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rivista semestrale
di scienze umane

Verifiche. Associazione di Studi filosofici
Sede Operativa e redazione: via Giorgio Schiavone, 1 - 35134 Padova
Direttore responsabile: Antonella Benanzato
Amministrazione: info@verificheonline.net
Autorizzazione Tribunale di Padova n. 2445 del 17/09/2017
Poste italiane - Spedizione in Abbonamento Postale
Chinchio Industria Grafica srl, Rubano (PD) - Via Pacinotti, 10/12
Anno XLVIII - N. 2 Luglio-Dicembre 2019
www.verificheonline.net

PREZZO € 35,00

«VERIFICHE» ISSN 0391-4186

VERIFICHE 2019

2

*Philosophical Insights
for a
Theory of Restorative Justice*
Edited by G. Grandi and S. Grigoletto

L. Alici, T. Chapman, G. Grandi, S. Grigoletto, B. Pali,
F. Schweigert, E. Tiarks, S. Worboys, H. Zehr

2019

ANNO XLVIII N. 2

Verifiche

Rivista fondata da Franco Chiereghin e Giuliano Rigoni

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Book reviews are generally commissioned by the Editorial Staff. If you are interested in writing a book review, please contact Barbara Santini (recensioni@verificheonline.net). Books should be sent to the following address: «Verifiche», via G. Schiavone n. 1, 35134 Padova, Italy.

Publicato con il sostegno del progetto sull'innovazione sociale di Area Science Park e del progetto 'Restorative Justice. Potenzialità e limiti di un paradigma di giustizia' del Dipartimento di Filosofia, Sociologia, Pedagogia e Psicologia Applicata (FISPPA) dell'Università di Padova.

«Verifiche» is an international biannual, peer-reviewed Journal (ISSN: 0391-4186)

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www.verificheonline.net

Verifiche

International biannual, peer-reviewed Journal (ISSN: 0391-4186)

ABBONAMENTO/SUBSCRIPTION PRICE (2019)

Italia: privati € 55,00 (sostenitori € 65,00; studenti € 35,00); enti: € 80,00.

Europe and Mediterranean Countries: € 75,00 (students: € 55,00); institutional: € 100,00.

Other Countries: € 90,00 (students: € 70,00); institutional: € 115,00.

Spese postali incluse/Shipping charges included.

FASCICOLI SINGOLI /SINGLES ISSUES (2019)

Italia privati: € 35,00 (fascicolo doppio: € 65,00); enti: € 45 (fascicolo doppio: € 85,00)

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Italia: € 40,00; Europe and Mediterranean Countries: € 40,00 (plus € 11 shipping charges).

Other Countries € 40,00 (plus € 16 shipping charges).

MODALITÀ DI PAGAMENTO/METHOD OF PAYMENT

Con bonifico bancario intestato a / By bank transfer to:

«Verifiche. Associazione di studi filosofici»

Intesa Sanpaolo Spa – Filiale Accentrata Terzo Settore, Piazza Paolo Ferrari, 10 – Padova

IBAN: IT54X0306909606100000142839

Nella causale specificare il numero o l'annata (per ordini) oppure solo l'abbonamento (in caso di abbonamento annuale). Please indicate *issue number* and *year* (for single issue) or *year* only (for yearly subscription).

Per usufruire dello sconto per studenti è necessario indicare nella casuale il numero di matricola e la sigla della sede universitaria (oppure l'indicazione dell'istituto).

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Cover Design by Giulia Battocchia

verifiche

Anno XLVIII, N. 2 Luglio-Dicembre 2019

Dir. resp. Antonella Benanzato • Amministrazione: Via G. Schiavone 1 35134 Padova
in corso di registrazione, Tribunale di Padova RVG 6214/2017
Poste Italiane s.p.a. - Spedizione in Abb. Postale 70% - NE/PD
Chinchio Industria Grafica s.r.l. - Rubano (PD) - Via Pacinotti, 10/12 - A. XLVIII (2), 2019

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RESTORATIVE JUSTICE BEYOND CRIME. A VISION TO GUIDE AND SUSTAIN OUR LIVES

by Howard Zehr*

Abstract. *In this paper Howard Zehr, widely considered the contemporary initiator of the debate on Restorative Justice, draws from some cases to present the core principles and values of this approach to justice. These lead to the starting questions of Restorative Justice that constitute the beginning of every restorative process and contrast a widespread conception of criminal justice. Finally, he tries to expand the reach of RJ by introducing the guidelines to bring restorative principles and values into our everyday lives. Namely: 1) Take relationships seriously, recognizing you are one part of a web of people, institutions and the environment; 2) Be aware of the impact of your actions on others and the world around you; 3) Take responsibility for injuries you have caused – acknowledge and try to repair harm; 4) Treat everyone with respect, including those who offend you; 5) Whenever possible, involve people in decisions that affect them; 6) View conflicts in your life as opportunities; 7) Listen to others deeply and compassionately – try to understand even when you disagree; 8) Engage in dialogue with others even when that's difficult – remain open to learning from them; 9) Be cautious about imposing your 'truths' and views on other people and situations; 10) Sensitively confront everyday injustices such as sexism, racism and classism.*

Keywords. *Restorative Justice; Restorative Principles; Restorative Values*

On November 4, 1995 at 4:40 in the afternoon, Jackie Millar was shot in the head at close range with an exploding bullet. Two boys broke into the friend's house where she was resting while waiting for him to return from working on his tree farm. They took her car keys, then debated which of their guns they would use to shoot her.

«I died», she told me with quiet conviction, «and then I got resurrected. The Lord told me, 'maybe you can stop one youth if you tell your story'».

* Eastern Mennonite University – Zehr Institute

When I met her, she was legally blind, her right hand paralyzed, and she walked with difficulty and talked slowly. But Jackie was visiting prisons, speaking with young men like those who shot her – including one of them men who did shoot her – doing ‘hug therapy’.

She insisted that Craig, who pulled the trigger, is like one of her sons. A long-time prisoner recounts how she transformed his life when she told him, «You are a human being, and don’t let anyone else tell you differently», then gave him a hug.

Most of us don’t experience the call or motivation to improve the world, to serve others, this dramatically. Many of us may, in fact, be uncomfortable with the term service, but my guess is that most involved in the work of peace and justice have experienced some sort of push or call to make the world a better place.

Jackie’s story is one of many included in my photo/interview book, *Transcending: Reflections of Crime Victims*¹. Earlier I had done a similar book with men and women serving life sentences. For *Doing Life: Reflections of Men and Women Serving Life Sentences*², I interviewed and made photographic portraits of ‘lifers’ in Pennsylvania. These men and women had been convicted of involvement in taking a life, and now were serving life. I was curious what they had learned about life.

In the spring of 2017, 25 years later, I finally received permission to revisit some of them. I was struck by how many felt called or motivated to do good, to find meaning by helping others.

Yvonne Cloud is one of those lifers. She was in her 20’s when I first met her and had now been in prison for 34 years. She came into the room with a detailed resume in hand, primed to show me how much she had changed over those years. During the intervening years, she has become a peer facilitator in a drug and alcohol program and a certified hospice care worker, among many other involvements. Recently she also became a Certified Peer Specialist

¹ H. Zehr, *Transcending: reflections of crime victims: portraits and interviews*, Intercourse (PA), Good Books, 2001.

² Id., *Doing Life: Reflections of Men and Women Serving Life Sentences*, Intercourse (PA), Good Books, 1996.

and spends much of her time talking with young, recently incarcerated women.

Back then I was somewhat shy, still in denial, didn't want nobody to know I had a life sentence, barely wanted to talk about it, but one thing stayed the same. Back then I was determined to do the wrong things. Now I still have the same determination, but to do positive things, and to give back to other people what was so freely given to me, and change their lives for the better.

I tell people all the time in groups, 'I don't have a clue what's going to happen in the future, but I will not stop being positive, and doing positive things, and helping other people change their lives'. Basically, my motto is, unfortunately I took a life, now what I try to do is help save lives. And help people make a difference in their lives.

Craig Datesman had been in 35 years when we reconnected. During those years, through a victim/offender dialogue program – one form of restorative justice – he was able to meet with a family member of the man he killed. The experience was transformative for him. «You really have to find meaning in life», he observed. «I realize how important service is: how satisfying it is to be helping other people».

Harry Twigs had 46 years in prison when I revisited him. Like Yvonne, he is a Certified Peer Specialist and his days are filled with working with other prisoners in that role. «I should have been dead a thousand times», he told me. «But for some reason, God kept me around».

I believe that we are blessed with two lives. The first we live, we make all the mistakes. We commit crimes, we hurt people. But once we come to, and wake up, and move to our second life, we can draw from the first life and see our mistakes. Not only can you help yourself, you are able to

help other people. I've been in two interventions just this morning.

I look on my being in here like Nelson Mandela and comrades at Robin's Island. They came to the conclusion that the solution was within them. So they sat and talked 27 years about how to dismantle apartheid.

Harry sees himself as one of the 'architects' of today's culture of street crime, with a calling to address it: inside prison for now («stopping it one person at a time»), but he dreams of doing it outside, on the streets, if his sentence would be commuted by the governor.

Many other lifers described this sense of call, but so also did many of those survivors of violent crime included in *Transcending*.

Following these two photo/interview books, my colleague Lorraine Stutzman Amstutz and I did a similar book highlighting portraits and quotes from children whose parents were incarcerated. Included in *What Will Happen to Me?* were a number of grandparents who were raising these children³. They had sacrificed their own plans and dreams for retirement to raise these children. That certainly seems to represent a kind of call to serve.

I often hear this commitment to serve others from those who seek to find peace and justice in their lives and beyond. Serving others is a way to make life and life experiences meaningful, and so very important in today's world.

But service to others can be exhausting and it is easy to give up, to burn out. A commitment to make the world better is not enough to keep us going. We need a moral vision to guide and sustain us.

For some, this vision comes from religious faith. For some, it comes through philosophical commitments. For a growing number of people, restorative justice serves as the needed moral and

³ H. Zehr, L.S. Amstutz, *What Will Happen to Me?*, Intercourse (PA), Good Books, 2011.

cultural vision. As we will see later, this vision can be framed in either secular or religious terms.

As individuals we need a moral vision, then, but the issue is larger than us. The world as a whole is facing a kind of social/cultural crisis – some would say a spiritual or moral crisis. I will name some elements of this crisis, starting with my own context, here in the United States.

We are a highly individualistic and materialistic society that emphasizes rights over responsibilities. Ours is a punitive culture that often glorifies violence. Today it is a highly polarized society in which few public figures are modeling integrity, respect or true dialogue.

Globally, we see tremendous religious and ethnic diversity. This provides for rich possibilities, but also has become politically and socially divisive. The need to belong is a fundamental human need. In threatening and uncertain circumstances, we tend to withdraw until our ‘clans’ and see others as enemies.

Racism runs deep and wide, taking different forms in various contexts. It represents in part an unhealthy way of finding a sense of belonging and defining social boundaries.

The split between the haves and the have-nots is dramatic and, at least here in the U.S., is growing. The visibility of this divide through the media and the internet results in high degrees of what is sometimes termed relative deprivation. The awareness of deprivation relative to others makes for a highly volatile situation, fueling crime, rebellion, even so-called terrorism.

Relative deprivation is one of many factors that contributes to feeling of shame and humiliation. James Gilligan and others argue that shame is a – maybe *the* – primary cause of violence, from domestic violent to political terror and hate crimes⁴. According to Gilligan, shame is at the heart of what makes structural injustice into structural violence.

Awareness is growing of how widespread trauma is, how trauma contributes to harm and to violence, and how trauma is

⁴ J. Gilligan, *Violence: A National Epidemic*, New York, Vintage Books, 1997.

transmitted to others. As is often said in our program's STAR trainings (Strategies for Trauma Awareness and Resiliency) at Eastern Mennonite University, «trauma that is not transformed is transferred»⁵; trauma that is not addressed is re-enacted in the lives of those immediately affected, but also in the lives of those around them, including their families and even future generations.

And then, of course, there is our disregard of what we humans are doing to the environment.

Technologically, we live in exciting times, when things are possible that those of us who are older could never have dreamed. Innovation is constant and promises all sorts of possibilities. I am somewhat techie, and very much enjoy parts of this.

Cell phones, the internet, inexpensive electronics are giving access to this technology to many marginalized people, making it possible for them to tell their stories, to connect with others who have similar interests, and to have a direct impact on events.

But many are still left out. The visibility of the 'haves' increases the alienation, the sense of relative deprivation, and the feelings of shame of the have-nots. The anonymity of the internet reduces factors that encourage empathy, making it possible to say and do things that we would not in person,

Manipulative use of media and the internet is negatively affecting politics, contributing to polarization and undermining democracy.

In short, while contributing to connection for some, these forces are also encouraging disconnection and depersonalization. Powerful forces are discouraging empathy and encouraging 'othering', an emphasis on how others are different from us. Violence to others becomes most possible when we 'other' people, turning them into our enemies. All of this contributes to unhealthy ways of finding a sense of belonging.

Albert Einstein has famously said: «We can't solve problems by using the same kind of thinking we used when we created them». What is required, I would argue, is a fundamental rethink of our values and assumptions not only about justice, but about life in

⁵ See: <https://emu.edu/cjp/star>.

general. We need a new ‘lens’ – a cultural and moral vision, if you will – that can span some of our differences.

This calls for an approach that favors compassion and collaboration above competition; emphasizes responsibility as well as rights; encourages respect and dignity instead of promoting shame and humiliation; promotes empathy and discourages ‘othering’; acknowledges the subtlety and power of trauma and the importance of trauma healing; and reminds us that we as human beings are not isolated individuals but are interconnected with one another.

Restorative justice offers an example of a moral vision or compass that points in this direction. It also provides some practices that can operationalize the vision.

Restorative justice may or may not be ‘the’ vision, but perhaps, at least, it can be a catalyst. It is, at minimum, a call to re-examine our assumptions, to take stock, to have a dialogue. It may also be viewed as part of a larger effort to build a culture of peace, a peace-building approach to justice.

The concept of restorative justice has roots and resonance in many indigenous, cultural and religious traditions. It connects with these, sometimes helps to legitimize them, yet is not necessarily rooted in any one of them.

As a field of practice, restorative justice arose as an attempt to respond to ‘crime’ but today has moved far beyond that to many other areas of application. It is increasingly popular in education settings but also is being applied to transitional justice and historical wrongs such as the legacy of slavery in the U.S. and is helping to reframe conflict resolution practices.

I will first provide a brief overview of restorative justice as a conceptual framework and moral vision before looking at specific practices or applications. As I will demonstrate later, this framework can provide a guide for intervention even when specific programs or practice models are not present.

Restorative justice is essentially a needs-based, relational approach to justice issues that focuses on repairing harm and promoting responsibility and favors dialogue and consensus as a process for doing so.

I like to summarize restorative justice in three principles or pillars:

1. Harms and resulting needs. Unlike our legal and rule-oriented criminal justice and school discipline systems, restorative justice is concerned first with the people and relationships that are harmed, and the needs that result. This means that those harmed should be central to any process of justice.
2. Obligations. Emphasis is placed on the obligations that result from the harms. The primary obligation may be on the part of those who directly caused the harm, but the surrounding community may have obligations as well. As much as possible, those who cause harm should be encouraged to understand, acknowledge and take steps to repair the harm.
3. Engagement or involvement. Justice is best served when those who have been part of the situation or who have been affected by it are involved in the resolution through process of dialogue, collaboration and consensus.

Central to a restorative approach is an effort to put right the wrong, to the extent possible, in order to promote healing and well-being.

Underlying these three principles are three key values:

1. Respect. A sense of dignity or respect is essential for well-being. I've found that much offending is motivated by an effort to gain respect in some way. If we treat those who offend with disrespect, we may only encourage the cycle of disrespect. I've often found that part of the trauma of victimization is the disrespect those who have been harmed experience on the part of the one who caused the harm, by the justice system, even by their loved ones who may compound the disrespect by blaming them and by not respecting their feelings or realities. Essentially restorative justice is about treating people respectfully.

2. Responsibility. In the U.S., at least, we live in a society that emphasizes rights but talks much less about responsibility. Restorative justice reminds us that we are responsible for our actions and decisions and when they harm others, we have a responsibility to acknowledge and address these harms.
3. Relationships. Again, many of us live in an individualistic society. However, as most indigenous and religious traditions emphasize, each of us lives within a web of human relationships. Interestingly, neuro-science is confirming this; our brains are ‘wired’ to connect with others. Because we are interrelated, the prior values of respect and responsibility are especially important.

The overall goal of a restorative justice approach is to promote individual and relational wellness – to improve the health of individuals and communities.

Restorative justice changes the questions, or the emphasis, of the questions we ask about harmful behavior. Instead of a preoccupation with what laws were broken, who did it, and what punishment the ‘offender’ deserves, restorative justice asks questions like these:

1. Who has been harmed? (The harm may be to individuals, communities, relationships)
2. What are their needs?
3. Whose obligation is it to address those needs?
4. What has caused this to happen?
5. Who has been affected or has a stake in this?
6. What is the process that can involve them in the resolution and prevent future harms?

Questions like this can be used to guide responses to harm, even when no restorative justice program may be easily available. We will see a case study later.

As we will also see later, some see the principles and values of restorative justice as an overall approach to life.

A variety of restorative justice practices can help to demonstrate and implement these principles and values. Methodologies such as victim/offender dialogues, or family group conferences that originated in New Zealand, for example, provide a safe space for dialogue about what happened and what should be done about it. These are being widely used not only in conjunction with the legal system, but also in schools, families and the workplace.

Circle processes, sometimes called peacemaking circles, may be the most powerful, universal and value-based approach. These are widely applicable to many situations beyond those where direct harm is involved and seem to connect with many indigenous traditions. Indeed, they entered the restorative justice field from the Aboriginal community in Canada. Kay Pranis, a leading advocate and trainer of circle processes, argues that are a practical tool for building community and achieving positive social change⁶.

The mechanics of the circle are simple. Participants sit in a circle without a table. One of two people – often called ‘circle keepers’ – facilitate the process. A talking piece is used to regulate speaking. It moves in one direction and only the person holding the talking piece is authorized to speak (although they may pass if they wish). Thus no one is interrupted and everyone has a chance to speak if they wish. This slows the process down and prevents people talking over each other.

Often an early round involves a discussion of the values that participants wish to bring to the circle. Emphasis is upon establishing relationships before moving to the work at hand.

As Kay argues, the circle is structured to include all voices, to treat everyone with dignity, to build connections, and to honor each member as belonging to the whole. The circle slows us down and creates space for deep listening, allowing us to hear our inner voices while hearing the voices of others. This in turn provides opportunities for empathy, re-connection, truth-telling and healing.

Kay argues that it is a way of building community and beyond that, a form of radical, participatory democracy. The threat to modern society, she says, is not primarily the lack of math or science or

⁶ Unpublished lecture texts provided by author.

technological skills; rather, it is the lack of skills and opportunities for living together and for building a culture of peace.

Restorative justice, then, is not just about responding to crime or even harms; it is a way of approaching life.

I was slow to understand what people mean when they said that restorative justice was ‘a way of life’. How, I wondered, could an approach initially designed to address the shortcomings of the criminal justice system be thought of so grandly? Eventually I realized that it was the values and principles, the overall vision, of restorative justice that was meant.

Legal systems are designed to say something about how we live together, but they only define minimum permissible behavior in a society. They usually draw these boundaries by threatening harm to those who cause harm. Because they are based on rules and threats, including the threat of violence, other ‘outside’ values and norms must be brought to bear as a way of limiting it and keeping it humane. This is less effective than when the needed values are inherent in the concept itself.

Restorative justice, on the other hand, provides a more comprehensive moral vision of how we should live together. The values we need are built into the concept. It is a vision that acknowledges our interrelationships and provides some values and principles for maintaining and repairing those relationships.

Based on this, I suggest some life guidelines that encompass restorative principles and values⁷:

1. Take relationships seriously, recognizing you are one part of a web of people, institutions and the environment.
2. Be aware of the impact of your actions on others and the world around you.
3. Take responsibility for injuries you have caused –

⁷ Originally published here: <https://emu.edu/now/restorative-justice/2009/11/27/10-ways-to-live-restoratively/>. See also H. Zehr, *Changing lenses: restorative justice for our times*, 25th anniversary edition, Harrisonburg, Herald Press, 2015, and Id., *The Little Book of Restorative Justice*, New York, Good Books, 2015².

- acknowledge and try to repair harm.
4. Treat everyone with respect, including those who offend you.
 5. Whenever possible, involve people in decisions that affect them.
 6. View conflicts in your life as opportunities.
 7. Listen to others deeply and compassionately – try to understand even when you disagree.
 8. Engage in dialogue with others even when that's difficult – remain open to learning from them.
 9. Be cautious about imposing your 'truths' and views on other people and situations.
 10. Sensitively confront everyday injustices such as sexism, racism and classism

Our 'new' world requires a new, more life-giving ethic – one that can transcend some of our religious and even political differences while yet encompassing some of their core values, one that aims at making our communities healthier and more just. Maybe restorative justice can encourage us to consider these some possibilities.

But restorative justice is not new. In fact, it is very old. Often my students from indigenous traditions around the world have said that it captures the essence of their own traditions. Some have returned to their contexts and used restorative justice as a framework to restore, legitimate and modernize those traditions. Graduate students from various religious traditions have found that it resonates with core principles of their own.

Restorative justice must not be considered a blueprint to be followed in detail. Practices, even the concept, must always be contextualized, and even after more than four decades, there are still many questions.

Restorative justice is not a blueprint, but perhaps it is a compass, pointing a direction and providing an invitation to question and explore our values, our needs, our traditions, our visions.

Many academics who research and write about restorative justice are social scientists. Science has an important role in this field,

but so do the arts. Restorative justice, like scientific innovation, involves a blend of science and art.

It is no accident that many of the innovators who were responsible for the development of computers and the internet were not only scientists but artists: musicians, painters, poets⁸. Similarly, the early pioneers of restorative justice were drawing upon their creative instincts, and it is such artistry that allows restorative justice to thrive and be adapted to varying personalities and contexts.

Although restorative justice needs science, then, I find it helpful to also view ourselves as artists. My final point is this: I suggest that we view our calls to service, our lives, our justice work, with the eyes of an artist.

Steven Meyers writes about the artist's perspective in *On Seeing Nature*. He talks about the «art of seeing», but it applies equally to the art of living and doing justice⁹.

Meyers reminds us that us that «one's knowledge must never overcome one's awe. As long as there is awe, there is seeing», he says. And he adds, «Seeing is a process, partly, of replacing our arrogance with humility».

I'll repeat that, rephrasing it: Living justly is a process, partly, of replacing our arrogance with humility

«Seeing begins with respect», he says, «but wonder is the fuel which sustains vision».

I want to conclude, as I often do in my writing and presentations, by emphasizing the two values that Meyers mentions. They have become very important to me.

The first is humility. However, I am not thinking so much here about humility as not putting yourself forward, or not taking credit. Rather, I mean humility as a deep recognition of the limits of what we 'know'. What we know, our 'truths', are inevitably affected by who we are: our gender, our race and ethnicity, our experiences, our biographies. For this reason, we should be very cautious about generalizing our 'truths' to other people and other situations. For

⁸ See W. Isaacson, *The Innovators: How a Group of Hackers, Geniuses and Geeks Created the Digital Revolution*, New York, Simon & Schuster, 2014.

⁹ S. Meyers, *On Seeing Nature*, Golden (CO), Fulcrum, 1987.

this reason, we must be willing to listen to others and appreciate and be open to their realities.

Only with a deep appreciation for and openness to others' realities can we live together in a restorative way. Empathetic or compassionate listening and respectful dialogue are essential.

The second is wonder or awe. Western education and learning has been profoundly shaped by the philosopher Descartes. Descartes' methodology was one of skepticism: he was determined to doubt everything except what was truly undoubtable. In one of my early philosophy classes, the professor acknowledged this but proclaimed that this would not be our primary approach to the history of philosophy. Rather, he said, we would begin in wonder. As a result, it was a wonderful class.

David James Duncan, in his book *My Story Told as Water*, defined wonder this way: «wonder is unknowing, experienced as pleasure»¹⁰.

In restorative justice, we inevitably experience this kind of pleasure, if we are open to it: there is so much we do not know, so much to discover.

I will conclude with a story that to me illustrates this kind of wonder¹¹. It also suggests how restorative justice principles and questions might be used to shape interventions even in the absence of established restorative justice programs.

In 1994, when Fred Van Liew was chief criminal prosecutor in Polk County, Iowa, he read a troubling police report. A local Jewish synagogue had been vandalized, with Neo-Nazi graffiti sprayed on it. An 18-year-old man and his 17-year-old girlfriend had been arrested and charged with the crime.

Fred says that he had been «irreparably damaged» by reading my early restorative justice book, *Changing Lenses*. As a result, he was unable to see things the way that he had been trained. He could

¹⁰ D.J. Duncan, *My Story Told as Water*, Berkeley (CA), University of California Press, 2001, p. 88.

¹¹ For the full story, see the site *Peacebuilder Online*, <https://emu.edu/now/peacebuilder/2012/04/a-justice-system-at-its-best>.

have prosecuted these two people with a hate crime but instead he began to ask restorative justice questions.

Fred met with the leadership and some of the members of the synagogue, some of whom were holocaust survivors. Many were angry, afraid, traumatized. When Fred suggested a circle process, many were skeptical. Eventually, however, they decided to proceed.

It was a difficult and moving process. The synagogue was able to talk about how it had affected them. In turn, they heard the 'offenders' stories of hurt, loss and alienation and of finding a sense of belonging through a white supremacy group.

Eventually the members of the synagogue and these two young people came to an agreement. The 'offenders' would do 200 hours of work for the synagogue; they would study Jewish and holocaust history, led by synagogue members; they would finish their high school educations and find jobs.

They did all this, got married and had a child. The rabbi and others were invited to the wedding and attended, bringing gifts. Five years later, the rabbi spoke at conference of his friendship with these two, holding back tears.

This is an example of bringing a restorative justice framework to an uncharted situation. It was possible because of Fred and the synagogue's willingness to be creative and take a chance. It is definitely a story that leaves me with a sense of awe and wonder.

In the *Afterward to Changing Lenses*, first released in 1990, I described restorative justice as «an indistinct destination on a necessarily long and circuitous journey»¹². Now, nearly three decades later, I can confidently say that, although it is still a journey with many curves, many detours and wrong turns, the road and its destination is not as indistinct as it once was.

I believe that if we embark on this journey with respect and humility, with an attitude of wonder, it can lead us toward the kind of world we want our children and grandchildren to inhabit.

¹² Zehr, *Changing lenses*, pp. 227-228.

Finito di stampare
nel mese di dicembre 2019
dalla Chinchio Industria Grafica s.r.l. di Rubano (Pd)