

Healing Fractured Communities: Restorative Justice as a Strategy for Inclusion

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Introduction

Restorative justice has been the focus of considerable attention over the past two decades, emerging as a promising alternative or complement to contemporary criminal justice at a time of growing disillusionment with current policy and practice. This surge in interest has led to greater efforts to unpack the principles behind the practice, to consider the meaning and implications of a commitment to restorative values, processes and outcomes both within the context of criminal justice and beyond. The values of inclusion and democratic participation feature prominently in such discussions, evoking an ideal wherein victims, offenders and communities take an active role in resolving their conflicts and determining means of individual and social repair. This paper seeks to elucidate this concept of inclusion as articulated within the restorative justice framework for criminal justice, focusing on the kind of inclusion sought, for whom and to what ends. I argue that inclusive processes are indeed central to restorative justice, but that a commitment to the inclusion of the community (in addition to the victim and offender) implies a broader perspective than one aimed solely at healing the immediate consequences of crime. Adopting a restorative “lens” (Zehr 2005) requires that we look beyond the immediate effects of the criminal act to consider the structural conditions that contributed to its occurrence and that efforts be made to counteract those inequalities both within the criminal justice system itself, through restorative conferences and their outcomes, and through stronger partnerships with other government agencies. Crime poses obstacles to community peace and stability, but also opportunities, as Nils Christie suggests (1977) – opportunities for social reflection and self-examination that take us beyond an assessment of crime’s consequences to consider the kind of society in which we live and how we can render it more peaceful, inclusive, and equitable.

The paper is organized in three parts. The first outlines the context in which the restorative justice movement has emerged and its central worries about the state of contemporary criminal justice. The second part presents the principles of restorative justice, demonstrating how a different understanding of the nature and significance of crime – as generating harms, as opposed to as lawbreaking – leads to a different set of ideas about the kinds of responses to crime that are appropriate. The last section considers the place of the value of inclusion within this framework, focusing particular attention on what is involved in including the community. I then go on to articulate a broader goal for restorative justice, drawing implications from the discussion of inclusion to what it means to adopt a more general restorative outlook.

A movement for criminal justice reform

The restorative justice movement has come to prominence at a time of considerable uncertainty and debate in the field of criminal justice – what some observers have gone so far as to call a “crisis” (Garland 2001; Bazemore 1996). At issue is not only the design and implementation of state policies regarding crime control, but the principles underlying those institutions and processes. Since the falling out of favour of treatment-based approaches to criminal and juvenile justice in the early 1970s, much of the debate has centred on how to achieve an appropriate balance between rehabilitation and retribution, between welfare and punishment as dual objectives of the system (Walgrave 2005). Under the individual treatment or social welfare model, delinquent behaviour was seen as a symptom of “underlying disturbances” in the offender (Bazemore 1996, p. 40), a sign of “malfunctioning socialization” (Walgrave cited in Bazemore 1996, p. 40), the root of which needed to be addressed with treatment programs tailored to the circumstances and needs of the offender. But the welfare model was found to be

ineffective and, more significantly, neglectful of other functions of criminal justice, in particular, the maintenance of public safety and the denunciation and punishment of unlawful conduct (Bazemore 1996).

A return to a more punitive model of criminal justice meant a renewed emphasis on the expressive function of justice, conveying public disapproval of criminal behaviour, while ensuring offenders received their “just deserts” (Garland 2001, pp.8-9) and society was protected from any dangers convicted criminals might pose to public safety. Although rehabilitation was not entirely abandoned as an objective of criminal justice, it became another end of – or rationale for – punishment alongside the goals of deterrence, disablement and retribution (Barnett 1977). In the field of juvenile justice, a shift in focus from the offender to the offence was seen as a modest improvement (Bazemore 1996), but for many critics, this was simply a different manifestation of the same set of underlying assumptions about the nature of crime and the purpose of criminal justice that remained problematic.

In 1977, Nils Christie published “Conflicts as Property” (1977), a scathing critique of the criminal justice system and the role of criminologists in its design and perpetuation that would come to be a major influence on the restorative justice movement. Christie argued that conflicts have an essential role to play in society and in people’s lives, providing opportunities for active social participation, norm-clarification and social development. Yet, the criminal justice system denies individuals these opportunities, stealing those conflicts from them by placing them in the hands of professionals – lawyers, treatment personnel, judges – or defining them away (p. 5). Christie called for a reappropriation of the conflicts embodied in crime, envisioning a “court of equals representing themselves” (p. 11) in place of the current, largely professionalised justice system.

Howard Zehr, some years later, voiced similar concerns about the lack of avenues of participation for victims and also offenders in the criminal justice process, in one of the first book-length articulations of restorative justice theory (2005). Zehr’s argument focuses on the needs of both victims and offenders in the aftermath of crime: for the victim, compensation for their losses, information about what happened, an opportunity to express their emotions and receive support, empowerment and assurances that measures are being taken to prevent the recurrence of the wrong they have suffered (pp. 19-32); for the offender, the opportunity to experience accountability for their behaviour by actively taking responsibility for the consequences of their actions, to come to terms with what they have done and to make amends (pp. 33-44). According to Zehr, the criminal justice system, in its present form, closes all such avenues of repair and reintegration for both parties, instead isolating them from the justice process, ignoring the most basic needs and interests of the victim and setting the scene for further criminal behaviour on the part of the offender once their sentence has been served. While these outcomes are connected with the institutions and procedures characterizing the justice system, they are more deeply rooted than this. For Zehr, these problems can be traced to a set of faulty understandings and assumptions about the problem of crime and what kind of response it requires: crime is seen as lawbreaking, with the state as victim; doing justice means dealing out appropriate punishment (the infliction of pain) to the guilty, in accordance with an idea of “just deserts,” where guilt is established through an adversarial process that treats everyone equally, but with little concern for its outcome (pp. 63-82). Altering the consequences of the justice system for victims, offenders and the community, for Zehr, means casting aside the “retributive lens” through which justice is perceived, in favour of a restorative perspective, that places victims at the centre of the justice process.

Such political, philosophical and practical critiques played an important role in the growth of the restorative justice movement and they came from all sides. As Daniel Van Ness and Karen Strong point out (2002), a number of social movements concerned with criminal justice reform have contributed to what now stands under the banner of restorative justice, including movements focusing on victims' rights, informal justice, restitution and social justice (pp. 16-27). Such groups have voiced a range of concerns about the state of contemporary criminal justice such as a lack of consideration for the victim in the criminal justice process, worries about the kinds of punitive measures employed and their stigmatising effects on offenders, neglect of the values of care, cooperation and reconciliation in the justice process, and the monopolization of justice by the state. From a criminological vantage point, questions have also been raised about the validity of both rehabilitative and retributive approaches to reducing crime in light of new research about its causes. In *Crime, Shame and Reintegration* (1989), John Braithwaite proposed a new theory to fit known facts about the conditions under which crime occurs: communities that engage in shaming that is reintegrative rather than stigmatising, expressing disapproval of certain conduct while offering pathways to reacceptance into the community following violation of its norms will have lower crime rates than those that employ more stigmatising techniques towards offenders. The theory called into question many of the practices of contemporary criminal justice, suggesting that a radical shift in its dealings with offenders was in order. Finally, the rise of the restorative justice movement coincides with a period of experimentation with a variety of alternatives to current practice, many of which looked to indigenous justice traditions for inspiration. Such practices include victim-offender mediation, conferencing, sentencing circles and restitution programs and have been put into practice in Canada, the United States, Britain, Australia, New Zealand and elsewhere (Van Ness and Strong 2002; Van Ness, Morris, and Maxwell 2001).

Faced with the failures of the dominant model of criminal justice in lowering crime rates and reducing recidivism, along with increasing worries about the moral appropriateness of a punitive approach to crime, the marginalisation of victims and an overly professionalised and adversarial justice process, academics, policy-makers and practitioners have gravitated towards a "third model" of justice (Braithwaite 2002, p. 10), a new perspective on the problem of crime and how it can be solved.

Principles of restorative justice

Emerging at the intersection of a number of different social movements, and often put forward under different headings – transformative justice, community justice, peacemaking criminology, relational justice (Bazemore and Walgrave 1999, p. 46) – the restorative justice movement has taken time to develop a clear and coherent agenda for criminal and juvenile justice reform. Yet, while its core tenets and priorities remain subject to some disagreement, more recently, the movement has begun to cohere around an identifiable set of principles and values. These ideas about how to respond to criminal behaviour are grounded in a particular understanding of the nature of crime and its significance for victims, offenders and communities.

A different conception of the nature of crime and its significance

For advocates of restorative justice, crime is more than lawbreaking; it is, as Howard Zehr puts it, "a violation of people and relationships" that "creates obligations to make things right" (2005, p. 181). What is fundamental to the problem of crime is not that it constitutes a

violation of the laws of the state or a defiance of governmental authority, but that it causes harm to victims, offenders and communities (Zehr 2005; Wright 1991; Van Ness and Strong 2002; Bazemore 1996; Bazemore and Walgrave 1999). Victims, both primary (those most directly affected by the criminal act) and secondary (family members of the primary victim, for example), may experience these injuries in any number of ways – physically, emotionally, psychologically, financially (Van Ness and Strong 2002). It is a feeling of powerlessness, in particular, that overwhelms many victims in the aftermath of crime, along with emotions of fear, anger and mistrust (Zehr 2005; Strang 2002).¹ The criminal justice system, as it is currently constructed, neglects these important consequences of victimization by pushing victims to the periphery of the justice process – in many instances, the victim is left uninformed of the status of the case, virtually excluded from the trial process except when called to testify for the prosecution (Zehr 2005). The addition of victim impact statements – statements from the victim to the sentencing judge about the various harms they have suffered as a result of the criminal act – has provided some occasion for participation on the part of the victim and recognition of their unique perspective, but the role of the victim in the justice process remains quite limited (Strang 2002).

Offenders would not normally be thought of as suffering injuries as a result of a crime they have themselves committed. Indeed, even when harms such as “social damage the offender causes to himself” (Walgrave 2005, p. 5) are acknowledged, they are clearly subordinate in importance to the injuries suffered by the victims. Those who attribute greater significance to the needs of offenders generally hold a more expansive notion of what constitutes harm. Daniel Van Ness and Karen Strong (2002), for example, suggest that harms to offenders include not only “resulting injuries,” those triggered by the criminal act, but “contributing injuries” as well, that is, “those that existed prior to the crime and that prompted in some way the criminal conduct of the offender” (p.40). Addressing such harms would seem to require a more comprehensive approach to doing justice, pushing the boundaries of criminal justice to consider broader issues of social justice. Others (e.g., Walgrave 2005) assert that only harms that can be causally derived from the criminal act are relevant. Lode Walgrave, advocating a strict outcome-oriented model, suggests that a shift in focus from the consequences of the offence to the conditions underlying it would mean “degrading the victim into being a tool in the service of the offender’s rehabilitation and not respecting the victim as a party on his own.” (p. 5). While he does not preclude the consideration of underlying socio-economic inequalities as an offshoot of the restorative justice process, Walgrave is clear that he thinks this should not be its primary aim. There is broad agreement, however, that the negative effects of the current system on offenders² – generally perceived as a compounding of the harms set in motion by the criminal act – are to be avoided.

Crime causes harm to individuals, but also to communities. What exactly does this mean? The term “community” can refer to the “local community,” the neighbourhood, town or municipality of which the victim and offender are members, a network of individuals connected to one another by virtue of where they live (McCold 1996). It can be defined by emotional ties and relationships between people, a “community of care” (Van Ness and Strong 2002, p. 39). In settings lacking in such bonds of care or geographic allegiances, community might also indicate interdependencies and relationships built around common interests, such as occupation or leisure

¹ Interestingly, Zehr notes that such reactions are not necessarily restricted to victims of more serious or violent crimes, but are often shared by victims of lesser crimes such as burglary (2005, p. 24).

² See, for example, Zehr’s discussion of the impact of imprisonment on offenders (2005, pp. 33-44).

activities, what Braithwaite calls a “community of interest” (1989, pp. 172-173). These different layers of community are no doubt often intertwined, which helps explain the different ways in which harm extends to the community in a context of crime. Focusing on the local level, Paul McCold suggests that “[t]he community’s injury is to *shalom*, right relationships, among members of the community. The damage is against peace, and requires a local effort to restore harmony in the community.” (1996, p. 94). Van Ness and Strong, referring to the community of care, add that in the aftermath of crime, “the sense of safety and confidence of their members is threatened, order within the community is threatened, and (depending on the kind of crime) common values of the community are challenged and perhaps eroded.” (2002, p. 39). All this suggests that the harms initiated by the criminal act will require complex, multi-dimensional responses if all injuries are to be adequately attended to.

Responding to crime: what it means to achieve justice for victims, offenders and communities

Since crime is significant for the harm it causes to victims, offenders and communities, doing justice means repairing that harm, instituting mechanisms to resolve conflicts and bring healing to all those affected by the crime (Zehr 2005; Wright 1991; Van Ness and Strong 2002; Bazemore 1996; Bazemore and Walgrave 1999). The justice processes initiated will be determined based on their capacity to meet the needs of all parties, to “restore” the victim, the offender and the community. It should be clear that restorative justice advocates use the term “restoration” in a singular way.³ Few would suggest that restoration is about returning things to the way they were before the crime occurred – this may not be possible or even desirable. Even in cases such as robbery, where the stolen property may be returned, other injuries remain, which may be difficult or impossible to quantify. Thus, while some element of restitution may be incorporated into restorative justice processes – or as an outcome of such processes – this alone does not constitute a sufficient means of repair. Reparation, compensation, truth-telling, apology, forgiveness, reconciliation, all may prove to be important to the healing of victims and offenders and their capacity to move beyond the incident to lead productive, meaningful and healthy lives; it is the contribution of the action or mechanism in question to such individual and social healing that determines its degree of “restorativeness” (Bazemore and Walgrave 1999).⁴

There are certain processes that are bound to be more restorative than others, however. Central to restorative justice is the observation that the current criminal justice process induces in both victims and offenders a sense of powerlessness, which in the case of victims, builds on the feeling of helplessness produced by the crime itself (Bazemore 1996; Zehr 2005; Van Ness and Strong 2002). For victims, crime is experienced as an assault on their sense of autonomy and sense of self, a harm best counteracted by giving them a voice in the criminal process:

Victims... need to be empowered. Their sense of personal autonomy has been stolen from them by an offender, and they need to have this sense of personal power returned to them. This includes a sense of control over their environment.

³ For example, working from a Christian Mennonite perspective, Zehr’s (2005) use of the term “restoration” appears to derive from the idea of restoring the covenant between God and his people established during the exodus from Egypt. Such an interpretation, grounded in a particular religious context, is problematic as a basis for justice within a secular, liberal society, which perhaps explains its absence from much of the criminology literature on this topic.

⁴ This concept is often operationalised in terms of stakeholder satisfaction with restorative justice processes and their outcomes, although this is only one amongst a number of indicators (Braithwaite 2002; Strang 2002; Bazemore and Walgrave 1999).

Thus new locks and other security devices may be important to them, or they may change their lifestyle as a means of reducing risks. Similarly, they need a sense of control or involvement in the resolution of their own cases. They need to feel that they have choices, and that these choices are real. (Zehr 2005, p. 28)

Offenders, for their part, are mostly passive recipients of justice, which is reflected both in the way their cases are managed (by professionals) and in the way punishment or treatment is administered to them (Zehr 2005; Bazemore 1996). Thus, processes that involve both victim and offender directly in resolving their cases, that is, in finding ways to address the consequences of the crime committed, will be more restorative than ones that do not allow them this active role.

What does it mean, then, to “restore” victims, offenders and communities? Restorative justice conceives of doing justice in holistic terms, which means that attending to the needs of one affected party will require or result in attention paid to the needs of the others: doing justice is not a zero-sum game; healing victims means also repairing communities, which involves offenders as well. Bazemore (1996) refers to victims, offenders and communities as “customers” of the justice system, each of which is entitled to have their needs recognized and responded to, with mechanisms put in place to help them heal from their wounds and move forward with their lives. Victims need “to have their victimization acknowledged; to have their losses restored; to be allowed to participate in the justice process; and to be given a decision-making role within this process” (Bazemore 1996, p. 47). As Van Ness and Strong point out (2002, p. 38), victims need a form of “vindication: an authoritative and decisive denunciation of the wrong and exoneration of the one who was wronged,” that is, assurance that they were not responsible for what happened to them and public expression of the fact that what was done to them was wrong. Offenders and communities both have important roles to play in ensuring that victims receive this recognition along with compensation for wrongs suffered, and in carrying out this function, they, too, will benefit from the healing process.

One of the pillars of contemporary criminal justice, along with the goals of increasing public safety and rehabilitating offenders, is the notion of accountability: offenders must be held to account for what they have done (Bazemore 1996). In practice, this has come to mean two things: public denunciation and sanctions in the form of punishment (Bazemore 1996; Zehr 2005). An offender is rendered accountable for the crime he has committed by bearing the burden of punishment – usually incarceration – proportional to that act. Restorative justice also views accountability as an essential element of restoration, but conceives of it differently. Accountability is achieved through the active assumption of responsibility on the part of the offender, in coming to terms with the consequences of his or her actions and in efforts to make amends. Van Ness and Strong’s notion of “recompense” captures this requirement of agency on the part of the offender:

The offender must make recompense for there to be full resolution. Recompense and retribution are different. Retribution is defined as deserved punishment for evil done. The definition underscores an important aspect to a society’s response to offenders, but it has two shortcomings. First, the active party, the punisher, is the government; the offender is merely a passive recipient of punishment. Second, punishment that does not help repair the injuries caused by crime simply creates new injuries; now both the victim and the offender are injured. “Recompense,” on the other hand, is something given or done to make up for an injury. This underscores that the offender who caused the injury should be the

active party, and that the purpose of punishment should be to repair as much as possible the injury caused by the crime. (2002, p. 47)

Furthermore, in the eyes of the offender, there needs to be a clear connection established between the crime committed and the measures carried out to “make things right” – hence, the active involvement of the offender in establishing what reparative actions need to be taken is a crucial element of restorative justice (Zehr 2005; Bazemore 1996).

There are clearly limits, then, to what coercive sanctions can accomplish by way of restoration for both victims and offenders. The active involvement of each party in designing appropriate strategies for healing the wounds caused by crime is deemed crucial to any process of repair. Wright (1991) contrasts this “family model” of doing justice, focused on making amends, with a “battle model” where the convicted criminal is seen as an “enemy of society,” thus, “[t]he ultimate objective is spoken of in terms not of deterrence and coercion but of healing and reconciliation.” (p. 113). Since communities also have a stake in the justice process, having suffered injuries as a result of the crime, they too should be involved in the problem-solving process, helping to identify ways to restore peace to the community, cultivate individuals’ trust in public safety, and to ensure a social climate of hopelessness or fear does not develop (McCold 1996).

Restorative values, processes and outcomes

Tony Marshall defines restorative justice as “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.” (1996, p. 37). (Victim-offender mediation, family group conferences and sentencing circles are examples of such processes.) In contrast to the consequentialist position described above, where the restorative quality of the actions taken and mechanisms adopted seemed to depend entirely on their success in repairing the harm caused by the criminal act, this definition equates restorative justice with a particular kind of deliberative process, one that brings together all those affected by the crime to engage in an examination of the event and its consequences and to develop strategies for offsetting those harmful effects. This raises an important question about priorities within a restorative justice framework. As outlined above, restorative justice clearly favours inclusive, deliberative mechanisms as fundamental to achieving justice in a context of crime, but are such processes, on their own, sufficient to ensure restorative outcomes? For a start, such a model would need to insist upon certain safeguards against power imbalances in the encounter (Braithwaite and Parker 1999). Surely, there are also limits as to what kinds of sanctions may be imposed on offenders, even where they are submitted to voluntarily – in other words, there must be criteria beyond the deliberative character of the process itself (and the focus of the discussion that takes place) that indicate what kind of outcomes are acceptable from a restorative point of view. John Braithwaite summarizes this concern as follows:

[Marshall’s definition] does not tell us who or what is to be restored. It does not define core values of restorative justice, which are about healing rather than hurting, moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility, apology, and making amends. (Braithwaite 2002, p. 11).

In short, the concept of restoration requires a content that goes beyond what Marshall provides.

Braithwaite, for his part, develops a three-tiered value structure against which restorative processes and actions might be evaluated (2003; 2002). The first tier consists of what he calls fundamental procedural safeguards, values that must be respected above all else. These include fundamental human rights specified in various international treaties including the Universal Declaration of Human Rights, values of non-domination, respectful listening, and equal concern for all stakeholders, among others (see 2003, pp. 8-9). Secondary to these are values that participants may set aside if they so choose: different forms of material and emotional restoration. In the third tier, Braithwaite lists values that one would expect (or hope) to see emerge from restorative processes, such as forgiveness, apology, remorse, and censure of the crime, all of which are considered to contribute to the healing of victims, offenders and communities affected by the criminal act. This framework is helpful in making sense of the variety of objectives and imperatives underlying the theory of restorative justice, revealing that it is *both* where we are going and what route we choose to get there that hold moral importance.⁵

Restorative justice and inclusion

It should be clear, at this point, that inclusion is a central value of restorative justice; inclusive processes that bring together all those with a stake in the offence are fundamental features of the restorative alternative to retributive justice. The remainder of this paper will explore this idea of inclusion as it is developed within the model of restorative justice, focusing in particular on what it means to include the community, and on the broader implications of such a restorative outlook.

Including stakeholders

Restorative justice calls for “collaborative inclusive processes” (Zehr 2005, p. 270) to repair the harm caused by crime. This means direct inclusion of all stakeholders – victim, offender and community – in a process of problem-solving in which the relevant parties discuss the ways in which the offence has affected them and determine jointly what should be done to attend to the harms identified. This will generally result in a series of reparative actions being taken by the offender – for example, offering an apology, providing material compensation, performing community service often closely related to the nature of the crime committed, or being subject to other kinds of sanctions – which are meant to assist the offender in assuming responsibility for his or her actions and in making amends to the victim and to the community (Zehr 2005; Van Ness and Strong 2002). Members of the local community and community of care may also agree to take certain actions to support both the victim and offender as they are reintegrated into the community and to counteract other social harms (Van Ness and Strong 2002).

Building on the overarching consequentialist logic described above – that inclusive processes are desirable to the extent that they promote the restoration of those with a stake in an offence – there are two more specific reasons why such inclusive, participatory mechanisms are central to restorative justice. First is the idea that those who are closest to the incident, who have

⁵ This is by no means a point of consensus, however. Lode Walgrave (2005), for example, remains committed to a fully consequentialist perspective: “Voluntary processes are valued, not because of the process as such, but because of their possible restorative impact on the participants and the reparative outcomes they help to achieve. One cannot evaluate restorative processes without taking account of the restorative outcomes they explicitly or implicitly promote.” (p. 4).

been most greatly affected by the crime, are those who are in the best position to determine how the resulting harms should be dealt with. They know what they need better than anyone else and should therefore be granted the opportunity to articulate those needs and contribute to the development of a strategy for repair. As Paul McCold states (1996, p. 91):

Effective crime control needs to be communised because most crimes of aggression are committed between persons living in the same community, and, thus, must be coped with by all the members involved and not by professionals who are outsiders. Strong restorative justice programs are characterized by an environment that includes local community control.⁶

Van Ness and Strong (2002) suggest that inclusion involves three elements: “*invitation, acknowledgement of the interests of the person invited, and acceptance of alternative approaches* that better fit that individual.” (p. 125, italics in original). To be included in the justice process, then, is to receive recognition of the particularity of one’s status in relation to the incident and to have one’s interests and views as to how best to resolve the situation privileged by virtue of that relationship.

A second reason for adopting inclusive processes, such as conferencing, circles or mediation, lies in the specific benefits that such participation brings to those involved. While inclusive processes promote restorative outcomes by providing participants with the opportunity to voice their needs and have them addressed, it would seem that the nature of the processes themselves contributes something particular to the healing of victims and offenders (Johnstone 2002). The recognition extended to individuals who are invited to participate in a deliberative forum plays an important role in the restoration of the affected parties (Zehr 2005; Van Ness and Strong 2002; Braithwaite 2002). Beyond this, however, there seems to be something distinctive about the “encounter,” to use Van Ness and Strong’s term (2002), that is important to the restoration of all involved. This relates to the idea that doing justice involves addressing not only the material harms caused by the crime, but the emotional ones as well: “crime and its consequences are addressed not only rationally but emotionally as well.” (Van Ness and Strong 2002, p. 69). Telling their stories, reflecting jointly on what happened, coming face to face with their counterpart in the criminal incident, and reaching decisions together about how best to rectify the past and move forward – all of these experiences provoke emotional responses that feature centrally within the restorative justice paradigm. Some see these events as critical to the healing process (Van Ness and Strong 2002; Zehr 2005); others (e.g., Braithwaite 1989, 2002, 2003), believe these elements, along with ideals of forgiveness and reconciliation, are desirable, but are not conditions on which the success of restorative justice processes depend. What this reveals is that the logic behind the inclusive processes adopted in restorative justice is more complex than a calculation based on the degree of “restorativeness” of the outcome, and that there are reasons to look to such inclusive mechanisms first when adopting a restorative approach to crime.

⁶ In this, restorative justice shows a strong affinity with community justice that seeks to transfer justice services to the ranks of those most affected by crime, to cultivate informal, neighbourhood-based mechanisms of crime control and criminal justice (Bazemore and Schiff 2001; see also Crawford and Clear 2004).

The community as stakeholder

This tells us something about the expectations surrounding individuals' participation in restorative processes and why this participation is important, but it leaves open the question of the role of the community as stakeholder. It should be noted that not all processes that fall under the general heading of "restorative" involve community members beyond the victim and the offender. For example, victim-offender mediation programs, which bring together the victim and the offender to engage in a mediated discussion about the crime and its effects and to reach an agreement about what steps need to be taken in response, may allow the addition of support persons to the meeting, but this is not a requirement. Family group conferences include members of the community of care along with justice professionals, while circles are widened even further to include members of the local community who have an interest in the case (see Van Ness and Strong 2002, pp. 55-78). Why should community representatives be included in conferences? There are three reasons that can be identified.

First, and most straightforward, is the idea that community-members can offer crucial support to victims and offenders both during the restorative encounter and in the process of reintegration to follow (Van Ness and Strong 2002). Van Ness and Strong (2002) point out that reintegration is not exclusive to offenders; as victims come to terms with what has happened to them, they too must find ways of returning to the community and resuming relationships with family members, friends and co-workers, all the while nursing their wounds and re-framing their worldview. Members of each party's community of care can facilitate this process by providing material and emotional support to both victims and offenders when needed.

Second, to the extent that the community itself has been harmed by the offence, it has a clear stake in the resolution of the case and a claim to having its interests represented during the proceedings. The community, here expanded to include the local community and not just those with an emotional tie to the victim or offender, has interests in how the case is resolved and in ensuring that measures are taken to restore peace and to reassure its members that they are safe and that criminal behaviour will not be tolerated (McCold 1996, p. 93). These public dimensions of crime must also be reflected upon and attended to (Zehr 2005, p. 195); the inclusion of community representatives in conferences ensures that such interests are considered.

The third reason for community involvement in restorative processes takes us back to questions raised earlier about the kinds of harms that are relevant to restorative justice. Although the explicit mandate of restorative justice is to heal the injuries *caused* by crime, a crucial element of the restorative perspective is the recognition that crime does not occur in a vacuum: there are, as Rob White says (2003, p. 147), "patterns of social inequality or disadvantage which make both victims and offenders, and indeed their communities, more prone to the experiences of criminal harm and to the processes of criminalization (i.e. state intervention)." This context seems to be what Van Ness and Strong are referring to when they talk about "contributing injuries" of offenders (2002, p. 40). Including the community in restorative processes such as conferences means empowering community members to "address and alter the existing social structures that are criminogenic – the root causes of criminal conflict" (McCold 1996, p. 95). This is not to suggest that offenders are not responsible for their actions or that they should not be held to account – as we saw earlier, restorative justice places a high degree of importance on creating the conditions under which offenders can actively assume responsibility for their crime by finding ways to make amends to their victims. It does mean, however, that in addition to being a secondary victim of crime with its own needs and interests, the community also bears

certain responsibilities for responding to crime. Paul McCold suggests the following responsibilities on the part of local communities:

to: (1) act immediately to protect victim and offender; (2) hold offenders accountable and insist on active involvement of interested parties in the resolution process; (3) provide the local resources for victim and offender to seek their healing; (4) provide public education and serve as a model for peaceful resolution processes; and (5) seek the systemic sources of recurring conflicts and encourage amelioration at their etiological source (1996, p. 96).

As points (4) and (5) indicate, McCold sees a broader mandate for restorative justice than addressing the immediate consequences of the criminal act for victims, offenders and communities – a broader project of social reform grounded in the idea that repairing harm means turning a critical eye towards the social conditions underlying the occurrence of the crime and looking to develop ways to promote peaceful community relations for the long term. The restorative process, ideally, should provide a window not only on the complex impact of crime on victims, offenders and communities, but on the social conditions, including structural inequalities, that set the stage for such conflict in the first place.

Crime as opportunity: building inclusive societies

A central element of Nils Christie's critique of contemporary criminal justice (1977) is the idea that conflicts – embodied in crime, but also other social situations – represent opportunities for individuals and for societies. Conflicts are valuable for individuals because they provide occasions for participation, counteracting the increasing segmentation of modern society by forcing people to relate to one another in constructive ways. People should be actively involved in resolving situations that concern them and this involvement, for Christie, constitutes a crucial stitch in the social fabric. By placing conflicts in the hands of professionals, the criminal justice system robs everyone, though victims in particular, of this possibility of participation. From the point of view of the community (or society in general), conflicts also pose unique "opportunities for norm-clarification," as citizens engage in "a continuous discussion of what represents the law of the land" (p. 8). In discussing the particularities of an individual case in relation to broader societal norms, citizens are empowered to weigh in on the relevance of certain facts to the case, for example, and to consider the importance of various circumstances and power dynamics for determining the degree of blameworthiness of the offence.⁷ Finally, Christie sees conflicts as opportunities for personalized encounters, defeating misconceptions and stereotypes about those involved in the crime and contributing to the development of solutions tailored to address the consequences of the offence.

The influence of Christie's understanding of social conflict at the micro level on the development of restorative justice practice should be easily apparent. Restorative justice's commitment to inclusive, participatory processes that engage stakeholders in deliberations about the impact of the crime and the kinds of reparative initiatives needed in response demonstrates a strong affinity with the principles listed above. At the community level, the second of these

⁷ Christie's suggestion that perhaps there should be no limits to what kinds of perceived facts and points of contention are brought into the case (p. 8) takes this a bit too far (consider the inclusion of the personal histories of victims of rape in the trial process, for example); however, the message about the educative potential of such restorative encounters for individuals and for communities is important.

functions of conflict holds particular importance. Beyond clarifying the application and meaning of the norms governing a community, however, I would suggest that conflict offers communities an opportunity for reflection and critical self-examination that goes further than the just implementation of the law. Indeed, my contention is that adopting a “restorative lens,” to use Howard Zehr’s term (2005), in engaging with the problem of crime requires the assumption of this broader perspective, that repairing harm to communities in any meaningful, lasting sense implies some critical examination of the underlying structural conditions of a society. As Paul McCold states, “system reform is essentially and fundamentally imbedded within the restorative justice paradigm” (1996, p. 95), a point echoed by Braithwaite and Parker (1999, p. 105):

Restoring individual victims and offenders is not enough. If racism in a school community is an underlying cause of bullying, then republican restorative justice [which conceives of freedom as non-domination] requires the restoration of racial harmony in the school so that freedom from bullying is guaranteed (for racial minorities).

An awareness of this relationship between restorative justice and underlying questions of social justice is further reflected in the point of departure of many restorative justice advocates: concerned about the situation of indigenous peoples in post-colonial societies and, in particular, their over-representation in the criminal justice system, many academics and practitioners have turned to experiments with restorative justice in a search for tools to counteract these structural inequalities (Braithwaite 2002; Van Ness and Strong 2002).

The idea that restorative justice should broaden its field of vision to include a concern for, and adoption of measures to tackle, deeper structural inequalities is not without its critics, however. Bazemore and Walgrave (1999, p. 57), for example, suggest that any move towards crime prevention confuses the primary purpose of restorative justice, which is to repair the injuries caused by crime. Maintaining “a coherent focus on repair,” on their view, requires that the focus of restorative justice be restricted to the outcome of crime and to the needs and rights of victims in this context (p. 57). The authors add that preventive outcomes may be “spin-offs” of the restorative process, but such results are not the immediate objectives of restorative justice. This raises an important question about the scope of criminal justice, understood in restorative terms: what is “the role of the criminal justice system in addressing social disadvantage” (White 2003, p. 147)? At two ends of a continuum lie the views that (1) criminal justice should focus on responding to criminal offences, as other government agencies are better equipped to handle matters of social welfare and (2) all state institutions should be concerned with social justice as progressive social change is only achievable when all agencies work together (White 2003, pp. 147-148). If a restorative outlook implies a concern for deeper questions of social justice, does this necessarily mean that restorative processes themselves should be geared towards such projects of social reform?

Braithwaite’s review of research on restorative justice as a strategy for advancing the interests of women and indigenous peoples (including women within indigenous communities) (2002, pp. 150-158) leads him to express cautious optimism about the potential of restorative justice in this regard, although he warns that programs that are not properly designed with appropriate protections against power differentials run the risk of worsening social justice rather than reducing it. He notes that restorative justice can have a positive role to play in providing a voice for marginalized people, that “restorative justice might confer power upon the disenfranchised... simply by listening to their stories and taking them seriously” (p. 157). To the extent that it allows for the development of justice mechanisms in keeping with alternative

understandings of justice and provides spaces for minority cultures, such as indigenous groups, to engage in justice practices that fit with their own history, culture and beliefs, but uphold the protections afforded by the courts, then restorative justice might well serve to promote a wider culture of social inclusion (p. 151).

While restorative processes might themselves contribute to the advancement of social norms of inclusiveness by providing a voice for marginalized people as Braithwaite suggests, this role will no doubt be restricted by these programs' limited mandates⁸ and the extent of the resources they are allocated. Thus, a more fruitful path to progressive social reform might be to foster greater linkages with and among other government agencies, so that where criminal justice interventions come to an end, other programs could step in. Conferences would thus have the added responsibility of identifying social fissures which may have contributed to the criminal act and passing on this information to those with the budget and mandate to tackle them at a structural level. A stronger partnership between government agencies built on the premise that how a society deals with crime reveals much about its underlying principles and values would do better at tackling the problem of crime, while furthering the interests and rights of marginalized people and nurturing a more inclusive society.

Conclusion

By considering the meaning of inclusion as articulated within the conceptual framework of restorative justice, this paper has argued that restorative justice implies an extended field of vision, looking beyond repairing the effects of crime on victims, offenders and communities to consider the underlying structural inequalities that create the conditions for its occurrence in the first place. While a restorative lens requires that we be aware and critical of such structures, the limited mandates and resources of restorative justice programs mean that their role in more substantial social reform will be somewhat restricted, however. Although restorative processes may develop initiatives aimed at improving social cohesion and reintegrating victims and offenders more effectively into the community, for example, it is only through stronger partnerships with other government agencies, informed by an awareness of the revelatory nature of crime, that structures of inequality and marginalisation might more effectively be addressed.

⁸ So long as restorative justice processes are restricted to the margins of criminal justice, this also raises an important question about how effective they can truly be at integrating the needs of marginalized communities into the mainstream.

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