

RESTORATIVE JUSTICE VALUES AND PROCESSES

Adopted by the Restorative Justice Network

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University of Wellington Diana Unwin Chair in Restorative Justice**

I. 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 emphasised 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 honoured, 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 actualise common restorative values and achieve similar restorative outcomes.
- For this reason, it is unwise to restrict “best practice” to a single prescribed process or set of procedures to be followed in every setting. It is more helpful to:
 - ➔ specify the values and virtues that inspire the restorative justice vision;
 - ➔ describe 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 which 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 – 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 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 recognise 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 recognises 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 together 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 offence 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 penalise 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 ensure 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 which 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.

*A process is **not** restorative if the facilitators do not ensure 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 in or remain in the process, or be compelled to communicate against their will. Restorative processes and agreements should be voluntary. Reaching agreed outcomes 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 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.*

- **Recognises 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 behaviour 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 minimised or trivialised, 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, endeavour 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 co-ordinators, 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 recognises 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.