Shaping justice for the twenty-first century in the USA: the National Association of Community and Restorative Justice

Michael J. Gilbert

Executive Director, National Association of Community and Restorative Justice; Associate Professor of Criminal Justice, University of Texas at San Antonio (USA), Michael.Gilbert@utsa.edu.

1. Introduction

Restorative justice and community justice are non-traditional forms of justice that can be seen as mutually reinforcing (Gilbert & Settles, 2007). Although they have somewhat different foci, they carry many of the same values and employ similar dialogue processes (Bazemore & Schiff, 2001; Clear & Cadora, 2003; Clear, Hamilton & Cadora, 2011; Karp & Clear, 2002; Umbreit & Armour, 2010). They share the key values and principles of respect, equality, dignity, honesty, inclusivity, open dialogue, consensus decision-making, and a focus on addressing harms or community problems in meaningful ways that prevent future harms. In both, community is an essential element. With restorative justice community serves as the major force that promotes healing of victims and earned redemption for offenders. Community is recognised as a co-victim of incivilities and crime because these acts threaten the safety and security of all who live or work in it. Community justice recognises harms to the ‘fabric of society’ from individual actions but also recognises the structural role of community in transmitting injustices and inequalities downward to create circumstances and conditions that concentrate incivilities and crime in geographical spaces.

Restorative and community justice operate across the micro to macro spectrum to address, repair or ameliorate harms caused by incivilities, crime, injustice and inequality. Despite these similarities, they employ different strategies. Restorative justice is victim-sensitive and focuses on reparation of harms to victims and their communities. Dialogue processes used in victim-offender mediation, family group conferencing,

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Restorative circles and community reparation boards often reveal higher-level injustices and inequalities that promote the patterns of crime and incivilities observed at the street level (Umbreit & Armour, 2010). When these injustices are made visible, they are held up for deep examination through dialogue. This dialogue often identifies constructive ways to address larger societal issues expressed within the community. Community justice, as practised in the United States, is focused on collaborative problem-solving in neighbourhoods, surrounding communities and political jurisdictions. Common strategies include neighbourhood-based community policing, courts, prosecution, corrections and legal aid (Nicholl, 1999; Nugent, Fanflik & Bromirski, 2004; Pearson, 2012). When practised well, it is characterised by genuine partnership between stakeholders, and deference by justice agencies to the preferences of residents who are recognised and appreciated as the experts on their neighbourhood.

Traditional criminal justice takes a ‘top-down’ approach which often exploits the intimate knowledge of residents to serve justice system needs for intelligence gathering, enforcement actions and felony prosecution. It is ‘doing something to’ residents rather than ‘working with them’. Such instrumental use of residents is ethically questionable and often received negatively by people living in the area. Genuine community justice strategies are culturally sensitive and prevention-oriented partnerships. The focus is on reducing criminogenic influences that foster crime and victimisation and is guided by: (1) the concerns and preferences of area residents for quality of life improvements; and (2) an understanding that the role of formal authority is to assist, support and facilitate community-driven problem-solving in ways that are consistent with the law (Clear, Hamilton & Cadora, 2011; Nicholl, 1999; Nugent, Fanflik & Bromirski, 2004).

Community justice calls on public service agencies to work as co-equal partners with residents to identify their key concerns, assess the issues, develop strategies, ensure cultural sensitivity in the strategies used and address underlying issues in meaningful ways (Nicholl, 1999; Nugent, Fanflik & Bromirski, 2004). This orientation was captured by Wayne Pearson (2012), a community prosecutor for many years with the Neighborhood District Attorney Program in Multnomah County (Portland, Oregon), in a comment about his first meeting with residents:

As a prosecutor, I thought I knew what the problems were and ... I wanted to start developing felony cases but ... these folks had very different concerns. They wanted something done about misdemeanour offenses and quality of life issues that caused them to feel afraid and ashamed of their neighbourhood. ... felony prosecution would be ineffective. We had to find new ways to help them.

A similar observation was made by John Feinblatt (undated), who led the effort to establish the Midtown Community Court in Manhattan in the Times Square area of New York City. Residents and business owners were concerned about incivilities and low-level crimes that damaged the neighbourhood, worsened quality of life for residents, under-
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mined the economy, and eroded the reputation of the Times Square area. He noted that they wanted to send two messages:

... one was that there were consequences to crime and the other message was that we were available to help. What was so remarkable was that both the business community and the residential community believed that [this] was the right message ... They were not opposed to helping, but they also wanted to drive home the message that there were consequences to crime and people who committed these low level crimes damaged the community and had to pay back the community in some way. They owed a debt to the community ... a debt that could be paid back through community service—painting over graffiti, cleaning streets, or making the parks more habitable—that was the payback. The quid pro quo [for the community] was an opportunity to help someone with a drug problem or who needed a job but didn't have a skill.

Restorative and community justice strategies provide important tools to increase collective efficacy (i.e., the ability of residents to exert informal pro-social controls) and social capital (i.e., the ability of residents to work collaboratively to protect their neighbourhood from decline, make improvements and access community resources) (Clear, Hamilton & Cadora, 2011; Nicholl, 1999). One way to think about this interrelationship is that people who are harmed by street crime also live in neighbourhoods that foster the very crime they were victimised by. On the flip side, neighbourhood social and economic conditions can enhance or erode quality of life for residents of the area (Anderson, 1999; Morenoff, Sampson & Raudenbush, 2001). In impoverished, high crime areas, multiple layers of deprivation erode quality of life and exert harmful, often anti-social pressures on residents which increase their odds of becoming a victim or perpetrator of crime (Bellair & McNulty, 2005; Bursik & Grasmick, 2002; Clear & Cadora, 2003: 8–9; Krivo & Peterson, 1996).

Gilbert and Settles (2007: 5) note that 'crime is a deeply embedded social problem, and policy responses to crime must do more than capture and punish criminals'. It was in this context that the National Association of Community and Restorative Justice (NACRJ) became operational in the USA on 21 June 2013 at the 4th National Conference on Restorative Justice. The vision statement for the NACRJ reads:

The National Association of Community and Restorative Justice employs principles of social and restorative justice seeking transformation in the ways justice questions are addressed. It promotes effective forms of justice that are equitable, sustainable and socially constructive. (National Association of Community and Restorative Justice, 2013)

Conceptually, the NACRJ was modelled on the American Medical Association or the American Bar Association. It strives to become an effective advocacy organisation on justice policy issues; provide supports for practitioners, educators and policy-makers; promote evidence-based practices; maintain programmatic standards for ‘restorative justice’ and ‘community justice’ practices; and promote a more just, safe and liveable
society. This orientation is captured by its motto ‘Shaping Justice for the 21st Century’. From this perspective, justice policy for the next 100 years cannot be more of the same.

2. US restorative justice movement

2.1 Setting the stage

Starting in the 1970s, a few community activists, justice system officials and scholars around the world, working independently of one another, began to envision and advocate a model of justice that has become known as ‘restorative justice’. These early efforts were case specific and not aimed at reforming justice systems. Over the next two decades local innovations occurred haphazardly, but the pace quickened following the publication of Howard Zehr’s (1985) vision of modern restorative justice (Cordella, 1991; Merry & Milner, 1995). Although applications during these early years demonstrated the potential of non-traditional justice, they had little impact on policy or justice systems. But the presence of non-traditional approaches to justice was noticed by the American Bar Association, which documented nearly 400 community-based mediation programmes in 1985 (McCold, 2008).

2.2 Growth of a movement

From the mid-1980s to the early 1990s, interest in restorative justice grew with the formation of the Victim Offender Mediation Association or VOMA in 1984 and the publication of Changing lenses: a new focus on crime and justice (Zehr, 1990). In 1992 the Office of Juvenile Justice and Delinquency Prevention funded the Balanced and Restorative Justice (BARJ) Project (Bazemore & Umbreit, 1997). This project provided a national platform for restorative justice through most of the 1990s and spurred development of community-based and agency-organised restorative justice programmes nationwide.

In 1994, the American Bar Association endorsed the use of restorative practices in minor criminal cases and established guidelines for victim–offender mediation (VOM). The following year, a monograph titled Restorative community justice: a call to action was published by the National Organization for Victim Assistance (NOVA), highlighting the principle of ‘victim-centredness’ in restorative practices. This principle is now a central tenet of restorative justice (Umbreit & Armour, 2010).

The impact of these endorsements combined with the BARJ Project moved restorative practices from the fringes toward mainstream justice policy and led to a sharp increase in community-based programmes across the nation (Umbreit & Armour, 2010). As of 2000, thirty states provided some statutory support for victim–offender mediation in minor criminal cases (Umbreit, Lightfoot & Fier, 2001: 5). Today, community-based restorative practices can be found in nearly every state and hundreds of jurisdictions...
(Umbreit & Armour, 2010). In some states there is evidence of systemic change. Perhaps the most robust example of change can be seen in the State of Colorado. In 2008, the Colorado Legislature passed HB-08-1117 titled Concerning the inclusion of restorative justice in the Children's Code.¹ This statute authorised the use of restorative justice conferences in juvenile cases. In 2011, the Legislature passed a second statute, HB11-1032, titled Concerning restorative justice. The statutory language makes it clear that the primary purposes of the law are to encourage the establishment of programs to provide for restitution to and restoration of victims of crime by offenders who are sentenced, or who have been released on parole, or who are being held in local correctional and detention facilities. It is the intent of the general assembly that restitution be utilized wherever feasible to restore losses to the victims of crime and to aid the offender in reintegration as a productive member of society. It is also the purpose of this article to promote establishment of victim–offender conferences in the institutions under the control of the department of corrections, using restorative justice practices as defined in SECTION 18-1-901(3) (a.5), C.R.S.²

This law established the right of crime victims to be informed by prosecutors that victim–offender conferencing is an option in criminal cases. A few years earlier, the Texas Crime Victims Bill of Rights (Texas Crime Victim Rights, 2007) authorised post-conviction victim–offender dialogue for victims of severe violence.

The role of VOMA has faded, but other organisations have stepped in to fill this role. In 2000, the International Institute for Restorative Practices (IIRP) was formed to provide graduate-level education in restorative practices and conduct international conferences. A separate effort by a group of academics, practitioners and activists began in 2005–2006 with planning for the first National Conference on Restorative Justice. That conference was held in 2007 at Shreiner University in Kerrville, Texas. Since then three more biannual conferences have been held. The National Conference is now a function of the National Association of Community and Restorative Justice (www.nacj.org). The 5th National Conference on Community and Restorative Justice is planned for 1–3 June 2015 in Fort Lauderdale, Florida.

3. Marginalisation, creativity and innovation

When ‘new’ confronts ‘traditional’ there is often resistance, and in the USA resistance to non-traditional justice is rooted in traditional law and order perspectives in which reactive and coercive responses to crime are prioritised over proactive prevention. Coercive formal social controls are considered necessary, appropriate and effective despite

clear evidence to the contrary. While mounting evidence that proactive prevention and non-traditional justice are ‘evidence-based’, restorative justice is dismissed for ideological reasons as risky ‘social engineering’ (Beckett & Sasson, 2004; Umbreit & Armour, 2010; Waller, 2008). As a result, policy-makers and justice officials have been reluctant to embrace restorative and community justice. This resistance kept restorative and community justice sidelined for 30 years and prevented the development of a strong public policy foundation. However, these circumstances may have had a positive but unintended impact because activists and academic researchers partnered with interested justice agencies and non-governmental organisations to try innovative applications of non-traditional justice. In this way restorative practices in the USA have evolved creatively from the bottom up in the face of official resistance, persistent marginalisation and the absence of public policy supports (Hines & Bazemore, 2003; McCold, 2003, 2008).

The mission of the National Association of Community and Restorative Justice (NACJ) includes advocacy for supportive public policy for restorative and community justice so that they can enter mainstream practice. However, it is important that the flexibility and creativity that has driven innovation be retained. It was through local innovations and experiments that researchers and practitioners learned how restorative and community justice could be used in creative and synergistic ways to provide more effective responses to victimisation, crime and social problems without violating underlying values and principles. For example, restorative practices are now applied far more broadly than initially envisioned (Umbreit & Armour, 2010; Van Ness & Strong, 2010). They are used by treatment courts with clients, jails and prisons to reduce violence, correctional treatment programmes to help violent males understand themselves and the impacts of their behaviours on others, pre-release programming, community-based re-entry support and accountability programmes, schools to provide restorative discipline and improve school climate, neighbourhoods to strengthen informal social controls and build social capital, businesses to resolve conflicts and create a constructive organisational culture, and gang peace/anti-violence initiatives. This spirit of innovation has also allowed creative community justice practices to develop, and revealed many commonalities with restorative justice and how these approaches can be used in mutually supporting ways (Gilbert & Settles, 2007).

4. What are the issues just over the horizon?

It has become clear to many analysts across the political spectrum that the American justice system is no longer sustainable because its costs and negative social impacts are no longer defensible. An example of this shift in thinking can be seen in the state of

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3 See Alexander, 2010; Anderson, 1999; Austin & Irwin, 2001; Beckett & Sasson, 2004; Messner & Rosenfeld, 2007; National Association for the Advancement of Colored People, 2011; Robinson, 2005; Rodriguez & Emsellem, 2011; Travis, 2005; Walker, Spohn & DeLeone, 2007; Waller, 2008.
Texas, where no new prisons have been built since 2006 and two have been closed. This is a major policy shift, driven by a shared understanding across political parties that punitive justice is too expensive to maintain and did not reliably produce public safety or reduce crime. Furthermore, community-based alternatives were effective, much less costly, and did not carry the adverse social impacts of traditional legal justice. Given such shifts in public policy, it seems that the time for community and restorative justice may have come in the USA.

The NACRJ seeks to provide a support system for practitioners, educators and policy-makers interested in community justice and restorative justice. The key elements of its mission are to present a policy relevant voice, maintain high-quality standards of practice, and promote evidence-based practices and standards in restorative and community justice. In terms of advocacy, it seeks to increase awareness among elected policy-makers and justice system officials of non-traditional justice policy alternatives. There is no other organised progressive voice advocating for broader application of restorative and community justice. The first opportunity for the NACRJ to enter the policy arena occurred in February 2014 after it was learned that newly proposed sentencing guidelines by the US Sentencing Commission for crimes against women were ‘more of the same’—traditional enhancements to more harshly sanction offenders. The proposed guidelines ignored the needs of victims for various restorative practices, including post-conviction restorative dialogue, as well as ignoring research showing that punitive sanctions are not evidence-based, and are costly, ineffective and often counterproductive. They also ignored evidence that restorative practices are evidence-based, effective and economically sustainable (Umbreit, Coates & Vos, 2001, 2002a, b; Umbreit & Armour, 2010). Upon learning of the pending sentencing guidelines, members of the NACRJ Executive Committee crafted a policy statement to express concerns about the proposed guidelines and advocate for the inclusion of restorative and community justice practices. The policy statement was approved on 14 February 2014 and sent to the US Sentencing Commission the following week. It was also sent to the Criminal Justice Committee of the American Bar Association. This was the first time that members of the NACRJ expressed their collective voice on a policy issue. The NACRJ will continue to express views on justice related issues as it seeks to play an effective role in the formation of justice policy.

This orientation toward policy relevance has revealed several important issues. These issues include:

1. **The need to create legislation to embed restorative and community justice in law and public policy.** This must occur at all levels if non-traditional justice practices are to become legitimate options of first choice for practitioners. There must be a recognised role for restorative and community justice within and outside justice systems to address community problems consistent with law. It is in this way that non-traditional practices will find an official and respected place in justice policy.
Accomplishing this will require building constructive relationships with public officials. The NACJ has deliberately recruited representatives from these professions to serve in key leadership roles. This strategy establishes credibility, builds relationships, and helps to ensure constituencies with the credibility to promote broader use of restorative and community justice.

2. The need to ensure victim involvement in restorative practices. The importance of being ‘victim-centred’ is rooted in the underlying philosophy, values and principles which focus on repairing wrongs or harms. Yet, victim centredness and victim engagement are not assured unless they become a matter of routine practice. Victim-centred practices are easily undercut by offender-oriented criminal justice systems, and by bureaucratic pressures for efficient case processing to ‘clear the docket’. Victim centredness is a qualitative principle for effective practices. It is realised through patient, caring and honest dialogue. Efficient case processing is not the primary concern and would quickly lead to ineffective practices if it became the primary focus. Maintaining effective practices consistent with the ‘victim-centred’ principle will require supportive law and public policy as well as programmatic dedication by practitioners and justice systems. Three key conditions should be embedded in law: (a) ensuring that the well-being of victims (i.e. safety, needs and preferences) is the top priority; (b) allowing victims the freedom to decide for themselves whether they want to participate in a restorative process; and (c) ensuring that direct or surrogate victims are involved in some way with each case where restorative processes are used.

3. The potential of well-meaning but misguided victim advocates or prosecutors, who are unfamiliar with restorative justice, will ‘mother’ victims by protecting them from perceived risks of re-victimisation during victim–offender mediation/dialogue. Given the resistance to victim–offender mediation/dialogue in the past, it is likely that victim advocates and prosecutors could become restrictive gatekeepers, suppressing victims’ willingness to seek healing dialogue with their offender. However, the solution to their concerns about the safety of victims and the potential for an offender to intimidate a victim is to ensure programmatic fidelity to the theory, values and principles of restorative justice. When conducted with fidelity, victim safety and sensitivity to their needs are the top priorities and the risks of victimisation are sharply reduced.

4. The need to expand the availability of competent training in restorative and community justice theory and practice. What training there is, often provides overly simplified skills-training that presents trainees with a mechanistic (often ‘scripted’) approach to non-traditional justice. Such training implies that competent practices in restorative and community justice can be achieved without a deep understanding of the underlying theories, values and principles. Yet, it is this deeper understanding that enables practitioners to ensure programme fidelity, maintain victim-centredness,
apply humanistic mediation appropriately and ensure cultural competence in practice. Deeper theoretical understanding is the core of non-traditional justice practices and necessary to maintain the process orientation which is crucial to effective practice (Umbret & Armour, 2010).

5. The need for certification programmes so that practitioners develop essential competencies and earn basic credentials. The lack of credentialing may undermine the credibility of the field among justice system professionals who make referrals. The NACRJ promotes greater access to training by publicising training opportunities. It also seeks to develop standards for knowledge, skills and competencies for practitioners as well as standards for credentialing programmes.

6. The need to reduce power differentials and increase democracy based on a shared understanding that wisdom is independent of educational degrees, occupation, social status and wealth. Effective facilitators are comfortable dealing with deep emotions and work as much or more from the heart as the head. Both avenues of expression and understanding must be open to them (Gilbert, Schiff & Cunliffe, 2013). Furthermore, they have lived experiences that, when combined with personal calmness, self-control and depth of understanding, allow them to manage intense emotions associated with victimisation and wrongdoing while retaining the ability to engage participants in meaningful dialogue. This view is consistent with the ‘medicine wheel’ concept of First Nations Peoples in which wholeness requires balance between the physical, mental, emotional and spiritual aspects of life and reinforces the importance of training for facilitators.

7. The need to recognise and address huge disparities based on race, ethnicity and class that produce injustice and inequalities. The differential impacts of criminal justice policy and enforcement practices have been responsible for systematic removal or marginalisation of up to one in every two young males in communities of colour through imprisonment and criminal conviction. This perpetuates the cycle of poverty and single female parent families. Restorative and community justice practices may help to address such harms. Neighbourhood-driven community and restorative justice practices strive to strengthen community by relationship building and addressing neighbourhood problems (including injustices by justice systems—e.g. ‘zero tolerance’, and structural inequalities—e.g. poverty, concentrated disadvantage, structural racism). The NACRJ seeks to engage and empower minority participation in achieving more just, equitable and safe neighbourhoods, cities and states and, ultimately, the nation. The first step is to embrace the wisdom of First Nations Peoples who view all people and all things as interrelated. Consequently, justice means living with one another in a ‘good way’. Justice also requires that we convey respect, dignity and integrity in our interactions with others. Attaining justice is therefore about how we live with one another in peace. It is more than a violation of law and criminal liability. It is relational.
8. The need for well-designed research as the foundation to inform both policy and practice. The NACRI has the opportunity to pool many ideas, promote comparative work, and influence public policy based on broadly generalisable findings from meta-analyses of disparate research efforts across many jurisdictions.

5. Conclusions

Over the last 30 years, awareness and understanding in the USA of restorative and community justice have developed slowly because they did not have support in either law or public policy. While this lack of support slowed the development of restorative and community justice practices, it created an opportunity in which creativity and innovation flourished. Marginalisation and official resistance pushed early practitioners toward creative adaptations to test these ideas. They found that positive outcomes could often be attained for victims, their families, offenders and communities when healing dialogue was used to address harms of crime to people and problem-solving circles with residents were used to address quality of life in neighbourhoods. These outcomes were rarely reached through traditional justice practices (Umbreit & Armour, 2010; Waller, 2008).

Today the USA seems to be at a tipping point (Gladwell, 2002) where traditional legal justice is increasingly recognised as ineffective, often counterproductive, extremely costly and unsupported by research findings. Conversely, non-traditional practices rooted in restorative and community justice are increasingly recognised as evidence-based practices. It seems that a moment of systemic change may have arrived and the National Association of Community and Restorative Justice may have hit the rising tide. For many, this circumstance is a source of great hope. The emergence of the NACRI may well signal a new chapter in the trend toward community-based responses to crime, inequalities, injustice and inequality. Given the social justice context of both community and restorative justice perspectives, justice policy rooted in these ideas may promote changes at all levels of society—micro (healing harms), meso (addressing institutional injustices) and macro (addressing the impacts of structural inequalities). When viewed from the traditional justice perspective, restorative and community justice practices appear to be ‘radical’ departures. The irony of that ‘radical’ claim is seen in the common observation by practitioners that victims, offenders, supporters and other participants tend to prefer non-traditional justice processes once they experience them and grasp their meaning. This is a hopeful time because the near total reliance of traditional justice systems and the injustices perpetuated by that system may be finally broken. This is the hope that underlies the formation of the NACRI.

Traditional and innovative practices evidence that the rising tide of crime and insecurity are not changes in the system. ACRIJ may be viewed as a symptom of larger social issues.

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Restorative justice and community justice in Canada

Barbara Tomporowski*

Instructor, Department of Justice Studies, University of Regina (Canada), Barbara.Tomporowski@gov.sk.ca

The evolution of restorative justice in Canada is fairly consistent with the developments Michael J. Gilbert describes in the United States, except that restorative justice has been incorporated into the Canadian justice system for 30 years (Tomporowski, Buck, Bargen & Binder, 2011), and had an increasing amount of government funding and policy support since the mid-1990s. However, the term ‘community justice’ is problematic because it is used in a different way in Canada, and national advocacy for restorative justice is less pronounced.

Restorative justice in Canada initially developed through experimentation. Gilbert refers to one of the most important experiments, the development of victim–offender mediation in Elmira, Ontario. This practice began when a probation officer and a volunteer took two youths to meet their victims and pay restitution for property damage from a vandalism spree (Kelly, n.d.). The willingness of the judge and probation officer to try a different approach eventually led to the widespread use of victim–offender mediation, which remains one of the most common restorative practices in Canada. Likewise, innovations such as sentencing circles and Circles of Support and Accountability developed through trial and error. Sentencing circles began in 1992, when Judge Barry Stuart invited Elders to participate in R v Moses (Goldbach, 2011), and Circles of Support and Accountability started in 1994 when correctional officials approached a pastor about community support for a high-risk sex offender being released after a custodial sentence (Wilson, McWhinnie, Picheca, Prinzo & Cortoni, 2007). These successful efforts were replicated by other community groups and individual justice officials, often with little institutional support.

* The author is a Senior Policy Analyst with Saskatchewan Ministry of Justice. Ms. Tomporowski co-chairs the Federal-Provincial-Territorial Working Group on Restorative Justice and was a member of the Steering Committee that developed the Canadian Restorative Justice Consortium. This document reflects her personal views and does not represent those of the Ministry of Justice, Government of Saskatchewan, Working Group on Restorative Justice or the Canadian Restorative Justice Consortium.
The landscape for restorative justice changed significantly in the mid-1990s. The growing momentum involved federal legislation, increased government funding and a proliferation of community-based programmes. One of the most important developments occurred in 1996 when the Criminal Code of Canada was amended to authorise community-based sentencing alternatives for adults. These amendments included section 717(1), which allows referrals to alternative measures programmes if a number of conditions are met. The kinds of offences that are referred vary because these programmes must be authorised by the Attorney General of a province or territory, but they usually involve property matters or minor assaults. This was critical because the majority of adult criminal cases referred to restorative justice programmes are made under the provisions for alternative measures.

Another important milestone occurred in 1997, when the Satisfying Justice Conference was held in Vancouver, British Columbia. This brought practitioners, community members, justice officials and policy makers together and reflected the growing interest in restorative justice.

The Youth Criminal Justice Act (Y.C.J.A.) of 2003 increased the use of restorative approaches. The Act includes provisions for referring young people to extrajudicial sanctions, which are similar to alternative measures and are the major way in which criminal matters involving youth are referred to restorative justice. Additionally, the Y.C.J.A. authorises youth justice committees and convening conferences to make decisions on matters such as sentences and reintegration plans. While the Y.C.J.A. does not specify that conferences or youth justice committees must be restorative, they often reflect restorative values, principles and practices.

The development of restorative justice was somewhat different in Québec, which has long embraced the use of alternative responses with young people in conflict with the law. Québec introduced the Youth Protection Act in 1979, which authorised the diversion of cases and alternative sentencing. These 'voluntary alternatives to formal court processes ... were the precursors to alternative measures and extrajudicial measures' (Caputo & Vallée, 2010). It has been estimated that about 35 per cent of all youth matters in Québec are handled with restorative justice annually (Tomporowski et al., 2011). On the other hand, it has also been suggested that restorative justice was not embraced as strongly in Québec as in other parts of Canada, perhaps because alternative approaches for youth were already widespread (Gaudreault, 2005).

There is now some restorative activity in every province and territory, although the number of programmes and referrals differs (Tomporowski et al., 2011). Many provinces and territories have policies regarding the referral of criminal cases, and Justice Canada played a strong role in a consultation that led to the development of 'Values and Principles of Restorative Justice in Criminal Matters' and 'Restorative Justice Program Guidelines' (Justice Canada, 2003a, b). Additionally, Federal-Provincial-Territorial Deputy Ministers Responsible for Justice and Public Safety have approved public documents...
on restorative justice, most recently a paper on community-government collaboration (Federal-Provincial-Territorial Working Group on Restorative Justice, 2013). Governments also provide funding for restorative programmes. The Correctional Service of Canada (C.S.C.) supports National Restorative Justice Week, the National Restorative Justice Symposium and the National Ron Wiebe Restorative Justice Award. C.S.C. also offers the Restorative Opportunities Program, which is a post-sentence mediation programme for cases involving serious crimes. A great deal of restorative activity is undertaken by community justice programmes through the Aboriginal Justice Strategy, which is cost-shared by the federal government with provinces and territories. These community justice programmes are operated by First Nations, Tribal Councils and other Aboriginal organisations. They reflect local cultural practices and provide services such as resolving cases, sentencing alternatives, supporting victims, and offender reintegration. Additionally, many provinces and territories fund restorative programmes operated by non-profit organisations and community groups. The amount of funding varies and agencies often operate on a volunteer basis or with financial support from faith organisations and charitable groups.

With this degree of legislation, policy and funding, it is not clear that governments in Canada attempted to ‘sideline’ restorative justice as Gilbert suggests in the United States. Yet funding remains a challenge for many agencies, and it has been suggested that restorative justice remains on the margins of the Canadian criminal justice system (Scott, 2010). Concerns have also been raised about whether restorative justice will continue to flourish in light of ‘tough on crime’ approaches (Steering Committee for the C.R.J.C., 2007).

Confusion over ‘community justice’ and ‘restorative justice’

Gilbert’s comments about similarities between the values of restorative and community justice are sound, but linking these fields is problematic in Canada because the term ‘community justice’ is used in a different way. As previously discussed, ‘community justice’ often refers to programmes operated by First Nations, Tribal Councils and Métis organisations. Some community justice programmes see themselves as offering restorative justice, while others draw upon Aboriginal justice approaches that differ from restorative justice. This mix of terminology—restorative justice, community justice, Aboriginal justice, not to mention alternative measures and extrajudicial sanctions—is confusing and has made it difficult to gather comprehensive information about the number of restorative programmes or referrals across the country.

In Canada, we tend to refer to ‘community-based justice approaches’, which include victim services, community policing and community corrections. Gilbert seems to suggest that community justice approaches are characterised by a greater degree of problem-solving and working in partnership than restorative justice, but Canadian restorative justice programmes are diverse in terms of their activities and funding sources.
justice programmes are often developed collaboratively with many groups and agencies and are delivered in flexible ways that address community concerns. Moreover, community justice committees and youth justice committees play numerous roles in restorative justice. Some meet directly with victims and offenders, while others refer cases to qualified practitioners, undertake public education or crime prevention and meet with police and other justice agencies to discuss community issues. These examples illustrate the overlap between restorative justice and the field of community justice, and I believe it is clearer to refer to ‘restorative justice’ and ‘community-based justice programmes’ in Canada rather than increasing confusion about what ‘community justice’ means.

New developments

Another difference between the two countries is that Canada does not have as much national advocacy regarding restorative justice. The Canadian Restorative Justice Consortium (C.R.J.C.) was established in 2012. Its mission is to promote restorative justice at the national level and support practitioners, programmes, agencies and networks/associations. The consultation that led to its development indicated that advocacy and public education were two of the most important goals for the C.R.J.C. (Steering Committee for the C.R.J.C., 2009: 22). The C.R.J.C. recently launched a website which includes a map of restorative programmes and a calendar of events (http://crjc.ca). During its first annual general meeting in November 2013, the C.R.J.C.’s Board of Directors discussed how to expand its membership and what role to play. The Smart Justice Network is currently more focused on public education and advocacy, and it will be interesting to see what activities the C.R.J.C. undertakes in the future.

The theme of the 2013 National Restorative Justice Symposium was ‘Inspiring Innovation’. The symposium featured workshops on new approaches such as using the arts to enable clients to express themselves and heal from emotional trauma. It also covered communications and social media, building social capital in workplaces, and how restorative justice can be incorporated into human resources. I was a member of the Program Committee, which was interested in offering workshops about fundraising and alternative funding sources for restorative agencies. Unfortunately, we did not receive any proposals for workshops on that topic. A few restorative programmes are experimenting with social return on investment, which may be an area for future exploration.

Discussions are occurring in some Canadian communities about guidelines for restorative programmes. The province of Nova Scotia implemented a set of Best Practice Standards for Restorative Justice, which is the most detailed in the country, and Saskatchewan has a manual with procedures for referring and handling cases (Saskatchewan Ministry of Justice, 2013). The Saskatchewan manual also outlines expectations regarding matters such as conflict of interest and protection of personal information. Having guidelines can help ensure that victims, offenders and community members receive high
quality services and restorative agencies use public funds appropriately, but I am not certain whether practitioners need to be accredited or how detailed procedures should be. Practitioners are concerned that standards and accreditation could impose rigid, 'cookie cutter' approaches that reduce their ability to develop creative, flexible processes and meet the needs of their clients (Scott, 2010). These issues are just starting to be considered and there are a small number of resources regarding standards and guidelines.

Restorative justice is growing rapidly in the educational system in Canada, particularly in high schools. Post-secondary institutions are increasingly offering courses on mediation and restorative justice and some universities have degrees focused on this area. For example, the Department of Justice Studies at the University of Regina and the Centre for Restorative Justice at Simon Fraser University School of Criminology offer degree programmes, organise conferences and support research. Academics frequently act as board members, provide expertise to restorative programmes and assist with evaluations. These are good examples of collaborative approaches that support restorative justice, and it would be valuable to have more participatory research involving academics, community-based restorative programmes, government ministries and justice agencies.

Other areas for expansion

Gilbert makes valuable observations about victim-centred practice and how restorative justice should not focus on efficiency at the expense of client needs. I agree with the need to strengthen the role of victims in restorative justice. Many agencies go to great efforts to engage victims, but some tend to focus on the offender as their primary client (Tomporowski, 2005). It is important that practitioners are sensitive to victims, invite them to participate and find ways to address their needs as much as possible. It is also important that victim services programmes and restorative agencies support each other in practical ways, such as taking each other’s training and referring clients when appropriate.

I also agree with the need for additional training. Here in Saskatchewan, workers in restorative programmes that receive provincial funding must take basic courses on resolving conflict and conducting mediation and participate in an ongoing training programme. Mediators in the federal Restorative Opportunities Program also receive regular training, but many practitioners and people who want to enter the field of restorative justice sometimes find it difficult to access training opportunities.

Restorative justice in the child welfare sector is not as advanced in Canada as in the Netherlands (Wachtel, 2011) or New Zealand, despite a number of tragic cases involving children in the child welfare system and the over-representation of Aboriginal children in care. This could be a valuable area for restorative practitioners to apply their skills. Finally, there have been innovations in British Columbia, Saskatchewan and the federal Department of Fisheries and Oceans in terms of using restorative justice to resolve cases

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involving hunting, fishing and environmental pollution. Given the growing interest in environmental matters, this could be another area for expansion.

Conclusions

Restorative justice evolved in Canada in a way that is broadly similar to Gilbert’s description of the United States, but with some important differences. Legislative changes in 1996 and 2003 enabled the referral of adult and youth criminal cases, and there has been an increasing amount of federal, provincial and territorial government funding and policy development since the mid-1990s. Therefore, there is less need to embed restorative justice into law and policy in Canada than in the United States, although Canada continues to face many practical challenges regarding funding, training, increasing the use of restorative justice in the criminal justice system, enhancing its use in the educational system, and exploring new approaches in child welfare and environmental matters. This is an exciting time as the C.R.J.C. seeks to define its role and restorative justice expands into new areas.

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Similarities and discrepancies—implementing restorative justice in Finland

Aarne Kinnunen, Saija Sambou, Aune Flinck and Pia Slögs

Aarne Kinnunen, Deputy Head of Department, Ministry of Justice (Finland), aarne.kinnunen@om.fi; Saija Sambou, Senior Planning Officer, Ministry of Justice (Finland), saija.sambou@om.fi; Aune Flinck, Development Manager, National Institute for Health and Welfare (Finland), aune.flinck@thl.fi; Pia Slögs, Managing Director of Mediation Office, Yöjalka Ry (Finland), pia.slogs@sovittelutoimisto.fi.

In his ‘Notes from the field’, Michael J. Gilbert gives us an interesting insight into the development of community and restorative justice in the USA. Gilbert describes the early phases of the community justice and restorative justice movements based on criticisms of traditional justice. He refers, for example, to the harmful effects of the traditional criminal justice system, which isolates offenders from the community to which they eventually return in most cases after incarceration. Gilbert also criticises the traditional criminal justice system for its lack of evidence-based policies and for relying on reactive policy instead of aiming to prevent future criminality of offenders. Gilbert emphasises the advantages of community justice and RJ aiming at ‘doing something with the victim and not to the victim’.

Gilbert also discusses various associations and stakeholders who promote the idea of community justice/restorative justice, especially the newly established National Association of Community and Restorative Justice (NACRJ), of which he is Executive Director. The NACRJ’s mission is to include advocacy for supporting public policy necessary to bring non-traditional, evidence-based justice into mainstream practice.

In this commentary we aim to reflect on and compare the development of restorative justice in the USA with developments in Finland across the same time span. Interestingly enough, there are both similarities and discrepancies. In the USA the ‘restorative justice movement’ was initiated in 1970s by academics and criminal justice professionals. In the case of Finland the concept arrived only a few years later, in the 1980s. Indeed, the first local pilot projects on victim-offender mediation took place in 1983.

In Finland—as in the USA—the first restorative justice initiatives were taken by a number of enthusiastic people who were willing to dedicate their efforts to testing their ideas of restorative justice and promoting them in Finland (Järvinen, 1993: 29–35).
Their role was essential and they became known as the ‘ambassadors’ of restorative justice ideology in Finland, rather like the devoted criminal justice practitioners in the USA, as mentioned by Gilbert. The first projects may be described as grassroots-level efforts in both countries. In Finland the restorative justice philosophy behind the initiatives was based on Nils Christie’s (1977) idea that conflicts belong to parties themselves, not to the state and its criminal justice system (see also Hulsman, 1986a, b; Umbreit, 2001).

Community justice vs. restorative justice

Gilbert refers to community justice and restorative justice as non-traditional forms of justice that may be considered mutually reinforcing. They operate according to many of the same values and employ similar dialogue processes, and in both community is an essential element. According to Gilbert, these two models of justice employ different strategies. Restorative justice is victim-sensitive and focused on reparation of harm to victims and their communities. Community justice, as practised in the United States, is focused on collaborative problem-solving in neighbourhoods, surrounding communities and political jurisdictions. Residents are recognised and appreciated by justice officials as the experts in their neighbourhood. Common strategies include neighbourhood-based community policing, courts, prosecution, correction and legal aid.

Described in this way, community justice does not really apply in the Finnish context, which is characterised by its emphasis on a legalistic tradition stemming from the classical school of criminal justice. In practice this means great respect for legal principles, such as applying the same punishment for the same type of crime and the proportionality of punishment. In Finland collective efficacy and social capital of the neighbourhood—two of the main goals of community justice—are achieved in different ways. One important tool for maintaining safety in communities is an inclusive social policy, which decreases social inequality between local residents and guarantees housing, minimum living standards, opportunities for education, and social and health care to all persons living in the country. Secondly, cohesion in neighbourhoods can also be enforced by housing policies in which different layers of society are mixed and ethnic concentrations are avoided. Furthermore, a fairly common phenomenon is neighbourhood improvement policies and efforts to increase transparency, democracy and innovations by different means to support the participation of residents in local decision-making, for example via the internet. In the Finnish context, the safety and security of local residents is a prerequisite to the general well-being and congeniality of the residential areas (Jarg, 2014).

In Finland the concept of criminal justice policy is a very broad one. Social and educational policies and crime prevention are also seen as important elements of a well-functioning criminal policy, but, unlike in the USA, in the Finnish context the criminal justice system comes into play only as an ultimo ratio—only when other means to deal with criminality are not effective (Tonry & Lappi-Seppälä, 2012). In this context,
restorative justice fits in well with general attitudes towards crime, while the concept of community justice seems to be relevant from a broader social policy perspective.

**From grassroots projects to forefront organisations and structured practices**

In Finland in the 1980s and 1990s, municipalities and NGOs arranged mediation services on a voluntary basis with much enthusiasm. Perhaps this could be called the ‘Let the thousand flowers bloom’ phase in the development of restorative justice. As the number of victim–offender mediations (VOM) increased, the traditional criminal justice system began to pay attention to this development. In increasing numbers of cases, public prosecutors began to waive prosecution after a successful mediation and especially after the perpetrator had agreed to compensate the victim for the harm caused. The continual increase in cases alarmed a number of academics and lawyers: perhaps the principle of ‘equality before the law’ could not be reached, because the services were not available on a national basis and the implementation of VOM varied between municipalities and between service providers. Not all citizens had equal access to VOM services even though mediation was recognized as successful, especially for minor offences. The large discrepancies in the organisation of mediation services led to a situation in which VOM was vulnerable to criticism.

In Finland, minor grassroots projects were not effective enough and did not get enough attention from the public, communities and officers working with offenders and victims. The number of cases began to decline, the economic recession at the beginning of 1990s being one of the reasons for reducing resources for early intervention services. The solution in Finland was to create nationwide legislation and state financing for the arrangement of VOM. Services became available nationwide in 2006 as the law on mediation in criminal and certain civil cases came into force (Livari, 2010; Kinnunen, Livari, Honkatukia, Flinck & Seppälä, 2012).

**The role of advocacy organisations**

Gilbert encourages readers to think further about the restorative justice developments in the USA and in other countries as described in his article. He challenges readers to gather more information on how the various community justice and restorative justice practices are implemented at the local level and by whom. However, information on the USA is given merely on two states: Colorado and Texas, where a major policy shift has taken place. In these states policy-makers have adopted the shared understanding that punitive justice is too expensive to maintain and does not reliably produce public safety or reduce crime. However, we do not really get to understand how widespread this policy change is throughout the United States or even North America. In Gilbert’s Note it becomes evident that the role of front-line organisations such as NACRJ is crucial when restorative
Justice practices are developed. These organisations are essential for keeping restorative justice on the political agenda and stimulating discussion on the renewal of traditional criminal policies. This is the point where differences between societies in Finland and the USA become clear.

In Finland, the state bore the responsibility to provide a legislative framework and funding for the organisation of VOM services throughout the country. The aim of the 2006 legislation was not only to safeguard governmental funding, but also to make procedures followed in mediation uniform, to give proper attention to the legal protection of the parties, to ensure the procedural rights and safeguards of the parties attending the mediation process, and to create conditions for long-term evaluation and development. Consequently, the number of cases started to grow and mediation became available throughout the country. In this way restorative justice was established as an important part of the nation’s criminal policy. However, it might be argued that this establishment also meant that restorative justice was narrowed down to one clearly defined practice. Since the legislation came into force, the focus has been on victim-offender mediation and mostly in less serious crimes. Not much space has been left for creative experiment, like in the USA, such as, family group conferencing, restorative circles and community reparation boards. It can also be argued that in Finland restorative justice has become ‘agreement oriented’ and has perhaps lost something of its original nature in promoting dialogue, healing and restoration. Authentic community involvement is lacking in Finland and should be developed. Presently, community involvement in victim-offender mediation consists merely of the voluntary mediations and the participation of custodians and other family members of the parties involved.

In order not to sketch too dark a picture, it must be said that new developments are also taking place in Finland. Recently—in 2013—an initiative to develop restorative justice in prison settings and for more serious crimes was implemented. Furthermore, mediation has been introduced in schools (Gellin, 2011) and workplaces (Pehrman, 2011), and for environmental disputes (Kangas, 2010), family disputes (Karvinen-Niinikoski & Pelli, 2010), and neighbourhood disputes among immigrants (Joensuu et al., 2011).

In his article Gilbert emphasises the importance of NACRJ and other organisations in the development of restorative justice in the USA. He mentions the creation of legislation to embed restorative and community justice in law and public policy at all levels of government as a first priority of NACRJ. As stated above, this has already taken place in Finland without needing strong advocacy organisations. Developments towards legislation and raising public funding have been easier in Finland than in the USA, partly because of the homogeneity and size of the population. Furthermore, the Finnish criminal justice system has recognised the importance of minimising the use of imprisonment and of finding alternatives to predominantly punitive policies. Gilbert reminds us in his article that crime should be seen as a deeply embedded social problem, and solutions

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and policy responses to crime must do more than merely capture and punish criminals. Finland is known for the ideology that comprehensive and inclusive social policies are the most effective criminal policy.

However, what is lacking in Finland is an umbrella organisation—similar to NACRJ—to provide support and education, and to develop and maintain high quality, evidence-based practices and standards in restorative justice. A legislative framework cannot itself guarantee full predictability and quality of services. Part of the role of the NACRJ is given to the Advisory Board on Mediation in Criminal Cases, whose representatives comprise members of various NGOs, child welfare and victim support organisations, and criminal justice system actors, such as the police and public prosecutor. Its objective is to develop mediation, enhancing cooperation between different actors in the field, and to supervise and monitor implementation.

Restorative justice as a partner to the criminal justice system

Finland has been fortunate. Mediation services have achieved reliability and status among the police, public prosecutors and judges, who now collaborate with the mediation offices at several levels. Mediation is highly recommended in criminal cases where the suspects are young offenders. Mediation reaches a relatively high number of young suspected offenders. During these face-to-face meetings with the different parties, mediation is believed to have both an educational and a social function, particularly in the case of early intervention. Making offenders realise the consequences of their actions and meeting with the parties harmed by their actions can effectively stop them from reoffending, breaking social norms or hurting other people. Mediation has proven to be an effective means to prevent juvenile recidivism and to teach young people to become responsible citizens. This was indeed one of the important starting points in Gilbert’s article when describing the first projects implemented in the USA.

One quite unique feature of mediation work in Finland is the fact that mediation is mostly based on the work of voluntary mediators. Mediators receive initial training before taking up cases and they need to have good interpersonal and conflict resolution skills and a basic knowledge of the criminal justice system. Voluntary mediators work as laypersons and are unsalaried, supported and supervised by professionals in mediation offices. Although we stated above that the role of the community has remained minor in Finland, the community is in fact involved through its voluntary unpaid mediators, who are direct representatives of the community. They are recruited from all sections of society and should possess a good understanding of local cultures and communities. The role of communities in the sense of giving opportunities for offenders to amend the harms caused by them should clearly be further developed in Finland, and lessons could be learned from the USA. One of the key issues in both countries is how to maintain the original ideas and the spirit of community justice and restorative justice.
As Gilbert notes, one aim of organisations like NACRIJ is to carry out research and promote evidence-based practices of community justice and restorative justice. We could not agree more. The more studies are conducted on the effects of RJ, the more state organisations and NGOs will be able to rely on them. Furthermore, NACRIJ’s role in keeping the topic of restorative justice and community justice continuously on the political agenda is necessary because of the punitive demands that often appear when criminal policies are discussed among the public. We need both advocates and stakeholders—whether associations or State legal bodies—to enhance restorative justice policies at the national level.

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