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## *From the USA*

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# THE PHENOMENON OF RESTORATIVE JUSTICE: SOME INTRODUCTORY REMARKS

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by **Dennis Sullivan , Larry Tifft & Peter Cordella**

This article offers an overview of the restorative justice movement as it presently exists. It addresses not only the key elements of restorative justice theory and practice but also its unique dimension of "transformative justice". The relationship between restorative justice and social structural change is examined as well as the relationship between restorative justice and an emerging criminological perspective known as peacemaking criminology.

**Key Words:** Restorative justice, peacemaking criminology, criminology, reconciliation, justice, crime.

In the past two to three years, the notion of restorative justice has made its way onto the criminal justice agenda with a certain degree of gusto. Even at national and international criminology justice conferences, whose sessions are dedicated mostly to conventional perspectives on crime, punishment, and justice, restorative justice has been embraced by many who a year or two earlier would have given its tenets very little consideration. While this broadening of interest in restorative justice might be viewed by some as cause for celebration, many who have been associated with the development and practices of restorative justice from its earliest days view this growth with a certain degree of suspicion, some even seeing it as a potential step toward the demise of restorative justice. A paradoxical turn of events, indeed.

But, despite the growing interest in restorative justice and the parallel concerns about such growth, there still remain a considerable number of people involved in the administration of criminal justice and even many who teach about justice issues at the university level, for whom issues of restorative justice, even the term itself, remain quite foreign. Nevertheless, many of these people, once they hear about restorative

justice, almost invariably show great curiosity about how it works, how restorative justice programs are administered, who is selected to participate in them, and a host of related questions. However, almost equally as often, they express a fair degree of scepticism about the effectiveness of restorative justice and its long term potential for responding to situations in which someone has harmed another.

When those familiar with the terrain of criminology first hear about restorative justice, many quickly notice the great similarity that exists between restorative justice and a criminological perspective known as peacemaking criminology (Pepinsky and Quinney, 1991; Sullivan and Tifft, in press, b). To a large extent, such an assessment is accurate as both perspectives search for forms of justice that refuse to employ power, control, and violence as means of correction. Indeed, the nature of the connection between the two perspectives and their shared potential for social change were explored in depth during a three day international conference in Albany, New York last June, Justice Without Violence; Views From Peacemaking Criminology and Restorative Justice. Most of the articles included in this first issue of the Contemporary Justice Review were first prepared for presentation at that conference.

When we try to understand the growing interest in restorative justice, on one level we can attribute it to how tired many people have become of the conventional methods used to respond to someone who has harmed another, namely, methods based in punishment (Mackey, 1997). Increasingly, people are coming to see that punishment, whatever the justifications offered for its use, is just another form of violence and, as such, has little potential for healing broken relationships and restoring a sense of community among those whose lives have been disrupted by harm (Cragg, 1992). In their advocacy for alternatives to power and violence as ways to effect change in people and social relationships, proponents of restorative justice suggest the best way to handle violent acts and other forms of harm, whether defined by the state as crimes or not, is to respond to them primarily in personal terms, in terms of the suffering and misery they create for those affected by the violence (Zehr, 1990). They see the aim of the restorative process as healing the physical and emotional wounds that harmful behaviour has produced as well as the communal connections that were severed. Such healing is achieved through acts of reconciliation, a process in which all who have

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been directly and indirectly affected by the harm are encouraged to participate. Enough research has been done to suggest that those who engage in this process, those who have been harmed as well as those who were the source of harm, describe an experience that had a significant impact on their lives (Umbreit, 1994).

Relying in part on methods that are standard practice in the world of mediation and conflict resolution, those who are involved in developing and administering restorative justice programs seek, first and foremost, to encourage all those directly involved in the life of a survivor of violence to acknowledge the hurt suffered by their family or community member. Once this is done, they can help that person take an active part in recovering his or her former self. This might include helping to dissolve resentments toward the person who has harmed them, to achieve at least a modicum of reparation for their losses, and to reduce their fears of being harmed again (Van Ness, 1993; Wright, 1991). Through the restorative process, a person who has been the object of harm is given an opportunity to achieve a greater sense of inner healing and closure for any traumatic loss of trust, self worth, and freedom and gradually to become again a positive presence in the community.

For those who have harmed another, the restorative process can be equally engaging. It encourages them to reflect upon and accept responsibility for their harmful behaviour, to offer a genuine apology to those they have harmed and thereby begin making reparation for what they have done. It is hoped that through this process they can put the offence behind them, regain or perhaps develop for the first time a degree of self esteem, and in the process become reintegrated into their family, workplace, school, or community which they might share with the person they have hurt (Van Ness and Strong, 1997, pp. 83-90).

A powerful example of what can be achieved through the restorative process can be found in the Family Group Conference, which had its origins in New Zealand in the late 1970s (Maxwell and Morris, 1996). In the conference setting, the person who has harmed another, the person who has been harmed, as well as the family members of both, come together to express their pain and suffering and to talk about the ways in which the harm has affected their lives, sometimes in disastrous ways. To help achieve this result, each conferencing program has its own set of

criteria to determine who will be selected to participate in this very sensitive process. There are also established ground rules for how to proceed so that the process does not turn into a denial producing or blame assessing contest (Gehm, 1990). But, even with such guidelines in place, the process can become riddled with tension and hostility, for example, when the parent or friends of an offender express indignation through defensive statements (“Our daughter would never do such a thing!”) or when the loved ones of a victim of violence or the police involved in the case, attempt to use the conference as a forum for heaping retributive indignities upon the offender (“You’ll pay for this, you scum!”) (Retzinger and Scheff, 1996).

As we might expect, such negative feelings, especially when expressed in a hostile manner, can quickly derail the reconciliation process. They can aggravate the defensiveness and belligerent attitude of an offender and thereby inhibit his or her experiencing true remorse for what was done and ultimately offering a sincere apology to those whose lives were adversely affected by the harm (Moore, 1993; Claassen and Zehr, 1989). But with close attention increasingly paid to the social climate that needs to be created for facilitating apologies and forgiveness (Tavuchis, 1991), successful conferencing programs are now flourishing in many areas of the United States, Canada, New Zealand, Australia, the Netherlands, and many other parts of Europe as well as the Pacific Rim (Galaway and Hudson, 1996). Such programs are now held in such high regard in New Zealand, for example, that, in 1989, the Children, Young Persons, and their Families Act made provisions for all juvenile offenders in that country to participate to some degree in a restorative process (McElrea, 1994).

But family group conferencing is only one of many forms of Victim Offender Reconciliation Programs (VORP’s) that have mushroomed to more than 200 in North America in the past two decades (Claassen and Zehr, 1989). In Canada and the United States, part of the impetus behind these programs has been and continues to be derived from the traditional value systems and practices of aboriginal communities within their boundaries. The Peacemaker Courts of the Navajo Nation in the southwestern United States (Yazzie, 1994; Zion, 1983), the Youth Justice Committees in Alberta, Canada (John Howard, 1994), as well as Community Sentencing Circles in Canada’s Yukon territory (Stuart, 1996),

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to revitalise social institutions that have become desiccated. Polly Smith suggests that this ebb and flow has been true for the work of the political philosopher, William Godwin. Godwin, she says, is part of the western tradition in which people seek to respond to harms done in non-violent ways. She points out that Godwin's view on punishment as moral development offers us a perspective on human change that differs radically from perspectives based in retribution and thereby contributes in a central way to the current discourse on restorative process of justice.

Finally, as indicated, restorative justice in its transformative dimensions raises a considerable number of questions about how we live our daily lives and offers us alternatives that are structurally different from power based social arrangements. The interview with Fred Boehrer of the Catholic Worker Movement demonstrates that restorative processes can be infused into everyday life and effect change on a structural as well as personal level. Emmaus House, where Fred and his family live, offers us a radically different version of what constitutes "family", family that is restoratively just, in and of itself, as well as in its extension to other families in needs of restoration.

When we consider such alternatives, it is difficult to give much credibility to those who suggest that restorative justice is a fad. It does not seem so. Whatever restorative justice evolves into over time and however great an impact it will have on our lives in community remains to be seen (Cordella, 1996). But clearly it has already provided, and continues to provide, an alternative to punishment, violence, and power as means to effect change in our selves and our social institutions.

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each in its own way, has allowed those who have been affected by a harm to participate peacefully in a genuine healing process. Historically, the aim of these justice tribunals has been away from separative retribution and towards connective reconciliation.

Clearly, such a reconciliatory process is grounded in a social ethic radically different from that of punishment. Moreover, it takes time, patience, and a loving attitude, especially towards those who initially refuse to take responsibility for or acknowledge the seriousness of their acts. For this, among other reasons, many associated with restorative justice feel that restorative justice programs should continue to be administered by community and/or religious affiliated groups rather than become part of governmental departments of correction. They say the qualities required for their success are less likely to be found within the confines of bureaucratic structures (Northey, 1992). As a result, many associated with restorative justice see its current growth, especially its movement into the professional and governmental arenas, as threatening its potential for healing severed relationships and regenerating community through reconciliatory processes.

Also, since restorative justice programs take a considerable commitment of time, resources, and energy to achieve their aims, administrators within governmental agencies wishing to add them to their roster of corrective services must be able to make not only an emotional but also a considerable financial commitment to introduce them. However, this is a commitment that a public, which seems more often than not bent on revenge, might not be willing to accept (Bae, 1991; Innes, 1993). Nevertheless, some state and municipal agencies in the United States have considered the results of restorative justice efforts well worth the investment. Vermont and Massachusetts, for example, have seriously begun to investigate the possibilities of a restorative justice approach to corrections (Rowley, 1990; Massachusetts, 1986) and the State of Minnesota Department of Corrections has established a full time position of restorative justice programs as well as assisting municipalities within the state to establish restorative programs locally (Pranis, 1996).

It should be pointed out that this commitment of resources and personnel in Minnesota has not only had a significant impact on the way justice is administered in that state but also influenced social processes that extend

far beyond the realm of the criminal justice system. For example, in the past several years restorative justice programs have been developed in a goodly number of Minnesota's schools. Through these programs children are taught methods of resolving conflicts peacefully and responding to harms done to them and their friends through restorative rather than retributive practices (Anderson et al., 1996). These processes are not unlike those that were introduced into a number of schools in Rochester, New York under the auspices of the Presbyterian Judicial Process Commission nearly a decade ago (Tifft, 1993, pp. 167-196; Allers, 1992).

One aspect of the theory responsible for the development of current restorative justice practices can be traced to the work of Australian criminologist, John Braithwaite, who has argued that those who have harmed another in some way can begin to be reintegrated into their communities once they experience feelings of shame and remorse for their acts and ask for forgiveness from those they have hurt (Braithwaite, 1989). Braithwaite makes a clear distinction between a shaming process that stigmatizes people and turns them into outcasts and a reintegrative process that offers gestures of reacceptance (Braithwaite, 1993). Some criminologists have pointed out that this process of reintegrative shaming is similar to the justice process prevalent in Japan where experiencing shame for one's misdeeds is an essential part of justice done. It helps to heal shattered relationships as well as reaffirm the importance of community (Braithwaite, 1989, pp. 64-74). However, other criminologists are quick to point out that, unless the kinds of cultural conditions exist that allow offenders to feel they have let other down, and thereby experience true shame for their acts, as is the case in another manifestation of power and violence based corrections only masked in restorative justice rhetoric (Haley, 1995; Sullivan, 1980). They query: is not coerced shame a contradiction?

Perhaps there is some validity to this growing concern about forced shaming. In a recent edition of a Fox Television news program, which focused on the value of shaming as a method of correcting offenders, a Texas judge incorporated shaming into his sentencing practices by forcing offenders to become the butt of jokes and jeering. One offender was openly berated and ridiculed by community members, while a woman who had stolen several small items from a store was sentenced to walk back and forth in front of that store carrying a sandwich board over her

As indicated, it is at the point of transformative justice that the restorative justice and peacemaking criminology movements find their common ground. And, it is in the meeting of these two movements that a whole other level of questions begins to arise. For example, if we are interested in instituting restorative justice processes into social arrangements at all levels of social life, must we not be aware of the ways that violence is structured into these social arrangements? And if we agree that the exercise of power is a form of violence, is not violence committed any time someone is denied participation in the processes of his or her own life because of power? Is not violence committed not only when a person's needs are minimised or denied but also any time a person is formed to become other than who he or she is (Pepinsky, 1988)? If we respond affirmatively to these questions, we are suggesting that restorative justice issues are not limited to the criminal justice system but also apply to all areas of our lives, to the family, the school, the workplace, and wherever else we develop a social arrangement (J Sullivan, in press, a; Krimmerman and Lindenfield, 1992).

Of course, underlying such a perspective on justice is a social ethic that differs radically from that prevalent in our current transnational political economy. The restorative justice ethic is based in a spiritual sense that sees us all connected to each other at a fundamental level and, as such, requires of us a more heightened and pervasive sense of justice. In his article on the Navajo peacemaking courts, Robert Yazzie, Chief Justice of the Navajo Nation court system, speaks about the spiritual dimensions that underlie the social life of the Navajo nation and how these dimensions serve to define the Navajo sense of justice as peacemaking. James Zion, who serves as a solicitor in that court, discusses why the peacemaking perspective that has been part and parcel of Navajo life since antiquity, disappeared for a time and why it is now re-emerging with great implications for how conventional systems of justice operate. In a similar vein, Shruti Goal Taraschi shows how both peacemaking criminology and aboriginal justice initiatives share the same spiritual foundations and, as such, have been working towards revitalising justice processes in today's complex world, inside and outside aboriginal communities.

As Zion and Taraschi have pointed out, it is interesting to observe the phenomenon of how alternatives to punishment, those based in a peacemaking tradition, are able to disappear for a time and then reappear

define restorative justice processes more in terms of intra and interpersonal change, experience some difficulty in understanding the connection that others make between the restorative justice process and transforming social arrangements.

The American sociologist, David Gil, whom many may know from his ground breaking work on child abuse and violence in the family, has addressed these kinds of issues in a recent article published in the American Journal of Orthopsychiatry on the possibility of reducing violence in the family. Surprising to some, the subtitle of Gil's piece was "Mission Impossible" because, as he says, it is impossible to eliminate violent behaviour within the family in a society whose social arrangements are structurally violent. Gil's prescription for eliminating family violence is both restorative and transformative in that, while it calls for a therapeutic response to all personal harms committed against any member of a family, it also calls for structuring families in such a way that they take into account the needs of all. This we define as a process of justice because all family members fully participate in the decisions that affect their lives on a daily basis. The proposals in Gil's perspective seek to face up to violence and other harms not just retroactively, after some harm has been done, but prospectively as well, by attempting to prevent as much as possible the production of harm structurally (Gil, 1996).

Here we can see how transformative justice transports the narrowly defined restorative justice process into the family and other primary social institutions. All we need to do is examine the kind of restorative family that U.S. paediatrician, T Berry Brazleton, has written about after years of observations of young children. Brazleton (1995) says that all children have basic needs that they are constantly trying to tell us about and that adults, who wish to create families that are just, must take those needs into account. This requires a commitment, he says, to providing each person every opportunity to speak about who they are in terms of their needs. Unless needs denying family structures, those based in hierarchy and power, are transformed into those that are fully participatory and needs satisfying for all, children will be excluded from restorative processes through which meaningful growth and development take place, Brazleton and Gil alike are talking about families whose structures are based in restorative justice and as such are transformatively just in nature (Harris, 1989).

shoulders. On the board were painted large letters announcing to passers-by that she was a "robber". The question is: can these forced shaming practices be considered reintegrative and healing? The answer, of course, is no. Indeed, they appear to be a throwback to the kinds of public shaming that were standard practice in the English colonies of the United States throughout the 17th century (Powers, 1966; Sullivan, 1997).

To counteract this history of stigmatizing punishments, including its modern day manifestations, as in the sentencing practices of the shaming Texas judge, other groups continue to emphasize the efficacy of non-violent means of correcting others and the positive effects of practices that welcome offenders and those they have harmed back into the community. These include those associated with the Mennonite and Quaker communities in both the United States and Canada, the Inter-religious Council of Churches, the criminal justice division of the Presbyterian Church (USA), among hundreds of other community based organisations such as the National Centre for Peacemaking and Conflict Resolution in Fresno, California. But with the expanding adoption of shaming as a correctional technique and restorative justice defined in terms of that practised by the Texas judge mentioned above, a whole new range of pressing questions present themselves about restorative justice. For example, what are the essential elements of restorative justice and when can a particular correctional practice be considered restorative and when not? In their incisive article in this issue, Howard Zehr (1990) and Harry Mika (1987), two fore runners of the restorative justice movement in the United States, provide some illuminating responses to these questions in the form of a check list. They suggest that certain key elements must be present in a corrective method or process if we are to consider it restorative in nature.

Indeed, part of the impetus that led Zehr and Mika to develop their definitional check list is the wide variety of practices that many people are referring to as restorative justice initiatives but that appear to have little if any restorative value. In trying to figure out a way to handle this diversity without being prohibitively narrow in determining what constitutes that we continue to think of as restorative justice, Kathleen Daly and Russ Immarigeon have suggested that we continue to think of restorative justice in terms of a social movement that has many dimensions and wait to see how these various dimensions play out in the future. At

the same time, Paul McCold, Director of the Community Service Foundation in Bethlehem, Pennsylvania, has used the Delphi technique for the past several years to poll international scholars and practitioners involved in restorative justice practices to arrive at some kind of cohesive and meaningful working definition of restorative justice (McCold, 1997a, pp. 1-2; 1997b). His aim was to introduce the concept and practice of restorative justice into the platform at the 10th UN Crime Congress in the year 2000. In a follow up article to this work that was prepared for this volume, McCold and his associate, Ben Wachtel, suggest that arriving at a satisfactory definition of restorative justice is only part of the solution to the definitional problem. They indicate that any approach to restorative justice requires that we simultaneously rethink our notions of what constitutes community and that we begin to accept the fact that community is far more than a "place".

These are the kinds of very basic issues that continue to arise when we seek to get to the core meaning of restorative justice. Indeed, in almost hydra-headed fashion, new questions arise as fast as old ones are put to rest, questions that highlight critical dilemmas we all face when embracing restorative justice as a concept and practice. Through her increasing involvement with restorative justice practices over the years, Kay Harris (1989) has become familiar with these dilemmas and produced a kind of a catalogue of such. In her article she poses some key questions that these dilemmas raise about how we should proceed with restorative justice. For example, to what extent can the state or its employees who work in a system that is retributive in nature, serve as healers in a process that refuses to demand an eye for an eye? Are there not structural contradictions inherent in the retributive, hierarchical workplace that cannot be resolved in favour of non violence? Also, if professionals become involved in the restorative process, will not a process that has been personally oriented and community-based lose its efficacy to heal by becoming a kind of managed-care operation? And to what extent will restorative justice efforts, once administered within a governmental context, extend the net of the criminal justice system deeper into the community and increase its tentacles of control (Trubek, 1984; Coates and Gehm, 1989)? Finally, if it is desirable to keep restorative justice processes as informal as possible and beyond the pale of bureaucracy and the law, what kinds of safeguards will exist for offenders to prevent

restorative processes, intended for good, from becoming part of a subtle vigilantism (Auerbach, 1983)? What kinds of safeguards will exist for those who have been harmed so that their needs and concerns are not sacrificed in the interest of informality?

These are questions for which there are no neatly packaged answers as the Daly Immarigeon article makes abundantly clear. Indeed, as we try to answer them, we find ourselves confronted with a whole other range of questions that exist on a whole other level, structural questions, if you will. For example, when we talk about the reintegrative impact of restorative justice, we have to ask at the same time: reintegrative into what? Can the reintegration of someone into a community be achieved, whether through reintegrative shaming or any other restorative method, when no or very little sense of community exists in the first place? In other words, what do you do if the person seeking reintegration lives in what Norwegian criminologist Nils Christie (1993), has referred to as a killed neighbourhood? Far from possessing a reintegrative capacity, these neighbourhoods contribute to much of the violence we do to each other. Rather than serving to facilitate human integration, these communities contribute to people relating to each other only as strangers, objects, clients, or consumers, indeed, in many cases as enemies.

In order to maximise the restorative potential that restorative justice processes possess, therefore, a number of those associated with the restorative justice movement have suggested that steps must be taken to restore, simultaneously, the killed neighbourhood. By arguing for such a structural approach to healing, these proponents of restorative justice come to share a point of view with those associated with the peacemaking criminology movement who call for a much broader definition of restorative justice. They speak of a transformative justice, a justice that seeks to effect change on a structural level while helping those whose lives were affected by interpersonal harms. These peacemakers suggest that transformative justice entails transforming social arrangements that are dead and lacking integration and, therefore, a source of violence, into social arrangements that are vital because they take into account the basic human needs of all (Mika, 1987; Morris, 1994; 1995; Tifft, 1993; Sullivan and Tifft, in press a; Gil, 1986; 1987). Of course, this much broader definition of restorative justice poses a critical question. Indeed, at some restorative justice conferences, those who