Radical Enactivism, Relational Responsibility, and Restorative Justice

Thus I do counsel you, my friends: Mistrust all in whom the impulse to punish is powerful

Friedrich Nietzsche, Thus Spoke Zarathustra

Abstract

Radical enactivism has brought a new perspective on human nature. It supports a Levinasian view of humans being heteronomous rather than autonomous as Kant and the enlightenment philosophers proposed. Relational responsibility is the result of teaching a Levinasian heteronomous view. Restorative justice could benefit by incorporating radical enactivism. Case examples, good and poor, are used to illustrate this.

Key Words: Radical enactivism, Wittgenstein, Levinas, relational responsibility, restorative justice

Introduction

For the past thirty or forty years a revolution has been occurring as the social sciences have been encouraged to release their grip on Kantian autonomy in favour of heteronomy, as expressed by such philosophers as Emmanuel Levinas (1978), Knud Løgstrup (2020), and Ludwig Wittgenstein (2009). This revolution is, perhaps, at its sharpest in cognitive science where it marches under the banner of radical enactivism (Drury & Tudor, 2023; Hutto & Myin, 2013). At the same time, at a societal level we are witnessing a transition to what Foucauldian scholars are calling a post-disciplinary society; where a struggle for justice and toleration is called for in a world increasingly characterised by conflicts of identity politics

(Gaete-Silva & Gaete, 2021). This has heightened our growing awareness that our systems of justice are not only failing in these conflicts, but also failing to engage most of those we seek to rehabilitate in criminal justice (Beaudry et al., 2021; Dent, Nielsen, & Ward, 2020; Lipsey & Cullen, 2007; Lösel, et al, 2020). New systems of justice are called for; which these philosophers show us are not captured in ethical codes but in practices where all parties participate in an atmosphere of mutual recognition (Fraser, 2003). This paper outlines how an endorsement of heteronomy is occurring in radical enactivism, and how this in turn encourages relational responsibility. This provides a firmer foundation for restorative justice. Case examples from my practice as a psychologist are utilised to demonstrate these.

As most know autonomy is the cornerstone of Kant's ethical theory; free will is a necessary condition of moral agency for him. Kant formulated the moral thinking of earlier enlightenment thinkers such as Rousseau, Locke and Montesquieu. Heteronomy was seen as an offense to this, because it reeks of slavery. However the twentieth century saw challenges to Kant, and Levinas (1978) for example, claimed that autonomy cannot be the condition for ethics because it is only through an ethical encounter with another that the self can become free. Only by helping another I encounter on the road of life can I become free from the sense of obligation I feel towards them. Also, in the 1920s a German psychoanalyst Georg Groddeck (1971), although writing the usual Freudian nonsense about Oedipal complexes, claimed our ego behaves essentially passively in life, and we are lived by unknown and uncontrollable forces. Like Jung these forces make up a collective unconscious that we can trust. (By contrast Freud's unconscious was a dark place and not to be trusted). If we drop the substantivization (turning an adjective into a noun) of the idea "unconscious", Groddeck and a few other twentieth century thinkers are not out of place in this turn to heteronomy.

Radical enactivism has been re-casting our understanding of human nature through social cognition (Drury & Tudor, 2023; Hutto & Myin, 2013; Jurgens & Kirchhoff, 2019). Basically, instead of thinking that we turn to inner models in our heads to socially navigate (e.g. Theories of Mind – hereafter ToM), it turns out that the vast majority of cognition occurs in embodied and situated activities (without ToM). All schools of enactivism (there are 3 major schools of which radical is one) posit that sensation and movement are inextricably linked; that fundamental inseparable sensorimotor processes characterise living things. Radical enactivism highlights how most of our human social cognition is also embodied sensorimotor processes, or in word, intuitive. This paper will flesh out this introduction to radical enactivism with some of the central ideas. The philosophical ancestors of enactivism include Edmond Husserl, Maurice Merleau-Ponty, Charles S. Peirce, and John Dewey; and in particular Ludwig Wittgenstein and Emmanuel Levinas for the radical school. Occasionally Eastern thought (particularly the Madhyamika dialect of Mahayana Buddhism), and some psychoanalysts are cited as sources. The point here is to develop a new understanding of ethics as it has emerged in radical enactivism, so we can ground the newly emerging restorative justice practices more firmly.

Radical Enactivism

The word "enactive" was first coined by the Chilean biologist Francisco Varela and colleagues in 1991 (Varela et al. 1991). Varela, along with his mentor Humberto Maturana, was best known for introducing the idea of "autopoiesis" to biology. Prior to that scientists defined life by seven characteristics (e.g. respiration, digestion, movement, etc.), but autopoiesis meant that life was by definition "self-producing". That is, living things know how to harvest the ingredients, and in turn use these to produce themselves. A single characteristic instead of seven.

That "knowing" is a form of "know how" (rather than "know that"), and it resides in our organisational structure. This places "mind" or "cognition" at the centre of life. Amongst the many implications was a new (but actually old) idea about the nature of perception. Rather than the brain or nervous system harvesting sense data that it interprets into perceptions, they proposed that we have direct access to the world. But we have to learn how to see; which is well-illustrated by post-cataract surgery patients having to learn to see by moving around (Hutto, 2011). So the brain or nervous system is no longer doing the heavy-lifting to make sense of two-dimensional images (sense data) hitting the eye; it is embodied motor skills that facilitate this. Embodied motor skills are autopoietic. "Perception and action, are fundamentally inseparable in lived cognition" (Thompson, 2007, p. 173). Thus perception is both direct (i.e. not a representation) and active (we are constantly moving around to get a better view, or sensing that we can). In a nutshell enactivism stresses the sensorimotor learning history of the organism to make sense of perception.

With enactivism there is also a sense of perception being extended. Consider a blind man with a cane. His attention is moving around a circuit that includes: the sound of tapping, the muscular contractions and extensions of his arms and legs, and the feel of the stick on the street. Older ideas on perception had a passive skull encased mind receiving and processing these perceptions, but enactivism takes a more direct embodied view. When our blind man sits down for lunch a different circuit comes into play. Note that our blind man has a sense of "oneness" with his world; which the phenomenologists called "readiness-to-hand" (Dreyfus, 2007). For example, I feel my wheels on the road when driving, until something goes wrong, and then a gap is created (or they would say, I lose my "readiness-to-hand"). Enactivists use the term "extended" or "distributed" to convey this sense. As this embodied view brings into focus the sensorimotor structure of the perceiver; then developmentally, the sensorimotor

stage is not abandoned or overcome in humans, as Piaget speculated, but rather refined as language and perspective taking develop (Thelen, 2000). Change blindness demonstrations (e.g., the man in the gorilla suit we fail to see because we are too busy counting the number of times the players pass the basketball (Simons & Chabris, 1999)), show that we using our sensorimotor skills to *enact* a particular world. So enactivists rejects the strictly realist or objectivist conception of the world, to replace it with a world that is action-relevant to us. A beetle, a child, and a forester see a different forest than each other.

Since Varela and colleagues first presented enactivism, their version has since been called *autopoietic* enactivism, to differentiate it from Noë's (2004) *sensorimotor* enactivism, and Hutto and Myin's (2013) *radical* enactivism. Varela and colleagues were influenced by the phenomenologists, in particular Husserl and Merleau-Ponty, and by the Madhyamika dialect of Buddhism, all of whom were exploring embodiment long before 1991. There is also some Kant in Varela's account. Alva Noë's background was in Wittgenstein and the phenomenologists, and Dan Hutto was a recognised Wittgenstein scholar long before he discovered enactivism. There is a great deal of commonalities between these three approaches, and the differences appear to be largely due to their background philosophers (Ward et al, 2017). Hutto (2017) emphasises that enactivism should be guided by the anti-representationalist ethos as that is the core of enactivism. His Wittgensteinian background, in my opinion, gives him an edge, as he shows in a variety of papers (e.g., Hutto, 2011; Hutto & Myin, 2017); and he argues that autopoietic and sensorimotor enactivism accidentally smuggle in some of the representational doctrines they aim to supplant. Not only that, but Hutto dissolves the so-called hard problem of consciousness by rejecting the metaphysical distinction between the phenomenal and the physical (Kirchhoff & Hutto, 2016).

A Broader View of Enactivism

One of the easiest ways to understand enactivism is via the idea of "fast" and "slow" thinking, as popularized by Gladwell (2005), Kahneman (2011), and Haidt (2012). This is the idea that most of the time we engage in "fast" intuitive thinking, like other animals, and only engage in "slow" deliberate thinking occasionally. A great deal of our philosophical knots have come about because of entanglements of our fast and slow thinking. Teasing apart our fast animal thinking from the slower deliberate thinking (which is largely due to relatively later evolving social linguistic system), and then re-integrating them has become a central task of contemporary philosophy and the social sciences (e.g., Haidt, 2012). With fast thinking, creatures are not necessarily making the best decisions, but are making fast and frugal decisions that are usually good enough. Sometimes the decisions are plain wrong. The American groundhog is legendary for emerging from its burrow only to find its overcast, in which case it retreats back into its burrow for another six weeks, presumably because it thinks that it is still winter. Aristotle thought heavier bodies fall faster than light ones; a common intuition that wasn't put to the test (subjected to slow thinking) until Galileo.

As we are at "one" with the world when engaging in fast thinking, enactivists say we are responding to sensations and not perceptions. When we first encounter the duck-rabbit we see it only one way, say the rabbit. Only later do we notice the duck. At that point our sensation (of it as a rabbit) becomes a perception, as we now have the choice of two perceptions. Perceptions are thus interpreted sensations (Wittgenstein, 2009), or a difference we notice when we slow down our fast thinking (and separate the seeing from the acting). A similar distinction occurs between an inten*s*ion (with an "s") and an inten*t*ion (with a "t"). The intension is the representation of the intention. It is doubtful that animals and small children have intensions, although they clearly have intentions. Wittgenstein (2009) had this distinction in mind when he wrote: "My attitude towards him is an attitude

towards a soul. I am not of the *opinion* that he has a soul" (p. 179). A great deal of Wittgenstein's philosophy is the sorting out of the fast intuitive animal thinking from the slower deliberate system.

Dreyfus and Dreyfus (1984) proposed that once a skill is fully mastered, the primary intuitive system is able to perform the skill by itself. They demonstrated this by having a chess grandmaster defeating skilled opponents in a five-seconds-a-move game whilst simultaneously adding numbers delivered at a rate of one a second. Using Haidt's (2012) metaphor of a jockey (the secondary deliberate system) riding an elephant (the primary intuitive system), the jockey can be allowed to daydream, as many of us do when driving. Having the jockey take too much notice of explicit rules, especially when things start to go wrong, results in escalating the error or choking (Hutto & Sánchez-García, 2015). However if you have been taught the skill by attuning to the animal intuitive system through the use analogies and metaphors (and less by rules), there is less chance of choking. Wittgenstein imagined a person even learning chess without learning or formulating rules (2009, §31); but mostly enactivists turn to East-Asian martial arts to describe the development of skills with minimal or no rules (Ilundáin-Agurruza, 2017). Teachers take note!

Anna Ciaunica (2017; 2020) is the enactivist we turn to understand our intersubjectivity or "self". She has challenged the assumption that we have an innate empathy by claiming that our sociality precedes our empathy, and is the source of our empathy. She cites the research that identifies that from 22 weeks onwards the maternal-foetal relationship is reciprocal, that there is maternal engagement with intentional foetal movement. This is carried on after birth, with newborns having protoconversational skills. Pre-schoolers demand reciprocal relatedness: they frequently deny they can see a person whose eyes are closed. We only

develop our explicit sense of self when we are able, through interactions with others, to develop a narrative practice. Before that we are relational beings, or one with each other, to which Ciaunica (2020) calls the "relational self". By learning language we learn to objectify ourselves, but we retain a sense of our relational self through our intuitions. Once we have mastered language most of our conversations, especially with intimates, becomes fast and intuitive also, evidenced by completing each other's sentences at times. Wittgenstein repeatedly stresses that we don't infer feelings in others, its more immediate than that.

Those familiar with the American psychoanalyst Trigant Burrow will recognise this relational self, and the subsequent objectification of ourselves, as his thesis. Burrow, who appears to have been deliberately marginalised from psychoanalytic community, despite being a founder of group therapy and biofeedback, first presented his thesis in 1917 (Drury & Tudor, 2022). Burrow claimed it made more sense to regard the mother as the "love subject" of the infant than the "love object" as Freud had proposed. They were both in agreement the child has "oceanic consciousness" or is one with the mother at birth. The difference was that Freud saw us more as frustrated narcissists objectifying mother when we can't access the breast; whereas Burrow saw us remaining in radical communion and harmony with not only mother, but each other, despite frustrations at times. From this sense of unity we gradually objectify ourselves argued Burrow, especially after language develops. But this ego is something of a false self (which as we have seen, was also Groddeck's view); which Burrow demonstrated, by biofeedback and group therapy, we could do without (Burrow, 1949). We retain an intuitive sense of our sociality, as a number of subsequent social scientists have also seen (Siegal, 1999; Porges, 2009; Henrich, 2016). We find a similar idea in the "Great Mother" religious traditions; and amongst some indigenous cultures that say that "I" comes from "we" (e.g., "*ubuntu*" in Zulu, or *whanaungatanga* in New Zealand Māori). Thus we

have Burrow and the enactivists claiming that we have an underlying relational self, that is being occluded by a fabricated self.

Relational responsibility

Our innate relational self makes us aware of the "call of the other" (or ethical demand), as Wittgenstein, Løgstrup, and Levinas (amongst others) pointed out; especially when the other is suffering (Overgaard, 2007). Levinas (1998) called his philosophy an "ethics first" philosophy, as our first response to another is an ethical one. His claim was that "I" finds its identity in response to another (Mkhwanazi, 2013). This is consistent with enactivists claim of an inseparableness between perception and action. Wittgenstein pointed out that we don't usually infer someone is in pain; we see it immediately (2009, §246). "It is there as clearly as in your own breast" (Wittgenstein, 1981, p. 220). And we are drawn to take action. However, when there are two or more calls on us at the same time, thought is born, and we develop our ethics (Levinas, 1978). Wittgenstein and Levinas were both attracted to Dostoevsky's character Father Zossima who says, "Everyone of us is responsible for everyone else in every way, and I most of all" (Dostoevsky, 1958, p. 339).

It is a relatively simple matter for family therapists to invite families to relational responsibility. As a family therapist I would put some version of the following scenario to families. Turning to, often the youngest member of a family, a child of six or seven, I would ask, "imagine that you are walking home from school on your own. You are in a bit of a hurry to get home, as you need to go to the toilet urgently. You come around the corner, and there lying in the middle of the road is a three year old, who has fallen off her tricycle. There is no one else around, and she is bleeding from one knee. What do you do?" I have yet to meet a child who didn't recognise their relational responsibilities. In the ensuing conversation all

family members can explore their relational responsibilities. Do the parents allow the children to look after them (in age appropriate ways), or has care flowed in only one direction in this family? What happens to the urgent need you had to go the toilet? What are the signs you see from a long way off that a friend or family member is in need of care? As the family's relational responsibility "sense" increases they are asked how they might invite or ask for help? We have explored household budgets and chores in this context. Many of the parents subsequently reported that the family passed through the teenage years with little or no conflict, as everyone was more fully human.

It is not such as simple matter to invite societies to relational responsibility. Foucault (1977) is famous for introducing the world to panopticism. This was a prison designed in such a way that the guards could see the prisoners, but the prisoners couldn't see when they were being watched. After a while the prisoners adopt the attitude that they are being constantly watched, and police (discipline) themselves. The prisoners become "fabricated selves", moulded by the values of the guards. Jeremy Bentham (circa 1800), the architect and politician who designed this, thought this was a model for how to discipline all society. It has resulted in a surveillance society or what Foucault called a disciplinary society; which can be contrasted with a sovereign society (and now, a post-disciplinary society). In sovereign society the source of power (the sovereign) is highly visible, and it is controlled by violence; but in the disciplinary society the source of power (the "norms" that we evaluate ourselves against) are largely invisible (and circulated by word of mouth and social media). It's not so violent as a sovereign society. People don't revolt against the fabricating apparatus, because society has become, in some ways, increasingly liberal since Foucault first drew our attention to this, and we experience ourselves as freely choosing the norms (Rose, 1996). Nonetheless the surveillance and disciplinary apparatus has been steadily increasing from 1800, especially since the 1970s under neoliberalism (Read, 2009). As there is some choice in the

"style" of your fabrication under neoliberalism, today's world is described as a post-disciplinary society by some sociologists (Campbell, 2004; Gaete-Silva & Gaete, 2021). As we have seen Burrow described the same process from a psychological viewpoint, by describing how our attention is a chronic "without in" way of looking, as we endeavour to monitor ourselves.

This "without in", or constantly looking in the rear view mirror to see what we are doing, Burrow called "ditention", as our attention is divided. He coined the word "cotention" as a contrast to this; and considered "cotention" more natural. However because we are enactive, which means that we *know how* to instinctually coordinate with other, Burrow saw, like the Mahayana Buddhists, that any individual who returned to a cotentive state "would be straightaway reconditioned environmentally, inter-relationally" (Burrow, 1968, p. 275). He, like the Mahayana Buddhists, thought that we could only be "liberated" as a group. ("Mahayana" is the "large raft" for getting everyone to enlightenment.) Burrow was measuring respiratory, EEG, and eye movement differences in people when they were in a cotentive or ditentive state (Burrow, 1938). He found that there was a considerable drop in respiratory rates when people weren't busy talking to themselves; a finding which attracted the attention of some peers (e. g. Eric Berne, 1963). He formed a group focused on maintaining this cotentive state that remained together for twenty years, and existed for many decades after he died.

Burrow's writings on leadership in the group, appear consistent with relational responsibility; that is the leader dissolves as the group finds confidence in itself (Drury & Tudor, 2022). In some egalitarian cultures, including sports teams, tactics are employed such as ritual mockery of successful leaders, or leadership is bestowed upon some skilled individual only for the duration of the endeavour (say the hunt) (Graeber & Wengrow, 2021).

Wengrow & Graeber (2015) set forth a thesis that since the last ice-age, a period of 20,000 years, humanity has been largely egalitarian and usually only adopted hierarchical arrangements on a temporary basis. They also claim that "proof that highly egalitarian organization has been possible on an urban scale" (2021, p. 297). They are not alone in this, although it appears to be more readily recognised by anthropologists than historians (Ayittey, 2012; Wilderquist & McCall, 2015). Graeber and Wengrow's thesis (2021) lends some weight to the idea that a historiography that made egalitarianism as central to human nature is more natural; which means the rise of civilizations indicates when we have largely lost touch with our human nature. Henrich (2020) makes the case that civilised people are considered peculiar by world standards, a point made also by anthropologist Clifford Geertz (1983).

Foucault spent the last decade of his life exploring the genealogy of ethics; as he seemed attracted to the possibility of a more egalitarian society. (A number of writers have speculated that this was due, in part, to his LSD trip in 1974 (Dean & Zamorra, 2021)). Although his subsequent writings on ethics (2010) foresaw (and have facilitated?) the emergence of less "docile" processes of subjectification by stressing tolerance for variety of "style", wealth disparity has also escalated drastically under neoliberalism. Tolerance for a variety of expressions of a "self", which led to "identity politics", has created the postdisciplinary society where demands for identity recognition drown out voices calling for greater egalitarianism or the redistribution of wealth (McNay, 2008; Fraser, 2010). Some scholars are in agreement that this was, in part, because Foucault failed to embrace the other (the Levinasian base for ethics), in these later writings, and thus fell short of relational responsibility (Moss, 1998; Smart, 1995). As we've seen enactivist such as Ciaunica (2020) (as well as Burrow) have a Levinasian perspective in so far as they see the primacy of "we" (over "I").

Restorative Justice

In my work as a family therapist I found it was a bit of an uphill battle to establish relational responsibility in a family if it had not been very evident prior to adolescence. Then a form of restorative justice (hereafter "RJ") was helpful in establishing relational responsibility, or the ethic espoused by Father Zossima. ("Everyone of us is responsible for everyone else in every way, and I most of all".) We would begin with anything that would establish rapport and lead to a conversation on RJ.

Ever since Eglash (1977) coined the term 'restorative justice' in 1977, it has been held out as a panacea for, firstly criminal justice, then later other forms of justice. Claims have been made that it will address our high incarceration and reoffending rates, as well as our disproportionate over-representation of indigenous and racial minorities in most Western prisons. It has achieved a certain authority by advocates drawing on historical and anthropological literature that presents an account that appears to legitimatize RJ presence over retributive justice (Braithwaite, 2002; Carey, 2000; Consedine, 1995; Leung, 1999; Weitekamp, 1999; Zehr, 1990). But, as Braithwaite (2002) points out, most indigenous cultures practiced retributive justice alongside of RJ, that was frequently more brutal than modern retributive justice. RJ advocates are accused of cherry-picking history to show that retributive justice as "bad" and RJ principles as "good" (Blagg, 2001; Tauri, 2014). Cherry-picked history or not, Johnstone (2011) notes RJ is, "beginning to make significant inroads into criminal justice policy and practice" (p. xi).

Histography of Restorative Justice

A number of Foucauldian scholars attribute this distorted account of the emergence of RJ, not as a whig history which glorifies the present, but as a "history of the present" (Foucault, 1984). A "history of the present" aims not to enlighten us as to what actually occurred in the past, but to legitimize the present (Garland, 2014; Rose, 1999). It aims to reveal something important but hidden that's relevant to our contemporary experience. Foucault (2007) described such accounts as coalescing in "*dispostifs*" (commonly translated as 'apparatuses'), because these discourses along with the regulations, laws, institutions, and so forth they generate, *dispose* us to act in certain ways. Further, there is an "urgent need" when a new *dispositif* forms (Foucault, 1980, p.195), and RJ is certainly seen as an urgent response to the growing discontent with the current *dispositif*. Others attribute the popularity and spread of RJ to the New Age context of our culture, or a return to egalitarianism, as much as to the birth of a new *dispositif* (Maglione, 2019; Richards, 2005).

From about the time of Foucault's LSD trip he changed his methodology from an "archaeology", which looked for discontinuous layers in history, to a more Nietzschean endeavour that was a "genealogy" of morals. Wittgenstein had pointed out in his *Tractatus* that ethics cannot be said, but shown. What the late Foucault does is show how our values emerge as practices in these *dispositifs* through specific struggles and conflicts. Largely as a result of Foucault's genealogy, its been claimed, correctional penology has been discredited, and RJ increasingly favoured (Braithwaite, 2003; Garland, 2001).

Case Example – successful case

If we accept the historical evidence that RJ practices were accompanied by retributive practices, then we may find space for both, that invites all members of a community to share responsibility for justice. A case example will illustrate. A 30 year old woman sought

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assistance for the sequelae to sexual abuse when she was a teen from her father. She had heard her father was wanting to make amends. After developing a clear picture of what she believed the abuse had cost her, and her preferred future, I (as the therapist) encouraged her to write a letter to her father asking him to contact me. On meeting him, I established that he indeed did want to make amends, what those amends might look like, and what his current circumstances were. I then broached the subject of her education, as that was a very important aspect of her assessment of the harm. She had been a top student, but dropped out to become a teenage mother. He was now retired, a widower, and living in his own townhouse. All three then met, and I gradually withdrew from having an active role in the conversation. The outcome was that he (reluctantly, at first) agreed to sell his townhouse, and the proceeds paid her university fees. He moved into private board which his pension paid. She granted access to his grandchildren, but only on the proviso that another adult be present (this was one of his suggestions as to how he could guarantee the kids were safe). A wider circle of family, and a long-standing family friend, were invited to meetings as agreements were reached, and their concerns and suggestions put in place.

For Levinas, ethics is enacted. Not through a set of rules or laws, but by two or more people coming together with a sense of justice that is realised in their joint enactment (Aasland, 2007). Both daughter and father, and later their wider social network, approached with a sense of justice and the damaged relationship was able to move towards repair (Aquino et al. 2006). All the people involved became vulnerable and this allowed a certain moral development to occur in all parties. Gavrielides (2007) reports that several anthropologists have noted that acephalous (leaderless & egalitarian) cultures developed RJ practices because of a marked reduction in egoism or defensiveness. The enactive theory of social cognition says that we enter into a participatory sense-making situation when we sense the other is equally vulnerable, and it was this that allowed this case to be successful

(Colombetti & Torrance, 2009). Mutual vulnerability is the key to enacting ought (Fourlas & Cuffari, 2021). Both were reclaiming their relational responsibility.

Case Example – unsuccessful case

Contrast this with the following case. One night, a few years ago I was led to investigate some noises outside my home, which turned out to be four 16 year old boys stealing a neighbours car. Approaching them I was punched and knocked to the ground by one of them, two others joined him to begin kicking me. Then the remaining youth got the car started and proceeded to run me over, twice. I spent 6 months in hospital recovering from 8 broken ribs and collapsed lung, the insertion of a titanium tibia in one leg, and some screws in the other ankle. Two of the four youths were apprehended by the police, and I was subsequently invited to New Zealand Youth Justice family group conferences, for each. These conferences are proud to embrace RJ (Leung, 1999; Maxwell and Liu, 2007; Henwood & Stratford, 2014).

Both boys read a carefully prepared apology, although it was not clear exactly what each was apologizing for. In conversations I had with each after these conferences I learned that each blamed the other for my injuries. One said that he was just responsible for knocking me to the ground and kicking me, but as most of my injuries were due to being run over, he was not to blame. The other said that he was not aware I was lying there and his friend was to blame for knocking me down, placing me there. He was only accidently responsible. I pointed out that the wheel track (the distance between the left wheel and the right wheel) on a Rav 4 is over 1½ metres (which was omitted from the police summary of facts), and as the distance from my chest to my ankles is less than a metre, he must have run me over

twice (which I also recall). He said he was drunk at the time and could not remember running me over twice. If he was aware, then that is attempted murder.

Finnish psychiatrist Ben Furman says that many play down the seriousness of their wrongdoing, unless they see the harmful consequences of their action. "An apology is sincere only when it comes with an understanding of the harm and danger inflicted" (Furman, 2023). There is now research emerging, especially in the treatment sex crimes, that remorse and disclosure does NOT necessarily lead to successful treatment, but accountability does (Levenson & Prescott, 2009; Nally et al, 2021). In other words, those who had empathy with the victim, and wanted to make amends (as the first case above illustrated), are more likely to result in successful treatment. I put this possibility to the test by inviting both boys, independently, around to dig my 2 square metre garden to demonstrate that I was now severely hampered to perform such tasks. Only one complied, and then with some reluctance, and did not offer with any future digging. I later learned that the other was advised by his Youth Justice social worker not to help if he didn't want to. I concluded they did not feel accountable for my injuries.

At the same time we were going through the RJ inspired family group conferences, youth justice initiated a number of programmes that the young men were required to complete. These programmes were occupationally or culturally based. On talking with the young men they both viewed these requirements through the lens of retributive justice; that these undertakings were a matter of "doing time". The Youth Justice co-ordinator reported to the Youth Court that both young men had issued a "heart-felt apology" which I accepted. I subsequently wrote to this co-ordinator saying I neither accepted the apology (as he claimed) nor rejected it, as I was unsure what specifically the young man were apologising for. I pointed out that my understanding of RJ was this was just the beginning of the process

or conversation, not an end, as the young men and their families understood the apology to be. A good question to ask the "offenders" when the apology is being made is, "what do you want to do to make amends?" Although they might seek forgiveness, that would not be given until after that question has been addressed.

Three years after these family group conferences I met with the mother of the young man who had knocked me to the ground, and invited her to reflect on the process that youth justice had instigated. At that time there had been an "epidemic" of ram-raids locally (using a car to break a shop window in order to steal), mostly involving teenagers. She said these recent ram-raids were a result of youth justice's approach to crime. She said it was well known that there was no accountability, and youth justice's approach could be likened to the Roman Catholic approach to sin: admit it, say five "Hail Mary's", and then all is forgiven. Although paying lip service to RJ (and claiming it was New Zealand's "gift to the world" (Henwood & Stratford, 2014)), Youth Justice appear to rely more on the occupational and cultural programmes they put these young people through, than the process of RJ. They were still heavily influenced by punishment (retributive justice), and when punishment is used as a deterrent to crime, the offender is wanting to minimise the offending, and then do whatever "time" they have to, to put it all behind them. This was exactly the attitude of the "offenders" in this case. Both the mother and her son did not acknowledge that he had abandoned me in the middle of the road at night after knocking me down, leaving me at risk of being run over by anyone. As far as I could make out his apology was for knocking me down, and not for abandoning me there. What's more his mother informed me that he was reluctant to make an apology, and did so when the social workers and family convinced him it was the quickest way of putting it behind him. Not only that, but this "offender" had to wear an ankle bracelet restricting his freedom, when his co-accused didn't. It is little wonder that these factors cultivate a defensive attitude in "offenders", which doesn't allow them to

have the vulnerability to engage in participatory parity (Fraser, 2003) (also known as participatory sense-making of RJ (Colombetti & Torrance, 2009)). Eighteen months after these family group conferences, the young man who had driven over me twice, was sentenced to five years in jail for his part in a subsequent spate of violent robberies and stealing cars.

The Key to success in Restorative Justice

John Braithwaite, considered by many as one of the world's foremost scholars on RJ, has recently backed away, partially, from reintegrative shaming (Braithwaite, 2020). He still believes that this form of shaming is the key to controlling all types of crime; this encourages the offender to desist. Solution-focused approaches, for example, will often ask a person guilty of some crime, when they could have offended but didn't, as this builds a narrative of exceptions (some say strengths) (Lehmann, Jordan, et al, 2012). A case of loving the sinner but hating the sin. But Braithwaite has backed off a little from this because he feels it is better to put the problem at the centre of the circle rather than the person; and all in the circle or conference can brainstorm how to address the harm done and prevent it occurring again. Thus he still advocates reintegrative shaming, but not so directly. Reintegrative shame is contrasted with stigmatizing shame, which elicits defensiveness, and it is easy to slip from one to the other at times. From a radical enactivists perspective we are wanting the conversation to remain in the primary intersubjectivity, where everyone is positioned in the Groddeck sense of the active unconscious, and not become defensive or shift to an ego-centred position. Some training of facilitators or co-ordinators may be required as this is, as much as anything, an attitude shift in one's way of life (Drury, 2022). Braithwaite (2020) provides evidence of the effectiveness of reintegrative shaming not just in criminal justice, but also in virtually every domain where a sense of justice is required.

Putting the problem of addressing the harm done at the centre of the circle, will, in some cases, elicit defensiveness from the family of the offenders; as there is an implication that they will pay. For families already facing severe deprivation, which is often the very cause of crime (Wilkinson & Pickett, 2009), they will naturally be wary of such suggestion. Indeed Agrawal (2015) argues that such a background could possibly constitute a criminal defence. As such state neglect is a form of physical and psychological violence against the family that requires state recognition. There is some recognition of this in those countries that have social welfare, but in some (many?) cases this is not adequately addressing the extent of state neglect, as evidenced by the high incarceration levels and health statistics. Duff (2010) suggests the state answers for its wrongs at the same trial (or in a separate process); and I say, by supporting the "offender" (and/or their family) in meeting some of the costs of reparation to the "victim". Such a move would invite the family to reintegrative shaming conversations as they are now not facing draconian costs. Currently New Zealand also has a state health insurance scheme (Accident Compensation Corporation), and a slight amendment to this act, could make the "offender" or their family contributing to the assessment of the "victims" health needs, if there is injury in the crime.

As we have seen mutual vulnerability is the key to the exchange in restorative justice, and which makes participatory sense-making possible. Nancy Fraser's "parity of participation" Invites the "victims" to admit their relevant crimes that contributed to the situation. In this case I readily admitted I came from a white male privileged position. But in my defence I wanted to discuss how I approached those young men that evening, and placed myself in a vulnerable position, not from a position of white male arrogance but from a position of familiarity. For a number of years I had watched these young men growing up, as they passed through the walkway at the foot of our garden on the way to the local river to swim,

or politely knocking on our door to ask if they can pick plums from our tree. However I never got to explore this due to the manner in which RJ conversations were orchestrated. Braithwaite (2020) says RJ programmes run "by poorly trained people, of which there is a lot" (p. 281) are often "quick and dirty". I wrote to the youth justice coordinator stating that both young men and their families were minimising their role in my injuries, and that I was not happy with the outcome as justice had not been restored. I said he could forward my letter to the courts if he wanted. I never heard back from him.

Conclusion

Restorative justice, since its appearance in academic literature about forty years ago, has shown itself to be a highly cost effective way of seeing justice done in a variety of domains (Braithwaite, 2020). The roots of RJ reach back to the customs and religious practices of most traditional societies (Gavrielides, 2007). It appears that we began to lose our way with justice from the time of William the Conqueror, when crimes became against the crown and real victims became invisible (van Ness, 1990). The anthropological evidence is overwhelming that ancient societies focused on not making the "offenders" pay the state, but make reparation to the person(s) affected (Gavrielides, 2007). RJ can be most clearly seen in egalitarian societies. Thus RJ practices supports the view that egalitarianism is a viable goal of histographies (Graeber & Wengrow, 2021). That is to say we seek egalitarianism as a primary goal of humanity. RJ may be one of principle means to reclaiming egalitarianism. With regard to the world today, I would note that Norway is the most egalitarian society amongst the developed nations and has one of the lowest recidivism rates in the world (Denny, 2016). Also of note, where more successful RJ occurs the more serious the crime the more meetings of the RJ group or circle (Braithwaite, 2002), and with agreements reached there is no need for the matter to go to court (Braithwaite, 2004).

The challenge this paper issues is for New Zealand Justice to adopt rigorous RJ practices, and to stop paying lip service to the concept. This will entail minor changes to compensation laws so that financially challenged offenders and their families will not become defensive about draconian costs when they are addressing reparation. It also invites not only those working in Justice to shift from their Kantian autonomous views to a Levinasian heteronomous view, but all of society. Training in participatory sense-making and relational responsibility amongst RJ co-ordinators is essential and part of this. Criminological theory is useful when it shows a strategy that deals with everything from global crises to minor disputes; which I believe RJ portends as it brings victim and offender together to write justice. RJ predicts that this will result in a more just world.

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