

Howard Zehr. April 18, 2015. Re-Visioning Justice.

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
 - 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

- o Legal: what laws did you break? What punishment do you deserve?
- o 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
 - o Many wrong things done in the name of RJ
 - o RESPECT: providing a respectful experience for everybody
 - Disrespect the disrespecter in the punitive process
 - o RELATIONSHIP: we are in relationship
 - o 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 who's 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 offending 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?
 - o Circles, conversations, questions
 - o Restorative Courts to govern based on RJ questions and principles
 - o Also need to reach juries
 - Balance of lay-people and professionals
 - Expanded the role to meet as they are originally intended
 - o 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
- Grandeur 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)