

Restorative Justice: Beginnings Of A Movement In Maine

by Marina Sideris

This article, the second in a four-part series on restorative justice, begins to look at the emergence of restorative justice as an international movement and field of practice. In our first article, we discussed the philosophy of restorative justice, and presented some research findings about what it may offer to victims of crime that our criminal and juvenile justice systems do not. This article grounds the abstract discussion of restorative justice in descriptions of two core restorative practices which translate theory into practice. Maine turns out to have played a small but notable role in the early emergence of restorative processes in the latter part of the 20th century. Many of those early efforts in Maine faltered, but they established foundations upon which the current resurgence of restorative justice builds. In looking to the past, we ask what lessons we can learn from those early years to inform our work now. Forthcoming articles will look at restorative justice in Maine today, and where we are headed.

The roots of the restorative justice philosophy are centuries old, drawing on traditions from around the globe. But many credit Howard Zehr, in his ground-breaking 1990 book, *Changing Lenses*, with articulating restorative justice philosophy in an accessible and compelling way, and planting the conceptual seeds for a social movement.¹

This philosophy helped to ground and connect an evolving set of criminal justice practices that were emerging around the world. For example, in North America and Europe, practitioners had been doing victim-offender mediation (VOM) for more than 15 years. Similarly, New Zealand codified family group conferences, a process now widely understood to be restorative justice, as the default response to juvenile crimes in 1989. Only in retrospect did these practices come to be presented and viewed as examples of restorative justice.

In Maine, as in many places around the world, interest in restorative justice developed rapidly in the 1990s. This new interest reflected a growing support for community corrections, as Maine and other states tried to figure out how to respond to rising incarceration rates. It also was fed in Maine especially, but elsewhere as well, by the rapid expansion of mediation as a means of dispute resolution.

In the 1980s, the Department of Corrections (DOC) faced a period of difficult transition. A major lockdown and reorganization at Maine State Prison in 1980 had broken up a powerful inmate leadership ring working through the novelty program. Soon after, the DOC became an independent department, split-

ting from the Department of Mental Health in 1981. At the same time, the incarcerated population was growing rapidly, causing overcrowding.

These and other circumstances led Governor Joseph Brennan to form a Blue Ribbon Commission on Corrections. That commission, chaired by Lloyd Ohlin (former associate director of the President's Commission on Law Enforcement and Administration of Justice in the 1960s), concluded in a 1985 report that the system was "in a state of deepening crisis."² It pointed to overcrowding; staff shortages and burn-out; deficient facilities; lack of sufficient sentencing options at differing supervision levels; an overburdened probation system; and lack of local, community-based residential and non-residential services for youth charged with crimes as central factors contributing to the state of crisis. On the issue of overcrowding, the Commission noted that the growth of the prison population was not due to increases in arrest rates, but rather to a rising rate of commitment of offenders; longer sentences being imposed by the courts; the abolition of Maine's parole system; and a dramatic rise in the number of imprisoned sex offenders.³ Primary among the Commission's recommendations was much more widespread use of community-based corrections in order to both reduce the cost of corrections and alleviate overcrowding.

Following the publication of "Corrections in Crisis," the Commission's final report, little happened. Frustrated by the lack of implementation of Commission recommendations, Tom Ewell, Executive Director of the Maine Council of Churches (MCC)

brought together several people including Lloyd Ohlin to discuss creation of a Criminal Justice Committee, housed within MCC, to advocate for those recommendations.

With later funding from the Edna McConnell Clark foundation, the Criminal Justice Committee took off. The committee hired Evelyn Hanneman as its coordinator, and rapidly expanded to include an impressive roster of criminal and juvenile justice professionals, clergy, sentencing and corrections experts, and service providers.

At first, the committee's focus was on public education about criminal justice issues, and legislative advocacy for community corrections solutions to overcrowding in Maine's prisons. The committee reviewed pending criminal justice bills, testified at legislative hearings, and hosted well-attended conferences. The Committee also closely followed sentencing trends in Maine, where the severity of sentences had been increasing dramatically, and advocated for alternative sentencing options that could both alleviate overcrowding and cost-effectively promote public safety.

In the mid-nineteen nineties, as awareness of restorative justice grew the world over, the MCC's Criminal Justice Committee began explicitly to promote restorative justice. The Committee launched RJ study circles to educate themselves and others, and began publishing a quarterly RJ newsletter under Evelyn Hanneman's editorship.⁴ In a 1995 annual report committee chair Craig McEwen shared the Committee's emerging conception of restorative justice:

"Restorative justice emphasizes the responsibility of offenders to their victims and to the communities they violate. It contends that punishment frequently discourages a sense of accountability while active efforts to repair harm encourage that feeling of responsibility. In this view, feeling and being an integral part of a community acts to control behavior far more than does the law or the threat of punishment by the state. Thus, a central goal of restorative justice is not just to repair the harm to the victim, but to restore a place in the community for the offender to encourage future law-abiding behavior."

Restorative justice appeared to fit naturally with the Committee's goals for increasing community-based responses to crime and alternatives to incarceration, and provided a new lens through which to analyze proposed policies and practices.

As the Maine Council of Churches' Criminal Justice Committee was learning about and advocating for restorative justice, a group in the Portland area launched what may have been Maine's first restorative justice program. Doris Luther, a mediator and trainer, had participated in a victim-offender mediation (VOM) workshop led by Mark Umbreit, one of the founders of the field, and wanted to bring VOM to Maine. Around the same time, a group led by Anita Jones launched the Community Dispute Resolution Center in Portland. The two efforts joined forces and established a VOM project. Luther recalls that, in exit interviews, over 90 percent of participants found it helpful and stated they would

What Does Restorative Justice Look Like?

Victim-Offender Mediation and Restorative Justice Conferencing are two of the most widespread restorative justice practices. They are centrally defined by the fact that they entail a face-to-face encounter between a person who is a victim of crime or wrongdoing, and the person who committed that crime or harm. Beyond a common core, programs often vary in format, process and/or name.

Victim-Offender Mediation

The process first coined victim-offender reconciliation developed from an *ad hoc* response to an alarming incident in Elmira, Ontario, in 1974. Two young men, ages 18 and 19, got drunk and went on a rampage, slashing tires, smashing car windshields, mirrors, grills and headlights, and otherwise damaging 22 vehicles or properties. The boys' actions shocked the community. But the young men had no criminal history, and their probation officer thought traditional punishment inappropriate in their circumstances. Instead, he recommended to the judge that they be required to face up to their numerous victims. Though there was no basis in Canadian law for such an approach, the judge went along with the recommendation. He deferred sentencing and ordered the two young men to meet with their victims and work out restitution. While their probation officer looked on, the two went door-to-door to the homes and stores of their victims. They admitted their crimes, and worked out an agreement for restitution with 20 of the 22 victims (2 had since moved away). The judge then sentenced them to pay restitution as a condition of their probation. Within a few months, the two had satisfied the restitution agreements, paying back losses of over \$2,000.

Building on the success of this case, Kitchener started the first victim-offender reconciliation program.⁹ The somewhat crude, improvised approach of "the Kitchener experiment" evolved as others adopted the model. Unlike in Kitchener, victim-offender mediation programs, as they most commonly are known, utilize trained mediators or facilitators and emphasize the importance of preparing victims and offenders separately before holding a face-to-face meeting. In-person preparatory meetings are essential for creating a safe environment for an in-person meeting, by giving the parties an opportunity to express emotions, feelings and needs, and to fully explore whether they want to engage in the process.

A victim-offender mediation frequently includes only those parties and a facilitator, though in some cases parents, support persons, or community members also participate. Although the process is often called mediation, it differs from mediation in other contexts; the involved parties agree at the outset about their respective roles (they are not disputants who share blame), and the primary purpose of the meeting is

simply to have a face-to-face dialogue, not to achieve compromise or negotiate an agreement. (To emphasize this important distinction from other forms of mediation, many programs use the name victim-offender dialogue.) In practice, restitution agreements frequently result from these dialogues, but research has consistently found that such agreements are less important to victims than the opportunity to express their feelings directly to, and ask questions directly of, those who have harmed them.¹⁰ By enabling safe, direct dialogue, these meetings can alleviate victims' fears of revictimization and support victims in the process of healing.

Restorative Justice Conferencing

In 1989, New Zealand replaced conventional juvenile justice proceedings with what they called family group conferences to more effectively respond to juvenile crime. Family group conferences are based on the Maori tradition of extended family decision-making, and were institutionalized in part to respond to concerns about disproportionate incarceration of Maori youth. The conferences bring together the victim, the offender and the family members, friends and/or key support persons of each, along with police, an advocate for the offending youth, a conference coordinator, and sometimes a social worker. The participants have a voice in determining the procedure of the FGC, so conferences can vary considerably. In general, the police officer, offender, and victim share their perspective on what happened, and discussion of potential outcomes follows, first separately in family groups, and then collectively.¹¹

In New Zealand's wake, conferencing programs took root worldwide, especially in Australia, the United States, the United Kingdom and Canada. In Australia's version, known as the Wagga Wagga model, conferences were introduced as a method of community policing, and were frequently facilitated by trained law enforcement officers. Conferencing programs in the United States have tended to follow Australia's model, though more often with trained volunteers than with law enforcement facilitators. Conferences following the Wagga Wagga model are usually scripted, unlike New Zealand's more free-flowing FGCs. The facilitator may prescribe the order in which participants speak, or may allow the victim to make that choice. Participants are prompted with a series of questions inviting them to share what happened, what they were thinking and feeling at the time of the incident and since, who was impacted and how, and what should be done to try to make things right, or as right as possible. Once all participants have had an opportunity to speak, they discuss and formulate an agreement about what the offender should do to repair the harm.

participate again, but the program was short-lived, and closed after about two years of operation.

Parallel to these efforts, there was growing interest in restorative justice among state leaders. Following his election to office in 1995, Governor Angus King appointed a new Commissioner of Corrections, Joseph Lehman, a strong proponent of restorative justice. In 1997, the Department of Corrections formed a task force, long encouraged by the Maine Council of Churches, to look at developing community-based corrections programs. That same year, Governor King, with DOC support, submitted a bill to the legislature, An Act to Establish and Implement Restorative Justice, proposing the development of family group conferencing for juveniles and community reparations boards for adults. Importantly, though, the Appropriations Committee cut funding for both programs, and the final bill that passed, An Act to Establish and Implement a Pilot Program for Restorative Justice (RJ Act), had a narrower scope.

Despite the absence of state funding, the passage of the RJ Act prompted well over a dozen pilot restorative justice projects around the state, in Auburn, Belfast, Biddeford, Fairfield, Farmington, Gorham, Mount Desert Island, and Old Orchard Beach, amongst other communities. Chiefly, these programs formed Community Resolution Teams (CRTs), Maine's version of family group conferencing, to conduct restorative justice conferences. A small handful of communities also created Community Reparations Boards to handle adult cases.⁵ Though there was no funding for the programs, the DOC supported them through its Victim Services division by providing training for volunteers and gathering data on the outcomes of conferences. In addition, the DOC encouraged its juvenile community corrections officers (JCCOs) to be active participants in the CRTs.

The Department of Corrections set general guidelines for the CRTs, including that they be limited to cases involving first-time, non-violent offenses, and prescribed the basic format for the conferences. In some programs, facilitators met separately with the victim and the offender first; in others, a conference coordinator contacted each by phone to discuss the process. Then a conference was organized, including the victim⁶ and offender, support persons for each, one or two trained facilitators, the referring JCCO or law enforcement officer, and one or more community members of the CRT. Most if not all projects had a committed group of community members who could be called upon to participate in conferences as needed. A member might be asked to participate because she could address a particular need a youth had, such as substance abuse, or because he could speak broadly to how the community was impacted by an offense. Facilitators followed a script, guiding conference participants through a discussion of what happened, what they were thinking at the time of the incident and since, who was affected and how, and what could be done to try to repair the harm caused. Participants then discussed and agreed upon a plan for reparation. Finally, a CRT might assign a community member to monitor a juvenile's progress in completing the agreement that was reached.

With communities across the state piloting their own restorative justice projects, the Maine Council of Churches' Criminal Justice Committee, now coordinated by Suzanne Rudalevige, identified a need for statewide collaboration and support. This

need increased when DOC announced in the early 2000s that, due to changes in priorities, it would not continue to train CRT volunteers. Rudalevige recalls that, without funding for coordination and administration, it was difficult for CRTs to sustain themselves on an entirely volunteer basis. To address the challenges of sustainability, the leadership of MCC's Criminal Justice Committee had the idea of forming a Restorative Justice Center to establish a statewide presence and support for RJ through Maine's churches. The Center had a festive opening in 2004, at which Attorney General Steven Rowe and Waldo County Sheriff Scott Story spoke, but it was not able to achieve its fundraising goals and closed in 2006.

Shortly thereafter, declining referrals led to repeal of the CRT statute in 2007. Barry Stoodley, then DOC's Associate Commissioner for the Division of Juvenile Services, testified before the joint legislative Committee on Criminal Justice and Public Safety about the proposed repeal: "Since a very positive beginning in 1997, the number of referrals to the Community teams has steadily declined. [Stoodley then cited that, after four strong years, cases markedly declined between 2002-2005, during which time several CRTs ceased operation.] The Department of Corrections believes that this process is most effective when 'owned' by the community."⁷

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Restorative justice trainer, theorist, and practitioner Kay Pranis writes, "The restorative justice framework calls for the inclusion of all stakeholders, especially victims and community members, in designing and implementing local justice practices. It is an empowerment model that must clearly be grounded in grassroots commitment at the local level."⁸ Associate Commissioner Stoodley's statement about community ownership of RJ programs is telling. The dropping referral numbers experienced by most pilot CRTs may point to a need for greater local ownership of future RJ programs.

In interviews for this article, there were a couple common refrains about why some of these early RJ programs were not sustainable. One common concern was funding; to facilitate swift action in response to case referrals, and support the volunteer efforts of many people, at least a minimum level of paid administrative help and coordination was cited as necessary. Another concern had to do with referral sources, and what happens to a community RJ program when the JCCO or law enforcement official who has been the primary referral source goes away or is otherwise unable to maintain his/her prior level of involvement.

Restorative justice entails a fundamental shift in how we do justice. This is evident in numerous ways. The shared decision-making that characterizes restorative approaches is utterly different from the hierarchical norms of our criminal and juvenile justice and corrections systems. Restorative justice programs also require a level of community engagement in the justice process that we have largely given up to professionals, jury service aside. In other words, when communities embrace restorative justice, they are making a decision to reject the status quo. Such bold steps are not taken lightly, or quickly.

Our next article will look at the restorative justice movement in Maine today. When most CRTs ceased operation, the notable exception was the Belfast-based Restorative Justice Project of the

Midcoast, now in its tenth year. A growing number of other communities are now developing their own RJ programs utilizing a generative approach developed by the Restorative Justice Institute of Maine (RJIM). This approach, part of RJIM's statewide strategy to forward the restorative justice movement across Maine, aims to achieve long-term sustainability by drawing on the particular needs and resources of a community, building local infrastructure, and allowing for continual growth and development by reflecting on and responding to what is working and what is not. It is an exciting time for restorative justice in Maine—stay tuned!



Marina Sideris is an attorney, small business owner, mom, and occasional farmhand who lives and works in Camden. After graduating from Camden-Rockport High School, Marina left Maine to attend Wesleyan University in Connecticut, then spent a decade in California. In California, Marina was a case manager for homeless individuals with pending criminal charges and an advocate for prison reform. She earned a law degree from the University of California, Berkeley, School of Law, then worked as a legal aid attorney in rural California for several years before returning to Maine. Marina is inspired and motivated by the potential for restorative justice to strengthen communities by promoting real healing for victims of crime and wrongdoing, and meaningful accountability and reintegration for those who harm others. She serves on the board of the Restorative Justice Institute of Maine. Marina can be reached by email at marina@dooryardlaw.com.

1. See Howard Zehr, *Changing Lenses* (1990).
2. Maine Governor's Blue Ribbon Commission on Corrections, *Corrections in Crisis* (1985).
3. *Ibid.* 2-7.
4. These newsletters, entitled *Kaleidoscope of Justice*, are an impressive collection of informative and educational pieces about restorative justice in Maine and globally, during the period 1995-1998. A complete set of the newsletters is now held at the offices of the Restorative Justice Institute of Maine, located at Fort Andross, 14 Main Street, Brunswick.
5. Reparations boards are intended to allow community members to play a direct part in responding to those whose actions disrupt the peace of their community. In models like the one Maine piloted, an offender sentenced to reparative probation was ordered to appear in front of a board comprised of community members, often representing a number of different systems and segments of the community. After meeting and speaking with the offender, the board would decide what reparative actions he or she should take, as conditions of probation. Reparative boards have been critiqued as not being truly restorative, in large part because they have often failed to effectively involve victims in the process. In addition, in models where offenders are mandated to appear as a condition of probation, they lack the voluntari-

ness that many consider to be a hallmark of restorative justice.

6. Victims were never required to participate, and occasionally conferences were held without the participation of the victim, or with a victim surrogate instead.

7. An Act to Amend the Laws Relating to Juveniles: Hearing on L.D. 521 Before the Criminal Justice and Public Safety Comm., 123rd Leg. 1 (Me. 2007) (statement of Bartlett H. Stoodley, Jr., Associate Commissioner for Juvenile Services, Department of Corrections).

8. Kay Pranis, "*Building Community Support for Restorative Justice: Principles and Strategies*," International Institute for Restorative Practices, Dec. 31, 1995, www.iirp.edu.

9. Following Kitchener, hundreds of similar programs sprang up throughout Canada, the United States, and Europe. By 2000, there were more than 300 programs in the United States and Canada, and more than 700 in Europe, with thousands of cases being handled each year. Gordon Bazemore and Mark Umbreit, U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, *A Comparison of Four Restorative Conferencing Models* (2001).

10. U.S. Dept. of Justice, Office for Victims of Crime, *The Restorative Justice and Mediation Collection: Executive Summary 3* (2000).

11. For a detailed description of New Zealand's family group conferences, visit the website of The Youth Court of New Zealand, <http://www.justice.govt.nz/courts/youth/about-the-youth-court/family-group-conference>.

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