

Applying a communitarian model of restorative justice and therapeutic jurisprudence: a social research project in Roebourne WA

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Abstract

This paper provides an outline of the processes and underpinning theoretical constructs involved in a social research project conducted in Roebourne, WA.

The author provides a brief history of how the research came about, and how various theories were applied among a grass roots, Aboriginal community level where there were continuous calls for broad socio-judicial and economic changes. The project draws attention to the localized social injustices, which prevail, adding to the difficulties of people who are regularly exposed to the police and court.

The paper also examines the use of therapeutic and restorative justice processes working together to provide a challenging and engaging combination of judicial practices. Collectively, it is argued, that this combination enables the offender's lifestyle to be examined and supported by the court and significant others, while working towards a community group conference with the victim and their supportive others. Reparation and restitution are sought from the court and community throughout the participatory process, together with a degree of compassion and forgiveness. The impact of a more communitarian model is measured against previous experiences.

Community input and support is a crucial element in this grass roots project where local people are engaged in taking leadership in challenging offending behaviour and facilitating a community group conference. The project aims to provide a sustainable response to the aftermath of crime, which is inclusive of and respectful towards the broader community.

Key words: Restorative justice, community sentencing, Indigenous communities, Western Australia.

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Introduction

This research began as a call from people within the local community referred to in this paper. They wanted research to be conducted into innovative practices that may assist them to reduce the number of local people going before the courts and then into prison. They wanted to develop their own capacity to deal with the aftermath of crime, and become more confident at reducing victimisation.

Like many indigenous communities, they were witnessing an increase in the number of arrests and court appearances that were leading to young people entering into the criminal justice system as a part of their life's journey. They had heard of restorative justice and look towards a process that could evolve out of their own cultural systems of respect and heritage, something that they could trust as being fair to all parties and that they could develop and facilitate among themselves. They recognised that this would be a tough call on the community unless they were assisted to build up their problem solving skills, gain an awareness of human rights and social justice issues, and create an ability to challenge anti social behaviours.

For capacity building to be successful, it was understood that communities need to have pertinent information readily available to them, fair and just processes in which to participate and develop, and clearly defined goals that benefit the common good. To this end, Calma (2006a) had stated in his Social Justice and Native Title Report; 'Governments...have a role to assist Indigenous peoples build community capacity in a way which respects Indigenous decision-making processes, authority structures and collective identity'. Tragically, this is often not the case in many Aboriginal communities in Western Australia. The recent focus has been on regulation and control rather than building a capacity through the community's self determination, good governance and economic advancement, thus ensuring that many communities continue to remain vulnerable to the impact of the criminal justice system with a massive over-representation of Indigenous people in the prisoner population.

The context in which the research took place was one not only of a 'punitive' society (Tyler 2006, 307), but one in which Indigenous people are often considered as culprits and suspects, emphasizing a characteristic of dangerousness. The current focus of public attention has, according to Tyler (2006, 307) been on the 'need to punish rule-breakers' whilst 'support has been high for harsh punishments for a wide variety of crimes'. Sadly, the current situation lacks credible and successful processes and outcomes, as the justice system fails victims and offenders alike, whilst failing to address many concerns aired by Indigenous leaders. Other voices calling for change to the relationship between Indigenous people and the criminal justice system include the Royal Commission into Aboriginal Deaths in Custody and the Bringing Them Home (BTH) report. Social Justice was at the heart of the BTH (1997) report written over ten years ago. The over-representation of both Indigenous young people and adults within WA's

criminal justice system continues to alarm communities and governments alike.

It's a tough call on Indigenous communities to build capacity, especially in order to provide safety and security for all of its residents. When addressing violence in Indigenous communities, a National Aboriginal Community Controlled Health Organisation (NACCHO 2006, 2) position paper, advocates 'a holistic response with a health focus on healing and empowerment....this includes addressing land rights, poverty, housing, health, education and employment'. NACCHO also claims that violence in Aboriginal communities has to be viewed and understood within the context of intergenerational loss, trauma and displacement where;

Dispossession of land and culture; breakdown of community kinship systems and Aboriginal law; racism and vilifications, economic exclusion and entrenched poverty; the breakdown of gender roles; the intergenerational effects of institutionalisation, racism, oppression and child removal policies, have resulted in ongoing trauma, loss and unresolved grief, alcohol and drug abuse and a range of other health and well being problems and issues, including violence (2006, 4)

Such loss, trauma and grief has been identified by Swan and Raphael (1995) as resulting in 'overwhelming problems, both related to a history of loss and traumatising and current frequent losses with excess mortality in family and kinship networks' where trauma and grief remain as 'amongst the most serious, distressing and disabling issues'. The NACCHO paper views the ripple effects of violence within families and communities as being able to 'greatly diminish perceived capacity to adequately deal with day to day life let alone stop violence from occurring' (2006, 4) and that family violence has a 'profound and adverse effects on the mental health and well being of children both through environments of violence that becomes a norm for behaviour and the personal effects of abuse and trauma' (2006, 4).

Any attempt to build capacity has to therefore take account of the depth of trauma associated with colonisation, for as Atkinson (1995) writes, 'there are....human trauma experiences, implicit in human acts of violence, which result in trauma behaviours. Violent outbursts, on others and on self, are one manifestation of traumatising. Alcohol and drug misuse appeared to fit the same self-medicating needs of those who are traumatised (1995, 3)

Such is the impact of intergenerational trauma that it is crucial therefore that communities are adequately supported to interrupt its perpetuating cycle of personal and collective damage. Failure to do so may well see community demolition, where a pathway to prison becomes a one-way street, taking away many potential community leaders and leaving communities once again in the hands of those who do not live there.

However, we would like to focus, if we may, on recent research conducted among local Indigenous people (I refer to them as 'the group') that examined alternative justice processes that could be developed from a grass-

roots perspective; an example of action research with a capacity building focus aimed at reducing recidivism and incarceration among Indigenous people. We acknowledge that we did not specifically focus on trauma in our attempt to engage in healing the aftermath of crime, but that we used family support circles to address the many presenting issues found within families clearly identifying themselves as struggling with patterns of violence and poor social-emotional health.

Following earlier research by Bevin, J., et al (2005), on a communitarian model of transformative and restorative justice, discussions took place with communities interested in pursuing a similar range of processes of working among offenders, victims, and their collective communities. The Centre for Social and Community Research engaged in discussions with already known and respected Indigenous leaders working in Roebourne, Western Australia. The team's networks within both the Prison Reform Group of WA (PRGWA) and the Institute for Restorative Justice and Penal Reform (IRJPR) led to contact with Ngarliyandu Bindirri Aboriginal Corporation (NBAC) and Mawarnkarra Health Services (MHS), then later to the Ngarluma-Yindjibarndi Foundation Limited (NYFL) and Roebourne Shire Council.

People working within these organisations suggested that restorative processes could be developed and researched in a regional community such as Roebourne in Western Australia's Pilbara region. They specifically wanted the team to see what was needed to establish and support local Aboriginal people to become more intimately involved in the aftermath of crime and anti-social behaviour. Networks were built up around key people including those engaged with the Aboriginal Legal Service, Community Development and Employment Program, Court Services, Aboriginal Visitor's Scheme, Aboriginal Medical Service and other local Aboriginal Corporations. A small group of people joined a loosely coordinated steering committee that gave oversight to the early stages of the project. A similar group was established among key stakeholders in Perth as a reference group with an ability to collect and disseminate information pertinent to the project.

Researchers aimed to examine how communities could develop and introduce a communitarian restorative approach to the aftermath of crime; one that attempts to be locally driven and sustained by grass-roots leadership whilst supported by the police and justice sector. They looked to see how a process which is inclusive, reparative and supportive of victims, and provide the means for offenders to take responsibility for their actions, could be initiated and sustained. Several theoretical constructs were discussed by both Perth and Roebourne groups, including restorative, transformative and procedural justice as well as therapeutic and problem solving court processes. Attention was given to local ideas and difficulties, and to providing possible scenarios for policy makers to consider when applying the process elsewhere.

From the outset, researchers were keen to explore how restorative methodologies and practices that are attuned to Indigenous culture, could be introduced in ways which re-energise problem solving and self determination among local people, especially in matters of social and criminal justice. Furthermore, local people made researchers aware that their community has had to tolerate at best, programs designed, developed and implemented by non-indigenous people. In his discussion on such matters, Cunneen (1999a) claims that;

The right of Indigenous people to cultural survival, to self determination, to develop solutions to the problems they face has been replaced with an essentially assimilationist view of Indigenous affairs. (1999a, 13)

Aims of study

The project aimed to examine how the introduction and development of a communitarian approach to restorative justice practices in the Roebourne area could be achieved. The research aimed to discover if locally driven and sustainable grass-roots leadership could be maintained. The project also had to address two of the key funding priorities of the Office of Crime Prevention: the creation of civil, robust and resilient communities and crime reduction and prevention systems.

Research findings were expected to have an immediate bearing on the development of future projects of a similar nature as information on the ways in which local communities harness strengths and resources would be recorded and provided to policy makers represented among the research reference group in Perth. Outcomes were also to indicate what was required by non-Aboriginal government and non-government structures to bring about reform within their organisations to show a genuine commitment to a reduction in high arrest and incarceration rates for Indigenous people, especially among juveniles and first time adult offenders.

The research phases

Researchers considered that the following phases were important milestones to be met;

- To undertake a review of relevant literature, research, reports and associated material related to a communitarian model of restorative justice and court centred therapeutic jurisprudence.
- Meet with key stakeholders and with various communities of interest, local leadership and Aboriginal communities.
- Formally connect with legal parties
- Begin training phase among key and interested parties in the process and its application both inside and outside of the court jurisdiction.
- Begin to implement process in the court, beginning with simple cases and progressing to more complex ones.

- Develop policy directions and recommendations for future action.

Methodology

Developing a community based model

During this period leading up to the funding proposal, Kathryn Trees (2005) found that people in Roebourne were ‘particularly concerned about reinstating systems of respect and community control over the behaviour of people in the community’. Further, she maintained that ‘people in the community particularly want to have a system that allows them to deal with problems before they are serious enough for the police and courts to be involved. They want to reinstate systems of respect’. Her comments are supported by NACCHO (2006, 6) that suggests ‘wherever possible, intervention should aim to divert perpetrators from unnecessary contact with the justice system’.

The central question posed to researchers was ‘how does a regional/cultural specific model of justice take account of stakeholders needs, remain sustainable and have more integrity than existing models of justice to Aboriginal people’. For researchers this meant not only looking at a model acknowledged by local people as their own but how to get to this stage and what is required to sustain it. Researchers also wanted to set out, in a simple way, a process that could be replicated elsewhere.

Enlisting local indigenous assistance

From the beginning several individuals wanted to be, and were encouraged to be, involved as much as possible in the research. Expanding the local network became easier for researchers when a number of women from the Strong Women’s Group began to participate more often. Several men, whilst not always attending in a group, asked to be kept informed of progress and to be included in all developments. Meetings took place in surroundings of cultural significance, or parks, side streets or in small communities. A slow but important and useful method for engaging people was to sit around, generally in a circle, developing trust and open communication, learning from each other and treating each other as valued participants in the research. Only six of our many formal and informal meetings were conducted in the local Aboriginal medical service meeting area.

Giving something back

Little could be offered in return for the remarkable dedication and motivation of the local group, except to be honest with them, explain truthfully about what direction was required by the court, and have them understand that at the end of the day they may not have anything of a restorative process apart from what they are able to provide amongst themselves. Researchers could only offer to assist with training, mentoring

and supporting others to learn how best to practice restorative interventions. At the time of writing, several family conferences have taken place outside of criminal justice procedures, and a small community has a preference to continue to use this style of resolving local conflicts.

The researchers were encouraged by the Perth reference group to assist communities to have, at the end of the day, a genuine response to resolve day to day issues, for it is these issues, which left unattended result in court actions and imprisonment. This is referred to by the Chief Magistrate Heath¹ as the legacy which the project should leave with the community.

Learning local protocols

Researchers found that whilst working among the local people specific protocols required their full attention, and within the Roebourne area these were based mainly on socio-cultural aspects and included issues to do with gender, age and status within cultural law. For this and future projects it is crucial to have local leadership provide the most subtle information so as not to cause hurt or embarrassment to participants who already face a criminal justice system as socially excluded people.

Researchers were encouraged to approach families by introduction from another person closely related or respected by them. From this point on a snowball effect was noted and these small groups and extended families were asked to assist in discussing justice issues and to provide mutual support to each other and the researchers. From the beginning it was pointed out to researchers that at least one male and one female facilitator would be required to be present at all meetings and, in some cases, meet with men and women separately especially when charges had been laid. Elders and respected others provided project leaders with assistance in this area. Avoidance taboos where specific individuals are not able to be in the presence of others were explained and, during the early stages of the project, these had to be learned quickly.

Building up the project

Creating a continuous learning environment

As the researchers' network grew, more people wanted to see opportunities flourish so that alternatives, including restorative justice, could be provided as a preventative as well as rehabilitative tool. During training sessions and forums they noted the benefits to victims as well as offenders and the community. Mr Poland, a senior worker at NBAC², commented that;

Local people want to see a fair and inclusive process where their concerns are heard and their situation improved. We asked for a

¹ Mr Steven Heath, Chief Magistrate speaking at the Perth Reference Group, October 2005.

² Conversation with NBAC reps, Feb 2005.

restorative justice trial so as to be more involved in our own destiny and to hopefully reduce the constant flow of prisoners into Roebourne Regional Prison’.

It was also noted among community members that, whilst the Department of Community Corrections³ provided limited educational and rehabilitative courses within the community and prison, its apparent difficulty to effectively challenge offending behaviour was reflected in a high rate of recidivism.

During the early stages of the study, the group hoped to see a police service, local elders and families working together to challenge and address offending behaviour at a family and community level whilst working with the justice system to supplement the range of healing options. However, the Office of Crime Prevention directed that the research be focussed on a project clearly situated within the court system as part of a sentencing regime. Thus, the project re-focused from the locally preferred direction of numerous interventions and preventions prior to and following arrest as well as preventing bullying at school and in the workplace, reducing violence and curtailing other anti social behaviours.

Meanwhile, the research project’s move towards a court focus raised a serious issue among key people on the steering committee. They felt that they and other local people should not get involved in any form of punitive sentencing regime, including Koori Courts⁴. Whilst they wanted to experience fair and just processes the group also said that they had always been the ones to experience harsh penalties and punishment. Many of the key people did however agree to participate in searching for alternative solutions and healing, as expressed by local resident, Ms Violet Samson during a training forum;

we want our men to take responsibility, we don’t want them locked up no more but do the right thing. They need help see to do that, and we all need help ’cause our grannies are always in trouble’.

Few local people appeared to be willing to judge another person or bring further harm in the shape of punishment to them, whereas a ‘healing circle’ appeared readily acceptable. The sense of change, from a punitive towards a healing model appealed to the group and allowed for a greater degree of discussion and eventual consensus among group members.

³ Previously known as the Department of Justice, and more recently, in 2006, following the Mahoney Inquiry (2005-6), the Department of Corrections. For the purposes of this paper, the term *Department* is used throughout.

⁴ Koori Court practices can be found at Trends & Issues in Crime and Criminal Justice. No 277: Indigenous Courts and Justice Practices in Australia. Marchetti and Daly, on the Australian Institute of Criminology website

Common goals

Speaking of past injustices, current practices and future opportunities encouraged broad debate on common goals that were presented by local leadership and those who frequently experience the criminal justice system. Many of the local people most affected by the system support Cunneen's (1999a, 7) comment that 'Indigenous people have a strong history of examples which shows that the standards which will be imposed and policed will be in the interest of the non-Indigenous society' and that 'Indigenous communities have the right to negotiate over criminal justice policy'.

During the regular meetings and informal gatherings, most people focused on processes and policies that would see greater participation by them in developing alternative methods aimed at reducing violence throughout the neighbourhood and communities.

Providing theoretical considerations

Following on from the suggestions and common goals presented by local residents, the research focused with a wide lens on treatment and rehabilitation ideas for both victims and offenders. Leaders wanted to see the methodology applied in many different areas, including the difficult areas of family fighting and child abuse cases, as these often remain unreported and therefore never settled.

Various theories were presented during training and educational sessions in easy to understand concepts and through the use of role-play. Written material and journal articles were also made available. Researchers noted the challenge to responsibility-taking for offenders in what Sykes and Matza (1957) refer to as the offender's 'neutralisations'. In their work among delinquents, Sykes and Matza (ibid) recognised a variety of strategies whereby young offenders deny their responsibility for a criminal activity; denial of responsibility, denial of injury, denial of victim, condemnation of the condemners, and appeal to higher loyalties. This study also supported Farrall (1995, 51) findings that '...desistance occurs away from the criminal justice system'.

Further to this, and in line with searching for examples which identify positive lifestyle opportunities for offenders, researchers noted Maruna and Immarigeon (2004) comment that 'the major correlates of desistance from crime identified in research...involve ongoing, interactive relationships that can take up most of an individuals waking life'. Social and interpersonal relationships were central to the study, both for victims and offenders especially as local crime was being viewed as a fracture of a variety of relationships within the community. Given this, successful rehabilitative options were explored among the steering committee so as to involve a broad multi-faceted approach to transforming the lifestyle of offenders, whilst providing a process suitable for victims to participate in. This had to

address sustainability and local involvement. The researchers began to look for alternative ways to deal with crime and its social and economic consequences from a position which identifies the offender as a social and interdependent being, one that responds positively to being engaged in the process. The researchers quest to build a robust sustainable and effective model led them towards what Tyler (2006, 307) describes as ‘viable models of regulation that do not generate the negative consequences associated with punitive, sanctioning approaches to rule breaking’. This met the local steering committee’s desire to see solutions that are themselves capable of developing personal and community strengths as well as offering support and assistance rather than punishment.

The committee also wanted to see a model cognisant of social structures that influenced the investment in social capital, especially factors such as education, gender, health, unemployment, poverty, substance abuse and family violence. Restorative justice (RJ) seemed to be one possible part of the solution whereby the interests of victims and the opportunity for offenders to take some responsibility for their actions could be refocused. And, as Morris notes:

Restorative justice also emphasizes human rights and the need to recognize the impact of social or substantive injustice and in small ways address these rather than simply provide offenders with legal and formal justice and victims with no justice at all....And, finally, restorative justice encourages cultural relativity and sensitivity rather than cultural dominance (2002, 598)

The use of a combination of therapeutic, restorative and procedural justice aimed at the family and community level would be the start of an inclusive model which deals with rule-breaking and compliance to authority as outlined by Tyler. Thus, the first priority would be to engage community members with a process which they could understand and be part of. Later, introduce this into formal processes that are responsive to therapy as a tool in sentencing for, as Calma, says;

The engagement of Indigenous communities in sentencing processes is a very encouraging development, as is the broader acceptance of restorative justice processes and the increased focus on diversionary schemes (2006b, 1)

A participatory methodology would be developed to compliment the re-integrative shaming adequately exemplified in restorative justice by Braithwaite (1989) and Ahmed, Harris, Braithwaite and Braithwaite (2000) and consistent with obligation and responsibility taking within Tyler’s framework of procedural justice (Tyler 2006, 316). The sociological methodology acknowledges the wrong-doer and those most affected by the wrong-doing as the experts of their own experiences. The use of a Mutually Agreed Plan (MAP) as described by Goulding and Steels (2006) would act as the identifier of underlying issues for offenders as well as enabling planning for their future. This methodology strengthens the ability of all

parties to heal and respect, providing the vehicle by which to make apology and offer forgiveness in a manner which is acceptable to local customary ideals. Problem solving and therapeutic conferences most often target a specific behaviour, whereas we are suggesting in this project, that underpinning lifestyle issues among family and community present as high risk situations and therefore need to be included in any problem-solving and restorative regime. We address the offender as a social being with the accompanying influential networks. In reality this shifts the focus to the social-self rather than the individual-self, and begs the call from the community for an adequate response to heal, repair and forgive.

Braithwaite's (1989) theory of re-integrative shaming, combined with Goulding and Steels (2006) mutually agreed plans (MAPs) enables a space which encourages the acceptance of responsibility by offenders whilst being among supportive others. It asks the offending party's networks to engage in a process to challenge and modify the lifestyle issues which underpin anti-social or criminal activity. It is here that the notion of re-integrative shaming begins. This provides an amount of shame necessary to motivate a positive shift in social behaviour. Too much shame stigmatises and is likely to prevent the individual from seeing the light at the end of the tunnel, causing humiliation and contempt for the process. Establishing a participatory process is crucial for the development of the common good within communities.

Only processes which are experienced as positive and therapeutic would be used to encourage and develop personal healing. According to Winick (2003, 63) the use of therapeutic jurisprudence process within the legal framework 'should value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever possible, and when consistent with other values served by law should attempt to bring about healing and wellness.' Self-determination and empowerment was seen as critical to health and well-being and this ought to be encouraged throughout each part of the process. Combined, the therapeutic, restorative and procedural justice concepts encourage a sense of challenge to offenders' 'neutralisations' (Sykes and Matza 1957, 668) and provide all parties with an opportunity to feel satisfied with both the process and outcomes. This last point meets Tyler's (1990, 172) notion that fair process is crucial to the legitimacy of the criminal justice process for, as he indicates, being 'unfairly treated' disrupts 'the relationship of legitimacy to compliance' even more than 'receiving poor outcomes.'

Current criminal justice procedures were not always experienced as being fair whilst court proceedings did not appear to provide opportunity for forgiveness – maintaining the never ending story of 'once a convict always a convict'. The non-Indigenous and adversarial court continues to be a reminder of the colonial past as it opens its doors to business each day without any traditional welcome and without recognition of the traditional owners of the land. The current criminal justice system continues its administration and regulation by mainly non-Indigenous people over Indigenous people.

Ideas for a Safer Roebourne project

Difficulties in developing an Indigenous communitarian model

When acknowledging difficulties, it is a given that any work among Aboriginal and Torres Strait Islander populations, regardless of place, makes it important to take account of previous reports such as the RCADIC Report⁵, Bringing them Home - The Report⁶ and the WALRC Discussion Paper⁷. Collectively these papers do nothing to instil confidence in current practices towards Indigenous Australians and much of what was called for among these and other reports largely remains under-resourced and poorly implemented. Typically among Indigenous communities, many current government practices continue to inflict further damage to the local population as they fail to fit together with local culture.

The Bringing them Home Report, Submission 77529, states that ‘The juvenile justice system is mimicking the separation policies of the past’, whilst submission 12730 notes ‘The fact remains that Aboriginal children are still being removed from their families at an unacceptable rate, whether by the child welfare or the juvenile justice systems, or both. Adding to this, the Bringing them Home - Community Guide⁸ raises the issue that the next generation are at risk, for the Inquiry found that, ‘as parents, many ‘stolen generations’ children have ‘problem children’ of their own. Their children are at risk of being removed on the grounds of neglect or abuse or because they become offenders.’

It is clear that significant personal damage remains and is transmitted from one generation to the next and Blagg highlights this in his discussion on violence,

This notion of intergenerational trauma is useful in describing the cultural transmission of destructive patterns of self abusive and violent behaviours in Indigenous communities (2005, 1)

Intergenerational trauma and damage to the self is also reflected among Western Australia’s Indigenous adult imprisonment rates which are reported at 30th June 2003 at 454 per 100,000 for women and 5191 per 100,000 for men. The state average was around 194 at the same period. Sadly these figures continue to remain high as government policies and agencies fail to address the social structures that contributes to this. Calma (2006a) highlights this situation succinctly as he speaks of the 15th anniversary of the findings of the Royal Commission into Aboriginal Deaths in Custody, stating that;

⁵Royal Commission into Aboriginal Deaths In Custody

⁶<http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen/stolen52.html>

⁷ West Australia Law Reform Commission

⁸ http://www.hreoc.gov.au/social_justice/stolen_children/media/comm_urges_govt.html

in the 15 years since the findings of the Commissioners were handed down the rates of Indigenous incarceration have increased - and significantly. In addition, new incarceration problems have emerged. For example, Indigenous women are being incarcerated at all time record rates and at a rate that is growing alarmingly.

NACCHO's paper on Child Abuse and Domestic Violence (2006) indicates that there is a general reluctance by Aboriginal people to engage with the justice system for a range of reasons including, 'That forced separation through incarceration intensifies deep wells of pain, anger and grief as a consequence of colonisation and past policies'. Further NACCHO maintains that although violence is a crime;

addressing violence with *only* punitive responses is a band-aid solution in that it does not address the underlying issues of entrenched poverty, unemployment, inadequate/overcrowded housing, unresolved anger, trauma, grief and loss.(2006, 6)

It suggests also, as do the local people, that strategies need to be in place to challenge offending behaviours 'while endeavouring to maintain family and community relationships'. Such comments are supported by National Crime Prevention (1999) which claims that 'the emerging patterns of preventative and other forms of work around family violence in Indigenous communities focuses on strengthening community controls and developing culturally appropriate 'healing' processes'(1999, 13)

Many of these notions have been partially discounted by the then Department of Justice which appears to continue to hold a preference for a court-driven focus, one that requires certain criteria to enter, and whereby, and against the wishes of local people, more involvement with the system is established over a longer period of time. In turn this increases opportunities by which people are later engaged within the system.

Deliberate or not, hostility has continued from management in the Department of Corrective Services, not only to this research project but to the previous Perth based study which has been fully recognised and endorsed by the judiciary as well as national and international peers. The kind of tension felt between those directly involved in the study and relevant government departments throughout this project has been well illustrated by King and Piggott (2006) as they describe the lack of support and hostile responses by departmental management in Perth to the Geraldton Alternative Sentencing Regime (GASR) where they 'continued to struggle to gain resources and recognition'.

Even after discussions between the study's chief investigator, Mr Guy Hall, and senior department officers, a level of tension continued to grow within this project. This could reasonably be compared to the 'hostility' experienced by King and Piggott, especially when it became clear that a grass roots driven project had, unlike imposed government services and structures, the support and momentum of local people.

Researchers found that restorative justice appears to be understood at a grass roots level, and among what Morris and Young (2000, 15) describe as 'communities of interest' involved in the process, whilst several bureaucratic stakeholders may need further explanation. Against this however, is the other point raised by local steering committee including the Aboriginal Legal Service (ALS) that within Roebourne it is the Police Service that are mostly on hand to provide support and assistance to individuals and families following anti-social activities and crime. Police and ALS have sound local knowledge of extended family and the victim's supportive networks and are able to access the court process even when a Magistrate⁹ is unable to hear the case.

It became evident that the local police can be significant agents of change, working with all members of the community to resolve the aftermath of crime in participation and cooperation with local people. Whilst any communitarian model founded within Aboriginal communities would be required to mesh with the criminal justice system, its full potential could be reduced if services are designed outside of the community for which it operates for, as Blagg (2005) explains:

Community-based services simply relocate the service to a community setting, rather than reformulate the fundamental premises upon which the service is constructed (2005, 1).

With the demise of ATSIC and ATSI¹⁰, both signatories to the Western Australian Aboriginal Justice Agreement¹¹, any local Aboriginal community voice once heard as a part of this agreement has now been lost to government funded organizations with their accompanying regulatory functions. Local communities now have to rely once again upon many regulatory agencies and government departments to hear concerns which were previously provided by Aboriginal representatives, leaving the question of Aboriginal self determination in dispute. However, prior to the dismantling of ATSIC and ATSI, Blagg (1999) laid out a framework for research and projects to take as he suggested that programs targeted at Indigenous people must also address structures that;

provide the greatest potential to optimise Indigenous involvement in the design, delivery and management of the program. It is now widely accepted that forms of intervention which do not work in an 'Indigenous way' can themselves damage the social fabric of Indigenous communities and compound the very conditions they seek to ameliorate. There is an imperative, therefore, to ensure that the project is run *by* as well as *for* Indigenous people. (1999, 34)

⁹ Roebourne does not have a resident magistrate. JPs are used on a more regular basis in Roebourne

¹⁰ Aboriginal and Torres Strait Islander Commission and Aboriginal and Torres Strait Islander Services

¹¹ Other signatories to this agreement are; Dept. of Justice; Dept. of Community Development; Dept. of Indigenous Affairs; Police Service and Aboriginal Legal Service

It is evident that the project remains a work in progress which notes the various tensions between the autonomy of local people and service providers operating under regulatory and bureaucratic parameters from outside of the local community. As reported in the House of Representatives Standing Committee on Indigenous Affairs (1990), most often these imposed structures fail Indigenous communities whereas initiatives formed around local community aspirations provide improved outcomes.

Researchers suggest that communitarian processes also enable communities to have a genuine response founded upon their strength to resolve the day to day issues. The ability and strength of Aboriginal communities to establish self-regulatory functions and work with notions of social order is referred to by Calma;

A community is most likely to have a healthy sense of order when control comes from agreed norms within. Over time, there is nothing more debilitating on a community than a lack of control, and an ongoing perception of a lack of *ability* among the people of that community to look after themselves (2006b).

It is these issues, which if left unattended, result in court actions and imprisonment. It is thought that local people can develop an ability to resolve issues through alternative and restorative means, and an outcome that Heath¹² referred to as the legacy which the project should leave with the community.

Reports from key Indigenous leaders in the project agree with the findings of the Law Reform Commission (2005, 83) that confirm the over representation of Aboriginal people within the criminal justice system, is 'destructive to Aboriginal culture'. The focus has to be on a level of socially inclusive and poverty breaking arrangements that can no longer wait for services to be in tune with economic rationalism and flow-ons from high profit making.

Clearly adversarial justice is not what local people want. To this end, and crucial to the development of Roebourne as a safer place to live, it is suggested that such a coordinated approach to restorative practices begin as soon as possible. This paper suggests that such practices are grouped under the banner of 'healing circles', as they utilise the yarning/story telling concepts of local people to heal the various aspects of relationship fractures; be it at school, in the workplace, at home, or located in a specific community follow criminal activity or anti-social behaviours including school and workplace bullying. These 'healing circles' are underpinned by principles of human rights and social justice.

Implementing a more restorative and procedural justice approach from diversion to the point of arrest and onward has real merit but it has to be

¹² Steven Heath, Chief Magistrate speaking at the Perth Reference Group, 2005

combined with human rights, due process, and natural justice. The dangers of a piecemeal process are noted by Wachtel (1999) who observes that:

If systems are not innately restorative, then they cannot hope to effect change by simply providing an occasional restorative intervention. Restorative practices must be systemic, not situational... You can't be restorative with students and retributive with faculty. You can't have punitive police and restorative courts (1999, 7)

What has been outlined here, and throughout this paper is the need for a firm and fair local justice system built on restorative justice and therapeutic problem-solving principles, and applied justly. However, it is important to emphasise that these changes cannot be done piecemeal, in haste or without adequate and secure resources. That is unfair to those contemplating local, alternative measures. These notions are not the answer in themselves. For them to be effective, the entire socio-judicial process from diversionary practices in schools and community, through to arrest, court, prison and rehabilitation, needs long term vision and bi-partisan commitment well beyond the four year political cycle of state politics.

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