

Restorative Justice and Practices in New Zealand: Towards a Restorative Society

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In this review, I will first summarise some of the key points in the general literature on restorative justice, then I will recount the chief contributions of the Maxwell and Liu book, and finally I will end with a brief discussion of future directions.

General restorative justice literature

Restorative justice has gained significant momentum as a justice reform movement within the past three decades, and it is estimated that up to one hundred countries worldwide utilize restorative justice practices (Van Ness, 2002). The popularity of restorative justice programs has been attributed to a growing dissatisfaction with the conventional justice system and the assertion that this system consistently fails to take into account the needs of offenders, victims, and their communities (Morris, 2002). From the beginning of its rise to prominence, restorative justice perspectives have been contrasted with the assumptions underpinning the criminal justice system in order to promote it as a fundamentally different, yet viable, approach to achieving justice.

Defining restorative justice is no easy feat because of the multiple strands comprising this conception of correctional justice. Attempts to settle on a particular definition have been contentious and rather than guiding theorists towards agreement, the debate around what actually constitutes restorative justice has served to highlight the existence of contrasting and competing perspectives. While the

term itself has the obvious implications that it is a form of *justice* that *restores* something, it is not clear what is being restored and to whom, and what justice means in this context. Dignan and Cavadino (1996) maintain that, "...the precise form of the paradigm is as yet unclear, whether in theory or practice, and the whole debate is characterized by considerable terminological and conceptual confusion" (p. 153). Restorative advocates, however, have argued that the appeal of restorative justice lies in its flexibility to encompass a wide range of initiatives and thus, any attempts to reach a definitive agreement about 'what it is' will somehow contaminate, and potentially destroy, its essence (Johnstone & Van Ness, 2007). Indeed, Braithwaite (1999) goes as far as to say, "An answer to the "What is to be restored?" question is whatever dimensions of restoration matter to the victims, offenders, and communities affected by the crime. Stakeholder deliberation determines what restoration means in a specific context" (p. 6). Although Braithwaite addresses the meaning of restoration rather than justice in his definition, he does imply that justice in this context is purely procedural rather than substantive. An additional implication of this perspective is that restorative justice is a nuanced, contextual approach

that eschews universal principles and is more concerned with meeting the needs and interests of stakeholders at particular times and in specific locations. Furthermore, there is the suggestion that victims, offenders, and communities ought to drive the process of seeking restoration and that a balance should be sought between these diverse, and possibly conflicting, interests.

Restorative justice models are commonly viewed as either process-based, such as that described above by Braithwaite, or outcome-based. Theorists who believe that joint stakeholder deliberation is fundamental to achieving restoration actively promote process-based definitions of restorative justice. One such definition is Marshall's (1999) where restorative justice is "a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future" (p. 5). In comparison, outcome-based definitions tend to prioritize the role that particular outcomes have in achieving restoration; that is, the specific constellation of benefits and burdens arising from the restorative decision-making process.

Restorative justice is commonly acknowledged to be a grass-roots movement that is practice- rather than theory-driven. Restorative principles and values form the foundation of, and subsequently guide, practice. Zehr and Mika (1998) outline three core principles that underpin restorative justice initiatives. First, criminal conduct *violates* both people and their relationships with one another.

This violation harms all of the key stakeholders in crime—victims, offenders, and communities—whose needs therefore ought to be actively addressed through a restorative process of some kind. Second, crime results in both *obligations* and liabilities for offenders. The offender is obliged to take responsibility for the crime and attempt to repair the damage caused. While coercion is to be avoided, offenders may be compelled to fulfill their obligations. The intention behind holding offenders accountable is to achieve reparation rather than to punish them, although there is some tension evident between these two conflicting values. Additionally, the community is obliged to support both the victim and the offender in dealing with the effects of the crime. Third, the purpose of restorative justice is to facilitate community *healing* by repairing the harm that results from crime; more specifically, the fractures occurring within relationships between victims, offenders, and the community that inevitably occur following offending.

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In this fine collection of essays on restorative justice (RJ) in New Zealand, Gabrielle Maxwell and Jim Liu have done an excellent job of capturing the complexity of the approach while paying particular attention to the pioneering work being done in this country. The book is divided into five parts, each based on a particular theme: RJ in the New Zealand context, RJ practice in the criminal justice system, RJ practices in civil society, critical reflections on RJ, and a concluding section where the future of RJ initiatives is imaginatively explored. I will briefly discuss each part and its component chapters in turn.

Part 1: Restorative Justice in the New Zealand Context

Gabrielle Maxwell does a superb job in chapter one of outlining the basic assumptions of the RJ approach to conflict, stressing the flexibility of its perspective and its inclusion of the multiple voices and stakeholders evident in the criminal justice system:

victims, offenders, community, and relevant agencies. A particular highlight is the careful comparison she makes between conventional justice and RJ with respect to the investigation process, determination of responsibility, repair of harm, and reintegration of both the offender and victim. In chapter 2, Jim Liu considers the social and historical contexts for RJ and distributive justice, arguing that robust RJ initiatives require healthy communities but in reality many have been damaged by a combination of globalization and modern industrialization processes. He warns us not to place unrealistic hope on the ability of RJ practices alone to reduce social evils and inequalities but suggests that they may help troubled youth offenders to find their way to better lives.

Part 2: Restorative Practice in the Criminal Justice System

There are six chapters in part 2, each examining RJ initiatives in some aspect of the New Zealand criminal justice system. In chapter 3 Gabrielle Maxwell outlines the origins and development of family group conferences and examines the evidence for their effectiveness. Andrew Becroft and Rhonda Thompson in their chapter (chapter 4) review key aspects of the New Zealand youth justice system through the lens of the Youth Court. They conclude that while there is a natural synergy between the aims of the Youth Court and RJ, there could be greater integration of RJ practices within this agency of the justice system. In chapter 5, Fred McElrea discusses the operation of RJ approaches within the adult criminal justice system. He notes that RJ referrals are made as pre-sentencing options and suggests that their utilisation as diversionary options would be a useful next step. Chapter 6 contains an analysis by Gabrielle Maxwell of RJ diversionary policing of young people. She concludes that the results of such initiatives are largely positive and consistent with RJ principles, although she cautions that there is room for improvements (e.g., involving young people more in decisions made). In chapter 7, Howard Broad examines the relationship between current policing strategies and the concept of restorative policing, and makes some useful suggestions for

the future development of restorative practices within a policing context. In the final chapter (8) in section 2, Kim Workman describes the origins and implementation of a faith-based prison unit in Rimutaka Prison. In his view the unit illustrates how RJ principles with a focus on reparative practices can effectively work within the parameters of the criminal justice system.

Part 3: Restorative Practices in Civil Society

In chapter 9 David Hurley overviews the core features of mediation in New Zealand and compares them with RJ principles, concluding that current practice shares many features in common with restorative ideas and less so with traditional litigation. In chapter 10 Wendy Drewery examines the utilization of RJ principles to develop conferencing processes in a small number of New Zealand schools. The aim was to develop restorative schools characterized by respectful relationships among staff and students where conflicts are addressed by reparative efforts rather than traditional authoritative disciplinary practices. In the following chapter (11), Sean Buckley describes the results of a RJ study involving 15 New Zealand schools that attempted to establish restorative classrooms and conferences when required. The aim was to ensure that offenders were reintegrated back into the school community rather than stigmatized and excluded. The final two chapters by Maureen Hickey (chapter 12) and Nicola White (chapter 13) in this section are more political in nature and deal with restorative initiatives on behalf of the Crown to make amends for historical injustices to Maori and other groups who have suffered at the hands of Government agencies.

Part 4: Reflections on Restorative Justice

In chapter 14 Tony Taylor analyses the concept of justice and makes a strong case for it being an essential or innate human need that, if not met, is likely to result in social alienation and insecurity. In their chapter Jim Liu and Katja Hanke (chapter 15) discuss the valuable contribution of empirical research in social psychology in underlining the importance of restorative justice considerations. In her chapter, Karen

Baehler (chapter 16) investigates the degree to which RJ practices resonate with the concepts of retribution and caring evident in modern philosophical accounts of justice.

Part 5: Conclusion

In the final part of the book, attention is given to some of the broader themes evident in a RJ approach. Gabrielle Maxwell and Jim Liu (chapter 17) point to the strengths of RJ and its capacity to promote repair and accountability within communities. However, they also caution that New Zealand has only just begun its exploration of RJ principles and associated practices and therefore both researchers and practitioners need to continue their scrutiny and development of programs. In chapter 18, Christopher Marshall reflects on some of the ideas contained in the previous chapters and discusses the ideal of a *restorative society* and its potential to foster moral repair and social integration in all individuals adversely affected by crime. He commits himself to a caring- or community-oriented view of justice and therefore stresses the value of spirituality and love when responding to wrongdoing and offenders. In the final chapter (chapter 19) Jonathan Boston critically considers the concept of a restorative society and its strengths and weaknesses. He warns that there is an urgent need for further analysis and debate over the nature of restorative practices and policies, and the ethical assumptions underlining their implementation.

Conclusions

This is an important book and it does an excellent job of identifying the achievements of RJ principles and practices within a New Zealand context. Alongside the development of innovative practices there has been some attention to RJ theoretical and ethical issues. However, in my view this is the one area where further work is required. In essence, because of its origins as a grassroots, practice-driven movement, the discussion of restorative justice has been under-theorized and its theoretical and empirical relationships to important moral concepts, such as human rights, insufficiently addressed (Ward & Langlands, 2008). Restorative justice advocates have responded to

these concerns in a variety of ways. Some theorists maintain that due process rights, such as proportionality, are not necessarily relevant in restorative justice settings because restorative practices are governed by values that oppose the rigid, rule-bound processes of conventional criminal justice (Braithwaite & Strang, 2001). Others have adopted a more moderate approach by arguing that there should be safeguards in place to protect the due process rights of offenders (Walgrave, 2007).

In my view, there is room for optimism that theorists, researchers, and practitioners will address such problems and establish a new generation of RJ programs that have as their aim a more humane, reparative, and community responsive approach to criminal justice and civil wrongdoing.

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