

**Community Conferencing: A Review of
Restorative Practices**

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Executive Summary

The literature indicates that community based restorative justice, particularly conferencing, has not only spread around the world but is also, perhaps, the most assured way of enabling families and communities to take ownership of their conflicts, and empowering them to resolve them.

The literature underscores four fundamental operational features of community based restorative justice: the power of apology in restorative justice; the need to provide healing for victims, families and communities through offenders' accountability; the need for victim-centered restorative justice rather than simply offender's reintegration; offenders feel more bound or more constrained to fulfill the requirements of the agreements than when they are imposed by traditional court proceedings; community members are the monitors of the offenders' commitment to the agreed upon requirements.

The literature recommends the cultivation of a culture of restorative practices in schools in order to address disruptive behavior affectively. This recommendation is made on the basis of evidence of decreasing disruptive behavior in schools where restorative practices have been integrated and normalized in the institutional culture, habits and practices.

Within the regular justice system crime is viewed as offense against the state or the Crown. According to the literature, this view robs crime victims of their victimhood and attributes it to the state. The offender, the victim, and their community have lost the ownership of crime to the state. This structural organization of the justice system alienates the victim, the offender, and their community from the production of justice, which often results in feelings of justice denied. By making the offender accountable to the state, the courts impose accountability to an invisible, depersonalized, distant and faceless entity, and thus prevent genuine sentiments of accountability to the victims. Hence the literature calls for the restoration of crime ownership to the victims, the offenders and their community through community based restorative justice.

Finally, the literature raises issues of power distribution between communities and the decision-making professional class. It is evident in the literature that by implication and in principle, restorative justice necessarily empowers communities to take initiatives to prevent crime and to deal with it once it has taken place. This requires professionals in the justice system, education system and social services to recognize the need to relinquish some of their power to communities. As Judge Brown points out: "[T]o empower families inevitably requires a disempowerment of those who previously exercised the decision-making function, in particular, social workers, police officers, lawyers and judges."¹

¹ Judge Michael J.A. Brown (1995) "Background Paper on New Zealand Youth Justice System", Paper presented at International Bar Association Judges' Forum Section on General Practice, Edinburgh, June 10-13: <http://www.restorativepractices.org/library/NZ.html>.

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Introduction

The accounts of the origins of restorative justice (RJ) tell different tales. One account locates the genesis of RJ in Ontario, Canada, where in 1974 Mark Yantzi, a probation officer, suggested that two young offenders, one of whom was Rush Kelly, ought to meet with their victims to declare sincere apologies for vandalizing their property. Tired of revolving door justice, Judge Gordon McConnell agreed despite the lack of precedents in law for such practices. The subsequent development has come to be known as the “Kitchener experiment.”² Another account situates the origins of RJ in the early 1980s in New Zealand, where grass-roots organizations experimented with Maori traditions and practices of conflict resolution in an attempt to repair and restore community relations damaged by an offender and his/her offense. However, it is clear from these accounts that the current wave of RJ, particularly in the form of community conferencing (CC), is more influenced by the New Zealand stream. It appears that the New Zealand justice system was more willing to embrace these grass-roots innovations, whereas the Canadian justice system was less enthusiastic to embrace its own “Kitchener experiment.”

The successes of CC in healing and restoring harmed community relations led to the institutionalization of CC within the New Zealand justice system. As it spread globally – first to Australia, then to the UK, Canada and USA – CC was geared toward diversion of young offenders from the traditional justice system. Today, various communities, justice systems, police services and school districts have, to a greater or lesser extent, adopted some form of RJ, CC in particular, as part of their institutional practices.

Having said that, one must add that these accounts converge on one fundamental point – that is, indigenous people of the world have long standing traditions of RJ wherein the offenders and the offended are brought together to work out their disputes and find ways of healing and restoring their relations.³

² McCold, P. (1999). “Restorative Justice Practice: The State of the Field 1999”, http://www.iirp.org/library/vt/vt_mccold.html. Now an ardent enthusiast of RJ, Rush Kelly gives an account of the grueling encounter with his victims in 1974 (see <http://www.sfu.ca/crj/kelly.html>).

³ Mirsky, L. (April 27, 2004). “Restorative Justice Practices of Native American, First Nation and Other Indigenous People of North America: Part I”: <http://www.realjustice.org/library/natjust1.html> or <http://fp.enter.net/restorativepractices/natjust1.pdf>; Mirsky, L. (May 26, 2004). “Restorative Justice Practices of Native American, First Nation and Other Indigenous People of North America: Part Two”: <http://www.realjustice.org/library/natjust2.html> or <http://fp.enter.net/restorativepractices/natjust2.pdf>; see also Mirsky, L. (October 21, 2003). “The Wet’suwet’en Unlocking Aboriginal Justice Program: Restorative Practices in British Columbia,

The current RJ spurt has its roots in these old indigenous traditions. What follows is a review of these current practices and uses of RJ, with focus on CC, in a variety contexts and settings around the world.

CC and Community Initiatives

As I noted in the opening statement, CC began as a community initiative to experiment with Maori indigenous knowledge in resolving community conflict. Community based conferencing has not only spread around the world but is also, perhaps, the most common way of enabling families and communities to take ownership of their conflicts, empowering them to resolve them. Judge Michael J.A. Brown, the Principal Youth Court Judge, New Zealand, stated in 1995: “[T]o empower families inevitably requires a disempowerment of those who previously exercised the decision-making function, in particular, social workers, police officers, lawyers and judges.” The judge noted that this was a “fundamental change” to which there was/is resistance.⁴ However, CC eventually became enshrined in The New Zealand Children, Young Persons and Their Families Act 1989. As such, “[w]ithin the Act there is a clear statutory intention to attempt to strengthen families and foster their own means of dealing with their offending young people. In order to exert informal social controls and hopefully nullify the excesses and inflexibility of crude State intervention.”⁵

On seeing CC’s success in dealing with young offenders, the enthusiasts of CC pressed for its use among adults. Thus in 1994 the first adult conferences were successfully held for the first time. The first New Zealand restorative justice group, Te Oritenga, founded in 1995, consisted of social workers, lawyers, church ministers, teachers and other community-minded people.⁶ The adult RJ initiative remains grass-roots based. Since Te Oritenga conducted its conference in 1995, the number of grass-roots RJ organizations reached 20 in 2003. In this aspect, the New Zealand government has practically been the follower, not the leader. As Brown and Boyack indicate, “[t]he proliferation of such groups has created a groundswell in favour of such processes, which in turn has prompted the government to take its own restorative justice initiatives.”⁷ As they point out, this program targets serious crime:

because the pilot administrators believe that where the damage caused by the offence has been the greatest, restorative justice may have the greatest impact. Offences that are being referred include property offences where the maximum penalty is at least two

Canada”: <http://www.restorativepractices.org/library/wuaj.html> or <http://www.iirp.org/pdf/wuaj.pdf>.

⁴ Judge Michael J.A. Brown (1995) “Background Paper on New Zealand Youth Justice System”, Paper presented at International Bar Association Judges’ Forum Section on General Practice, Edinburgh, June 10-13: <http://www.restorativepractices.org/library/NZ.html>.

⁵ Ibid.

⁶ Helen Bowen and Jim Boyack (August 30, 2003) “Adult Restorative Justice in New Zealand/Aotearoa”, Restorative Justice Trust Auckland, New Zealand Plenary Speakers: http://www.iirp.org/pdf/nl03_bowenboyack.pdf

⁷ Ibid.

years imprisonment, and other offences where the maximum penalty is no less than two years and no more than seven years. There are exceptions to this, however, including the offence of aggravated robbery, where the maximum penalty is 14 years. Domestic violence cases are excluded. To date, the offences of burglary, theft, fraud, assault and aggravated assault, firearms offences and dangerous or careless driving causing death or injury have predominated.⁸

Brown and Boyak indicate that according to the Sentencing Act of 2002, judges are required to take into account the processes and proposals of RJ, which, in my view, represents, perhaps, the most progressive criminal law in the world. According to Bowen and Boyack: (1) the group realized *the power of apology* in adult RJ, particularly where both parties participated voluntarily unlike in young offender's case where the parties were mandated to participate; (2) the group realized that in the case of young offenders, RJ was *oriented toward the offenders, family and community, while neglecting the victims*. So it pressed for *victim-centered* RJ program rather than simply offender's reintegration; (3) the Auckland group also realized that offenders felt *more bound or more constrained to fulfill the requirements of the agreements* than if they were imposed by traditional court proceedings; (4) young offenders' RJ was criticized for *lack of adequate monitoring* which left the offenders off the hook and not complying with the requirements of the agreements. The adult RJ was to correct this by *finding volunteers who were willing to monitor* the offenders' commitment to the requirements of the agreements.

In 2005 the government of New Zealand commissioned a robust evaluative study of the RJ program. The final report indicates the satisfaction of victims, offenders and the justice system with these grass-roots based RJ initiatives.⁹

In the UK restorative justice is used in a wide variety of contexts and settings. Apart from the usual victim-offender mediation, there are family group conferences (FGC) wherein family members are empowered to make decisions about their children subject to court review. The Family Rights Group (FRG) launched the program in 1992 to deal with welfare issues and it has since expanded to schools and dysfunctional families with serious young offenders.¹⁰ CONNECT, a South London community organization, does community conferencing for victims after conviction and before sentencing. Conferencing is also done in prison for convicts and their victims. The British workplace has become the site of RJ practices in dealing with workers' grievances.¹¹ Large community organizations such as Neighborhood Renewal Unit (NRU), which is managed by nine regional coordinators, have taken up RJ to rejuvenate their

⁸ Ibid.; See also Joshua Wachtel (March 15, 2007), "RJ in the Land of Long White Cloud: New Zealand Embraces Restorative Justice for Adult Offenders", *Restorative Practices eForum*, <http://fp.enter.net/restorativepractices/nzadultrj.pdf>, <http://www.realjustice.org/library/nzadultrj.html>

⁹ Victoria University and Ministry of Justice (2005), "New Zealand Court-Referred Restorative Justice Pilot: Evaluation."

¹⁰ Les Davey (2005), "The Development of Restorative Justice in the United Kingdom: A Personal Perspective", Real Justice United Kingdom.

¹¹ Ibid.

communities.¹² The Sefton Centre for Restorative Practice (SCRP), UK, is the brainchild of Sefton Youth Offending Team (YOT) whose aim is transformation of community through restorative practices. SCRCP propagates RJ across Sefton's social institutions through training and support to hundreds of education, social work and criminal justice personnel, in schools, the youth justice sector, looked-after children's homes and neighborhoods. The center delivers restorative practices training and support to staff and students at 35 of Sefton's 110 primary and secondary schools. The training covers the informal use of restorative practices, restorative conferencing with and without victims present and more.¹³ In 1994 the Hampshire County Council Social Services Department was one of the first UK agencies to promote the use of community conferencing under the name of Family Group Conferences (FGCs). These conferences involve students, teachers and principals, trained volunteers as facilitators and family members (parents and siblings). The evaluations indicate a high degree of satisfaction with the program.¹⁴

The RJ movement is also gaining momentum in the USA. John Cutro and Dannis Mosley are restorative practices consultants in Albany, New York. Run more like "mini-corporations", Cutro's and Mosley's programs are drawn up as "mini-business plans" rather than "long documents." The plans are "just a page or two" describing what is to be achieved. Cutro and Mosley conduct community conferencing for troubled neighborhoods, young offenders, inter-generational conflict.¹⁵ Gena Gerard manages the Central City Neighborhoods Partnership, Restorative Justice Program (CCNP), Minneapolis, Minnesota. After conducting a series of studies in partnership with the University of Minnesota, CCNP launched CC in 1997 to deal with "lower level crimes" which "the formal justice system does not deal with in a very effective, constructive or meaningful way."¹⁶ Community members are recruited and encouraged to get involved; they are trained; they are involved in the justice system. A survey is conducted following each conference. Each year offenders complete on average more than 1,000 hours of service in the neighborhoods they have harmed. Community members

¹² Ibid.

¹³ Laura Mirsky (March 22, 2006), "The Sefton Centre for Restorative Practice: A Restorative Community in the Making", *Restorative Practices eForum*: <http://fp.enter.net/restorativepractices/sefton.pdf>. See also Paul Moran and Mark Finnis (2006) "Sefton Centre for Restorative Practices: Heading for a Restorative Community", "Restorative Approaches in Scottish Schools: Transformations and Challenges", Paper from "The Next Step: Developing Restorative Communities, Part 2," the IIRP's 8th International Conference on Conferencing, Circles and other Restorative Practices, October 18-20, Bethlehem, Pennsylvania, USA: http://fp.enter.net/restorativepractices/beth06_finnismoran.pdf

¹⁴ University of Sheffield (November 2004) "Supporting Pupils, Schools and Families: An Evaluation of the Hampshire Family Group Conferences in Education Project", http://www.petermarsh.staff.shef.ac.uk/documents/Supporting_Pupils_text_000.pdf. See also Laura Mirsky (November 4, 2003), "Hampshire County, U. K.: A Place of Innovation for Family Group Conferencing", *Restorative Practices eForum*; Paul Nixo (n.d) Family Group Conference Connections: Shared Problems and Joined up Solutions", Hampshire County Council Social Services Department, England: http://www.restorativepractices.org/library/vt/vt_nixon.html

¹⁵ Mary Shafer (October 24, 2005) "Restorative Conferencing in Inner-city Albany: From Retribution to Resolution", *Restorative Practices eForum*

¹⁶ Gena Gerard (March 17, 2003) "Community Conferencing", *Restorative Practices eForum*

meet and connect with each other, contributing to greater cohesion. Victims and community members show sense of empowerment to take action to make their communities safer.¹⁷ Lauren Abramson is the executive director of Community Conferencing Center (CCC), an organization that offers restorative conferencing services to communities across Baltimore, Maryland. In 2004 CCC held conferences for 500 cases “as court diversion for juvenile nonviolent offenders and juvenile first time, as an alternative to school suspension, to heal ongoing neighborhood conflicts and as an aid in re-entry into family and community after incarceration.”¹⁸ In cases of conflict in schools, Abramson points out that:

one issue... that has been ignored is gossiping.” While she [Lauren Abramson] recognizes the value of focus on bullying in schools, she stresses that “gossiping also creates major problems, not only in really deteriorating the quality of life for a lot of students... but resulting in a lot of violent incidents that come out of gossiping.”¹⁹

Pertaining to re-entry into families and neighborhoods, the program helps people coming out of prisons “to have a conversation with the people in their lives who have been affected by their incarceration... it’s a safe place and structured way for people to have that conversation, which normally they would not do.” CCC is privately and publicly funded and it has been integrated with the State of Maryland Department of Justice Services.²⁰ Rodney Skager argues for the cultivation of restorative justice culture in schools in order to address disruptive behavior effectively. This assertion is made on the basis of evidence of decreased disruptive behavior in schools where restorative practices have been integrated and normalized as part of institutional culture, habits and practices.²¹

In Canada, grass-roots based RJ organizations have also come into being. Initiated in Hamilton, Ontario, by the Mennonite Community, the Circles of Support and Accountability (CoSA) is a project designed to make sex-offenders accountable to their victims and communities. Started in the mid-1990s, the project brings together victims and offenders and their supporters respectively – including previous victims and offenders – to restore damaged relations caused by the offense. Due to its success, the project spread across Canadian Mennonite Communities and has been emulated in Europe.²² In 2002 in the UK, the Quaker Peace and Social Witness Friends House jointly mounted a pilot project in the Thames Valley near London based on the Canadian model. In 2005 the project released its report following its third successful year of

¹⁷ Ibid.

¹⁸ Laura Mirsky (March 9, 2004) “The Community Conferencing Center: Restorative Practices in Baltimore, Maryland”, *Restorative Practices eForum*

¹⁹ Ibid.

²⁰ Ibid.

²¹ Rodney Skager (October 2007) “Effective and Humane Youth Policy Starts by Treating Youth with Respect”, <http://www.realjustice.org/library/skager.html> (retrieved March 12, 2008)

²² Andrew McWhinnie and Robin J. Wilson (November 3, 2005) “Courageous Communities: Circles of Support and Accountability with Individuals who Committed Sexual Offenses”, *Restorative Practices EFORUM*. See also http://www.csc-scc.gc.ca/text/prgrm/chap/circle/proj-guid/index_e.shtml

operation.²³ In British Columbia, the Nanaimo Community Justice Forum (CJF) has taken up CC initiative to deal with juvenile delinquency. The courts, the RCMP and schools refer cases to CJF for CC. The community involvement in the process is encouraged. As a result,

[t]he community is increasingly engaged in the Nanaimo CJF process... Community partners, like school liaison [police] officers, make referrals and attend the forums; community members attend forums if we don't have support people for offenders or victims; and agencies in our community come as support, like ADAPT [Alcohol and Drug Abuse Prevention and Treatment Society] and Tillicum House, for First Nations.²⁴

Initiated in 1998, the Calgary Community Conferencing (CCC) is jointly supported by the city's Youth Probation Services, Board of Education, Student Response Team, John Howard Society and Mennonite Central Committee. CCC receives referrals for CC from the youth court and schools.²⁵

It is evident in the RJ literature that CC empowers communities to take initiatives to prevent crime and to deal with it once it has taken place. This requires police openness to explore different ways of policing. Such an attitude requires self-confident, self-assured and courageous police men and women unafraid to free up their power and redistribute (share) it more evenly with communities. The literature also teaches us that restorative conferencing expands the vision range of communities; opens up opportunities for community members to come together frequently and become acquainted; enables community members to forge strong bonds; stimulates longer and denser webs of interdependences between community members, which in turn intensify the sense of accountability among offenders. In restorative communities external social restraints reinforce internal self-restraints effectively – another way of saying that, in restorative communities, people keep each other accountable more effectively. Next are examples of restorative policing around the world.

CC and Police Initiatives

Restorative conferencing has been used to good effect around the world by the police in handling young offender cases. In Australia the police embraced CC in the early 1990s. The Queensland Police Service has been conducting CC in dealing with young offenders since 1995.²⁶ The Thames Valley Police, west of London, has been the leading promoter of restorative justice in the UK, having also created the Restorative Justice Consultancy in 1997. RJ is used to address

²³ See http://www.quaker.org.uk/shared_asp_files/uploadedfiles/82f718a7-9344-4a5c-a4a7-4b053ff22239_circlesofsupport-first3yrs.pdf

²⁴ Laura Mirsky (February 16, 2005) "The Nanaimo Community Justice Forum: A Restorative Justice Partnership in British Columbia, Canada", *Restorative Practices eForum*

²⁵ http://www.calgarycommunityconferencing.com/about_us.asp

²⁶ Sergeant Kevin Francis (1999), "Community Conferencing for Juveniles", Paper Presented at the Children and Crime Conference, Brisbane, Australia, June 17-18.

the public's complaints against police conduct.²⁷ Rather than doing referrals, with its Restorative Conferencing Project, the Thames Valley Police conduct their own CCs for victims and offenders, their respective supporters, and when fitting other stakeholders in the community at large. RJ has been integrated in police training.²⁸ An account of the trajectory of CC around the world by a well regarded RJ enthusiast includes a discussion of the Thames Valley Police Service as one of the landmarks of RJ in the world.²⁹ In Australia, the Northern Territory police officers usually facilitate CC.³⁰ The Northern Territory police have been trained and sensitized to RJ, particularly CC. In the USA, the Bethlehem Police, Pennsylvania, have initiated CC program wherein police officers not only refer offenders but also facilitate CC where they see fit.³¹ In St. Paul, Minnesota, Paul Schnell pioneered police CC in the late 1990s. According to Schnell, policing is more effective when it is informed by restorative practices. Thus, rather than relying on the punitive measures – e.g. arrest and detention – the police at St. Paul hold CC sessions to resolve conflicts and restore troubled youths back to good standing with their communities. Schnell also contends that restorative practices are effective in bringing victims to a meaningful closure in cases where the offender is unlikely to be found. Restorative practices have since become part of police training routine.³² The Nanaimo detachment of the Royal Canadian Mounted Police (RCMP) and the Nanaimo Region John Howard Society (NRJHS) – an NGO that has traditionally worked with offenders and ex-offenders – jointly initiated the Nanaimo Community Justice Forum (CJF) for purposes of CC and RJ at large.³³

According to the Superintendent of the Thames Valley Police, Mel Lofty, traditional police force can be described as: reactive, narrow, law enforcement focus, militaristic, hierarchical, 'blame culture', backward looking, reliant on 'tradition' and rule tightening. Whereas restorative police service on the other hand focuses on: problem solving; wider, community safety focus; individual responsibility and accessibility; acknowledges and learns from mistakes; forward

²⁷ Les Davey (2005), "The Development of Restorative Justice in the United Kingdom: A Personal Perspective", Real Justice United Kingdom.

²⁸ Daniel W. Van Ness, 2005, "An Overview of Restorative Justice Around the World", Eleventh United Nations Congress of Crime Prevention and Criminal Justice, Bangkok, Thailand, 18-25 April, 2005:
http://www.icclr.law.ubc.ca/Publications/Reports/11_un/Dan%20van%20Ness%20final%20paper.pdf

²⁹ Terry O'Connell (n.d), "From Wagga Wagga to Minnesota", New South Wales Police Service, Australia: http://www.restorativepractices.org/library/nacc/nacc_oco.html

³⁰ Graham Waite (2003), "Northern Territory Police Juvenile Pre-court Diversion Scheme: A Preventative and Restorative Approach to Juvenile Offending", Fourth International Conference on Conferencing, Circles and other Restorative Practices, 28-30 August 2003, Veldhoven, Netherlands: http://www.iirp.org/library/nl03/nl03_waite.html

³¹ Paul McCold and Lt. John Stahr (1996), "Bethlehem Police Family Group Conferencing Project", Paper presented to the American Society of Criminology Annual Meeting, Chicago, November 20-23: <http://www.restorativepractices.org/library/bethlehem.html>

³² Paul Schnell (April 5, 2003) "Restorative Practices and Policing", *Restorative Practices eForum*, interview by Laura Mirsky

³³ Laura Mirsky (February 16, 2005) "The Nanaimo Community Justice Forum: A Restorative Justice Partnership in British Columbia, Canada", *Restorative Practices eForum*

looking; encourages innovation; rights of victims, witnesses and offenders.³⁴ Research on restorative policing in Australia, UK and USA shows that such approach significantly transforms police attitudes to more community-oriented, problem-solving approach; improves relations between the police and communities; increases community satisfaction with police work; increases community participation in policing; increases sense of fairness for both victims and offenders; increases compliance with the requirements of the agreements between victims and offenders.³⁵ The same research shows that force or lecturing offenders proves less effective than restorative policing. These examples represent opportunities for Canadian police forces to reinvent themselves as restorative police services.

RJ/CC in Schools and Shelters

Restorative practices, including but not limited to CC, have made inroads in schools and rehabilitation shelters. Stanfield Homes in Hertfordshire, UK, are homes to abused and abusive youths aged between 11 and 18 years. The punitive practices to which these youths were subject proved ineffective and meaningless. However, the discovery and introduction of restorative practices in the homes reversed the usual course of relations. RJ at Stanfield is not limited to CC, but restorative practices permeate all aspects of everyday life. Speaking of this RJ turn, the Stanfield manager Veronica Hart stated: "It's more of a culture and ethos." Owing to the success at Stanfield, restorative practices were implemented in all the children's homes in Hertfordshire.³⁶ Gwynedd Lloyd describes the success of a restorative justice pilot program in 20 schools in Scotland. The pilot program aimed for complete reversal of traditional punitive practices in favor of restorative practices. Indications were to expand the program to the entire education system.³⁷

Brookside Youth Detention Centre and Secondary School, Cobourg, Ontario, has been practicing restorative conferencing since 1999, replacing the usual disciplinary (punitive) practices. At Brookside, conferencing is both a

³⁴ Mel Lofty (2002), "Restorative Policing: Thames Valley Police," Presented at Third International Conference on Conferencing, Circles and other Restorative Practices, August 8-10, Minneapolis, Minnesota: http://www.iirp.org/library/mn02/mn02_lofty.html.

³⁵ Paul McCold and Benjamin Wachtel (1998), "Restorative Policing Experiment: The Bethlehem Pennsylvania Police Family Group Conferencing Project": <http://www.iirp.org/library/summary.html>. Mel Lofty (2002), "Restorative Policing: Thames Valley Police," Presented at Third International Conference on Conferencing, Circles and other Restorative Practices, August 8-10, Minneapolis, Minnesota: http://www.iirp.org/library/mn02/mn02_lofty.html

³⁶ Laura Mirsky (September 8, 2005) "From Sanctions to Support: Restorative Practices Transform Homes for Looked-after Children in the UK", *Restorative Practices eForum*.

³⁷ Gwynedd Lloyd (2006) "Restorative Approaches in Scottish Schools: Transformations and Challenges", Paper from "The Next Step: Developing Restorative Communities, Part 2," the IIRP's 8th International Conference on Conferencing, Circles and other Restorative Practices, October 18-20, Bethlehem, Pennsylvania, USA: http://www.iirp.org/pdf/beth06_lloyd.pdf

preventative and restorative measure. That is, the workers do not wait for an offense to happen in order to hold a conference. When news or rumors of an impending turbulence surface, the staff call on a conference to defuse the tensions.³⁸ In this case where there is often no distinction between offender and victim, the school (the community) takes the status of victim.

The Community Service Foundation (CSF) is an organization that runs schools and 16 foster group homes, 9 for boys and 7 foster girls in Quakertown, Pennsylvania, USA. CSF schools and homes are atypical: “they’re run according to the tenets of restorative practices: doing things *with* the residents instead of *to* them or *for* them; insisting that they engage in decisions about their futures; demanding accountability for their choices and behavior.”³⁹ Both the schools and the group houses are social spaces constructed to allow the youths – as the program director puts it – “to eat, breathe and sleep restorative practices around the clock.” The program is geared toward “providing the most conducive atmosphere for long-term success.”⁴⁰

In Australia RJ practices in schools appear to be spreading like wildfires in dry seasons. In certain jurisdictions, entire school districts have practically become hotbeds of RJ. In some districts, schools appear to be engaged in a race to become restorative schools par excellence. Entire regions such as South Australia have proudly embedded RJ as a “way of learning and being together”. It has resulted in increasing parent participation in schools; increasing performance of children, particularly aboriginal and immigrant children; closing achievement gap between mainstream children and aboriginal and immigrant children; increasing consultation with aboriginal and immigrant parents; healthy community relations.⁴¹ In a study of effects of restorative practices in schools in Canada, UK and USA, Lyn Doppler refers to these trends. The study shows that Australia is the leading country in this paradigm shift in education, followed by the UK and the USA, particularly in the states of Maryland and Pennsylvania. Interestingly, the report indicates that Canadian schools are the least restorative.⁴² This is ironic when considering the fact that the current of wave restorative justice has its origins in Canada. It simply means that Australia, the UK, and certain American jurisdictions have enthusiastically embraced and developed Canada’s social technology to their advantage, while Canada itself remains largely unenthusiastic and negligent toward its own invention.

³⁸ Michael Maguire, Bruce Schenk and Ron Camereon (October 21, 2004) “Restorative Justice Conferencing with Young Offenders at Brookside Youth Detention Centre and Secondary School, Cobourg, Ontario, Canada”, *Restorative Practices eForum*, interview by Laura Mirsky

³⁹ Mary Shafer (July 7, 2005) “Home Work: Life in the CSF Residential Program”, *Restorative Practices eForum*.

⁴⁰ Ibid.

⁴¹ Lynn M. Welden (January 2008), “Restorative Practices in Australia’s Schools: Strong Relationships and Multi-School Summits Help Schools ‘be and learn’ together”, *Restorative Practices eForum*: http://www.iirp.org/pdf/Aus_school.pdf.

⁴² Lyn Doppler (2006), “The Effects on Student Achievement in Schools Where Restorative Practices Have Been Embedded as a Way of Learning and Being Together – UK, USA and Canada”, http://www.rozelle-p.schools.nsw.edu.au/Downloadable%20Files/Churchill_Report.pdf.

Patricia Marshall, Brenda Morrison, Lisa Cameron and Margaret Thorsborne provide theoretical and practical deliberations on restorative practices and child education. Patricia Marshall provides excellent insights on challenges and implications of restorative practices in schools.⁴³ Brenda Morrison deliberates on restorative practices with respect to bullying.⁴⁴ Lisa Cameron and Margaret Thorsborne discuss restorative practices in relation to school discipline from practitioners' perspectives.⁴⁵ Drawing from research on child development, personality development, and development of self, these authors make theoretical and practical connections between restorative practices and child education. Their argument is simple and straightforward. And that is, schools are social spaces in which child development, personality development, and development of self take place. Whether these developments occur positively or negatively depends on the nature of human interactions between children and adults in schools. In other words, the development of good or bad behavior, civil or uncivil habits, depends on whether these interactions are predominantly punitive, retributive and exclusionary (expulsion and isolation) or predominantly affirmative, constructive, inclusive and ultimately restorative. Restorative practices are psychosocial means – they are technologies of the self – through which human development can be shaped in schools. In my opinion, these writings would be useful aids for education professionals – teachers, school principals, and school district superintendents – who are interested in how they can incorporate restorative practices in their schools. The writings could be adopted as guides in transforming Canadian schools into restorative social spaces.

The same principle of redistribution of power applies in the education system. The literature in this aspect indicates that restorative practices – doing things *with*, rather than *for* or *to*, students – pay off in the long run. The current educational system is organized in such a way that the power balance between the teachers, principals and superintendents, on the one hand, and the students and parents, on the other hand, is very asymmetrical, heavily tilted in favor of the former. The repressive culture in our schools which constantly says “You’re not good enough”; “You can’t handle this”; “Oh no! Not yet! You can wait a few more years” – the culture of suspicion which says “We don’t and can’t trust you”; “We know you’re up to no good” – such a culture produces youths with oppositional behaviour. Constant repressive power, control and suspicion often weaken

⁴³ Patricia Marshall (August 2002), “Restorative Practices: Implications for Educational Institutions”, Third International Conference on Conferencing, Circles and other Restorative Practices, Minneapolis, Minnesota: http://www.iirp.org/library/mn02/mn02_marshall.html.

⁴⁴ Brenda Morrison (2001), “Restorative Justice and School Violence: Building Theory and Practice”, Paper presented at the International Conference on Violence in Schools and Public Policies, Palais de l'UNESCO, Paris, March 5-7: http://www.realjustice.org/library/morrison_bullying.html.

⁴⁵ Lisa Cameron and Margaret Thorsborne (n.d.), Restorative Justice and School Discipline: Mutually Exclusive? A practitioner's view of the impact of Community Conferencing in Queensland schools, Education Queensland and Transformative Justice Australia (Queensland): <http://www.restorativepractices.org/library/schooldisc.html>.

children's ability to develop durable self-confidence and self-restraints. Consequently, the drives, impulses and passions tend to break loose when no one is watching. It behooves education professionals to let go, to some degree, of some of their power and redistribute it to their students. The more they feel respected, the more they feel trusted, the more they feel valued, the more they feel empowered, then the more they feel accountable to their communities.

RJ/CC Evaluations

Caroline M. Angel's study on the impact of restorative conferencing among crime victims found that victims of burglary and robbery who underwent CC showed significant reduction in post-traumatic stress symptoms: flashbacks, difficulty sleeping, feelings of anger and physical symptoms.⁴⁶ A survey of evaluative studies of restorative justice programs conducted over 30 years concludes that there is an overwhelming support of RJ both by offenders and victims.⁴⁷ The Survey also indicates that the studies report high degree of success and satisfaction.⁴⁸ Similarly, a review of 63 empirical cases in western societies shows overwhelming satisfaction and support among participants in RJ programs.⁴⁹ Kimberly de Beus' examination of RJ program completion and recidivism shows that the correlation between program completion and recidivism has a number of intervening factors.⁵⁰ According to the study, offenders in RJ stream were more likely to complete the program and less likely to recidivate than those who went through the traditional justice system. Property offenders in RJ stream were less likely to recidivate than property offenders in the traditional justice stream. The study also shows that poverty at the community level had a significant influence in both program completion and recidivism, namely that offenders from moderately poor communities (i.e. between 11 and 20 percent) were more likely to complete the RJ stream program than those from lesser poor communities (i.e. less than 11 percent). The study also found that offenders from poorer communities (i.e. 21 to 40 percent) were less likely to complete the program than those from moderately poor communities. The evaluation of Minnesota RJ program shows positive results: the majority of participants felt safe sharing their experiences in CC settings; nearly all participants felt they were heard and treated with respect; nearly all participants felt the process was fair to all parties; ninety percent were satisfied and felt that everyone involved had fulfilled their obligations; nearly all participants claimed they would

⁴⁶ Abbey J. Porter (August, 2006) "Restorative Conferences Reduce Trauma from Crime, Study Shows", *Restorative Practices eForum*.

⁴⁷ Paul McCold (2004), "A Survey of Assessment Research on Mediation and Restorative Justice", <http://www.realjustice.org/library/rjsurvey.html> or <http://fp.enter.net/restorativepractices/rjsurvey.pdf>

⁴⁸ *Ibid.*

⁴⁹ Mark S. Umbreit et al. (2002), "The Impact of Restorative Justice Conferencing: A Review of 63 Empirical Studies in 5 Countries", Center for Restorative Justice and Peacemaking, School of Social Work at the University of Minnesota.

⁵⁰ Kimberly de Beus and Nancy Rodriguez (2007), "Restorative Justice Practice: An Examination of Program Completion and Recidivism", *Journal of Criminal Justice*, 35, 337-347.

recommend the program to others in similar situations.⁵¹ An evaluation of CC program of the Bethlehem Police, Pennsylvania, reported positive results.⁵² What remains unclear in these program evaluation reports are the long-term impact of restorative justice on recidivism. To answer this question a rigorous longitudinal study is required.

Crime, Courts and RJ

RJ raises fundamental issues relative to the culture, habits and practices of our justice system, particularly the courts. The moral organization of the state in modern societies is an important context for these issues. According to Norbert Elias, state formation – which he defined as the monopolization of the means of violence and taxation – is a fundamental characteristic feature of modern societies.⁵³ With this claim to the exclusive right to use violence against human beings, the state endowed itself with the exclusive moral claim to judge and do justice. Thus, the individual who violates another infringes upon the state's exclusive right to violence. And herein resides the idea of crime as an offense against the state, not against the victims of crime. Evidently through state formation the victims of crime lost their victimhood to the state. Now the state is the victim. As such, the state alone decides what justice is. Anything else is revenge, not justice. The injured person is relegated to the sidelines, pushed away from the site of justice, effectively denied a role or voice in the justice process.

The fundamental principle of RJ speaks directly to the ownership of crime and its harm, namely that “the injury caused by crime is the property of the victim, offender, and their local community.”⁵⁴ This principle calls for “a fundamental shift in the power related to who controls and owns crime in society — a shift from the state to the individual citizen and local communities.”⁵⁵ Conferencing broadens the definitions of harm and victim: crime harms human relations; victims of crime include those directly and indirectly affected. The ripple effect of a criminal act envelops the whole community: the victim is the community.

Crime, therefore, produces double-bind alienation: it alienates the offender and offended; and it alienates the offender and the community. By removing the ownership of crime and its harm from the offender, the victim, and their community, the courts operate in ways that aggravate this alienation, which often results in feelings of justice denied. By making the offender accountable to the state, the courts impose accountability to an invisible, depersonalized, distant

⁵¹ Minnesota Department of Corrections (2006), “Restorative Justice Program Evaluation: Fiscal Year 2005 Report”

⁵² Paul McCold and Lt. John Stahr (1996), “Bethlehem Police Family Group Conferencing Project”, Paper presented to the American Society of Criminology Annual Meeting, Chicago, November 20-23: <http://www.restorativepractices.org/library/bethlehem.html>

⁵³ Norbert Elias (2000), *The Civilizing Process*.

⁵⁴ Paul McCold (1995), “Restorative Justice: The Role of the Community”, Paper presented to the Academy of Criminal Justice Sciences Annual Conference, Boston, March 1995: <http://www.iirp.org/library/community3.html>

⁵⁵ M. S. Umbreit quoted in Paul McCold (1995).

and faceless entity. This prevents genuine sentiments of accountability to the victims. RJ on the other hand brings the offender face-to-face with the victim and the community. According to the literature, facing one's victims is tougher than going to courts. Offenders who participate in CC repeatedly confess feeling the full weight of their crime, the impact of their actions, the pangs of restorative guilt and shame. This meaningful encounter or dialogue between the offender and the victim is precluded in court settings. In courts, legal professionals speak to and with themselves. The legal discourse they use is unintelligible to the offender, the victim, and their community. This further alienates the parties from the production of justice. Justice is produced for and to, but not with, them. RJ on the other hand seeks to restore the ownership of crime to the parties; bring the parties to the production of justice; reduce the divide between the parties and the justice system. Courts hardly repair damaged community relations in the aftermath of crime. The objective of RJ on the other hand is to heal community relations in the wake of crime. Thus, RJ requires fundamental institutional transformation within the justice organization. This requires the redistribution of power between the legal profession and the communities, enabling the latter to participate actively and meaningfully in the justice production process. It is my view, therefore, that RJ training should be offered to all who have a stake in health communities: police, lawyers, teachers, social workers, community organizers and volunteers, etc.

Conclusion

The literature shows that restorative practices such as CC are used to good effect around the world in a variety of contexts and settings. First, restorative practices are used by grass-roots community organizations to repair and restore community relations following offenses either by young or adult offenders. Cases are referred to these RJ organizations by the courts, police services and schools. Second, in some jurisdictions the police have gone beyond doing referrals to doing restorative conferencing. In these jurisdictions, restorative practices tend to supersede punitive measures in police training curricula. Third, schools and rehabilitation shelters have embraced restorative practices as *a way of learning and being together*. Fourth, the literature also shows high levels of satisfaction and approval of restorative practices among people who have participated in them. Finally, it is noteworthy that in the literature, the professionals that have traditionally worked with troubled youth – i.e. judges, lawyers, police, social workers and teachers – are ironically identified as the major barriers to the exploration of the full potential of restorative practices. Since RJ requires revolutionary redistribution of power so that the power balance between the professional establishment and local communities becomes less asymmetric, this resistance is understandable, if inexcusable.

Appendix: CJI and Victim-Offender Mediation

Founded in 1985, the Fraser Region Community Justice Initiatives Association (CJI) embodies RJ as outlined in this review. Although CJI programs focus on victim-offender mediation, the underpinning principles are exactly the same as those that guide ACTS' CC. CJI's views crime in exactly the same way as proponents as ACTS. Like CC at ACTS, CJI programs distinguish between crime in terms of retributive justice and crime in terms of RJ. On the one hand, CJI views crime from the retributive justice as an offense against the state: "Crime is a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by systematic rules."⁵⁶ On the other, CJI views crime from RJ point of view as offense against individuals and their communities: "Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions that promote repair, reconciliation and reassurance."⁵⁷

CJI runs two RJ programs: Victim-Offender Reconciliation Program (VORP) and Victim-Offender Mediation Program (VOMP). The first seeks to promote reconciliation between victims and offenders. The Second assists disputants reach agreeable solutions to their disputes. CJI operates within a set of 19 principles and values outlined in its 2003 *Charter for Practitioners of Restorative Justice*.⁵⁸

In 2002 CJI embarked on RJ training and implementation in the Langley School District. The project's goal was to introduce a culture of RJ in conflict resolution in Langley schools through training and mentoring of students, teachers, parents and administrators. CJI staff provided presentations, training and technical assistance at a variety of venues in Canada and the United States. CJI offers practicum experience to graduates of the Justice Institute of BC's conflict resolution certification program, to university and college students enrolled in a relevant course of study, and to individuals with equivalent training or life experience. Although CJI focuses on victim-offender mediation, its modus operandi is similar to that of ACTS and CC. CJI's experience and knowledge span more than 20 years of history, from which ACTS could greatly benefit. Most importantly, it behooves ACTS to adopt CJI's *Charter for Practitioners of Restorative Justice*.

⁵⁶ Fraser Region Community Justice Initiatives Association, BC, 2002, *Community Justice Initiatives: Annual Report 2002*, p.4, <http://www.cjibc.org/PDFs/2002%20Annual%20Report.PDF>. See also their *2006 Annual Report*: <http://www.cjibc.org/PDFs/2006%20Annual%20Report.pdf>, their 2003 *Charter for Practitioners of Restorative Justice*: <http://www.sfu.ca/cfrj/fulltext/charter.pdf>.

⁵⁷ Ibid.

⁵⁸ CJI (2003) *Charter for Practitioners of Restorative Justice*: <http://www.sfu.ca/cfrj/fulltext/charter.pdf>.

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