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Restorative Justice primary focus on people, not procedures

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RJ Principles

Wow!! Yesterday I had the privilege of facilitating a VORP case meeting. Again I was amazed at what happens. I have seen it happen so often but each time it is a wonderful miracle. I also know that it doesn't happen on its own. It takes a structure like VORP to train mediators, arrange for cases, manage the cases, etc. And I know that VORP does not exist without a large number of people like you who provide the financial support to make it possible.

Thanks to your support I have had the privilege of working with and studying restoration and reconciliation as a means of violence reduction, public safety, and community building since 1983.

In May, 1996, at the National Conference on Peacemaking and Conflict Resolution (NCPCR) in Minneapolis, Minnesota, I made two presentations. One focused on the criminal justice system (Principles of Restorative Justice and Continuums for Evaluation) and the other on schools (Principles: Discipline that Restores).

What I have found is that the discipline systems in schools look and operate in ways that are very similar to the criminal justice system. The schools have provided a much smaller setting in which to work at a deliberate interaction between theory and practice. What has emerged are some principles and practices that work together to reduce violence and increase community. Steve Gonzalez, principal, reported that "in the year following limited attempts to put into practice the Principles of Discipline that Restores, formal home suspensions dropped by 31%, referrals to the principal dropped substantially, and safety and general overall environment improved.

What I plan to do for the next several newsletters is to lay out the Restorative Justice Principles. It appears that if we designed our systems for responding to misbehavior based on these principles, violence would be reduced and overall safety and cooperation would be increased. I would appreciate your comments.

If you would like to receive a copy of either set of principles as they were presented at the NCPCR, please send your request along with your VORP donation.

PRINCIPLES #1: Crime is primarily an offense against human relationships and secondarily a violation of a law (since laws are written to protect safety and fairness in human relationships).

Laws are important. They provide a context and guide. However, it would not be possible to write enough laws to cover all of the ways that one might violate another person or their relationship. The laws that have been written cover the violations that a majority of the people or legislators have decided are serious enough to have in a form which allows the state to take an action in regard to the one who violates the law. But again, our real concern is not the law, it is the violation of human relationships that caused the law to be written in the first place.

When we place the emphasis on the violation of law instead of the violation of the human relationship, we hide or mask the real violation. It is possible for an offender to be tried and sentenced for an offense, more or less serious, and never be fully aware of the human consequences or impact of the violation.

If we take a purse snatching for an example, the offender may admit guilt or be found guilty and punished. What he doesn't know and take responsibility for is that the victim had to get a new license, credit cards, and perhaps change locks on the house out of fear because the offender knew the address, and the list goes on and on. This significant human violation is most likely never dealt with. And the needs of the victim created by the offense will most likely be completely ignored.

The real problem, the violation of the human relationship, is ignored and therefore what we are most concerned about has been hidden. In fact, when we focus primarily on the violation of the law, we inadvertently encourage denial of responsibility.

Howard Zehr puts it this way: "Even if he is guilty, his attorney will likely tell him to plead 'not guilty' at some stage. In legal terms 'not guilty' is the way one says 'I want a trial' or 'I need more time.' All of this tends to obscure the experiential and moral reality of guilty and innocence" (Changing Lenses, page 67).

Judge McElrea of New Zealand (one of the keynote speakers at our 3rd Annual Restorative Justice Conference) says that as important as "due process" is, in a court trial, the over-riding issue is whether fair procedures are followed not whether they produce a just result, a fair outcome for the accused, satisfaction for the victim or harmony in the community to which both victim and offender belong. He also says, I am sure the wider society would support a system that encouraged those who are guilty to admit their guilt and focus their attention on putting right the wrong they have done (Relational Justice, page 101).

VORP is a structure to encourage and assist in changing the focus of crime from the violation of law to the violation of human relationships for those cases where the offender admits responsibility.

Victims need to hear that what happened to them was wrong, unfair, and undeserved. It is wrong for someone to break into your house and take your things. However, often the first response a victim hears when telling their story of victimization is, Did you have proper locks on your

doors? Did you have the proper lights on? While these things are a good idea to protect one's home, the one who broke into the home and took things that didn't belong to them was wrong. A first step in the restoration and healing process for both victim and offender is to recognize this.

In the July newsletter and in the next few I am laying out 11 principles I think could guide us (all who are working with or making decisions on how to respond to crime) in the direction of Restorative Justice. I first presented them at the National Conference on Peacemaking and Conflict Resolution (NCPCR) in Minneapolis in May. I am interested in your responses.

PRINCIPLES #2: Restorative Justice recognizes that crime (violation of persons and relationships) is wrong and should not occur and also recognizes that after it does, there are dangers and opportunities.

The danger is that the community, victim(s), and/or offender emerge from the response further alienated, more damaged, disrespected, disempowered, feeling less safe and less cooperative with society. The opportunity is that the injustice is recognized, the equity is restored (restitution and grace), and the future is clarified so participants are safer, more respectful, and more empowered and cooperative with each other and society.

Recognizing the wrong in the criminal act, how it violates individuals and society, is an important starting point in the healing and restoration process for victim and offender. In New Zealand the language being used is integrative shame. While it is important to recognize the wrong, it is also very important how that is done. If it stigmatizes and isolates the offender so they become less cooperative with society, it is counterproductive. But if the response leads to new learning and changing behavior for the future, it is very helpful to the restoration of both victim and offender.

VORP is one structure that works with offenders who choose to recognize the wrong and make things as right as possible. Because VORP exists in Fresno, last year over 450 offenders and their victims were encouraged and invited to consider responding to the violation experience in a cooperative way, and more than half came to constructive and restorative agreements.

PRINCIPLE #3: Restorative Justice is a process to make things as right as possible and includes: attending needs created by the offense such as safety and repair of injuries, relationships and physical damage resulting from the offense; and attending needs related to the cause of the offense (addictions, lack of social or employment skills or resources, lack of understanding or will to make moral or ethical decisions, etc.).

PRINCIPLE #4: The primary victim(s) of a crime is the one(s) most impacted by the offense. The secondary victims are others impacted by the crime and might include family members, friends, criminal justice officials, community, etc.

PRINCIPLE #5: As soon as immediate victim, society, and offender safety concerns are satisfied, Restorative Justice views the situation as a teachable moment for the offender—an opportunity to encourage the offender to learn new ways of acting and being in community.

These principles suggest that justice is a process for making things as right as possible rather than simply punishing the offender. In this short article I cannot develop a thorough rationale, so I would suggest that you read Howard Zehr's book *Changing Lenses: A New Focus for Crime and Justice*. His book provides historical and biblical rationale.

Attending to safety needs and repair of injuries/damages means that the victim is as important as the offender in a Restorative Justice system. Incapacitation of the offender is not an adequate or a wise response since it alone does not address three concerns: (1) the injuries/damages experienced by the victim; (2) the negative relationship between the victim and offender; and (3) the antisocial behavior of the offender. Incapacitation and punishment that is harsh enough can force a short-term change in the behavior of the offender as long as the force continues to be applied. But doing this is very costly emotionally and financially. When the offender voluntarily and cooperatively changes, this is much more efficient and effective but cannot be guaranteed. I think we need to put much more effort into understanding what it is that makes it likely that an offender would voluntarily change behavior. We are learning some things through VORP and similar programs.

Even when I interview people who advocate very harsh punishment and ask them why they take that position, they tell me their real concern is to stop the violations and to create a safe community. We generally come to agreement that there is hope that a first time offender who decides to learn new ways of behaving could become a cooperative and contributing member of society. We agree that there are some offenders who are unable or unwilling to control their impulses to hurt people, and that those people cannot be allowed to roam the streets. We also agree that if there is not some constructive intervention to encourage the voluntary change with the first-, second-, and third-time offender the likelihood is higher that they will become part of the group that is unable or unwilling to control their impulses to hurt people.

Therefore, it seems both efficient and humane (and biblical: see both Galatians 6:1 and Matthew 5) to design a Restorative Justice system that provides interventions which address the needs of both victim and offender and encourage voluntary and cooperative change.

The Restorative Justice Conference, October 6 & 7, is being planned as an opportunity for community, church, and system people to think and talk together about how we want to respond to crime.

PRINCIPLE #6: Restorative Justice prefers responding to the crime at the earliest point possible and with the maximum amount of voluntary cooperation and minimum coercion since healing in relationships and new learning are voluntary and cooperative processes.

PRINCIPLE #7: Restorative Justice prefers that most crimes are handled using a cooperative structure including those most impacted by the offense as a community to provide support and accountability. This might include primary and secondary victims and family (or substitutes if they choose not to participate), the offender and family, community representatives, government representatives, faith community representatives, school representatives, etc.

PRINCIPLE #8: Restorative Justice recognizes that not all offenders will choose to be cooperative. Therefore there is a need for outside authority to make decisions for the offender who is not cooperative. The actions of the Restorative Justice authorities and the consequences imposed should be tested by whether they are reasonable, restorative, and respectful (for victim(s), offender, and the community).

PRINCIPLE #9: Restorative Justice prefers that offenders who are not yet cooperative be placed in settings where the emphasis is on safety, values, ethics, responsibility, accountability, and civility. They should be exposed to the impact of crime on victims, invited to learn empathy for victim, and offered learning opportunities to become equipped with skills to be a productive member of society. They should be continually invited (not coerced) to become cooperative with society and given the opportunity to demonstrate this in appropriate settings as soon as possible.

PRINCIPLE #10: Restorative Justice requires follow-up and accountability structures utilizing the natural community as much as possible since keeping agreements is the key to building a trusting community.

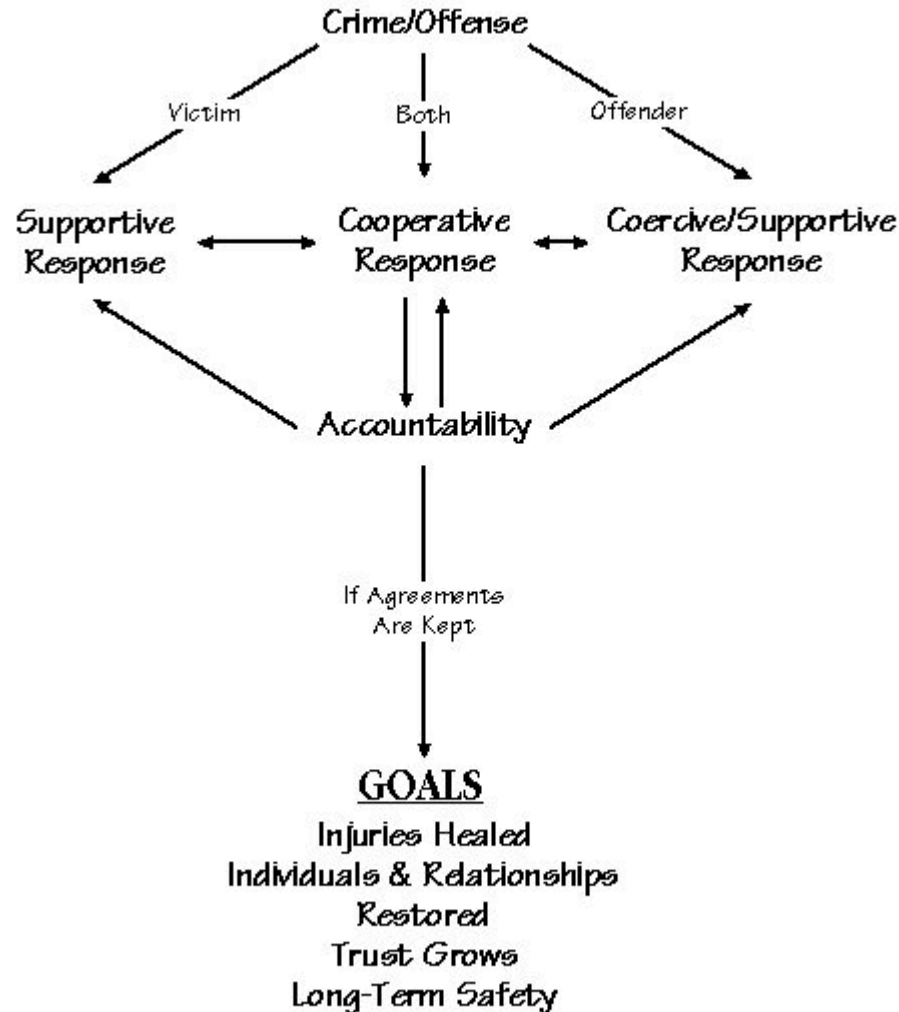
DEFINITIONS:

Coercion is where one party has the ability to force their way or to cause an action to happen unilaterally. The other party, if asked, would say, "I had no choice."

Outside Authority is where some authority outside the parties makes a decision for them.

Cooperation is where all involved parties come to a decision they think is good or at least that they can accept and support.

Please refer to the diagram below and principles as you read the next several
Restorative Justice System



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Principle #6 says that Restorative Justice (RJ) prefers using the cooperative response as much as possible and #2 and #7 help decide who needs to be involved in the cooperative response. Since a cooperative response has to be voluntary #8 recognizes that not all parties will, at least initially, voluntarily choose to be cooperative. One of the supportive responses for a victim is to offer them the choice of participating in a cooperative response. If they choose not to participate that is respected and the supportive response continues. If the offender chooses not to cooperate (#8) there needs to be a coercive/supportive backup. The coercive/supportive response is designed to let the offender know that the offense was wrong and unacceptable to society and to encourage, educate, and invite (not coerce) the offender to become cooperative (#9). Participation in a cooperative response for the offender is important since we recognize that the goals cannot be achieved through coercion.

All actions should be tested by whether they are reasonable, respectful and restorative. This is especially important in the coercive response area since the difference between abuse and supportive coercion is if it meets the criteria of being reasonable, respectful, and restorative. We can test it by its outcome. If the outcome is one that leads in the direction of the goal, then it is restorative.

Accountability is essential. Trust grows if agreements are made and kept. Therefore it is essential that the cooperative agreements be clearly understood. The follow-up accountability process is intended to encourage all parties to keep the agreements and to keep everyone informed. If there are minor infractions everyone might agree to again use a cooperative process to clarify or renegotiate the agreement to build in additional support and/or consequences. The criteria to decide if the cooperative process should be utilized again is if all of the parties are still willing to search for how to make things as right as possible and be accountable for the agreements. If agreements are made in this cooperative process to get you off my back, but not kept, there is new violation and trust will deteriorate even further. If the offender does not keep agreements and is not willing to be cooperative then they are returned to the coercive/supportive response.

I have attempted in a very brief form to introduce how I envision a restorative justice system. I am not suggesting that this is a finished product but one in process and one that needs to be tried. I think that there are many things that are already done that fit into this Restorative Justice System. I also think that many things that are done would have to change.

PRINCIPLE #11: Restorative Justice, recognizes the important and vital role of the religious/faith community in preventing crime and in responding to crime.

It is the religious/faith community that has the responsibility of teaching a moral and ethical standard which is far above the base level of the law. In a recent conversation with our Chief of Police, Mr. Ed Winchester, he made the comment that "when we as police get involved, it is because the other informal systems in the community have failed. I believe that he is right. My religious/faith orientation is Christian. I know that when I live in ways taught in the Bible, like the ten commandments, the love (agape commitment to be constructive) ethic, and putting my energy in trying to find ways of bringing about reconciliation rather than revenge, I will not have much contact with the police as an offender. If the social influence of the religious/faith community is high, the need for the police should be low.

Another significant role of the religious/faith community is in the response to crime. The religious/faith community is to teach and assist the community in responsibility, forgiveness, healing, and reconciliation. Gal. 6:1 says that ". . . when one is "caught in any trespass," those who are spiritual should restore him in a spirit of gentleness . . ." While this was probably referring most directly to those in the faith community, with Jesus' suggestion to teaching to love (agape - to be constructive with) the enemy, the restoration teaching would certainly apply to all who are "caught in any trespass." It is important to recognize that to "restore in a spirit of gentleness" does not mean to minimize the offense, say the offense is OK, or to overlook safety of the victim. True forgiveness will recognize the injustice, make agreements to restore the equity as much as possible (restitution + grace), and plan for an accountable future in which the trespass does not continue.

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