

4

Emotionality, Rationality, and Restorative Justice

Kimberly J. Cook and Chris Powell

Emotions and Restorative Justice

IN THIS CHAPTER, we begin by analysing observations of diversionary conferences in Australia. While there, Cook observed twelve conferences and interviewed sixteen coordinators/administrators in Tasmania, Queensland, South Australia, the Australian Capital Territory, Victoria, and the Northern Territory. Daly (2001) summarises the variety of conference schemes in Australia, and while those distinctions are interesting, the focus here is on Cook's observations of restorative justice programs, especially emotional dynamics and bureaucratic pressures affecting diversionary conferences. The final part of this paper involves a broader discussion of the relationships between restorative justice and more traditional justice practices in regard to emotionalism, rationality, and social interest.

Restorative justice is a "new paradigm" for thinking about crime and its aftermath (Zehr 1990). Advocates argue that, rather than processing cases through courts, offenders' and victims'¹ needs and interests are better served in a system that encourages their emotional presence, personal "accountability" and collective views on how to repair the acknowledged damage. Rather than emphasising punitive responses to the harms done, a restorative approach intends to concentrate on the apparently damaged relationships. Recognizing that punitive responses often compound the harms, advocates for restorative justice argue that offenders are less likely to re-offend when given the opportunity to make amends for their actions. Advocates claim,

therefore, that if crime is about harm then justice should be about healing (Braithwaite 2002).

Courts present an imposing and intimidating setting for the resolution of the harms caused by crime. The ritual space of adjudication in courtrooms takes place within a ritualized language of “rights and responsibilities” as well as “rules and procedures” where various people play ritualized roles such as “judge” and “prosecutor,” etc. In this sense, the physical location of “justice” is formal, where the emotional injuries arising from crime are often dismissed as irrelevant (Christie 1977) in favour of rationally evaluating the evidence brought to bear on the particular case at hand. Christie (1977) argues that people whose conflicts proceed through courts ultimately lose “ownership” of those conflicts (and outcomes) to lawyers, judges and other decision-makers within the system. What occurs, then, is that the “irrelevant” (perhaps emotional) issues are dismissed as not central to the legal dispute and thus have no place in the rationalized discourse of “justice.” The formalized rituals of justice in courts can be disorienting experiences for many participants who are required to negotiate their problems within an unfamiliar conceptual framework by relying on professionally trained advocates who navigate this foreign land. On the contrary, in theory and to some extent in reality, restorative justice programs generally take place in a less formal setting where there is reduced (some may say relatively little) emphasis on the procedural rules to be observed by participants, and more emphasis on exploring and resolving the emotional and material injuries of crime (Braithwaite 2002; Ahmed, Harris, Braithwaite, and Braithwaite 2001). Depending on the format used and the facilitator’s idiosyncracies, the scripted model (O’Connell, Wachtel and Wachtel 1999) can provide an opportunity for the emotional and material injuries of crime to be at the forefront of concern during a conference.

There are various mechanisms for accomplishing restorative outcomes when crimes are committed. It is beyond the scope of this chapter to summarize all mechanisms, but a few comments are in order. While this approach has been used to varying degrees in Australian jurisdictions and elsewhere, it mainly focuses on conventional crimes committed by young people, as does the research. In particular, when juveniles are criminally processed in Australia (depending on the jurisdiction), it is quite likely that they will be afforded the opportunity to “make amends” by attending a diversionary conference. Relying heavily on the scripted model, the conference typically includes the “offender[s],” the “victim[s]” and their respective supporters, a police officer and/or juvenile case worker, and perhaps community representatives. The conference is normally opened by a facilitator who summarizes the details of the offense, then asks the young person to talk about the event and its

consequences. When this happens the young person is generally, though not always, contrite. By recalling the events, and reporting on what the young person believes to be the consequences of these actions, he or she is able to declare himself/herself aware of and accountable to the situation.

The facilitator then asks the victim for his or her perspective, the impact of the offense and how life has been since that event. Depending on the nature of the offense, the victim sometimes becomes quite emotional. Here, victims might cry, plead, and express their continuing fears, embarrassment, and shame associated with being victimized. One example from observed conferences is:

[T]he victim said that she was shocked and scared when she came home that night from a night evening out to dinner with her daughters to see her new car so damaged. She's a single mother raising three daughters on her own and waited many years to buy a new car. Even though this car is eight years old, it's new to her and she was very proud of it. She could not believe that someone would be so malicious. She was also very scared by the symbolism of the swastika on the pavement. What did it mean? Who was it aimed at? Who would do such a thing to her? She immediately called the police, and then went to the neighbours to find out if they'd seen anything. No one slept well that night due to their fears. When she learned about [the offender's] actions, it was unbelievable to her that he would walk so far [10 kilometres] for vengeance. The damaged car is embarrassing to drive around. She's not proud of the car like she had been.

In this case, clearly, the emotional reaction to the image of the swastika spray-painted on her driveway gave rise to her fear. Yet, emotions are socially constructed (Jaggar 1989) as this instance clearly illustrates. As in many cases of victimization, the injured person conveys an emotion-frame around the experience that invokes socially constructed meanings. Emotions are not just involuntary or irrational responses; they are often companion with our rational knowledge of the world and willful choices made in response to a particular circumstance. Hochschild (1979) uses an example of a bride miserable on her wedding day because her close friends were unable to attend the wedding. The incongruity results from the cultural expectation that the wedding day should be "the happiest day of her life," but the desire to share it with her close friends results in her unhappiness. The rational actor here is understandably unhappy about her friends absence. In the instances of diversionary conferences, emotional expressions are similarly bound by rational culturally constructed meanings of the crime experience and its attempted resolution, as in this woman's understandable distress at the symbol of hate and other damage done to her property. Culturally constructed rationality, then, provides "scripts" for the expression of emotions.

After hearing from the victim, the facilitator generally asks the young person if he or she has any response to share directly, face to face, with the victim. This is a first opening for the young person to apologize, or express his or her own feelings about the impacts of the offense. The apology, when offered, is usually not heard until the end of the conference. The following is an example of this dynamic; the situation involves two school aged boys having a fight on school property. The aggressor has been charged with a crime and has opted to participate in the conference.

He reports that he was punished at home, his mum made him hang out laundry and clean his room, and he's been grounded. The facilitator encourages him to think of an apology, but without directly suggesting it. His mother directly suggests he might want to apologize, and the facilitator asks him what he thinks would be the result of an apology. "If I say sorry then he won't have to be scared anymore."

Next, the offenders' and victims' supporters are asked to discuss their experiences of the offense and eventually the participants develop an agreement as to how the offender can 'fix' the damage caused by his or her actions. Agreements usually involve an apology, community service, monetary compensation, and other forms of restitution to the victims, or in the case of drink-driving experiments, to the "community of potential victims." In some situations the "victims" were satisfied with an apology from the offender and nothing more was expected.

It is important to note that prior to the conference the offender has admitted his or her involvement in the offense, and that is not open to question. Restorative justice is not concerned with establishing guilt or innocence, blame or fault, but rather it attempts to provide a forum for healing the injuries that were creating as a result of the offense. During these diversionary conferences it is quite common for people to weep, to laugh, to express anger, to forgive, and to show renewed affection for each other. Expressions such as these involve emotional risks, where the participants trust that their feelings will be respectfully received and heard, thus leading to acceptance, understanding, and ultimately healing when it goes well. These gestures of healing and/or cleansing are an important source of the "magic" for the restorative justice approach that courts have neglected. The most commonly documented and discussed emotion associated with the diversionary conferences approach is "shame" (see Braithwaite 2001 for a current review of these findings, and Ahmed, et al., for the latest revisions in shaming theory). These are complex theories and findings, which cannot be fully summarized in this paper. We are concerned about examining the panoply of emotions, beyond offender's sense of shame, as they emerge and are negotiated in conferences.

Several concepts are important for restorative justice theory and practice.

First, and perhaps most prominent is the issue of “accountability” (Roche 2003; Cook 2006). For advocates and participants, accountability consists of the offender recognizing the damage caused by his or her actions, without necessarily being subject to punitive sanctions. If offending is dehumanizing, then accountability is recognizing such dehumanization and reversing it. By discussing the harms, injuries and other consequences, the victim and offender can regain perspective on each other as people who are connected through a series of events. These events, however damaging, can be repaired when accountability involves a holistic view of the injuries endured by the offender’s actions.

Second, is the framing of an “apology.” For people to make amends for the harm they caused, they often separate themselves from that action by sincerely apologizing for it. As an act of “grace” an apology is a process whereby the offender communicates to those present that the offense is not the most salient part of her or his identity (Braithwaite and Mugford 1994). It provides the offender a chance to distinguish himself or herself from the offense, and reclaim moral personhood in front of those who have sustained the harms. This, then, also provides an opportunity for the victims to re-connect with the offender on a personal level.

Third, is the dynamic of “voice.” The typical court process limits people in how they can voice their perspectives on events that affect their lives. The very strict parameters surrounding the rules of evidence and procedure in criminal trials systematically marginalizes voices of those people most deeply injured by the offenses. With restorative justice, the voices of the offenders, victims, and community are structured into the process and outcomes. It is critical to the success of restorative justice programs that multiple voices be heard. The polyphonic dialogue (Hydle 2001) requires that the voices of the victims, offenders, their respective supporters and the community members present bear equal weight and value in deciding the outcomes and resolutions. This should not imply, however, that each participant is morally defended, as is often the case with mediation programs. Braithwaite and Braithwaite argue that an important advance for diversionary conferences, over mediation, is that the facilitators and participants should not be morally neutral (Ahmed et al. 2001, 58–69).

Masters and Smith (1998) suggest that restorative justice programs such as those in Australia actively represent “feminine” justice, whereas traditional court-based processes are “masculine” or “rational” justice. Drawing from Gilligan (1982) and Heidensohn (1986), Masters and Smith advocate for an expansion of restorative justice programs in order to honor the emotional experiences of crime. For Masters and Smith, restorative justice is “relational justice” more likely to produce satisfying outcomes to the participants. “In

theory and practice, reintegrative shaming is contextual, immediate and relational, rather than universalist, remote, and abstract” (Masters and Smith 1998, 14). In fact, they declare boldly that “viewed in this light, reintegrative shaming is perhaps the first feminist criminological theory” (20). There are feminist criminologists who would certainly dispute the point, however (i.e., Daly 2002). Nonetheless, diversionary conferences provide a venue for people to share their feelings and repair the emotional and material damage done. The dynamics of these emotional processes are a main theme of this paper. We explore this issue employing feminist and sociological theory of emotions, and our own observations of diversionary conferences in Australia.

Susan Drummond (1997) argues that restorative justice programs provide a “just and loving gaze” (cited in Ahmed et al. 2001, 58). Braithwaite and Braithwaite believe that restorative justice conferencing is far more ‘benevolent’ than traditional court proceedings. This is true across all cultural and ethnic communities, from complex modern Western societies such as Australia, and complex Eastern societies such as Japan, and to remote indigenous communities in Canada and throughout the world (Ahmed et al. 2001). They argue that the “genius of restorative circles is their collective emotional dynamics” (59). Because conferences are opportunities for participants to stake a moral claim about the wrongdoing, the process can reinforce the morality of right and wrong, moral and immoral, just and unjust actions, within and across multiple cultural contexts. This sometimes requires a relatively passionate strategy for communicating to the “offender” who has agreed to participate in the conference. Thus, “they are not about defusing emotion but about creating ritual spaces into which emotion can be infused, where right and wrong can be discussed by concerned and affected citizens” (Ahmed et al. 2001, 69).

Emotion work and feeling rules dictate the ritual space for discussions of moral behavior (Hochschild 1979; 1983). Hochschild writes that people obey certain cultural rules for their interactions that are *appropriate to the situation* (1979, 552). These feeling rules are socially constructed, evaluated for their propriety, and supported (or rejected) depending on the social circumstances. A feeling rule “delineates a zone within which one has permission to be free of worry, guilt, or shame with regard to the situated feeling” (Hochschild 1979, 565). When a conference facilitator opens the proceedings he or she provides what Hochschild refers to as the “framing rules” that articulate the appropriate conduct for the proceedings and also illuminates some foundational expectations for the group. Indeed, the process of preparing for the conference is one of articulating such framing rules. These framing rules convey a particular ideological value system upon which a degree of consensus

must be granted. For example, when observing a diversionary conference for a young person who had shoplifted candy (A\$3.41) on Easter weekend, the framing rules declared the behaviour a *crime* (supported by statute, of course), the young person tried to reframe the situation for himself and others to understand, declaring that he did it because he was “heaps hungry” since he didn’t follow his mother’s advice to eat lunch before venturing out. The ideological value system that was reinforced in this particular conference was that of corporate interest and private profit. Interestingly, in this case, the seemingly *rational* choice of the corporation to send two representatives to the conference costing hundreds of dollars in wages, is questioned by the fact that the stolen merchandise was not actually lost to the store, but confiscated and returned to the store shelves unopened.

An important feeling rule in the process of diversionary conferences, of course, is the ritual of apologizing. It is, as Hochschild points out, “an exchange of display acts” (1979, 568). When an offender² offers such an apology in a conference that statement is “I exchange my apology to you for your understanding, acceptance, and/or forgiveness.” By expressing contrition and seeking emotional understanding the offender must take on board for himself or herself the definition of the situation as expressed by the victim and her or his supporters. For example, the shoplifting offender in the previous example heard the following from the loss prevention specialist and store manager:

She asks [offender] to realize that a large company like [hers] is just as affected by shoplifting as a small company in the following ways: sales are affected, profits are reduced, staff members are paid less, shareholders don’t make as much, and the price of goods increases. The police officer present at the conference asks for the statistics specific to their store. The store manager says that in a six month period they lose between A\$80,000 and \$100,000 mostly because of shoplifting. The police officer says that everyone is affected because they’re paying higher prices for items they buy at that store, and that much money would pay the wages for at least four people. [Offender] looks around the room to see who’s looking at him, he’s open-faced, listening and agreeing. The loss prevention specialist goes on to tell him that stores “have to install security systems and without theft these wouldn’t be necessary and goods wouldn’t be so expensive.” Eventually the offender says, “I’m sorry I stole from your store and I won’t do it again,” in an unsure tone of voice. The store manager says that from her perspective, based on what she’s seen in the conference and that his attitude is a lot better than before, “That apology would be enough.” The offender is visibly pleased, relieved, and proud of himself (he sits a little taller) for being here and doing the right thing. Everyone points out that his attitude of cooperation makes a huge difference in how they see him now.

The feeling rules were understood by all participants in this conference, and framing of the process was unchallenged and the “exchange display” was readily accepted. Of course, this conference illuminates the ideological framework of respect for corporate interests and the economic *need* to prevent shoplifting. Thus the broader socio-economic interests are conflated with the specific offender and victim interests. The specific emotional object lesson here combines *shoplifting is wrong* because corporate interests prevail.

When these feeling rules are contested by participants, however, the emotional dynamics are fragile. Participants enter the diversionary conferences having been instructed in the typical process and therefore the feeling rules are outlined: victims feel “injured,” offenders feel responsible and (hopefully) contrite, supporters feel concerned on behalf of their respective parties, and facilitators feel empowered to broker a resolution. In one conference, the young offender was a teenaged boy being charged with assault on a four year old neighbour. The four year old (Daniel) was present, along with his older brother and father. The *assault* was an unfortunate consequence of a conflict between the offender and the victim’s older brother, which everyone present recognized as an *accident*.

The facilitator asks Daniel, “How did you feel when Johnny hurt you?” to which Daniel replied “I was scared.” His father articulates for him that he was scared, and shaking because he doesn’t like police and the ambulance crew scared him, too. The confusion of the situation was scary for four-year-old Daniel, as it was for his father because he arrived to see the ambulance there and he didn’t know who was hurt or how badly. He was not angry, however, because he knew that Johnny didn’t mean to hurt Daniel. The facilitator points out that Daniel’s father is very forgiving and how rare that is.

In this case, the young offender offered an apology immediately upon entering the room and then again during the conference. Each time, the father of the injured boy graciously accepted the apology and his concern was to ensure that the two families could become good neighbours again.

On the other hand, there are times when the victim’s injury extends well-beyond that inflicted by the offender. The following example was the result of two high school aged boys (Jeremy and Thomas) engaged in a difficult relationship during their summer holidays. The conflict had been going on for some weeks, when one (Jeremy) eventually exploded and threatened to do violence to him directly and to “fuck” the other’s mother. In this situation, the victims were asked how it affected them:

Thomas was very afraid that Jeremy would follow through on the threats to burn down his family’s house and rape his mother. At this point in the confer-

ence, Thomas's mother indicates that she has been raped before and that her son knows it, and he's very concerned about her well-being and never wants to see her hurting, so this particular threat was especially scary. Plus, she said, "I have cancer and he's very worried about me anyway." At this point, Jeremy started to sob and it appeared that he was unfamiliar with these aspects of Thomas's life. The facilitator then asks Jeremy how he felt about the way his behaviour impacted the others, he said he felt bad about that, and realizes he made a stupid mistake when he threatened them.

It is clear that these broader contextual concerns would likely not have been revealed in an ordinary court proceeding. An adept and emotionally aware facilitator can allow these details to come to light while not disrupting the aim of the conference.

In another instance, however, the young person came to the conference after having been kicked out of his home, being intensely angry with his family, especially his mother. The young person, Clive, was charged with vandalism to the school where he had gone to escort two girls home from a party. When his mother is asked how her son's actions affected her, she claims the status of victim:

Clive's mother is next asked what she thinks would be a good agreement for Clive, and she yells, "I feel like I'm a victim in this, BIG TIME, and that simply paying for the broken window is not enough for him. I work in a school and I know how they scrounge for money, I'd like to see him do some community service work at the school." Clive explodes at his mother at this point and says, "No way! You shut up, just keep quiet, just let me pay for it, I won't do community service." He is very angry at his mother and deeply resents her input in this matter: "It's not up to her to make these choices for me!"

At this point, the community representative, Terry, stepped in to smooth out the situation between Clive and his mother. He successfully defuses the situation by explaining the process to Clive that these are just suggestions and he, Clive, can refuse to do them if he wishes. Later in this conference, it is revealed that Clive's mother had recently suffered a minor stroke and was frail in her health and that Clive's lifelong problem with ADD has been a difficult burden for her. Clive rejects that label, however, and declares, "ADD is just a label, it's just an excuse," to which the facilitator replied, "Clive, you're just not getting it, are you?" A recalcitrant offender, such as Clive, is a frustration to the diversionary conference process. Clive admitted breaking the window, and was willing to "pay for it" but he was not willing to accept the "ADD label" or the insistence that he perform community service. In the end, this conference resulted in a signed agreement. But, Clive tore out of

the room in tears, and later it was discovered that his copy of the agreement was ripped up and discarded on the floor outside the conference room.

Supporters of victims may engage with the broader social narratives of injury and harm endured by the victim in an attempt to display their concern. In the case of the boy who'd walked 10 kilometres on a hot summer day to spray paint a classmate's private property with a swastika as previously mentioned, a male neighbour attended to support the woman whose property was damaged.

Stephen, the neighbour and friend, says that he knows how the victim feels. After all, she's a single mother raising three daughters on her own. "Four women in the same house experiencing this, it must have felt pretty defenceless."

He took this as an opportunity to demonstrate his good-neighbour masculinity and said in the conference that, as a man, he felt especially responsible to help them out in times of need because they were "on their own."

Ultimately, then, the feeling rules typically employed revolve around conventional (and implicitly conservative) social understandings of *good order* and *morality*. Advocates of restorative justice would postulate that providing opportunities for the articulation of feeling rules enables broader and deeper understanding of a specific situation to emerge. They might further argue that this exemplifies the differences between the purely clinical and cold world of formal legalism compared with the humanist and much warmer world of restorative justice. However, the fact remains that feeling rules are inevitably harnessed to common sense and hence fundamentally conservative versions of morality. Restorative justice bolsters rather than challenges the interests which lie behind this *morality*.

Rationality and Rationalization of Restorative Justice³

Restorative justice programs are becoming increasingly rationalized under the rubric of progressive reform. The family group conferences that began in New Zealand in the late 1980s were proclaimed to be an adaptation of Maori customary practice (Maxwell and Morris 1993). With a revised version spreading to Australia in the early 1990s, increased formalism emerged (Daly 2002) in terms of research programs just as RISE (Sherman and Strang 1997) and SAJJ (Daly 2001) as well as in official practice and passage of state statutes.

In important ways, rationalized restorative justice is quite different from

the theoretical conceptualizations developed by scholars and early activists. First, while restorative justice allows for the expression of remorse, regret, and apologies, the reality is that offenders are informed that these expressions are an anticipated element of the process, thereby tilling the soil for apologies that may be utilitarian rather than sincerely expressive. Second, while the theory predicts that once *shamed* the participants would be successfully reintegrated (Ahmed et al. 2001) in the community, a significant number of young people return to conferencing as a result of continuing law violations. Third, shaming theory is intended to be limited to shaming the offender, while in reality parents of the young person often express feelings of themselves being shamed (Prichard 2002). Fourth, in theory, reintegrative shaming is supposed to break down the obstacles between participants, it sometimes (and probably unintentionally) builds higher barriers. Regrettably, emotion becomes a rationally elicited product wheeled out to suite stage-managed circumstances.

Finally, while restorative justice may fit the outlines suggested by Nils Christie (1977) in theory; in practice, it is becoming an approach that “steals” the events from the participants, as it becomes increasingly bureaucratized. Some of the restorative justice conferences observed involved *community representatives* who were intended to represent the community interest in the outcome of the conference. Community representatives were added to the conference process during the *drink-driving* experiments in Canberra in the early 1990s (Mugford, personal communication, 2001). The intent was to provide a voice for the potential victims of those intoxicated drivers arrested but who had not yet injured anyone. Community representatives volunteer to attend conferences and participate in developing agreements, even though they themselves are not directly impacted by the events being discussed. Facilitators, on the other hand, are not supposed to represent any one person in particular, but rather has the role of being a moral agent encouraging shame and accountability of the offender while also serving victims needs. Police officers, when they are not facilitators, are present to represent the state, which the young offender would have to confront in court should the diversionary conference fail. Therefore, community representatives, police officers, and facilitators take “ownership” of a portion of the problems from the direct participants. For example, as seen in the shoplifting case, it is routine in South Australia to inform the offender of the statutory trajectory of the law:

The police officer says to the offender, “We work really hard here to keep people out of court, and since you’ve had the informal and formal cautions and now the family conference, and another family conference before this, next time

it's off to court. There you'll have a conviction and a criminal record following you around for the rest of your life. Do you know what that might mean for your future?" The offender listens and he knows the *right* answer: "I won't get jobs and I won't be able to travel so freely." This is a very structural moment in the conference. The police officer is reading the law to the offender, in uniform, and with the authority of the state behind him. This highlights the inequality between these two people, and it highlights that the police are advocates for the victim's interests, in this case, the corporate interest of a large discount store. The offender's mother stays quiet and looks at the floor. The police officer says, "I don't want to see you again; I don't want to see your name come across my desk, because next time I won't be able to do anything else but send this to court. We're all here to help you, we just need to say it's up to you at this point."

In this case, it was clear this young person was *appropriately deferential* to the process and to the participants, thereby resulting in a relatively clear-cut outcome for him. Typical outcome agreements involve an apology, monetary compensation when appropriate, community service, and/or other gestures of remorse (in the ACT, for example, offenders may be encouraged to donate blood, which is a residual of the drink-driving experiments). The offender agrees, the victim approves, but the events, outcomes, and process are "owned" by the state as illustrated when the facilitator (or police officer) is required to authorize it, and when failure to satisfy the agreement results in the case being referred to court regardless of the victim's desire or extenuating circumstances. Facilitators work very hard to get the "right" outcomes in conferences, and sometimes are personally distraught when the outcomes do not include what the facilitators believe to be fair and just resolutions. In another situation reported elsewhere (Cook and Powell 2003), it was clear that the young person, Roy, had a *phoney choice* (Cohen 1985) in terms of the outcomes and his participation. No agreement was possible for Roy because the facilitator had already established what she deemed the *appropriate* outcome for Roy, which was to be sent away to a residential facility that would treat him for his petrol sniffing problem. In her frustration with the extremely difficult situation, the facilitator ended the conference when it became obvious there was an impasse.

The new *experts* in restorative justice programs are the new owners of the conflict when their careers depend on successful outcomes. Facilitators in some jurisdictions also feel institutionalized pressures to *keep the numbers up*. While chatting over lunch with two facilitators in South Australia,

we got into a discussion about "managerialism" where each facilitator is now required to complete at least sixteen conferences per month, and to dispose of cases within eight weeks. They said that's fair and reasonable in most situations,

yet it doesn't take into consideration problems that occur through no fault of their own, but make their "numbers" look bad. For instance, if they spend the necessary amount of time to arrange a conference and the offender fails to show up, even after the facilitator has driven 50 kilometres to hold the conference, that's lost time and no conference is recorded. Their numbers suffer. They reported that there is increased pressure to keep the numbers going in order to satisfy the bureaucrats. This is a frustration in the office that is not easily resolved. Also, other material resources are shrinking such as access to vehicles. When much of their work requires them to be on the road, and seven staff sharing three cars, there are limits as to what they can accomplish. In the midst of the "numbers pressure" this adds a level of frustration on an already demanding job.

This overly rationalized approach violates the spirit of a pure restorative justice philosophy. Braithwaite and Mugford (1994) argue that when people keep re-offending, communities must relentlessly provide opportunities for successful reintegration ceremonies. To do otherwise, to outline the statutory trajectory of "three strikes and you're in court" risks alienating young people and diminishing the potential success of restorative justice. From Cook's field notes:

What I saw repeatedly was that the young person was informed of this linear progression as if it were "etched in stone" by the police officer attending the conference. This is dishonest, though, and young people can sniff out an inconsistency faster than we can type it. Young people know that they have more than one chance to go through family conferencing, and to say there's only one chance violates that young person's right to the truth. What might be better to say to the young person is, "Look, we're going to keep coming back here as long as you keep getting into trouble, we're going to keep giving you changes to fix the problems that you've caused and we're going to keep trying to prevent you from having a conviction on your record. We're here because we care about you and we're not going to give up trying to help you. If you don't want to come back and go through this again, then try not to make mistakes again. We want you to learn from this problem as best you can, and we're trying to help you learn from it."

Analysis and Discussion: McDonalized and Commoditized Emotions in a Rationalized Setting

In the broader social circumstance of diversionary conferences in Australia, given the increasing need for administrative oversight, conferences themselves run the risk of becoming "judicial happy meals." Citing Mestrovic, Williams writes that "McDonalized emotions (i.e., bite-sized, pre-packaged,

rationally manufactured emotions): a 'happy meal' consumed by the masses . . . is a system designed to avoid 'emotional disorder,' prevent 'loose ends' in emotional exchange, civilize 'wild' arenas of emotional life, and in general to order emotions so that the social world 'hums as smoothly as a well-maintained machine'" (1998, 755). Thus, diversionary conferences can be seen as "ways of escape" which have been rationalized through scripted models and administrative demands to meet quotas. Williams writes that "the McDonaldization of emotions, in short, has been an attempt to make the 'Enlightenment project, therapy, civilisation, and communities all seem predictably "nice" and to create Disneyesque, artificial realms of the authentic'" (1998, 755). Perhaps restorative justice is in danger of becoming another example of assembly line justice, albeit cheaper and engaging the bewigged Ronald McDonald rather than blind Lady Justice.

Students were debating the feasibility of restorative justice programs in a recent class at the University of Southern Maine. One student, Christine Olsen, identified herself as "optimistic" and said that restorative justice is like a field where a flower has been planted; perhaps in ten years that field will be full of beautiful flowers, she hoped. Her point is that the beauty and magic of restorative justice will not emerge overnight, but given time and effective cultivation, the long-range benefits are worth striving for. Another student, David Johnson, was somewhat more skeptical. He pondered that the field of flowers will only be able to grow so long as the planners do not come along, plow the field and pave it for a parking lot. While David appreciated the theory and philosophy of restorative justice programs ("I wish they were around when I was coming through the system!"), he also believes that once the state agents get into the business of rationalizing and orchestrating the programs, their effectiveness, and magic, will erode.

Simply structuring multiple voices into the process will not be enough to break down the institutional obstacles people face in the criminal justice system. The "polyphonic dialogue" of restorative justice (Hydle 2001), might liberate society from the very restrictive legal "monologue" that is the cornerstone of the conventional criminal processing system (Belknap 2001). This polyphonic dialogue is as much an internal dialogue within individuals (at least for these authors) as it is between participants in the restorative justice programs. As observers we must be ever vigilant of the multiple voices in our own hearts and heads, as well as those among the participants in the restorative justice process of "culture in the making" (Hydle 2001, 11).

Restorative justice initiatives aim to deal emotionally with emotional situations, and aim to deal practically with the practical realities of these situations, but do so within a complex bureaucratic setting. As such, they are regulated by a rationalist state that frames restorative justice programs within

politically resonant discourses (Braithwaite and Mugford 1994) of rights, responsibilities and system efficiencies. The professionals who do restorative justice work are operating within an employment atmosphere that values their emotional sensitivity while at the same time encourages (and demands) their productivity by establishing a pseudo-quota system where they have to process a specific number of *cases* per month. The “emotional assembly line” that appears to be emerging in some jurisdictions (South Australia, in particular, where this was observed to be most pronounced), is producing emotional outcomes within a rationalized context. These are Fordist economic pressures of cost-efficiency and productivity within a post-Keynesian *kindness* and *ethic of care* framework.

Conclusions

We will draw to a conclusion by recommending that one should adopt a sound dose of skepticism when confronted with the apparent differences between restorative justice and more conventional processes of justice. Undoubtedly, advocates of restorative justice⁴ have placed stress on the differences in terms described previously. In response, traditionalists have warned against adopting restorative justice’s different procedures. Emotions, they would suggest, are invariably more liable to get out of hand. It is essential that the system should contain and control emotions by guaranteeing a standpoint of aloofness and detachment—indeed of *rationality*. Emotionality panders to victims’ and offenders’ presumed needs where what should be of more importance is the broader social interest.

First, let’s state briefly that as so often we are faced with “straw people” despite the denial of a legitimate place for emotions in the conventional formal system, in fact, emotion plays a significant part in those proceedings. Indeed, the emergence of victim-impact statements, specifically represents a recognition of the emotional, though one suspects that for true traditionalists these take a step too far in the direction of “touch-feely-ness.” More fundamentally, though, surely at least part of what the ritualistic dimension of court procedures are about is concerned with stirring emotions. The ceremonial element can serve to conjure up a variety of different emotional responses ranging from a more *negative* awesome power of the state, to a more *positive* social consensus on values and morals. Furthermore, formal courts on occasions provide a forum for expression of *high emotion*—people regularly break down, get angry, and even laugh, in conventional courts. Hence, we should on no account assume the formal context to be a haven (however one evaluates it) of pure rationality.

We began by indicating that advocates of restorative justice justify their initiatives by primary reference to offender and victim needs and interests. The argument was that needs fulfillment demanded an emotional dimension. However, a traditionalist might ask “in which ways might it be possible to link the needs of any specific victim or offender with a broader social interest?” In conventional terms it seems there is a major problem here emanating from a quite different kind of emphasis. Do we sometimes have to *do justice* by failing to accommodate the needs of individuals? Can justice emerge from a negotiated settlement between needy parties, or rather is it essential for that old iron fist of rationality to oversee the process in the interests of non-participants? So simple questions emerge from the traditional camp: is restorative justice inevitably neglectful of the broader social interest in favour only of participants’ interests? Does it illegitimately assumed that the social interest is naturally maximized if individual needs are met or reconciled?

What may or may not pass for social interest, of course, lies at the heart, both of this discussion and of any attempt to analyze the strengths and weaknesses of two ostensibly different systems. Undoubtedly justice is seen as the desirable outcome of the “social interest being maintained.” We have seen, however, that restorative justice and traditionalism regards that interest differently, one perhaps more concretely, the other more abstractly. Yet in another sense, restorative justice advocates and traditionalists actually agree on the social interest—that it is to be accomplished by restoration. The argument thus becomes reduced to merely addressing the question of the most effective means. Rarely do restorative justice advocates doubt the good faith of their ideological opponents, though they may well indicate, and of course do, that in pragmatic terms traditionalists have got it all woefully wrong. Both see the point of the criminal law to be about making broad social statements laying down markers as to the various gradations and parameters of acceptable behavior. While one would not anticipate traditionalists promoting anything other than conservative principles, we might expect something a little different (in substance as well as style) from those advocates of restorative justice who appeal to progressivism. The word “restorative” really says it all. In addition, the social interest is to be accomplished by the restoration of the status quo and any radical analyst should recognize that social interest in practice translates to the interests of the powerful and the established. Ultimately, perhaps restorative justice engages emotionality in practice to promote a specific version of rationality, one rooted in common sense and essentially conservative assumptions.

Notes

This paper was originally presented at the Norwegian Ministry of Justice and Police; Oslo, Norway. The authors would like to thank Ida Hydle for her supportive conver-

sations and organizational work in arranging this presentation. These ideas also provided the basis for a seminar we presented for the Kristiansand Conflict Council, Kristiansand, Norway. We would like to thank all participants for their insights, and especially Liv Moreland for her generous hospitality, and Nils Christie for his warm hospitality. The research presented was conducted while Cook was a Fulbright Senior Scholar at the Australian National University in Canberra, ACT. Cook expresses gratitude to John Braithwaite, her benefactor while in Australia, Stephen and Jane Mugford for their warm support, friendship, and love.

1. The phrases “offender and victim” are used with reluctance in this paper. We are mindful of the complex identities people construct for themselves throughout their lives, yet in the proceedings available with restorative justice programs and the rituals of emotional reparations, people come to conferences with these roles already ascribed or acquired. Furthermore, the scripted model of conferencing implicitly and explicitly require participants to accept these labels. When participants re-ascribe their roles during the conference (“I’m a victim here, too!” says the offender), the emotional dynamics of the process become more contested.

2. Conferences prioritize this aspect of the young person’s identity as the most salient characteristic for the “exchange display” at hand. This prioritizing also applies to “victims” whose other characteristics and self-identities are wide-ranging. By applying these identities, of course, the participants are able to draw on culturally constructed discourses of fear, defiance, contrition, and retribution to bolster their claims.

3. We do not mean to imply a binary opposition between emotionality and rationality. It is, however, analytically helpful to prioritize one over the other in distinct sections of this paper.

4. Including the first author of this paper who is a certified facilitator and active in the local community’s restorative justice program.

References

- Ahmed, E., N. Harris, J. Braithwaite, and V. Braithwaite. 2001. *Shame Management through Reintegration*. New York: Cambridge University Press.
- Belknap, J. 2001. *Invisible Woman*. New York: Routledge.
- Braithwaite, J. 1999. “Restorative Justice: Assessing Optimistic and Pessimistic Accounts.” Pp. 1–127 in M. Tonry, ed., *Crime and Justice: A Review of the Research*, Vol. 25. Chicago: University of Chicago Press.
- . 2002. *Restorative Justice and Responsive Regulation*. New York: Oxford University Press.
- , and K. Daly. 1994. “Masculinities, Violence and Communitarian Control.” Pp. 189–213 in T. Newburn and E. Stanko, eds., *Just Boys Doing Business*. New York: Routledge.
- , and S. Mugford. 1994. “Conditions of Successful Reintegration Ceremonies: Dealing with Juvenile Offenders.” *British Journal of Criminology* 34: 139–71.
- Christie, N. 1977. “Conflicts as Property.” *British Journal of Criminology* 17, no. 1: 1–15.
- Cohen, S. 1985. *Visions of Social Control*. London: Polity Press.

- Cook, K. J. 2006. "Doing Difference and Accountability in Restorative Justice Conferences." *Theoretical Criminology* 10, no. 1: 107–24.
- , and C. Powell. 2003. "Unfinished Business: Aboriginal Reconciliation and Restorative Justice in Australia." *Contemporary Justice Review* 6: 279–91.
- Daly, K. 2001. "Restorative Justice in Australia and New Zealand: Variations, Research Findings, and Prospects." Pp. 59–84 in A. Morris and G. Maxwell, eds., *Restoring Justice for Juveniles: Conferencing, Mediation and Circles*. Oxford: Hart Publishing.
- . 2002. "Restorative Justice: The Real Story." *Punishment and Society* 4: 55–79.
- Drummond, S. 1997. *Incorporating the Familiar: An Investigation into Legal Sensibilities in Nunavik*. Montreal: McGill-Queen's University Press.
- Gilligan, C. 1982. *In a Different Voice: Psychological Theory and Women's Development*. Cambridge, MA: Harvard University Press.
- Heidensohn, F. 1986. "Models of Justice: Portia or Persephone?" *International Journal of the Sociology of Law* 14: 287–96.
- Hochschild, A. 1979. "Emotion Work, Feeling Rules, and Social Structure." *American Journal of Sociology* 85: 551–75.
- . 1983. *The Managed Heart: Commercialization of Human Feeling*. Berkeley: University of California Press.
- Hydle, I. 2001. "Anthropological Reflections on Restoring Justice in Norway." Paper presented at the American Society of Criminology, Atlanta, GA.
- Jaggar, A. 1989. "Love and Knowledge: Emotion in Feminist Epistemology." Pp. 145–71 in A. Jaggar and S. Bordo, eds., *Gender/Body/Knowledge: Feminist Reconstructions of Being and Knowing*. New Brunswick, NJ: Rutgers University Press.
- Masters, G., and D. Smith. 1998. "Portia and Persephone Revisited: Thinking about Feelings in Criminal Justice." *Theoretical Criminology* 2: 5–27.
- Maxwell, G., and A. Morris. 1993. *Families, Victims, and Culture: Youth Justice in New Zealand*. Wellington, New Zealand: Victoria University of Wellington, Social Policy Agency and Institute of Criminology.
- O'Connell, T., B. Wachtel, and T. Wachtel. 1999. *Conferencing Handbook: The New Real Justice Training Manual*. Pipersville, PA: The Pipers Press.
- Powell, C. 2000. "Under the Influence: Of Drink Drivers and Communitarian Criminology!" *Journal of Postmodern Criminology*. Retrieved May 24, 2002, from <www.tryoung.com/journal-pomocrim/vol-8-shaming/powell.html>.
- Prichard, J. 2002. "Parent-child Dynamics in Community Conferences—Some Questions for Reintegrative Shaming, Practice, and Restorative Justice." *Australian and New Zealand Journal of Criminology* 35, no. 3: 330–46.
- Roche, D. 2003. *Accountability in Restorative Justice*. New York: Oxford University Press.
- Sherman, L., and H. Strang. 1997. *The Right Kind of Shame for Crime Prevention*. Australian Institute of Criminology, Reintegrative Shaming Experiments (RISE), Working Paper No. 1. Canberra: Australian National University, Law Program.
- Williams, S. 1998. "Modernity and the Emotions: Corporeal Reflections on the (Ir)rational." *Sociology* 32: 747–69.
- Zehr, H. 1990. *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press.