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## Restorative justice: a kinder, gentler and better way?

Restorative justice" is both an old and a new concept. It is quickly spreading throughout American society, including the formal court system.

In Georgia, the parents of a young woman killed by her boyfriend asked the court to apply restorative justice concepts as part of the sentencing of their daughter's killer; in fact, they said that they understood and forgave him. Whatever its origins, restorative justice is clearly an idea whose time has come.

Restorative justice is the process by which all of the parties who have been affected by an injustice have the opportunity to discuss how the injustice has affected each of them, how the harm done by the injustice can be repaired and how to begin a healing process. It can be part of the formal criminal justice and penal system, or it can be entirely separate from it.

Restorative justice has its roots in the mediation and restitution systems of many ancient communities. Some of these communities, such as nomadic tribes, had no formal courts. Others were minority groups within a larger society whose court system they did not trust, such as the minorities within the Russian and Ottoman empires over a century ago.

Think what would happen if someone injured or killed a member of your family. Your first instinct would be to cry out for vengeance, for punishment, for "justice" by the legal system. If you could see the perpetrator of the crime punished, you would feel a sense of closure, a sense of healing. But often the family of the victim continues to suffer even after punishment is meted out, and, psychologically, there is no real healing.

In recent years, some countries that have experienced gross na-

tional injustice have turned to truth and reconciliation commissions that investigate the wrongs done. Often the witnesses, even the perpetrators, were given amnesty so that they would talk freely.

South Africa was a pioneer with its post-apartheid commissions, which investigated and publicized abuses by all parts of South African society. Even Winifred Mandela was called to account by a commission that was concerned about her actions while her famous husband was in prison.

I saw a similar variation of this in Argentina and Chile in 1993. Both countries had just concluded decades of repressive dictatorships. Using truth and reconciliation commissions, they learned, as the saying goes, "where the bodies were buried."

In some cases, that was literally true as soldiers revealed where they had buried the corpses of dissidents tortured to death. Sometimes the truth was appalling, as when young people learned that the junta had murdered their biological parents and then given them, the children, to friends whom they now called mama and papa.

Argentines and Chileans told me that these revelations, however painful, were necessary to their countries' future. In the end, some of the perpetrators expressed remorse and begged their victims' families for forgiveness. The forgiveness became the "reconciliation" after the "truth."

Few perpetrators actually faced criminal charges in courts, but the truth of their crimes became known. Most important, the victims, their families and their countries were able to move on.



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How can we transplant these experiences to our country? Sometimes judges allow a trained facilitator to call the victim or victim's family together with the perpetrator and his family. A skilled facilitator can persuade each of the "stakeholders" in the injustice to speak what lies in his heart.

Sometimes the perpetrator begs forgiveness and offers to

option in the revision of the model penal code. This may be the first time that any American penal code has formally recognized the restorative justice concept. Already, some criminal courts are quietly experimenting with restorative justice in an informal setting. A few law schools, including John Marshall, now offer courses in restorative justice.

Some elementary and high schools are using restorative justice concepts as an alternative to disciplinary measures. Restorative justice sessions seem to be particularly effective in combating bullying and other forms of strife among students.

Sometimes a teacher whom a student has attacked asks the school to refrain from calling the police — which invariably leads to a juvenile record for the student — and instead use restorative justice methods to determine the source of the student's anger and help him control his rage.

At first I was skeptical about restorative justice as an efficient way to address strife and violence. However, I now think it is a modern version of

what the ancient Greek playwrights called "catharsis" in their tragedies. Catharsis was the purification

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make some kind of restitution. Sometimes the victim and his family accept both the apology and the restitution.

In any event, there is usually a healing, a sense of peace that we rarely see come from the formal court system. Occasionally, the victim or his family even asks the judge to impose a more lenient sentence upon the perpetrator, as the parents of the murdered woman in Georgia did.

The American Law Institute is considering a restorative justice

that came from the release of emotions, especially pity and fear, that flowed from suffering. From catharsis the person who suffered could find ennoblement.

Clearly, restorative justice is an idea whose time has come. Perhaps it will not provide ennoblement in the ancient Greek sense, but it can provide a way to heal, not just punish, injustice.

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