

**Social Work and Restorative Justice**  
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In this paper I will explore briefly the forces that are leading to interest in Restorative Justice in a number of countries where the adversarial justice system has been the norm. I will consider the contribution that Restorative Justice could make to developing community capacity and explore questions arising from the conceptualisation of communities by restorative justice theoreticians. Finally I will touch on the implications for social work of a restorative justice model.

The challenge of assisting communities, families and individuals to develop strength, build their capacities and to deal with the issues that confront them is particularly daunting in Australia and other western countries at the moment when we look at the question of community safety and crime.

Current political processes (within which I include the role of the media) are focussing on criminal activity and threat to community safety in ways that divide communities and encourage the exclusion of some members. (Strang and Braithwaite 2001: 3; Gumz 2004: 454)

The focus of these political processes are both domestic law breaking and issues relating to border control. This emphasis on problematic individuals posing a threat to good order can be seen in other arenas of our social life including welfare policy in which as Martin (Martin 2004) argues "conservative contributors have re-emphasised disadvantage and exclusion as largely due to behavioural problems of the 'undeserving poor'".

Traditionally our justice system has focussed on legal definitions of crime with an emphasis on the responsibility and accountability of the individual who may be found to have offended at the end of a fair adversarial process. The enhanced politicisation of the justice arena is challenging the valued neutrality of the system and is resulting in the demonising of certain activities and actors, increasing levels of imprisonment and decreasing perceptions of community safety.

Dissatisfaction with the justice system is being expressed in the media and in public debates - often in the form of a call to a tougher law and order response to crime. While one might worry about the evidentiary basis for the claims being made, the result is an influential critique of the capacity of the current system to respond to community expectations. In this context there is considerable interest both amongst progressive reformers and amongst some institutional players to consider the possibilities offered by a Restorative Justice approach to addressing community concerns.

A restorative model of justice is one in which crime is defined as a violation or harm to people and relationships (Zehr 1997) In utilising such a definition of crime, Restorative Justice moves away from a legalistic definition of crime in which the emphasis is on whether it can be proved that an individual committed a tightly defined act with appropriate intent. The focus is on harm experienced and on recognising Victims and their needs. Responses to crime that are derived from Restorative Justice philosophies are located in a community context and involve individuals, families and community representatives in

understanding the harming act and the experience of the victim and together finding appropriate responses.

Although there is a variety of Restorative Justice approaches being implemented throughout the world, (McDonald and Moore 2001: 144,145) common elements include the bringing together of offender, victim, support people for each of them and representatives of the broader community. The victim is provided with an opportunity to speak about the harm experienced directly to the Offender and to have that harm acknowledged by the Offender and community representatives. The offender is provided with an opportunity to tell his/her story and to have that acknowledged by the victim and the community.

Restorative Justice approaches to community safety and non-social behaviour rejuvenate the notion (which is central to our traditional justice system) that the community (or the state) has a very real interest in what is happening to its members. The difference lies in the fact that in our current system the State demonstrates its interest by acting on behalf of a victim. In recent years, many victims have started to describe this process as disempowering (See Barton 2003) and distancing of them from an experience in which they would prefer to be involved. Restorative Justice approaches draw both victim, offender and community representative centrally into developing an appropriate response to the harm that has been caused. The involvement of community is central to restorative justice theory, although often is lost or minimized in the implementation of restorative justice programs (Fields 2003) In contrast with the very individualised and isolating accountability processes in our current court system Restorative Justice moves to place the offender and any initiatives to address the consequences of the offender's behaviour and prevent repeat offending in a community context. In this process the responsibility for both seeking to repair the harm and to prevent future harm can be shared beyond the individuals concerned. In fact, this sharing would seem to be an essential element in distinguishing a retributive system from a restorative system.

The naming of community and the relationship between community and key individuals as an essential element of resolving criminal incidents provides an exciting and potentially very creative opportunity for community capacity development/

However, Social workers with their strong traditions of community work, might argue (with other critics (Walgrave 2002)) that in Restorative justice models and practice, the notion of community is under theorised and somewhat simplistically employed.

Recent explorations of community in social work literature suggest that the need to recognise diversity of experience of and perspective on community, makes it more useful to talk about communities in the plural and to consider capacity building of communities rather than focussing on community as a single homogenous entity.

This is a useful perception for exploring the role of community in restorative justice. A restorative process gathers together community members with a range of interests who may not know one another and who may struggle to see any commonality in their interests. In an ideal situation the offender attends with friends and family, the victim attends with friends and family and other community representatives (often representatives of institutions such as police) will also participate. (Barton 2003)

Walgrave identifies that in many Restorative processes, community is both a central resource in resolving the conflict (Walgrave 2002: 75) and at the same time can be the focus for the exploration of causation of the offending behaviours

Whilst there is considerable debate about the evidence that Restorative Justice can deliver on some of the claims made for it – and in particular the claim of reducing offending (measured in the individual sense of reducing recidivism), there is consistent evidence that satisfaction with the justice system increases when victims and offenders are involved in Restorative Justice processes (Gumz 2004: 455) This can be argued to illustrate the community building

capacity of processes that allow space for community members to be heard and acknowledged.

Restorative models of justice have potential to build community capacity to respond to the causes of crime and reduce its prevalence within the community. It is a capacity that is developed through

- hearing the experiences of individuals,
- focussing on their needs and their relationships within communities and
- reflecting on what can be learnt about current community structures and their impact on people's lives.

Each crime/offence/harm has a context. Yes, it occurs through the action and choices of an individual or small group of individuals, but those actions and choices are shaped through a series of interactions within communities.

Restorative justice processes provide an opportunity to focus not just on the isolated incident which has caused the harm, but the history and context of the incident. This focus encourages attention to alienating social structures, inequitable distribution of resources and the impact of race on the lived experiences of community members.

As Walgrave (Walgrave 2002) identifies this means that community is both the process for restoration and the goal of restorative practice. Walgrave argues that this multiplicity of positioning of community is a problematic aspect of Restorative Justice theorising, however in this paper I argue that it is both a strength of the RJ approach and a strength of the RJ approach that should be the focus of social workers attention.

For social workers, the restorative justice paradigm provides new opportunities for working within the justice system and within other institutional settings where social conflict is a focus of their work.

Restorative Justice provides a framework for working with individuals who have experienced harm and with individuals who have caused harm in a way that moves beyond the narrow confines of personal responsibility and into a social arena in which the effect of relationships and structures on people's capacities and decisions are recognised.

Restorative Justice offers opportunities for empowerment of both victim and offender in the context of community accountability. Not only do Restorative Justice processes provide a structure for the victim to be heard, they also give the offender a voice that is not constrained by the requirement to "just answer the question".

Restorative Justice practices are being incorporated into institutional practices throughout Australia, New Zealand, the United States and Canada and the United Kingdom. It is interesting that the most common arena of practice for Restorative Justice is juvenile justice and in Australia some element of restorative practice is present in each of the jurisdictions juvenile justice system.

The separation of juvenile and adult justice systems is in itself an acknowledgement that at the heart of the justice system lies the question of the capacity of the offender to change – whether it be behaviours, attitudes or values that you might see as the focus for change.. Clearly the future orientation of the restorative justice philosophy is more acceptable in the arena of juvenile justice.

The procedures for implementing conferences and other restorative justice structures usually involve the use of trained facilitators. Sometimes these facilitators are justice professionals (McDonald and Moore 2001) other times they are drawn from a range of backgrounds including education (Fields 2003) mediation and social welfare (McDonald and Moore 2001). The argument developed by McDonald and Moore (2001) that facilitators from some

backgrounds adapt more easily to the “role of neutral referee in a conference” than others flags an important issue relating to the contribution of social work to Restorative Justice. If a Restorative Justice program is to maximise its potential to develop community capacity, then those designing the system and possibly those facilitating the restorative justice interventions need to be well grounded in the analytic and practical techniques of helping people to make use of resources to solve their problems (Specht and Courtney cited in Gumz 2004). This is the specialised area of social work practice – working at the interface between individuals and the community to enable the development of the full potential of each individual.

Social Workers can utilise their skills developed from working as both case workers and community workers to empower participants in restorative justice processes – whether they be family group conferences, healing circles or victim-offender mediations,- to widen their gaze from the individual and the incident to the social. This is not an easy transition to make, in societies where the individual and their rights and obligations has become a sacred cornerstone of society. The values, knowledge base and skills repertoire of social workers equip them to work with restorative process participants.

This will challenge social workers to restructure their own practice - to reconceptualise their own relationships with offenders, victims and communities. Social workers along with others working in this new restorative framework will need to articulate a new understanding of their accountabilities.

However, Restorative justice practices are also being trialled or piloted in a range of adult settings. The Canberra Reintegrative Shaming Experiment (in addition to a number of juvenile justice foci) involved the random allocation of adult offenders of drink driving charges in the Canberra Magistrates court to either a restorative justice program or to a traditional court process. Here in South Australia there is a pilot program to provide a restorative justice option between a guilty plea and sentencing for consenting adult offenders and victims.

Justice settings are not the only institutional settings in which restorative justice is being utilised in response to harm caused by anti-social behaviours. Restorative Justice has been trialled in a number of school settings and within educational systems (Fields 2003) Schools have commonly adopted the community conferencing model that is also utilised within juvenile justice programs. (Fields 2003: 47)

RJ, whether implemented through a formal program within a justice system or other institutional setting or more informally in particular situations involves a value shift. It involves recognising crime or rule breaking as a harm to people and relationships and that the aim of any intervention is to identify obligations and meet the needs of all in a way that promotes healing (Zehr 1997)

If we ask offenders and victims to make this shift without broad community engagement and support we risk exacerbating the lack of satisfaction with our current system

Communities that take up the challenge to engage with the experience of both victim and offender will need to look closely at the structures that exclude and where the responsibility for these structures lie. Not only will the victim need to make restitution and change to avoid future offending, but communities will need to accept responsibility for change.

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