

From South Africa

RESTORATIVE JUSTICE AND THE REGULATORY STATE IN SOUTH AFRICAN TOWNSHIPS

by Declan Roche

In South Africa the idea of restorative justice is most famously associated with the work of the Truth and Reconciliation Commission; the concept underpinning the Commission's approach to dealing with apartheid-related violence. Less well known is that restorative justice is also helping play a role in the day-to-day governance of South African townships. John Braithwaite has suggested that the work being done by Clifford Shearing and his colleagues, establishing local peace committees in South African townships, illustrates how criminologists can work within the new regulatory state to enhance access to justice and safety. This article analyses these peace committees, placing them within the context of the emerging restorative justice movement. In broad terms, it argues that the peace committees display the core elements of restorative justice that distinguish them from other forms of private and informal justice, while at the same time pursuing a more ambitious and radical agenda than most restorative justice programmes.

Part One of the article provides an overview of the peace committees established by the Community Peace Program, and attempts to bring some sort of clarity to ongoing debates about the meaning of restorative justice. Part Two draws some similarities between peace committees and other restorative programmes, and contrasts these with other forms of private policing. These similarities are no accident: in promoting their work in townships, peace committee members are at pains to emphasize the core restorative elements of their programme so as to distinguish themselves from the other informal bodies that have sought to rule townships. This article argues that the differences between peace committees and other

forms of township policing provide a dramatic example of a more general contrast between restorative justice programmes and other private forms of security and policing. Specifically, restorative justice programmes may reduce the accountability deficit often thought to follow the privatization of governance.

Having considered how peace committees sit comfortably alongside other restorative justice programmes, the final section of this article changes tack, describing and then critiquing the respects in which committees differ from most restorative justice programmes. Principally, the novelty of peace committees lies in their independence from the formal criminal justice system; their handling of a wide range of offences — from apparently trivial disturbances through to the most serious crimes — and their attempts to address the structural conditions that underlie offending. It is suggested that these committees offer one possible blueprint for future efforts to adapt to the state's limited ability to provide security for all.

Part One — The Community Peace Programme

With the support of the South African government, Clifford Shearing established the Community Peace Foundation (CPF) in 1992, in the period between the unbanning of the ANC and other liberation movements in February 1990 and the first national democratic elections in April 1994. Its brief was to rethink policing — in the broadest sense — in post-apartheid South Africa. In 1997 the CPF was dissolved and succeeded by the Community Peacemaking Programme (CPP), a programme consistent with the community approach to policing advocated by the CPF.

With funding from the South African government and overseas governments — originally the governments of Sweden and then Finland — the CPP began working with the local community in Zwelethemba, a township approximately one hundred and twenty kilometres outside Cape Town, to develop a community-based conflict resolution process based around the use of peace committees. Based on the model developed in Zwelethemba, a number of other townships across South Africa either have established their own peace committees, or are in the process of doing so. In Cape Town a small full-time staff assists in the implementation of new peace committees and oversees the maintenance of existing committees.

The peace committees comprise local township residents engaged in two separate activities: peacemaking and peace-building. In the peacemaking process, peace committee members attempt to help community members resolve specific conflicts, while the peace-building process aims to address the problems often underlying conflicts in these communities, such as poverty and the acute lack of employment opportunities and basic amenities. These two activities are described in more detail in Part Two.

From local government and overseas funding the peace committee receives 100 Rand for each peacemaking gathering it runs. R30 is split between peace committee members as a stipend for assisting in the peacemaking session, R30 is invested in a loan fund to support local micro-enterprises, R30 is made available for peace-building activities, and R10 is reserved for administration expenses. The payment of peace committees blurs the distinction drawn by David Bayley and Clifford Shearing between private commercial policing and non-commercial community policing: peace committees create a form of commercial community policing, albeit a poorly paid one.

Restorative justice

While restorative justice is a long way from becoming a mainstream approach to justice, in the last ten years it has captured the imagination of many of those with an interest in reforming the criminal justice system. Building on a range of earlier social movements, social practices and theoretical perspectives, restorative justice has come to attract considerable reforming enthusiasm, both within and outside the criminal justice system.

While support for restorative justice may be easy to find, its meaning remains much more elusive. 'Restorative justice' is used to describe a bewilderingly diverse range of practices and programmes. Meetings between victims and offenders, healing lodges, victim impact statements and court-ordered community service are just some of the practices that have been described as examples of restorative justice. It seems, as Paul McCold argues, that 'restorative justice has come to mean all things to all people'. It may be possible to dispel some of this confusion by thinking of restorative justice in terms of both a process and a set of values.

Restorative process

Thought of as a process, restorative justice brings together all the parties affected by an incident of wrongdoing, to decide collectively on a consensual basis how to deal with the aftermath of the incident. In a restorative process victims, offenders and their supporters assume responsibility for dealing with the aftermath of an offence, using a deliberative process convened by third party. These deliberative meetings vary in a number of ways: the number of participants; the function of the meeting, (in some programmes, meetings provide an alternative to formal conviction and sentencing, in others, meetings are a component of formal conviction and sentencing or meetings occur entirely independently), the length and location of the meeting, and the role and identity of the meeting's convenor. Among the most common forms of restorative process are conferences, circles, victim offender mediation and sentencing panels.

Instrumental in the articulation of this restorative process is Nils Christie's celebrated article, 'Conflicts as Property', in which he argued that criminal justice professionals have 'stolen' conflicts from those affected by them, namely victims, offenders and their local communities. To many of us, the state's responsibility for investigating, prosecuting and sentencing crime is so commonplace as to be self-evident. As Andrew Ashworth observes: 'It has become implicit in much modern Anglo-American legal doctrine that a criminal offence is a crime against the state.' Clearly, though, the state's responsibility for dealing with crime is only as old and as strong as the modern nation-state itself, and thus varies both historically and culturally. Restorative processes follow Christie's urging to 're-establish the credibility of encounters between critical human beings: low-paid, highly regarded, but with no extra power outside the weight of their good ideas'.

A weakness of restorative justice viewed solely in terms of a process is that, on such a basis, any meeting between victims, offenders and their supporters may be considered restorative, even if it produces further trauma or injustice for participants. Restorative justice advocates counter this criticism by arguing that the deliberative, consensus-based nature of decision making restricts the extent to

which participants in a restorative process are able to dominate other participants. However, this may not prevent all abuses, particularly where young offenders or victims of domestic violence may be unable to negotiate for themselves.

Restorative values

Partly because of the shortcomings of a purely processual definition, restorative justice is also defined in terms of the values that should guide an intervention following an incident of wrong doing. Restorative justice seeks to repair the harm that an offender has caused, that is, restore victims and communities. It also seeks to reintegrate offenders into communities, that is, restore offenders. These, and other values, should guide restorative processes. The particular circumstances surrounding individual crimes will determine the answer to the question, 'What should be restored?' As John Braithwaite observes, the pursuit of restorative values may lead us in the pursuit of one or more of many things including the restoration of property loss, personal injury, the environment, damaged relationships and peace.

Clearly restorative processes such as the ones described above are not the only way to pursue these restorative values. The means for pursuing restorative values are almost innumerable. On the basis that they are designed to promote restorative values, victim support groups, art and memorials to honor victims of mass violence can all be considered as examples of restorative justice. So too the Minnesota correctional programme that provides access to laser treatment for offenders wanting gang tattoos removed, or even more broadly, programmes that offer offenders pathways into education and employment. One consequence of viewing restorative justice in terms of process and values is that it is less accurate to ask whether a programme is or is not restorative, than to ask in what ways a programme is restorative.

Part Two — Peace Committees as Restorative Justice

South African peace committees are committed to both a restorative process and a restorative set of values. In process terms, peacemaking gatherings rely on a collective process involving victims, offenders and the wider community to decide how to resolve the aftermath of an incident. Peace committee members meet with victims, offenders

and members of their communities to attempt to negotiate on a consensual basis the resolution of an injustice. In designing this model the CPP consciously drew on circle programmes in the United States and Canada, and conferencing programmes in New Zealand and Australia.

The rate of victim participation is one of the most restorative aspects of the peace committees. Although most restorative justice programmes regard it as important to involve the victim, this is not always reflected in practice: in most programmes, victims attend somewhere between rarely and regularly. Victims always attend peacemaking gatherings, however, because almost invariably a meeting is convened at a victim's request.

Peace committees have also successfully involved local communities. As with victims, most restorative justice programmes stress the need to involve local communities. Restorative justice programmes, however, have been criticized for their failure to involve local community members, and in particular those from the same background as offenders. Richard Delgado, for example, in his critique of restorative justice in the United States argues that in most cases middle-class mediators gang up with vengeful victims on young minority-group offenders. This is not the case in South Africa, though, where peace committee members come from the same townships as victims and offenders, and where the historical segregation and confinement of black communities in townships means that these communities remain relatively homogenous in terms of social and economic circumstance.

The peacemaking programme also reflects the values of restorative justice. Under the code of good practice, members of the peace committee make the following commitments:

- We help to create a safe and secure environment in our community
- We respect the South African constitution
- We work within the law
- We do not use force or violence
- We do not take sides in disputes
- We work in the community as a cooperative team, not as individuals

- We follow procedures which are open for the community to see
- We do not gossip about our work or about other people
- We are committed in what we do
- Our aim is to heal not to hurt

The last pledge reflects the restorative values of repairing harm, and healing, as arguably does the pledge to respect that inspiring document, the South African Constitution. The peacemakers' code of good practice is an important source of authority and guidance for peace committees. Promotional fliers — printed in Xhosa, Zulu, Afrikaans and English — distributed around the townships advertise the code, as well as the names and addresses of peace committee members. The code is read out aloud at the beginning of each peacemaking gathering, and is often referred to again by peace committee members during a gathering. Failure to follow the code of good practice is a ground for not renewing a peacemaker's license — upon becoming peacemakers, community members are given six-month renewable licenses. Further, discussions between CPP and the South African have emphasized the importance of a code of conduct to any future 'townships' regulatory framework.

The particular importance of these restorative principles in the context of South African townships is better understood against townships' experiences with other types of informal justice, considered in the following section.

Informal justice in South Africa

Archbishop Desmond Tutu argues that restorative justice values resonate with traditional ideas of justice in pre-colonial African society:

I contend that there is another kind of justice, restorative justice, which was the characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment but, in the spirit of *ubuntu*, the healing of breaches, the redressing of imbalances, the restoration of broken relationships. This kind of justice seeks to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he or she has injured by his or her offence. This is a far more personal

approach, which sees the offence as something that has happened to people and whose consequence is a rupture in relationships. Thus we would claim that justice, restorative justice, is being served when efforts are being made to work for healing, for forgiveness and for reconciliation.

Some writers have highlighted the tendency to oversimplify the complexity and diversity of indigenous laws in order to make the sweeping claim that restorative justice and indigenous justice are one and the same. Certainly anthropological evidence cautions against the making of such a claim in relation to African indigenous laws. Max Gluckman, for example, warns against attributing to the value of reconciliation an 'ultimate, almost mystical' status in customary African law. Reconciliation was not sought, for example, in disputes between two people who were comparative strangers to each other. Olawale Elias also notes that to characterize African customary law as restorative is to fail to acknowledge its punitive side. However, notwithstanding these qualifications, and the considerable variations in laws and customs both within and across African tribes, anthropological studies suggest that reconciliation and reparation are indeed prominent characteristics of customary African law.

For South Africans living in townships, however, the impact of colonization has fundamentally altered their experiences with informal justice. As townships grew rapidly during the twentieth century, so did the number of informal justice bodies in those townships. These included street committees, people's courts, and a variety of bodies set up by groups such as gangs, political parties and even sports teams. These bodies were developed as a way of policing these townships, and originally were partly modeled on the courts in rural village communities. During the height of apartheid in the 1980's, new bodies were created as townships rejected the authority of state courts and police forces as part of the broader resistance movement.

These bodies often were established with the best of intentions, as townships struggled to deal with high levels of crime, and where the formal state criminal justice system was both inaccessible and illegitimate. But in an environment of extreme political turmoil and violence, they often departed from their original aspirations and

imposed progressively harsher punishment, including severe floggings. Vigilante mobs began to rule townships, in some instances cultivated and surreptitiously assisted by government officials. And in post-apartheid South Africa informal bodies, such as taxi gangs, and in some townships teenagers armed with AK-47s, continue to compete for control of townships, summarily dispensing their own swift and brutal forms of justice.

This legacy of colonization poses a unique challenge for peace committees attempting to encourage communities to adopt restorative justice. In many western democracies informal restorative justice methods ‘compete’ for cases with the formal criminal justice system. However, the challenge for peace committees is not so much to persuade people involved in conflict to use an informal rather than formal state body, as it is to persuade community members to choose between competing informal bodies. Peace committee members must explain to wary township communities the way in which peace committees are different from the other forms of informal justice with which they may have had experience. In this task peace committee members emphasize the restorative aspects of the programme: the voluntary, deliberative nature of the process and other specific aspects of the code of good practice, such as the prohibition on using force, and the pledge to heal, rather than hurt. As such, peace committees partially resemble customary law, rearticulated within a modern discourse dominated by western liberal conceptions of human rights. CPP staff consider adherence to these principles as critical if peace committees are to avoid the dangers that have plagued other forms of informal justice.

There are signs that communities are embracing this restorative form of justice. In contrast to the often ‘blatantly patriarchal’ bodies that preceded them, peace committees have attracted membership from a wide cross-section of local communities-men and women, young and old. Clifford Shearing reports that in gatherings to date, 58 per cent of the participants are women, and 12 per cent youth, and 65 per cent of the peace committee members who facilitate gatherings are women. In townships where the peace committees exist, township residents queue up on meeting nights to bring their conflicts to committees. And while peace committees have met with some

suspicion from other informal bodies — such as township street committees — they hope to convert these bodies through their commitment to restorative process and values. In the township of Nomzamo, the local peace committee has even attempted to hold a local street committee accountable for its own misconduct. There the victim of an attempted rape complained to the peace committee about the way a street committee had handled her case. In her absence and without consulting her, the street committee had punished her assailant by ordering that he buy some liquor for the street committee members. The peace committee convened a meeting between the victim and her family and two members of the street committee, where the victim and her family expressed their dissatisfaction with the conduct of the street committee, and where the street committee members were given the opportunity to explain their conduct. Towards the end of the gathering both members of the street committee apologized for their conduct and expressed their support for the process adopted by the peace committee.

Accountability and the privatization of governance

The previous section considered how programmes emphasize their restorative process and values to distinguish themselves from other township based informal justice institutions. In this section I consider how the peace committees, and restorative justice programmes generally, differ from many private forms of justice.

The growth in private policing is one of the defining trends in contemporary policing. That this trend favors those communities with the money to pay for such services is clearly evident in South Africa; a country which has experienced a staggering growth in the provision of private security for wealthy communities, and where gated communities exclude those who cannot afford to live within them. In such circumstances, communities are left to devise their own forms of private justice that all too often degenerate into vigilantism.

Where peace committees aim to distinguish themselves from — and improve upon — these other forms of private policing is by ensuring they operate in an accountable manner. A persistent concern about forms of private justice — whether private security guards in wealthy communities, or street committees in poorer ones — is that they lack sufficient public accountability. However, the decision-making

process in a restorative meeting implies an important process of deliberative accountability, in which participants hold each other accountable for their views and demands. For example, in a consensual process a victim who wants compensation must justify and explain his or her claim to the offender — and the offender's family and friends. And if the offender or his supporters consider the request unreasonable they can withhold their consent until the demands become more reasonable. Similarly, as I will go on to argue, victims and their supporters can hold offenders accountable.

Though peace committees share this similarity with other meeting-based restorative programmes, in another accountability sense they are quite different. Most restorative programmes rely to a large extent, often completely, on receiving referrals from agencies within the criminal justice system. To ensure an adequate flow of cases many programmes accept referrals from a number of points in the criminal justice system, including police, prosecutors, judges and probation services. And once a programme receives a case the state usually remains — to a varying extent, and in a range of ways — involved in the resolution of the case. By contrast, one of the most noticeable features of the peace committees is their independence from the formal state criminal justice system. Peace committees receive very few cases from the formal criminal justice system, instead relying almost entirely on community members coming forward to request the services of peacemaker committees. To this end, in addition to distributing promotional fliers, peace committee members wear brightly coloured peacemaker t-shirts, erect signs outside their shacks, and walk through townships with loud-hailers promoting their work. And where local police do refer cases, that is the end of their involvement in the matter, with no provision for peace committees to report back to police.

A restorative programme's relationship to the criminal justice system carries implications for accountability. The involvement of the criminal justice system in most programmes provides an additional source of accountability — beyond the deliberative accountability between participants in a restorative justice meeting. For example, in many programmes police, prosecutors and judges play a role in monitoring the outcomes of a restorative meeting. In such

programmes, it is hoped that not only will the formal system hold restorative justice accountable, but also that restorative justice will hold the formal system accountable. That is, that the formal and the informal will check the disadvantages and injustices of the other. As Braithwaite puts it, 'the ideal ... is for the justice of the law ... to filter down into restorative justice and for the justice of the people given voice in restorative deliberation to percolate up into the justice of the law'.

Free-standing peace committees possess no such form of accountability. However, with the assistance of the CPP, the South African government is in the process of devising an alternative regulatory framework for peace committees. The first proposal mooted by the South African Law Commission was to establish Community Forums, separate from the formal legal system, as a second tier above peace committees. One of the functions envisaged for these forums was to resolve complaints about the peacemaking process. This proposal gave way to a second, quite different approach, under which 'regulators' would monitor peace committees and other 'community dispute resolution structures', with the power to suspend the operation of a body where it was demonstrated that it was not acting according to its code of good practice. Currently, a third, simpler approach is under consideration, that would make funding contingent upon informal programmes establishing their own code of conduct. The latter two regulatory proposals, with their emphasis on ensuring informal justice bodies keep their own affairs in order, are examples of what Peter Grabosky calls 'meta-monitoring'. The ongoing debate about the most suitable form of regulation illustrates the government's ongoing struggle to devise affordable forms of governance for enhancing social justice in post-apartheid South Africa.

Distinguishing features of peace committees

The regulation of peace committees is not the only respect in which peace committees differ from other restorative justice programmes. This section considers some other, perhaps more significant, respects in which peace committees are unusual among restorative justice programmes. These differences relate both to the scope of peace committees' work, and the process used by peace committees in

peacemaking gatherings. There are two respects in which the scope of peace committees' work is broader than most restorative justice programmes. One is the attempt through peace building activities to address the structural problems that underlie crime; the other is the wide variety of individual disputes dealt with in peacemaking gatherings. Written records of peacemaking gatherings show that peace committees consider a range of problems that classified in legal terms would span criminal, contract, property, family and succession law. John Cartwright, the Program Manager for CPP, says that the most common type of problem is a person seeking repayment of an outstanding debt. Disputes over the inheritance of a residential shack, or the ownership of building materials used in the shack are also commonplace. Another striking feature is the wide range in terms of the seriousness of the problems considered, from noise complaints and insult swapping through to serious acts of violence including domestic violence and attempted rape.

Peace committees are also distinguishable from many other restorative justice programmes by aspects of the process used to resolve specific disputes. Earlier it was discussed how in broad terms the process used to resolve specific incidents reflects restorative justice processes, in that peace committees use a collective deliberative decision-making process involving the people immediately affected by an incident. There are, however, some distinguishing features, relating to the role of community volunteers, the informality of a gathering, and the timing of a gathering. Peace gatherings begin in an unusual fashion for a restorative justice meeting, with the committee separating the disputants and taking written statements from them. Peace committee members then present these statements to the gathering of disputants and their families. These meetings take place in the most informal of circumstances. Also novel is the timing of peacemaking gatherings. CCP Records reveal that the great majority of gatherings are held within five days of the offence. This is in stark contrast to many restorative justice programmes, where delays of up to more than a year between the commission of an offence and the convening of a meeting are not uncommon. The following section considers some of the implications of these differences.

Scope of peace committees' work

Peace-building — One critique of restorative justice programmes, and informal justice schemes generally, is that they fail to address the problems that underlie offending, such as unemployment, poverty and family breakdown. Some critiques go further, arguing that such programmes not only fail to address these problems but actually compound them by distracting attention from them; attempting to quell disharmony, and replace it with, in Peter Fitzpatrick's words, a 'massive non-rebellious normality'. George Pavlich, for example, argues that:

So long as community mediation is enlisted in the service of individual dispute settlement, the self-identities it tries to fashion are likely to perpetuate — rather than eradicate — the liberal, governmental power formations that nurture particular conflicts in the first place.

The underlying problems are particularly acute in crowded South African townships, comprised of shacks built from scrap wood, hessian sacks, corrugated iron and cardboard, and where electricity, running water, public telephones, sewage systems, parks and playing fields remain rare. Although such critiques have a tendency to adopt an overly 'top-down', conspiratorial view of how and why informal justice is established — neglecting the considerable demand in local communities for such programmes, they do carry an important warning: if peace committees are to do more than perpetuate the oppression of South Africans they must be accompanied by — and not at the expense of — a range of measures aimed at securing societal change.

While such a large task is clearly beyond the capacities of individual peace committees, they are in small but tangible ways making their own effort towards addressing these inequalities. As mentioned above, 30 per cent of the money earned from peacemaking is used for peace-building activities. So for example, in Zwelethemba the peace committee built a desperately needed, and now heavily used, children's playground. More recently sleeping mats were purchased for a new childcare center in the township, and funds have also been used in the refurbishment of an old people's home. Another 30 per cent is also made available for loans to fund micro-enterprises within

the townships. Examples of loans that have been made include support for micro-businesses preparing and selling cooked food, knitting and selling children's stockings, and upgrading a photographer's business. In conducting peace building activities the CCP is also seeking to make use of overseas sources of assistance, with, for example, Canadian NGO's sponsoring young Canadian interns to help communities establish visual and dramatic arts programmes in townships.

Diversity of peacemaking activities

Range of legal disputes — The scope of committees' peacemaking activity has insights for areas of debate around restorative justice, including the suitability of restorative justice for family violence, and the concern that restorative justice will lead to net-widening. Many critics of restorative justice have grave reservations about its appropriateness for addressing cases involving family violence. Two assumptions underpinning restorative justice are that victims will be able to negotiate a satisfactory response to acts of violence, and that in restorative justice meetings community norms will be invoked to express disapproval for offending acts. Both assumptions are questioned in relation to family violence. In relation to the first, Stephen Hooper and Ruth Busch argue that victims of domestic violence may be unable to negotiate for themselves in the way that restorative justice meetings expect:

the power imbalances and dynamics of control which characterize many domestic violence relationships suggest that, in most instances, the victims of violence do not have the capacity to negotiate freely and fairly with the abusers.

With regards to the second assumption, scepticism surrounds any intervention that relies upon the mobilization of community norms when those norms may not necessarily condemn the use of violence by men against their wives or partners.

Restorative justice advocates argue that by including a diverse range of supporters, restorative justice processes may both uncover strong anti-violence norms and empower victims to negotiate. A case I observed in the township of Zwelethemba illustrates how this might work. A young woman came to the peace committee

complaining that her boyfriend had beaten her after finding her in a shebeen — an illegal township bar — late one evening. A peace gathering was convened, to which the young woman brought along her sister and another female friend, and the young man a male friend. Five peace committee members, four women and one man, also attended. Once the meeting got underway, the young man readily admitted to beating his girlfriend and apologized for his behavior. Just as quickly the victim accepted his apology and expressed her forgiveness. Had the gathering concluded there, grave debts about the woman's safety would have remained. However, one of the peace committee members then asked the other participants in turn if they were satisfied with the young man's apology. When it came to the victim's sister she strongly expressed her dissatisfaction. She explained to the group that the offender had apologized for beating her sister on previous occasions, only to resume the beatings shortly thereafter. 'What makes this time 'any different?'' she demanded. The sister's protest prompted the group to further consider the young man's behavior, with the peace committee members warning him that if he did continue to beat his girlfriend they would assist her to go to the police to bring charges against him.

This case appeared to illustrate how supporters may help change the power dynamic in a restorative justice meeting, and mobilize norms of anti-subordination. It also, however, illustrated the danger of relying on community norms. While there was consensus about the unacceptability of the young man's actions, much of this disapproval was expressed with admonitions such as 'this woman is not your wife, you are not entitled to discipline her', suggesting that had the couple been married condemnation may have not been as forthcoming. Careful monitoring and evaluation of such cases is essential to determine whether, through the mobilization of communities of support for victims, peace committees are helping to break the cycle of domestic violence for women in these communities.

Non-legal disputes and net-widening — Earlier it was mentioned that peace committees deal with disputes involving a wide range of illegal actions. Not all cases, however, deal with conduct that is

illegal. Many cases confront conduct that may be objectionable but not illegal, such as infidelity, excessive noise late at night, and the passing of insults. In this respect peace committees are guided by norms more than they are by legal rules. Mike Brogden and Clifford Shearing argue that the promotion of dominion is the proper focus of policing — in the broadest sense — in post-apartheid South Africa. Peace committees share this focus, intervening whenever residents perceive a threat to their dominion. One consequence of this flexibility is that peace committees are frequently called upon to consider cases that deal with misconduct that might be considered by some people as trivial — such as the passing of insults.

On one view intervening in such events is questionable. Restorative justice programmes have been criticized for encouraging net-widening, that is, bringing into systems of social control people who may have previously remained out of them. This concern is familiar from critiques of earlier modes of informal justice in the 1970's and 80's. A number of writers expressed concern that many of the cases handled by such programmes would probably have been dismissed by the courts; and as a result individuals become 'unnecessarily entangled in an official informal process'. As Richard Abel puts it, 'if informal institutions render law more accessible to the disadvantaged, they also render the disadvantaged more accessible to the state, and the latter consequence may be the more significant'.

The absence of a lower limit in terms of triviality suggests that peace committees intervene too readily in people's lives. On another view, however, the intervention is justifiable on the basis that it is preferable to intervene in minor disputes, over incidents such as insults, rather than waiting until they escalate into much more serious incidents. This justification prompts reconsideration of concerns about net-widening and suggests the need to abandon a 'generalized condemnation of 'social control'' in favor of a precise identification of the consequences of the impugned intervention'. An informal intervention might be timely and appropriate in cases of conduct that is 'pre-criminal'; that is conduct, which if not addressed, may later result in criminal conduct by one or more parties. Early intervention may prevent more serious harm from occurring.

No admission requirement — The absence of an admission requirement for eligibility to peacemaking significantly expands the scope of restorative justice programmes: the overwhelming majority of justice programmes restrict access to offenders who have admitted committing an offence, on the basis that courts are superior to restorative justice processes in cases where guilt is in dispute. However, in townships a person accused of some wrongdoing is not required to make any admission before a peace committee gathering is held, and indeed is not required to make any admission during the course of a gathering. So for example, in a peacemaking gathering I attended in the township of Zwelethemba a man denied that he owed to a storekeeper the debt she claimed he did. Peace committees suggest a role for restorative justice to operate not just as an alternative to formal cautioning and sentencing processes but also possibly as an alternative to formal fact-finding processes.

One of the consequences of not insisting on an admission is that in the course of a peace gathering responsibility can swap between or be shared by participants. For example, in the township of Nomzamo a man approached the peace committee to complain that his girlfriend had physically attacked him and another woman. When a peacemaking gathering was held it became apparent that the girlfriend had attacked him because he was being unfaithful. As a result the peace committee then switched its focus to the young man and asked him what he was going to do about his behavior.

The process used to resolve specific conflicts

The role of community volunteers — With the exception of some cases in mediation programmes, most restorative meetings begin with face-to-face deliberation between the affected participants. In peace committees, however, peace committee members interview disputants separately before bringing them together to read disputants' written statements to the gathering. Clifford Shearing argues that this process allows basic facts to be established without unnecessary disagreement and emotional stress, and provide a non-intimidating environment in which victims can make allegations that peace committee members then articulate to the group.

This practice, though, could be queried on a number of grounds. For one, attempting to streamline the process of dialogue between victims

and offenders may partly deprive victims of the full opportunity to tell their stories and have their victimization acknowledged. As Iris Young argues, storytelling is often ‘an important bridge ... between the mute experience of being wronged and political arguments about justice’. Relying in the first instance on peace committee members to describe the victim’s harm may have less impact on an offender than when a victim and his or her supporters describes that harm in his or her own words.

Such an approach also risks creating the perception in the minds of both peace committee members and disputants that the peace committee members are elevated from the other participants in a gathering, in the way that a judge is in a courtroom. Sally Engle Merry and Neal Milner observe that it is common for forms of popular justice to mimic state law, noting that ‘even tribunals ideologically opposed to state law and founded on a critique of its failures still borrow its forms’. This is particularly a concern in the context of townships that have a history of informal bodies replicating the worst aspects of formal justice systems, and turning increasingly authoritarian, punitive and retributive. Indeed CPP staff records of early gatherings reveal a concern that peace committee members intervened excessively in meetings. It is a concern that a process in which participants rely to some extent on peace committee members to communicate between them may encourage this tendency.

To ensure that participants feel empowered to speak it may be preferable to rely on the technique of widening the circle of people present to ensure that people are present who can support those participants who may otherwise be intimidated. Against this, though, is the fact that there is not always an admission by one party that can provide the starting point for dialogue. In the absence of a state police presence in most townships, peace committees are forced to perform investigative as well as sentencing functions. This difference may partly justify the process used in peacemaking gatherings.

The informality of proceedings — The informality of peace committee meetings is striking. Twice a week, a number of gatherings are held in the very small and cramped homes of committee members. Gatherings are punctuated by frequent interruptions. Committee members come and go during gatherings — meeting and

interviewing the community members gathering outside for cases scheduled for later in the evening — and household members go about daily routines of eating and sleeping. Such informality is unusual in restorative justice programmes — although certainly more common in restorative justice programmes than in court.

What, if anything, is to be made of this informality? After all, even if it were desirable to make meetings more solemn or formal occasions it would be difficult in many of these townships, which invariably lack the community halls and other sorts of venues used by most restorative programmes. It may be, however, that other restorative justice programmes can learn something from the — unavoidable — informality of these proceedings, Iris Young argues that for deliberative processes to be properly inclusive they must not privilege formal, dispassionate, ordered speech over other styles of expression, but instead, accommodate a range of styles. Specifically Young suggests deliberative processes should accommodate the use of greeting — or public acknowledgement — rhetoric and narrative. One appeal of restorative justice processes is that they more readily accommodate than does the formal legal system these different styles of expression, as people can tell stories, laugh, cry, pray and freely show emotion. Peace committees show how making a deliberative process as informal as possible may accommodate a wider range of styles, which in turn may make people more open to persuasion.

The timing of a restorative justice intervention — Clearly the timeliness of an intervention depends on the source of a programme's cases. When a victim approaches a programme directly it can respond very quickly. Committee members pride themselves on their rapid response to problems and it is not unusual for committee members to be called out late at night. However, when a programme relies on the formal criminal justice system to provide it with cases this often results in considerable delays while one or more of the police, prosecutors, courts and probation services handle a case. Of course, victims, particularly in serious crimes, may not be ready to meet with offenders immediately after an offence is committed, and a delay may assist in healing. But if there is to be a delay it should be based on an assessment of the parties' needs, not forced on the parties by bureaucratic delays.

The timing of restorative justice meetings may have a bearing on another concern about restorative justice programmes, namely that offenders will agree to outcomes that are excessively onerous — such as large amounts of community service. The passage of time between the commission of an offence and a restorative justice meeting may affect the types of outcomes negotiated when the meeting is held. In particular, a substantial delay may make it difficult directly to repair the harm a victim has suffered, as material damage will often have long since been repaired and any emotional harm may be receding. The absence of readily identifiable ways for an offender to repair a victim's specific harm may lead parties to consider alternative outcome plans such as community service that, in the absence of any natural tariff, can quickly become excessive. In contrast, when a meeting is held in the immediate aftermath of an offence, negotiations can be directed to repairing the specific harm, and if the problem is ongoing, finding a way to stop the problem. In other words, a more timely intervention may naturally produce outcomes that are both more satisfying for victims, and less burdensome for offenders.

Conclusion

Informal justice provides opportunities for ordinary people to resolve conflict in ways that display some of the best human qualities: the ability to empathize and reconcile, apologize and forgive. In explaining the dynamics of an informal approach to conflict resolution, analogies are often drawn with the dynamics of a loving family, a small close knit town, or ancient forms of indigenous justice. But informal justice-like families, small towns, and indigenous justice also provide opportunities for people to show their worst sides, their capacities to hate and abuse, stigmatize and oppress one another. It is this feature that troubled critics of earlier experiments with informal justice, and continues to trouble critics of restorative justice, the most concerted and significant movement to informalize the modern criminal justice system.

The concern is that restorative justice dispenses with the formal rules and rights that restrain people's ugly impulses while retaining, or even exacerbating, the disadvantages of formal justice, such as the individualistic construction of responsibility. In essence, the fear is

that restorative justice will deliver us the worst of both formal and informal worlds. This critique carries an extra resonance in the context of South Africa, where informal township bodies illustrate some of the most undesirable characteristics of informal justice. Much restorative justice writing puts a benign gloss on a community's impulses when dealing with crime. The experience of South African townships provides an ominous reminder of how, even with the best of intentions, communities can become as violent and oppressive as the misconduct they seek to control.

Peace committees, however, at this stage appear to provide townships with a better experience of informal justice. Peace committees are not a vehicle for extending state control, or a forum for dealing with trivial grievances in a heavy-handed way. Instead, they handle a wide range of offences with a commitment to repairing harm, in a deliberative and accountable manner. Moreover, where they do deal with trivial disputes they challenge us to rethink traditional 'net-widening' objections, and consider the benefits of intervening in disputes before they escalate. Perhaps most importantly, however, these programmes — unlike the great majority of restorative programmes — go further than simply addressing individual crimes: they also attempt to address the underlying conditions that cause such unrest. Certainly, initiatives such as playgrounds and small savings funds for micro-enterprises are only small steps towards ameliorating the difficulties of life in South African townships. But they may provide an example of how informal justice can play a constructive role in ameliorating both individual and social injustice.

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