The notion of 'restorative' justice\(^1\) has been a topic of particular interest amongst justice practitioners and academics only in the last two decades. But the concept has been recognised for a hundred years and its roots lie in antiquity. This paper explores the history of the concept, and reviews the current debate concerning its potential influence in the criminal justice system in Australia. Finally, the author explores the translation of restorative principles into practical programs and justice mechanisms in a variety of settings.

INTRODUCTION TO THE THEORY OF RESTORATIVE JUSTICE

Prior to the 12\(^{th}\) century, in English law, victims or their kin pursued private actions in an endeavour to 'restore' the parties to the positions they had been in prior to the offence. Victims took the lead in organising the communal reaction to law-breaking, and the desire for compensation was probably at least as common as the urge to retaliate. Victims eventually lost their central role in the justice process when formally organised governments emerged and began to assert their authority. The criminal justice system became premised upon the state taking action against offenders, a legacy of the Norman conquest in 1066. Crime became a crime against the state, the key features of punishment became deterrence and retribution,\(^2\) and victims were referred to the civil courts, not the criminal courts, for their grievances to be heard.\(^3\)

\(^{†}\) Presented as a keynote address at a conference on Restorative Justice at OARS, Adelaide, 19 November 1997. The author is grateful for the comments of David Moore.

\(^{1}\) L J B, MA Associate Professor and Head, School of Law and Legal Practice, University of South Australia, Visiting Professor, Graceland College, Iowa, 1997.

\(^{2}\) There is also reference from time to time to the allied notions of 'relational' justice, 'alternative' justice, community justice, and transformative justice.

\(^{3}\) Lest it be said that retribution is intrinsically harsh, it must be remembered that retribution also provides a brake on the excesses of punishment; that is, it seeks to have punishment meted out only in direct proportion to the mischief. The eye for an eye of the Judaic law in fact is a limiting feature in retribution. One could only take an eye for an eye, not two eyes, or a life, for example.

Centralized justice developed despite the persistence of 'restorative' themes in religious thought and practice, especially early Judeo-Christian justice tenets. These tenets allowed a guilty person to ask for divine pardon, and one's good works often amounted to sufficient reparation without there having to be any form of formal punishment. It was this concept that gave rise, however, to the 'indulgences' system of pardon, a corrupt system ridiculed by Martin Luther in 1517. While we praise Luther today for his efforts in rooting out some of the more problematic theologies and practices of the Holy Roman Church, the legacy for the criminal law is less commendable. The criminal court has now replaced the Almighty, and punishment is hard labour without salvation.

Hence, a system of criminal justice that endeavours to listen to, and appease, aggrieved parties to a conflict, has not been a feature of Anglo-American law for hundreds of years. This has led to some problems. For crime is first and foremost a conflict between people. At the moment we do not treat it as such. We treat crime as something that has happened between the State and an offender. Yet, as between people who may be in continuous contact with one another, justice policy ought to consider the future as well as the past, and remind us of the fact that many offenders are often victims as well.

For example, cases of assault, theft or damage between parties who are familiar with each other or who have an on-going relationship with each other, are dealt with today on the basis, largely, that only one party is legally culpable. That is rarely the case. The party singled out for attention may have been responding to an on-going struggle with the other party. While provocation can be a mitigating feature in sentencing, it is not an exculpating one.

Moreover, cultural and gender issues are, for the most part, officially irrelevant to adversarial criminal proceedings, although they may, in fact, be crucial to the etiology of the incident in the first place and crucial to the ultimate outcome. Thus, at the end of the day, many parties tend to leave the modern criminal justice system experience embittered, burdened with costs and often determined to seek further action, judicial and extrajudicial, if at all possible. This is a common experience amongst many victims, offenders and their families alike.

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4 H Bianchi, *Justice as Sanctuary: Toward a New System of Crime Control* (1994) 42–8 reminds us of the rabbinical *teshuva* (turning around) and the fact that the restorative concepts of reconciliation, repentance, forgiveness and mercy are found in all of the great modern religions.

If policy-makers were to recognise the value in mediating hurt and restoring parties to a right relationship with each other, then the adversarial system should be one of the last choices they should make. More enduring solutions and satisfactory outcomes are likely to occur in a non-adversarial environment than an adversarial one. Not only that, adversarial encounters are criticised as contributing to costs, delays, over-servicing and poor accountability. Thus there has been a concerted effort this century to explore alternative models.

**EARLY DEVELOPMENT OF RESTORATIVE JUSTICE**

The moves to engender a more 'restorative' milieu have been explored by a number of theorists, the most notable recently being American social scientists. But the concept has its roots earlier this century.

In 1917 the American social psychologist George Herbert Mead highlighted the inadequacy of the punitive system of justice:

> The concentration of public sentiment upon the criminal which mobilises the institution of justice paralyses the undertaking to conceive our common goods in terms of their uses...[and] we see society almost helpless in the grip of the hostile attitude it has taken toward those who break its laws and contravene its institutions. Hostility toward the lawbreaker inevitably brings with it the attitudes of retribution, repression and exclusion. These provide no principles for the eradication of crime, for returning the delinquent to normal social relations, nor for stating the transgressed rights and institutions in terms of their positive social functions.

In the 1970s, the Danish criminologist Nils Christie again explored the notion of putting 'justice' in context, and returning criminal conflicts to their 'rightful' owners, an evolution of people's sense of power over the legal process:

> The current system is a loss of opportunities for a continuous discussion of what represents the law of the land. Lawyers are trained into agreement on what is relevant in a case. But that means a trained incapacity in letting the parties decide what they think is relevant (emphasis in the original).

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From this time on, the recognition that relationships are crucial to the criminal justice process began to gain some currency. In 1977, psychologist Albert Eglash coined the term 'restorative justice', writing:

The reparative effort does not stop at restoring a situation to its pre-offence condition, but goes beyond. Beyond what our own conscience requires of us, beyond what a court orders us to do, beyond what family or friends expect of us, beyond what a victim demands of us, beyond any source of external or internal coercion beyond any coercion into a creative act where we seek to leave a situation better than it ever was.

Restorative justice soon emerged as a legitimate justice model, designed to provide the context for ensuring that social rather than legal goals are met. The expected end result is that communities and individuals are empowered in dealing with their problems and in influencing the direction of the criminal justice process, so formal punishment and incarceration become less relied upon sanctions.

Two decades on, it is possible to see that there has been some transfer of the theory into practice.

**Restorative Justice Today**

Restorative principles are often expressed in different ways, but some clear themes emerge. In models of restorative justice, there is:

1. shared responsibility for resolving crime and for one another;
2. the use of informal community mechanisms in addition to the involvement of criminal justice professionals;
3. the inclusion of victims as parties in their own right;
4. an understanding of crime as injury, not just law breaking; and
5. an understanding that a state monopoly over the response to crime is inappropriate.

In a traditional model of criminal justice, crime is defined as a violation of the state, the focus is on blame, deterrence and punishment, and the offence is defined in purely legal terms, devoid of moral, social and political dimensions. In a restorative model, crime is defined as a violation of one person by another; the focus is upon problem-solving, dialogue and restitution (where possible), mutuality, the repair of social

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10 A Eglash, Beyond Restitution: Creative Restitution in J Hudson and B Galaway (eds), *Restitution in Criminal Justice* (1977) 95
11 C La Prairie, Altering Course: New Directions in Criminal Justice (1995) *Australian and New Zealand Journal of Criminology (Special Supplementary Issue)* 78, 78
injury and the possibilities of repentance and forgiveness. The offence is understood in a range of dimensions including its moral, social and political implications.

The 'success' of a justice system based upon restorative notions is not measured by the final outcome or legal result, which is usually the case in an adversarial context, but rather by the degree to which people feel they have an impact, that they have been treated fairly, that they have understood each other that they have better mechanisms for making decisions and handling their differences, and that their key issues have been addressed. In particular, there is an enhanced level of participation in decision-making that affects people's lives. If successful, the participants feel that they are a valued part of their community. 

THE RELUCTANCE TO EMBRACE THE CONCEPT

There has been some resistance to the notion of restorative justice. There are probably six main reasons one can identify:

1. **Rehabilitation by Another Name**

There are ongoing doubts about the success of the 1960s and 1970s 'rehabilitation' models of punishment and correction, especially since Martinson's damning critique. It is thought that perhaps restorative justice is just another name for rehabilitation, with its history of failure, and its paternalistic overtones.

2. **Excuses**

Those on the political 'left' are of the opinion that restorative models excuse too much men's violence against women and children. Those on the political 'right' believe that proponents of restorative models are too keen to excuse offenders' personal behaviour, and are 'soft' on crime.

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15 R Martinson, *What Works? Questions and Answers About Prison Reform* [1974] *The Public Interest* 22, 35 Martinson's paper has often been misquoted as 'Nothing Works'. However, the view is widespread today that Martinson both was misunderstood and over-stated his case.
3. Private outcomes

There are grave concerns that the privatisation implicit in some restorative models, for example, the lack of publicity of 'family conference' outcomes (discussed below), are anathema to the concept of an open system of justice.

4. Retributive public attitudes

There is little doubt that the public in general sees the purpose of the criminal justice system first and foremost as an agent of retribution and deterrence, and anything that looks likely to undermine those concepts, and undermine a strong statement against criminal conduct, is likely to be viewed with suspicion.

5. The traditional legal expectations

The adversarial encounter is entrenched in the current style of legal education and thus expected by legal practitioners and clients alike. One is brought up to think that disputes are best solved in an adversarial contest. There is still a strong assumption in the public domain that legal reasoning is distinct from ethical or political discourse in general, as a method for reaching 'correct' results.

6. Certainty and consistency have deep appeal

There is great power in the symbolic function of the law as being certain and consistent. Restorative models are, by their nature, somewhat ad hoc, based upon the players themselves reaching outcomes. Many people prefer to live under a concept of legal (if not moral or philosophical) certainty even when it is said or suspected that such certainty is ill-conceived.

Nevertheless, restorative models have assumed some importance in some aspects of the criminal justice system in Australia and elsewhere if for no other reason than that they can be potentially cost-saving exercises. A formal criminal trial costs the state a great deal more money than outcomes derived through mediation and private restitution, for example. Indeed, there appears some evidence, explored in the examples below, that lasting outcomes (and hence cheaper

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17 R Sarre, Uncertainties and Possibilities A Discussion of Selected Criminal Justice Issues in Contemporary Australia (School of Law, University of South Australia 1994) 29
18 Editorial, 'An Escape from Criminal Justice Rituals?' [1996] Criminal Law Review 1, 3 The writer of the editorial questions this assumption
outcomes in the long run) are more likely where restorative principles are in place. The author is, therefore, on balance, persuaded that the weight of evidence favours the active pursuit of restorative goals in a modern criminal justice system. The author sees value in what Bottoms refers to as 'legitimacy', that is, a greater willingness of participants to accept the justice system if it recognises crucial relationships. There is also much to commend the notion that inherent in restorative models is the potential for the promotion of greater social cohesion. It is well accepted that such cohesion acts as a prophylactic against much criminal conduct.

RESTORATIVE JUSTICE IN PRACTICE

In the discussion following one might observe restorative initiatives at all three levels of the criminal justice system: the investigative, the adjudicative and the corrective levels. The following examples provide a starting point for policy consideration and development along restorative lines. It is not suggested that practitioners commonly refer to these fields of endeavour in 'restorative' terms. It is suggested, however, that reviewing the restorative potential of such programs and mechanisms provides scope for developing the paradigm generally.

Pluralised Policing

Western governments have, in the last two decades, adopted a notion of public policing which incorporates so-called 'pluralised' policing. This model encourages greater flexibility in policing, allowing greater levels of community involvement and input including private operations, and thus has the potential to encourage non-adversarial policing to prevail. There are good reasons to suspect that the transfer of power from authorities to communities has not happened in the manner often maintained in the rhetoric, but academics who have reviewed the policing needs in the new South Africa have highlighted the possibilities currently alive in that country for a police vision that places less emphasis upon police forces and greater emphasis upon the self-policing abilities of communities themselves.

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19 A Bottoms Avoiding Injustice Promoting Legitimacy and Relationships in J Burnside and N Baker (eds), Relational Justice Repairing the Breach (1994) 58
20 Use of this term does not underestimate the difficulty of determining 'communities', and of resolving conflicts when different communities (by age, gender, race, geography, commerciality etc) want different outcomes
22 Eg: M Brogden and C D Shearing, Policing for a New South Africa (1993)
Once policing is seen as something that is, and can be, done by other institutions besides the South African Police, new possibilities for transformation become available. This approach, we argued was well suited to South Africa where governance has not been the sole preserve of the state and where the struggle against apartheid has given rise to a vast network of popular policing initiatives. Whatever problems these initiatives might have, and certainly many questions can have been raised about them the culture that has guided them has not been the culture of Afrikanerdom. These institutions of popular policing, we concluded, provided a basis for radically reforming policing. What is more as these institutions already existed they could be mobilised relatively easily and quickly to bring about change. What was required to do this was a recognition that policing could be done through a network of civil institutions outside the state.

For example, 'problem-solving' policing searches for precipitating factors, which, if eliminated, may stop or at least limit antisocial conduct that otherwise might have occurred. Such an approach is consistent with the view that not all crime and disorder problems are the same, nor are the neighbourhoods and communities in which they occur. A problem-oriented strategy, therefore, attempts to collate incidents in order to paint a larger picture. Moreover, two academics have explored the idea that privatised policing has the potential to deliver restorative outcomes.

The evidence is anecdotal, but the experience of the USA and Canada indicates that adopting a more pluralised policing strategy, especially problem-solving approaches, can correct some conditions that would otherwise require repeated police mobilisations. It can endeavour to leave communities in better shape after police intervention, a phenomenon rarely seen in crime control activities in modern western society.

Recognition of Indigenous Customary Law

Academics have long pondered the question and effects of the extinguishment of traditional or customary law and the potential of a restoration of Indigenous law in Indigenous communities to improve justice outcomes. At a 1994 conference in Darwin the issue again gained prominence:

> Recognition must be given to the existence (and survival) of customary law. As indigenous cultures are organic (rather than static), customary law may exist (albeit in an evolved/evolving format) in contemporary

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23 C. D Shearing, Transforming the Culture of Policing: Thoughts from South Africa (1995) *Australian and New Zealand Journal of Criminology* (Special Issue) 54 58
25 D. Bayley, Back from Wonderland, or Toward the Rational Use of Police Resources in A N Doob (ed), *Thinking About Police Resources* (Research Report No 26, Centre of Criminology, Toronto, 1993) 11
26 E.g: F. Brennan, Self-Determination: The Limits of Allowing Aboriginal Communities to be a Law Unto Themselves (1993) 16 *University of New South Wales Law Journal* 245
communities, as well as in their more traditionally orientated counterparts. As Australian society examines socially just ways of dealing with its indigenous peoples, and as Aboriginal and Torres Strait Islander peoples continue to demand the right of more culturally appropriate responses, the importance of customary law cannot be underestimated 27

In 1992 the Commonwealth, in implementing recommendation 219 of the Royal Commission into Aboriginal Deaths in Custody Report, 28 requested a further report be prepared which outlined the Commonwealth government’s progress on the consideration of customary laws since a 1986 Australian Law Reform Commission report on the subject. 29 The 'progress' report 30 concluded that there had been no implementation of comprehensive customary law legislation due to the complexity of the issues and the fragmented nature of government in Australia. Thus the matter remains unattended to A serious commitment to the development of customary law in policing and sentencing could foster community mechanisms and provide yet another restorative avenue in the criminal justice system 31

Offender and Victim Reconciliation

While this notion has attracted a good deal of attention in North America 32 and Europe, 33 it is still very much in a nascent form in Australia 34 The concept endeavours to repair social injury and encourage mutuality Offenders are encouraged to understand the impact of the crime and to take responsibility for it The work of

27 Social Justice Commissioner Report on the National Aboriginal and Islander Legal Field Officer Training Program (Paper presented at Darwin, 19-21 April 1995) 31
28 Commission of Inquiry into Aboriginal Deaths in Custody 1991 National Report (Elliott Johnston, Commissioner) vol 5
31 R Sarre, 'Sentencing in Customary Australia : an overview of the issues' in R Sarre and D Wilson (eds), Sentencing and Indigenous Peoples (Research and Public Policy Series No 16, Australian Institute of Criminology) 7; R Sarre Legal Aspects of Native Title: Land Rights, Native Title and Aboriginal Customary Law (1997) Kaurna Higher Education Journal 53
33 Eg: U Hartmann, Victim Offender Reconciliation with Adult Offenders in Germany in C Sumner et al (eds), International Victimology Selected Papers from the Eighth International Symposium on Victimology (Conference Proceedings No 27, Australian Institute of Criminology, 1996) 321-7
Zehr, outlining the Victim Offender Reconciliation Program (VORP) in the USA and Canada (commencing in Kitchener, Ontario in 1974) has not been emulated in Australia to any significant degree. There is still a grave fear that the objectives of the politically charged 'law and order' regime might be compromised if offenders are seen to be receiving an alternative (read 'soft') option to their just deserts. Other concerns come from the other end of the political spectrum; fears that mediation may deflect community attention away from wider institutional problems of patriarchy and the seriousness of family violence.

Nevertheless, the Victorian Law Reform Committee supports both pre-court and post-conviction models for both adult and young offenders and has had a pilot program in operation since October 1993. The Western Australian Department of Corrective Services set up a working party to explore a post-conviction model and has a pilot pre-sentence victim-offender (adult only) conciliation program operating. Queensland has a similar pilot project applying to both adults and juveniles. There is little doubt that the success of juvenile offender-victim mediation programs (described below) will lead to greater exploration of the potential of adult programs as well.

**Family Group Conferencing**

The experiment of family group conferencing has been warmly embraced in Australia, and the subject of much research in its implementation. South Australia was the first jurisdiction in the world (in 1869) to initiate a separate juvenile justice system. In November 1993, the South Australian Department of Social Services set up a working party to explore a post-conviction model and has a pilot pre-sentence victim-offender (adult only) conciliation program operating. Queensland has a similar pilot project applying to both adults and juveniles. There is little doubt that the success of juvenile offender-victim mediation programs (described below) will lead to greater exploration of the potential of adult programs as well.

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35 Zehr, Changing Lenses: A New Focus for Crime and Justice (1990)
36 M. Thornton, The Liberal Promise (1990) 144
37 Victorian Law Reform Committee, Restitution for Victims of Crime, 137
38 Department of Corrective Services, The Role of Community-based Corrections in Restorative Justice (1992)
39 G. Murray, 'Mediation and Reparation Within the Criminal Justice System' (Discussion Paper prepared for the Department of the Attorney-General, Queensland, 1991)
1992, in South Australia, a Parliamentary Select Committee, established to look into the delivery of juvenile justice services in SA, reported on its findings. It was impressed with the *Children, Young Persons and their Families Act 1989* (NZ), which, in 1989, introduced family conferences for young offenders, based upon a Maori village justice model dating back hundreds of years. On 1 January 1994 new legislation came into force a new *Young Offenders Act 1993* (SA) came into operation making it possible for a 'family group conference' to be convened, bringing together the offender(s), their extended families and advocates (if appropriate), the victim(s), the police and an independent mediator. Under this system, offenders are required to confront their wrongdoing (for the most part the less serious offences) while being empowered to develop their own negotiated settlement. The aim of the process is to bring about reconciliation, not to exact punishment.

In many respects the model incorporates the concept of 'shame and reintegration' explored by criminologist John Braithwaite\(^{41}\) as an alternative punishment model. He creates a model of 'reintegrative shaming', that is to say, a system where there is a clear acknowledgment of wrongdoing by the offender and a desire to rebuild links with the community. He contrasts this with the notion of 'disintegrative shaming', that is, where condemnation of the wrongdoer occurs but without the rebuilding of social bonds, thereby setting up potentially serious tensions within the community. In a family group conference setting, communities are asked to seek their own solutions to problems rather than relying upon the State to take centre stage.\(^{42}\) In this respect, consistency is not as important as 'democratic creativity'.\(^{43}\)


42 J Braithwaite and S Mugford, Conditions of Successful Reintegration Ceremonies: Dealing with Young Offenders (1994) 54 *British Journal of Criminology* 139

The South Australian experience of family conferencing has undergone a review that supported its continuance.\(^4^4\) It should be noted that use of the word 'shaming' has been criticised by some commentators, who say that it is too 'loaded' a term. But the value of reintegration/restoration in the juvenile justice system is an idea whose time has come. It awaits further exploration and development.

**Police Cautions**

The new system of juvenile justice in South Australia in 1994 also introduced a new choice for police in their interaction with young offenders: where discretion determines that a mere 'caution' is required, there is now a distinction between *formal* cautions and *informal* cautions. Formal cautions, described in s 7 of the *Young Offenders Act 1993*, are used for matters which are more than trivial but which can be adequately dealt with by having young people and their parents attend a meeting with a cautioning officer to discuss the offending behaviour, whereupon the caution is delivered and, if necessary, sanctions imposed. These cautions can be administered in relation to not only offences against 'good order' but in more serious cases of larceny, burglary, fraud, forgery and robbery. Formal cautions are distinguished from informal cautions which are used for the more trivial offences, and particularly where there has been no previous offending.

This is how the Hon C J Sumner, the then Attorney-General, described the new options and process in the Legislative Council on 23 April 1993:

> In accordance with the aim of returning police to a more central role, a system of formal police cautioning is introduced. At the initial point of contact with the youth suspected of having committed an offence the police will have the option of either informally warning the youth on the spot if the matter is extremely minor or issuing a more formal caution, which will be officially recorded. These records will be admissible as evidence of prior offending in the youth court but will not be admissible in proceedings relating to offences committed by the individual as an adult. The formal caution may take the form of a verbal warning delivered to the young person in the presence of his/her parents or guardians. Where appropriate it may also involve a 'warning with penalty' whereby the police officer can require a young person to apologise and/or make reparation to the victim. Failure to fulfil an undertaking at this level results in referral to either a family conference or the youth court. The aim is to increase the range of options available to police so that they can deal with relatively minor matters quickly and effectively without the need for formal judicial processing.\(^4^5\)


\(^4^5\) South Australia, *Parliamentary Debates*, Legislative Council 23 April 1993 2072
The Attorney General was making the point that cautions were to be considered first and foremost as an alternative to court. He was at pains to ensure that the legislation did not have the effect of putting more young people at risk of formal processing by the justice system. For the 8,000 or so young people who receive cautions annually in South Australia, the cautioning system could be described as putting in place restorative ideals, although there is some evidence in the United Kingdom and Canada that the cautioning system does not necessarily meet the goal of diversion in fact.

**Restitution and Community Service**

In the mid-1960s penal reformers advocated the use of sanctions that could be used in place of custodial sanctions. The most common were victim restitution (usually in the form of money) and community service orders, namely unpaid service given not to the victim but to the wider community. The earliest record of an official community service program dates to 1966 in California's Alameda County and then a nationwide program instituted in the UK in 1973, emulated soon thereafter by governments in Australia, Canada and New Zealand. The activity is based upon the hope that disciplined work is reformative, educative and rehabilitative. Theorists have argued that the idea of restitution restores offenders' psychic balance and self-esteem and encourages the development of greater social responsibility and maturity.

Unfortunately, the results of attempts to determine whether such sanctions have had a restorative, indeed a rehabilitative effect

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46 In the year 1994–1995 young people accounted for over 15,000 apprehension reports submitted by police in South Australia. About 55 per cent of these matters were dealt with by way of caution — 22 per cent were disposed of by way of formal caution and 33 per cent informal caution. Unfortunately, the figures do not distinguish between formal cautions delivered before or after court hearings. Refer to the *Juvenile Justice Advisory Committee Annual Report* to 30 June 1995. Importantly for the story related in this paper, Table 3.12 of that Report notes that disorderly/offensive behaviour offences account for only 4.2% of all matters that police acted upon beyond informal cautions. Compare Office of Crime Statistics *Crime and Justice in SA*, vol 32, 31. This report maintained that of 10,000 matters in calendar year 1995, 32% went to formal caution with a further 46% going to Court and 16% to a family conference. The discrepancy is not explicable but not dissimilar in any event.


have been equivocal. While there is little evidence that adopting these restorative themes makes any difference to the subsequent criminality of adult offenders, there is, arguably, some value in exploring the notion as a means of bringing broadly-based restorative themes to bear in modern communities. One might also argue that, if there be no difference in crime rates, then it is preferable to employ restorative themes rather than adopt other forms of punishment which are both costly and do not involve restitutive payments and community service.

**Corrections Management Incorporating a 'Restorative' Criminological and Penological Perspective**

Prison management has been keen in some jurisdictions to explore alternative models of incarceration that do not merely add to the despair of inmates and increase recidivism rates. For example, there have been some efforts by the South Australian Department for Correctional Services to operate from a restorative base in daily operations.

> While the [restorative] notion stretches well beyond the domain of Corrections, we can take advantage of the time the offender spends with us to help (re)establish sound relationships with family, friends and the community, confront issues important to him/her and learn and demonstrate behaviours that reflect those desired and accepted by the broader community. We must offer the offender, the victim and the community opportunities and a participatory role in restoring the balance while the offender is in the care of Corrections.

Furthermore, there are a number of prison fellowship ministries in Australia which provide restorative possibilities to inmates. In the USA these ministers are well known for their roles as 'spiritual advisers' to death row inmates. They are often influenced and inspired by the 'restorative' criminological perspectives found amongst 'peace-making' criminologists.

The criminologist Richard Quinney speaks of the possibilities of policy endeavours to overcome alienation, embrace individual inner peace and foster personal awareness. A criminology of peacemaking, the non-violent criminology of compassion and service, seeks to end suffering and thereby, if not to eliminate crime, to reduce it and reduce the number of recidivists. While it is a rather new step for criminology

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50 M Gupta, 'Restorative Justice and Corrections' (Unpublished paper, Strategic Services Division, South Australian Department for Correctional Services, 1996) 9

to take, few criminologists and commentators have even noticed it, as they do not like to move from the 'certainties' of sociological and positivist enquiries. Peacemaking criminologists, in contrast, have been in the forefront of those who wish to challenge injustices and have been located, unashamedly, in arenas of moral consensus. Such theorists look back with embarrassment and regret upon centuries of policies and practices that justified slavery, racism and anti-Semitism, the disempowerment of women, and homophobia. Peacemaking criminologists are not content with easy, settled legal and moral prescriptions, monitored very often by those whose power these prescriptions favour. Rather they constantly struggle to remain relevant and to re-interpret out-moded concepts where they are found wanting and where they preserve an unjust status quo. Terms like reconciliation, restoration, redemption and repentance can thus find a place in criminology and criminal justice.

SUMMARY

The current themes of criminal justice that place great store on deterrence, retribution, incarceration and adversarial encounters have not provided an environment that is conducive to the possibilities of a better society. For the most part they make matters worse, a situation only justifiable in circumstances where there are no alternatives. The possibility for an alternative restorative model does exist, but only if policy-makers can enjoin communities to embrace restorative themes. There are a number of Australian criminal justice agencies seeking to employ restorative principles, but are unsure about the exact 'fit' of theory into practice.

This paper has provided some examples of the extent to which restorative justice can draw us away from an assumption that the only workable systems of criminal justice are based upon retributive and adversarial notions. It may provide further options for theorists and practitioners alike. Restorative justice is an idea whose time has come. The momentum for further exploration of its theory and practice should be encouraged with vigour.

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