

2011

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### Recommended Citation

Mark S. Umbreit and Marilyn Peterson Armour, *Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community*, 36 WASH. U. J. L. & POL'Y 65 (2011), [http://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol36/iss1/5](http://openscholarship.wustl.edu/law_journal_law_policy/vol36/iss1/5)

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## Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community

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From its humble beginnings in the mid-1970s, the principles and practices of restorative justice have become a social movement in the twenty-first century, with an ever increasing presence in and impact on the global community. Rooted in the juvenile justice systems of North America, with a focus on non-violent property crimes, restorative justice policy and practice are now present at virtually all levels of adult and juvenile justice systems, even handling severely violent crimes.<sup>1</sup> Restorative justice and dialogue have now moved far beyond the justice systems of the world and are found in school settings, workplaces, faith communities, and even in the context of deeply-entrenched political violence, such as in Israel and Palestine, and in post-conflict societies such as Northern Ireland, South Africa, Liberia, and Rwanda.<sup>2</sup> This Article will provide a review of the restorative justice movement, of how it is developing in various policies and practices, of what we have learned from research, and of the specific opportunities and challenges facing the movement.<sup>3</sup>

The most succinct definition of restorative justice is offered by Howard Zehr, whom many consider the leading visionary and architect of the restorative justice movement. His seminal book,

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1. MARK UMBREIT & MARILYN PETERSON ARMOUR, RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE (2010).

2. *Id.*

3. This commentary is chiefly drawn from UMBREIT & ARMOUR, *supra* note 1, at 6–9.

*Changing Lenses*,<sup>4</sup> provided the conceptual framework for the movement and has influenced policy makers and practitioners throughout the world. According to Zehr, “[r]estorative 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.”<sup>5</sup>

Zehr notes that restorative justice can be contrasted with conventional criminal justice along at least four key variables:

TABLE 1: TWO DIFFERENT VIEWS OF JUSTICE<sup>6</sup>

CRIMINAL JUSTICE	RESTORATIVE JUSTICE
Crime is a violation of the law and the state.	Crime is a violation of people and relationships.
Violations create guilt.	Violations create obligations.
Justice requires the state to determine blame (guilt) and impose pain (punishment).	Justice involves victims, offenders, and community members in an effort to put things right.
<i>Central focus: offenders getting what they deserve.</i>	<i>Central focus: victim needs and offender responsibility for repairing harm.</i>

The conventional criminal justice system focuses upon three questions: “(1) What laws have been broken?; (2) Who did it?; and (3) What do they deserve?”<sup>7</sup> From a restorative justice perspective, an entirely different set of questions are asked: “(1) Who has been hurt?; (2) What are their needs?; and (3) Whose obligations are these?”<sup>8</sup>

Restorative justice initiatives involve both system-wide interventions and/or individual programs, based on the following criteria:

- (1) focus on the harms of wrongdoing more than the rules that have been broken;

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4. HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE 13–15 (1990).

5. HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 37 (2002).

6. *Id.* at 21.

7. *Id.*

8. *Id.*

- (2) show equal concern and commitment to victims and offenders, involving both in the process of justice;
- (3) work toward the restoration of victims, empowering them and responding to their needs as they see them;
- (4) support offenders while encouraging them to understand, accept, and carry out their obligations;
- (5) recognize that while obligations may be difficult for offenders, they should not be intended as harms, and they must be achievable;
- (6) provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate;
- (7) involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community bases of crime;
- (8) encourage collaboration and reintegration rather than coercion and isolation;
- (9) give attention to the unintended consequences of our actions and programs; and
- (10) show respect to all parties including victims, offenders and justice colleagues.<sup>9</sup>

#### RESTORATIVE JUSTICE POLICY DEVELOPMENTS IN THE UNITED STATES<sup>10</sup>

Restorative justice policies and programs are developing throughout the United States. These initiatives range from small, individual and marginal programs in many communities to a growing number of state and county justice systems that are undergoing major systemic change. Examples of such systemic change initiatives are occurring in the states of Arizona, California, Colorado, Illinois,

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9. Howard Zehr & Harry Mika, *Fundamental Concepts of Restorative Justice*, 1 CONTEMP. JUST. REV. 47, 54–55 (1998).

10. This section is chiefly drawn from UMBREIT & ARMOUR, *supra* note 1, at 11–13.

Iowa, Minnesota, New York, Ohio, Oregon, Pennsylvania, Texas, Vermont, and Wisconsin. The state of Vermont is a particularly good example of a broad, macro-level implementation of restorative justice through its community Reparative Boards, which have replaced much of the state's traditional probation supervision.<sup>11</sup>

Previous criminal justice reform movements have often dealt primarily with fine-tuning the existing structure. The restorative justice movement has major implications for system-wide change in how justice is achieved in democratic societies. While it is important to initiate restorative justice interventions such as victim-offender mediation, family group conferencing, peacemaking and sentencing circles, restorative community service, victim panels, and other forms of victim-offender dialogue or neighborhood dispute resolution, restorative justice, as a movement, places heavy emphasis upon changing the current system. Already, there are nineteen states in America that have introduced and/or passed legislation promoting a more balanced and restorative juvenile justice system. Thirty other states have restorative justice principles in their mission statements or policy plans. There are individual restorative justice programs in virtually every America state, and a growing number of states and local jurisdictions are dramatically changing their criminal and juvenile justice systems to adopt the principles and practices of restorative justice.<sup>12</sup> In 1994 the American Bar Association ("ABA") endorsed the oldest, most wide-spread and research-based expression of restorative justice, victim-offender mediation, and recommended its development in courts throughout the country.<sup>13</sup> This institutionalization of restorative justice was further buttressed by the ABA when, in 2006, it began a national survey of restorative justice programs and, in 2008, offered grants to its members to develop restorative justice initiatives in criminal law settings.

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11. See *infra* note 35 and accompanying text for a description of the Vermont Reparative Boards.

12. SANDRA PAVELKA O'BRIEN, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, RESTORATIVE JUVENILE JUSTICE IN THE STATES: A NATIONAL ASSESSMENT OF POLICY DEVELOPMENT AND IMPLEMENTATION 18–23 (2000).

13. AM. BAR ASS'N, *Policy on Legislative and National Issues*, in POLICIES AND PROCEDURES HANDBOOK 730 (1994).

RESTORATIVE JUSTICE POLICY DEVELOPMENTS IN THE  
INTERNATIONAL COMMUNITY<sup>14</sup>

Restorative justice policies and programs are also being developed in many other parts of the world, including Australia, Canada, most European countries, Japan, China, Liberia, New Zealand, South Africa, several South American countries, South Korea, Russia and Ukraine. Canada has played an exceptionally strong leadership role in both the initial development and the continuing practice of restorative justice over the years.<sup>15</sup> The United Nations, the Council of Europe, and the European Union have been addressing restorative justice issues for a number of years. While convening in 2000, the United Nations Congress on Crime Prevention considered restorative justice in its plenary sessions and developed a draft proposal for *Basic Principles on the Use of Restorative Justice Program[s] in Criminal Matters*.<sup>16</sup> The proposed principles encourage the use of restorative justice programming by member states at all stages of the criminal justice process, underscore the voluntary nature of participation in restorative justice procedures, and recommend the establishment of standards and safeguards for the practice of restorative justice.<sup>17</sup> This proposal was adopted by the United Nations in 2002.<sup>18</sup> The Council of Europe focused more specifically on the restorative use of mediation procedures in criminal matters and adopted a set of recommendations in 1999 to guide member states in using mediation in criminal cases.<sup>19</sup> In 2001, the European Union adopted a victim-centered policy in support of “penal mediation,” otherwise known as Victim-Offender Mediation (“VOM”).<sup>20</sup> This policy stated that member states (nations) of the European Union should promote

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14. This section is chiefly drawn from UMBREIT & ARMOUR, *supra* note 1, at 11–12.

15. *See, e.g., infra* note 40 and accompanying text.

16. E.S.C. Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 (July 27, 2000).

17. *Id.*

18. E.S.C. Res. 2002/12, U.N. Doc. E/2002/INF/2/Add.2 (Aug. 3, 2002).

19. *Recommendation No. R (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters*, COM (1999).

20. *Report from the Commission Pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the Standing of Victims in Criminal Proceedings*, COM (2009) 166 final (Apr. 20, 2009).

mediation in criminal cases and integrate this practice into their laws.<sup>21</sup>

European nations have clearly outpaced American policy development and implementation in support of restorative justice practices, with Austria having established the first national policy commitment in the world through broad implementation of VOM in 1988. Numerous other European countries have now made strong policy commitments to restorative justice and, in particular, to VOM. Germany, for example, has an exceptionally broad and large commitment to VOM, with more than 468 programs and 20,000 cases referred annually. Other European countries that have developed local restorative justice programs or national initiatives include: Denmark, England, Finland, Sweden, Ireland, the Netherlands, Luxembourg, Switzerland, Albania, Slovenia, Romania, Poland, Bulgaria, Italy, Spain, and Ukraine.

#### NOTABLE RESTORATIVE JUSTICE INITIATIVES<sup>22</sup>

Restorative justice practices, programs, and policies are developing in communities throughout the United States and abroad. In this section, several different examples of restorative justice programs are briefly described, followed by examples of efforts to implement system-wide changes.

In Orange County, California, a victim-offender mediation and conferencing program receives up to a thousand referrals of juvenile offenders and their victims annually.<sup>23</sup> This program is supported by a large government grant<sup>24</sup> and provides needed support, assistance, and restoration for victims of crime, while also holding young people accountable to the victims and their communities for those misdeeds.<sup>25</sup> By diverting these juveniles from further penetration into the justice system, so long as the victim's needs are met, the County also will benefit from a significant cost reduction for the already

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21. *Id.*

22. This section is chiefly drawn from UMBREIT & ARMOUR, *supra* note 1, at 13–16.

23. Mike Niemeyer & David Shichor, *A Preliminary Study of a Large Victim/Offender Reconciliation Program*, 60 FED. PROBATION 30, 31 (1996).

24. *Id.* at 31.

25. *Id.* at 30.

overcrowded court system. The program in Orange County is part of a much larger network of more than 1300 victim offender mediation and conferencing programs in seventeen countries, working with both juvenile and adult courts.<sup>26</sup>

The Community Conferencing Center in Baltimore, Maryland, represents a well-established, community-based restorative justice initiative in a large urban community, with nine out of ten participants in community conferences being minority youth. In fiscal year 2010, 1185 youth were referred to the program, representing 463 cases. A total of 220 community conferences were convened, involving 1650 participants. Community conferences in Baltimore resulted in agreements to repair the harm 98 percent of the time, with 95 percent compliance with the agreements.<sup>27</sup> A recent study found that young offenders who participated in a community conference were 60 percent less likely to reoffend.<sup>28</sup>

In several U.S. cities (such as Austin, Texas, Des Moines, Iowa, and Milwaukee, Wisconsin)<sup>29</sup> prosecuting attorney offices routinely offer to victims of crime the choice to participate in restorative dialogue with the offender and others affected by the crime through victim-offender mediation, family group conferencing, peacemaking circles, or related programs. A program in Indianapolis works closely with the police department in offering family group conferencing services, during which young offenders and their families meet the individuals they have victimized and participate in dialogue with each other toward repairing the harm, resulting in a significant reduction in recidivism among these offenders.<sup>30</sup>

With so many former prisoners being released back into society, there is a tremendous need to address a wide range of interests relating to jobs, housing, counseling, and particularly to building

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26. MARK S. UMBREIT, *THE HANDBOOK OF VICTIM OFFENDER MEDIATION: AN ESSENTIAL GUIDE TO PRACTICE AND RESEARCH*, at xliii-xlv (2001).

27. *Impact: Overview*, CMTY. CONFERENCING CTR., <http://www.communityconferencing.org/index.php/impact/> (last visited Mar. 3, 2011).

28. *Id.*

29. MARK S. UMBREIT ET AL., *FACING VIOLENCE: THE PATH OF RESTORATIVE JUSTICE & DIALOGUE* 324 (2003).

30. EDMUND F. MCGARRELL ET AL., *RETURNING JUSTICE TO THE COMMUNITY: THE INDIANAPOLIS JUVENILE RESTORATIVE JUSTICE EXPERIMENT* 25–26, 48–49 (2000).



healthy connections of support among members of the community in which these former prisoners will reside. There exists a growing number of reentry programs that incorporate restorative justice principles and practices.<sup>31</sup>

Canada pioneered the early development of restorative justice in the mid-1970s and continues to pioneer new restorative justice practices involving reentry into society. Circles of Support and Accountability (“COSA”) were first developed in Ontario more than fifteen years ago as an “alternate means of social support to high-risk sexual offenders released at the end of their sentence without any community supervision.”<sup>32</sup> The initial pilot project has now been replicated throughout Canada and many locations in the United States.<sup>33</sup> A Canadian study found that compared to a matched sample of offenders not in COSA, offenders in COSA had an 83 percent reduction in sexual recidivism, a 73 percent reduction in all kinds of violent recidivism, and an overall combined reduction in recidivism of 71 percent.<sup>34</sup>

For many years, the Vermont Department of Corrections (“DOC”) has pioneered one of the largest policy-level implementations of restorative justice through its Reparative Boards model, in which an offender appears before a panel of appointed community leaders that determines how the offender will be held accountable. This process replaces traditional probation services.<sup>35</sup> The Vermont DOC has modified the Reparative Boards model to organize effectively community volunteers who meet with offenders reentering society. These community members provide advice and support for offenders during their reentry process.<sup>36</sup>

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31. See, e.g., *Programs & Services: Re-entry from Prison*, CMTY. CONFERENCING CTR., [http://www.communityconferencing.org/index.php/programs/returning\\_from\\_prison/](http://www.communityconferencing.org/index.php/programs/returning_from_prison/) (last visited Apr. 4, 2011).

32. Robin J. Wilson, Franca Cortoni & Andrew J. McWhinnie, *Circles of Support & Accountability: A Canadian National Replication of Outcome Findings*, 21 *SEXUAL ABUSE: J. RES. & TREATMENT* 412, 412 (2009).

33. *Id.*

34. *Id.*

35. DAVID R. KARP, MARY SPRAYREGEN & KEVIN M. DRAKULICH, VERMONT REPARATIVE PROBATION YEAR 2000 OUTCOME EVALUATION FINAL REPORT 2 (2002), available at <http://www.skidmore.edu/~dkarp/Karp%20Vitaefiles/VT%20Reparative%20Probation%20Year%202000%20Outcome%20Evaluation.pdf>.

36. *Id.*

In addition to their use in juvenile and criminal justice settings, restorative justice principles and practices are increasingly being used to address larger issues of human rights violations and deeply-entrenched national conflict and political violence. A restorative dialogue-based format was used in Eugene, Oregon, following a hate crime against the local Muslim community that occurred within hours of the September 11 attacks.<sup>37</sup> The prosecutor's office gave the victimized representatives of the Muslim community a choice of either following the conventional path of prosecution and severe punishment or the restorative justice path of participating in a neighborhood accountability board, including face-to-face conversations with the offender and others in the community who were affected by this crime. The victims elected to meet in dialogue, and together they were able to talk openly about the full impact of this hate crime and to develop a specific plan to repair the harm and promote a greater sense of tolerance and peace within the community.<sup>38</sup>

In several jurisdictions, restorative justice procedures are being used to enable ethnic communities to access elements of their traditional means of handling infractions and breaches of trust among themselves. For example, the Hmong peacemaking circles in St. Paul, Minnesota, receive referrals from local judges in cases involving Hmong participants so that the offense is handled in a more culturally appropriate way that fosters peacemaking and accountability.<sup>39</sup> In Canada, aboriginal groups are utilizing the circle-sentencing format of restorative justice dialogue to handle a wide range of offenses within the community.<sup>40</sup>

Restorative justice dialogue responses are increasingly being offered to victims of severe and violent crime, driven by requests from victims to have such opportunities available.<sup>41</sup> Departments of Corrections in Texas, Ohio, and many other states have initiated

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37. Mark S. Umbreit, Ted Lewis & Heather Burns, *A Community Response to a 9/11 Hate Crime: Restorative Justice Through Dialogue*, 6 CONTEMP. JUST. REV. 383, 386–87 (2003).

38. *Id.* at 388–90.

39. Hannah Allam, *Sentencing "Circle" Aims to Rebuild Lives*, ST. PAUL PIONEER PRESS, Mar. 2, 2002, at 12A.

40. THERESE LAJEUNESSE, *COMMUNITY HOLISTIC CIRCLE HEALING 1* (1996),

41. UMBREIT ET AL., *supra* note 29, at 13.

statewide victim-offender mediation and dialogue programs through their victim services units.<sup>42</sup> In such programs, and in the wake of trauma caused by extreme violence, including homicide, victims meet in facilitated dialogue with the offenders who have harmed them as part of their search for meaning and some measure of closure. Extensive preparation by all involved parties is required in these cases.<sup>43</sup> In one such program, a retired Wisconsin Supreme Court justice facilitates dialogue groups in a state prison among prisoners and with several victims of severe violence in an effort to stress the full human impact of the prisoners' behavior upon victims and their communities.

Most recently, restorative practices are emerging as part of the healing process for victims of political violence. The Truth and Reconciliation Commission hearings in South Africa were established to foster national healing in the wake of severe and violent political conflict as the apartheid system of racial segregation and oppression was dismantled.<sup>44</sup> In response to massive inter-tribal violence and killing, the West African nation of Liberia initiated a Truth and Reconciliation Commission to hold hearings in both Africa and Minnesota, where the largest population of Liberian refugees reside, and to incorporate restorative justice practices in the hearing process.<sup>45</sup>

A victim-offender mediation was held in Israel between two Israeli-Palestinian youths and a young Israeli mother who had been assaulted and robbed; families of both the offenders and the victim were involved. Both the Jewish and the Palestinian communities actively participated and forged a path toward greater understanding, accountability, and mutual respect. Again within Israel, a restorative justice conference allowed the Arab victims of a Jewish hate crime

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42. *Id.* at 1–2.

43. *Id.* at 15–16.

44. *See generally* AMANDA DISSEL, CTR. FOR THE STUDY OF VIOLENCE & RECONCILIATION, RESTORING THE HARMONY: A REPORT ON A VICTIM OFFENDER CONFERENCING PILOT PROJECT (2000) (describing the Victim Offender Conferencing Pilot Project in South Africa and its purpose of using community-based restorative justice to resolve conflict, particularly criminal conflict).

45. *U.S. Public Hearings*, THE ADVOCATES FOR HUMAN RIGHTS, [http://www.theadvocatesforhumanrights.org/Public\\_Hearings.html](http://www.theadvocatesforhumanrights.org/Public_Hearings.html) (last visited Mar. 19, 2011).

and assault to meet face-to-face, talk about the full impact of the crime, and develop a plan to repair the harm. In another case, a former prisoner who was an icon of the Irish Republican Army (“IRA”) movement in Northern Ireland met face-to-face with the daughter of one of the men he killed in their mutual search for greater understanding, meaning, and peace in their lives. Restorative justice initiatives have also occurred in Rwanda and Nigeria to foster reconciliation and healing in the wake of deeply entrenched political violence.

These examples are a sample of the increasing number of cases in which restorative justice dialogue is being used. These examples demonstrate the flexibility of using restorative justice in multiple settings—from local to international—to foster accountability and healing in the midst of severe criminal and political violence.

As many advocates point out, restorative justice is a process, not a program. Therefore, some proponents are hopeful that a restorative justice framework can be used to foster systemic change. Such changes are beginning to occur. For example, in Minnesota the state Department of Corrections has established a policy to handle letters of apology by prisoners to their victims in a highly restorative and victim-centered manner.<sup>46</sup> First, the state agency encourages and assists prisoners who want to write such letters. Instead of sending the letters directly to victims, an act that could re-victimize them, the letters are deposited in a victim apology letter bank in the central office for later viewing by victims should they choose to do so.<sup>47</sup>

A number of other countries have undertaken broad systemic change initiatives. In 1988, Austria adopted federal legislation that promoted the use of victim-offender mediation throughout the country.<sup>48</sup> In 1989, legislation was adopted in New Zealand that completely restructured their youth justice system, based on the traditional practices of its indigenous people, the Maori, and on principles consistent with restorative justice.<sup>49</sup> The largest volume of

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46. *Victim Assistance Program: Apology Letters*, MINN. DEP’T OF CORR., <http://www.doc.state.mn.us/crimevictim/apology.htm> (last visited Apr. 5, 2011).

47. *Id.*

48. DANIEL W. VAN NESS & KAREN HEETDERKS STRONG, *RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE* (2d ed. 2002).

49. Kathleen Daly, *Conferencing in Australia and New Zealand: Variations, Research*

youth justice cases now are handled in family group conferences rather than court. This change has resulted in a significant reduction in both court cases and incarceration, with no evidence of increased recidivism. Finally, the United Kingdom has undertaken a nationwide systemic change effort through its policy commitment to adopt restorative justice principles and practices throughout the country.<sup>50</sup> These changes are focused on increased participation by crime victims, youth accountability boards, and different forms of victim offender mediation and dialogue.

### RESTORATIVE JUSTICE DIALOGUE<sup>51</sup>

#### THE MOST WIDELY USED AND RESEARCH-BASED RESTORATIVE JUSTICE INTERVENTION

To best provide an in-depth examination of restorative justice practices, we will now turn our focus to restorative justice dialogue. In so doing, we do not mean to imply that it is the best practice in all situations or the only practice worthy of examination. We discuss it here because it is the oldest, most widely practiced, and most thoroughly researched of the various processes that fall under the broad umbrella of restorative justice.

#### DESCRIPTION

Four general types of restorative justice dialogue are examined in this review. They are victim-offender mediation, group conferencing, circles, and “other.” All have in common the following: the inclusion of victims and offenders in direct dialogue, nearly always face-to-face, to address a specific offense or infraction; the presence of at least one third party who serves as mediator, facilitator, convener, or circle keeper; and usually, advance preparation of the parties so that they will know what to expect. The focus of the encounter nearly always involves naming what happened, identifying its impact, and

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*Findings and Prospects*, in RESTORATIVE JUSTICE FOR JUVENILES: CONFERENCING, MEDIATION AND CIRCLES 59, 61–62 (Allison Morris & Gabrielle Maxwell eds., 2001).

50. VAN NESS & STRONG, *supra* note 48.

51. This section is chiefly drawn from UMBREIT & ARMOUR, *supra* note 1, at 18–24.

coming to some common understanding, which often includes reaching an agreement as to how any resultant harm will be repaired. Use of these processes can take place at any point in the criminal justice process, including pre-arrest, pre-court referral, pre-sentencing, or post-sentencing, and even during incarceration.

Victim-offender mediation (often called “victim-offender conferencing”, “victim-offender reconciliation” (“VORP”), or “victim-offender dialogue”) usually involves a victim and an offender in direct mediation facilitated by one or sometimes two mediators/facilitators; occasionally the dialogue takes place through a third party who carries information back and forth, a process known as “shuttle” mediation. In face-to-face meetings between the victim and offender, support persons for victims and/or offenders (such as parents or friends) are often present; a 1999 survey of victim-offender mediation programs in the United States found that support persons, including parents in juvenile cases, were present in the majority of cases.<sup>52</sup>

Group conferencing (usually known as “family group conferencing,” “community group conferencing,” or “restorative group conferencing”) routinely involves support persons for both victims and offenders, as well as additional participants from the community. Many group conferencing programs rely on a script, though some are more open-ended. The number of support persons present can often range from only a few to as many as six to ten, much like victim-offender mediation. Some group conferences can involve well over ten people.<sup>53</sup>

Circles are variously called “peacemaking circles,” “restorative justice circles,” “repair of harm circles,” and “sentencing circles.” The number and type of participants gathered for circles are similar to those gathered for conferences, though sometimes there is even greater community member participation, either as interested persons, as representatives of the criminal justice system, or as additional

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52. Mark S. Umbreit & Jean Greenwood, *National Survey of Victim-Offender Mediation Programs in the United States*, 16 *MEDIATION Q.* 235, 241 (1999).

53. For a description of several examples of group conferencing, see Paul McCold, *Primary Restorative Justice Practices*, in *RESTORATIVE JUSTICE FOR JUVENILES: CONFERENCE, MEDIATION AND CIRCLES*, *supra* note 49, at 41, 44–48.

circle-keepers or facilitators. The process involves the use of a “talking piece” that is passed around the circle to designate who may speak.<sup>54</sup>

“Other” refers to programs, such as reparative boards and other community-based programs, that invite victims and offenders to participate together in crafting an appropriate response to the offense.

Increasingly over time, distinctions across these categories have begun to blur, particularly between “mediation” and “group conferencing.” Thus, there are programs that refer to their process as “family group conferencing” or “restorative group conferencing,” but in fact convene only offenders and victims with few—if any—support persons and no outside community representatives. Similarly, many “victim offender mediation” or “victim offender conferencing” programs have moved towards more routinely including support persons, and on occasion additional affected community members.

Despite the overlap, there are differences in the relative importance of various stakeholders in each type of restorative dialogue. For example, victim-offender mediation highlights the victim and offender as the primary parties in the offense, and gives greater emphasis to storytelling and problem-solving through dyadic dialogue.<sup>55</sup> Group conferencing puts a central focus on the role of the family and other support persons, as those people have the best chance of influencing the offender through the importance of their prior or ongoing relationship and the use of empathy, support, and respectful disapproval.<sup>56</sup> Circles feature shared leadership and consensus-based decision-making as core to the functioning of the group and the development of the group’s process. Although the purpose of the circle may be to address the offender’s behavior, circles also tend to place more philosophical attention on stakeholder and community needs.<sup>57</sup> Boards operate under a small decision-making body of community volunteers that gives primary consideration to the offender and reparation.<sup>58</sup> Boards underscore the

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54. *See id.* at 50–51.

55. GORDON BAZEMORE & MARA SCHIFF, JUVENILE JUSTICE REFORM AND RESTORATIVE JUSTICE: BUILDING THEORY AND POLICY FROM PRACTICE 37 (2005).

56. *Id.* at 37–38.

57. *See, e.g.,* McCold, *supra* note 53, at 50–52.

58. Gordon Bazemore & Mark Umbreit, *A Comparison of Four Restorative Conferencing*

citizenry's ownership of the criminal justice system because of the member's direct involvement in the justice process.

#### EVIDENCE-BASED PRACTICE

Restorative justice is more a process than a product. Consequently, the measurement of its success requires an evaluation of the factors that influence the process as much as its outcomes. Restorative justice research, therefore, has concentrated on participation rates and reasons, the overall satisfaction of participants, and participant perception of fairness as indicators of the health of the process, while also considering restitution and repair of harm, diversion, recidivism, and cost. Moreover, evaluations of restorative justice dialogue are extensive and in relationship to youth, require a closer examination over a longer period of time than most other programs in the juvenile justice systems of the United States, including cognitive behavioral treatment, juvenile drug courts, and family-based therapy programs.<sup>59</sup> For example, over eighty-five studies have been conducted on various types of restorative justice dialogue including four meta-analyses, one of which was based on a sample of almost 12,000 youth.<sup>60</sup> This research, which has been generated over the past thirty years, suggests that the restorative justice paradigm can make a substantial contribution to increasing victim involvement and healing, offender responsibility for behavioral change and learning from experience, and community participation in shaping a just response to violations of law and to destructive behavior.

Participant satisfaction has remained the most commonly studied outcome variable across all restorative justice approaches. Expression of satisfaction with victim-offender mediation is consistently high

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*Models*, in A RESTORATIVE JUSTICE READER: TEXTS, SOURCES, CONTEXT 225, 228 (Gerry Johnstone ed., 2003).

59. For an example of a study that examined these other kinds of juvenile justice programs, see generally Elizabeth K. Drake, Steve Aos & Marna G. Miller, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs: Implications in Washington State*, 4 VICTIMS & OFFENDERS 170 (2009).

60. William Bradshaw & David Roseborough, *Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism*, 69 FED. PROBATION 15, 17 (2005).



across sites, cultures, and offense severity for both victims and offenders. Indeed, those offenders are likely to find the process satisfying while also displaying lower recidivism rates and adhering to restitution agreements.<sup>61</sup> Typically, eight out of ten participants report being satisfied with the process and resulting agreement.<sup>62</sup>

Restitution is regarded by many as an important by-product of bringing victim and offender together. Restitution (also called reparation) can be quite varied and may include direct compensation to the victim, community service, work for the victim, and sometimes unique paybacks devised by victim and offender together. Also, program reports often include apologies as a component of repairing the harm. In some settings, restitution amounts are established before cases are referred for a restorative justice intervention; in others, deciding whether the victim should receive restitution, the type, and the value of that restitution, are seen as important domains for the dialogue session.

Victim participation seems to contribute to the nature of and willingness to meet the conditions of the agreement. For example, one study found that reparation occurred 42 percent of the time when victims were present, compared to 29 percent across all cases with harmed victims.<sup>63</sup> Moreover, when victims are present during the process, work performed by offenders is more likely to be done for the victim than when victims are not present.<sup>64</sup> There are no known studies of restitution for peacemaking circles.

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61. Jeff Latimar, Craig Dowden & Danielle Muise, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 85 PRISON J. 127, 136–37 (2005).

62. CLIFFORD R. CARR & PERRY NELSON, JUDICIAL COUNCIL OF CAL. CENTINELA VALLEY'S VICTIM OFFENDER RESTITUTION SERVICES: A REPORT FOR THE ADMINISTRATIVE OFFICE OF THE COURTS (2000); AUDREY AVJE & ROBERT CUSHMAN, JUDICIAL COUNCIL OF CAL., A SUMMARY OF THE EVALUATIONS OF SIX CALIFORNIA VICTIM OFFENDER REHABILITATION PROGRAMS 26 (2000); LAUREN ROBERTS, VICTIM OFFENDER MEDIATION: AN EVALUATION OF THE PIMA COUNTY JUVENILE COURT CENTERS VICTIM OFFENDER MEDIATION PROGRAM (VOMP) (1998); TIM ROBERTS, EVALUATION OF THE VICTIM OFFENDER MEDIATION PROJECT (1995); MARK S. UMBREIT, ROBERT B. COATES & BETTY VOS, NAT'L ORG. FOR VICTIM ASSISTANCE, JUVENILE VICTIM OFFENDER MEDIATION IN SIX OREGON COUNTIES 20–21 (2001).

63. GABRIELLE M. MAXWELL & ALLISON MORRIS, FAMILY, VICTIMS AND CULTURE: YOUTH JUSTICE IN NEW ZEALAND 93–94 (1993).

64. *Id.* at 93.

Recidivism studies are important indicators of restorativeness because a major objective in all restorative justice approaches is to change offending behavior. Moreover, “[d]esistance from crime indicates both individual . . . and social well-being.”<sup>65</sup> Although studies indicate that victim-offender mediation and group conferencing have a significant impact on re-offending, little is known, as yet, about the contribution peacemaking circles and reparation boards have on reducing recidivism—or about the durability of their imprint. Because peacemaking circles involve community members, and therefore have a potentially wider effect, there is some evidence that this practice could also serve as a community control mechanism to prevent crime. For example, a study of the impact of “healing circles” on the Hollow Water First Nation community, located in the Canadian Province of Manitoba, suggests that the effect might be substantial. Hollow Water has had a recidivism rate of approximately 2 percent over a ten year period.<sup>66</sup>

Indeed, there is little research on the systemic impact of restorative justice. However, those countries that legislate the use of restorative justice provide opportunities to measure its influence more broadly. In Australia, for example, group conferencing reduced the total number of police interventions involving youth and further increased the proportion of cases handled through cautioning rather than in court.<sup>67</sup> In New Zealand, systemic changes made through the Children, Young Persons and Families Act of 1989 have dramatically reduced the court load from up to 13,000 cases per year to as little as 2,587 in 1990.<sup>68</sup>

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65. Lois Presser & Patricia Van Voorhis, *Values and Evaluation: Assessing Processes and Outcomes of Restorative Justice Programs*, 48 *CRIME & DELINQ.* 162, 176 (2002).

66. JOE COUTURE, TED PARKER, RUTH COUTURE & PATTI LABOUCANE, NATIVE COUNSELLING SERVS. OF ALTA., EDMONTON, A COST-BENEFIT ANALYSIS OF HOLLOW WATER’S COMMUNITY HOLISTIC CIRCLE HEALING PROCESS 25 (2001).

67. DAVID MOORE & LUBICA FORSYTHE, A NEW APPROACH TO JUVENILE JUSTICE: AN EVALUATION OF FAMILY CONFERENCING IN WAGGA WAGGA 22–27 (1995).

68. MAXWELL & MORRIS, *supra* note 63, at xvii.

OPPORTUNITIES FOR EXPANDING THE VISION<sup>69</sup>

The restorative justice movement is built on a foundational vision of an entirely different way of understanding and responding to crime and conflict. In some instances, restorative justice is seen as a replacement for the criminal justice system. In others, it is seen as an option to use when the current situation has failed to bring about its intended purpose. Under other circumstances, restorative justice is viewed as complementary to the criminal justice system because it attends to issues that the traditional system neglects. Regardless of the position taken, the vision of restorative justice is grounded in values that are resonating with an increasingly broad range of individuals and communities throughout the world, presenting many opportunities for new and widened impact. A number of these opportunities are listed below; many others continue to emerge.

- (1) Initiating a system-wide commitment to providing local citizens who are victimized by all but the most serious violent crime the opportunity to choose a local community-based restorative justice response first. Both parties would retain the legal right to go before the formal criminal or juvenile justice system if either felt that they were not treated fairly or were dissatisfied with the outcome of the restorative justice intervention. Such a policy would place restorative justice at the forefront of our collective response to crime, rather than consigning it to a marginal position as an option for only a select number of individuals. This policy could also result in huge cost savings.
- (2) Developing an increasing number of hybrids that integrate the strengths and limitations of each individual restorative justice intervention process. For example, in more serious cases the use of victim-offender mediation on a small or intimate level could first be offered to the specific victim and offender. This more intimate mediation could later be

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69. This section is chiefly drawn from UMBREIT & ARMOUR, *supra* note 1, at 24–27.

followed by a session involving a number of family members and support people; this phase could even be followed at a later time by a much larger community intervention involving a peacemaking circle of perhaps twenty to thirty individuals. Case examples of such combinations have occurred periodically over past years, yet these hybrids could be used more frequently.

- (3) Increasing the use of surrogate victim-offender community dialogue. Encounters with surrogates can be a partial response to the large volume of crime victims whose offenders are never caught. Such victims are equally in need of gaining a greater understanding of why people commit such crimes and letting others in the community know about the impact of these crimes on their lives. Often victims also find it beneficial to help hold other similar offenders accountable for their actions even though their own offender was never caught. Dialogue groups in prisons and other correctional facilities that include offenders, victims of similar crimes, and community members have been shown to benefit all who are involved at a relatively low cost. Examples of these practices exist in Minnesota, Texas, Washington, and Wisconsin.<sup>70</sup>
- (4) Applying restorative justice principles and practices in school settings from elementary level through college. Examples of this option include the use of peacemaking circles to deal with student conflicts in an entire school district in Minnesota, as well as programs at other schools throughout the country that use various forms of victim-offender mediation, peer mediation, family group conferencing, circles, or other types of restorative dialogue. Skidmore College<sup>71</sup> and the University of

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70. Marilyn Peterson Armour et al., *Bridges to Life: The Impact of an In-Prison Restorative Justice Intervention*, 18 J. COMMUNITY CORRECTIONS 19, 19 (2008).

71. David Karp & Susanne Conrad, *Restorative Justice and College Student Misconduct*, 5 PUB. ORG. REV. 315 (2006).

Colorado at Boulder<sup>72</sup> are two institutions of higher learning that have developed and implemented formal restorative justice programs on campus.

- (5) Expanding the use of restorative justice principles and practices in workplace settings among co-workers.
- (6) Increasing the use of restorative justice principles and practices to foster healing in the wake of severe political violence and in the context of national healing.
- (7) Building increased coalitions among unlikely allies within communities, with a focus on the real human impact of crime, the need for direct and comprehensible accountability of law violators, and the need to foster healing within the community.
- (8) Offering more support for victims of severe violence. This step would include greatly expanding the opportunities for victim-offender dialogue for those victims who seek to meet with their offenders. It would also involve a much wider use of victim intervention projects that respond to the needs of victims immediately after the crime, whether or not there is ever any direct engagement with the offender. Defense-Initiated Victim Outreach (“DIVO”) is an emerging restorative justice program that offers victim-survivors in capital murder cases the chance to have their judicial needs met, with particular regard for the needs that the other party can address.<sup>73</sup>
- (9) Developing strong legislative support for public resources being appropriated to support the restorative justice movement, based on evidence of its effectiveness in reducing recidivism, cutting costs, and increasing victim and citizen satisfaction with the justice process. Such initiatives would also involve building stronger alliances

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72. Bill Waters, Tom Sebok & Andrea Goldblum, *Making Things Right: Restorative Justice Comes to Campuses*, 1 CONFLICT MGMT. HIGHER EDUC. REP. 1 (2000).

73. Terrica L. Redfield, *The Role of Victim Outreach*, CHAMPION MAG., Dec. 2006, at 49.

with the crime victim advocacy community through focusing on joint interests between restorative justice advocates and crime victim advocates.

- (10) Building ever-increasing bridges between the dominant culture and the many ethnic groups and communities of color within our society. One approach already being used is that of tapping into the ancient wisdom among many indigenous people who for centuries have practiced elements of what is today called restorative justice. Tribal Justice Exchange in Syracuse, New York, seeks to encourage state and tribal courts to share information, assist tribal communities in enhancing their justice systems, and explore ways in which state courts can benefit from traditional tribal justice practices.<sup>74</sup>
- (11) Using the principles of restorative justice to engage in a new framework for research on the public policy and human impact of the death penalty.
- (12) Strengthening the fabric of community responsibility through increasing involvement of neighbors and citizens in restorative community-based justice initiatives. This kind of involvement provides opportunities for more frequent and meaningful contact with others in activities that benefit all of society. For example, a project in a poverty-ridden neighborhood in San Antonio, Texas, is using the underpinnings of restorative justice to improve the quality of life for area residents by addressing institutional, social, and structural problems.<sup>75</sup>

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74. CTR. FOR COURT INNOVATION, ANNUAL REPORT 6–7 (2008), available at [http://www.courtinnovation.org/\\_uploads/documents/2008\\_Annual\\_Report1.pdf](http://www.courtinnovation.org/_uploads/documents/2008_Annual_Report1.pdf)

75. Michael J. Gilbert & Tanya L. Settles, *The Next Step: Indigenous Development of Neighborhood-Restorative Community Justice*, 32 CRIM. JUST. REV. 5–25 (2007).

QUESTIONS FOR THE FUTURE<sup>76</sup>

Restorative justice has made vast strides in the past quarter century. With growth, however, come new dilemmas that, despite the increasing international acceptance of restorative justice principles and practices, and despite the many opportunities facing the movement in the twenty-first century, present numerous unresolved, and often troubling, issues. Many of these dilemmas speak to the core integrity of the movement, while others pose concerns about fair and effective implementation. We present the most salient of these questions in the following list:

- (1) The growth in restorative justice makes the concept increasingly ambiguous.
  - Is restorative justice in fact about developing an entirely new paradigm for how our criminal justice systems operate at a systemic level, or is it a set of processes, specific principles, and practices that can operate within our conventional criminal justice systems?
- (2) Restorative justice needs to influence the social injustice that permeates our society.
  - How does the restorative justice movement avoid becoming only a micro-level intervention serving victims, offenders, and communities?
- (3) Society is focused overwhelmingly on retribution.
  - Can restorative justice really be a victim-centered approach when the overwhelming emphasis is upon, and resources in the system are so heavily focused upon, identifying, apprehending, processing, and punishing, or even treating, the offender?
- (4) Restorative justice is currently represented by people with many different perspectives. Some would severely limit

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76. This section is chiefly drawn from UMBREIT & ARMOUR, *supra* note 1, at 27–29.

who is really in “the movement.” Others would be so inclusive that it becomes hard to distinguish what makes the policy and practice uniquely restorative.

- How big is the tent under which policies and practices are considered to be part of the restorative movement?
- (5) Many argue that restorative and retributive justice are not in competition, but rather need to work in concert with each other.
- How can the restorative justice movement avoid the predictable co-opting of its philosophy as it seeks to become mainstream itself within the criminal justice system?
- (6) The vast majority of crime victims never have their offenders apprehended and processed in the system. These victims are largely ignored by the justice system, whether it is restorative or conventional.
- How can restorative justice address the multitude of needs facing victims of crime whose offenders are never caught, and who therefore are never given the opportunity to enter a mediation session, conference, peacemaking circle, or other related intervention?
- (7) Restorative justice has the potential for broad reach in its ability to address harms related to variety of social issues.
- Will restorative justice be marginalized through being required to deal, in effect, with only the most minor types of criminal and delinquent offences, many of which would self-correct on their own?
- (8) A variety of restorative practices are emerging.
- Will restorative justice as a movement gravitate toward a “one size fits all” approach in which a specific intervention or approach will be viewed as appropriate for nearly all cases or for all cases of a given type?



- (9) A major pillar of the restorative justice approach is its emphasis upon the involvement of communities and respect for the needs of the community.
- How will the restorative justice movement handle the reality that many communities express a wish for policies and practices that are far from being restorative in nature? Will the movement be able to integrate respect for those positions and still to advocate more restorative approaches?
- (10) Some believe that domestic violence cases can be routinely referred to programs like victim-offender mediation while others are more cautious. In theory, restorative justice may have a great deal to offer to the field of domestic violence. In practice, however, it holds the potential for doing irrevocable harm, despite good intentions.
- How will the restorative justice movement effectively deal with cases involving domestic violence?
  - How can the dangerous territory of domestic violence be reconciled with the good intentions of those involved with the restorative justice movement?
  - What changes are needed on an individual program basis to ensure the victim's safety?
- (11) Within the United States, the criminal justice system has a vastly disproportionate number of persons of color caught in its policies and practices.
- How does the restorative justice movement avoid mirroring this same reality?
  - How many restorative justice policies and programs affect communities of color?
  - How many of these programs and policies actively engage people of color in leadership and service delivery roles?

(12) Concerns remain about the relationship between restorative justice and a current legal system that rests on an adversarial model of justice.

- How can the informal nature of community-based justice, which characterizes the restorative justice movement, be reconciled with the protection of rights offered by our formal criminal and juvenile justice systems?
- How can extensive and unfair disparity in sanctions and outcomes be avoided as individual victims and communities are given a wide range of options for holding the offender accountable?

#### CONCLUSION<sup>77</sup>

The restorative justice movement is having an increasing impact upon criminal justice system policy-makers and practitioners throughout the world. As a relatively young reform effort, the restorative justice movement holds a great deal of promise as we enter the twenty-first century. By utilizing many traditional values of the past, drawn from many different cultures, we have the opportunity to build a far more accountable, intelligible, and healing system of justice and law, which can lead to a greater sense of community through active victim and citizen involvement in restorative initiatives.

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77. This section is chiefly drawn from UMBREIT & ARMOUR, *supra* note 1, at 29.