

RESTORATIVE JUSTICE IN SCHOOLS: INTERNATIONAL PERSPECTIVES [8883]

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Abstract

Since the rise of restorative justice in schools in the mid 1990s, when restorative justice conferencing was first used in Australia to address serious incidents, the development of a wide range of restorative, and responsive, approaches to harmful behavior in schools has developed. This paper reviews these developments across a range of countries.

Restorative Justice and Responsive Regulation

We leave the realm of justice to our courts, where investment and growth is soaring. Yet justice is a part of our everyday lives, and hence it also belongs in our homes and our schools, where investment and growth are in decline. Schools as our primary developmental institution need to invest in justice. Restorative justice and responsive regulation offers an opportunity for schools to invest in justice, not a simple ‘one-off’ opportunity but one that embraces the ongoing and emerging complexities of school life. Restorative justice emphasizes emotionally intelligent justice (Sherman 2003). Responsive regulation takes a problem solving approach that aims to be more responsive to the concerns of all members of the school community, offering an alternative to the structured regulatory formalism of zero tolerance. Together, responsive regulation provides a framework for locating restorative justice in institutional space (Braithwaite 2002). To this end, a range of restorative practices have been developed that address a wide behavior range, from everyday niggling behavior to very serious incidents of harm. This paper begins with a brief overview of the emotional mechanisms underpinning restorative justice. A range of practices is then reviewed, drawing on developments from around the world. Finally, a full model of responsive regulation is presented.

Emotional Intelligence and Restorative Justice

In June 2004, Professor Roger Weissberg of the Collaborative for Academic, Social and Emotional Learning (CASEL) provided evidence before the United States Subcommittee on Substance Abuse and Mental Health Services for adolescents. The concerns he raised not only included substance abuse but also violence, sexual behavior, depression, and suicide. Weissberg’s (2004) testimony emphasized the importance of social and emotional learning (SEL), making a strong argument that “SEL is fundamental to children’s social and emotional development, health, and mental well-being, ethical development, citizenship, motivation to achieve, and academic learning” (p 6). His evidence suggests that SEL not only acts as a protective factor against harmful behavior, it enhances academic outcomes. Advocates of restorative justice would add that the enhancement of social and emotional learning should be an educational priority for the whole school community, through the institutionalization of emotionally intelligent practices and processes that seek to deliver emotionally intelligent justice. Larry Sherman (2003), in his presidential address to the American Society of Criminology, argued that there is ‘reason for emotion’ and that the delivery of emotionally intelligent justice within institutions should include (1) increasing awareness of emotions; (2) recognizing

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emotions in victims and offenders; (3) managing emotions. The practice of restorative justice in schools seeks each of these ends through embedding a system of emotionally intelligent practices in the regulation of school life.

Restorative justice seeks to be emotionally intelligent through recognizing the contribution of negative affect, such as shame and anger, as well as positive affect, such as interest and excitement, in understanding and responding to behavior (Morrison 2005). The emotion of shame has been central to the theoretical development of restorative justice; in particular, through the development of re-integrative shaming theory (Braithwaite 1989; Ahmed, Harris, Braithwaite and Braithwaite 2001). The theory recognizes the importance of discharging shame to the process of re-integration for victims and offenders following harmful behavior. In the context of schools, it has been shown that shame management style is predictive of bullying behavior (see Ahmed et al. 2001). Students who bully and/or are victimized are caught up in maladaptive shame management strategies, albeit in different ways; while non-bullies/non-victims use adaptive shame management strategies. Thus, restorative interventions aim to provide opportunities for students who use maladaptive shame management strategies to learn, and experience, more effective ways to manage shame, and enhance their social and emotional learning.

At a macro level, this analysis suggests that it is important for school communities to create institutional space where harmful behavior can be addressed through processes that enable shame to be discharged, before anger and other harmful emotions arise, with early intervention being the optimal point of intervention. This conclusion also resonates with Gilligan's (2001) analysis "that the basic psychological motive, or cause, of violent behavior is the wish to ward off or eliminate the feeling of shame and humiliation" (p 29). There is building evidence that programs and practices based on principles of restorative justice can accomplish this task; however, further research needs to be done on the emotional dynamic underlying these processes, and the associated outcomes, across a range of ages to ensure responses are developmentally appropriate (see also Harris, Braithwaite and Walgrave 2004).

Practicing Restorative Justice

The evidence presented by CASEL also emphasized the importance of moving beyond a problem-focused approach which targets singular behavior problems, such as bullying, homophobia, mental health, etc. Targeted approaches fail to consolidate the complicated etiology of problem behavior and the significant overlap of risk and protective factors underlying these targeted behaviors. Indeed, the growing consensus is that school safety and well being should be regulated in line with public health regulation; that is, along three different levels of intervention that form a continuum of responses, based on common principles, at *primary*, *secondary* and *tertiary* levels. In the context of restorative justice, instead of singularly targeting the behaviors of students, the aim is to understand students' behavior in the context of their social relationships (Morrison, 2003). Building on Braithwaite's (1989) analysis of separating the person from the behavior, restorative practices aim to support the individuals involved while not condoning the behavior.

With an emphasis on building strong healthy relationships, the *primary* level of intervention targets all members of the school community through an 'immunization' strategy; such that, all members of the community develops basic relational skills to curb the escalation of conflict when differences first arise. All members of the school community are trained and supported in the development of social and emotional competencies, particularly in the area of conflict resolution, such that members of the school community are enabled to resolve differences in respectful and caring ways that re-affirm the importance of relationships to social learning and behavior.

The *secondary* level targets specific individuals and groups within the school community but draws on and involves other members of the school community. It is through drawing on other key members of the school

community that the intensity of the intervention at the *secondary* level increases. Typically, at this level of intervention, the conflict has become more protracted or involves (and affects) a larger number of people, with a facilitator being required. The aim is to re-connect the individual to the community through leveraging and strengthening relationships.

The *tertiary* level involves the participation of an even wider cross section of the school community, including parents, guardians, teachers, social workers, and others who have been affected or need to be involved, when serious offences occur within the school. The aim is to re-build a web of relationships across different social spheres of a young person's life through participation in a process that condemns the act while offering dignity to the person.

Taken together, these practices move from proactive to reactive, along a continuum of responses. Movement from one end of the continuum to the other involves widening the circle of care around participants. The emphasis is on early intervention through building a strong base at the primary level, which grounds a normative continuum of responsive regulation across the school community. Across all levels, restorative practices aim to develop inclusive and respectful dialogue that focuses on the health and safety of the whole school community.

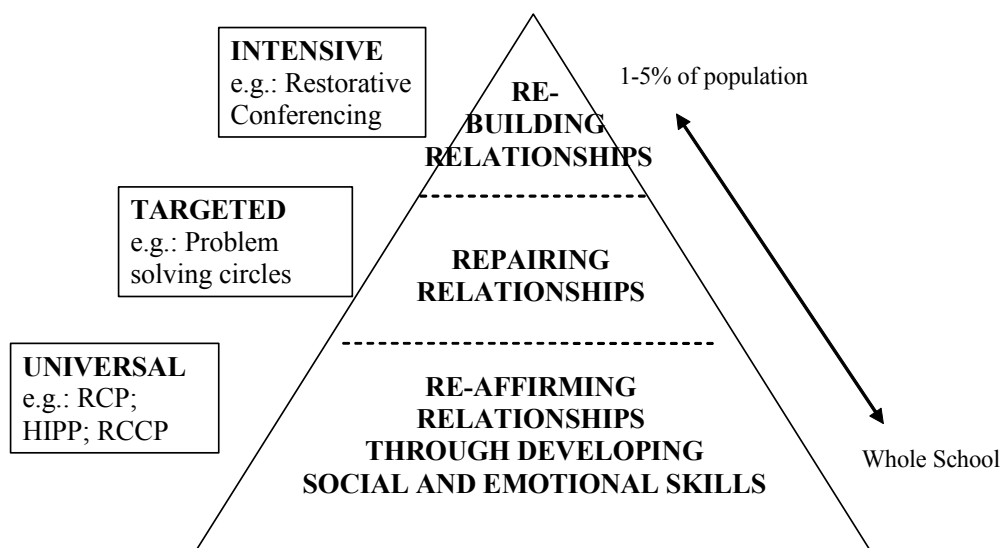
This tri-level approach has been described in different ways: the primary, or universal, level targets all members of the school community, with an aim to develop a strong normative climate of respect, a sense of belongingness within the school community, and procedural fairness; the secondary, or targeted, level targets a certain percentage of the school community who are becoming at risk for the development of chronic behavior problems; the tertiary, or intensive, level targets students who have already developed chronic and intense behavior problems. Within this conceptual model, the students who receive intensive intervention, typically also receive target intervention, and all students, including those at the targeted and intensive levels, receive the primary intervention.

It also needs to be made clear that while the recommendation is to model school safety on a health care model, the model proposed is much more dynamic. Instead of a one shot inoculation at the primary level, the emphasis on maintaining healthy relationships must be re-affirmed in the everyday practice of life at school. At the secondary and tertiary level, while particular students or groups of students are targeted, the inclusive practice of restorative justice necessarily involves the participation of students not a risk. Targeted strategies are about re-connecting students with the school community. The behavior of some students may keep them at this targeted level for ongoing period of time, others may drift to this level only a few times, and others not at all. At the tertiary level, these students will have experienced all levels of intervention; however, relationship patterns have faltered to the extent that relationships need to be repaired or rebuilt. In summary, the focus of primary interventions is re-affirming relationships, the focus of secondary interventions is re-connecting or re-pairing relationships, and the focus of tertiary interventions is rebuilding relationships.

Continuums of Response Based on Restorative Justice

Continuums of restorative practice in schools have been conceived in a range of ways. Wachtel and McCold's (2001) continuum of restorative practices was one of the first to be documented. The emphasis is on moving from the informal to the formal practices, with movement along the continuum involving: "... more people, more planning, more time, are more complex in dealing with the offence, more structured, and due to all those factors, may have more impact on the offender" (p 125). Specifically, the continuum of practices suggested are: affective statements; affective questions; small impromptu conferences; large group circles and formal conferences.

Figure 1: A Regulatory Pyramid of Restorative Responses to Managing Social Relationships and Behavior



Hopkins (2004) sees her whole school approach to restorative justice as a framework that pieces together the jigsaw of school life and describes a continuum of restorative processes of increasing complexity through the involvement of increasing numbers of people. Specifically, she suggests the following range of responses: restorative enquiry; restorative discussion in challenging situations; mediation; victim/offender mediation; community conferences and problem solving circles; restorative conferences; family group conferences.

Thorsborne and Vinegrad (2004) use a multi-level conferencing approach, dividing conferencing processes into two groups: (1) proactive processes which enhance teaching and learning; (2) reactive processes for responding to wrongdoing. Proactive processes are managed through classroom conferences that address a range of issues important to school life. Reactive processes include: individual conferences; small group conferences; whole class conferences; and large group conferences.

Blood (2004) uses a regulatory pyramid approach, describing universal interventions that address the whole school and involve developing social and emotional capacity through: (1) accountability; (2) responsibility for self and others; (3) working together; (4) personal potency. Secondary interventions manage difficulties and disruptions in the school and classroom through corridor conferencing, mediation, problem solving circles. Tertiary interventions aim to restore relationships through the use of restorative conferencing.

These examples highlight the range of responses schools use in establishing a continuum of responsive regulation based on restorative justice. No one continuum has been shown to be more effective than the other; indeed, school communities mix and match these models developing a continuum of response that fits their needs and concerns (see Morrison 2005). While a recent international review of a range of restorative practices finds evidence of positive outcomes for students, teachers, parents, and community members, be they victim or offender, there is a strong need for research and development to establish and test the long term effects of the different models, and levels, particularly in the context of a whole school approach (Morrison forthcoming).

Restorative Justice and Responsive Regulation

While these continuums of restorative practices compliment each other, and are useful in broadening the work of restorative justice in school, they are insufficient in sustaining a fully realized model of restorative justice and responsive regulation. As a start, restorative justice is not a panacea. We still have a lot to learn about the effectiveness of restorative justice in schools. Further, if the development of restorative justice in schools focuses too much on the practice, and not enough of the institutional dynamic sustaining current practice, the true potential of the restorative process is lost; that is, micro-institutional reform that develops and sustains macro-institutional reform.

Fully realized, restorative justice and responsive regulation is not about adding another program, or set of practices, to the tool bag of school life, it is about institutionalizing a process that facilitates micro institutional change that is responsive to the ongoing and emergent needs of individuals and communities. For this change to be effective, it must broach both the everyday practice of managing student outcomes, as well as the institutional culture that sustains those practices. It is on this second point that the realization of restorative justice in schools has as yet largely failed.

The full model of restorative justice and responsive regulation in schools that I am proposing goes back to a seminal point made by Braithwaite (1989) on restorative justice; that is, separating the behavior from the person. But instead of applying this to individuals, we are applying this to institutions, in this case, schools. The model of responsive regulation that is proposed is conceptualized through the use of a four sided regulatory pyramid (Morrison forthcoming_a). To explain this model, it is sensible to begin with the side of the pyramid which focuses on the practices underpinning restorative justice in schools, as this is our starting point. However, this side of the pyramid only defines one aspect of support that is needed to bring about sustained behavioral change within schools. To sustain school wide behavioral change, it is important to support ongoing system of growth and development, both at the individual level and at the institutional level. How might this be realized? Perhaps through an interlocking system of responsive regulation that focus on: relational practices that empowers individual change and development; behavioral evidence that empowers responsive decision making; relational bridging that empowers institutional change and development; behavioral vision that empowers the development of responsive institutional policy.

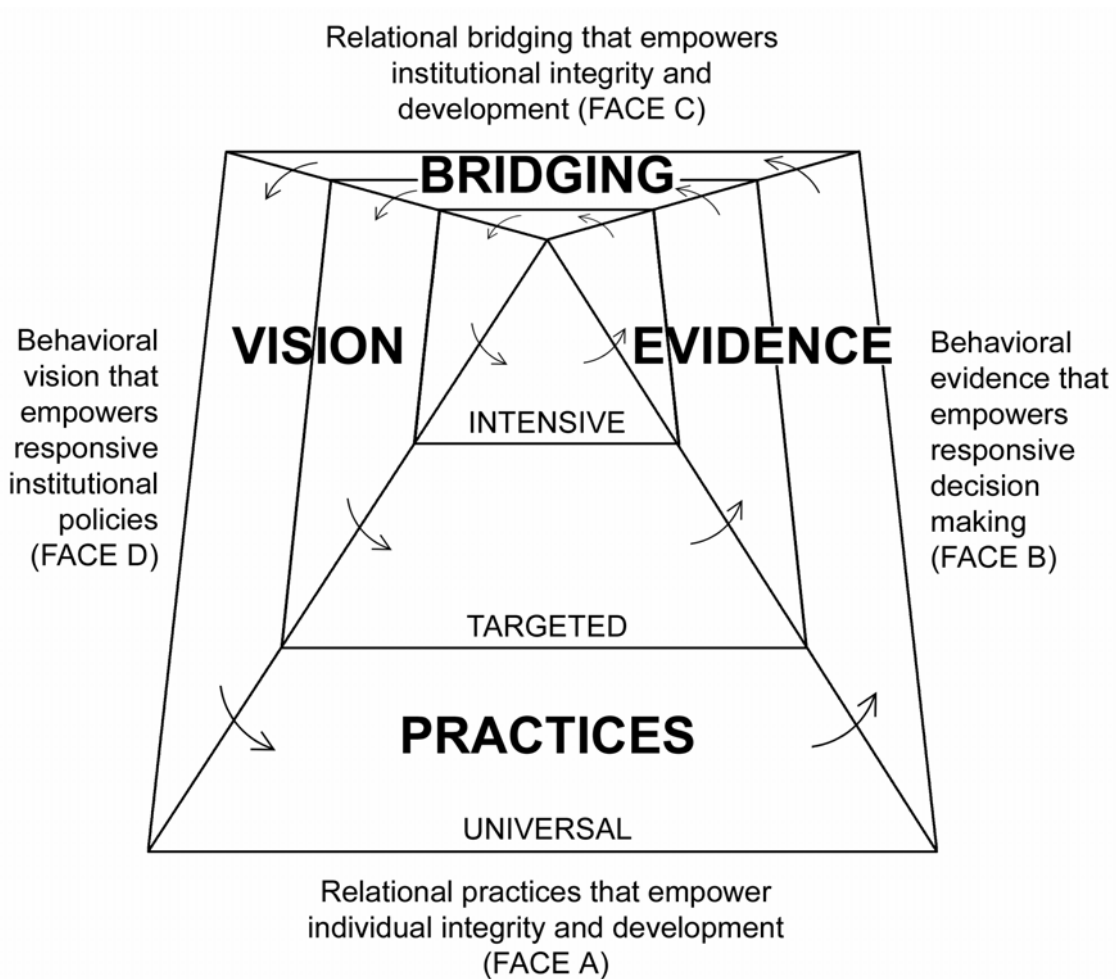
Two faces of the regulatory pyramid focus on behavior (the behavioral pair), while the other two focus on the person and the institution, in the context of relationships within and outside the school community (the relational pair). This regulatory framework outlines a process through which schools can be responsive to behavior and restorative to individual and institutional relationships. Hence, behavioral policies are not forgotten but imbedded in a broader framework that recognizes the importance of relationships, both at the individual and the institutional level. For each pair (two behavioral and two relational), the two faces stand opposite each other, supporting opposite sides of the pyramid (opposed to standing adjacent to each other). Thus, as one moves around the pyramid, the behavioral and relational faces alternate.

The behavioral pair focuses on behavior in two different ways: behavioral vision and behavioral data or evidence. Behavioral vision clearly establishes, through policy, what behavior is expected and how schools respond to behavioral concerns. Behavioral data provides the evidence-base for the development of policy and the practice. In other words, the data provides the evidence base on how schools are doing in terms of policy and practice.

The relational pair focuses on relationships in two different ways: relational bonding practices at the individual level and relational bridging practices at the institutional level. Having the individual and institutional level faces of the pyramid standing opposite to one another reflects the reciprocal nature of individual and institutional level process, in terms of how the dynamics of one level influences the dynamics

of the other, and vice versa. At the individual level, the pyramid establishes a range of practices, typically utilizing the strength of the community, that support individual integrity and development. At the institutional level, the pyramid establishes a range of systemic practices that support institutional and cultural integrity and development, as well as the sustainability of change. In comparative terms, the behavioral pair involves more reflection and planning, while the relational pair involves more of active engagement with the school community. Hence, given the pairs stand opposite each other, the framework is constantly moving within a broad action learning and action research framework.

Figure 2: A Responsive Regulatory Pyramid That Promotes Ongoing Practice, Research and Development



Simply put, responsive regulation and restorative justice is about responding to behavior and restoring relationships. The idea is to broaden the vision from a range of responsive practices that restore relationships, to a responsive framework that regulates the implementation, development and sustainability of restorative practices in schools. More to the point, building safe and healthy school communities goes hand and hand with how safe and healthy schools are regulated. This regulatory framework capitalizes on Braithwaite's (1989) notion of separating the behavior from the person, for too many policies and practices that seeks to

regulate safe school communities focus too much on the behavior, emphasizing the rules of behavior, while failing to address the relational needs of the school community, and the web of relationships that sustain the school community's health and safety. By way of analogy, when we focus too much on behavior, we fail to see the forest for the trees. We must understand behavior in the context of the relationships that regulate that behavior. The framework outlined focuses not only on the behavior, but also the relationships that sustain them. Further, policies development needs to be embedded into the cultural life of the school; they are less effective when they are simply handed down from a higher authority. Policies, as well as practices, need to be responsive to the needs of individuals, as well as the needs of communities. To do this we must bridge the school with the wider community.

In summary, the framework outlines a recursive process of ongoing monitoring and development that must constantly be in place in schools, responding to concerns as they arise. For new problems will always arise, new actors and new behaviors will always be bubbling up from within the foundations of the school system. We will always have deviance from the status quo within schools – some of this deviance will breed new life into the school community, some of this deviance will eat away at the foundation of school life. The school community needs to respond to both, for deviance has the capacity to shut us down or provide opportunities for grow. Schools, as a microcosm of society, are dynamic, not static. Our society, over the past half century, has changed much quicker than our schools. Our schools have been left behind, economically, culturally and socially, as a result human and social capital are suffering. Restorative justice and responsive regulation have the potential to address this concern, and with this comes an opportunity to broaden our vision for restorative justice.

Conclusion

Restorative justice grew from a dissatisfaction with aspects of court based justice, in particular juvenile and criminal justice. Yet courts have a very different mandate than schools. Schools are developmental institutions. Because of this, within schools we can broaden our vision for restorative justice to a mechanism that works towards achieving social justice. Braithwaite's (2001) Youth Development Circles are a step in this direction. This vision is about achieving just outcomes for students on all levels, it terms of safety and health, as well as academic outcomes.

Within the context of courts, Nils Christie (1977) described the system as stealing conflict, and with this the voices, from those affected. There are many conflicts stolen and voices not heard within schools as well; and with this, the system steals more than conflicts, it steals the hopes, dreams and potential of our children. To this end, we do ourselves as individuals, and a society, a great disservice. Our children are our mirror, our reflection. We know how well we are doing as a democracy when we take the time to reflect on, and respond to, how well our children are doing. When our children are hurting they are sending us a strong and powerful message, one that we should take note of. Some children will rise out of the injustices served them, showing amazing capacities for resilience and growth; others will not. But we must always raise the counterfactual. What would have happened if that harm didn't occur? Or we addressed the harm in a different manner? All children need challenges to grow, but if these challenges occur in the context of harmful behavior, and we provide no opportunities for members of the school community to understand and learn from harmful events, we need to ask ourselves what we have achieved? The responsive practice of restorative justice provides us with opportunities to learn from harmful events. In doing so, the hope is that we will be working towards not only just schools, but a more just society. A focus on justice in schools provides the scaffolding of hope for the next generation.

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