



Restorative Justice: A Primer

Restorative Justice, its application, and its interface with dispute resolution

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This Knowledge Note explores the current literature and practice in the area of restorative justice, specifically looking at its interface with other dispute resolution mechanisms. This Knowledge Note supports Synexe's mediation activities, of which restorative justice is a core area.

Introduction to restorative justice

Restorative justice refers to a range of informal justice approaches which require that offenders take responsibility for their crimes, and which aim to meet both the victims' and the communities' need for remedy (Miers 2001; Braithwaite 2002). In some cases restorative justice aims to engage the community in its fullest sense, not just those directly involved in the criminal activity (Ryan et al 2006). Restorative justice seeks to restore relationships between offenders, victims, and communities (Strang 2001; Schmid 2003) in order to restore balance within the broader community (Meyer 1998). Restorative justice, in its conceptual and practical form, is an effort to transform the way we think of punishment for wrongful acts (Menkel-Meadow 2007).

Restorative justice usually involves a facilitated or mediated communication between victims and offenders, often with community representation, to provide a setting that achieves the following (Menkel-Meadow 2007):

- Acknowledgement of fault by the offender
- Restitution to the victim as deemed appropriate, both material (financial) and non-material (apology)

- The development of new understandings, forgiveness, and to new undertakings for improved behaviors.

Menkel-Meadow (2007, p. 164) identifies the following foundational concepts that guide the development and application of restorative justice:

- "Personalized and direct participation in a process of speaking and listening of both a wrongdoer (offender) and a victim of an act of wrongdoing;
- Narration of what an act of wrongdoing consisted of and the harm or injury it caused to those affected (including both direct victims and often others, including bystanders and the larger community);
- Explanation by the offender of what was done and why;
- Acknowledgment and acceptance of fault for the wrong committed by the offender with recognition of the harm caused (with apology, if not coerced);
- Opportunity for appreciation or understanding of why the wrong occurred (root causes) and, in some cases, forgiveness of the individual, without forgetfulness of the act;
- Consideration of appropriate outcomes or restitution to those wronged by all participants, including victim, offender, family members, and/or larger community, often with expert facilitation;
- Reintegration of the wrongdoer into the larger community, through apology, restitution, and/or support and social services provided (alone or in conjunction with formal punishment as well);
- Reconciliation of wronged and wrong-doer, within a

renewed commitment to shared social norms (often reconstituted within the restorative process);

- An orientation to the wrongdoer that treats the act separate from the person so that the person may be redeemed as the victim/community is repaired;
- An orientation to the future, to the extent possible, to make right what was wrong and to rebuild new relationships and new communities.”

In addition to its application in the criminal context, restorative justice is also a policy for regulating child welfare, schools, corporations, civil litigants, and authoritarian regimes that abuse human rights. Although variations exist where restorative justice is applied in these contexts, there remain commonalities: an inclination towards collaborative dialog and deliberation as opposed to adjudication, and the desire to develop and implement remedies that repair harm and strengthen communities and ties of interdependence (Roche 2006).

Restorative justice may also be a condition of parole or probation, used following release where the offender may be required to engage with the victim or the community through social service, compensation, or some behavior change.

Overall, it is important to note that restorative justice represents an orientation to justice, based on a philosophy and ideas, more than a procedural prescription.

Restorative justice and Alternative Dispute Resolution

Restorative justice, similar to civil justice, is a reaction to a punitive, bureaucratic, inflexible, and ineffective (at crime reduction) criminal law system (Menkel-Meyers 2007). Alternative Dispute Resolution (ADR) has emerged as a less expensive, quicker, more flexible, and arguably more effective system to address disputes as a whole (Hill 2008).

Restorative justice does not stand alone as a social movement, as it works in collaboration with ADR and conflict prevention and resolution proponents, as well as within the realm of peace studies, with nonviolence advocates and practitioners, and with international human rights activists (Menkel-Meadow 2005). It fits into the overall framework for dialogic regulation and justice (Pavlich 1996). These approaches all advocate that a humane and authentic dialog can help to break the vicious cycle of misconduct, vengeance and violence through reconciliation and reintegration (Menkel-Meadow 2007).

Roche (2006) identifies links and opportunities between the restorative justice movement and the larger ADR movement, which includes arbitration, mediation, fact-

finding commissions of inquiry and conciliation. ADR distinguishes between the “facilitatory” role of the mediator and the “evaluator” role. When facilitation is undertaken, the mediator establishes communication between parties, ensuring that issues are identified and articulated, and that parties are involved in formulating an agreement, with the opportunity to reflect upon and revise their opinions and desired outcomes as necessary. As an evaluator, the mediator takes on the additional responsibility of persuading parties to accept suggestions that are based on that mediator’s knowledge and experience. It may be necessary, in certain contexts, for restorative justice mediators to step beyond the facilitation role (which is commonly taken) and move into that of the evaluator. However, as with mediation, interventions and direction must be strategic and in the intent of the aims of restorative justice. Roche sites the example of Navajo peacemaking, where mediators are known as “peacemakers” and provide advice to the parties, sharing Navajo cosmology stories (Meyer 1998, Coker 1999).

Most effective forms of restorative justice are coupled with the threat of tougher enforcement (Roche 2006). It is logical that a reluctant wrongdoer would be more likely to engage in restorative justice where the threat of formal prosecution would be a consequence if he or she refused to cooperate.

As with civil ADR, restorative justice is designed to be able to creatively construct outcomes to meet the needs and requirements of the parties involved. As a consequence, claims are that there will be higher rates of compliance and an increased satisfaction with the process itself. This encourages belief in the approach’s legitimacy, and in its ability not only to provide remedies, but also to mend social relationships that have been destroyed or harmed (Menkel-Meadow 2007).

Key considerations for the application of restorative justice

A number of considerations have emerged for practitioners and communities in deciding whether or not to engage in restorative justice as a remedy (adapted from Menkel-Meadow 2007):

1. What is the scale? Will scaling-up compromise the ideas and values behind restorative justice?
2. How aligned are the participants (including victim and offender) in terms of worldviews, notions of justice, and values?
3. Are human and/or legal rights threatened for one party or another through the restorative justice process?
4. Does the restorative justice approach of informality, confidentiality, and flexibility compromise public

process requirements (enforcement, transparency & equity)?

5. Will the restorative justice process be a substitute or be supplemental to other conventional legal processes?
6. Will some participants be favored over others through the process (more verbal or eloquent, well-resourced, more educated, manipulative)?
7. What is the intent of each of the participants going into the process? Are some acting out of self-interest?

These considerations only cover the theoretical and philosophical challenges that may need to be considered. The logistics of the intervention add a tremendous amount of additional considerations (e.g., time, costs, expertise, risk assessment, etc.) which are not covered in any detail in this briefing paper.

Concluding remarks

This paper explores the fundamental concepts and the application of restorative justice, and serves as a starting point for a conversation about when, where and why restorative justice approaches may be applicable. As an approach, restorative justice has far-reaching implications and potential both within and beyond the field of criminal remedy.

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