

**Ten Years On, the ‘Three Circle’ model of Restorative & Transformative
Justice: a tool to combat victimization and recidivism**

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Abstract:

This paper had its genesis ten years ago in the authors’ development of a communitarian ‘three circle’ model of restorative and transformative justice for a pilot restorative justice study used with serious and repeat adult offenders appearing in the Magistrates’ Courts in Western Australia. The model was designed in part to place their crimes within a context, something that most often does not occur within the mainstream adversarial criminal justice system in Australia. Although primarily the model was designed to provide victims of crime with the best outcome and offenders with the opportunity to provide apology and restitution, as well as take responsibility for their actions.

The three circles, each including two facilitators, are:

Circle 1: consists of the perpetrator who has pleaded guilty to a specified criminal act together with his/her family and/or friends;

Circle 2: consists of the victim(s) of the crime together with their family and/or friends.

Circle 3: consists of a combination of the first two circles, tasked to seek if possible, a mutually agreeable resolution that culminates in a report to present to the Magistrate in court to use in mitigation of sentencing.

Importantly, although the 30-month study had socially and economically significant results, ten years after its completion there is still no restorative justice program in the adult courts in Western Australia. Because of this, the authors also set out to question the state government’s motivation in largely ignoring this successful process.

Key Words Restorative and transformative justice – offender neutralization – victimization – recidivism

Introduction

In 2000 when the idea for the pilot study originated, it was clear that there was no restorative justice process in place within the adult criminal justice system in Western Australia. This meant that there was no operational restorative justice service to research. With this in mind, the original concept of the communitarian restorative and transformative justice model came about from collaboration between the authors, Dr Dot Goulding and Dr Brian Steels. From this collaboration the aforementioned model was developed into a manageable two and a half year project, running from the beginning of May 2000 to its completion at the end of October 2002, exactly ten years ago at the time of writing. For the purpose of this paper the authors have defined restorative justice as:

‘An approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm’ (Cormier 2002).

Broadly speaking, restorative justice is a process that involves active victim participation, requires offenders to take responsibility for the harm they have caused and to make apology and amends to their victims. One of the fundamental principles of restorative justice is a will to restore ‘the balance between the victim, the offender and the community’ (Coyle 2001). Keeping in mind that, ‘in many respects the victim is badly served by our current adversarial system of criminal justice’ (Coyle 2001). Restorative justice also seeks to bring all parties, victims, offenders and communities of interest together tasked to achieve some form of reconciliation through a mutually acceptable outcome.

It is also important to note from the outset that restorative justice constitutes a move from head to heart. That is, the restorative process is emotional and compassionate in nature and does not fit well within a purely bureaucratic frame. Restorative justice processes involve the notion of re-integrative shaming rather than disintegrative or stigmatic shaming. In essence, this is shaming of the act rather than the actor. Braithwaite (1989) describes the notion of re-integrative shaming in this way:

‘Re-integrative shaming means that expressions of community disapproval, which may range from mild rebuke to degradation ceremonies, are followed by gestures of reacceptance into the community of law-abiding citizens... disintegrative shaming (stigmatization), in contrast, divides the community by creating a class of outcasts’.

Braithwaite (1989) and Tyler (1990, 2006) also contend that re-integrative shaming is most effective when used in the presence of significant others – relatives and/or close friends. Thus it was recognized from the outset that ‘the restorative justice process could only be effective where there was some form of emotional or social connection between the offender and others present within the restorative justice conference’ (Goulding & Steels 2006). Indeed, Social relationships are seen as central to successful rehabilitation of offenders. Maruna and Immarigeon (2004) note that “the major correlates of desistance from crime, identified in research, involve ongoing, interactive relationships that can take up most of an individual’s waking

life”. Farrall, (1995), too argues that, generally speaking, desistance to crime ‘occurs away from the criminal justice system’.

Background to the study

The authors’ background as prison reformers as well as their general frustration with a failed criminal justice system that did not meet the needs of victims, offenders or community, led them to eventually develop their own robust model of restorative and transformative justice. The mainstream adversarial system had failed to reduce victimization and high levels of victim dissatisfaction prevailed. Victims did not feel well represented within the court system and were often left fearful for their safety and general wellbeing. In addition, offenders were being imprisoned more often and for longer periods of time yet fear of crime was ever prevalent throughout the West Australian community despite Western Australia having the highest incarceration rate of all Australian states at around 220 per 100,000 of the population (Australian Bureau of Statistics: 4517.0, 2002). Indeed, ten years on and Western Australia still boasts the highest incarceration rate of all Australian states and that rate has increased phenomenally by around 50 per cent now standing at 322 per 100,000 of the population (Australian Bureau of Statistics: 4517.0, 2012). One of the major features of the Australian criminal justice system has been the extraordinary growth in prison numbers. The Australian Institute of Criminology monitors prison numbers in Australia and notes that the average prison population in Australia has grown by 5 per cent *each* year between 1984 and 2004 (Australian Institute of Criminology 2007). In summary, it would be fair to say that the Western Australian criminal justice system in its entirety, from the police service through the courts to the prison system and beyond has failed miserably to reduce crime and its related impacts.

In support of the notion that increased levels of imprisonment do not necessarily reduce crime rates, Coyle (2001:6) argues that:

‘One should be very cautious of any suggestions that an increased use of imprisonment is an efficient form of crime control. There is little evidence from anywhere in the world that there is any relationship between high rates of imprisonment and low rates of crime. Indeed the contrary is often the case. High rates of imprisonment are frequently an indicator of the breakdown of community values’.

Although the prison authorities provided a variety of rehabilitative programs within West Australian prisons, these failed to effectively challenge offending behavior, as the recidivism rate continuously remained high. It was the ineffectiveness of prevailing rehabilitation programs and the ‘revolving door’ syndrome that concerned the authors. The criminal justice system appeared to be failing in its core functions – those of deterrence, rehabilitation and, ultimately, community safety. It seemed to the authors that the so-called rehabilitative practices in place within the prison system were treating the offender ‘as an object to be manipulated rather than as a responsible moral agent’ (Duff and Garland 1994:10). In short, the criminal justice system, particularly the increasing use of imprisonment as a tool of first resort, appeared to be reproducing criminality and, consequently, more victims including secondary victims amongst offenders’ families. Foucault (1977:266) puts it this way:

‘The prison cannot fail to produce delinquents. It does so by the very type of existence that it imposes on its inmates: whether they are isolated in cells or whether they are given useless work... The prison makes possible, even encourages, the organization of a milieu of delinquents, loyal to one another,

hierarchized, ready to aid and abet any future criminal act... Lastly, the prison indirectly produces delinquents by throwing the inmate's family into destitution'.

Against this background, the authors began to search for alternatives that might afford meaningful inclusion of both victims' and offenders' needs. Restorative Justice processes provided a positive starting point, appearing to be one possible part of the solution wherein both the interests of the victim and the opportunity for the offender to take responsibility for their actions could be accommodated.

The goal was to find or develop a model that encompassed the ideals of both restorative and therapeutic processes and outcomes in order to provide an opportunity for victims and offenders to feel satisfied. The model would clearly need to challenge offending behavioral patterns and encourage responsibility taking in offenders. Sykes and Matza (1957) refer to offenders' levels of denial of responsibility for their criminal actions as 'neutralizations'. In their work with juvenile offenders, Sykes and Matza (1957) outlined several strategies whereby offenders deny responsibility for their crimes, victimization, injury, as well as claiming condemnation of their condemners and an appeal to higher loyalties.

Subsequently, the authors, together with some like-minded people formed a community organization – Restorative Justice Western Australia (RJWA), a grass roots community group of people from all walks of life, including church organizations, victims' groups, concerned individuals and prison reform groups. RJWA became the conduit for regular discussions on the various RJ models and ways in which restorative processes could be introduced into the criminal justice system in Western Australia. The authors argued consistently for a holistic communitarian model, citing the many obvious flaws of the bureaucratic pseudo restorative process at play in the juvenile justice system. The 'Juvenile Justice Team' process included the presence of uniformed members of the criminal justice system – police and juvenile justice officers. It rarely included the presence of victims and was weighted in favor first time offenders, thus excluding repeat offenders who, arguably, caused more harm in the community than their 'first time' counterparts. Ten years on, the authors continue to contend that repeat offenders generally produce more victims and so are in need of a process that might serve to reduce their offending behavior patterns. In this way, victims of repeat offenders are discriminated against as they are excluded from participating in the pseudo restorative justice process used by the Juvenile Justice teams.

Within a few years RJWA had run its course and the Institute for Restorative Justice and Penal Reform (IRJPR), a more formalized organization, was established. IRJPR continued to provide support to the authors through ongoing discussions, keeping up with international trends and the sharing of knowledge and ideas. IRJPR members were in general agreement that a community-based model of Restorative Justice would only gain government, judicial and community approval if it was thoroughly researched, evaluated and found to be beneficial to the broader community. With this in mind, the authors visited New Zealand to examine several established restorative justice programs. These included the police run 'Project Turnaround' in Timaru, South Island and a community run model in Auckland. They also met with key restorative justice academics at the Victoria University of Wellington as well as the then Under Secretary for Justice, New Zealand. Finally, they approached key academics at Murdoch University School of Law and entered into discussions to formulate a restorative justice research proposal.

Community consultation: setting up a Restorative & Transformative Justice service in the courts

Several key people and organizations assisted the authors in the progression of the Restorative & Transformative Justice (R&TJ) model from an idea to a practical service in the courts. These were: the then Director of Community Corrections, David Daly; the Deputy & Chief Stipendiary Magistrates from Central Law Courts, Perth; two Magistrates from Fremantle Courts; Police Prosecutions Branch (Fremantle & Perth); duty lawyers, Aboriginal Legal services; Legal Aid; two local Domestic Violence groups, church organizations, Heads of Churches committee; Victim Support Services (DOJ). The community consultation process was both complex and lengthy as various individuals, groups and government departments sought to find safeguards for their particular interest groups and to influence the direction of the development of the model and which crimes it should target. Also, the proposed communitarian R&TJ model was the first of its kind in Australia to target serious and repeat adult offenders through a radically different process than that already established within the mainstream court system.

Prior to commencement in the courts, information sessions about the pilot study were provided to several interested groups. Police prosecutions displayed a strong degree of cynicism towards the model, arguing that offenders would see the process as a soft option rather than a pathway to a law-abiding lifestyle. Duty lawyers and lawyers already engaged to represent defendants as well as Legal Aid and Aboriginal Legal service lawyers opted to use the service. Initially, Victim Support Services (VSS) became involved as liaison between the restorative justice team and victims. The process however, was cumbersome and never led to a successful completion or even a successful victim contact within the court specified timeframe (usually 21 days). Subsequently, under directions from the Chief Stipendiary Magistrate, the restorative justice team approached victims directly and the vast majority of cases were then completed within the allotted timeframe.

It was obvious, throughout the life of the study that bureaucratic tensions existed particularly when VSS was excluded from the process. The then Department of Justice (DOJ) hierarchy opined that the restorative justice team had no right to deal directly with victims who were viewed to be 'owned' by VSS. The authors contend that this was a major contributing factor to the department's subsequent decision not to adopt the R&TJ model in its communitarian form, notwithstanding the study's socially significant results. King and Ford (2006) also describe the lack of support and hostile attitude from the DOJ hierarchy to the Geraldton Alternative Sentencing Regime (GASR) pilot program wherein they 'continued to struggle to gain resources and recognition'.

Domestic violence groups expressed real concerns regarding the use of the communitarian R&TJ model for assault cases involving domestic abuse. Because of these concerns the authors entered into extensive discussions with the groups. Their concerns were centered on the very unequal power relationships at play in the area of domestic and family violence. On the one hand, the domestic violence support groups were concerned that victims would be coerced into participation in the restorative process by their abusive partners, yet on the other hand, the authors did not want to deny domestic violence victims the right to participate if they elected to do so. The authors described the ways in which, unlike the mainstream court process, the R&TJ process was able to identify the often-serial nature of domestic violence offenders even though they may be presenting at court as first time offenders. It was suggested

that first time offenders facing the mainstream court process could easily argue that the violence was out of character, an isolated incident. In these cases the offender was unlikely to be ordered to undergo any form of anger management or alternative to violence treatment. Whereas the restorative process, in readily identifying violent behavioral patterns, meant that the sentencing magistrate was more likely to order offenders to undergo some form of program or treatment to address the violent behavior. In the event, agreement was reached and safeguards were put in place. Assault cases involving domestic violence were allowed to proceed through the R&TJ process with domestic violence support groups providing support for victims. Additionally, a forty-eight hour cooling off period was established for domestic violence victims electing to participate in the restorative process. Of the referrals to the study, seven cases involved domestic violence assaults and all of these resulted in mutually agreeable resolutions.

In the first instance the authors had approached the magistrates presiding in the Fremantle Court of Petty Sessions. This became the first court to refer a case to the restorative & transformative justice process. The authors then met with the Chief & Deputy Chief Stipendiary Magistrates in Central Law Courts, Perth. The Deputy & Chief Stipendiary Magistrates elected to establish the pilot study in Court 37 at Central Law Courts. This was the court that both aforementioned magistrates presided over. In Court 37 the authors were instructed where to position themselves and how to act within the formal court process. Both magistrates chose to refer cases to the 'restorative justice team' and, following their example, duty lawyers also referred cases. Whereas in Fremantle courts the authors were expected to find their own cases and to formally ask to approach the bench and describe why such cases were suitable for referral to the R&TJ process.

Developing the model

As previously mentioned, there was no wholly restorative justice process in use in Western Australia so it was clear that the model had to be developed and the subsequent R&TJ service set up through the authors' extensive consultation with statutory bodies such as the courts, the police and interested community groups. It also became clear that the authors would have to provide the service themselves. In addition, they would have to collect all data for the study. With hindsight, the authors' working as service providers as well as collectors of data, was a major positive in terms of tweaking and molding the model at grass roots. Such first hand experience of delivering the service provided them with an in depth knowledge of the intended and unintended consequences of the process as and when they occurred. This first hand experience allowed the authors to understand that a 'one size fits all', proscriptive approach to restorative processes would not function effectively and that there was a constant need for flexibility of approach, although ensuring that the underpinning ethos of restorative justice was held sacrosanct.

In the event, and in collaboration with Community Corrections (DoJWA) Director, David Daly (Industry Partner), and Guy Hall from Murdoch University's Law School, a successful Linkage grant application from the Australian Research Council (ARC), together with the then Department of Justice, Western Australia as Industry Partner ensured that the study would go ahead. The study was funded for 30 months. It was agreed that the proposed model had to take account of a combination of practices that supported victims and their support networks to participate in a process where they were able to hear apology, seek reparation in a safe and secure

environment and provide or withhold any degree of forgiveness. In addition, the model had to provide offenders the opportunity to take responsibility for their actions, provide apology and reparation to their victims, to challenge their offending behavior and, finally to be able to successfully reintegrate into the community as law abiding citizens.

The proposed three circle model was developed from taking account of a combination of international practices mainly originating from the Indigenous peoples of New Zealand and Canada and adapting these to suit the urban Western Australian situation. It is important to note here that the study took place in the metropolitan area of Perth, the capital of Western Australia. This was for both economic and logistical reasons. Western Australia is a vast geographic expanse with the majority of its population residing in and around the capital city. It is also important to note that since the study was completed, the authors have worked on the cultural flexibility of the model to include healing circles within regional and remote Indigenous communities.

Fair process was viewed as crucial to the legitimacy of the model of restorative justice to be used. Tyler (1990) in his early text *Why People Obey the Law* indicated that when a person feels that they have been treated unfairly this disrupts 'the relationship of legitimacy to compliance'. In short, if a person is dealt with in what is perceived as an unjust or unfair manner the result is likely to be non-compliance and/or resistance. Consequently, the authors were aware that not only had the process to be fair but it had to be seen to be fair and just if it was to have a positive impact on all concerned.

It was decided that a communitarian or 'bottom up' model was best suited to the study. The model should culminate in a face-to-face meeting between the offender group and the victim group in a community group conference setting (CGC) to try and repair the damage caused by the offender and to attempt to reach a mutually agreeable resolution. This model views crime as a relational act that results in a fracturing of relationships within a community, which itself holds the key to healing the effects of crime. The model always involves using two independent facilitators (one male; one female), with the primary participants being victims, offenders and their support networks rather than members of statutory bodies such as police and courts. In this model, offenders who admitted guilt in the courts were able to be referred to the restorative justice team (the authors) and thus become part of the pilot study. The selected process included a holistic problem-solving approach with offenders as well as a community group conference involving victims and their supports. In essence the model was a hybrid that utilized the community group conference process in three separate circles (offenders and supports; victims and their supports; face-to-face meeting between the two groups) tasked to seek a mutually agreed resolution and provide a comprehensive report to the court. The report could then be used by the magistrate to view the criminal act within a context and in mitigation of sentencing. In this way the CGC model was both restorative and transformative in nature and satisfied the legitimacy of the mainstream court system. In this study the offender was always returned to court for sentencing.

This particular study focused the research on fairly serious and repeat criminal offenders who might be facing, or on the cusp of, custodial sentences within the Court of Petty Sessions. The Court of Petty Sessions or Magistrates' Courts can hand down prison sentences of up to 3 years. Using serious and repeat offenders was a deliberate strategy to pre-empt any challenge that the restorative process could only work with victims and offenders of petty crime. The charges specific to the study were

theft/stealing; stealing as a clerk or servant; burglary including aggravated burglary; fraud; assault including common assault and assault occasioning bodily harm.

The authors set out to test both the effectiveness of this model in gauging victim perceptions of fairness and justice and personal security as well as challenging criminal lifestyle in serious and repeat offenders. It is important to stress that the model tested in the study was court sanctioned and not diversionary and that all offenders were returned to court to be sentenced. It was felt that first time and non-serious offenders could be more effectively dealt with through a court diversion program. Additionally, the authors were of the opinion that a single community group conference would not necessarily be an effective deterrent to further criminal activity, especially amongst repeat and serious offenders who had already established criminal behavior patterns. Although it was thought that the CGC would effectively personalize criminal actions and encourage apology and feelings of remorse in offenders while also affording meaningful engagement of victims, it was felt that a stronger engagement with offenders and their support networks was necessary to increase the likelihood of turning around the lives of those already entrenched in criminal lifestyles.

To this end the following model of restorative and transformative justice was used throughout the study. Although it is necessary to reiterate that the model evolved somewhat throughout the thirty months of the project's life. The model has proven to be flexible and is able to be adapted to diverse cultural and social applications. In this way, the R&TJ model came into being and was tested in the local courts with the approval of relevant statutory bodies and community organizations. To the authors' knowledge, no other similar communitarian restorative justice model had, at that time, used a transformative component as part of its approach to healing the effects of crime in communities. The authors continue to argue, ten years on, that using the combination of restorative and transformative processes effectively encourages offenders to challenge their own 'neutralizations' and encourage responsibility taking for their actions, providing them with an opportunity to accept both process and outcomes as being fair and just.

THE COMMUNITY GROUP CONFERENCE MODEL

The CGC process is always voluntary for all parties. That is the ideal. However, the authors noted that throughout the study the presiding magistrates sometimes applied a level of coercion in order to 'encourage' offenders to participate. This was usually by thinly veiled threats of impending imprisonment. No coercion was used on victims. It was imperative that victim participation was always absolutely voluntary.

The model is designed to provide victims to be able to receive information directly from the court regarding the offender's responsibility taking for the crime and its impact. This is done through a guilty plea. Also, the model provides assistance to the victim and their supportive others in preparation for a face-to-face meeting with the offender and their supportive others. Victims were also given the opportunity to participate at a level they felt comfortable with, which meant that all cases did not proceed as far as the CGC stage. In one case a surrogate victim was used because the *actual* victim was geographically distant and requested a specific representative from the organization that had been harmed by the offender.

For offenders the model involves, upon a guilty plea, the opportunity to meet their victims within a CGC setting provided they are willing to involve their support networks of family and/or friends. The authors would not work with offenders in

isolation. The rationale for this is that the circle of offender and supportive others is designed to identify underlying issues that may have led to the offence and/or offending lifestyles. This process was named the Mutually Agreed Plan (MAP). The MAP process was modified to sit comfortably within the Restorative Justice process, ensuring that the transformative component was included. In this way the authors were able to claim a more robust engagement with offenders than could be claimed in previous models. Thus, the model became known as the communitarian model of restorative and transformative justice.

The notion of MAPs is only initiated when the offender agrees to proceed to a CGC with the victim and their supports. Not all cases in the study completed both the restorative and transformative stages (MAP plus CGC). However, those offenders who engaged with their support networks in the MAP process actually engaged with the re-integrative shaming process that underpins the restorative ethos. Through the MAP process offenders were able to comprehend the harmful manner in which their offending behavior had impacted upon their family and/or friends. This, in turn, provided the victim with an indication that the offender was attempting to take responsibility and move towards a more positive lifestyle. The MAP when applied to offenders, also provided the court with a report that placed the crime within a context by identifying underlying issues that may have led to the offence and/or criminal lifestyles. The MAP also served to provide the offender with a realistic future plan that may involve therapeutic programs and other community supports based upon personal strengths and ongoing support from others.

CGC: Chronology of events

1. In court the offender enters a guilty plea
2. If offender agrees to participate in the Restorative and Transformative Justice (R&TJ) process the magistrate or judge suspends sentencing during a 'stand down' of court proceedings. The MAP process is discussed and arrangements made to meet in the first circle setting (offender plus family and/or friends). This meeting usually takes place in the offender's home or the home of one of the supportive others. During this meeting (which may be one of several such meetings) the offender and supports will identify any underlying issues and work toward their future plan.
3. Once the offender has agreed to participate together with their support networks then the victim is contacted. This is to ensure that victims are not further disadvantaged if they agree to participate and then the offender declines. Victims are always contacted in person or, failing that, via telephone – never by letter as the authors considered this to be too impersonal. Victims are then informed that the case has gone to court and that the offender has pleaded guilty and is engaged in challenging his/her criminal lifestyle, preparing to meet with them face-to-face if they so desire. The R&TJ process is explained to them and they are invited to participate. The victim is then told that a CGC will not proceed without them but that they can become involved at a level that is acceptable to them.
4. If the victim does not wish to participate the offender is informed and only the transformative component (MAP) or first circle of offender and support network takes place. A summary of the offender's MAP is then presented in court. This report describes the underlying issues surrounding the crime and provides a snapshot of the offender's lifestyle.

5. If the victim volunteers to participate fully in the process the second circle of victim plus supportive others takes place in a place that the victim feels comfortable – usually their home. This second circle consists of information about the process, answering any concerns and preparation for a face-to-face meeting at a CGC. Importantly, the victim can choose not to participate further at any stage of the process.
6. The CGC or third circle consists of the victim and supports and the offender and supports. This usually takes place at a time and place of the victim group's choice. There are always two facilitators present (preferably one male and one female). They explain how the CGC will work and set the two ground rules. These are: 1. Each person must be allowed to speak undisturbed; 2. Each person must speak the truth. The facilitators' duties are as follows: one facilitates the process while the other closely monitors proceedings and takes notes. The order of speaking is again the choice of the victim. When everyone has spoken the two groups separate (each with a facilitator) to discuss what each group thinks should occur. They then regroup and offer their opinions regarding what should happen. A full report from the CGC is written up for the court. This report will ascertain whether or not the groups have reached a mutually agreeable resolution. Both the MAP report and the CGC report will be handed to the magistrate or judge in court by one of the facilitators immediately prior to sentencing.

The strength of the R&TJ model in transforming criminal lifestyles lies in the way the authors dealt with offenders. Because they refused to deal with offenders in isolation but always in the presence of family and/or close friends, they were able to identify the underlying issues that ultimately led to criminal behavior patterns. Offenders were, in the presence of those who knew them best, unable to get away with lies and modifying events. This, in turn, served to identify underlying issues such as drug and/or alcohol abuse; social isolation, poverty and homelessness; addictive gambling behaviors; poor anger management skills.

VICTIM PARTICIPATION

Restorative justice... seeks to restore the victim's security, self-respect, dignity and, most importantly, sense of control. And it seeks to restore responsibility to offenders for their offending and its consequences, to restore a sense of control to the to make amends for what they have done and to restore a belief in them that the process and outcomes were fair and just (Morris, 2002).

As previously mentioned, victims were at all times given the opportunity to participate in the process at a level they felt comfortable with. In this study more than 50 per cent of victims requested that the team explain the R&TJ process and this group also offered information to the researchers on how the crime had impacted on their lives. Most of these victims also wanted to know about the effect of the process upon the offenders and whether or not the offenders were accepting responsibility and taking positive steps towards law abiding lifestyles.

Throughout the study, the restorative justice team met with the victims and their support networks (usually at the victims' homes) on average twice prior to any community group conference or sentencing of the offender in court. Not all victims

requested to meet their offenders face-to-face although the study had a full victim/offender participation rate of 34 per cent of total referrals.

It is important to note here that in the study the crime known as 'stealing as a clerk or servant' featured as a substantial percentage of magistrates' referrals. Because of its level of seriousness on the scale of stealing offences 'stealing as a clerk or servant' often attracted a custodial sentence for a first offence. Consequently, this led to a substantial number of commercial and corporate bodies to be involved as victims. Several commercial victims became fully involved in the process but most expressed an interest in the process and requested information but declined to participate further.

Findings from the 2002 study

During the two years that the pilot study took place in the courts (6 months was taken up with project set up, finalizing data analysis and writing up final report) the authors received 135 offender referrals. One hundred and eighteen offenders engaged to some degree in the process; 98 completed the first circle (MAP) or transformative process and 50 offenders completed community group conference (CGC) with their victims or an approved surrogate victim. *Significantly, 48 of the 50 CGCs resulted in mutually agreeable resolutions between victim and offender groups.*

The gender breakdown of offender participants was as follows: 44 women, 91 men. Forty-one of the female offenders completed the first circle (MAP) and 20 of these also completed community group conferences. Of the 91 male offender participants, 77 completed the first circle (MAP) and 30 of these also completed community group conferences. Eighty-three of the 135 participants were referred to the study by magistrates, 36 by duty lawyers, seven by the drug court, 6 by Aboriginal Legal Services and three self-referred. The CGCs were held in the following locations: family home of the victim (in some cases also the offender's home), one was held in the home of one of the facilitators, church offices, community halls, business premises (of corporate and commercial victims), parks, cafes. In addition, one CGC was held in a juvenile detention center because the victim was in custody. Another CGC was held in an adult correctional facility because the offender could not meet bail conditions.

Sixty-three of the 135 offenders referred to the study were repeat offenders. Around 40 per cent of the first time offenders were facing charges serious enough to attract a custodial sentence. Because of economic and time factors the authors were unable to monitor the progress or otherwise of offender participants. Indeed, this was beyond the scope of the study – with hindsight, a major omission in terms of gauging recidivism rates for this group. However, other studies demonstrate that restorative justice results in a reduction of offending behavior of around 7 per cent (Latimer, Dowden & Muise, 2001), but more critically, if combined with effective therapeutic interventions, restorative justice has been shown to have a combined 31 per cent reduction in offending (Bonta, Jesseman, Ruge and Cormier, 2006).

Data from the study indicated that victims had a greatly increased satisfaction rate with the R&TJ process than with the mainstream adversarial court process that largely ignored them. This was from a 15 per cent satisfaction rate with the control group of victims whose cases proceeded through the normal court system to an almost 90 per cent satisfaction rate with the victims who participated fully in the R&TJ process (Beven et al, 2005). Victims expressed satisfaction in being able to tell the offender how their offending behavior had impacted on their lives and, importantly,

they were able to regain feelings of security and safety, often in the knowledge that the crime committed against them was most often opportunistic rather than targeted.

The findings of the study clearly demonstrated that the R&TJ model was particularly effective in reducing offenders' neutralization and increasing their levels of responsibility taking. Professor John Braithwaite (personal conversation with the researchers 2002), on examining the study and its findings, said that the R&TJ model was robust and indicated that the therapeutic or transformative component (the MAP) gave the model strength in that it afforded 'two bites of the re-integrative shaming cherry' thus significantly diminishing the likelihood of offenders being able to neutralize their criminal behavior and encouraging them to accept responsibility for their actions.

A bureaucratic non-response: the authors' conclusions

By any measure, the R&TJ study produced socially significant and positive results. Heightened victim satisfaction rates, a 34 per cent victim participation rate, offenders addressing underlying issues that led them to criminal behaviors and lifestyles. Indeed, the Chief Stipendiary Magistrate (2002) whose court oversaw 85 per cent of the R&TJ cases, stated:

'The restorative and transformative justice pilot has provided a rare opportunity to receive an independent report of the interaction between the victim, the offender and their families or friends after the offence. In that way it goes beyond the matters that might be contained in an outline of the facts, a victim impact statement or a plea in mitigation. It provides the Court with valuable information, particularly in determining whether there are matters which will make a sentence other than one of imprisonment appropriate. It is a valuable tool in the context of therapeutic jurisprudence in forcing offenders to confront problems with their families and peers and has, on occasion, uncovered issues not otherwise apparent to those dealing with the offender'.

In short, the R&TJ model worked. It worked in a way that the mainstream criminal justice system had continually failed to do. The findings from the study indicated clearly that the combination of restorative and transformative processes provided victims with a voice and offenders the opportunity to apologize and make reparation to victims and community. The process was court sanctioned and sentencing was carried out in the courts. Why then, in 2012, ten years after these results were released is there no R&TJ process for either adults or juveniles in any jurisdiction in Western Australia?

In explanation, and from the researchers point of view, it was felt that the R&TJ pilot study carried less official regard than other court projects such as the Drug Court trial in Central Law Courts and the Family Violence Court trial in a suburban court. Interestingly, the Drug Court and Family Violence Court trials were officially established and sanctioned by the relevant government department (DOJ) and data was collected and analyzed by departmental employees. In other words, the bureaucracy owned both projects, was publicly linked to both studies and had a great degree of credibility invested in them. Conversely, the researchers in the R&TJ pilot, who were both long time and very public critics of the criminal justice system in Western Australia, had initiated this study, developed the model, provided the service and collected the data. Also, when Victim Support Services failed to provide an adequate and timely liaison between victims and the R&TJ team, the department was to all intents, precluded from influencing, or indeed claiming, any part of the study.

Some time after the conclusion of the pilot study, DOJ established a restorative justice service for adult offenders in Central Law Courts. However, the researchers contend that the model used could not be described as wholly restorative, nor was it transformative in nature. The underpinning ethos of restorative justice was diluted almost beyond recognition. The DOJ model was bureaucratic in nature, working only from Monday to Friday, where offenders were summoned to an office and seen in isolation without family and/or friends. In short, the transformative component found to be so important in the communitarian model developed by the researchers, was lost completely. Victims were contacted by letter rather than personally as in the original study. The participation rate diminished to around 5 per cent as opposed to the researchers' 34 per cent victim uptake. There is no public record of how many face-to-face conferences took place. And so, after a short lifespan, the restorative justice service provided by DOJ disappeared from the courts. All assistance offered by the researchers at that time was ignored and/or declined.

Perhaps it could be argued that the R&TJ model was too progressive for the Western Australian bureaucratic system at that time. The researchers consistently argued that the R&TJ model would be best run by non-government organizations as a hybrid model in collaboration with the mainstream court system, all sentencing being court sanctioned. This model is readily adapted to diverse cultural situations, cross cultural crime, first time and repeat offenders, and both petty and serious crimes. Sadly, there is now no restorative justice service for adult offenders in the Perth metropolitan area. This loss impacts negatively on victims, offenders, their families and community.

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