

Restorative and Healing Justice in Aotearoa - a way forward for schools

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Oamaru

E te Rangatira tena koe

Tena hoki koe
i roto i nga ahuatanga
O te wa.
O tatou mate
Noho mai i roto i te ao wairua.
Tatou o te ao ora,
Kia ora huihui mai tatou

Kaore i hangaia te kupenga
Hei hopu ika anake, engari i hangaia
Kia ouoi i roto i te nekeneke o te tai.

The net is not fashioned just to catch fish
But also to be flexible
So that it may flow with the tide

(Ngati Rangiteaorere o Te Arawa)

I wish to honour and acknowledge my dear friends Mihi Mariu (deceased), Denise Komene, Ricky Houghton and Judge Mick Brown who continue to teach and inspire me.

I also wish to acknowledge Rosie Abbott, co-coordinator at Te Whanau Awhina who is a joy to work with and whose work I value hugely.

Introduction

I thank you for the opportunity of letting me share my experiences within the justice and restorative settings, with you today.

I am convinced that the learnings from the justice sector about effective restorative interventions, can be applied to schools.

This paper is an attempt to encourage schools to examine their culture of conflict; and to seek out inspired leaders from school communities to develop principled models of restorative intervention.

What is Restorative Justice?

Restorative Justice has at its heart, the object of healing relationships. Despite best attempts during a restorative intervention, there may in fact, be no resolution, there may be no forgiveness, but all that may happen is that the victim may be able to see

the offender in a new light. The wrongdoing and the offender may be demystified. The restorative process always holds the offender accountable and usually recognizes the value and place of the victim.

The process is only “restorative” if it gives expression to key restorative values such as respect, honesty, humility, mutual care, accountability, trust, providing an environment where the parties will be listened to, and compassion.

These values are essential for healthy relationships and guide restorative processes.

Who attends a restorative process?

Those that attend a restorative process include the victim and their support people and the offender and his supporters.

Supporters play an indispensable role because they inform the process by giving the victim an understanding of the offender’s community.

Victim supporters can articulate the harm done when the victim finds that words fail.

When an offender takes responsibility in a restorative environment, in the presence of his supporters, this will be healing for the victim.

If a victim decides to forgive the offender, this

may also be healing for those present, as well as the victim.

Done with skill and authenticity, restorative justice can be hugely healing.

The danger of many restorative programmes is that they do not give due recognition to the relationship that has been hurt. There is a sameness about agreements and often there is no considered follow-through to give victims a sense of safety, integrity and trust in the process.

Importance of Restorative Values

The most important learning so far, is that if restorative values are in place, the process can take many forms.

Restorative values, if present, underpin good restorative justice programmes. I am hopeful that schools may be encouraged by some examples of healthy restorative practices, to start their own programmes.

It is essential that school communities wanting to grow a restorative process, develop their own model, one that best suits their community. As long as restorative values are in place, the process chosen has a better chance of success.

This paper seeks to highlight effective restorative practice, with an emphasis on Maori processes.

Examples will be given where a healing response from a Marae justice intervention laid the foundation for the Court to successfully reunite family members. After a carefully crafted twelve month period of oversight and intervention by whanau and the marae committee, an offender was re-united with the daughter he had assaulted, and his family.

Restorative Justice for Maori

Restorative processes that take place in a marae setting seem to create a more healing environment because they have as their object the mending of relationships.

Restorative Justice on the marae empowers people within their communities to take responsibility for all their own members, including victims, offenders and families.

Restorative Marae Justice allows for meaningful input from the people who have been affected by the crime, and for responsibility therefore to be restored to the social group.

The State criminal justice system provided by courts has the ability to protect when other strategies fail.

When both restorative and State systems are harnessed, this enables meaningful and healing justice for Maori together with an increased respect for the State.¹

The learning from Maori, for me, is that where the source of conflict starts, is where the remedy lies. It is also critical to listen to those harmed and those who care for the offender and make adjustments that work for that specific community.

Application to Schools

I believe we must challenge leaders within Catholic school communities to learn from examples of restorative practice and develop (together with school communities) a school-specific restorative model taking into account the culture of conflict that currently exists within your school setting.

In the workshop we can develop the discussion further with examples from actual school restorative processes and role plays.

If models developed within schools are to have credibility, they must be developed together with students, teachers, the Board of Trustees and the community.

¹ New Zealand Maori Council. "Restorative Justice: A Maori Perspective. Restorative Justice: Contemporary themes and practice. Bowen and Consedine. ,p26

In order for new models to begin, they need inspired leaders who can challenge and also sustain the integrity of the vision.

Schools also need the support of other schools that can provide consistent mentoring in the early stages and beyond.

Funding can be sought for initiating restorative interventions.

The History of Restorative Justice in Aotearoa

Prior to European contact, Maori had a well-developed system of custom and process that ensured the protection of individuals, the stability of social life and the integrity of the group.²

For many Maori, the vision of The Treaty of Waitangi was to adopt the British legal system while maintaining a Maori perspective which honoured and acknowledged Maori management of their own affairs.

What happened, in fact, was an erosion of cultural infrastructure and the giving way to a western

² New Zealand Maori Council: Bowen and Consedine Ibid

system of justice. The result was a gradual silencing of Maori justice through colonization.³

During the 1970's there emerged a growing discontent within Maoridom at the high numbers of children being placed in social welfare institutions.

A complaint was made to the Human Rights Commission in 1978 followed by a Commission of Inquiry. The findings in 1982 confirmed, amongst other things, a lack of recognition of cultural values within the social welfare institution.

A subsequent report made a finding of institutional racism.⁴

John Rangihau subsequently produced the Puaote-Ata-Tu Report which recommended greater whanau involvement both in decision-making and with respect to extended care of children in the wider community.⁵

The Children, Young Persons and Their Families Act 1989 adopted many of the report's recommendations and introduced the concept of family group conferences, Aotearoa's first official step towards a restorative process.

³Ward, A: A Show of Justice: Racial 'Amalgamation' in 19t Century New Zealand, 2nd ed,1995, Auckland University press, Auckland, New Zealand

⁴ Institutional racism in the Department of Social Welfare, Tamaki-makau-rau (Department of Social Welfare, Wellington 1985.)

⁵ Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (1986)

The reality for many Maori, however, is that the family group conference process has failed to meet their needs.

The legislation envisaged iwi authorities which would bring a more culturally responsive framework to conferencing. Iwi authorities have not been funded sufficiently to meet this role. This has disappointed those who saw the potential of this innovation.

The fact that Maori rights are part of the laws of New Zealand (Aotearoa), which the judiciary is sworn to uphold, requires the court to develop alternatives to criminal justice policies that meet customary Maori rights.⁶

In the absence of a clear mandate from government to affect such alternatives, a number of restorative initiatives nevertheless have prospered, using the marae committees as the forum within which to deal with certain offences, between plea and sentence.

Restoration on the Marae

Te Whanau Awhina is a restorative programme based at the Hoani Waititi Marae in West Auckland. The programme was developed in the 1970's by Maori Welfare community volunteers and remains an outstanding model that resites justice in its community.

⁶ Hon. Justice Baragwanath, Treaty of Waitangi Issues - the last decade and next century. April 1997, New Zealand Law Society Seminar 13.

The programme started at a local high school handling disputes where victims could choose whether to attend an informal meeting or refer the dispute to the local police.

Such was the success of the programme that Police soon started referring cases to the programme, as did Judge Mick Brown of the Henderson District Court, who saw the benefit of the process as an alternative to the system over which he presided.

Dr Pita Sharples, Member of Parliament, has been a great encourager of the programme and without his leadership in this and other initiatives, the programme may have floundered.

The marae community panel restorative process

The Te Whanau Awhina process derives from early Maori customary practice.⁷

The process works because it is respectful towards the community it serves and because it acknowledges the place and integrity of the families present.

The panel process honours the need for families to provide their own solutions and is directed towards

⁷ Dr Pita Sharples: Te Whanau Awhina: An Indigenous Programme for Restorative Justice by the Maori of New Zealand. Inaugural Conference of Restorative Practices International. Queensland, Australia October 2007.

reconciling families where the incident has polarized family members.

A meeting is called by the marae community panel members. It invites the offender, his family, the family of the victim and where possible the victim.⁸

The specially selected panel for a particular case, holds a meeting on the marae. The process can briefly be described as follows:

Welcome

The traditional Maori greeting followed by the karakia opens the meeting.

Enquiry

There follows an enquiry into the incident where discussion takes place about the crime and its effect on the victim and the community.

Findings

The panel members retire for a period and make a determination about how best the offender can put right the wrong. This may include an apology, a rehabilitative programme, reparation and support for both the victim and offender.

⁸ Conversation with Rosie Abbott. Te Whanau Awhina Co-coordinator March 2008

Agreements

Agreements are made between the parties with the offender agreeing to put right the wrong.

The written agreement to fulfill certain tasks is concluded at a later stage by the marae panel co-coordinator who then works with the family to make sure the offender completes the tasks.

Conclusion

The meeting concludes with a further prayer and then supper.⁹

Strengths of the marae process

Respect

Respect is demonstrated when participants engage and with and listen to each other to create an authentic process.

The process is inherently respectful.

The process allows the hosts of the marae to give hospitality to the guests. (Manuhiritanga). This gives the process structure and mana. The guests are made to feel welcome.

⁹ Conversation with Rosie Abbott, Te Whanau Awhina March 2008

The implicit understanding is that the “wrong” has brought the parties together. The process makes it clear that all members of the meeting are valued; that the incident is a problem that is to be shared and resolved in a way that meets the best interests of all present.

An authentic process

Authentic process enables the offender to take responsibility. When the offender does so, the victim shifts in focus from feeling aggrieved to feeling listened to and having their experience validated.

Sometimes a victim will feel as if they are responsible in some way. The offender is encouraged to assure the victim that there is no need for them to take responsibility. The victim did not choose to be victimized. In this type of discussion the offender is requiring of himself to take real responsibility for his actions and the harm caused by absolving the victim from any responsibility.

This interplay gives the offender an understanding of the effects of his actions. It also provides an opportunity for the victim to contextualize the offending by learning about the offender’s life, his views and his family circumstances.

When both victim and offender start to learn about one another, fear lessens and trust can start.

All parties can then seek solutions which heal and strengthen relationships, and the community itself.

Forgiveness and healing

A healing restorative space creates the opportunity for forgiveness to occur.

Not to forgive is to be imprisoned by the past, by old grievances that do not permit life to proceed with new business.

Not to forgive is to yield oneself to another's control; to be locked into a sequence of acts and responses of outrage and revenge.¹⁰

Unless there is a breach with the evil past, all we get is this stuttering repetition of evil.¹¹

The business of forgiveness is the business of physical and psychological hygiene - it is essentially a selfish act, like washing. It is taking care of ourselves.¹²

We tend to think of forgiveness as doing something to someone else for their sake. But primarily, forgiveness is doing something for one's own self.

When someone has been hurt it is easy not to own the feelings of anger, pain, hurt and resentment.

¹⁰ Conversation with Mary Rose Wilson, Auckland March 2008

¹¹ Donald Shriver.

¹² Correspondence with Don Reekie March 2008

When rage, hurt and fury are expressed in a restorative environment, the opportunity arises for the suffering to be a thing of the past. The restorative process allows the past to be let go of and for there to be a new focus. The freedom that comes from letting go does not lead to a feeling of being less or being diminished, but rather of being more intact and more comfortable.

Forgiveness leads to giving up freely what we have lost already.

Spirituality/Wairua

The prayer or karakia at the commencement sets the scene for the possibility of forgiveness and reconciliation between the families.

The karakia is an opportunity for members to put aside their daily concerns and bring a sense of consensus to the task. It calls upon a greater power to assist and, because of this, the sharing of that call helps lessen the tension between the parties.

The process of the group coming together provides an opportunity for the meeting to be "spirit - lead". A description of the Spirit as one who "causes connections" among people is in evidence in many restorative meetings.¹³

¹³ Mary Grey." Where does the Wild Goose Fly to? Seeking a New Theology of Spirit for Feminist Theology.", New Blackfriars, Feb 1991:89-96

The Maori protocol of the hongi at the commencement of occasions such as a marae justice meeting could be called the breath that transforms the vulnerable into new people.

One strong biblical description for the Spirit, is God's breath which creates, keeps things in existence and restores people to life. (Psalm 104 proclaims "You take back your breath and they die."¹⁴)

Creating a healing environment

The aim of a restorative process should be to give information, to promote accountability and to allow healing to occur.

In a healing environment, there is more likely to be a real taking of responsibility.

When someone feels listened to and there is a feeling of no resistance from the listeners, just openness and receptivity, healing is more likely.

Where a listener gives an open mind and attention to the speaker, this is a gift. Sometimes it is important for there to be silence so that the words and their meaning have time to settle.

Follow-through

One of the many strengths of the marae process is follow up. In some cases, the offender remains

¹⁴ Helen Bergin OP. Hope and Identity form the Resurrection. Proceedings of the Theological Symposium of Hope, July 1998. page 25

accountable to the panel for up to twelve months. The offender may attend a series of meetings so that his progress can be determined and this information in turn can be fed back to all participants., renewing the benefits of the process.

A case study

The marae process has worked well with many types of offending including offending between family members.

The following is a case study involving an assault against a child: (the names have been changed)

Danielle's story (aged 8)

At about 6'oclock last night I was home with Dad, my brother and uncle. Dad told me to go clean my room. I went to my room and started cleaning up a little bit.

My brother helped me for awhile and then sat down on my bed. Dad told me to finish cleaning my room because it was really messy. I told Dad I didn't want to clean my room. I wanted to do my homework. Dad then came into my room and started hitting me in the face. He did this more than once. He also hit me on the lips.

I started crying and then went to talk to my uncle.

I then carried on cleaning my room. Dad called me out of my room to have a look at my mouth. He told me to go to the bathroom, to get a cold flannel and put it on my mouth. He then gave me a lolly and told me to have a shower.

I finished my shower and heard Granddad's car outside. I came out to see him. Granddad took me and my brother to my aunty's house.

What happened next

When questioned by the police, the father said he did not wish to make a statement, as his lawyer had told him not to. When asked if he had anything further to say, he said, "I am sorry."

Charlie (the father) had been taking methamphetamine for some years, prior to the offence.

After appearing in Court, Charlie was referred to marae justice.

The panel met with the grandparents of Danielle and with Danielle's mother. Over a period of time there were a series of meetings involving the offender (Charlie) and the family. These restorative meetings enabled Charlie to apologize to all family members and included a written apology to Danielle.

The process allowed those who cared for both Charlie and Danielle (although not present) to have a say

about what should be put in place to make things right.

The following were agreements made by Charlie:

- A letter to the Judge explaining what he did
- A letter of apology to Danielle presented to the marae
- A letter of apology Danielle's grandparents
- Completion of anger management course
- Completion of drug rehabilitation
- Attendance at ancient Maori weaponry course
- Attendance at family counseling
- Maintain weekly contact with marae justice co-ordinator
- Donate a native tree to Danielle's school. This represents new beginnings for his family.

The Court was given copies of the plan that Charlie agreed to undertake and remanded him on bail to complete the tasks.

Danielle remained in the care of her grandparents.

At the end of the plan, Charlie had completed all tasks, Danielle was returned to her mother and Charlie who was welcomed back into the family.

The Judge convicted Charlie and deferred his sentence for a period of one year. If he kept out of trouble for the duration, he would simply receive a conviction.

Within this sentence was an acknowledgment from the Court that the marae process had held the offender to account, that justice for the victim had been effected and that Charlie continued to have oversight by virtue of the sentence.

I liken schools to the marae environment and am confident that schools can develop similar models to that described here.

As long as the school develops a model in conjunction with the school community and listens to those who experience it, the process will work.

At tomorrow's workshop – we examine a case study from a school and talk about what a model of restorative justice might look like within the school setting.

A Restorative process has at its heart compassion:

If you love the justice of Jesus Christ
More than you fear human judgment
Then you will seek to do compassion.

Compassion means
that if I see my friend and my enemy
in equal need,
I shall help both equally.

Justice demands
that we seek

and find the stranger,
the broken, the prisoner
and comfort them
and offer them our help.

Here lies the holy compassion of God

Mechtild of Magdeburg
("Birthed From the Womb of God"
Reverend Dorothy Harvey.)