

## Restorative Justice in Schools

The term "restorative justice" came to be used in schools during the 1990s as pilot programs of the Conferencing process were established in Australia and New Zealand, Canada and the US, the UK, South Africa, Scandinavia and elsewhere. In other words, the adoption of the language of "restorative justice" in schools is closely associated with the introduction of the Community Conferencing process. Many school processes that are now seen as examples of "restorative justice" were not initially categorised that way. These processes include:

- Peer mediation
- Circles, peacemaking circles or circle time
- Community Conferencing

Restorative justice approaches typically involve a process known as "conferencing".

### What is Conferencing?

Conferencing involves a formally structured conversation between people who are affected by conflict in a community. That conflict may be:

- the result of some harmful act about which there is no dispute, and/or
- associated with many unresolved disputes between individuals, and/or groups in the community.

Whether there is no dispute, or there are many disputes, the Conferencing format enables everyone affected to consider:

- what happened,
- how each person has been affected, and
- what might be done to improve the situation.

In schools, Community Conferences tend to be convened in the wake of reasonably serious incidents of harm. Typical incidents, occurring within or outside the classroom, involve behaviours such as:

- bullying;
- fighting;
- significant and/or persistent disruption;
- property damage; or
- theft.

A trained facilitator brings together those directly involved, with appropriate school personnel and often also with family members. Participants in a Conference typically plan to meet the identified needs of any of the participants and to seek necessary changes to school structures, policies and practices in order to minimise the likelihood that harmful behaviours might be repeated. Follow-up supports compliance with any agreement. Conferences tend to prevent further harm by successfully resolving concerns and conflict.

### Where did Conferencing develop?

Versions of the conferencing process were:

- legislated in New Zealand in 1989, in justice and welfare applications;
- piloted in Australian youth justice systems from 1991 (Wagga Wagga, NSW, and South Australia) with an emphasis on understanding and improving process dynamics;
- first piloted in Australia schools in 1994 in Queensland (Sunshine Coast);
- piloted in North America from 1995.

In essence, from the mid-1990s, the language of one social movement has incorporated the processes of several other social movements. In schools, the related alternative phrase "restorative practices" is being used with growing frequency to reflect these growing range of processes.

### Why restorative practices now - and why in schools ?

Historically, when social rules have been breached, the agencies vested with the authority to maintain order, i.e.

- State justice systems,

- State and private welfare agencies, and

Schools have asked common questions:

- who is our subject? and
- what do we do to them?

Agencies using punishment to maintain order ask more specifically:

- Who has done the wrong thing, and
- what punishment should we inflict on them?

There is growing scepticism about the adequacy of the traditional of imposing punishment in response to social problems. This scepticism is associated with:

- a sceptical attitude towards authority;
- a general democratisation of institutions;
- a growing awareness of the science of group decision-making - that with the right process, a group can make better decisions than any of its individual members;
- empirical evidence that punishment can be inefficient and ineffective as a sustainable mechanism for coordinating communities.

Scepticism about punishment is compounded in schools by:

- a perceived tension between punishing other's mistakes and learning from one's own from mistakes;
- a more broadly educated populace; and
- a growing view of formal education as a commodity.

Just as importantly, we are now aware of processes that achieve many of the ostensible goals of punishment more effectively, and by fairer means.

### **Why do we punish?**

In schools, as in other social systems, punishment is traditionally supposed to have some or all of the following functions:

- Restoring "moral balance" - You'll pay for this!
- "Individual deterrence" - That'll teach you!
- "General deterrence" - Let this be a lesson to the lot of you!
- Demonstrating the responsible exercise of power - That'll remind (the lot of) you who's in charge here!

#### **Why do we punish? (i) Restoring "moral balance"**

You'll pay for this!:

(ancient) You'll be caned ! (modern) You'll be detained!

The agency that enforces community rules imposes punishment on any individual who is judged to have breached those rules. That individual is "made to pay" for their breach by bearing some sort of burden:

- physical or psychological suffering, and/or
- the removal of resources (time, money, grades, etc.).

#### **Why do we punish? (ii) Individual deterrence**

That'll teach you!

The agency that enforces community rules seeks to deter any individual who is judged to have breached those rules from breaching them again. The agency sends the individual a message that:

Any subsequent breach will again have negative consequences for you!

Why do we punish? (iii) General deterrence

Let this be a lesson to all of you!

The agency that enforces community rules seeks to deter all members of the community from breaching those rules. The agency sends all members of the community a message that:

Any similar breaches of community rules will have negative consequences for you !

### **Why do we punish? (iv) The responsible exercise of power**

That'll remind all of you who's in charge here!

The agency that enforces community rules reminds those involved in, and/or aware of, a specific breach of the rules, that it is responsible for:

- maintaining order by restoring moral balance; and
- deterring individual and the collective from breaching rules.

### **Problems and costs of traditional punishment**

Punitive approaches are criticised for misallocating resources, focusing on the wrong outcome, and sending contradictory messages. In short, punishment can be (i) inefficient, (ii) ineffective, and (iii) widely viewed as unfair. The following general critiques apply as much in schools as they do elsewhere:

#### **1. "They've done the wrong thing - and yet they get all the attention!"**

Agencies that carry out punishment are increasingly being criticised for "revictimising" people who have been harmed. The focus of punishment tends to be: °

- less on those harmed by the breach of rules and more on those who have breached the rules; and
- less on repairing the present harm caused by the breach of rules and more on demanding "payment" for past actions and on deterring future harms.

So, whether a person who has caused harm is perceived to have "got off too lightly" or to have "got what they deserved", agencies inflicting punishment are frequently seen as failing to "restore the moral balance" because their primary focus is not on repairing the harm.

#### **2. "We may not catch all of you, and to those we do catch our response may not be swift - but it will be sure!"**

The primary foci of punishment are payment for past harm and prevention of future harm to promote both individual and general deterrence. Yet empirical evidence suggests that punishment is an inefficient means of deterring people from breaching social rules.

The factors that most deter people from breaching rules are:

- certainty: the probability of being found out; followed by
- celerity: the probability that there will be some sort of rapid response - punitive or otherwise; and then and only then
- severity: the probability that punishment will be harsh.

#### **3. "We've got no idea what's going on!"**

"We just do what we're told!"

"They say one thing and do another!"

"They tell you to show initiative and look after yourself, and when you do, you get punished!"

People tend to question the legitimacy of power if any aspect of a punitive response is considered unfair, and particular if the "rules of engagement" are unfair because they are:

- unclear;
- imposed - rather than accepted by contract or consensus;
- changed - during the course of an intervention ; or there is
- an apparent clash between two sets of written rules; &/or
- an apparent clash between written and unwritten rules.

### **Different ways to maintain order**

**"Retributive justice"**: punishment is imposed on individuals who have broken the law, and is an example of imposing solutions on subjects in a hierarchical system

**"Restorative justice"**: the parties affected by (criminally) harmful behaviour are engaged in reaching a common understanding of what has happened and in determining collectively how best to deal with the aftermath of what has happened, is an example of joint problem-solving by citizens with equal rights.

### **Origins of the phrase "restorative justice"**

A distinction between retribution and restoration / reconciliation has long existed in:

- jurisprudence,
- social theory (criminology, psychology, sociology), and
- many faith traditions.

The Christian tradition emphasises the restoring power of forgiveness, and this emphasis has been particularly strong in Anabaptist (e.g. Quaker and Mennonite) communities. Mennonite activists played a significant role in developing the process of "victim-offender reconciliation", with supporting "restorative justice " programs, in the mid-1970s - first in Ontario , then in Indiana and in various other Canadian provinces and US states. Through the 1980s, the philosophy of restorative justice was represented primarily by a process called either:

- Victim Offender Reconciliation (a phrase that emphasises the desired outcome) or
- Victim Offender Mediation (a phrase that emphasises process).

Again, the language entered schools when the Community Conferencing process was adopted for use in cases of harm that warranted some formal, collective and constructive response.

### **What do "retributive" processes have in common?**

Imposing authority on subjects in a hierarchical system, agencies vested with the authority to maintain order have asked:

- Who is our subject?
- What do we do to them? and, more pertinently,
- Here are the wrongdoers!
- Let's punish them in the following ways!

### **What do (or, at least, should) "restorative" processes have in common?**

To encourage joint problem-solving by citizens, creating the conditions for people to analyse and solve their own problems, an alternative set of questions is:

- What has happened?
- How have people been affected?
- What can we (each) do to improve the situation?

These questions are asked, most clearly and most formally in:

- Restorative Conferences
- Family Group Conferences
- School Community Conferences
- Community Conferences
- Workplace Conferences
- Conferencing

These processes are informed by a philosophy of deep democracy, which holds that those people most affected by specific social problems should be engaged in the process of understanding and resolving those problems. Research is showing that using of these processes in school communities often triggers a larger process of re-evaluation and continuous improvement of behaviour management and governance practices.

### **What is research telling us about "restorative justice" in schools?**

Early studies from Queensland, New South Wales, Victoria and New Zealand from the mid-1990s onwards have demonstrated that Conferencing is a highly effective process for responding to inappropriate behaviour of a serious

nature in schools. Overwhelmingly, participants report that they feel have been treated with respect, have been given an opportunity to say their piece, and have felt understood. Almost all participants have been satisfied with the way agreements have been reached and that the terms of agreements have been fair. School staff report that Conferencing is consistent with school values, and many family members expressed positive perceptions of the school.

However, the use of the Conferencing process alone has not achieved the significant changes in school behaviour management policy and practice that first seemed possible. Rather, schools using Conferencing have found that an emphasis on using the process as a reactive response in isolation tends to produce only limited change.

Consequently, schools are developing a wider range of proactive processes, which have in common an emphasis on interpersonal relations in their approach to problem-solving, dispute resolution and conflict management. Many schools that have supported a "restorative" philosophy are discovering that their behaviour management practices can be located on a continuum ranging from the small-scale and informal to larger and formal interventions.

### **"Restorative practices" in schools**

For these reasons, educators have more recently begun to talk of "restorative practices" in schools. This extension beyond one or two "restorative justice" processes to a broader set of restorative practices raises further issues:

1. Effective behaviour management relies on a complex set of inter-related factors, including curriculum content and methods of teaching and learning. As a result, reconsideration of behaviour management practices tends to prompt a reconsideration of effective teaching and learning methods.
2. The experience of introducing a very effective process yet not necessarily achieving programmatic change raises an important question: How can schools offer a range of processes for the effective resolution of disputes and conflict?

The answer, not surprisingly, seems consistent with the experience of cultural change in many other organisations. Integrated programs of positive cultural change in schools take several years, and proceed through multiple stages. Practical steps include: training key staff in process skills; enhancing existing peer mediator and/or similar programs; providing forums to introduce restorative practices to members of the school community; appointing one or more staff members to program coordinators positions; developing community-based partnership with local providers of social services such as parenting workshops.

This sort of active, integrated approach to improving the social climate of the school community can significantly improve the delivery of improved student learning outcomes.

### **Levels of "restorative practice"**

Researcher Brenda Morrison, of the Australian National University, suggests it is useful to categorise "restorative practices" on a spectrum running from primary interventions, secondary or "targeted" interventions and tertiary interventions.

#### **Primary interventions**

Primary interventions are comprehensive teaching programs that assist members of a school community to improve their skills in resolving disputes, managing conflict, and communicating in ways that promote strong relationships. Effective programs tend to emphasise the importance of process in imparting skills of active listening, negotiation, facilitation and the appreciation of diversity. Common aims include develop a sense of supportive community by recognising and valuing the role of each participant.

Morrison's meta-evaluation of several of these "primary intervention" programs (in North America and Australia) suggests that they can indeed foster pro-social behaviour. Pre-post evaluations have shown students significantly more likely to respond constructively to conflict. Effective programs appear to widen students' circle of friendship, improve their relationship with their teachers; and assist students to address conflict in schools in its early stages. Furthermore, some programs seem to assist students to perform better on standardised academic achievement tests.

## **Secondary or Targeted Interventions**

Peer Mediation is the best known example of a targeted intervention in schools. Peer mediation programs were first introduced to schools decades ago, and have now been widely adopted with many programs in many countries.

Mediation is typically defined as a structured method of conflict resolution in which a trained facilitator assists people in dispute by helping them to negotiate. In the standard process, the mediator explains the structure and allows the parties to explain their thoughts and feelings, participants are encouraged to talk directly, develop options, and reach a consensual settlement that will accommodate their needs. In school peer mediation programs, the mediator is a fellow student (or students) trained in mediation.

While some peer mediation programs have been found to be effective according to a range of criteria, systematic reviews of peer mediation programs show non-significant or weak effects. A likely explanation is that a single process has, over the years, been asked to do too much. Peer mediation programs have, in effect, been used to build negotiation skills, as a substitute for more substantial dialogue circles, and as a best available process for dealing with inter-student disputes and conflict - in the absence of the more rigorous and comprehensive process of Conferencing.

One response to this problem of a single process and program being asked to do too much is to supplement the program. For instance, the New South Wales Department of Education and Training in Australia complemented peer mediation programs with a tertiary intervention, namely Community Conferencing, in a Dispute Resolution and Alternatives to Suspension Projects that was launched in the late 1990s.

Other schools have introduced "problem-solving circles", which can be facilitated in various ways. Typically, a Circle provides students with an opportunity to address everyday concerns within the classroom and school, thereby building students' capacity for collective problem-solving.

Early evaluations of this approach found significant differences with the control group, namely that students using the Circle process showed higher levels of emotional intelligence, reported greater use of productive conflict resolution methods, felt that the teacher held students more accountable for behaviour, and reported less bullying.

## **Tertiary Interventions**

Larger and more formal circle processes take several forms, depending on the program in which they are used and the nature of the issue they are addressing. The common feature of the various forms of Conferencing in school setting is that the significant nature of the issue warrants an increase in the provision of support and accountability, this typically requiring the attendance of a significant number of people, often including parents, other care givers and professionals.

Conferencing has now been used extensively in schools in Australia and New Zealand, Canada, and the United States, the UK and other parts of Western and Central Europe, and in some pilot programs in South East Asia. (The process has had various titles; the simple generic of "group conferencing" or "community conferencing" is probably now most widely used.) The results from early evaluated programs have largely been replicated, with continuing very high levels of participant satisfaction with process and outcome, and high levels of compliance with agreements.

Equally consistently, though, the introduction of a Conferencing to a school community continues to draw attention to tension between current behaviour management philosophies and practices and the more democratic or restorative philosophy informing Conferencing. In short, each now program further emphasizes the need for secondary and tertiary interventions in schools to be consistent with aspects of teaching and learning that promote democratic participation and the constructive resolution of disputes and management of conflict.

As Morrison summarises her overview of current practices: education systems in a number of countries are realising that a whole school approach to behaviour management requires (i) that members of a school community have access to practices that support pro-social behaviour; (ii) systems to support practices; (iii) data to support policy making about systems.

## "Restorative practices" in Victorian schools

The Association of School Councils in Victoria placed restorative practices on the agenda in the late 1990s, and the Victorian Education Department, the Catholic Education Commission and the Association of Independent Schools have all been piloting the use of restorative practices in Victorian schools for several years. These programs continue to be evaluated, but there is sufficient local, national and international evidence of the value of this approach that the rate of adoption of restorative practices in Victorian schools is now significant, with scores of schools involved.

The evidence that the broad use of restorative practices in schools has improved levels of safety aligns this social movement with federal and state government policy as outlined in the Federal Government's 2004 National Safe Schools Framework and the recent Victorian research report Building Blocks to Safe Schools (BBSS). This report examined the protective factors contributing to childrens' perceptions of safety in a school environment, as reported by students, teachers and parents. The report also examined factors contributing to the safety of teachers, highlighting the need for teachers to feel safe if they are to provide a safe environment for their students. The BBSS model provides schools with a framework they can use to optimise safety.

In 2004 VARP Committee Member Margaret Armstrong visited various schools restorative practices programs internationally as part of a Churchill Fellowship study. Here recommendations include:

- 1.High quality trainers are required to support restorative practices in schools. Since successful training cannot be achieved through academic coursework alone, current restorative practitioners should be encouraged to make themselves available to schools to provide this training and be supported statewide and nationally by a professional association.
- 2.An Australasian Association of Restorative Justice Practitioners will provide restorative practitioners with an opportunity for professional learning and networking. Educational authorities need to promote and support this association.
- 3.Dialogue with Teacher Registration bodies and educational institutions can encourage them to include restorative justice / behaviour management practices as a compulsory component of pre-service teachers' education.
- 4.Funding opportunities/grants should be sought to produce Australian training videos/DVDs that support restorative practitioner training.

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### Key references:

Armstrong, M. (2004) Report to the Winston Churchill Memorial Trust: To study restorative justice programs/models that focus on the development of emotional, physical and psychological safety for all members of the school community - UK, Canada, USA, NZ , Melbourne

Hopkins, B. (2004) Just Schools: A Whole School Approach to Restorative Justice London:Jessica Kingsley.

Morrison, Brenda (200\*) From Bullying to Responsible Citizenship: A Restorative Approach to Building Safe School Communities . Sydney : Federation Press.

Queensland Department of Education (1996) Community Accountability Conferencing: Trial Report, Brisbane , Department of Education.

Shaw, G & Wierenga, A (2002) Restorative Practices Community Conferencing Pilot Evaluation , University of Melbourne .

Strang, H & Braithwaite, J. (eds) (2001) Restorative Justice and Civil Society , Cambridge University Press, UK .

Thorsborne, M and Vinegrad, D. (200\*) Restorative Practice in Schools: Rethinking Behaviour Management

Weare, K (2004) Developing the Emotionally Literate School . Paul Chapman Publishing, London.