



FORUM

In Pursuit of Paradigm: A Theory of Restorative Justice

PAUL MCCOLD AND TED WACHTEL
INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES

Paper presented at the XIII World Congress of Criminology, 10-15 August 2003, Rio de Janeiro, Brazil.

Restorative justice is a new way of looking at criminal justice that focuses on repairing the harm done to people and relationships rather than on punishing offenders. Originating in the 1970s as mediation between victims and offenders, in the 1990s restorative justice broadened to include communities of care as well, with victims' and offenders' families and friends participating in collaborative processes called "conferences" and "circles." This new focus on healing and the related empowerment of those affected by a crime seems to have great potential for enhancing social cohesion in our increasingly disconnected societies. Restorative justice and its emerging practices constitute a promising new area of study for social science.

In this paper, we propose a conceptual theory of restorative justice so that social scientists may test these theoretical concepts and their validity in explaining and predicting the effects of restorative justice practices. The foundational postulate of restorative justice is that crime harms people and relationships and that justice requires the healing of the harm as much as possible. Out of this basic premise arise key questions: who is harmed, what are their needs and how can those needs be met?

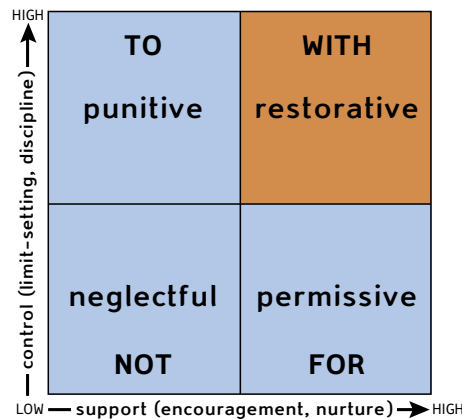


Figure 1. Social Discipline Window

A CONCEPTUAL THEORY OF RESTORATIVE JUSTICE

Restorative justice is a collaborative process involving those most directly affected by a crime, called the "primary stakeholders," in determining how best to repair the harm caused by the offense. But who are the primary stakeholders in restorative justice and how shall they be involved in the search for justice? Our proposed theory of restorative justice has three distinct but related conceptual structures: the Social Discipline Window (Wachtel, 1997, 2000; Wachtel & McCold, 2000), Stakeholder Roles (McCold, 1996, 2000) and the Restorative Practices Typology (McCold, 2000; McCold & Wachtel, 2002). Each of these, in turn, explains the how, what and who of restorative justice theory.

Social Discipline Window

Everyone with an authority role in society faces choices in deciding how to maintain social discipline: parents raising children, teachers in classrooms, employers supervising employees or justice professionals responding to criminal offences. Until recently, Western societies have relied on punishment, usually perceived as the only effective way to discipline those who misbehave or commit crimes.

Punishment and other choices are illustrated by the Social Discipline Window (Figure 1), which is created by combining two continuums: "control," exercising restraint or directing influence over others, and "support," nurturing, encouraging or assisting others. For simplicity, the combinations from each of the two continuums are limited to "high" and "low." Clear limit-setting and diligent enforcement of behavioral standards characterize high social control. Vague or weak behavioral standards and lax or nonexistent regulation of behavior characterize low social control. Active assistance and concern for well-being characterize high social support. Lack of encouragement and minimal provision for physical and emotional needs characterize low social support. By combining a high or low level of control with a high or low level of support the Social Discipline Window defines four approaches to the

regulation of behavior: *punitive, permissive, neglectful* and *restorative*.

The punitive approach, with high control and low support, is also called “retributive.” It tends to stigmatize people, indelibly marking them with a negative label. The permissive approach, with low control and high support, is also called “rehabilitative” and tends to protect people from experiencing the consequences of their wrongdoing. Low control and low support are simply neglectful, an approach characterized by indifference and passivity.

The restorative approach, with high control and high support, confronts and disapproves of wrongdoing while affirming the intrinsic worth of the offender. The essence of restorative justice is collaborative problem-solving. Restorative practices provide an opportunity for those who have been most affected by an incident to come together to share their feelings, describe how they were affected and develop a plan to repair the harm done or prevent a reoccurrence. The restorative approach is reintegrative, allowing the offender to make amends and shed the offender label.

Four words serve as a shorthand to distinguish the four approaches: NOT, FOR, TO and WITH. If neglectful, one would NOT do anything in response to offending behavior. If permissive, one would do everything FOR the offender, asking little in return and often making excuses for the wrongdoing. If punitive, one would respond by doing things TO the offender, admonishing and punishing, but asking little thoughtful or active involvement of the offender. If restorative, one engages WITH the offender and others, encouraging active and thoughtful involvement from the offender and inviting all others affected by the offense to participate directly in the process of healing and accountability. Cooperative engagement is a critical element of restorative justice.

Stakeholder Roles

The second structure of our theory of restorative justice, the Stakeholder Roles

	Harm	Needs	Responses
PRIMARY STAKEHOLDERS			
Victim(s)	direct	specific	active
Offender(s)	direct	specific	active
Families+	direct	specific	active
SECONDARY STAKEHOLDERS			
Neighbors+	vicarious	aggregate	supportive
Officials+	vicarious	aggregate	supportive

Figure 2. Stakeholder Roles

(Figure 2), relates the harm caused by the offense to the specific needs of each stakeholder created by that offense, and to the restorative responses required to meet those needs. This causal structure distinguishes the interests of the primary stakeholders—those most affected by a specific offense—from those indirectly affected.

The primary stakeholders are, principally, the victims and offenders, because they are the most directly affected. But those who have a significant emotional connection with a victim or offender, such as parents, spouses, siblings, friends, teachers or co-workers, are also directly affected. They constitute the victims’ and offenders’ communities of care. The harm done, needs created and the restorative responses of primary stakeholders are specific to the particular offense and require active participation to achieve the greatest healing.

The secondary stakeholders include those who live nearby or those who belong to educational, religious, social or business organizations whose area of responsibility or participation includes the place or people affected by the incident. The whole of society, as represented by government officials, is also a secondary stakeholder. The harm to both sets of secondary stakeholders is vicarious and impersonal; their needs are aggregate, not specific, and their most restorative

response is to support restorative processes in general.

All primary stakeholders need an opportunity to express their feelings and have a say in how to repair the harm. Victims are harmed by the loss of control they experience as a result of the offense. They need to regain a sense of personal power. This empowerment is what transforms victims into survivors. Offenders damage their relationships with their own communities of care by betraying trust. To regain that trust, they need to be empowered to take responsibility for their wrongdoing. Their communities of care meet their needs by ensuring that something is done about the incident, that its wrongfulness is acknowledged, that constructive steps are taken to prevent further offending and that victims and offenders are reintegrated into their respective communities.

The secondary stakeholders, those who are not emotionally connected to the specific victims and offenders, must not steal the conflict from those to whom it belongs by interfering with the opportunity for healing and reconciliation. The most restorative response for the secondary stakeholders is to support and facilitate processes in which the primary stakeholders determine for themselves the outcome of the case. Such processes will reintegrate both victims and offenders and simultaneously strengthen civil

Types and Degrees of Restorative Justice Practice

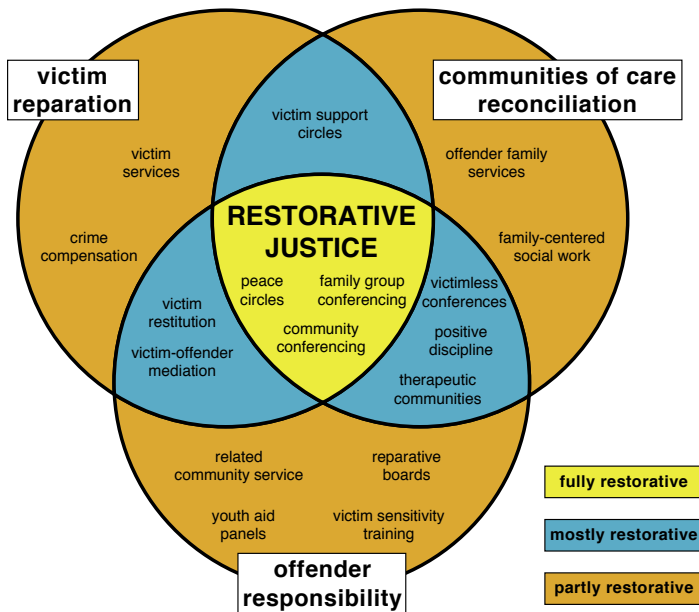


Figure 3. Restorative Practices Typology

society by enhancing social cohesion and empowering and improving the citizenry's ability to solve its own problems.

Restorative Practices Typology

Restorative justice is a process involving the primary stakeholders in determining how best to repair the harm done by an offense. The three primary stakeholders in restorative justice are victims, offenders and their communities of care, whose needs are, respectively, getting reparation, taking responsibility and achieving reconciliation. The degree to which all three are involved in meaningful emotional exchange and decision-making is the degree to which any form of social discipline can be termed fully "restorative." These three sets of primary stakeholders are represented by the three overlapping circles in Figure 3. The very process of interacting is critical to meeting stakeholders' emotional needs. The emotional exchange necessary for meeting the needs of all those directly affected cannot occur with only one set of stakeholders participating. The most restorative processes involve the active participation of all three sets of primary stakeholders.

primary stakeholders are actively involved, such as in conferences or circles, is a process "fully restorative."

CONCLUSION

Crimes harm people and relationships. Justice requires that harm be repaired as much as possible. Restorative justice is not done because it is deserved, but because it is needed. Restorative justice is ideally achieved through a cooperative process involving all the primary stakeholders in determining how best to repair the harm done by the offense.

The conceptual theory presented here provides the framework for a comprehensive answer to the how, what and who of the restorative justice paradigm. The Social Discipline Window describes how conflict can be transformed into cooperation. The Stakeholder Roles structure demonstrates that repair of the emotional and relational harm necessitates the empowerment of the primary stakeholders, those most directly affected. The Restorative Practices Typology demonstrates why participation of the victims, offenders and their communities of care are all

required to repair the harm caused by the criminal act.

A criminal justice system that merely doles out punishment to offenders and sidelines victims does not address the emotional or relational needs of those who have been affected by crime. In a world where people feel increasingly alienated, restorative justice restores and builds positive feelings and relationships. A restorative criminal justice system aims not just to reduce crime, but to reduce the impact of crime as well. The capacity of restorative justice to address these emotional and relational needs and engage the citizenry in doing so is the key to achieving and sustaining a healthy civil society. ☉

REFERENCES

- McCold, P. (1996). Restorative justice and the role of community. In B. Galaway & J. Hudson (Eds.), *Restorative Justice: International Perspectives* (pp. 85-102). Monsey, NY: Criminal Justice Press.
- McCold, P. (2000). Toward a mid-range theory of restorative criminal justice: A reply to the Maximalist model. *Contemporary Justice Review*, 3(4), 357-414.
- McCold, P., & Wachtel, T. (2002). Restorative justice theory validation. In E. Weitekamp and H-J. Kerner (Eds.), *Restorative Justice: Theoretical Foundations* (pp. 110-142). Devon, UK: Willan Publishing.
- Wachtel, T. (1997). *Real Justice: How to Revolutionize our Response to Wrongdoing*. Pipersville, PA: Piper's Press.
- Wachtel, T. (2000). Restorative practices with high-risk youth. In G. Burford & J. Hudson (Eds.), *Family Group Conferencing: New Directions in Community Centered Child & Family Practice* (pp. 86-92). Hawthorne, NY: Aldine de Gruyter.
- Wachtel, T., & McCold, P. (2000). Restorative justice in everyday life. In J. Braithwaite and H. Strang (Eds.), *Restorative Justice in Civil Society* (pp. 117-125). New York: Cambridge University Press.