.
- Strengthen...
  - Neighborhood capacity for self-governance and collective action.
  - Pro-social norms within neighborhoods.
  - Capacity of residents to work collaboratively toward a safer community with *higher quality of life*.
- Promote mutually respectful collaborations with government agencies to improve social conditions within the neighborhood.
Restorative Justice Questions

- Who has been hurt by this event?
- What are their needs?
- Whose obligations are they?
Restorative Justice Philosophy

- Advocates responses to wrongdoing that focus on *healing the wounds to victims, communities and offenders caused by crime*, by:
  - Identifying harms,
  - Recognizing the harm caused
  - Taking steps to repair those harms,
  - Involving all stakeholders, and
  - Transforming the traditional relationship between communities and their government
    - By allowing people and communities find meaningful justice.
Restorative Principles

- Victim Focused
- Crime breaks *right relationships* first
  - Causes multiple layers of harm (ripples)
    - Victims, Community, Government, and Offender
  - Creates obligations to repair the harm
  - Creates obligations to resolve conflicts
- Requires processes that are:
  - Voluntary (or “willing”) participation
  - Dialogue driven (NOT outcome driven)
  - Inclusive & collaborative processes
  - Provides opportunity for full participation of stakeholders
- Strives to right the wrongs for victims and community
Restorative Justice Values

- Protect the dignity and self-worth of participants.
- Ensure safety and security of participants.
- Seek the common good of the community.
- Prioritize constructive human relationships.
- Personal integrity is the foundation for “Right Relationships”.

Right Relationships:
- Personal humility,
- Respect for common humanity and connectedness with others,
- Acting justly,
- Ensuring the personal dignity of those involved,
- Genuine concern for the human condition and social circumstances of others,
- Demonstrating honesty and integrity in interactions, and
- Maintaining peaceful relationships.
Restorative Justice Values

**Concern for Victim’s Needs**
- Information about the offense and justice process,
- Truth-Telling
  - Tell what happened
  - In significant settings
- Empowerment
- Restitution or vindication

**Concern for Offender’s Needs**
- Accountability to victims and community
- Support for reintegration into the community

**Concern for Needs of Community**
- Recognition of
  - Impacts of crime
  - Need for repair and restoration
  - Community as a victim
  - Building a sense of community
  - Community accountability

**Encourage the community to:**
- Meet community obligations
- Address social justice issues (public order & peace)
Restorative Justice Values

- Focus on putting things right
  - Addressing harm
  - Addressing causes of harm
    - Repairing past harm
  - Restoration & reintegration of victim and offender
Key Values for Sound Practice

- **Inclusion**
  - Success of relational justice depends on support of the community; and,
  - Participation of stakeholders is the basis for that support.
  - *Pre-encounter preparation of all stakeholders for safety.*

- **Amends**
  - Recognizes that ending conflicts and achieving peace often starts when those responsible acknowledge their role in causing harm and strive to make it right.

- **Protection of Participants**
  - Calls on facilitators to support honest expressions of emotion while ensuring respectful expression that adds understanding and does not create new harms.

- **Encounter**
  - Trained mediators
  - Direct facilitated dialogue among stakeholders; and,
  - Discussion of the harms, obligations and what might be done to repair harms.
Key Values for Sound Practice

- **Moral Education**
  - The power of dialogue processes on participants lies in the empathy and understanding gained; and,
  - Shared commitment of participants to hold themselves accountable to community norms.

- **Empowerment**
  - Participatory democracy to promote healing and build peace.
    - Participants express views, fear, emotions and thoughts in a safe place.

- **Resolution**
  - Recognizes that restorative practices are *process driven*.  
    - *NOT Outcome Driven*
    - *NOT Resolution Driven*
  - Meaningful resolution is what those involved agree constitutes “justice”.
  - The quality of the experience (i.e., processes used) lead to constructive outcomes.
    - Bureaucratic Pressures for Efficiency in Settling Cases WILL “ERODE” or “KILL” the Restorative Potential.
Key Values for Sound Practice

- Maintain focus on “Doing Justice”
  - Offender accountability for their acts
  - Community accountability for:
    - Local conditions that foster crime.
    - Attending to the needs of victims & offenders
    - Finding resolutions that do not further harm those involved.
    - Affirming community norms without severing bonds.
    - Victims and offenders being full community members.

- Equal emphasis on:
  - Accountability
  - Competency development for offenders
  - Community safety

When you find peace within yourself, you become the kind of person who can live in peace with others.
Restorative Justice

(Van Ness & Strong, 2002, pp. 45-49)
Restorative Strategies & Elements: Diversion from Traditional Case Prosecution

- **Typical Strategies:**
  - Family Group/Neighborhood Conferencing
  - Victim-Offender Mediation
  - Sentencing Circles

- **Common Elements:**
  - Explain Procedures
  - Story Telling (all participants)
  - Deciding What Should be Done
  - Restoration Agreement (when possible)
Post Sentencing, Pre-Release, Post Release: Restorative Strategies & Elements

- **Strategies**
  - Victim – Offender Impact Panels
  - Circle Processes

- **Elements**
  - Structured Dialogue and Facilitation
  - Dialogue that Focuses on…
    - Sharing Human Experiences
    - Capacity for Empathy
    - Building Prosocial Relationships
    - Strengthening Informal Social Controls of the Community
Restorative Re-Entry Processes

- Provides in prison pre-release services to offenders.
  - May include restorative-based programs
- May also include post-release supervision & support
  - Mentoring with community members
- Direct victims and community members often not included in the process

**Examples:**

- Texas Department of Criminal Justice
  - Bridges to Life
- Circles of Support and Accountability
  - Used with a wide range of offenders of formerly incarcerated clients upon release in Canada.
Restorative Justice

- A different way of looking at justice:
  - Seeks to promote peace and healing.
  - Decision making and participation of victims and community is essential.
  - Offender accountability is directly to the individuals and communities harmed.
  - Government plays a facilitative and supportive role rather than a central directive role.
Community Justice...

- Incorporates the strengths and interests of the community.
  - Can be tailored to meet specific community needs.
  - Can be used at any point in the justice process.

- The community justice approaches are often compatible with traditional justice thinking
  - But adopts dialogic processes along with the values and principles of restorative justice.

- Restorative and Community Justice share several common goals…
  - Safer, More Peaceful, and More Livable Communities.
Community Justice

- “Community Council” or “Council of Elders” – Circle processes
  - Working in tandem with government agencies
  - Identify specific quality of life and crime problems and develop neighborhood driven strategies to reduce these crimes.
  - Government role – support and facilitate community defined objectives.

- Co-equal partnerships with:
  - Police
  - Courts
  - Zoning and environmental safety agencies
  - Probation and parole agencies

- Examples:
  - Community court (Mid-town, NYC; Red Hook, NYC)
  - Neighborhood prosecutor – focused on community quality of life problems (Portland, OR)
  - Specialty – Treatment Courts
What Makes Something Reparative in the Relational Justice Context

- The extent to which there is fidelity in practice to the underlying theory, principles and values embodied in:
  - Restorative Justice
  - Community Justice

What happens in actual practice is critical. It is the dialogic process that is healing and reparative, not the specific technique used.
Non-Restorative Processes are Often Mistaken for Restorative Justice

- Practices may not be restorative when bureaucratic concerns for efficiency (i.e., timely case processing) undercut the process oriented principles and values.
  - May produce counterproductive effects:
    - Leaving victims unhealed or feeling marginalized
    - Creating dynamics that are likely to increase offending

- Examples of Non-Restorative Processes:
  - Restitution and victim compensation funds
  - Directed community service
The Traditional Justice System is Also….

Extraordinarily Expensive

Fiscally
Socially
Neighborhood Driven Restorative and Community Justice Processes

- Changing the Role of Government
  - Facilitation and Support
  - vs.
  - Ownership and Control

- Strengthening People and Community
  - Community Empowerment (“Social Capital”)
  - Informal Prosocial Controls (“Collective Efficacy”)

- In High Crime Areas
  - Introducing the Restorative and Community Justice Principles
  - Facilitating Neighborhood Dialog
    - Identifying Local Concerns
  - Facilitating Program Development
    - Tailoring Local Approaches
Neighborhood Restorative and Community Justice

- Neighborhood as The Subject Matter Expert
  - Culturally Sensitive
  - Area & Residents
  - Problems & Concerns
  - Neighborhood Meetings
  - Area Volunteers
  - Local Communication

- Training - Staff and Volunteers
  - Mediators
  - Neighborhood Participants
  - Community Participants

- Justice System Referrals
Applying Restorative and Community Justice in the Neighborhood Context

- Neighborhood Based Processes
  - Official Referrals
    - Police
    - Courts
    - Juvenile Probation
    - Adult Probation
    - Schools
  - Informal Referrals
    - Conflicts
    - Problematic Behavior

Processes Held in Easily Accessible Neighborhood Facilities

Rebuilding Informal Social Controls and Strengthening Neighborhood Social Capital Needed for Peaceful Communities.
Why is Recidivism So High?

Roughly 66% of the formerly incarcerated are re-arrested, reconvicted or reincarcerated within 3 years of release.
Because...

- High Recidivism Rates are Associated with Many Factors:
  - Individual Deficits
    - Low Education Levels
    - Mental Health Problems
    - Poor Physical Health
    - Untreated Substance Problems
    - Personal Traits that Limit their Employability
  - Social Deficits
    - Unstable Family History.
    - Absence of Family Constructive Supports.
    - Inability to Establish a Family of their Own.
    - Prior Criminal Friendship Networks.
Because...

- High Recidivism Rates are Associated with Many Factors:
  - Community Resistance
    - Inability to Find Housing.
    - Unwillingness of Potential Employers to Hire Returning Offenders.
    - Public Stigma, Fear, Rejection, and Marginalization.
  - Ineffective Public Institutions
    - Lack of Prison Based Treatment Programs and Services.
    - Insufficient Resources ("small government" quandary).
    - Enforcement Oriented Community Supervision…
      - Agents more Interested in Enforcement than Reintegration.
      - Judges more Concerned with the Image Needed for Re-Election than Reintegration or Impacts on the Community.
Because...

- Counterproductive “Fear-Based” Public Policies
  - Sentencing Policies
    - Determinate Sentences,
    - Mandatory Sentences,
    - “Truth in Sentencing”.
  - Lack of Prison Based Educational Opportunities.
  - Zero Tolerance Parole Policies.
  - Excessive or Unreasonable Parole Conditions.
  - Public Access to Criminal Records and Criminal Registries.
  - Civil Disabilities (“Invisible Sanctions” Beyond Criminal Sanctions)
    - Denial of the Vote,
    - Occupational Prohibitions,
    - Denial of Public Assistance and Education Opportunities,
    - Discrimination in Housing, and Many More.
Because...

- Punitive Social Attitudes
  - Unwillingness to Allow Formerly Confined Persons to Earn Redemption.
  - “Once an Offender, Always an Offender”.
  - No Means by Which Offenders can be Restored to Full Citizenship.
  - Strong Public Resistance to Providing Transitional Supports (NIMBY)
    - Transitional Residential Facilities for Parolees
    - Access to Stable Housing
  - Unwillingness to Understand or Accept...
    - “Uncertainty” and “Risk” of Offender Reentry.
    - That Keeping People “Locked Up” is Not Feasible
    - That Ever Increasing Incarceration Rates is Socially Destructive.
    - Public Safety is Improved, not Risked, by Effective Community Supervision.
    - Mass Incarceration is a Threat to Public Safety.
Because...

- **Mass Incarceration has Severe Racial Disparities**
  - Roughly 6 times the rate of Black African Males in South Africa under Apartheid in 1993.
  - Devastates Marriageable Age Males in Minority Communities.
  - Increases Single Parent Families, Headed by Minority Females.
  - Politically Marginalizes Minority Interests by Denial of the Vote.

- **Undercuts Democracy by Denying the Vote**
  - To Offenders who are Disproportionately Minority Group Members.
  - Advantages the Political Interests of those who Advocate Punitive Policies.
  - Changes Election Outcomes in Predictable Ways.
Because...

- Normalizes Criminal History as a Common Experience
  - In 1984 – 17% of Adult Population (30.3 million people)
    - Petersilia, 2003, p. 107
  - In 1999 – 29% of Adult Population (59 million people)
    - Petersilia, 2003, p. 107
  - As of Dec. 31, 2006 – 35% of Adult Population (80.67 million people)
    - Out of 230 million adults (U.S. Census Bureau data and Bureau of Justice Statistics, 2008)

- Increases the Marginalized Proportion of the Population
  - …Young, Male, Unemployed, Unstable Life and Desperate.
  - …Motivated to “Make a Living” in Crime.
  - …Heightened Sense of Fatalism, Hopelessness, Helplessness.
  - …Interested in Involvement with Gangs, Drugs or Organized Crime.
  - …Who Abscond – “Go Underground” – Hide from Their Past.
Even if formerly incarcerated people wants a fresh start and work hard, the odds are stacked against them.

They can do their part, will we?

A CONVICTION IS A “LIFE SENTENCE”

RELATIONAL JUSTICE PRACTICES MAY OFFER A WAY OUT.
In addition, justice systems could be both just and effective if we use legal justice as the option of last resort, and use...

RESTORATIVE AND COMMUNITY JUSTICE
AS OPTIONS OF FIRST CHOICE
Thank You

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