

2023 HAWAI‘I ACCESS TO JUSTICE CONFERENCE

“BUILDING TRUST AND UNDERSTANDING ABOUT CIVIL ACCESS TO JUSTICE”

Friday, June 16, 2023

William S. Richardson School of Law, University of Hawai‘i

2:15 - 3:30 p.m.

“Access to Justice and Restorative Justice”

[Lorenn Walker, Judge Leslie Hayashi (ret.), Jeannie Lum]¹

This session focused on exploring three questions: What is restorative justice? What are its origins? And what is its future?

What is restorative justice?

Restorative justice focuses on the person that has been harmed. The process allows the harmed person to express their feelings and to think about what could happen to make them feel “repaired.”

The process has to allow for everyone who has been affected to participate. Their feelings must also be taken into consideration.

Origins of restorative justice

Restorative justice has its roots in ancient and indigenous cultures all over the world. For example, the aboriginal beliefs that all things in the universe are part of a single and interconnected through relationships captures the essence. Therefore, when a person is harmed, a relationship is violated, and that injury needs to be addressed. Healing carries a duty, and that duty does not rest solely with the offender – all factors that contributed to the offense need to be identified.

According to Peter Senge, at one point all cultures and societies had a form of restorative justice. However, western societies moved away from restorative justice.

According to John Braithwaite, that decisive move came with the Norman conquest of much of Europe at the end of the Dark Ages. Transforming crime into a matter of fealty to and felony against the king, instead of a wrong done to

¹ Judge Leslie Hayashi (ret.) prepared this summary.

another person, was a central part of the monarch's program of domination of his people.

Many in the restorative justice field believe that the interest in North America was rekindled when an experimental victim-offender reconciliation program was started in Kitchener, Ontario in 1974.

The Zehr Institute webpage describes this re-interest as follows:

It emerged as an effort to correct some of the weaknesses of the western legal system while building on its strengths. An area of special concern had been the neglect of victims and their needs; legal justice is largely about what to do with offenders. It has also been driven by a desire to hold offenders truly accountable. Recognizing that punishment is often ineffective, restorative justice aims at helping offenders to recognize the harm they have caused and encouraging them to repair the harm, to the extent it is possible. Rather than obsessing about whether offenders get what they deserve, restorative justice focuses on repairing the harm of crime and engaging individuals and community members in the process.

The 70s is also a time when legislatures pass bills creating victims' bill of rights. This included requesting restitution, a way for the defendant to compensate the victim. In addition, the rise of alternative dispute resolutions began to offer solutions that were based on rehabilitation rather than retribution. Concerns over growing prison populations also contributed to a need to seek alternatives.

Core principles of restorative justice

According to Howard Zehr, the father of modern restorative justice, the assumptions behind restorative justice are:

- (1) crime violates people and relationships;
- (2) justice aims to identify needs and obligations
- (3) so that things can be made right;
- (4) justice encourages dialogue and mutual agreement;
- (5) gives victims and offenders central roles; and
- (6) is judged by the extent to which responsibilities are assumed, needs met, and healing (of individuals and relationships) is encouraged.

These principles boil down to these three values:

- Respect
- Responsibility
- Relationship

Future of Restorative Justice

Although Zehr speaks in terms of criminal law, restorative justice blurs the line between criminal and civil wrongs by focusing on the harm done and the solutions required for healing, rather than the action itself or the need for punishment.

Therefore, the principles of restorative justice are applicable to both criminal and civil conflicts where a wrongdoing is at issue. Already it is being applied in the juvenile justice setting and is widely used in schools. Public housing is another area suitable for restorative justice. Family law matters including child custody, property division and elder care benefit from restorative justice. Wills and probate are other areas where restorative justice principles can be of value. Environmental concerns are beginning to embrace restorative justice principles. Although restorative justice cannot be a panacea for every situation, whenever there is a broken relationship, restorative justice may be the key to healing it.