

RESTORATIVE JUSTICE AND A NEW CRIMINAL LAW OF SUBSTANCE ABUSE

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The healing process of restorative justice might contribute to the treatment of substance abuse because it can deliver the love and caring to motivate holistic change in a life. Restorative justice is about repairing injustice, and there are important ways that substance abuse is implicated in the generation of injustice. Some case studies illustrate how (a) a restorative approach to substance abuse can catalyze confrontation of a profound community injustice and (b) confronting injustice can help tackle substance abuse. At present, most restorative justice programs fail to achieve either dynamic, sweeping substance abuse under the carpet. Criminalization of the harm caused by substance abuse (e.g., burglary to support a heroin habit) may be an effective way of reducing substance abuse when it is used to trigger well-designed restorative processes. The research and development needed to test this hypothesis is outlined.

SUBSTANCE ABUSE AND INJUSTICE

In restorative justice processes, stakeholders sit in a circle and discuss how to restore the victimized, the victimizers, and the community following an injustice. Restorative justice means a process where all the stakeholders affected by an injustice have an opportunity to discuss its consequences and what is to be done to right the wrong. Is substance abuse an injustice? This is a hard question, one on which Philip Pettit and I have had a little to say in the past (Braithwaite & Pettit, 1990, pp. 92-100). The contribution of this article will not be to wade into those philosophical issues. Let me simply assert that substance

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abuse can be a source of profound injustice. Substance abuse by a family member can destroy the life of another family member in a way that is painfully unjust. Recognition by a substance abuser of the injustice caused by stealing from friends and family, lying, or other untrustworthy behavior is often the kind of recognition of injustice that motivates change through restorative processes.

In some restorative conferences I have convened or seen, victims (of theft) bearing the burden of injustice out of love for the offender, offering support from one friend or family member to another, moved substance abusers to want to be part of healing the relationships. Because substance abusers routinely steal from loved ones and friends who protect them by declining to lodge complaints and because abusers often suffer unacknowledged shame for putting their loved ones in this position, restorative justice programs outside the state criminal justice system can provide an opportunity for these hurts to be healed. The hope is that the process of confronting hurts and acknowledging shame to loved ones they care about will motivate a commitment to rehabilitation in a way that meetings with more unfamiliar victims would not.

There is much evidence reviewed by Muck et al. (2001 [this issue]) that prevention of problems such as substance abuse and crime can work. There is also a lot of evidence that mostly it does not. My hypothesis is that the key reason for the gap between preventive promise and the reality of practice is motivation. The person with the substance abuse or crime problem is not motivated to change. This hypothesis is implicit in Prochaska, DiClemente, and Norcross's (1992) six-stage model of how people move out of addictive behaviors. The first three stages involve moving from having no intention to change, to becoming aware that there is a problem, to motivation to take action. Furthermore, my hypothesis is that love is a source of acknowledgment and motivation, as is empathic engagement with the injustices that others suffer. The empirical evidence is that the experience of love is a key ingredient in successful restorative justice processes in a way that it is not an important ingredient of successful court cases (Ahmed, Harris, Braithwaite, & Braithwaite, 2001), that empathy is greater in restorative justice conferences than in court cases (Ahmed et al., 2001), and that empathy predicts success in restorative justice processes (Maxwell & Morris, 1999). Redemption rituals assist motivational transfor-

mation (Maruna, 2001), and redemption is earned through repairing injustice (Bazemore, 1999).

In such rituals, old debates about whether it is right to blame or punish people for substance abuse are not relevant. In restorative justice processes, it is just fine to allow those who are responsible for injustice to believe "It is not my fault, but it is my responsibility" (Brickman et al., 1982). It becomes morally possible for poverty and drugs to be blamed for past errors. This follows Jesse Jackson's political prescription: "You are not responsible for being down, but you are responsible for getting up." For the victim of substance abuse, the "liberating life narrative" (Henry & Milovanovic, 1996, p. 224) that restorative justice might draw out can be about action under the influence of a drug as "not the real me." Maruna (2001) defined an archaeology of hope as one that motivates a restorying (Zehr, 2000) of the self as basically good. Maruna found empirically that desistance from crime is associated with a restorying that in cases of substance abuse means redefining the self as "not like that anymore," "not like I was when the drug had hold of me." Maruna also found that in redemption rituals, a recurrent feature of finding the "real me" (and of desistance) is a desire to help others suffering the same struggles. For example, one of the things I have seen happen in a conference I have convened is a young substance abuser urging an adult neighbor (who he loved and had victimized by burglary) to try one of the programs he had experienced for her minor problem of substance abuse. She agreed to do so! Just as one of the best ways to learn is to teach, Maruna's research shows that one of the best ways to be helped is to help.

So, restorative justice sidesteps questions of whether it is right or wrong to punish substance abuse with the following move. If substance abuse is part of the story of injustice, part of what it is important to understand to come to terms with the injustice, then both the substance abuse and the injustice it causes are likely to be among the things participants will wish to see healed in the restorative process. Another thing they might want to see healed is hurt and injustice arising from attempts to punish substance abuse. I have seen conferences in Australia on marijuana use where much of the discussion was around the inappropriateness of the police intervening through threatening to invoke the criminal law against the marijuana use. Justice under the restorative model is an emergent property of deliberative de-

mocracy. Citizens are given a space where they can contest laws they believe to be unjust or laws that might be just in some abstract sense but unjust in the practice of their enforcement in a particular context.

Because citizens discover through deliberation whether they feel something should be done about a particular injustice, restorative justice builds democratic commitment to doing those things. The story about restorative justice building motivation to repair the harm is therefore a relational one, not just one of the individual psychology of being moved by the revelation of injustice. Those invited into the restorative justice circle are those who enjoy the most respect, trust, and love from victims and offenders. When those we most respect sit and work through with us the reasons why something should be done to repair a harm, the collective quality of the resolve means that we will be more committed to it. We know we enjoy collective support for the resolve to embark on drug rehabilitation or to do something else (Cullen, 1994). We make a personal choice to commit to the remedy based on a process that motivates this commitment and delivers collective support to us to stick with it and to offer all manner of practical help along the way. The ideal of relational transformation is that through empowerment and recognition, all parties to the conversation acquire compassionate strength to deal with problems as they choose (Bush & Folger, 1994).

The fundamental decency of the normative commitment to deliberative democracy in restorative justice therefore bears a causal connection to the effectiveness of restorative justice in motivating the free choice to restore. These are the core theoretical claims advanced here.

CRIME AS AN OPPORTUNITY TO CONFRONT SUBSTANCE ABUSE

We know it takes an enormous amount of personal commitment and help from others to turn around a serious problem of substance abuse. We know that people in the grip of an addictive substance drift rather than confront the issues in their lives. It takes something special to shake the person out of this drift. Arrest for a crime has the potential for that special drama. For minor crimes, the production-line processing in a few minutes before a lower court, transacted in the techno-

cratic language of lawyers, has been stripped of drama, especially for repeat players. Restorative justice processes have much more hope of a ritual impact that might shake a substance abuser out of drift. First there is more time—time for greeting, for building up the story of how this happened, for drawing out who has been hurt by the police being dragged into the life of the family, time for tears, and for offering a tissue or a hug in response. With drunk driving, there is time for talking about how lives actually are shattered by drunks who drive cars. Restorative justice is partly about returning ritual to criminal process, ritual that requires taking stock rather than perpetuating drift (Braithwaite & Mugford, 1994).

When a restorative justice conference is held for a teenage heroin abuser who commits a burglary, the conference can be an opportunity for the parents of the child to cry out for help. They can emerge from the conference as the bigger victims than the folk whose house was burgled. It becomes clear that the consequences of the specific burglary are minor in comparison to the way a number of lives are being destroyed by the young person's attachment to heroin. The most important thing that happens at the conference is that the child has to sit and listen as a number of people express concern about the suffering not only the offender but also his or her parents and other family members are going through. Often the conference has no effect on the subsequent course of events, however, because it too quickly moves from the communal recognition of deep suffering to what is to be done to fix the more tractable problem of the losses suffered by the burglary victim. Everyone looks the problems of the substance abuser's family in the face, then turns away for fear that they will be saddled with the enormity and seeming impossibility of dealing with them. Instead, they settle for the comfortable denial that by agreeing on a few practical things for the offender to do to help the victim, some justice has been done, and perhaps this will get through to the offender. This seems unlikely for an unemployed offender with a heroin habit that must be paid for somehow.

The alternative is to promote restorative justice as a safe and special opportunity for the loved ones of a person with a substance abuse problem, an opportunity to talk openly about all the dimensions of the problem. The pitch would be that the normal reason for not talking openly about an illicit drug problem—that it would bring trouble from

the police—is moot because there is already trouble with the police and the police undertake not to lay any additional charges because of drug offenses disclosed at the conference. Indeed, the fact that things have gotten to the point of trouble with the police becomes the occasion for admitting the need for getting into the open all the harms and hurts at issue. The ritual importance of a criminal arrest can also be an excuse for bringing a lot of supporters of the offender into the circle, not just a few. In the facilitator's preparation for the conference, some of those supporters might have been persuaded to offer to do some little things for the family. When others see that there are many potential helpers in the circle, some of whom are already offering help, they will be more likely to take the risk of getting involved, to overcome the fear that if they do they may be overwhelmed by the scope of the problems. Just as abuse begets abuse, so can help beget help, strength beget strength.

Of course the other reason families do not want to openly discuss the substance abuse of one of their members, even for licit drugs, is that it brings shame on the family. Here we need to educate the community that acknowledging shame is healthy and helps us discharge shame. Shame acknowledgment also tends to elicit forgiveness and needed help from others. This forgiveness also helps us to discharge shame, to put it behind us. Eliza Ahmed (2001) showed that acknowledging shame for school bullying helps prevent further bullying. Loved ones of a drug abuser who seize the opportunity of a ritual encounter to acknowledge shame over some of the things associated with the drug abuse can also be role models for a substance abuser who is resisting shame acknowledgment, who prefers denial or discharging of shame in anger. All this adds up to the virtue of persuading families that a restorative justice circle provides them a confronting yet supportive context where it is in their interests to acknowledge the shame members of the family are feeling.

Most heroin addicts eventually get into trouble with the law. Most alcoholics, particularly in a society such as Australia that has random breath testing of drivers, eventually get into trouble with the law. Indeed, one of the strongest policy arguments for random breath testing of drivers is that it gives the community a principled excuse for confronting serious alcohol abuse. Even more controversially, laws criminalizing smoking in the vicinity of babies or children who are too

young to resist this imposition on the health of their environment might give families an opportunity to communicate their fears about the health effects of tobacco, to offer emotional support in the struggle to give up the drug. This does not imply a need to report such a crime to the police. A better approach is for a relative who is concerned about the health of the baby to use the fact that such conduct has been criminalized as a moral resource to insist on a restorative justice conference coordinator in civil society helping the family to confront her fears for the baby. This is a new strategy of the criminal law as a weapon against drug abuse. Instead of being about deterring substance abuse, this restorative strategy is about exploiting the criminalization of the effects of substance abuse to provide an occasion for a ritual confrontation of the substance abuse itself.

Such a new criminal strategy offends liberal sensibilities. Liberals will be offended by any overreach of the criminal law into regulating the right of people to go to hell in their own fashion. Yet one can be a liberal opponent of criminalizing victimless crime while supporting the criminalization of effects or forms of substance abuse that do endanger others. We can be opposed to prohibition and support drunk driving laws. And if we support drunk driving laws, we can support the right of stakeholders to advance their proposed solution to the problem in a specific case. In saying that we think stakeholders such as accident victims, family members, or drinking mates of drunk drivers should have a right to use the ritual occasion of a restorative justice conference to seek to persuade someone to moderate or desist from substance abuse, this does not mean we think they have a right to enforce their preferred solution. All they are given is a ritual opportunity to put their case to the offender. If everyone else in the circle agrees with a proposed program of moderation or rehabilitation, under the philosophy of restorative justice, the offender has a right to say no and take whatever consequences a court might seek to impose if he or she cannot persuade the conference that its proposal is inappropriate. The new criminal strategy proposed is therefore not a threat to freedom because the restriction of freedom involved is not a matter of legal enforcement but of deliberative discussion constrained by a veto right for the person whose freedom is at risk. However, the criminalizing of effects of substance abuse that do have victims is used unapologetically to advance the regulation of substance abuse by deliberative de-

mocracy, to give those victims a special opportunity to make a case for an agreement for drug rehabilitation.

Now we will develop these ideas by considering what may be some successes and failures of restorative justice in confronting substance abuse. They will all be cases of alcohol abuse. The implications may be of general import to all kinds of substance abuse. First, we will deal with a case study where confronting substance abuse led to the confrontation of injustice (sexual assault) and then a case where the deliberative confrontation of injustice (domestic violence) led to the successful confrontation of substance abuse. Then I will consider a case where a failure to confront underlying substance abuse led to a failure to confront the injustice.

SUBSTANCE ABUSE CONFRONTED, SEXUAL ABUSE CONFRONTED

Healing circles in the Manitoba Ojibway community of Hollow Water were convened to deal with community concerns about an epidemic of alcohol abuse. As citizens sat in these circles discussing the alcohol problems of individual people, they realized in 1986 that there was a deeper underlying problem, which was that they lived in a community that was sweeping the sexual abuse of children under the carpet. Through setting up a complex set of healing circles to help one individual victim and offender after another, in the end it had been discovered that a majority of the citizens were at some time in their lives victims of sexual abuse.¹ Most of the leading roles in this process were taken by women of Hollow Water (Bushie, 1999). Fifty-two adults out of a community of 600 (Jaccoud, 1998) formally admitted to criminal responsibility for sexually abusing children, 50 as a result of participating in healing circles, 2 as a result of being referred to a court of law for failing to do so (Lajeunesse, 1993; Ross, 1996). Ross (1996) claimed that the healing circles have been a success because there have been only two known cases of reoffending. Tragically, however, there has been no genuinely systematic outcome evaluation of Hollow Water. So we do not have data on pre- and post-levels of either alcohol abuse or sexual abuse.

What is more important than the crime prevention outcome of Hollow Water is its crime detection outcome. When and where has the traditional criminal process succeeded in uncovering anything approaching 52 admissions of criminal responsibility for sexual abuse of children in a community of just 600? Before reading about Hollow Water, I had always said that the traditional criminal investigation and trial process is superior to restorative justice processes for justly getting to the truth of what happened. Restorative justice processes were only likely to be superior to traditional Western criminal process when there was a clear admission of guilt. The significance of Hollow Water is that it throws that position into doubt.

In his discussion of the Hollow Water experience, Ross (1996) emphasized the centrality of restoring communities for restoring individuals:

If you are dealing with people whose relationships have been built on power and abuse, you must actually show them, then give them the experience of, relationships based on respect . . . [so] . . . the healing process must involve a healthy group of people, as opposed to single therapists. A single therapist cannot, by definition, do more than talk about healthy relationships. (p. 150)

Ross also found special virtue in the participation of healed victims and healed victimizers of sexual abuse who can cut through the (often shared) neutralizations that they had to cut through in confronting their own abuse.

In Hollow Water, ex-offenders are not shunned forever, but seen as important resources for getting under the skin of other offenders and disturbing the webs of lies that have sustained them. Better than anyone, they understand the patterns, the pressures and the ways to hide. As they tell their personal stories in the circle, they talk about the lies that once protected them and how it felt to face the truth about the pain they caused. (p. 183)

Indeed, at Hollow Water, before they met their own victim in a healing circle, sexual abusers met other offenders and other offenders' victims who would simply tell their stories as a stage in a process toward breaking down the tough-guy identity that pervaded the dominating

relationship with their own victim. Note what an interesting strategy this is from a defiance theory perspective (Sherman, 1993). Averting defiance is about getting offenders to put their caring identity rather than their defiant self in play.

I find the fundamental hypotheses to take away from Hollow Water to be that

- abuse of substances and abuse of people is a vicious circle,
- communal caring for people and effective confrontation of abuse is a virtuous circle,
- by confronting abuse of substances communally we might confront abuses of people that have been swept under the carpet.

If there is in play here a virtuous circle of healing begetting healing that has flipped the vicious circle of hurt begetting hurt, it follows that by confronting communally the abuse of people, we might effectively deal with the abuse of substances. Our next Canadian case study is about just that.

VIOLENCE CONFRONTED, SUBSTANCE ABUSE CONFRONTED

The award-winning Health Canada video *Widening the Circle: The Family Group Decision Making Experience*, based on the work of Gale Burford and Joan Pennell (1998) with family violence in Newfoundland and Labrador, shows how to advance best restorative justice practice in a number of respects. We see on the video the family sit in the circle and discuss the problems they share as an extended family. A social worker puts up on butcher paper the range of options available locally for dealing with family violence and other problems (including substance abuse) that the family identifies as concerns. Later the experts leave but are called in to explain some other kinds of treatment options that the family thinks might help in their situation.

The hypothesis here is that the plurality of deliberation in restorative justice conferences will increase the effectiveness of rehabilitation programs. This plurality would push out one-size-fits-all pet psychotherapeutic programs often spewed up by state monopolies of

welfare provision. The experts under the restorative model have to persuade the affected communities of care that this really will be the best option for them. Most critically, they must persuade the offender or the victim who is to be helped. We hypothesize that this will increase the odds of the help being effective (in comparison with coerced help). Although the evidence is not clear that this hypothesis is correct, it is far more clear that commitment to rehabilitation in a context of family and community support is more effective (Cullen, 1994).

Burford and Pennell's (1998) research found a marked reduction in both child abuse/neglect and abuse of mothers/wives after the intervention. A halving of abuse/neglect incidents was found for 32 families in the year after the conference compared to the year before, whereas incidents increased markedly for 31 control families. Pennell and Burford's (1997) research is also a model of sophisticated process development and process evaluation and of methodological triangulation. Although 63 families might seem modest for quantitative purposes, it is actually a statistically persuasive study in demonstrating that this was an intervention that reduced family violence. There were actually 472 participants in the conferences for the 32 families, and 115 of these were interviewed to estimate levels of violence affecting different participants (Pennell & Burford, 2000). Moreover, within each case a before and after pattern is tested against 31 different types of events (e.g., abuse of child, child abuse of mother, attempted suicide, and father's keeping income from mother) where events can be relevant to more than one member of the family. Given this pattern matching of families \times events \times individual family members, it understates the statistical power of the design to say it is based on only 63 cases. The Newfoundland and Labrador conferences were less successful in cases where young people were abusing their mothers, a matter worthy of further investigation.

Burford and Pennell (1998) also found reduced drinking problems after conferences. Although dealing with substance abuse was not a principal objective of this program, the empirical findings do support the hypothesis that communally confronting the abuse of people can assist with confronting abuse of substances. Also beyond the positive effects on the direct objective of reducing violence, the evaluation found a posttest increase in family support, concrete (e.g., babysit-

ting) and emotional, and enhanced family unity, even in circumstances where some conference plans involved separation of parents from their children. The philosophy of this program was to look for strengths in families that were in very deep trouble and build on them. This seemed to deliver high levels of participant satisfaction. In Pennell and Burford's (1995) conferences, 94% of family members were "satisfied with the way it was run," 92% felt they were "able to say what was important," and 92% "agreed with the plan decided on." My diagnosis is that the key to the success of the Newfoundland and Labrador programs was the depth of the empowerment of families to define what were the important problems to put in the center of the circle. The hypothesis is that where substance abuse is one of the underlying problems with abuse of people, family members will know this. If the process is rich in the way it empowers them, they will target the substance abuse as a problem they need to commit collectively to solve. Our next case study is a restorative justice failure story where communal empowerment was too constrained to allow this to occur.

SUBSTANCE ABUSE NOT CONFRONTED, DRUNK DRIVING NOT EFFECTIVELY CONFRONTED

Sherman, Strang, and Woods (2000) recently reported that whereas the RISE violence restorative justice experiment in Canberra, Australia, reduced reoffending by 38 crimes per 100 per year, restorative justice increased drunk driving reoffending by 6 crimes per 100 offenders per year. I will put aside here possible reasons for the success of the violence experiment and focus on possible reasons for the failure of the drunk driving experiment in which 450 offenders were randomly assigned to a restorative justice conference and 450 randomly assigned to court. Perhaps the most likely reason for the failure of the RISE drunk driving experiment is about the incapacitative effects of license suspensions being available in court cases and not in cases assigned to the restorative justice conferences. Certainly the pattern of early analyses fits this interpretation (Sherman et al., 2000).

Perhaps, then, if only conferences were put on a level footing with courtroom adjudication by empowering conferences to suspend driving licenses, conferences would prevent more drunk driving than

court processing. But there seem to be other reasons why the drunk driving experiments might not have had the success reported in other restorative justice evaluations (Braithwaite, 2001a). One is that the drunk driving cases were all ones where there was no victim. They were all detected by roadside stops and random breath tests. To assure homogeneity, the rare cases where the driver had hit someone or something were excluded. So the emotional power that comes of hearing from a victim of the consequences that were suffered as a result of the wrongdoing was missing from these conferences.

But the other deficiency I observed in these conferences that is theoretically relevant here arose from a decision by the police who convened these conferences that the offense being dealt with was drunk driving and conferences should be prevented from delving critically into aspects of the life of the offender that were not specifically implicated in the offense. This constraint was motivated by admirable liberal anxieties about averting the overreach of the criminal law (Morris & Hawkins, 1969). Yet the problem can be read as an underreach of citizen empowerment rather than an overreach of the law. What I and others (Retzinger & Scheff, 1996) observed to happen in drunk driving conferences was that when the conference would begin to struggle with confronting an underlying alcohol problem, the police convener of the conference would intervene with a constraining comment such as "It's not a crime to drink. We only break the law when we get behind the wheel of a car after drinking too much." At times, the consequences of this policy against net widening were palpably sad. There would seem to be a mother or other loved one in the conference who was deeply concerned about the effect that excessive drinking was having on the life of the offender and the family and who wanted to talk about this. Because of interventions such as that quoted earlier, these loved ones were denied the space to put this problem in the center of the circle. It was sad at times to watch the lost opportunity. Drinking mates, who often themselves had serious alcohol problems, rallying around the offender were also a big part of the problem (Inkpen, 1999). They would conspire with the police to prevent the needed net widening that would have occurred had there been undominated empowerment of the loved one who wanted to put confrontation of substance abuse on the conference agenda. The worst patterns of drunk driving arise in the lives of people who are chroni-

cally under the influence of alcohol. If you are drunk every day, in a sense you have to make a choice between drunk driving and abstaining from driving altogether. A criminal justice program that fails to confront the substance abuse problem that underlies these, the worst cases of repeat offending, is bound to have a limited effect on repeat offending. In the case of the RISE experiment, the effect was too limited to outweigh the increase in reoffending caused by not being able to suspend licenses. It must be said, however, that this is a speculative interpretation of the failure of this RISE experiment that needs more detailed empirical exploration.

CRIMINALIZING THE HARM, NOT THE ABUSE

A fundamental hypothesis to develop empirically through an ambitious program of research is that drug rehabilitation can work but that we can widen and deepen the front on which it works by making restorative justice the primary vehicle for collective choice of rehabilitative programs and follow-up of their completion (as in the Hollow Water and Newfoundland case studies). This is because restorative justice delivers superior commitment and superior follow-through compared to the professionalized therapeutic state (Braithwaite, 2001a). It is also more democratically decent. In Latimer, Dowden, and Muise's (2001) meta-analysis of restorative justice programs, the effect size for compliance with restitution agreements was .33, meaning approximately one third higher compliance for restorative justice cases than for comparison groups. The collective commitment of loved ones to ensure that the offender honors an agreement is more effective than the enforceable orders of a court. The importance of this strength of restorative justice in building motivation to follow through on commitments is underlined by the Williams, Samuel, and Addiction Centre Adolescent Research Group (2000) literature review conclusion that key issues treatment programs must address are treatment dropout and the maximization of treatment completion.

Under such a dispensation, the new role for the criminal justice system is to trigger restorative justice, to use the crisis of laying charges to ask families to work together to face their problems—or else. The

criminal justice system is not a useful instrument for the control of substance abuse. But its usefulness as an or else to programs that are extremely useful, as the gravitas in the catalysis of crisis, is sadly underdeveloped in theories of drug rehabilitation. This does involve a kind of criminal justice coercion of democratic deliberation—offering a conference as an alternative to a criminal trial.

It has been argued that there is a reciprocal relationship between substance abuse and abuse of people. Obversely, getting motivated to help others helps substance abusers to get on top of their abuse, to find their redemption narrative (Maruna, 2001). Empathic experience of the injustices suffered by others as a result of the substance abuse—the “just and loving gaze” of those who have been hurt (Drummond, 1999)—nurtures that motivation to help others. The restorative justice philosophy sidesteps debates about whether it is right or wrong to punish substance abuse. What is morally required is that those who are hurt by substance abuse are given a chance to explain their hurts and needs, what problems they would like to see solved. Restorative families can learn to do this without help from the state. Sadly, the worse the substance abuse is, the more likely state intervention will be needed to jolt the drift of the abuser. And the more likely the state will get involved because the most devastated abusers of drugs such as heroin and alcohol do eventually tend to hit serious trouble with the police. The shock to a family of this happening for the first time to one of its young members is a special opportunity when it is the substance abuse that underlies the trouble. The opportunity is that the trouble with the law gives loved ones who wish to make an issue of the harm the substance abuse is doing a ritual space, a solemn and serious dialogue it is hard not to listen to.

Hence, what the criminal justice system can offer beleaguered families of substance abusers is not deterrence of abuse but the gravitas to trigger a ritual moment in which people can be gathered and things said that it is otherwise difficult to say. People need a lot of support to make the move from incessant and ineffective nattering at the substance abuser, who drifts through the natter (Patterson, 1982), to solemn commitment to a plan of action to deal with the abuse and its consequences. The fear we have of being overwhelmed by the problems if we offer help can best be overcome by a collective process where

many are encouraged to offer help. Agreements articulated collectively with those we love and depend on most have the best prospect of sticking.

Unfortunately, restorative justice in practice, as illustrated by the RISE drunk driving experiment, still typically shies away from underlying problems of substance abuse, spurning the help desperate family members need, smugly satisfied with a bit of repair for a victim or a dose of community service that at least keeps the offender out of prison for the moment. The Hollow Water and Newfoundland family group decision-making programs show that simultaneously serious confrontation of abuse of persons and of substances is possible—with powerful results. This requires a depth of communal empowerment and some serious back-up of state resources. It probably also requires preconference meetings with an offender and his or her loved ones that encourage them to look holistically at the individual and collective life at risk—to discourage them from just sweeping an underlying substance abuse problem under the carpet. This strategy also establishes restorative justice as a framework where rehabilitative options are available for choice by the community of care.

The key institutional questions are therefore not about whether to punish but about how to trigger and support problem-solving dialogue where the people who count in this particular life have a voice. It is certainly a good democratic thing if this group of people also decide to turn their private troubles into a public issue by getting involved with drug law reform, campaigns for funding more rehabilitative options, and so on. Here the institutional challenge is to create a space where that is a democratic option that citizens will occasionally be motivated to take up but not an expectation. The expectation is that normally the overwhelmed families will do well to come to grips with their private troubles. The democratic aspiration is mostly more banal—to give beleaguered people a deliberative space that they actually lack to roundly discuss a central problem in their little lives. The systematic evidence of satisfaction with participation in restorative justice processes after loved ones are arrested is that citizens of all types, but especially mothers, appreciate and use this bit of voice (Braithwaite, 2001a).

The new criminal justice of substance abuse is therefore to move resources from state punishment of drug criminals to restorative justice

processes backed up by well-resourced rehabilitative options. These conferences are triggered when the substance abuse becomes serious enough to cause real crime such as burglary, assault, pushing drugs to others, drunk driving, and even what I provocatively suggest should be the crime of blowing cigarette smoke in the face of one's children. The crime that has a victim becomes a ritual occasion for loved ones to confront the substance abuser's victimization of himself and collateral victimization of his family. The criminal law can make a very major contribution to reducing drug abuse by catalyzing loving concern that confronts substance abuse instead of nattering at it, that delivers an empathy, practical help, and support that motivates substance abusers to jettison fatalistic scripts, rediscover what they perceive to be their real selves, to restore their lives as lives where they are in control.

Some would say this program of criminal justice reform could be implemented by drug courts. Perhaps a lot of it could. That is an empirical question. Family empowerment and love seem to me the crucial ingredients for success, and a court controlled by a judge seems an unlikely context for these to flourish. All the criminal justice system needs to provide is the gravitas, perhaps even the sword of Damocles (Braithwaite, 2001a), to trigger the ritual moment where the just and loving engagement of family and friends might motivate rehabilitative resolve, might build out from their strengths. Before it escalates from help to desperate resort to the sword of Damocles, however, it may do better by escalating to even more support and help. These too are empirical assertions that demand much more rigorous testing. First, however, I suspect we need more qualitative research and development on how to prevent restorative justice processes from sweeping substance abuse under the carpet when it is a driver of criminal behavior.

SYNERGIES WITH CIVIL SOCIETY PROGRAMS

The suffering of victims of the harms inflicted by drug abusers often runs very deep. These victims desperately need vindication of that suffering, especially if they are loved ones of the abuser who need to keep finding the compassionate strength to provide support. Although they may be parents of the offender, they are victims of serious crimes and should not be seen as anything less. The wonderful opportunity

with such victims is that they are often not retributive victims. They want to forgive and help. Publicly funded restorative justice programs in civil society should be available to support them as victims. Without involving the police, such programs can convene restorative justice circles to help heal the hurts of victims. The crisis that provides motivation and ritual moment in this scenario is not trouble with the police, but it is still the recognition that someone has been a victim of a serious crime (that he or she does not wish to report to the police). Just because a citizen does not want to report a loved one to the police, this does not mean he or she should be left to suffer alone as a victim of serious crime. The victim right of community support for repair of the harm suffered can be honored without resort to the criminal process. My hypothesis is that honoring this victim right in civil society can create a special kind of opportunity for confronting abuse of persons to lead to the confrontation of abuse of substances.

A second kind of civil society program I have advocated for confronting drug abuse that involves no connection with criminal justice is youth support circles (Braithwaite, 2001b). These are universal programs oriented to the educational development of young people. The circle keeps meeting with each young person in a school until he or she finds a place in a tertiary institution or a job. They are not problem-centered circles so much as development-centered circles, although they can deal with a specific problem such as drug abuse if it comes up as an obstacle to educational and vocational development. Part of the idea of this kind of circle is that because it is universal, it is less stigmatizing than other approaches to life problems. It is about building the excellence of the problem-free children as well as tackling the obstacles that confront the weakest ones. The most disadvantaged children would benefit most, however, because they most desperately need an outside adult or older pupil who can spend a couple of hours a week with them on their math homework. They most need a middle-class friend with the contacts to help them get a job on graduation. Retirees as well as older buddies are seen as especially valuable resources for challenges that single mothers in particular are overwhelmed in meeting.

Finally, there is a case for another kind of civil society program that takes referrals from the police. Good police services get to know the names of offenders who are supporting an addiction by selling drugs

themselves or by persistent property crime. They target them and eventually catch them. Once the police have possession of this intelligence, I have suggested an alternative to targeting and arrest. This is prearrest conversations with such offenders that their pattern of offending is known to the police. They are advised that a judge has approved that there is "reasonable suspicion" for their being targeted for special surveillance. However, they are given the opportunity to get off this targeting program before it succeeds in arresting them by participating in a healing circle with their loved ones about the problems that are besetting their life (Braithwaite, 2001a). The same kinds of conversations are advocated in Braithwaite (2001a) for targeted organized criminals who market drugs, drawing on experience with gang retreats and gang surrenders in Papua New Guinea (Dinnen, 2001) and some of the Giuliani strategies for cleaning up the Mafia in New York (Jacobs, 1999). The Papua New Guinea restorative justice initiatives with organized crime are often brokered by the church, although often with state participation at a level as high as the prime minister. Whether we are thinking about drug barons or street-level addicts, when the police do prearrest targeting they can refer the case to a restorative justice process run totally in civil society rather than convene it themselves.

CONCLUSION

The orienting empirical insight in this article is that abuse of substances causes abuse of people and vice versa. Abuses of people but not abuses of drugs are appropriate for criminalization. A direct focus on the criminal abuse of people is therefore advanced as a promising indirect way of confronting substance abuse. Arrest for a burglary can supply an occasion of crisis in a life and a moment of ritual that is a special opportunity for creating the motivation and social support normally lacking for confronting substance abuse. Equally, a friend of a substance abuser who has something important stolen but who does not want to report the abuser to the police can trigger the crisis by saying she might go to the police unless the offender joins him or her in a restorative justice circle convened in civil society. Or, the police can create a prearrest crisis by communicating their targeting decisions to

targets instead of treating them as secret. Finally, universal youth development circles that are not only prearrest but preproblem could be useful both to prevent the reasons for substance abuse before they arise and to deal with them when they first arise in a minimally stigmatizing fashion. The possible synergies between these four different kinds of restorative justice programs is the stuff of an exciting research and development program that comes at the substance abuse problem from a fresh angle that has deep theoretical roots for its effectiveness claims.

NOTE

1. LaPrairie (1994) in a study of this problem in another context found that 46% of inner-city native people in Canada had experienced child abuse. For an outline of the Hollow Water procedures for dealing with sexual abuse, see Aboriginal Corrections Policy Unit (1997a, 1997b). At Canim Lake, the site of another innovative Canadian First Nations healing circle approach to sexual abuse, "The research showed us that up to eighty percent of our people had been sexually abused at one point in their lives" (Warhaft, Palys, & Boyce, 1999, p. 171).

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