

RESTORATIVE JUSTICE FOR ADOLESCENT OFFENDERS – A WELCOME BREAKTHROUGH

Background

Since its foundation, GPV has been interested in the wellbeing of all children and young people. The attention of the organisation was drawn sharply to the welfare of children in the youth justice system after riots broke out at the Melbourne Youth Justice Facility in Parkville, Melbourne, in late 2016.

Due to damage caused at the facility, and overcrowding in other youth justice centres, the decision was made by the Victorian government to house 33 young offenders in Barwon Prison – a maximum security facility for adult male offenders. This is just one example of what children's law specialist Fleur Ward has described as 'Victoria's growing retrograde treatment of its young offenders' and a 'harmful paradigm through which Victoria's community is increasingly viewing its young offenders'.

A number of reports released in the months following, including one by the Victorian Commissioner for Children and Young People, found that conditions in Victorian youth justice centres were detrimental to the wellbeing of the young people being held there, with not enough opportunities for educational, therapeutic, and rehabilitative programs.

Restorative justice is now being proposed as a viable alternative to incarceration in some cases.

What is restorative justice?

Restorative justice is a system of criminal justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.

Restorative justice views crime as more than breaking laws – it also causes harm to people, relationships, and the community.

A just response must address that harm as well as the wrongdoing. If the parties involved are willing, the best way to do this is to help them meet to discuss any harm and how to about bring resolution. Other approaches are available if the parties are unable or unwilling to meet. Sometimes those meetings lead to transformational changes in people's lives.

There are three "big ideas" within restorative justice:

1. Repair – crime causes harm and justice repairs that harm.
2. Encounter – the best way to determine how to do this is to have the parties decide together.
3. Transformation – this can cause fundamental changes in people, relationships and communities.

Restorative justice is deeply rooted in the principle of challenging a person, or parents, or a family to change and giving them the support to effect that change. It is most successful when used to work 'with' people, rather than making decisions 'for' them. The practice can be applied to not only criminal matters, but also child protection matters such as family violence or neglect, creating an opportunity for families to address their issues together and perhaps prevent the need for more drastic interventions such as removing children from their parents. Gale Burford, a USA based expert in restorative justice says:

'Politicians, community leaders, researchers and practitioners need to work together in new ways that safeguard the values of restorative justice. States have long histories of not getting needed services to the people who need them the most. It is both somewhat ironic and a source of hope that in Australia and internationally leaders in domestic violence and sexual assault policy, practice and research are looking more positively at the potentials for RJ having now seen the negative results of years of lopsided investment to a criminal justice response.'

Restorative justice has several advantages over more traditional western philosophies around crime and punishment. The system obliges offenders to see and understand the ongoing impact their crimes have on those around them. It also benefits victims, giving them a sense of closure and a sense that their trauma has been acknowledged both by the offender and the justice system.

Relationships Australia's National Executive Officer, Alison Brook says:

'One way that restorative approaches weaves magic in communities is where indigenous people live and work in dominant white cultures that came out of colonial invasion. In Whanganui, for example, much work has been done to build trust between Maori and former European New Zealanders. Indeed, restorative practices – circle talk, broad family/tribal approaches to decision making – are embedded in many indigenous cultures, and it is the dominant white cultures that have so much to learn from the wisdom of millennia.'

Why are communities turning to restorative justice?

There is an increasing demand within communities for restorative justice. Most of this demand comes from people who know all too well that over-reliance on the legal system has limitations when it comes to trying to resolve any injustice and the subsequent fallout. Those in favour of restorative justice argue that it is effective in restoring the social functioning of offenders, victims and others affected by crimes. This system is of greater value than punitive practices when it comes to promoting the ideals of citizenship and community building.

In the long run restorative justice can transform the role of the legal system in preventing crime and strengthening the response of those at the community level who first encounter it when it does happen.

Further, restorative justice techniques, such as Family Group Conferencing, are increasingly being used to bring together the extended family and wider community in child protection matters. Where major decisions need to be made (for example in the case of whether to remove a child, or whether to move to permanent placement of a child), this allows all those who have the child's welfare at heart to become involved in the decision-making process.

Restorative justice communities are being established around the world

In recent decades, conferencing has increasingly been used to resolve conflicts around the world. A community conferencing centre was opened in Baltimore, USA nearly 20 years ago. In the years since, the centre has more than halved recidivism amongst young offenders.

A number of towns and cities around the world have now declared themselves to be restorative. Hull, Leeds, Halifax and Whanganui (NZ) are well down the track of creating communities that interact restoratively in many ways.

Others, such as Canberra and Newcastle in Australia are still at early stages of working out what a restorative community may look like for them. This will be a long process, as according to Alison Brook,

'creating systemic approaches that are radically different is hard and many feel threatened by empowering people to make decisions for themselves and their children.'

In Australia, conferencing was trialled for adults in Queensland as early as 1992. Group conferencing is a popular pre-sentencing option in the Children's Court of Victoria, through which there were 300 youth justice conferences in 2016. The model has also been adopted by the Koori Court, and is also being rolled out for use in some family violence cases.

Restorative justice and group conferencing centres exist around Australia. Youth conferencing is available in all states and territories, but adult conferencing is available only in NSW and SA. Victoria and the ACT are the only jurisdictions in Australia that do not have the capacity for 'Victim-Offender Mediation' (described below).

The most noteworthy use of restorative justice in Victoria in recent years was in the aftermath of the 2016 Moomba riots. Thirty-four young men were charged with a variety of offences after the riots, including 'affray', 'riotous behaviour', and 'theft'. Only eight of these young men qualified for group conferencing – their offence had to be at the low-end of the scale of severity, they had to have had minimal contact with police prior to the riots, they had to have admitted their guilt in court, and had to consent to the group conferencing process.

How does it work?

In practice, restorative justice is generally carried out by means of face-to-face encounters, often mediated by a neutral party. The parties involved in the case are invited to share their experiences of how the crime that has been committed has affected them, both in the short and long terms. It is an opportunity for the offender to understand the effect their behaviour has on others, and for those affected by the events to have some say in what needs to occur to repair the situation. There are various forms that these sessions might take:

- 'Victim-Offender Mediation' – A one-on-one session between a victim and an offender, these meetings are sometimes conducted behind bars as part of an offender's rehabilitation before parole.
- 'Family Group Conferencing' – Allows for participation by a larger group, such as the friends and family of the main parties. This form of mediation is most commonly used in cases involving juvenile offenders, and can be found in the New South Wales legislation, *Young Offenders Act* (1997).
- 'Group Conferencing', also known as 'Restorative Conferencing' or 'Restorative Circles' – These are large group sessions that may involve not only those who would be involved in a Family Group Conference, but also the police, legal practitioners, community leaders and members of the wider community who have either been affected by the crime(s) committed or are to be involved in the process of healing and repair.

Regardless of the number of participants, to be effective a restorative justice mediation or conference needs to be facilitated in such a way that all participants feel able to be heard and, more importantly, are able to feel safe. This is particularly important in the case of the victims of crime – their participation in group conferencing is strictly voluntary.

'It's important that everyone feels ready for what will inevitably be a time of raw emotion,' says Kate Taylor of CatholicCare Sandhurst, an expert in facilitating group conferences. 'It's certainly not for everyone. But when people are open to it, it can be a really transformative experience.'

In the case of the Moomba riots, the process began only after approval from Children's Court President, Judge Amanda Chambers. Each of the young men who qualified for group conferencing then had several individual meetings with the facilitators of the conference, ahead of the main group conference session attended by approximately 40 people. Participants in the conference included the young offenders (eight boys and young men aged between the ages of 16 and 18), their parents, police, community leaders, lawyers, and victims.

At the conference, the boys were asked to tell their side of the story – how and why they had come to be at Moomba that night, and how they had become involved in the violence that followed. Then the victims told about their experiences – the physical and mental scars they carried from the night.

Amongst the conference participants was a risk and emergency management consultant hired by the Moomba organisers, who spoke about the impact the riots had had on the reputation of the Moomba festival, and about the businesses who had lost money as a result of lower-than-anticipated crowds in the days following the riot. Leaders of the ethnic communities to which the boys belonged spoke about the negative stereotypes which had been re-enforced by the boys' and young men's actions.

The boys and young men involved were reported to have been stunned by these accounts, as it had not occurred to them that their individual actions might do so much damage to so many people.

Police youth resource officer Aaron Herriot, who was involved in arranging the group conference, described it as *'something that held the young people accountable for what they had done, that wouldn't be seen as a soft option but to [sic] also provide them with insight into how it had affected the community, their own families, police and everyone that was there on the night'*.

For those who think that a group conference is a soft option, Restorative Justice Association President David Moore has this to say:

'Nothing has the impact of sitting directly opposite someone who hasn't slept for six weeks since you bashed open their garage door and threatened to harm their family unless they handed over the keys to the family Audi. Especially if you're also sitting next to your mother and your brother and other people affected.'

Alison Brook agrees:

'The high challenge / high support model does not let anyone off the hook, but in a compassionate but rigorous way provides a path forward that builds on participants' strengths, and allows them to change the direction of their lives and relationships in a way that maintains their dignity, is not punitive and creates new possibilities in people's lives that may never have been foreseen.'

Following the group session, written plans were drawn up, with a checklist of conditions and requirements that had to be followed up by the boys and young men. Among these were items such as going back to school and joining productive extra-curricular activities. The boys and young men then had to appear before Judge Chambers, who was pleased with the success of the process to give the young offenders a greater respect for the justice system, and for the community at large. She, too, sees that restorative justice has a far greater impact on young offenders than simply sending them into juvenile detention.

'Unless we put things in place to ensure they're not simply returning to a situation that doesn't support them,' said Judge Chambers, 'that period of detention potentially will have only confined the young person ... and no more.'

In group conferencing, apologies and expressions of forgiveness can often emerge but should not be forced. There have been some reports worldwide of cases where the perceived need to restore family or community harmony has been considered to outweigh the victim's personal feelings, leading to an expectation that the victim will make a statement of forgiveness (whether they feel it or not). Examples of this can be found in complex cases that involve deeply held family ties, such as incidences of sexual assault where the offender was previously known to the victim.

This is particularly true in cultures such as that in Fiji, where notions of family and community harmony do not match those of the West. The family may not necessarily side with the victim or the process itself could cause rifts in within the clan. Furthermore, the process as a whole, places much emphasis on the victim forgiving the offender, as opposed to the offender making amends with the victim.¹

Outcomes

The majority of studies into the success of restorative justice in restoring relationships and preventing recidivism are overwhelmingly positive; however, there are some isolated examples where the process has encountered difficulties.

¹ Whitehead, John and Roffee, James. (Mar 2016). 'Child sexual abuse in Fiji: Authority, risk factors and responses,' *Current Issues in Criminal Justice*, 27 (3): pp. 323–34.

Policy makers and researchers still have differing views on the use of group conferencing. One important question asked about restorative justice processes is: how is it possible to balance empowering and regulatory processes in a decision-making effort that safeguards the rights of the individuals, especially to safety, and allows for solutions to emerge from the affected parties themselves?

Judge Chambers says she has seen some extraordinary cases of reconciliation and transformation emerge from the group conferencing process.

'Group conferencing is a highly effective process aimed at increasing the young person's understanding of the effect of their offending and to address the causes underpinning their behaviour, and in doing so, preventing a trajectory of lifelong offending.'

In the Moomba example, the positive outcomes were outstanding. It has been reported that the young offenders were visibly shaken by the realisation of the far-reaching effects of their actions on the night. Participants in the group conference related afterwards that the verbal apologies offered, and the written apologies which followed, appeared to be heartfelt.

Community Conferencing Manager of the Neighbourhood Justice Centre in Collingwood, Russell Jeffrey, who facilitated the Moomba conference, said later that the power of the process lies in the fact that:

'People come into conference very angry, frustrated. That anger dissipates as they understand what's happened and they gain a shared understanding of what's happened.'

It is not just relationships between community members that can be repaired by group conferencing. The effects of crime, particularly youth crime, also have a significant impact of the dynamic within the offender's family.

Russell Jeffrey said of the parents in the Moomba case, *'They're cross at their children, frustrated, but also by association with their child, they feel that shame, too. They feel that they're being judged as a parent.'*

One parent had expressed disgust at his eldest son's actions at Moomba. He felt that they had brought shame upon his family, and his community. The man was now worried about what influence the boy would have on his younger siblings. At the end of the group conference he stood and said, *'I forgive my son now, but I won't forget what had happened and I want to work with him to make this better.'*

As at the beginning of March 2018, not one of the boys involved in the Moomba group conference had re-offended.

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Sources:

- Fleur Ward, 'The Criminalisation Of Adolescence In Victoria', Address given at the Safer Communities, Safer Relationships Conference, Prato, October 2017
- Emily Woods, 'The young Moomba rioters: Restoring faith in justice,' (*The Age*) 12 May 2017
<https://www.theage.com.au/national/victoria/the-young-moomba-rioters-restoring-faith-in-justice-20170510-gw1zs0.html>
- Karin Derkley, 'Restoring the damage,' (*Law Institute Journal*) 1 March 2018
<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/March-2018/Restoring-the-damage>
- Gale Buford & Paul Ad, 'Restorative Justice, Responsive Regulation and Social Work,' *The Journal of Sociology & Social Welfare*, 2004
<https://scholarworks.wmich.edu/jssw/vol31/iss1/3>
- Centre for Justice and Reconciliation, online tutorial: 'What is Restorative Justice?'
<http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.ZRILkgPs.dpbs>
- Australian Institute of Criminology
<https://aic.gov.au/publications/rpp/rpp127/restorative-justice-australia> https://en.wikipedia.org/wiki/Restorative_justice