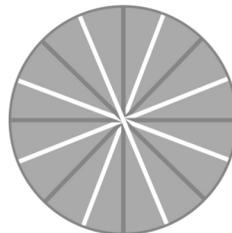


Just Resolution
and
Restorative Justice Principles
in the
Complaint Procedure
of
The United Methodist Church



God has told you, O mortal, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?

Micah 6:8

All this is from God, who reconciled us to himself through Christ, and has given us the ministry of reconciliation...

II Corinthians 5:18

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JUSTPEACE Center for Mediation and Conflict Transformation is a mission of The United Methodist Church to engage conflict constructively in ways that strive for justice, reconciliation, resource preservation and restoration of community in and through The United Methodist Church and with the Church universal to the world in which we live.

Introduction

Because they are bound together to the event, both victim and offender need each other to experience the liberation and healing from the continuing thrall of the offense. The offender needs the victim to trigger or sharpen his contrition, to hear his confession, remit his guilt, and to affirm his ability to start fresh. The victim needs the offender to hear her pain, answer her questions, absorb her resentment, and affirm her dignity. Each holds the key to the other's liberation.

from *Beyond Retribution* by Christopher Marshall

A review of a violation of the sacred trust of ordination and membership in an annual conference “shall have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God’s work of justice, reconciliation and healing may be realized in the body of Christ” (§362).

As of the General Conference in 2004, just resolution has been defined by using the principles of restorative justice. “A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as possible and bringing healing to all the parties.” (§362)

Restorative justice principles and practices are consistent with previous disciplinary provisions, but the preference for these principles and practices has now been clearly affirmed. Restorative justice principles and practices have been part of the Social Principles of *The Book of Discipline* (§164H) since 1996, with more full elaboration in 2000. This paragraph deals with how parties should be treated in the criminal justice system of our secular courts. The General Conference simply affirmed in 2004 that the same principles should apply to the parties in our own complaint procedures. *The Book of Discipline* is now explicit that those who have been harmed in the church have the same opportunity to have their harm understood and appreciated and addressed through restitution, reparations and other forms of real accountability to them; offenders in the church have the same opportunities to take responsibility for their actions, make things right, and to experience the possibility of healing and reintegration within the community of the church.

The United Methodist Church is part of a worldwide movement, a movement from a focus on retributive justice to a focus on restorative justice. This movement parallels the movement in the Biblical understanding of justice.

Section

1

Restorative Justice and the Social Principles

¶164 H states:

...In the love of Christ, who came to save those who are lost and vulnerable, we urge the creation of a genuinely new system for the care and restoration of victims, offenders, criminal justice officials, and the community as a whole. Restorative justice grows out of biblical authority, which emphasizes a right relationship with God, self, and community. When such relationships are violated or broken through crime, opportunities are created to make things right.

Most criminal justice systems around the world are retributive. These retributive justice systems profess to hold the offender accountable to the state and use punishment as the equalizing tool for accountability. In contrast, restorative justice seeks to hold the offender accountable to the victimized person, and to the disrupted community. Through God's transforming power, restorative justice seeks to repair the damage, right the wrong, and bring healing to all involved, including the victim, the offender, the families, and the community. The Church is transformed when it responds to the claims of discipleship by becoming an agent of healing and systemic change.

The key principles of restorative justice, which grow out of “biblical authority of a right relationship with God, self, and community” are seen here as

- A repair of the damage or a righting of the wrong to the victims
- Accountability of the offender to the victimized person and to the disrupted community—making things right
- Healing all involved, including the victim, the offender, the families, and the community—through God’s transforming power
- Transformation of the community of the Church

This is compared with retributive justice, which is focused on holding offenders accountable to the state, not to victims, with punishment being the equalizing tool of accountability. (Also see Appendix B, *Book of Resolutions*, 258: Mission Plan for Restorative Justice Ministries.)

Report of the Council of Bishops Task Force on Fair Process: Restorative Justice and the Complaint Procedure

This report recommended to the 2004 General Conference the addition of just resolution principles and processes to the complaint procedure. The report presents a good overview of just resolution and restorative justice principles that informed the legislation. What follows is the section of the report on the reflections of the task force on restorative justice and our complaint process.

Report of the Council of Bishops 2001-2004 Task Force on Fair Process

The Task Force's Reflections on Restorative Justice and our Complaint Process

- A. Our complaint process is a church process, not a secular one. We should follow a Biblical understanding of justice and process.
- B. Biblical justice is seen as fulfilling the demands and obligations of the clergy covenant or relationship, and when there is a breach, attempting to make things right, healing the harm and finding solutions that would restore the well-being or shalom of the relationship. Biblical justice is about restoring community.
- C. The movement in the Bible is from the law of Lamech (retribution of seventy-sevenfold, Gen. 4:24) to proportional and limited retribution (an eye for an eye, Lev. 24:19-20) to the healing power of forgiveness and reconciliation (as Jesus teaches, forgiveness of seventy-seven times, Mt. 18:22). The movement is from retributive justice (our trial process of dealing with judicial complaints, as well as the secular system) to restorative justice (which is being practiced more and more in the secular judicial system).
- D. Restorative justice focuses on the violation or harm to people and relationships with the aim of identifying obligations, meeting needs and promoting healing. Restorative justice asks: Who has been harmed? What should be done, and by whom, to make things right? How can we restore those who have been harmed and the offenders to community? Restorative justice gives substance to an understanding of real accountability and repentance, of shalom or right relations, of healing and reconciliation.
- E. In regard to process, following Matthew 18:15-16, we understand that the primary process which Jesus encourages us to follow is collaborative, involving the parties to the complaint. The church (the trial court) is asked to decide for the parties only if collaboration fails (Mt. 18:17).

- F. Restorative justice encourages engagement of those who have been harmed, the offender and members of the community. Each party hears the stories of the other parties and helps decide what justice requires. Restorative justice believes that we need each other to accomplish healing. Healing is a communal act. Those who have been harmed and the offender are bound together by the event. They need each other to experience liberation and healing. Offenders need those who have been harmed to help them understand the depth of the harm created, to give them the opportunity to address that harm and make things right, including reparation and restitution, and to affirm the human capacity to live responsibly in community. Those who have been harmed need the offender to hear their pain, answer their questions, assure their safety, be accountable for what was done and provide an opportunity to let go of the power of the offense through forgiveness. Each can be uniquely helpful to the other's liberation. Members of the community, including those responsible for the covenant of ordination and membership in an annual conference, are significant participants in determining accountability and what is needed for healing and the restoration of community. This is not an adversarial process, where one side wins and the other loses.
- G. The process for restorative justice can create a space for all peoples of different cultural, racial, and ethnic identities and backgrounds. We believe that the goal of healing and restoring a reconciled community can be achieved when the indigenous cultures of the people involved in the process for restorative justice are valued and honored.
- H. Restorative justice gives substance and guidance in realizing the "primary purpose" of the review of membership in the ministerial office and of the judicial process as expressed in the Book of Discipline (§§359 and §2701), which is a "just resolution...in the hope that God's work of justice, reconciliation and healing may be realized in the body of Christ." Moreover, restorative justice gives us practices and processes that enable us to experience such justice, reconciliation and healing.
- I. We recognize that our Social Principles ask us to practice restorative justice in our criminal justice system (§164 F). We believe that we should afford those who have been harmed in the church the same opportunity to have their harm understood and appreciated and addressed through restitution, reparations and other forms of real accountability to them. We believe that we should afford those who are offenders in the church the same opportunities to take responsibility for their actions, make things right, and to experience the possibility of healing and reintegration within the community of the church.
- J. In encouraging a restorative process in our complaint procedure, we also affirm the need to maintain our present system of trials, while maintaining the Book of Discipline's mandate that a trial should be a last resort (§2707). This is required by The Constitution (Section III, Article IV).
- K. We also gave consideration to whether another name for these principles, other than restorative justice, would be more descriptive and more helpful. We decided that the term "restorative justice" is developing a much broader context than just the criminal justice system, as people are beginning to see it as descriptive of a way of being in relation and addressing broken relations, whatever the relations might be. Many in the church have now heard of the term and have expressed commitment to its principles. We want to build on this. We find the term helpful in describing these principles.

- L. Some bishops have already begun to use the principles of restorative justice in the complaint process in their annual conference. We believe this can be done within the current *Disciplinary* language. We also believe that it is time for the church as a whole to affirm these principles and practices.

- M. The language we are proposing affirms that these principles are a goal and a way of thinking about all we do in the complaint procedure. Our hope is that we can move toward a justice that heals those who are harmed, offenders and members of the community affected by the breach of the sacred trust. The language provides for flexibility and creative thinking about how these principles can be realized in regard to a particular matter. The restorative justice process is voluntary for the respondent and other parties. We believe that such a process should be considered at every point in the complaint procedure. A Workbook, described below, will provide assistance and give practical guidance.

Section

3

Summary of Just Resolution Principles and Processes in the Complaint Procedure

(See the full paragraphs on “just resolution” in Appendix C)

Primary Purpose or Goal: Just Resolution (¶362.1, ¶2701)

Hope: That God’s work of justice, reconciliation and healing may be realized in the body of Christ (¶362.1, ¶2701)

Key principles that define just resolution (¶362.1)

- Repairing any harm to people and communities
- Achieving real accountability by making things right in so far as possible
- Bringing healing to all the parties
- Through a just resolution process, which involves an engagement of the parties.

General Elements of the Process In all Contexts: Supervisory, Administrative and Judicial (¶362.1b, the essential structure, to which other paragraphs refer.)

- A just resolution process may be used.
- The goal of the process is a written agreement satisfactory to all parties.
- The process is assisted by trained, impartial third party facilitator(s) or mediator(s).
- Prior to the process, a written agreement is created by the bishop, or other instituting person(s) and other appropriate persons, outlining the process, including any agreements on confidentiality.
- If resolution is achieved, a written statement of agreement and resolution, including any terms and conditions, shall be signed by the parties.
- If resolution is achieved, the parties shall agree on any matters to be disclosed to third parties.
- This is not an administrative or judicial proceeding.
- This process can be instituted at any time in the supervisory or complaint procedure.

- Special attention should be given to ensuring that cultural, racial, ethnic and gender contexts are valued throughout the process in terms of their understandings of fairness, justice and restoration. (§362.1)

Additional Elements Specific to “Just Resolution” Processes in the context of Supervisory, Administrative and Judicial Responses

Supervisory Response

- The bishop is the person who initiates a just resolution process for local pastors, associate members, probationary members, full members, and diaconal ministers. (§362.1b) (§2704.3a—for diaconal ministers)
- The president of the College of Bishops, or the secretary if the complaint concerns the president, initiates the just resolution process for a bishop. (§413.3c)
- The written agreement of resolution in regard to a bishop shall be given to the person in charge of that stage of the process for further action consistent with the agreement. (§413.3c)
- It appears that the pastor or district superintendent, as well as the bishop, might institute a just resolution process for a layperson. In all cases, the pastor or district superintendent should take pastoral steps to resolve any grievances or complaints. (2704.4a)

Administrative Complaint (§362.4)

- The Board of Ordained Ministry may refer the matter back to the resident bishop who shall institute a just resolution process.
- Such referral will not constitute a dismissal.
- The parties shall be told that any resolution remains subject to final approval by the board, which can include dismissal, retaining oversight relating to any terms or conditions of the statement of resolution, or other action as deemed appropriate.
- The written agreement describing the process shall be developed by the appropriate persons, including a cabinet member and a representative of the board of ordained ministry.
- The board’s response will be shared with the clergyperson, the bishop, the cabinet, and the person bringing the original complaint.

Judicial Complaint (§ 2701)

For both the Committee on Investigation and the Trial Court

- The appropriate persons for working out the written agreement on the process shall include the counsel for the Church and the counsel for the respondent.
- If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the disciplinary disclosures required for possible readmission.

Committee on Investigation (§2706.5c(3))

- The committee may refer the matter to the resident bishop for a just resolution process upon recommendation of the counsel for the Church and the counsel for the respondent. The bishop shall institute such a process.
- Such referral will not constitute a dismissal or double jeopardy under §2701.5. The matter is returned to the committee if there is no resolution.
- Such a written statement shall be given to the bishop for further action consistent with the agreement.
- If the process does not result in resolution, the matter shall be returned to the committee.

Trials (§2707, §2708.3)

- Trials are regarded as an expedient of last resort.
- The presiding officer may refer the matter to the resident bishop for a just resolution process upon consultation with the counsel for the Church and counsel for the respondent.
- This referral will not constitute a dismissal or double jeopardy under §2701.5.
- A written statement of resolution shall be given to the presiding officer and the presiding officer shall take action consistent with the agreement.
- If no resolution results, the matter is returned to the presiding officer for further action.

Additional Relevant Provisions

The bishop and cabinet shall provide a process for healing within the congregation, annual conference, or other context of ministry if there has been significant disruption by the complaint. This process may include sharing of information by the bishop and/or cabinet about the nature of the complaint, without disclosing alleged facts, which may compromise any possible forthcoming administrative or judicial process. This may include a process of a just resolution, which addresses unresolved conflicts, support for victims, and reconciliation for parties involved. (§362.1e, §2701.8)

Discussion of Each Step in the Just Resolution Process

A. Decision as to Referral to a Just Resolution Process

1. A referral is not mandatory. This is not a coercive or mandatory process as its ideal is the consent and voluntary involvement of all the key parties.
2. A referral can be made at any time or at any point in the complaint process.
3. A referral decision is made by the following:
 - a. The resident bishop in a supervisory response involving local pastors, associate members, probationary members, full members, and diaconal ministers.
 - b. The president of the College of Bishops, or the secretary if the complaint concerns the president, in a supervisory response involving a bishop.
 - c. The pastor or district superintendent, as well as the bishop, in a supervisory response involving a layperson.
 - d. The Board of Ordained Ministry in response to an administrative complaint, with the referral to the resident bishop who shall institute a just resolution process.
 - e. A committee on investigation in response to a judicial complaint upon recommendation of the counsel for the Church and the counsel for the respondent, with the referral to the resident bishop who shall institute such a process.
 - f. The presiding officer of a trial court in response to a judicial complaint refers the matter to the resident bishop for a just resolution process upon consultation with the counsel for the Church and counsel for the respondent.
4. Some issues to consider in making a referral:
 - a. The goal of the complaint procedure is just resolution with the hope of justice, reconciliation and healing in the body of Christ, recognizing that reconciliation and healing are gifts, but that we can provide the sacred space and time where reconciliation and healing might be experienced.

- b. The principles of just resolution should always be kept in mind in considering such a process:
 - i Repairing any harm to people and communities,
 - ii Achieving real accountability by making things right in so far as possible,
 - iii Bringing healing to all the parties,
 - iv Through a just resolution process, which involves an engagement of the parties.
- c. Is the time right?
 - i Generally, the sooner you can deal with the issues involved in a complaint the better, but you need to be sure that you have a pretty good idea of the relevant facts and the timing is right in regard to the other issues below.
 - ii The best time to do a just resolution process is prior to or during the supervisory response.
 - iii However, sometimes the parties come together only after the matter has been as an administrative or judicial complaint.
- d. Is the respondent willing to participate?
 - i Generally, you begin by exploring a restorative justice process with the respondent.
 - ii The ideal is to have the respondent voluntarily participate.
 - iii The ideal for such a process is a respondent who admits to some or all of what has been charged.
 - iv One of the most appropriate situations for such a just resolution process, for example, is when the respondent confesses and is willing to offer up his papers. Just taking the papers, in most situations, does not address most of the needs of the victims, the offender or the church. It is easy to accept the papers and consider the matter concluded. Much is left unresolved and not healed.
 - v Respondents need to understand the opportunities such a process provides and the realities of trials, as well as the consensus nature of the process. Nothing happens in the just resolution process without their consent.
 - vi The parties should be consulted on the process so they fully understand it.
 - vii Respondents are generally more willing to tell the truth in the context of a just resolution process than in the context of a hearing or trial.
 - viii In situations of innocence or denial, a hearing or a trial might be the only way to reach a resolution. Nothing should be done to impact the respondent's right to a hearing or a trial.

- ix In some situations of denial, where the person bringing the original complaint and the respondent are willing to participate, a facilitated conversation might result in a better outcome for everyone, even if it cannot be called a just resolution process fulfilling all the principles of such a process. All parties need to be clear about the process and the expectations of the process before participating. In such a process, the conversation might lead to an honest and frank discussion that allows for the fulfillment of the principles of just resolution.
- e. Is the person bringing the original complaint willing to participate?
 - i In restorative justice practice, victims are never coerced into participating. Their involvement is voluntary.
 - ii Victims need to understand the opportunities such a process provides and the realities of trials, and the consensus nature of the process.
 - iii They need to be assured that the process will provide a sacred space as well as space that is relatively safe. No one can provide or guarantee absolute safety.
 - iv They should be consulted on the process so they fully understand it.
 - v When the person who brought the original complaint decides not to pursue the complaint, it is often a good idea to invite them to any process, but the process can proceed without them.
 - vi Where the local church is the victim, the church needs to agree on a few participants for the process whom they will trust with the outcome.
 - f. Are all parties willing to live with the resolution reached by the process?
 - i In regard to just resolution processes in the context of a committee on investigation or trial, actions must be taken that are consistent with the agreement that is reached at the end of the process. In other words, the bishop, the board of ordained ministry and other bodies cannot second guess the resolution and must act consistently with the agreement.
 - ii This is true of the judgment by members of a trial court. The judgment must be accepted and acted upon by the bishop and the board of ordained ministry.
 - iii A problem is created for respondents, in particular, but also for those who brought the original complaint, if they cannot be assured that the results of the process will be respected. Without these assurances, should or would the parties have the frank and honest discussion that is needed, or do the hard work to reach an agreement?
 - iv Since it is by consensus and since a written agreement needs to be reached on the process, including who will participate, and since the resolution or final agreement is one that satisfies all the stakeholders, the bishop and the board of ordained ministry should be willing to assure the participants that they will support the resolution.

- v In the administrative hearing, the board of ordained ministry might also be willing to assure the participants that they will act consistently with the agreement in the same way as committees on investigation and trial courts must act consistently with the agreement.

B. Choice of a Facilitator(s) or Mediator(s)

1. The just resolution process is one that is better described as a facilitated conversation, rather than mediation. Some people do not like to think of resolving their harm or dealing with their principles as mediation. This is simply to say that the term “facilitator” for the third party or parties is probably a more acceptable designation
2. The third party or parties need to be trained and impartial, or accepted as impartial by the parties.
3. In some situations, it is better to have two facilitators rather than one. This is particularly true, for example, in a sexual abuse matter.

C. Role of the Facilitator(s) or Mediator(s)

1. A facilitator(s) should be chosen early in the process to assist in the work with the parties to determine if a just resolution process is appropriate.
2. The facilitator can work with the bishop and the parties to determine the appropriate process and the matters that will go into a written agreement about the process, including who should participate.
3. The facilitator can work to make sure that cultural, racial, ethnic and gender contexts are valued in terms of their understandings of fairness, justice and restoration.
4. The facilitator helps prepare the parties for the process. This involves building trust and relationship. This is a time of determining issues, concerns and needs. The process needs to be clearly understood and the role of the facilitator needs to be understood by the parties.
5. The need to talk separately with each party without the other being present is one of the key reasons why *The Book of Discipline* is clear that this facilitated conversation is not an administrative or judicial proceeding.
6. The facilitator is responsible for facilitating the process.
7. The facilitator is responsible for helping the parties write out any agreements.
8. The facilitator can assist with follow up.

D. Development of Written Agreement on the Process

1. This is a key step in the process. Here you can develop a spirit of collaboration. Through participating in designing the process, all parties develop a sense of ownership and responsibility for the process, as well as a sense that the process will create a relatively safe space.
2. The first decision is who should be involved in consulting on the process and signing the agreement.

- a. The bishop, the person(s) bringing the original complaint and the respondent should be signatories.
 - b. In most cases, getting the chair of the board of ordained ministry to agree on behalf of the board is a wise move.
3. The next decision is the design of the process and what should be included. The agreement should include the following:
- a. A description of the process, so that everyone understands and accepts the process.
 - b. The parties who will participate. This differs according to the situation, but the following should be considered:
 - i The person(s) who brought the original complaint
 - ii The respondent
 - iii The district superintendent
 - iv A representative of the board of ordained ministry
 - v Support people as needed for the respondent and the victims
 - vi Anyone who might sabotage the agreement, if not included
 - vii Perhaps an ex-offender who can help with the accountability and healing process
 - c. Provisions for confidentiality
 - i This is required by *The Book of Discipline* and also by the need of the process to provide a relatively safe space for frank and honest conversation, and the need to preserve the opportunity and right to a trial.
 - ii The agreement should say that the ideal is to move toward as much transparency as possible, but only to the extent agreement can be reached.
 - iii The agreement should note that if a resolution is reached, the resolution agreement shall spell out what will be disclosed, with the understanding of the need of the board of ordained ministry, in cases where there is an issue of readmission, to know what was agreed and what needs to be considered on readmission.
 - d. The fact that the resolution is by consensus of those participating should be spelled out as well as any other decision process, if it is not by consensus.
 - e. The commitment of the bishop and board of ordained ministry to support a resolution should be included. It is suggested the board take a vote consistent with the agreement after the agreement is reached.

- f. In the context of an administrative hearing, an understanding that any resolution remains subject to the final approval of the board, unless the board is willing to say that it will act consistently with the resolution
- g. An understanding of what happens if no resolution is reached
- h. An understanding of when and where the process will take place
- i. A commitment to stay with the process until all agree that it is fruitless
- j. A relational covenant as to how everyone should be treated in the process. This is an important part of the process. This involves the parties deciding how they want to be treated in the process. All parties generally have the same concerns and can reach agreement, demonstrating that they can collaborate with each other. This is key to developing a safe and sacred space. (See Appendix D for a sample relational covenant.)

E. The Process (See Section 7 on Practices.)

F. Written Agreement for Resolution

- 1. The agreement should include the terms and conditions in realistic, clear and simple language.
- 2. The specifics should be addressed—who, what, when, where, how.
- 3. The agreement should spell out what is to be disclosed and to whom beyond the bishop and the board of ordained ministry. This language should be consistent with the disciplinary disclosures required for possible readmission where resolution results in a change of ministerial status.
- 4. The agreement should be clear about the monitoring and follow up and the need to have a record in the Bishop's office and in the Board of Ordained Ministry
- 5. The agreement should be clear on how to handle any further problems that arise. Most agreements do have wrinkles that develop.
- 6. The agreement should be clear on future monitoring and follow-up.
- 7. The agreement should be signed by all the participants.

G. Follow-up: This is as important as any other step in the process. The agreement should include what needs to be done. Oversight might be with the bishops and/or with the board of ordained ministry. The agreement should include a description of the follow-up.

The Needs of Each of the Parties to the Complaint Procedure and the Response of Restorative Justice

- A. What are the needs of those who are the original complainants? What are the needs of those who have been harmed? What does justice require for victims?
1. The first and most important thing to be said is that no two victims are the same and each victim must tell you what their needs are. An important part of the just resolution process is to hear from the complainants what their needs are.
 2. There are certain things, however, that most victims say they need.
 - a. Safety: They want to know that this will not happen again.
 - b. Being Heard: They want to be able to tell their story in a space where their story is heard.
 - c. Getting Answers: This involves getting real answers, not just speculation or the narrow story, the lawyer's story that one gets in court. The person who can best give the answers is the person who did the harm.
 - d. Vindication: This is most fully realized through restitution.
 - e. Empowerment: This is most fully realized through being able to participate fully in the process, not just as a witness subject to cross-examination.
 - f. Healing: This involves a process of re-storying, finding meaning and restored relationships.
 3. These needs are best addressed by restorative justice, which, unlike retributive justice, is focused on addressing the needs and harms of victims, providing a collaborative process for meeting these needs. Retributive justice is offender driven and focused. In retributive justice the victim is often victimized twice, once by the violation and then by the adversarial process.
- B. What do respondents who are offenders need? What does justice require for offenders?
1. It is helpful to first understand what the effect of the retributive, punishment system is on offenders. It causes offenders:
 - a. To avoid acknowledging responsibility

- b. To avoid personally making things right
 - c. To create neutralizing strategies
 - i. Stereotyping the victim
 - ii. Rationalization of the act
 - d. To feel like victims
2. What are the needs of respondents who are offenders? What does justice require from and for offenders. Again, each offender is unique but there are things that can generally be said. Their needs include:
- a. Knowing harm they have created: The full knowledge is only created by hearing from the person they have harmed, in a situation of deep listening, as opposed to adversarial cross-examination.
 - b. Coping with guilt, as opposed to a defensive posture of denial as seen in the adversarial process
 - c. Being seen as a person in context: The retributive system judges you by one event in your life. Everyone is more than this one event and everyone feels a need to be seen in the context of their whole life. This is where friends can help gain perspective on an individual.
 - d. Being responsible by participating in the decision as to how to make things right and owning that decision
 - e. Being accountable in a way that addresses harms and encourages empathy and responsibility: This involves making things right to the best of one's ability and capability. This is real accountability, not just coerced accountability as seen with adversarial retributive justice.
 - f. Being transformed: This is part of becoming a person who will not re-offend. This is critical to most victims. This is part of becoming a productive member of the body of Christ.
 - g. Being reintegrated into community: This reintegration might or might not be as an ordained person, but is always as part of the baptized community.
3. The collaborative restorative justice process affirms accountability, but provides for real accountability, not just coerced accountability. It provides greater opportunity to meet the needs described above.
- C. What are the needs of the Church, the local church, the annual conference, and the clergy communion? What does justice require from and for this community?
- 1. Again each community is unique and each community determines what its needs and responsibilities are.
 - 2. There are certain things that most communities say are needed:

- a. Safety within the community, feeling that this offender will not offend again. This also involves dealing with the causes that create offenses, such that such offenses are less likely to occur.
 - b. To support and assist those harmed: This is the focus of restorative justice, but not of retributive justice.
 - c. To hold offenders accountable: Unlike retributive justice where accountability is imposed, restorative justice works for real accountability.
 - d. To work to support, assist and reintegrate offenders in the community: Restorative justice has the goal of reintegration of all parties into community.
 - e. To address the larger systemic issues that contributed to the context of the offense: Retributive justice has the limited goal of punishing offenders, but restorative justice gives the community an opportunity to consider the larger systemic issues and recognize what needs to be done to address them.
 - f. To experience healing as a community
3. Ultimately, restorative justice is about creating community.

Section

6

Restorative Justice: An Overview

Retributive justice and restorative justice ask different questions.

Retributive Justice	Restorative Justice
<ul style="list-style-type: none">• What laws or disciplinary provisions have been broken?• Who did it?• What do they deserve?	<ul style="list-style-type: none">• Who has been hurt?• What are their needs?• Whose obligations are these?

Retributive and restorative justice define crime or violation of the sacred trust in different ways.

Retributive Justice	Restorative Justice
<ul style="list-style-type: none">• Crime or violation of sacred trust violates laws or disciplinary provisions and the state or the church• Violation creates guilt• Justice: State or church determines blame and imposes pain• Central Focus: Offenders get what they deserve	<ul style="list-style-type: none">• Crime or violation of sacred trust violates people and relationships• Violation creates obligations• Justice: Stakeholders involved in determining responsibilities and repairing harm• Central Focus: Victim's needs and offender's responsibilities

At a minimum, restorative justice requires that we:

- Address harm experienced by victims and their needs.
- Hold offenders accountable to make right those harms.
- Involve victims, offenders and communities in the process

The three words that summarize restorative justice are:

HARM

ACCOUNTABILITY

ENGAGEMENT

Section

7

Practices of Restorative Justice

- A. In practice, restorative justice can take different forms.
 - 1. The practices should be consistent with the principles of restorative justice.
 - 2. The practices usually involve an encounter (direct or indirect) or engagement of the parties
 - 3. Restorative Justice practices:
 - a. Assist those who have harmed to communicate with those who have been harmed
 - b. Are entirely voluntary for victims
 - c. Are guided by a facilitator
 - d. May involve substantial pre-and post-work.
 - 4. They provide opportunities to...
 - a. Ask and answer questions
 - b. Express feeling
 - c. Tell stories
 - d. Work toward mutually acceptable outcomes
- B. Two primary encounter models for church practice
 - 1. Victim-Offender Conferencing (VOC)
 - a. The victim and offender are the primary participants
 - b. An impartial facilitator or co-facilitators is responsible for the process.
 - c. This smaller circle of participants might be appropriate when no one else needs to be in the process to fulfill the principles.
 - d. This process is not generally appropriate in sexual abuse cases, as a larger circle is needed to create safety and to balance the power of the participants.
 - 2. Circles of Accountability and Healing

- a. Includes the victim(s) and offender, support people for each, members of the cabinet and board of ordained ministry, as appropriate, and others as needed.
- b. This process is facilitated by a circle steward and usually involves a talking piece.
- c. The circle symbolizes our interconnectedness and interdependence, as well as our equal responsibility and accountability for the outcome. The circle affirms the collective wisdom and discernment of the participants.
- d. All circles open and close with ritual that frames the whole time and space together as sacred, a space safe enough for the speaking and hearing of truth.
- e. A talking piece, something of significance to the group, is used to help people speak and listen well. For example, in the church, many circles use a Bible as a talking piece. When you hold it, you make speak. You may pass. When you do not hold it, you listen. Everyone has an equal opportunity to be heard without interruption and commentary. The talking piece is passed in order around the circle. Everyone knows when he or she will speak. When the conversation is going well, the talking piece is held by the steward with the understanding being that anyone can speak as long as he or she is recognized and does not interrupt anyone else.
- f. The role of facilitator or steward of the circle includes the following:
 - i. Sets a tone of respect and hope that honors and supports every participant
 - ii. Frames the circle as sacred by beginning and ending with ritual.
 - iii. Obtains agreement on the relational covenant.
 - iv. Raises powerful questions and issues to address before passing the Bible.
 - v. At the end of passing the Bible or at other times as needed, summarizes the contributions of the circle.
 - vi. Maintains the process and respect for the covenant.
 - vii. Respects all contributions—not favor any one option.
 - viii. When appropriate, holds the Bible and opens discussion, but recognizes one person at a time.
 - ix. Helps explore options and common ground
 - x. Summarizes consensus or, if there is no consensus, what has been accomplished and what has not been accomplished.

Section

8

The Biblical and Theological Grounding for the Just Resolution/Restorative Justice Principles

Overview

Our complaint procedure is a church process, not a secular one. We should follow a Biblical understanding of justice and process. In this context, Biblical justice is not abstract philosophical speculation, but the experience and understanding of God and God's justice.

What do we learn about justice from the Biblical narrative?

Justice "is the heart of who God is and what God does . . . Justice is the objective foundation of all reality."¹ The justice of God is most fully incarnate and revealed in the life, death and resurrection of Jesus the Christ. (Romans 1:16-17; 3:21-26)

The pursuit of justice is the obligation of the people of God. To do justice is to know God (Micah 6:3-8) and to serve Christ. Other ways of worshiping God are abhorrent to God unless justice is being done (Amos 5:21-24).

Justice is about relationships. We are constituted by our relations, with God and neighbor. Justice means fulfilling the demands and obligations of the relationship. Justice is about restoring healthy relationships. There is no tension between justice and mercy, since mercy is often the best way to restore healthy relationships. "Compassionate acceptance of human fallibility is essential to the functioning of healthy relationships."² For example, in John 8:3-7, we read about Jesus' approach to the woman caught in adultery.

Restoration of what has been damaged by the offender is what satisfies the demands of justice, not punishment. The shalom of creation has been ruptured. Restoration is required at several levels: the victim to wholeness, the offender to a right relationship and the wider community to peace and freedom from fear and harm. Howard Zehr says, "Biblical justice decidedly was not a forensic inquiry into wrongdoing to establish guilt and decide what punishment was merited. Rather, Biblical justice was an attempt to right

¹ *Biblical Justice*, Christopher Marshall, Manuscript pp.20-22; Isaiah 24:16; 30:18; 45:21; Genesis 18:25; 2 Chronicles 12:6; Nehemiah 9:8; Psalm 7:9; 89:14; 97:2; 103:17; Jeremiah 9:24; Daniel 9:14; Zephaniah 3:5; Zechariah 8:8; Romans 3:26; 9:14; 1 Peter 2:23; Revelation 15:3.

² Marshall, p. 31

wrongs, to find solutions that would bring about well-being.”³ The purpose of justice is to restore shalom, restore the world to the way it was created to be.

Justice is not a static ideal but a commitment to action, like a mighty river, not a neatly balanced set of scales. This sometimes requires impartiality, such as when dealing with criminal wrongdoing or litigation. In regard to social injustice, God is partial for the disadvantaged. The conditions of the impoverished and oppressed violate God’s intentions for the world. As the parable of the Good Samaritan tells us, victims are not to be neglected. (Luke 10:30-37)

The movement in the Bible is from the law of Lamech (retribution of seventy-sevenfold, Gen. 4:24) to proportional and limited retribution (an eye for an eye, Lev. 24:19-20) to the healing power of forgiveness and reconciliation (as Jesus teaches, forgiveness of seventy-seven times, Mt. 18:22). The movement is from retributive justice to restorative justice. Adversarial retributive justice is a distortion of Biblical justice.

Words for justice in the Bible are “righteousness” and “justice.” “Often in the Hebrew Bible, ‘righteousness’ (*sedeqah*) and ‘justice’ (*mishpat*) occur as a word-pair with virtually identical meanings.” (Amos 5:24, Isaiah 32:1, Psalm 72:1-2) . . . Righteousness in the Bible incorporates the idea of doing justice, and doing justice in the Bible conveys the idea of righting what has gone wrong, of restoring things to a condition of ‘rightness’ or righteousness.”⁴ The New Testament generally uses the terms ‘righteous’ to mean justice.

The most important example of injustice and God’s justice is the cross. Here God through Jesus broke the power of evil that locks the human race into the endless cycles of violence and counter-violence by not retaliating against his abusers. Jesus refused Peter’s sword and refused to respond to hatred with counter-hatred. Jesus offered, instead, forgiveness, refusing the logic of evil and crippling its power. God vindicates the way of forgiveness in the resurrection.

In regard to process, following Matthew 18:15-17 we understand that the primary process which Jesus encourages us to follow is collaborative, involving the parties to the complaint.

Other related ideas:

Shalom: Shalom is God’s vision for creation. Everything is as it was created to be—in wholeness, well-being and right relation. This is Justpeace, where justice and peace come together. The words for paying back (*shillum*) and recompense (*shillem*) have the same root word as shalom.

Covenant: Covenant is the formal commitment, which brings the relationship into existence and specifies the rights and obligations of the parties.

Torah: Torah is what is needed to live in covenant relationship, defining the rights and obligations of the relationship. “Torah really means ‘instruction.’⁵ It has a pedagogical

³ *Changing Lenses*, Howard Zehr, p. 142

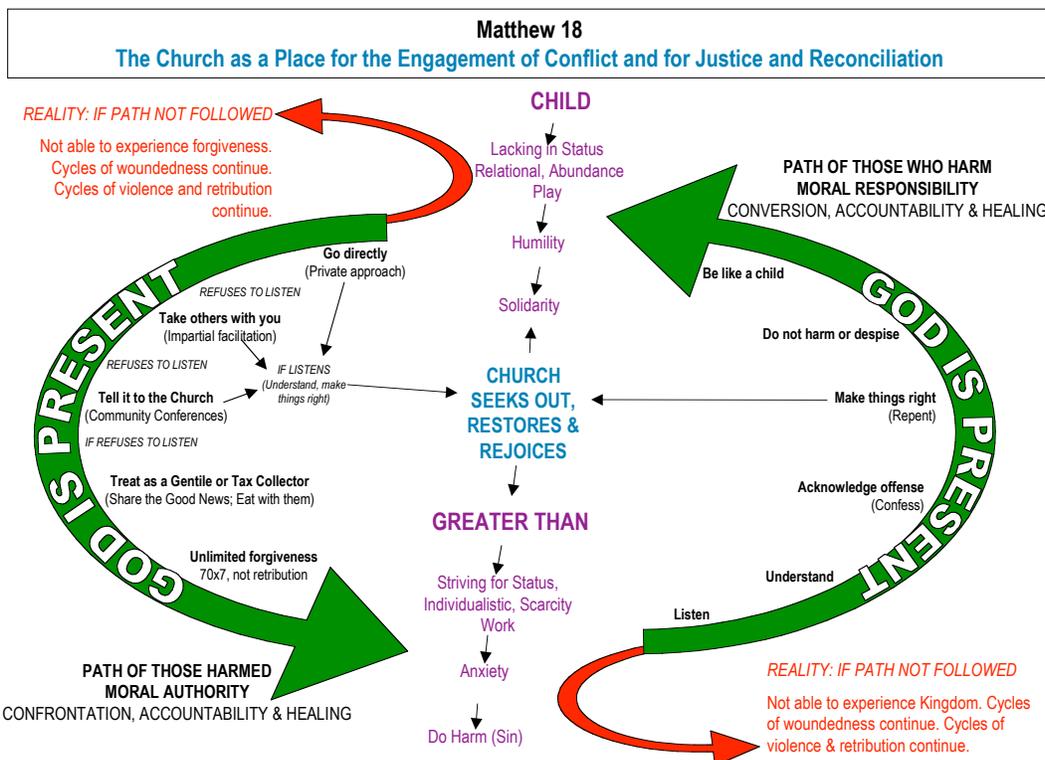
⁴ Marshall, p.12

⁵ Marshall, p. 15

and educational function. The imperative is to do justice, not simply to enforce the law. (Deut. 16:18-20; 17:8-13)

Deed Consequences: The way God made reality is that deeds carry their own consequences. Punishment is in reality self-inflicted. God gives people up to their choices (Rom. 1: 24, 26, 28). We cannot escape responsibility for our choices, as this is “the essential prerequisite of human freedom.”⁶

A Study of Matthew 18



Matthew 18 is the place where Jesus most directly and practically advises us on how to deal with conflict and with harm. This scripture gives a brilliant analysis of why we have destructive conflict and harm. Jesus opens up the theology of restorative justice and the practice of restorative justice.

This chapter is all about how the church can be a place for the engagement of conflict and for restorative justice and reconciliation. It is about seeking out those who are lost, restoring them to community and rejoicing, celebrating.

The first thing that happens in this scripture is that Jesus turns our world upside down and puts those seeking to be the greatest at the bottom. The child, who was the least in the Roman culture, is put at the top. The child is defined as the greatest. What is Jesus trying to tell us through this social reversal? What has he told us about the reality of

⁶ Marshall, p. 18

God's creation? Here Jesus in one move has exposed the dynamics of what creates harm in this world and presented us with the ideal. We are to become as a child.

The scripture says of the child, "their angels continually see the face of my Father in heaven". This is one of the most extraordinary scriptures in the Bible—how intimate and close to God. The child is born into a profound relationship with God. The child knows that it is a dependent, vulnerable creature. The child knows in its being its interdependence with all creation. The child knows that it is not in control. In fact, the child is without status, being simply property with no rights in Roman society. Jesus is telling us that we need to give up our striving for status and our desire to control. The child lives out of a theology of abundance, seeing life as a gift. Power and love are not limited. The child lives out of a humility expressed as wonder. The child lives in relationship, in solidarity with all creation. This is what we are called to be—like a child, not childish or simply innocent. This is what it means to be born again—to be as a child

Jesus does not say that there is a problem being great. The child is great. We are created for greatness. The problem is the seeking to be greater than the other.

Nelson Mandela's 1994 Inaugural Address quoting Marianne Williamson, *A Return to Love*: "Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond measure! It is our Light, not our darkness, that frightens us. We ask ourselves, who am I to be brilliant, gorgeous, talented and fabulous? Actually, who are you not to be? You are a child of God. Your playing small doesn't serve the world. There's nothing enlightened about shrinking so that other people won't feel insecure around you. We are born to make manifest the Glory of God that is within us. It's not just in some of us. It's in everyone. And as we let our own Light shine, we unconsciously give other people permission to do the same. As we are liberated from our fears, our presence automatically liberates others."

What problems are created by striving to be the greatest, whether it is in power, money, sex or goodness, or even humility? Are these idols and addictions? What does it mean to live out of comparisons, expectations, needing to prove oneself, instead of out of one's own song? Is this being unfaithful to self, the other and to God? Jesus understood that this striving is driven by an autonomous, individualistic view of reality, contrary to the relational nature of creation. This striving is driven by a fear of scarcity, a fear that there is never enough. This striving creates anxiety. Reinhold Niebuhr says that anxiety is the precondition to sin. This anxiety results in offenses and harm to others, particularly to the "least." It creates systems of domination and exploitation. It creates stumbling blocks. Sin is the rupture of communion: abuse and harm. Sin is not loving God, the neighbor and oneself.

The heart and soul of this passage—the Rosetta stone—is the central parable of the shepherd in search of the lost sheep. Everything in the chapter is seen in the context of this parable.

The model for our church and for our work is that of the shepherd seeking out, restoring, and having a great celebration or rejoicing. The understanding of *shalom* is raised to a new level. In this relational world, with a relational God, no one is to be lost. This means no one, which includes both those who are lost because they are offenders and those who have been harmed. This is the image of the Body of Christ. Exploiting one part weakens the whole. Stub a toe and the whole body hurts. The health of the community is determined by the least. As Bishop Tutu says, "When I dehumanize you, I dehumanize myself". When I dehumanize myself, I dehumanize you. This is not just about individual but communal healing and restoration. What blesses one blesses all. All works together for the good of the whole.

The parable reaches out to both worlds, to the person harmed and the one doing the harm, to the child and to the one seeking to be the greatest. All have been lost—all need to be found—we find ourselves on both paths, sometimes simultaneously. We are going to deal with two paths: the path of those harmed and the path of the one who harms, and both paths are related. As we go down these paths, we recognize that we find ourselves on both paths.

What does it mean to say that God is present on both paths? What does it mean to say that wherever two or three are gathered together in conflict, God is present? This is a journey that no one takes alone. God heals, God restores, God saves. The only question we have is whether we really believe this. There is no moment that is more sacred or full of the presence of God than when two people or groups of people experience reconciliation and restoration. Recognizing that God is present makes it possible for us to go down this path.

The path Jesus starts with is the path of the person harmed, as does restorative justice. Jesus starts with victims and their harm. The person harmed has priority. Jesus has the victim going to the offender. He is saying that the victims have the moral agency or authority. Jesus is saying that they should be empowered to confront, and to hold accountable. The victim is not powerless.

The person harmed determines if he or she is heard. The person harmed is the moral agent for transformation. The people harmed need to confront. This is, however, not a path of punishment. Pain is not relieved by inflicting more pain. This is not a path of revenge but of restitution, amends, making things right. This is a demanding process.

Jesus first suggests that the person harmed go directly to confront the person who did the harm. Is this the way folks usually do it in the Church? As a leader you are a target for triangulation, with everyone wanting to make their problems your problem. We generally need to ask the question: Have you spoken to the other person? Your role might need to be one of coach. This can involve coaching on how to prepare self and engage the other. Jesus certainly would not want to put anyone in this process in harms way. This admonition does not apply where the person, for example, is a child who should not be alone with her or his abuser.

The offender can be restored to community if he or she listens. What does it mean to be heard in a way that leads to regaining the brother or the sister, with being reconciled? Hearing in the Bible means responding to what we hear. How can you hear and not respond? This is where accountability and making things right are sure signs of listening, healing and restoration of the person harmed—and the regaining of the brother or sister. Listening is healing. It means more than just hearing, it means understanding and working to make things right—accountability.

If we simply practiced this at an early stage of a conflict, most conflicts would be resolved. But some people are hard of hearing. Jesus recognizes this, and has a second suggestion: Bring witnesses or third parties with you.

How can the witnesses or third parties help? In practicing mediation, I was always amazed at how helpful a third party can be to two people in conflict, and the miracles that occur. The third party provides a safe space for people to tell their stories. The third party helps the people in conflict feel empowered to tell their stories as well as to listen to the other's story. The third party can help them move from their positions to their needs and interests, getting everyone on the same side of the table trying to address each other's needs and interests. Good things happen. Here, Jesus suggested how the presence of others can help people listen. (See Deut 19:15 and 1 Tim 5:19) But even here, Jesus recognizes that sometimes people just do not listen.

So Jesus suggests a third step of telling it to the Church. Here church members advocate for both and provide a larger context of wisdom, listening, accountability, and restoration. Again, the main task is to have truth telling that allows for listening and restoration.

However, Jesus says that some people do not even listen in the presence of the church. And he suggests that they be treated as gentiles and tax collectors. What has this meant traditionally for the church? Usually we see this as excommunication or exclusion. How did Jesus treat gentiles and tax collectors? He ate with them. He believed that all need to be redeemed. We should recognize that they have excluded themselves, and you cannot spend all your time and energy on them. But wouldn't Jesus say, "Dine with them periodically and give them the good news."

Peter listens to all of this and thinks he has understood. The Hebrew Bible says forgive three times. Isn't seven times greater? Peter thinks he is being generous. But Jesus says to Peter: You don't get it; forgive seventy times seven. In other words, forgiveness is unlimited. How do we do this? How do we teach this? How does this become a craft? Forgiveness is the generative power for newness. This is not cheap grace. The victims set the agenda. No one is forced or manipulated to forgive. Forgiveness is a gift—primarily a gift the person harmed gives him or herself, being freed from the thrall of the offense. Forgiveness is a journey and always a gift. This is the reverse of Lamech's curse.

This chapter goes on to say that this is serious business. If you do not forgive, then you are not able to experience forgiveness. What does this mean? This is how the world is created. The Lord's Prayer does not say that forgiveness is not given, like to the debtor at the end of this chapter, but when you close your heart to forgiveness, you lose the ability to receive it. Bishop Tutu, says, "No future without forgiveness." If you don't follow this path, cycles of woundedness continue. Cycles of violence and retribution continue if forgiveness is not practiced. Jesus is spelling out the way we break these cycles.

The path of the offender is the path of moral accountability or responsibility. This journey involves conversion, change, *metanoia*. This is the only way to healing and restoration for the offender. The offender's journey includes the following in his or her engagement with the person harmed:

- Listen
- Understand
- Acknowledge—Confess
- Repent—This involves real accountability. Victims don't want your hand or eye. They want real accountability, like the man in South Africa who confessed his role in destroying a village but said he would spend the rest of his life rebuilding it.
- Healing and Restoration: There is nothing retributive about this. This is not a punishment system, but a restorative system. It is a system of real accountability, in a way that is healing.
- Do not harm: Put to death those things that destroy neighborliness, abuse and exploitation: Promote simple obvious daily practices of respect.

- Be like a child

Again, this is serious business. If this path is not followed, you will not save your soul. You will not be able to experience the Kingdom. Yes, the door is always open. Jesus is still ready to welcome you and dine with you. But the reality is that you can't see the door and the table if you do not follow this path. Cycles of violence and retribution will continue.

We live in a very retributive, punishing world. In Matthew 18, we are asked by Jesus to follow another way.

Restorative Justice in the Social Principles

From the *Book of Discipline* of The United Methodist Church, 2004

¶164

H) Criminal and Restorative Justice

.... In the love of Christ, who came to save those who are lost and vulnerable, we urge the creation of a genuinely new system for the care and restoration of victims, offenders, criminal justice officials, and the community as a whole. Restorative justice grows out of biblical authority, which emphasizes a right relationship with God, self, and community. When such relationships are violated or broken through crime, opportunities are created to make things right.

Most criminal justice systems around the world are retributive. These retributive justice systems profess to hold the offender accountable to the state and use punishment as the equalizing tool for accountability. In contrast, restorative justice seeks to hold the offender accountable to the victimized person, and to the disrupted community. Through God's transforming power, restorative justice seeks to repair the damage, right the wrong, and bring healing to all involved, including the victim, the offender, the families, and the community. The Church is transformed when it responds to the claims of discipleship by becoming an agent of healing and systemic change.

Adopted 2000

Restorative Justice in the Book of Resolutions

From the *Book of Resolutions* of The United Methodist Church, 2004

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Mission Plan for Restorative Justice Ministries

I. Biblical/Theological Grounding

The words of Micah ring out clearly, setting the tone for justice ministries in the church: "He has told you, O Mortal, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?"—(Micah 6:8)

Justice is the basic principle upon which God's creation has been established. It is an integral and uncompromising part in God's redemptive process, which assures wholeness. Compassion is characterized by sensitivity to God's justice and, therefore, sensitivity to God's people.

The gospel, through the example of Jesus Christ, conveys the message for Christians to be healers, peacemakers, and reconcilers when faced with brokenness, violence, and vengeance. Through love, caring and forgiveness, Jesus Christ is able to transform lives and restore dignity and purpose in those who are willing to abide by his principle.

Jesus was concerned about victims of crime. In the story of the Good Samaritan, Jesus explored the responsibility we have for those who have been victimized: "Which of these three, do you think, was neighbor to the man who fell into the hands of the robbers?" He said, 'The one who showed him mercy.' Jesus said to him, 'Go and do likewise'" (Luke 10:36-37).

Jesus was concerned about offenders, those who victimize others. He rejected vengeance and retribution as the model of justice to being used for relating to offenders: "You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, do not resist an evildoer. But if anyone strikes you on the right cheek, turn the other also; . . ." (Matthew 5:38ff). Jesus also indicated the responsibility Christians have for offenders: "I was sick and you took care of me. I was in prison and you visited me . . . Truly I tell you, just as you did it to one of the least of these . . . you did it to me" (Matthew 25:36, 40).

The apostle Paul believed that this biblical concept of justice which was reflected in the life of Christ was a primary mold of Christian community and responsibility: "All this is from God, who reconciled us to himself through Christ, and has given us the ministry of reconciliation; that is, in Christ God was reconciling the world to himself, not counting

their trespasses against them, and entrusting the message of reconciliation to us" (2 Corinthians 5:18-19).

While acknowledging that the biblical concept of justice focuses on the victim, the offender, and the community in the hope of restoring all to a sense of God's wholeness, it is also important to understand that our Methodist heritage is rich with examples of ministries carried out in jails and prisons. John Wesley (and others in his inner circle, including a brother, Charles) had a passion for those in prison. As early as 1778, the Methodist Conference adopted action making it the duty of every Methodist preacher to minister to those who were incarcerated. United Methodists have reaffirmed and expanded the mandate for prison ministry and reform in many different chapters of our denominational history. This is a part of our identity and call.

Criminal justice in our world rarely focuses on the biblical initiatives of restoration, mercy, wholeness, and shalom. Out of a desire to punish rather than restore, governments around the world have made retribution the heart of their criminal justice systems, believing that this will deter crime and violence. The statistics indicate the colossal failure of retributive justice. Therefore, we call on the church to embrace the biblical concept of restorative justice as a hopeful alternative to our present criminal justice codes. Restorative justice focuses on the victim, the offender, and the community in the desire to bring healing and wholeness to all.

II. Our Current Criminal Justice System: A Retributive Justice System

A. Victims

When crime is defined as the breaking of a law, the state (rather than the victim) is posited as the primary victim. Criminal justice, as we know it, focuses little or no attention on the needs of the victim. Legal proceedings inadvertently cause crime victims, including loved ones, to experience shock and a sense of helplessness which is further exacerbated by financial loss, spiritual or emotional trauma and, often, a lack of support and direction. Many victims feel frustrated because, in most cases, there seems to be little or no provision for them to be heard or to be notified of court proceedings. Victims, moreover, are seldom given the opportunity to meet with their offenders, face to face, in order to personally resolve their conflicts and to move toward healing, authentic reconciliation, and closure.

B. Offenders

Our criminal justice systems around the world have become increasingly based on retribution. Although it is often cloaked or justified in the language of accountability, this focus on punishment has resulted in massive increases in the number of incarcerated persons across the globe. In the United States, for example, the prison population doubled between 1990 and 2000, even as the crime rate decreased during this period. Because prisons are often places where dehumanizing conditions reinforce negative behavior, present criminal justice systems actually perpetuate a cycle of violence, crime, and incarceration, especially among those whose race, appearance, lifestyle, economic conditions, or beliefs differ from those in authority.

Incarceration is costly. In the United States, the cost of incarcerating someone for a year ranges between \$15,000 and \$30,000. Citizens are, therefore, paying billions of dollars for the support of systems that consistently engender a grossly dehumanizing experience characterized by the loss of freedom, the loss of contact with family and friends, the loss of self-determination, the loss of education, the loss of adequate medical care, and the loss of religious freedom and opportunities for spiritual growth.

C. Community

Criminal justice, as we know it, is retributive justice. It is consumed with blame and pain. It is a system of retribution that pays little or no consideration to the root causes of criminal behavior. It does not aim at solutions that will benefit the whole community by helping the community to repair the breach and often fails to come to terms with the social conditions that breed crime. Retributive justice permanently stigmatizes the offender for past actions; thereby creating such a sense of alienation from the community that social reintegration is virtually impossible. An offender who is held in exile away from the community cannot be held accountable to the community for his or her wrongdoing. An ex-offender who is ostracized and kept in exile after paying his or her debt to society is further violated. He or she is stripped of the opportunity to fully understand the consequences of the crime committed, to make restitution to the victim, to be reconciled with the community, or to heal and become a viable member of the community.

III. Our Vision of Restorative Justice

The gospel, through the example of Jesus Christ, conveys the message for Christians to be healers, peacemakers, and reconcilers when faced with brokenness, violence, and vengeance. The concept of restorative justice shows us specific ways by which to transform lives and effect healing.

Restorative justice asks: Who has been hurt? What are their needs? Whose obligations are they?

We label the person who has been hurt "the victim." But the victim is essentially a survivor who need not remain a victim for his or her entire life. The victim needs healing and emotional support. Victims (survivors) want people to recognize the trauma they have endured and how this trauma has affected their lives and the lives of their loved ones. Often survivors/victims need counseling, assistance, compensation, information, and services. Victims/survivors need to participate in their own healing. They may need reparations from the offender, or the victim may want to meet the offender and have input during the trial, sentencing, and rehabilitation process.

During the healing process, the victim often asks: Why me? What kind of person could do such a thing? Therefore, they may want to meet their offender to receive answers to such questions. Victims deserve to have these questions answered and to hear that the offender is truly sorry.

Victims suffer real pain; however, encouraging vengeance does not heal pain. The community needs to aid in the recovery of the victim. The community can help the victim by not ostracizing him or her, by learning how to accept him or her as a person and not just a victim.

Offenders are harmed as well. An offender is harmed by being labeled for life as an offender. One or more bad decision or action sometimes measures the total of an offender's life. Offenders are further harmed when they are denied the opportunity to make amends, to have respectful interaction with others, and to develop healthy social skills before, during, or after incarceration. Often young offenders do not have constructive guidance or a good role model in the community. Sometimes they need treatment for a disorder, life skills development, or mentoring with clear and achievable expectations of heightened self-awareness and accountability.

The victim and the community need to identify ways the offender can remedy hurt and harm caused. The offender needs to understand how his or her behavior affected others, and acknowledge that the behavior was indeed harmful. The offender needs to be

transformed into a contributing citizen of the community with a system of limits and support.

Crime hurts the community. When crime occurs, the neighborhood is disrupted; people become more isolated, fearful, distrusting, and uninterested in the community. Restorative justice helps to release the community members from their fear of crime; it empowers them with the knowledge that circumstances are not out of their control. The community needs to express pain and anger to the one or ones who caused the harm. However, we need to take one step further by helping in the healing process. We need to understand and address the causes of crime to prevent future occurrences. The victim, community, and offender (when possible) need to help others who face similar struggles.

Restorative justice opens the opportunities for personal and community transformation. This transformation cannot be mapped, planned, or put into a program or structure. Nevertheless, it can be encouraged and nurtured.

United Methodists have the will, the vision, the opportunity and the responsibility to be advocates for systemic change. We are called to minister with all parties affected by crime: the victim, the offender, and the community.

Expectations are high for the faith community to lead the way in practicing restorative justice. We need to own and advocate a vision for restorative justice. We need to be supportive to members of the congregation who are victims, offenders, and their families, and especially to those who work toward restoration in the criminal justice system.

The church must initiate models of restorative justice with service providers, policy makers, and law enforcement. We need to work in partnership with the criminal justice system to make it more open, accessible, humane, effective, rehabilitative, and less costly. We need to see our own capacity in community breakdowns and in the racism and classism present in the enactment and enforcement of criminal law. We must also advocate for social and economic justice to see the restoration and strengthening of our communities.

IV. A Call to Action

As United Methodists we are called to:

- repent of the sin we have committed that has fostered retributive justice;
- speak prophetically and consistently against dehumanization in the criminal justice system;
- establish restorative justice as the theological ground for ministries in The United Methodist Church and build bridges of collaboration and cooperation to advance the practice of restorative justice with boards and agencies within The United Methodist Church, with United Methodist and other Methodist communions around the globe, with other faith communities in the United States and worldwide, and with nonprofit organizations and/or governmental organizations; and
- intensify our redemptive ministries with those who work within criminal justice, victims of crime and their families, those who are incarcerated in jails and prisons and their families, and communities traumatized by crime.

ADOPTED 2004

Just Resolution/Restorative Justice Principles and Practices in the Complaint Procedure

From the *Book of Discipline* of the United Methodist Church 2004

¶362

Complaint Procedures

1. Ordination and membership in an annual conference in The United Methodist Church is a sacred trust. The qualifications and duties of local pastors, associate members, probationary members, and full members are set forth in The Book of Discipline of The United Methodist Church, and we believe they flow from the gospel as taught by Jesus the Christ and proclaimed by his apostles. Whenever a person in any of the above categories, including those on leaves of all types, honorable or administrative location, or retirement, is accused of violating this trust, the membership of his or her ministerial office shall be subject to review.

This review shall have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation and healing may be realized in the body of Christ. A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as possible and bringing healing to all the parties. In appropriate situations, processes seeking a just resolution as defined in 362.1(b) [sic] may be pursued. Special attention should be given to ensuring that cultural, racial, ethnic and gender contexts are valued throughout the process in terms of their understandings of fairness, justice and restoration.

...

b) Supervisory Response—The supervisory response is pastoral and administrative and shall be directed toward a just resolution among all parties. It is not part of any judicial process...

The supervisory response may include a process that seeks a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s), in reaching an agreement satisfactory to all parties. The bishop and other appropriate persons shall enter into a written agreement outlining the process, including any agreements on confidentiality. If resolution is achieved, a written statement of resolution, including any terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties.

A process seeking a just resolution may be begun at any time in the supervisory or complaint process. This is not an administrative or judicial proceeding.

...

e) Supervisory Follow-up and Healing—The bishop and cabinet shall provide a process for healing within the congregation, annual conference, or other context of ministry if there has been significant disruption by the complaint. This process may include sharing of information by the bishop and/or cabinet about the nature of the complaint without disclosing alleged facts, which may compromise any possible forthcoming administrative or judicial process. This may include a process of a just resolution, which addresses unresolved conflicts, support for victims, and reconciliation for parties involved.

¶2704

Referral of Original Complaint to Counsel for the Church, Who Shall Prepare Judicial Complaint and Supporting Material for Consideration by Committee on Investigation

...

3. When respondent is a diaconal minister

If a written complaint is made against a diaconal minister for any of the offenses in ¶ 2702.1, the supervisory response should be initiated and a just resolution process may be used. (See ¶ 362.1(b) for a discussion of a just resolution.)

4. When respondent is a layperson

In all cases, the pastor or district superintendent should take pastoral steps to resolve any grievances or complaints. Such steps may include a just resolution process. See ¶ 362.1(b) for a discussion of a just resolution.

¶413

Complaints Against Bishops

1. Episcopal leadership in The United Methodist Church shares with all other ordained persons in the sacred trust of their ordination. The ministry of bishops as set forth in The Book of Discipline of The United Methodist Church also flows from the gospel as taught by Jesus the Christ and proclaimed by his apostles (¶ 403). Whenever a bishop violates this trust or is unable to fulfill appropriate responsibilities, continuation in the episcopal office shall be subject to review. This review shall have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation, and healing may be realized.

...

3. c) The supervisory response may include a process seeking a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s) in reaching an agreement satisfactory to all parties. (See ¶ 362.1[b]). The appropriate persons, including the president of the College of Bishops, or the secretary if the complaint concerns the president, should enter into a written agreement outlining such process, including an agreement as to confidentiality. If resolution is achieved, a written statement of resolution, including terms and conditions, shall be signed by the parties and

the parties shall agree on any matters to be disclosed to third parties. Such written statement of resolution shall be given to the person in charge of that stage of the process for further action consistent with the agreement.

¶362

Complaint Procedure

...

2. Administrative Complaint—If the bishop determines that the complaint is based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform ministerial duties, he or she shall refer the complaint as an administrative complaint to the board of ordained ministry for its consideration of remedial or other action.

...

4. Disposition of Administrative Complaints—... The board alternately may refer the matter to the resident bishop as deemed appropriate for a process that seeks a just resolution (See ¶ 362.1b). The bishop shall institute such a process and may use the assistance of a trained, impartial third party facilitator(s) or mediator(s). Such referral will not constitute a dismissal. The appropriate persons, including a cabinet member and a representative of the board of ordained ministry, shall enter into a written agreement outlining the process including any agreement on confidentiality. The parties shall be told that any resolution remains subject to final approval by the board. If resolution is achieved, a written statement of resolution, including any terms and conditions, shall be signed by the parties and the parties shall agree on any matters disclosed to third parties. If the just resolution process results in resolution, the signed written statement of resolution shall be given to the board, and the board may dismiss the matter, retain oversight relating to any terms or conditions of the statement of resolution or take such other action as deemed appropriate. If the process does not result in resolution, it is returned to the board for further action. The board's response will be shared with the clergyperson, the bishop, the cabinet, and the person bringing the original complaint.

Section II. Investigations, Trials, and Appeals > Fair Process in Judicial Proceedings

¶2701

The judicial process shall have as its purpose a just resolution of judicial complaints, in the hope that God's work of justice, reconciliation and healing may be realized in the body of Jesus Christ. The following procedures are presented for the protection of the rights of individuals guaranteed under Section III, Article IV, of our Constitution and for the protection of the Church. The presumption of innocence shall be maintained until the conclusion of the trial process. The judicial proceedings and the rights set forth in this paragraph commence upon referral of a matter as a judicial complaint from counsel for the Church to the committee on investigation. The judicial process terminates at the end of any appeal or right of appeal. Special attention should be given to ensuring racial, ethnic, and gender diversity of boards, committees, and courts and the timely disposition of all matters.

A Just Resolution in Judicial Proceedings — Processes that seek a just resolution are encouraged at any time, including through the judicial proceedings. If a process seeking a just resolution is used, the appropriate persons, including the counsel for the Church and the counsel for the respondent, should enter into a written agreement outlining such

process, including any agreement on confidentiality. If resolution is achieved, a written statement of resolution, including terms and conditions, shall be signed by all participants. The parties shall agree on any matters to be disclosed to third parties. See ¶ 362.1(b) for discussion of just resolution.

If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the disciplinary disclosures required for possible readmission.

...

8. Healing—As a part of the judicial process, the bishop and cabinet, in consultation with the presiding officer of the pending hearing, trial, or appellate body then sitting, shall provide for healing if there has been significant disruption to the congregation, the annual conference, or the context of ministry by the judicial matter. This may include a just resolution process for unresolved conflicts, support for victims, and reconciliation for all who are involved. This process may also include the sharing of information by the bishop or a cabinet member about the nature of the complaint without disclosing alleged facts underlying the complaint that might compromise the judicial process.

¶2706

Committee on Investigation—Procedures

...

5. Bill of Charges and Specifications, Deliberations, Vote, and Referral—

...

c) Findings other than reasonable grounds by committee or other actions

(3) Upon recommendation of the counsel for the Church and the counsel for the respondent, the committee may refer the matter to the resident bishop as deemed appropriate for a process seeking a just resolution. The bishop shall institute such a process and may use the assistance of a trained, impartial third party facilitator(s) or mediator(s). Such referral will not constitute a dismissal or double jeopardy under ¶ 2701.5. The appropriate persons, including the counsel for the Church and counsel for the respondent, should enter into a written agreement outlining the process, including any agreements on confidentiality. If resolution is achieved, a written statement, affirming such resolution, including any terms and conditions, shall be signed by the parties and they shall agree on any matters to be disclosed to third parties. If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the Disciplinary disclosures required for readmission. Such a written statement shall be given to the bishop for further action consistent with the agreement. If the process does not result in resolution, the matter shall be returned to the committee.

TRIALS

¶2707

Fundamental Principles for Trials

Church trials are to be regarded as an expedient of last resort. Only after every reasonable effort has been made to correct any wrong and adjust any existing difficulty should steps be taken to institute a trial. No such trial as herein provided shall be

construed to deprive the respondent or the Church of legal civil rights, except to the extent that immunity is provided as in ¶ 2701.9. All trials shall be conducted according to The Book of Discipline in a consistent Christian manner by a properly constituted court after due investigation.

¶2708

General Organization and Pre-Trial Procedures

...

3. Pre-Trial Motions and Referrals—...The presiding officer may refer the matter as deemed appropriate for a process seeking a just resolution to the resident bishop upon consultation with the counsel for the Church and counsel for the respondent. The bishop shall institute such a process and may use the assistance of a trained, impartial third party facilitator(s) or mediator(s). Such referral will not constitute a dismissal or double jeopardy under ¶ 2701.5. If a process seeking a just resolution is used, the appropriate persons, including the counsel for the Church and counsel for the respondent, should enter into a written agreement outlining such process, including any agreement on confidentiality. If resolution is achieved, a written statement, affirming such resolution, and any terms and condition, shall be signed by the parties and the parties on all matters to be disclosed to third parties. Such a written statement shall be given to the presiding officer and the presiding officer shall take action consistent with the agreement. If no resolution results, the matter is returned to the presiding officer for further action.

Some Forms and Checklists

A. Facilitator's Checklist 1 (Before / After the Circle)

1. General considerations
 - a. Describe this as a dialogue or facilitated conversation, not mediation or a settlement conference—a process for mutual help to facilitate accountability and healing.
 - b. Recognize issues of power and manipulation.
 - c. Ensuring that cultural, racial, ethnic and gender contexts are valued.
 - d. Remember that the goal of the complaint procedure is just resolution with the hope of justice, reconciliation and healing in the Body of Christ, recognizing that reconciliation and healing are gifts, but that we can provide the sacred space and time where reconciliation and healing might be experienced.
 - e. Keep in mind the principles of just resolution: repairing harm to people and communities; achieving real accountability by making things right in so far as possible; and bringing healing to all parties.
 - f. Protect the right to trial.
2. Exploration with each of the parties of the possibilities for a facilitated conversation
 - a. Help each party understand the consensus nature of the process.
 - b. Help each party understand the opportunities afforded by a facilitated conversation.
 - c. Describe your role in the process.
 - d. Explain confidentiality.
 - e. Determine their willingness/ability to participate in the process.
 - f. Discuss their hopes for the outcome of the process.
 - g. Ask for their thoughts about how this conversation can be most constructive.
 - h. Begin work on a relational covenant.

- i. Begin work on designing and explaining the process.
 - j. Determine whom they would like to participate.
3. Exploration with the bishop and board of ordained ministry, if involved, to see if they are willing to accept an agreed resolution.
 4. Conversation with all counsel after the parties have agreed individually to the facilitated conversation
 - a. Describe your role and the process.
 - b. Agree upon relational covenant, including confidentiality.
 - c. Agree upon participants—spouses, support people, etc.
 - d. Set date—generally allow at least two days for the process.
 - e. Affirm their voluntary participation.
 5. Work out a formal written agreement for the process to be signed by all parties. Have all the necessary parties sign the written agreement, including the bishop, and the chairperson of the board of ordained ministry, if the board is involved.

-
1. After the circle, do follow-up as agreed.
 2. Evaluate the process.

B. Facilitator's Checklist 2 (The Circle Process)

1. Arrive early; make the space/seating: inviting, comfortable, confidential and safe.
2. Arrange chairs in a circle as small as possible—no empty spaces (can add chairs)
3. Greet all the parties so that they feel welcome.
4. Seat the participants generally where they feel comfortable. There might be a seating arrangement that will assist the process
5. Invite the participants to introduce themselves
6. Include the following in your introductory comments:
 - a. Appreciation for their participation
 - b. Description of your role: to facilitate conversation, not to judge or give answers
 - c. Description of process and talking piece
 - d. Prepare those who like to control or dominate a process for an initial frustration of not always having the talking piece. Name the frustration and let them know that the talking piece is going to help them to listen.
 - e. Prepare all for intense feelings and hard moments. This is the only way to work through conflict to a healing place.
 - f. Share mantra: "Trust God, Trust Self, Trust the Wisdom of Others and Trust the Process"
7. Do an opening ritual
8. Affirm relational covenants: further development and affirmation by consensus
9. Ask first question: a powerful question that, for example, gets at their hopes for the circle
10. Summarize after the talking piece returns to you; include areas of mutual agreement and consensus and recognizing feelings
11. Ask second question: a powerful question that opens up storytelling
12. Summarize; list issues and mutual concerns and areas of agreement; determine the next question and how the talking piece will be used (passed, held, etc.)
13. Build off their experience of grace-filled moments
14. Determine interests and needs
15. Work on meeting interests and needs by developing and agreeing on options
16. Where there is harm, determine what is needed for addressing the harm and healing
17. Summarize at the end what was accomplished and what was not accomplished

18. Clarify agreement: If possible, agree to resolution of the charges that were brought; you may include “This agreement constitutes a full and final settlement between the parties of all claims and charges.”
19. Express appreciation for participation in the process.
20. Do a closing ritual.

C. Agreement for Facilitated Conversation

All parties to these conversations understand and agree as follows:

- This is a nonjudicial process. It is a facilitated conversation between all the parties trying to seek a just and healing resolution.
- The facilitator's role is to manage the process of the conversation. The facilitator is not a decision maker. _____ is an impartial participant and does not represent any party.
- In order to promote frank communication and resolution, personal information disclosed during this process will be kept confidential and is privileged from disclosure in any proceeding, unless it is agreed to do otherwise during our time together. No party shall subpoena the facilitator, his or her documents or notes in any proceeding. The only exception to confidentiality is the threat of serious imminent harm to someone. We recognize that it would be good for all the participants to reach a place where the participants can be as transparent as they can be to the larger community of the church, but this transparency and what is disclosed shall only happen by agreement.
- The facilitator, at times, might need to meet separately with the parties in order to further the conversation and to attempt to reach resolution. The parties agree that such separate meetings can and should take place and waive any rights, if such exist, to be present at such separate meetings.
- The following persons will participate:
- The parties have agreed to the relational covenant, which is attached.
- To facilitate the conversation, we will use a circle process of accountability and healing, using the Bible as a talking piece.
- All decisions shall be made by consensus.
- The bishop and the board of ordained ministry agree to act consistently with the agreed resolution, if any.
- If no resolution is reached, the matter shall be returned to _____.
- The participants will meet at _____ on the following dates _____.

D. Relational Covenant for a Circle Process

(This is a starting point. Each circle needs to develop its own covenant.)

- What is shared while in circle stays in circle. Personal information that is shared in circle is kept confidential except when safety would be compromised.
- Speak with respect:
 - Speak only when you have the talking piece.
 - Speak from the heart.
 - Speak only for yourself.
 - Be specific.
 - Speak in a way that encourages dialogue.
 - Be brief and to the point.
- Listen with respect:
 - Listen for understanding.
 - Be open to be transformed.
- Stay in circle: Respect for the circle calls upon people to stay in circle while the circle works to find resolution to the issues raised.



Restorative Justice: The Concept

by Howard Zehr

A revolution is occurring in criminal justice. A quiet, grassroots, seemingly unobtrusive, but truly revolutionary movement is changing the nature, the very fabric of our work."

These are the opening words in a recent publication of the National Institute of Corrections (NIC) characterizing the combined community and restorative justice movements. Author Eduardo Barajas Jr., a program specialist for NIC, goes on to observe that the changes extend beyond most reforms in the history of criminal justice: "What is occurring now is more than innovative, it is truly inventive . . . a 'paradigm shift.'"

The restorative justice movement has come a long way since probation officer Mark Yantzi and co-worker Dave Worth first pushed two shaking offenders toward their victims' homes in Elmira, Ontario, in 1974. Who could have imagined, when we began our version of victim/offender mediation — the Victim Offender Reconciliation Program, or VORP — in Elkhart, Ind., several years later that we were at the vanguard of a movement with the potential to revolutionize justice?

Crime as Harm

As Barajas' observation above implies, restorative justice is not a matter of adding some new programs or tinkering with old ones. Instead, it involves a reorientation of how we think about crime and justice.

At a recent consultation of restorative justice and rehabilitation specialists sponsored by the NIC Academy, participants agreed that two ideas were fundamental: restorative justice is harm-focused, and it promotes the engagement of an enlarged set of stakeholders. Most of restorative justice can be seen as following from these two concepts.

Restorative justice views crime, first of all, as harm done to people and communities. Our legal system, with its focus on rules and laws, often loses sight of this reality; consequently, it makes victims, at best, a secondary concern of justice. A harm focus, however, implies a central concern for victims' needs and roles. Restorative justice begins with a concern for victims and how to meet their needs, for repairing the harm as much as possible, both concretely and symbolically.

A focus on harm also implies an emphasis on offender accountability and responsibility — in concrete, not abstract, terms. Too often we have thought of accountability as punishment — pain administered to offenders for the pain they have caused. Unfortunately, this often is irrelevant or even counterproductive to real accountability. Little in the justice process encourages offenders to understand the consequences of

their actions or to empathize with victims. On the contrary, the adversarial game requires offenders to look out for themselves. Offenders are discouraged from acknowledging their responsibility and are given little opportunity to act on this responsibility in concrete ways. The “neutralizing strategies” — the stereotypes and rationalizations that offenders use to distance themselves from the people they hurt — are never challenged. So the sense of alienation from society experienced by many offenders, the feeling that they themselves are victims, is only heightened by the legal process and the prison experience.

If crime is essentially about harm, accountability means being encouraged to understand that harm, to begin to comprehend the consequences of one's behavior. Moreover, it means taking responsibility to make things right insofar as possible, both concretely and symbolically. As our ancestors knew well, wrong creates obligations; taking responsibility for those obligations is the beginning of genuine accountability.

The principle of engagement suggests that the primary parties affected by crime — victims, offenders, members of the community — are given significant roles in the justice process. Indeed, they need to be given information about each other and to be involved in deciding what justice requires in this situation. In some cases, this may mean actual dialogue between these parties, as happens in victim/offender mediation or family group conferences, to come to a consensus about what should be done. In others, it may involve indirect exchange or the use of surrogates. In any eventuality, the principle of engagement implies involvement of an enlarged circle of parties as compared to the traditional justice process.

At the risk of oversimplifying, the restorative justice and the traditional justice approach — retributive justice — might be summarized as follows:

Retributive Justice

Crime

is a violation of the law, and the state is the victim.

The aim of justice

is to establish blame (guilt) and administer pain (punishment).

The process of Justice

is a conflict between adversaries in which the offender is pitted against state rules, intentions outweigh outcomes and one side wins while the other loses.

Restorative Justice

Crime

is a violation or harm to people and relationships.

The aim of justice

is to identify obligations, to meet needs and to promote healing.

The process of justice

involves victims, offenders and the community in an effort to identify obligations and solutions, maximizing the exchange of information (dialogue, mutual agreement) between them.

To put restorative justice in its simplest form: crime violates people and violations create obligations. Justice should involve victims, offenders and community members in a search to identify needs and obligations, so as to promote healing among the parties involved.

Widespread Interest

Today's interest in restorative justice at the national level follows several decades of innovation and experimentation at the community and state levels. Victim/offender mediation programs have sprung up in at least 300 U.S. and Canadian communities. The Minnesota Department of Corrections has on staff a restorative justice planner who is working innovatively to help communities in that state develop new restorative approaches. Vermont has rethought the concept of probation, designing a "reparative probation" system for nonviolent offenders. Native American and Canadian communities are finding ways to put into operation some of their traditional approaches and values; these approaches also are being seen as part of a restorative justice framework. In academic and consulting fields, too, numerous restorative justice institutes and programs are emerging.

This interest in restorative justice is not limited to North America. Hundreds of victim/offender mediation programs have developed in European countries; Germany, Finland and England, for example, have many such programs. South Africa is writing a new juvenile justice code incorporating restorative principles. In New Zealand, restorative justice has served to guide and help shape the family group conference approach which is now the basis of that country's entire juvenile justice system.

Deciphering Terms

"Restorative justice" is a term that quickly connects for many people, and therein lies both its strength and its weakness. Many professionals, as well as lay people, are frustrated with justice as it is commonly practiced and are immediately attracted to the idea of restoration. Restorative justice intuitively suggests a reparative, person-centered, common-sense approach. For many of us, it reflects values with which we were raised. As a result, the term has been widely embraced and used in many contexts.

But what do we mean by "restorative justice?" Will the term be used simply as a new way to name and justify the same old programs and goals? Many programs can be compatible with restorative justice if they are reshaped to fully account for restorative principles. If they are not reshaped as part of a larger restorative "lens," however, at best they will be more of the same. At worst, they may become new ways to control and punish.

All this is not to say that there is such a thing as "pure" restorative or retributive justice. Rather, justice should be seen as a continuum between two ideal types. On the one end is our Western legal system. Its strengths — such as the encouragement of human rights — are substantial. Yet it has important weaknesses. Criminal justice tends to be punitive, conflictual, impersonal and state-centered. It encourages the denial of responsibility and empathy on the part of offenders.

It leaves victims out, ignoring their needs. Instead of discouraging wrongdoing, it often encourages it. It exacerbates rather than heals wounds.

At the other end is the restorative alternative. Victims' needs and rights are central, not peripheral. Offenders are encouraged to understand the harm they have caused and to take responsibility for it. Dialogue — direct or indirect — is encouraged and communities play important roles. Restorative justice assumes that justice can and should promote healing, both individual and societal.

Criminal justice usually is not purely retributive. On the other hand, we rarely will achieve justice that is fully restorative. A realistic goal is to move as far as we can toward a process that puts victims, offenders and members of the affected community — and their respective needs and roles — at the center of our search for a justice that heals.

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Howard Zehr is professor of sociology and restorative justice at Eastern Mennonite University and director of the Mennonite Central Committee. US. Office on Crime and Justice. Copies of the "restorative justice signposts" bookmark (and a list of other criminal justice resources) are available without charge from Literature Resources, Mennonite Central Committee, 21 S. 12th. Akron, PA 17501; (717) 859-1151; e-mail: see@mcc.org.

RESTORATIVE JUSTICE SIGNPOSTS

We are working toward restorative justice when we. . .

- Focus on the harms of wrongdoing more than the rules that have been broken;
- Show equal concern and commitment to victims and offenders, involving both in the process of justice;
- Work toward the restoration of victims, empowering them and responding to their needs as they see them;
- Support offenders while encouraging them to understand, accept and carry out their obligations;
- Recognize that while obligations may be difficult for offenders, they should not be intended as harms and they must be achievable;
- Provide opportunities for dialogue, direct or indirect, between victims and offenders as appropriate;
- Involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to community bases of crime;
- Encourage collaboration and reintegration, rather than coercion and isolation;
- Give attention to the unintended consequences of our actions and programs; and
- Show respect to all parties, including victims, offenders and justice colleagues.

—Harry Mika and Howard Zehr



Engage Conflict Well

PREPARE YOURSELF FOR CONFLICT TRANSFORMATION

CREATE A WELL, NOT A WALL

Create in yourself an openness to conflict as part of God's creation, an opportunity for growth and revelation.

ALLOW THE WELL TO FILL

Open your heart and mind to God's love, as incarnate in Jesus, reducing your anxiety and drawing you toward reconciliation and being a reconciler.

BE WELL PREPARED

Be prepared to listen for understanding, speak the truth in love, use your imagination, and be forgiving.

BE WELL

Accept forgiveness and healing so that you can be a mediating presence in the conflict.

ENGAGE OTHERS IN CONFLICT TRANSFORMATION

CREATE A COMMON WELL TOGETHER

Together analyze the conflict and design a collaborative process where everyone can participate and be responsible.

SHARE THE WELL

Create a relational covenant that clarifies and affirms how everyone will be treated in the process.

DRINK DEEPLY TOGETHER

Elicit stories of peak experiences, grace-filled moments and dreams of a preferred future.

LET IT FLOW

Move from positions to interests and needs, generating options to reach consensus. Move from retribution to restoration: healing the harm, affirming accountability and creating a new relationship.

BE WELL TOGETHER

Celebrate each step toward healing and communion. Be prayerful, persistent and patient.

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