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An Interdisciplinary Theoretical Interpretive Synthesis Examining the Barriers to Implementing Restorative Justice as the Standard Paradigm of Adult Criminal Justice Within the Context of the United States

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An Interdisciplinary Theoretical Interpretive Synthesis Examining the Barriers to
Implementing Restorative Justice as the Standard Paradigm of Adult Criminal Justice
Within the Context of the United States.

By Matthew J. van Maastricht

April 2010

A Master's Thesis

Submitted to:

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In partial fulfillment of the requirements for the degree of
Master of Social Work

School of Social Work
College of Community and Public Service
Grand Valley State University

Signature page has been removed.

To my partner and best friend, Marie.

Without your continual support and unconditional love, I would not have been able to finish this endeavor, and I never would have made it this far in my academic career.

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Abstract

A systemic paradigm shift of any sort is complex and multifaceted. A systemic paradigm shift of justice is no different. The purpose of this study is to identify the barriers that exist in a systemic paradigm shift from retributive justice to restorative justice. The methodology for this study is an interpretive synthesis of literature on restorative justice and consists of primarily theoretical literature. The literature for this study came from a variety of disciplines (e.g. psychology, criminal justice, sociology, and social work) in order to obtain a holistic perspective. A tripartite analysis was conducted using three perspectives: criminal justice, social systems model, and social work. In using these three lenses, different barriers to a systemic paradigm shift were able to be identified. This study identified several barriers from all three perspectives that may likely impede a systemic paradigm shift to restorative justice. With these barriers is it possible that a restorative justice paradigm might not be able to wholly replace the criminal justice system, but rather, that it can grow to work in concert with the current criminal justice system, and infusing the criminal justice system with restorative values.

This study holds the potential for social workers to focus efforts on social change, and addressing the barriers that have been identified. This research advocates for social workers to be active in political action as well as in community organizing and development. Social work, because of its mission, values, and perspectives, is in a unique position to address these barriers.

CHAPTER ONE

Introduction

The purpose of this study is to examine the potential for a paradigm shift to occur from retributive justice to restorative justice and to explore the barriers that may prevent such a paradigm shift. Retributive justice can be characterized as an emphasis on punishment which is aimed at inflicting a punishment of comparable severity as the wrongful act. Therefore, punishment is seen as justifiable, and the individual deserves punishment, because of the harm that was committed. Thus in the current implementation, the state takes the responsibility for seeking retribution (Reichel, 2001). Restorative justice, on the other hand, emphasizes the need for the victim and the community to experience wholeness by attempting to satisfactorily repair the harm that has been done (Reichel, 2001).

Determining the barriers that exist in implementing restorative justice is crucial to the advancement of social policy. Without understanding the barriers that exist in implementing a paradigm shift from retributive justice to restorative justice, the criminal justice system – and the greater society – will remain in the current cycle of discussing 'restorative justice' in terms of masking certain diversionary programs within the present system, which is largely retributive, in restorative façades. Without examining the barriers that exist in a systemic paradigm shift, such a shift may never happen.

Advocacy is a major part of the social work profession, both for clients as individuals and clients systems at various levels (National Association of Social Workers [NASW], 2008). Obtaining knowledge, regarding the specific barriers to restorative justice, enables advocacy efforts to focus on the changes that need to take place for this paradigm shift to occur.

Many of the writers and researchers discussing restorative justice have not dealt with the ability of restorative justice to actually take hold as a paradigm of justice (van Wormer, 2006), but have rather focused simply on the implementation of practices and programs that are labeled as “restorative” (McCold, 2000). The focus of this research is not simply on creating restorative justice programs that serve as diversionary programs within the criminal justice system as an alternative to the standard retributive paradigm. Instead, this research focuses on the current barriers that prevent establishing restorative justice as the mainstream paradigm of justice, and to use a colloquial phrase, almost turning the current criminal justice system on its head. Thus my research question is: What are the barriers that prevent a shift to a restorative paradigm of justice within the context of the United States? It is by discovering and addressing the barriers that progress in changing justice philosophy can occur.

Methodology

The methodology for this study is an interpretive synthesis (Weed, 2008) of primarily theoretical literature. The epistemological foundation for this research is largely advocacy and pragmatism (Creswell, 2003). Beyond discovering the systemic barriers that exist, the ultimate goal for this author is to determine what works in order to

promote social change. Consistent with these orientations, this author does not purport that this analysis is the only way of viewing the world or that there is a single static reality which is achieved in this research. On the contrary, reality is dynamic and socially constructed. Therefore, this author is presenting a perspective and a view of the world with the hopes that this will ultimately promote a systemic justice paradigm shift.

The data for this study was collected from published literature. The literature for this study came primarily from peer-reviewed journal articles, although books were used adjunct to these articles. Primary search was done searching for “restorative justice” in the abstract/title fields. The databases that were searched consisted of: Criminal Justice Periodicals, PsycARTICLES, SocINDEX, Social Work Abstracts, Academic Onefile, Academic Search Premier, Wilson Select Plus, Sage collections, JSTOR (law, philosophy, political science, psychology, public policy, religion, and sociology collections) and Sage complete. In addition, other sources were found from a review of reference lists within the peer reviewed articles that were found by the aforementioned methods. The specific articles that were used were chosen by relevance to the topic.

The methodology of this thesis is a synthesis and analysis, a secondary analysis, rather than simply a summation of the literature. As restorative justice does not fall clearly within the bounds of one discipline, relevant theory and applications of restorative justice are spread across the social sciences and thus, the literature in this study is multi and interdisciplinary in breadth. Although this study is a part of the body of social work literature and will be written from such a perspective, the analysis will occur from three perspectives: social systems theory, criminal justice, and social work.

The paradigm of restorative justice is primarily housed in the discipline of criminal justice; therefore the first perspective is from the standpoint of criminal justice. For this analysis, the primary lens that will be used is the Crime Control Model (Packer, 1968). Although this is certainly not the only model of criminal justice, this is an important one for the contemporary criminal justice system.

The second perspective point is that of social systems theory. Many systems allow for flow in and out of the system. Therefore, systems are not cut off from other systems, but are connected through interfaces (Norlin, Chess, Dale & Smith, 2003). It is important, then, to examine such a change from the standpoint of systems and system variables. Additionally, contextual factors play a large role in any system of examination. Therefore, this section will also address the socio-political factors that surround the discussion at hand. For the purpose of this study, the particular social systems theory that was utilized is the Social Systems Model (Norlin, Chess, Dale & Smith, 2003).

Finally, the third perspective is from social work – provided primarily by the *Code of Ethics of the National Association of Social Workers* (NASW, 2008). The *Code of Ethics* (2008) identifies the mission of the social work profession as such: “to enhance human well-being and help meet the basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty” (NASW, preamble, p. 1). Further, the *Code of Ethics* (2008) identifies social justice as a core value of the social work profession (NASW). Although the *Code of Ethics* (2008) is not strictly the limits of this analysis, this was the primary lens through which the literature was examined for this section.

By conducting the analysis in this manner, restorative justice was analyzed in a holistic fashion, and the results will provide diverse information on the barriers to systemic implementation of a restorative justice paradigm. In analyzing the theoretical and research literature on restorative justice, it is hoped that the barriers to systemic change may be discovered.

Ethical issues and limitations. There will be no risk to participants, primarily because the data will be collected from published literature. Because the literature is already distributed in a public forum, there is no confidentiality that will be protected. Further, there will be no direct contact with any human subjects, that thus the potential for risk to participants is eliminated.

Potential limitations of this study include the possible limitation of the data that is collected, as there will certainly be literature that is not included in this study. Further, because the analysis is not done using statistical data the analysis may be seen as somewhat bias. Bias is nearly always present in any qualitative or even quantitative analysis (Creswell, 2002, Grinnell & Unrau, 2008).

This study also lacks the traditional positivistic foundations which lead to concepts such as generalizability. However, it can also be argued that all social research has limited generalizability, as humans are dynamic and cannot be easily manipulated in a laboratory. Thus, while this may be seen as a weakness, it may also be seen as a strength, as this may be more realistic regarding the scope applicability of this research. Overall, this project will be offered as an addition to the conversation to further understand the barriers that impede the full implementation of a restorative justice paradigm.

CHAPTER TWO

Literature Review: Restorative Justice

This chapter will discuss restorative justice, including defining restorative justice, a review of a few of the major values underlying restorative justice followed by a brief discussion of the roots of restorative justice. Second, there will be a discussion of the two models of restorative justice followed by a discussion of the process and outcome of restorative justice. Third, this writer will discuss three of the main practices employed in restorative justice followed by a discussion of the role of shame in restorative justice. Fourth, a discussion of a few specific types of crime that restorative justice has been and might be used with. Finally, an evaluation of restorative justice will be offered.

Defining Restorative Justice

One of the more difficult aspects of discussing restorative justice is the fact that there is no official definition of restorative justice, and there is no precision of the language that is used (Van Ness & Schiff, 2001). There are, however, some basic assumptions on which the concept of restorative justice is based. First, crimes are not simply violations of a legal code, but rather are “a violation of people and relationships” (Bradshaw & Roseborough, 2005, p. 15). Further, restorative justice consists of three main foci: victim reparation, community reconciliation, and offender responsibility (McCold, 2000).

Restorative justice can also be conceptualized as the antithesis of what it is an alternative to (Braithwaite, 1999). Therefore, restorative justice is not in existence solely

for the reasons of outcome, but also for ethical reasons. Restorative justice is then a collection of principles and from those principles come practices which are beneficial (Walgrave, 2000). Restorative justice focuses primarily on the harm that was done in the act of the crime. The harm can be to the victims, to the greater community, and even to the offender themselves (Van Ness, 2004). Those who hold the restorative justice philosophy seek to repair those harms and help support restoration of all parties, including the victim, the community and the offender (Van Ness, 2004).

Those who advocate a restorative justice philosophy, in seeking to repair and support restoration focuses not on punishment or rehabilitation, but rather on how the repair can happen and what is needed to restore the victim to wholeness (Walgrave, 2000). Restorative justice theorists hold to a more holistic view of crime, and understands the impact of crime to be multifaceted and very personal to both the victim and the offender. In a restorative justice paradigm, success is measured by the amount of harm that has been repaired rather than the amount of punishment inflicted (Van Ness, 2004, p. 102).

Restorative justice does not only include all stakeholders in an offense, but it also benefits all stakeholders of an offense (Walgrave, 2003).

For the victim, restorative justice offers the hope of restitution or other forms of reparation, information about the case, the opportunity to be heard, and input into the case as well as expanded opportunities for involvement and influence. For the community, there is a promise of reduced fear and safer neighborhoods, a more accessible justice process, and accountability, as well as the obligation for

involvement and participation in sanctioning crime, reintegrating offenders, and crime prevention and control. For the offender, restorative justice requires accountability in the form of obligations to repair the harm to individual victims and to victimized communities, as well as the opportunity to develop new competencies and social skills and the capacity to avoid future crime. (Bazemore, 1999, p. 87-88).

Values of Restorative Justice

Restorative justice is not codified in any way and the values can differ in specificity, however multiple authors appear to agree on the generalities of a number of foundational values. These foundational values are non-domination, empowerment, and respect and will be discussed in this section.

One of the major foundational values is non-domination, so that all participants have an equal standing and an equal opportunity to participate. Any program that seeks to be restorative must actively seek to overcome domination. This is important so that one party does not silence the other party and prevent them from fully participating in the dialogue (Braithwaite, 2003; van Wormer, 2006).

A second foundational value of restorative justice is empowerment. Restorative justice practitioners seek to empower individuals, families, groups, and communities in the process of justice (van Wormer, 2001). The practice of restorative justice empowers offenders to take active responsibility in the harm that has been committed, and it empowers victims to take an active role in their own process of healing. More generally, however, the application of restorative justice encourages all people to take active

responsibility in dealing with crime (Braithwaite & Roche, 2001).

Restorative justice involves the community much more than traditional forms of criminal justice. Whereas in traditional forms of criminal justice, governmental representatives, such as judges and police, bear the majority of the responsibility, in restorative justice, particularly in restorative community justice, the burden of responsibility is placed back upon the community. With this comes both burden and opportunity. The local community, then, is given actual responsibilities in the carrying out of justice (Braithwaite & Roche, 2001). The result of this communal empowerment is that the community is less dependent on professionals, and more dependent on themselves. While professionals may still be present in the practice of restorative justice, the active involvement of the community is even more present (Pranis, 2004; Shapland, 2003; Boyes-Watson, 2004).

A third foundational value of restorative justice is respectful dialogue and respectful listening (Hudson, 2003)—or put more simply, respect (Zehr, 2002). Although this need not always be the case, restorative justice as a practice prizes the encounters between offender and victim and the opportunity for asking questions, receiving answers, and the ability to say what is important to him/her (Hudson, 2003). The other side of respectful dialogue is respectful listening. A partner to non-domination, respectful listening must be practiced by all, because refusing to abide by this value disempowers the other participants in the process (Braithwaite, 2003). Zehr (2002) argues that respect is the most important value and states that “restorative justice is respect” (p. 36).

Roots of Restorative Justice

When one considers the roots of restorative justice, there are a few dimensions to consider. The first is that the roots of restorative justice originate from indigenous practices around the world—particularly the native peoples of North America and New Zealand (Daly, 2002; Zehr, 2002). Throughout time, and across the world, communities and cultures have developed ways to deal with and resolve conflict. These methods were often ritualized and involved the whole community in one way or another as well as the families of both the offending and the victimized party (Louw, 2006, van Wormer, 2004a; Zion & Yazzie, 2006).

Modern restorative justice began as an experiment in the mid-1970s in Canada as the Victim-Offender Reconciliation Program (VORP) to deal with two individuals who vandalized several properties. A group of Mennonites as well as a probation officer were considering ideas that would allow the victims to meet the offenders face-to-face. Although the judge was expressly pessimistic about such an endeavor, the judge, in fact, ordered sentencing that required the offenders to meet with victims face-to-face in order to decide on appropriate restitution (Zehr, 1990).

Accompanied by a probation officer, the offenders met with each of the victims and restitution was finalized for each. That restitution was also paid back within a timely manner (Zehr, 1990). VORP programs began to spread across Canada and shortly thereafter were introduced into the United States by a group of Mennonites in Elkhart, Indiana (Zehr, 1990). The VORP movement birthed programs that worked in cooperation with the criminal justice system but was not a part of the mainstream criminal justice

program. The early VORP movement was the foundation for what would come to be known as restorative justice (Zehr, 1990). Although the 'modern' restorative justice movement began in the 1970s, it was not until the 1990s that restorative justice, and its cousin community justice, were understood to be justice paradigms which would compete with a retributive justice paradigm (Bazemore & Dooley, 2001).

Models of Restorative Justice

Just as there is not one form of retributive justice and there is not one form of rehabilitative justice, neither is there one form of restorative justice represented in the literature. Although the distinction can be somewhat blurred, there are two camps within the restorative justice literature: the maximalists and the purists. Each of these will be described in-turn.

Maximalist model. Those who advocate for the maximalist model of restorative justice seek to maximalize, or expand the “restorative justice tent” (Bazemore, 2000, p. 469). The goal for maximalists is not to become more loose with commitment to restorative justice principles, but rather to diversify restorative justice so that restorative justice can be flexible to meet the needs of a diversity of stakeholders in the process (Bazemore, 2000; Walgrave, 2007). Further, maximalists argue that it is principles rather than practices that should be the locus of attention, so that restorative justice is not restricted to a limited number of practices (Bazemore, 2000). Paradigms and models of justice are not discrete points, but rather exist on a continuum, and it is by focusing on principles rather than practices that this can be best put into practice (Bazemore, 2000).

Restorative justice encompasses a wealth of approaches and interventions that hold the potential to transform criminal justice goals (Bazemore, 2000). Because of this diversity, it is its principles that allow restorative justice to be recognized. It is this focus on principles that is one of the more revolutionary aspects of restorative justice as the criminal justice system tends to focus on programs and ignores the values that underlie those programs (Bazemore, 2000). Restorative justice, as a paradigm, holds the potential for development and evolution, and in focusing on principles rather than programs one can allow restorative justice to be flexible enough to evolve and develop (Bazemore, 2000).

Purist model. Restorative justice theorists and practitioners of the purist persuasion tend to place a stronger emphasis on face-to-face interactions such as conferences and circles (McCold, 2000). In this model, the process and practices are of fundamental importance. For the purist, so long as the process is protected and carried out appropriately, restorative justice has happened (Boyes-Watson, 2000). Further, purist theorists eschew any type of coercion in the implementation of restorative justice, and thus insist that all participants must participate on a voluntary basis (McCold, 2000). Therefore, a purist model of restorative justice excludes a large number of cases where a voluntary agreement to come together cannot be solicited (Walgrave, 2000). Additionally, purists exclude any use of force or coercion (Walgrave, 2007). Just as the maximalist theorists desire to expand the restorative justice tent, following the same metaphor, the purist theorists of restorative justice try to keep the tent the same size, but encourage more people to come in—without expanding the tent (Walgrave, 2000).

Although these two models are nuanced differently, they are not opposites. The goal for both is the same in the end, a wholly restorative justice system. The differences exist in the operationalization of restorative justice until the ultimate goal of a restorative justice system can be achieved (Walgrave, 2000). Indeed, it is important for these two models to be integrated, as both contain elements that are crucial to restorative justice: process and principles (Boyes-Watson, 2000).

Process and Outcome in Restorative Justice

There are two major dimensions to restorative justice: process and outcome. The process dimension describes how the parties come together to discuss and resolve together how best to deal with what has happened. In terms of process, restorative justice often refers to non-adversarial (van Wormer, 2006) and non-adjudicative practices such as conferences and victim-offender mediation—in these practices, the victim and the offender, as well as the community are given the majority of the “decision-making power” (Roach, 2000, p. 253). Particularly, it returns the locus of responsibility back to the community and empowers the community to help find justice solutions (Bazemore, 1999). Beyond simply the reduction of crime, restorative justice seeks to reduce injustice (Braithwaite, 2003). The voluntary nature of the process is also important to restorative justice philosophies. Voluntary participation in the repair of wrongs committed recognizes the dignity and worth of the victim, and is important to the process of healing for the victim (Pelikan & Trenczek, 2006; van Wormer, 2004a; Walgrave, 2003).

The outcome dimension describes the results of the dialogue, and the outcome looks forward as well as being in the best interest of all parties (Shapland, 2003). The

process is most commonly discussed, and can be seen in the practices described below.

One of the important concepts in terms of outcome is decision making by consensus.

Consensus is not an easy way to make decisions and come to resolutions; indeed, it is a process that requires a significant amount of emotional and chronological investment. As restorative justice does not seek to create a “winner” and a “loser”, there is strength in seeking consensus among those involved in the conference or dialogue. Decision making via consensus is also able to help support the non-domination value. Participants are encouraged to speak, and restorative justice offers them an opportunity not only to be heard, but also to engage in the decision making process (Pranis, 2001). However, it is also important to note that in making decisions via consensus, there are social skills that are required that in many offenders can be underdeveloped or even absent (Pranis, 2001).

Restorative justice does not attempt to present itself as neutral, but is very biased toward improving the quality of social life as well as the improvement in relationships (Walgrave, 2007). Further, the desired outcome is a consensus among all parties present signaling agreement to an outcome. In order for this to occur, however, all must share power and cooperate with one another and with the process (Wagrave, 2007).

Restorative justice is not primarily about forgiveness (Zehr, 2002). The process can become oppressive toward victims if forgiveness is promoted actively by the facilitator. If a victim is to offer forgiveness to an offender, the decision lies solely with the victim and cannot be influenced by the mediator and the victim cannot feel pressured into offering forgiveness. In the restorative justice process, forgiveness is a side-effect,

so to speak, that is implicitly hoped for, but must naturally develop from mutual emotional availability (Armour & Umbreit, 2006).

Practices in Restorative Justice

Although there is no set number of restorative practices, there are a number of practices that have been most popular and prevalent in the practice of restorative justice. These three approaches, victim-offender mediation, conferencing, and circles, will be explored in the following section.

Victim-Offender Mediation. Of these, by far, the most popular is victim-offender mediation. In the context of restorative justice, mediation is much different than traditional mediation procedures (Umbreit, 1999; Presser & Gaarder, 2000). Restorative justice mediation may happen at any point during the criminal justice process or can serve as a replacement to the traditional criminal justice process (van Wormer, 2004a; Van Ness, 2004).

Victim-offender mediation brings together victims and offenders, with a trained facilitator. The focus of victim-offender mediation is, first and foremost, dialogue (van Wormer, 2004a; Dignan, 2003; Umbreit, Coates & Vos, 2006). Through this dialogue, the aim of the process is to bring to the offender the implications of the wrong that has been committed, not abstract harms against the state, but concrete harms against people. Additionally, after the harm has been presented, the hope is that the offender will be able to change and to not commit the same wrong again (Duff, 2003). However, this is not to simply impose pain and suffering upon the offender, but it is to help the offender, sometimes by emotionally painful means, to accept what he/she has done and try to repair

or restore the harm done (Duff, 2003; Pelikan & Trenczek, 2006). Further, restorative justice advocates hope that through mediation one can find a balance between the needs of the victim and offender so that the process can be hospitable to both (Pelikan & Trenczek, 2006).

In the process of dialogue, which involves respectful dialogue and respectful listening, the telling of one's story and the hearing of one's story are of the foremost importance, and in this case, listening can almost be more important than speaking (Hudson, 2003). Mediation, while often used by restorative justice programs and practitioners, is not solely the domain of restorative justice, and has been used by the traditional criminal justice system as well. While there are concepts that differentiate restorative justice mediation from other forms, this could possibly function as a link to the criminal justice system (Van Ness, 2004).

Mediation provides an opportunity for learning and for the offender to seek to make reparations through a manner acceptable to the victim. Further, mediation provides an opportunity for transformation—changing—of both parties as well as healing for both parties (van Wormer, 2004a). Further, mediation can be understood to be a more just and equitable justice practice, as participants direct the flow of the session, rather than a third party. In contrast to trials where the focus is on discrediting and damaging the opposing side, conferences are about supporting one's one side while respecting the other (Braithwaite, 1999).

While indirect mediation is possible in crimes of little consequence or very little emotional involvement, research shows that direct mediation is most beneficial for all

parties (Pelikan & Trenczek, 2006). However, studies have shown that direct mediation is linked with victim satisfaction, reduction of recidivism, as well as offender compliance with the terms of the mediation (Pelikan & Trenczek, 2006). Additionally, the process of mediation is a relational one, which seeks to re-establish the relationship between the victim and the offender (Mannozi, 2002).

In restorative justice mediation, the focus is on dialogue and story telling, and this stands in stark contrast to other forms of mediation, particularly civil mediation, as the role of the mediator is very different (Umbreit, 1999; Raye & Roberts, 2007). The term “mediation” can be a bit of a misnomer, and perhaps the term “conferencing” may be more appropriate (van Wormer, 2004a). However, this use of the term “conferencing” confuses the differentiation between what has traditionally been considered victim-offender mediation, and what has been traditionally considered family-group conferencing or conferencing.

Conferencing. In contrast to victim-offender mediation where the victim and the offender meet with a facilitator, conferencing involves not only the victim and the offender as individuals, but also family members and supporters of both the victim and the offender (Van Ness, 2004; Raye & Roberts, 2007). Typically, the offender is able to speak first, followed by the victim, and finally anyone else present is allowed to speak. After all have spoken and the conference is finished, the group then decides what the offender must do to repair the wrong (Maxwell, Morris & Hayes, 2006).

Conferencing, therefore, is a more democratic process as the decisions are not made by a disproportionately small number of people with a significant amount of

authority (Maxwell, Morris & Hayes, 2006). Although conferences involve more than just the individual victim and offender, the victim presence is essential, particularly as research suggests that the victim's presence is key in the reduction of recidivism (Raye & Roberts, 2007). Conferencing may be a practice preferable to victim-offender mediation, as it may be more culturally sensitive as it not only focuses on the individuals, but also welcomes into the process and is more open to traditions which may place a larger emphasis on family involvement of various cultures (Weitekamp, 2002).

Circles. A third practice in restorative justice, which is related to the previous two, are circles (sometimes referred to as peacemaking circles) (Stuart & Pranis, 2006). Circles are based on, though not a replication of (Stuart & Pranis, 2006), the practices of native peoples of North America, and circles have a strong community focus—this is what differentiates circles from the other two practices. Circles involve the victim and offender as well as other community members and criminal justice representatives all participating as equals (Raye & Roberts, 2007; Van Ness, 2004). Circles are therefore most inclusive because they have the potential to involve the greatest number and the greatest diversity of people — anyone who is interested (Van Ness, 2004).

In addition to the actual circle gathering itself, there is a significant amount of preparation. Although there is no facilitator per se in the gathering as is the case with mediation or conferencing, there is a facilitator role. This role has a responsibility for determining the suitability of the case for a circle as well as preparing the individual participants for the circle (Stuart & Pranis, 2006).

Rather than a facilitated conversation, the speaking moves around the circle in a clock-wise direction. Often times an object is used to manage the conversation. When the object such as a stick or a stone is passed to an individual, the individual is invited to say whatever they wish regarding the situation at hand uninterruptedly. When a person finishes, they pass the object to the next person and so on (Van Ness, 2004; Raye & Roberts, 2007). Circles can be used at any stage in the criminal justice process, and its usefulness extends beyond the formal criminal justice system and can also address community problems that may have lead to criminal activity but are not criminal in and of themselves (Van Ness, 2004).

Role of Shame in Restorative Justice

Another concept that is popular in restorative justice is that of reintegrative shaming. Shaming is one concept that van Wormer (2004a) consciously removed from her development of the strengths-restorative approach (van Wormer, 2001; van Wormer, 2004a), arguing its incongruous nature along with the strengths perspective (van Wormer, 2004a).

It is important, however, to differentiate between stigmatic shame and reintegrative shame. The purpose behind shaming (often called reintegrative shaming) in restorative justice is not to stigmatize the offender or to, in some way, reduce their humanity, but rather the purpose is to function as a form of informal social control. Reintegrative shaming views the person as a good person who committed a bad action, and does not allow the person themselves to be painted as bad. Essentially, reintegrative shaming is able to distinguish the action from the person. The goal of reintegrative

shaming is not to stigmatize the person permanently, but to facilitate the individual to be reintegrated into the community (Braithwaite, 2000b; Tyler, Sherman, Strang, Barnes & Woods, 2007).

Reintegrative shaming is not something that comes from the government, from police, courts, or prisons, but it comes from those in one's own community and those whom the offender knows, trusts, and loves (Braithwaite, 1999). It is in this social disapproval of the act that the offender can leave behind his/her action and be fully welcomed back into the community through rituals of reintegration. The person, therefore, is not forever branded a deviant (Braithwaite, 2000b). Further, it is beneficial to demarcate the difference between shame and humiliation. Humiliation may further cause injustice, oppression, and division, the very things that restorative justice advocates are attempting to transcend (Cohen, 2001). Thus, reintegrative shaming is different from humiliation.

Something that is seemingly paradoxical is that in order for reintegrative shaming to be effective the offender must be simultaneously supported. The goal is not for the offender to be outcast, but rather for the relationship between the offender and the community to be restored, and part of what is often required is a change on the part of the offender. The offender needs to be supported through this process of change. While the community condemns his/her actions, they must be willing to accept the person fully back into the life of the community (Presser & Gaarder, 2000). Therefore in restorative justice, shaming must take place in the "context of acceptance" (Bender & Armour, 2007, p. 256). Additionally, this issue of shame must be addressed in a culturally sensitive and

competent manner in order to determine the difference between shame that is helpful for restoration and shame that is toxic (Rodogno, 2008).

Because reintegrative shaming is not punishment, it must be the individual being shamed that must decide if it is reintegrative or if it is punitive. It is not possible for the shamers to decide if the shaming rites are reintegrative for the offender or if it is punitive for the offender (Maxwell & Morris, 2002b). Reintegrative shaming will only work with communities that are deeply involved in each other's lives and have pre-existing relationships (Braithwaite, 2000b). Reintegrative shaming can best be accomplished among people who respect and care for one another (Braithwaite, 2000b). Reintegrative shaming is a way for the community to express disapproval and for the offender to be held accountable for what she/he has done and to ensure that the offender no longer offends (Presser & Gaarder, 2000).

Restorative Justice and Types of Crime

Traditionally, in contemporary society, restorative justice has been utilized to assist with relatively benign crimes. Non-violent crimes, particularly property crimes have been crimes that have been the focus of much restorative justice programming (Umbreit, 1999), particularly with juvenile offenders (Bazemore & Umbreit, 2002). In addition, the major bastions of restorative justice—Australia, New Zealand, and the United Kingdom—have historically focused on juvenile non-violent offenses, which would otherwise lead to little or no formal penalty (Cossins, 2008). Despite the trends, there has been research and writing done that expands, either in practice or in theory, restorative justice application to other crime domains. This next section will review the

literature on types of crime for which restorative justice can be applied, with particular attention to atypical crimes for restorative justice utilization.

Restorative Justice in Non-Violent Offenses. Property crimes are categories that have traditionally received a fair amount of attention in restorative justice programming (Umbreit, 1999). Many restorative justice programs are specifically tailored for juvenile property offenders (for example, see Bonta, Wallace-Caprett, Rooney & Mcanoy, 2002). Further, much of the concern regarding traditional criminal justice interventions versus restorative justice interventions are around non-violent crimes, particularly property crimes such as burglary or larceny (Yeats, 1997). This is not to say, however, that these are always offenses of a mild severity and are not serious, but that they are significantly different from crimes such as murder or rape. In fact, one study showed that participants were more likely to send a burglary to a pure restorative procedure than any other crimes of high seriousness (Gromet & Darley, 2006). In addition, there is yet another emerging direction for considering restorative justice and a different form of non-violent crime: white collar crime (Piquero, Rice & Piquero, 2008).

Restorative Justice in Domestic Violence. Although mandatory procedures such as arrest and prosecution may help to reduce the prevalence of domestic violence, they are not empowering to the victims as it has little if any place for victim agency in the process (Grauwiler & Mills, 2004). By participating in the justice process, victims would gain a particular level of autonomy that does not exist in the traditional criminal justice system, even with the victims services that are emerging (Grauwiler & Mills, 2004). It is this lack of agency that can also lead to reluctance for victims to call the police, as they

have no choice in what happens in the process (van Wormer, 2009).

The idea that victims would ever want to meet with the person(s) who abused them may seem absurd, however, it is not uncommon for individuals to want to meet with that person to gather information or to help on their quest of healing, although, this often occurs years later, and not necessarily attached with a systemic restorative justice program (van Wormer, 2009).

By using restorative justice with victims of domestic violence—particularly the conference model of restorative justice—there is a systemic and official way for the victims to meet their offenders and to have hand in controlling the process. The victim can be given power that is often taken away in a domestic violence situation. The victim is not recognized as a passive person that has simply had wrong done to them, but it offers them an opportunity to become an active participant—an actor—in the process (Presser & Gaarder, 2000).

In fact, restorative justice also broadens the scope from simply the victims and offenders, and also puts the locus of focus not at the governmental level, but at the community level to give the community more authority in what happens (Presser & Gaarder, 2000). This allows for both support and enforcement at the community level, so that victims can feel supported and offenders can be held accountable in their community. This gives the community members, rather than simply governmental officials, an active task in stopping the violence (Presser & Gaarder, 2000).

Further, restorative justice holds the potential to address the roots of problems, including battering (Presser & Gaarder, 2000). Conferences do not impress the same

stigma that involvement that the traditional criminal justice system does, and thus it may not cause victims to feel as though they must hide the fact that they are involved in an abusive relationship and this may lead to more support at the community level which they may not have otherwise (Grauwiler & Mills, 2004).

A further difficulty with the traditional criminal justice system with domestic violence is that it stigmatizes offenders. In order for offenders to change, they “need to feel supported” (Presser & Gaarder, 2000, p. 185). Although the actions of the offender must be condemned, the offender cannot be wholly rejected as a whole person from their community, as this does not support change (Presser & Gaarder, 2000).

It is possible, however, that using restorative justice in crimes such as domestic violence, can lead to the assumption that it is a panacea and that a conference can offer enough to cause offenders to change and victims to heal (Cheon & Regehr, 2006). However, changing and healing are not a 'one-size-fits-all' type of process, and it can be a very different process for different people. While theoretically there are great benefits to victims, offenders, and communities by utilizing philosophies, principles, and practices of restorative justice, it is not yet concretely determined how “abusive relationships can be transformed and their harms repaired” (Cheon & Regehr, 2006, p. 387-88) without a rehabilitative framework.

Restorative justice, then, is not necessarily the whole solution, but only a part of a whole to support victims and stop partner violence in the most effective ways possible (Cheon & Regehr, 2006). Further, communication poses a risk to the victims of further trauma and even re-victimization, particularly with offenders “deficient in particular

social, cognitive, social, and psychological characteristics” which “might interfere with victim healing” (Presser & Gaarder, 2000, p. 187). Further, the encouragement of empathy in violent crimes, including domestic violence, can actually be dangerous to the victim, and therefore the implications of championing the experience of empathy in a conferencing proceeding must be thoroughly considered (Cossins, 2008).

Restorative Justice and Sexual Crimes. The understanding of the acceptability of restorative justice for sexual crimes is diverse, with some thinking it to be a good and productive alternative to the criminal justice system, and others seeing too many inadequacies. One can begin by considering the current barriers that there are to healing in the current criminal justice system, such as the difficulties that one may experience in trying to receive help from legal and medical systems, and one can often feel “blamed, doubted, and revictimized” (Campbell, 2008, p. 711) when assistance is received, adding to the post-event stress that the victim experiences (Campbell, 2008).

One of the major arguments in favor of the utilization of restorative justice in sexual offenses is that the current criminal justice system is not a place that promotes healing and restoration for the victim. The criminal justice system encourages denial of wrongs, particularly considering the adversarial approach that is entrenched in the culture of the United States. Further, the high evidentiary standards as well as the length of the process also reinforce the general trend of denying wrongdoing (Daly, 2008). The long and public trial is often not the event that brings healing and restoration for the victims, but the ability to witness the offender accept responsibility and to seek to make amends (Koss & Achilles, 2008). Additionally, it is this denial of wrongdoing that furthers the

victimization of the victim (Daly, 2008).

Daly (2008) argues that restorative justice, with its emphasis on accepting responsibility for the wrong, is a far more beneficial paradigm when working with sexual offenses. In fact, what is important is not solely what happens after guilt is determined, but what happens from the very first contact with police. It is these early contacts that are equally important in facilitating an atmosphere of healing. A suspect's denials often begin during the first contacts with police officers, even before the court becomes involved. On the other hand, it is also at this time that admissions of guilt may also be offered, if the suspect is indeed guilty (Daly, 2008). If the paradigm of justice moves closer to being restorative in nature, and the punishments can be less punitive, it is possible that more admissions of guilt may occur (Daly, 2008). Further, utilizing restorative justice in crimes of higher severity also allows for a more holistic response and supports the victim and the offender (McAlinden, 2006). However, restorative justice is not a panacea for sex offenses, but restorative justice is one of the alternative views of crime and justice that is important to seriously consider (Daly, 2008).

If restorative justice is also understood to be non-adversarial, using restorative justice practices puts more power and choice into the hands of the victim which empowers them to regain a sense of agency, power, and control in their lives (van Wormer & Berns, 2004). It affords the victim the possibility of confronting the offender(s), to ask questions, to seek answers, and to receive a confession, which can act as catalyst in the healing process. Moreover, for the offender, it is an opportunity to express remorse and offer some sort of restitution (van Wormer & Berns, 2004).

Although, as noted above, most jurisdictions have reserved restorative justice primarily for non-violent offenses, Daly (2006b) reported that New Zealand and South Australia are more likely to use restorative justice to address sexual assault, particularly involving youths, than other areas of the world. This is in contrast to other areas, such as the United States, where these crimes are thought of as being too severe or too serious to be dealt with by restorative justice means and are only appropriate for the criminal justice system (Daly, 2006b).

Conversely, there are others who argue that the use of restorative justice in cases of sexual assault is not proven and are “to a large extent, speculative” (Cossins, 2008, p. 362). One concern regarding restorative justice with sexual offenses is that the power dynamics that exist between the offender and the victim will remain, causing re-traumatization of the victim. Whereas the criminal justice system values the shielding of the victim from the offender, the values of restorative justice are contrary to this shielding and promote face-to-face dialogue, even in cases of sexual assault (Cossins, 2008).

Although there are drawbacks to the adversarial system in sexual assault cases, Cossins (2008) argues that the criminal justice system cannot be completely supplanted by restorative justice because sexual assault, particularly with children, is an offense that occurs repeatedly and often escalates in severity. Further, sexual assault, particularly against a child is a crime that is very serious and therefore Cossins (2008) argues that the prosecution “should not be a private conference process” (p. 375) and that it should be a public process with empirical outcomes (Cossins, 2008). What is more, many writers who advocate for restorative justice argue that restorative justice is (or should be) a

paradigm that is non-coercive. However, with crimes that are sexual (and thus violent) in nature, the ability to coerce the offender must remain (Koss & Achilles, 2008).

Restorative Justice and Clergy Sexual Abuse. Just as sexual assault perpetrated by a family member often has special difficulties associated with it, so also does sexual abuse by clergy members (van Wormer & Berns, 2004). In this case, it is the Church and the Church's representative who is also a spiritual representative who is the one that is the perpetrator, and the victims' support system is eroded away by the offense. In fact, clergy sexual abuse can even be worse than others because of these factors (van Wormer & Berns, 2004).

Restorative justice in clergy sexual abuse cases, just as in others, offers similar benefits to both the victim and the repentant offender. Van Wormer and Berns (2004) further note that the use of restorative justice in such a context, with the spiritual and religious implications of the crime, also offer a sense of spiritual and religious healing in the process as well, and is consistent with the concepts of redemption and forgiveness.

As restorative justice is not codified in any manner, it is able to take place at any point within the process as a supplement to, or a replacement of the traditional adversarial criminal justice process. In addition, the restorative justice approach also includes family members as well as the community in the process to both support the victim and the offender, but also to represent the wider community, as offenses such as clergy sexual abuse do not only affect the individual victim(s), but also the community at large (van Wormer & Berns, 2004).

Acceptability of Restorative Justice for Various Types of Crime. In a series of studies by Gromet and Darley (2006), participants were given vignettes that described various crimes and the participants determined whether the offender(s) would go through a pure restorative procedure, a mixed-procedure, or the traditional criminal justice system. The study found that less serious crimes were more likely to be sent to the purely restorative procedure (Gromet & Darley, 2006). For mid-serious crimes, the participants were “predominately split between the pure restorative and the mixed procedure” (Gromet & Darley, 2006, p. 407), and those crimes with a high-seriousness were most often sent to the mixed procedure as well (Gromet & Darley, 2006).

Overall, “the more serious, the more morally offensive, and the more violent the crime, the more likely participants were to choose a procedure with punitive punishments” (Gromet & Darley, 2006, p. 409). Further, the study participants were more willing to reduce prison sentences for offenders who completed the restorative justice procedure, although they also tended to be more somewhat harsher if the offender was not able to complete the restorative procedure (Gromet & Darley, 2006).

Evaluation of Restorative Justice

Criticisms of restorative justice. When it comes to restoring the harm, it is much easier to determine the harm and how to restore it when the crime is property or financial. However, it is unclear how well restorative justice may work when the crime is not a tangible crime such as property or financial crimes (Duff, 2003). Drinking-and-driving is a crime in which there is no support for the hypothesis that restorative justice diversions reduce re-offending (Tyler, Sherman, Strang, Barnes & Woods, 2007). In

drinking-and-driving cases where there is no injury, there is no identifiable victim, and traditional restorative justice processes where the victim and the offender are brought together do not work as well (Tyler, Sherman, Strang, Barnes & Woods, 2007).

It is unclear how well restorative justice will work on a larger scale in contemporary society contrasted with traditional societies from which many of the principles and practices of restorative justice have arose. There are many differences between the contemporary context and the traditional context—particularly with the normalization of European culture and values—and these differences challenge the efficacy of “‘blanket’ delivery of [restorative justice]” (Bottoms, 2003, p. 110).

The emphasis on community involvement in restorative justice, in a way, assumes that everyone is a member of a caring and close-knit community that is able to be defined and delineated from other communities. However, in practice this is not always the case as there are communities that are rather distant and not involved in the lives of others—this will be discussed further in chapter six below. Further, there are people who, for various reasons are somewhat distant from their community and have weak or non-existent social bonds with others in the community. Communities face a variety of unique challenges, and it is not possible to expect all communities to be able to primarily handle crime and intracommunity conflict on their own (Harris, 1998).

If restorative justice is expected to remain strictly informal, the door is then opened to certain abuses in the absence of safeguards (Dignan, 2003). Restorative justice does not allow for any way to determine guilt, it is assumed (and required for restorative justice dialogue to continue) that offenders will accept responsibility for the crime and

not deny or hide any part of it; and further, that the offender will express remorse for his or her actions. Moreover, restorative justice, is often written about as a philosophy of punishment, taking the place of more retributive sanctions such as imprisonment (Shapland, 2003). There are also roles that criminal justice professionals, such as those that judges and lawyers occupy, that cannot be filled by restorative conference facilitators (Shapland, 2003). In addition to the difference in roles, there is concern regarding the consistency and fairness of restorative justice.

There is also a lack of consistency across the board in restorative justice (Kurki, 2000). It is possible for similar cases involving similar elements to have radically different outcomes, but still agreed upon by all participants—many argue that this lack of “horizontal equity” (Tonry, 2005, p. 1269) is unjust. However, this is to assume that in the traditional criminal justice system the sentences are certain and consistent, which in the United States, with the strong tradition of plea bargains and prosecutor discretion, is simply not the case (Kurki, 2000).

There are many crimes where people may be victims without realizing it, or they may be the victim of a crime where the offender was never identified. In these cases, the victims do not benefit from restorative justice processes. Further, even in cases where the victim knows that they have been victimized and the offender is known, admissions of guilt are rare. Thus, there are only a small percentage of crimes in which the victim realizes their victimization, the offender is identified and apprehended, and the offender is forthcoming about an admission of guilt (Braithwaite, 1999).

While an admission of guilt and the acceptance of responsibility is important, it is possible that this may not always prove the most beneficial. In fact, there is also literature to suggest that when an offender takes full responsibility for his or her actions, restoration is not the result, but more criminal behavior may very well be the result. Therefore, by accepting without reservations their own responsibility in their action, it is possible that offenders define themselves as bad or criminal and continue to live out that identity (Alexander, 2006). It is important for the process to also help the offender to differentiate their actions from their personhood.

Finally, there is not a universal agreement on the types of cases which are most appropriate for restorative justice. It may be too simplistic to assume that restorative justice is equally applicable in all cases, particularly the more complicated ones, and when attention is not given to the many complexities of those cases. Cases such as domestic violence are particularly difficult and complex for victims, and “restorative justice advocates and practitioners must accept responsibility for failing to take seriously the full implications of the philosophy and values they espouse” (Achilles & Zehr, 2001, p. 93). On the other hand, in the application of restorative justice, it is possible that cases that are seen as more benign and minor may be most utilized for restorative justice processes rather than more serious cases where more is at stake (Harris, 1998).

Finally, as mentioned above, restorative justice is seen as a more holistic response to crime. However, this does not mean that it does not have its own limitations in scope. Restorative justice, particularly with its focus on dialogue, is unable to address the deeper systemic causes of crime such as poverty, homelessness, and racism (Cohen, 2001).

Interestingly enough, this is a key focus of social work (DuBois & Miley, 2008), and linking social work with restorative justice may be able to assist in addressing systemic causes of criminality.

Victim's experiences. It is important to consider whether victims are willing to participate in a dialogue with the offender, and an important dimension to consider is fear. While victims may initially feel fearful in the anticipation of a conference, this fear was not a significant factor contributing to the victim's decision to participate or not participate in the conference, and did not necessarily influence the outcome of the conference. Indeed, many victims had positive feelings toward the conferences generally (Wemmers & Cyr, 2005). “When victims feel that they have been treated fairly, they are more likely to feel able to put their victimization behind them” (Wemmers & Cyr, 2005, p. 540).

Further, there is little evidence of re-traumatization of the victim during the process of conferences (Wemmers & Cyr, 2005; Daly, 2006b). The traditional criminal justice system includes a much higher chance of re-victimization in that it takes much longer to finalize, cases are dismissed or withdrawn, and opportunities for victims to tell their stories are far more limited (Daly, 2006b). However, when re-victimization does occur, it is typically attributed “to the offender who has failed to take responsibility for his or her actions” (Wemmers & Cyr, 2005, p. 540).

Deterrence and recidivism. Conferences are more likely than traditional court processes to help offenders feel that they have been treated fairly. It can be argued that it is this feeling that is most indicative of whether they will cease offending or whether they

will re-offend (Tyler, Sherman, Strang, Barnes & Woods, 2007). On the other hand, however, there have not been any studies convincingly showing that restorative justice processes have led to a reduction in recidivism (Kurki, 2000). While there has not been a significant amount of concrete quantitative research showing deterrence, studies have shown enough promise in terms of reducing recidivism to support the expansion of restorative justice (Maxwell & Morris, 2002a). When there is a difference in recidivism, people crimes tend to have a lower recidivism rate than property crimes (Kerrigan, 2008). Moreover, it is still to be shown if the restorative process itself has the potential to reduce recidivism, or if the type of offender who chooses to participate in a restorative justice dialogue is less likely to re-offend (Kerrigan, 2008). Related to recidivism is deterrence, and restorative justice does not place much, if any, emphasis on deterrence (Braithwaite & Roche, 2001).

Efficacy studies of restorative justice. Some argue that the impacts of restorative justice are so small that it is hardly detectable by standard scientific research, unless an impossibly massive sample size is utilized (Braithwaite, 1999). In fact, it is important to consider methods of evaluation when evaluating restorative justice. Because restorative justice is fundamentally different from penal-focused models of justice, the way that one goes about evaluating its efficacy is very different from such models, and restorative justice practitioners must change the way the validity and efficacy of a justice paradigm is evaluated (Braithwaite, 2003). Moreover, because restorative justice is relatively young, there have been few studies of the effectiveness of restorative justice (Lemonne, 2008). The evaluation studies, however, may be somewhat biased as well.

By insisting on the voluntary nature of participation in restorative justice, it is quite possible that there is a strong selection bias in the positive findings of restorative justice (Armour, Windsor, Aguilar & Taub, 2008).

No study as shown that restorative justice processes have made a situation worse (Braithwaite, 1999). In fact, in restorative justice studies have shown overwhelmingly that all parties are more satisfied with the process and the result than in traditional criminal justice (Kurki, 2000; Title, Carasso & Seidler, 2002). When considering the breadth of the applicability of restorative justice, it is important to consider whether restorative justice is appropriate for all offenders, or if it is limited to “offenders who demonstrate unusual self-awareness” (Karp, Sweet, Kirshenbaum & Bazemore, 2004, p. 215).

Studies have also shown that socio-economic status can play a role in restorative justice program completion. When there is poverty at the community-level, the program completion rate, specifically juveniles, was much lower than in more affluent communities (de Beus & Rodriguez, 2007). This brings to light Cohen's (2001) criticism of restorative justice not addressing systemic issues into further relevance. Additionally, even if a program is not completed, exposure to a restorative justice program, offenders are offered motivation to change and community services that may assist in change. Therefore, even if a program is not finished, the individuals are better off because of their participation in it (de Beus & Rodriguez, 2007). However, if juveniles are able to complete the restorative justice program, the results can be of a larger impact if those lessons are able to be carried into adulthood (Kerrigan, 2008).

Summary

Restorative justice is difficult to define. However, despite the different ways of conceiving of restorative justice, a few constants exist: the offender must take responsibility, the focus is often on reconciling the victim, and there must be sometime sort of reparation on the part of the offender to work toward the wholeness. Although restorative justice has roots in indigenous practices, the modern restorative justice movement only began gaining momentum in the last two decades.

Restorative justice values non-domination in the process of dialogue, and values the empowerment of the victim, the offender, and the community. Respectful dialogue and respectful listening are also values that are highly prized in the process of restorative justice. Many assert that participation in restorative justice processes must remain voluntary in order for them to be most effective, and it is important to make decisions by consensus among the participants.

There are a number of practices in restorative justice, though the three most popular are victim-offender mediation, conferencing, and circles. Victim-offender mediation joins together the victim and the offender along with a trained facilitator to dialogue about the offense. Conferencing includes the victim and the offender along with family members and other stakeholders in the offense to dialogue with a trained facilitator. Circles include, in addition to the participants of conferences, community members, and dialogue moves around the circle so that all parties can say what they want or need to say.

There are two main models of restorative justice: the maximalist model and the

purist model. Although these two models are difficult to differentiate, and although they are not discreet categories, there are some differences. Generally speaking, maximalist restorative justice theorists tend to put more of an emphasis on principles over practices, and purist restorative justice theorists tend to focus more on practices.

Restorative justice differs from retributive justice and rehabilitative justice. Whereas retributive justice tends to focus on the offender and the punishment for the offender, restorative justice also focuses on the victim as well as the surrounding community. Restorative justice emphasizes restoring the harm rather than punishing the offender. Rehabilitative justice seeks to help the offender change, although it does so in isolation from the environment, including the victim, the families, and the community.

Two dimensions are important to consider when discussion restorative justice, the process and the outcome. Although restorative justice does focus on restoration, and although forgiveness is a desired outcome, forgiveness cannot be forced. Forgiveness must be offered voluntarily by the victim and cannot be forced or pressured out of the victim.

Another integral aspect of restorative justice is reintegrative shaming. Reintegrative shaming is distinct from stigmatic shaming in that the goal is not to stigmatize the offender, but rather to make it clear that the actions of the offender are wrong and will not be tolerated, while also seeking to reintegrate the offender back into the community. This reintegrative shaming is best done by those who care for and are cared for by the offender.

Restorative justice has typically been used with juvenile offenders of nonviolent

property crimes. While this remains the overarching trend, restorative justice scholars and practitioners have begun to expand beyond nonviolent property offenses and juvenile justice. By utilizing restorative justice in these offense categories, healing can be promoted and the processes can be fine-tuned specifically to the needs of the particular victim(s) and offender(s). Gromet and Darley (2006) supported the idea that pure restorative justice is more acceptable for low-severity crimes, and that higher-severity crimes need to have some elements of the traditional criminal justice system.

Additionally, some writers identify weaknesses with restorative justice, as well as with the broad application of restorative justice. On the other hand, although studies have not shown concrete evidence of the reduction of recidivism, there is a strong potential for the reduction of recidivism, so much so that it supports the expansion of restorative justice programs. Finally, restorative justice has high satisfaction rates when compared to the traditional court process and are generally positive toward the results of restorative justice.

CHAPTER THREE

Criminal Justice Analysis

Crime Control Model of Criminal Justice Process

In the previous chapter, the values underlying restorative justice were discussed. Restorative justice differs from the current criminal justice system and this can also be seen in the prevailing model of criminal justice and the values that serve as the foundation to that model.

The primary value of the crime control model is that “the repression of criminal conduct is by far the most important function to be performed by the criminal process” (Packer, 1968, p. 158). In order to repress criminal conduct, offenders must be punished, and in order to be punished must be convicted, and in order to be convicted, there must be evidence to do so. Therefore, crime control model advocates place particular emphasis on gathering evidence (fact-finding), and having as few barriers as possible in the task of fact-finding (Packer, 1968). Restorative justice, on the other hand does not have such a fact-finding mechanism inherent in it (Daly, 2006a). Lack of a fact-finding mechanism coupled with the focus on informal processes and informal social control mechanisms pose a significant barrier to a systemic implementation of restorative justice.

The crime control model rejects informal processes and non-adjudicative fact finding processes, that is, processes that are not formalized through the court system (Packer, 1968). Indeed, because repression of criminal conduct is the first and foremost goal, according to the crime control model, the sentence of the court must be carried out

as soon as possible. Punishment must be carried out swiftly and certainly (Packer, 1968). The model pivots on its ability to “produce a high rate of apprehension and conviction” (Packer, 1968, p. 159) quickly and with a high degree of certainty. In order to accomplish this the process must become streamlined and include only those essential to prosecute the case (Packer, 1968).

In order to control crime, the typical methods that are discussed among politicians are generally methods that employ larger numbers of police officers, an increased number of correctional institutions, and increasing sentences for more crimes (Sampson, 2002). Packer (1968) envisioned the crime control model as a conveyor belt on which cases continually processed and people as certain stations did their small task that contributes to the whole beginning with the police and ending with corrections. The crime control model assumes that the criminal justice system has a substantial impact on reducing the crime rate, however, it only has a “limited impact” (Pranis, 2004, p. 138). Rather than understanding crime to be controlled through formalized governmental agencies, restorative justice seeks to place crime control as a function of the community and as such views crime and crime control in a much more holistic light (Pranis, 2004).

Because of this trend of increasing police, prisons, and mandatory sentences, moving to a paradigm of justice which does not focus on punishment, and which will completely neglect the crime control model's interests of swift and certain punishment will likely prove difficult. A movement to restorative justice would include more than simply legislative changes, it would require a change in popular thought, which is much more difficult to accomplish.

The primary focus of the current criminal justice system is not on the victim and the offender, but the focus is on the relationship between the offender and the state. The state initiates the prosecution on behalf of society and therefore the process is rather abstract—a crime is committed against a victim, and the state retains all of the authority to charge, prosecute, acquit, and/or punish (Noll & Harvey, 2008). Therefore, the victim plays a very small role in the process (Achilles & Zehr, 2001). In restorative justice practitioners' focus on the offender and the victim, it helps the offender remember that there are actual victims that are harmed by the crime (Hudson, 2003) and not the faceless authority of the state.

Another assumption of the crime control model is that convictions and punishments with speed and certainty will deter future criminals from offending (Braithwaite & Roche, 2001). Restorative justice, on the other hand, does not place an explicit focus on deterrence, and places deterrence in the background (Braithwaite & Roche, 2001). This lack of explicit focus on deterrence is likely to pose a significant difficulty in terms of the wide acceptance of restorative justice as punishment and deterrence is has popular support (Packer, 1968).

Fairness and Proportionality in Criminal Justice

Fairness and objectivity have long been important concepts in criminal justice, and there is no better example of this than the archetypical representation of Justitia—blindfolded with the scales of justice in one hand and the double-edged sword in the other. One major area in which fairness has been lacking and sought to be improved is racial disparities. In fact, it was racial disparities that led to the rise of determinate

sentencing¹ and sentencing guidelines² (Tonry, 2005).

It was in the 1970s that indeterminate sentencing³ began to decrease in popularity while determinate sentencing began to rise in popularity. In determinate sentencing the goal was to flatten disparities that existed by placing stricter limits on judicial discretion, so that people who commit similar crimes will be punished in a similar manner. However, as race disparities were the major driving force for determinate sentencing, they have not been able to meet the goal of reducing racial disparities. Further, mandatory minimums and determinate sentencing guidelines have not contributed to greater proportionality but rather simply increased punishments (Tonry, 2005). While the trend in retributive justice has been to ensure similar punishments for similar crimes, restorative justice does not have this same horizontal equality.

The concept of fairness in restorative justice is not to ensure that everyone in the nation or everyone in the state decides on similar resolutions for similar crimes. Rather, the concept of fairness in restorative justice is largely the result of the restorative justice facilitator's words and ability to maintain equality in the restorative justice dialogue (Daly, 2003) as well as the impartiality of the facilitator (Hoyle, 2007). In addition, the conference process itself is fairer to all parties involved because the power of the dialogue is held with those who participate in the dialogue (Braithwaite, 1999).

Restorative justice is not based on proportionality between the offense and the

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- 1 Determinate sentencing involves a sentence for a fixed period of time and involves little discretion for the individual offender (Reichel, 2001).
 - 2 Sentencing guidelines are a technique that is used for judges to make determinate sentences and to ensure these sentences are more consistent, often requiring the judge to make sentences within the range specified (Reichel, 2001).
 - 3 The opposite of determinate sentencing, indeterminate sentencing allows for greater discretion by correctional officials as a wider range is sentenced by the judge (Reichel, 2001).

resolution as the participants in the dialogue are empowered to come to a resolution together. This opens the possibility to have a resolution that is disproportionate to the crime (Wright & Masters, 2002). In theory, this makes a very large barrier, however, in practice, the barrier is much smaller as proportionality is often not a reality in the current criminal justice system (Fattah, 2002; Tonry, 2005).

The danger remains, however, that a restorative justice resolution could be disproportionate to the crime, and arguable the most dangerous is to have the resolution disproportionately severe. While in one sense, the current criminal justice system may have significant difficulties with proportionality, it will not be beneficial to shift to a new paradigm of justice to simply recreate the current unjust outcomes of the current system.

The Court System

In addition to the theoretical system underlying the criminal justice system, practical considerations, particularly the institution of the courts is also significant. The way that the court system operates, with a judge imposing sanctions, can not operate in a fully restorative manner, even if the judge is influenced by restorative justice values, as the power structure is significantly unequal (Bazemore, 2000; Boyes-Watson, 2000; Roach, 2000). However, this is not to say that there is no place for the courts in restorative justice.

Rather than playing a central role, the courts would play a regulatory role. In discussing the potential for lack of proportionality in resolutions, the courts can function as an oversight mechanism to ensure the rights of all parties, including the rights of the greater society, are upheld (Burford & Adams, 2004; Dignan, 2003; Duff, 2003;

Walgrave, 2007). However, it is also possible that the courts could function as a mechanism to determine if the accused actually did commit the crime (Duff, 2003). However, if this was needed, it would be likely that the offender did not take responsibility and denied the offense. While this could be a possible resolution to those who may not admit to the offense, it brings into question the non-adversarial value of restorative justice. Thus in addition to the radical change in the function of the courts, the possibility of the offender denying the offense also becomes a barrier to a systemic implementation.

Retributive Justice and Restorative Justice

Although the grammatical origin of retributive justice is retribution, and retribution is often aligned with vengeance, much of the theory behind retributive justice is not necessarily that of vengeance alone (Reichel, 2001). The word *retribution* is composed of two main elements: the prefix *re-* which means “back” and *tribuere*, from which we get the word tribute, which historically can mean payment. Thus retribution is “pay back.”

When integrated into a system of justice, retribution and other concepts such as equity and desert theory enter into the conversation (Reichel, 2001). Equity demands that similar crimes be treated alike, so that there are not disparities in punishment between offenders that committed similar crimes (Reichel, 2001). Desert theory postulates that the punishment must be proportional to the offense and that there should not be great disparities between them. Thus, although desert theorists are retributive theorists, they do not advocate unbridled vengeance (von Hirsch, 2001, 2007). Further,

equity requires that the similar offenses should be punished in similar ways (Reichel, 2001). Thus, in a retributive paradigm, “a just punishment is one that is morally appropriate, or proportionate, for this offender for that offense” (Tonry, 2005, p. 1240).

Although the system that is currently in existence is doling out harsher punishments—being pushed, and often required, by the citizens—it often does not even cohere with desert theory of retributive justice. Desert theory does not advocate excessive, unnecessary, or disproportionate punishments for offenders, but simply argues that a punishment is deserved of a crime and that punishment must be in some way proportionate, though not necessarily equal to, the crime that was committed (von Hirsch, 2007).

Retributive philosophies and policies are furthered, and often radicalized, by politicians who run on platforms of being “tough on crime”. As a generalization, people tend to favor policies that most directly benefit them, and thus by voting for politicians that have a toughness on crime platform, those who see themselves as being more likely to be victims rather than perpetrators of crime, support those policies as they see such policies most directly affecting them (Tonry, 2005). The primary difference between a retributive justice paradigm and a restorative justice paradigm is that of focus. Whereas retributive justice tends to focus on assigning the appropriate punishment to the appropriate crime, in restorative justice “the aim is constructively to solve a problem in a way that all involved agree is just and appropriate” (Tonry, 2005, p. 1270). The issue that forms the fulcrum of the teeter board of justice is whether restoration or punishment is the most effective response to crime (Duff, 2003; Tonry, 2005).

Retributive justice theorists seek to make a link between crime and punishment, in that if one commits a crime, there is an appropriate punishment for that crime, however, restorative justice advocates do not agree that there is a necessary connection between crime and punishment (Roche, 2007). Punishment, particularly incarceration, is subjective and lacks any connection to the harm that was done. The seeming only common thread connecting the crime and punishment is that there is then harm inflicted upon both sides. It also brings up questions concerning what punishments are appropriate and who decides what punishments are appropriate (Roche, 2007). Restorative justice rejects the premise that punishment is the only effective means, or even the most effective means, to deal with crime, and instead looks to more restorative and innovative strategies in order to best address the offense at hand (Pranis, 2004; Walgrave, 2003; Walgrave, 2007). Further, punishment as a means is not as specifically directed toward its goal as restorative justice is focused on the goal of restoration and wholeness (Walgrave, 2003).

The drive for retribution, and most crudely vengeance, is a natural human tendency, but does little to facilitate a positive outcome (Braithwaite, 1999). Further, crime victims often use “their time in court as a backdrop for outbursts of hostility and rage directed at the offenders by attacking and demeaning them publicly” (Alexander, 2006, p. 73). While the anger felt by crime victims is completely understandable (Alexander, 2006), it begs the question whether or not this is the best expression of those emotions.

Another way in which retributive justice and restorative justice paradigms differ is in the concept of active versus passive responsibility. Restorative justice holds the

offender accountable, just as in retributive justice, except the type of responsibility is different. Punishment is centered on passive responsibility—the offender shows responsibility by having something done to him/her. By contrast, restorative justice is focused on active responsibility, where the offender shows responsibility by actively doing something, namely contributing to the positive outcome and restoration of the victim (Walgrave, 2007). Active responsibility is often a growth out of a sense of communal responsibility, and can contribute to healing and restoration in ways that a court-imposed sanction cannot (Braithwaite & Roche, 2001).

Like retributive justice, restorative justice is also explicit, sometimes even more so, in expressing social disapproval of the wrongful act. Restorative justice, however, links social disapproval to wrongful acts and that actual human harm that was committed, rather than to abstract laws (Walgrave, 2007). In this way, the disapproval can be directed more specifically than is possible with a punishment such as incarceration. Further, the victims themselves are able to play a role in this show of disapproval and of the goal of restoration (Walgrave, 2003).

There are also practices which are known to the present criminal justice system which are also used by restorative justice in a restorative fashion. Certain acts such as restitution and community service may be considered restorative if they arise from restorative processes (Van Ness, 2004). Incarceration is not something that is necessarily abandoned in restorative justice, but it may be possible for it to be used responsibly, particularly a person is a constant and persistent threat to the safety of the public (Dignan, 2003). Further, in restorative justice, the use of punishment is reserved only if all

willingness or compliance with restorative procedures fail (Burford & Adams, 2004). As demonstrated here, restorative justice and retributive justice are not necessarily discrete categories, but exist on a continuum (Roche, 2007).

Rehabilitation and Restorative justice

The word “rehabilitate” is made up of two primary parts the prefix *re-*, which in this case means “again” and the root *habilitate*, which according to the *Merriam-Webster Collegiate Dictionary 11th edition*, means “to make fit or capable” (ad loc). Therefore, rehabilitation means “to make fit again.” Rehabilitation is “a planned correctional intervention that targets for change internal and/or social criminogenic factors with the goal of reducing recidivism and, where possible, of improving other aspects of an offender's life” (Cullen, 2002, p. 255). The hallmark of rehabilitation is the intervention that will make recidivism less likely (Cullen, 2002).

Rehabilitation focuses on the individual and treating them in order to “eliminate criminality from their behavioral pattern” (Gaines, Kaune & Miller, 2001, p. 256). It is not the purpose of this research to discuss the origins of criminality within an individual. The main point behind rehabilitation is that there is something that is awry that must be fixed.

Although not retributive, rehabilitation is not restorative justice and treatment is not the same as restoration, although treatment can be an outcome of restorative processes. Rehabilitation, by itself, places a focus on the pathology of the individual and places the focus of the relationship between the individual offender and professionals. Rehabilitation is not based on the relational model that restorative justice is built upon

(Boyes-Watson, 2000).

Reduction of recidivism is also an important concept, but it is somewhat naïve to assume that treatment can be wholly effective at protecting citizens from the effects of crime (Bazemore & Dooley, 2001). Further, because restorative justice has a much larger focus, it has been more effective than rehabilitative justice approaches (Braithwaite, 1999). Restorative justice can be more effective at rehabilitation than how rehabilitation is currently understood (Braithwaite, 1999) because restorative justice does not address the person in a vacuum, but views the person in their environment, which, interestingly enough, is central to the social work profession (DuBois & Miley, 2008).

Summary

The crime control model is important to criminal justice and is largely the model on which the criminal justice system is built (Packer, 1968). Restorative justice does not have a fact finding mechanism inherent in it. This is a major barrier to the systemic implementation of restorative justice, particularly if the offender does not admit to the crime. If the offender does not admit to the crime, there is no way to gather facts in order to determine who committed the crime.

Restorative justice does not employ any of the methods that have been typically used to control crime such as the addition of police, prisons, or longer sentences. This requires a change in the assumptions of crime control. This is likely to be a barrier, as it requires changing long-standing assumptions and patterns. Additionally, restorative justice does not have an explicit focus on deterrence, which many understand to be the pro-active way to deal with crime. While this may be more of a psychological barrier,

such barriers are as real as material barriers.

Restorative justice also has a different way of understanding fairness; fairness is considered in a case-by-case instance rather than fairness to be a flattening of difference. This is a significant barrier, as in a time of determinate sentencing and sentencing guidelines; fairness is seen as crucially important to ensure that the similar types of crimes yield similar sentences. A related barrier, sentence proportionality is also of concern.

When a resolution is left to the victim and offender or to the victim, offender, and community, it is unclear how some sort of proportionality might be upheld. Although there is benefit to empowering those affected by the offense to be involved in the process, it remains possible that all could decide upon a harsh resolution for a comparably more benign crime. This is a significant barrier because of the fact that this would, in effect, be no more just than the system that is currently in existence.

Changes in the function of the court system are also a barrier. The court system takes a central role in the criminal justice process and determines both guilt as well as sentence. While the court system would not necessarily disappear in a restorative justice system, its role would change from that of decision-maker to that of oversight. In addition to the lack of specificity in which a court system would achieve oversight without usurping the authority of the victim-offender(-community) relationship, this would involve changing an institution that has been established in the United States since its founding. In order to achieve this, there would be significant need for popular support for restorative justice in addition to legislative changes.

Finally, as restorative justice differs from both retributive justice and rehabilitation, restorative justice is a new way of conceiving of crime, justice, and how best to handle crime. This would impact not only legislative changes and the popular acceptance of it, but it would also impact the police, the judicial system, and even the academic study of criminal justice. From a criminal justice perspective, there are many significant barriers to the systemic implementation of a restorative justice system.

CHAPTER FOUR

Social Systems Analysis

In this chapter, restorative justice will be analyzed using the social systems model as well as the political climate of the United States and how this climate effects criminal justice policy. In this chapter, the criminal justice system is the focal system of analysis. The barriers to a paradigm shift are also influenced by the place of the criminal justice system in the wider social system as well as in the political climate of the larger social system.

Social Systems Analysis

From the perspective of this author, the criminal justice system serves as a subsystem of the overarching system of society—a system within a system. The criminal justice system is an open system, which allows for inputs from and outputs to the suprasystem—the greater society of the United States (Norlin, Chess, Dale & Smith, 2003).

The boundary of a restorative justice system would be broadly defined by law, as it is in the traditional criminal justice system. However, the boundary would be much more malleable, as restorative justice places much of the locus of responsibility back onto the communities themselves. Therefore how the justice system is defined and bounded can vary greatly from community to community. In terms of legal changes, as described in chapter two, there are two primary models of restorative justice: purist and maximalist.

While the two are not necessarily opposing, there are differences. If the boundary is defined by law, it is unknown which model would be the model of reference. Depending, however, on how broad the larger definition is, the system could look very different and operate very differently in a variety of contexts.

As every system requires a boundary (Norlin, Chess, Dale & Smith, 2003), it is still to be determined if one would be able to speak of a 'restorative justice system.' The question remains: how would those outside of the system know who are inside of the system, and how would those inside of the system know who are outside of the system? If a restorative justice paradigm prevailed, no longer could the boundary of the justice system be seen as those who carry badges or wear robes. Neither can the boundary be seen as the triad of police stations, courthouses, and correctional facilities. If restorative justice is to be systemically adopted as described above including the emphasis on non-domination, dialogue, and community involvement the boundary would likely become somewhat nebulous. If the boundary is not defined, it is difficult to ascertain if it would even remain a system at all.

When considering boundary, it is also important to consider interface. An interface is part of a system's boundary, but it is a shared boundary with one or more systems so that there can be flow—albeit controlled—in and out of the system (Norlin, Chess, Dale & Smith, 2003). Therefore, with no boundary there would be no input or output interfaces. However, this causes problems, such as through what manner do people enter a restorative justice process? What will trigger dialogue to begin? Even though a restorative paradigm of justice would be likely more connected to the lives of

citizens, restorative justice as a way of dealing with crime would not be an integral part of the social system, but would only exist to deal with crime. Theoretically, then, if there was no crime, there would be no restorative justice system. Therefore, signal inputs would put the processes into motion. In order for this to happen, there must be an input interface, and therefore, there would likely be a boundary.

Inputs enter the system through an interface and are exchanges that display the interconnectedness of systems. Of inputs, there are two types: maintenance inputs and signal inputs (Norlin, Chess, Dale & Smith, 2003). The inputs of a restorative justice system would include money and laws, as does the current criminal justice system. In terms of funding, restorative justice programs are often funded by discretionary funds, rather than hard funds (Pranis, 2004). In order for a restorative justice philosophy to systemically take root as a formalized system, there would need to be systemic shift in how funding is allocated so that hard funding exists for restorative justice, and that “all activities and functions of the justice system” are infused “with restorative values (Pranis, 2004, p. 152). However, as restorative justice does not focus on punishment, puts a very low emphasis on imprisonment and does not utilize imprisonment readily (as discussed previously), correctional infrastructure would likely not be a major input in the restorative justice system. What this means for funding is to be determined as corrections absorbs a fairly significant amount of funds.

Everything that a system needs to function is an input to the system (Norlin, Chess, Dale & Smith, 2003), and this would include roles as well. In addition to police officers and legal officials, a major task input that would be relatively new in a restorative

justice system is community volunteers, and at the very least restorative justice dialogue facilitators. The signal inputs, however, would remain relatively similar: offenders entering into the system, although victims would be an additional signal input. In a restorative justice system, it is likely that law enforcement would remain the major input interface.

The part of the system that transforms inputs into outputs is termed conversion operations. Conversion operations are comprised of structure and functions: what the roles are and what those roles do (Norlin, Chess, Dale & Smith, 2003). From the perspective of this author, one of the most significant changes in terms of the functioning of the social system are the conversion operations. The structure of a restorative justice system would look radically different. Although legal officials such as judges and attorneys would likely remain in the structure of a restorative justice system, their functions would change, namely, they would have significantly less power and influence than they currently have. Instead, the roles of offenders, victims, and community members would change, particularly with more influence and authority. Those people involved then become subjects with agency in the process of justice rather than objects.

Another role that would be greatly changed would be that of correctional officials and practitioners. In a purely restorative system, the need for incarceration would either be eliminated or greatly reduced. However, it is not likely for jails and prisons to be completely eradicated, as there may be people that need to be incarcerated for their own safety or public safety, as well as some for whom restorative justice may not be appropriate.

Other changes in structure would be the addition of two more parties: victims, family members, and the respective community. Victims will take a central role in the process of restorative justice, and will be given agency and authority in restorative justice processes. If the community is to take a more active and significant role in justice, the role of the government, such as the police and the courts must shift from a role of expert in crime control, to one of community participation facilitator (Bazemore, 1999). However, a particular danger exists here, in that the community may become only a symbolic presence rather than a full participant in the justice process (Dzur & Olson, 2004). This may be particularly so if the government's role does not shift. If there is not a systemic shift and if restorative justice remains as an appendix to or operates at the behest of the criminal justice system, the coercive influence of the government may still remain (Bazemore, 2000; Harris, 1998).

Thus while restorative justice narrows the control of the state, it broadens the control of the community (Braithwaite, 1999). However, community is a relatively vague concept and is difficult to define and describe scientifically (Walgrave, 2002). If communities are to be given more responsibility in carrying out justice, it must be necessary to define communities and be able to demarcate one community from another; this is very difficult to do (Walgrave, 2002).

Although it may seem somewhat paradoxical, while the government's role in crime and justice would have to shift, it is important that is that the government does not cease to function in the area of crime and justice. The government's role would change, although it would remain significant. The government's role, in empowering community

participation, is to maintain the rights of the participants and the procedural integrity of the process. This is particularly important, because the potential for domination by one party over another is much higher in a restorative justice conference or dialogue than it is in a traditional court proceeding (Braithwaite, 1999). When signal inputs are processed through the conversion operations, they are transformed into outputs.

Technically, proposed outputs and outputs are different. Proposed output is used to describe the purpose of the system—describe what the system hopes to accomplish. Outputs, on the other hand, are what is released into the suprasystem after passage through the system. Inputs enter the system through an interface, processed through the conversion operations, and exit into the suprasystem as an output through an interface (Norlin, Chess, Dale & Smith, 2003). Because this analysis is on a theoretical system, for the purposes of this writing, the proposed output and the output will be conflated into one, as there is no actual output to examine.

There are three types of outputs: task outputs, maintenance outputs, and waste. Task outputs are the outputs that are released into the suprasystem. Maintenance outputs are outputs that look much like task outputs, but they are recycled back into the system to strengthen it. Waste is much like it sounds, it simply accounts for all of the inputs into a system (Norlin, Chess, Dale & Smith, 2003). The outputs to the suprasystem would also be amended. The signal inputs are not only offenders but also victims, families, and community members. Therefore, the task outputs would not only be changed offenders, but it will also be restored victims and families as well as the seeds of community reconciliation. However, the output interface, primarily for task outputs will no longer

be, primarily, non-conviction or the completion of a punitive sentence. The output interface would now be the conclusion of a dialogue, or the completion of the terms agreed to. Therefore, the output interface would be much more informal and variable depending on the course of the process and the resolution agreed to by the parties involved. Another output of the criminal justice system is deterrence. However, in restorative justice, deterrence is not an emphasis per se, and therefore deterrence may not be an output of a restorative justice system, at least it is not a proposed output, however, it may in fact be a by-product output of a restorative justice system.

Finally, feedback is the information that is provided back to the system to determine to what degree the output aligns with the proposed output (Norlin, Chess, Dale & Smith, 2003). The feedback in the system would also likely change if there was a paradigm shift to a restorative justice system. In addition to reduced offending, other ways that will let the restorative justice system know that it is working is victim restoration and even community cohesion. As the focus of restorative justice is more holistic than the traditional criminal justice system, the ways in which the system will know that is functioning properly will also be more holistic. How exactly this might be determined must still be developed.

Politics of Justice

Much of the justice system, including the boundary, the structure, and much of the maintenance input, is largely defined by politicians, bureaucrats, and even scholars. However, many of these people are still convinced of the importance of traditional ideas, such as the fundamental importance of incarceration and retributive paradigms. This

reluctance to re-evaluate or re-envision criminal justice will likely be a barrier to a systemic shift (Fattah, 2002). Additionally, the public also tends to desire punishment that fits the crime. Punishment has become the fulcrum on which the criminal justice system operates, and it is accepted as such (Cullen, Fischer & Applegate, 2000).

Although a retributive framework is supported by public opinion, public opinion is also open to “tempering their punitiveness if given a good reason to do so” which is “typically rooted in notions of utility: it 'makes sense'” (Cullen Fischer & Applegate, 2000, p. 58).

The degree to which public opinion should dictate criminal justice policy is still debatable. While it is important for the public to have a say in the justice policy, there are finer points of justice and crime control that much of the public is not educated on (Cullen, Fischer & Applegate, 2000). However, the public votes for the legislators and the legislators continue to carry on the “political ranting and raving that seems to get votes” (van Wormer, 2001, p. 37).

On a general or 'global' level , the public prefers or, at the very least, accepts policies that 'get tough' with offenders. Thus, when asked, they endorse capital punishment, harsher punishments, three-strikes-and-you're-out laws, prison terms for most offenders, and lengthy incarceration for violent criminals. (Cullen, Fischer & Applegate, 2000, p. 57-58)

Conversely, these opinions are not static and can change depending on the popular view of crime and criminals. When politicians and the media tell stories of serious crime public opinion tends to move toward harsher punishments. Indeed, desires to 'get tough on crime' have overridden calls for more humane and just expressions of justice and

corrections, and this does not appear to change in the near future (Cullen, Fischer & Applegate, 2000). Politicians, generally conservative politicians, have turned solely to inflicting pain and punishment on offenders (Fattah, 2002) in the form of increased mandatory sentences and using imprisonment more often (Yeats, 1997). The political trend over the last two decades has been overwhelmingly reactionary (Fattah, 2002). However, justice paradigms can change and have changed, and typically change along with the prevailing attitudes toward crime and justice (Fattah, 2002).

Although the criminal justice system has been made more reactionary and more punitive under conservative politicians (as noted above), this is not to say that restorative justice is a liberal policy. In fact, restorative justice is a paradigm that can appeal to both conservative and liberal camps. For people of a more liberal bend, restorative justice offers an alternative to a penal-focused justice system. For conservatives, restorative justice is a paradigm that holds offenders accountable for their actions, places more responsibilities on local communities rather than in centralized governments, and also has the financial benefits of restricting the use of imprisonment (Braithwaite, 1999; Roach, 2000).

Summary

In this chapter, restorative justice was analyzed through a social systems model to theoretically determine the barriers to a systemic paradigm shift from a systems perspective. Although somewhat difficult to determine because it is a theoretical analysis rather than an analysis of an existing system, this analysis did bring some barriers to the fore.

One of the potential barriers is the issue described with the boundary. While the traditional criminal justice system is roughly centralized, in order to facilitate a paradigm shift to restorative justice, it may become necessary to rethink how systems are designed and how boundaries are identified. It is quite possible that a restorative justice system would not be centralized, and therefore it may be more accurate to potentially speak of restorative justice systems rather than a restorative justice system. This, then, would be a very different way of conceiving of a justice system, and could very well become a barrier. Somewhat distinct yet connected is the massive change in law to not only accomplish restorative justice but also to re-conceive of the justice system.

The system's relation to the suprasystem would also be affected, especially the involvement of citizens in the process. It may be difficult to suddenly involve community members, both in willingness to participate and in relational skills needed to be most effective. Thus, another potential barrier would be the drastic change in role.

The current structure of the criminal justice system is also a potential barrier. There is a rather large correctional infrastructure including physical buildings as well as human-power. If a restorative paradigm becomes the foundation, theoretically, use of the correctional infrastructure would likely be greatly reduced. If these correctional facilities ceased to be, there would likely be a negative economic impact. Other criminal justice structures which would change in function, such as the roles of judges and prosecutors. This would be a sudden change, especially for the professionals that currently occupy those roles as their functions would shift immediately upon such a paradigm shift. This

could very well serve as a barrier as well. In the place of these roles is the community. There is also some difficulty in defining community, and if communities are to be given more authority and responsibility, there needs to be a way to define community.

Finally, the interaction between the political system and public opinion and the justice system poses a major barrier. The political system is closely aligned with the justice system (in fact the justice system is largely molded by the political system). The formation of the justice system is essentially determined by the public opinion. As we are currently living largely in a neo-conservative era (Jansson, 2009), politicians tend to get 'tougher' on crime and impose harsher punishments in order to win elections. So long as the traditional paradigm is accepted as the normative paradigm of justice, a shift to a restorative justice paradigm will likely not occur.

CHAPTER FIVE

Literature Review: Restorative Justice and Social Work

Although much of the restorative justice literature is in the criminal justice field (van Wormer, 2004a), the relevance of restorative justice certainly does not solely lie with criminal justice scholars and practitioners. Social workers work with diverse populations, and often those populations include individuals who have been victims of crime and/or and those who have committed crimes (van Wormer, 2003). Because of the relevance of restorative justice to social work practice, this chapter will seek to provide a review of restorative justice in the social work literature.

Social Work, Criminal Justice, and Restorative Justice

It is in the arena of criminal justice, particularly that of corrections, where the values of the social work profession and the values of the culture of the United States generally clash in the greatest way (van Wormer, 2004a). However, both the social work profession and the field of criminal justice are undergoing somewhat similar transformations. The social work profession is shifting away from pathology and deficits, and moving towards a framework of building on the strengths of individuals, families, groups, and communities. Further, the field of criminal justice is undergoing an “intensive struggle” (van Wormer, 2001, p. 49) to seek justice in a way that is more democratic, community oriented, and seeks to focus more on a holistic view of the offender and the victim, as well as righting wrongs that have been done in the act of a crime (van Wormer, 2001).

Further, social work is able to help address the psychosocial-spiritual needs of the victim(s), offender(s), families, and the community in a way that is unique to the social work profession. Further, restorative justice allows social work an opportunity to reclaim its historical identity as “building models of community rehabilitation and justice” (Gumz & Grant, 2009, p. 125). Therefore, social work can serve as a bridge between the criminal justice system that presently exists, and restorative justice (Gumz & Grant, 2009).

The intersection of social work and criminal justice is a place that is very dynamic and in flux. Therefore, although criminal justice has historically been strictly differentiated from social work because of the radically different perspectives, they are now coming closer together in “new and unexpected ways” (van Wormer, 2001, p. 35). This drawing together helps to bring to light alternative routes of doing 'justice.'

Social Work Ethics and Restorative Justice

The *Code of Ethics of the National Association of Social Workers* (NASW, 2008), includes six core values that guide the social work profession. These values consist of: “service,” “social justice,” “dignity and worth of the person,” “importance of human relationships,” “integrity,” and “competence” (NASW, 2008, preamble). These values are not reflected in a large way in current criminal justice policy and its foundations of, among other models of justice, retribution (van Wormer, 2004a, 2004b). Indeed, it is often that in the current practice of the criminal justice system, offenders do not simply face judgment of their acts, but also judgment of their very selves and personhood (van Wormer, 2003).

Restorative justice, as an alternative paradigm, aligns much more closely with social work values (van Wormer, 2003; 2004a; 2004b; 2006; 2009). The first core value in the order given by the NASW is service. Service, as a core value can relate to the imperative for social workers to become involved in restorative justice, particularly lending their perspectives and expertise to the facilitation of victim-offender conferences, as well as in policy advocacy (van Wormer, 2003). Additionally, this can also relate to social work practice with communities, particularly community organizing, to help empower communities to meet the needs of offenders, victims, and their families (van Wormer, 2004a). “In helping victims and offenders heal, social workers are providing service to the community” (van Wormer, 2004b, p. 113).

The core value of social justice relates to the equitable nature of restorative justice in that it allows both the victim as well as the offender an opportunity to speak and be heard and actively participate in the process. As an alternative to the “simplistic either/or, winner-take-all” (van Wormer, 2003, p. 445) models of justice, restorative justice seeks to be more holistic in its view and seeks to seek justice for everyone involved, not simply the individual who 'wins' (van Wormer, 2003).

Restorative justice is the intersection of criminal justice and social justice in that the community is held responsible, in a way, for their own wholeness. Restorative justice advocates affirm that one of the functions of a community is to support the well-being of all of the members. Additionally, restorative justice advocates assert that every individual has value and must be treated justly (Pranis, 2004). This links well to the next core value, the dignity and worth of the person.

Restorative justice holds the core value of dignity and the worth of both the victims and the offenders by treating them as whole people and actively involving them in the process, rather than treating them as passive objects (Braithwaite, 2000a; van Wormer, 2003). This paradigm also re-humanizes both the offender and the victim and understands them to be people within a social context who must be helped as whole people within that context in order for restoration to happen (van Wormer, 2004). Restorative justice processes also offer people a voice who have been traditionally silenced and in this way, it coheres with respecting the dignity and worth of all people (van Wormer, 2006).

The core value of the importance of human relationships is present throughout restorative justice principles. By restoring offenders to the community through some form of restitution or community service, the offender is also restored to the victim as they offer sincere apologies for their action(s) (van Wormer, 2003). Further, such encounters between offenders and victims may actually also help to motivate offenders both adult and juvenile to reform their lives (van Wormer, 2004a).

The core value of integrity is manifested by the honest and open discourse that happens between the victim and the offender themselves, rather than through the words of their representatives and legal advocates. In the current system the victim and the offender as people remain relatively silent and their attorneys challenge evidence and witnesses. By contrast, restorative justice encourages open and honest sharing and dialogue (van Wormer, 2004a).

Finally, the core value of competence is addressed by the roles that social workers could play in being educators for members of the criminal justice system as well as the greater society of human behavior and the social environment as well as working with victims, offenders, and communities (van Wormer, 2004b). Restorative justice programs include a trained facilitator, who need not necessarily be a professional (Wright, 1998). In this way, social work can have a great deal to offer restorative justice as well to supplement the participation of legal professionals with dynamics of human behavior as well as their social environment.

Strengths Perspective and Restorative Justice

Van Wormer, who appears to be a lone voice (although she is joined by Mark S. Umbreit) in the social work literature regarding restorative justice, presents a paradigm that she terms the “strengths-restorative paradigm” (van Wormer, 2001, p. 29). In this approach, the strengths perspective, which is solidly becoming a part of social work practice, is blended with a restorative rather than a retributive philosophy of justice. Van Wormer uses this approach in counseling victims of crimes: the strengths aspect of the approach allows helps to empower the victims of the crime, to see themselves not as objects who simply have actions done to them, but as a subject who is free to act and react. The restorative aspect allows the victim to seek restoration, wholeness, and healing rather than retribution and vengeance. In addition to using this approach for empowerment in counseling victims, she also uses this approach to empower offenders as well as a way to address their wrong, and allows them the opportunity of being an active participant in their own process of change (van Wormer, 2001).

In fusing these two paradigms, however, van Wormer made two important modifications to the way in which restorative justice is often conceived. First, she emphasized the role of the state in ensuring the implementation of justice and protecting the rights of the victim; and second, she eliminated the concept of reintegrative shaming (van Wormer, 2004a). Although restorative justice originates at the macro level, instead of the micro level as the strengths approach originates, the values on which restorative justice is built is compatible with the strengths perspective of social work practice (van Wormer, 2001).

Social Work Roles in Restorative Justice

Social workers have a variety of roles that are possible and available to them in the area of restorative justice. First, it is important that social workers advocate on various system levels for a system of justice that coheres much closer to the values and ethics of the social work profession. Van Wormer sees a restorative justice paradigm as filling this need (van Wormer, 2004a). Secondly, because of social work's focus on empowerment and on the strengths of the individual, social workers are uniquely qualified to take leadership roles in the implementation and administration of restorative justice and its processes and practices (van Wormer, 2004a).

Social workers are not prevalent in leadership roles in restorative justice programs that are currently in existence. This is particularly true in the United States where these roles have often been delegated to legal professionals such as attorneys and judges as well as correctional workers. However, this is not the case in other nations such as Canada and New Zealand (van Wormer, 2004a), and this need not always be the case for

the United States.

Although mediation, as a general intervention, is not foreign to social work as a profession, victim-offender mediation is somewhat new to social work. However, victim-offender conferencing is becoming a valid social work intervention, particularly in Canada and in Europe, but increasingly in the United States as well (Umbreit, 1999). Social workers, therefore, have the unique ability to take roles in both the leadership in restorative justice programs, as well as in direct-practice interventions such as victim-offender conferencing.

Restorative justice has been making inroads into the social work profession through individual social work professionals as well as through research done at the Center for Restorative Justice and Peacemaking, which is housed in the School of Social Work at the University of Minnesota. Further, van Wormer expects that restorative justice will become a part of the social work profession in the United States, due largely by the influence of Canadian social work on United States social work as evidenced by further collaboration among professionals in North America (van Wormer, 2004). Of particular importance to restorative justice, van Wormer offers a description of what social work has to offer: "...its long history of advocacy for community-based treatment, its belief that most human beings are redeemable, and the renewed stress on interdisciplinary team work" (van Wormer, 2004a, p. 220).

While there are some, such as van Wormer, who see social workers as holding great potential to active participation in restorative justice policy creation as well as the practice of restorative justice, there are others who view it differently. While social

workers do have a particular skill set that can be very useful in the implementation and practice of restorative justice processes, it is important that social workers do not attempt to control restorative practices and processes that occur, but rather that social workers empower individuals, communities, and families to resolve their own conflicts as much as is possible. It is by encouraging popular participation that restorative justice will be both sustainable as well as the most equitable and empowering approach possible (Wright, 1998).

Summary

Restorative justice is certainly relevant for social work practice and research. Restorative justice aligns much more closely to social work values than does the traditional criminal justice system, and it would be beneficial for the knowledge about restorative justice to grow among social workers. In addition, restorative justice can be utilized alongside of the strengths perspective of social work, and this has been done in the strengths-restorative approach developed by van Wormer and briefly introduced above. Finally, social workers have many roles to play in the practice of restorative justice including facilitators, policy advocates, and community organizers in order to involve the community in the process.

CHAPTER SIX

Social Work Analysis

This chapter will analyze restorative justice through the lens of social work. As discussed in chapter four, the values of social work and the values of restorative justice closely align; however, there are also points of diversion. This chapter will not continue to describe the benefits of restorative justice from a social work perspective, but instead will identify and discuss some of the theoretical barriers to a systemic implementation of restorative justice from the perspective of social work.

Code of Ethics

Chapter five briefly describes how the values of restorative justice much more closely align with the values and ethics of the social work profession than with the values of the current criminal justice system. In spite of the fact that social work and restorative justice complement each other in many ways, there are some instances where the two may be in conflict.

The core value of social justice places an ethical mandate upon social workers to “pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people” (NASW, 2008, ethical principles, p. 5). While restorative justice is certainly more holistic in perspective than the current criminal justice system, there are still shortcomings, particularly that there are not mechanisms inherent to address social problems with often contribute to criminality (Cohen, 2001).

Because social change is not at the core of restorative justice, the core value of social justice may or may not be present in restorative justice.

In addition to social justice, an ethical standard that is of note for the present discussion is the right of client self-determination (NASW, 2008, 1.02). The right of client self-determination maintains that individuals have the rights to make the decisions to clarify their own goals make decisions to meet their own needs, within legal constraints (NASW, 2008). This is particularly salient for the role of the victim and the community. While in chapter two the value of voluntary participation was discussed, making restorative justice the standard paradigm for dealing with crime brings in a new element: what if one of the stakeholders refuses to participate?

Victims and community members cannot be forced to participate in a restorative justice process, and even if there was a formal way of coercion, it is unlikely that that it would be as productive. Therefore, there must remain some other avenue for crime to be resolved in the instance that a stakeholder refuses to participate. This right to self-determination is a major barrier to restorative justice replacing the criminal justice system from a social work perspective.

Finally, another important point to consider is the nature of dual relationships. Professional distance and objectivity is highly prized, and the social work profession is no different (NASW, 2008, 1.06c-d). While *The Code of Ethics* (2008) does not categorically prohibit dual relationships, it places a mandate to not engage in dual relationships, or if it is necessary, to put strict boundaries around the nature of the relationships (NASW, 2008, 1.06c-d). However, the difficulty with this arises when one

examines restorative justice. Restorative justice includes the victim and offender, and potentially includes support people for each, families and community members. As noted above, restorative justice seeks to include those affected by the crime.

By including those who are most affected by the crime, it is possible that a sense of objectivity is lost, and everything becomes a dual relationship. Indeed, as with the discussion of reintegrative shaming, the power of restorative justice is that it is a dual relationship and that the process happens with people who know, and potentially care about one another. The only caveat of this is that it eliminates any semblance of professional objectivity or professional distance. Restorative justice capitalizes on the existence of informal social controls and essentially makes the process a dual relationship.

Community

Social workers focus not only on an individual or a small group, but also on communities and societies (Dubois & Miley, 2008). Therefore, it is important to not only consider the effects that restorative justice might have on individuals, but also communities. Including communities into justice proceedings has many benefits, such as increasing the ability to address the systemic causes of crime (Mackey, 2000) and reducing dependence on professionals (Pranis, 2004). However, there are also drawbacks to placing a high value on community involvement.

If restorative justice is to empower communities, as noted in chapter six, there must be some way to define community and to delineate one community from another. There is some difficulty in defining community. For instance, *The Social Work*

Dictionary (2003) defines community as “[a] group of individuals or families that share certain values, services, institutions, interests, or geographic proximity” (Barker, ad loc). While this definition may be accurate, it does not help in narrowing the definition of community; it may, in fact, broaden it. This difficulty with defining community is nothing new. North Americans, with their emphasis on self-reliance and individualism have historically had a difficult time with the concept of community (Bellah, Madsen, Sullivan, Swidler & Tipton, 2008).

When North Americans do consider the concept of community, it is typically an idealized version in which people share the same perspectives and views (Bellah, et al, 2008). This leads to another definition of community: “a voluntary association of neighbors who personally know one another and fondly express concern for one another, an essentially private, rather than public, form of association” (Bellah, et al, 2008, p. 263). Although this definition varies slightly from the one given above, community is still a broad concept. Communities can be defined geographically, or communities can be defined in terms of human relationships that do not necessarily fall along geographic lines (Mattaini & Lowery, 2007; Zehr, 2002). There are challenges and risks to expecting communities to resolve criminal conflict without defining community, and distinguishing one community from another.

When a crime is committed, there needs to be a way to define community to determine the community as a stake-holder. Further, there need to be ways to ensure that the process and outcomes are just and equitable (Walgrave, 2002; Zehr, 2002). When restorative justice places an emphasis on the community, it may be a community of

idealization rather than the community of reality. Communities are not necessarily positive, just places where people care about one another and where all are equal. Communities can be places where intolerance, oppression, and exclusivism are very present (Walgrave, 2002).

While the value of consensus as described above is also a lofty ideal, it may not always be possible. In expecting a consensus resolution, restorative justice does not take into account the diversity of communities that exist, and the tumultuous history that has plagued some communities. Consensus can be difficult to develop, particularly in communities that have a history of disenfranchisement (Mattaini & Lowery, 2007).

Finally, while it is laudable to include the community in restorative justice, even in the absence of a judge or prosecutor (Shapland, 2003), it may not be a realistic ideal. This ideal of community involvement seems to assume that communities are relatively similar across the board and also appears to assume that communities have the interest and the ability to become involved and invested in the justice processes. However, not all communities have access to an equal amount of resources and options (Mattaini & Lowery, 2007).

While it is possible that some communities would lack interest in such involvement, there are also likely to be communities that would find benefit in becoming involved in restorative justice processes but lack the available resources. By requiring the community and/or the victim in restorative justice proceedings, there is likely to be a commitment of time into the process, which assumes that community members have disposable time to become involved. Further, restorative justice processes at the

community level would require some infrastructure, for instance for training facilitators, coordinating the conferences, and follow-up to ensure that the offender is carrying out the terms of the conference resolution. It is possible that not all communities currently have the potential for the establishment of this even minimal infrastructure.

The core value of service mandates that social workers offer service to the community, often in a volunteer agreement (NASW, 2008). While this is one possible way in which the difficulty of availability of community resources could be addressed. However, it would be important for social workers to continue to focus on community empowerment and continually assess whether their presence is required. It would be crucial that social workers would not become the infrastructure but simply assists communities with what they need until they are able to stand on their own.

Power

As described above, restorative justice is an approach that values non-domination, meaning that all participants are seen as equal and all have the ability to participate equally in the dialogue process—in fact, this is likely one of restorative justice's major gains toward social justice (Pranis, 2001). While this is a laudable goal and coheres very well with social work values and ethics, this may be a view of an idealized world rather than the world that currently exists. Although the concept of community is very close to the heart of the identity of the United States, those in powerful and dominant groups tend to put their own personal gain and advancement ahead of the common good (Mattaini & Lowery, 2007). In thinking about the community, it is important to begin with the community how it is, rather than how one wants it to be (Alinsky, 1989).

As discussed above in chapter four, if restorative justice was to replace the current criminal justice system, it would require attorneys and judges to relinquish the amount of power and influence that they currently have. What is difficult about this, however, is that those in power do not readily give up their power (Mattaini & Lowery, 2007). The nature of power is that those who have power and authority retain it and do not relinquish it. Indeed, everything that the powerful do is focused on retaining the power structure (Alinsky, 1989; Freire, 2007).

Summary

Although much of restorative justice closely aligns with social work values and ethics, there are still barriers to a systemic shift to restorative justice from a social work perspective. The *Code of Ethics* identifies social justice as a core value of social work and restorative justice holds more potential for social justice. However, because there is still no mechanism in restorative justice that addresses social inequalities and the factors that contribute to criminality, instituting a restorative justice paradigm would not mean an increased presence of social justice.

The right of self-determination is also a potential barrier. Because individuals have the right to decide whether or not to participate, it is possible for a victim to refuse to participate, and it is unclear how the case would proceed. Such lack of clarity serves as further barrier to a systemic shift to a restorative justice paradigm.

A final barrier from the code of ethics is the importance of professional distance and objectivity and the ethical mandate not to engage in dual relationships. Because restorative justice relies so heavily on the victim, families, and/or the community,

restorative justice processes consist of dual relationships. Indeed, restorative justice appears to prefer dual relationships, so that those making the decisions are those who are involved with and invested in the offender.

Another barrier comes from the difficulty defining community. If communities cannot be defined, it is not possible to place more responsibilities on communities. Further, not all communities are equal with equal resources and some communities are simply unable to manage crime on their own. To assume that all communities are positive places that are supportive of one another and have a unified vision and are able to manage crime on their own and always have the best interest of their members in mind is simply not realistic.

Finally, the power structures that currently exist pose significant barriers to a systemic shift to restorative justice. Those in power do not give up their power. A shift to restorative justice, however, would require that those who currently have significant amounts of power such as judges and prosecuting attorneys to relinquish their power in favor of victims, offenders, and community members. While this is not necessarily impossible, it does pose a significant barrier.

CHAPTER SEVEN

Conclusions and Implications for Social Work Practice

Conclusions

This study examined the literature on restorative justice and analyzed that literature from three perspectives: criminal justice, social systems, and social work. This study identified several barriers to a systemic paradigm shift to restorative justice. While these barriers are not necessarily permanent, it is important to address them if a systemic change is pursued. Such a change cannot come simply from legislating changes; such change must come from both the legislature as well as from individuals and communities.

Restorative justice is a paradigm that requires commitment and participation from the offender, the victim, and other family members, support people, and/or community members. Therefore, restorative justice is not something that can be simply legislated and then expected to be able to be carried out. Restorative justice must be something that arises primarily from individuals and communities first.

It is not only the process that requires a high degree of commitment, but also the values of restorative justice. Even if a community is able to effectively support the processes of restorative justice, without holding to the values of restorative justice, the potential exists for restorative justice to become simply another form (or potentially a harsher form) of retributive justice. Because of this there would likely need to be some form of oversight to ensure that restorative justice outcomes are actually focused on restoration rather than retribution. I am unsure, however, whether such oversight would

even cohere to the values of the restorative justice process or if it remains a significant remnant of formal control in which does not have the same values of restoration.

A systemic shift to a restorative justice paradigm would greatly change criminal justice as it is currently understood. It would potentially change the way that policing was done, and it would likely change the way that court processes are handled and the way that people are sentenced. However, one of the major difficulties with these changes is that they are all based upon the assumption that offenders will admit to the crime and feel remorse for it.

Because restorative justice does not have a fact-finding mechanism in it, it is unlikely that the system would continue to function effectively and in a restorative manner. While there have been writers (described above) that have discounted the idea of re-traumatization in a restorative justice conference, re-traumatization would be much more likely in a conference in which the offender denied responsibility and showed no remorse.

Systemically speaking, this would involve a radical departure for the roles of the criminal justice system, particularly judges, attorneys, and corrections officials. A systemic implementation of restorative justice would potentially greatly reduce the number of correctional institutions. Further, this would also significantly reduce the influence of judges and prosecuting attorneys in the justice process. Rather than being at the center of criminal justice proceedings, it is likely that they would be moved to the side in order to allow the victim-offender-community interaction to take center-stage. This would be another significant barrier, because as discussed in chapter six, those with

power and authority do not readily give up that power and authority.

These barriers do not necessarily mean that restorative justice is doomed, that it cannot at some point become implemented on a larger scale, or that the paradigm of restorative justice cannot grow. These barriers do, however, suggest that perhaps restorative justice may not be able to replace the current criminal justice system, but perhaps it can grow to be more intertwined with it and influence the current criminal justice system. Even if restorative justice does not replace the criminal justice system, advancement of restorative justice values, principles, and practices holds the potential to greatly influence the functioning of the criminal justice system.

Suggestions for Research

This research is a starting point to the growth of restorative justice in the system of society. Further qualitative research and quantitative research is important to determine how restorative justice has grown and can grow in society. Further research can identify acceptability of restorative justice among various domains. As this research project was a theoretical piece, further research can be used to confirm or refute as well as build upon the findings presented here.

Implications for Social Work Practice

As the discipline of social work is focused on not only the person, but the person in their environment, social work analyzes the micro-level (individuals), mezzo-level (communities, groups, and organizations), and the macro-level (society) (DuBois & Miley, 2008). Therefore, the implications for social work practice will be presented at three levels: micro-level, mezzo-level, and macro-level.

Micro-level implications. Social environments not only influence an individual, but individuals actually influence their social environments as well (Dubois & Miley, 2008). Any additional growth of restorative justice must originate, largely, from individuals. It is important for social workers, in their individual work, to emphasize restorative values over retributive values. One way that this can be accomplished is through counseling, primarily with counseling people who have encountered the criminal justice system (see van Wormer, 2001). It is by creating change on the individual level with individual people, that change can begin to occur on the larger levels.

Mezzo-level implications. Additionally, an important implication for social work practice is the importance of community organizing and development. Advocating for social change has historically been a major focus for social work practice. However, with the contemporary focus on individual treatment, this progressive or radical bend has taken been replaced (Reich & Andrews, 2002). As discussed in chapter six, one of the major barriers to restorative justice is the lack of definition of community as well as the differences in what communities are currently realistically able to accomplish. Not all communities have the access to the same amount of power and resources, and not all communities are places where there are positive social connections. Not all communities are invested in the best interest of its members.

In order for a systemic paradigm shift to restorative justice to become a reality, social work at the community level must happen to help communities with fewer resources to improve their situation, to help communities have a sense of community, and to empower communities to become involved in crime and restoration. Community work

has a goal of teaching individuals how to advocate for themselves and work to change policy so they have equal access and opportunity to resources.

Just as individuals have strengths, communities also have strengths (Saleebey, 2009; Weick, Kreider & Chamberlain, 2009). It is important for social workers to start where the community is at, acknowledging their strengths and building upon them. It is in this way that communities might be better able and prepared to effectively participate in restorative justice processes.

Other loci in which it is important for social workers to practice is with formal organizations and groups such as police departments, court systems, and correctional institutions to help them see the value in restorative values and practices and to help these organizations to incorporate restorative values into their work. Additionally, work with other groups and organizations including faith communities is also important to the growth of a restorative justice philosophy. Faith communities can play significant roles in the lives of some communities as well as some individuals. By advocating for restorative justice within other formal groups and organizations, social workers can also advocate restorative justice values, principles, and practices at the mezzo-level.

Macro-level implications. The barriers as presented here also have implications for social workers in social and political action, particularly in policy. While policy advocacy and formulation is a crucial step in a potential shift to a restorative paradigm of justice, it is important that the policy change does not happen prematurely, or before communities are able and ready to accept it. It is much easier for the top-level of government to delegate responsibilities to communities, but it is much more difficult for

communities to accept that responsibility, particularly if they are not prepared for it. By working at multiple levels simultaneously, social workers can help restorative justice values, principles, and practices to take root not only within the society's institutions, but also the society itself.

Restorative justice offers both opportunities and challenges for the profession of social work as well as the greater society. The implications of this research advocates for social work activity in political action as well as in community organizing and development. This study identified multiple barriers that may prevent a shift to a restorative paradigm of justice within the context of the United States; however, the profession of social work, by the very nature of its mission and core values, is in a unique position to advocate for the dismantling of these barriers.

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