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Running Head: Justice Restored

Something's Missing: Justice Restored

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Honors Thesis

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November 29, 2005

When I was nineteen, my younger brother Robert died. I had just spent the summer living with my friend Sharon's family and my parents separated while I was gone. My seventeen year-old brother Robert stayed at the house with my father. My youngest brother Ronald, who was nine at the time, moved into a rental house with my mom. I moved into my mom's new place on October 25, 1999. The next day she came home from work and told me to sit down that she had something important to tell me. She told me that Robert had been shot in the head and was at the hospital in critical condition. We rushed to the hospital. All I could think was that it had something to do with Robert's "so-called" friends. They were a pretty rough crowd, always getting into trouble. Some were in gangs and in all honesty I don't know if my brother was a member of a gang. His friends told my family that he was not in a gang; however, a friend that worked at a photo lab developed pictures that had graffiti with my brother's name and gang affiliations.

I hated that he hung out with gang members and tried to convince him that they were just using him; that he was the one getting into all the trouble. He was caught with his friends stealing a car and was released from jail the night before he was killed. It could have been a rival gang or maybe he was just in the wrong place at the wrong time; instead my mom said it was my father that shot him point blank with 357 Magnum. My father didn't even call an ambulance, instead one of my brother's friends found my father clearing out the back of his Ford Bronco. It was at that point that my father told my

brother's friend to run to the neighbor's house and ask the neighbors call an ambulance. Some of my family still wonders if he was preparing to go dump my brother's body.

At the hospital, my mom and I were taken into the consultation room, a small room in which the lights gave off an odd gray tone and the attending physician told us matter-of-factly how part of my brother's brain was still in the kitchen. Afterwards, we were taken to Robert's hospital bed and family members started drifting in. My brother's girlfriend, with whom he had a daughter only three months earlier, came with her mom and her best friend. Everyone stood around his bed praying for a miracle, however, all I could think about was that part of his brain that was still in the kitchen. I whispered in his ear so that the others couldn't hear me and told him I understood if he had to go. I couldn't imagine the kind of life he would live if he were kept alive. He was taken off life support and lived for about three hours. One thing I will always remember is that after people talked to him his heart rate on the monitor would go up, like he was listening, even answering us. The last thing I told him was that I would look after his daughter and I would make our father pay for what he did.

My father was/is an alcoholic and he physically, verbally, and mentally abused everyone in my family. I remember one occasion when he had a loaded gun under his pillow on the couch and my mom, youngest brother Ronald and I waited upstairs until he fell asleep, then left to stay with my grandma for a week before returning to the house. Robert was in a juvenile detention center at the time.

During my teenage years, the police were called to my house on what seemed like a daily basis, mostly for Robert, although my father often antagonized him. I guess you could say Robert had an "attitude problem." He stood up to everyone, including my

father. I chose to lock myself in my room during much of that time, or take off with my youngest brother so we wouldn't be at the house.

Once, I was sitting on the front porch reading a book and Robert demanded that I go inside. I had it in my head that that day I was going to stand up to him, after all I was the older sibling. Robert didn't like that though and ended up beating my head against the bathtub giving me a slight concussion. He threatened to throw one of my ferrets against the wall so I grabbed my pets and went to live with my aunt for three days. Then I came back home for a few weeks until I went to stay with my friend Sharon's family at their request. Even Robert's probation officer and the regular cops who were called to the house said it was time for me to leave home. They said it wasn't healthy for me to be there.

On the other hand, Robert saved me from being beat by my father on more than one occasion. I don't think my brother was capable of killing my father. I think he could have threatened him and/or assaulted him.

I feel my family was totally shut out of legal process. I was not allowed to give a deposition whereas my half-sister who never lived with us was. In addition, the case went through three prosecutors. The second prosecutor didn't like that I stated, in what I thought was a personal conversation, that I thought if my father was Black he would not

have been released from jail the next day so I was banned from testifying. My father was released from jail October 27, 1999 (the day after he shot Robert) and remained free until January 2000. When the police came to the house to arrest him he was hiding in a crawlspace. His fiancée lied about his being at the house and she was arrested for

obstructing justice. A friend accompanied me to the house after his arrest; there were paper grocery bags packed with clothes, toiletries, paperwork and legal documents; including newspaper clippings about Robert, videos, and a bag filled with alcoholic beverages; including a lime that was already cut. He had also just purchased a new car battery. It sure looked like if the police had come ten minutes later he might have already left the area. My initial reaction was what was he trying to run from if he was innocent.

The case was plea bargained down to reckless homicide. He claimed it was self-defense and that the dog jumped up on him causing the gun to accidentally go off. I didn't believe him then. My mom, Robert's girlfriend, my aunt, and I were able to give statements at the sentencing hearing along with my father's friends, relatives, and co-workers from the railroad. The judge sentenced him to prison for four years and he ended up serving two years due to good time served.

Two years in prison seemed too little a time to serve for taking someone's life. If you asked me during those two years what I thought my father deserved I would have answered death without even giving it a second thought. After he was released from prison whenever I went back home I was afraid; afraid he might come after my sons and me, afraid just to see him.

On the contrary, I am not afraid of him anymore. Two Christmas' ago I took my brother Ronald, and my two sons with me to visit him. He looked much older, his limp had gotten worse, and in general his health wasn't all that great. He was ordered to take anger management classes while incarcerated, he even got his GED, something he takes great pride in.

Coincidently, I was able to witness an occasion where he would have exploded if it had happened in the past, yet he remained calm. My brother Ronald, fourteen at the time, back-talked to my mom in front of my father and instead of physically assaulting or yelling at him he told him, without raising his voice, that he did not approve of the way Ronald had spoke to my mom. I was amazed.

I don't think it was healthy for me to hate my father. My mom has been able to forgive him but not the act. My mom's health deteriorated rapidly after Robert died. She also wanted my father to get the death penalty at first. Once she was able to let go of the hate, it seems her severe arthritis has been slowly getting better. But at the same time, I can't help but feel like a traitor to my brother. All I ended up doing was testifying against my father at the sentencing trial. For the past two years my niece's mom hasn't even let us see her. All I can do is ask a mutual friend how she is doing.

This experience has greatly affected my life. It made me want to get involved in restorative justice and work with at-risk youth. I do not think that the time my father spent in prison helped repair the wrong of killing my brother. I think my father benefited from earning his GED and taking anger management classes, however, my niece will grow up without a father, in addition to having only a mom to support her financially.

This has always bothered me. I feel that it is only fair that my father help support her financially since he is the one ultimately responsible for the death of her father. This is in tune with the tenets of restorative justice.

When I am asked what field of criminal justice I would like to become involved with, I am most often met with a contemplative grin and asked what exactly restorative

justice is. One problem to answering what seems like a fairly easy question is that within the restorative justice field there is division. In my research I have found that much of the division is between victim advocates and offender advocates.

The first part of this paper is to give one definition of restorative justice I feel could be accepted by all factions of the restorative justice field. Then list the mission of restorative justice and some of its values and processes. The second part lists some of the themes of restorative justice, including community restorative boards, victim offender mediation, restitution, community service, group conferencing, healing circles, and victim impact statements. The third part of this paper deals with the utility, effectiveness, and impact of restorative justice. The fourth part of this paper deals with implementation of restorative justice within the current United States criminal justice system. The fifth part of this paper ties my family situation (illustrated in the narrative portion of this paper) to restorative justice themes I believe would have benefited my family and the community.

What is Restorative Justice?

When asked what field of criminal justice I would like to become involved with I am most often met with a contemplative grin and asked, "What exactly is restorative

justice?" One problem to answering what seems like a fairly easy question is that within the restorative justice field there is division; much of the division is between victim advocates and offender advocates. As restorative justice continues to gain popularity in our criminal justice system it is crucial to develop a clear understanding of its definition, mission, and processes.

The first part of this paper is to give a vague definition of restorative justice that could be accepted by all factions. However, due to its vagueness it is important to provide clarity by including its mission, values and processes. The second part lists themes of restorative justice; including community restorative boards, victim offender mediation, restitution, community service, group conferencing, healing circles, and victim impact statements. The last part of this paper deals with the utility, effectiveness, impact, and implementation of restorative justice.

Restorative Justice Defined

Restorative justice scholar Katherine Van Wormer defines restorative justice as "... a collective term that loosely refers to a number of initiatives that hold offenders directly accountable to victims and the community" (2005, para. 5). Initiatives include community restorative boards, mediation, restitution, community service, conferencing, healing circles, and victim impact statements. Deputy Commissioner of the Minnesota Department of Corrections, Mark Carey, believes the mission of restorative justice is "to improve the experience of criminal justice so that victims, offenders, and the community are informed, involved, empowered, restored, and satisfied, to the degree possible" (2005, para. 7).

One of the pioneers of restorative justice, John Braithwaite, lists the following as values of restorative justice: restoration of all the following - human dignity, property loss, injury to the person, damaged human relationships, communities, environment, freedom, compassion, peace, empowerment or self-determination, a sense of duty as a citizen, and emotional restoration. Other values are mercy and forgiveness (2005).

Restorative justice advocate, Derek Brookes, lists three main processes of restorative justice- reconciliation, reparation, and transformation. Transformation is a result of the first two processes. Reconciliation happens when an apology is offered and forgiveness is received with the intent of improving relations between the parties. It is an attempt to recognize and apologize for the pain, suffering, humiliation, or other wrong stemming from the offense. Brookes says to do so helps "cast off or decertify the offender's deviant or blameworthy moral status" (2005, para. 7).

Reparation happens when the offender takes responsibility for the crime. This is accomplished by compensating the victim for the material harm caused by the offender. An important aspect is that it must be deemed fair and mutually acceptable by all parties involved. Brookes believes that transformation is an ongoing consequence of reconciliation and reparation and defines it as when:

> "individuals and communities concerned experience some degree of liberation from the conditions that perpetuate the cycle of violence, aggression and domination exemplified in criminal behavior: for example, by overcoming the negative emotions of humiliation, fear and hatred, and by advancing the alleviation of degradation, oppression and stigmatization which characterize existing socio-political structures and relations" (Brookes, 2005, para. 10).

Community Restorative Boards are made up of a small number of community members who have participated in intensive training. They meet with offenders whom are sentenced by the court. The meetings take place in person; the offender and board discuss the nature of the crime and its consequences. Then it is the board members job to create a proposal of sanctions for the offender. The offender must deem the proposal fair

and together they create a course-of-action plan and agree on a time period in which reparation for the crime will be paid. It is the offender's responsibility to track their own progress in completing the agreed upon plan. The board submits a report regarding the offender's compliance to the court when the time period ends. The submission of the report ends the board's involvement with the offender (USDOJ).

Goals of community restorative boards include citizen involvement in the criminal justice process, giving the community the chance to constructively address offenders regarding the offender's behavior, letting offenders take responsibility for their actions and holding offenders directly accountable for the harm they cause victims and the community, and replacing formal criminal justice processes with "community-driven" consequences (USDOJ).

Victim offender mediation is when an interested victim decides to meet with their offender in a safe and structured setting with a trained mediator aiding discussion of the crime. The victim tells the offender the impact of the crime and can ask the offender questions in addition to helping create a restitution plan (USDOJ).

Some goals of victim offender mediation are: giving victims the choice to meet their offenders on a voluntary basis, encouraging the offender to learn about the impact of

the crime they committed, allowing the offender to take responsibility for harm caused by the crime, and providing the victim and offender with the opportunity to develop a plan that addresses the harm (USDOJ). Additional goals of mediation include: separating the people from the problem, focusing on interests not positions, creating options for mutual gain, and insisting on the use of objective standards (Strang, 2001).

Restitution is an amount of money paid by an offender to a victim to compensate for financial loses caused by the crime. It holds offenders responsible for their wrongdoing. It also aids to repair the victim's injury. There are two types of restitution direct and symbolic. Direct restitution is when the offender pays for stolen or damaged items. Symbolic restitution pays for items not directly lost. Restitution can be ordered by a judge or can be determined in the course of mediation, conferencing or healing circles (Centre for Justice).

Goals of restitution are repayment to the victim, rehabilitation for the offender, and reconcillliation between the victim and offender (Strang, 2001). According to Chris Cunneen the main goal of restitution is to "re-establish to the extent possible, the situation that existed prior to the perpetration of gross violations of human rights" (Strang, 2001, p. 93). Another goal is to repair harm caused to victims (USDOJ).

Community Service is any work done by an offender for the benefit of the community. It is a method of addressing the harm crime causes directly to communities. It serves as a public apology from the offender and works to reintegrate the offender back into the community (Centre for Justice). Goals of community service include helping offenders build "pro-social identities," altering the publics' negative view of offenders,

increasing informal community support for offenders, and strengthening the bonds between the offender and the community (USDOJ).

There are two types of group conferencing- family and community. In group conferencing the victim, offender, family, friends and key supporters of both decide how to address the aftermath of the crime. Some goals of conferencing are: giving the victim

an opportunity to be directly involved in responding to crime, helping the offender recognize of the impact of their behavior, offering an opportunity to take responsibility for it, engaging the offender's support system for making a public apology, shaping the offender's future behavior, and allowing the offender and the victim to connect to key community support (Centre for Justice).

In "Evaluating the Practice of Restorative Justice: The Case of Family Group Conferencing," Lode Walgrave lists four main goals of conferencing. They are emotional resolution, empowerment, restoration, and reintegration. Emotional happens when the emotional issues caused by the offense are addressed. It gives all affected by the offense a role in resolving which helps to empower them. Restoration helps repair the harm caused by the offense. Reintegration is based on reintegrative shaming theory co-founded by John Braithewaite and Stephen Mugford. It suggests that the way disapproval is expressed is one of the main contributing factors in whether criminal justice intervention is effective. Reintegrative shaming helps reintegrate the offender into society by separating the offender from the offense (Walgrave, 2003).

Healing circles also referred to as peacemaking or sentencing circles are used to develop unity among community members, victims, victim supporters, offenders,

offender supporters, and members of the justice system such as judges, prosecutors, defense counsel, police, and court workers. Together all interested decide an appropriate sentencing plan that all involved parties deem fair. Some goals of healing circles include: promoting healing of all affected parties, giving the offender the opportunity to apologize, giving victims, offenders, family members and the community a voice and

equal responsibility in resolution, addressing underlying causes of criminal behavior, and building a sense of community around shared community values (USDOJ).

Goals of healing circles include acting as a support system for the victims, encouraging offenders to apologize and change their behavior, and to determine the underlying problems that caused the offender to commit the offense and develop ways to address them. Additional goals are open participation to all interested parties and encouraging them to help make decisions deemed fair by all (Centre for Justice). Equal voice = equal responsibility is a motto used based on the principle "Every life story has relevance to finding a resolution that facilitates healing for all those affected by the crime" (Braswell, 2001, p. 239).

Victim impact statements are detailed descriptions given by victims that state the affects the crime caused them and their loved ones. They are used to help show short and long-term psychological, physical, and financial effects of the crime. They can be given orally, in writing, or by audio or videotape (USDOJ). One goal of victim impact statements is to record important facts about the crime that may not be included in the plea agreements, dispositions, sentencing, or offenders' correctional case files. This information helps hold offenders accountable for the crimes they committed. It also

helps provide an outlet for victims to present information and increase their participation in the justice system. (USDOJ)

Utility of Restorative Justice

One of the main purposes of restorative justice is reintegration. In "Tackling Recidivism" Lukas Munitingh states that offender reintegration holds offenders

accountable for their actions in a constructive and restorative manner. In addition, he argues that successful offender reintegration should be the overall purpose of the criminal justice system in terms of reducing crime. He believes restorative justice has a proactive approach that is far more successful than our current reactive approach which is disempowering. In order for an offender to be reintegrated to society Muntingh believes punishment should "be perceived as just, show clearly a connection between crime and punishment, be inflicted with respect, restore the breach in the community, and be an invitation for the offender to re-enter the community" (2002, para 24). Restorative justice practices meets the criteria needed for successful reintegration.

Another purpose of restorative justice is to reduce public fear. One of the current goals of our criminal justice system is to reduce crime levels and decrease the fear and anxiety generated by crime. Martin Wright, author of "Making Good- Prison, Punishments and Beyond," argues that the current criminal justice system is hypothetical in that it attempts to change the offender without expecting any change from society, it is almost guaranteed that the offender will not survive once released back into society (1982). Restorative justice reduces public fear by directly involving them. Restorative justice gives the community rights and expects them to fulfill responsibilities. As a result

crime reduction strategies are developed directly from the restorative justice process and leads to implementation of social policy (Wright,1982).

Yet another purpose of restorative justice is prevention. Often times the public can be short-sighted in terms of the deterrent effect of incarceration. The Canadian Parliamentary Committee points out that the community is only safe for the time that the

offender is incarcerated (Wright,1982). Most offenders will be released back into society. In "Tackling Recidivism" author Lukas Muntingh states over 95 of prisoners are released back into society (2002). Furthermore, the current prison system causes many offenders to become angry, frustrated, vindictive, unadjusted, and unprepared to cope upon release. Many are affected with tension, fear, and paranoia. However, directly through restorative justice the community can become educated about social pressures toward crime, strategies for reducing them, and preventative actions (1982).

Effectiveness and Impact of Restorative Justice

Lt. David Hines of the Woodbury Public Safety Department argues that community restorative justice is most effective at the grass-roots community level and advocates more police involvement for success. In 1994, Woodbury a suburb with a population over 50,000 located in St. Paul, Minnesota implemented the Woodbury Community Justice Program based on restorative justice practices to deal with mostly juvenile crime and delinquency. Common practices include group conferencing, victim-mediation, and healing circles. Assigned conference cases have a completion rate of over 85% and those in which an agreement is reached are in the mid-90% range. Ninety-seven percent of restitution payments are paid in full (2004).

Recidivism rates fell from 72% prior to the program's implementation to 33% in 2004. Satisfaction rates are high with all participants- over the first nine years of the program victims reported a 90% satisfaction rate. Offenders reported an 86% satisfaction rate and parents reported a 91% satisfaction rate. Furthermore, the program is cost effective with a cost equaling one-fourth the cost of court of less (2004).

In his multi-site assessment Mark Umbreit also finds high levels of victim and offender satisfaction with the mediation process in addition to high successful restitution completion rates and reduced fear among crime victims. His research shows that most victims and offenders benefit from the process of meeting each other, talking about the offense and its impact upon all involved, and developing a restoration plan (1998).

Umbreit's findings also show increased completion of restitution agreements and reduced victim fear and anxiety. Nine out of ten cases that are mediated resulted in agreements perceived as fair by both parties. The rates of successful completion of restitution agreements ranged from 79 to 98 percent. In Umbreit's study prior to meeting the offender, 23 percent of victims were afraid of being revictimized by the same offender. However, after the meeting with the offender only 10 percent were still fearful. In addition, after the meeting the percent of victims upset about the crime decreased by 18 percent (1998). In addition a study by A. W. Roberts shows the impact of mediation on victims includes relief from having a chance to be heard, no longer feeling the offender had control over them, being able to see the offender as a human being, beginning to feel more trust in their relationships with others, feeling less fear, less

preoccupation with the offender, felt more at peace, no longer continued to feel suicidal, and no longer felt angry (Umbreit, 1998).

Umbreit's study showed that 84% to 90% of victims felt satisfied with the outcome. Offender satisfaction ranged from 91% to 100%. One of the largest studies on effects of mediation was conducted in Langley, British Columbia by A. W. Roberts in 1995. The study found that the impact of mediation on offenders included helping them

discover emotions such as empathy, increasing awareness of the impact of their acts, increasing self-awareness, expanding their view of the world past institutional ways of thing, feeling good about taking part in something positive, and achieving peace of mind in knowing one has helped a former victim. (Umbreit, 1998).

In "Conferencing and Law Enforcement: Woodbury Community Justice Program," Reginald Hines argues that offenders who participate in community service work have significantly lower recidivism rates. In addition offenders feel self-worth and learn about responsibility. They also learn job skills. The recidivism rate of the inmates who completed community service was 27.9 percent. The inmates that did not participate in community service had a recidivism rate of 36.2 percent. Findings also concluded that the offenders that participated in community service that did recidivate had an average reimprisonment time almost seven months less than those that had no community service (2004).

Implementation of Restorative Justice

Minnesota's Department of Corrections is one of the leading pioneers in restorative justice in the United States. Deputy Commissioner of the Minnesota

Department of Corrections, Mark Carey, advocates increasing the application of restorative justice in the current criminal justice system. The first step in his plan is to increase awareness of restorative justice and clarify its definition. The next step is to educate the incoming criminal justice system workforce on restorative justice principles. The final step is to increase policy and legislation based on restorative justice ideals (2005).

In "Sentencing and Corrections," Leena Kurki argues that restorative justice should not be implemented statewide due to inconsistent practices and outcomes. She believes restorative justice is best suited to the juvenile justice system and people who commit minor crimes. However, she goes on to state, "even if restorative justice principles cannot completely transform the justice system, they may turn criminal justice policy and values in another, arguably better, direction." She also argues that if the criminal justice system endorses restorative justice principles but does not participate in designing, implementing, and monitoring programs based on them it leads to the trivialization of said programs. I witnessed a similar example of this at a recent presentation I attended on probation. The probation officer said probation officers in his county do not carry guns instead they go by this "new thing" called restorative justice. He went on to say that if a probationer threatened to kill him his restorative justice response would be to throw his hands up helplessly and sheepishly ask, "Now why do you want to shoot me?" I felt the manner in which he did this was negative and condescending to someone like me who believes in restorative justice (1999). If the

criminal justice workforce scoffs at restorative justice and treats it as a fad it will not gain support and may become one.

Discussion and Conclusions

My goal in using the narrative is to paint a picture of what led up to the killing of my brother Robert and its aftermath. In the majority of violent crimes the victim knew the killer so it is not impossible to believe similarities might exist between my experience and others who also lost a loved one; similarities such as dysfunction, alcoholism, and

abuse. I tried to include only details I feel are important to illustrate the "who, what, why, and how" this happened. I tried to reduce bias as much as possible and not pass blame however found it difficult to separate myself from the situation and encourage the reader to use objectiveness when reading the narrative portion of this paper.

The narrative also illustrates my experience with the justice system; one that was not satisfactory. On the contrary, victim and offender satisfaction rates with restorative justice initiatives were found to be quite high, leading me to believe restorative justice initiatives would have benefited my family. The five restorative justice initiatives I feel would have been beneficial in my family situation are victim offender mediation, restitution, community service, family group conferencing, and healing circles. Victim offender mediation would help my father by him learning the impact killing Robert had on everyone affected. In addition, everyone affected would then help create a restitution plan. Restitution would be paid to my brother's daughter to help compensate for financial loses caused by Robert's death. Restitution could also help hold my father responsible for his actions and help reconcile my family. My father could be assigned to

do community service such as gun safety education. This could work as a public apology and help integrate him into society. Lastly, family group conferencing and healing circles could influence my father's future behavior. His alcoholism was never addressed by the justice system and after being released he returned to heavy drinking. Family group conferencing and healing circles would address his alcoholism and he could agree to treatment with the support of others.

In conclusion, restorative justice is a growing movement that advocates holding offenders directly accountable to victims and the community. Values of restorative justice include: restoration of human dignity, property loss, injury to the person or health, damaged human relationships, communities, environment, freedom, compassion or caring, peace, empowerment or self-determination, a sense of duty as a citizen, emotional restoration, mercy and forgiveness (Braithwaite, 2005). The three main processes of restorative justice are reconciliation, reparation, and transformation. Themes of restorative justice include community restorative boards, victim offender mediation, restitution, community service, group conferencing, healing circles, and victim impact statements.

The purpose of restorative justice includes reintegration, reducing public fear, lowering recidivism rates, and crime prevention. Studies show that restorative justice when implemented correctly is quite effective in reducing fear and anxiety among

victims, lowering recidivism rates, yielding high restitution completion rates, costs less than traditional court costs, and perhaps most importantly increase victim and offender satisfaction with the restorative justice process and the justice system in general.

The growing consensus I found is that restorative justice is successful when used with juveniles, people who commit minor crimes, and at the grassroots level. I hope my paper suggests further research on restorative justice in violent crime is needed to determine whether the impact on victim and offender satisfaction with the criminal justice system increases. I believe an increase in satisfaction would lead to people believing in the justice system; one that the public has steadily lost faith in over time.

When one believes in something they are much more likely to abide by rules pertaining to it. I believe the restorative justice movement holds much promise and that if society gives restorative justice a chance society will be greatly rewarded.

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