

Chapter 1:

Looking at the past of restorative justice: Normative reflections on its future

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Restorative justice is a contested term with a contested history because it has emerged within a context of social reform movements. The chapter will critically review the modern history of the restorative justice movement by deconstructing the legal, political and social agendas that have contributed to the programs, principles, practices and philosophy of restorative justice. It is common to note that the principles and practices of restorative justice are “not new” because elements of this contemporary philosophy can be found in indigenous and non-Western conflict resolution and within major religious traditions. This article will examine the reservoir of ideas retrieved from the past; demonstrate how these ideas are refashioned to serve diverse agendas; and provide an overview of the contemporary context within which restorative practices are situated.

Introduction

A few years ago, I attended a five-day gathering at the Zehr Institute along with forty or so colleagues to reflect on the future of the restorative justice movement. As a group, we created a timeline of key events ranging from the first victim-offender reconciliation meeting in 1974 to the 1994 Truth and Reconciliation Commission, to the “beginning of time” when humans needed to reconcile themselves with one other in community in a good way. At the time I wondered: were we all talking about the same movement?

Restorative justice is a *contested* concept (Johnson and Van Ness, 2007) with a contested history precisely because it has served as an aspirational paradigm for a variety of different activist movements. For those seeking to create change, restorative justice is the alternative future to a particular aspect of the current reality. The restorative justice movement is far from a unitary movement: it is both a paradigmatic foundation and a banner that different sets of reformers have adopted to frame their agenda in creating social change within a particular context. This can lead to ‘a blind man and the elephant’ problem: depending on which part of the movement you touch - the shape and feel can vary widely.

This chapter makes no attempt to write a history of the global restorative justice movement – that is a massive project chronicling complex developments within different cultural, legal and national contexts. Nor am I able to acknowledge the full roster of activists and scholars who have made substantial contribution to the movement. What I attempt to do for this Handbook is to lay out the basic contours of the restorative justice movement that has emerged within the Western advanced democracies in the late 20th century. The snapshot in this first chapter is developed from my vantage point – as a North American white female sociologist shaped by how, why and for what reasons I became involved in the restorative justice movement. My hope is that this conceptual map will provoke readers to assess the movement from their perspective.

Although some would date the restorative justice movement emerging in the 1970s with victim-offender mediation, I see the start of the modern movement in the 1990s when the term restorative justice came into more widespread use fueled by the publication of Howard Zehr’s *Changing Lenses* (1990). I identify four relatively independent arenas of activism that have contributed to the modern restorative justice movement. The largest and most influential is a set of justice reform movements targeting the criminal-legal system; the second arena is focused on the management of youth behaviour targeting reforms in child welfare, social services, schools and juvenile justice systems; the third arena consists of movements to re-invent post-conflict processes and build conditions for democratic governance and peace; and the final arena are movements to assert indigenous cultural and political autonomy from colonization and to regenerate these practices within the contemporary context. These arenas develop independent of one another. Although they arose with distinct agendas, they each contributed to the understanding and development of restorative justice theory and practice.

The questions I explore here are: what concerns are motivating activists within this arena? Who are the activists? What are the central ideas and practices promoted by the movement? What are people are trying to change? Where are they concentrating their efforts? Has there been notable achievement or success in creating the desired change? The question of “success” is related to the question of cooptation of the desired changes by the system or structure of power activists are trying to change. The problem of cooptation is a persistent theme within criminal justice reform. As an activist who is also a sociologist, I am mindful that the attempt to build one kind of future can lay the foundation for something else altogether (Boyes-Watson, 1999; 2004).

The final section of the chapter discusses how elements within each of these arenas are influencing current dynamics within the restorative justice movement. Each arena highlights different priorities with the need to engage with a different set of social actors with a distinct agenda. While there are hard truths to be faced about the achievements of the movement thus far, I find reason to be hopeful about the future direction of the movement. This has a great deal to do with the confluence of different agendas in the contemporary landscape – at least in North America – that are reshaping the goals, strategies and practices of the movement in important ways.

The Four Arenas

Reforming the State Justice System

The dominant agenda contributing to the development of the modern restorative justice movement has been reform of the western legal system. Within this broad stream are several intertwined reform movements that have contributed to the idea of restorative justice: the “informal justice” movement or Alternative Dispute Resolution (ADR); alternatives to incarceration movement - which includes diversion, community corrections and the restitution movement; and the victims’ rights movement (Van Ness and Strong, 1997). The activists here are professionals in the system – legal scholars and criminologists from the academy - and criminal justice professionals working with offenders; advocates from religious communities; and victims. In this context, restorative justice is focused on reform of the legal system.

ADR developed in the U.S. in the late 1970s as a means to address a range of concerns from the conservative fear of a “litigation crisis” arising from the threat of overcrowded dockets to the leftist radical critique of the state-centered court (Abel, 1982; Olson and Dzur, 2004). ADR became incorporated into mainstream legal practice and education (McManus and Silverstein, 2011) while the use of mediation in criminal matters remained comparatively underdeveloped until the emergence of the restorative justice movement in the 1990s (Go, 2010).

Critical left theorists rejected liberal procedural justice as substantively unjust and looked to legal anthropologists for alternative systems of dispute resolution outside the formalized Western context. In this context, a 1977 article by criminologist Nils Christie foreshadowed many of the fundamental aspirations of the later restorative justice movement (Christie, 1977). One shared

priority between the later restorative justice movement and the leftist scholars of the informal justice movement is the desire to rebalance the relationship between the community and the state as agents of social control (Van Ness and Strong, 1997).

The early development of victim offender mediation came from activists seeking alternatives to incarceration for offenders (Hudson and Galaway, 1972; Liebmann, 2007). Steven Schafer (1968) in the 1960s linked restitution with restoring victims to the central place within the justice process. Among these was Albert Eglash (1977) who first coined the English phrase “restorative justice” urging the benefits of “creative restitution” in which payment is directly linked to the harm with positive outcomes for both offender and victim.

According to Mark Umbreit (1985), what distinguished the Victim Offender Reconciliation programmes that emerged in the late 1970s from correctional restitution programs was the emphasis on the emotional exchange between the victim and offender. By engaging in an emotional dialogue about the feelings and impact of the offense itself, VORPS sought to facilitate reconciliation in the relationship between the parties. These programs were housed in community based religious organizations influenced by values of unity and solidarity expressed within religious doctrine. The goals of reducing recidivism or lowering costs were secondary to the more profound goal of building the beloved community.

The victims’ rights movement emerges in the 1970s advocating for a range of reforms such as victim compensation; access to counselling/social support; safety; notification; and sentencing reform, generally in support of enhanced sentencing (Elias, 1983). The feminist movement was crucial in shaping the victims’ movement: the first victim assistance programs focused the crimes of rape and domestic violence (Young and Stein, 2004). Feminist activists asserted key ideas vital to the restorative justice movement: the psychological trauma of crime, the critical importance of empowering victims, the extent to which victims are not treated with respect and dignity by the criminal justice system, and the healing journey that involves partnerships between the system and community. Feminists were wary of efforts to apply restorative justice to the crimes of domestic violence and sexual assault (Stubbs, 2002; Ptacek, 2005). The goal of reconciliation in the restorative justice paradigm kept feminists at arms distance from the restorative justice movement.

Victim activists have been suspicious of the claim that the restorative justice movement is primarily motivated by the needs of victims. Victims who do not wish to engage with their offender, or whose offender has not been apprehended, find most restorative programs offer little services to meet their needs. What the victims' movement did was to elevate the "needs of victims" as a legitimate political goal (Richards, 2009). The victims' rights movement sensitized the public and thereby politicians to the anger, discontent and unmet needs among crime victims. RJ advocates could then gain support from policy makers by arguing that restorative justice was designed to meet the needs of victims even though many of these needs were not included within the restorative justice agenda.

By the 1990s the label of restorative justice as a strategy for criminal justice reform emerged from this rich confluence of ideas and agendas. Martin Wright and Tony Marshall in the U.K. and Lode Wolgrave in Belgium promoted the use of victim-offender mediation as a form of restorative justice and alternative to the criminal justice process. The American Bar Association endorsed victim offender mediation in 1994. In 1996 Dan Van Ness founded the Centre for Justice and Reconciliation as part of Prison International Fellowship. The International Network for Research on Restorative Justice for Juveniles was formed in Leuven, Belgium in 1997. In the U.S. Gordon Bazemore and Mark Umbreit joined forces to create a national curriculum that offered comprehensive training to juvenile justice systems with demonstration projects in key states along funding by the National Institute of Corrections and Office of Community Oriented Policing. By 2000 the Canadian federal government began to invest in training and program development and the European Forum for Victim-Offender Mediation and Restorative Justice (now the European Forum) was formed. In 2002 the U.N. issued the Basic Principles on the Use of Restorative Justice Programmes in Criminal Justice Matters. Developments in the criminal justice arena multiplied over the next ten years in justice reforms efforts around the world.

Management of Youth and Families

A second independent powerful arena emerges in the late 1980s from an effort in New Zealand to reshape Western juvenile justice and child welfare systems to engage marginalized families with practices more culturally responsive and empowering for indigenous youth within the system (Maxwell and Morris, 1993; McElrea, 1994). This arena focused on youth with the goal of developing more effective strategies for disciplining, morally educating and rehabilitating delinquent youth. The New Zealand family group conferencing (FGC) model ostensibly

modelled after Maori understandings of conflict resolution and decision-making captured the imagination of youth focused policing, juvenile justice criminologists and juvenile justice professionals in Australia and then North America. These ideas aligned with the tenets of positive youth development, empathy development, and rehabilitation of youthful offenders.

The main activists here are professionals charged with managing the behaviour of youth and families. The primary context for this second set of reform agendas was first and foremost, the juvenile justice system and then police involvement with youth, child welfare system/social services and schools. The goal of activists within this stream was to make the work of professionals more effective by shifting the way they engage with youth and their families in their professional jobs.

In New Zealand, the 1989 Children, Young Persons and their Families Act established the FGC as a mandatory tool for all important decisions in the Youth Court in which the youth does “not deny” the charge. The process borrowed elements from Maori cultural practice in order to be more culturally sensitive with Maori youthful offenders who make up more than half of youth in the NZ juvenile justice system (Doolan, 1996; Love 1999). In its development, there was no use of the term “restorative justice” and no focus on “victims” as stakeholders in the process. Instead the focus was on the youth, his/her moral and social development and accountability for their behaviour. Involving families was seen as adding an important dimension to this goal for the culturally communitarian Maori youth.

In 1991 police sergeant Terry O’Connell adapted the FGC as a community policing strategy for responding to minor youth crime (Moore and O’Connell 1994). By using the Socratic method of asking questions, Terry O’Connell developed the core questions that were later transformed into the “script” widely disseminated by the IIRP. A driving force in the growth and dissemination of family group conferencing is the work of Ted Wachtel. Wachtel heard Terry O’Connell speak about the FGC and recognized the approach as aligned with the practices at his juvenile residential centers. They both contributed to this Handbook arguing for a different future for restorative justice. Along with Paul McCold, Wachtel founded Real Justice in 1994 (to become IIRP in 1999) and later developed the Social Discipline Typology articulating the balance between support and accountability that constituted a “restorative” approach to discipline using the “script” of the Wagga Wagga model of family group conferencing.

Several other key players contributed to the theoretical underpinning of practices that were increasingly coming under umbrella of “restorative justice.” Criminologist John Braithwaite developed the theoretical concepts and empirical research associated with the family group conferencing model beginning with his seminal book *Crime, Shame and Reintegration* published in 1989. Braithwaite linked the FGC model with a critique of relational processes within Western societies. Braithwaite articulated the theory of re-integrative shaming referring to the family group conferencing as a process that condemned the act and not the actor in the context of caring community relationships (Braithwaite and Mugford, 1992).

The work of Sylvan Tomkins (1963; 1964; 1991) a Princeton psychologist also served as another theoretical basis for the effectiveness of the conference and particularly the “script” (Nathanson, 1992; Kelly and Thorsborne, 2014). Lauren Abramson entered the field studying with Tomkins in the final years of his life. For Abramson, the conference process represented the opportunity for human beings to be “fully human” and express emotions in way that is built into the biological architecture for creating and maintaining social bonds in groups. Abramson rigorously expanded the application of the conferencing model to a wide range of community conflicts in urban Baltimore and brought the practice to schools based on the core ideas of affect theory (Abramson and Moore, 2001; 2002).

In the U.K. conferencing was first adopted by the Thames Valley Police in the mid-1990s as an approach to youth offending trained by Terry O’Connell (Thames Valley Police Restorative Justice Consultancy, 1997; Hoyle and Young, 2003). In 1998 the Crime and Disorder Act set up interagency Youth Offending Teams (YOTS) as the key preventative strategy for responding to youthful offenders. The experience in New Zealand and Australia was highly influential in shaping the restorative strategies of the Youth Offender Panels and Reparation Orders managed by the Youth Offending Teams (Crawford and Newburn, 2003; Leibmann, 2007).

The expansion of the use of FGC in social services coincided with the spread of family meetings within child welfare. The core agenda was to reform these systems to more effectively fulfil the mission of strength-based family engagement by including the family in assessment, planning and decision-making. Gale Burford and Joan Pannel developed pathbreaking pilots project using family group decision-making for family violence (Burford and Pannel, 1995). Expansion to schools was also a major leap forward in this arena. Marg Thorsborne was the first practitioner to apply the conference model to the realm of school discipline in Queensland Australia in 1994

(Cameron and Thorsborne, 2001). Brenda Morrison (2001; 2007) and Belinda Hopkins (2004) promoted application to the field of education arguing for a whole school cultural approach to the implementation of restorative practices similar to whole school bullying interventions.

The first conceptual attempt at the idea of a “restorative city” emerged from activists working within the justice reform movement (Van Ness, 2010). The first genuine effort to create a city based on restorative justice principles and practices was in Hull U.K. (Mirsky, 2009; Green et.al., 2013). It began with implementation of restorative practices in schools followed by training of over three thousand professionals within schools, police, children’s homes, community resource centers and social services across the city (Straker, 2015).

Peacebuilding

The third independent stream is in the arena of peacebuilding, transition to democracy, and conflict transformation in the wake of mass violence, genocide, state violence and civil war. According to Llewellyn and Philpott (2014) the past three decades can be considered the “era of peacebuilding” because of an explosion of efforts around the world to build peace in the wake of massive injustice. These range from the use of international tribunals based on traditional strategies of criminal prosecution to the use of local indigenous practices for forgiveness and reconciliation.

Activists within this stream are NGOs, community-based organizations and religious groups shifting attention away from the diplomacy between representatives of the state –referred to as first track diplomacy - to the promotion of dialogue between ordinary people – or second track diplomacy with the goal of healing and reconciling relationships that have been damaged by the conflict (Montville, 2006). In this arena of peacebuilding and transitional justice there is a revival of indigenous practices using local customs and processes to promote reconciliation, healing and integration in the wake of civil violence.

In the wake of WWII, the concept of international law grounded in universal principles of human rights and enforced by internationally sanctioned tribunals emerged within a traditional framework of criminal legal prosecution (Minow, 1998). The realm of transitional justice is concerned with issues of power, politics, legitimacy, rule of law and democratic governance. Holding state officials accountable for violations of human rights of their own subjects during

war or under authoritarian regimes remains a central objective of the International Criminal Court.

Starting in the 1970s, truth commissions emerged as alternative process for holding state authorities accountable for atrocities and violent acts by requiring a public record and admission of these violations – the “truth” - in some instances, in exchange for amnesty from retribution or criminal prosecution and/or as a condition for transition to a legitimate democratic government (Minow 1998; Shriver, 2001). Over forty such truth commissions have been held worldwide (Llewellyn and Philpott).

For critics, this approach represents second class justice – a political compromise abandoning the quest for justice in favour of a settlement of peace or at least the end of physical violence/conflict. (Rotberg, 2000) In the mid-1990s, Desmond Tutu made the prominent and influential argument that the South African Truth and Reconciliation Commission was the realization of a different kind of justice called restorative justice (Minow, 1998; Tutu, 1999). Informed both by the indigenous African understandings of “ubuntu” and Christian ideas of forgiveness and redemption, Tutu forged a strong philosophical connection between the global peace-building movement and the emerging domestic agenda of the restorative movement.

The focus on victims as key stakeholders in a forum where they tell their stories in the presence of the wrongdoer and the wider moral community resonated with the face to face encounters mediated by victim-offender reconciliation programs (Botchavaria 2001; Yoder, 2005). Practitioners recognized parallels in bringing parties together face to face in a dynamic process of emotional engagement that transforms emotions and relationships through the dynamic interaction between the parties. The idea that confession, apology, amends, reparations and forgiveness are relevant to “doing justice” in the context of political violence paralleled the “different” meaning of justice and accountability espoused by restorative justice advocates in criminal violations. The issue of reparations for victims – not just for atrocities committed against individuals but also for systemic economic marginalization and oppression of groups – also has become a constitutive, if unrealized, goal of “restoring justice” (Villa-Valencio, 2014).

More recent are efforts to hold established Western democracies accountable for historical and current harms. The Civil Right and Restorative Justice (CRRJ) Project at Northeastern University founded by civil rights lawyer Margaret Burnham in 2008 provides empirical research on anti-

civil rights and racialized violence that occurred in the U.S. between 1930-1970s. This data, available to the public, serves as a basis for remedies for victims ranging from criminal prosecution, to truth and reconciliation proceedings, to public apologies and reparations and as a national repository for establishing the historical record.

Indigenous Rights and Regeneration

The fourth independent arena is indigenous justice movements arising from First Nation's mobilization within North America to decolonize, reclaim their cultural practices and heal (Cunnen, 2001; McCaslin 2005; Sawatsky 2009). In North America, key actors are indigenous justice movements asserting rights to sovereignty, land return, accountability and reparations for previous and current acts of injustice; addressing challenges of violence, domestic violence, conflict, sexual abuse and addiction through the lens of oppression; and reclaiming traditional justice and healing practices. The theme of "resisting colonization" in everyday life is combined with the goal of regenerating and re-inventing indigenous justice traditions within the modern context.

Activists are members of oppressed groups of colour— First Nations and Native Americans, African-Americans, immigrant rights, youth activists and formerly incarcerated men and women. The development of alternative justice practices in this arena differs from the establishment of family group conferencing in New Zealand that was a state-led initiative (Cunnen, 1997). Activists are challenging racism and privilege within mainstream institutions of policing, corrections criminal justice system, education, welfare, politics and corporations as well as focusing on healing from internalized oppression and creating alternative approaches.

This stream shares with the peacebuilding the emphasis on "truth telling" and revising the historical record that denied indigenous people an accurate recounting of the physical and cultural genocide committed against them (McClaslin, 2005; Breton, 2012). There is a need to reclaim language and name realities of ongoing oppression, marginalization and discrimination institutionalized within current social structure. There is also a need to re-establish the connection between the harms of the past – namely, systemic injustices of slavery, genocide and colonization and ongoing current economic and social inequality.

The Native Law Centre at the University of Saskatchewan, Canada was founded in 1975 to promote the development of Aboriginal law and legal practitioners. The Aboriginal healing movement began in the 1980s to use traditional practices to deal with the effects of alcoholism and drug abuse within communities (Lane et.al. 2005). Healing included understanding the source of the problem in the forced removal native children to residential schools. In response to Native activists, the Canadian federal government committed to “reconciliation” including a \$350 million dollar grant in 1998 to support Aboriginal healing projects and offered a public apology in 2008 (TRC, 2015).

The Navajo Peacemaker Court was established in 1982 by Navajo judges who wanted to revive traditional peacemaking rooted in Navajo law and custom. Robert Yazzie (1994) explains that in the Navajo worldview, an offender is someone who “acts as if he as no relatives” and shows little regard for right relationships; the solution according to traditional Navajo practice is to “bring in the relatives” to teach that s/he is connected to and a part of the community. In 2012, the program dropped the word “court” from its title and renewed its commitment to practice traditional peacemaking that emphasizes education, heroic journeys, expression of emotions and healing (Navajo Peacemaking Program, 2012).

Among the most well known efforts to use traditional approaches to serious crime is the Hollow Water Community Holistic Circle Healing Program started in 1987 in an Objjway community called Hollow Water in Canada (Ross, 1996; 2005). A group of service providers along with lay members from the community recognized the pervasiveness of sexual abuse within the community which had its resulted in the intergenerational cycles of harm, drug abuse, and intergenerational trauma rooted in the destruction of families and community by colonization. The founders of this program rejected the Western reliance on incarceration stating that it only made matters worse for the community because “an already unbalanced person is moved further out of balance.”

As a justice of the Yukon Territorial Court Barry Stuart began to collaborate with First Nations communities to use traditional method of Peacemaking Circles as an alternative for criminal sentencing. In 1996, Stuart connected with Pranis serving as the Restorative Justice planner for the Department of Corrections in Minnesota to bring First Nation teachers from the Yukon to teach the circle process to activists in the restorative justice movement. Kay Pranis became a key teacher of the circle process to Western communities in the restorative justice movement.

My own journey intersected with these developments working with gang and street-involved youth in Boston in 1997 (Boyes-Watson, 2008) publishing several books including Circle Forward (Boyes-Watson and Pranis, 2015) with Living Justice Press, a non-profit press founded in 2002 dedicated to publications that take the restorative justice dialogue to deeper levels by addressing racism, historic harms, and other conflicts between Peoples.

The introduction of peacemaking circles into the restorative justice movement has had most impact on the growing use of restorative practices within urban schools in Oakland, Boston, Minneapolis and New York City. After thirty years as a civil rights lawyer at center of the civil rights movement, Fania Davis enrolled in a Ph.D. program to study African healers which led to the founding of RJOY – Restorative Justice for Oakland Youth that promotes school based restorative justice and court diversion to “interrupt racialized mass incarceration strategies” using healing circles (Davis, 2012).

THE WHIRLPOOL OF RESTORATIVE IDEAS

If we take a bird’s eye perspective, the focus of the restorative justice movement has shifted from reform of the justice system to the transformation of practices within civil society to a reconnection with politics, spirituality and social justice. In this discussion, I return to the question of achievement and cooptation of the different priorities and goals within each arena.

The Limits of Justice Reform

As an effort to “reform” the system, it is accurate to say that the amount of “talk” about restorative justice far outpaces the “walk” of practice within the criminal legal system. While it is a common mantra to state that “restorative justice is more than just a program,” for the most part, restorative justice is practiced in specialized programs that have had little impact on “business as usual” of the criminal legal system (Wood and Susuki, 2016).

Co-optation of restorative justice programs by the needs and interests of the existing system is routine. District attorneys, police and probation serve as gatekeepers; set timelines and criteria for eligibility, participation and completion. Programs do their best to “bring the community in” but there is an artificial quality to this because relationships are mediated by the legal system, not by naturally occurring connections within the community. Community members play a “scripted”

role in the restorative justice process “trained” by professionals to enact a part in the encounter between the offender and those affected by crime (Rosenblatt, 2015; Rossner and Bruce, 2016).

Much of the restorative justice practice in U.S. juvenile systems resembles a patina of restorative practice: youth are assigned “restorative tasks” and required to write apology letters as consequences for misbehaviour; systems professionals deliver curricula that teach youth about the impact of crime on victims while caseworkers help youth develop empathy for others by helping them think about the impact their behaviour on others. Low victim participation is a persistent finding in restorative justice programs.

With historical hindsight we know that “get tough” ideologies accelerated in the 1990s and 2000s instituting policies that fuel mass incarceration concentrated within minority communities. Expansion has occurred at both the soft end and hard end of the system. Reform of the criminal legal system requires more than programmatic add-ons – it needs significant political movements for sentencing reform, police, prosecutorial and judicial accountability and justice re-investment along with shifts in cultural mindsets, political power, resources and priorities.

Taking the Justice out of the Practice

When we move outside the justice system, we see the most rapid spread of restorative “practices” in the non-criminal justice arena of schools and social services/child welfare.

The measurement of success in this stream is tied to the goals of these systems. In schools, reductions in suspensions and exclusion, increases in attendance and academic achievement and improvements in school climate are key positive outcomes of restorative practices. In social services, outcomes that indicate success are reductions in out of home placements, more family participation and increase in client satisfaction.

It is within this arena that the preference arises for substituting the term “justice” for “practice.” IIRP now refers to “Restorative practices is a social science that studies how to build social capital and achieve social discipline through participatory learning and decision-making” (Wachtel, 2017). In some ways, it is an expansive vision – in workplaces, families and schools - people are happier and more productive when people in authority do things “with” others rather than “to” or “for.” At the same time, it focuses narrowly on the micro dynamics of the exercise of

authority – specifically the relationship between those with authority – teachers, police, parents, managers – and those subject to it.

Green et. al. (2015) refer to this development as being in a “downward” direction – away the state and towards the transformation of everyday activities in schools and workplaces. In this context, the aspiration is to increase the quality of communication in order to build the kind of communitarian society in which ordinary citizens exercise empathy and care in their relationships with one another. The concept of “social capital” is generally invoked here to refer to the rebuilding of community connections and community functions that have atrophied in modern societies.

Within this arena, however, there is little focus on reforming the structure of institutionalized power and privilege embedded within systems themselves. These reforms assume the right of the state to intervene in the lives of poor marginalized families while attempting to make that intervention more effective, collaborative and less overtly coercive. The dropping of the term “justice” is telling because this arena tends to stand apart from a challenge to the power of the state and from the agenda of doing justice in an “upward” direction by holding the state, elites or corporations accountable or by attempting to address structural inequalities. Focusing on structural injustice points to the limits of the managerial stream of restorative practices that seeks to “give voice” to the governed so that they are more effectively governed.

From Practice to Politics and Spirituality

It is through the concerns of activists within the movements for peacebuilding and indigenous rights that the issue of institutionalized power and privilege is moving towards the center of the restorative justice movement. Publication of the *The New Jim Crow* (Alexander, 2012) and the Black Lives Matter movement has brought more activists of colour with Afro-Centric ideas to the restorative justice movement along with leadership from First Nations activists and incarcerated and formerly incarcerated men and women.

The new wave of restorative justice activism engages with issues of oppression, discrimination, and economic injustice. In the U.S. restorative justice in schools has been fuelled by the political concerns of racial equity and civil rights. It is significant that Fania Davis and her sister Angela Davis along with other indigenous activists of colour are finding restorative justice a meaningful

resource for the rejuvenation the 21st century civil rights movement focused on the dismantling of the “cradle to grave” prison industrial complex and de-colonization of dominant white institutions. Today Davis (2016) calls for a Truth and Reconciliation Process in Ferguson and in communities across the U.S. to open space for ordinary people tell the truth about racial oppression through the criminal justice system.

For a new generation of activists, the personal is political. Activists are engaged politically and spiritually focusing on nurturing oneself and others as a way of living. There is no separation between spirituality and justice (Batley, 2004; Sawatsky, 2009), between heart-thinking and head-thinking (Zion, 2005). There is a greater effort to understand the worldview and ethics of aboriginal justice and to create ways to be true to those values in the Western context. Philosophically there is resonance between feminist ethics and vision of justice articulated by Kay Harris (1987) and Carol Gilligan (1982) with a “return of the feminine principles to restore balance with the masculine energy of domination” (Davis, 2016).

These developments bring the movement back to the question of *shalom* that Zehr (1990) identified as the touchstone for the paradigm of restorative justice. A key source of convergence within the North American restorative justice movement is the grounding of the commitment and understandings in essentially spiritual and ethical understandings about “right relationship.” There is acknowledgement that values of love and the practice of spirituality cannot be made secondary to the call to struggle against oppression. If there is no vision or aspiration to create a “beloved community” in which relational equity is a condition for all members of the community, then the goals of “restoration” and “participation” seems both hollow and deceptive.

The restorative justice movement has always been more than a “mechanism” or “response to harm.” The idea of restorative justice rests on an affirmative vision of how to live in “right relationship” or as Native people would say, “in a good way.” Weitkampte and Parmentier (2016) note that the concept of healing justice within Germanic legal philosophy similarly focuses on healthy patterns of everyday life. Restorative justice is about how to create harmony, not just end conflict; how to live in right relationship, not just reconcile over a past harm.

This is in tension with the secular and technical rationality of the social science and legal agenda that frames criteria for restorative justice in terms of efficiency, effectiveness, evidence and outcomes framed by current institutional systems. As Sawatsky (2009) notes, the restorative

justice field has overwhelmingly focused on “case management” with little attention to the socio-economic context that generates much of the crisis and harm addressed by the criminal justice and social service systems. Most restorative justice practice ignores the building of a healthy foundation for well being and focuses on the response to the crisis – the eruption of aggression, violence or harm that is symptomatic of individuals and communities not living in balance or healthy relationship.

People wonder about the future of the restorative justice movement. In my view, it has a very dismal future as a technocratic solution to the inadequacies of the current criminal justice system. Proving through social science evidence that it “works” more effectively to reduce recidivism or suspensions than some other intervention may appeal to funders but does not draw activists into the movement. What inspires people to turn to restorative justice is the connection to humanistic values that have always inspired human beings.

Restorative justice is a big idea that encompasses far more than reform of the criminal justice system. In the long run ideas change institutions, shape culture and outlast the efforts of individuals. We would do well to remember that race too is a big idea – a terrible and oppressive idea that has been institutionalized within modern social structure, institutions and consciousness. Dr. Gail Christopher (2017) keynote speaker at the 2017 National Association of Community Restorative Justice wisely counsels that as we build a restorative vision about who we are, we must concurrently dismantle the idea of race and practices of privilege and discrimination at the foundation of current social structure. Opening this international Handbook - diverse in its views and evidence - this chapter argues that the restorative justice movement has always been a vehicle for creating a different future. The expansive growth of the movement is a testament that the big ideas of restorative justice are continuing to draw people to this movement in order to create transformative social change.

References

- Abel, R. (1982). *Introduction*. The Politics of Informal Justice: The American Experience. Volume I. New York: Academic Press, pp.1-16.
- Abramson, L. and Moore D.B. (2001). Transforming conflict in the inner city community conferencing in Baltimore. *Contemporary Justice Review* 4 (3-4), pp. 321-340.
- Abramson, L. and Moore D.B. (2002). The psychology of community conferencing. In: J. Perry (ed) *Restorative Justice: Repairing Communities Through Restorative Justice*, Alexandria: ACA pp. 123-140.
- Alexander, M. (2012). *The new Jim Crow: Mass incarceration in the age of colorblindness*. New York, NY: The New Press.
- Batley M. (2004). 'What is the Appropriate Role of Spirituality in Restorative Justice? In H. Zehr and B. Toews. (eds.) *Critical Issues in Restorative Justice*. Monsey NY: Criminal Justice Press. pp.361-374.
- Botcharova, O. (2001). Implementation of Track Two Diplomacy: Developing a Model of Forgiveness. In: R. Petersen and R. Helmick (eds.) *Forgiveness and Reconciliation: Religion, Public Policy and Conflict Transformation*. Philadelphia: Templeton Foundation Press.
- Boyes-Watson C. (1999). "In the Belly of the Beast? Exploring Dilemmas of State-sponsored Restorative Justice". *Contemporary Justice Review* 2(3): 261-281 2002
- Boyes-Watson C. (2008). *Peacemaking Circles and Urban Youth*. St. Paul MN: Living Justice Press.
- Boyes-Watson C. and Pranis K. (2015). *Circle Forward: Building a Restorative School*. St. Paul MN: Living Justice Press.
- Braithwaite, J. (1989). *Crime, shame and reintegration*. Cambridge, UK: Cambridge University Press.
- Braithwaite, J. and Mugford, S. (1994). Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders. *Brit. J. Criminol*, 34(2), pp.1-33.
- Breton, D. (2012). Decolonizing Justice. Tikkun. Winter.
- Burford G. and Pennel J. (1995) *Family group Decision Making: New Roles for "Old" Partners in Resolving Family Violence*. St. Johns: Memorial University of Newfoundland.
- Cameron, L., & Thorsborne, M. (2001). Restorative justice and school discipline: Mutually exclusive? In: H. Strang and J. Braithwaite (Eds.), *Restorative justice and civil society*. Cambridge, MA: Cambridge University Press, pp.180-95.
- Christopher, G. (2017). Racial Healing: The Journey to Sustained Transformation. Keynote speech at 2017 National Association of Community Restorative Justice. https://www.nacRJ.org/index.php?option=com_content&view=article&id=242:dr-gail-christopher-d-n&catid=73&Itemid=1117

- Christie Nils. (1977). Conflicts as Property. *British Journal of Criminology* 17 (1).
- Cunneen, C. (1997). Community conferencing and the fiction of indigenous control. *Australian & New Zealand Journal of Criminology*, 30(3), 292–311.
- Cunneen, C. (2001). Reparations and Restorative Justice: Responding to the Gross Violations of Human Rights. In H. Strang and J. Braithwaite. (eds.) *Restorative Justice and Civil Society*. Cambridge U.K. Cambridge University Press. pp.83-98.
- Davis, F. (2012) ‘Whats Love Go To Do With It?’ Tikkun. Winter.
- Davis, F. (2016). This Country Needs a Truth and Reconciliation Process on Violence Against African-Americans--Right Now. *Yes! Magazine*. [online] Available at: <http://www.yesmagazine.org/peace-justice/this-country-needs-a-truth-and-reconciliation-process-on-violence-against-african-americans> [Accessed 27 Oct. 2017].
- Doolan, M. (1988) From welfare – to justice: Towards new social work practice with young offenders. Nuffield Foundation study report. Wellington, New Zealand
- Eglash, A. (1977). Beyond restitution – creative restitution. In: J. Hudson & B. Galaway (eds.), *Restitution in criminal justice*. Toronto: Minnesota Department of Corrections, Lexington Books, pp. 91-129.
- Elias, R. (1983). *Victims of the System: Crime Victims and Compensation in American Politics and Criminal Justice*. New Brunswick, NJ: Transaction Books.
- Galaway, B., and Hudson, J.. (1972). “Restitution and rehabilitation: Some central issues.” *Crime and Delinquency*, 18(4), pp.403-410.
- Gilligan, C. (1982). *In a Different Voice*. Cambridge, MA: Harvard University Press.
- Green, S. and Johnstone, G. and Lambert, C. (2013). What Harm, Whose Justice? Excavating the Restorative Movement. *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice*, 16(4), pp.445-460.
- Greensboro Truth and Reconciliation Commission Report. (2006) Presented to the residents of Greensboro, the City. Downloaded at <http://www.greensborotrc.org/>
- Harrington C. (1982). Delegalization Reform Movements: A Historical Analysis. In: R. Abel, (ed) *The Politics of Informal Justice: The American Experience*. Volume I. New York: Academic Press, pp.35-63.
- Harris M.K. (1987). “Moving into a New Millenium: Towards a Feminist Vision of Justice” *The Prison Journal*, 67(2).
- Hassell, I. (1996). Origin and development of family group conferences. In: J. Hudson, A. Morris, G. Maxwell, and B. Galaway (eds.) *Family Group Conferences: Perspectives on policy & practice*. Monsey, NY: Willow Tree Press.

- Hopkins, B. (2004) *Just Schools: A Whole School Approach to Restorative Justice*. London U.K.: Jessica Kingsley.
- Hoyle, C. and Young, R. (2003). 'Restorative Justice, Victims and the Police.' In T. Newburn (ed) *Handbook of Policing*. Cullompton, Devon: Willan.
- Johnstone, G., & Van Ness, D. (2007). The meaning of restorative justice. In: G. Johnstone & D. Van Ness (eds.), *Handbook of restorative justice*. Cullompton, England: Willan Publishing, pp. 5-23.
- Kelly V. and Thorsborne M. (eds.) (2014) *The Psychology of Emotion in Restorative Practice: How Affect Script Psychology Explains How and Why Restorative Practice Works*. London U.K.: Jessica Kingsley Publishers.
- Lane, P., Bopp, M., Bopp J., and Norris J. (2005). 'Mapping the Healing Journey: First Nations Research Project. In: McClaslin W. (ed.) *Justice as Healing: Indigenous Ways*. St Paul, MN: Living Justice Press.
- Lederach J.P. (1999). *The Journey Towards Reconciliation*. Scottsdale, PA: Herald Press.
- Llewellyn J. and Philpott D.(2014) 'Restorative Justice and Reconciliation: Twin Frameworks for Peacebuilding. In: Llewellyn and Philpott (eds.) *Restorative Justice, Reconciliation, and Peacebuilding. Studies in Strategic Peacebuilding*. Oxford University Press, pp. 14-37.
- Liebmann, M. (2007). *Restorative Justice: How It Works*. London: Jessica Kingley.
- Love, C. (1999) Family Group Conferencing: Cultural origins, sharing, and appropriation – A Maori reflection. In: G. Burford and J. Hudson (eds) *Family Group Conferencing: New directions in community-centered child & family practice*. New York: Aldine de Gruyter.
- McClaslin, W.D. (2005) Introduction: Naming Realities of Life. In: W. McClaslin (ed.) *Justice as Healing: Indigenous Way – Writings on Community Peacemaking and Restorative Justice from the Native Law Centre*. St. Paul MN: Living Justice Press.
- McElrea F. (1994). "Justice in the Community: The New Zealand Experience." In: J. Burnside and N. Baker (eds). *Relational Justice: Repairing the Breach*. Winchester, UK: Waterside Press.
- McManus, M. and Silverstein, B. (2011). Brief History of Alternative Dispute Resolution in the *CADMUS*, Volume 1(3), pp.1-10.
- Maxwell, G.M. and Morris A. (1993) Families, Victims and Cultures: Youth Justice in New Zealand. Wellington: Department of Social Welfare and Institute of Criminology.
- Minow, M. (1998). *Between Vengeance and Forgiveness: Facing History and Genocide after Mass Violence*. Boston, MA: Beacon Press.
- Minow, M. (2000). "The Hope for Healing: What Can Truth Commissions Do?" In: R.I. Rotberg and D. Thompson (eds). *Truth v. Justice: The Morality of Truth Commissions*. Princeton, NJ: Princeton University Press.

Mirsky, L. (2009). *Hull, UK; Toward a Restorative City*. 1st ed. [ebook] International Institute for Restorative Practices, pp.1-2. Available at: <https://www.iirp.edu/news/1942-from-the-archives-hull-uk-toward-a-restorative-city> [Accessed 25 Oct. 2017].

Montville, J. V. (2006). "Track two diplomacy: The work of healing history." *Whitehead J. Dipl. & Int'l Rel.*, 7, 15.

Moore, D. and O'Connell, T. (1994) "Family Conferencing in Wagga Wagga: A Communitarian Model of Justice" In: C. Alder and J. Wundersitz, (eds.) *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* Canberra: Australian Institute of Criminology.

Morrison, B. (2001). *The School System : Developing its Capacity in the Regulation of Civil Society*. In: H. Strang and J. Braithwaite. (eds.) *Restorative Justice and Civil Society*. Cambridge U.K. Cambridge University Press. Pp. 195-211.

Moyle, P. and Tauri, J. (2016). Māori, Family Group Conferencing and the Mystifications of Restorative Justice. *Victims & Offenders*, 11(1), pp.87-106.

Nathanson D. (1992). *Shame and Pride: Affect, Sex and the Birth of the Self*. New York: W.W. Norton.

Olson, S., Dzur, A. (2004). Revisiting Informal Justice: Restorative Justice and Democratic Professionalism. *Law & Society Review*, 38(1). pp.139-176.

Peacemaking Program of the Judicial Branch of the Navajo Nation. (2012) Institutional History of Hózhóji Naat'aah. <http://www.navajocourts.org/Peacemaking/Plan/PPPO2013-2-25.pdf>

Pranis K., Stuart B. and Wedge, M. (2003) *Peacemaking Circles: From Crime to Community*. Minneapolis MN: Living Justice Press.

Ptacek, J. (2005). Guest Editor's Introduction. *Violence against Women*, 11(5), pp.564-570.

Reeves, H. (1989). "The Victim Support Perspective." In: M. Whright and B. Galaway (eds.). *Mediation and Criminal Justice. Victims, Offenders and Community*. Sage Publications, pp. 44-56.

Richards, K. (2009). Taking Victims Seriously? The Role of Victims' Rights Movements in the Emergence of Restorative Justice. *Current Issues in Criminal Justice*, 21(2). pp. 302-320.

Rosenblatt F. (2015). *The Role of Community in Restorative Justice*. NY: Routledge.

Ross R. (1996). *Returning to the Teachings: Exploring Aboriginal Justice*. Toronto, Ontario: Penguin.

Ross R. (2005). 'Aboriginal Community Healing in Action: The Hollow Water Approach.' In: W. McClaslin (ed.) *Justice as Healing: Indigenous Way – Writings on Community Peacemaking and Restorative Justice from the Native Law Centre*. St. Paul MN: Living Justice Press.

Rossner, M. and Bruce, J. (2016). Community Participation in Restorative Justice: Rituals, Reintegration and Quasi-Professionalization. *Victims & Offenders* 11, pp.1-20.

Rotberg, R. (2000). Truth Commissions and the Provision of Truth, Justice and Reconciliation. In: R. Rotberg and D. Thompson. *Truth v. Justice: The Morality of Truth Commissions*. Princeton N.J.: Princeton University Press, pp. 3-21.

Sawatsky, J. (2009). *The Ethic of Traditional Communities and the Spirit of Healing Justice*. London U.K.: Jessica Kingsley.

Schaefer, S. 1968. *The Victim and His Criminal: A Study in Functional Responsibility*. New York: Random House.

Shriver D. Jr. (2001) "Truth Commissions and Judicial Trials: Complementary or Antagonistic Servants of Public Justice?," *Journal of Law and Religion*, 16(1).

Scull, A. (1982). *Community Corrections: Panacea, Progress, or Pretense?* In: R. Abel (ed.) *The Politics of Informal Justice: The American Experience*. Volume I. New York: Academic Press, pp.99-118.

Straker, C. (2015). The Restorative City: Emperor's new clothes or achievable paradigm shift? In: *Fifth Restorative Practices International Conference*.

Stubbs, J. (2002). 'Domestic Violence and Women's Safety: Feminist Challenges to Restorative Justice. In: H. Strang and J. Braithwaite (eds.) *Restorative Justice and Family Violence*. Cambridge UK: Cambridge University Press.

Tauri, J. (2009). An indigenous perspective on the standardization of restorative justice in New Zealand and Canada. *Indigenous Policy Journal*, 20(3), pp. 1–24.

Thames Valley Police Restorative Justice Consultancy. (1997). *Restorative Justice, Restorative Cautioning – A New Approach*. Oxford: Thames Valley Police Restorative Justice Consultancy.

Tomkins, S. (1962). *Affect Imagery Consciousness*, Vol. I. New York: Springer.

Tomkins, S. (1963). *Affect Imagery Consciousness*, Vol. II. New York: Springer.

Tomkins, S. (1991). *Affect Imagery Consciousness*, Vol. III. New York: Springer.

Truth and Reconciliation Commission. (1998) Truth and Reconciliation Commission of South Africa Report. Cape Town: Juta & Co. Ltd.

Truth and Reconciliation Commission of Canada. (2015). Honouring the truth, reconciling for the future: summary of the final report of the Truth and Reconciliation Commission of Canada.

Tutu D. (1999). *No Future without Forgiveness*. New York: Doubleday.

Van ness, D. (2005). An Overview of Restorative Justice around the World. In: *United Nations 11th Congress on Crime Prevention and Criminal Justice*.

Van Ness, D. (2010). *RJ City: Phase 1 Final Report*. RJ City. Washington, DC: Prison Fellowship International, pp.1-85.

- Villa-Vicencio C. (2014). Living Between Promise and Non-Delivery: Pursuing Inclusive Reparations. In: J. Llewellyn and D. Philpott (eds.). *Restorative Justice, Reconciliation, and Peacebuilding. Studies in Strategic Peacebuilding*. U.K.: Oxford University Press.
- Wachtel, T. (2009). My Three Decades of Using Restorative Practices with Delinquent and At-Risk Youth: Theory, Practice and Research Outcomes. In: *First World Congress on Restorative Juvenile Justice*.
- Wachtel, T. (2016). *Defining Restorative*. International Institute for Restorative Practices, pp.1-12.
- Wachtel, T. (2016). *Governance and the use of authority: encompassing diverse definitions of 'Restorative'*. 17th ed. [pdf] European Forum for Restorative Justice, pp.7-9. Available at: http://www.euforumrj.org/wp-content/uploads/2016/11/Vol_17_3.pdf [Accessed 30 Oct. 2017].
- Weitekamp, E. and Parmentier, S. (2016). Restorative justice as healing justice: looking back to the future of the concept. *Restorative Justice*, 4(2), pp.141-147.
- Wood, W. (2016). Editor's Introduction: The Future of Restorative Justice?. *Victims & Offenders*, 11(1), pp.1-8.
- Wood, W. and Suzuki, M. (2016). Four Challenges in the Future of Restorative Justice. *Victims & Offenders*, 11(1), pp.149-172.
- Umbreit, M. (1985). *Victim Offender Mediation: Conflict Resolution and Restitution*. Valparaiso, Indiana: National Institute of Corrections, pp.8-23.
- Yazzie. R. (1994). 'Life Comes From It': Navajo Justice Concepts, *New Mexico Law Review* 24 : pp.
- Yoder, C. (2005). *Little Book of Trauma Healing: When Violence Strikes and Community Security is Threatened*. Intercourse, PA: Good Books.
- Young, M. and Stein, J. (2004). *The History of the Crime Victims' Movement in the United States*. 1st ed. Washington, DC: National Organization for Victim Assistance, pp.1-15.
- Zehr H. (1990). *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press.
- Zion J.W. (2005). 'Punishment versus Healing: How Does Traditional Indian Law Work?' In: W. McClaslin (ed.) *Justice as Healing: Indigenous Way – Writings on Community Peacemaking and Restorative Justice from the Native Law Centre*. St. Paul MN: Living Justice Press.