

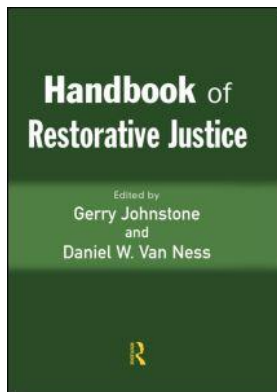
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The ideas of engagement and empowerment

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Chapter 3

The ideas of engagement and empowerment

Jennifer Larson Sawin and Howard Zehr

From the earliest days of the restorative justice movement, advocates have criticized conventional criminal justice, especially as practised in Western societies, for its failure to engage and empower those most directly affected by crime. Indeed, it was argued, those affected by a crime were often excluded almost entirely from the criminal justice process, an exclusion which had very damaging results. Restorative justice emerged, then, as an effort to engage more fully and empower those involved in or affected by criminal wrongdoing.

In recent years, restorative justice has found applications in many arenas including schools, the workplace, even situations of mass violence. However, since its origins were in the criminal justice arena and the restorative justice field is most developed there, the following discussion will focus primarily on the concepts of engagement and empowerment within criminal justice.

Engagement and empowerment: the principles

Origins

The following story is well known in the field of restorative justice.¹ In 1974, in the town of Elmira in the Canadian province of Ontario, two young men pleaded guilty to 22 counts of willful damage, following a drunken Saturday night vandalism spree. Prior to their sentencing, two probation workers, Mark Yantzi and Dave Worth, had been mulling over more creative responses to crime in that town. At some risk to his reputation as a probation officer, Yantzi (who had been assigned to prepare pre-sentence reports for the young men) made a suggestion to the judge that had no basis in law: that it might be valuable for the two young men to meet personally with the victims of their several offences.

One might imagine the judge's reaction. Indeed, the judge's initial response was that he did not think it was possible for him to ask the offenders to do this. But something about this idea must have caught the judge's attention because he was eventually persuaded and ordered a one-month remand to enable the pair to meet the victims and assess their losses, with the assistance of Dave Worth and Mark Yantzi. The two offenders subsequently visited and spoke to all but one of their victims (one had moved) and discovered that they had caused over \$2,000 damage, of which half had been recovered through insurance policies. The judge then fined each offender \$200 and placed them on probation, with one of the conditions being that they make restitution to their victims. Within a few months of sentencing, the two young men had revisited their victims and had made restitution accordingly.

Strictly speaking, the facilitated encounter approach in this story represents only one expression of restorative justice principles in practice. Moreover, one might point to a number of roots of restorative justice principles and practice; many claim, for example, that the origins of restorative justice are located in indigenous traditions.² However, we place the narrative here because it did play a prominent role in the emergence of restorative justice as a field, and it is an illustrative case study of the two restorative principles of engagement and empowerment.

Stakeholders

Nils Christie, a Norwegian criminologist who influenced many early restorative justice theorists, famously describes conflict as property (1977). Christie argues that lawyers and other professionals in our justice system 'steal' the property of conflict and its aftermath from those to whom it should rightly belong. This view of conflict provides an important theoretical basis for the argument that individuals and communities need to be more fully engaged and empowered in justice.

However, in order to discuss engagement and empowerment, we must first introduce the subjects, or *who* is being (dis)engaged and (dis)empowered in any story of justice. The field of restorative justice has adopted the term 'stakeholder' to describe the parties who have been most affected by wrongdoing. It tends to distinguish 'direct' stakeholders – the victim and offender – from 'indirect' stakeholders, such as family members and friends of each, the surrounding community or even members of the judicial system who are drawn into the event by some relationship to the victim and offender. It may be helpful to think of the stakeholder positions as emerging in concentric rings from the pivotal event of wrongdoing that lies at the centre.

If we return to the story from Elmira, direct stakeholders would include victims of the vandalism whose personal property had been destroyed. Of course, the two young men who had offended are also direct stakeholders in that they were personally responsible for the vandalism that took place. Indirect stakeholders in this event may have been family members and perhaps friends of the victims and offenders, and more official figures such as a community youth worker, a sports coach, a schoolteacher, the presiding

judge, lawyers for the accused men and an arresting officer. Some have called certain members of this latter group the 'community of care' (McCold and Wachtel 1998), a term that emerged as restorative justice practitioners and theorists sought to identify the appropriate people to include in a restorative conferencing process. This 'community of care' or 'micro-community' is distinguished, by McCold and Wachtel, from the larger community of citizens indirectly affected by the crime (the 'macro-community').

Although early proponents of restorative justice saw it as a way of returning conflicts to the community, the initial practice of restorative justice in the USA tended to engage primarily the victims, offenders and facilitators. Some limited provision was made for involvement of communities of care, especially family members, but the macro-community was supposedly represented by the presence of volunteer facilitators and community-based organizations. Subsequently, new restorative approaches, such as family group conferencing and peace-making circles, emerged, which made more explicit provision for participation by both micro- and macro-community members (Zehr 1990: 256–62).

The Western legal system

Restorative justice advocates have argued not only that the various stakeholders need to be engaged and empowered, but also that the Western criminal justice disengages and disempowers them. The book *Changing Lenses* (Zehr, 1990) was among a group of early reflections on this phenomenon of restorative justice.³ In this widely cited text, Howard Zehr (co-author of this chapter) sets forth a 'new focus for crime and justice' and invites readers to consider restorative measures rather than retributive ones. He proposes that the current justice paradigm (at least in the West) is preoccupied with identifying the wrongdoer, affixing blame and dispensing an appropriate punishment or pain to the offender.⁴ The system, as any organized activity, engages specific people in the pursuit of justice. Police officers are employed to investigate crime, apprehend wrongdoers, interview witnesses, collect evidence and so on. In the trial phase – affixing blame – prosecutors assume the role of victim and craft a case to present the evidence linking the accused to the particular crime. Other lawyers will speak on behalf of the accused and defend them against the charges brought. Crime victims may be invited to testify if the prosecution believes that their testimony will assist the prosecution case. A judge or jury will hear both sides of the story during the trial. If the offender is found guilty, a sentence proceeding will dictate a proportional punishment of prison time, community service, probation or a fine.

In this generalized scenario of criminal wrongdoing, one might ask, 'Who is engaged?' as well as 'How are they engaged?' Certainly members of the justice system serve a prominent role in the process, from the first arresting police officer to the probation officer. The offender will appear marginally and will rarely speak on his or her own behalf, unless called to testify. The views of offenders, and the story they would tell about the particular wrongdoing or crime, are almost always filtered by legal professionals through the

vocabulary of law and the grammar of relevant statutes. Representation by proxy is the standard, and those who decline counsel and choose to act in their own defence are deemed unwise. The focus of the process is on establishing guilt, and the state has the burden of proof. Moreover, the concept of guilt is highly technical. For these reasons, offenders are often inclined to deny responsibility and the degree of engagement is usually passive or oppositional.

Most glaringly absent from this process are the victims. Since the state is declared the victim in criminal cases, victims are often almost entirely excluded from the process except when needed for testimony. Victim impact statements in some jurisdictions do allow input. However, victims generally are unable to control – and indeed are not informed about – the use to which their statement will be put. More generally, there tends to be a lack of clarity about the relevance of victim impact statements in a process oriented towards retributive justice. Due to the success of the victims' rights/services movement in the past decades (especially in the USA and the UK), victims have been able to obtain increased information, services and rights in many areas. Nevertheless, the fundamental definition of crime – an offence against the state – continues to limit meaningful involvement of victims.

In addition, it is the exception rather than the rule that the community is meaningfully involved in the justice process. While the state occasionally sends a message to the community about a wrongdoing, typically through the media in periodic press statements on progress of the case or rationales for pressing charges, the community rarely has the opportunity to participate directly in the justice-seeking deliberations.

The question of who is engaged in a justice event points to the deeper, sometimes more unsettling, question: 'Whose interests and needs are valued in the process of seeking justice?' If one reviews the above scenario, it is clear from the number of state representatives present that the state interest is paramount. As the ostensible custodian of social order, the state's duty is to denounce the wrong, ensure that the offender receives the 'hard treatment' he or she deserves and take steps to assure that no further harm will be committed. The state carries out this duty by discovering the source of wrongdoing (the offender), condemning the act and extracting assurances that the offences will desist, either through imprisonment, monitoring, treatment or reform. Much of this is done in the name of the larger or macro-community, but rarely is the community actually consulted or involved in any meaningful way.⁵ Moreover, the reality that the individual victims are sidelined indicates that their needs and roles have not found a comfortable place in the architecture of justice.

It would seem reasonable to assume that those most affected by wrongdoing should be the ones engaged and empowered to assist in seeking justice; indeed, the restorative justice field has argued that engagement is crucial to meeting the needs of both victims and offenders and to holding offenders accountable. As we have seen of the current justice system, those who have been directly harmed are excluded. As a result, many people – victims in particular – find some of our justice forms and processes bewildering. For

instance, with regard to the legal practice of designating criminal cases as 'The Queen versus [the offender]', one Canadian victim's strong reaction was: 'The charges were pressed in the name of the Queen, her Crown and dignity, and I was just a witness. I didn't like that bullshit – this happened to me. It didn't happen to the fucking Queen!' (Zehr 2001: 144).⁶ On the other hand, many victims say that if they are included at all in the justice system, they typically experience further harm and disempowerment. Judith Lewis Herman, a specialist in the field of trauma, writes: 'If one set out to design a system for provoking intrusive post-traumatic symptoms, one could not do better than a court of law' (1992: 72).

Yet restorative justice advocates argue that some of the victims' most critical needs cannot be met without genuine engagement and empowerment; these include the need to tell one's story and to obtain authentic information related to the case. A victim may wish to know: why was my loved one hurt? What were his or her final words? Where are the items that were stolen from me? Why were we specifically targeted? Such questions as well as their need for assurance of safety are not particularly relevant to the finding of guilt in a courtroom. They may want to ask: is my home safe now? Who will be on the lookout for my well-being? Besides these practical and physical concerns, one aspect of trauma of crime is that the offence and the offender take away power over one's emotional life. A critical need, then, is for an experience of empowerment.

At least in principle, offenders do have their legal interests represented in that a lawyer may defend them against the case presented by the prosecution. However, offenders will usually lack the power or the encouragement to take full responsibility for their wrongdoing, even if they wish to. While there may be an opportunity to enter a formal plea of no contest or guilt, there is rarely a place or time to apologize meaningfully and there are few mechanisms to make direct amends to the victims. As defined by restorative justice, accountability would encourage offenders to develop understanding of their offence and empathy for the victim, and then take active steps to right the wrong, symbolically or practically. In fact, some argue that real accountability would encourage offenders to have some responsibility in deciding what is needed as an adequate outcome. Clearly the Western legal system does not leave much room for such gestures.

Finally, the absence of an assigned place for the community, both micro- and macro-, in justice proceedings means that it also lacks a full measure of power to serve the victim and offender, to find reassurances of its own well-being or to explore the social and moral issues highlighted by the situation. Of course civic-minded individuals in the community may come to the aid of both victim and offender in significant ways. Neighbourhood Watch programmes can extend a helping hand to someone who has been robbed. A prison ministry may assign a pastor to visit the offender. These moves are important indications of a resilient community where connections between people are valued and cultivated. Yet only in the most exceptional cases is there a place for systematic or institutionalized responses by either micro- or macro-communities to victims and offenders after wrongdoing.

Use of terms

When early theorists began outlining restorative justice, one of the major assertions was that this field would be rooted in principled values rather than strict rules. While the precise list of those values shifts slightly from one theorist or practitioner to the next, engagement and empowerment appear consistently. But what exactly is intended by these terms?

We will begin by mentioning a few basic assumptions in the field. Ted Wachtel proposes that restorative justice is characterized by ‘doing things *with* people rather than *to* them or *for* them’ (2004). The different prepositions here are critical and allude to collaboration, which requires engagement, and to meaningful contribution, which requires empowerment. In addition, restorative justice theorists would say that that crime – even wrongdoing in general – is a rupture of relationships more than a transgression of law. Those relationships may be extremely close (e.g. between a mother and daughter), somewhat tenuous (e.g. between neighbours) or barely existent (strangers passing on a street). Regardless, those committing the wrong and those harmed by that wrongdoing are the central figures. This view of crime is the starting place for deciding who is engaged and empowered in the wake of wrongdoing and hurt.

What is meant?

While the term ‘engagement’ is used occasionally in restorative justice literature, the more prevalent, but perhaps less active, bywords have been ‘inclusion’ or ‘involvement’. In societies governed by democratic principles, a basic ethical precept of decision-making is to include in the decision process those who will be most directly affected by it. This principle applies as much to political democracy as to community development and environmental policy. One author in the related field of group facilitation eloquently argues that:

[I]nclusive solutions are wise solutions. Their wisdom emerges from the integration of everybody’s perspectives and needs. These are solutions whose range and vision is expanded to take advantage of the truth held not only by the quick, the articulate, the most powerful and influential, but also of the truth held by the slower thinkers, the shy, the disenfranchised and the weak. As the Quakers say, ‘Everybody has a piece of the truth’ (Kaner *et al.* 1996: 24).

When it comes to harm in a criminal sense, those most directly affected are victim, the offender and those who care about them. Restorative justice practitioners and theorists argue these parties need to be included in seeking justice. Gordon Bazemore (2000) defines restorative justice as addressing ‘all acts related to repairing harm’ through a process in which stakeholders are provided the opportunity for active involvement as fully and as often as possible (Bazemore also credits Van Ness and Strong 1997). In this version, he places emphasis on the term ‘opportunity’ while acknowledging that in

some cases not all stakeholders wish or are able to engage in a restorative process (Bazemore 2000: 468).

While most will agree on the principle of engagement, there has been considerably more debate in the field over the term 'empowerment'. In *The Promise of Mediation*, Robert Bush and Joseph Folger write: 'In simplest terms, empowerment means the restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems' (1994: 2). This definition emerges from the field of mediation and some connotations may not fully apply in restorative justice settings. For example, some crime victims may take umbrage at the presumption that after a particularly traumatic event they should be expected to 'handle life's problems' as they used to. Indeed, the return to a sense of power and control over one's own life may be a long time coming. That achievement is, by and large, an intensely personal journey that takes years for some, and never happens for others. Yet a victim's sense of personal disempowerment, related to the harm and its aftermath, should be the very reason that the process of justice should seek to restore power to the victim. In that respect, the definition by Bush and Folger is helpful. For offenders, many would find it easier to assume responsibility to make things right if they are given a range of options – even if they are limited – rather than being forced down one predetermined path by an external actor.

What is not meant?

To expand the definitions, it may be helpful to delineate what these words do *not* mean in the field of restorative justice.

Engagement does not require that everyone, no matter what the association, should be involved in a restorative justice process. For instance, some in the restorative justice movement find problematic the growing tendency to invite into the process a range of people who are not obviously affected stakeholders. This, they suggest, can have harmful consequences: the process stalls because there are too many decision-makers; the case becomes so high profile that the parties become unwitting poster-children for larger groups of people; the autonomy of the central players is eroded; and the needs of the central figures are not given adequate consideration. While participation by affected people is fruitful, engagement without any criteria or responsibility can be problematic.

Engagement does not necessarily mean a face-to-face encounter between victim and offender. While some may choose this method of engaging the other party, typically after a good deal of preparation, it can be emotionally or practically difficult especially in serious offences. There are meaningful ways outside a personal meeting that offenders and victims can engage with one another and their respective communities of care. Letters, video conferencing, shuttle representation and telephone calls are all varieties of engagement that can meet the needs of the various stakeholders and lead to empowerment. Where an offender is not identified or apprehended, or where a victim may decline to meet with an offender, surrogate arrangements can prove to be restorative forms of engagement. Whether or not any kind of direct or

indirect encounter is involved, however, restorative justice assumes that all parties should be provided an opportunity to be engaged and empowered in defining and meeting their own needs, roles and responsibilities.

Even Bush and Folger, who were among the first to take hold of the term empowerment in the context of victims and offenders, admit that the term can be cloudy because of its broad usage. They assert that empowerment does *not* mean that an external actor (such as a facilitator) should mysteriously balance, add to or redistribute power; neither does empowerment mean that the facilitator should control or influence the empowerment process (1994: 95–6). On the contrary, the most rewarding restorative justice processes spur individuals and their communities of care to draw upon *their own resources* to reflect on the wrongdoing, the hurt caused, the obligations created and the ways to meet needs.

One feminist voice, Stephanie Riger (1993), has suggested that the term empowerment is fundamentally problematic. She argues, among other things, that the empowerment concept favours individual actors who strive against one another for self-interest over communal actors who seek co-operation. This arrangement may suit Western cultures that value individualism over collectivism but may be undesirable in cultures where family, religious or ethnic values supersede those of any one person. She also argues that in community facilitation and related fields, the *sense* of empowerment rather than *actual* power is sought and valued. The danger with this discrepancy is that people can be lulled into the illusion of power over self or process and that the structural ‘status quo may actually be supported’ (p.2). The sorts of questions she prompts include: is the practice of victim–offender mediation in prisons truly empowering to the participants when the punitive prison structure goes unexamined, and when the courts are reluctant to hear the story of the victim? Are we truly empowering people if we do not address the unequal distribution of power in the larger society? Are we in fact perpetuating a larger pattern of structural injustice?

Kay Pranis also addresses some of these issues (2001: 301). She argues that, while the restorative justice movement does have a radical vision of structural change, it cannot by itself correct the troubling power inequities in society. She suggests, however, that restorative justice practitioners can operate in two meaningful ways: on a micro level by bridging social distance, affirming mutual responsibility and helping to level power dynamics; and on a macro level by providing a well tried model for transforming relationships and power across multiple systems and structures. In summary, she links these two levels of activity with the oft-quoted dictum ‘think global, act local’.⁷

Working definitions

For the purposes of this chapter, we assume the following definitions: *engagement* is the voluntary participation of stakeholders in deciding what happens in the wake of wrongdoing and hurt; and *empowerment* is not only the power to participate but also the ability to draw upon needed resources to make a decision and to follow through on that decision.

Engagement and empowerment: the challenges

We now turn to look at some of the real-world challenges of truly engaging and empowering stakeholders.⁸

Victims

Studies of victim attitudes towards and satisfaction with restorative justice have generally been quite positive. However, with the proliferation of programmes promoting restorative justice, there has been simultaneous criticism, especially in the USA and UK, that the claim of increased victim engagement and empowerment has too often been in name only. A variety of forces are seen to contribute to that failure. These include the offender-centred focus of the justice system; the offender-advocacy backgrounds of many restorative justice practitioners; the unwillingness of practitioners to take seriously the worries and concerns of victims and victim advocates; and the failure to include victim voices in the development and oversight of programmes (Achilles 2004). Victim advocates have also criticized restorative justice programmes for only serving (thus empowering and engaging) victims when offenders have been caught and when offenders are willing to participate; this amounts to a form of offender centredness and victim exclusion (Herman 2004).

Mary Achilles, a state-level victim advocate from Pennsylvania, argues that some programmes have been designed on the assumption that 'one size fits all', that victim voices have too often been excluded from the design and evaluation of programmes, and that victims are engaged only to the extent that they can serve or rehabilitate offenders (Achilles and Zehr 2001: 94). With such warnings in mind, Achilles suggests that any restorative justice process that genuinely seeks to engage and empower victims should do the following:

- Provide victim representation on governing bodies and initial planning committees.
- Ensure that the safety of victims is a fundamental element of programme design.
- View victims and their needs as critical; victims are not expected to aid or rehabilitate the offender unless they so choose.
- Inform victims at every step of the process, offering as much information as possible.
- Protect the level of privacy sought by the victims.
- Offer the widest possible range of choices with flexibility in process and outcome as well as referrals where needed.
- Find ways to engage victims even when offenders are not apprehended or identified.

For some years after restorative justice practice emerged, there was anecdotal but increasing evidence that victims and their supporters were feeling excluded from and disempowered in the expression of this concept and

practice. In 1999, a group of researchers and advocates in the USA sought to explore this evidence further. A 'listening project' was designed and carried out in seven states during 1999–2000; its main goals were to 'confront the significant deficiencies of restorative justice practice pertaining to victim participation and impacts for victims, their advocates and victim services generally' (Mika *et al.*, 2002: 3). The research did indeed identify serious concerns among the victim services community around the engagement and empowerment of victims. However, it also identified significant areas of promise and suggested remedies to be taken by both the restorative justice and victim services field in the USA.

Offenders

As noted earlier, from the beginning, a key element of restorative justice was an understanding of accountability that engaged and empowered offenders. However, critics have noted that this was a very constrained understanding of these terms. Moreover, they suggest, the field has focused too exclusively on accountability, neglecting other offender needs, such as their needs to come to grips with their own sense of victimization and their needs for personal growth. What does a restorative approach have to say to such needs, and how do engagement and empowerment fit in?

While there is wide agreement that participation by victims in restorative processes must be voluntary, there has been significant debate as to whether offenders might be coerced to participate. Some programmes claim that the process of engagement is purely voluntary, but this claim is hard to maintain when, for example, a victim–offender conference is being offered as a potential alternative to prosecution or another sentence. The appropriateness, limits and dangers of coercion remain an ongoing issue in the field.

Based on their work with prisoners and ex-prisoners, long-time restorative justice practitioners Jackie Katounas (herself an ex-offender) and Barb Toews have raised significant questions about whether restorative justice has truly been as sensitive as it should to offenders and their perspectives. For instance, they have heard offenders ask: 'If restorative justice is about accountability and empowerment, what can I do when I am not permitted to take any initiative to make amends – e.g. by initiating a victim–offender encounter?' (Most states in the USA require victim-initiated inquiries, even if offenders have interest in meeting their victims.) Similarly, 'If restorative justice is about understanding the crime and people's needs for justice, why am I supposed to understand the victim and community perspectives when my own experiences, needs and perspectives are ignored or minimized' (Toews and Katounas 2004: 115)? They conclude that if offenders are not engaged and empowered in these ways, restorative justice is at risk of becoming an activity 'done to' offenders rather than done with them, ironically duplicating the punitive and retributive measures of the current justice system that it sought to correct. To address this concern, Toews conducted a series of focus groups and seminars in prison and developed a new study book on restorative justice for prisoners that seeks to begin with their concerns and worldviews (Toews 2006).

Community

Most restorative justice advocates see some role for the community in the process. However, there have been heated debates within the field about the definition of community, the actual role of community, and approaches for actually engaging and empowering the community.

For example, Paul McCold outlines the dangers of an ill-defined community in restorative justice (2004). Some approaches would engage and empower the 'community of care' or 'the networks of obligation and respect between an individual [victim or offender] and those who care about him or her the most'. However, he warns that a community justice model could define community as 'local hierarchical formations, structured upon lines of power, dominance, and authority' (p.19). While McCold does not disparage the relevance and appropriate use of such community justice practices in addressing crime and wrongdoing, he urges practitioners to be clear about the underlying theory, definitions and values because these will spring forth the design and implementation of practice itself.

Other criticism is levelled at the too-rosy views of community in restorative justice. Robert Weisberg has written a critical inquiry on the use of the word 'community' and its engagement in the field of restorative justice (2003). He wonders, for example, to what extent the 'sunny harmonious sound' of the term is used to mask more difficult legal and social issues (p.343) as well as the often-fractured views that may exist within a seemingly monolithic and homogeneous group. George Pavlich also warns that advocates of community engagement should be wary of 'totalitarianism [where] rigid formulations of community create simulated divisions that isolate insiders from outsiders' (2004: 174). The danger of such a course, he suggests, is that insiders will feel no obligation or responsibility to engage with those who are considered outsiders. A related question concerns how restorative justice can guard against the possible excesses of community, such as vigilantism.

Still others have been concerned about engaging and empowering the community when its condition is not healthy. First Nation women in Canada, for example, have worried that involving a hierarchical, patriarchal community may only perpetuate or deepen patterns of abuse (Cayley 1998: 119–214). However, others have argued – and case examples such as the Hollow Water community in Canada illustrate – that properly engaged and empowered, restorative processes can lead to healing of communities as well as individuals (Ross 1996; Pranis 2001).

Another debate is around community empowerment and the extent to which it overlaps with concerns about victims. The concern here is that, as the circle of participation grows, and as restorative processes come to be promoted as participatory democracy, the empowerment of the broader community might be pursued at the expense of individual victims, who will be sidelined yet again.

The state

Most theorists in restorative justice would probably admit to a community-centred, or at least a state-decentralized, bias. After all, the state is primarily

responsible for the alienation of victim and offender from each other, the separation of the offender from the community in cases of incarceration, and the failure to meet the needs of participants after an offence is committed. In addition, the state also represents the traditional seat of coercive power. Yet Susan Herman argues that the state plays a critical role in marshalling resources. If engaged, the state can meet victim and offender needs, sometimes quite long term, that are sometimes beyond the ability of community to meet: day-care, employment counselling, substance abuse treatment, housing (2004: 78). Herman also asserts that whether ideal or not, the state is in the position of speaking on behalf of society at large. State representatives can be engaged to raise wrongdoing to public awareness, to assure society that the offending action was in breach of a social contract and to acknowledge the hurt of the victim.

Vernon Jantzi (2004: 189) agrees, pointing to New Zealand as the exemplar of a state engaging as the enabler of communities that are empowered, within a formal legal framework, to take responsibility for local wrongdoing. He adds that the state can also engage as resourcer and guarantor of practice standards. In New Zealand, a police officer as a state representative is present in family group conferencing (FGCs) that are now standard practice in the national juvenile justice system. Allan MacRae, manager of FGC Co-ordinators for the Southern Region of New Zealand, explains police engagement this way: 'The FGC process empowers the police to seek appropriate outcomes. They gain ... information about the community which they police [and] build a closer and more effective relationship with youth, their families, and their community' (MacRae and Zehr 2004: 70).

There are some who would dispute the engagement of police in any justice proceeding that purports to be restorative. This would be especially true in contexts where the state has occupied a controversial position in the administration of impartial justice. South Africa and Northern Ireland are the classic examples of this phenomenon. Kieran McEvoy, Professor of Law and Transitional Justice at Queens University in Belfast, believes with co-author Harry Mika that while the state and community restorative justice schemes may eventually merge their respective efforts, a police officer's company – and perhaps the presence of any state representative – would be too coercive in some community-based restorative justice efforts today. The most important aspect of empowerment is that people should 'take control over the *steering* of their own lives without programmes being swallowed up by the state infrastructure' (2002: 556, emphasis in original).

Along a similar line, others would see that the state serves an important, if somewhat passive, function of background coercion with offenders. The mere existence of more retributive measures such as possible incarceration may encourage offenders to engage in restorative processes and help to monitor the follow-through. Braithwaite writes, 'Very few criminal offenders who participate in restorative justice processes would be sitting in the room absent a certain amount of coercion ... No coercion, no restorative justice (in most cases)' (2002: 34). The trick, he later argues, is to keep the explicit threat of formal state-imposed punitive measures – what he terms 'the Sword of Damocles' (p.119) – firmly in the background and never the foreground.

Otherwise, the process may backfire and put the stakeholders in further danger of hurt and failure. McCold agrees that in addition to existing as a less desirable option for offenders, state authority may be invoked when 'the offense is deemed too serious for an informal voluntary response alone' (2000: 394).

Most restorative justice theorists agree that the state has some role and stake in restorative justice. In societies that experience the luxury of the rule of law and a relatively corruption-free environment, many would see the state role as central. Van Ness argues that while it is the community's role to make peace, it is the state's responsibility to maintain order (1989: 20). A crucial role for the state, it might then be argued, is to be engaged as a safeguard and backup for the restorative process, ensuring due process, seeing to it that those responsible for wrongdoing are brought to justice. The design of New Zealand's youth justice system, for example, has most serious offences going to a restorative conference, but with youth court there to ensure it happens and to make decisions that cannot be made in the conference (MacRae and Zehr 2004).

Facilitators

Restorative justice literature has long emphasized who is *being* empowered or engaged. But it has not shed as much light on who is *doing* the empowering or engaging in any given restorative justice event – although early efforts saw the facilitator playing a key role as representative of the community. For some, it seems that the facilitator is erased, perhaps due to Christie's early challenge: 'Let's have as few experts as we dare' (1977: 12). Certainly, use of a talking piece⁹ in circle processes would place the facilitator in a less prominent role. Yet the power of invitation, the time spent in preparing and the ability to set the scene all shape the extent to which other stakeholders are engaged and empowered. Most argue that 'encounter forms' of restorative justice require a trained facilitator operating under clear guidelines or principles; debate persists, however, on what those guidelines might be, and how rigidly to adhere to them.¹⁰ As practices become more widespread and on a larger scale, however, the use of professional facilitators is growing, leading to some question as to whether they can adequately represent the community and still remain true to the empowering and engaging spirit of restorative justice. A related concern is whether professionals from allied professions such as law will co-opt the practice as has happened so often in the mediation field (Auerbach 1983).

Kay Pranis has reflected on the relationship between story-telling and empowerment: 'Listening to someone's story is a way of empowering them, of validating their intrinsic worth as a human being' (1998: 23). In any restorative process, the accomplished facilitator would serve a critical role by engaging the victim, offender and loved ones, and inviting each party to articulate a life story, or the story of the wrongdoing itself, in order to assess the impact of the wrongdoing and the needs made plain from that event. If Pranis's assertion holds true, then the very opportunity to be *listened to* might begin to empower the parties and propel them towards healing. Braithwaite

offers the example in a nursing home context: 'Wheeling the bed of that ... resident into a room full of fairly important people who listen attentively to her stories of neglect is extraordinarily empowering' (2003: 166). Thus, it can be asserted that the facilitator is a pivotal stakeholder who cultivates the safety and space to engage people in the hearing and telling of stories.

Frontier issues

The preceding sections have provided a sample of some of the concerns and challenges that have emerged in the field around the issue of engagement and empowerment in theory and practice. There is another cluster of issues that we call 'frontier issues' – new areas where the field needs to expand and develop.

Cultural adaptation of restorative justice practice is one theme that looms large. In most settings, relatively little has been done to examine the cultural assumptions that underlie the theory and practice of restorative justice (Jenkins 2004), or to study systematically what forms of empowerment and engagement are appropriate or inappropriate in various cultural settings. In a study of how the Indo-Canadian community interacted with Western victim–offender mediation practice, Bruce Grant (2004) found that there is significant resonance between the traditional processes and victim–offender mediation, but significant modifications are needed in how the encounter is carried out. He examines not only the cultural variations of victim–offender mediation practice that are necessitated for intra-group use (i.e. *within* the Indo-Canadian community) but also intergroup use (i.e. when processes involve more than one culture). New Zealand's statute establishing the youth justice system is unusual in recognizing cultural customization; it mandates that facilitators of conferences work with the parties involved to ensure that the process is culturally appropriate for them (MacRae and Zehr 2004). In some situations, adaptations may require the use of substitute participants or even rule out direct encounter altogether. In many cases in that setting, empowerment and engagement will also require culturally specific rituals to be part of the process.

After the restorative justice concept was used to help shape (or at least explain in retrospect) South Africa's Truth and Reconciliation Commission (TRC), some have begun to debate whether restorative justice might be a framework for informing a justice response to other societal-level wrongdoing and conflict. In the USA, for example, the Greensboro (North Carolina) Massacre of 1979¹¹ spurred many to work towards restorative justice through a regional TRC modelled explicitly after South Africa. But questions of engagement and empowerment linger. On this scale, with the passage of time, under such public scrutiny, and when so many sectors of society are required for buy-in, how is full engagement by all affected parties possible? How can each party be empowered in a tragedy claimed by so many people? These are but a few of the frontier issues facing restorative justice as it enters into its fourth decade as a field of practice and theory.

Conclusion

Victim–offender encounter processes have often been seen as the primary way to provide opportunities for engagement and opportunities. However, the conceptual framework of restorative justice assumes that these principles should guide the search for justice from the start and throughout – regardless of whether an offender is identified, whether the victim is willing to participate or whether an encounter is possible or appropriate. Zehr has argued, for example, that restorative justice is essentially a set of ‘guiding questions’ to inform the real-world search for just solutions. The last two of these questions centre on engagement and empowerment: who has a stake in this situation? What is the appropriate process to involve stakeholders in an effort to put things right?

Although significant conceptual and practical issues remain to be resolved, the intertwined concepts of engagement and empowerment have been central in the field since its origins. They remain fundamental to the theory and practice of restorative justice.

Selected further reading

- Braithwaite, J. (1989) *Crime, Shame and Reintegration*. New York, NY: Cambridge University Press. In one of the early texts in the field, Braithwaite explores theories on the reasons why people commit crimes. As a way to engage the offender in constructive ways, the author proposes a process of ‘reintegrative shaming’ (versus stigmatizing shaming), whereby loved ones express social disapproval to the offender for his or her behaviour.
- Pranis, K., Stuart, B. and Wedge, M. (2003) *Peacemaking Circles: From Crime to Community*. St Paul, MN: Living Justice Press. Drawing from Native American and other indigenous traditions, the authors outline the peace-making circle – a process that engages and empowers those who have assembled to deliberate on a specific issue or event. Used in communities, schools and correctional settings, the circle calls upon the community’s ability to prevent wrongdoing, seek underlying causes and begin healing.
- Ross, R. (1996) *Returning to the Teachings: Exploring Aboriginal Justice*. Toronto: Penguin Books. In first-person narrative, Ross details his exploration of ‘peace-maker justice’ in aboriginal communities of Canada. While the text does not deal explicitly with restorative justice, it does outline the values and vision that give rise to a justice system that has the power to promote healing and respect.
- Zehr, H. (1990 and 2005) *Changing Lenses: A New Focus for Crime and Justice*. Scottdale, PA: Herald Press. In this text, one of the first to outline the theoretical framework of restorative justice, Zehr describes our current system as ‘retributive justice’ and outlines an alternative of ‘restorative justice’. While the former sees crime as an offence against the state, the latter views crime as a violation of people and relationships. These two ‘lenses’ lead to radically different justice responses.

Notes

- 1 The story is told and analysed in Peachey (1989).
- 2 Restorative measures in the wake of wrongdoing can be found throughout many cultural practices, especially indigenous forms of justice seeking. See, for example, Rupert Ross (1996) for a review of North American aboriginal justice. A succinct review of restorative-leaning, pre-modern justice and analysis can also be found in Johnstone (2002: ch. 3).
- 3 See also Van Ness (1986).
- 4 In his book *Limits to Pain* (1981), Nils Christie uses the term 'pain law' rather than 'penal law' and argues that this legal code is an elaborate mechanism for administering 'just' doses of pain.
- 5 One might argue that, by political design, democratically elected candidates put forth a criminal justice platform for public consideration (the 'Three Strikes' policy in California is one controversial example). Candidates are then elected into or out of office depending on the public's satisfaction with those policies and the public is thereby 'engaged' in justice proceedings. Yet these policies are written by a small subset of the public, remain relatively abstract, rarely invite genuine community input and do not adequately flex to address specific circumstances of each case. Moreover, the dialogue on these issues is often on a highly symbolic level, usually framed by political and media agendas.
- 6 Restorative justice advocates generally acknowledge an important role for the government in making sure the needs of the larger community are represented. They argue, however, that this public dimension has overwhelmed the 'private' dimension, and call for a better balance of the two.
- 7 For more on these dynamics, with an emphasis on practitioner training in structural matters, see Dyck (2000).
- 8 For a more complete discussion of these issues, see Zehr and Toews (2004).
- 9 Talking pieces emerge from indigenous traditions where a group, usually seated in a circle, convenes to discuss a matter relevant to the community. The talking piece is passed around the circle, each person speaking only when in possession of the piece. The group is encouraged to speak and listen from the heart and each participant voice is weighed equally.
- 10 For example, Ross has questioned whether the aboriginal figure of the 'elder' is the ideal figure to assume the role of judge (1996: 223). In addition, while some advocate a scripted proceeding with a trained facilitator (the Real Justice group conferencing model, found at www.realjustice.org/Pages/script.html), most others (including New Zealand's family group conferencing; see MacRae and Zehr 2004) would pursue a less regimented conversation.
- 11 On the morning of 3 November 1979, a group of organized labour advocates gathered to march in downtown Greensboro against the Ku Klux Klan and Nazi sympathizers. Police were accused of abandoning security measures over a lunchbreak during which KKK and Nazi groups allegedly shot and killed five marchers and injured ten. There were no convictions by all-white juries and the tragedy has shaped much of the racial divide in North Carolina over the last decades. Greensboro TRC commissioners began to hear testimony in January 2005 but no KKK, Nazi sympathizers or police officers have agreed to testify and the mayor and city council members have disapproved of the largely grassroots-inspired TRC.

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