

# Restorative justice: process and outcomes



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**Should restorative justice be defined as a process or a set of outcomes?**

Restorative Justice rather than relying on judges to sentence offenders, places great emphasis on the importance of reparation and gives a role to the victim of the crime and the wider community. (Newburn, T 2013: 768)

When it comes to the debate of how restorative justice should be defined, either as a process or a set of outcomes it could be said that while they both have legitimacy, restorative justice can only be defined as one or the other. There is a great disagreement among critics on whether the emphasis should be placed on the outcome or the process. A definition of restorative justice that highlights the importance of both restorative processes and outcomes is, 'restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders.' (Van Ness and Heetderks Strong, 2006: 43)

Marshall (1996: 37) who's definition is most frequently quoted said that 'restorative justice is a process whereby parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.' Within this definition 3 core elements of restorative justice are identified. Zehr (2003) stated that the first element is that harm must be healed, restorative justice views crime as harm done to people and communities. It seeks to repair the harm caused by offenders. The second being that violations create obligations, offenders must understand their wrongdoing and restorative justice wants offenders to accept responsibility for their actions. The third element being engagement or participation, relationships are the focus, it is the crime that violates these

relationships and restorative justice needs to repair them. The main aim is to mend, restore and build.

Dignan (2005, cited in Newburn 2013: 771) suggests that Marshall's definition is of very little value for several different reasons, one being it characterises restorative justice as a particular type of process but fails to focus on outcomes, in doing so raises the possibility that undue attention will be paid to questions of equality and fairness. It also fails to consider outcomes by diverting attention away from those cases where restorative justice processes may be inappropriate but where its values and aims may still apply. 'the process based definition of restorative justice is at best incomplete, because it has nothing to say on the subject of restorative outcomes' (Walgrave, 2002: 174) this is because there is no direct involvement from the victim needed therefore there is nothing restorative it is just an outcome. Restorative outcomes may include, restitution, reparation and reintegration. It can be argued that a restorative process may not necessarily result in a restorative outcome. For example, within restorative conferencing where a direct victim is not present or participating, decisions on outcomes may be left to state regulators. Walgrave argues for an outcome-based definition of restorative justice for example as "an option for doing justice in the aftermath of crime that focuses on repairing the harm and suffering caused by the crime rather than preserving an abstract legal order." (Newburn, 2013: 772)

The victim is seen to be a central stakeholder, who holds an important role in shaping both the process and outcomes of restorative justice. Victims want information about the processing and outcome of their cases, answers to

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their questions, empowerment and vindication. The process of restorative justice is to meet the needs of crime victims that are not being adequately met by the criminal justice system. Victims may feel ignored or neglected by the justice process. Victims need answers to questions they have about the offense, why has this happened to them? Victims often feel like control has been taken away from them by the offense. Involvement in their own case can be an important way to return a sense of empowerment to them.

Restitution by offenders is often important to victims this may come in the form of an apology. (Zehr 2003: 18-20). However there are potential dangers when it comes to the victim they may simply become a mere prop used in a process rather than being an empowered participant.

The community is another stakeholder that is considered to be vital to restorative justice. There is a risk of domination, authoritarianism and vigilantism. In N Ireland a restorative justice process was set up in order to stop paramilitary punishments that were being carried out. Braithwaite (1996 as cited in Newburn, 2013) said ' there are 3 levels at which it is possible to conceptualise the process of restoring community through restorative justice practices.' At a micro level it involves those who are close to both the victim and the offender. At a meso level restorative justice helps to foster a sense of community within institutions such as schools, churches and so on. Lastly at a macro level it helps to focus attention on designing institutions of deliberate democracy. ' Communities need from justice, attention to their concerns as victims. Opportunities to build a sense of community and mutual accountability. Encouragement to take on their obligations for the welfare of their members, including victims and offenders,

and for the conditions that promote healthy communities. Community also want assurance of not to repeat the same and preventive actions.' (Zehr, 2003: 22)

The offender is the third stakeholder that is consider to be of value in the restorative justice process. offenders need the opportunity to take responsibility for the harm caused by their behaviour towards victims. Offenders need to take away from the restorative justice process, ' accountability that addresses the resulting harms, encourages empathy and responsibility, and transforms shame. Encouragement to personal transformation, including healing for the harms that contributed to offending behaviour, opportunities for treatment for addictions and/or other problems, and enhancement of personal competencies. Also encouragement and support for integration into the community' (Zehr, 2003: 21). Restorative justice aims to help prevent the offender from reoffending again in the future. Being able to face their victims in a restorative justice process provides a chance to also develop empathy and remorse while also having input into the process. Offenders can complete this process threw community service or by issuing an apology to the victim.

Crawford and Newburn (2003, cited in Newburn 2013) stated that in order for there to be a restorative process, stakeholders involved rely on four forms of restorative justice practice. These practices are victim-offender mediation, conferencing, sentencing circles and community boards. This group of practices has in common a process where the offender, victim and other members of the community meet together to consider the impact of a crime

or harm on victims and communities and try to develop a plan to repair this harm that meets the needs of those affected.

In Northern Ireland, diversionary youth conferences are used as a form of restorative justice. If the offender admits their guilt, then the Public Prosecution Service decides that there must be a conference involving the victim and the offender. Participation in conferences are voluntary. The offender is given the opportunity to discuss the offence and what he/she is prepared to do to repair the harm caused to the victim. The victim is given the opportunity to tell the offender of the impact the offence has had and what they feel should be done to repair the harm. This may for example include an apology or reparation to the victim or community. (Public Prosecution Service N. I. 2008). Youth Conferences provide an effective, fair, proportionate and restorative response to those offending which provides satisfactory outcomes for victims. The aims of a youth conference are about repairing relationships, making amends and to be able to reintegrate back into society.

To conclude it could be argued that when it comes to defining restorative justice as a process or outcome it can cause disagreement amongst critics. Gavrielides (2007) stated that those who agree with a process-based definition, tend to limit the scope of restorative programmes to cases that are considered appropriate for a restorative justice intervention or to those in which both parties are willing to participate and abide by the ground rules. However, restorative programmes may appear in different shapes and forms. By adhering, therefore, to a definition that understands restorative justice as a process, we risk excluding the ‘mostly restorative’ and ‘partially

restorative' programmes. And this is only one of the limitations of this approach. On the other hand, those who agree with the definition of outcome-based definitions risk stretching the concept to include programmes for example community service, which although may in the end result with restorative outcomes, they might not be carried out respecting central restorative rules.