

BOOK REVIEW

RACHAEL FIELD*

Charles K B Barton, *Restorative Justice – The Empowerment Model* (Hawkins Press, 2003) 194 pp

The use of informal processes in criminal justice contexts is still in relative infancy and there is significant scope for the development of theoretical foundations to practice. This book is a welcome contribution to the emergent literature of restorative justice theory and method. It will also be a useful resource for practitioners, professionals involved with conferencing, and tertiary educators and students.

Group-focused consensus-based alternatives to processing offenders that also provide victims with a central role in criminal justice outcomes have found mainstream applications since the beginning of the 1990s. As with many alternative dispute resolution processes, the practice of restorative justice has not always been well grounded in the discipline's theoretical foundations. This book, which started out as a group conferencing manual, provides practitioners with a strong conceptual framework within which to situate their practice, without requiring them to wade through mountains of dense theoretical exposition.

Barton also offers practitioners a positive alternative framework to what has, to date, been one of the dominant approaches in Australian restorative justice, namely John Braithwaite's theory of 'reintegrative shaming.' Braithwaite's theory aims to reject the stigmatising nature of traditional criminal justice process and replace it with an opportunity for offenders, victims, their families and communities to engage in negotiation and reparation. This is achieved through an expression of reprobation for the offender's act (not for the offender themselves) and a process of reintegrating the offender back into their community through acts of forgiveness and (re)acceptance.¹

* BA, LLB (Hons) (QUT), LLM (Hons) (QUT), Grad Cert in Education (QUT), Barrister and Solicitor (ACT), Solicitor (QLD), Lecturer, Faculty of Law, Queensland University of Technology.

¹ On the shaming approach see: J Braithwaite, *Crime Shame and Reintegration* (Cambridge University Press, 1989) and J Braithwaite and P Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice* (Oxford University Press, 1990). See also: H Zehr and M Umbreit, 'Victim Offender Reconciliation: An Incarceration Substitute?' (1982) 46(4) *Federal Probation* 63; SP Hughes and AL Schneider, 'Victim-Offender Mediation: A Survey of Program Characteristics and Perceptions of Effectiveness' (1989) 35 *Crime and Delinquency* 217; H Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press, 1990); M Umbreit and R Coates, *Victim Offender Mediation: An Analysis of Programs in Four States of the US* (Minnesota Citizens Council on Crime and Justice, 1992); JG Brown, 'The Use of Mediation to Resolve Criminal Cases: A Procedural Critique' (1994) 43 *Emory Law Journal* 1247; KL Joseph, 'Victim-Offender Mediation: What Social and Political Factors Will Affect its Development?' (1996) 11 *Ohio State Journal on Dispute Resolution* 207; A Morris and G Maxwell, 'Re-Forming Juvenile Justice: The New Zealand Experiment' (1997) 77 *Prison Journal* 125; and A Morris and G Maxwell, 'The

Whilst many have accepted and applauded Braithwaite's shaming methodology, Barton offers a different view. He rejects the retributive/restorative dichotomy that has dominated restorative justice analyses and theory to date as being an incomplete approach that fails to explain victim restoration and healing. Barton's assertion is that theorists, such as Braithwaite, have failed to provide a 'plausible over-arching framework that [is] philosophically sound and empirically compelling'.² His response to this asserted gap in the theoretical foundations of conferencing practice is to introduce a 'paradigm of empowerment' that has its origins in victim empowerment and victim justice.

Barton's empowerment paradigm has been developed in a number of publications since completing his doctorate on the subject in 1996. Central to this perspective is the belief that for restorative justice to be truly successful, all the key stakeholders must be empowered. Empowerment in this context means that 'all parties must be enabled to negotiate from a position of knowledge, and with confidence that they can deal with this matter and make a positive difference in the outcome'.³

It is true that both Braithwaite and Barton advocate approaches that represent a 'more decent, less oppressive criminal justice system',⁴ but the emphasis in Barton's conceptual framework is undeniably more positive. In my view, its focus on empowering participants places a greater priority on the notion of 'making things right.' Barton's recognition of the centrality of all stakeholders to the success of restorative justice processes is also important. His theory, as well as his practical strategies for participants, apply not only to facilitators, offenders and victims, but also extend to those who are involved in the role of supporter; professionals (such as police, social workers, and legal advocates); and those whose presence is felt in a more abstract way (such as program managers, referring agents and policy makers).

Barton has divided his work into two parts, which the book jacket claims provides an even balance between theory and practice. This is a little inaccurate as the 'theory' chapters (chapters 1-3) are significantly outnumbered by the 'practice' chapters (chapters 4-10) — although certainly theoretical considerations pervade those chapters focussed on the description of practical issues. In addition, the theoretical approach found here is clearly directed at making aspects of restorative justice theory sensible to practitioners. According to Barton, his aim has been to put theory into accessible language.⁵ An inevitable consequence is that some of the academic rigour usually associated with theoretical pursuit is lost to the prioritisation of clarity in communication. However, this is not a bad thing in light of the work's key objective of facilitating success for all participants in restorative justice processes through enhancing and improving approaches to best practice. Readers should perhaps look to Barton's numerous other publications developing his empowerment paradigm if they seek a more

Practice of Family Group Conferences in New Zealand: Assessing the Place, Potential and Pitfalls of Restorative Justice' in A Crawford and J Goodey (eds), *Integrating a Victim Perspective within Criminal Justice* (Ashgate, 2000) 207, 207-208.

² C Barton, *Restorative Justice – The Empowerment Model* (Hawkins Press, 2003) vii-viii.

³ Ibid 30.

⁴ J Braithwaite, 'Thinking Harder About Democratising Social Control' in C Alder and J Wundersitz (eds), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (Australian Institute of Criminology, 1994) 199, 200.

⁵ Barton, above n 2, ix.

thorough development of theory than this practical text can provide.⁶ Further, it is positive that in pursuing the reality of achieving empowerment in practice, Barton is prepared to be unapologetically focussed on emphasising some of its necessary mundanities — for example the importance of preparing facilitation instruments such as a seating plan and scripted prompts. In fact, 44 of the 179 pages of text are devoted to practical appendices that offer a script for facilitators, a crisis management plan and a number of role-plays.

A key point of critique in relation to Barton's empowerment paradigm, at least as it is expressed in this text, is that, whilst the paradigm is itself grounded in a critical view of the retributive/restorative dichotomy, it does not appear to apply the same level of reflective, contextualised analysis to its own elements and operation. Restorative conferencing advocates have long claimed the empowering effects of restorative processes for the participants.⁷ For example, offenders are said to be empowered through active participation in a non-stigmatising and reintegrative process, families are said to be strengthened through their involvement and focus on their responsibilities, victims are said to be empowered through active involvement and enhanced possibilities of reparation, and the community is said to be empowered through being able to take back control of resolving criminally based conflicts from the state.⁸ However, these assertions of empowerment are rarely unpacked in a constructively analytical way that adequately contextualises them.

In addition, even though Barton's theory is entrenched in the notion of empowerment, he does not, for example, provide a concrete analysis of many of the relevant practical power-based issues that impact on the reality of empowerment for the more vulnerable participants in conferencing. Such an analysis, I would argue, would provide greater depth to the practical assertions associated with the empowerment paradigm.

For example, Barton's practical information for offenders participating in a conference (limited to eight and a half pages) makes the initial point that offenders will benefit through gaining a knowledge of the relevant law(s) but that they will gain respect if they forget about legal technicalities and 'own up honestly to what they have done wrong, without making excuses or trying to minimise [their] responsibility in any way.'⁹ At one level this reflects accurately attitudes and approaches that are found in practice and it is certainly a relevant tip for an offender who wants to 'win over' the other participants. On the other hand, we might question an empowerment approach that does not advocate that offenders seek to have the social and political framework in which they committed the offence — for example, family violence, poverty, unemployment, homelessness, and discrimination — explicitly acknowledged in the context of

⁶ See: C Barton, *Getting Even: Revenge as a Form of Justice* (Open Court Publishing, 1999); and C Barton, 'Empowerment and Retribution in Criminal Justice' (1999) 8 *Res Publica* 16 (also published in H Strang and J Braithwaite, *Restorative Justice: From Philosophy to Practice* (Aldershot, 2000)).

⁷ M Wright and B Galaway (eds), *Mediation and Criminal Justice: Victims, Offenders and Community* (Sage, 1989); B Galaway and J Hudson (eds), *Criminal Justice, Restitution and Reconciliation* (Criminal Justice Press, 1990).

⁸ K Warner, 'Family Group Conferences and the Rights of the Offender' in C Alder and J Wundersitz (eds), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* (Australian Institute of Criminology, 1994) 141, 141.

⁹ Barton, above n 2, 109.

conference discussions without feeling that it will be seen as an attempt on the offender's part to minimise their responsibility.

Another real issue for offenders that could be unpacked is that of the informal and private nature of the conferencing process, which can be said to remove offenders from the safety net of public scrutiny and formal accountability measures. Pressure on offenders to admit guilt to avoid formal criminal justice processes, to plead guilty to lighten their sentence, or to agree to inappropriately harsh outcomes because of a sense of powerlessness, are all possible and real pressures applying to offenders that deserve explicit treatment by Barton. In the bigger picture, not addressing these issues could be said to potentially jeopardise the legal and human rights of offenders.

There are also concerns about the 'voluntary' nature of offenders' participation in conferencing that would be a useful inclusion in Barton's analysis. The National Alternative Dispute Resolution Advisory Council ('NADRAC') has identified a participant's ability to 'make a free and informed choice to enter' an informal process like conferencing, and the absence of any 'threat, compulsion or coercion to enter or stay in the process,'¹⁰ as important in terms of the fairness of the process. Voluntary participation can have little real meaning for offenders, however, if they perceive that they have no real power to choose to enter or to terminate the process, particularly for example, if they consider themselves to be subject to coercion from: the victim; their own family or support group; or authority figures (such as the convenor or the police). The voluntary nature of an offender's choice, both to enter and to remain in an informal process, and the real pressures associated with that, are issues deserving more detailed treatment by Barton.

In summary, whilst the book jacket asserts a level of balance between theory and practice in this work, it is my view that one of the book's great strengths is its clear emphasis on practical conferencing issues, strategies and techniques, and the contextualisation of theory within the realm of practice. There is room, however, for a more detailed coverage of issues that cross the theoretical/practical line – particularly those that impact on some of the more vulnerable participants. Perhaps a greater inclusion of the work of Barton's other publications would have achieved this. It seems to me to be an especially important consideration if the empowerment paradigm is truly to achieve fair and just outcomes for the offender, victim and State in the practice of restorative conferencing.

¹⁰ National Alternative Dispute Resolution Advisory Council, *Issues of Fairness and Justice in Alternative Dispute Resolution – Discussion Paper* (AGPS, 1997) 21.