



**UNIVERSITÀ  
DEGLI STUDI  
DI TRIESTE**

# RESTITUZIONE E RIPARAZIONE

Verso un paradigma ripartitivo nella Giustizia. Milestones

# Albert Eglash

Creative Restitution.

A Broader Meaning for an Old Term  
in "Journal of Criminal Law  
and Criminology" (1958)

Restitution is a synonym for reparations or indemnity<sup>1</sup>:

1. It is a financial obligation.
2. Its extent is limited.
3. It is court-determined.
4. It is an individual act.

In this paper I want to describe a meaning of restitution which distinguishes it from reparations or indemnity:

1. It is any constructive act.
2. It is creative and unlimited.
3. It is guided, self-determined behavior.
4. It can have a group basis.

# Randy Barnett

*Restitution. A New Paradigm for Criminal Justice*  
in "Ethics" (1977)

3. Psychologist Albert Eglash has long argued that restitution would aid in the rehabilitation of criminals. "Restitution is something an inmate does, not something done for or to him. . . . Being reparative, restitution can alleviate guilt and anxiety, which can otherwise precipitate further offenses."<sup>39</sup> Restitution, says Eglash, is an active effortful role on the part of the offender. It is socially constructive, thereby contributing to the offender's self-esteem. It is related to the offense and may thereby redirect the thoughts which motivated the offense. It is reparative, restorative, and may actually leave the situation better than it was before the crime, both for the criminal and victim.<sup>40</sup>

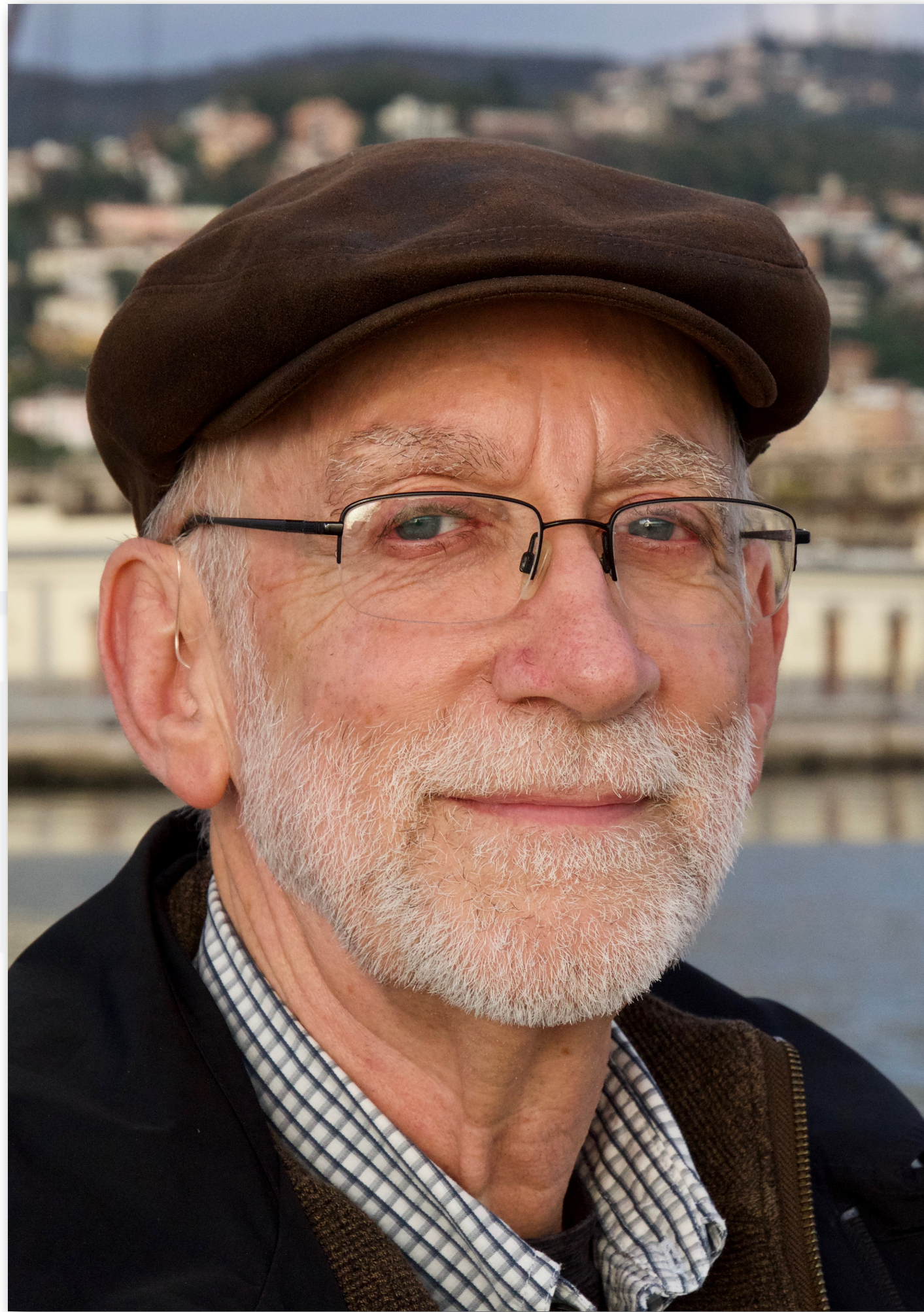
# Randy Barnett

*Restitution. A New Paradigm for Criminal Justice*  
in "Ethics" (1977)

## OUTLINE OF A NEW PARADIGM

The idea of restitution is actually quite simple. It views crime as an offense by one individual against the rights of another. The victim has suffered a loss. Justice consists of the culpable offender making good the loss he has caused. It calls for a complete refocusing of our image of crime. Kuhn would call it a "shift of world-view." Where we once saw an offense against society, we now see an offense against an individual victim. In a

way, it is a common sense view of crime. *The armed robber did not rob society; he robbed the victim.* His debt, therefore, is not to society; it is to the victim. There are really two types of restitution proposals: a system of "punitive" restitution and a "pure" restitutorial system.



# Howard Zehr

Freeport, Illinois 1944

Distinguished Professor of Restorative Justice - Eastern Mennonite University's Center for Justice and Peacebuilding, Co-director of the Zehr Institute for Restorative Justice.

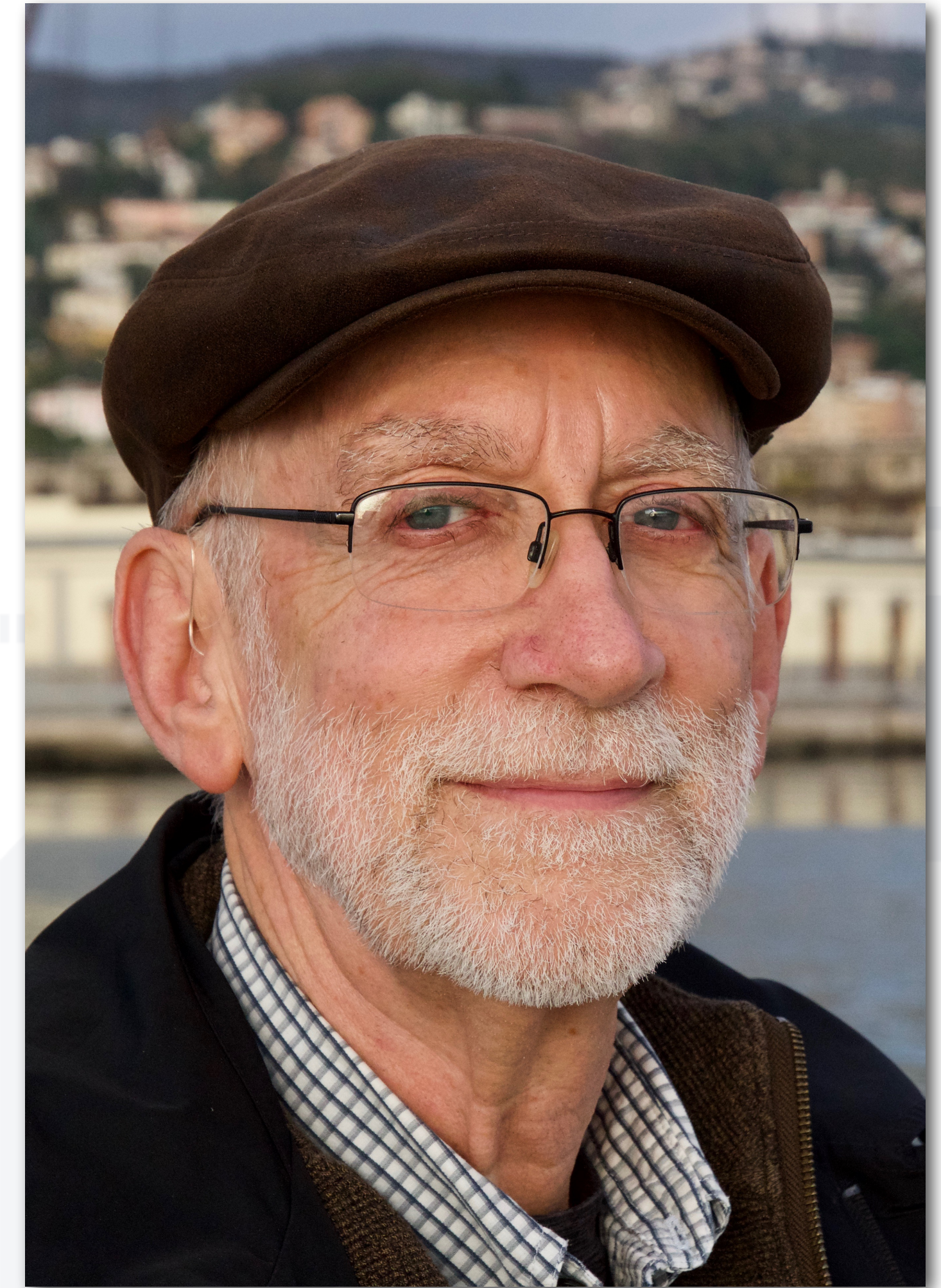


Now, if it is true that the problem lies in the way we understand crime and justice, how should we understand them? What would a new paradigm look like?

I would suggest that we define crime as it is experienced: as a violation of one person by another. Crime is a conflict between people, a violation against a person, not an offense against the state. The proper response ought to be one that restores. In place of a retributive paradigm, we need to be guided by a restorative paradigm.

Victims have many needs. They need chances to speak their feelings. They need to receive restitution. They need to experience justice: victims need some kind of moral statement of their blamelessness, of who is at fault, that this thing should not have happened to them. They need answers to the questions that plague them. They need a restoration of power because the offender has taken power away from them.

**Howard Zehr**, *Retributive Justice, Restorative Justice* (1985)



## PARADIGMA RETRIBUTIVO

Quali leggi sono state infrante?  
Chi ha compiuto l'infrazione?  
Quale è la sanzione per il colpevole?

## PARADIGMA RIPARATIVO

Chi è stato colpito?  
Quali sono i bisogni di chi è stato colpito?  
Quali impegni sorgono e da parte di chi?

**Howard Zehr**, *The Big Book of Restorative Justice*, 2015



# PARADIGMA RETRIBUTIVO

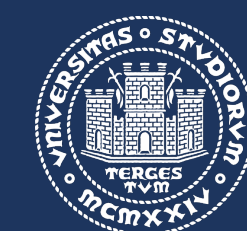
# PARADIGMA RIPARATIVO





# DOCUMENTI ISTITUZIONALI

1999	EU	Consiglio d'Europa, R (99)19 <b>"Recommendation of the Committee of Ministers to member States concerning mediation in penal matters"</b>
2000	UN	Dichiarazione di Vienna. Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders + Commission on Crime Prevention and Criminal Justice: <b>"Vienna Declaration on Crime and Justice"</b> .
2002	UN	Economic and Social Council, <b>RES 2002/12 "Basic principles on the use of restorative justice programmes in criminal matters"</b>
2006	UN	United Nations Office on Drugs and Crime, <b>Handbook on Restorative Justice Programmes</b>
2010	EU	Consiglio d'Europa, R(2010)1, <b>Regole del Consiglio d'Europa in materia di Probation</b>
2012	EU	Parlamento Europeo, DIRETTIVA 2012/29/UE <b>"Norme minime in materia di diritti, assistenza e protezione delle vittime di reato"</b>
2018	EU	Consiglio d'Europa, R(2018)8 <b>"Recommendation of the Committee of Ministers to member States concerning restorative justice in criminal matters"</b>
2018	IT	Autorità Garante per l'Infanzia e l'Adolescenza, <b>La mediazione penale e altri percorsi di giustizia riparativa nel procedimento penale minorile</b> (Documento di studio e proposta).
2020	UN	United Nations Office on Drugs and Crime, <b>Handbook on Restorative Justice Programmes</b> (2 Ed)



# Definizioni

Any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator

**Economic and Social Council resolution 2002/12** of 24 July 2002, annex, par. 2

Il termine 'giustizia riparativa' si riferisce a ogni processo che consente alle persone che subiscono pregiudizio a seguito di un reato e a quelle responsabili di tale pregiudizio, se vi acconsentono liberamente, di partecipare attivamente alla risoluzione delle questioni derivanti dall'illecito, attraverso l'aiuto di un soggetto terzo formato e imparziale (da qui in avanti 'facilitatore').

**Raccomandazione Rec(2018)8** del Comitato dei Ministri agli Stati membri sulla giustizia riparativa in materia penale, appendice, II,3

# Definizioni

1. **Restorative justice programme.** Means any programme that uses restorative processes and seeks to achieve restorative outcomes.
2. **Restorative process.** Means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles
3. **Restorative outcome.** Means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender
4. **Parties.** Means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process
5. **Facilitator.** Means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

# Italia (Riforma Cartabia)

## **LEGGE 27 settembre 2021, n. 134**

Delega al Governo per l'efficienza del processo penale nonché in materia di giustizia riparativa e disposizioni per la celere definizione dei procedimenti giudiziari. (21G00146)  
(GU n.237 del 4-10-2021)

### **Art. 1, comma 18**

c) prevedere la possibilità di accesso ai programmi di giustizia riparativa in ogni stato e grado del procedimento penale e durante l'esecuzione della pena, su iniziativa dell'autorità giudiziaria competente, senza preclusioni in relazione alla fattispecie di reato o alla sua gravità, sulla base del consenso libero e informato della vittima del reato e dell'autore del reato e della positiva valutazione da parte dell'autorità giudiziaria dell'utilità del programma in relazione ai criteri di accesso definiti ai sensi della lettera a);

# Un primo “protocollo”

## Regione Friuli Venezia Giulia

Indicazioni operative per la sperimentazione di percorsi di giustizia riparativa e mediazione penale

Finalità generali, attori coinvolti, metodologia e strumenti

