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Restorative Justice: Origins, Practices, Contexts, and Challenges

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Introduction

The term restorative justice has gained widespread use in recent years and a foothold in criminal justice policy discussions. Diverse programs and sanctioning options -- from sentencing circles to sexual notification laws -- are increasingly called "restorative." Crime victims, reform advocates, and criminal justice officials have great interest in the concept; and many high-level governmental and private sector forums are being held to learn about it.

It is tempting to say that this popularity is sudden. But a more accurate assessment, we think, is that the recent interest in restorative justice is a consequence of events and trends that have occurred over the past several decades within and beyond the boundaries of criminal justice. Various streams of activity and practice have coalesced in response to these elements: community, offender, and victim disillusionment with the criminal justice system; concern with the rising costs of punitive policies, especially the costs of imprisonment; enthusiasm on the part of citizens and governments to use informal processes whenever possible; and the popularity of metaphors of reconciliation, healing, and restoration in responding to conflict.

With all the activity surrounding restorative justice and the diverse forms it is taking, it seems appropriate to address core areas concerning its origins, practices, contexts, and challenges.

Origins and Practices

Twenty years ago, when the first victim-offender reconciliation programs were being set up in Canada and in the midwestern U.S., and when few academics or practitioners were aware of indigenous justice traditions, the term restorative justice did not exist. In subsequent years, it gradually emerged as a concept in the writings of Colson and Van Ness (1990), Mackey (1981, 1992), Van Ness and Heetderks Strong (1997), Wright (1991), and Zehr (1985, 1990). Victim-offender mediation, family group conferences, sentencing circles, victim impact panels, and other "restorative justice" processes have evolved, at least to this point, largely as a result of specific practices rather than research and theory. At the core of "restorative justice" is an interest to involve victims, offenders, and communities in a new philosophy and practice of criminal justice that is anchored, we believe, in three major streams of ideas and activism: social movements of the 1960s, particular practices and programs, and academic research and theories. In sketching these paths of development, we draw largely on U.S.-centered activities, but we also report on the influence of international developments.

A. Social Movements

Our history of restorative justice does not begin with the victim-offender reconciliation program in Kitchner, Ontario, as most histories do, but rather with the civil rights and women's movements of the 1960s. The civil rights movement was based, in part, on critiques of racism in police practices, in courts, and in prisons. Racial domination by whites was maintained, many claimed, by the overcriminalization and imprisonment of African-Americans and other racial ethnic minority groups. This analysis

was central to decarceration actions, including prisoners' rights and alternatives to confinement. In the U.S., Native American challenges to white colonialism also contained a critique of the prison system; such indigenous challenges to incarceration were also in evidence in other nations, including Australia, Canada, New Zealand, and South Africa. The women's movement also figured importantly. During the 1970s, campaigns around violence against women were a central element of feminist organizing, and women's groups were among the first to call attention to the mistreatment of victims in the criminal justice process. Feminist activists were also involved in prisoners' rights campaigns. Thus, social movement activists identified problems of the overincarceration of offenders and the under appreciation of victims' experiences. Although victims and offenders are typically viewed as protagonists in the justice system, they can also be seen to share common ground in their experiences with traditional justice system practices as being unfair and unresponsive to their circumstances and needs.

B. Programs and Practices

Since the 1970s, numerous programs and practices have helped to build momentum for restorative justice. Early restorative justice practices focused on moderated meetings between victims and offenders. Later, these meetings expanded to include family members and friends of both parties, as well as professionals and others with access to community resources. More recently, the notion of community responsibility and involvement has received greater attention. Indeed, restorative justice advocates often prompt a broad agenda of social justice and social change. We sketch eight types of programs and practices that we feel have given shape and substance to restorative justice.

1. Prisoner rights and alternatives to prisons. During the 1970s, some scholars and practitioners felt offenders were victims of societal neglect, impoverished communities, and racial and gender discrimination.

Accordingly, advocates hoped to change prison conditions, minimize the use of incarceration, and even abolish jails and prisons as institutions. In this context, Fay Honey Knopp (1976) and others (Hull and Knopp 1978) hoped to build "a caring community" that addressed victims and victimizers. Knopp and her colleagues were a key force in bringing victim interests into criminal justice reform in a progressive way, rather than in a more narrowly focused victim-centered or "rights" based way. During the late 1970s and through the 1980s, as U.S. prison populations became increasingly bloated, intermediate sanctions gained in popularity and use. At the time, however, neither victim-offender mediation nor restorative justice were commonly mentioned as alternatives.

2. Conflict Resolution. During the mid- and late 1970s, the development of community justice boards and neighborhood justice centers reflected a desire for greater "access to justice" characterized by informality and citizen participation. These new methods of conflict resolution (also referred to as alternative dispute resolution) reflected a growing disillusionment with adversarial fact-finding and adjudication according to strict adherence to legal principles. Instead, emphasis was given to negotiation, exchange between disputants, and a less central role for legal professionals.

3. Victim-Offender Reconciliation Programs (VORPs). These programs, first introduced in Canada in 1974 and subsequently in the U.S. in 1977, were founded on Mennonite principles of exchange and dialogue. They involved meetings between crime victims and offenders, usually after sentencing, in the presence of a neutral third-party. VORPs focused primarily on restoring "the right relationships" that should exist between two parties (Zehr, 1990). VORP proponents originally hoped for a close working relationship with religious institutions and principles, and VORPs were also intended to be used as an alternative to incarceration.

4. Victim-Offender Mediation (VOMs). During the last part of the 1970s, victims (and their advocates) increasingly preferred the term

mediation rather than reconciliation in the development of programs for victim-offender interactions. The program model for VOMs was similar to that for VORPs, although other people affected by the conflict could be brought to meetings, particularly when more serious crimes were being addressed. VOMs were introduced to England, Scandinavia, and Western European countries in the late 1970s and 1980s, primarily in the handling of youth justice cases. In a forthcoming report, Mark Umbreit and his colleagues at the University of Minnesota observe the significant growth of these programs in the U.S. and other countries.

5. Victim Advocacy. Conservative and progressive voices alike share the view that crime victims have insufficient voice in the criminal process. In the 1970s and 1980s, feminist activists and socio-legal scholars focused on making the police and courts more accountable to women and children who had been sexually or physically abused. The "victim's rights" groups focused attention on restitution for crime, on a formal voice in the court process, and on community safety. In 1983, the Reagan administration issued a task force report on crime victims that stimulated the growth of victims' rights groups. Alliances between victim advocacy groups and criminal justice reform groups have begun to grow in the 1990s, as victim- and offender-based groups recognize their common interests.

6. Family Group Conferences (FGCs). During the decade of the 1980s, New Zealanders began reassessing the Treaty of Waitangi, a constitutional document, and its implications for Pakeha (white) and Maori (indigenous) relations. A 1986 ministerial report recommended changes in government policies and practices toward Maori people. Legislation in 1989 established major changes in the handling of youth justice and family welfare matters; this action was taken in response to the overrepresentation of Maori youth in detention facilities and Pakeha-dominated family welfare decisionmaking processes. Youth justice FGC's can be used for nearly all juvenile offenses, although in practice they are applied in the more serious cases (with some statutory exceptions), while

the minor cases are handled through police diversion. FGCs differ from VORPs or VOMs because they bring more community people into discussions about the offense, acknowledge a wider range of victimized people, and emphasize family participation (Umbreit and Zehr 1995-96). Also, FGCs minimize state intervention and alter professional problem-solving roles.

FGCs were first introduced into Australia in 1991-2 as part of police operations in one jurisdiction (the "Wagga" model of diversionary conferences in New South Wales). Police-run conferences were also established in the Australian Capital Territory, and on a trial basis in other states and the Northern Territory. Conferencing was established legislatively in the handling of juvenile cases in South Australia and Western Australia in 1993-94, where non-police professionals convene and run conferences. Legislation is pending or recently passed in New South Wales and Queensland to employ conferencing in juvenile cases; and it is being used in schools in Queensland.

7. Sentencing Circles. Sentencing circles emerged in Canada during the 1980s as part of First Nations groups' ways of responding to offenders. Ross (1992) observes that the objectives are conflict resolution, restoration of order and harmony, and offender, victim, and community healing. Sentencing circles are a consensus process (Stuart 1997), which involves "a broad holistic framework [that includes] crime victims and their families, an offender's family members and kin, and community residents in the response to the behavior and the formulation of a sanction which will address the needs of all parties" (Griffiths 1996: 201). Sentencing circles are now being tried by non-Aboriginal groups in Canada and the U.S., including African-Americans in Minnesota.

8. Other Practices. Other practices emerging in the 1980s and 1990s fall under the restorative justice umbrella. In Vermont, Reparation Boards are composed of community members who fashion penalties for juvenile offenders; the penalties are typically community service and occasionally victim-offender mediation. Victims are not normally present at these

meetings. Another practice is victim impact panels, originally established by Mothers Against Drunk Driving. These panels allow victims and their families to express their feelings about the consequences of drunk driving to those offenders who have been court-ordered to attend. Victim impact panels differ from most restorative justice processes in that they are not voluntary. However, they bring an important element of victim-offender contact into the process, which is often missing from traditional criminal justice proceedings. They are used extensively throughout the U.S.

C. Academic Research and Theories

At least eight categories of theoretical or empirical studies have informed the development of restorative justice. We stress that there is no simple path from theory into practice, or from practice to theory. Some commentators suggest that the practice of restorative justice came first, born of the exigencies of needing to do justice differently, and that the theory came later (Marshall 1996). But there was, in fact, a good deal of theory development by socio-legal scholars in the 1970s, which occurred under the rubric of informal justice.

1. Informal Justice. Socio-legal scholars (e.g., contributors in Abel 1982; Matthews 1988) conducted empirical and theoretical studies of informal and formal justice in western industrialized societies and in tribal, agricultural-based societies. Matthews notes that "(l)ess than a decade after the emergence of the first wave of optimism it was overshadowed by an equally forceful wave of pessimism" Matthews 1988: 1). By the 1990s, disillusionment had set in; with some exceptions (e.g., Merry and Milner 1993), little new work has emerged.

2. Abolitionism. During the 1970s and 1980s criminologists in Norway, The Netherlands, and elsewhere (e.g., Mathieson 1974; Bianchi and Van Swaaningen 1986) argued for the abolition of prisons. Their work dovetailed with the alternatives to prison and decarceration activities during this time period. Fewer scholars today would argue for a complete

ban on prisons, though many take a strong stance of a minimal use of prisons (Carlen 1990; de Haan 1990). This past February, the 8th International Conference on Penal Abolition (ICOPA), held in Auckland, New Zealand, supported restorative justice through discussions and resolutions.

3. Reintegrative Shaming. John Braithwaite (1989) introduced the term reintegrative shaming in arguing for a response to crime that was integrative rather than stigmatizing. His analysis focused on the positive benefits of informal methods of social control (e.g., social disapproval that inculcates feelings of shame) in regulating social order. Braithwaite's ideas were put into practice as "the theory" behind the model of conferencing in Wagga Wagga, New South Wales, Australia. Prior to Wagga, the idea of shame had not featured in FGCs in New Zealand, nor is it part of conferencing in the Australian states of South Australia, Western Australia, and Victoria. To date, it has primarily been the Wagga model that has been exported to the U.S.; however, there is much debate over whether "shame" should be made a central feature of the conferencing process.

4. Psychological Theories. In further refinements of the Wagga model and applications of shaming theory, proponents have added affect and script theories to describe the micro-dynamics and sequences of experienced emotions (Moore 1993). Scholars have also drawn from research on disputants' senses of justice in the legal process (Tyler 1990).

5. Feminist Theories of Justice. A substantial body of feminist work has emerged in moral theories, drawn in part from Gilligan's (1982) notions of the ethics of care and justice in decision-making. In criminology, scholars have been enthusiastic (Heidensohn 1986; Harris 1991) and skeptical (Daly 1989) of Gilligan's framework. A feminist ethic of care framework has been applied to FGC in domestic violence cases in Canada (Pennell and Burford 1994).

6. Peacemaking Criminology. The criminology of peacemaking, according to Pepinsky and Quinney (1991), is "a criminology that seeks to

alleviate suffering and thereby reduce crime" (Pepinsky and Quinney 1991: ix). Peacemaking criminology draws on different traditions, including spiritualism and feminism. For peacemaking criminologists, crime and criminal justice are violence. "Crime is suffering," Quinney notes. "The ending of both suffering and crime, which is the establishing of justice, can only come out of peace, peace that is spiritually grounded in our very being" (Quinney 1991: 11).

7. Philosophy. Philosophical arguments for alternatives to traditional justice system responses have been made by Braitwaite and Pettit (1990), Cragg (1992), and Fatic (1995). In different ways these authors call for restricting the use of penal sanctions and for non-retributivist modes of response. Pepinsky (1991) distinguishes between "responsiveness" and "unresponsiveness" in analyzing crime and punishment. Communitarian thought has also influenced recent crime response proposals (Etzioni 1996).

8. Religion. While the implementation and use of restorative justice requires managerial, mediating, and organizational skills, the bedrock of restorative justice, in Canada and the U.S. at least, is religious and moral theory. The first VORPs came from Mennonite traditions; and Aboriginal, First Nation, and Native American peacemaking processes merge spiritual and cultural elements. In addition to Mackey, Van Ness and Strong, Wright, and Zehr, other religion-based writers include Boers (1992), Burnside and Baker (1994), Consedine (1995), DeWolf (1975), McHugh (1978), and Wood (1991).

Contexts and Challenges

Restorative justice is a process that takes different forms, including victim-offender mediation, victim-offender reconciliation, family group conferencing, circle sentencing, and victim impact panels. Within each of these processes, a variety of specific sanctions can be used, depending on the outcome of discussions by the participants. Community

service and restitution, then, are not restorative justice sanctions per se. These penalties and other intermediate sanctions are used in the traditional criminal justice system for punitive, as well as rehabilitative purposes.

We concur with Marshall (1996) that it is naive to suppose that restorative justice processes and outcomes will entirely replace those of traditional criminal justice in the foreseeable future. Indeed, the growth of restorative justice faces critical implementation problems, variable organizational strategies, political concerns, and theoretical work. Some of these are specific to restorative justice; others are common to any effort to reform criminal justice practices. All criminal justice reforms produce unintended consequences. Restorative justice will experience them too.

Implementation problems are inevitable, and perhaps vital, challenges for restorative justice. In an important (and unparalleled) evaluation of FGCs in New Zealand, for instance, Maxwell and Morris (1993) found that victims were not widely involved in the process. Some have pointed to this as a shortcoming of the program model, but instead it reflects a failure of implementation and training. Furthermore, reviews of FGCs in Australia (Alder and Wundersitz 1994) and other countries (Hudson et al. 1996) have identified numerous questions, including the following: Which kinds of cases are appropriate? Who decides? Will restorative justice widen the net of criminal justice control? Are sufficient resources available to accommodate potential caseloads? Who should facilitate conferences? Should police officers have a role? Should the process focus only on the immediate offense or on an offender's whole history?

Varied organizational strategies will define the coherence and integrity of restorative justice processes. It is not at all clear what the best ways are of integrating restorative justice practices with traditional ones. Or, alternatively, of replacing traditional practices with restorative ones. For example, how should indigenous justice

practices "co-exist" with majority group practices? Should separate justice systems be advanced (Jackson, 1991)? Who should staff restorative justice efforts? Can religious groups organize staff and sites, and should there be reliance on community volunteers? How will the varied groups associated with restorative justice -- community members, religious groups, criminal justice professionals, social service agencies -- be organized? Who will be in charge?

Critical political concerns confront the expansion of restorative justice. Research on informal justice and mediation programs in the 1970s and 80s, for example, found that informal processes in small groups can too easily reproduce power relations that exist in the wider society and that state entities may absorb and co-opt the innovative, progressive features of programs and practices (Abel 1982; Matthews 1988). Efforts to develop alternatives to prison have frequently "widened the net of social control." Restorative justice initiatives have taken diverse political and organizational routes. New Zealand, for instance, uses legislation to anchor its efforts. The same is true in several Australian states. But legislation can be difficult to pass. For example, British Columbia has been struggling, so far with little finality, with legislating FGCs for child abuse cases (Immarigeon 1996). And even when legislation is passed, it may not be optimal. For example, many Maori in New Zealand feel that conferencing has fallen short of their cultural expectations.

The literature on restorative justice features extensive debate on theory and philosophy, yet empirically-based theoretical work is rare, and only just emerging. Non-penal and reparative sanctions were used in the 1980s with little theoretical base, except for the assumption held by many criminologists of the negative effects of state intervention, a legacy of the continued influence of labeling theory. The claims made for reparative sanctions were then even stronger (and perhaps more impractical) than those made today for restorative justice. More theoretical work is needed, and especially the kind of work that addresses methodological problems in

describing group processes and individual perceptions of "justice." For example, what approaches should be used to test restorative justice theories? How would we know whether or not restorative justice efforts are "working"? Is it possible in practice to balance concerns for offenders, victims, and the community? What is the nature of "community" and "community involvement" in restorative justice? Do theoretical claims concerning shaming, affect, and emotion make a difference to participants? How are participants affected by a more participatory process? Are there limits to the applicability of restorative justice practices in different cultural settings?

Comprehensive and critical research is needed. Criminal justice reform movements often exaggerate their claims. We would rather see the theory and practice of restorative justice tested empirically before it is marketed and sold as the latest justice product. Researchers will need to balance and trim their excitement about restorative justice in order to produce a solid body of careful research. The Maxwell-Morris study of FGCs in New Zealand is a model for sound reflective research.

Conclusion

Restorative justice is an emerging method of responding to adult and juvenile offenders and to crime victims. Although restorative justice in the U.S. has been a predominately community-based phenomenon, its message is clearly reverberating throughout some governmental corridors. Restorative justice reflects the evolution of three decades of activism and ideas, as proponents have sought to do justice differently. It remains to be seen whether the current enthusiasm and growing numbers of interested people and governments will be sustained. Most uncertain, but crucial, is how restorative justice principles and practices will align with those associated with traditional criminal justice. Restorative justice has made significant advances in Australia, Finland, Germany, and New Zealand. In Canada, restorative justice has great potential. In the U.K. and the U.S.,

use of restorative justice is slight in comparison to the overall reliance on punitive responses to crime, especially incarceration.

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