

RESTORATIVE JUSTICE

**JOHN HOWARD SOCIETY OF ALBERTA
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EXECUTIVE SUMMARY

Restorative justice offers an alternative to Canada's current punitive justice system. The inability of our justice system to positively affect crime rates and the lack of concern for crime victims has fueled the growth of restorative justice models. The restorative justice process involves the offender, the victim and the community in negotiations and dialogue aimed at restitution, reconciliation and restoration of harmony.

Canada's current justice system attempts to rehabilitate offenders, deter others from committing offence and provide compensation to victims. However, because our justice system relies so heavily on incarceration and punishment, it does not successfully rehabilitate offenders, deter others or compensate victims. Restorative justice models, however, lower costs associated with incarceration, provide the victim with a sense that justice was served, provide the offender with the feeling that the legal process has treated him/her fairly, address victim-offender relations and make the community aware that it has a responsibility to the offender, victim and justice system.

Restorative justice ideals have been manifested in the creation of different types of programs including restitution, victim-offender reconciliation and community mediation.

The concept of restitution is ancient and has existed long before the creation of a formal justice system. Restitution is "an offender-oriented sanction involving offender payments to the crime victim or substitute victim" (Hudson & Galaway, 1977, p. 1).

Contemporary programs, including restorative justice models, attempt to involve the victim in the justice process. Each model centres on a different stage of the justice system but all attempt to improve victim satisfaction with the process and the outcome. Attempts have been made to improve victim participation at the pre-trial stage, trial stage, sentencing stage and post-sentencing stage.

Victim-Offender Reconciliation Programs (VORPs) offer an alternative to the formalized criminal justice system. They are designed to improve conflict resolution, to provide monetary reparations to the victim, to prevent recidivism and to offer a speedier and less costly alternative to formal processes.

Community mediation programs allow representatives from the community to mediate between victims and offenders to reach a negotiated resolution. As an alternative to the adversarial process, community mediation programs provide more power to the participants of the conflict and allow them to reach a mutually satisfying solution.

The Restorative Resolutions project, implemented by the John Howard Society of Manitoba (JHSM), is one of the most comprehensive restorative models initiated in North America. The aim of Restorative Resolutions is to provide offenders with the opportunities to regain acceptance and trust within the community. The project acknowledges the need for reparations, the need to involve victims and the community, the need to educate all participants and the need to reduce the costs of the criminal justice system.

The desire to respond more effectively to crime has sparked the development of restorative justice programs. Restorative justice emphasizes the importance of holding offenders accountable for their behavior while providing victims and community members every opportunity to participate in the justice process.

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INTRODUCTION

Over the last two decades, criminal justice authors have been gradually shifting their attention toward a new concept: restorative justice. Restorative justice offers an alternative to the punishment oriented justice system of today. Umbreit and Carey (1995, p. 47) explain that restorative justice differs from the current justice system by emphasizing that “crime is a violation of one person by another, rather than as a violation against the state.” Proponents of restorative justice argue that through the use of various techniques, the victim, the offender and the community can be restored to their pre-crime status (Austin & Krisberg, 1982). They favour a return to offender/victim-centred conflict resolution using community mediation and resulting in some form of mutually acceptable reparation.

Restorative justice arose mainly from the growth of restitution through the 1970s but is also based in a historical perspective. Several factors, including a dissatisfaction with the present system and a lack of concern for crime victims, have caused us to look to alternative models of justice. As the restorative model grows in popularity, community mediation centres and restitution programs are growing in number across North America.

THE NEED FOR CHANGE

There are two major problems fueling the growth of the restorative model. The first of these is the inability of our justice system to positively affect crime rates. Our current practices and philosophies have done little to relieve overwhelming fear of crime. A second motivation is that the legal process has become less and less concerned with the victim. Focus is no longer on the person who is affected the most by an offender’s wrongdoing; instead focus is placed on the state. Victim satisfaction with the overall outcome has been ignored. The restorative model proposes to resolve these issues using techniques which involve the victim and contribute to offender rehabilitation and reintegration.

THE FAILURE OF THE JUSTICE SYSTEM

Section 718 of the Criminal Code deals with the purpose and principles of sentencing. The section is intended to provide direction to the courts in making sentencing decisions. The following is the text of the purpose of sentencing:

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;

- (b) to deter the offender and other persons from committing offence;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

The fundamental principle of sentencing is as follows:

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Other sentencing principles include the following:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on the race, nationality, colour, religion, sex, age, mental or physical disability or sexual orientation of the victim, or

(ii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offence committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Notably absent from this section is retribution, a goal which the government has always held central to the process (The Canadian Sentencing Commission, 1987). An examination of our success at accomplishing these goals is disconcerting.

Retribution

Bazemore and Umbreit suggest that while “retributive justice is focussed on determining guilt and delivering appropriate punishment (“just deserts”) through an adversarial process, restorative justice is concerned with the broader relationship between offender, victim and the community” (Bazemore & Umbreit, 1995, p. 302). A justice system based on retribution is troublesome for both philosophical and practical reasons.

Cragg (1992) argues that religions often denounce the practice of punishment. In one example, the New Testament (John 8:1-11) contends that a system of justice based on punishment is not possible since only people free from sin should impose punishment. Since nobody can ever fully live up to moral law, a sinless imposer of punishment does not exist.

In addition, most forms of punishment are actually acts which have been determined to be unlawful (ie. confinement and corporal punishment). To impose harm in response to harms done is revenge, not resolution.

Beyond the philosophical arguments, there are several practical concerns with retribution. First, retribution is difficult to distinguish from vengeance (which suggests excessiveness). Even without the element of emotionality and revenge, the use of punishment is both morally impractical and practically immoral, given the existence of a feasible alternative. Furthermore, in order to justify imposing punishment, one must be absolutely certain of guilt and intent. Imposing pain upon someone who is innocent or unaware is impractical and illogical. Beyond this concern, the development of appropriate sanctions has been next to impossible. Codes which outline punishments for offences rarely take into consideration the vast differences which exist between cases.

Deterrence

A significant problem with justice based on punishment is that it tries to invoke a fear of the law in the general public. As opposed to retribution, deterrence is the forward-looking use of punishment. We try to discourage people from committing crime by making them aware of punishments and their severity. Whether discussing specific deterrence or general deterrence, the evidence overwhelmingly suggests that this practice is pointless. Specific deterrence “occurs when a convicted offender is deterred from committing further offence as a consequence of his or her personal experience of punishment” (Griffiths & Verdun-Jones, 1994, p. 407). The system imposes sanctions in the hope of making offenders fearful of re-exposure to those sanctions. General deterrence, on the other hand, “is achieved when the threat of legal sanction prevents the commission of potential crimes by people other than punished offenders” (Griffiths & Verdun-Jones, 1994, p. 407).

There are several arguments against adopting deterrence as a goal of the legal process. First, legal sanctions will not have a general deterrent impact unless they are widely known. Few people are aware of present day sanctions. In addition, deterrence cannot affect every person the same; some people have more to lose than others. A recent study clearly showed that individuals who are incapacitated actually have a higher risk of reoffending than those who are not (Bridges & Stone, 1986). Based on these arguments, the authors caution against the adoption of deterrence as a goal of justice administration (Griffiths & Verdun-Jones, 1994).

Denunciation

The denunciation of behaviours is closely tied to the concept of retribution. Punishment serves as a statement of society's conviction against certain actions. The severity of penalties, therefore, needs to reflect the degree to which society condemns that specific act. The law exists as a statement of society's values. With the growth of the “get tough” mentality toward criminal justice reform, lengthier sentences are increasingly being called for. Under the restorative model, the amount of reparation would also tend to represent a scale of denunciation. As opposed to denouncing the offenders, however, it proposes to denounce the act. The more damaging a behaviour, the greater the redress will be.

Rehabilitation

The 1950s witnessed the growth of an ideology based on “treating” the offender. Criminal behaviour was seen as some form of sickness. Therefore, the reasonable solution was to subject an offender to treatment which generally took the form of psychological therapy, education and training. Many programs have been aimed at rehabilitating the offender over the last 45 years.

In 1974, Robert Martinson coined the phrase “nothing works.” He based this conclusion on the weight of evidence which showed that rehabilitation programs have not been successful. Since that time, there has been renewed faith in rehabilitation. In more recent years, numerous authors have revived the notion that correctional rehabilitation can be effective given certain conditions.

Appropriate types of intervention involve the use of behavioral and social learning principles of interpersonal influence, skill enhancement and cognitive change. The Correctional Service of Canada (CSC) continues to pursue traditional means of rehabilitation (ie. non-directive counseling) which have proven ineffective.

Incapacitation

The only goal that the present Canadian criminal justice system can truly accomplish is incapacitation. Imprisonment removes the offender from the community and prevents further offending during the period of incarceration. This is, however, a “band-aid” solution. Ignoring problems does not solve them.

Reparation

The goal of redressing harm highlights the shift to a restorative model. The idea of making reparations for harm done is central to restoring pre-crime states. The implementation of this goal has been difficult and at present is limited to moderate restitution, community service orders and compensation. But the inclusion of such a goal will certainly pave the way for future reforms based on restorative concepts.

Costs

The cost of incarcerating and treating offenders is enormous. In 1994/95, the average annual cost for keeping an inmate in a federal penitentiary was \$44,344 (Canadian Centre for Justice Statistics, 1996, p. 10). That same year, over \$1.9 billion was spent on adult correctional services (Canadian Centre for Justice Statistics, 1996, p. 1). With an overwhelming price tag, the government and the public need a cost-effective alternative.

Success is usually assessed by the ability of the system to fulfil the above-mentioned functions. Our system has consistently failed to make identifiable improvements toward meeting these goals, and, consequently, there is growing disillusionment among the general public. Given the strength of the arguments and the evidence which illustrates the extent to which our present system has failed to viably prevent crime, practitioners have been forced to examine other alternatives.

IGNORING THE VICTIM

In 1977, Nils Christie published an article entitled “Conflicts As Property.” This article was one of the first attempts to question the operation of the criminal justice system. Christie identifies two recurring features of most western legal systems. First, the parties who are in conflict are represented by attorneys. Second, the victim, who is to be represented by the state, “is so thoroughly represented that she or he for most of the proceedings is pushed completely out of the arena” (Christie, 1982, p.

299). Christie expresses the opinion that disputes need to be returned to the main parties, namely the victim and the offender.

The crime victim is almost always allocated a periphery position within the framework of the legal process. While it would be impossible to operate without the cooperation of the victim, once they are no longer useful, the process tends to neglect and ignore them. Several studies have shown that the system can be a weary and tedious experience for the victim (Ash, 1972; Chelimsky, 1981; Knudten, Meade, Knudten, & Doerner, 1976; Rosenbaum, 1977).

Some authors have described the criminal justice process as a dual victimization (Christie, 1982; Symonds, 1980); there is the actual crime which can include monetary loss, physical injury and psychological stress and there is neglect and traumatization brought on by the legal process. Victims often suffer through unfamiliar situations, loss of time, humiliating testimony and lack of input. The victim is rarely given the opportunity to express opinions, to confront the offender or to address the issue of reparations (Griffiths & Verdun-Jones, 1994). Restorative justice provides an alternative which not only allows victims to voice opinions, but gives them the opportunity to resolve issues.

WHAT IS RESTORATIVE JUSTICE?

Restorative justice differs completely from the retributive model which is the basis for Canada's criminal justice system. The following chart summarizes many of the differences between the two models.

	<u>Retributive</u>	<u>Restorative</u>
Definition of a Crime	the breaking of rules (laws)	harm done to a person
Aims	to punish offenders for their crimes	to restore victim, offender and community to their pre-crime status
Offender's Role	to be determined guilty or innocent and to be punished	to make amends to victim and community; to "right the wrong"
Offenders Rights	due process rights	right to express concerns and to negotiate reparation
Nature of Victim	the state	the individual
Victim's Role	periphery; to report offence and to testify in court when required	central; to reconcile with offender and to negotiate reparation
Victim's Rights	none	to confront offender and to receive restitution
Community Role	none	to mediate reconciliation
Community Rights	to be protected from crime	to be involved in restoration
Court's Role	to determine guilt and to impose a sentence	to help mediation process
Prosecutor's Role	to represent state and to provide evidence	administrative
Standard of Proof	beyond a reasonable doubt	balance of probabilities
Administrative Process	adversarial	negotiation/mediation
Focus	past; determination of guilt and administration of pain	future; search for solutions and promotion of reconciliation
Concept of Guilt	guilt is absolute and permanent	guilt removable through acceptance of responsibility and reparation
Concept of Debt	paid by being punished and owed to the state	paid to victim by making reparations
Concept of Justice	"right-rules," tested by process and intent	"right-relationships," tested by the outcomes
Outcomes	punishment	reparation and reconciliation (based on Zehr, 1990)

Three key principles form the foundation of the restorative justice paradigm:

- 1) Crime results in injuries to victims, communities and offenders; therefore, the criminal justice process must repair those injuries;

2) Not only government, but victims, offenders and communities should be actively involved in the criminal justice process at the earliest point and to the maximum extent possible;

3) In promoting justice, the government is responsible for preserving order, and the community is responsible for establishing peace. (Van Ness, 1990, p. 9)

Restorative justice emphasizes that crime is a violation of one person by another, rather than merely a crime against the state (Umbreit, 1990; Morris, 1992; Bazemore & Umbreit, 1995). The restorative model of justice involves the offender, the victim and the community in negotiation and dialogue aimed at restitution, reconciliation and restoration of harmony. Offenders take an active part in the restorative process, with remorse, repentance and forgiveness being important factors. The stigma arising from an offence may be removed through conforming behaviour on the part of the offender. The restorative model also looks at the social, economic and moral context of the criminal behaviour, while still holding the offender responsible for his or her actions. Restorative justice places victims and offenders together in problem-solving roles and impresses upon offenders the actual human impact of the behaviour (Umbreit, 1991).

Restorative justice is the concept of restoring a community and its specific members back to their lifestyles prior to the commission of an offence. Although reparations cannot entirely compensate for the physical and emotional costs of crime, partial restoration would be better than the existing situation. The specific elements of restorative justice take many forms and encompass several areas. There are some identifiable broad groups of activities which are central throughout. It is first important to identify restorative justice goals.

RESTORATIVE JUSTICE GOALS

Restorative justice attempts to accomplish several goals. First of all, justice needs to be served in respect to both the victim and the offender. Each party should feel that he or she has received fair treatment. Second, the relationship between the two needs to be addressed; the opportunity for reconciliation must be given. Third, the process must also take into consideration the concerns of the community. Last, directions for resolution must be achieved.

Justice for the Victim

Several things must occur in order for victims to feel a sense of justice. Victims need to be able to express facts, opinions and concerns to the offender. They need to receive directly proportional compensation for their harms. Beyond that, they need to participate and they need support. After these tasks are completed, the victim is more likely to feel a sense of rightness.

Justice for the Offender

Offenders also need to be able to feel that the legal process has treated them fairly. A drunk driving study revealed that 22% of the offenders who participated in regular court proceedings felt they were disadvantaged. However, only 4% of offenders who participated in the restorative justice model felt disadvantaged (Sherman & Barnes, 1997, p. 3). Offenders need to be given the opportunity to accept responsibility for their actions. They need the chance to challenge any wrong assumptions. Finally, they need the occasion to redress victims.

Addressing Victim-Offender Relations

Any successful restorative justice system should encourage interaction between the offender and the victim. Both parties need the opportunity to address issues, ask questions and hear answers from one another. Reconciliation and forgiveness are essential to the healing process.

Community Concerns

Different restorative justice programs attempt to include the community in varying degrees. It is widely acknowledged in the literature that society must take responsibility for crime. Communities have an obligation to correct social factors which contribute to crime and to allow offenders to rehabilitate and reintegrate. In order to do so, the public must be aware of crimes, their causes and their outcomes. Furthermore, the needs of the community must be addressed during dispute resolution. If it is appropriate for the community to receive reparations, then that must be discussed. The community needs to be responsible for crime and represented in resolution.

RESTORATIVE JUSTICE TECHNIQUES

Restorative justice ideals have been manifested in the creation of different types of programs including restitution, victim-offender reconciliation and community mediation. While most programs have grown out of different movements (i.e. the victim's movement), they are all interconnected by underlying value systems. As the entire restorative movement grows, each of these programs gains popularity.

Restitution

The concept of restitution is ancient and has existed long before the creation of formal justice systems. Bruce Jacob (1977) highlights six stages of development which the criminal justice system has undergone. In the first stage, response to crime was one of personal vengeance. People simply took revenge on any person who harmed them. During the second stage, collective vengeance (in the form of kin groups) was the focus. Families of the victim and the offender would seek revenge. Due to the potential for never-ending blood feuds, a third stage evolved. A process of negotiation between the families became common place. During the fourth level of development, societies

adopted codes which contained preset levels of compensations for various crimes (i.e., *lex talionis* - “an eye for an eye, a tooth for a tooth”). Over the years, lords and rulers gradually became involved in the mediation process and would receive a given percentage of the resulting compensation. The adversarial system became entrenched in resolution. During the final stage, the state made all offences crimes against the state and displaced the victim. The resulting system was contemporary criminal justice.

It is important to differentiate between restitution and compensation. Restitution is “an offender-oriented sanction involving offender payments to the crime victim or some substitute victim” (Hudson & Galaway, 1977, p. 1). Compensation, on the other hand, is a process whereby the state compensates the victim using tax monies. Restitution is generally imposed with property crimes wherein there is obvious financial loss. Compensation is usually assessed and given in cases involving violence and resulting in physical harm or death. It is also important to identify community service work as a form of representative restitution. As opposed to making financial payments to the victim, the offender is sometimes required to perform a specified number of hours of work either for the community or for non-profit organizations within the community.

Restitution programs regained popularity during the 1970s. Over the last two decades, Galaway and Hudson have traced and interpreted the growth of restitution programs across North America. Restitution orders and community service work are now common practices in most jurisdictions in Canada and the United States.

One major issue surrounding restitution is over who has the right to impose it. Legally, the only person who can order restitution is the presiding judge. Any other restitution order must be made through a contract which is enforceable in civil court. Because the amounts of restitution are generally small, the cost of pursuing civil court action would be detrimental. Other people have suggested that parole boards should also be empowered to provide for restitution. To date, there are no provisions under the Corrections and Conditional Release Act whereby the Board can make restitution a condition of release.

Victim Participation

During the 1980s, the attention of reformers was being drawn toward the issue of victim involvement in the criminal justice process. Early reforms have been criticized for giving victims only marginally improved status with the hope of gaining their cooperation as witnesses. Contemporary reforms, however, try to truly involve the victim. Different programs centre on different stages of the justice system but all attempt to improve victim satisfaction with the process and the outcome.

Pre-trial stage

There have been three main attempts to improve victim participation at this stage. First, the police have attempted to increase ties with community and to make themselves more approachable. It is felt that this will increase the reporting of crime and will stimulate exchange of information thereafter. In order to accomplish this, several police forces across Canada have created Victim Services Units which provide both information and first contact, crisis management services. These programs are still strongly criticized for simply pursuing the aim of encouraging victims to testify.

Another major reform has been to include victims in plea bargaining. Task forces in both the United States and Canada have concluded that victims deserve to be involved in this process. By allowing victims to participate, they will have the opportunity to express their concerns and to ensure that any bargain represents their interests. The actual integration of victim participation in plea bargaining has yet to be effectively introduced.

Independent victim services programs are yet another attempt to increase victim participation. These groups have several focus areas: they provide crisis services for victims in conjunction with police forces; they act as lobby groups for victims issues, and; they educate the public in matters which concern victims rights.

Trial stage

If a criminal case goes to trial, the testimony of the victim will almost always be required. Testifying in court can, however, be a traumatic and frightening experience. For example, in sex offence trials, defense attorneys may try to establish that the victim has a questionable background. Having one's sexual history examined in court is undoubtedly a humiliating experience. Unfortunately, under a retributive model, little can be done to improve their position. The government of Canada enacted Bill C-49, an amendment to the Criminal Code guaranteeing some protection to victims against intrusive cross-examination.

Another major reform recommendation is community mediated victim/offender conflict resolution which directly reflects the goals of restorative justice. Most programs are known as Victim-Offender Reconciliation Programs (VORP). The idea for VORPs can be traced back to Kitchener, Ontario, when Probation Officer Mark Yantzi made an in-court recommendation that two vandals would benefit from having to meet their victims (Woolpert, 1991; The Church Council on Justice and Corrections, 1996). The presiding judge agreed and the concept became established. This court decision allowed for the creation of several non-profit organizations who facilitate reconciliation.

Essentially, VORPs offer an alternative to the formalized criminal justice system. They are designed to improve conflict resolution, to provide material reparations to victims, to prevent recidivism and to offer a speedier and less costly alternative to formal processes (Woolpert, 1991; Griffiths & Verdun-Jones, 1994). There is a general pattern of procedures which most VORP programs adhere to. They usually involve non-violent offenders at a post-conviction stage (The Church Council on Justice and

Corrections, 1996). After the initial screening and assignment of a mediator, separate meetings are arranged with the victim and the offender. These first meetings provide the mediator with an opportunity to introduce himself/herself, to explain the concept behind VORP and to make arrangements for the main meeting. Once the arrangements are made, the victim and the offender are brought together. Chupp (1989) describes three stages during the reconciliatory meeting: “facts, feelings, and restitution.” Both participants are given the opportunity to state the facts from their point of view, then they are allowed to voice their opinions and emotions regarding the events. Once the venting of emotions is done, a verbal negotiation is worked out regarding reparations. Once a restitution contract is agreed upon, there is a period of evaluation and follow-up to determine if restitution has been made. Studies indicate that victims are generally willing to partake in such programs (Galaway, 1991; Reeves, 1989).

In terms of success, Umbreit and Coates (1992, p. 2) indicate that “high levels of client satisfaction (victims, 79%; offenders, 87%) and perceptions of justice (victims, 83%; offenders, 89%)” were attained through the mediation process. Given the potential of these programs to relieve the congestion of the formal justice system while at the same time effecting positive and acceptable resolutions, VORPs deserve attention.

Sentencing stage

Several reforms have been aimed at involving victims in the sentencing process. Across North America, Victim Impact Statements (VIS) and Victim Statements of Opinion (VSO) have been instituted (Griffiths & Verdun-Jones, 1994). These documents generally provide the presiding judge with information regarding either the objective losses or subjective harm that has been caused to the victim. Taking into account statement information, judges are presumably better able to have sentences reflect the losses of victims. In order to protect the due process rights of offenders, overt victim involvement has been avoided. Mark Umbreit (1990) concluded from a study of victim participation that, although most victims feel that they should have direct involvement in determining restitution, many felt that ultimate sentencing decisions should be left up to the judge.

As opposed to having a sentencing stage, VORPs have negotiations which result in reparation contracts between offenders and victims. This process leaves both parties satisfied with the results. Having voiced their opinions and having heard those of the other party makes the resulting “punishment” seem positive. In fact, lack of information is a major cause of dissatisfaction with the criminal justice system. A study done by Doob and Roberts (1983) indicated that when presented with complete information regarding a criminal case, victim and general public agreement with sentences increased. Reconciliation programs make people aware of extenuating circumstances, which helps to satisfy participants and observers.

Post-sentencing stage

Under a true restorative model, post-sentencing involvement would be superficial. Victims would receive reparations in some form. However, trying to incorporate aspects of restorative justice into the present system limits the forms of reparation available.

Some advocates might conclude that the institution of post-sentencing VORPs would be beneficial, but this poses certain problems. The most significant problem would be in motivating the offender to participate. The offender might feel that she or he has nothing to gain. One solution to this problem may be to include VORP participation as a prerequisite, or at least a favourable condition, for parole.

A post-sentencing concern for victims is a lack of input into decisions regarding the early release of offenders and the conditions of that release. In 1990, the National Parole Board affirmed the rights of victims:

(w)e recognize that for victims, offenders, and their respective families our decisions are of critical importance. We will therefore strive to exercise the highest degree of sensitivity and respect in our dealings with those primarily affected by our processes and decisions. (p.6)

Consistent with meeting this goal, the Board undertook to increase the sharing of information between the Board and victims. As such, they welcome victims' opinions regarding both policies and risk assessment of offenders. Under normal circumstances, however, it is the obligation of the victim to submit any information; the Board will not pursue the input of victims unless absolutely necessary. Similarly, if victims wish to attain information regarding parole decisions, they must apply for it. The provision of information varies depending on the type of information requested. Policy information is readily available. The Corrections and Conditional Release Act allows certain information regarding offenders to be provided to victims (Griffiths & Verdun-Jones, 1994). This information includes: the offender's name, the offence for which the offender was convicted, the date of commencement and length of sentence, the eligibility dates and review dates applicable to the offender for unescorted temporary absences and parole. In addition, victims may receive information regarding the location where the offender is serving the sentence, the date of any hearing and the details of any conditions attached to any form of release. Aside from these provisions and others (detailing the openness of parole hearings to victims), there have been few attempts to integrate the effective participation of victims in parole decisions.

Community Mediation

A final major program based on restorative justice principles is the use of community mediation in conflict resolution. Since the community is also affected by the incident, their participation can be beneficial. A representative from the community can help the victim and offender come to a

negotiated resolution. The community sees that the problem has been resolved and feels that justice has been served. As such, the majority of modern proposals involve the use of community mediation.

The first community mediation centre was started by Mark Yantzi and was known as the Kitchener VORP. By 1980, the program became centralized in terms of the people who took part and the goal they were trying to achieve. Dean Peachey (1989) described it as:

The adversary nature of the legal system with its emphasis on determining guilt or innocence seemed particularly unsuited for handling cases between acquaintances, where both may have contributed to a disagreement leading to an assault or property damage. By handling such conflicts through mediation it might be possible to resolve the dispute to the satisfaction of both parties, and prevent it from escalating to the point where a more serious offence might take place. (p. 20)

In 1982, the program began a slow decline due to an unfavourable ruling regarding restitution in the Ontario Court of Appeal (*R. v. Hudson*, 1982). Since that time, there has been strong revitalization of restitution within the justice system. By 1996, 26 jurisdictions across Canada had established VORP programs (Church Council on Justice and Corrections, 1996).

As an alternative to the adversarial process, community mediation in VORP programs provides more power to the participants of the conflict and allows them to come to a mutually satisfactory solution. As opposed to working against each other, the victim and the offender need to work together in order to find a solution. Once the solution is agreed upon, everybody (victim, offender and community) feels that justice has been served and that life will return to normal. The restorative criminal justice system provides a fair and adequate reaction to crime by reaffirming society's values, by instilling respect (as opposed to fear or contempt) for the law, by realizing just resolutions and by focussing on problem solving for the future rather than establishing blame for past behavior (Umbreit & Carey, 1995).

THE FUTURE OF RESTORATIVE JUSTICE IN CANADA

The John Howard Society supports and promotes the concept of restorative justice. Consistent with the goal of preventing crime by developing and implementing new policies and techniques within the criminal justice system, this new ideology offers several alternatives. The development of a Community Reconciliation Centre by the John Howard Society of Manitoba (JHSM) has been one way in which restorative justice has been implemented.

The JHSM has some unique goals. First, they strive to “provide direct Restorative services that empower persons in conflict with the law” (John Howard Society of Manitoba, 1992). In addition, they advocate for the reform of the criminal justice system toward a restorative justice model and strive to make active use of volunteers and facilitate public awareness of criminal justice. Consistent

with these goals, the JHSM was awarded government funding to implement a program known as Restorative Resolutions.

Restorative Resolutions is one of the most comprehensive restorative programs initiated across North America. The aim of Restorative Resolutions is “to provide selected offenders the opportunity to re-establish trust and acceptance with the individuals and community they have harmed” (The Church Council on Justice and Corrections, 1996, p. 5). The project takes into account the need for reparations, the need to involve victims and the community, the need to educate all participants, as well as the need to reduce the costs of the criminal justice system. Beyond these main focuses, this project tries to “build bridges between Aboriginal and Non-Aboriginal cultures” (John Howard Society of Manitoba, 1992, p. 14).

Referrals to the program originate from lawyers (either Crown or defense), judges, community corrections officers, resource groups and various other members of society (The Church Council on Justice and Corrections, 1996). Using established guidelines, the intake staff select offenders who are most likely to succeed under the framework. Techniques for selection include risk prediction scales, motivation testing interviews and a willingness by offenders to accept responsibility.

Once selected, staff determine a case plan which is designed exclusively for the offender (The Church Council on Justice and Corrections, 1996). These plans are individually determined to best meet the needs of the offender and the associated victim. Potential plans might include compensation, restitution, community service work, counselling, mediation, education, employment and crime free behaviour. To determine the case design, meetings are held weekly and involve a team approach.

Beyond offender oriented activities, the program also extends opportunities to victims (The Church Council on Justice and Corrections, 1996). These activities include participation in the form of mediation and victim impact statements, education and information provision. There is strong emphasis on involving the victim in order to make reparations and to help the rehabilitation of the offender.

The project attempts to involve the community by making use of volunteers (The Church Council on Justice and Corrections, 1996). Volunteers may be used in several areas including mediation, service delivery and community education.

The Manitoba project encourages the federal and provincial correctional agencies to look at the restorative alternative quite carefully. With a growing need for fiscal responsibility and cost effective alternatives, the restorative model represents an appealing change.

Restorative justice principles can also be seen in the Aboriginal justice movement across Canada. In essence, traditional Aboriginal justice is based on the restorative model. The goal is to facilitate restoration, rehabilitation and reintegration. Increasing numbers of Aboriginal groups are lobbying for a return to traditional justice. These reforms have gained the support of judges and politicians and

are gradually being put in effect. These movements will undoubtedly open the doors for new programs which attempt to incorporate restorative ideals.

CONCLUSION

Restorative justice is a new model for criminal justice. While some authors have criticized the model as unrealistic (Cragg, 1992), the movement is still gaining momentum. Restorative justice models emphasize the importance of holding offenders accountable for their behavior while providing victims and community members every opportunity to participate in the justice process. The John Howard Society of Alberta supports the movement toward restorative justice. There are two ways in which this can be accomplished.

First, in evaluating any new programs that are created, it is helpful for groups to use five questions developed by Howard Zehr.

- a) Do victims experience justice?
- b) Do offenders experience justice?
- c) Is the victim-offender relationship addressed?
- d) Are community concerns being taken into account?
- e) Is the future being addressed?

By using these questions, every program can be evaluated in terms of its degree of restoration. The Society should seek to incorporate these principles in all its programs.

Second, the John Howard Society of Alberta should also actively pursue the creation of restorative programs. In order to prove the success of the principles, projects similar to Restorative Resolutions need to be developed.

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