

Introduction

If blood will flow when flesh and steel are one
Drying in the colour of the evening sun
Tomorrow's rain will wash the stains away
But something in our minds will always stay
Perhaps this final act was meant
To clinch a lifetime's argument
That nothing comes from violence and nothing ever could
For all those born beneath an angry star
Lest we forget how fragile we are. (Sting, "Fragile," 1987)

Imagine the following scenario. You have just disembarked from a city bus around midnight and you immediately come upon a woman in distress on the ground, her anxious children gathered around her. You glance a fleeting shadow disappearing into an alleyway. What would be the first action you would take?

When presented with this thought experiment, most people's response is to attend to the needs of the woman on the ground. The second concern is to take care of the children and then, perhaps, to check out the person in the alley. Our sensibilities tend to have us focus first on the victim, then on those others affected by the harm and finally on the perpetrator. This is what we learn in our homes, in the schoolyard and in the community.

But this is not how our criminal justice system responds to harm. The first attention is paid to the perpetrator; indeed, later concerns of the system are also the perpetrator. When attention is paid to victims, it is usually in their capacity as witnesses, since in our system the state usurps the role of the victim. This is why *Criminal Code* offences in Canada are cited as "*R. vs John Smith*," with "R" representing "Regina" or "Rex" (Queen or King). The victim's and perpetrator's supporters and the communities they live in are usually not attended to at all.

The above thought experiment was presented by Dennis Maloney to demonstrate the disjuncture between what we want from a justice system and what we get. Until his death in 2007, Dennis spent sixteen years as the director of Deschutes County's community justice department in Oregon and was associate director of the Cascade Center for Community Governance. Like many people involved in restorative justice work, Dennis began his career working within the retributive criminal justice system. His

pull towards restorative justice began with his interest in how some of the Aboriginal communities he worked with handled problems we might categorize as crimes. Ultimately, he saw the community development possibilities of restorative justice and the crime prevention benefits derived from this holistic philosophy.

Maloney's appreciation for traditional Aboriginal ways of working through problems is echoed in this book, which uses primarily Canadian and American examples to illustrate themes germane to a fulsome expression of restorative justice. The Canadian emphasis is an obvious outcome of my own nationality and experience and is useful for its particular history of contact between settling Europeans and First Nations peoples. The Canadian intellectual John Ralston Saul, in his intriguing book *A Fair Country* (2008), challenges the Canadian historical premise that the nation was founded solely by the British and the French. Using historical records, he persuasively demonstrates that First Nations people heavily influenced the evolution of Canadian culture — as seen in our preference for negotiation over violence, our acceptance of diverse opinions between individuals and groups, and our belief in egalitarianism. Colonizing Europeans who arrived in the northern half of the continent were dependent on the hospitality and guidance of the indigenous people, who had lived successfully in the harsh climate. The French in particular engaged indigenous peoples on a personal level through marriage, resulting in the new cultural grouping known as Métis. Saul's assertion is that Canada is a Métis nation, a country informed by European and Aboriginal thought and ways.

The significance of this historical diversion is found in how Canadian approaches to restorative justice may differ from those of the U.S., the South Pacific and other pioneering nation sites of RJ. Most of what has been written about RJ has been directed by the cultural standpoint of the authors; this book is similar in that it reflects my own Canadian context and experiences. In establishing this from the outset, it is also necessary to note that Canada is a large country of ten provinces and three territories, delimited by three oceans and the forty-ninth parallel. Unique expressions of RJ pepper the country. In Nova Scotia, for example, RJ is deployed through governmental institutions down to the community. In British Columbia, where I reside, the RJ tradition has been primarily community-based.

Saul's assertion of the profound influence of Aboriginal ways on current Canadian culture has particular relevance to the British Columbia context. Community-based RJ groups have benefited from the teachings of their Aboriginal neighbours within the province and from the bordering Yukon Territory. We have been challenged through these relationships to deepen our understanding of what we call "restorative justice" to consider a more holistic context for conflict. This means that there is a tendency to see the

promise of change as emerging from the grassroots of our society, rather than being institutionally driven.

Canadian expressions of RJ have also been informed by the valuable contributions of Mennonite organizations across the country. The first contemporary example of RJ globally came in 1974 from a small town in southern Ontario called Elmira, in which Mark Yantzi deployed a rudimentary version of victim-offender mediation in the case of two young men who had spent an evening vandalizing property. Yantzi's Mennonite background and consultation with elders in his community influenced his experimental approach; since then, the Mennonite-based Community Justice Initiatives (in both Waterloo, Ontario, and Langley, British Columbia) has emerged as a leader in the particular RJ approach of mediation. The Fraser Region Community Justice Initiatives Association in B.C. has also been of value for their internationally recognized violent offence mediation approach; the attention to trauma in this book was catalyzed by engagement with this organization.

A recent contribution to the literature by Jarem Sawatsky (2009), from a Mennonite community in the province of Manitoba, offers the case for a holistic approach to peace building that he calls "healing justice." In a portion of his argument, he questions RJ for its limitations of expression and its dependence on criminal justice institutions. Sawatsky's view of what is required to develop peaceful communities was partly influenced by his research with the First Nations community of Hollow Water. Using the medical framework of primary, secondary and tertiary care, Sawatsky argues that most RJ falls into the latter category, where it is deployed as a response to harm that has already occurred. Harm prevention targeted at people who are at higher risk of requiring tertiary intervention is the purview of secondary care; RJ in schools is an example of this. Primary care is that which is focused on changing the whole of society so that we are more likely to be out of harm's way. This offering challenges us again to think outside of the box RJ has found itself in — as a criminal justice add-on program.

In order to avoid the traps of co-optation and relegation to the criminal justice system's sidelines, RJ needs to be affirmed as something more than a program. In academic terms, it is more useful to conceptualize RJ as a paradigm — one that holds its own philosophical and theoretical framework — focusing on theories that purport to explain relevant phenomena and encouraging research that tests these propositions. In community development terms, RJ may be seen as a holistic approach that is grounded in core values that are helpful towards creating the kind of peaceful societies we say we want. On a more personal level, RJ is often described as a way of life, an approach to individual conduct that promises more peaceful relationships.

This book introduces several key concepts necessary for understanding

the broader strokes and foundations of restorative justice. Its contents emerge from the basis of where we are in RJ currently, as an approach to conflict, and move into an appreciation of RJ as something fundamentally different from individualistic and retributive beliefs and processes.

In order to open up to the possibilities of restorative justice, it is first necessary to see where we are right now. This starting point entails not only an overview of the Canadian criminal justice system today but also a look at a road not yet committed to, although manifested, in the systems of our neighbours to the south. The United States is a large carceral experiment in the context of world systems, and what has been happening there offers us some insight into the consequences of particular penal policies. This is the subject of Chapter 1.

In order to better enable our critical analyses, we need to revisit familiar themes such as punishment and justice to consider what they mean and how they shape our beliefs about what should be a proper response to harm-doing. I use the term “harm-doing” instead of “crime” deliberately, since restorative justice is not merely about criminal justice but pertains to a wide terrain of social interaction, from parenting, schools and businesses to relationships in general. In Chapter 2 we unpack one of the heaviest pieces of baggage on this journey — punishment. The idea of punishment is axiomatic; we debate its implementation styles or intensity but rarely its utility. In this chapter we consider the views of many theorists about punishment — what it is, what it is for, how it works and whether it accomplishes what it promises — and review what works instead. In Chapter 3, our curiosity about punishment spills into the arena of justice; we ask: what is justice? Philosophers for cons have examined justice, as a feature of the democratic state, as the property of systems and as a character trait of individuals. Do we have a common understanding of justice, and to the extent that we differ, how does that play out in the criminal justice system and school and family disciplinary systems? We need to examine the meaning of justice so we are prepared to engage with a different framework for it, in the shift to a restorative justice paradigm.

At last, in Chapter 4, we engage directly with restorative justice itself. The concept of restorative justice, in its different expressions, is introduced as both a way of asking questions about harm and its effects and of focusing on certain phenomena. These key phenomena are addressed in more detail in Chapters 6, 7, 8, and 9, but in Chapter 4 I sketch their significance to the restorative justice lens overall, particularly in terms of healthy democratic societies. Restorative justice is about healing harms, which is not necessarily the mandate of the retributive system. Inevitably, this leads us to ponder the realistic possibilities for restorative justice within the context of our current systems, and many of us tend to think of criminal justice systems specifically. There are some difficult yet intriguing consonances and contradictions

between the retributive and restorative paradigms, and in Chapter 5 we take on some challenging ideas about the role of restorative justice in societies governed by the rule of law. Both in philosophy and practice, restorative justice asks what is necessary to live collectively and as our “best selves.”

We pick up the phenomena outlined in Chapter 4 in Chapter 6, in which the theme is values and processes. Restorative justice is, if anything, about values in both thought and action. It also begins with each individual rather than being something “done” to someone else. Core values are those that seem to enjoy some universality, which helps in cross-cultural conflicts. But values require expression, and it is a goal of restorative justice that its values inform and embody the processes used to develop communities and work through conflicts. Conflicts are usually, although not always, the focus of restorative processes. And conflicts are about individuals who are not in “right relationship.” In Chapter 7, we consider the individual and relationships within the paradigm of restorative justice. Individuals are autonomous, with their own agencies, and each is unique in their own way. Each person is on their own journey, and each carries with them their own varying life experiences. The following two chapters examine more closely two significant hotspots in the psychology of restorative justice that are manifested in individuals before or as a result of the harm being considered. These are also better understood when we see the individual in relationship with others. Restorative justice is often characterized as being *relational*, that the source of both harm and healing of individuals is found in relationships.

Chapter 8 reviews the concept of shame, which some theorists consider to be an innate affect. “Affect” is the biological portion of emotion. While the awareness of harm-doing is bound to generate some emotion, for those harmed, those committing the harmful act and those in the community containing everyone and beyond, our retributive systems of conflict resolution are not structured to manage the emotions antecedent to and generated by conflicts. Shame is a key emotion in this context, for both those harmed and those harming others. Restorative processes endeavour to create safe places for difficult conversations, which involves attention to shame management. The other psychological hotspot for restorative justice is trauma, the focus of Chapter 9. Trauma has been examined extensively since the 1970s, primarily due to therapeutic work with Viet Nam veterans and sexual assault victims. Knowledge of the effects of trauma helps us to better understand the behaviour of both those harmed and those committing the harm, which is particularly critical in cases involving violent crime or genocide. Early trauma is often a key factor in offending behaviour and a major hurdle in victim healing. Restorative justice not only opens our awareness of possible underlying implications of trauma but also reminds us that in responding to harm we should, at the very least, do no further harm.

In Chapter 10, we examine the critical component of the community in restorative justice. The idea of “community” has been critiqued for its idealistic connotations and often rightly so. This chapter entertains different definitions of community and considers ways in which communities constitute the web of relationships necessary for supporting healing efforts of parties to harm. But communities can also be built or reinvigorated when their members become involved in restorative processes, as individuals grow in their capacities to become more competent as citizens. Restorative processes can be opportunities to clarify community values. In this chapter, RJ opens up to its broader expression as a communal and individual way of being that cultivates more peaceful societies.

Our final chapter concludes with a look to what restorative justice might mean to us as individuals “doing what we can.” Perhaps the most difficult aspect of restorative justice is that it asks us to begin with ourselves, to work towards “transforming the power-based self” (Sullivan and Tift: 2005: 154–57). This requires us to think outside of the subject-object distinctions of the retributive justice paradigm, to move from beliefs that we “do” justice to others or “bring” them to justice towards the understanding that we must *be* just as individuals in our everyday lives. Restorative justice cannot be actualized merely through the implementation of new criminal justice or other system-based policies. If it isn’t who we are, the policies will not be sustainable. In any event, the idea is to become more competent and engaged as citizens in our homes and communities, so that we need to rely less on formal government institutions to address our problems. Restorative justice is about *us*, how we are in the world in our everyday lives, how we conceptualize the problems with which we are confronted and how we respond to them. Its foundation is the belief that “we cannot get to a good place in a bad way — *ever*.”¹

Note

1. This phrase has been asserted often by Molly Baldwin, Executive Director of Roca, a “performance-based and outcomes-driven organization that helps young people to change their behavior and shift the trajectories of their lives through a High-Risk Youth Intervention Model.” Roca serves very high-risk young people in Chelsea, Revere and East Boston, MA. See <www.rocainc.org>.