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## VISITING EXPERTS' PAPERS

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### CRIME, COLONISATION AND COMMUNITIES

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#### I. INTRODUCTION

With the knowledge that crime can be viewed as ‘relational’<sup>1</sup> and that desistance from crime occurs away from the criminal justice system<sup>2</sup> inclusive of police, courts, prisons, parole and the judiciary may be able to improve both process and outcomes by using a variety of restorative justice approaches<sup>3</sup>. So too, as Maruna and Immarigeon<sup>4</sup> suggest “the major correlates of desistance from crime identified in research . . . involve ongoing, interactive relationships that can take up most of an individual’s waking life”. Furthermore, it is noted that relationships developed and supported during restorative encounters and circles are crucial to enable desistance from crime.<sup>5</sup>

It is also important that discussion takes place around the policies that drive the overuse of the penal estate in many countries of the region, most notably Australia. Communities have been made no safer and victimization has failed to be reduced by the building of more prisons and yet policy makers and politicians view these institutions as the quick fix for many unspoken social ills. If the region’s criminal justice systems were to be judged on producing fair and just processes and outcomes, as experienced by victims and perpetrators and respectful of all human rights, they would most likely be found wanting in both ethics and in their breach of rules regarding integrity. Sadly these self-propelled juggernauts increase the size of their own bureaucracies out of all proportion to the benefits that they provide to victims, the community and those who commit harm.

With British colonisation of the Indian continent, Singapore, Burma, Australia, and New Zealand, came the importation of the British legal system with its accompanying public service and burgeoning bureaucracy. Embedded within this were the assumptions about education, race, crime, property and power as well as the argument to suggest the superiority of the Western way of life. A frontier mentality challenged Robert Peel’s notion that “the police are the public and the public are the police”<sup>6</sup> slowly transforming a community based service into a paramilitary operation. In turn the ready-made justice system, driven by self-serving bureaucracies, protected the new landowners, business developers and industries, ensuring the removal of local populations, especially indigenous peoples throughout the region, from land and full citizenship. However, this colonization was not only a British move, but one used for commerce and trade by Dutch, French and Spanish interests who, like their British counterparts, used military force and European systems of law and justice to hold onto land and maintain the excesses of power. Today’s colonizer could be seen as the US, with tentacles of its own brand of justice exported through literature, commerce, media and politics.

It is within this set of assumptions that today’s criminal justice systems are developing, often imposed throughout the jurisdictions of the region as law and order policies by powerful lobby groups, politicians and their civil service. Growth in the fear industry creates the conditions for high incarceration rates and more policing, more criminal acts legislated and more charges laid. With an array of bureaucratic measures that slowly but surely became self-serving a growth industry was born around

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<sup>1</sup>Burnside & Baker 1994; Braithwaite 1989.

<sup>2</sup>Farrall 1995.

<sup>3</sup>Goulding & Steels 2006.

<sup>4</sup>Maruna and Immarigeon 2004.

<sup>5</sup>Goulding and Steels 2006.

<sup>6</sup>Nazemi 2009.

punishment and incarceration. It is the marginalised, poor and oppressed who are always the first to be dispossessed and incarcerated, a move that continues today, almost ensuring the removal of people from their lands to prison cells. Many of the assumptions held during the early years of occupation throughout the region have found comfort today within bureaucracies and leading political parties. Among the most obvious are the notions that “once a criminal, always a criminal” and referring to all people seen as “the other” with taunts of “you can’t trust any of them”.

Although independence and self-government has arrived across most of the region, Western assumptions about law and order had already permeated the criminal justice systems of many nations throughout Asia. These assumptions about crime, society, community and family challenged ways of life and philosophies of many regional states particularly where Eastern philosophy was held in high regard. An examination of past practices from around the world clearly shows that “both violence and peacemaking have shaped the overall human experience. In short, human beings are often, at one time or another, both conquered and conquerors”.<sup>7</sup> This binary state of peace and violence is the “starting point for many nations and communities as they try to live in global peace and harmony . . . this is a balance not always peacefully achieved”. Furthermore, as the authors note from several developing projects, notions of reparation and healing of the environment as well as the harm done to others, takes shape through the broadening of restorative notions and peace-making principles that address the totality of human activity, relationships and interconnectedness. It is here that we are able to bring into focus a glimpse across borders, cultures and national concerns and link RJ (Restorative Justice) with better compliance to rules, fairness in process and just outcomes within diverse cultural contexts. Western notions of criminal mediation are vastly different to the local Panchayat focus in an Indian village or the gatherings of the Pukhtoon Jirga in Afghanistan.

An example of the remnants of the colonial past can still be found in India where reform of its criminal justice system is crucial to ensure timeliness, fairness and equitable access to legal recourse. This requires a move from its bureaucratic overburden of red tape and incompetence to responding to the needs of local people wishing to experience fair process and just outcomes. Within the Buddhist and Hindu traditions harmony and balance between nature and human activity was sought, informing ways of dealing with rule breaking. Today the Indian criminal justice system fails most litigants as the system sinks under the huge demands made upon it to deal with small and localised disputes. It is within Asia’s largest democracy that corrupt practices exist and where according to Thilagaraj<sup>8</sup> police are “known to extort money at every step” and where tasks are “quite often neglected outright”. The Indian experience for both victim and offender is often dependent upon status, power and wealth. Quah<sup>9</sup> suggests that “corruption results from the combined effect of ample opportunities, low salaries, and the low possibility of detection and punishment for corrupt behavior”, arguing that this is not a problem in Japan, Singapore and Hong Kong where corruption is seen as being of high risk and low reward. To ensure that fair and just processes occur in Indian everyday life a cultural shift has to occur across society towards restorative and therapeutic practices that can be afforded to everyone living within a society that is socially aware and just. Privilege, position, power and prestige all too often hold the hallmark of corruption.

That said, the authors note that throughout the region Confucian legal tradition has been noted as being mostly secular and unofficial, informed by the notion of being harmonious and interconnected between the human and natural universe where “ideal harmonious human-society relationships and harmonious human-nature relationships were sought”.<sup>10</sup> The conflict between Western legal systems and the many local jurisdictions’ ways of dealing with legitimacy, compliance and law breaking is now at a crucial point in the early stages of the 21<sup>st</sup> century. It is within this contested space where the values and practices of restorative justice can be found as commonplace among local people who recognise crime as belonging to them, or within a government controlled space that forms part of formalized procedures and highly regulated and dominating services where legitimacy is often in question and fairness is decreed by the state.

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<sup>7</sup>Steels & Goulding 2012.

<sup>8</sup>Thilagaraj 2013:201.

<sup>9</sup>Quah 2013:31.

<sup>10</sup> Lui and Palermo, 2009:52.

Hope for change is in the air as communities throughout India and the sub-continent as well as in Japan, Taiwan, China and Indonesia begin to demand fair practices and processes to address the needs of those harmed by perpetrators as well as by lawyers who often try to avoid the full weight of the law being applied. So it is that hope for a better future lies within each family, community and nation as they turn to restorative practices across all harm-making from the micro aspect of individuals to the macro aspect of nation building, peacemaking and truth and reconciliation commissions.

## II. RESTORATIVE PRACTICES THROUGH THE CRACKS AND THROUGHOUT THE REGION

The ultimate aim of reducing victimisation and violence, increasing trust in the common good and encouraging support for the social contract can be achieved through the development of new pathways throughout the region. Restorative justice can and should be viewed as a positive response to combat crime, anti-social activities and war as these are all behaviours that bring harm to others. RJ can also be viewed as a crucial tool for the region where local, cultural and gender appropriate practices are required as the norm in order to foster healing and promote responsibility taking. However, let us examine the benefits of RJ as seen by Lord McNally<sup>11</sup> who confirmed his support for RJ, stating:

I am an ardent supporter of the principles of restorative justice. It offers an opportunity not only to assist the rehabilitation of offenders but to give victims a greater stake in the resolution of offences and in the criminal justice system as a whole. Victim-led restorative justice can allow us to make inroads into the re-offending cycle, with the triple benefit of victims avoiding the trauma of future crimes, the tax payer not having to foot the bill of more crime, and a rehabilitated offender making a positive contribution to society.

In his address McNally speaks of “the evidence for the effectiveness of restorative justice” and referred to his department’s analysis of several restorative justice pilots that showed “85% of victims who participated were satisfied with the experience and there was an estimated 14% reduction in re-offending”. These results urged him to reaffirm that the government is “therefore committed to making use of restorative justice in more areas, and in more circumstances across the criminal justice system”. Indeed, others have argued that restorative justice is best located within local culture, communities, customary laws and by-laws<sup>12</sup>. It has to be responsive to local crime and re-offending through unique responses. It needs to be driven by the voices of those people harmed as well as those taking responsibility for their actions together with communities and practitioners, academics and respected local people.<sup>13</sup> RJ is all about process and can be considered a participatory process of healing that can occur inside or outside of the criminal justice system. The authors also note the contention that “the major correlates of desistance from crime identified in research . . . involve ongoing, interactive relationships that can take up most of an individual’s waking life”.<sup>14</sup> Farrall<sup>15</sup> also found that, in general terms, “. . . desistance occurs away from the criminal justice system”.

In short, social relationships are central to restoring justice both for victims and offenders especially when crime is viewed as a fracture of relationships within a community. This can also be applied to sustainable practices that work best when conducted at grass roots levels by participatory methods that are centred on relationships and interconnection with others. However, the authors note that restorative justice often enters the scene through cracks in rigid processes involving state police and prosecution and judiciaries no longer willing to abandon human rights and social justice. It is usually the cry for fairness and tears of shame that have allowed the light to enter. Although it was never going to be an easy task to empower victims of crime, make rehabilitation effective and offer an alternative to all parties.

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<sup>11</sup> Lord McNally, British Peer and Parliamentarian, Minister of State for Justice (UK), in his 2012 address to the All-Party Parliamentary Penal Affairs Group AGM.

<sup>12</sup> Steels 2007; Goulding & Steels 2006; Bevan et al. 2005.

<sup>13</sup> Steels, Goulding & Abbott 2013.

<sup>14</sup> Maruna and Immarigeon 2004:6.

<sup>15</sup> Farrall 1995:23.

The status quo with its expansion policies driven by the mantra of *tough on crime* see these failed systems as a result of a lack of discipline and social order within the community as well as from within their own ranks. Blame is laid at the foot of the marginalised, poor and oppressed as these systems deny the evidence that continually highlights ineffective practice. Such criminal justice institutions are less able to provide a process that is experienced as fair and just whilst they continue to ensure that every crime is exposed throughout the communities as an act against the state. The argument here is that in general terms restorative justice offers victims, offenders and the community a participatory process, one not generally experienced within traditional criminal justice sanctioning. A working definition by Cormier (2002) defines restorative justice as:

An approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime — victim [s], offender and community — to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.

It has been noted previously<sup>16</sup> that the Asia Pacific regions hold the world's largest populations, namely China (1.3 billion) and India (1.1 billion) along with Pakistan and Indonesia. These regions encompass many diverse cultures and belief systems within a matrix of relationships from Buddhism with its Four Noble truths, the respectful Shinto temples, the simplicity and complexity of Zen, through to the mystics of India and the Teaching of the Gita. There are also the teachings of the Quran among the world's most populated Muslim country and the words of the Old and New Testaments of Christianity as well as the teachings of the Torah. The authors also note that the regions include ancient Confucianism with its philosophy of restoring harmony together with Taoism and the perpetual need for balance. All of these belief systems exist within nation states that can "...display the politics of nationalism, communism, capitalism, juntas, democratic governments and dictatorships".<sup>17</sup> The authors argue that within such cultural diversity it is still possible to find common ground around both restorative justice as well as its relationship to ecological sustainability and the reduction of harm to the planet. For example, the global ability to help others in times of anguish and disaster that crosses national boundaries and the protocols that relate to a global reduction on greenhouse gases and global warming. Trying to keep a balance between yin and yang in the maintenance of harmony impacts upon the young as well as the elderly and knows no limits. Bloodlines can stretch far across land and seas and it is these interconnections that highlight the many ancient traditions working together with modern practices and ambitions of restoring peace, harmony and justice. They bring into the 21st Century the Asian Pacific practices of harmony and peace with the self, among others, within local villages, small communities and peaceful co-existence between nations.

Restorative Justice has played a role historically in one form or another in China. RJ has now developed along with the emergence of principles and standards, especially as the process within some jurisdictions has moved into schools, nursing homes, prisons, rehabilitation centres and other institutions.<sup>18</sup> A note of caution is registered here as Braithwaite<sup>19</sup> raises the concern that standardization can mean a progression of moves that leads the state to maintain control over a restorative process that has been produced to empower citizens. The authors suggest that these concerns are real and evident. However, as practices are established among villages and local communities the hand of the state will hopefully be one of support rather than control, with a balance to ensure fairness and just outcomes are not motivated by fear but a willingness to engage freely.

Restorative practices along with responsibility taking have also moved from a purely criminological focus among individuals to include a focus on a nation's responsibility to its people, including environmental concerns that impact on quality of life throughout the region. Harm is often now redefined across borders as nations begin to cooperate to reduce harm among people, species and the planet. In addition, victim driven policies are fast becoming commonplace where restitution and

<sup>16</sup> Steels & Goulding 2013.

<sup>17</sup> Steels & Goulding 2013.

<sup>18</sup> Maxwell 2007; Newell 2007; Braithwaite 2002; Bazemore & Schiff 2005; van Ness, 2003; Zehr 2002; 1990.

<sup>19</sup> Braithwaite 2002.

reparation are expressed as concerns for victims and the communities harmed by crime.<sup>20</sup> Though RJ practices are among new initiatives for dealing with various types of offending in many countries, there has been a paucity of evidence-based documentation and evaluation of the actual grass roots use of RJ practices in mainland China.

### III. THE REGION

Mediation (*tiaojie*) has been practiced as a central principle of social control throughout the Greater Chinese region and has been referred to as being similar to some of the more fundamental restorative practices in outcome and process. RJ (*hufuxing xifa*) is noted by several authors<sup>21</sup> as more of a Western style approach to crime, specific to a more traditional Chinese form of social control. Mok and Wong<sup>22</sup> agree with others<sup>23</sup> that current restorative practices and regimes are replacing many of the traditional mediation practices across several areas of China. Again, according to Wong and Mok<sup>24</sup> the term restorative justice (*hufuxing xifa*) has attracted attention from practitioners and scholars since early 2000.<sup>25</sup> However, in most jurisdictions the discourse has continued to show a narrow focus. Generally speaking, the main focus of RJ has been on juvenile crime, specifically on young, first time offenders of petty criminal activity. Such a narrow view of RJ has discriminated against the many victims of serious crime by adult offenders by denying victims the opportunity to engage in restorative processes. In addition, the authors argue that the use of RJ in combination with therapeutic outcomes as well as its use within penal institutions is the way forward to effectively reducing reoffending and re-victimisation.<sup>26</sup> The prevailing narrow focus on youth and less serious crimes is seen as problematic. On the other hand, the authors note several ad hoc examples of visionary and progressive practices. For example, on a recent visit to India the authors were privileged to see, within one of India's largest and most populous prisons, a move towards an environmentally sustainable and healing environment where the linking of harm to self, others, communities and the planet demonstrated a truly holistic interconnectedness.

In this paper we examine across jurisdictions and national borders how to best transform individuals from convicted persons into people who comply with the social and legal demands surrounding them as citizens, and how best to have people harmed by crime move to reclaim their identity, often damaged by crime. The authors note that throughout the region informal as well as formal ways of dealing with wrongdoing are used. It is in Japan that we see the practice of *Ji-dan* that has a long tradition of use as a means of conflict resolution. In contemporary Japan *Ji-dan* remains as a useful process of negotiation between family members and others as a way to resolve a dispute between two or more parties. It may mean that no direct face to face meetings will occur but that family or trusted others will negotiate for a fair and just outcome that will save face and restore harmonious relationships. However, it is pertinent to note that Japanese social organization and cultural practices are central to the success of *Ji-dan*. As Komiya<sup>27</sup> points out:

As Japanese have obtained a sense of security by integrating themselves with groups, they had no choice but to strictly adhere to countless rules for group cohesiveness. In this process, the Japanese have become a patient and orderly people, and have successfully elevated their level of self-control.

Certainly, we can agree that such elevated levels of self-control as seen in Japan are not apparent within contemporary Australian society where individual rights continue to subsume notions of the common good as a societal and cultural norm. However, we note Kittayarak's<sup>28</sup> remarks that we "...have to be mindful that restorative justice is an evolving concept and there is no definite formula

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<sup>20</sup> Harris, 2008; Johnstone & Van Wormer, 2008; van Ness, 2007.

<sup>21</sup> Leng 2011; Li 2010.

<sup>22</sup> Mok and Wong 2013.

<sup>23</sup> Zhang, 2013; Wong & Lo 2011.

<sup>24</sup> Wong and Mok 2010.

<sup>25</sup> Ibid.

<sup>26</sup> Goulding & Steels 2013.

<sup>27</sup> Komiya 2011:132/133.

<sup>28</sup> Kittayarak 2005.

of success. . . . Each country has to find its own recipe which properly balances the conventional role of criminal justice with this new concept so as to be able to come up with a better way to ensure justice to all". The same can be applied to sustainable practices emerging alongside RJ within the notion of reducing harm. An element of caution should be noted here as all restorative practices and solutions ought to aim to be compliant with a set of standards as outlined by Braithwaite,<sup>29</sup> always cognizant of human rights.

The discussion is now focused on how the people of the region, including Japan, China, Taiwan, Indonesia, India and Australia as well as other regional players can take some control over their local criminal justice systems and their environments whilst power remains invested in the state. Pertinently, many of these nation states have already established RJ legislation in place and yet do not always adhere to the basic principles. As Pranis<sup>30</sup> suggests, when a community can "draw on and trust its own inner resources to discover the validity of a new paradigm, the community is liberated from bondage from old embedded, fixated ways of being in the world". It becomes clear that regardless of local policies and the political ambitions of a few, the community is then, according to Pranis<sup>31</sup> ". . . able to embrace the creativity of chaos, the possibility of dreams". It is from this perspective that she suggests people are then "empowered to imagine new ways of being, to problem solve on a deep level".

Meanwhile New Zealand's Judge McElrae<sup>32</sup> suggests that the criminal justice system will be able to ". . . deliver justice for all, not just for defendants, and that the courts will be left to get on with the job of judging according to the law and applying principles of respect and compassion for all". Further he claims that<sup>33</sup>

. . . restorative justice offers a quite different view of victims' interests, one that is not necessarily opposed to that of offenders — and can produce "win-win" outcomes. They are actually what is aimed at every time. If the Courts could more consistently show that victims' interests can be catered for in meaningful ways (not token ways like victim impact statements), and that their needs are better addressed in this way, much of the pressure for tougher sentences would fall away.

Freiberg<sup>34</sup> provides insight to the holistic model when he describes restorative justice joined to problem-oriented approaches:

The astonishing expansion of restorative justice programs around the world, even in the absence of solid evidence about their effect on recidivism, indicates that their true appeal is not necessarily utilitarian but symbolic: process is paramount. When this insight is joined with a problem-oriented approach which devotes court and service resources to deal with underlying criminogenic causes, it can provide a powerful alternative to the sterile, costly and ultimately counter-productive punitive approaches which have resulted in dispirited court and correctional officers and bursting gaols.

Alternatively, Kittayarak<sup>35</sup> claims that the future for restorative practices in the region is only going to be as good as services allow it to be. There will always be a need for policing and court services with a separation of the legislators and judiciary, quality prosecution and exemplary lawyers, and we are all aware of the question mark hanging over much of current practice throughout the region. We should also be aware that in some instances long court lists, delays in claims for reparation and the marginalization from justice for the marginalized and powerless ensure that many people currently do not experience fair treatment or just outcomes. However the authors contend that transformation is occurring, mostly due to the call for change from the grass roots where the impact

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<sup>29</sup> Braithwaite 2002.

<sup>30</sup> Pranis 2010:4.

<sup>31</sup> *Ibid.*

<sup>32</sup> Judge McElrae 2010:3.

<sup>33</sup> Judge McRae 2010:2.

<sup>34</sup> Freiberg 2001:9.

<sup>35</sup> Kittayarak 2005.

or war, conflict and crime requires people to engage at local levels where solutions can inspire personal and community transformation, reduce harm among families as well as communities and across borders. Social and cultural change is often driven by local people immersed in the aftermath of conflicts and crime, policy makers and politicians signing up to international agreements and neighbouring states showing that restorative practices can reduce the strain on the courts whilst offering procedures that are fair, timely and healing. For the region, restorative justice offers a very important opportunity to invest in procedural fairness with outcomes that are socially just. It is within the vast bureaucracies of India and China that we see glimmers of hope as current situations are no longer tolerable for both the leadership or for the local people. As Van Wormer<sup>36</sup> points out, the traditional Chinese emphasis is on “harmony between persons and on the unity of humanity with nature. Influenced by Confucian communitarian ideology, the Chinese criminal justice system relies on grassroots committees to provide social control and to resolve conflict”.

Villages and other small communities can participate in empowerment strategies and working for the common good as they engage in social justice, community education and an awareness of restorative benefits. They can turn to restorative justice practices to heal many conflicts including the aftermath of interpersonal and relational crime, communal violence, public disorder and grievances. This may lead to a sense of purpose for individuals and communities seeking out solutions that assist in building the community's capacity to create harmony whilst reducing crime and anti-social behaviours. Being valued by leadership and having leadership value its citizens will also bring about the transformation of the region. Tyler's<sup>37</sup> argument supports this:

People value affirmation of their status by legal authorities as competent, equal citizens and human beings, and they regard procedures as unfair if they are not consistent with that affirmation. To understand the effects of dignity, it is important to recognise that government has an important role in defining people's view about their value in society. Such a self-evaluation shapes one's feelings of security and self-respect.

Tyler's words link the actions of procedural fairness and just outcomes as found within restorative practices with security and self-respect. They also relate to other practices such as sustainability as much as restorative solutions, giving hope to the idea that collectively the region can lead the world in embracing restorative solutions to relationships between people as well as how we relate to our environment, our communities, other species and the planet.

#### IV. VICTIMS OF CRIME

Victims of crime, war and community violence are often the unheard voices during the aftermath of such harmful events yet RJ often appears to focus on those who do the harm. Whilst the rehabilitation of perpetrators of crime is crucial for community safety so too is the care of victims. Victim participation in the aftermath of crime is however clearly identified by various bodies.<sup>38</sup> These documents continue to encourage jurisdictions to provide a broad interpretation. They also set the scene to allow and encourage the voice of victims in various guises. Today we ask that consideration be given by governments to encourage victim driven RJ practices. Victim driven processes allow victims to request an encounter with their perpetrator at a date, time and place to suit them in a process of their choice. Such a process would seek to find out how best to encourage and develop RJ into a meaningful and empowering exercise of choice for victims albeit with the supports necessary to ensure safety, recovery and a full return to community participation.

UN Standards call for the support of victims of war, terrorism and crime. The Rwandan experiences following its civil war demonstrates that victims of crime together with the perpetrators can act in a fair and just way following conflict. *Gacaca* is the system of community justice used throughout

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<sup>36</sup> Van Wormer 2008:3.

<sup>37</sup> Tyler 1996:10.

<sup>38</sup> Council Framework Decision of the European Union (2001/220/HA); the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); the Council of Europe Recommendations for Victims of Crime (R (85) 11).

villages in Rwanda. Rules are few and processes clear whereby all parties listen to each other and accept the group's decision following apology, restitution and compensation. It is among these village gatherings where victims find resolution and empowerment as well as having their voices heard.

Sadly, this is not true of all jurisdictions throughout the region. For instance, in Western Australia (WA) victims are only able to participate in an RJ process under the terms set out by the legislators and then only with juvenile first time offenders. Victims of repeat offenders and/or adult offenders are denied the opportunity to meet and participate in restorative processes. The Juvenile Justice Teams are a bureaucratic response to restorative justice within the Juvenile Justice legislation but this pseudo restorative programme fails to answer the needs of victims of crime. And so it is with victims of adult offenders, as these victims can't engage in any restorative process apart from a victim impact statement. For the most part these victims are captured as the witness, a role with limited voice and one that is unable to transform into participant of a restorative encounter. This is especially true for Indigenous women, as victims' services are often unavailable outside of the major cities and where violence against women is commonplace. Whilst there have been many calls for restorative justice to be offered as a response to crime in WA, apart from a successful pilot project, little has been done to ensure that *all* victims of crime have an opportunity to participate in a process of their choice.

According to Edwards<sup>39</sup> there are four styles or practices whereby a victim of crime can participate in restorative justice processes. Edwards sees the first as control. This is the most empowering style that enables victims to lead the process and make a choice of method of participation. Victims' needs are catered for with the choice of practice and style of facilitator or mediator at a particular place to meet and at a time to suit the victim rather than the prosecution and court. The implication here is that the criminal justice system will provide for the victim's preferences. The obligation is on the authorities to make this happen, an issue that is often raised as criminal justice systems around the region continue to have few options available. Innovation has to be found within the bureaucratic and legalistic processes for this to occur. The second style that Edwards suggests is that of consultation whereby authorities are obligated to find out what the victim wants in terms of available participation processes and for the system to act accordingly. This consultation often means that the system remains in control and can only invite the victim to participate in what is already in place. The third style is through information provision whereby victims are obliged to supply any information that they may have to the police and prosecution whilst being used as the "body witness", the "body specimen" or the "body damaged". Edward's fourth style is expression whereby victims can express their wishes but the authorities may or may not act on them. Edwards' continuum from empowered to controlled can be a useful additional tool in the evaluation of services and together with Braithwaite's Standards<sup>40</sup> are able to provide an insight into the degree of participation and values associated with victims of crime.

## V. PROCEDURES AND STANDARDS

Braithwaite<sup>41</sup> argues that throughout human history "restorative justice has been the dominant model of criminal justice". Bottoms<sup>42</sup> on the other hand, suggested that threats, punishment and coercion were the order of the day for settling disputes in pre-modern societies. The authors suggest instead that a degree of restoration and restitution may have existed as a notion of the common good. These notions of justice are woven through the social connections between communities, families and kin, holding together the values that lend themselves to the larger social and moral order. Tyler<sup>43</sup> and his work around Restorative Justice and Procedural Justice sees a major link between social compliance, rule breaking and restorative processes. He contends that:

Procedural justice research suggests that there is another possible route to effective social regulation besides punitive punishment (Tyler, 1990; Tyler & Huo, 2002). This route involves

<sup>39</sup> Edwards, I., (2004). An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making. *British Journal of Criminology*, 44, 967-982.

<sup>40</sup> Braithwaite, J., (2002b). Setting standards for restorative justice. *British Journal of Criminology* 42, 563-77.

<sup>41</sup> Ibid.

<sup>42</sup> Bottoms 1999.

<sup>43</sup> Tyler, 2003; 2006.

treating people with procedural justice and respect. When people are so treated, they view law and legal authorities as more legitimate and entitled to be obeyed. As a result, people become self-regulating, taking on the personal responsibility for following social rules. This approach has been labelled a process-based model of regulation.

Interestingly, with regard to processes following disputes, including apology, Tavuchis<sup>44</sup> notes that “no matter how sincere or effective, an apology does not and cannot undo what has been done. And yet, in a mysterious way and according to its own logic, this is precisely what it manages to do”. The authors experiences within prisons, courts and communities has demonstrated that whilst science can try to control and predict, determine and state, the human spirit is able to astonish us with its complexity of responses to crime, including the ability to let go.

Braithwaite<sup>45</sup> identified three types of standards for assessing and maintaining the quality of RJ practices with the following caution “. . . whether a restorative justice programme is up to standard is best settled in a series of regulatory conversations with peers and stakeholders rather than by rote application of a rulebook”. Braithwaite’s first tier identifies “constraining standards” and includes non-domination, empowerment, equal concern for all stakeholders, respectful listening, honouring legally specific upper limits on sanctions and the respect for human rights. The second tier highlights the “maximising standards” such as the restoration of human dignity, property loss, restoration of human relationships freedom, compassion peace sense of citizen duties and other social support and prevention of future injustice. Braithwaite’s third tier standards are the “emergent standards” such as remorse over injustice, apology, censure of the act, forgiveness of the person and mercy. Braithwaite<sup>46</sup> states:

The constraining list are standards that must be honoured and enforced as constraints; the maximizing list are standards restorative justice advocates should actively encourage in restorative processes; the emergent list are values we should not urge participants to manifest — they are emergent properties of a successful restorative justice process. If we try to make them happen, they will be less likely to happen in a meaningful way. These, especially when linked to sustaining an effective strategy for compliance with the law, lead to a better understanding of processes that are experienced as fair and just.

Also, Tyler,<sup>47</sup> when dealing with compliance, suggests that we would “benefit from being in a situation in which people have additional reasons for obeying the law beyond their fear of being caught and punished for wrongdoing”.

Throughout the many regional criminal justice systems the legitimacy of authority is often questioned and frequently made worse by processes that are mandatory and at times used without good reason other than to maintain control. To provide processes that are participatory, fair and just, as well as being used for the safety of everyone within the community, is a major point that is often overlooked in the process of rehabilitation within the courts and penal estates. Tyler<sup>48</sup> illustrates the pathways that people walk from non-compliance to compliance as they recognize and act on procedural fairness and legitimacy of the authority. Tyler<sup>49</sup> also claims that:

One way to encourage people to view law as legitimate is for legal authorities to act in procedurally just ways. For example, studies suggest that procedural justice during personal experiences with authorities is important because it builds the social value of legitimacy (Tyler, 2004). Legitimacy, once activated, then encourages everyday compliance with the law. Hence, legal authorities receive more citizen cooperation when people generally view them as legitimate. People, who have more supportive social values, are easier for legal authorities to deal with during personal encounters.

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<sup>44</sup> Tavuchis 1991.

<sup>45</sup> Braithwaite 2002.

<sup>46</sup> Braithwaite 2002:571.

<sup>47</sup> Tyler 2006:210.

<sup>48</sup> Ibid.

<sup>49</sup> Tyler 2006:312.

Not only do Tyler’s words underpin the need for legitimacy to be recognized and experienced within the community but also within the criminal justice system. Tyler explains compliance in direct relation to being treated fairly and justly. This includes being given the opportunity to engage in positive social values and shown a direction by a legitimate authority such as from parole, police and prison officers and other professional staff and officers. Legitimacy is often questioned of poor quality policing and is at the core of non-compliance among many people. Again Tyler<sup>50</sup> adds to this by suggesting that:

Experiencing procedural justice, either in particular personal experience or in the everyday functioning of the law, is important because it encourages feelings of responsibility and obligation to follow the law—i.e., it increases the legitimacy of the law and the legal system. Hence, procedural justice suggests that possibility of a legal system based more heavily upon voluntary cooperation of process-based regulation.

As a cautionary measure it is important to note that a sense of purpose is something that we all need and so it is with the criminal justice systems of the region, for the system itself needs criminals and has to continually create rules and regulations that criminalize and remove people from society. In doing so the criminal justice system often fails to address the systemic issues that underpin crime. These are issues such as poverty, homelessness and dispossession. The authors also contend that the prevailing promotion of restorative justice through a “Western” view of processes and methodologies perpetuates a purely Western hegemony that diminishes the underpinning values of restorative justice. We continually note rigidity and conformity, which presents a “west is best” criminological discourse through literature and practices. Therefore it is pertinent here to reflect on Braithwaite’s<sup>51</sup> standards that speak to the empowerment of participants and the opposing control by services over them.

Evidence and innovation from below instead of armchair pontification from above should be what drives the hope of restorative justice to replace our existing injustice system with one that actually does more to promote justice than to crush it.

## **VI. A PROCESS OF EMPOWERING AND HEALING: RESTORATIVE JUSTICE**

Restorative justice is about people who have been harmed and people who have harmed them, together with support from both parties. As a process RJ doesn’t have to be encumbered by tight regulations, yet attempts are often made to make it so.<sup>52</sup> The RJ process doesn’t have to be inflexible although departments within the system often demand that certain victims cannot be given the opportunity to meet the person who harmed them due to the nature and severity of the crime, or the offender’s perceived lack of remorse, unsuitable demeanour or closeness to the victim. It is as though the victim does not know best or is acting in a way that is likely to decrease the sentence. These predominantly “western standards” engulf community practices as Steels<sup>53</sup> noted whilst developing a community response to crime where the autonomy of local people was challenged by service providers operating under regulatory and bureaucratic parameters from outside of the local community. This is often the case among poor and marginalised communities that wish to be a part of the solution to local crime and want a say in how the processes are to operate. However, with the urgent call from victims of crime and their supporters, far from the trappings of power, many government agencies and academics are beginning to note the call to break from dominating parameters and limited flexibility that often engulf the innovative, local and culturally balanced processes.

The above practices provide opportunity to break from what Braithwaite terms “domination” within restorative practices. In defining domination, Braithwaite<sup>54</sup> argues that domination means “if a stakeholder wants to attend a conference or circle and have a say, they must not be prevented from attending. If they have a stake in the outcome, they must be helped to attend and speak”. Further,

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<sup>50</sup> Tyler 2006:313.

<sup>51</sup> Braithwaite 2002:569.

<sup>52</sup> Steels 2008.

<sup>53</sup> Ibid.

<sup>54</sup> Braithwaite 2002: 565.

Braithwaite<sup>55</sup> maintains that, “any attempt by a participant at a conference to silence or dominate another participant must be countered”. It is within the understanding of domination and liberation within restorative solutions that both regimes will be constantly engaged as both have to contend with prisoner and staff movements and their attendant training and practices.

On the one hand, governments have moved closer to restorative justice practices but, on the other hand, they have often redefined RJ by building it into existing and often closed regimes. This is done with limited foresight as well as a lack of insight into the broader applications of the process. In turn, many jurisdictions have attempted to keep tight control, lessening the ability to empower and support those most harmed and decreasing opportunities for all participants to tell their stories. How governments respond to crime through their courts and justice services is often a concern with regards to human rights and fair process. If governments are to produce quality restorative practices, then new services will have to be designed, delivered and regulated to reflect liberating rather than controlling governance, striking a balance between the needs of offenders with the needs and aspirations of victims. Without such safeguards new practices and services can end up as what Pelikan<sup>56</sup> describes as overtly legalistic formalities and regulatory controls that fail to deliver a high degree of satisfaction in terms of access, process, timeliness and outcomes.

Early restorative practices began as a voluntary encounter between a person who has harmed someone and the person who experienced that harm. Nils Christie<sup>57</sup> claimed that conflict should be seen as the property of those with an interest in it. That is, the offender and the person(s) offended against rather than the property of the state. Over a period of time these processes have often become “all-encompassing diversionary practice”<sup>58</sup> far removed from families and communities and their problem-solving responses to crime. A good example of this style of bureaucratic diversionary measures comes from Western Australia where strict state control determines and limits access to any restorative practice. On the other hand, good examples flourish internationally and it is these break-away processes from the tightly controlled and institutionalised criminal justice systems that form where conformity is most often demanded. They are the light getting into the cracks of strict control.

## VII. THE HEART OF RJ: STORY TELLING AND NARRATIVES

Set at the heart of the restorative encounter and within any of the restorative justice or healing circles<sup>59</sup> is the period of time in which all participants are encouraged and supported to share examples of their life, leading up to and including the recent events that have brought them together with others in the aftermath of crime, war and/or conflict. This is best described as unscripted story telling or free-flow conversations where facilitators encourage empathy, support questions and allow for past and current narratives. Steels and Goulding<sup>60</sup> argue that it is through participation in restorative encounters, first among those who have produced harm together with their family and then among all those who have been harmed that we are presented with an opportunity to consider our conduct as it presents;

...the ability to reflect rationally upon our actions and those of others is often the starting point after we have caused harm or experienced being harmed by another. It is a crucial time to be able to have the space to review our lifestyle, to think of cause and effect, to think of what has occurred and to go over in our heads those often catastrophic and defining moments.<sup>61</sup>

It is within this balance of personal and shared space where reflection and admission, hurt and fear

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<sup>55</sup> Ibid.

<sup>56</sup> Pelikan 2000.

<sup>57</sup> Nils Christie 1997.

<sup>58</sup> Pelikan 2000:150.

<sup>59</sup> Steels and Goulding suggest that three circles are used in any RJ process. The first is with the harm-maker and their family and supportive people, the second is with the people most hurt, injured or harmed, together with their family and support, and the final circle or encounter is set among all of the participants from the first two circles.

<sup>60</sup> Steels and Goulding 2013:388.

<sup>61</sup> Ibid.

all build up into a greater awareness and where the personal and often tragic storylines begin. As Braithwaite<sup>62</sup> notes in his essay *Setting Standards for Restorative Justice*, the process allows people to feel empowered regardless of socio-economic status, age or gender.<sup>63</sup> Braithwaite further highlights Pranis' suggestion<sup>64</sup> that people will listen to those in high office or power but will ignore those that are not. Restorative justice allows all those involved a chance to tell their story and for those around them to listen. In this way giving the storyteller a sense of empowerment. These encounters help to create an environment of trust and fairness throughout the circle, giving balance in terms of time and frequency with a talking piece. It is among these circles where passion and emotions flow, that Braithwaite<sup>65</sup> sees the presence of "relatives, friends or a personally relevant collectivity" act to challenge personal actions and make amends for the future largely because "repute in the eyes of close acquaintances matters more to people than the opinions or actions of criminal justice officials" This also compliments Tyler's<sup>66</sup> notions that where encounters increase the motivation to transform and challenge the immediate behaviour as well as any future actions in a way that encourages respect from close family and associates. It also enhances self-image and leads to compliance with the law in the future.

For many people the free-flowing process within these series of circles provides an opportunity for participants to engage in a way that seeks to heal the aftermath of crime, resolve various questions and enable discussions to take place with regard to future directions and positive outcomes. For some, this process comes a little easier when it is shared within a safe environment and where only one or two rules exist. One very important rule is to ensure that only one person speaks at a time. Another is to ask that truth be spoken without fear or prejudice but with respect. To enable these stories to assist in the problem solving restorative and healing process the following ideas may be of use. They are often used by the authors within and outside of the formal justice system and can be used in conjunction with story-telling or other ceremonies. With all story-telling and yarning circles a good amount of silence is encountered. This is to be honoured and respected as a part of the ceremony. Flexibility is the key to this restorative encounter that may last longer than most restorative justice encounters. It may be spread over days or hours rather than a rushed event especially when it is dealing with serious and repeat offending from within a smaller community or large family. Timeliness is crucial for courts and justice services but not always so for many traditional or customary circles.

The cross over and mix of traditional and modern or between Western and Eastern processes shows the flexibility of facilitators, participants and process. It should be able to accommodate people of different or no religious faith, various cultural backgrounds and cross-cultural communities. Stories are often so rich that they give life to the encounter in a way that more formal courts are unable to provide.

## VIII. THERAPEUTIC COURTS AND THERAPEUTIC COMMUNITIES

The authors note from Tyler's<sup>67</sup> that to treat people badly or to give them an experience of injustice in the early stages of contact with the criminal justice system often means that they, together with family and friends, fail to be compliant and respectful of the law in the future. Fairness always needs to remain crucial to any restorative encounter as well as the legitimacy of the criminal justice process for being unfairly treated disrupts "the relationship of legitimacy to compliance" even more than "receiving poor outcomes"<sup>68</sup> . All participants must be in a position to feel that they are being treated fairly and respectfully. Combined, the therapeutic, restorative and procedural justice concepts provide all parties with an opportunity to feel satisfied with both the process and outcome. In addition, processes should not bring about harm. Winick (2003:26) claims that therapeutic jurisprudence "should value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever

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<sup>62</sup> Braithwaite 2002:564.

<sup>63</sup> In Pranis 2007.

<sup>64</sup> Ibid.

<sup>65</sup> Braithwaite 1989.

<sup>66</sup> Tyler 2006: pp. 307-326.

<sup>67</sup> Tyler's work 1990.

<sup>68</sup> Ibid.

156TH INTERNATIONAL SENIOR SEMINAR  
VISITING EXPERTS' PAPERS

possible, and when consistent with other values served by law should attempt to bring about healing and wellness". Combined with restorative justice and the participation of people who have experienced harm the therapeutic jurisprudence process is a good companion for restorative justice practices where such ideals are seen as the sum total of the circle process for all participants.

When preparing for the first circle, or the first part of a meeting or conference, facilitators should be aware of Sykes and Matza<sup>69</sup> processes of neutralisation that include; denial of responsibility; denial of injury; denial of victim; condemnation of the condemners and appeal to higher loyalties. If not exposed, these notions will continue to deflect blame on others rather than allow a space for offenders to take responsibility. Alternatively they may then erupt or lay dormant just under the surface during the first circle.

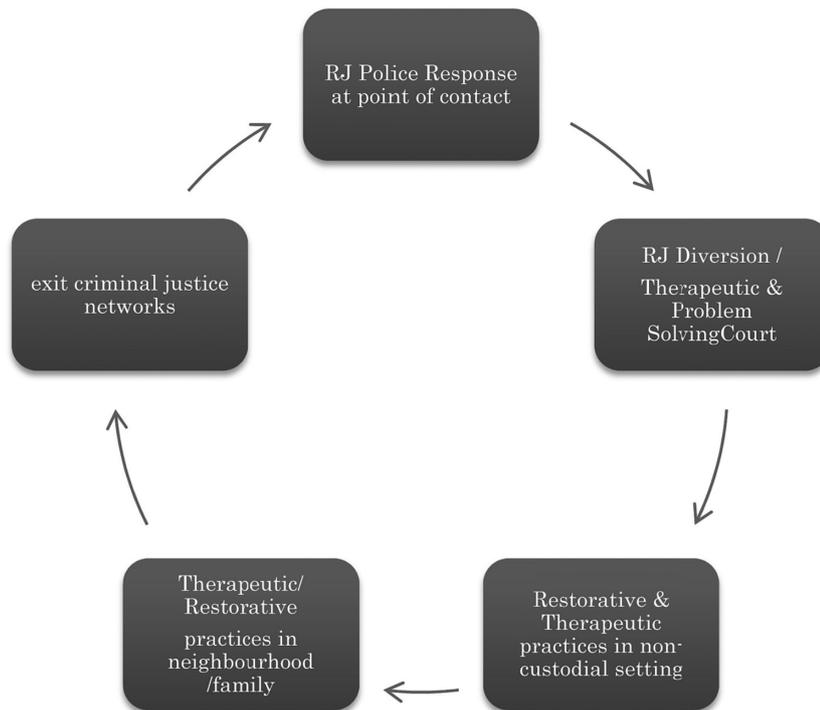
Focusing on one specific group of people as offenders within the criminal justice system can be helpful if the process used is one that is culturally appropriate, respectful to traditional law, and doesn't produce further harm especially among those people who are victimized by the crime. But it also brings limitations and assumptions about the court process. Whilst it is a positive move to engage with perpetrators in a manner that is respectful perhaps even in a special First Nation court with local Elders, the process may leave out cultural, traditional and customary representations for First Nation or Aboriginal victims of crime. If the person most harmed by the crime is a First Nation person then a number of safeguards must come into being. The first is that a fair and just process is provided, one that protects their right to be heard in a safe and secure environment. The second is that they are assured of protection from re-victimization and further abuse. Victim support services in rural and remote areas of some states find themselves lacking the resources to engage with even the most seriously victimized people. With regard to a perpetrator's family there could be good reason for the perpetrator and his/her family to be provided with an opportunity to engage in ceremonies that heal the group, assist with an apology and restitution and acknowledge the shame that has descended upon them.

The authors pose the question of how this process might work in a cross cultural situation where the victim of crime is a member of a First Nation or Aboriginal person and the perpetrator is not. Do we ensure that the court acts respectfully and in a culturally appropriate manner towards the victim of crime, including the treatment of them by the media? One way to ensure that we treat all participants in a criminal justice process fairly, justly and in a culturally respectful way is to offer a restorative process to all people who are willing and able to participate. This includes listening to victims of crime who ask for a facilitated encounter with their offender even when the prosecution opposes such a pathway. It would also assume that any victim of crime, not only victims of first offenders, would be invited to attend or able to request an encounter with the perpetrator and the perpetrator's family. This would serve to provide all victims of crime with the same opportunities to participate. In this way all people are treated respectfully with recognition of their cultural, traditional and customary needs. Finally we strongly advocate for restorative processes to be made available in every court, linked to the philosophy and practice of therapeutic jurisprudence where the voices of all participants in a restorative encounter are able to be heard.

The following diagram shows restorative justice and therapeutic interventions from the point of contact with the police to breaking away from the criminal justice system. To be effective it requires a high degree of procedural fairness.

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<sup>69</sup> Sykes and Matza 1957: 664-670.



Sadly and all too often the authors note a connection to the criminal justice system at an early age followed by further connections leading to and from juvenile detention centres and later the adult prison system. This is particularly true of the Australian and New Zealand systems. Scholars attribute this cycle of crime to various inter-connected factors. Individual behaviours are questioned together with a lack of societal discipline<sup>70</sup> poor socioeconomic conditions within families and communities together with a lack of support;<sup>71</sup> colonisation and intergenerational trauma,<sup>72</sup> and other structural factors due to geographic location, language, under-employment and drug and alcohol fuelled violence. Whilst any one or more of those conditions may be prevalent within a family home or community it may also be attributed to current “tough on crime” policies widely heralded across Asia. However, it is also due to the enormous gap referred to by Casey<sup>73</sup> as he highlights the gap in social and economic wellbeing between Indigenous and non-Indigenous people. Casey reports on the Australian situation noting that “the discrepancy between the social and economic well-being of Indigenous and non-Indigenous people could be described as a vast gulf, rather than a ‘gap’”. As Indigenous people throughout the region find themselves more and more marginalized especially in India, Taiwan, Japan and China, restorative practices may assist them to have their voices heard.

The results of these regional policies are but a warning of the danger of building more courts and prisons whilst failing to use therapeutic, problem solving and restorative environments. It is important to consider a policy redirection towards effective solutions that apply smart, fair and just processes. The evidence to date suggests that therapeutic and restorative interventions help to provide empathy for others, improve social connections, are inclusive of victims and look to local and community solutions. Problem-solving courts, restorative practices and therapeutic communities seek answers, can place the criminal act within a context, listen to solutions and are focused on healing the aftermath of crime whilst aiming to reduce re-victimization. They challenge offending or harmful behaviour whilst providing support. They include all stakeholders and empower participants. Perhaps cynically, the authors question whether the problem with these progressive, problem solving ideas is that they will reduce imprisonment whilst allowing funds to be channeled where they are needed—to victims, perpetrators and their networks—our communities.

<sup>70</sup> Weatherburn et al., 2003.

<sup>71</sup> Blagg 2005; Steels 2008; Goulding et al., 2006.

<sup>72</sup> Atkinson 1990; Steels 2008; Cunneen 1999.

<sup>73</sup> Casey 2007.

## IX. PRISONS OF THE FUTURE: RESTORATIVE, SUSTAINABLE AND PROBLEM SOLVING

Victims of crime throughout the region are often not fully compensated for the harm and losses that they incur and the overuse of imprisonment fails to make their communities feel safer. Further, victims of crime seldom have a role to play in the penal estate apart from ad hoc occasional circumstances. Regionally, prisons do not reduce crime but conversely are often themselves criminogenic, providing a learning environment among people who have already been convicted of crime. Goulding, Hall and Steels suggest that the community gains few benefits from prisons “because the continued high cost of incarceration eats into the public purse with ever increasing imprisonment rates”.<sup>74</sup> Their economic cost demands a thorough examination in terms of social and economic costs. For example, currently the cost of keeping each adult prisoner in custody in Western Australia is \$115,000 per year (DCS, WA, Annual Report 2010-2011) and rising.

Alternatively, restorative processes throughout the prison can offer victims, offenders and the community greater participation and improved outcomes than traditional criminal justice processes. The restorative prison, according to Coyle<sup>75</sup> is able to “present prisoners with a series of duties, challenges and learning opportunities”. A key factor in a restorative prison is an environment of safety for prisoners and prison staff. There is no doubt that many obstacles have to be overcome in transforming current prisons’ punitive regimes to restorative practice. This is something that we are now undertaking in collaboration with partners from Europe. Newell<sup>76</sup> contends that the tension between restorative processes and traditional prison modes are still troublesome, maintaining that “restorative justice requires respect, the assuming of responsibility and the freedom to solve problems by those involved in the conflict”. Another conflict facing many jurisdictions keen to design innovative restorative practices within the penal setting is risk averse government ministers and their departments. Attempting to balance risk with progress often sees good ideas shelved, although our science on the topic is improving. Whilst the process is difficult it is worthy of closer examination.

A restorative prison would continually challenge criminal behaviour in order to and reduce re-victimization through comprehensive and effective, restorative and transformative programmes. All members of a holistic prison environment including residents in custody, management and staff are called upon to act respectfully and restoratively in all communications thus ensuring fair and just processes and outcomes that are more likely to encourage compliance and pro-social behaviour, within and outside of the prison environment. These holistic processes would include facilitated encounters between victims and their supportive others, prisoners and their family and/or peers and members of communities of interest. Encounters such as these are an effective way to encourage victim empathy and improve self-image. Making an apology to family and friends is often the first step towards taking complete responsibility for our actions, and the beginning of the journey towards the encounter with the person most harmed and victimized. A restorative justice prison is one that is able to successfully engage in restorative practices with the accompanying underpinning philosophy of harm reduction, reparation and restitution. Many of the prison’s activities would involve victims, community reparation projects and skill-development activities that are pro-social and civic minded. The activities ought to be designed to encourage respect for others and increase a desire to take on board responsible citizenship.

All prisons should be instilled with the desire to be experienced as a restorative justice prison that is seriously looking to provide a wholly restorative environment with fair and just processes and positive outcomes. These processes and outcomes can be measured through the personal experiences of residents in custody, victims of crime and prison management teams. Through restorative and transformative environments, these prisons could reduce further victimization whilst generating a greater interest in family connections, social responsibility and civic pride. In terms of prisoner experiences, a holistic restorative prison environment could provide an example of being treated fairly and justly with respect and understanding. This can in turn present opportunities to look at the self as

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<sup>74</sup> Goulding, Hall & Steels 2008.

<sup>75</sup> Coyle 2001.

<sup>76</sup> Newell 2001.

a respected social being with responsibility who can reflect on the harm that has been caused to others—victims and their own family and relatives. Restorative practices usually encourage personal growth, maturity and integrity on the journey to a better understanding of how we respond to ourselves and others, especially in times of crisis and conflict. These are critical life skills that can assist those who reside in custody to make amends, put their lives in order, understand others and look at being valued by others.

In terms of prison management, restorative practices offer prison staff the opportunity to be pro-active in encouraging responsible living in harmony with others. We seldom hear of peacemaking and responsibility taking within penal institutions but that is what is called for from the prison's leadership as prison staff move among residents who may not have experienced being treated with dignity and respect. As a management tool restorative philosophy and practices can initiate potential for growth and transformation of key workers, senior staff, prison officers and people held in custody. In turn this can lead all participants towards positive relationships and lifestyles. Restorative justice prisons can provide more than just a glimmer of hope—they offer a journey of transformation. As previously mentioned, the authors recently visited Tihar Prison in Delhi in order to see first-hand the prison as a place of environmental sustainability. This visit runs parallel to the research being undertaken in Western Australia. Already Tihar management have noted a marked change in the behaviour of residents working within their sustainable projects. Residents are able to focus on the fine balance of climate, human activity and food security, ensuring that the jail is not a burden or is not producing further harm to the planet.

Although these are small examples they serve to highlight the link with harm to self and victim, harm to family and community with harm to the future of life on earth. In typical Asian style it shows the interconnectivity and inter-dependency of species and clearly demonstrates that harming another human being brings harm to many others. The focus on these others does in turn assist the prisoner to learn more about life than crime.

## **X. CONCLUSION: RJ; SUSTAINABLE PRISONS; THERAPEUTIC AND PROBLEM SOLVING COURTS**

With the Asian region taking account for the world's most populated land masses, diverse languages and well defined national identities, there is always going to be major functional differences within jurisdictions, especially around restorative solutions to crime and compliance to law. This is underpinned by a variety of philosophies and religions, Indigenous, colonised and mixed populations and legal support or restrictions placed on human rights and democratic processes. Most importantly for ordinary people wishing to own their crime, for those who want to make things right and for those wanting to share their stories of their fear and harm, many regional governments and services are beginning to listen. The future does hold hope for restorative encounters and free-flowing conversations facilitated between harm doers and those most harmed in a willingness to ensure that harmony prevails. The how, where and when we can all see restorative justice providing the region's people with a safer way to live without fear of crime, is with us now. We need to seize the opportunity. We are all empowered to take control of crime, work towards healing its impact and restoring good relationships. This paper is just the first of many steps to take in personal, national and international transformation. It should lead us all to a greater understanding, compassion and fairness among families and communities. Restorative justice can come into its own once empowered by the all-encompassing bureaucratic criminal justice systems and treated as a mainstream, genuine response to healing crime. Its ability to have people move towards future compliance and to experience their government's processes as fair will in future bring local and national rewards of safer and peaceful communities. However, none of this occurs overnight. Crime still occurs, wars continue and justice remains lost to many and yet it is the most crucial relationships between the victim of crime and the harm-doers that we have to focus on today. These restorative solutions present not only a way out of crime for those participants entering an encounter but it offers whole communities and governments a more effective and less costly way of healing the harm.

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156TH INTERNATIONAL SENIOR SEMINAR  
VISITING EXPERTS' PAPERS

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