

From Restorative Justice to Restorative Governance

Miller, Shereen Benzvy, Schacter, Mark, Canadian Journal of Criminology

Restorative justice has assumed a legitimate place in criminal justice discourse. It is being defined and redefined by courts and participants in the criminal justice system. Its evolution can be traced through Supreme Court cases (R. v. Gladue, R. v. Proulx, R. v. Wells) and program development, and everyone agrees that this is a positive step. In this brief commentary, we attempt to enlarge the scope of the debate surrounding restorative justice by relating the concept to governance. We will argue that in order to really advance restorative initiatives, we cannot rely solely on the criminal justice system. The task is too big. It is the responsibility of all sectors and all levels of government to further the healing necessary to repair the damage done to and by offenders.

Judges have long struggled with the multiple purposes of sentencing, which include rehabilitation, deterrence, incapacitation, and rehabilitation. Restorative justice is the newest among the concepts of sentencing and it may represent the key to transforming the way in which we respond to offenders in the future. But, in struggling to define its practical relevance, it becomes clear that none of the aims of punishment, including this one, will speak to the fundamental social problems that the criminal justice system is ultimately called upon to resolve. We have been unable to find the common ground since long before the Ouimet Report in 1969.

Perhaps we cannot all agree because we are asking the wrong question. The issue is not how criminal justice can restore balance in society. That is a burden that the criminal justice system was neither designed nor intended to bear. It might be more productive to ask simply, what is the role of criminal justice, together with other public and civic institutions, in this struggle? What we need is not merely a model of "restorative justice", but a model of "restorative governance" - in which criminal justice plays only a small role.

What is governance?

Why introduce yet another term into the debate? Why restorative governance? Because the term "governance" is coming to be understood as a process by which entire societies address social problems. Restorative justice is but a part of a larger frame of reference, which is restorative governance.

The United Nations (1997) describes governance as

... the exercise of political, economic and administrative authority to manage a nation's affairs. It is the complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences. Governance embraces all of the methods -- good and bad -- that societies use to distribute power and manage public resources and problems.(2)

In short, governance is about how societies allow themselves to be governed, and about the choices that societies make for themselves.

The criminal justice system struggles daily to deal with the consequences of our collective social choices, that are in turn the product of our system of governance. To place the burden of social healing on the justice system is like having the proverbial tail wag the dog. What we need, therefore, are overarching guiding principles, and commonly understood goals, to steer our decision-makers -- not just in the criminal justice system but throughout government and civil society -- so that with every new challenge our shared values will be furthered.

That criminal justice has become so well integrated into the political fabric is a reflection of a combination of factors, but fundamentally it is because courtrooms and penitentiaries provide the highly visible end-products of untreated social problems. Crime and punishment has become an all-too-easy target for angry editorialising and parliamentary grandstanding. The cure for the problems, however, lies in a broader and more considered approach that defies rhetoric. It lies, among other places, in pre-school education, in proper care for mental illness, in poverty alleviation, in improved literacy rates -- places that, over the last half-century, have been pushed off the political agenda. A wide-ranging political choice needs to be made in favour of restoration.

What is 'restorative justice'?

There are many definitions of the concept, but none fully satisfy because none is ever complete -- all expect too much of the criminal justice community. For our immediate purpose, what is important are the themes that run through all the definitions: fairness, equity, citizen-engagement,

accountability, reparation, forgiveness, inclusion, and healing or wellness. "Restorative justice" is about including all of these principles in the purpose of the criminal justice system. It demands that justice be used to heal -- primarily, but not exclusively the victims of crime. It also requires that all stakeholders (victims, offenders, and community) have an opportunity to be involved in harm assessment and reduction. But none of these concepts are exclusive to criminal justice -- governance should respect all these principles too. And perhaps one of the roles of restorative justice is to point the way to implementation of restorative governance -- a less piece-meal, less politically expedient approach to dealing with social ills.

Why is the restorative mantle too heavy for justice to carry alone?

Some crime, disease, and poverty will always be with us. The question is, what do we do about them? Prevention is certainly one approach worth pursuing in order to minimise the weight of these challenges. To the extent that it can succeed, crime prevention relies on public education, economic stability, enforcement, and a wide array of social systems working together.

But there must be another goal to aim for when prevention has failed. Principles of restoration should prevail. Restore individuals to wellness. Restore the balance in the community that was upset by the crime (or the disease or the poverty). Restore people's sense of belonging, of safety. But the restoration process involves far more than the sentencing process or carceral system can possibly handle. Crime springs from broad social ills like poverty, illiteracy, physical and mental health problems. Sentencing and (sometimes) incarceration are responses to the symptoms of these problems.

As we have read, these sentiments were captured in the Supreme Court of Canada's *R. v. Gladue* (1999) in relation to the over-representation of aboriginal offenders in our courts and penitentiaries. The court said that:

It is clear that sentencing innovation by itself cannot remove the causes of aboriginal offending and the greater problem of aboriginal alienation from the criminal justice system ... What can and must be addressed is the limited role that sentencing judges will play in remedying injustice against aboriginal peoples in Canada.

Similarly, the judiciary and the sentencing process play but a small part in addressing the root causes of crime generally, or the problems that parade through our courts hourly.

These must be addressed through an integrated commitment in the realm of education policy, health planning, and social programming to attack these problems from all angles: we need a restorative governance agenda.

Why not rely on the 'restorative justice' model primarily?

The criminal justice system should be allowed and encouraged to focus its diminishing resources and personnel on protecting the rights of the accused, since it is those rights that are most at risk in that arena. Therefore, judges, academics, and justice experts must insist that restoring the imbalances reflected in crime is not their primary job. The job must be tackled through a restorative governance approach that includes health care, education, social services, and justice decision making. Then and only then will we find the common ground with respect to the purposes of punishment.

It is difficult for the criminal justice system to serve more than one master. For example, in the battle that is the adversarial process, all parties must focus on preventing injustice. Rules must protect the rights of the person who stands to lose the most: the accused. Prosecutors and defence lawyers must lock horns thinking only of the accused and the crime.

What about the victim?

By the time a crime has been committed, it is too late to protect the victim. The focus for the treatment of the victim should be on restoration. Restore the victim to a position of strength. Endow the victim with power, show respect, provide needed services: healthcare, mental health services, and financial compensation where possible. Inform and involve (where possible) the victim in the trial and sentencing processes. It goes without saying that the victim should not be re-victimised by the criminal justice system, but healing the victim cannot possibly be the responsibility of that system. Only an all-encompassing approach that marshals all of society's resources -- a restorative governance approach bringing to bear the many sectors and agencies of the public sector and civil society -- can help a victim of crime.

Communities are victims too. They require healing as much as individuals do. And the same argument applies. Restore the community, as much as possible, by allowing people to participate in denunciation and sentencing. But we cannot expect the prosecutor or the defence lawyer to focus on this -- they are busy serving another agenda. It would be too much to expect the criminal justice process to have the resources (personnel or financial), the experience or the understanding to assume this responsibility.

Judges cannot wave a wand and make the victim whole again or an unemployable drug addict well. But they can, as Gladue suggests, look for ways to contribute to the healing process that takes place outside the courtroom. The correctional system may make a small contribution to mitigating the damage of, say, early childhood neglect, but it cannot prevent it -- that responsibility must fall on other shoulders.

Conclusion

By the time the justice system is called upon we are often reacting to problems created by failed or inadequate policies in other areas. The restorative justice movement in Canada and elsewhere can and should serve as a catalyst to transform our approach to social choices. It can serve as an example of how decision-making can use community values that set us apart from other nations. But it cannot succeed as a stand-alone theme without risking grave disillusionment from the public and the professionals who struggle in the system every day.

There needs to be discussion of how a restorative governance model could be implemented, what it would look like and who the key motivators of change need to be. This discussion should be the focus of another conference.

Notes

(1.) The views in this text are those of the author and do not represent those of the Correctional Service of Canada.

(2.) A Canadian think-tank, the Institute On Governance, describes governance similarly as "the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern." (<http://www.iog.ca/about.html>).

References;

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