

RESTORATIVE JUSTICE AND ITS IMPACT
ON COMMUNITY POLICING

Article

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The criminal justice system has gone through major changes over the past few decades. These changes have affected all aspects of the system: the courts, law enforcement and corrections. Law enforcement has been at the forefront of this change. Most law enforcement organizations have moved away from being closed institutions to opening their doors to the communities they serve. They are seeking ways to involve the community in departmental operations. As crime rates decrease, police departments are exploring new areas in which they can remain an integral part of the community and be a bridge from the community to other areas of the criminal justice system.

The restorative model of justice appears to be the vehicle in which police agencies can discover a new mandate to represent their community in the criminal justice system. Restorative justice models, which allow victims more active involvement in the disposition of their cases, are being adopted in many jurisdictions across the nation. What will be the impact of the restorative justice model on the community policing efforts of a mid size police agency in the future? This is the issue that will be examined, to discover if there is a role for the police in this model of justice.

In the late 1960s there was a change in the direction of corrections. The move was from a rehabilitative model to a re-integrative model. This model was commonly referred to as Community Corrections. Under Community Corrections, it is assumed that the offender must change. But it also recognizes that factors within the community that might encourage criminal behavior, unemployment, for example, must also change. Where the rehabilitative model

focused on social and psychological imperfections in the criminal, the re-integrative model emphasized that social conditions in the community have an influence on the criminal as well.¹

In 1967, the President's Commission on Law Enforcement and Administration of Justice in their Task Force Report: Corrections, supported this move towards community corrections. The use of probation and parole increased as well, as did the use of half way houses and community based programs. However, with the increase in crime that occurred throughout the decade of the 1980s and early 1990s, the pendulum swung back and most states adopted a retributive model of justice.

The retributive model of justice is currently the most widely practiced model in the United States. Under this model, punishment of the offender is the primary concern. In recent years many states have adopted three strikes legislation as well as career criminal statutes. These laws extend the length of prison terms for repeat offenders. The underlying theme is to remove criminals from society, lock them up and throw away the key. This philosophy of corrections has led to major prison expansion and a rapid increase in prison populations.² This model is process driven, in that penalties are prescribed by law. Very little input is allowed by either victims or the community. Thus, while crimes are solved and perpetrators are brought to justice, the victims and the community often times are left out of the process and cannot gain closure, leaving them with their feeling of victimization.

An alternate form of justice began developing in the 1990s. This was the restorative justice model, and its programs and policies are known to be developing in more than forty-five states, including a number of state and county justice systems that are undergoing systematic change.

Restorative justice programs are also developing in many European countries as well as Australia, New Zealand, and South Africa. The principles of restorative justice are based upon the thoughts and wisdom of many indigenous cultures from throughout the world, most notably Native American culture within the United States and Aboriginal/First Nation culture in Canada.³

While this transformation has been taking place in corrections throughout the past few decades, law enforcement has also been making major changes in the way it delivers services to the community.

The most fundamental change that has swept through law enforcement in the last several years has been the concept of community policing. Many police agencies throughout the nation have adopted some form of community policing. The civil unrest of the 1960s coupled with the rising crime rates of the following decades, highlighted the separation of the police from the public it served.

In 1973, a Law Enforcement Assistance Administration report found that during the twenty years following World War II, the police became increasingly isolated from their communities. Reasons for this isolation include urbanization, rapid changing social conditions, greater demands for police services, increased reliance by the police on motorized patrol, police efforts to professionalize, and reduced police contact with non-criminal elements of society. These factors, combined with public apathy, caused many police agencies to attempt to combat rising crime without actively involving their communities in their efforts.⁴

Police agencies had become increasingly alienated from their communities. Many citizens, especially in the minority communities felt the police were not responsive to their needs, nor were they providing them with adequate protection. Police administrators attempted

to establish new links with the community by instituting programs that would enhance their relationship. Thus, in the 1970s an era of formalized police-community relations began. This became the buzzword of the decade. Many colleges and universities incorporated police-community relations classes into their criminal justice curriculum. However, most of these programs ended in failure as evidenced by the fact that most departments have disbanded or re-focused the mission of their police-community relations units.

The initial focus of the community-police units was to make friends with the community. Citizens perceived that the goal of these units were to put a good face on whatever the police did, without providing a valid two-way conduit for citizens to have input into police priorities, policies, and procedures.⁵

In the early 1980s, Herman Goldstein, Professor Emeritus at the University of Wisconsin Law School, conceived and developed the concept of problem oriented policing. This concept called for the police to address a wide range of problems that threaten the safety and security of communities, including, but not limited to what is commonly viewed as serious crime.⁶ The police attempted to improve their understanding of the underlying conditions that gave rise to community problems and to respond to these problems through a much wider range of methods than they had conventionally used.⁷ It is through the work of Goldstein and others that the philosophy of community oriented policing began to develop.

Definition of Terms

The terms restorative justice and community policing can mean many different things depending on the context of their usage. For the purposes of this paper the following terms and their definitions will be as follows:

Restorative Justice

Restorative justice is a victim centered response to crime that provides opportunities for those most directly affected by crime, the victim, the offender, their families, and representatives of the community, to be directly involved in responding to the harm caused by the crime.

Restorative justice is based upon values which emphasize the importance of providing opportunities for more active involvement in the process of offering support and assistance to crime victims, holding offenders directly accountable to the people and communities they have violated; restoring the emotional and material losses of victims; providing a range of opportunities for dialogue and problem solving among interested crime victims, offenders, families, and other support persons; offering offenders opportunities for competency development and reintegration into productive community life, and strengthening public safety through community building.⁸

Restorative justice promotes power sharing and conflict resolution and is expanding the meaning of justice beyond the activities of the courts, judges and corrections. Restorative justice involves the resolution of conflict through community building after crime and disorder problems have been identified. It also provides an opportunity for communication between the affected parties, the community and government agencies about the conditions that encourage criminal behavior and work collaboratively to find ways to inhibit those conditions.⁹

Community Policing

Community policing is any method of policing that involves police officers assigned to the same areas, meeting and working with the residents and business people who live and work in the beat area. The citizens and the police work together to identify the problems of the area and to collaborate in workable resolutions of the problems. The police officers are a catalyst,

moving neighborhoods and communities toward solving their own problems, and encouraging citizens to help and look out for each other.

Community policing requires total commitment of the police, citizens and subgroups such as business, media, political leaders, social service agencies, and other institutions of the community to be successful. It is proactive, decentralized, and personalized. Community policing is based on the joint effort of citizens and police toward solving neighborhood problems, which in turn satisfies the needs of the citizens and enhances the resident's quality of life.¹⁰

With emphasis provided by the federal government, police agencies across the country have embraced some form of community policing. Departments have taken advantage of federal grants and received assistance from the Office of Community Oriented Policing Services. New and innovative programs are being developed that allow the community and the police to interact in a productive and meaningful way.

Most efforts of police/community collaboration have been in the area of crime prevention or follow-up investigation to identify the perpetrator after the crime has been committed. Once an offender is arrested, he/she is prosecuted by the district attorney. The police traditionally move on to the next case, the prosecutor brings the offender to trial, or plea bargains the case out, and the victim is left on his own to deal with the aftermath of the crime. The community as a whole is rarely considered in the process.

Restorative justice encourages the involvement of the victim, offender and the community in the justice process. It assumes that when a crime occurs, the relationship between the offender and victim has been damaged, but also the relationship of the offender and

community has been hurt. These relationships need to be restored. It is here that the police can find a new role.

The primary purpose of the police under this model would be to help the victim, community, and offender to carry out their tasks by designing and managing a process that facilitates participation.¹¹ Officers can be trained to become mediators and facilitators and bear the responsibility of convening victim-offender mediation sessions, family group conferences, reparative citizen boards, or sentencing circles. They could also assist in creating and overseeing plans and programs for offender reparations that would be acceptable to the victim and community.¹²

By assuming this new role, the police would be viewed as having a major role in the community, not only as protectors but also as restorers. They would be seen as the catalyst that would help make a community whole again after it has suffered tragedy as the result of a terrible crime. Most importantly they would be recognized as community partners, which is the goal of community oriented policing programs.

The police alone cannot insure the public safety or public peace. It is the community and their level of tolerance and acceptance of what is appropriate behavior that maintains order.

The first thing to understand is that the public peace...is not kept primarily by the police, as necessary as the police are. It is kept primarily by an intricate, almost unconscious network of voluntary controls...No amount of police can enforce civilization where the normal casual enforcement of it has been broken down.¹³

Restorative justice would serve to re-institute the informal social controls that are established by communities and which have been undermined over the years by the formal enforcement process.¹⁴ The responsibility for policing would be returned to the community and their efforts supported by the police.

Once the benefits of the restorative justice model are recognized, an agency must make drastic changes in their operations in order to place the model into practice. How can this be accomplished? A sound strategy for change would need to be implemented. First, the leadership of the police department would need to embrace the concepts of restorative justice and incorporate them into the operation of the police department. Consensus would need to be developed. This could be accomplished by bringing together representatives of the police, community and other agencies that believe in the restorative justice model.

They can promote the benefits of the model to the public in an attempt to garner support and create a shared vision. The restorative justice model requires fundamental changes throughout the criminal justice system. Therefore this period of garnering support is perhaps the most critical and time consuming. It may take one to two years for the public and other agencies to accept the concepts and be willing to change the way they both deliver and receive services. A coalition of professionals and the public, with their shared vision could influence the elected officials to support restorative justice initiatives both fiscally and through statutory changes. Funding sources would need to be secured. Exploration of the grant process would be conducted. Grants are available through federal agencies, many of which are intended for use in exploring alternatives to incarceration and support for community policing efforts.

The next step would be to create a restorative justice unit within the police department. This unit would be responsible for helping to create the community partnerships and with community participation, develop training for the participating officers. Criteria would need to be established listing the skills and traits necessary for officers to qualify to participate in the unit. The police administration would have to emphasize the importance of restorative justice to

the rank and file, and the benefits that it would bring to the department and each individual officer, in an attempt to win their support for the model.

Civilian staff would also be dedicated to perform the administrative functions of the restorative justice unit. They would need to be equipped with computers and terminals linking them to various criminal justice data bases.

An evaluation system would have to be put in place to judge the effectiveness of the model. Surveys of crime victims and offenders should be utilized to gauge their opinions of the program and their satisfaction with the justice system. Caseloads should be monitored to evaluate the effectiveness of the process, i.e. can it handle a sufficient workload, or is the process too cumbersome to accommodate large numbers of cases.

Under this strategy is the need for the police administration to create a vision for the department and incorporate that vision into the everyday workings of the organization. By implementing the restorative justice model in the police department's community policing efforts, the police will move from a position of conducting its operations apart from the community to one of receiving its mandate and support from the community.

It is time for police leaders to adopt a true community policing model. One in which the community is the key role player supported by the police in their efforts. It is the community through mediation and councils that will set the law enforcement agenda. They will determine what offenders need to do in order to regain their place in the community.

The police will adopt a new support role to the community to ensure that they are acting within the law. They will become mediators and facilitators. The community will rely upon them for counsel. This will require new styles of leadership on the part of the police that emphasizes communication and problem solving. Leaders within the community will have to be

identified and educated in order to assume various roles within the restorative justice model. Decision making, which traditionally was accomplished by police management, would now be exercised by members of the community. Only then will we have created vital, effective organizations for our communities.

Not only will the effect be felt in the local police agency but throughout the entire criminal justice system. The restorative justice model is the essence of community policing. It is the community policing itself, with the support of professional staff.

Will this change come easy? It probably will not. However it is imperative that the change be encouraged. As Richard Slaughter states in The Foresight Principle:

The purposes and meanings which powered the social system over some two hundred years have created a world of contradictions. The purpose of selecting new ones will not be easy since powerful groups always have interests bound up in the way things were. Yet the de-legitimization of redundant social principles and practices is overdue. This is a major focus of critical futures work.¹⁵

Communities across this nation are becoming more diverse. The police are faced with new challenges as these various groups come together in communities. Communication and dialogue will be the key to keeping the peace and maintaining harmony. Through the utilization of the model of restorative justice, the police role will be to facilitate this communication among community members and police. Thus, the role of the police will evolve into overseeing the process in which the community polices itself.

¹ George F. Cole, The American System of Criminal Justice Third Edition (Monterey: Brooks/Cole Publishing Company, 1983).

² World Wide Web, "California Department of Corrections FAQ Page"
www.cdc.state.ca.us/factsht.htm Accessed August 5, 2001.

³ Mark S. Umbreit, Ph.D., "What is Restorative Justice", Center for Restorative Justice & Peacemaking, School of Social Work, University of Minnesota, April 15, 1999.

⁴ Devere Woods & Joanne Ziembo-Vogl, "Reengineering the Criminal Justice System" 1996, Internet <<http://www.concentric.net/~dwoods/cjsys.htm>>, Accessed April 17, 2001.

⁵ Robert C. Trojanowicz and David Carter, "The Philosophy and Role of Community Policing" National Center for Community Policing, Michigan State University, 1988.

⁶ Michael S. Scott, "Problem Oriented Policing: Reflections on the First 20 Years", U.S. Dept. Of Justice, Office of Community Oriented Policing Services, October 2000.

⁷ Ibid.

⁸ Mark S. Umbreit, Ph.D., "What is Restorative Justice", Center for Restorative Justice & Peacemaking, School of Social Work, University of Minnesota, April 15, 1999.

⁹ Caroline G. Nicholl, "Community Policing, Community Justice, and Restorative Justice" COPS Publication, U.S. Department of Justice 1999

¹⁰ Susan Trojanowicz and Robert Trojanowicz, "Theory of Community Policing" 1998, Internet <<http://www.concentric.net/~dwoods/cjsys.htm>>, Accessed April 22, 2001.

¹¹ Todd R. Clear and David R. Karp, "Toward the Ideal of Community Justice", National Institute of Justice Journal, October 2000

¹² Ibid.

¹³ Jacobs, J. Death And Life Of Great American Cities, New York: Vintage Books, 1961

¹⁴ Caroline G. Nicholl, "Community Policing, Community Justice, and Restorative Justice" COPS Publication, U.S. Department of Justice 1999

¹⁵ Richard A. Slaughter, The Foresight Principle, Cultural Recovery in the 21st Century, Praeger Publishers, United States, 1995

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