

Book review

Martin Wright reviews *Restorative justice and the law*, ed. by Lode Walgrave. Cullompton, Devon: Willan Publishing. 2002 £26 paperback

One definition of restorative justice (R J) is that it is a deliberative process, and in that spirit Lode Walgrave has edited a deliberative book, presenting different points of view with his summing-up at the end. Most contributors, like Adam Crawford, want restorative deliberation to take place at a community or individual level, but with the criminal justice system or state in the background as a safeguard.

In the first chapter, however, George Pavlich is so opposed to universal principles that this itself becomes an 'ethical imperative'. It does not mean that 'anything goes'; people may 'gather to name injustice or harm, and address promises of just patterns of being with others' (p. 5). Ethics is about 'being with others' (p.11), but Pavlich does not say how we should be, except that we should show 'hospitality', by which he appears to mean something like respect. If so, one wonders why this should not be a universal principle? To prescribe that they should aim, say, to repair or improve the situation would apparently be 'totalitarian'. Reading Pavlich is difficult, partly because he hardly ever illustrates his argument with examples.

He argues that processes are not either restorative or non-restorative, but are more (or less) along several continuums.

Hans Boutellier coins the word 'victimization', meaning a morality in which suffering is defined as victimization so that more types of behaviour are criminalized. R J responds by restoring harm (Boutellier does not mention victim/offender dialogue); punishment 'causes the opposite of what it intends, social exclusion instead of moral inclusion' (p. 25). He warns against the entanglement of social policy into a community safety policy: lack of safety is a problem, but should be tackled democratically through R J, not by shifting towards a penal state.

Some R J practice is too offender-focused, but Gordon Bazemore and Sandra O'Brien warn against the opposite tendency. It should include reintegration and the well-being of offenders who make it right with their victims. R J approaches rehabilitation through relationships, not just the individual; also, reparation is linked to the development of relationships and skills, which leads to desistance from crime, and hence more relationships and skills. Thus a restorative framework would help build social capital. Victim/offender conferences enable 'those whose opinions matter to the offender [to] express disapproval

respectfully' (p. 55) and build informal support systems; the involvement of the community gives it a greater capacity to address harm, with the government's support.

Another Dutch contributor, Ido Weijers, recommends that family group conferences be used only for serious offences, and where there is a good parent/child relationship; where this is lacking, some other victim/offender dialogue may work better.

Restoration should be a form of punishment, not an alternative to punishment, according to Anthony Duff. What cannot be restored may be compensated or apologized for, perhaps with service to the community, a thoughtful gift or a programme of rehabilitation. Duff insists that because the offender has not merely caused harm but done wrong, these must not only impose a real burden on the wrongdoer, but should be painful. He does not say why: to him it appears self-evident. We should not however aim to make offenders suffer for the sake of it, but let them experience the censure of fellow citizens and the pain of repentance - which is, as Walgrave points out (p. 201-2), a different kind of pain.

There is much to be said for involving the

community: it is a secondary victim, and can be a bulwark against excessive punitiveness and managerialism; but Adam Crawford warns against romanticizing it with selective anecdotal examples. Informal social control can also entail abuse of power by local elites, so it needs to be regulated. The R J response could be limited to individual therapy, and hence conservative rather than radical; Crawford sees its great potential as 'deliberative, a forum in which the emphasis is shifted from individual incidents to systemic patterns, from punishment to prevention. There would be a more participatory civil society, an interplay between state, law and culture, but with safeguards: to advance R J 'necessitates working through, in and against the state' (p. 126).

The original victim/offender reconciliation programs were community-based, as Daniel Van Ness reminds us, but so are lynch-mobs; so he supports the need for restraint by the state. He argues that processes are not either restorative or non-restorative, but are more so (or less) along several continuums. They are more restorative if they include a victim/offender encounter, making amends, reintegration or the whole truth; less so if they tend

towards separation, infliction of harm, ostracism and limited 'legal truth'. When prison has to be used, the regime should be restorative. Government and community is also a continuum: the more active the community and volunteers, the less need for the state.

The question of proportionality is tackled by John Braithwaite. He doesn't like it: 'Equal punishment for equal wrongs is a travesty of equal justice'. It should depend on context, with a maximum but no minimum. If an individual takes responsibility for a crime, punishment is unnecessary and hence wrong; even if it produces deterrence it also arouses defiance, and can obstruct healing. Braithwaite lists values and international conventions which the state should respect (but omits the Beijing Rules and the International Convention on the Rights of the Child).

Jim Dignan identifies three divisions of opinion, or 'fault-lines', within the R J movement. Process vs. outcome: if R J is a process, it is limited to those cases where victim/offender dialogue takes place; but if it is an outcome, this needs to be defined. Civilian vs. humanitarian: if mediation is the sole response to wrongdoing, it collapses the distinction between crimes (which have broader

social implications) and civil wrongs; and populism can be illiberal. Separatist vs. integrationist: Dignan is for integrating R J into the criminal justice system. He criticizes Braithwaite's idea of resorting to deterrence if R J fails: we need to deal with the recalcitrant, but could use 'restorative punishments' and ultimately incapacitation.

Finally, Lode Walgrave uses the editor's prerogative to present his conclusions. He sees R J as distinct from both punishment and treatment (despite Bazemore and O'Brien's case for rehabilitation). He accepts a degree of coercion, but rejects the idea that R J should keep punishment in reserve (Braithwaite) or be regarded as punishment (Duff). The word 'punishment' should be reserved for the intentionally painful, and restorative measures should be 'sanctions'. It needs legal safeguards, maximum limits to restoration, but no minimum, and a communitarian ideal inserted into a state model.

This is a useful contribution to the development of the restorative concept; despite the differences, common ground is emerging. ■

Martin Wright is a Council member of CCJS, and Vice-chair, Restorative Justice Consortium.

Book review

Andrew Sanders reviews *Critical Criminology* by K. Carrington and R. Hogg. Willan, Cullompton, 2002, and *Policing, Ethics and Human Rights* by P. Neyroud and A. Beckley. Willan, Cullompton, 2001.

On the face of it these two books have little in common, apart from them both being published by Willan. So why review them together? Well, it is no bad thing to mark the fact that, in only a few years, this specialist criminology publisher has built up a remarkably broad-based and high quality list. The latest Willan catalogue is always worth looking through.

At one level these books are certainly worlds apart. *Policing, Ethics and Human Rights* is written by a Chief Constable and a police service manager, while *Critical Criminology* is a collection of chapters written specially for this book that reflect different aspects of radical criminology. This movement – or, more accurately, loose collection of perspectives – has challenged 'administrative' criminology, of which *Policing, Ethics and Human Rights* is an example, since the 1970s. I thought the books might be reviewed together to see how far apart these worlds really are: have critical perspectives informed the thinking of progressive Chief Constables? And have progressive Chief Constables who, moreover, write intellectually defensible books (relatively recent phenomena), shaped critical perspectives in the 21st century?

In some ways the books are not far apart. Both are aspirational. They seek to make the world a better place through, among other things, fairer criminal justice processes. Moreover, there is some agreement about the meaning of 'fair', as both extol the virtues of human rights. The contributors to *Critical Criminology* would probably agree with Neyroud and Beckley's identification of many of the worst features of modern policing: for example, the 'vicious cycle' whereby the police are put in the forefront of the 'war against crime' and are then dogged by scandal and the exposing of corruption; the need for police ethics to be a question of substance and procedure, not just rote following of a rule book; and the way discretion is used in many respects. Neyroud and Beckley also acknowledge Macpherson's indictment of the police as institutionally racist and the indefensible way in which stop-search powers are often used. These are examples of what the authors regard as poor ethical practices that should be changed.

Where many people, not just radical criminologists, would disagree with Neyroud and Beckley is over their view of the causes of, and solutions to, problems like these. Unfortunately Neyroud and Beckley do not systematically address

the causes. They contrast the 'culture of policing' (the problem) with the 'professional will of individual officers' (the solution), with no indication of the structural forces that shape the way the police exercise their powers. They advocate ethical codes and training programmes aimed at fostering a 'professional clinician' model of policing. But there are already plenty of codes for the police – several made under the authority of PACE. Research shows that when it is important for the police to do so, they ignore, bend or circumvent these codes. The result is, for example, that only a third of suspects in police custody secure legal advice. And custody officers authorise the detention of 99.9% of suspects who are brought to the station even though they are supposed to do so only when it is 'necessary' to detain them. The authors do not address why these abuses occur, nor how they can be effectively combated. For all the influence they have had on this book, none of the critiques of criminal justice that have appeared over the last 20 years, let alone books like *Critical Criminology*, need ever have been written.

As for 'professional ethics', in the early 1990s we heard a lot about how 'ethical interviewing' was going to replace the 'adversarial interviewing' that has contributed to so many miscarriages of justice. Yet for nearly a decade now there has been a

one thing to advocate ethical policing, but practising it is another matter entirely. Here lies the main problem with *Policing, Ethics and Human Rights*. To be aspirational is a good thing. But to only be aspirational, as in this book, misses the opportunity to examine where policing fails, as in the examples given earlier. None the less, there are key issues to be addressed that radical criminologists ignore. Neyroud and Beckley reject the old counter-posing of human rights versus crime control, arguing that one enhances the other. Is this a model that the contributors to *Critical Criminology* would endorse?

There is a lot more to *Critical Criminology* than I have been able to discuss here. For example, Tony Jefferson seeks to put 'psychosocial' criminology onto the radical agenda, in a move a way from the 'fully social' aspiration of *The New Criminology* and the radical criminology it inspired. Kerry Carrington explores the relationship between feminism and critical criminology. Among the important issues she canvasses is the dilemma faced by radicals when victims are vulnerable and socially marginal. Whose side is the legal system on? Is the classic liberal 'innocent until proven guilty' formulation appropriate? She uses the example of a recent Australian case where both the rape victims and the accused man were Aboriginal to illustrate the problem, but unfortunately she does not resolve it.

I thought the books might be reviewed together to see how far apart these worlds really are: have critical perspectives informed the thinking of progressive Chief Constables?

deafening silence about 'ethical interviewing', and it rates not one mention in *Policing, Ethics and Human Rights*. If the police cannot even introduce 'ethical interviewing' at the margins of policing, what chance is there for more thorough-going ethical practices?

Even the common ground between the two books is more apparent than real. It is clear from Scraton's chapter in *Critical Criminology* on 'critical analysis as resistance' that the concepts of human rights (as distinct from discipline and control) and social justice (as well as criminal justice) are as central to radical criminological analysis as they are to the liberal project of Neyroud and Beckley. Indeed, radical criminologists were making this argument long before Chief Constables and government policy makers championed these ideas. Scraton argues that 'authoritarian populism' characterises the age of 'New Labour' as much as it did the 1970s and 1980s, pushing human rights and social justice to the sidelines. Pratt uses different examples to make a similar argument. I largely agree with these arguments, but how can these dystopian visions be reconciled with the ethical policing and respect for human rights advocated by Neyroud and Beckley?

Scraton would presumably point out that it is

And a lively opening chapter by the editors and closing chapters by Pat Carlen and Jock Young provide provocative takes on critical criminology past, present and future. While all these writers claim, rightly, that what marks out critical criminology from conventional criminology is its engagement with injustice, inequality and authoritarian state practices, most of this book is only really for readers with a particular interest in the discipline(s) – as distinct from the crime, justice and victims that are the subject of the discipline.

The two books are similar in the unfortunate way that both left me unclear about how the authors of one book would respond to the analysis of the other. For, in reality, they remain worlds apart. Critical criminologists and criminal justice agency leaders need to start talking with (instead of talking past) each other. Until that time we will make only limited progress in understanding our crime and justice problems and doing something significant about them.

Andrew Sanders is Professor of Criminal Law and Criminology at the University of Manchester.