



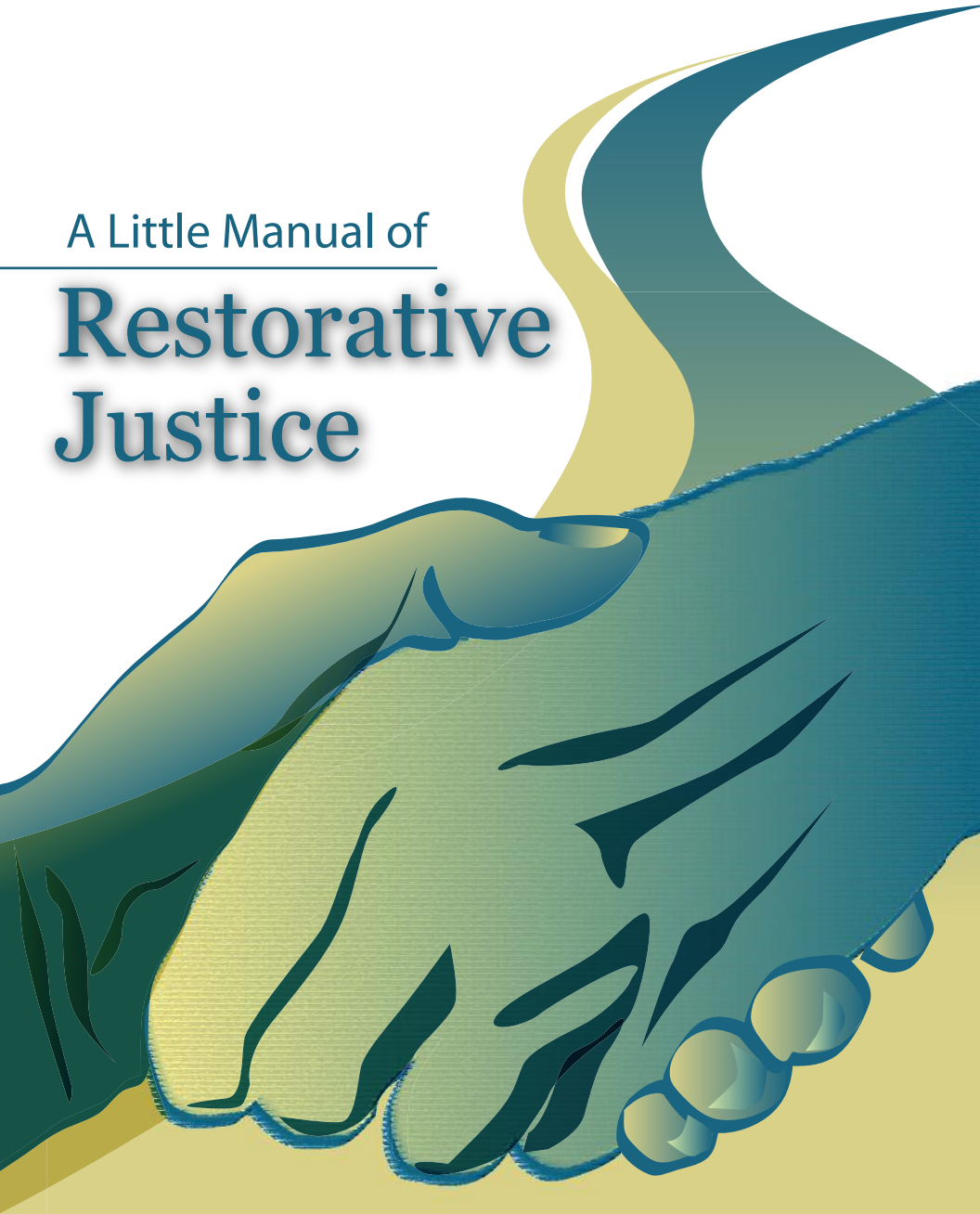
Public Safety  
Canada

Sécurité publique  
Canada

A Little Manual of

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# Restorative Justice



Canada 

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# **A LITTLE MANUAL OF RESTORATIVE JUSTICE**

**BY JUST.EQUIPPING • MARCH 2008**



# Introduction:

The people who have been asked to contribute to this little manual on restorative justice have all been involved for many years in the restorative justice movement in Canada and abroad. The little manual wants to put into your hands a basic training tool. The themes addressed in the various modules are themes that the writers\practitioners have found useful in seeking to educate communities about restorative justice and engage citizens in a deeper reflection about the criminal justice system. Some of the modules are brief and seek only to draw attention to a few key elements and leave you with questions for discussion. Some others are lengthier and seek to provide you with food for thought. Depending on the length of the educational sessions, all of the modules may not be covered. It is estimated that proper coverage of all modules, allowing time for significant input from participants, would take at least three full days. Ideally, we recommend spreading it over a week. The modules could also be presented on a weekly basis depending on the availability of the audience. If the manual leads you to reflect more deeply with others on the potential and complexity of restorative justice and to want to learn more about how it can provide a meaningful way of transforming justice, it would have fulfilled its goal.

Happy reading!

**Pierre Allard, President  
Just.Equipping  
Ottawa, Ontario  
Canada**



# Module # 1:

## Restorative Justice

By Pierre Allard, President  
Just.Equipping

In 1988, I was asked to be part of the Correctional Service of Canada (CSC) team tasked with writing a Mission for the Service. I remember vividly some of the heated discussions that took place when it was suggested that victims should be mentioned in the Mission. Finally, the minority voice managed to have a one liner put in the CSC Mission (Core Value #1, 1:10). Twenty years later, the CSC has now a full division dealing with victims and the present Government has appointed an Ombudsman for Victims.

Victor Hugo has said that ‘nothing is as powerful as an idea whose time has come’. This explains as well as anything else the incredible interest in recent years toward Restorative Justice. We are now a long way from the solitary efforts of a few pioneers such as Mark Yantzi and David Worth in the Elmira project (Victim Offender Reconciliation Program–VORP, 1974), David Daubney chairing the *Taking Responsibility Report*–1988 and Howard Zehr with his seminal book *Changing Lenses* (1990).

Today, if you ‘Google’ Restorative Justice, you will have to deal with over 100 pages of entries. Family group conferencing (begun in New Zealand with the Maori) has been widely adopted by the RCMP in their Community Justice Forums, circles sentencing grew under judges such as Barry Stuart and Brian Huculak. Community Justice Initiatives under the leadership of David Gustafson is deeply involved in mediation in the most serious of cases. The Criminal Code of Canada as of 1996, ss. 718, e) and f) declares that the stated objectives of sentencing include ‘to provide reparations for harm done to victims or to the community’ and ‘to promote a sense of responsibility in

offenders, and acknowledgement of the harm done to victims and to the community'. The Vancouver Conference in 1997 under the leadership of the Canadian Criminal Justice Association (CCJA) and The International Centre for Criminal Law Reform and Criminal Justice Policy becomes a watershed and a catalyst in restorative justice. In 1999 and 2000, the Law Commission respectively publishes *From Restorative Justice to Transformative Justice* and a video *Communities and the Challenge of Conflict: Perspective on Restorative Justice*. And what about the most significant role played by, among others, David Daubney and Robert Cormier in leading to the adoption by the United Nations Commission on Crime Prevention in its 11<sup>th</sup> session in Vienna on April 18, 2002 of a set of Basic Principles on the use of restorative justice programs in criminal matters. The Truth and Reconciliation Commission in South Africa was an example on the world scene of restorative justice in action with its limitations but also its great accomplishments. The 'gacaca' in Rwanda returns to some tribal restorative justice practices. Our own First Nations' People have much to teach us from their rich restorative justice tradition.

Amazingly enough, a strong case could be made—obviously beyond the scope of this Little Manual—that restorative justice is truly a lost treasure to be re-discovered within the Judaeo-Christian heritage which deeply marked Western civilization and helped shape the early codes of law. But let us turn now to defining restorative justice.

I define restorative justice this way: "Restorative justice says that crime is much more than the breaking of a law. It is the breaking down of human relationships in a community of people where real people have harmed real people. And the question to ask is: How can we make things better?" I would now like to present two more definitions more academically expressed. The first one is from Robert B. Cormier, Public Safety Canada, "Restorative Justice is an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime—victim(s), offender and



community—to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.” (Cormier, 2002) The second one is from Howard Zehr who after stating that “some of us question the wisdom or usefulness of such a definition. While we recognize the need for principles and benchmarks, we worry about the arrogance and finality of establishing a rigid meaning” goes on to say:” with these concerns in mind, I offer this suggestion as a working definition of restorative justice.” : “ Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”(Zehr, 2002)

In these definitions, it is clear that Restorative justice seeks to involve as much as possible the victim(s), the offender (s) and the community. It calls for a deep respect for all involved. It seeks to listen carefully to all parties, to focus on the truth of the event and to the possibility of reparation. Restorative justice can never be forced on people. It is a voluntary process. It seeks to humanize the justice process which through the centuries has become professionalized and sanitized. The central focus of Traditional Justice is: offenders getting what they deserve. The central focus of Restorative Justice is: victim needs and offender responsibility for repairing harm. The questions asked are also different. In the Criminal Justice, we ask: What laws have been broken?, who did it? And what do they deserve? In the Restorative Justice, the questions are quite different: Who has been hurt? What are their needs? And whose obligations are these? Confronted with such different approaches, it remains to be seen how successful the Traditional System of Justice will be in supplementing its rigid procedures with restorative justice processes and programs. The good news is that the Law in Canada does not have to be changed to allow various points of entry in its existing criminal justice system. The Nova Scotia Restorative Justice Program has identified four distinct possible entry points: 1) Pre-charge: police entry point; 2) Post-charge: crown entry point; 3) Post-conviction\pre-sentence: judicial entry point and 4) Post-sentence: corrections entry point.

Although the Law may not have to be changed, a type of revolution similar to what happened in the hospital delivery room years ago will have to happen in the court system according to Wilma Derksen who says: “ I think the same scenario is happening in our courts today. In our attempt to create and deliver justice, we have concentrated only on determining guilt. We have given the courtroom entirely to the professionals who have made it into a sterile room of law and order. They have banned the fainting father from the room and silenced the screaming mother. More and more they are whisking the difficult decision-making process away from the public into the realm of plea bargaining, with the same intentions as the doctors in keeping the baby clean and safe, out of the weak mother’s arms. Consequently, we now have offenders and victims experiencing the trauma of the courtroom. We need the same delivery room revolution to happen in the courtroom.

Justice is not only about determining guilt, but also about creating peace and harmony between the victim and offender so that they can meet in the grocery store and not kill each other. Yet the courtroom is designed to keep them apart. More often than not, it enhances the anger between them, creates more friction, and heightens the conflict....Yet to create justice, we will need a certain amount of blood, emotion, chaos and choice. Justice-making should be messy. Victims and offenders are stakeholders in the justice-making. They have to take center stage again. It is where they belong. Just as we learned to customize the delivery room for the patients, we need to customize the courtroom.” What a beautiful challenge awaits us!

## Suggestions:

1. What do you think about the last quote by Wilma Derksen?
2. Write out your own definition of Restorative Justice.
3. Identify Restorative Justice programs for each of the possible 4 entry points (i.e., pre-charge; post-charge; post-conviction; and post-sentence).

## Reading:

1. **Van Ness, Daniel & Heetderks Strong, Karen**, *Restoring Justice*. Anderson Publishing, Cincinnati, 2<sup>nd</sup> edition 2002. ISBN 0-87084-890-9
2. **Berman, Harold J.** *Law and Revolution: The Formation of the Western Legal Tradition*. Harvard University Press, 1983, 9<sup>th</sup> printing 1997. ISBN 0-674-51776-8
3. **Zehr Howard & Barb Toews (editors)**. *Critical Issues in Restorative Justice*. Criminal Justice Press, 2004. ISBN 1881798518



# Module # 2:

## Participant Histories

**By Pierre Allard, President  
Just.Equipping**

'We learn best in relation to what we already know'. This great educational principle is so important when seeking to introduce people to restorative justice. Introducing a new paradigm calls for points of entry into the participants' history. We have found that the exercise of what we call 'the building of the wall' is a great way to get to the participants' history in a non threatening way. I was introduced to this important exercise in January 2002 by Jacqueline Pelletier whom I had recruited to lead the Community Engagement Sector under my responsibility into a visioning exercise. Since then, I have used this process successfully in a number of contexts, none more dramatic and heart-wrenching than in Rwanda in February 2007. Let me explain the process.

First, you will need large pieces of paper and as many markers as there are participants. The sheets of paper would have been attached to the walls in three different sections. One section would be entitled: Personal Wall, the second one: Political Wall and the third one: Treatment of Prisoners Wall (now this third one could vary depending on the interest of the group to be addressed, e.g. it could be: Treatment of Victims Wall). These three walls would then be assigned the same time period. For example, in Rwanda, we divided each wall into two specific time segments: Up to 1994 (year of the genocide) and 1994 to today.

Then, the group of participants is randomly divided in three and each group is sent to a specific wall with the following instruction. In silence, write on your assigned wall whatever positive or negative memories come to you. After approximately

fifteen minutes, people on wall # 3 are invited to move to wall # 1; people from wall # 2 move to wall # 3 and people from wall # 1 move to wall # 2. After another fifteen minutes, people move to the wall that they have not covered yet.

When the process of writing on all walls is completed, you invite the people to circulate as in a pilgrimage, always in silence, in front of the three walls and to absorb what they can of the lives of their co-participants. Make sure you leave sufficient time for people to go beyond the one sentence written to the feelings it might carry.

When this silent 'pilgrimage' to the wall is completed, invite people to share what struck them. It is not a time of discussion or clarification but only a time of respectful sharing of what joy or pain is detected beyond the words expressed. In all cases, the full scope of human emotions will be found on the walls. There will be happy events but many sad and tragic events. You might be surprised how many people might express that they have been victimized, harassed, hurt. It usually creates a great bond of humanity and leads to a deep respect of the human story/history behind and beyond the written words. In the context of Rwanda, participants could not believe their eyes on how negative the three walls were. They found it thoroughly depressing and it certainly led them to be most attentive about restorative justice in the hope that restorative justice might provide a hopeful path out of their despair. Although other groups might not have such a horrific past as the genocide survivors or perpetrators, you will be amazed to see how much the human experience is similar around the globe when confronted with injustices, pain and many of life's struggles.

We suggest that you leave the three walls up during the whole training session and, as leaders, you might find it very useful to keep illustrating your teaching about restorative justice in reference to the life stories of your participants as expressed on the three walls.

## Suggestions:

1. Ask the participants, towards the end of the training session, if restorative justice leads them to interpret differently some of the events mentioned on the walls.
2. Ask the participants on the last day of training to dream of the future with a restorative lens and to write some of those dreams on the appropriate wall.

## Reading:

I do not know of resources dealing with this specific exercise but would love to hear from you if they do exist.





# Module # 3 :

## The Roots of Violence and The Shadow of Transference

By Rod Carter, Director  
Restorative Justice Program  
Queen's University

### The Roots of Violence

It seems that human beings are incapable of resolving conflict without violence. Vengeance seems to be in the DNA of human beings. As psychologist Nancy Reeves says: 'Vengeance is the most seductive drug we have'. In the last half century, René Girard from Stanford University, has emerged in many circles as a leader in explaining the roots of violence. His writings and research have led to the annual forum on Violence and Religion. St Paul's University in Ottawa had the privilege of hosting the latest one.

René Girard has developed a mimetic theory that claims to explain the central dynamics of human desire, and patterns of violence. Girard claims that from the time we are very young we learn what is desirable from other persons whom we take as models: we imitate the desire of our models. Often we think our desires are spontaneous, but in fact we have learned them from others. Desire arises from our awareness of a void within us, not only of possessions but of being. We desire to be by 'imitating someone else'. We see that someone else desires something and we follow. Though it may be difficult and even humiliating to admit to ourselves, what we really desire is to become ourselves by appropriating the being of the model we imitate. The object receives its lustre from the model's desire, but it fails to satisfy.

In his research, Girard focuses on patterns of violence and the use of a scapegoat. Mimesis can easily lead to rivalry, and rivalry leads to violence, whether physical or not. Violence is itself mimetic, rendering humans more and more like each other and calling forth more violence. Thus violence repeatedly threatens to escalate out of control. Girard found that in ancient cultures, just as a group was about to destroy itself in mutual violence, the recourse to a scapegoat had a mysterious calming effect. The use of a scapegoat was enacted either by the killing or the expulsion of one particular individual or one particular group. This process brought peace to the group vicariously through the scapegoat. As this process was repeated incessantly over time, it taught early humans that the most effective way to prevent uncontrolled violence was to discharge the tensions of the group onto particular individuals or groups of individuals. One does not have to think hard about the history of the twentieth century to come up with a number of examples of the use of scapegoats on a large scale.

If one accepts Girard's theory of the use of a scapegoat, one would conclude that, at times, offenders can easily become 'scapegoats' for a community willing to unload 'unlimited' punishment unto those who have harmed its fabric. The 'inflated' call for punishment, heard in some quarters, is often the desire to unload unto the 'offender' the ills of the community. Even Governments can sometimes act, or be perceived to be acting, in a manner that, on behalf of the wider society, marginalizes certain segments of the population, like offenders.

## Suggestions:

1. What does it mean to be a caring human being in our society today?
2. Do you believe that our desire and its consequences is our attempt to imitate others?
3. Do you feel that society today continues to use the scapegoat mechanism to exonerate itself? Discuss!

## Reading

1. **Girard, René.** *Violence and the Sacred.*  
The John's Hopkins University Press, 1977.
2. **Girard, René.** *The Scapegoat.*  
The John's Hopkins University Press, 1986.
3. **Bailie, Gil.** *Violence Unveiled.*  
New York, Crossroad Publishing, 1999.

## The Shadow of Transference

Carl Jung, the Swiss psychiatrist has done much to help us understand violence through the development of his theory of the shadow.

He said, "Unfortunately there can be no doubt that man is, on the whole, less good than he imagines himself or wants to be. Everyone carries a shadow, and the less it is embodied in the individual's conscious life, the blacker and denser it is. If an inferiority is conscious, one always has a chance to correct it. Furthermore, it is constantly in contact with other interests, so that it is continually subjected to modifications. But if it is repressed and isolated from consciousness, it never gets corrected, and is liable to burst forth suddenly in a moment of unawareness. At all events, it forms an unconsciousness snag, thwarting our most well-meant intentions.

We carry our past with us, to wit, the primitive and inferior man with his desires and emotions, and it is only with an enormous effort that we can detach ourselves from this burden. If it comes to a neurosis, we invariably have to deal with a considerably intensified shadow and if such a person wants to be cured it is necessary to find a way in which his conscious personality and his shadow can live together."

One of the most important aspects of healing ourselves and the earth is the willingness to face our shadow—the feelings and parts of ourselves that we have rejected, repressed or disowned.

As children we learn to reject and repress our vulnerable feelings and become strong and powerful or to repress our power and aggression and be gentle and vulnerable. If we repress both aggression and vulnerability we become nice, safe, middle-of-the-roaders. In any case we lose not only major parts of our personality and being but an enormous amount of our life force.

The feelings and parts of ourselves that we have repressed do not go away just because we don't want them. If we do not find ways to express them, they begin to "leak out" into distorted ways, or they begin to lead us into life situations which will give them a chance to emerge. For example, if you have repressed your power, you will have anger building up inside of you. If you don't find a way to express your anger in a direct and constructive way, it will leak out as indirect, covert hostility, or it will eventually burst forth as explosive rage or violence. It might well attract you toward angry people, with the unconscious intention of triggering your own anger.

Many followers of Jung have expanded the shadow metaphorically. Robert Bly says, "the shadow is the long bag that we drag behind us," containing all the dark parts of ourselves that we would like to keep secret.

The shadow may include our anger, selfishness, jealousy, pride, insecurity, wildness, or destructiveness. Eventually, they get out of the bag when we project them onto others—husband, wife, child, friend, neighbour, co-worker, or another race and culture.

The spiritual practice of shadow involves being able to recognize these elements—and deal with them—when they make an appearance in our lives.

The last voice belongs to Carl Jung, "Recognition of the reality of evil necessarily relativizes the good and evil within, converting both into halves of a paradoxical whole".

## Suggestions:

1. Do you agree with Jung that we all have a shadow side filled with negative traits and emotions?
2. Can you recall a time when your anger or destructiveness "leaked out" and created problems for you?
3. According to Jung we allow our good and evil natures to dwell within while keeping our awareness of all our traits in tune. Discuss!

## Reading:

1. **Jung, C.G.** *Memories, Dreams, Reflections*.  
New York: **Vintage, 1989.**
2. **Jung, C.G.** *Man and His Symbols*.  
New York: **Doubleday, 1964.**
3. **Vardey, Lucinda**, *God in all Worlds*.  
Canada: **Alfred Knopf, 1995.**

# Module # 4 :

## Dehumanization, Demonization and Hate Crimes

By Rod Carter, Director  
Restorative Justice Program  
Queen's University

Vern Redekop, Director of the Masters' Program in Conflict Resolution at St Paul's University, speaks about the roots of murder and genocide where demonization plays a major part. The following two factors may drive people to 'sacrifice' others:

- Memories and feelings of historical enmity may stimulate the urge to victimize others; and
- Dehumanization alters perception to the point of making it 'acceptable' to destroy the enemy.

In particular, during times of increased hostilities, the memories and the dehumanization of the others lead to the demonization of a particular group. The demonization of the 'other'—now turned into the enemy—is functional from the point of view of a society that wants to track its members to maintain the 'other' in its enemy role. Society's fear of the sex offenders, especially pedophiles, and of the high-risk offenders leads often to a form of stereotyping which does not leave much room for creative reinsertion. A person dehumanized or demonized becomes humiliated and degraded and often falls prey to helplessness. Helplessness can easily turn to rage and vengefulness and thus in an increase in further harmful actions on the part of the 'rejected' one.

It remains one of life's great mysteries on how easily we come to demonize the enemies and blame things on something outside of ourselves. Nations do this as well as individuals.

Barbara Colorosa has written recently on genocide which so often follows demonization and she says, 'genocide is not outside the realm of ordinary human beings behaviour. At the same time it is not normal, natural, or necessary. It is the most extreme form of bullying—a far too common behaviour that is learned in childhood and rooted in contempt for another human being who has been deemed to be, by the bully and his or her accomplices, worthless, inferior, and undeserving of respect'. I would add that bullying is, in fact, a conscious and deliberate hostile activity intended to harm, induce fear through the threat of further aggression, and create terror. Three markers characterize bullying: An imbalance of power sees the bully as usually older, bigger, stronger, verbally adept and higher up on the social ladder. Secondly, an intent to harm sees the bully inflicting emotional and/or physical pain, expects the action to hurt, and takes pleasure in seeing the hurt. And thirdly there is a threat of further aggression whereby both the bully and the bullied know that the bullying can and will occur again. When bullying escalates unaddressed, a fourth element is added, that of terror. Bullying is systematic violence used to intimidate and maintain dominance. Once terror is created, the bully can act without fear of recrimination or retaliation. The bullied child is rendered so powerless that he is unlikely to fight back or to tell anyone about the bullying. The bully counts on bystanders becoming involved in participating in the bullying or, at least, in doing nothing to stop it. Thus the cycle of violence begins and to no one's wonderment who works with young or adult offenders this has become their main 'modus operandi'.

Any serious efforts at eradicating dehumanization and demonization from our society would target bullying in our school system from the earliest stages to university. Within corrections, helping offenders becoming conscious of their destructive 'modus operandi' will lead to safe communities.



It would be too easy to think that this tendency to dehumanizing, demonizing and bullying is not part of every human being. It is not the lot of the ‘genocide perpetrators’ or of the offenders within our institutions. We are all capable of such actions. Capacity for evil lives in each one of us. To deny this truth is to live in an air-conditioned fantasy world. As Alexander Solzhenitsyn says so beautifully: “If only it were all so simple. If only there were evil people somewhere insidiously committing evil deeds, and it were necessary only to separate them from the rest of us and destroy them. But the line dividing good and evil cuts through the heart of every human being. And who is willing to destroy a piece of his own heart?” And Mahatma Gandhi also said: “ Now is the time to accept the hatred that lives in us. The only devils in the world are those running around in our hearts.”

It is wise to accept and own our shadow, to name our demons and learn from them and to realize that we are not alone in overcoming the challenge of dehumanization and demonization. Francis of Assisi’s advice is a good one: “ Love the leper inside.”

## Suggestions:

1. Bullying can escalate frighteningly fast. Have you been bullied or done bullying or been a bystander to bullying?
2. What forms of power do you in fact use in your life every day, week, and year?

## Reading:

**Coloroso, Barbara.** *The Bully, the Bullied and the Bystander.*  
Harper Collins Publishers, 2002.

**Keen, Sam.** *Faces of the Enemy.*  
Harper and Row Publishers, 1986.

**Rusesabagina, Paul.** *An Ordinary Man.*  
Penguin Books, 2006.

# Module # 5 :

## Relating to Offenders and Victims of Crime

By David Shantz  
Prison Chaplain in the CSC Quebec region

*If we were to take Restorative Justice seriously, what impact would this have on the way we relate to offenders, to victims?*

**This module is presented under five headings.**

- A. We would relate to victims and offenders as integral people.
- B. We would provide quality leaders for victim and offender programs.
- C. We would encourage victims and offenders to come out of their isolation and to become a community with others who are suffering as they are.
- D. We would wait until the victim or offender is ready to participate voluntarily.
- E. We would present to victims and offenders an alternative approach to understanding truth.

## A. We would relate to victims and offenders as integral people.

If we were to take restorative justice seriously, victims and offenders would be acknowledged as integral people. Everything about them such as their name, their reputation, their family and their community must be treated with profound respect. We must not dehumanize by giving them numbers or other labels that distract from their dignity and their personhood.

A man whose mother was killed in an automobile accident said that all through the trial the crown and the defense lawyer referred to her as the “dame”. She was simply an object of evidence for the Crown and an offensive object to the defense lawyer who wanted to prove that his client was not responsible for her death. As her son, he came away from the trial very angry and hurt. “Why could they not identify my mother by her name?” he asked sorrowfully.

The offenders can also be treated in an inhumane way. The negative names that society uses to define the offender and his\her behaviour will only reinforce the negative thinking of both the offender and the victim.

We must believe that the voice of the offender and the voice of the victim need to be heard and respected. We must believe that they deserve a place at the discussion table with full privileges if they agree to accept the guidelines and discipline determined by the group.

We need to be guided by ethical values which put the emphasis on common good ahead of personal advantage. When we abide by these values which involve such characteristics as integrity, impartiality, the courage to speak truthfully, the willingness to have respect for the law, to take responsibility and to be accountable, we will

believe that even the most violent of persons can replace his/her destructive behaviour with constructive behaviour.

## **B. We would provide quality leaders for victim and offender programs.**

If we were to take restorative justice seriously, we would take the choice of leadership very seriously. At first glance restorative justice may appear to be a rather simple form of mediation in which information is gathered to produce an arbitrary decision that brings resolution to the conflict. The full extent of the needs of the victims and the offenders is often ignored and the case is reduced to a simple form of mediation.

Restorative justice is a process which requires leadership by gifted people, trained in the concept of resolving conflict in a non violent and non adversarial fashion. Leaders who qualify, have developed mature convictions about non adversarial conflict resolution by living out these principles in their own experience.

We have all been victimized and we all need to acknowledge that we have offended others. Until we accept that fact we cannot be a leader. It is highly recommended that future leaders participate in a Face to Face session either as a victim or an offender before they endeavor to lead a group.

The hurting community will agree to submit to their authority if they lead first by example. They are leaders who do not come with their own agenda or with assumed answers for the group. They come prepared to help each participant to understand and to articulate their feelings as related to what happened. Gifted leaders are so essential for restorative justice because they have to achieve a level of satisfaction which is both just and restorative for the participants.

Such leaders are not like the ones identified by Dr Tana Dineen in her book *Manufacturing Victims*. In her book, she describes some leaders who believe that they alone, as the professional caregivers, have the answers. She states that, “It was clear that diagnoses were generally more consistent with the psychiatrists’ beliefs than with the patients’ problems.” She observed this while doing research about how psychiatrists went about deciding what was wrong with their patients and what treatment was needed. (Preface, page 13) She goes on to detail many case studies of how the problems of the victims and offenders were interpreted by the psychiatrists so that the prescribed treatment could only be applied by the professional care giver. The diagnoses often had very little to do with the actual problems of the patient. This was intentionally done to create a dependence on the caregiver.

Such a problem needs to be identified and avoided by all those who would want to provide leadership in the restorative justice process.

In a well-functioning group, leadership will be shared by several people. Victims and offenders will provide a form of leadership as they become more comfortable talking about their experience. Their ideas and insights will often lead the group to levels of openness and honesty that are so important for healing and closure to be achieved.

### **C. We would encourage victims and offenders to come out of their isolation and to become a community with others who are suffering as they are.**

Community can be defined as a group of people who have a vested interest in a particular issue or concern. It transcends race, gender, age, language or geographic

location. We would relate to victims and offenders and all persons affected by an offence, as a community of people who are seeking to resolve conflict in a non violent way. In this process it is the offence which caused undue suffering and pain that brings the people together as community. Suffering is a great leveler which has rendered those affected by it with a feeling of helplessness. Victims and offenders often have to suffer in silence. Very few people, including their friends, are interested in listening to their story.

In 1991, while working as a chaplain for Correctional Service of Canada, at the Federal Training Center, a federal institution in Laval, Quebec, we put together an activity called, Face to Face. Since at that time there were complex regulations which prohibited offenders and their victims from meeting each other or interacting even by letter, we arranged for some victims who were not the actual victims of the offenders to come into the prison to meet with the inmates. Although they were not the actual victims of the offenders, they shared similar experiences. (In the next section I will describe the preparation that is necessary for inmates, victims and coordinators of the activity.)

In the Face to Face activity, the victims and the offenders do not come together to prove guilt or wrong doing as perceived by the laws of the country. They come together to deal with unresolved suffering and pain, issues that the courts are not mandated to process. For example, although the crime may be very serious, the charge by the police and the Crown Attorney may be a lesser accusation because they know that they do not have enough evidence to prove motive and intent for the actual crime committed. The crown will then go with what they are convinced they can prove in a court of law before a judge. The victims and the offenders know that the crown will “cut a deal” in order to close the case. Therefore both the offenders and the victims do not

experience healing or closure to the psychological and emotional wounds that were caused by the behaviour of the offender. These feelings of incomplete justice often linger in the soul of the victim as well as of the offender for the rest of their lives. Who is able to truly empathize with them? Who is able to encourage them to seek healing?

The Face to Face group comes together once a week for a period of 5-6 weeks. Each person has an opportunity to share his or her experience and to ask questions of the others in the group. The group is limited to 5 inmates and 5 victims. There is also one additional person who represents the community and gives a perspective of the crime from the point of view of the neighbors who lived next door to the crime scene. It is a very positive experience for those who participate. This activity is ongoing today in several correctional institutions across Canada.

In such a group both victims and offenders feel for the first time that they are part of a community that accepts them in spite of what has happened in their lives. Offenders share their experience which is important, but they also get to express their regret for the suffering they caused their victim. Previously the only place that the inmates had any opportunity to say in public that they regret what they did was in the court room. It is not a very appropriate place for either party to dialogue about the suffering, the fear, and the anger, the emotional, physical and psychological cost that was caused by the crime.

Forgiveness may not be stated in so many words by the victims. It is not words but actions that are important. As acceptance and goodwill are demonstrated toward the inmates, it helps them believe that others will also accept them once they are released from prison.



Another benefit for all participants in the group is that they get to hear the other testimonies and learn from them. I became aware that each person has a detail in their experience that they have difficulty talking about. Offenders and victims are able to overcome their fear and shyness when they hear others identify that one “thing” in their experience.

The benefits of the Face to Face program are rather special;

1. Since the people coming together are not directly involved in the same crime, the level of emotions and intensity is more objective. Each participant is more in tune with what is happening in the whole group. If the direct offender or victim were there, their attention would be more liable to be focused on one person and that would limit their ability to learn from others.
2. It provides an opportunity for victims and offenders to speak to each other. Many of them have taken therapy but they have never dialogued with someone who has been through, “it”, as they have. They will be forever closely connected to each other because of the crime and this activity provides a setting in which questions can be asked or comments expressed directly to the other person without fear or shame.
3. Time has moved on and the emotions are not as strong as they may have been right after the crime. Both parties are able to reflect more objectively about their experience.
4. It is special for the offender because for the first time since she/he has been incarcerated she/he is able to dialogue about the details of her/ his case with a number of people from the community. Together with these people she/he will confront the

“monsters” in her/his case that have held the prisoner in their grip. She/he no longer has to fight them alone. As she/he humbles herself/himself before the group she/he is empowered to live. Victims may also experience some of these same feelings but they have opportunities in the community to talk about them, which the inmate does not have in the institution.

#### **D. We would wait until the Victim or Offender is ready to participate voluntarily.**

Restorative justice programs are only effective if the participants enroll on a voluntary basis. This needs to be understood by all those in the community. There are instances when well intentioned people try to persuade victims to participate before they are ready. The results can be very disastrous, causing the person to be re-victimized.

Some people assume that they know what it is all about but as it requires so much honesty and integrity they, at times, withdraw from the activity. Both victims and offenders have withdrawn because they realized that they could not hide behind a lawyer or an interpretation of the law. They were not ready or willing to be questioned about their emotions and motives by other victims or offenders.

Offenders may accept with difficulty the fact that they are also victims. For many offenders, emotions and thoughts of victimization represent a form of weakness which if acknowledged can be used as weapon against them. They like to think of themselves as leaders not followers, as persons who cannot be conned. When the offenders are willing to accept who they are, and are prepared to talk about their criminal behaviour from the stand point of their emotions then they may qualify.

Some inmates who want to participate often say that by taking this activity they hope to impress the parole board. The letter that the parole board will receive from me, simply states the dates when they attended the activity. All information shared in the group is confidential and is not to be shared outside of the group.

Offenders who want to participate have to agree to lay down their weapon of choice which they used to empower themselves and to take power away from other people. They learned how to use these tools to create an imbalance of power in their favor so they could take what they wanted. This could be a gun, a pen for writing false cheques, a threatening look in their eyes or a tone in their voice which would be used to intimidate people. Without these tools offenders may feel rather helpless and when pushed to give answers may become rather uncomfortable because now there is no imbalance of power in their favor. The other person has just as much power as they do. The only option that they have is to cooperate and tell the truth, which may be painful, or turn and leave the group like a coward. This is also very painful.

Victims who want to participate in Restorative Justice Programs also have to agree to lay down any “weapons” which could give them an advantage over the offender. These “weapons” include exaggeration of the facts, intentional distortion of the truth, emotional outbursts with tears and accusations towards the offender that are intended to divert the focus away from themselves. Victims may perceive themselves as survivors of a war and therefore they believe they are permitted to do anything necessary to get through the enemy lines. Restorative justice requires victims to stop using their experience as justification for seeking favors above and beyond that which are provided for all of society. They also need to acknowledge their violence and their anger to be able to empathize with offenders.

Restorative justice programs are not a place for the curious or those with an interest which borders on voyeurism. Each member should be interviewed by the leaders of the group to determine the genuineness of their involvement. Since there is a lot of in-depth sharing, the participants are required to have a profound respect for the emotions and details that are shared in the group. Confidentiality is a must for everyone.

## **E. We would present to victims and offenders an alternative approach to understanding truth.**

In the courts of our land, victims and offenders are required to swear on a Bible; and repeat, “I swear to tell the truth, the whole truth and nothing but the truth so help me God.” What follows then is a serious battle between the Crown prosecutor and the defense lawyer to determine whose truth is going to be accepted. Since the purpose of the court is to determine guilt and to punish the offender, the Crown Prosecutor will choose only the truth that will prove guilt. The defense is also just as determined to present the truth which proves their client is innocent.

An alternative approach is to begin by bringing those involved together and help them identify the hurt and suffering that has happened. The truth of each person is a very private thing and when used in a vindictive way it will be exaggerated. If there is fear of punishment, truth will be denied. The responsibility of the leader will be to intentionally direct the focus of the community away from these two dead end streets. They will lead them in a process in which each person of the hurting community has the opportunity to express their truth of how they experienced the event.

As the group talks about the details and emotions of “what” has happened and not “why” it happened, both the offended and the offender will be encouraged to appreciate the feelings and the truth as the other person believes it to be. The group is encouraged to come to a consensus about the truth of the experience. Then, out of the consensus they can agree on appropriate sanctions and discipline measures which should encourage healing and closure for all persons involved.

The term, Truth Brokering, is an expression used by some leaders to describe the struggle as each side tries to come to a consensus concerning the truth of the event. Part of the pain that both victims and offenders have to live with is the fact that they may never know all of the truth of what happened. In spite of that, when there is good healthy dialogue we learn how to hold even the unknown details with love and serenity.

In conclusion I would acknowledge that there will always be scars after the wounds heal, and that closure does not mean that we never think about what has happened. I believe that by going the restorative justice route we will be empowered to acknowledge this experience as part of who we are in an unashamed and noble fashion.

It is from this position of strength that we now reach out to victims, offenders and others of the community and encourage them to deal with their pain and sorrow caused by destructive behaviour through the process of restorative justice.

## Suggestions:

1. How do you feel about the Face to Face program?
2. If you were a victim, would you accept to meet your offender and if so, under what conditions?
3. If you were an offender, would you accept to meet your victim and if so, under what conditions?

## Reading:

1. **Dineen, Dr Tana**, *Manufacturing Victims*, **Multimedia Publishing, Westmount, Qc, 1996, ISBN 1-55207-012-03**
2. **Zehr, Howard**. *Changing Lenses: A New Focus for Crime and Justice*. **Herald Press 1990. ISBN 0-8361-3512-1**
3. **Hallock, Daniel**. *Hell, Healing and Resistance*. **Plough Publishing House. 1998.**
4. **Derksen, Wilma**. *Confronting the Horror: The aftermath of violence*. **Amity Publishers. ISBN 0-9731557-0-1**

# Module # 6:

## Helping Victims Forgive and Forget

By Rod Carter, Director  
Restorative Justice Program, Queen's University

*One writer said that forgiveness is 'a pilgrimage of the heart; it is to love one's enemy.' That's difficult!*

Bishop Tutu who chaired the Truth and Reconciliation Commission in South Africa said, "Forgiveness is not an easy state of mind. It requires opening up wounds that you thought had been closed. When you nurse a grudge, you're allowing yourself to continue in bondage. When you get to a point when you're able to forgive—even if the other person maybe doesn't want or doesn't ask to be forgiven—you have moved out of the situation of being a victim, you're no longer held to ransom by that person."

The South African concept of Ubuntu means to express your humanity through others. That is, our humanity surfaces in that moment of teetering on the brink of acknowledging, of forgiving.

From *Spirituality of Imperfection* we read, "We are forgiven only if we are open to forgiving, but we are able to forgive only in being forgiven—we get only by giving, and we are given only by getting."

To explore briefly the distinction between forgiving and forgetting we've many powerful teachings.

No less a voice than C.S. Lewis says, "Forgiving does not mean excusing. Many people seem to think it does. They think that if you ask them to forgive someone who has cheated or bullied them you are trying to make out that there was really no cheating or no bullying. But if that were so, there would be nothing to forgive. Forgiveness does not mean that you must make every effort to kill every trace of resentment in your own heart—every wish to humiliate them."

The following stages of forgiveness are based on the principle that you can forgive yourself even if your aggressor will not forgive you:

- Decide not to avenge yourself.
- To stop the offence sometimes requires only telling the person to stop.
- Let justice follow its own course.
- Recognize the wound in you and do not make excuses for the victimizer.
- Share your wound with someone else (if possible the person who hurt you).
- Discover the extent of your loss and mourn it; a lost dream; what you were robbed of.
- Accept your own anger and desire for vengeance.
- Try to understand the aggressor (it makes your forgiveness more rational).
- Forgive yourself.
- Find a meaning in your loss (how have I changed?).
- If you have not been loved, it is difficult to love others, to forgive others.

In closing, I recall a statement by Bishop Tutu, "the words forgive and forget do not belong in the same sentence, but forgive and remember does."



## Suggestions:

1. Do you agree that the primary assistance we can offer a crime victim is support? Why should we offer comfort to a crime victim, especially if the victim is not a member of our family or immediate neighbourhood?
2. In the realities of crime and victimization, how do love and forgiveness for those who wrong us relate to the desire for vengeance and the pursuit of justice?
3. Authentic reconciliation requires movement by both sides, the offended and the offender. Both contribute, both grow, both reopen the future. Do you agree or disagree?

## Reading:

1. **Casarjian, Robin.** *Houses of Healing.* Lionheart Press, 1995.
2. **Derksen, Wilma.** *Confronting the Horror.* Amity Publishers, 2002.
3. *Exploring Forgiveness.* Edited by Robert Enright and Joanna North. University of Wisconsin Press, 1998.



# Module # 7:

## Restorative Justice and the Community

**By Scott Harris, Director  
Restorative Justice Branch  
Correctional Service of Canada**

One of the key cornerstones undergirding the development of restorative justice is the recognition that all crime is ultimately an affair of the community. The harms of crime are experienced, not in courtrooms and legal battles, but in the lives of real people. Crime happens in communities and communities are dramatically changed by them. As community members, we adjust our lives in crime's wake, attending to the immediate injuries and adjusting to the reality that we are not as safe as once imagined. Those who are victimized by crime often remain in our midst, or at least, in our memory, leaving a rather permanent legacy of the injuries experienced and the innocence lost. Those who commit the crimes are also an enduring presence. They emerge from our communities. They are our children, our friends and our neighbours. Their families remain among us. And ultimately, they return to our midst following whatever punishment the state requires them to endure. And if we pay attention, we become acutely aware of the facets of life which contributed to their actions.

As such, the active involvement of the community is a critical aspect of restorative justice implementation. Communities need the opportunity to give voice to the many facets of harm that they have experienced. Similarly, they need to express disapproval about the criminal behaviour, serving both to hold the individual to account and to clarify the collective agreement to social rules. Communities also need the opportunity to demonstrate

solidarity with those most hurt by the crime, the victims. Moreover, they have a need to hear the offender take accountability and make efforts to repair the harms as much as possible. In addition, communities have an obligation to sustain harmony, to acknowledge and address the social causes of crime and to make space for both victims and offenders to be restored to the community when appropriate.

Involving the community toward these goals, however, poses a number of significant challenges for practitioners and policy-makers. Not the least of these issues is the learning to define the meaning of community. For many, community conjures several simultaneous meanings, including a geographic space, a group of family and friends and more recently, a loosely connected group of virtual acquaintances. In official circles, the term “community” is often used as a substitute for “society”—leveraging national identity and conformity to governmental prerogative. As such, several restorative justice scholars have begun to parse out methods for defining community.

McCold, for example, has identified macro-community and micro-community as a method for distinguishing between different aspects. Micro-communities, according to McCold, are the relationships defined by the crime itself. It includes the people most affected by the crime. Macro-community refers to larger collectivities such as geographic communities, workplaces, associations, etc. Engaging each of these types of communities will vary depending on the type of restorative justice objective being pursued. Resolving any particular criminal infraction would inevitably lean toward engagement of the micro-community. Developing a larger-scale restorative justice program or designing an intervention for a systemic pattern of crime would require greater attention to the macro-communities. For example, the Hollow Waters Community Healing Project in Manitoba, a program designed to address, extremely high levels of sexual offending in an Aboriginal community, required the program leaders to attend to both the micro-communities impacted by each offence brought to their attention as well as the macro-community in which the offences

had occurred. In doing so, different objectives were identified and achieved that fostered healing for individuals and for the community as a whole (Native Counselling Services of Alberta).

Another challenge with the involvement of community is the inherent tensions and power dynamics that are already present within any community. These tensions exist for a multitude of reasons and can be quite complex. In most cases, these dynamics are a by-product of healthy community functioning including government, economics, family, education and other social structures. By sheer pragmatics, individuals are assigned responsibility that requires them to exercise discretion and control over others lives. In other cases, though, power structures become dysfunctional and result in active oppression and control for the advantage of one particular group or alternatively as a means of harming others.

Inevitably, both the positive and negative expressions of social control in community affect the ability of restorative justice practitioners to advance their work. At the pragmatic level, community power structures are often confronted in deciding who should or should not participate in an intervention and the means by which the person should be “encouraged” to participate. Coercion is often present. In addition, power dynamics among community members affects the nature of their involvement. People frequently adjust their behaviour when they are in the presence of those whom they either wish to impress or those whom they fear. As such, it can affect the ability of participants to be fully honest.

Moreover, in striving to reproduce community harmony, negative social control dynamics can often be overlooked or actively sustained through restorative justice encounters. For example, with an aging North American population, a number of older adults have found themselves under the care of family members due to declining health and mental capacities. Given the private nature of these relationships and the dependency upon those involved, abuse occasionally emerges and is difficult to address. Family members routinely hide the abuse and when it

is disclosed, act together to avoid intrusive intervention thus perpetuating the abuse. One creative restorative justice project has begun to address this particular problem by engaging a wider range of social supports and community agencies to confront the negative behaviours while ensuring that there are supports available (Groh).

Similar issues have been identified regarding women in abusive relationships. Aboriginal women in particular have given voice to the issue of restorative justice being used to sustain oppressive control over their lives in their communities (Native Women's Association of Canada).

For restorative justice practitioners, involving the community remains an important and challenging goal. Often, the issue of which community to involve and how they should be involved is determined primarily on the circumstances of the case being discussed and the will of participants. It is, however, imperative that practitioners perform a challenge role within these discussions to ensure that power and control dynamics are identified and addressed and to ensure that appropriate participation is elicited and supported.

## Suggestions:

1. What role should the community play in the development of restorative justice initiatives?
2. Should community involvement in any given restorative justice intervention be at the discretion of the primary victim and/or the offender?
3. How can restorative justice practitioners prepare themselves to address unfamiliar power structures in a restorative justice intervention?

## Reading:

1. **Groh, Arlene.** *The Restorative Justice Approaches to Elder Abuse Project.* **Kitchener, Ontario: Pandora Press. 2003.**
2. **McCold, Paul.** "What is the Role of Community in Restorative Justice Theory and Practice?" *Critical Issues in Restorative Justice.* Eds. Howard Zehr and Barb Toews. **Monsey, New York: Criminal Justice Press. 2004: 155-171.**
3. **Native Counselling Services of Alberta.** *A Cost-Benefit Analysis of Hollow-Water's Community Holistic Circle Healing Process.* **Edmonton, Alberta: Author. 2000.**
4. **Native Women's Association of Canada.** *Aboriginal Women and Restorative Justice: An Issue Paper.* **Presented at the National Aboriginal Women's Summit in Cornerbrook, Newfoundland. 2007.**





# Module # 8:

## Restorative Justice and Human Rights and the Interface between the Traditional System and Restorative Justice

By Philippe Landenne, S.J.  
Jurist and Prison Chaplain

### Preliminary Remark:

Just.Equipping turned to Philippe Landenne, a lawyer, Jesuit and prison chaplain from Belgium to write this module for a number of reasons. Belgium in the 1990s and 2000s has probably been the country which made the most systematic effort in introducing restorative justice programs in its prisons. Did it work? Is it working? Philippe's critical analysis will help us as Canadians to take stock of where we are in the implementation of restorative justice. His call to not set up in opposition the traditional system with the restorative justice system but to work out a creative synergy is worth listening to.

In debates between advocates of a traditional criminal justice system and proponents of restorative justice, it is common and sometimes slightly caricatured to see *two opposing views of the reality of crime*.

For some, crime is simply a breach of criminal laws created to ensure public order. The task of punishing crime rests with the public prosecutor, representing the state, whose mission is twofold: prove the existence of the elements which, taken together, constitute the crime as defined by law and provide justification for prosecution; and reverse the suspect's presumption of innocence so that the suspect can be convicted on the strength of factors which show that he or she is in fact the perpetrator of the alleged crime. In this scenario, the victim is by definition an outsider who has little input into proceedings from which he or she feels excluded.

For others, crime is first and foremost a life-changing violation of the victim's integrity and the stability of the community. The sometimes deep wounds the perpetrator inflicts trigger an urgent need for intensive care and solid support to comfort the victim and restore the possibility of trust within a community that is also affected by the perpetrator's marginal behaviour. The perpetrator must be supported and held accountable through a process that enables him or her to embark on a path toward reparation that starts with an all-important admission and expression of the truth. The only way to resolve the conflict brought to light by a crime is to restore communication among all of the parties directly concerned in the community.

Depending on which approach is taken, expectations in terms of law and aspirations concerning justice are expressed in very different ways. My long years of service in prison have allowed me to see first hand the respective merits of these two approaches and the confusion and difficulty that can be encountered when implementing them. It is not a matter of contrasting them, but rather of learning how they can complement each other and how they can be improved.

As a prison chaplain, I am primarily concerned, of course, about the holistic aspect of restorative justice, which boldly generates unifying and creative initiatives rooted in a community perspective and enhanced by the spiritual resources of the people involved. However, as a jurist, I am also a firm believer in the

importance of fully protecting the essential guarantees afforded today by charters and conventions establishing the fundamental rights of human beings in democratic societies.

During my career, I have sometimes been confused by and uncomfortable with how the criminal justice system works. My perspective stems from my work as a prison chaplain in Belgium,<sup>1</sup> work that by definition puts me in direct contact with individuals charged with or convicted of crimes, but in no way means I am indifferent to the fate of victims. I hold fast to the view that prisoners cannot be given support without considering the perpetrator-victim-community triangle and the challenge of restoring communication within that triangle.

The thoughts I take the liberty of sharing in this article are based on my two types of work experience in prison—preventive custody and enforcement of sentencing.

### • Support in a preventive custody setting

When I work in a prison, my primary function is to support men who have been placed in preventive custody for committing crimes that in many cases are very serious. Time and again, I am able to see first hand how people deal with a life-altering event through long months of proceedings as they await trial.

In most instances, the first encounter brings me face to face with a person who is overwhelmed and upset by the human drama that landed him in custody. In the context of the trust that can be created by the “refuge” a prison chaplain offers, I simply listen to deeply moving stories in many of which the central theme is a lack of understanding of the painful breakdown of human relations. The first things mentioned are the victim’s face, the split with family and friends, the weight of moral guilt, revelations of personal vulnerability, frustration over the inability to make reparations, despair over the breach of trust, irrational feelings and awkward attempts to find meaning

<sup>1</sup> Twenty years of full-time service: seven years in a jail (preventive custody) and 13 years in a long-term prison.

beyond the broken relationships. Quick to follow are questions about the extent of the damage caused, the condition of the victims and how family and friends left on the outside will survive. Then there is the gradual decline of the accused's community integration that so often precedes the criminal act: social disintegration, addiction, socio-economic problems, disrupted communication and other factors revealing of the slow destruction of the life circle that needs to be restored. The processes are infinitely complex, and the "reality" of the experiences always entails many different aspects. It is not uncommon for an accused person to secretly convey during these meetings a confused desire to take some action or make contact with the victim. How could anyone not dream of a restorative approach after hearing such stories in endless conversations during which emotion comes to a boil in an atmosphere of humility and, in many cases, astonishing sincerity?

But other parameters and imperatives come into play at the same time. Coupled with this need to engage in restored communication driven by truth, an accused exposed to the world of prison is given a rude awakening by the criminal justice system, the system that imposes the sentence, and quickly learns that the all-encompassing institution that is giving him shelter can destroy him in unimaginable ways. Fellow inmates and visitors do not allow him to dwell on the issues referred to above. There is another priority: the first thing is to resist the prison environment and quickly figure out how family and friends outside are going to cope; simply put, the inmate has to limit the damage. I am not describing expansion of the collateral damage of imprisonment that is nothing if not a criminal punishment of surgical precision. I am simply making the observation that the urgent need to mobilize his remaining resources in order to survive the destructive experience of incarceration inevitably becomes the inmate's primary concern. In that context, a lawyer's visit will often provide new food for thought. The first question for the advocate will no longer be "What can I do to take responsibility and engage in a process of making reparations to my victim," but rather "What can you do to get me out of here as soon as possible and how can we keep my sentence as light as possible?"

Rendered powerless in the heady world of custody, the accused, utterly in disarray, asks his lawyer to pull every string in the traditional criminal justice system. In many situations, even if the person shares an entirely different story with me in confidence, he will seize every opportunity to work with his lawyer's strategy by coolly explaining the failings of the case and saying how he will fight the prosecutor's efforts to prove the offence and reverse his presumption of innocence. The less the accused says, the less vulnerable he will be at trial. This tacit rule of cultivated silence in prison is often detrimental to the victim, who is waiting to hear the truth. The lawyer will also make it clear to the client that attempts to contact the victim in any way are out of the question as they could be construed at that point as manipulation or harassment. It is probably true, though, that the victim is usually too distraught at this stage to consider any contact with the attacker.

I am regularly surprised to get calls from inmates after they have seen their lawyer. Time and again they ask me to telephone their lawyer so that I can help them understand what was said in the visiting room! The legal terminology is complex, to be sure. Moreover, discussions that focus strictly on the cold materiality of the facts lead to increasingly obscure and technical analyses that often come down to whether an offence was or was not committed under the law. The accused becomes lost and ultimately resigns himself to putting blind trust in his lawyer: he gradually loses interest in taking part in a debate the legalities of which he finds relatively inaccessible. Many inmates are therefore forced to invoke Themis, the blindfolded goddess of justice who holds in her hand scales that should lean toward the arguments put forward by their lawyers. In prison yards, justice is often described as a lottery in which the chances of winning depend on how much money is spent on a lawyer!

We thus move slowly away from the frankness of these confidential conversations in which the accused allowed himself to feel bothered by the human consequences of the crime and went straight to the problems in his life and the many factors that contributed to the breakdown of his relationships. The

formal legal debates undertaken to prove that the accused committed the alleged act and to show *mens rea*<sup>2</sup> establishing the culpability of the accused have nothing to do with the participative aspect of the assumption of responsibility by the perpetrator with a view to making reparations.

This observation could ultimately lead to disillusionment with and rejection of the traditional criminal justice system. The preference would obviously be widespread use of mediation<sup>3</sup> (the caveat being that the use of mediation must be governed by a legal framework) or any other participative justice initiative in cultures where community traditions provide benchmarks which ensure that all the parties are respected. Alternate use of a mode of sentencing inspired by the restorative justice movement is of course the stuff of dreams, but admittedly, the prerequisites for taking that approach are clearly lacking in most of the situations encountered in the western world today.

Other considerations urge me to strongly invoke article 5, 6, 7 or 13 of the *European Convention on Human Rights*. Strict legal control of the use of preventive custody, the right to a fair trial, the presumption of innocence, the right to counsel, the right to examine prosecution and defence witnesses, the legality of offences and sentences, the right to effective recourse, etc.—all of these provisions are the product of democratic debate based on the reality of possible miscarriages of justice in the absence of such guarantees. The formal requirements of criminal proceedings, concern for fairness cast in the principle of the legality of sentences and offences, the non-retroactivity of criminal legislation and respect for defence rights remain the cornerstones of a reliable justice system in a state where the rule of law applies. How can we restore a relative balance between the parties in a conflict without such legal guarantees?

<sup>2</sup> *Mens rea* or criminal intent is one of the elements the prosecutor must prove beyond reasonable doubt in order for a person to be convicted of a crime.

<sup>3</sup> The law passed in Belgium on June 22, 2005, now permits broader use of mediation at various stages of the criminal justice process.

The first step is to consider the fact that a large proportion of accused do not admit the facts. For most accused, the spectre of the devastating impact of a prison sentence is probably sufficient incentive to risk denying the facts as stated above. However, I also have to admit that there are cases where an accused is found innocent and released in the midst of proceedings or even when a judgment on the merits is handed down. I realize, too, that cultural factors can be a major impediment to confession: for example, for many of the young North African accused I meet, confession is unthinkable because they could not bear to visit more perceived shame on their family and their community; they sometimes even have to deny the evidence in the name of Oumma, at the risk of having exasperated judges impose a harsher sentence.

Another factor that may undermine the chances of introducing a form of sentencing based on the restorative approach is the frightening erosion of community fabric in our western society. Many of the inmates I work with have long been socially marginalized and completely isolated. The acts they are alleged to have committed are rarely perceived by them as inconsistent with any human relationship. Many thefts and other antisocial acts are committed in a context of “getting by” or confused rebellion because of the social disconnect the perpetrators feel. Restoring ties with a community to which they have long felt no connection seems unrealistic. Moreover, knowing that they are demonized by unmonitored media, inmates assume that they are bound to be rejected by society even more in the future. They are convinced that they have to continue struggling to survive “in spite of” a community they feel is hostile. Having met many accused from disadvantaged segments of society, I am struck by a sort of fatalism that saps the desire of many of those accused to mount a defence. In their view, justice is one of the safety mechanisms that shut the door to their integration into a community that does not want them. Why should they think now that the system will all of a sudden give them the slightest chance? Many young accused say that they have already been

condemned for not “looking right” or for failing to show any understanding in their social conflicts. How can they be convinced that they will be treated fairly in court?

In that context, all I can do is cling to the sometimes voluntary initiatives of a traditional system that almost “imposes” legal aid from *pro Deo* counsel and persists in trying to provide accused with the basic legal guarantees referred to above. Françoise Tulkens, a judge with the European Court of Human Rights in Strasbourg, has made the following statement regarding basic human rights: “The honour and strength of human rights lie in protecting even those who have respected those rights the least and those who have not demanded them! Protection of human rights is an unmerited guarantee.” Helping an accused by affording him the benefit of every possible protection under the law can also be a way of restoring his personal dignity as a full-fledged member of the human family. In that sense, ensuring that every accused benefits from all the guarantees afforded by the criminal justice system may be the key to acceptance of accountability. And is that not a prerequisite to the restoration of social connection?

### • Support for convicts in jail

One of the hardest things to manage in long-term penitentiaries is without question the victimization of inmates, which often culminates in hatred or despair.

A lawful sentence imposed by a court is often extremely hard to accept for the perpetrator and the victim alike. The “price to be paid” set by the court in its ruling, taking into account the legal limits on custody, is by definition arbitrary and inadequate. Who is in a position to determine the length of a sentence? Who really believes that sentencing one party brings relief to the other? Who really believes that there is, in the end, a balance between sentence and relief?



There is an issue that has to be clearly recognized in the setting in which we work. Prison is by nature nothing more than a prime instrument serving this great concession to human frailty that is a correctional facility. Because we all have the potential to be aggressive when we become victims, prison takes the option of reacting for us to unacceptable breaches of our personal integrity and social harmony. It is resigned to legitimizing and at the same time “measuring” a punitive point of view. The thinking of the criminal justice system is this: to stem the hypothetical devastating and irrepressible flow from the shameful need for vengeance in those who are victims of behaviour inconsistent with established norms, we delegate to a public authority the task of reacting to and punishing criminal acts. We implicitly authorize that public authority to “inflict” on the person convicted of the crime pain that is commensurate with the pain the person caused. The main goal is to set boundaries for a social reaction that we ultimately wish to temper. Instead of perpetuating differences on a civil level by making every effort to negotiate a conflict resolution process that seeks to offer reparation for the damage caused, the government chooses to apply repressive justice on behalf of the parties concerned, who are prohibited from ensuring justice themselves. Lawmakers and judges have a mission to lead the debate on the nature and length of sentences to be imposed on behalf of the honest citizens we believe ourselves to be. The result is a public sentencing service whose role is to make the convicted “pay their debt.” Let us cut to the chase: while some convicts are willing to “pay the price” without making a fuss, I have encountered very few who consider their sentence a “fair response” to their criminal behaviour. I do not think I have ever met a victim who was “happy” with the punishment imposed on the perpetrator of the crime.

As their interminable detention continues, inmates inevitably feel more and more anguish, anger and hatred. They may admit in theory that the loss of freedom is the lowest price they could pay for their unacceptable crimes, but they are soon appalled to discover the tragedy of the “collateral damage” caused by their

detention. Apart from the loss of freedom, the extraordinarily disproportionate related trauma caused by placement in a correctional facility overwhelms them! Insecurity, promiscuity, depersonalization, failure to accept accountability, destruction of relationships with friends and family... the psychological, moral and physical suffering caused by day-to-day life in prison is out of scale! The destructive impact of sentences goes far beyond what may have been intended by the legislature that criminalized the improper or the court that enforced the law. What do those decision makers know about the minefield that is prison? Prison is more than just a sentence and the piercing wounds inflicted behind prison walls gradually bring about the “victimization” of inmates, who feel they have been flung with those around them into the cold machinery of the criminal justice system. This view usually destroys any hope of giving the slightest constructive meaning to enforcement of the sentence for the person who is serving it. Time spent in prison is like “dead time”.<sup>4</sup> Inmates are soon convinced that no one is able to identify the dizzying limits of their prison sentence! Only in the virtual world of ideological literature are the objectives of sentencing precisely measured, targeted and attained. As I go through this thought process, I am haunted by the question I have heard a thousand times: “Sentences make no more sense to us who serve them. Can you not see that we all end up hating?”

In that context, which I feel I have not presented in sufficient detail, I have endeavoured to refer to legal instruments which set out basic human rights. Article 3 of the ECHR is regularly cited to varying degrees of success depending on the situation: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The desire to enforce that article in European prisons led the Council of Europe to create the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). This basic right is helping create tangible initiatives in some countries to develop legal status for inmates that will make them persons subject to law rather than victims of a system. However, the scientific

<sup>4</sup> Chantraine, Gilles, “La mécanique du temps vide,” in *Sociologie Pénale : système et expérience pour Claude Faugeron*, pp. 257-272.

literature and testimonials from people who work in prisons abound and generally show how the law itself is still lost in the darkness of the penitentiary system. This is a clear sign that there is an urgent need to promote a specific legal framework that provides for effective ways of enforcing sentences.

Beyond the destructive effect of incarceration to be limited inasmuch as possible through the judicial system, can the enforcement of prison sentences nevertheless be geared to reparation? Can restorative justice initiatives lead to prison time? Can the victim's experience come to the fore and challenge the person serving a prison sentence to the point of awakening in that person a sense of accountability?

In Belgium, a political decision was made in 2005<sup>5</sup> to hire a restorative justice consultant (RJC)<sup>6</sup> in every penitentiary. The ministerial circular describing the role of RJC's stated that the objective is to change criminal law from repressive law to law driven by reparation and, more specifically, to establish a new focus for prison policy from that perspective. In that context, the mission of restorative justice consultants is to play a tangible role in penitentiaries in order to shift the prison culture from punitive justice to restorative justice. Their role consists primarily in actively developing a culture of respect for the various players concerned and promoting a local penitentiary policy consistent with the restorative justice model. RJC's serve as consultants to local penitentiary officials. They are expected to be driving forces for the initiation, coordination and implementation of projects designed in collaboration with all prison stakeholders. Their mission in the field is primarily structural: they have to ensure communication among the various players by making the players aware of the culture of restorative justice. They are required to develop forums for coordination among penitentiary officials, inmates, victims and society.

<sup>5</sup> Ministerial Circular 1719, October 4, 2000.

<sup>6</sup> Since 2007, for reasons of administrative terminology, "consultants en justice réparatrice" have been called "attachés en justice réparatrice".

Symbolically, the presence of RJC in prisons is positive in that it opens the prison world to the concept of restorative justice. After seven years of operation, however, it may be too early to tell if that objective is realistic. A number of initial thoughts have to be put forward.

Choosing their words carefully, the consultants said in their initial reports that it is difficult for physical, mental or organizational reasons and because of security considerations to implement the concept of restorative justice in a prison context that is not always conducive to such an approach. Many of these new in-prison professionals quickly come to the following conclusion: the top priority is to fix prisons themselves! Their primary mission is to create cohesion between staff members and the various prison units. Developing constructive channels of communication and opportunities for dialogue in order to foster the emergence of a culture of respect is a critical step in prisons. In that context, some consultants report a significant gap between their vision of restorative justice and what they actually do in the field. They believe they have to spend a great deal of energy doing other things, such as filling emotional and structural voids in prison. In 2002, a “rebalancing” exercise was undertaken and priorities were identified for RJC, namely:

- **exploring the possibility of handling requests for contact and mediation between perpetrators and victims;**
- **assisting in the creation of a stress team;**
- **putting in place an intake and information procedure for victims heard by the parole board;**
- **helping directorates distribute information to inmates at all stages of the criminal justice and sentence enforcement process;**

- identifying problems and needs related to the compensation of parties by perpetrators when they leave prison and making proposals for improving or facilitating that procedure. (Prison unquestionably deprives inmates of any chance to provide real compensation to parties: work in prison is a privilege to which many do not have access, and the “pay” workers get is barely enough to cover their day-to-day needs.)

Even after that rebalancing, it is clear that the concept underlying the mission of RJC's is still quite muddy. Increasingly, however, RJC's work primarily to facilitate mediation or any program specifically geared to making inmates accountable to victims. The challenge is a very delicate one. Getting inmates to accept accountability in particular by having them abandon the belief that they are victims and encouraging them to take an active role in their own transition in a spirit of reparation often seems to be beyond the realm of possibility. The destructive context of custody as described above becomes a daily obsession for inmates unable to think of anything other than their own situation and therefore reach out to others. How do we restore prisoners' empathy toward victims and society in these circumstances?

Reparation is not something RJC's can bring about alone. It requires input from officially recognized organizations in the still-rare cases where mediation between a victim and a convict is requested by one of the parties. In partnership with several accredited outside associations, it occasionally contributes to the creation of focus groups in which inmates can own up to the consequences of their actions for themselves, their victims, their family and friends, and society as a whole. In that context, convicts are encouraged to come up with initiatives for dealing with others.

Unfortunately, such initiatives are still relatively scarce, and few inmates seem inclined to become involved. They appear to be under pressure from two sides. Rightly or wrongly, they say are being used as guinea pigs by authorities and caseworkers who see getting inmates involved in that type of program as a move designed to “increase the chances of parole.” Rightly or wrongly, they say they are viewed as brown-nosers or “collaborators” with the system by other inmates who could never imagine taking part in that kind of initiative for any reason other than to look good. The prison subculture creates obstacles that are less visible but sometimes harder to overcome than walls and bars.

The promotion of restorative justice programs in Belgian correctional facilities is meticulously coordinated by RJC's, who cover the “professional” side. Initiatives put forward by chaplains or counsellors that entail meetings with victims or community representatives are not a good fit in Belgian prisons. People find it hard to grasp the concepts of series of meetings between inmates and victims’ representatives, “healing circles” and other activities aimed at bringing about restoration as part of spiritual or philosophical activities initiated by clergy or counsellors. For RJC's, restorative justice is an undertaking that cannot be improvised, and the strict requirements of author-victim mediation, which is the preferred approach, can only be put in place by “specialists.” At first blush, the community aspect, which entails spontaneity and unbridled willingness to restore trust by expressing feelings and intuitions, seems dubious. Volunteers, even if they are trained in chaplaincy, are not yet welcome participants in meetings with inmates under restorative justice programs. The question remains, however, whether discussions of this type can bring about in inmates a different group affiliation inasmuch as they are conducted within the confidential environment of chaplaincy, irrespective of the institution.

Freedom to participate in or withdraw from a restorative justice process at any time is essential to the integrity of the process. Is the freedom to take part in restorative justice possible and unequivocal if the program has to be controlled by an RJC who is part of the prison's management team? I am delighted with the institutionalization of the restorative justice approach in the correctional system indicated by the appointment of RJC's in every prison, but I still think we have to answer that question. Is it possible to come up with a participative justice model in a confined, controlled institution like a prison?

In keeping with tradition, chaplaincies want to remain confidential, open "places of refuge" in which healing and restoration of community ties can occur amid deep respect for and faith in human relationships. Only that way can chaplaincies make a unique contribution of some sort to the promotion of a restorative dynamic in prisons. They can then support perpetrators, victims and communities in their efforts to restore trust and repair the damage caused by crime. They may face extreme "professionalization," but those involved in restorative justice are up to the challenge none the less. The restorative approach has to be genuinely holistic; a commitment must be made to mobilize all available human resources in order to overcome conflict, but without losing sight of the spiritual and community elements!

## Suggestions :

1. Can you draw some parallels between the Canadian and the Belgian experience as far as restorative justice within penal institutions?
2. Do you agree that we should seek complementarity between the two systems? Is this a watering down of restorative justice?

## Recommended reading:

1. *Vade mecum, la justice réparatrice en prison*, Georges Kellens, Stephan Parmentier and Tony Peeters, eds, published by Academia Press, 2004, ISBN 900382 05883 X.
2. *Essai sur la tragique et la rationalité pénale*, Christian Deburst, Françoise Digneffe, Dan Kaminski and Colette Parent, published in the collection "Perspective criminologiques," De Boeck, 2002, ISBN 2-8041-8104-7.
3. *La Justice et le Mal*, Antoine Garapon and Denis Salas, eds, published by Éditions Odile Jacob, 1997, ISBN 2-7381-0504-1.



# Conclusion:

In teaching the modules presented in this manual, we have found it important to be creative in the presentations. For example, in Rwanda where Just.Equipping did some training in February 2007, knowing that the issues discussed would revive some very deep wounds, we decided to bring on our team a professional musician (and 75 recorders) who, a few times a day, taught the participants to first make noise and little by little some nice music through the week. It was fun, released a lot of tension and sent the message that just as you need to develop new reflexes to play a musical instrument, you need to develop new reflexes in espousing restorative justice as a way of dealing with crime, victimization, healing and reconciliation. For each group, you will need to find a creative way of releasing tension as learning restorative justice forces us to deal with difficult issues such as dehumanization, transference, hurt, betrayal, healing, horror, anger, fear, loneliness, etc..

It is worth noting also that the participants in Rwanda decided on the last day to burn these 'too negative walls' and to create a wall of hope on the last afternoon. If in using the module on Participants Histories, you end up with much negativity, you may want to consider with the group a way to symbolize a passage from despair to hope before the end of the training session.

In Rwanda, we also had a 'mystery person' who began the week all bandaged from head to toe and who appeared every morning with less and less bandage on. The moral of the story, understood easily by the participants, was that as the week went on and as the participants accepted more and more the 'mystery person', he began to heal. There is healing in an accepting, trusting community.

We suggest that for each module, you seek to find some creative illustrations. For example, to reinforce that in restorative justice we must never lose sight of the victims, offenders and community and that it is essential to listening to all, to be involved in truth-telling and restoring, we invited six partners to develop a restorative justice dance. It was striking to see the willingness of the victims to dance with the community or with truth-telling but it took a long time for victims and offenders to want to enter into a dance together. The participants had understood the importance of not forcing the issue, of waiting for the appropriate time and place.

As we come to the end of our journey through *A Little Manual of Restorative Justice*, it is hoped that you have been informed, challenged and stirred to know more about restorative justice and its potential to put a more humane face on the justice system and make it more satisfactory for victims of crime, the community and the offenders.

Just.Equipping wishes to thank Public Safety Canada for its trust in our organization and wishes to thank especially the contributors Rod Carter, David Shantz, Scott Harris and Philippe Landenne. Their varied voices and various perspectives have enriched the presentation of *A Little Manual of Restorative Justice*.

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P.S.: Just.Equipping would receive with gratitude your suggestions on how to improve the teaching on restorative justice through this little manual. You can reach us at: [allard@justequipping.org](mailto:allard@justequipping.org) You may also visit our site at [www.justequipping.org](http://www.justequipping.org) and read the report of our training session in Rwanda in February 2007.