

CHAPTER 8

Building Legitimacy Through Restorative Justice

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Until the nineteenth century, criminal justice in the most developed nations such as Britain and United States was mostly a victim-initiated process.

SANITIZING THE VICTIM

Two centuries ago, if a case went to court it was not a result of arrest by professional police and prosecution by a state prosecutor. The victim might enlist the help of others to apprehend the felon by hiring private investigators or by enrolling a posse of volunteers. The prosecution would also be a private prosecution, by victims, thief takers, or bounty hunters seeking a reward. There were certainly village constables, mostly volunteers, who in various ways steered and refereed the private enforcement. We have all seen elements of this world in the genre of the Hollywood Western. Much private justice comes down to a blood feud, a life for a life. Sometimes the sheriff oversees fair play in gunfights to end blood feuds; sometimes he intercedes to substitute negotiated settlement for a shoot-out; when he is the only one strong enough to stand up to bad guys who terrorize the town, he might gun them down himself. More rarely the felon is captured and taken before a rowdy, participatory community trial, convened in a makeshift locale such as a saloon.

The spread of professional police after Prime Minister Robert Peel established the influential model of the London Metropolitan Police in 1829 was rapid in Anglophone nations, then globally. Every significant city in the world today has a professional paramilitary police. The professionalization of prosecution was less

rapid, more institutionally variegated, but no less inexorable in its "publicization" of the private. It is difficult to resist the conclusion that this public takeover of justice was a good thing—among other things, it protected offender rights and reduced the violence associated with private justice. Data from many nations show that crime and violence fell dramatically and, with some hiccups, mostly continuously for a century or more after 1829—in many places right through to the 1950s or '60s (Warner 1934; Ferdinand 1967; Lane 1967, 1979, 1980; Graham 1969; Richardson 1970; Gatrell and Hadden 1972; Skogan 1975; Gurr, Grabosky, and Hula 1977; Gatrell 1980; Gurr 1981; Mukherjee 1981; Monkkonen 1981, 1982; Hewitt and Hoover 1982; Wilson and Herrnstein 1985). The abuses of bounty hunters—those who set up innocent people up so they could collect a reward—also ended. These developments were overwhelmingly positive, yet the project of the professionalization of justice went too far. Victims, the central stakeholders in crimes, were progressively almost totally disempowered. This undermined the legitimacy of criminal-justice institutions. Some European nations such as Germany and Austria managed this crisis with more finesse while maintaining low crime and imprisonment rates compared to Anglophone nations. Some of the institutional adaptation to manage the crisis has nevertheless been radical—such as rape trials in Germany, where there are two prosecution tables in the courtroom, one for the public prosecutor, the other for the (publicly funded) private prosecutor who sits with the alleged rape victim and her family (Frey 2004).

MOVEMENTS TO REINSTATE THE VICTIM

The professional capture of criminal justice has proved more total in Anglophone nations than in many non-Anglophone nations; in the former, criminal justice has also proved less adaptive and more resistant to popular reengagement. But all national criminal-justice systems have been forced to engage with two big movements for change. The first was a retributive movement that rose in the 1970s. The vanguard of this movement was punitive victim advocacy. Its ideology was that "nothing works": the rehabilitation professionals were mollicoddling criminals; there should be a return to long, certain sentences and to capital punishment. From 1976 an influential group of criminal lawyers and criminologists latched on to the anti-rehabilitation, anti-indeterminate sentences, anti-early release (for good behavior), "truth-in-sentencing" part of this program (see, for example, Von Hirsch 1976). A certain kind of legal professionalism was actually further entrenched by this uneasy alliance between liberal legalists and a punitive victim-rights movement. We see the uneasy settlement between them in reforms of the 1980s to allow victim impact statements. These allow victims to seek to influence proceedings with an address before sentencing, which most judges manage to resist in their determination to defend the integrity of consistent sentencing, just as judges continue to silence victims during the trial proper, continuing to limit their role to the supply of evidentiary cannon fodder for the lawyers.

In the 1990s a second movement to reempower victims grew on the embers of that crumbling settlement. It was restorative justice. It sought to engage the victims movement with a more radical program that gave victims a direct voice in the course of proceedings as opposed to voice only through legal mouthpieces. Its ideology was that the lawyers had "stolen" people's conflicts (Christie 1977). It sought to persuade the victims movement that getting a sincere apology and offers of reparation from the offender was of more tangible and emotional benefit to them than a longer prison term. Using their voice to craft solutions that helped prevent the same thing from happening to other victims could help their recovery. It could even reduce post-traumatic stress (Angel 2005). Indeed, forgiveness, though only if they were ready for it, also tended to be good for peoples' emotional well-being (Park and Enright 1997; Enright and Fitzgibbons 2000; Enright and Kittle 2000; Taft 2000, Petrucci 2002, Regehr and Gutheil 2002).

Restorative justice is a process that takes values such as healing, apology, and forgiveness seriously, as well as practical prevention of recurrence, as it seeks to restore victims, restore offenders, and restore communities. It is a process where all the stakeholders in a crime have the opportunity to discuss what harm has been done and what needs to be done to repair that harm, prevent it from happening again, and meet the needs of the stakeholders. Often, both victims and offenders are supported by loved ones who assist them to identify their hurts, their needs, and the remedies they are able to offer. Later, we will discuss restorative justice that occurs over minor assaults in school playgrounds without being referred to the police, police-diverted, or prosecutor-diverted restorative justice, restorative justice ordered by courts (say between a finding of guilt and passing of sentence), and restorative justice in corrections.

The first just-deserts movement failed to restore legitimacy to the criminal-justice system (see the declining levels of trust in Sherman 1999). The reason is that retributivism is an ideology that chases its own tail. When sentences get longer, the reaction is that they are still not long enough. Until the suffering of the offender equals the accumulated suffering of perhaps many victims, revenge cannot be sweet. When the sadistic murderer is hung, this seems too good for him; perhaps he should have been boiled in oil? Revenge feeds on itself until a more conciliatory mentality displaces it. This is why law and order politics is not as smart for politicians as the opinion polls suggest. The effect of the law-and-order politician's locking up criminals for longer is to create more voracious demands to lock them up for even longer. When the law-and-order politician calls a halt so there is some money available for other programs to get her reelected beyond building more prisons, she is viewed as selling out her law-and-order constituency. Law-and-order auctions—to win elections—have big losers, including the legitimacy of the justice system, but they do not have big political winners.

In this chapter, I argue that the second antiprofessional movement, restorative justice, holds more promise of rebuilding legitimacy and restoring victim rights.

Moreover, there are grounds for hope that it might be able to accomplish this while preserving the historical gains that professionalization delivered. Although the early reactions to this reform movement from both legalists (Sandor 1993; Brown 1994) and rehabilitationists (Levrant et al. 1999) was to shudder at its populism, partly in response to the antilegalist, antitherapeutic discourse of the reformers, the twenty-first century has seen considerable rapprochement among these camps. Lord chief justices of England and Wales and other jurisdictions began to give speeches about the virtues of restorative justice, appellate courts gave it explicit recognition in their decisions (Thorburn 2005), rehabilitationists began to see that because restorative justice builds stronger popular commitment to implement preventive decisions that emanate from the criminal process (Latimer, Dowden, and Muise 2001; Bonta et al. 2006), a restorative-justice circle can be a superior delivery vehicle for rehabilitative interventions that work than orders made in a traditional criminal trial (Braithwaite 2002, 95–102). In a Canadian Department of Justice meta-analysis of eight evaluations of restorative-justice programs with control-group comparisons, compliance with agreements and orders was 33 percent higher in the cases that went to restorative justice (Latimer, Dowden, and Muise 2001, 17).

This professional rapprochement with both the legalists and the rehabilitationists has reversed some of the early delegitimation of restorative justice by justice professionals who were influential with the public. The rapprochement was partly driven by the fact that repeatedly the professionals noticed that restorative justice was perceived as just and satisfying by victims, offenders, police and other participants in the process from the community (Braithwaite 2002, chapter 3). Even the worst run restorative justice programs secured outcomes of 80 percent or 90 percent of participants being satisfied with the process and the outcome, something the most well-run, well-resourced courts were not achieving. Once thousands of people in a city had participated in a restorative-justice conference (say, five hundred conferences with an average attendance of seven citizens ($500 \times 7 = 3,500$), a significant constituency for restorative justice beyond the hard-core reformers was being created. Once those reformers had the self-confidence to engage with the victims'-rights movement, to invite their leaders to sit in on restorative-justice conferences, to invite conservative politicians to do so, even to invite television film crews in, the greater satisfaction of citizens with the justice they were getting began to become apparent to potential recruits to the punitive politics of law and order.

JUSTICE OF THE PEOPLE, JUSTICE OF THE LAW

A legitimacy ideal that has been articulated for restorative justice is that it would assist the justice of the law to filter down into the justice of the people and the justice of the people to bubble up into the justice of the law (Parker 1999; Braithwaite and Parker 1999). The role of restorative-justice circles as bridge-building institutions to enable this is part of a wider story about republican governance where plu-

ralized mutual checking of power is institutionalized (Braithwaite 1997). So the bubbling up, filtering down metaphor is about power from above (that is, legal rights) checking abuse of power from below. Equally it is about power from below (the restorative-justice circle calling to account excessive police violence during arrest) checking abuse of power from above. For example, the hope is that the story of reconciliation being retold following a restorative-justice conference over an egregious act of discrimination against a female assistant professor in a university might have dual effects on the rippling of justice. On the one hand, it becomes an occasion to filter down the justice of university equal employment opportunity policies into the warp and woof of departmental politics. On the other, the story of how the injustice was inadequately dealt with by a lip-service EEO regime becomes an occasion for a university-wide, or even wider, politics of transformation on gender justice. That is the model of restorative storytelling as a fulcrum for checking abuses of power from above and from below. Crucial to this possibility is the insight that culturally resonant narratives can do what mute EEO policies cannot on those occasions when a big enough splash is created at one node of governance to cause ripples to spread across the whole pond of an organization or a society.

Declan Roche (2003, 214) and Kathleen Daly (2004, 506) have challenged John Braithwaite and Christine Parker's (1999) "bubbling up" conception of restorative justice as a vehicle of democratic impulses. Roche argues that "the real instrument of change of formal law is formal law itself . . . [because] the law works as a self-referential system of communication." First, Braithwaite and Parker's (1999) normative push is precisely about rendering formal law less self-referential. Second, the contested empirical idea of autopoiesis (Teubner 1987), that law is overwhelmingly self-referential, is simply less true in the contemporary "age of statutes" (Calabresi 1983), when less law is made by judges reading old legal texts and more by reading new statutes. The legal content of many of those new statutes does come from democratic impulses from below. Third, we will argue a little later that democratic impulses to change policies of executive governments are often more important than those that change formal law. But first we consider more fully the second point, that the normative push for statutory reform could come from below more often, more democratically, and more deliberatively via the vehicle of restorative justice. This is the point, for example, of Braithwaite and Parker's (1999) illustration of how Australian insurance law and policy changed following a press conference to publicize the outcome of a series of restorative conferences concerning exploitation of rural indigenous consumers by major insurance companies (see also Parker 2004).

Another example comes from Braithwaite, Toni Makkai, and Valerie Braithwaite's (2007) study of nursing home regulation in three nations. They found exit conferences at the end of nursing home inspections in the 1980s in the United States to be quite restorative and multipartite. The participants in these exit conferences—generally fifteen to twenty staff, residents, relatives, management, proprietors, church representatives for church-run homes, advocacy groups, inspectors, and

sometimes other kinds of participants—would sit down together to discuss the problems detected in the inspection and movement toward a "plan of correction." Two decades on, exit conferences are much less restorative, having succumbed to "adversarial legalism" (Kagan 1991). Particularly important during the 1980s was the role of advocates in these processes. A September 1991 survey of five hundred twenty facilities in forty states found representatives of the state ombudsman to be present at a quarter of exit conferences, residents of the facility were present in half, and attorneys were present in only 2.5 percent (American Association of Homes for the Aging 1991). Most of the ombudsmen were trained community volunteers and some of the state and local-area ombudsman programs were contracted to advocacy organizations, such as Citizens for Better Care in Michigan, that were prominent in national nursing home politics.

When I interviewed leaders of the Oklahoma ombudsman program, I was told that the two hundred fifty volunteer advocates' training included the understanding that "part of the ombudsman's role is to monitor development of the law." This meant both Oklahoma and federal law, and concrete examples of ombudsmen's influencing both were provided. A facilitating linkage of volunteer ombudsmen (many of them retirees) in Oklahoma was to the Silver Haired Legislature, convened from time to time by the American Association of Retired Persons, to define an elderly-issues agenda for legislators that sometimes touched on nursing home law. "Bubbling up" was facilitated by linkage of a volunteer ombudsman in a remote rural community in Oklahoma to networking meetings of the state ombudsman program, and in turn linkage of state ombudsman programs to the National Association of State Long Term Care Ombudsman Programs and the National Citizens' Coalition for Nursing Home Reform (NCCNHR). Braithwaite, Makkai, and Braithwaite (2007) show that the latter organization, partly in collaboration with the former, led the transformation of United States nursing home law in the 1980s and '90s (1987). This law reform had some big effects, including the reduction of chemical and physical restraint in nursing homes (the rate of physical restraint went from 42 percent of nursing home residents across the United States at the end of the 1980s to 4 percent today). State ombudsmen counted among many of the leading activists of the NCCNHR. The high-water mark of its influence was April 24, 1987, National Nursing Home Residents' Day, when NCCNHR convened most of the major nursing home interest groups, including some industry groups, to discuss and settle which of a wide-ranging raft of law reforms each interest group would sign on to as a consensus position. This long list of consensus reforms then became the blueprint for the most sweeping set of national nursing home law reforms in United States history.

Let us now consider how democratic impulses to change policies of executive governments are often more important than those that change formal law. I recently challenged British advocates on restorative justice in schools with our failure to define the institutional mechanisms whereby private troubles can bubble up to become public issues. Belinda Hopkins, the author of *Just Schools: A Whole School Approach to*

Restorative Justice (2004), replied that restorative justice advocates were seeking, not very successfully to date, to seduce British educational policy to an explicit way of bubbling up specific personal narratives into national policy. This approach was the constant revision of National Practice Guidelines on Restorative Justice in Schools (Restorative Justice Consortium 2005b) adapted for restorative justice in school settings in light of bottom-up experience.¹ She explained that in conferences, workshops, and around the table in drawing up these Guidelines and Principles, "Personal narratives from professional experiences are shared and help to make the strong case for policy review and change." Her claim was that ordinary people's stories do "inform the debate and influence decision making." It was mainly the lack of punitive response to "bad news" stories—for example, those involving domestic violence or school bullying—and bad outcomes befalling victims (even suicide, in one influential school bullying case) that had actually limited the roll-out of restorative justice in a democratically responsive way. My own experience as a member of a committee that debated and drafted the 2004 Australian Capital Territory Restorative Justice Act was that aspects of that law were drafted in response to specific stories of real cases in the experience of those around the table.

This emphasis on personal stories could of course be taken further. General principles in something like the British National Practice Guidelines document could be illustrated by personal stories of ordinary citizens that have shaped their drafting. This indeed is an interesting translation of the old idea that corporate cultures can be a storybook more than a rule book (Shearing and Ericson 1991) into the more democratically ambitious idea that the networked governance of national institutions can be guided by a storybook. Many leading corporations, such as 3-M, have come to the conclusion that an excess of abstraction in corporate policies is a problem. So policies and plans are brought to life by stories intended to create the desired kinds of sensibilities among employees (Shaw, Brown, and Bromiley 1998):

Stories are central to human intelligence and memory. Cognitive scientist William Calvin describes how we gradually acquire the ability to formulate plans through the stories we hear in childhood. From stories, a child learns to "imagine a course of action, imagine its effects on others, and decide whether or not to do it." . . . Cognitive scientists have established that lists, in contrast, are remarkably hard to remember.

Iris Young has been an influential thinker about the link between narrative and justice. Storytelling for Young can be "an important bridge between the mute experience of being wronged and political arguments about justice" (Young 2000, 72). Human beings tend to make sense of their experience of injustice through an architecture of narrative. Just as psychotherapy can be a form of narrative repair when people cannot construct an adaptive story about their worries, restorative justice

can be about restoring lives in disarray because of a crime. Then they are renarrated as the lives of people who have survived, transcended or repaired injustice (Zehr 2000; Pranis 2001; Neimeyer and Tschudi 2003). As a general matter, the nonnarrative processing of human experience might be somewhat exceptional (Neimeyer and Levitt 2001). Courtrooms and law books can undermine real worlds of justice because they too ruthlessly crush narratives about new injustices with old abstractions. Narratives are meaning making; in addition to giving meaning to personal identities such as "reformed drug abuser" or "rape survivor," they can give new meaning to justice itself.

A restorative institution such as a truth and reconciliation commission (there have been twenty-five now worldwide) makes it easier to understand how a justice institution can turn the private troubles of victims into public issues (but see Stanley 2005 on the suppressed recognition of women's truth in the East Timor Commission, for example). Public commission hearings in which victims confront perpetrators attract more attention than the average court case. The stature of a leader such as Nelson Mandela resides in his legacy of restoring South Africa as a nation that has transcended an unjust institution. Whatever their race, all South Africans begin to share the identity that they have all been victims of Apartheid, all impoverished by it to become something less human.

Let us try to better understand what is democratically at issue in our bubbling up, filtering down of legitimacy by sticking with the school example. Whole-school programs with a restorative ideology are taking hold in education systems of the Anglophone world much more rapidly than restorative justice is taking hold in criminal-justice systems. These school programs first seek to filter the justice of rights down into the justice of the school community. Classroom by classroom, whole-school programs initiate conversations among administrators, teachers, students, parents, and other community members such as janitors and counselors about what is acceptable and what is not. This engenders a rights culture intended to secure the rights of children and staff alike to be safe against, for instance, bullying. Democratic deliberation in local sites such as classrooms teaches and affirms commitment to rights enshrined in the law and builds commitment to intervene in, say, playground bullying when these rights are threatened. Systemwide education policies to nurture and resource whole-school restorative programs systemically foster filtering down of the justice of the law into a popular culture of rights in schools.

That is the filtering-down side. The bubbling-up side at the microlevel of the school has been documented in cases in the literature of, for example, school conferences dealing with minor incidents of sexual harassment or sexual assault. One case describes the reversal from blaming the victim as a girl who was "asking for it" in the antirights culture of an Australian school (Braithwaite and Daly 1994; Braithwaite 2002, 66–70). In the outcome of that conference, the responsible boy and his friends agreed to go out into the school to spread the message that this girl was not responsible for what happened to her. The boys were responsible, and the

boys attending the conference accepted an obligation to confront and change the patriarchal culture of that school, which was disrespecting of girls' bodies. On my account, what is happening here is that justice impulses from below, from dominated teenage girls, bubble up through the agency of remorseful boys to transform the private justice system of one school.

The next step is to constitute justice storybooks, as in my conversation with Hopkins on national guidelines for restorative justice in schools, that create a path for local stories to bubble up to influence systemwide justice. These can be stories more oriented to learning how to secure victim rights or the rights of alleged perpetrators, children's rights or those of parents or teachers.

JUSTICE IN MANY ROOMS

Legalists will of course say that school justice systems or corporate justice systems (as at 3-M) are a far cry from state legal systems. The restorative-justice theorist finds that an overstated reaction at three levels. First, there is the legal pluralist response that justice occurs in many rooms (Galanter 1981), where courtrooms in a sense do best by justice through overseeing (checking and balancing) the justice making that occurs in those many rooms. Second, the restorative-justice theorist says we are not born just; we are not born democratic. We have to learn to be democratic citizens who will do justice well in courtrooms and other rooms later in life as complainants, witnesses, jurors, lawyers, journalists reporting the case, and in other roles. Enriching justice experiences in school are important to our learning to be just, in particular, to learning to make human rights active cultural accomplishments as opposed to passive legal restraints.

Third, state justice is itself not mainly transacted in courtrooms. It is lawyerly myopia to see it that way. The empirical evidence is that "the process is the punishment," that police and prosecutors exact more punishment outside courtrooms than inside them (Feeley 1979). So when (as in cases discussed by Roche 2003) a mother complains about excessive use of force against her son during arrest, or discrimination against her son because he was arrested whereas the police treated other perpetrators more leniently, this is not a marginal issue. It is a story at the heart of how we would want the justice of the people to bubble up into the justice of law enforcement.

In my experience as a commissioner with Australia's national competition and consumer protection regulator, I chaired conferences that discussed allegedly illegal conduct by major corporations in which they complained about the unfairness of how we as the regulator treated them in our enforcement work. I would take these concerns back to meetings of the full commission to discuss whether the complaints justified a need to revise our policies and procedures. There were other cases where such complaints about unfair process through such channels were ignored and were revisited by the corporation attacking us in the media. Such bubbling up of checks

and balances about pretrial justice is absolutely fundamental to the quality of a justice system and therefore its legitimacy in the eyes of citizens. Not post-trial but, rather, intra-trial, we should also look forward to the day when a judge sends a case to a restorative-justice conference not only for a recommendation on sentence but also for information on any injustices that should be repaired in the context of this trial. We should look forward to the day when such a conference returns to the judge with some advice on how she might have handled the case with more propriety or sensitivity, or why an apology from her to a witness might be in order.

Two centuries ago, in Jeffersonian America, democracy was close to the people. Electors may never have met the governor or the president, but most knew the mayor or a local legislator they elected to vote in the capital. Today the debates that matter most—whether to go to war, increase taxes, make a key appointment—take place in the executive offices of the capital. Deliberation on the floor of chambers that are open to citizens—legislatures, town meetings—count less and less as decision-making nodes. Nevertheless, disputes over specific injustices that affect citizens continue to be heard in chambers that are no less open to ordinary citizens than they used to be. Restorative justice is partly about reconceiving the judicial branch of governance more than the legislative branch as a site where deliberative democracy can be reinvigorated, where ordinary stakeholders can be given a more genuine say. When people have been a victim of injustice, whether as a victim of crime, of a consumer rip-off, or of school bullying, there is more edge to their desire for participation than there is to participate in neighborhood watch or consumer or school policymaking. The restorative-justice circle in a school to confront a playground assault thus becomes an opportunity for young citizens to acquire a taste for becoming deliberatively democratic.

So far my argument has been that democracy can be made more legitimate by more effectively allowing the justice of the law to filter down into the justice of the people and the justice of the people to bubble up into both the justice of the law and the justice of state enforcement. In the next section, we argue that legitimacy requires much more than making the legal order legitimate. A bigger question is the social order.

THE LEGITIMACY OF THE SOCIAL ORDERS OF THE STATE AND THE STREET

Trust in the government of the United States and other Western governments started a big, long decline in the 1960s (Putnam 2000). Trust in Washington was over 70 percent at the beginning of the 1960s, and below 30 percent in the early 1990s (Nye and Zelikow 1997). Gary LaFree (1998) summarized evidence across time and space suggesting that where governmental legitimacy was low, crime was higher. Income inequality was also implicated in this picture, being associated with both higher levels of crime and perceptions that the system is unfair. Elijah Anderson

(1999, 130) found in his ethnography of black urban offenders that "many feel wronged by the system, and thus its rules do not seem to them to be legitimate." In other words, the illegitimacy of the social order is one of the things that creates the illegitimacy of the legal order.

Many subcultures of the street are consequently about rejecting one's rejectors (Cohen 1955). Participants in minority street cultures feel rejected by mainstream society. When police and white officials enter such streets purveying crime prevention programs, they tend to be seen as quintessentially worthy of rejection. This renders these officials incapable of changing the culture of street crime. One innovative attempt to re-theorize this dilemma has come from the LIFERS Public Safety Initiative Steering Committee of the Graterford State Penitentiary in Pennsylvania (LIFERS 2004). These long-term prisoners contend that arresting gang members takes only those individuals off the street, their place to be taken by new recruits to the gang (Reiss 1980). Even when those arrested are rehabilitated in prison, crime is not reduced because their illicit niche on the street has been filled by another.

This is one reason the Graterford LIFERS advocate transformation rather than rehabilitation. They conceive rehabilitation as being about change in the way a person behaves, whereas transformation involves a fundamental change in personal philosophy whereby the process of transformation is not complete until manifest in "personal efforts to transform others ensnared in the street crime lifestyle" (LIFERS 2004, 64S). Shadd Maruna (2001) found that one predictor of serious offenders' "making good" was involvement in helping others to make good.

The more practice one has, the greater the likelihood that one will perfect the desired changes in personality. Therefore, artists become great artists not by attending discussion groups about great art but by practicing. Writers become accomplished writers not by talking to professional writers but by writing. Prisoners desiring to learn more socially productive behaviors do so not by sitting through endless hours of therapeutic group sessions but by returning to their communities and practicing the socially productive behaviors that they seek to make part of their lives (LIFERS 2004, 64S).

Their most important point is that "society should begin to use the experience, knowledge, insight, and expertise of transformed ex-offenders to do the work that members of the community and those in positions of authority are not equipped to do" (LIFERS 2004, 65S). The idea is to change a sequence of

conviction → rehabilitation → replacement on the street

to

conviction → personal transformation → transformation of the culture of street crime.

When long-term prisoners are given a chance to return to their street to deploy their street cred to transform a culture they know, that chance is given to someone who might have legitimacy on the street. Authority figures do not enjoy legitimacy on the street precisely because they do enjoy legitimacy in the mainstream.

There are many ways released offenders can transform their street. One is by brokering terms of peace agreements between gangs that include the renunciation of armed violence, as we have seen the Alliance of Concerned Men do in Washington, D.C. (Marcia Slacum Greene, "Feuding Gang Factions Report a Truce in SE: Slaying of Boy, 12, Spurs Effort to End Violence," *Washington Post*, January, 30, 1997). The day delegates from the 2005 World Congress of Criminology visited Graterford in 2005, Tyrone Parker, from the Alliance of Concerned Men, said to me that changing the law in states like Pennsylvania to allow the early release of lifers from a transformative group is important because there is a "shortage of strong black men who are role models who can show how the street can be transformed for the better." Pre-release restorative-justice conferences could be one vehicle for negotiating conditions for graduated release to the street of inmates to work on transforming the culture of street crime on their old block. Earlier release of long-term prisoners with street legitimacy would also be a step toward a more legitimate social order that holds out a better future for minorities who run afoul of the law than a life of perpetual incarceration. Early release to participate in crime-prevention programs that hold out a prospect of saving a future generation of victims, where the decision to release gives the offender's original victim a say in a restorative-justice circle about whether release should happen, might secure the legitimacy of the early-release program.

The other important feature of the LIFERS program is that it empowers prisoners as generators of criminological theory. We criminologists can lend legitimacy to them by the simple gesture of listening to their ideas. Simultaneously criminology can also become more legitimate when some influential ideas in its repertoire come from below. This is what made the Graterford event for the 2005 World Congress of Criminology so special.

RESTORATIVE JUSTICE AND LEGITIMACY: CONCLUSION

It has been argued that professionals sidelining of victims over the past two centuries has undercut the legitimacy of the criminal-justice system. Restorative justice can reinstate victims' voices while averting violence as a means of private revenge and preserving the rights focus that less privatized justice has delivered. Indeed, restorative justice can be a vehicle for rights that are more active cultural accomplishments, enlivened by participatory storytelling processes, than the passive rights of legal texts.

Narratives of restorative justice might also better bubble up the justice of the people into the justice of the state. Law-making dialogue could be better informed by stories from below if restorative-justice programs institutionalized a channel for communicating personal stories that should be made political. Advocacy NGOs that are funded to monitor outcomes of restorative-justice programs could play that role. For example, children's-law centers can watch for stories of abuse of children as victims or offenders in restorative-justice processes and feed those stories into deliberation over policy change and into policy documents. Environmental NGOs can do that for restorative environmental-justice programs, Aboriginal rights NGOs for Aboriginal-justice programs, women's rights NGOs for abuses of the rights of women in restorative-justice programs, unions for abuses of workers' rights, and so on.

A social order that enabled higher-quality justice in many rooms would enjoy more legitimacy than one where justice could only be obtained by paying lawyers to take cases to court (thus a justice that is mostly only available to the rich). Policies and guidelines for enacting justice in different chambers of private and public governance (schoolrooms, corporate towers, police stations, offices of universities) might be transformed from rule books to storybooks, where the stories are channeled up through restorative-justice programs.

The criminal-justice system will become more legitimate as it becomes more effective at preventing crime and helping victims. The restorative-justice idea is that these two objectives can be brought together in various ways (see Braithwaite 2002 for a range of them). A promising new way bubbled up from below, from Graterford Penitentiary, is engaging victims with early-release restorative justice conferences for transformed long-term offenders, then sending those offenders back to their block to transform the culture of street crime. The Graterford LIFERS argue that their members have the street legitimacy for doing work such as negotiating gang truces to reduce violence. These ideas are but illustrative sketches of the possibility that street legitimacy, the legitimacy of a just social order and a just legal system, might be bound together in an integrated strategy for building democratic legitimacy. Justice that occurs in many rooms can empower more meaningfully than justice that occurs in very big chambers on Capitol Hill. We can tell how much power a person has by how many listen to his or her stories. It follows that restorative strategies for institutionalizing listening to the stories of little people in little rooms are simple strategies of empowerment. When the people have more power through such practical strategies and feel that they do, legitimacy grows.

NOTES

1. The U.K. also has more general principles (Restorative Justice Consortium 2005a) that were also developed collaboratively by practitioners, partly on a foundation of sharing crime narratives.

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