

*Strang, H & Braithwaite, J (eds), Restorative Justice and Civil Society, Cambridge University Press, 2001. Paperback. 288 pp. ISBN 00053X*

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No one with even a passing interest in criminology would by now be unaware of the growth of an ever-widening interest during and since the 1990s in the restorative justice movement. The origins of the movement in Australia and New Zealand are widely credited to the twin influences of the *Children, Young Persons and their Families Act 1989* (NZ) and to the writings of John Braithwaite. While restorative justice programs often occur in the context of a decentering of juvenile justice systems, in New Zealand the 1989 reforms also encompassed care and protection matters. Since then, the concepts have been extended in different places to school and other disputes. Some of the ideas have been compared to the parallel but separate development in Canada of circle sentencing now the subject of a pilot program in New South Wales. The circle sentencing developments in Canada are not, however, focussed on juveniles and experiments have developed in areas such as domestic or family violence. The claims of the New Zealand developments to Maori influence and recent doubts about its extent and the clear indigenous base for circle sentencing in Canada, have resulted in comment and questions in the Australian context also on the possible relevance to Aboriginal and Torres Strait Islander communities, although there is not much sign yet of such communities being consulted. The literature on these matters is now both extensive and burgeoning as are local pilot schemes.

On the one hand, however, the idea that imprisonment is the only appropriate and hardest and most effective penalty for offending seems ineradicably entrenched in the psyche of the community, ironically at the same time as are the myriad criticisms and shortcomings of the adversarial criminal trial process and the sentencing process.

On the other hand, restorative justice has now penetrated even to the biannual conference of District and County Court judges. Indeed, the translation of the many youth justice initiatives to the adult sphere was the point of New Zealand Judge David Carruthers' paper there, as was Heather Strang's paper at the 2001 Australian and New Zealand Society of Criminology conference

Braithwaite has campaigned for a much broader application of restorative justice principles. Others such as Daly (for example in respect to sexual matters) and Blagg (in respect to matters involving the relationship between Indigenous and non-Indigenous Australians) have drawn attention to limits and barriers to this. Others again have focussed on issues such as the appropriate role of police or other officials or of lawyers. At the conceptual centre is the idea that disputes over criminal offending have been stolen by the State and its officials and other experts such as lawyers and should be returned to those directly involved or affected.

Another prominent strand of public debate centres around the concepts of social capital and civil society. Robert Putnam and Francis Fukuyama - in Australia with help from Eva Cox's Boyer Lectures - have been to social capital what John Braithwaite is to restorative justice. The concept is, for example, now the subject of Australian Institute of Family Studies' interest with books and papers about social capital and public policy and about the measurement of social capital within families and between families and the broader society.

Neither concept - restorative justice or civil society - is of course without its problems of definition or measurement.

The book now reviewed helps to put the two strands together around the concept of restorative justice in a series of essays by different authors which venture well beyond the fields usually traversed by criminologists.

The chapters are the result of a conference and thus reflects the diverse interests and approaches inherent therein with the inevitable strengths and weaknesses. The editors see restorative justice as both processes and values.

The authors come from a wide variety of backgrounds and the book is introduced by an overview by the editors. In Chapter 2, for example, Clifford Shearing describes the Zwelethemba community peace experiments in South Africa. In Chapter 3 by contrast Lawrence Sherman contrasts the Puritan ethics of hierarchy and respect for externally established legal institutions with Quaker ethics of egalitarianism and the central idea of personal conscience in the context of restorative justice and civil society. The thesis that increasingly the old Puritan ethos, with its support of State established mechanisms, is being replaced by the Quaker ethos leads to two questions - first, whether extra court restorative justice processes will weaken support for established authority or should be supported as in consonance with emergent societal values. The other is whether restorative justice processes are more likely to reflect internalised feelings of vengeance or Braithwaite's reintegrative concepts.

Ironically, the Quakers were behind the move to replace capital punishment with imprisonment, to reform by penitence, against which now restorative justice is to a large degree pitted.

Sherman likens the typical family group or Wagga Wagga styled conferences to the egalitarian and community-based Quaker meeting, free of lawyer/priest authority figures and based rather on common sense, decency and emotion and building in the participants respect, inclusiveness, apparent equality of treatment and consensus. The question is not only whether this will be true on a societal level but where the organisational leadership will come from.

Other authors in this volume also note the international Western decline in support of various institutional structures and the growth in community perceptions of the importance of personal relationship issues.

Two chapters, one by Heather Strang and the other by Chris Cunneen, then address the role of restorative justice processes vis-a-vis respectively victim movements in the United States, Europe and especially the ACT and secondly, various national reports dealing with gross abuses of human rights and especially the Australian 'stolen children' report. Contrasting United States victims movements demands for legal rights within the state justice system and the links with retributive sentencing lobbies on the one hand and European movements based on non-political support services on the other, Strang points out the Canberra victims movement support for the restorative justice experiments being carried out in that city. Cunneen raises the question of the role of State-based and community-based justice systems where the State has been the perpetrator of systematic abuses. After citing numerous examples, Cunneen writes:

At a basic level we can see some of the similarities between the role of reconciliation processes, reparations tribunals and truth commissions and restorative justice, at least in the broad emphasis on establishing truth as a way of resolving conflict, of providing the opportunity for reintegration of victim and offender, and on developing the principles of reparation, restitution and compensation. Both the emphasis in restorative justice and processes of reparations has been to adopt an approach which breaks down the divisions between civil and criminal wrongs, and instead prefers to consider the broader issue of individual and community harm. Restorative justice and reparations for human rights abuses are clearly identified as both a process and a set of values. As a process both bring together those affected to establish truth and provide the framework for reconciliation. As a set of values or principles both are concerned with healing and reconciliation between parties (pp87-88).

But Cunneen raises a number of important issues in the context of restorative justice and civil society in these cases:

The issue of responding to contemporary removals of Indigenous children poses a particular set of problems which advocates of restorative justice must squarely confront. The inter-generational effects of colonial policy mean that Indigenous children are massively over-represented in child welfare and juvenile justice systems. This problem is not particular to Australia. One important implication of this is that restorative justice advocates must allow their own practices to contextualise the contemporary effects of past policies. ... The individualisation of family problems through child welfare casework or criminal justice notions of individual responsibility provide virtually no framework for a contextual understanding. It seems to me that restorative justice advocates can make a real contribution in this area by supporting welfare and justice practices which allow for the deeper meanings of harm and responsibility to emerge.

Indigenous self-determination poses a related set of issues for restorative justice. Self-determination may involve the devolution of power to community or regional structures. It certainly involves a move away from the centralised authority of the nation-state. At least at this level it is consistent with the broad philosophy of restorative justice, which advocates a return of conflict from the state to the parties and communities involved. Certainly Indigenous organisations see self-determination in the context of the devolution of power and authority from the (colonial) state to the organisations of (Indigenous) civil society. Unfortunately, much of what has passed for restorative justice in practice, at least in Australia, has not led to any real devolution of power to Indigenous communities. In this context restorative justice advocates need to go well beyond simply holding up Indigenous dispute resolution mechanisms as a form to be adapted or adopted, to actually advocating for the rights of Indigenous peoples to exercise jurisdiction (p96).

Finally:

The outcomes of the Stolen Generations Inquiry in Australia, also highlight some of the political problems which arise when there is a recalcitrant government which *refuses* to acknowledge responsibility for past actions. It highlights the central problem of power imbalances where the offender simply denies responsibility to the victim. ... How can civil society through social movements force the state to take responsibility for its past harms? Restorative justice requires the devolvement of ownership of the conflict back to the parties involved. In this case one of the parties involved is the state and as a perpetrator must be held responsible for its actions (p98).

In Chapter 8, the issues turn from the macro to the micro: restorative justice in everyday life. Disputes and issue management in areas such as employer-employee, teacher-student and parent-child relationships are in mind. The ways in which these issues, as well as offending, can be dealt with are conceptualised along two dimensions - control and support - into four types: punitive (being authoritarian and stigmatising), neglectful (being indifferent and passive), permissive (being therapeutic and protective) and restorative (being collaborative and reintegrative, that is high on both control and support). The chapter writers are enthusiasts:

Collaborative, problem-solving approaches have a history of success in families, communities, organisations and international relations. The social science research is overwhelming, consistent and clear. In the vast majority of situations, restorative practices work better than punishment or treatment approaches (p123).

From these approaches, they spell out six principles of practice: foster awareness of how others have been affected by behaviour, avoiding scolding or lecturing, involving offenders actively in the process, accepting the ambiguity in many events, separating the deed from the doer, and seeing wrongdoing and conflict as an opportunity for learning. It is clear that such approaches may be readily adopted in the context of most juvenile offending: the big issue for our traditional adult courts - not only high volume magistrates courts but especially the superior courts - is whether they can or should attempt such approaches let alone how that can be done and in which types of matters. The role of the state and its agents is itself sometimes a critical issue, as a number of the case studies and various theories of conferencing approaches illustrate.

Some of the authors urge a conceptual separation out of different strands such as victim-offender mediation, circle sentencing etcetra. Others argue that 'voluntary compliance is a cornerstone of restorative justice arrangements (and the central tenet of the democratic state and a civil society)'. The Chief Constable of Thames Valley Police, on the other hand, whilst sceptical that the criminal trial process can be much improved, sees scope for restorative and conferencing techniques both at the sentencing level (referring to the Canadian circle sentencing systems) and at a level of court - avoiding policing techniques.

But the book is also about larger issues and the following chapters turn to restorative justice approaches in wider contexts: the workplace, bureaucracies and corporations and schools, as well as a chapter dealing with the psychological processes involved. Perhaps those are matters beyond the central interests of readers of this journal.

Judge Hal Jackson

District Court of Western Australia