Introduction

It is always a challenge to be asked to give a keynote address and especially so on a subject you know little about. I barely knew the words and very little of the concept or practice of restorative justice until a few weeks ago. Then, like Alan Rumsey, I started swotting over the voluminous writings of John Braithwaite and Sinclair Dinnen¹. What I say today owes something to that reading but also to listening yesterday. I learnt a lot from the rich presentations of scholars, of policy makers and especially those practitioners of peace — those involved in the arduous, everyday process of conflict resolution — like John Tombot in Bougainville, before, during and after the crisis; like John Ivoro, in the unsafe, unsettled settlements, such as Six Mile in Port Moresby.

But I cannot refrain from hearing the conversations of yesterday in the broader context of the dangerous new challenges to peace in our region — in Fiji and the Solomons. Both conflicts entail not just the spectre of lives lost and bodies mutilated, but the spectre of not being able to repair these large
tears in the fragile fabric of the imagined communities of these new nation-states. The divisions, as I understand them, are not just those of race or place, between the first people of the land and the immigrants (the Fijians versus Indo-Fijians, the people of Gaudalcanal versus those of Malaita). Such ethnic divisions are also entangled with other complex differences: the transformed indigenous hierarchies of rank, seniority and gender; the introduced inequalities generated by capitalist development; new forms of education; and the very structures of the nation-state in a globalising world system.

These changes and conflicts will likely have serious consequences not just in lives lost but in lives ruined by increased poverty, the deterioration or loss of services and resources and the heightened sense of chaos and confusion which threatens to exaggerate pre-existing differences — including those intimate familial differences between young and old, men and women.

I am also concerned about the appropriate role of Australia in such regional conflicts. In explaining why, in contrast to East Timor, Australia would not commit police or troops to the Solomons, the Australian Foreign Minister, Alexander Downer, refused the role of Deputy Sheriff (presumably to the US as global Sheriff). Of course, Australians were not averse to this role in the epoch of colonization. For example, in PNG, ‘tribal fighting’ was ended not just by indigenous conversion to Christianity, with the ‘coming of the light’ and of peace, but by the exertion of superior force on the part of the colonizers — a process rather paradoxically called ‘pacification’. But today, even when invited by the embattled Prime Minister of the Solomons, Australia is scrupulous not to assume that paternalist posture of the ertswhile colonizer.

Yet, as you would know, in my own country, Australia, there are huge perduring divisions which owe much to the past of colonial conquest and which seem unlikely to be resolved or reconciled in the near future of the Australian nation. I refer to the plight of the first people of our place — Aboriginal people and Torres Strait Islanders — and the failure of our current
conservative government and in particular our Prime Minister, John Howard, to apologise for the past policies of Aboriginal child removal or to fully support the work of the National Council of Reconciliation. The ten-year-long work of this Council culminated three weeks ago, not just in a collective statement, but in mass marches of people walking across bridges as part of a journey of national healing. On May 31st, over 250,000 crossed the Sydney Harbour Bridge in glorious sunshine. In my hometown of Canberra, a brave few thousand of us crossed the Commonwealth Bridge in temperatures of 4 degrees, in biting winds and drifts of uncommon snow. Our Prime Minister refused the repeated invitations of our indigenous leaders like Evelynne Scott and Aiden Ridgeway to join hands and make that walk. He went to the football in the snow instead.

For John Howard, the violence of conquest is safely removed to the past as the ‘guilt’ of our white ancestors, but not as our concern. For him, our taking responsibility for past and present structural injustice can only be an admission of our own ‘guilt’. He and Herron, our Minister of Aboriginal Affairs, deny the reality of the more recent trauma of the ‘stolen generation’, those Aboriginal children removed from their own families to the custodial care of white foster families, mission or government ‘homes’. This did not happen in the distant past, but continued into the 1970s and is thus part of the life experience of the present generation of politicians. Howard and Herron make precious distinctions between symbolic reconciliation (to ‘say sorry’ which they fear will fuel compensation demands) and practical reconciliation (dealing with inequities in the present). But it is clear that most Aboriginal people need and want both. Government policies have done little to redress perduring racial inequalities in health, employment and education. A conservative Northern Territory government enshrines mandatory sentencing amidst the horrors of Aboriginal deaths in custody. This is one consequence of the persisting racialised and gendered inequalities in the Australian criminal justice system whereby young Aboriginal men are not only at much greater risk of being arrested and locked up, but of dying in prison.
I mention these large problems of restorative justice in Australia and the region, not just to stress our human, historical and geopolitical connection, but to echo at the level of the imagined communities of nations, those hard questions of restorative justice which we have been facing in those other contexts where communities are imagined. In my view there is a relation between justice in the broader political sense of redressing inequalities and differences and justice in the narrower legal sense, of adjudicating conflicts in a way which delivers both fairness and harmony. But, as we appreciate, the balance between justice and peace is often hard to find.

I turn now from these rather portentous opening thoughts to ask three hard questions.

(1) First, what is the relation between restorative and retributive justice and how does this relate to the difference between customary conflict resolution in Melanesia and introduced legal systems, derived largely from Western models?

(2) Second, I want to ponder whether the process we are calling restorative justice might better be conceptualised as transformative justice.

(3) Third, I ask what is the model and the value of ‘community’ being evoked and how far is this a value for all, or rather reflects dominant voices? So, heralding the themes of today’s session, how might gender and age be seen as integral to such processes of restorative or, better, transformative justice?

Reflections on restoration and retribution

In his pre-circulated ‘Concepts Paper’, Sinclair Dinnen introduced restorative justice as a large and capacious category, a broad reform movement aimed at achieving more effective and sustainable solutions to conflicts. It includes reconciliation ceremonies, truth tribunals, peace processes, family group conferences, victim-offender mediation, restorative probation, reparation and reintegrative shaming schemes. Restorative justice is contrasted with the adversarial practice of the Western
criminal justice system, which pits a victim against an offender in the context of a judicial search for the truth of guilt or innocence and which stresses control, punishment and incarceration. Restorative justice is rather sought through the active participation of the several parties — the victim, the offender and other stakeholders, the imagined ‘community’ — be it an evanescent healing circle or a more perduring group of neighbours or kin. Sinclair Dinnen suggests that the ‘emphasis on dialogue and participation necessarily involves a process of deliberative democracy’.4

John Braithwaite, acknowledging Marshall, talks of restorative justice, as 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’.5 He stressed how, in the historical development of Western criminal justice, conflicts had been ‘stolen from ordinary people’ by the intervention of the crown or the state in pursuit of abstract and uniform justice. Arguably, the barbarism of personalistic blood feuds had been supplanted by the barbarism of the state. Moreover, there is much evidence that the predominant stress on retribution in the criminal justice system had neither succeeded in reducing crime (at present the United States has about two million prisoners) nor rehabilitated offenders. He suggested that restoration entailed the restoration of victims, offenders and communities. It encompassed not just restoration of injury to a person or the loss of property but the restoration of human dignity, of freedom and compassion, of empowerment and peace.

Both Braithwaite and Dinnen warn that restoration and retribution are ideal types since most legal systems entail the co-presence of both restorative and retributive principles (although the emphasis may vary). Braithwaite also noted yesterday that restorative justice often prevails in contexts where parties are connected or intimates, while retribution often prevails where the parties are disconnected or strangers. Moreover, we should be wary of unduly associating retributive justice with its emphasis on guilt, control, punishment and incarceration with
Western justice and restorative justice with its emphasis on reconciliation, restitution and harmony with Melanesian or Pacific ways. The history of European legal systems yields rich evidence of restorative traditions, prior to and beyond the formation of centralized states and the associated notion that certain kinds of offences were so heinous as to be not only offences against other persons (the victims) but to be crimes against the crown or the state. Pacific societies too have rich traditions of restorative justice, of resolving conflicts through talk which generates consensus and reconciliation through the exchange of valued goods (pigs, mats, shells, betel, kava) and sometimes the exchange of people (women in marriage, children through adoption). But these restorative traditions of the Pacific co-existed with the retributions of warfare and with punitive sanctions for those who flouted the authority of the powerful or transgressed the ways of the ancestors.

‘Best practice’ in contemporary restorative justice in the Pacific seems to me not so much a recuperation of pre-colonial forms of conflict resolution but the creative connection of indigenous and introduced forms. As I heard John Tombot talk yesterday, he stressed not just the power of the chiefs to adjudicate and reconcile conflicts as in the past, but the power of mediators to transform conflicts into peace through new techniques of resolution — talking with the victim, talking with the offender, meeting with both parties, discussions with each group, reaching a decision with both parties, achieving an act of conciliation, signing an agreement and follow up. The mediators involved in these processes are importantly not just older men or chiefs, but also younger men and women. John spoke of the ‘marriage’ of customary techniques and introduced skills in the practice of contemporary restorative justice in Bougainville.

But, unfortunately the conjugation of the indigenous and the introduced is not always such a happy marriage, and I now want to consider the particular challenges which confront both indigenous and introduced traditions by those conflicts which entail the different or divergent interests of men and women.
I am not suggesting, as some Western feminists do, that the interests of men and women are irrevocably opposed. There is often rightly a rhetorical stress on the complementarity or mutuality of male and female interests in the construction of Pacific communities. But I stress that many Pacific women have highlighted the deficiencies of both the criminal justice system and of village courts or kastom jiís in dealing with those cases which most graphically embody conflicts between men and women — rape and domestic violence.

**Gender and justice — domestic violence and rape**

Echoing the much earlier work of the Law Reform Commission in Papua New Guinea,⁷ there has been some disturbing recent evidence from across the region of the failures of both the criminal justice system and of customary law to deal with such conflicts in a way which delivers both peace and justice. The presentations made to this conference by Rita Naiviti on Vanuatu and Edwina Kotoisuva on Fiji strongly support this conclusion. But I here refer to some recently published research on Vanuatu and the Highlands of Papua New Guinea.⁸

A recent study of domestic violence in Port Vila, based on a selection of cases of women who presented to the Vanuatu Women’s Centre, found that the police and the judicial system failed to deal with domestic violence — and especially with husbands’ assaults on their wives — as a criminal matter.⁹ Despite the fact that it is a criminal offence in Vanuatu law, it was still seen by police too often as a domestic or private matter and as something which should be reconciled rather than a matter of court resolution. This was despite the fact that all these women had expressly chosen to pursue legal solutions rather than a path of counselling or conciliation. Women’s legal right of ‘security of person against intentional assault’ and ‘equality before the law’ were thus negated. Moreover the women most likely to be assaulted were younger women between twenty-five and thirty-four. They were at even greater risk if they had young
children and if they were in paid employment, and especially if their husbands were unemployed. They were at greatest risk if their husbands were policemen or members of the Vanuatu Mobile Force (about three and a half times the rate for other men). This analysis raises troubling questions about the relation between domestic violence and public violence and about those who can exert the state’s legitimate monopoly on force. It poses questions not just about women as maltreated victims but about certain forms of masculinity.

But, we might ask, do systems of customary law yield better outcomes for women who are the victims of domestic violence or rape? In Vanuatu the decisions of kastom jiis (traditional/custom chiefs) have also often been faulted for laying undue stress on reconciliation and the harmony of the ‘community’ at the expense of the wronged woman.10 Similarly Sarah Garap, writing on customary law in Simbu province Papua New Guinea, presents a very grim picture of customary law in her region. In her view village courts do not redress wrongs against women but are ‘the worst offenders in terms of the way they deal with cases involving women’.11 She believes that village courts are intimidating to women who feel they cannot speak freely and who, when they do speak, have their voices regularly discounted. In several judgements in cases of adultery she discerns a tendency to discipline the woman and not the man. Moreover, in cases of sexual violence and rape there is a tendency to blame the victim. In rape cases, it is often the male relatives of the woman who are compensated rather than the woman. Domestic violence is often, as in Vanuatu, treated as a domestic affair rather than a criminal matter, and is thus thought undeserving of police action. Again, police themselves pose a particular danger not just to their own wives but other women — female inmates have been assaulted and raped while in prison, she avers.

Such gloomy stories of women as victims are of course not the only ones. We have heard many positive stories about women as vocal agents in peace-making, about the power of women to stop conflict — for example in the Nebilyer Valley of
Papua New Guinea as recounted by Alan Rumsey,\textsuperscript{12} in many regions of Bougainville, as both John Tombot and Ruth Saovana-Spriggs attest, and right now in the conflicts in Fiji and the Solomons. There does seem to be a promise of new forms of restorative justice for women, especially if this becomes a transformative justice which not only deals with women more fairly as victims (or offenders!) but also acknowledges women’s particular capacities as peacemakers and mediators.

**Conclusion**

In conclusion then, I think there is a need to think about justice in the way Hannington Alatoa suggested to this conference, not just justice in terms of the restorative resolution of particular conflicts but the proactive process of creating peace and harmony in communities in a way that is wedded to a deep desire for justice, through fairness for all — men and women, old and young. But such challenges of transformative justice or, as Ruby Zarriga envisions it, ‘community development’, are ever greater as the communities of more certain local places are transformed into the evanescent communities of urban settlements, and where the hopes for the future in Pacific villages and towns are continually subverted by the divisions created by social and political injustices, not just within nations but between nations.
Endnotes


2 I am not here discounting those other reasons which include the heavy commitments to other peace-keeping operations in East Timor and Cyprus, the fact that by the Prime Minister’s invitation violence had escalated to such a point that unarmed police would be endangered and the lack of what Downer commonly refers to as ‘an exit strategy’.

3 Rodman, Margaret and Matthew Cooper (eds) 1977. The Pacification of Melanesia; White, Geoffrey 1991. Identity through History: Living Stories in a Solomon Islands Society

4 Dinnen, Sinclair nd. Concepts paper: p 3

5 Braithwaite, John 1999. ‘Restorative justice: assessing optimistic and pessimistic accounts’: p 5

6 Ibid : pp 1–3

7 Toft, Susan (ed) 1985. Domestic violence in Papua New Guinea


9 Mason 2000

10 Jolly, Margaret 1996. ‘Woman ikat raet long human raet o no?: women’s rights, human rights and domestic violence in Vanuatu’

11 Garap 2000: p 163

12 Merlan, F and A Rumsey 1991. Ku Waru: Language and Segmentary Politics in the Western Nebilyer Valley; Rumsey, Alan 2000. ‘Women as peacemakers — a case from the Nebilyer Valley, Western Highlands, Papua New Guinea’
map 4 micronesia, melanesia and polynesia
map 5  melanesia with polynesian outliers
map 6  papua new guinea and solomons islands
map 7 solomons islands
map 8 guadalcanal (solomon islands)