History of Criminal System:
- Locking people up to “rehabilitate” them

Encouraging racism
- Radical criminality: lot of cynicism, without positive vision to give hope
- Replaced it with just desserts
- Say we’re punishing people, but specify beforehand what will happen to them
- Discretion didn’t leave: moved from public judge to private prosecutor
  o Most politicized justice system: prosecutor’s system
  o Prison rates expanded

RJ catalyst for re-visioning
- remain critical
- it’s not a silver bullet, too
- have a willingness to be self-critical
- “changing lenses”: remain critical
  o only with a sense of direction can we know we are off the path

Restorative Justice Roots
- start in mid-70s in particular case in Canada
- came up in Northern Indiana: Zehr got involved there
- 3 main concerns:
  o people who are victimized are neglected from the justice process: re-traumatized by the process
    (how do we be healing)
    ▪ information about what “really happened”
    ▪ chance to tell your story
    ▪ chance to be re-empowered
    ▪ chance to be vindicated
    * get stuck when these needs are not met * RJ tries to address these needs
  o we were punishing a lot of people: punishment is not accountability
    ▪ neutralizing strategies: re-enforcing the very way people get in trouble in the first place
  o our justice process is actually weakening community
    ▪ communities are built when they solve problems together
    ▪ when they don’t solve, we dis-empower them
    ▪ how do we engage communities in a way that is life-giving and meets their needs?

- Meeting the needs to those who have been harmed, reconciling the ones who have done the harm
- Victim-offender conferencing
- Continuum practices: come are more effective than others

RJ (Restorative Justice)
- characterization: relational approach to problems, conflicts, harms – focuses on needs and responsibilities, and puts a premium on dialogue
- neuroscientists: designed to fit the way the brain works
- PRINCIPLES
  o Harms/Needs: Legal system/school system defines things by the laws that were broken / RJ focuses on the HARM
    ▪ Central damage of wrong-doing is the trust
    ▪ Have to address the harms and the needs (harms/needs focused)
  o Obligation: When we harm someone, we have an obligation to make this right – helping people take responsibility
    ▪ Process for community responsibility
  o Engagement: people who have a stake ought to be involved
Legal: what laws did you break? What punishment do you deserve?
RJ says: who has been hurt? What are their needs? Who caused it? What needs to be done to make this right? Whose obligations are these?

Values
- Many wrong things done in the name of RJ
- RESPECT: providing a respectful experience for everybody
  - Disrespect the disresponder in the punitive process
- RELATIONSHIP: we are in relationship
- RESPONSIBILITY: we are responsible for our behavior and the impact it has on other people

Sunday: how to implement in the real world
- Zehr’s suggestions:
  o Victims: current system only services those whose offender has been identified
  o Divides victim and offender up, assumes they are adversaries, and then ensures that they are; divides people who need to be brought together
  o Parallel justice: need system for both victim and offender, with links between the two
  o Defense attorneys: to address the needs of victims
  o Death Penalty: Timothy McVague: “there are so many victims that we don’t know what we’re doing”
  o Something has to change how we do capital cases
  o Creating a BRIDGE between defense and prosecutor – to get answers
    - You have a responsibility, not just to your client, to the person that did the harm. Let’s try to meet their needs as much as possible
    - People who have been victimized have a right to engage with their offender, as long as it’s done safely and responsibly
  o Police: focus not only enforcement, but PREVENTION
  o Arrest be a last result, not a default
  o Variety of restoratively enforced cautions, or warnings
  o New Zealand: youth justice
    - Assume most youth defending is developmental
    - Labeling theory: If you get people into the system and call them offenders, they will actually become offenders
    - Keep them out of the system
    - Most people will grow out of wrongdoing
    - Circle processes instead of arrests
  o Bay Area:
    - Prosecution: keep all people out of the system; instead of a charge, these people can bring the victim, family, offender, police officer together (reverse Miranda – anything you say can NOT be used against you)
    - RJ can help offenders better understand their needs
    - Conversation more about the best outcome
  o Europe v. United States
    - Europe: focus on presumption of innocence / but once convicted, dignity and respect
    - United States: focus on presumption of innocence / but once convicted, anything is possible

Can we imagine a court that asks RJ questions?
- Circles, conversations, questions
- Restorative Courts to govern based on RJ questions and principles
- Also need to reach juries
  - Balance of lay-people and professionals
  - Expanded the role to meet as they are originally intended
- Probation
  - Punitive-ness has seeped through the whole system
  - Surveillance of offenders
  - Community – justice officers
    - Transformation from role of __, to facilitator for community responses to crime
• Focus on repairing harm, reducing risks, and repairing community: focus on stake-holder engagement

- Prison
  o Restorative culture
    ▪ Holman in Alabama: 200 men trying to live together restoratively
    ▪ Prison in Pennsylvania: prisoners making their own training
  o Use of RP for re-entry
    ▪ Family
    ▪ Circle
    ▪ Transitions
    ▪ Keep people accountable
    ▪ Surround person with circle to support and hold accountable

- Chad Marona: “Doing Good”
  o Why do people keep from doing crime?
    ▪ Relationship with law-abiding people
    ▪ Meaning
  o Offenders and victims are both trying to re-story their lives

- Grander Vision: Dream
  o Lawyers: as problem-solvers and healers
  o Systems set up to meet victims’ needs
  o Everyone in system keeps asking questions, “who has been hurt? What are their needs? Whose obligations are they”
  o Justice System as pyramid:
    ▪ Bottom: whole series of restorative options
    ▪ Middle: deterrents
    ▪ Top: Incapacitation (last resort – not needed for most people – should be short term)
      • each level has its own deficiency
  o Less costly, most respectful

- New Zealand
  o In 1980’s, had one of highest incarceration rate among youth – especially people of color
  o Mauri: system is culturally inappropriate and inherently racist
  o Came up with whole new system, then used RJ
    ▪ Conference with family members (or virtual), victims (and supporters), and especially trained advocates, and police officer: decide case by consensus
    ▪ Issues taken out of court and moved back into the community
    ▪ Designed system to deal with most heinous cases imaginable
    ▪ Why can’t we come up with a system where restorative actions are the default?
  o May have us re-think our idea of rights
    ▪ Our rights have been defined with very individualist terms
    ▪ Need restorative concept of rights
      • Mutual promotion of dignity of everyone
        o Transform situation
    ▪ Begin at the least legalistic level
  o Herbert Parker Packer
    ▪ Crime-patrol orientation: emphasizes insecurity – certainty of power and incapacitation – victims needs are met by severely punishing offender
    ▪ Due – process orientation: government is so powerful, and it’s so easy to make a mistake: need to make sure that we safeguard the government’s power – more on safeguarding offender’s rights and citizen’s rights
      • Really have a lot in common; most define wrongdoing by law-breaking, and not harm. Focus on state v. offender, leave out victim.; keep victim and offender separate; leave out victim
      • Establishing guilt, handing out punishment
    ▪ RJ could be a third way: to emphasize repair and reasonability
Focus on harm (trust)
Seek to repair harm
victims and offenders needs would be equally balanced
  o what does the victim need?
  o What is happening in the offender’s life to make this happen? What needs to happen so that they don’t do this again?

- Justice: reducing and repairing harm; encouraging responsibly, and engaging people in the process

- US focuses on freedom; has to do with colonization (individualistic)

- New Zealand: focused more on fairness (relational)

- Can we combine liberty and freedom with fairness and justice?

- Honesty, bravery – including victims in process of repairing harm

- “Neils Christie” Limits and Pain

- RJ doesn’t have all of the answers, but I hope it’s provocative
  o Offers some possibilities – moral vision essential for transformation

- People who are offenders need habilitation (I had to come to death row to find love)
- They’ve can’t get RE because it’s never happened
- Most serious offending is based on that person being offended as well
- “all violence is an effort to do justice, or to undo injustice”
- Trauma is so central (star) trauma effects individual and societies
- RJ is a value system (just as criminal justice is a value system)