

Apology and Forgiveness

Expanding the Borders of Restorative Justice

by Darrell L. Puls

Most published articles regarding restorative justice place it squarely in the realm of the victims of criminal offenses and the offenders who did the crimes, and particularly within victim-offender mediation. Indeed, restorative justice programs are “an alternative approach to criminal justice that began in response to what proponents viewed as the ineffectiveness of our current system.” (Wellikoff, 2004)

Some people find it necessary personally to confront the offender face-to-face. They must see him, hear his voice, and watch his body language to satisfy themselves that the offender is no longer a threat. If the offender confesses both the act and the damage done, and makes an offer of restitution, it is more likely that the victim will forgive and find personal release from the criminal act. [*Author’s note: Forgiving does not imply ignoring justice by condoning or pardoning the act, but is a series of decisions to let go of anger and the desire for revenge. Rather, forgiveness and justice are intertwined. (Puls, 2006a)*] In addition, the offender is more likely to see the victim as a human being rather than as an object, and find regret for what he or she did. Restorative justice, in treating crime and civil offenses as a violation of one person by another, emphasizes face-to-face dialogue, problem solving, repentance, social repair, and the possibility of forgiveness (Sarre, 1997), and so meets these needs.

Restorative Justice

Restorative justice offers the opportunity to mend personal relationships and reestablish both in society (Dzur & Wertheimer, 2002). It allows both to see each other as human beings rather than as objects. Thus, the offender seeks to regain status through changing morally incorrect behaviors, and the victim regains power by shedding the baggage of victimhood. As rehumanization progresses and the offender begins to truly understand the gravity of what he has done and the damage he caused, it becomes more

likely that he will express contrition, apologize, and request forgiveness, knowing that both making the request and granting forgiveness have behavioral and moral consequences for both parties. Thus, the restorative model opens a window of opportunity for the two parties to each find cathartic release and relational repair; it is win/win rather than win/lose or lose/lose.

Restorative justice works. Offenders who have gone through mediation with their victims have considerably lower recidivism rates than those exposed to strict punishment (Zehr, 1990), with particularly dramatic reductions in juvenile offender recidivism (Umbreit, Coates & Vos, 2004). The act of placing a human being whom the offender hurt before them who asks them to explain their actions while offering their own pain and fear often serves to break through offender defenses, allowing them to admit the offense and seek forgiveness. Restorative justice also goes far in helping victims heal the past and move into a brighter future in these intimate encounters where remorse and apology are used as powerful tools in bringing closure to victims and restoration to offenders (Stephanos & Bierschbach, 2004).

But is restorative justice truly limited to the criminal justice system? Not if you define victims as those persons directly affected by the offense, including family members and members of the affected community (Maise, 2003). We must also look at what we mean by an offense. My Webster’s Ninth Collegiate Dictionary has several different meanings for the term, and so I go with the most inclusive: a breach of a moral, social, or legal code.

I spent much of the last five years studying the dynamics of forgiveness, relational repair, and reconciliation in individuals and communities disrupted by severe interpersonal or violent conflict. I suggest that limiting restorative justice to being part of the criminal justice system confines our thinking and practice to standing on the border

of a vast new country and calling what we see all there is. If we look at the definitions of victims and offenses, it immediately becomes clear that they encompass a much wider array of possibilities—the borderland we see is very narrow, so we must look beyond it.

Unlocking Restorative Justice

The key to unlocking restorative justice is this close and personal encounter, its essence is the desire to understand and heal, and its heart is apology.

The magnetism of victim-offender mediation is the possibility of understanding the offender and triggering some form of release for the victim and the hope of forgiveness and redemption by the offender. Otherwise, why bother? It’s dangerous to open oneself to being wounded again or simply rejected, but the hope that is buried in the encounter is often strong enough to overcome these fears.

My more than 30 years experience in conflict resolution leads me to conclude that this same hope is present but mostly ignored in other areas where it can be an incredibly powerful goad to apology, changed behaviors, restitution, and even forgiveness. Isn’t that what restorative justice is all about, an interplay between victims and offenders where each is healed and changed for the better?

By its very nature, justice cannot restore all that which was lost. Instead, it often creates a paradox where, in attempting to make one whole, the original loss is compounded by demanding that even more be lost, often through the trauma of testifying in court. In addition, justice alone cannot restore the sense of personal safety to the rape victim, or the peace of mind of the burglary victim. Even if something stolen is returned, justice cannot restore the time that it was gone. The strict justice of forfeiting a life for a life not only cannot restore the life that was lost, it instead compounds the loss

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of life where not only is there no surcease of mourning, but mourning is doubled. Restorative justice

inculcates an ethic of mercy into this complex calculation, making what was rigid into something far more pliable.

Restorative justice encounters are already being expanded into such fields as medical mistake litigation, and with astonishing effect. To understand why, we must examine the very heart of the encounter: face-to-face apology.

Apology

Nicholas Tavuchis (1991) states that apology "is the middle term of a moral syllogism," which Lee Taft (2000) describes as beginning "with an inner urging to repent and ends with forgiveness as a moral option for the offender." Apology is, then, the centerpiece in a moral dialectic between sorrow and forgiveness." Apology cannot be separated from morality, for apology is about admitting wrongdoing. If there is wrongdoing, there must also be a place for "rightdoing" to rebalance the scales. Justice is also about morality, right and wrong, healing, and relational repair. Justice by itself, however, brings only temporary satisfaction. Strict justice is about revenge and revenge lights up the same short-term pleasure center in the brain as do thoughts of chocolate (deQuervain, et al., 2004). To satisfy, justice must be something creative and deeper, and cannot follow a legal equation, for determinations of what constitutes justice swirl and change as the process moves forward.

Apologizing requires moral courage, but also a "willingness to accept the consequences that flow from the wrongful act." (Taft, 2005) According to the Law Commission of Canada (1999), this heart of apology is generally considered as incompatible with mounting a strong defense. One cannot apologize for what one did, with its admission of guilt and sorrow, and still defend it. I offer that this is where we misapprehend the proper role of apology. Too often advocates count only the tangibles that admitted liability may threaten, e.g., damages. There is more to the justice equation, and apology, with its gut-wrenching moral challenges, plays a major role in bringing it to the fore.

Jonathan R. Cohen (1999) argues, "Apology subtracts insult from the injury," and, offered at the right time, can prevent minor conflicts from escalating into major lawsuits.

Why is apology such an integral part of restorative justice? And, why does it so often go wrong? There are a many reasons, but the most common come together in what is called "needs theory" where the needs for safety, security, and relatedness have been violated (Ryan, 1995) and the apology falls short of meeting those essential needs.

We each have differing needs when it comes to apology, and we tend to extend apologies based on our own needs by projecting those needs onto other persons. We are thus perplexed when the apology fails, for it seemed like a very good and sincere effort on our part. Unfortunately, we met our needs and not those of the other party.

There are four levels of apology, and each must be met to maximize the probability of success, preferably in the following order:

- 1.The most foundational level is confession where the transgressor acknowledges what he or she did, taking unequivocal ownership of the act and the damage it caused, and the victim hears the truth from the one who did the act. The result is a sense of relief for the victim at having a face and name to go with what happened or, already knowing the name, seeing honesty restored where deception had prevailed.
- 2.The next level is the most powerful component: the expression of remorse, such as "I'm so sorry that I hurt you." The expression must be genuine, but may be expressed verbally, through body language, in other ways, e.g., flowers, or in combinations of these. Showing remorse acknowledges that the act itself was wrong, damaging, and painful, and that the victim did not deserve it. True remorse contains great power through the risky but moral act of dropping all defenses and reaching out to heal the injured, a voluntary sacrifice of the self for the sake of one's victim.

3.The third level by necessity incorporates the first two, but adds on repentance, a change of mind and behavior that assures the victim that the transgressor is no longer a threat, and perhaps even is trustworthy again. This is usually a verbal recounting of what he or she learned and how he or she will behave in the future under similar circumstances. This is the trust-building phase, and may have to be stretched out over a considerable period of time to ensure that the transgressor truly is "walking the walk."

4.Restorative justice is the final phase of every effective apology, and it arrives through the open-ended offer from the offender of, "What can I do to make this right?" This is where things can get very creative and travel down unforeseen, but ultimately healing, paths. What is justice to one is injustice to another, so expect variations and nuances, particularly since the preceding actions, if done genuinely and completely, invoke mercy to intervene with punishment (Puls, 2006b). In one instance in South Africa, the mothers and wives of the seven murdered young men known as the "Guguletu 7" forgave the police informant who led their sons and husbands into police bullets. Why? He owned and confessed his crimes, showed true remorse, offered no defense and no excuses, and his repentance was so real that they forgave, meaning they let go of their anger and resentments and desires for revenge against him. Several physically embraced him, with one ending the embrace with, "Go well, my son."

Expanding Restorative Justice

Where else might we expand the role of restorative justice? Why not use a similar process in employment cases? I represented unions and union members for 26 years and can attest to the terrible toll that wrongful (or even rightful) terminations can take on people, both for the termination itself and for the increasingly cold manner in which it is carried out. In one recent case, a woman returned

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from vacation to find a certified letter stating that she had been terminated from her job three days previously. The employer, fearing liability, refused to give reasons and refused, on the advice of counsel, to apologize *even for the inhuman manner in which the termination was carried out*. The result is an expensive lawsuit when what she wanted was an apology for the way she was treated. In another case, the employer spent more than \$500,000 developing its defense and \$1,000,000 on a settlement when all the man wanted was an apology, his old job, and back wages. He even would have signed an agreement guaranteeing his silence. Restorative justice would have been much cheaper and far more satisfactory in both instances.

Let's look at some startling results of expanding restorative justice into medical practice. In 2002, the University of Michigan Hospitals adopted a policy of immediate full disclosure, sincere apology, restitution, and transparency in their investigation into every medical error case. Attorneys usually argue that this is an invitation to suicide because it readily admits error and apologizes for it. Instead, the number of new lawsuits dropped by more than 60% within 18 months, and legal costs also dropped from \$3 million to \$1 million annually (Sparkman, 2005). This has been replicated at the Dana Farber Cancer Center, Johns Hopkins University, and the Children's Hospital of Minneapolis (Berlin, 2006). The Veterans Administration Hospitals saw an even more amazing change: average settlements dropped from \$98,000 to \$16,000 (American Academy of Physician's Assistants, 2007). In all of these scenarios, victims and their families reported much higher levels of satisfaction than in those cases handled in the more traditional manner. Why, you may ask, is this so? The research indicates that people want to see their physicians as fallible human beings, and they find it fairly easy to forgive when he or she admits honest error, expresses sorrow, and does everything possible to make things right again. An attorney reported to a friend that his clients reduce their settlement demands by an average of \$100,000 after an effective apology is given; con-

versely, their demands tend to harden if they believe there is a cover-up or that they are being stonewalled. (Berlinger, 2003).

Where else might restorative justice bring people back together? Why not negligence and other tort cases? Why not national and international disputes? Why not long-standing, even inter-generational or cultural disputes? Why not family disputes? It could be a very long list as we move out of borderland and into the unexplored interior.

Restorative justice requires humility, honesty, and the ability to reach out to the wounded. It is a two way street upon which confession introduces victim and offender, remorse makes them reach out for each other, repentance begins rebuilding trust, and mercy intervenes with justice to create a place where they kiss instead of hiss.

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