

Practicing Justice - The Zwelethemba Model of Conflict Resolution

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1. Introduction.

During the 1990s restorative justice became ‘the’ emerging social movement for criminal justice reforms. It was conceived as an attempt to look at crime and justice through a new lens (Zehr 1990) – a lens that attempted to develop (and offer reason for) a range of new approaches and interventions. It is frequently claimed, however, that no single generally agreed upon definition of restorative justice has emerged. A review of the literature reveals a tension between a conceived need to develop clear visions for restorative justice, as a way of demarcating its agenda off from the competing territories of retributive and rehabilitative practices, and on the other hand, a reluctance to formulate rigid or universal definitions that could limit developments (Walgrave and Bazemore 1999: 371) or undermine the idea of local ownership of the conflict (Christie 1977). For this reason attempts to specify the new approach have tended to emphasise qualities of restorative processes, like the frequently quoted formulation of Tony Marshall (1999: 5): “Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”.

John Braithwaite, by many seen as the leading scholar of the field, has also been interpreted as leaning towards prioritizing definitions stressing deliberative processes over pre-defined outcomes, contending that ‘stakeholder deliberation determines what restoration means in a specific context’ (1999, in Crawford and Newburn 2003: 44). However, as restorative justice has become increasingly popular, has gained support

from diverse sources and, at least in some countries, has moved from the margins to the mainstream of criminal justice, scholars have increasingly become concerned with the need to specify core restorative values, partly motivated by the fear of a corruption of restorative justice by the destructive logic of punishment (Crawford and Newburn 2003: 46). There is now an abundance of new attempts seeking out the defining values or principles of restorative justice.

According to Bazemore and Walgrave (1999 :371-74) the primary restorative objectives are to provide a more open and satisfying way to repair harm and resolve conflict and to reduce professional roles in criminal justice, seeking less system intervention and more community interventions. For Dignan (2005 : 8) the restorative focus is defined by the emphasis on the offender's personal accountability, the inclusiveness of the process and the promotion of non-coercive forms of decision-making. Wright (2001: 360-61) argues that qualities of the process is an essential part of the response, pointing to its (potential) constructive and therapeutic qualities and the emphasis to repair the harm. Crawford and Newburn (2003 : 22-23) see three elements as central: stakeholder inclusion, deliberative processes and restorative outcomes, adding the value of consensus-building and problem-solving based in local knowledge and capacity, embracing a creative range of potential solutions. According to Van Ness and Strong (1997: 42) four core elements of restorative justice are the values of (direct) encounters, reparation, reintegration and participation. Moore and McDonald (2000: 55) underline the rules of participatory democracy; fair rules, fair play, and fair outcomes; participation, deliberation, equity, and non-tyranny.

In line with this tendency Braithwaite (2002: 12-16) emphasizes on the importance of explicating the foundational values of restorative justice. He argues that in evaluating how restorative a program is, it is necessary to analyse both the restorativeness of its processes and its values. Underscoring restorative justice as an alternative that has a very different values framing than punitive justice, he suggests that in thinking about how to realise these objectives we should distinguish clearly between the values and the processes for realizing them. This argument corresponds with earlier formulations by Bazemore and Walgrave (1999: 50) who note that how restoration can be achieved is a question composed of two sub-questions: what processes must be utilized and

what are the outcomes of that process? They point to the potential that ‘A wide variety of processes can be utilized to achieve restorative outcomes’ (op. cit.: 50).

Braithwaite (2002: 12-16) argues that the long list of values restorative justice promotes can be united by their emphasis on greater community self-determination, inclusion rather than exclusion, a focus on a better future rather than on guilt and retribution and an experience that justice has been done. Particularly useful in this analysis is Braithwaite’s distinction between core and less significant values and desired outcomes. He places ‘respectful dialogue’ (2002: 14-15) – a value that resonates with the ‘republican’ value of ‘non-domination’ – at the core of restorative justice, and values such as forgiveness, mercy and remorse as values as values and outcomes that might be indirectly realized.

As emphasized by Shearing, Wood and Font (forthcoming) this way of thinking about restorative justice in terms of a core set of values and associated outcomes serves to open a conceptual space that allows one to distinguish between how these values are realized in different spaces, both within criminal or restorative justice, and potentially within or across other fields, or nodes. Uncoupling values from processes allows one to scrutinize both the extent to which restorative (or punitive) values are in fact realized within the various ‘restorative’ programmes, and the extent to which other practices, organized on the basis of other mentalities or techniques, might give expression to restorative values.

2. Different Practices and Methodologies in Restorative Justice.

Actual practices and policies of restorative justice take different forms both within and between different countries. The most discussed contemporary forms of restorative justice are victim-offender mediation programmes, family group conferences and sentencing circles. The following account confines itself to these.

In UK and US, and most of Europe, restorative justice has been associated with forms of mediation between victims and offenders. The first *victim-offender reconciliation program* was established in 1974 in Kitchener, Ontario, by the Mennonite community. The model emphasise direct mediation and has focused on healing injuries and assisting victims, helping offenders to change their lives and restoring

relationships. The need to humanise the criminal justice system has been a strong motivation behind the programme, as well as the idea that church-based restorative justice programmes are the best guard against programme co-option (McCold 2001: 43, Umbreit et al 2001: 122). Currently there are assumed to be at least 300 programmes in operation in the US and over 500 in Europe seeking to mediate between victims and offenders, usually after sentencing (Strang 2002: 45).

Both in the US and in UK the victim movement seem to have been an important root for the introduction and shaping of *victim-offender mediation programmes*. In the 1980s English mediation schemes were strongly criticised for being too offender-oriented. According to Umbreit (2001: 123) the victim movement ‘has helped the victim-offender mediation process to achieve, at least theoretically, a balance between the needs and interests of victims and offenders’. More than 500 victim-offender mediation programmes are currently in operation in the US and Canada (Bazemore and Griffiths, 2003: 77). The vast majority are community or church based. Mediation seems to be fairly equally distributed across the criminal justice process. The majority of cases are minor assaults, thefts and juvenile offences. English mediation schemes have relied more upon indirect mediation using ‘go-between’ approaches, compared to the inclination for ‘face-to-face’ encounters between victims and offenders in the US (Crawford and Newburn 2003:25). Due to relatively generous compensation laws for victims, financial restitution has been less of a concern in England than in the US. Most English mediation schemes have operated at the cautioning stage or after conviction, but prior to final sentencing. Schemes have typically been small-scale and limited to a narrow range of relatively minor offences (Crawford and Newburn 2003: 25-27). Compared to victim-offender reconciliation programs victim-offender mediation schemes have typically de-emphasised reconciliation and emphasised victims’ healing, the accountability of offenders and the restoration of losses (McCold 2001: 44). Mediation is primarily done by trained volunteers. Many mediation schemes have sought, at least in theory, to recruit pairs of mediators who each share some characteristics, such as ethnicity, with either the victim or the offender. Mediators of minority group background still seem to have been in scarcity (Wright and Master 2002: 60). These models emphasize the responsibility of the mediator to create a safe space for interaction between the victim and the offender, non-enforcement of agreements and the ideal of minimal intervention by the mediator

himself (Umbreit 2001: 122-123). Increasingly, mediation programmes seem to move toward what practitioners call 'multi-party mediation', encouraging supporters to accompany victims and offenders in meetings (Roche 2003: 68).

In New Zealand and Australia and in parts of Canada development of restorative justice has been related to a revival of indigenous dispute resolution practices. Against a background of Maori political violence justice reforms in New Zealand, in the latter part of the 1980s, and the importance of an appropriate criminal justice response to Maori youths family group conferencing was introduced as part of national programme. The intention was to draw upon and utilize Maori traditions of problem-solving that included extended families. These conferences were introduced both as an alternative to court and as a guide for sentences. They are generally attended by offenders, their extended family, victims, their supports, police and social worker, and significant others from the community. Young persons are provided with a lawyer. Victims attend around half of the conferences and procedures have been modified to encourage victims' participation (McCold 2001: 45-46). Meetings are informal and decision-making is intended to be open and consensual. Conferencing in New Zealand is used primarily for more serious and persistent offenders. Agreements frequently include reparative sanctions like apologies, restitution or community service. A significant characteristic of the procedures are the 'private planning time' offered to the offender and his or her family during the process to consider and suggest a plan of action for the offender to take accountability for the offence and make amends to the victim.

In contrast to North-American victim-mediation programmes family group conferences are generally convened and facilitated by public officers rather than by trained volunteers. In New Zealand conferences are facilitated by youth justice coordinators employed by the Department of Child, Youth and Family Services. Compared to the volunteer mediator the role of the public facilitator in family group conferences is described as being more active, containing a broader set of functions and allowing for more directed facilitation (Umbreit and Zehr 2003: 70-71).

In New Zealand family group conferences was introduced essentially as an alternative to formal court processing. The ways innovative models are diffused to other places,

however, frequently effect how the new practice is given shape. In Australia conferencing as a model took root in policy and legislation via initiatives of mid-level administrators and professionals, rather than as a consequence of a desire for engagement in constructive racial politics (Crawford and Newburn 2003: 29). In Wagga Wagga, in New South Wales, the model was picked up and reshaped as of *police-led conferencing process for less serious cases as a form of 'restorative cautioning'*. The Wagga Wagga model has been the subject of criticism because of its potential for 'net-widening' (Umbreit and Zehr 2003: 74) and likelihood of an extension of police powers over young people (Blagg 1997). It is also controversial as a consequence of its emphasis on the theory of 're-integrative shaming' (Braithwaite 1989) While some see reintegrative shaming as a core element of restorative justice (Retzinger and Scheff 2002: 278), others regard it as being in opposition to the basic philosophy of restoration (Morris and Maxwell 2000: 216-17). The Wagga Wagga model was abandoned in New South Wales in 1995. However, police-run conferencing was introduced into the Australian Capital Territory in 1993. It has since been exported both to the US and UK in the form of new police-led restorative cautioning programmes (McLaughlin 2003: 10-11). Justice authorities administer most other Australian conference schemes. In Tasmania they are administered by the Department of Health and Human Services. Programmes vary in terms of the type of offences referred, and offenders eligible for, conferencing. They also vary on the basis of their legislative basis (Strang 2002: 47).

Compared to New Zealand and Australia conferencing in England and Wales appears to have developed on a more ad hoc basis outside of a statutory framework.

Restorative projects have typically operated outside the formal criminal justice system, in local, marginal and precarious positions (Dignan and Marsh 2003: 105-106). According to Crawford and Newburn (2003: 30-31) there are few examples of the New Zealand form of conferencing, while police-led models of restorative cautioning have had greater impact. Schemes vary according to how and when cases are referred, seriousness of offences eligible for conferencing, volume of cases handled and where the responsibility for organising and facilitating conferences is located (Crawford and Newburn 2003: 32).

The introduction of *sentencing circles* has been related to the re-emergence of First Nation sovereignty on North American reservations. Projects appear to have adopted practices drawn from First Nations practices in Canada (Van Ness, Morris and Maxwell 2001: 9). A primary goal has been to reduce the number of aboriginal young men in prisons. Circles tend to be based on broader notions of community participation than family group conferences, bringing together victims and offenders with their extended families as well as significant others who are thought to have the capacities to persuade offenders to accept responsibility for his actions and alter the course of their lives. The degree of involvement of judges and their staff in cases vary considerably. Circle sentencing is not authorised by statute, but relies on juridical discretion. It is not a form of diversion, but a part of formal sentencing process. The judge imposes an agreed upon sentence that results in a conviction and a corresponding criminal record. The focus, however, is on consensual decision-making that addresses the interests of all parties.

Statements of the restorative values of circle sentencing programmes are typically framed very broadly – they are conceived as being as concerned with empowering communities as they are resolving particular offences (Crawford and Newburn 2003: 34). Circle sentencing is almost exclusively used for serious offences. In addition they typically only admit offenders who demonstrate a desire to change their lives (Lilles 2001: 162). Circle sentencing has been criticised for its dependence on court processes and court personnel (Strang 2002: 46). However, local people seem to be becoming increasingly involved as ‘keepers of the circle’ who can and do replace judges as facilitators of the process (McCold 2001: 51). According to Bazemore and Griffiths (2003: 90) circle sentencing provides a particularly good example of power sharing as communities can, and do, act as gatekeepers who determine which offenders may participate in a sentencing circle.

As this review reveals, practices of restorative justice take different forms and use different methodologies to promote restorative values. Mediation programmes generally score low on participation, being less prescriptive about the attendance of supporters than other forms of restorative justice. Conferences generally increase the number of voices heard, while sentencing circles tend to involve a wider community in problem solving than either conferences or mediation programmes. Circles also

tend to offer the best opportunity for broad deliberations on a range of restorative objectives, while mediation programmes typically define their goals more limited. Victim-offender reconciliation programmes have a somewhat broader restorative agenda than victim-offender mediation programs which tend to prioritise victim restitution and compensation over more broadly defined reconciliatory goals. Conferences tend to include a broader range of restorative objectives than mediation schemes but less than circle sentencing.

Some observers have interpreted the Wagga Wagga conference model as a drift towards a less inclusive restorative agenda (Morris and Maxwell 2000: 216-17). The vast majority of mediation programmes are church or community driven, but they all seem to be heavily dependent on the criminal justice system for referral of cases. Conferences are typically state-controlled enterprises and only sentencing circles offer the community a major gate-keeping role.

In conclusion restorative justice practices generally appear to have their problem solving capacities circumscribed by the state's definitional powers. This is most visible in the tendency for restorative programmes to receive conflicts only after they have been conceptualized, that is, made up, as 'crime'. Accordingly, none of the most recognized restorative justice models score very highly when assessed according to the priority they accord to local knowledge and capacity in both defining and solving problems. The greatest danger for professional (and in particular criminal justice) domination lies with conferencing models that use state officials as convenors and facilitators of restorative encounters. Mediation schemes prescribe a more limited role for the facilitator and make use of self-trained volunteers rather than experts. The extent to which deliberations at sentencing circles are dominated by local knowledge or by the language and practice of the court is more difficult to assess given the mixture of 'design variables' that are used.

3. Model-drift

Restorative justice is still opposed by forces within the traditional criminal justice system. Implementation of new restorative programmes frequently meets with resistance from public officials in criminal justice or social work (Nixon 2000: 94, Sundell 2000: 198-205, Marsh and Crow 2000: 206-217). The principles of the

retributive system continue to be the driving force in criminal justice. Outside New Zealand most restorative programmes still occupy peripheral positions and rely upon criminal justice for resources and referral of clients. But the popularity of the approach has increased during the last decade and it has gained support from a diversity of sources. Restorative justice has become popular and ‘mainstreamed’ during a decade in which the support for punishment has gained new legitimacy, as evidenced by the rise in popularity of the just desert philosophy (Von Hirsch 1993). However, it appears that the greatest challenge to the spread of restorative justice values and practices at present may be less overt resistance by those who favour more punishment focused approaches than a tendency for restorative processes to incorporate non –restorative elements.

Early observations of restorative justice practices in New Zealand showed that conferences did not lead to less punitive outcomes for offenders (Lemly 2001: 49). Evaluations in Australia led researchers to conclude that ‘at least for property cases, offenders were agreeing to harsher outcomes than they would have received in court’ (McCold and Watchel 1998, in Young 2001: 217).

In the UK the tendency has long been to regard compensation by the offender and various forms of community service as forms of punishment rather than as new measures superseding punishment (Wright 1992: 531). Morris and Gelsthorpe (2000, in Ashworth 2003: 168) argue that newly institutionalised restorative practices in England and Wales seriously distort the fundamental elements of the approach, placing power and control with the professionals, and not with the key parties to the offence. According to Dignan and Marsh (2003: 113-114) the focus in the United Kingdom is increasingly on reducing offending and increasing levels of victim satisfaction, sacrificing a concern for broader restorative objectives in favour of crime reduction objectives. Restorative justice practices may well be becoming increasingly disciplinary and more directly linked to the objectives of criminal justice objectives of the New Labour government. Dignan and Marsh (2003: 114) express grave doubts that the framework established through recent legislative initiatives will provide a satisfactory basis for emergence and consolidation of an inclusive and forward-looking variant of restorative justice within the UK.

In Canada and the United States redress to victims seems to have prevailed over every other restorative considerations. In the US a popular phraseology has been for 'balanced and restorative' forms of justice that promote victims needs and interests (Thomas et al 2003: 142). The goal of victim-offender reconciliation has clearly become secondary to the objective of ensuring restitution by offenders to victims. This is evident in the shift in nomenclature from 'Victim-Offender Reconciliation Programs' to 'Victim-Offender Mediation Programs' (Fattah 2004: 27). The objective of restitution has prevailed to such an extent that, according to Fattah (2004: 27), programmes have been described as 'collection agencies' for the victims. Brown (1994, in Roche 2003: 39) observed that some victim-offender-mediation programmes in the US allowed offenders to participate only to the extent that it was likely that they would be able to make restitution payment to victims.

In the US, as mediation has moved from the margins to the mainstream of the juvenile justice system new "fast food" versions of such programmes have appeared, stripping the process of its most important restorative elements (Umbreit 1999: 214). In some areas victim-offender mediation is increasingly used to describe quickly arranged and executed negotiations between the parties, often not face-to-face, held for the sole purpose of negotiating a restitution agreement (Umbreit 1999: 226). As a way of receiving the required political support to initiate family group conferences in the US, these practices are increasingly cast as cost-savings or containment mechanisms (Burford and Hudson 2000: 229).

The 1990s saw an exponential growth in community-based family groups conferencing initiatives in the US. The vast majority, however, appear to depart from the central restorative values we identified earlier (Merkel-Holguin 2000: 225-26). Schiff and Bazemore (2002), on the basis of data from a national survey of restorative justice programmes in the US (that included family group conferencing) draw a somewhat more optimistic conclusion. They argue that (op. cit.: 197) 'programmes are conscious of and are, at least in theory, making an effort to integrate restorative principles in their day-to-day work'.

In continental Europe restorative justice programmes are still less developed and more weakly institutionalised, especially in countries with strong victim support systems

(Weitekamp 2001: 149). In Germany mediation schemes tend to be implemented with a strong educational bias. According to Trenczek (2003: 276); ‘educative solutions are frequently being forced upon youth to “successfully” close down a case – of course always in their “best interest”’. Advocates for restorative justice recently presented it as an approach in criminal justice which meets ‘the punishment purposes and the need of the victim well or even better than a traditional sanction alone’ (op. cit.: 280).

Observations like these might indicate that a new coalition of criminal justice strategies is forming within which ‘restorative’ practices are being included as an element alongside rather punitive and repressive interventions (Cunneen 2003: 182). One is reminded of Daly’s (2002) insistence on not confusing ideal descriptions of restorative justice models and values and actual restorative justice practices.

Even though restorative justice programs show evidence of significant achievements, particularly in relation to parties’ subjective experiences of procedural fairness, restorative justice may still fail to ensure equitable and fair outcomes for particular groups, or communities (Cunneen 2003: 191). The most disappointing observation from Australian conferencing practice, according to Braithwaite (2003: 160), is the small proportion of Aboriginal young persons attending. Australian programmes have failed to reduce Aboriginal imprisonment rates. Accordingly, despite their progressive intentions and underpinnings, restorative justice programmes may have class and racial biases that disadvantage poor communities (Levrant et al 1999: 16). Australian criminal reforms of the 1990s, introduced with an explicit intent of promoting restorative values, have not benefited indigenous youth to the same extent as non-indigenous youth (Blagg 2001: 229). Restorative justice programmes in Australia have become embedded in a development toward a more bifurcated approach to juvenile offenders. These programmes categorize clients according to their ‘suitability’ for restorative justice, channelling some into more punitive processes of incapacitation (Blagg 2001: 237, Cunneen 2003: 184). In Canada, LaPrairie (1999, in Roche 2003: 39) reports the same tendency. Offenders well-known to the system and most vulnerable to imprisonment due to criminal records, appear to be systematically excluded from participation in alternative restorative approaches. Observations like these testify to a real danger that restorative justice

could become precisely what it opposes: a practice which closes, limits and excludes some individuals and groups to the advantage of others (Cunneen 2003: 183-86).

4. Restorative Potential – The Need for New Innovative Designs.

Depending on how restorative processes are organised and managed their capacity to promote restorative values will vary. If we accept that ‘non-domination’ and ‘respectful dialogue’ are values at the basic core of restorative justice, which qualities of restorative programmes seem to offer the greatest hope of producing such valued outcome?

Some scholars suggest that what makes processes more or less ‘restorative’ is the *intent* with which they are imposed, seeking reparative outcomes instead of retributive use of punishment as a deliberate infliction of ‘pain’ to balance the harm (Bazemore and Walgrave 1999: 48-49). Others strongly oppose such a simple dichotomy between restorative justice and the formal criminal justice system, arguing that restorative outcomes frequently lead to obligations for offenders which are experienced as unpleasant (Duff 1992, Daly 2002). Whatever might be the correct philosophical position of this debate we generally find little value in using intention as a measure of ‘restorativeness’, due to such practical problems as deciding who constitutes the punisher or the ‘good doer’, who is privileged to interpret his or her intention and, in particular, of deciding what these intentions actually are (Crawford and Newburn 2003: 46).

Four other dimensions seem to offer a more fruitful and practical way to assess the restorative capacity of restorative practices. Firstly, McCold (2000) has produced a typology that can be used to measure the restorative potential of different practices depending on the degree to which people who have a stake in the conflict are engaged. Programmes’ *degree of inclusiveness of stakeholders* thus seems to be a useful criterion to evaluate restorative processes. We assume that programmes that ‘broaden the circle’, allowing a plurality of voices to be heard, will normally have a greater restorative and problem-solving capacity than programmes who limit participation.

Secondly, Dignan (2005: 8-9) and Van Ness (2002: 10) suggests that significant differences between restorative practices have to do with *variations in the restorative agenda or aspiration* of different practices; some programmes define their goals rather narrowly, for instance as repairing the specific harm that are caused by particular offences, while other schemes have goals that extend far beyond that, including the reintegration of the offenders back into the community, approaching structural problems and social inequalities that cause instances of domination and conflict to emerge, or aiming at the re-empowering of the community itself to increase its capacity of conflict-management and peace-building. It seems reasonable to assume that programmes of the last category might have greater restorative potential, aiming beyond 'crises intervention' toward a genuine governance of conflicts and their causes.

Thirdly, Mika and Zehr (2003) argue convincingly that restorative justice programmes can be distinguished by *their locations relative to bases of power and control*. They suggest that restorative practices might be arranged along a continuum 'from programmes that are community based where the responsibility, resources and control of services are vested in the local community and its citizens, to those programmes that are promulgated, underwritten and controlled by the state' (op. cit.: 139). The restorative justice movement, it can be argued, has been based on the idea of 'conflicts as property' (Christie 1977) – the aim is to redistribute power and disperse decision-making, reducing system-interventions and increasing community-interventions. Restorative justice in this sense is about shifting the balance between state and civil society to the advantage of the latter. If this characterisation is accepted then programmes that are locally based and driven by non-governmental associations ought to have greater restorative potential than centrally managed, state-driven projects.

Our fourth evaluative dimension of restorative potential is based more directly on Braithwaite's identification of 'respectful dialogue' and 'non-domination' as core restorative values. We suggest that the honouring of such values might require, not only that the voices of significant 'conflict-owners' are heard, but even that the resolution of problems should be based primarily on accounts of how local stakeholders experience and conceive of conflicts. As underscored by Christie (1977),

‘Specialisation in conflict solution is the major enemy’. Therefore, to the extent that conflicts are pre-defined by the criminal justice system and then referred to restorative programmes as ‘crimes’, the capacity of such programmes to search for outcomes in an open, non-constrained manner will be significantly reduced. In addition, to the extent that professionals dominate restorative meetings, the parties to the conflict lose some of their ownership of the problem. For that reason, programmes that *prioritize decision-making based on local knowledge and capacity* is assumed to have greater restorative potential than programmes in which problem-solving is circumscribed by definitions and categories formulated in other places, or that rely more heavily on the skills of professionals or experts to reach solutions.

To summarize our discussion to this point we conclude that there is a need for new and more innovative strategies in restorative justice. Based on our analysis of contemporary trends and challenges and on what seem to decide the restorative potential of different programmes, we conclude that restorative practices should adhere more strongly with the following principles:

- focus attention on options for future peace more than on issues of restoration or re-integration
- extend channels for referral of ‘cases’ beyond the criminal justice system
- forge a stronger link between the management of individual conflicts and the approach to generic problems
- organize restorative processes in such a way that responsibilities, resources and control are moved from state-sponsored restorative professionalism to local communities and lay persons
- establish rules, procedures and review mechanisms that is required to ensure that local practice respect the core values of restorative justice.

In the next section we present a dispute resolution model that adheres to these principles that has been consciously and explicitly designed to strengthen the position of poor and marginalized communities in the governance of security.

4. Building a New Model: Zwelethemba - A South African Innovation

The model we will articulate began in a poor community near Cape Town called Zwelethemba – a Xhosa word that means country or place of hope. Within the community a “experimental” trial and error process was initiated with the purpose of establishing a set of sustainable institutions for governing security at the local level that was informed by and would mobilize local capacity and knowledge.

This initiative was sponsored by the then Minister of Justice, Dullah Omar, who had been impressed with a model of public order policing that had been instituted to governing demonstrations during South Africa’s first democratic elections in 1994. This model, which had been developed by a Panel set up by the Goldstone Commission of Inquiry regarding the Prevention of Public Violence and Intimidation (Heymann 1992) and which proposed the use of demonstrators as the principal resource to be relied upon in the policing of demonstrations, had worked exceptionally well during the run up to the elections. The Minister argued that if this approach of relying on local knowledge and capacity to govern demonstrations had worked as well as it had the principles central to it should be applicable to the governance of security at a local level.

This action research began at late in 1997 after the first democratic government in South Africa had been elected. During this post-election period the Truth and Reconciliation Commission was actively engaged in its work. This was one of series of initiatives, including the election of a democratic government in South Africa for the first time, that had contributed to the establishment of an environment in which ideas that sought to find ways to make government more responsive and deliberate were being well received (Dixon and van der Spuy 2004). At the same time there was a mood of dissatisfaction with the various 'popular' governance forums that had emerged within 'townships' during the apartheid era to provide governance outside of discredited state structures (Nina 1995, Brogden and Shearing 1992). A central feature of this dissatisfaction was a widespread rejection of the often brutal and autocratic features of these 'popular' institutions. A further feature of the mood that was reflected very strongly at the meetings that took place in Zwelethemba was a frustration with the slow pace of change within government delivery mechanisms (Dixon 2004). Associated with this was the feeling that if there was to be a rapid improvement in the delivery of services, more effective and controlled local or

popular mechanisms would have to be developed (van der Spuy 2004). This sentiments might be summed up as consisting of considerable hope and high expectations for what the transition to democracy might deliver coupled with a pessimistic realism.

This hope that deliberative democratic processes would deliver better governance, combined with a scepticism concerning government priorities and the ability of existing agencies to realize the hopes of a better life, established a relative fertile ground in which to plant the seed of experimentation with local capacity governance. This ground was nurtured by the sensibilities of both the Justice Minister who was willing to give his endorsement to this line of exploration and by a National Commissioner of Police who was willing to do the same.

Following two years of experimentation a set of processes and institutional arrangements that were sufficiently robust and well articulated to be thought of as a model for managing conflict, had taken shape. While there have been, and continue to be, many adjustments to this model (as the experimentation has continued in Zwelethemba and other similar townships), its essential features have remained in tact. Since 2000 the model has been “rolled out” to some 20 communities in South Africa.

The Zwelethemba model¹

¹ The empirical observations following this presentation is based on a study of three peace committees conducted in April/May 2003; the Nkqubela Peace Committee, located outside Robinson, a town two hours drive north of Cape town, the Khayelitsha Peace Committee located in the largest township on the Cape Flats, and the Mbekweni Peace Committee outside Paarl. The study consisted of eight interviews of individual peace committee members and two peace committee group interviews, eight interviews of disputants and other community members, plus attendance at five peace gatherings. A follow-up study was conducted in February to June 2004, consisting totally of five interviews of ‘experienced members’, eight interviews of ‘new recruits’, five of whom were interviewed a second time, two peace committee focus group interviews, plus attendance at three peace gatherings and one interview of a disputant.

The Zwelethemba model is built around a process that came to be called 'PeaceMaking' because it is concerned with establishing peace in the face of interpersonal conflict. This idea of peace resonated with (and continues to resonate with) a widespread transitional sensibility that had developed around the South African peace process. Within the model PeaceMaking refers to the objective of reducing the likelihood that the particular conflict will continue. PeaceMaking takes place at PeaceMaking Gatherings to which people who are thought to have the knowledge and capacity to contribute to a solution that reduces the likelihood that the dispute will continue are invited.

Avoiding a 'crime' construction

According to the Zwelethemba model, individuals directly involved in the conflict are understood as participants or 'parties' rather than 'victims' and 'offender'. The victim/offender binary is viewed within the model as serving to separate, exclude and to pre-judge. In practice it is commonplace for a 'case' brought to the attention of local peacemakers (called "Peace Committees") to be regarded as no more than a single slice in time that should be located within a history of conflict between the parties. Within this context the 'offending' party and the 'harmed' party may, and probably do, change places over time. In other words, today's 'offender' may have been yesterday's 'victim'. The model is based on the argument that the language of 'victim' and 'offender' structures the meaning of what happened in the past in ways that make it difficult for parties involved to understand and articulate their own reality or lived experience.

Identifying Root Causes

The model does contain a backward-looking mechanism, but not one that is focused on the blaming or shaming of the behaviour of a pre-defined offender. Instead, the disputants and other participants are encouraged to engage in a collective search for underlying 'root causes' that have contributed to the dispute. Before a solution is reached, it is regarded as important to reveal the series of events that has contributed to and nurtured the conflict,

'...It is important to follow the steps. It can be very dangerous to go too quickly for a solution. You must first see what the cause is. For instance, if one

*of the disputants cries, show regret, that is not enough, you must ask and tell, try to locate the cause. If not, people will do it again. Before the solution, you must find the underlying cause. You must not jump at a solution. That can be very dangerous...'*²

A Future Orientation

The goal of PeaceMaking Gatherings is the establishment of a future-oriented solution to the conflict that will 'make for a better tomorrow' that most, and ideally all, parties present agree to. In this regard, the model stresses a deliberative approach that end in consensus building (Shearing and Wood 2003). The model is designed, to borrow from LaPrairie (1995:80), "...to return the conflict to its rightful owners..." (see also Christie 1977). During the Peacemaking Gathering, or at its termination, it may indeed be the case that considerable affect (anger, sadness, remorse, etc.) is displayed, but emotional transformation is not the goal of the process. It is regarded as 'nice if it happens' but not as essential. The goal is instrumental. The key question guiding the peacemaking process (and the set of steps established for this) is, 'how do we make a better tomorrow?' This focus on the future has its roots in the life experience of poor people who are required daily to get on with the business of living. With its instrumental focus on the future, the process may produce the outcome of reintegration as described by Braithwaite (1989) but once again reintegration is a 'nice if it happens' consequence but not a goal.

Accordingly the term 'reintegration', however, is not an appropriate one to use in characterizing this local capacity model, as it suggest that there existed a prior collectivity (small or large) to which an individual or individuals were bound to, or integrated with. This is certainly not always or even usually the case. The notion of reintegration implies that a certain relationship or 'bundle of life' that needs to be 'restored'. This may indeed be the case, and this restoration process may indeed be an outcome of a Gathering. However, living in peace and making a better future may simply involve an agreement between parties that they will avoid each other in the

² Member of the Nkqubela Peace Committee, interview no. 1, May 2003

future and an agreement by their associates that they will work to ensure that this happens.

An example from Zwelethemba serves to illustrate this. One of the conflicts brought to a Zwelethemba Peace Committee was by neighbours of a family who were worried that the ongoing conflict between a daughter-in-law and her husband's mother would escalate into serious violence. A Gathering was convened of the persons regarded as most likely able to contribute to a resolution of the conflict. The invitation to the Gathering was to persons who were seen in a position to be helpful in an instrumental sense – they were not invited to attend as 'supporters' of the conflicting parties. The Gathering quickly concluded that the chances of restoring a 'happy family', if there had ever been one, were minimal. The Plan of Action agreed to involved moving the son and the daughter-in-law's informal house to another part of the township far away from the mother-in-law.

Justice as a Future Guarantee of Peace

The uniqueness of the Zwelethemba model, compared to both retributive and some restorative justice arrangements, is that the matters of dispute are not addressed through a backward looking process that seeks to balance wrongs with burdens but through a forward looking one that seeks to guarantee that the disputants' moral goods will be respected in the future. Contrary to what one might expect from the discourses of many moral philosophers with a deontological approach, this is experienced by the parties to the dispute, and by members of the community, as both a just and an instrumentally effective outcome. Justice, as a moral outcome, is given meaning within a future-focused framework (Shearing and Johnston 2005).

The Peace Gatherings – Creating Spaces for Free Deliberation

Such an experience of justice, however, depends on the capacity of the model to produce agreements that the disputants, and others present, agree to adhere to and honour. Survey data indicate that in over 96% of the 14,000 Peacemaking Gatherings that have been convened in South Africa to date simple plans of action to reduce the likelihood of the conflict in question have been formulated. For each plan of action people at the Gatherings commit themselves formally in writing to their part in the

Plan. Research that is currently being undertaken will seek to assess the degree to which these intentions and promises are in fact realized.

Domestic disputes and violence are among the cases that, according to the PeaceMakers, are often complicated and difficult to resolve. There is a widespread belief in the communities in which our research has been undertaken that in terms of cultural norms in Xhosa communities conflicts among spouses ought first to be dealt with within the family. Accordingly, where such disputes are brought to Peace Committees PeaceMakers usually check to see if this has been done, *“We tell them; you must try to use the family. If that does not work, the dispute will often come back to us”*³. Sometimes, when agreements in cases of domestic conflicts have not been honoured, the Peace Committee might seek a more coercive solution than their Code of Good Practice, that prohibits the use of force, permits (see below). In such cases the norm is to pass the case on to the police:

*“If the man keeps on doing this, he keeps beating his wife ... then we have to put him to court, and then we assist. It is our role to see to it that those things do not happen again, that there is no more of this cruel beating...”*⁴

Peace Committee members argue that almost any case can become time consuming and complicated. What is critical they argue is not the nature of the dispute but the attitudes of the disputants. What is critical is the will or lack of will of the parties to resolve a dispute and the degree to which they are committed to being honest. Sometimes, when this is not the case, Peace Committees might postpone a case and widen the circle of participants. Usually, however, this is not required. PeaceMakers typically observe that the setting of a Peace Gathering tends to foster sincerity and makes it difficult for participants to maintain strategic or opportunistic stances,

‘...At the Peace Gatherings, I think many people are affected. We see that they do their best to help us solve a problem. If you come as a friend, he will also be affected. He will, not only support you, but correct you if it is right, tell the truth. Outside, before a meeting, we understand that people are sometimes

³ Member of the Mbekweni Peace Committee (Pola-Park), group-interview Mai 2003

plotting, making alliances. But the PeaceMaking changes things. Attitudes are changed, people come to the truth. Afterwards, when we ask them they will admit that they had plotted, but that they failed to keep it up...’⁵

Increasing the likelihood that agreements will be honoured

Reaching agreements is not sufficient. The credibility of the model also depends on the degree to which the agreements are honoured by the parties to the conflict. The likelihood for future peace, however, is related to the way that agreements are reached. The Zwelethemba model underscores that resolutions must be reached by the disputants themselves and never enforced upon them by others. It is considered to be important to check if that is indeed the case. As one PeaceMaker pointed out,

‘...It is important to use time, because of the solution and the peace. Both disputants must feel free, be satisfied. We must know that the agreement is the right one. At the end, we will see it in their faces, that it is correct. That it brings the peace. We often ask the friends and relatives who are present if they think that the solution is correct...’⁶

Because the status of the Peace Committees is so closely related to the likelihood of agreements being honoured they are forced to take this issue very seriously. A Peace Gathering organised in Khayelitsha in May 2003, attended by one of us, helps to illustrate this point. The dispute concerned a money-lending issue, for which a solution was not so difficult to reach. The agreement entered into by the parties was that the husband of disputant number two would pay disputant number one Rands 200 a month, until the agreed upon amount had been paid. However, as, for a variety of reasons, no one else was present beside the disputants and the PeaceMakers they decided to arrange for a new Peace Gathering. The Peace Committee felt that it was necessary to commit additional members of the disputants’ families and community to

⁴ Member of the Mbekweni Peace Committee, interview March 4th 2004

⁵ Member of the Nkqubela Peace Committee, interview no. 1, April 2003

⁶ Member of the Mbekweni Peace Committee (Lonwabo), group-interview May 2003

the agreement, particularly the husband of disputant number two, as he was to be the source of the money to be paid.

Monitoring the Peace Agreements

An equally important function is to monitor the implementation of action plans for peace. One or several of the participants at a Gathering, frequently, but not always, members of the Peace Committee, are selected to make sure that those who have committed themselves to the peace contract fulfil their promises. Compared to other community structures involved in solving local conflicts the Peace Committees appear to put more emphasis on this function, as one representative of a civic organization (SANCO) in Khayelitsha noted, “*We do see that the peace committee uses much more time to follow up cases, we do not have the capacity for that*”⁷ The members of the Peace Committees recognise that the capacity to monitor agreements is an important and advantageous feature of their practice:

*‘...Most of the disputants follow up the agreement. If some does not, we try to encourage them to keep their promises. For instance, in money-lending cases, we ask; ‘Could you manage to pay 50 R a month’, like that. We try to encourage the disputants to keep their promises. People say to us; ‘We like the way you follow up’. The monitoring, it is important for being trusted. Monitoring, we think of it as marketing...’*⁸

Conflicts involving money-lending seems to be a category of cases that sometimes lead to broken promises. This can lead to Peace Committees members assuming the role of negotiators.

*‘...Money lending, people are prepared to pay, but then they don’t, that happens. So we call them back and when he or she comes again, they will pay. We have never experienced otherwise. If the person is unemployed he might ask if payment can wait for a while and if so we will ask the other disputants, if he is willing to accept that...’*⁹

⁷ Member of the civic organization (SANCO) in Khayelitsha, interview no. 14, Mai 2003

⁸ Member of the Khayelitsha Peace Committee, interview no. 11, Mai 2003

⁹ Member of the Mbekwni Peace Committee (Pola-Park), group-interview, Mai 2003

Peace Committees appear to have developed a range of measures to enhance the probability that agreements felt to be insecure (often cases involving transfer of money or other forms of value) will be honoured. An example from the Mbekweni community serves to illustrate this

‘...Currently, for instance, we have a domestic case. The husband does not want to be supportive of his wife. So the agreement is that each month he gives four-hundred Rands of his pension to us, and we see to it that his wife really gets it...’¹⁰

In situations like this there is, of course, a danger that coercion (either implied or explicit) might come to the fore. To avoid this the Community Peace Programme has sought through a variety of mechanism to monitor this, and other possibilities, though devices such as case reviews, monitors attending Gatherings, exit interviews with Gathering participants and community surveys.

Mobilizing Local Knowledge and Capacity

The “Zwelethemba Model” of local capacity governance promises to mobilise local knowledge and capacity to manage and increase security within poor communities. Local knowledge and capacity was originally mobilized and transformed into particular rules and principles of PeaceMaking and PeaceBuilding in close dialogue with the Zwelethemba community. PeaceBuilding refers to a process whereby PeaceMakers convene Gatherings to identify and tackle generic issues within communities through the development of PeaceBuilding projects. Local knowledge and capacity continues to be mobilized through the experiences that PeaceMakers accumulate as part of their practice and through the engagement of other community members who voice their opinions and suggestions at PeaceMaking and PeaceBuilding Gatherings.

¹⁰ Member of the Mbekweni Peace Committee (Lonwabo), group-interview Mai 2003

Facilitating or chairing Peace Gathering is a role that has to be learned through practice. PeaceMakers usually admit that it had been a difficult task to fulfil at the beginning of their ‘careers’.

“In the beginning I was not confident, I was afraid of doing it. I did not have the experience from other community structures. I had to get the skills, talking skills. Now I got the confidence, I am growing”¹¹

The knowledge and capacity that experienced PeaceMakers are utilizing when they facilitate Peace Gatherings seem to be built on a combination of an accumulated knowledge of a variety of local conflicts gathered through the practice of PeaceMaking and, on the other hand, on an intuitive and implicit understanding of life in their local communities,

‘... What I can do is to use earlier examples, similar cases, as tools. We try to store ideas, points, to use in later cases. It is also important to know the community, the culture, the style of life. If you don’t, you might think you do the right thing, but people might think you are rude. We know our people...’¹²

The capacity of PeaceMakers to facilitate and guide Peace Gatherings toward a resolution is based on analogical knowledge rather than on abstract theory, using experience from past cases as tools and examples when they confront new ones. Experience, however, is not only, or primarily, accumulated on an individual basis. An essential principle of the model is to ensure at each Peace Committee engages in frequent assessments and evaluations of their own practice,

“We usually sit down and evaluate a case, if we got a good decision. We do an assessment, talk through the case. This is to keep the good things and to get rid of the bads. A bad approach would for instance be that you are not listening, that you are stopping people. Good ones; may be the way we try to work together. It is important to help each other. If somebody is a slow

¹¹ Member of the Khayelitsha Peace Committee, interview no. 12, Mai 2003

¹² Member of the Nkqubela Peace Committee, interview no. 3, April 2003

*thinker, to encourage, not to embarrass him or her in front of the
disputants”¹³*

Some experienced PeaceMakers claim that they have achieved an advanced capacity to anticipate the difficulty and complexity of new cases and to know how to take the peace process forward and seek for solutions. The following statement by a member of the Nkqubela Peace Committee serves to illustrate this point,

‘...I have chaired more than hundred Peace Gatherings. I do it better than before, I’m doing more of both, chairing and dispute facilitating. I have to know if this is going to be a heavy dispute or not, how complicated. When people want to speak they must raise their hands. If the chair sees that the dispute is not so heavy, he will say, ‘I need only three to four hands’. It is also important not to waist time unnecessary. I have much more ideas in my head now, usually I can easily see the way forward...’¹⁴

As Peace Committees accumulate knowledge they develop expertise in facilitating conflict resolution. This creates a potential difficulty – a tension with the core principles of the model. A new hierarchy of local knowledge forms might be established. PeaceMakers may come to think of themselves and their capacities as more important than the voices and experiences of local community members. In the coaching that takes place through review processes this potential is identified and discussed. This potential is nicely illustrated in the following statement.

“A chair, a facilitator, he or she must be someone who tries hard, someone who tries to be clever. The chair is the head and the body of the process; it is a very important role. He or she must be able to see the way forward, must be one who knows what to do”¹⁵

It is precisely such statements that the Community Peace Programme, through its monitoring processes, seeks to pick up and use as a basis for discussion about the core

¹³ Member of the Mbekweni Peace Committee (Lonwabo), group-interview May 2003

¹⁴ Member of the Nkqubela Peace Committee, interview no. 2, April 2003

¹⁵ Member of the Nkqubela Peace Committee, interview no. 1, April 2003

values of the model during review processes. To build trust and credibility it is important that PeaceMakers know what they are doing and are good at practicing it. But as underscored by Christie (1977) specialization in conflict resolution entails a major risk that such a function comes to be seen as something that can only be handled by experts.

A statement that fits better with the core values of the model is the following.

*'...I have facilitated forty to fifty cases. The facilitator, he or she would chair the meeting. The facilitator is just there to guide, he or she is not a decision maker. The facilitator is not the most important person, it is all the participants at the Gathering...'*¹⁶

In the last statements the Peace Committee member conceives of himself as a less important figure in the resolution process than community participants who are viewed as the primary source of knowledge and experience that needs to be mobilized in the search for peace.

Rules and Procedures: Regulating the Peace-making

In stressing the importance of local knowledge and capacity, the model does not propose that the knowledge and capacity gathered together should reign supreme. The gathering together of local knowledge and capacity might enact processes of deliberative democracy at the local level but it is essential that they do so in ways that operate within limits. This is precisely the conclusion that was reached in Zwelethemba where people were very familiar with the excesses associated with popular forums that were so often brutal and autocratic.

Accordingly, the local capacity model developed in Zwelethemba includes, as an essential component, a regulatory framework in the form of a 'Code of Good Practice' (see appendix). This Code operates as a 'constitutional framework' that guides and limits what takes place. It also establishes a language and a set of meanings that are used in constituting cases and subsequently acting on them. The Code, along with

¹⁶ Member of the Khayelitsha Peace Committee, interview no. 13, May 2003

PeaceMaking steps that set out how a gathering is to be organized, structures the actions of Peace Committee members in a way that enables them to 'act out' the restorative values they are expressing. Expressed differently the Code embodies a sensibility out of which actions flow (Shearing and Ericson 1991).

The Code requires that force should never be used as a consequence of a Peace Gathering to solve a problem. If the conclusion is reached that a coercive solution is required this is defined as grounds for referring the matter to the police. Second, the Code requires that the members of the Peace Committees should never engage in adjudication. They are only to facilitate the PeaceMaking process of searching for a Plan of Action that both parties to the conflict will accept. The focus is on discovering what can be done to reduce or eliminate the problem or problems that are identified as the root causes of the conflict. The Code also emphasise the value of neutrality and fair treatment of both parties, and the importance of trust and confidence, of not gossiping about cases and disputants.

When asked how the principle of abstaining from adjudication is enacted in practice most PeaceMakers emphasise a 'how to do it' technology outlining the formal steps of the PeaceMaking procedure as it is work-shopped and coached with the Community Peace Programme. Following such procedures PeaceMakers typically have a repertoire of questions they utilize to mobilize the voices of the disputants and other community members, thereby indicating that the responsibility for solving the dispute rests with the people at the Gathering and not upon the peace makers, whose role it is only to facilitate the process,

'... Yes, I have the experience now. But I must still be able not to work as a judge. I must ask the questions that contribute to the solution, but I must remember not to be a judge. I have some questions to ask, like, 'What do you think that the PC can do for you'. And the second question, digging the root cause, we can ask, 'What do you think caused this to happen...'¹⁷

¹⁷ Member of the Khayelitsha Peace Committee, interview no. 12, May 2003

*'... We read the statements first. We ask if they have something to add. But we also ask them; 'Is there nothing you have forgotten?' And we also ask the disputants; 'How do you think we [the participants at the Gathering] can deal with this, how can we help you?', so that we will have their input...'*¹⁸

The basic rules and principles allow for local adaptations as to how the core technology is practiced. Members of the Nkqubela Peace Committee, mostly composed by a group of engaged community youngsters, had a stronger tendency of emphasising and reflecting upon the constructive role they played themselves in the peace process. The following statement serves as a good illustration,

*'...I have participated in approximately four hundred Peace Gatherings, chaired in half of them. None of the disputes are the same. I am much better in chairing now. As chair, you must check, in order to get the right solution. First, you must test; get an index of the dispute. You must have a plan for the Gathering. I must try to see if I can start myself, or if I should let others speak first. Try to see what kind of style you can use, how you can plot the meeting, seek the right way to a solution...'*¹⁹

Nonetheless, while they may seek to orchestrate events so as to increase the likelihood that participants will develop solutions PeaceMakers typically demonstrated a firm commitment to the principle of never engaging in adjudication themselves. The proper role was conceived as limited to facilitating and controlling the peace process.

In some Gatherings religion plays a part as a shared stock of knowledge that PeaceMakers may utilize in searching for a peaceful solution. Members of the Mbekweni Peace Committee spoke of mobilizing religion in this way from time to time to encourage participants to deliberate so as to come up with a Plan of Action.

¹⁸ Member of the Mbekweni Peace Committee (Lonwabo), group-interview, May 2003

¹⁹ Member of the Nkqubela Peace Committee, interview no. 1, April 2003

*“We can only advise the disputants. But we can try by all means to convince.
Often we say that ‘even God would have wished’ or ‘even God would like’.
Most of the time people will listen”²⁰*

There are, however, clear limits as to how far the PeaceMakers go in the direction of offering advice and guidance. In commenting on these limits a respondent warned against the potential consequences of a too active or advisory PeaceMaking role.

“You know usually we don’t. We don’t give advice. We don’t provide that service ... It is not our place and it is not our role. Even if it is advice they are looking for ... That is not what we are here for. You can’t deal with things by taking them in your own hands. And it is one of our rules. You can’t advise because you don’t know where your advice is going to go ... that person goes to another person saying ‘the PC told me to do that’, then the whole community is implied in it. Because of one PC member, it can end up in one community problem. So then, you mustn’t mess directly with peoples’ problems by giving advice”²¹

Substantive and procedural rules are designed to promote the mobilization and availability of local knowledge. In many ways procedural rules are expected to be most critical because such rules will fundamentally impact on the mobilization of particular kinds of knowledge. The interviews indicated, however, that members of the Peace Committees are more explicitly aware of the substantive rules (the ‘Code’). This, however, does not mean that the procedural rules do not guide their activities. These rules are embedded in the forms and habitual procedures that are used to guide practice in the constitution of Peace Gatherings. Compliance with both sets of rules is encouraged and audited through the Community Peace Programmes review and incentive processes (see below).

The issue of explicitness of rules is significant as there is a tendency in review processes for people to want to focus on explicit rather than embedded rules. There are advantages and disadvantages when considering how explicit rules should be. On

²⁰ Member of the Mbekweni Peace Committee (Lonwabo), group-interview May 2003

the one hand, being embedded allows rules to become part of the ‘architecture’ (Shearing and Stenning 1985, Lessig 1999) and as such useful in creating a “habitus” (Bourdieu and Wacquant 1992) that structures behaviour. On the other hand, when and if a serious slippage of conformity with embedded rules occurs there may not be clear standards to point to, to get the process back on track, because the track has become implicit and thus in some ways invisible. There is no simple solution to this dilemma, it rather points to a tension that has to be managed on a continual basis.

Accountability and Transparency

The procedures the model endorses include some safeguarding features. The overriding principle is that collectivities have a right to undertake PeaceMaking and PeaceBuilding as long as what they do is within the law and is undertaken in a transparent manner so that the legality and normative appropriateness of their actions can be assessed. A similar principle is applied at a political level: the position the model takes is that no political approvals are necessary or required so long as the process is legal and appropriate. This is true for governments, political parties and for the 'community'. Political support is, however, regarded as desirable.

Peace Committees are typically formed after general community meetings in which the PeaceMaking and PeaceBuilding are introduced to a group of residents. In the initial stages, external coaches (typically from neighbouring communities) help Committee members to develop facilitative skills. Soon, however, internal coaches are identified within the Committee so as to ensure that learning is both localised and continuous. To ensure transparency Peace Committees make known, to as many people as possible within, what procedures will be used, for example, by publicising widely the Code of Good Practice and the PeaceMaking and PeaceBuilding steps. This is also done, for example, at the outset of each Peace Gatherings where the Code is read out and the order of events is made known.

An essential part of the model involves the collection of data. This takes place as part of a review process in which audit teams identify and analyse problems that arise. As well as analysing the reports of Gatherings, the audit team may carry out interviews

²¹ Member of the Mbekweni Peace Committee, interview March 4th 2004

persons who have attended Gatherings to generate an independent source of information about the validity of the reports they receive. In addition to data gathering and analysis, community surveys are conducted (though this does not always happen as regularly as it should) in order to assess the nature of community problems and steps which people take to resolve them. By these various means transparency is ensured and feedback given to Peace Committees and to the staff of the Community Peace Programme who assist in coaching Committee members.

Sustainability - Corporate Governance and the Incentive System

The issue of sustainability proved to be both a crucial and a difficult one – this continues to be the case. Participants in Peace Gatherings, during the pilot phase, often raised the 'free rider' problem, saying, 'we do all of this work which the community benefits; but we get no compensation and the members of our households would prefer us to spend the time earning some money instead'. However, the project team, and community members involved in the Zwelethemba 'experiment' were very aware that the 'obvious' solution to the problem - paying participants for their work on a salaried basis – was likely to replicate the failures of previous reform programmes undertaken by governmental and non-governmental organizations in South Africa. It was thought, for example, that turning the work into paid jobs was likely to give rise to another layer of 'experts', divorced from the community that might very well create divisive status distinctions. The model that has been developed seeks to get around this problem by recognising both the material value of the Committees' work to its members and to the community, and the administrative costs associated with carrying it out.

To achieve these aims a payment structure has been built into the model. Committees earn a monetary payment for every Peace Gathering held and facilitated according to the Code of Good Practice. This is not a salary for a job but a fee for service. Part of this money goes into “the pockets” of Peace Committee members as recognition of the value they are adding to their communities and the value of their skills and knowledge and capacity. A second part is ploughed into local development projects, linked to the generic problems identified at PeaceBuilding Gatherings. These monies may support projects directly linked to the governance of security narrowly understood but they also support projects concerned with enhancing public health,

education, child support, support for the elderly, the environment, etc. The strong preference in dispersing these funds is that they should be used to support local entrepreneurs. Together these two sets of monies are thought of as contributing to poverty reduction, work creation and community development.

The income-generating mechanism ensures that the Peace Committees have access to resources that they 'own'. Because of this, the Committees may be conceived of as small corporate businesses responding to local demands for conflict management and investing in their communities as micro-investment “banks”. In doing so they operate in a “market” that is deliberately regulated by the Code and the Steps of PeaceMaking and PeaceBuilding.

It is an essential principle that members of local Peace Committees, 'Organizers' (who help arrange the Gatherings) and 'Co-ordinators' (who have a wider mandate that includes review and data gathering) are also paid strictly on an outcome basis, and their work is also subject to audit. The model this has sought to blend features of market-based governing mechanisms with a Keynesian approach through the use of tax resources from local governments (as well as development aid) to promote economies for enhancing self-direction and 'thickening' of social capital and “collective efficacy” (Sampson, Morenoff et al. 1999) in poor communities. The focus on output is important since the model aims to ensure that PeaceMaking and PeaceBuilding processes can be funded in ways that conform with the effective use of tax resources as well as preventing the growth of costly bureaucracies. The model is predicated on a 'no product, no support' mentality. The importance of the Keynesian element is to ensure that the program does not align with the tendency of many programs of “empowerment” (a term which the Community Peace Programme avoids on the grounds that it suggests that “power” comes to communities from outside) that have been developed under neo-liberal “governance at a distance” (Rose and Miller 1992) approaches that seek to pass on the work of governance that used to lie with states to others without a corresponding shift of resources (see the concept of “responsibilization”, O'Malley and Palmer 1996).

When asked about their motives for joining the Community Peace Program members typically emphasise moral values;

“I liked the idea, that I was going to make a difference to the community, to make it less violent”²²,

“The Code of Good Conduct, I really liked that. The way of mediation, and no judgement”²³,

“I decided to participate to get peace in the community, that was my intention”.²⁴

Such statements should not be interpreted as an indication that the payment received by Peace Committees has less or insignificant importance. Members generally earn from one to several hundred Rands a month, depending on the number of Peace Gatherings they participate in, and while not a sufficient income to raise a family, it typically amounts to a valuable contribution to a household’s economy. As one member pointed out,

“The income is important to me. In a month I can earn hundred-and-fifty to two-hundred-and-forty Rands. That is not enough, of course. I always experience money problems”.²⁵

The payment is also experienced as a token of respect, as an acknowledgement of the importance of the work that the PeaceMakers do. A productive synergy is achieved through an emphasis on moral values combined with material incentives for doing work in accordance with rules and principles.

The incentive scheme is also intended to back up procedural outcome. One desired outcome has to do with limiting the number of PeaceMakers attending a Peace Gathering to ensure that the local knowledge of ordinary community members are not dominated by the experience of PeaceMakers. The more PeaceMakers who attend a Gathering, the less the material reward will be for each of them – payments are made

²² Member of the Nkqubela Peace Committee, interview no. 2, April 2003

²³ Member of the Khayelitsha Peace Committee, interview no. 13, May 2003

²⁴ Member of the Mbekweni Peace Committee (Pola-Park), group-interview May 2003

per Gathering and these are then split between the PeaceMakers in attendance. Some Peace Committees, however, are infused with egalitarian roles that to some extent seem to counteract this mechanism. In Khayelitsha, for instance, it is not unusual that from ten to fifteen PeaceMakers attend a Gathering, frequently outnumbering participants from the community by something like three to one. One member even interpreted this to be in line with the Code of Good Practice,

“The money, it is important. But we are not here to get the money. I had a concern, the community. The members get some money, little payments, it encourages them. But it is difficult to share two hundred Rands; we are plus minus twenty members. It is a problem with the payment, that we are so many to share, but all persons have a right to participate, we cannot decide who should come and not. It is the Code of Good Practice, we are not to decide”²⁶

Again what we see is a tension that has to be managed. The procedures seek to ensure that the local knowledge of people other than the PeaceMakers (who do not provide for solutions), and the disputants, are the primary knowledge that is mobilized. That the attendance of a larger number of PeaceMakers is not triggering financial disincentives might be a problem. More knowledge of what happens when such procedural outcomes are not realized is required.

Zwelethemba and State Governance

On the one hand, the Zwelethemba model promotes the local governance of security through forms of self-direction which are compliant with state law and which makes no attempt to challenge the state's claim to monopolise the distribution of physical force. On the other hand, the model should, in no way be seen as equivalent to a state-led strategy of 'responsibilization' in which people are mobilized to act in accordance with state objectives, and were the community merely provides human and other resources for the delivery of state agendas. To put it another way, the Zwelethemba model does not subscribe to a neo-liberal strategy of governance whereby the state 'steers' and the community 'rows'. On the contrary, the model assumes a devolution of

²⁵ Member of the Mbekweni Peace Committee (Lonwabo), group-interview May 2003

²⁶ Member of the Khayelitsha Peace Committee, interview no. 11, May 2003

both the 'steering' and the 'rowing' as a way of strengthening the capacity for local self-direction within poor communities.

A new innovative state/civil society partnership - ProjectiThemba - was launched in the township of Nkqubela in October 2002, in the Boland town of Robertson. The partners are the Community Peace Programme, the Boland district Municipality, the Boland Region of the South African Police Service and the Nkqubela Peace Committee. The experiment was precipitated by a request from a poorly serviced residential area for a local police station, closed for several years, to be reopened. Negotiations between the South African Police Service, Boland Region, and the Community Peace Programme resulted in a plan to re-open the building, not as a police station but as a "Community Peace Centre", with input both from the Police and from the Peace Committees. Through this project the police gain increased access to, and respect from, communities who for historical reasons tended to be hostile, sceptical and uncooperative, as well as relief from dealing with matters for which they are less suited, thus saving time, money and unnecessary frustration all round. The objective of the Peace Committees and the Community Peace Programme is to gain further recognition that opens doors to sustainable financial support from agencies such as the national police force and local governments, access to an existing network of police districts into which Peace Committees can expand through the creation of new Community Peace Centres as well as a partnership that will relate professional and local knowledges and capacities. The partnership with the police is based on a model of role-differentiation at the level of service delivery, with the assumption that the police will refer the majority of cases, depending on the consent of the parties to the conflict, to the Peace Committee. At the time of writing there are three Community Peace Centres in operation. The partnership is seen as an opportunity to explore the conditions under which the local forms of knowledge that the models generates will impact on larger policy networks concerned with issues of crime, policing, poverty reduction and local governance generally.

Generalizing the Zwelethemba Model to a Variety of Contexts

Dixon (Dixon 2004) has suggested that Peace Committees, while prospering in townships like Zwelethemba, located on the outskirts of relatively small agricultural towns, might find it much harder to function and preserve their autonomy in places

like Khayelitsha, close to the larger metropolitan area of Cape Town and already consisting of a diversified and competitive market for conflict resolution and security management. The Peace Committee in Khayelitsha was established in September 1999. It has experienced problems which seem to confirm Dixon's concerns, being actively opposed by the local civic organization (SANCO) and similar community structures who have viewed of the Peace Committee as a potential new competitor. While relations have become more harmonious tensions still exist. These have created problems in securing local funding.

“As they participated in our Peace Gatherings, they saw and understood. Now we have a good mutual understanding. We get some cases referred from SANCO. They see that it eases their work. We are supported also because of the PeaceBuilding activities”²⁷

“If we see that a case needs peace more, we may refer it to the PC. Those cases, it would typically be conflicts between family members, and also domestic abuse. In SANCO we have a lot to do, many cases, development projects. We need more time for such work, so the PC has relieved us of some work”²⁸

There is no doubt that places like Khayelitsha are more challenging environments within which to establish and sustain Peace Committees than smaller townships with high rates of crime and conflict, but frequently with a lack of existing community structures offering security. To strengthen its position within the community the Peace Committee in Khayelitsha has put strong emphasis on peace building activities, and regards such practices to be of outmost importance for its status and support in the community;

‘...The peace making, it is very important, for marketing. The peace making, it's like a bank, but the peace building is more important for support...’²⁹

²⁷ Member of the Khayelitsha Peace Committee, interview no. 12, May 2003

²⁸ Member of SANCO, the local civic organisation in Khayelitsha, interview no. 14, May 2003

²⁹ Member of the Khayelitsha Peace Committee, interview no. 12, May 2003

*'...Now the PC is growing. In the beginning, we had no implementation of peace building projects. But from last year, we engaged in a lot in such activities. People here got very impressed. Now we get a lot of applications for sponsoring, but we do not have the means...'*³⁰

The emphasis on PeaceBuilding projects is indicative of how this Peace Committee has sought to adapt it self to institutional surroundings characterized by dense local structures, a competitive security market and a strong cultural valuation of community progress. In such environments, our findings suggest, legitimacy and support depend on the ability of Peace Committees to demonstrate their capacity to contribute to collective development projects. There is a danger, of course, that the basic function of PeaceMaking might suffer if it becomes regarded merely as a 'bank' for more essential activities. As one participant remarked at the monthly review meeting in May 2003; *"if peace making is to be a bank, that will surely be done quickly"*.³¹ Currently, however, there are few signs that this Peace Committee is actually drifting away from core values. Members of the Khayelitsha Peace Committee demonstrated a good understanding of and commitment to the basic principles upon which the Zwelethemba model has been based. The idea that the solution must come from the disputants themselves, and not from the PeaceMakers, seems to be strongly adhered to. This norm has become an identifying mechanism, a core value that members frequently commented upon as a way of distinguishing between themselves and other local community structures,

*'...I was in SANCO before, I was very respected. But here we are not doing things as in SANCO. They are judging, there the aim is only payment, not peace. We are seeking solutions reflecting the disputant's wills. When new members come from other community structures, from SANCO, ANC, ANC youth league, or from the political parties or the police forum, we often need to correct them. Those structures, they make judgments, not from the disputants, but by majority decisions. It is very different from what we are doing...'*³²

³⁰ Member of the Khayelitsha Peace Committee, interview no. 11, May 2003

³¹ Participant at the monthly review meeting of the Khayelitsha Peace Committee, May 2003

³² Member of the Khayelitsha Peace Committee, interview no. 11, May 2003

The Zwelethemba model does seem to have the capacity to realize values associated with the restorative justice movement in different social, political and economic contexts. Work undertaken in both South Africa and in Argentina enables us to examine this issue from a broader comparative perspective. In both countries model experimentation are within very poor collectivities of persons who either live in self-built informal housing or very basic formal housing. Both countries have a history of authoritarian rule and both are countries that are in the process of building more democratic political institutions. A “*Code of Good Practice*” that closely parallels the one developed in South Africa, while allowing for some adaptations to local context, is also being used in Argentina as part of a pilot project that began in 2000.

Peace-building in Argentina

Declan Roche (2002) argues that a unique feature of the South African project is its commitment to addressing generic, structural issues in the communities. Like South Africa, the Argentine pilot project in the community of ‘Villa Banana’ places equal emphasis on the PeaceBuilding component that is focused on addressing the underlying issues that fuel insecurity. A focus on PeaceBuilding often leads away from issues on security to broader developmental concerns such as public health, hygiene, food, shelter, rubbish collection, education and recreational opportunities. Thus, peace-building broadens the scope for realization of restorative values beyond security.

As in South Africa an open-ended approach of ‘democratic experimentation’ was also followed in Argentina, allowing for a comparison of how this pilot project compared with the initial sites. Although remarkable similar processes were developed for gathering people together to address local issues in ways that realized restorative values, the substance of what was addressed within peace-building was different, as was the inclination for the Argentine project to place grater emphasis on PeaceBuilding than PeaceMaking.

In initial project meetings, aimed at identifying the most pressing security issues in the community, repeated abuse on the part of the police featured prominently. Participants gave accounts of incidents involving the police that they either witnessed

or were personally involved in. The stories were all quite similar, relating instances of arbitrary detention, theft of their possessions and/or being physically assaulted while in custody in any of the two nearby police stations.

In accordance with the local capacity model, Gatherings of persons thought to have the knowledge and capacity to contribute to a solution were convened. These Gatherings resulted in the development of a peace-building initiative that unfolded over several months. Thus plan of action was formulated at a series of Gatherings facilitated by the 'Foro' (the Argentine Peace Committee) that mobilized all the groups affected by these incidents. Given the future-oriented focus of the project, the primary objective agreed to was to minimize the risks of further victimization by the police. Having determined that the police targeted particular individuals (male youth) in particular spaces, one strategy was to ensure that the youth no longer congregated in these spaces and at these times. This was combined with strategies that sought to enhance participants' capacity for collective mobilization. Central to this was the establishment of a group (particularly mothers in the community) who would gather when instances of arbitrary arrest and detention came to their attention. Once assembled, they would go to the police station and remain there peacefully until they were provided with information regarding the release of the person.

Contact was made with various state agencies – including courts, high-ranking police officials and political authorities – who were informed of what was happening. This was reinforced through lobbying with high-ranking officials that had authority over Chief Constables. After several months the officer responsible for the local station called for a 'truce', committing himself to improving police-community relations (Barrera et al, 2001).

This peace-building initiative has had a lasting impact on the community of Villa Banana. At the time of writing, no instances of arbitrary detention conducted by the local police station have taken place. As well, community members who have been arrested by the police have not been subject to mistreatment either on the street or in the station. Finally, when community members present themselves as being associated with the work of the Foro, they are treated in a polite manner (Shearing, Wood and Font, in submission).

Conclusion

Participatory governance has had a chequered history, sometimes producing limited change, sometimes being hijacked for repressive ends. As argued by Braithwaite (2002) it is necessary that such practices takes place within a context of broader values and regulations that set constitutional limits to what is appropriate within a restorative justice framework. The gathering together of local knowledge and capacity might enact processes of deliberative democracy at the local level but it is essential that they do so in ways that operate within “constitutional” limits. Accordingly, the local capacity model developed in Zwelethemba includes, as an essential component, a regulatory framework in the form of a *Code of Good Practice* along with embedded procedures . These regulatory constraints operates as a ‘constitutional framework’ that guides and limits what takes place. The Code, along with PeaceMaking and PeaceBuilding steps set out how Peace Gatherings are to be organized, structures the actions of Peace Committee members in ways that enables them to ‘act out’ the restorative values they are expressing.

Through local democratic experiments in South Africa and Argentina a robust model of participatory conflict management has been developed. An important question that needs to be addressed is whether its principles and perhaps some of its procedures can be generalized to a variety of other social, political and economic contexts.

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