

Developing, implementing and researching a communitarian model of restorative & transformative justice for adult offenders in Magistrates' Courts

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Introduction

This paper has been developed from an article presented to a peer review. It describes the development and provision of a communitarian model of restorative and transformative justice within the Magistrates Court. The paper engages with the experiences of the two researchers as they developed, established, serviced and researched, over a two year period, the communitarian model within the structure of the Magistrate's court and the Department of Justice. Placed within the context of the prevailing adversarial court system, the model was trialled among serious and repeat adult offenders likely to face custodial sentences. The paper follows the researchers' path as they engage with various statutory bodies and community organisations. It also highlights their experiences of facilitating planning sessions and community group conferences. Finally, it throws light on the study's quantitative and qualitative data.

It was evident during early discussions on this research project that there was no entirely restorative justice process in place within the adult criminal justice system in Western Australia and therefore no operational service to research. The original concept of the communitarian model of restorative and transformative justice (R&TJ) as identified in this paper came about from an original collaboration between Brian Steels and Dot Goulding. Thus, from this point the model was moulded into a feasible two year research project from May 2000 until its completion in October 2002.

Background to the project

The researchers' background as prisoner advocates and prison reformers led them towards this research. They had experienced a general frustration with the failure of the criminal justice system to reduce victimisation and noted that there was a high level of victim dissatisfaction. Many victims were speaking out about feeling ignored within the mainstream criminal justice process and indicating that they were often fearful for their safety and general wellbeing. Concerns about crime throughout the community were also well documented

in the local press, radio and television current affairs programs, yet the incarceration rate within Western Australia was at its highest ever, around 220 per 100,000 of the population; the highest imprisonment rate of any Australian State.

It was also noticeable that whilst the Ministry of Justice provided a variety of educational and rehabilitative courses within prisons, its apparent difficulty to effectively challenge offending behaviour was reflected through its own data that pointed to a high rate of recidivism. It was this ineffectiveness and 'revolving door' syndrome that the researchers were concerned with, as it became clear that it was producing more and more victims of crime, including a second tier of victims among the offender's family and social networks. Prisons were thus being seen to present the darker side of the criminal justice system, for as Findlay observes:

Those who do end up in gaol, and for those employed to manage them, the prison environment requires significant redevelopment, if inmates are not to leave prison more maladjusted than when they went in. Violent, inhuman, unsafe, confrontational and exploitative prison settings will distort social and moral messages that are consistent with crime prevention.

Against this background, the researchers' focus on treatment and rehabilitation had a wide lens, embracing both victims and offenders. They looked for a combination of therapeutic and restorative processes to provide an opportunity for offenders and victims to feel satisfied with both process and outcomes. They noted the challenge to responsibility-taking for offenders in what Sykes and Matza refer to as the offender's 'neutralisations'. In their work with juveniles, Sykes and Matza recognised a variety of strategies whereby offenders deny their responsibility for a criminal activity; denial of responsibility, denial of injury, denial of victim, condemnation of the condemners, and appeal to higher loyalties. Further to this, and in line with searching for examples which identify positive lifestyle opportunities for offenders, the researchers noted Maruna and Immarigeon's comments that 'the major correlates of desistance from crime identified in research...involve ongoing, interactive relationships that can take up most of an individuals waking life'. The researchers' preliminary studies also supported Farrall's findings that, in general terms '...desistance occurs away from the criminal justice system'. Social relationships were seen to be central to the study, both for victims and offenders, especially as crime was being viewed as a fracture of relationships within a community.

Given this, successful rehabilitative options were explored so as to involve a broad multi-faceted approach to transforming the lifestyle of an offender, whilst providing a process suitable for victims to participate in. The researchers began to look for alternative ways to deal with crime and its social and economic consequences, especially from a position which identifies the offender as a social and interdependent being, one that responds positively to

being engaged in the process. The researchers quest to build a robust and effective model led them towards what Tyler describes as 'viable models of regulation that do not generate the negative consequences associated with punitive, sanctioning approaches to rule breaking'.

Restorative justice (RJ) seemed to be one possible part of the solution whereby the interests of victims and the opportunity for offenders to take some responsibility for their actions could be refocused. And, as Morris notes:

Restorative justice also emphasizes human rights and the need to recognize the impact of social or substantive injustice and in small ways address these rather than simply provide offenders with legal and formal justice and victims with no justice at all. Thus it 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 them to make amends for what they have done and to restore a belief in them that the process and outcomes were fair and just. And, finally, restorative justice encourages cultural relativity and sensitivity rather than cultural dominance.

Accordingly, the restorative justice option was explored with some like-minded people and shortly thereafter Restorative Justice WA (RJWA) was formed, a grass roots community group of people from all walks of life; church organisations, concerned individuals, victims' groups, prison reform groups and various community organisations. RJWA continued to provide in principle support for the development of the communitarian model of restorative justice until the group's demise some three years later. The Institute for Restorative Justice and Penal Reform (IRJPR) was then formed and subsequently provided support for the researchers and a venue to discuss restorative processes with institute members, other interested individuals and community groups.

The researchers felt that the development of an effective communitarian model of restorative justice would only gain government, judicial and community support if it was thoroughly researched, evaluated and found to be beneficial to the community as a whole. The researchers elected to look at several innovative working projects and, after two comprehensive study tours examining restorative justice programs in New Zealand, looked for the most effective way to introduce wholly restorative practices within Western Australia. As previously mentioned, there was no such service in Western Australia so the model had to be developed and the service had to be set up through consultation with interested community groups.

At this point it became clear that the researchers would have to provide the service themselves and ensure that data was collected from participants; both quantitative and qualitative. To do this they collaborated with Guy Hall from Murdoch University Law School in developing the research instruments and

presenting their ideas to the Mr David Daly, who was at that stage responsible for Community Corrections, who under the Ministry of Justice became the research industry partner. Subsequently the project received an Australian Research Council grant, which provided funding for thirty months.

Research on Restorative Justice suggests that the process provides benefits to victims, offenders and communities of interest. Using Howard Zehr's approach from his book *Changing Lenses* (1990), RJ first asks the question of how the process can assist the offender and victims of the crime, how the situation can be resolved, what do the people feel about it, what needs to happen to put things right, and who is going to do it.

Developing the preferred model

The proposed model was developed from taking account of a combination of international practices that supported the victims and their supportive network to participate in a process whereby they were able to hear an apology, seek reparation and provide or withhold a degree of forgiveness. The model also had to offer the offender, through their social networks, an ability to take full responsibility for their actions. It also had to enable them to challenge their behaviour, take up lifestyles free of crime and prepare them to provide reparation and apology in a face to face encounter with the victim and their supportive network. Fair process was seen as crucial to the legitimacy of the process used, for as Tyler's earlier work had indicated, feeling that one has been 'unfairly treated' disrupts 'the relationship of legitimacy to compliance' even more than 'receiving poor outcomes'. In essence, if unjust or unfair practices are encountered, the net result is likely to be non-compliance and resistance and visa versa. The researchers knew that the process not only had to be fair but be experienced as fair and just if it was to have such a positive impact upon all participants. Freiberg suggests that process is paramount.

Such a model was considered best if it were 'communitarian' or 'bottom up' in nature. The model should involve offenders and victims coming together with their support networks in a community group conference (CGC) setting to try to repair the damage caused by an offence and to try and find some mutually agreeable resolution. This model approaches crime as a relational act which results in a fracturing of relationships within a community, which itself holds the key to healing the effects of crime. The process is best conducted by trained independent facilitators, with primary participants being victims, offenders and their support networks rather than representatives from statutory bodies such as police and courts. In this model, offenders who pleaded guilty in court to specified offences were able to be referred to the project. The process included a holistic problem-solving approach with offenders, as well as a community group conference involving victims, offenders and their supports.

To this end Braithwaite's theory of re-integrative shaming is combined with a process called Mutually Agreed Plans. The planning process provides a space which encourages the acceptance of responsibility by offenders whilst being among supportive others, examining and correcting neutralisations and providing a supportive environment in which to look at a crime-free future. It asks the offender's networks to engage in a process with the offender to challenge and modify the lifestyle issues which underpinned the criminal activity. It is here where the notion of re-integrative shaming begins. This provides only an amount of shame necessary to motivate a positive shift in social behaviour. Too much shame stigmatises and is likely to prevent the individual from seeing the light at the end of the tunnel, causing humiliation, resentment and contempt for the process, thus providing less motivation and opportunity for compliance.

The researchers acknowledged from the outset that a Restorative Justice process is emotional and compassionate in nature; hence meriting the exclusion of a purely bureaucratic model. The preferred model is based on the underpinning philosophy of restorative justice, that of re-integrative shaming (as opposed to 'disintegrative or stigmatic' shaming) of offenders in an environment of safety and support. As Braithwaite contends:

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. These gestures of reacceptance will vary from a simple smile expressing forgiveness and love to quite formal ceremonies to decertify the offender as deviant. Disintegrative shaming (stigmatization), in contrast, divides the community by creating a class of outcasts.

Braithwaite also claims that re-integrative shaming is most effective when used in the presence of 'relatives, friends or a personally relevant collectivity' largely because 'repute in the eyes of close acquaintances matters more to people than the opinions or actions of criminal justice officials'. Tyler also supports this argument:

The restorative justice conference seeks to motivate such immediate and future behaviour by separating the 'good' person from their 'bad' conduct. The conferences then seek to both deal with the consequences of the bad conduct and, separately, to connect the good person to their motivation to behave in ways that win respect from their family, friends, and community. It is this connection with one's favourable self-image that motivates compliance in the future.

Accordingly, it was recognised from the outset that this process could only be effective where there was some form of emotional or social connectedness between the offender and others present within the restorative justice conference.

This particular study focused the research on fairly serious criminal offences and offenders who might be facing, or on the cusp of, a custodial sentence in the Court of Petty Sessions, and their victims. This was presented to pre-empt any challenge that the restorative justice process worked only with victims and offenders of petty crime. The criminal charges involved in the project were:

- Theft / stealing;
- Stealing as a clerk or servant;
- Burglary;
- Fraud; and
- Assault (including common assault and assault occasioning bodily harm but excluding sexual assault).

The researchers intended to test both the effectiveness of this model in challenging criminal lifestyles in fairly serious and repeat offenders as well as gauging victim perceptions of fairness, justice and personal safety. It is important to note that the model as tested in the research project was court sanctioned and not diversionary, and that all offenders were returned to court to be sentenced. Researchers were of the opinion that first time offenders of non-serious crimes could be more effectively dealt with via a court diversion method.

The researchers felt that a single community group conference (CGC) would be less of an effective deterrent to further criminal activity, especially among serious and repeat offenders and their victims, were a one or two hour face-to-face conference might not have quite the desired effect on those offenders with established criminal behaviour patterns. Whilst the researchers believed that the CGC would effectively personalise criminal actions and encourage apology and feelings of remorse in offenders whilst also affording meaningful engagement of victims, they felt that a more robust engagement with offenders would be necessary to turn around those already entrenched in criminal lifestyles.

To this end they developed the following restorative and transformative justice (R&TJ) model, which was used throughout the research project; although it should be pointed out that the model evolved somewhat throughout the thirty months of the project's life. The model is flexible and able to be adapted to diverse cultural and social applications. In this way the communitarian model of restorative and transformative justice came into being and it was this model which, with the approval of relevant statutory bodies and community organisations, was tested in local courts. To the researchers' knowledge, no other communitarian restorative model had, at that point, utilised a transformative component as part of the holistic approach to healing the effects of crime within communities.

Combined, the transformative and restorative constructs encourage a sense of challenge to offenders' 'neutralisations' and provide them with an opportunity to feel satisfied with both the process and outcomes. This last

point meets Tyler's notion that fair process is crucial to the legitimacy of the criminal justice process, for as he indicates, being 'unfairly treated' disrupts 'the relationship of legitimacy to compliance' even more than 'receiving poor outcomes.' Victims and offenders, together with supporters, can benefit from such processes as previous research has indicated as they provide greater satisfaction with process and outcome.

Setting up the service: community consultation

It was through the increasing support of several key people and groups which eventually assisted in the progression of the communitarian restorative and transformative justice model from an abstract idea to an actual service within the courts. The individuals and organisations consulted included; the Chief and Deputy Chief Stipendiary Magistrates, two other Magistrates whose courts we intended to service, Police Prosecutions Branch within both Central Law Courts and Fremantle Court of Petty Sessions, Duty Lawyers, Aboriginal Legal Service, Legal Aid, two local Domestic Violence Groups, several Church Organisations, Heads of Churches Committee, Victim Support Services (Ministry of Justice WA), church groups and other neighbourhood organisations. The community consultation process became a somewhat daunting task, as each of these contacts was made from cold without any formal introductions to leaders and practitioners in the field. In addition, the proposed communitarian model was to be the first of its kind dealing with adult offenders in Western Australia and a radically different concept from the prevailing mainstream criminal justice process.

In the first instance the researchers approached the Magistrates who presided in Court 1, Fremantle Court of Petty Sessions. This was the first court to permit a case to be referred to the R&TJ process. Following this, the researchers then approached the Chief and Deputy Chief Stipendiary Magistrates from Central Law Courts, Perth, who chose to pilot the model in Court 37 at Central Law Courts. It was this court that they most often presided in. The researchers were instructed where to sit in court and how to conduct themselves within the formal court process. In Fremantle Courts they were expected to find cases themselves and to formally ask the Court if they could approach the bench and explain why specific cases were suitable for referral to the project. Conversely, in Court 37 both Magistrates chose to refer cases to the 'Restorative Justice Team' and the duty lawyers in this court often asked for their clients to be referred to the project.

Both the Chief and Deputy Chief Stipendiary Magistrates in Court 37 developed a discreet system of communication for potential referral of cases to the R&TJ project. This took the form of unique eye contact or suggestion by raising a file, with the researchers responding with either a nod or shake of their heads to indicate whether the offence fell within the guidelines of, and was suitable for, inclusion in the project. On occasion, cases which did not strictly adhere to the research criteria were referred to the 'Restorative Justice

Team' as the Magistrates felt that the restorative process would better serve as a deterrent to further offending. These were generally for first time shop theft, and the 'team' was asked to provide brief counsel to the parties to get a better glimpse of the offender's background and the impact upon the victim.

Prior to commencement in the courts, information sessions on the R&TJ project were presented at Police Prosecutions Branch at Central Law Courts and Fremantle. A strong degree of scepticism was aired by several of the Police Prosecutors present at the Central Law Courts session, with the general concern amongst these prosecutors was that offenders would view the process as a soft option or the 'get out of jail free' card. Conversely, Legal Aid and Aboriginal Legal Services demonstrated some interest in the project during the information sessions but it was the duty lawyers and local lawyers already engaged to represent defendants who made a more enthusiastic and practical use of the R&TJ process.

Among local domestic violence groups there were strong concerns about the restorative and transformative justice project. The researchers entered into dialogue with these groups, explaining that if victims of domestic violence elected to participate in the R&TJ process then they should not be denied the opportunity to do so. The researchers explained how the R&TJ process, unlike the mainstream court process, readily identified the often serial nature of domestic violence offenders. Those presenting as first time offenders in the ordinary court process were likely to face fines without the problem of ongoing violence being addressed in a therapeutic manner, consequently increasing the potential for producing more domestic violence victims. However, in the restorative process the seriousness of the problem was more likely to be identified by both the offender and their supportive network, and could then be addressed via court ordered anger management or alternatives to violence programs.

In addition to this issue, the domestic violence groups expressed concern about the problem of the complex, imbalanced power relationships that arose when victims were in close proximity to perpetrators. Input from these groups was most valuable and enabled the use of specific safeguards such as victims of domestic violence having a forty eight hour cooling off period subsequent to any face-to-face conference plus the offer of support from domestic violence counsellors. Power imbalance was already a major concern for the researchers who believed that regardless of the crime, a victim had to have safeguards in place to promote and protect their rights, allow space for their story to be told, and for them to seek redress in a way that empowered them. The process was also seen as empowering as victims could withhold forgiveness or offer it as a sign of their personal strength.

Victim Support Services (VSS) were also consulted and presented with an information session and in-depth explanation of the project and its methodology. Initially there was some concern that the model might be similar to the Department of Justice Juvenile Justice Panels which, VSS managers claimed, did not adequately address victim needs. They presented concerns

over the researchers' ready access to victims, and so initially an agreement was reached whereby the researchers would use VSS volunteers to approach victims, explain the R&TJ process and ask if they wanted to participate. In addition to this the volunteers would offer support to victims at face-to-face conferences. This proved to be an unsatisfactory process as it was cumbersome, lengthy and simply not 'do-able' within the twenty one day time-frame allowed by the courts.

In the process put forward by VSS, the researchers were required to contact VSS volunteers only indirectly through VSS employees. Specific volunteers were allocated to certain victims but volunteers only worked a limited number of days and contact between both volunteer and victim, and volunteer and facilitator via VSS was difficult and, using this approach, the researchers never actually managed to complete preparation of victims and offenders, community group conferences and court reports within the specified twenty one days. Consequently, under directions from the Chief and Deputy Stipendiary Magistrates, the researchers approached victims directly and the vast majority of cases were then completed within the required time-frame.

Nevertheless, it was noted throughout the project that bureaucratic tensions were present and, while the researchers continued to have early support from several members of senior management at the Department of Justice, who were the Industry Partners, they were often faced with the opinion that they had no right to deal directly with victims, who were seen to be the sole domain of Victim Support Services. Furthermore it was noted at the completion of the project that the Industry Partners paid scant regard to the significant findings. This kind of tension has been well illustrated by King and Piggott¹ (2006) as they describe the lack of support and hostile responses by departmental management in Perth to the Geraldton Alternative Sentencing Regime (GASR) where they 'continued to struggle to gain resources and recognition'.

Police Prosecution Officers, on the other hand, cooperated fully with the Magistrate's instructions to provide the researchers with all information necessary to initiate direct contact with victims to ascertain if they wished to participate. This expedited the process and allowed the sequence of events to run smoothly.

In summary, the initial intensive community consultation process took approximately six months and to a lesser degree throughout the project as requests for information sessions on restorative justice and the pilot project increased. More than three years after the completion of the project the researchers still receive requests, outside of the Department, to present conference papers, seminars and address community organisations on communitarian models of restorative and transformative justice.

The communitarian model of restorative and transformative justice

The model provides a victim with an opportunity to receive information directly from the court that an offender has taken responsibility for the crime and its impact upon them. Further, the model offers to assist them, along with their supportive others, in preparation for the conference with the offender and their network. Whilst the latter did not always occur, victims and their network were provided with opportunity to engage in the process to a level that best suited them, including the use of a surrogate victim if desired.

For offenders, this model involves, upon a plea of guilty to specific charges, opportunity to demonstrate a willingness to meet with their victims within a community group conference setting. It also involves their willingness to involve their support networks of family and/or friends in a process designed to identify the underlying issues which led to the offence and/or offending lifestyles. This process is called the mutually agreed plan (MAP). The MAP process was modified to suit the Restorative and Transformative Justice pilot.

The notion of mutually agreed plans, in this instance, is initiated with the offender's willingness to proceed to a restorative conference together with the victim[s]. It is important to note that not all cases completed both restorative and transformative processes, but the facilitators point out that offenders who completed the transformative or mutually agreed plan component with their support networks, actually engaged in the re-integrative shaming process which underpins restorative justice. It was, therefore, expected that the concept of mutually agreed plans, when applied to offenders taking responsibility for their actions, would provide the following outcomes:

- Provide the victim (or victim approved surrogate) with an indication that the offender and his or her supportive others were willing to work towards a positive crime-free lifestyle, whilst taking responsibility for any harm done and making reparation and restitution as resolved through a forthcoming community group conference;
- Provide the Court with a report which placed criminal charges within a context by investigating underlying issues which may have led to the offence or patterns of criminal behaviour;
- Provide a futures plan that is holistic in therapeutic content and collaborative in support and intervention, agreed to by the offender and his or her support network;
- Provide the offender with a plan that contains short and long term interventions based upon personal strengths, support from others and built on foundations of responsibility and integrity from all participants.

The mutually agreed plan provides this opportunity through:

- The offender developing the strength and ability to take responsibility for his/her future becoming crime free;
- The offender working towards gaining competencies in areas such as stress reduction and communication skills;
- The offender developing ongoing support from a network of family and friends and other community based support systems;
- The offender preparing for meaningful activity within the community either in paid or unpaid employment or purposeful activities such as educational or parenting skills;
- The offender attending (if appropriate) therapeutic interventions as required within the written agreement. This may be amongst supportive others;
- The offender addressing necessary adjustments to achieve a positive quality of life among supportive others;
- The offender addressing family and relational issues;
- The offender exploring lifestyle issues within the prevailing income level;
- The offender agreeing to meet with the victim and his or her supportive others to make an apology, restitution and reparation to victim and community, with the support of others.

Methodology

Mutually agreed plans were established between offenders and their support networks of family, friends and colleagues. Independent facilitators used a group conferencing approach. This process began as soon as possible after the offence and involves those people most likely to present as both supportive and challenging to the offender, and willing to build upon their own and the offender's personal strengths. This was a commitment not only to the offender, but also to those offended against and the broader community. The participants were selected by the offender and could include family member, friend, fellow worker, church member, neighbour or any other person who was likely to provide a level of integrity to the group and its process.

Most of the facilitators' engagement with offenders took place in the offender's home or appropriate setting where, together with the support network, they felt safe and freely able to discuss inter-personal issues. Throughout the communitarian model, neither victims nor offenders were called into a formal office setting, nor were they engaged with in isolation. For the offender this meant that they were obliged to be joined in the process with a person or

persons that he or she had some form of emotional connection with. In this way the facilitator was able to glean a snapshot of the offender's current lifestyle and the offender was less likely to simply tell the facilitator what he/she thought they wanted to hear. Finally, the process allowed facilitators two chances to engage in the re-integrative shaming process – in this case with the offender in the presence of his or her support network. The process of re-integrative, rather than stigmatic, shaming was viewed as integral to the success of the process. As Tyler claims:

Re-integrative shaming combines strong disapproval of bad conduct with respect for the person who committed those bad acts... In the case of offenders, the goal is to encourage feelings of shame regarding one's bad acts, accepting responsibility, and sincerely apologizing. This restores the dignity of offenders. Key to this process is the social connection that people feel to their family, friends, and community.

In this way the process examined, within a culturally appropriate setting and in an atmosphere of trust, honesty and dignity, issues which were likely to contribute to offending behaviour and criminal lifestyle. Each plan was tailored to suit the offender's needs within an environment of support. As previously stated, it was important that there was an emotional connection between the supportive others and the offender, so that whilst the environment may have been challenging towards the offending behaviour, there remained support for the individual. MAPs explored areas of high risk and looked at safeguards and positive motivation for those who had offended. The plan had to be flexible in order to cope with individual changes and encourage positive personal imagery and growth in relationships. Researchers examined the process with supportive networks present, to note the outcome, in terms of challenging offending behaviour, and if it was more likely to break the cycle of crime and offending behaviour patterns.

The MAP process was explained to the offender prior to its occurrence. Offenders were told that this process might be challenging, and that they would need time to speak to a small number of supportive others who they would wish to be present. The rationale behind the MAP was also explained. A date and time was set for the session, which could take between two to three hours initially, with possible follow-ups to ensure the MAP goals, strategies, performance indicators and safeguards reflected the group's intentions.

More specifically it engaged with the offender and their network to examine the offender's Social, Physical, Intellectual, Emotional and Spiritual well-being and their:

- Developmental history, including health, education, sense of family and place, sense of worth;
- Current social and emotional wellbeing;

- Earliest connection with criminal justice system;
- Current lifestyle behaviours including addictions, leisure pursuits, meaningful activities and occupation, skills and competences;
- Impact of current lifestyle upon others – positive and negative – and how this impacts upon the victim;
- Unmet ideas, goals and ambitions;
- Degree of motivation for change – intrinsic/extrinsic;
- Level of support available to them and from where/when/how

Supportive others were invited to comment, and the whole process was managed in a non-judgmental atmosphere. Researchers examined the process with supportive networks present, to note the outcome, in terms of challenging offending behaviour, and if it was more likely to break the cycle of crime and offending behaviour patterns.

Usually by this stage the dynamics had encouraged a more open discussion whereby the supportive others present provided much of the information, again in a more supportive role rather than one based on blame or rejection of the person. Facilitators remained mindful that the offender had already pleaded guilty as charged and in this way had taken responsibility for the crime. The offender's story of the specific offence was invited and any neutralisations and/or excuses that diminished the level of responsibility were raised as a concern. Following the story, reaction was gained from the supportive others.

Working upon the information gathered from the offender and their supportive others, questions were then presented to the group, first by addressing the most serious problems thus reducing the likelihood of further harm. In general terms, the first set of actions was about personal safety for the victim and others. The facilitators then focused on any issues of behaviour and addiction that may have been raised. These could be alcohol, other drugs, including prescribed medication, gambling, and/or violence. The group was asked to look at how these could be urgently addressed and at what local resources were available.

Facilitators then explored the possibilities of a lifestyle away from crime. Here the group provided valuable information on what could be collectively supported in line with family and friend's personal values. This was medium to long-term goal setting, with the strengths of the offender used as directional and motivating factors. Issues covered here included housing, education, work, leisure, children and other family members' needs. Responses to such questions as; 'what is achievable?', 'what might prohibit reaching the goals?', and 'what can be done to ensure that it works?' were invited. Participants

were encouraged to take responsibility for some follow-up and feedback. From the items listed above, some goals were established, and strategies to bring them to fruition were sought. Each goal had a series of performance indicators that corresponded to the strategies, and in turn several safeguards were placed to ensure that harm was reduced and that all of the actions would be progressed.

Chronology of events relating to Community Group Conference and MAP

1. Guilty plea entered by the offender at the earliest opportunity to the court.
2. The Judge or Magistrate suspends the sentence date if an offer to use a restorative and transformative justice process is agreed to by the offender, following a brief introduction to the initiative during a 'stand down' of court proceedings. A re-appearance concludes that that process will be used, and information brochures given to offender along with contact details for further discussion.
3. The offender is then contacted within the following forty eight hours and the participation in a mutually agreed plan and community group conference is discussed in more detail - who will be invited, and issues such as the victim being known to the offender. This meeting is often held in the company of a close friend or family member of the offender.
4. The offender and their supportive others will work towards their MAP and CGC although, at this stage, the victim is yet to choose whether or not to become a full participant.
5. The victim is given the information that the case has proceeded to court and the offender has taken full responsibility. Further, it is explained to them that the court invites them to engage in the process to a level that they feel comfortable with. They are provided with an outline of the process, and it is explained to the victim that the offender is proceeding down a track of challenging their lifestyle of crime, and is working towards a face-to-face meeting with them. It is also explained that a conference will not be held without them, although they may wish to be involved at a level that they are comfortable with.
6. If the victim does not wish to participate in the voluntary process, the offender is informed and only the transformative component is completed by the offender and their supportive network. A summary of the offender's MAP is presented to the court. However, if the victim wishes to proceed to the community group conference a summary of the MAP is taken by the offender to the CGC for their perusal and comment.

7. All potential CGC participants (victims, offenders and support networks) are engaged in comprehensive information sessions provided by facilitators prior to any face-to-face meeting.
8. A full report from the CGC is written up as a report which is presented to the Court by one or other of the facilitators immediately prior to sentence being handed down by the Magistrate.

Identifying underlying issues

Through use of the Mutually Agreed Plan (MAP) process the researchers identified several recurring underlying issues which contributed to offending behaviour patterns. These were:

- Social exclusion issues including poverty and homelessness;
- Drug and/or alcohol abuse;
- Gambling behaviours and addictions;
- Mental Health issues;
- Poor anger control (often exacerbated by drugs/alcohol);
- Peer networks

Because the researchers did not deal with offenders in isolation but always in the presence of their family and/or friends, they were able to identify the underlying issues which eventually led to criminal activity. Following are three case studies which illustrate the ways in which the transformative component (MAP) assisted in fleshing out issues which factored into offending behaviour patterns.

Case Studies

1. *Alison: stealing as a clerk or servant*

Although her family had no idea of Alison's drug use, the researchers were able to identify during a MAP session at her home in the presence of her parents, that she had a nine year entrenched heroin addiction. Because the MAP method mirrors the re-integrative shaming process of the community group conference allowing everyone present to speak uninterrupted, the researchers/facilitators were able to ascertain that Alison had, over a period of several years, emptied her bank account of \$45,000, accumulated a significant drug debt, had her car repossessed and finally stolen from her employer to buy heroin and pay back her dealer. Throughout this time Alison had held down her job and, because her parents had no knowledge of drug addiction or its signs, no one was aware of her heroin addiction even when her case was first presented in court. The facilitators reported events from the MAP session and the subsequent CGC to the Court and Alison was referred to the Drug Court. At the time of writing, her rehabilitation has remained successful for more than three years and she is currently working and

studying. Her father wrote to the research team after the project was completed thanking them for helping his daughter, saying that he believed she would be dead by now if she had not been referred to the project and subsequently to the Drug Court.

2. Tommy: stealing as a clerk or servant

Tommy was a valued and popular employee of 12 years in the transport company where he was employed as a courier. His crime was opportunistic. One night at work a package he was loading onto his truck broke open and it was full of banknotes, coins and cheques. Tommy took the money and disposed of the coins and cheques. He did this on two occasions, stealing in excess of \$100,000 from his employers. The Magistrate presiding over Tommy's charges recognised that the crime was clearly out of character and referred the case to the Restorative Justice Team in order to try and place the crimes within some social context. During a MAP session in the presence of Tommy's wife the researchers/facilitators were able to identify that he had a serious gambling problem of longstanding. Tommy had managed to accumulate a substantial gambling debt and had committed his offence to pay this off and feed his gambling addiction. Until the MAP session at his home Tommy's wife believed that he only had an occasional bet on the horses. The community group conference was held at the offices of the firm where Tommy had worked. It was a very emotional occasion where Tommy acknowledged his guilt, his addiction and how much he had let everyone down. In this case his ex-employer, supervisors and work mates were forgiving and stated clearly that they did not want him to be jailed. Tommy had been made aware that he was almost certainly facing a custodial term. He was given an eighteen month custodial sentence, served six months and was released to parole. Tommy told the facilitators that he was grateful for the opportunity to apologise and express his remorse to his family, friends and workmates.

3. Jason: assault occasioning bodily harm (family violence)

Jason was on his second serious assault charge and facing a prison term when he was referred to the restorative justice project by his Legal Aid lawyer. He had assaulted both his mother and father during a serious family argument and, although both parents tried to have the charges on their son dropped, the police proceeded because of Jason's previous record. Jason's case was complex and the researchers conducted three MAP sessions with the entire family. Several issues pertinent to the offence were identified during these sessions: (1) Jason's twin brother had died in infancy and his mother was extremely over protective and overtly controlling, treating her 21 year old son like a small child; (2) Jason had himself been the victim of a serious assault four years prior to this offence. The assault had left him with minor brain damage and suffering severe headaches which often hospitalised him; (3) Jason indulged in occasional binge drinking which contributed to a recognisable inability to manage his anger which was most often directed at

his mother. The ensuing community group conference was emotionally charged but it was evident that the family wanted to resolve the situation. All MAP and CGC reports were presented at court and the Magistrate was able to make an informed judgement. Jason was put on a two year Intensive Supervision Order and ordered to attend alcohol awareness counselling and an anger management course. In addition to these the family attended family counselling sessions.

Time and intensity

During the time span of the project the researchers dealt with other family violence cases, assaults (some where the line between offender and victim was blurred), stealing as a clerk or servant, fraud, theft and burglary. In each of these referrals either drug addictions, excessive alcohol consumption, poor anger control, mental illness, gambling problems, homelessness, social exclusion or poverty, or a mix of several of these factors, underpinned the criminal activity for which each offender appeared in court.

The intense level of communicating with victims, offenders, their supportive others and significant community members became a crucial issue throughout the research, adding to the level of flexibility required to conduct the research. Mutually agreed planning sessions and community group conferences were, with very few exceptions, emotionally charged situations. Seven of the cases involving domestic or family violence offences progressed to face-to-face conferences, all of which were fraught with raw emotion as both victims and offenders told their stories. During face-to-face conferences victims of assault and/or burglary vividly recounted their fears and feelings of loss of security. In this way offenders were directly confronted with the harm that they had caused in the commission of their crimes, effectively removing their ability to depersonalise and/or neutralise their actions. Because of the emotional nature of these processes, it was usually necessary for the facilitators to spend time with both victim and offender groups immediately after face-to-face conferences. The process was also emotionally draining for the facilitators and the practice of using two facilitators per case proved to be an effective debriefing method.

Community group conferences and offender and victim information sessions rarely took place between 9am and 5pm, Monday to Friday. The researchers had to be prepared to work out of office hours on a regular basis throughout the timeline of the project: evenings and weekends being the most sought after time for meetings. On three occasions community group conferences were held on public holidays at the request of victims.

The research project: statistics

There were 135 offender referrals. 118 offenders engaged to some degree in the process, most (98) proceeding through mutually agreed plans (the transformative process). 50 offenders completed community group

conferences with their victims or an approved surrogate victim (1). 48 of the 50 conferences resulted in mutually agreeable resolutions.

Breakdown by gender

- 44 women were referred
- 41 of these completed mutually agreed plans
- 20 of these also completed community group conferences
- 91 men were referred
- 77 of these completed mutually agreed plans
- 30 of these also completed community group conferences

Breakdown by ethnicity

- 10 Aboriginal offenders were referred; 7 men and 3 women
- 5 completed mutually agreed plans
- 2 of these completed community group conferences.
- 1 was sent to regional court
- 2 lawyers failed to follow up with the research team and the client of one of these was dealt with on the day in court by the normal court process
- 10 offenders identified as having English as a second language. The ethnic diversity within this group was Vietnamese, Indian, Philippino, Croatian and Indonesian
- 10 completed mutually agreed plans (100% participation rate)
- 4 of these also completed community group conferences

Of the 135 referrals:

- 83 were referred by Magistrates
- 36 by Duty Lawyers
- 7 by the Drug Court
- 6 by Aboriginal Legal Service
- 3 self referred.

Locations of Community Group Conferences (most often at victims' request)

- 4 were held in the family home of the victim (in some cases also the offender's home)
- 1 was held in the home of one of the facilitators
- 2 in the Christian Centre for Social Action, Victoria Park
- 1 in Hakea Remand Centre (offender remanded in custody because he could not meet bail conditions)
- 1 in Rangeview Juvenile Detention Centre (victim was in detention)
- 2 in local parks

- 4 in church offices
- 10 in business premises (of corporate victims)
- 2 in Centrelink offices
- 6 at workplace/factory
- 17 in cafés, hotels

63 of the 135 offenders referred to the project had offended prior to prevailing charges. Because of ethical considerations pertinent to the research project, the researchers were unable to monitor the progress of offenders post sentencing. Consequently, they have been unable to accurately assess the re-offending rate amongst the participant group who engaged in the project at the transformative level (MAPs) or at the CGC level (MAPs + CGC). Although Morris points out that there are no significant studies which show higher recidivism rates for restorative justice processes when compared to mainstream justice approaches and, in their meta-analysis examining recidivism rates within restorative justice processes, Latimer et al contend that restorative approaches produce, on average, lower recidivism rates than adversarial court processes.

Victim participation and satisfaction

Throughout the study, victims were provided with the opportunity to participate in the process at a level they felt comfortable with. This varied from individual to individual and, as indicated above, involved them discussing the level of participation among a supportive network of family and friends. One of the main findings of the research clearly indicated a strong desire for most participants to be included in the process of Restorative and Transformative Justice, as did previous research which suggested that victims generally want some level of engagement in the process with offenders and court justice. In this study, more than 50 per cent of victims invited the team to further explain the process and to provide them with information on the impact of the crime. Amongst this group, most were keen to enquire about the effect of the process upon the offenders and to what level offenders were challenging their behaviour and lifestyle. Ideally, all parties involved need to agree to a plan for reparation, thus increasing commitment to it as a just resolution. At all times the team provided victims with available information and discussed future planning should they wish to continue in the process. They were also provided with information on support groups.

On average, the team attended victims' addresses twice during the period prior to the court sentence and made themselves available to victims and their supportive networks to answer questions and to provide information. Not all victims wished to meet with their offenders face-to-face but most wanted some knowledge of what happened to the offender and how this might translate for them into both safety and reparative issues.

Small business and corporate victims such as banks and multi-national companies, whilst not agreeing to fully engage at all times, demonstrated

varying degrees of interest in the concept and several invited the team to discuss the process and how it might impact upon both themselves and the offender. Additionally, because of its seriousness on the scale of stealing offences and its likelihood of attracting a term of imprisonment for a first offence, 'Stealing as a Clerk or Servant' featured as a substantial percentage of referrals from Magistrates within the project. This, in its turn, has caused a high number of commercial and corporate bodies to be involved as victims.

Magistrates' participation

Perth Central Law Courts provided 85 per cent of the cases dealt with in the pilot project. The bulk of referrals came from both the Chief and Deputy Chief Stipendiary Magistrates. The Drug Court Magistrate also referred six cases to the team. Comments from Chief Stipendiary Magistrate Mr. Steven Heath suggest that the process was a valuable resource for the court as well as community, stating that:

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.

Conclusion

The researchers contend that the communitarian model of restorative and transformative justice project referred to in this paper has shattered the myth that restorative justice conferencing is a soft option for offenders that only works well in cases of less serious crime. On the contrary, serious victimisation was evident among the majority of cases presented to the court, and the opportunity to participate presented a level of intense scrutiny for all offenders.

The project produced a participation rate of 34 per cent (of total referrals) of victims and offenders in face-to-face conferences. This represents a relatively high level of participation. In addition to those who actually participated in face-to-face conferences many of the remaining victims who elected not to progress to the conference stage contacted the researchers for assistance and information.

Research data indicated that, for victims of crime, the R&TJ model described here worked well in both process and outcome measures. The findings clearly demonstrated that the model was particularly effective at reducing offender neutralisation. In support of this contention, Professor John Braithwaite also stated that the R&TJ model was robust and the therapeutic nature of the transformative component (MAP) gave the restorative process 'two bites of the re-integrative shaming cherry', thus substantially diminishing the tendency of offenders to 'neutralise' their behaviour and encouraging them to accept personal responsibility for their actions.

Against this, the researchers found that the R&TJ pilot project carried less official weight and recognition than other court projects such as the Drug Court trial in Central Law Courts or the Family Violence Court trial at Joondalup Court and, accordingly, was sometimes discounted by lawyers and participants as being 'research rather than the real thing'.

The findings indicate that a combination of transformative and restorative processes provide a powerful voice to victims and the community and act positively on victims, offenders and community alike.

End Notes

¹ Mirroring the Stages of Change in the Establishment of Problem Solving Courts. Third International Conference on Therapeutic Jurisprudence. Perth June 2006.

² Both researchers had a long and committed history working with offenders and prisoners. They had provided numerous courses to offenders. They advocated for an open and accountable criminal justice system that was effective in challenging offending behaviour and promoting the status of victims.

³ Later to become the Department of Justice, and more recently, in 2006, following the Mahoney Inquiry (2005-6), the Department of Corrections. For the purposes of this paper, the term *Ministry* is used throughout.

⁴ Findlay 2004:2 unpublished notes.

⁵ Sykes, G., and Matza, D., (1957) 'Techniques of neutralisation: A theory of delinquency', *American Sociological Review*, 22, 664-670.

⁶ Maruna, S. and Immarigeon, R. (2004) *After Crime and Punishment: Pathways to Offender Reintegration*. Willan. Devon UK.

⁷ Farrall, S. (1995) *Why do people stop offending* *Scottish Journal of Criminal Justice Studies*, 1:51-9.

- ⁸ Tyler, T (2006) 'Restorative Justice and Procedural Justice: Dealing with Rule Breaking', in *Journal of Social Issues*, vol 62, no 2, pp307-326.
- ⁹ Morris, A., (2002:598) 'Critiquing the critics: A brief response to critics of restorative justice' in *British Journal of Criminology*, vol 42, Summer 2002.
- ¹⁰ Tyler, Tom R., (1990) *Why People Obey the Law*, Yale University Press. New Haven.
- ¹¹ Frieberg A (2001) 'Problem Oriented Courts: Innovative Solutions to Intractable Problems?' 11 *Journal of Judicial Administration* 1.
- ¹² Braithwaite, J., (1989) *Crime, Shame and Reintegration*, Cambridge University Press.
- ¹³ MAP was developed by Dr Dorothy Goulding and Dr. Brian Steels in 1999 for use in identifying underlying social and criminogenic lifestyles.
- ¹⁴ Braithwaite, J., (1989:55)
- ¹⁵ Tyler, T (2006) 'Restorative Justice and Procedural Justice: Dealing with Rule Breaking', in *Journal of Social Issues*, vol 62, no 2, pp307-326.
- ¹⁶ Sykes, G. and Matza, D. (1957:668) *Techniques of Neutralisation: A Theory of Delinquency*. *American Sociological Review*, 22.
- ¹⁷ Tyler, Tom R., (1990:172) *Why People Obey the Law*, Yale University Press. New Haven
- ¹⁸ Bevin, J., Hall, G., Froyland, I., Steels, B., and Goulding, D., (2005) *Restoration or Renovation? Evaluating Restorative Justice Outcomes in Psychiatry, Psychology and Law, Vol 12. 1. 2005:194-206*
- ¹⁹ At the time of the project, VSS came under the umbrella of the Ministry of Justice WA. Following the Mahoney Inquiry it has been moved to the Office of the Attorney General.
- ²⁰ Tyler, T., (2006:315) 'Restorative Justice and Procedural Justice: Dealing with Rule Breaking', in *Journal of Social Issues*, vol 62, no 2, pp307-326.
- ²¹ Morris, A., (2002:607) 'Critiquing the critics: A brief response to critics of restorative justice' in *British Journal of Criminology*, vol 42, Summer 2002.
- ²² Cited in Morris, A., (2002)
- ²³ Maxwell and Morris 1999; Strang 2000; Daly 1999
- ²⁴ As identified by McElrea, 1994:99-101.

²⁵ Written statement by Chief Magistrate Steven Heath (2002) upon completion of the pilot restorative and transformative justice project carried out in Court 37 Central Law Courts, Perth; the Court over which he regularly presided.

²⁶ Beven et al 2005:206

²⁷ Beven et al 2005:206

²⁸ In conversation with researchers at ANU during the study (2001) and at a Breakfast address to invited guests at an Institute of Restorative Justice meeting, Subiaco, 2004.

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