

# PRISON SERVICE JOURNAL

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The Editorial Board wishes to make clear that the views expressed by contributors are their own and do not necessarily reflect the official views or policies of the Prison Service.

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# Editorial Comment

*Dr Kate Gooch is a Lecturer at Birmingham Law School, Birmingham University; Steve Hall is a former Prison Governor now living and working in New Zealand; and, Dr Karen Harrison is a Senior Lecturer in Law at the University of Hull.*

**Prisons and prison conditions have been in the headlines of late: overcrowding, high levels of violent behaviour, (il)legal highs, record levels of deaths in custody and staff shortages are all reasons given for why the prison system in England and Wales is currently said to be in crisis. Rather than focus on these negative aspects of prisons, however, this special edition of the PSJ looks at Restorative Justice (RJ) and in particular its use in prisons. While it is currently being used both in and out of prisons in many countries worldwide, for reasons of space, we focus on its recent history and use in England and Wales, New Zealand and Australia. The contributors are all proponents of RJ, but have taken time to reflect on the 'good and the bad', as well as the frustrations experienced in developing what is still an emerging discipline. Recently enshrined in (sentencing) law in at least one country, RJ is increasingly being seen as a necessary and purposeful component of our Criminal justice system(s).**

In any volume on a particular topic one of the forefront issues is to define exactly what the subject matter is; with this being the role of the first article. As eloquently argued by Masahiro Suzuki and Hennessey Hayes while RJ has become attractive to scholars, policy-makers and practitioners across the globe; there is often confusion over what exactly RJ is and what qualifies as RJ. The authors therefore give us the historical background to RJ and importantly focus on RJ in terms of the concept, its definition and practice. For readers not that familiar with notions of RJ this is a useful introduction to the key literature.

The next few articles then focus on the use of RJ in prisons. The first of these articles, written by Gerry Johnstone, provides an overview of RJ in prisons, looking at three approaches. These include victim awareness and responsibility acceptance courses (e.g. the Sycamore Tree programme); victim offender mediation and conferencing; and restorative imprisonment. He argues that the latter is a vision rather than a current practice but could exist where the principles and practices of RJ fully permeate the work of the prison. In terms of a 'restorative prison' Gerry Johnstone looks at how this might be achieved by looking at how RJ principles could influence induction and sentence planning, prison work and the prison and

its surrounding community. Also importantly he questions the nature and purpose of imprisonment and suggests that by reforming current prisons using RJ principles, these fundamental questions could finally be answered.

'RJ in prison: a contradiction in terms or a challenge and a reality' looks at the Sycamore Tree project in more detail. Written by Penny Parker, a Sycamore Tree tutor, it details what the programme is, how it works, how offenders are selected, offender experiences, participant feedback, victim involvement including when this occurs and also how this affects the participants. Penny Parker looks at offender responsibility and explains how this is achieved through the programme but importantly details how the programme also looks at their lives going forward. The article also offers some data on whether or not the programme works in terms of reducing reoffending. More evidence is needed but current data appears to be positive.

The Sycamore Tree programme is again mentioned in the next article by Kim Workman, which looks at the use and history of RJ in New Zealand Prisons. Tracing the rise and fall of RJ in custodial settings this article provides many case studies where prison conferences have been beneficial to both offender and victim participants. While government funding for direct victim/offender mediation and the Sycamore Tree project was discontinued in 2010, the article nevertheless ends with some optimism for the future, citing the new government policy that requires all New Zealand judges to consider RJ options prior to sentencing. This theme is picked up in an interview later on in the edition with one of these judges who runs one of New Zealand's experimental Drug Courts.

The final article on the use of RJ in prisons is written by Kimmie Edgar, Head of Research at the Prison Reform Trust. Rather than focusing on the use of RJ to mediate between offenders and victims, this interesting article looks at how RJ can be used in segregation units and in the management of often violent and disruptive prisoners. Kimmie argues that by using RJ in this environment a sense of responsibility can be instilled in those held in custody which can help with overall behaviour management. By treating offenders with respect and with RJ much more can be achieved than dirty protests and controlled force.

We then turn to an article written by David Thompson which focuses on the use of RJ in the community through Circles of Support and Accountability (CoSA). This is currently being used with many high-risk sex offenders when they are released back into the community and so serves as a useful risk management tool for NOMS. Recent additions to the programme also include a number of initiatives where Circles are being started within the prison environment so that the positive functions for the Core member can begin before release. David Thompson traces the history of CoSA and also sets out their usefulness and contribution to the RJ debate. If we do ever reach a stage that RJ in prison is the norm rather than the exception it is important that there are suitable community programmes in place so that any benefits realised in prison can be built upon following release.

Following on from the practice of RJ in the secure estate, we then consider effectiveness. The first article by Theo Gavrielides looks at the efficacy of RJ in custodial settings with specific reference to juvenile offenders. Although he states that the literature is rather scant in this area, his general view is that there are many benefits which can be experienced by young people; including an opportunity to express remorse; a greater sense of closure; to change perceptions about

the impact of offending and an opportunity for the victim to ask the 'why me' question. The article also considers the cost-benefits of RJ and again makes some favourable comments, concluding that whilst evidence is again scarce, RJ practices do appear to be cheaper than more traditional criminal justice options.

Finally, and in an attempt to provide balance, we turn to the opposite viewpoint with an article by William Wood. He looks at the promises and problems of RJ in terms of its use in the prison secure estate and offers a more critical view. In particular he looks at the recent history of prison policy and questions whether prison as an institution could ever make the necessary changes which would be required to make it truly restorative. He also offers some comments about the use of RJ in prisons, arguing that as the vast majority of current RJ programmes do not involve the direct victim can they ever really be said to practice RJ principles? Furthermore he questions whether current 'restorative values' in prisons originate in RJ traditions.

Even though this edition ends on perhaps a more cautious note than it began, we hope that the articles provide food for thought and will encourage practitioners and policymakers to consider the benefits and pitfalls of using RJ within custodial settings.

# Current Debates over Restorative Justice: Concept, Definition and Practice

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**Since its emergence, restorative justice (RJ) has attracted scholars, practitioners and policy-makers from around the world. At the same time, however, such popularity has also generated confusion and a lack of consensus on what is RJ. Different people have proposed different notions of what qualifies as RJ. This article aims to contribute to such an ongoing debate by providing an overall picture of RJ. In this commentary, consideration is given to three aspects of RJ: concept, definition and practice.**

## What is restorative justice?

### Concept

Developing effective ways of responding to crime has been a long-standing challenge. In this regard, conventional justice systems have been criticised for their ineffectiveness.<sup>1</sup> In conventional justice systems, laws identify punishable acts, and as such, crime is seen as a law-breaking behaviour. As a consequence of criminal behaviour, convicted or admitted wrongdoers are the subject of punishment imposed by the state. Yet, the intent of punishment is not always clear to offenders, due to the lack of moral communication during the justice process.<sup>2</sup> The adversarial nature of conventional justice systems encourages offenders to justify their behaviour by denying or neutralising responsibility for what they have done, because their focus is on avoiding harsher penalties rather than on understanding the impact of their crime on victims.<sup>3</sup>

Conventional justice systems also fail to meet the needs of victims. In the conventional justice process, victims have been neglected.<sup>4</sup> Victims' roles in the conventional justice process are limited and they are disempowered because they are not actively involved in the decision-making process in responding to the crimes committed against them.<sup>5</sup>

In response to these critiques,<sup>6</sup> RJ emerged in the 1970s as a new mode of responding to crime. Daly<sup>7</sup> observed that there are four key scholars who have mainly contributed to developing the early concept of RJ. Albert Eglash<sup>8</sup> first coined the term, RJ. He identified three types of justice (retributive, distributive and restorative) and argued that, while retributive and distributive justice focus on punishing offenders and ignoring victims, RJ focuses on the restoration of the harm caused by crime. Second, Randy Barnett<sup>9</sup> proposed the need for a new paradigm that views crime not as an offence against the state, but as an offence committed by one person against another. He argued that traditional criminal justice systems, which utilises punishment as a major strategy in response to crime, are not effective. Third, Howard Zehr<sup>10</sup> argued for a paradigm shift. Zehr claimed that conventional justice systems have failed to address crimes because it still retains a 'retributive' lens that views crime as a behaviour that violates criminal law. This view discourages offenders from understanding the impact of their crimes on victims. He therefore argued for the need to shift from a 'retributive' lens to a 'restorative' lens, which re-conceptualises crime as a violation of the

1. Crawford, A. and Newburn, T. (2003) *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*, Devon, UK: Willan Publishing.
2. Walgrave, L. (2008) Restorative Justice: An Alternative for Responding to Crime?, in Shoham, S. G., Beck, O., and Kett, M. (eds.) *International Handbook of Penology and Criminal Justice*, Boca Raton, FL: CRC Press, pp.613-689.
3. Zehr, H. (2002) *The Little Book of Restorative Justice*, Intercourse, PA: Good Books.
4. Strang, H. (2001) Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration, in Morris, A. and Maxwell, G. (eds.) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford, UK: Hart Publishing, pp.183-194.
5. Barton, C. K. B. (2003) *Restorative Justice: The Empowerment Model*, Sydney, Australia: Hawkins Press.
6. For a critique on such a view, see Richards, K. (2014) 'A Promise and a Possibility: The Limitations of the Traditional Criminal Justice System as an Explanation for the Emergence of Restorative Justice', *Restorative Justice*, Vol.2(2) pp. 124-141.
7. Daly, K. (2013) The Punishment Debate in Restorative Justice, in Simon, J. and Sparks, R. (eds.) *The Sage Handbook of Punishment and Society*, London, UK: SAGE Publications, pp.356-374.
8. Eglash, A. (1977) Beyond Restitution: Creative Restitution, in Hudson, J. and Galaway, B. (eds.) *Restitution in Criminal Justice: A Critical Assessment of Sanctions*, Lexington, MA: DC Health and Company, pp.91-100.
9. Barnett, R. E. (1977) 'Restitution: A New Paradigm of Criminal Justice', *Ethics*, Vol.87(4) pp. 279-301.
10. Zehr, H. (1990) *Changing Lenses: A New Focus for Crime and Justice*, Scottsdale, PA: Herald Press.

relationship between victims and offenders and encourages offenders to repair the harm caused by their crimes. Finally, Nils Christie<sup>11</sup> proposed the need to return crime as 'conflict' to those who are directly affected by crime. These are victims, offenders and the community, who are the stakeholders of crime. Christie argued that crime as a 'conflict' between stakeholders is 'stolen' by the state and professionals who represent these stakeholders in the justice process. As a consequence, Christie argued that these stakeholders are disempowered by being deprived of opportunities not only to express their feelings but also to resolve the conflict on their own. As such, at the early stages of its development, RJ was proposed as a conceptual opposition to conventional justice systems, which were claimed to be retributive and to have failed.<sup>12</sup>

However, such an oversimplified dichotomy between retributive and restorative justice has been criticised.<sup>13</sup> As Daly<sup>14</sup> observed, such a view was useful in the early stages of the evolution of RJ to attract and convince a broader audience. However, RJ actually contains some retributive elements in its means to achieve its goals because it imposes some burdens on offenders often through moral persuasion.<sup>15</sup> Retributive and restorative elements are thus not considered mutually exclusive; rather, both should be viewed as interlinked and necessary to achieve justice.<sup>16</sup> Therefore, as an early pioneer of RJ, Zehr<sup>17</sup> changed his original view and argued that it is more common today to view the concept of justice along a continuum from 'fully restorative' to 'non-restorative'.

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There are arguably two core approaches for interventions to be restorative. First, RJ aims to achieve justice by repairing the harm caused by crime. Viewing crime as a violation of the relationship between victims and offenders gives offenders an obligation to put their broken relationship 'into proper balance'.<sup>18</sup> Second, to repair the harm caused by crime, RJ aims to involve the stakeholders of the crime in the decision-making process for dealing with the aftermath of the crime as it is difficult to repair the harm without the involvement of those directly affected.<sup>19</sup>

### **Definition**

The definition of RJ has been contested.<sup>20</sup> This may partly relate to its development as a concept and as a practice. For example, Van Ness and Strong<sup>21</sup> provide five movements that influenced the development of RJ: informal justice; use of restitution; victims' rights; reconciliation and conferencing; and social justice. Further, Daly and Proietti-Scifoni<sup>22</sup> provide additional reasons for the difficulty in defining RJ, such as global popularity, ambiguity in key terms, various views among RJ theorists and advocates, and applications in transitional justice contexts. Therefore, reaching an

absolute definition of RJ has become a challenging task and different scholars and practitioners try to define RJ differently.

Amongst the various definitions of RJ, however, there are two distinct definitions of RJ that are commonly used: purist and maximalist.<sup>23</sup> The first and perhaps the most cited is Marshall's purist definition of RJ, which he defines as 'a process whereby parties with

11. Christie, N. (1977) 'Conflicts as Property', *British Journal of Criminology*, Vol.17(1) pp. 1-15.

12. Daly (2013) see n.7.

13. Daly, K. (2000) Revisiting the Relationship between Retributive and Restorative Justice, in Strang, H. and Braiwaite, J. (eds.) *Restorative Justice: Philosophy to Practice*, Aldershot, UK: Ashgate Publishing, pp.33-54.

14. Daly (2013) see n.7.

15. Young, R. and Hoyle, C. (2003) Restorative Justice and Punishment, in McConville, S. (ed.) *The Use of Punishment*, Devon, UK: Willan Publishing, pp.199-234.

16. Ibid.

17. Zehr (2002) see n.3.

18. Pranis, K. (2004) 'The Practice and Efficacy of Restorative Justice', *Journal of Religion & Spirituality in Social Work* Vol.23(1/2) pp. 133-157.

19. Bazemore, G. and O'Brien, S. (2002) The Quest for a Restorative Model of Rehabilitation: Theory-for-Practice and Practice-for-Theory, in Walgrave, L. (ed.) *Restorative Justice and the Law*, Devon, UK: Willan Publishing, pp.31-67.

20. Cunneen, C. and Goldson, B. (2015) Restorative Justice? A Critical Analysis, in Goldson, B. and Muncie, J. (eds.) *Youth Crime & Justice*, London, UK: SAGE, pp.137-156.

21. Van Ness, D. W. and Strong, K. H. (1997) *Restoring Justice: An Introduction to Restorative Justice*, Cincinnati, OH: Anderson Publishing.

22. Daly, K. and Proietti-Scifoni, G. (2011) Reparation and Restoration, in Tonry, M. (ed.) *The Oxford Handbook of Crime and Criminal Justice*, Oxford, UK: Oxford University Press, pp.207-253.

23. Dünkel, F. et al. (2015) Restorative Justice and Juvenile Offenders in Europe – Comparative Overview, in Dünkel, F., Horsfield, P., and Parosanu, A. (eds.) *European Research on Restorative Justice: Volume 1 Research and Selection of the Most Effective Juvenile Restorative Justice Practices in Europe: Snapshots from 28 EU Member States*, Brussel, Belgium: International Juvenile Justice Observatory, pp.175-251.

a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future'.<sup>24</sup> This definition focuses on the process of a 'problem-solving approach involving recognition, reparation, reconciliation, and reintegration of victims, offenders, and others personally affected'.<sup>25</sup>

However, such a purist definition of RJ has been criticised for two reasons. First, it is 'too narrow' because it may limit RJ to a voluntary process, despite the fact that the important feature of RJ is to repair the harm caused by crime.<sup>26</sup> Such limits may make it difficult to apply RJ to some cases or for some offenders. Further it also makes it impossible to apply RJ when stakeholders cannot gather nor agree to meet.<sup>27</sup> Second, the purist definition is also 'too broad' in the sense that it does not refer to the possible outcomes, leading to 'no specific boundaries on the kinds of process included'.<sup>28</sup> The process lacks any specific aims, leading to confusion as to whether it is 'an end in itself, irrespective of any outcome' or 'a means to some other end'.<sup>29</sup> Walgrave<sup>30</sup> argued that it is impossible to define a process without its purposes. Moreover, without referring to goals, there might be a risk of leading to unexpected outcomes, which may not be restorative at all.<sup>31</sup>

In response to these critiques on the purist definition of RJ, Bazemore and Walgrave<sup>32</sup> proposed what is called a maximalist definition of RJ: 'every action that is primarily oriented toward doing justice by repairing the harm that has been caused by crime.' Contrary to the purist definition, the maximalist

definition of RJ focuses on outcomes as the essential aim of RJ — repairing the harm caused by crime — and it does not limit RJ to a specific process to achieve that goal. By doing so, maximalists aim to transform all conventional justice practices into restorative ones.<sup>33</sup>

The maximalist definition of RJ is not without its critics. For instance, McCold<sup>34</sup> critiques it for five reasons. First, it does not provide any measure to distinguish 'what is and what is not restorative' because it is not theoretically clear how both restorative and retributive goals are incorporated in the definition.<sup>35</sup> Second, it fails to incorporate stakeholders in decision-making processes, leading to a failure to appropriately address the key component of RJ, which is the personal or relational nature of crime. Third it includes coercive measures as a restorative practice, despite the fact that it claims to be voluntary. Fourth, although RJ is a different paradigm from conventional justice, it does not contain any 'serious challenge to the retributive/deterrent paradigm or the therapeutic/treatment paradigm of justice and legitimizes the goals of both as restorative'.<sup>36</sup> Finally, lacking a clear definition of the central concept of RJ, namely harm, may make it difficult to distinguish RJ from other conventional models of justice.

It has been almost 50 years since RJ originated. However, the debate over its definition has yet to be settled and it remains a challenge. In this regard, Braithwaite and Strang<sup>37</sup> suggested viewing RJ not as a dichotomy between process and outcome but as a continuum 'involving a commitment to both

... without referring to goals, there might be a risk of leading to unexpected outcomes, which may not be restorative at all.

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24. Marshall, T. F., (1999) *Restorative Justice: An Overview*, London, UK: Home Office. Research Development and Statistics Directorate.
  25. McCold, P. (2000) 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', *Contemporary Justice Review*, Vol.3(4) pp. 357-414.
  26. Bazemore, G. and Walgrave, L. (1999) Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform, in Bazemore, G. and Walgrave, L. (eds.) *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, Monsey, NY: Criminal Justice Press, pp.45-74.
  27. Roche, D. (2001) 'The Evolving Definition of Restorative Justice', *Contemporary Justice Review* Vol.4(3/4) pp. 341-353.
  28. Bazemore and Walgrave (1999) see n.26 p.48.
  29. Dignan, J. (2005) *Understanding Victims and Restorative Justice*, Maidenhead, UK: McGraw-Hill Education.
  30. Walgrave, L. (2011) 'Investigating the Potentials of Restorative Justice Practice', *Journal of Law & Policy*, Vol.36 pp. 91-139
  31. Walgrave (2008) see n.2.
  32. Bazemore and Walgrave (1999) see n.26 p.48.
  33. Walgrave, L. (2010) Restorative Justice Potentials and Key Questions, in Gyökös, M. and Lányi, K. (eds.) *European Best Practices of Restorative Justice in the Criminal Procedure*, Budapest, Hungary: Ministry of Justice and Law Enforcement of the Republic of Hungary, pp.29-45.
  34. McCold (2000) n.25.
  35. Ibid p.388.
  36. Ibid p.396.
  37. Braithwaite, J. and Strang, H. (2001) Introduction: Restorative Justice and Civil Society, in Strang, H. and Braithwaite, J. (eds.) *Restorative Justice and Civil Society*, Cambridge, UK: Cambridge University Press, pp.1-13.

restorative processes and restorative values'. Thus, rather than pursuing a concrete definition of RJ, it may be more fruitful to view both process and outcome along a continuum from less restorative to more restorative.<sup>38</sup> However, Daly<sup>39</sup> has more recently claimed the need for a more concrete definition of RJ because while RJ is already at the stage of being assessed empirically, without a concrete definition it is almost impossible to define its effectiveness. Therefore, Daly<sup>40</sup> has changed her previous view, which was that the lack of consensus over the definition of RJ is not fatal because it reflects a variety of ideas, interests and ideologies of justice.<sup>41</sup> Daly<sup>42</sup> has recently suggested that RJ should be viewed as a type of 'justice mechanism', which means not as a type of justice but as 'a justice response, process, activity, measure, or practice'. Therefore, Daly proposes a definition of RJ as 'a contemporary justice mechanism to address crime, disputes, and bounded community conflict' and '[t]he mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people'.<sup>43</sup>

Once victims and offenders have had a chance to speak, to ask questions, and to respond, a mediator helps the parties consider how to put things right.

### Practice

Although RJ as a 'meeting' is currently implemented in the different continents of North America, Europe, Australasia, Africa, Latin America, and Asia,<sup>44</sup> they adopt different forms of RJ that vary in operational features.<sup>45</sup> Amongst these forms, there are three primary forms of RJ: victim-offender mediation (VOM); conferencing; and circle process.<sup>46</sup> These forms are considered primary as they share essential components of RJ, such as dialogue-driven

process,<sup>47</sup> and because they have influenced the development of other forms of RJ, such as youth justice panels.<sup>48</sup>

VOM was the first contemporary form of RJ implemented in Ontario, Canada in 1974. In VOM, victims and offenders are first prepared for the process by a trained mediator, where they are told how the process works and what they are expected to do. Victims and offenders are then brought together in a meeting coordinated and facilitated by a trained mediator. In this process, victims explain to offenders how the crime has affected them, and offenders explain what they did and why, and answer questions from victims. Once victims and offenders have had a chance to speak, to ask questions, and to respond, a mediator helps the parties consider how to put things right.<sup>49</sup> VOM is now utilised in most European countries.<sup>50</sup>

In 1990, the New Zealand government introduced conferencing for young offenders with the enactment of the *Children, Young Persons and Their Families Act, 1989*. Conferencing gives a significant role to a 'community of care' in its process. It involves not only victims and offenders but also their supporters and sometimes even community members to support victims and offenders. The conferencing process is generally divided into two phases: story-telling and outcome-discussion. In the story-telling phase, participants express their views and opinions about the crime and its impact. In the outcome discussion phase, the focus of the discussion shifts into what offenders should do to repair the harm caused by crime.<sup>51</sup> Conferencing is

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38. Ibid.  
 39. Daly, K. (2016) 'What Is Restorative Justice? Fresh Answers to a Vexed Question', *Victims & Offenders*, Vol.11(1) pp. 9-29.  
 40. Ibid.  
 41. Daly, K. (2006) The Limits of Restorative Justice, in Sullivan, D. and Tifft, L. (eds.) *Handbook of Restorative Justice: A Global Perspective*, Oxon, UK: Routledge, pp.134-146.  
 42. Daly (2016) see n.39.  
 43. Daly (2016) see n.39 p. 21, emphasis in the original.  
 44. Liebmann, M. (2007) *Restorative Justice: How It Works*, Philadelphia, PA: Jessica Kingsley Publishers.  
 45. Dignan (2005) see n.29.  
 46. McCold, P. (2006) The Recent History of Restorative Justice: Mediation, Circles, and Conferencing, in Sullivan, D. and Tifft, L. (eds.) *Handbook of Restorative Justice: A Global Perspective*, Oxon, UK: Routledge, pp.23-51.  
 47. Umbreit, M. S. and Armour, M. P. (2010) *Restorative Justice Dialogues: An Essential Guide for Research and Practice*, New York, NY: Springer Publishing Company.  
 48. Crawford, A. (2003) The Prospects for Restorative Youth Justice in England and Wales: A Tale of Two Acts, in McEvoy, K. and Newburn, T. (eds.) *Criminology, Conflict Resolution and Restorative Justice*, Hampshire, UK: Palgrave Macmillan, pp.171-207.  
 49. Umbreit and Armour (2010) see n.47.  
 50. Dünkel, F., Grzywa-Holten, J., and Horsfield, P. (2015) (eds.) *Restorative Justice and Mediation in Penal Matters – a Stocktaking of Legal Issues, Implementation Strategies and Outcomes in 36 European Countries*, Mönchengladbach, Germany: Forum Verlag Godesberg.  
 51. Macrae, A. and Zehr, H. (2004) *The Little Book of Family Group Conferences*: New Zealand Style, Intercourse, PA: Good Books.

implemented predominantly in Australia<sup>52</sup> and New Zealand<sup>53</sup> for young offenders (and also some European countries).<sup>54</sup> Also, like New Zealand, conferencing is legislated in all states and territories in Australia.<sup>55</sup>

The third primary form of RJ is arguably<sup>56</sup> the circle process. Drawing upon indigenous practices, a judge, Barry Stuart, first used the circle process in Yukon, Canada in 1992. In the process, the notion of stakeholders is broadened and community members who have an interest in the crime may participate in the process. All of the participants in a circle process are asked to express their feelings about the crime and this continues until resolution is reached. This communication is facilitated and protected by the keeper who is often a community member. The process of the circle may be more ritualised because a 'talking piece' is passed between participants, and the participant who holds it is the only one allowed to speak.<sup>57</sup> The circle process is practiced for indigenous offenders in some countries, such as Australia<sup>58</sup> and Canada.<sup>59</sup>

There are fewer comparative studies between different forms of RJ.<sup>60</sup> While comparing these different forms of RJ may lead to different outcomes,<sup>61</sup> such differences may not be as important as expected. This is because these differences are somewhat blurred in current practices<sup>62</sup> and there are more similarities than differences.<sup>63</sup> Based on their Campbell Collaboration Systematic Review,<sup>64</sup> Strang and Sherman<sup>65</sup> suggest that at this moment conferencing is the only practice that is strongly supported by rigorous evidence because in their review other forms of RJ such as VOM were

excluded for failing to meet rigorous criteria. However, as Daly<sup>66</sup> suggests, one needs to be careful in interpreting such a claim, not only because in the systematic review certain types of crime, such as sex offences, were excluded, but also because the review focused exclusively on *diversionary* conferencing. It is possible that diversionary conferences may have a different effect on victims compared to victims attending conferences conducted at other stages of the justice process, such as post-sentencing. That said, except for the Strang and Sherman systematic review, many rigorous examinations on what is the 'best practice' of RJ have yet to be conducted. This raises a need to conduct such studies for the further development of RJ.

### Concluding remarks

The rapid growth of RJ has led to ambiguity of what is RJ. Since RJ is believed to continue to grow not only in the field of criminal justice, but also in other areas such as in school and workplace, a better understanding of what is RJ has become vital. It is our intention to contribute by providing an overview on the recent debate over RJ. RJ is currently viewed as a continuum from not restorative to fully restorative rather than a simple dichotomy between retributive and restorative justice. Despite a long time period since its emergence, the controversy over the definition of RJ is an ongoing challenge and the 'best practice' of RJ has yet to be identified. Future theoretical debate and research on RJ should contribute to these challenges.

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52. Joudo-Larsen, J., (2014) *Restorative Justice in the Australian Criminal Justice System*, Canberra, Australia: Australian Institute of Criminology.
  53. Maxwell, G. (2013) Restorative and Diversionary Responses to Youth Offending in New Zealand, in Van Wormer, K. S. and Walker, L. (eds.) *Restorative Justice Today: Practical Applications*, Thousand Oaks, CA: SAGE Publications, pp.103-112.
  54. Zinsstag, E. (2012) Conferencing: A Developing Practice of Restorative Justice, in Zinsstag, E. and Vangraechem, I. (eds.) *Conferencing and Restorative Justice: International Practices and Perspectives*, Oxford, UK: Oxford University Press, pp.11-32.
  55. Joudo-Larsen (2014) see n.52.
  56. For example, see the critique by Daly (2016) see n.39.
  57. Pranis, K. (2005) *The Little Book of Circle Processes: A New/Old Approach to Peacemaking*, Intercourse, PA: Good Books.
  58. Joudo-Larsen (2014) see n.52.
  59. Laprairie, C. (1995) 'Altering Course: New Directions in Criminal Justice – Sentencing Circles and Family Group Conferences', *Australian and New Zealand Journal of Criminology*, Vol.28(3) pp. 78-99.
  60. Bradshaw, W. and Roseborough, D. (2005) 'Restorative Justice Dialogue: The Impact of Mediation and Conferencing on Juvenile Recidivism', *Federal Probation*, Vol.69(2) pp. 15-21. and Shapland, J., Robinson, G., and Sorsby, A. (2011) *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*, Oxon, UK: Routledge.
  61. Walgrave (2011) see n.30
  62. Umbreit and Armour (2010) see n.47
  63. Shapland, J. (2014) 'Implications of Growth: Challenges for Restorative Justice', *International Review of Victimology*, Vol.20(1) pp. 111-127.
  64. Strang, H. et al., (2013) *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*, Oslo, Norway: The Campbell Collaboration.
  65. Strang, H. and Sherman, L. (2015) 'The Morality of Evidence: The Second Annual Lecture for Restorative Justice: An International Journal', *Restorative Justice*, Vol.3(1) pp. 6-27.
  66. Daly (2016) see n.39.

# Restorative Justice in Prisons

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**In recent years there has been a significant development of restorative justice in prisons.<sup>1</sup> This has taken a variety of forms, ranging from limited experiments with restorative encounters involving very small numbers of prisoners and a handful of crime victims to more ambitious efforts to introduce a restorative justice ethos throughout entire prisons. In this article, a number of different approaches to the use of restorative justice within prisons will be delineated. This will be followed by a very brief discussion of the potential of restorative justice in prisons.<sup>2</sup>**

The precise meaning of 'restorative justice' is a matter of some debate.<sup>3</sup> For the purposes of this paper, restorative justice will be discussed as a distinctive way of thinking about how we should *understand* and *respond* to crime. Restorative justice understands crime as 'a violation of the just relationship that should exist between individuals'.<sup>4</sup> In responding to crime, restorative justice prioritises the question of what we should do in order to repair the harm the offender has caused. And, in restorative justice the emphasis is on the power of dialogue to solve seemingly intractable conflicts and problems in human relationships and to bring about significant positive transformations in people's attitudes and dispositions.<sup>5</sup> Characteristic practices of restorative justice include:

*Victim-offender mediation*: a victim and offender meet face-to-face to talk about how the crime affected the victim and to try to reach an agreement about what the offender should do in an effort to repair the harm caused.

*Restorative conferencing*: similar to victim-offender mediation, but differs in that a wider group of people take part in the discussion.

## Restorative justice in prisons

In practice, restorative justice in prisons schemes vary considerably in terms of: (i) who instigates and runs them; (ii) objectives; (iii) methods; (iv) participants; (v) role of victims; (vi) alignment with other activities in the prison and criminal justice system; and (vii) underlying aspirations and ideals. In what follows, I will identify three different (but not mutually exclusive) ways of using restorative justice in prisons.<sup>6</sup>

### *Approach 1: Victim awareness and responsibility acceptance courses*

One form which restorative justice in prisons takes is that of courses designed to enable prisoners to understand better the impact of crime upon victims and to take responsibility for their actions. Such courses include the Hope Prison Ministry (South Africa), the SORI (Supporting Offenders through Restoration Inside) Programme, the Forgiveness Project, the Insight Development Group (Oregon, USA), Opening Doors (Ohio, USA), and Bridges to Life (Texas, USA).<sup>7</sup> Here, I will focus on one of the best known and most globally developed examples of such courses: the Sycamore Tree Programme (STP).

The STP is instigated and run by a non-governmental organisation: the Prison Fellowship (PF). PFs are Christian ministries, run by a small team of paid staff who support the work of a larger number of volunteers. Today, PFs exist in 125 countries, with national organisations being associated with each other through Prison Fellowship International (PFI). PFI developed the STP in 1996, with the name deriving from the Biblical story of Zacchaeus. A STP is run in a prison by trained PF volunteers and small group facilitators.<sup>8</sup> A

1. Van Ness, D. (2007) 'Prisons and Restorative Justice', pp. 312–24 in Johnstone, G. and Van Ness, D. (eds.) *Handbook of Restorative Justice*. Cullompton: Willan.
2. This paper is a much abridged and edited version of a report on 'Restorative Justice in Prisons' prepared by the author for the Council of Europe, European Committee on Crime Problems, Council for Penological Co-operation. I am grateful to the Council for Penological Co-operation for permission to use material from the report. The full report is available at: [http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202014/PC-CP%20\(2014\)%2017E\\_REV%20Report%20on%20Restorative%20Justice%20in%20Prisons%20by%20Mr%20Gerry%20Johnstone%2029.09.14.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/PCCP%20documents%202014/PC-CP%20(2014)%2017E_REV%20Report%20on%20Restorative%20Justice%20in%20Prisons%20by%20Mr%20Gerry%20Johnstone%2029.09.14.pdf)
3. Johnstone, G. and Van Ness, D. (2007) 'The Meaning of Restorative Justice', pp. 5–23 in Johnstone, G. and Van Ness, D. (eds.) *Handbook of Restorative Justice*. Cullompton: Willan.
4. Zehr, H. (2005) *Changing Lenses: A New Focus for Crime and Justice (3rd edition)*. Scottsdale, PA: Herald Press, p. 182.
5. Miller, S. (2011) *After the Crime: The Power of Restorative Justice Dialogues between Victims and Violent Offenders*. New York: New York University Press.
6. A fourth approach, which involves using restorative justice as an alternative or supplement to internal disciplinary procedures, is discussed in the Council of Europe report (see note 2).
7. Liebmann, M. (no date) 'Restorative Justice in Prisons: An International Perspective' (retrieved from [http://www.foresee.hu/uploads/media/MarianLiebmann\\_text.pdf](http://www.foresee.hu/uploads/media/MarianLiebmann_text.pdf) – last accessed 11/05/2016).
8. Ibid.

course typically consists of six–eight sessions of two–three hours. The objectives are to meet the needs of both inmates and crime victims who participate. With regard to inmates, the goals include: encouraging them to take responsibility for their actions; enabling them to experience confession, repentance, forgiveness and reconciliation regarding their offences; and to help them make amends through participation in acts of symbolic restitution. With regard to victims, the aims include: helping them to resolve issues around the offence committed against them; helping them to become better informed about crime, offenders and restorative justice; enabling them to see offenders take responsibility for their offending; and helping them gain a sense of closure, forgiveness and peace.

The STP brings together a group of prisoners with a group of ‘unrelated’ victims, that is the victims are not the direct victims of the offenders they meet. The course consists of group discussions, role-plays, victim–offender dialogues, readings, and a workbook which inmates complete. A key part of the course involves victims telling their stories of how the crimes committed against them affected their lives. In the final session, prisoners may make symbolic restitution.

Prisoners tend to be recruited for participation in the course in one of two ways: either (i) they sign up for the course after seeing posters or flyers distributed in the prison or (ii) staff in the institution — such as officers, chaplains or behavioural experts — select them and offer them the opportunity to participate. Victims also tend to be recruited in one of two ways. Some hear about the course through articles in newsletters and so on and then approach the PF. However, there is also some proactive ‘recruitment of victims’ by PF volunteers.

Victims have a crucial role to play in STPs, and are carefully selected and prepared for that role. Victims can help offenders understand how their offending behaviour actually affects real people: how offending behaviour impacts upon the victim’s daily life, work, health, sleep and so on and how it also affects other members of the victim’s family. Hence, offenders come to realise that their offences have harmed people in ways they previously had not considered or imagined, and that the harm extends

well beyond that captured by the official, legal definition of the crime.

Although it is less part of the ‘official’ function, participation in the STP also tends to benefit victims, and many organisers do regard this as an important benefit. According to the course organisers, victims tend to report that telling their story has therapeutic and empowering effects; for example that before participation in the course they still thought of themselves as victims, whereas telling their story and seeing the reactions of the prisoners helps them ‘process’ what happened to them.<sup>9</sup>

The STP is organised by agencies outside of the prison administration. To run the course, the organisers require permission for their volunteer facilitators, tutors and victims to come into the prison along with a suitable room in which to run the course, and some cooperation from the prison authorities in helping them secure prisoner participants. However, beyond that, the course need not be aligned with any other activities in the prison or criminal justice system.

At its heart, the STP seems underpinned by the idea of redemption. People who have made mistakes, done harmful things or even, as in the Biblical story from which it derives its name, led bad lives, can be saved or redeemed. But, this redemption must be earned. Offenders themselves need to go through the often painful, but ultimately liberating, experience of taking personal responsibility for their decisions, actions and life course. They must express remorse for what they have done and been, and commit to acting and being better in the future.

#### *Approach 2: Victim-offender mediation and conferencing in prisons*

Restorative practices such as victim–offender mediation and conferencing are most commonly employed in community settings, as an alternative to conventional criminal justice processes. However, for most restorative justice advocates, the aspiration is to use restorative justice in a much larger proportion of cases, including cases involving adults who have committed serious crimes. In such cases, there is little chance of restorative justice being used as an alternative to conventional criminal justice. Hence, in

Although it is less part of the ‘official’ function, participation in the STP also tends to benefit victims, and many organisers do regard this as an important benefit.

9. Source: interview conducted with STP coordinator (interview 5, 080514) as part of the EU funded Action ‘Building Bridges’ (JUST/2013/JPEN/AG/4479) (see <http://restorative-justice.eu/bb/>).

order to have restorative justice in such cases, it needs to run in *parallel* with conventional criminal justice processes. For the offences of persons sentenced to imprisonment, although there is the option of post-release restorative justice, if a restorative justice process is to take place within a reasonable period after the offence it will often need to happen during the prison sentence. Accordingly, schemes have been established to conduct restorative justice processes within prisons.<sup>10</sup> Such schemes emerged in Canada, Switzerland and the USA in the 1980s and early 1990s.<sup>11</sup> There are currently highly developed schemes in Hungary<sup>12</sup> and Belgium.<sup>13</sup>

When mediation or conferencing takes place within prisons, it tends to be organised in one of two ways. First, governmental and non-governmental (or voluntary sector) agencies and individuals who provide mediation and conferencing services in community settings extend their work into prison settings with the agreement of the prison authorities.<sup>14</sup> Second, agencies working within prison services, often with experience of mediation and conference from previous work, start a prison-based scheme.<sup>15</sup>

The basic objective of such schemes is to achieve some degree of reconciliation between the imprisoned offender and their actual victims.<sup>16</sup> This is regarded as beneficial to both offenders and victims. Offenders, especially when their release is impending, sometimes have a need to resolve what happened between them and the victim (or the victim's family in the case of homicide). They may wish to express their repentance to the victim, but will have had no opportunity to do so. And, they may have a need to know what the victim's attitude towards them is. A mediation process can be a way of meeting these needs. Victims, on

The basic objective of such schemes is to achieve some degree of reconciliation between the imprisoned offender and their actual victims.

the other hand, have a range of needs which have to be met if they are to recover from the trauma of their victimization. Restorative justice proponents have tended to identify four sets of needs which must be met if victims are to recover: the need for answers to questions about what happened (some of which can only be answered by the offender); the need to express and have validated their feelings about what happened; the need for empowerment — the regaining of control over their environment; and the need for reassurance about their future safety (again, a need which can often only be met fully by reassurances received directly from the offender).<sup>17</sup> Mediation and conferencing services provided in community settings have, as part of their objectives, the

meeting of such needs. But, for victims whose offenders are imprisoned, the meeting of such needs requires the provision of such services in prison settings.

As these programmes involve the extension of restorative justice schemes developed in community settings into prison settings, their methods, participants and role of victims are the same as those described in the earlier account of 'characteristic restorative justice practices'. Where programmes are initiated and run

by agencies who work outside the prison service, as with victim awareness courses they are not necessarily aligned with any other activities in the prison or criminal justice system. These schemes might be understood as a supplement to what the criminal justice system usually does — and are designed to meet the needs of offenders and victims which criminal justice, as currently constituted, does not meet.

The ideals and aspirations behind these programmes are, likewise identical to those of the restorative justice movement in general. The key idea is

10. Shapland, J. (2008) 'Restorative Justice and Prisons' (retrieved from [http://mereps.foresee.hu/uploads/media/Paper\\_by\\_Joanna\\_Shapland.pdf](http://mereps.foresee.hu/uploads/media/Paper_by_Joanna_Shapland.pdf) – last accessed 09/07/2014) and Van Ness, D. (2007) 'Prisons and Restorative Justice', pp. 312–24 in Johnstone, G. and Van Ness, D. (eds.) *Handbook of Restorative Justice*. Cullompton: Willan.

11. Liebmann, M. and Braithwaite, V. (1999) 'Restorative justice in Custodial Settings: Report for the Restorative Justice Working group in Northern Ireland'. (retrieved from <https://www.restorativejustice.org.uk/sites/default/files/resources/files/Research%20into%20Restorative%20Justice%20in%20Custodial%20Settings.pdf> – last accessed 11/05/2016).

12. Barrabas, T. (2012) 'The Possibilities of Reconciliation and Restoration in Prisons', pp. 23–64 in Barrabas, T. and Felligi, B. (eds.) *Responsibility-taking, Relationship-building and Restoration in Prisons*. Budapest: Foresee.

13. Goossens, E. (2012) 'A Case from Belgium', pp. 279–88 in Barrabas, T. and Felligi, B. (eds.) *Responsibility-taking, Relationship-building and Restoration in Prisons*. Budapest: Foresee.

14. Liebmann, M. (no date) 'Restorative Justice in Prisons: An International Perspective' (retrieved from [http://www.foresee.hu/uploads/media/MarianLiebmann\\_text.pdf](http://www.foresee.hu/uploads/media/MarianLiebmann_text.pdf) pp. 5–6 – last accessed 11/05/2016).

15. *Ibid*, p. 6.

16. Barrabas, T. and Felligi, B. (eds.) (2012) *Responsibility-taking, Relationship-building and Restoration in Prisons*. Budapest: Foresee, p. 19 and Immarigeon, R. (1994) 'Reconciliation between Victims and Imprisoned Offenders: Program Models and Issues'. Akron, PA: Mennonite Central Committee.

17. Strang, H. (2002) *Repair or Revenge: Victims and Restorative Justice*. Oxford: Oxford University Press and Zehr, H. (2005) *Changing Lenses: A New Focus for Crime and Justice (3rd edition)*. Scottdale, PA: Herald Press. pp. 26–8.

that criminal offences — as well as being legal transgressions that harm society — also cause harm to the people directly involved. Our criminal justice system is designed to redress the offence against society, but tends to do little to heal the harm crime does to people and relationships. Like all restorative justice schemes, mediation or conferencing in prison is motivated by concerns to identify and repair such harm.

### *Approach 3: Restorative imprisonment*

The third approach is more a vision of some restorative justice advocates than something which has actually been practiced, although there have been prisons that have experimented with some of its ideas. The vision is of a ‘fully restorative prison’.<sup>18</sup> Even if such a vision is seen as unlikely to ever to be realised, it is important to consider it because it brings out more fully the implications of restorative justice for prisons and can also be a yardstick against which the ‘restorativeness’ of other models and experiments can be assessed. In a fully restorative prison, principles and practices of restorative justice would permeate the work of the prison. In addition, I will suggest, the idea of a restorative prison has implications for thinking about fundamental questions concerning the nature and purposes of imprisonment.

This approach would clearly incorporate elements from approaches one and two, outlined above. There would be victim empathy courses in which prisoners meet with ‘unrelated’ victims and opportunities for prisoners to encounter their actual victims for restorative dialogue. But in addition, the achievement of restorative justice goals — such as repairing the harm which crime causes to people and relationships — would be incorporated into the prison’s mission, and restorative justice principles would influence the way society answers the question ‘Why the prison?’. In order to illustrate this idea, let us look at just a few of its implications.

*Induction and sentence planning:* The message which those sentenced to imprisonment receive from society and the courts is that they are being sent to

prison as punishment for their offences. Not surprisingly, many offenders interpret this message as meaning that by suffering the hardships of imprisonment for a certain period of time they will have paid for their offence. In a restorative prison, this message would be countered at the induction and sentence planning stages, and constantly from that point on. Prisoners would be encouraged to take ‘active responsibility’. The message would be that they must use their time in prison to make amends for their offence in more active ways. Prisoners would be encouraged and assisted to think about how they could use their time in prison to help repair the harm they caused to their victims and to the wider society and to ensure that, on release, they were less likely to engage in further harmful acts.

In a restorative prison, work would take on a more reparative function: as an opportunity for prisoners to do something to make amends to their victims and society for their past wrongdoing.

*Prison work:* Throughout the history of imprisonment, prison work has been conceived and organised in a variety of ways.<sup>19</sup> Hard labour and degrading work has been used to enhance the pain and disgrace of imprisonment. Efforts (invariably unsuccessful) have been made to make sufficient profit from the labour of prisoners to make prisons self-sufficient. Since the emergence of the rehabilitative ideal in the late nineteenth century, the aspiration has often been that prisoners will learn good work habits in prison. In

contemporary society, many espouse the related idea that prisoners should be taught useful skills, so that they will be more employable when released.<sup>20</sup> In a restorative prison, work would take on a more reparative function: as an opportunity for prisoners to do something to make amends to their victims and society for their past wrongdoing. Hence, the emphasis would be upon prisoners doing constructive work for others and especially for the communities that they have harmed through their past behaviour. Where possible, the ideal would be that prisoners would actually do work in the community (i.e. outside prison) in order to enhance its reparative nature and effects.<sup>21</sup> Like many ideas now associated with restorative justice,

18. Edgar, K. and Newell, T. (2006) *Restorative Justice in Prisons: A Guide to Making it Happen*. Winchester; Waterside Press, p. 80.

19. Radzinowicz, L. and Hood, R. (1986) *The Emergence of Penal Policy in Victorian and Edwardian England*. Oxford: Oxford University Press.

20. See for example, Ministry of Justice (2010) *Breaking the Cycle: Effective Punishment, Rehabilitation, and Sentencing of Offenders*. London: The Stationery Office.

21. Stern, V. (2005) *Prisons and Their Communities: Testing a New Approach*. London: International Centre for Prison Studies.

this one is by no means unique to it. In the days before 'restorative justice' became common currency in penal discourse, adherents to the rehabilitative ideal were saying similar things. For instance, in 1960 Hugh Klare wrote: 'As prisoners are employed on local farms or in small factories, so it becomes clear not only that they are much like everyone else, but that the neighbourhood may be able to play its part in the rehabilitative effort'.<sup>22</sup>

*The prison and its surrounding community:* The boundaries between a prison and its surrounding community tend to be formidable. A restorative prison would have a different relationship with its local community. The core purpose of it would be to prepare prisoners for return to the community as law-abiding citizens. But to achieve this, as well as working on offenders within the prison, strong links should be created between prisons and the communities in which they are located. Prison walls would be more 'permeable' with members of the community coming in to participate in its work and prisoners going out to do constructive work in the community.<sup>23</sup>

*Why the prison?:* Whilst the practice of imprisonment goes back to ancient and medieval times<sup>24</sup> and has been a central part of the system of judicial punishment since at least the nineteenth century, the question of why we imprison people and what functions imprisonment is supposed to perform has never been settled. Throughout its history, there has been dispute and debate over fundamental questions such as what prisons are for, what purposes they should serve, what prison conditions should be like, and what sorts of obligations and rights prisoners should have and forfeit.<sup>25</sup> To advocate the idea of a restorative prison is to do more than argue for some small innovation or reform in the way prisons are currently run. Rather, it is to provide distinctive answers to these fundamental questions about the nature and purpose of imprisonment. It is important to emphasize again that the answers are not wholly novel. They overlap, in many

respects, with many of the things that penal reformers and progressive penal administrators have been saying and doing for a long time. So, whilst restorative justice might not provide a wholly novel way of re-imagining imprisonment,<sup>26</sup> it has the potential to provide a new 'working ideology' for the prison.<sup>27</sup>

### The potential of restorative justice in prisons

Discussions of the idea of restorative justice in prisons, and reflections upon existing experiments with this idea, suggest that there are many potential benefits. Prisoners can gain important insights into the effects of their offending behaviour, and at the same time develop empathy for those they harm. At the same time, they can gain a valuable opportunity to make amends for their past offences through symbolic acts of restitution and reparation, including making efforts to reform themselves. Some schemes also provide opportunities for prisoners to repair damaged relationships with their own families. Hence, for those prisoners who are inclined to avail themselves of it, the availability of restorative justice in prisons can provide an opportunity for them to start repairing, morally, the damage their wrongdoing has caused to other people and hence help reconstruct their moral relationships with the community.

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For those victims who take part in it, restorative justice in prison also seems beneficial. In general, restorative justice has the potential to meet many of the needs of victims which, if left unmet, can hamper recovery from the trauma of crime.<sup>28</sup> However, at the moment, victims are likely to have the opportunity to take part in restorative justice only if their offender is (i) apprehended by the criminal justice system and (ii) then manages to stay out of custody. If restorative justice is to deliver on its claims that it can deliver an experience of justice to all crime victims who wish to avail themselves of it, ways need to be found to overcome both of these limitations. The development of restorative justice schemes in prisons (as well as

22. Klare, H. (1960) *Anatomy of Prison*. Harmondsworth: Penguin, p. 16.

23. Stern, V. (2005) *Prisons and Their Communities: Testing a New Approach*. London: International Centre for Prison Studies.

24. Peters, E. (1995) 'Prison before the Prison: The Ancient and Medieval Worlds', pp. 3–43 in Morris, N. and Rothman, D. (eds.) *The Oxford History of the Prison: The Practice of Punishment in Western Society*. Oxford: Oxford University Press.

25. Morris, N. and Rothman, D. (eds.) *The Oxford History of the Prison: The Practice of Punishment in Western Society*. Oxford: Oxford University Press, p. ix.

26. Carroll, E. and Warner, K. (2014) (eds.) *Re-imagining Imprisonment in Europe: Effects, Failures and the Future*. Dublin: Liffey Press.

27. On the concept of working ideologies see Garland, D. (1990) *Punishment and Modern Society*. Oxford: Oxford University Press.

28. Strang, H. (2002) *Repair or Revenge: Victims and Restorative Justice*. Oxford: Oxford University Press.

post-release schemes) is one step towards overcoming the second of these limitations. However, one of the challenges facing those advocating restorative justice in prisons is to devise ways of making a much wider group of victims aware of their existence and overcoming the many obstacles to bringing victims into prison.<sup>29</sup> Perhaps one of the most important potentialities of restorative justice in prisons is, however, its capacity for prompting a 're-imagining of imprisonment'.<sup>30</sup> There is a deeply felt need for a new 'positive' working ideology for imprisonment, and restorative justice has some potential for meeting that need. There are, however, more cautious and sceptical voices which need to be heeded if we are to have a rigorous discussion of the potential of restorative justice in prisons. One of the most systematic statements of the sceptical case is that of Guidoni.<sup>31</sup>

Although he himself was involved in a restorative prison project in Italy, his attitude towards such projects ended up as being ambivalent. Whilst some good came from the project he was involved with, he suggests that rather than prisons being transformed in line with restorative justice principles, the more likely outcome of such projects is the temporary adoption of limited aspects of restorative justice, which are then used to add legitimacy to an institution which remains essentially punitive.

Yet, the case for restorative justice in prisons is a powerful one, which must be taken seriously by any agency in a position to exert influence over the practice of imprisonment in modern society. Although the evidence base remains limited, the task of developing and evaluating this idea fully and rigorously is now a pressing one.

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29. Barr, T. (2013) 'Putting Victims in Prison', *Restorative Justice: an International Journal*, 1(3), pp. 389–413.

30. Carroll, E. and Warner, K. (eds.) *Re-imagining Imprisonment in Europe: Effects, Failures and the Future*. Dublin: Liffey Press.

31. Guidoni, O. (2003) 'The Ambivalences of Restorative Justice: Some Reflections on an Italian Prison Project', *Contemporary Justice Review*, 6:1, 55–68.

# Restorative justice in prison:

## A contradiction in terms or a challenge and a reality?

*Penny Parker is a Sycamore Tree Tutor.*

**The Sycamore Tree course has been introducing restorative justice principles and working restoratively in prisons across the country with short- and long-term offenders, men, women, and young people, to great effect since 1998. Sycamore Tree was introduced to prisons in England and Wales at HMP The Mount and since its inception it has reached over 22,000 offenders and currently runs in over 40 prisons and YOIs and is in early stage development for delivery to 15–18-year-olds.**

### What is Sycamore Tree?

Sycamore Tree was developed in 1996 by Prison Fellowship International, a Christian social movement working on behalf of prisoners, ex-prisoners, their victims and families. The course came out of a desire to facilitate reconciliation between offenders and victims and at its creation it was intended to sit within the restorative justice paradigm, at the time a relatively new and revolutionary concept. Dan Van Ness, one of the authors of the course, is a key proponent of the approach to restorative justice that places emphasis on values rather than processes. The two fundamental concepts of a values-based approach are that crime represents a breakdown in relationships and causes harm and that resolution of the conflict caused should involve all those affected. A values-based approach encourages an enlarged view of the restorative justice 'tent': direct victim and offender conferences but also a range of alternative restorative approaches or practices involving wider groups affected by crime, shuttle mediations, circles of support and accountability and a victim awareness course such as Sycamore Tree. This contrasts with policy on restorative justice in England and Wales, which adopts a process driven definition focussing primarily on direct conferencing of a related victim and offender. Academic debate tends to raise theoretical issues such as whether the custodial setting of any restorative practice undermines the

nature and essential elements of restorative justice and risks legitimising the prison regime<sup>1</sup> and whether a programme developed as part of a rehabilitative strategy and therefore primarily, though not exclusively, offender-focussed, can be considered as a form of restorative justice. The pragmatic and practical reality is that restorative justice practices can and indeed have been working successfully in prisons for many years.

Sycamore Tree stems from the idea that restorative justice is both an alternative way of looking at crime and the impact of crime and a tool for resolving the issues crime gives rise to. It acknowledges that retributive approaches to crime resolution are overly offender-focussed and can lead to dissatisfaction among victims and a failure to deliver 'justice', where justice is measured by victim and community satisfaction, concepts of peace and wider interpretations of outcomes that recognise and deal with harm in the broadest sense.

Ideas that retributive and restorative justice might be mutually exclusive are no longer persuasive. Courses such as Sycamore Tree, and the adoption in England and Wales of restorative justice as a pre-sentencing option in appropriate cases under the Crime and Courts Act 2013, are based on an acknowledgement that restorative justice practices (restorative practices) and the traditional criminal justice system have to develop ways of cohabiting in the same space concurrently or consecutively as the circumstances permit and that the arguments for mutual exclusivity hold value only at a theoretical level.<sup>2</sup>

Over the last decade restorative justice has rightly gained widespread acceptance among all the political parties and has played a key part in the current Government's criminal justice agenda with policy driven by recognition of the need to get justice, and the experience of justice, right for victims of crime. Much of the excellent work to date has been focussed on rolling out direct restorative justice conferencing. But awareness is low and success, if measured in

1. Guidoni, O.V. (2003). The ambivalences of restorative justice: some reflections on an Italian prison project. *Contemporary Justice Review*, 6, 55–68.
2. Daly, K. (2002). Restorative justice; the real story. *Punishment and Society*, 4, 55-79; Morris, A. (2002). Critiquing the critics: a brief response to critics of restorative justice. *British Journal of Criminology*, 42, 596–615.

conferences coming to fruition, is also relatively low.<sup>3</sup> A restorative practice such as Sycamore Tree offers an opportunity to widen the spread of the restorative justice net by working with a group of offenders, introducing them to an unconnected victim of crime. It therefore offers an opportunity to reach offenders who may never be able to meet their own victims in a conference. However, it may also be a preparatory step for those for whom direct restorative justice may be an option in the future and it can be the catalyst for an offender to seek a conference. As prisons appoint restorative justice coordinators many are finding, where Sycamore Tree operates, that the primary, if not only, source of offenders looking to pursue restorative justice to conference is Sycamore Tree. The course can also offer a similar opportunity to victims of crime: where a victim wishes to meet their offender but for whatever reason is not able to, Sycamore Tree can offer an opportunity for the victim, with appropriate preparation, to have a voice and to speak to an audience of offenders about how crime has impacted their life.

Sycamore Tree was developed by an international team including experienced restorative justice theorists and early-adopters with experience of Victim Offender Reconciliation Programmes (VORP) in North America. Somewhat extraordinarily, Sycamore Tree is used across the world in work from 'normal' criminal justice environments to work with perpetrators and victims of genocide in Rwanda; in response to ethnic conflict and tensions in the Solomon Islands; and the demobilization of paramilitary forces in Colombia.<sup>4</sup>

In England and Wales,<sup>5</sup> Sycamore Tree was introduced as a prison-based programme designed to be delivered to a group of up to 20 offenders in an adult environment (up to 16 with young offenders and in a small group of six–eight when working with 15–18-year-olds). The course is delivered by a team of trained volunteers under the lead of an expert tutor. The course consists of six two-and-a-half hour sessions (subject to minor variations to fit individual prison regimes). The course is faith-based but not faith promoting and is open to offenders of all faiths or none. It has only one preferred criterion for participants: that they should be convicted or, if on remand, that they should have pleaded guilty. As with direct restorative justice, acceptance of conviction and guilt and a willingness to participate is an important precursor for the course, which examines what it means to take responsibility for offending behaviour.

#### **Sycamore Tree:**

- Explains restorative justice concepts.
- Helps offenders to understand the wider impact of crime.
- Introduces offenders to victims' experiences.
- Explores what it means to take responsibility.
- Encourages reconciliation between offender and victim and offender and his or her family.
- Offers offenders an opportunity to respond personally.
- Engages community in the rehabilitation of offenders.

#### **Practical issues: Selection of candidates for the course**

The selection methods for the course vary from prison to prison. However, the course is rarely, if ever, advertised with posters and applications are often almost entirely by peer recommendation. It is not unusual for a tutor to be given several names over the duration of the course as cell-mates or peers on the wing ask participants to 'put their name down'. In individual prisons referrals may also be taken from Offender Managers, probation officers or CARATs (Counselling, Assessment, Referral, Advice and Throughcare) teams but participants usually submit a standard prison 'app'. In most prisons the course, which is accredited educationally by Gateway, is run through the Chaplaincy team. In some prisons final selection may be subject to a brief interview process to ensure that the expected level of commitment and engagement is understood.

All selected participants are required to complete a sign-up form acknowledging the key aspects of the course, including that they are expected to contribute, to participate in small group discussions and to complete a workbook between sessions. The workbook is the basis for much of the personal work participants are encouraged to do. This explores the impact of their own offending and moves on to consider how they can make amends for their behaviour. It also forms the primary basis for assessment for the Gateway Level 1 or 2 qualifications.

The principle of voluntary participation can be undermined where applicants for the course are motivated by the requirements of their OASys (Offender Assessment System) sentence plans. Over the last ten

3. NOMS Restorative Justice Capacity Building Report, (March 2015) <http://www.icpr.org.uk/media/39384/Final%20RJ%20Report%20-%2026%2003%202015.pdf> (last accessed 01/05/15).

4. <https://pfi.org/how-we-make-a-difference/restoring-justice/> (last accessed 01/05/15).

5. Sycamore Tree is run in prisons in Scotland and Northern Ireland by the Prison Fellowship Scotland and Prison Fellowship Northern Ireland.

years, the course has gained wider recognition within prisons and so is increasingly being specified for a variety of offenders, including those of so-called 'victimless' crimes involving drugs or fraud. The need to progress during a sentence, and the issues that gives rise to this, are well documented and feedback at the conclusion of Sycamore Tree often acknowledges the coercive pressures offenders can feel.<sup>6</sup> Initial positions are captured in a pre-course 'expectations form' which, as well as acknowledging the requirements of a sentence plan, can give answers such as 'to give something back', 'to know more about victims' or to 'learn more' or to 'better myself'. The language is often from a limited range of vocabulary and feels like 'prison-speak' acquired after experience of the system and interviews with offender managers or probation officers. None-the-less, it is a common experience in feedback at the conclusion of the course, that participants acknowledge the progress-driven or box-ticking nature of their initial motivations but then seek independently to acknowledge the value of their experience on the course in their own, often very personal, terms.

### Delivery methods

The sessions comprise a mix of tutor-led whole-group presentations and facilitator-led small-group work throughout which the observations, contributions and experiences of participants are welcomed. A tutor manual outlines key themes and session aims but delivery is not prescribed and the sessions are unscripted. This allows tutors to adopt their own style and language and to respond flexibly to comments, questions and events. This is a key strength of the course; the flexibility in sessions results in greater 'buy-in' by participants and a sense of 'ownership' of the responses.<sup>7</sup> Participants have responded that it makes it 'real'. Tutors make clear that their intention is to create a 'safe place' that requires mutual respect and confidentiality between participants and trust within the group. From the outset, tutors and facilitators couch their language in terms of trust and openness and ownership of the course by the

A tutor manual outlines key themes and session aims but delivery is not prescribed and the sessions are unscripted.

offenders, resonating with the idea that desistance is a process that belongs to the desister.<sup>8</sup> A variety of delivery tools are used including ice-breaker exercises encompassing a thought provoking idea, role-play exploring offender and victims attitudes and experiences based around the story of Zaccheus the tax collector from Luke's Gospel, interactive discussion and a range of short films commissioned specifically for the course. These films comprise a mix of short documentary-style clips portraying actual offender experiences, including some who have been through restorative justice conferencing with their victims, and a three-part fictional story that contributes to debate about the wider impact of crime on victims, community and on an offender's family. The approach of the delivery team is of positive reinforcement. Modelling responsible behaviour and involving the participants throughout, the team guide the participants through a process of self-discovery and learning, engaging emotional awareness and developing inter-personal skills.

After an initial wariness in session one, it is noticeable that relationships warm. Some participants have noted that facilitators were 'nice people who care about us and want to see us do well and turn our life around'. It is clear that the volunteer role is significant as participants realise course delivery is not simply someone doing their job. The positive, personal and humanizing impact of volunteers working with prisoners has been noted in other studies<sup>9, 10</sup> and in Sycamore Tree, participants have noted such small courtesies as 'these ladies ask about my mum' and 'they smile and shake your hand'. The approach is intended to be non-judgemental: tutors and facilitators intentionally avoid obtaining risk profiles and offending histories of participants. Instead the participants are invited, initially in their workbooks but then also in discussions in their small groups, to talk about themselves and the impact of their offending, encouraging them to develop a personal narrative. Participants note the apparent lack of an agenda, explicit or implicit. The importance of

6. Crewe, B. (2007). Power, adaptation and resistance in a late-modern men's prison. *British Journal of Criminology*, 47, 256–275.

7. Clarke A., Simmonds, R. & Wydall, S. (2004). Delivering cognitive skills programmes in prison: a qualitative study, Home Office Online Report 27/04.

8. McNeill, F. (2006). A desistance paradigm for offender management. *Criminology and Criminal Justice*, 6, 39–62.

9. Dhami, M.K. & Joy, P. (2007). Challenges to establishing volunteer-run, community-based restorative justice programs. *Contemporary Justice Review*, 10, 9–22.

10. Ronel, N. Frid, N. & Timor, U. (2013). The Practice of Positive Criminology; a Vipassana Course in Prison. *International Journal of Offender Therapy and Comparative Criminology*, 57, 133–153.

significant key relationships in probation work is well established:<sup>11</sup> a similar approach is adopted by the tutor and small group facilitators, creating supportive encouraging relationships between participants and the team whose approach is based in an 'ethic of care'<sup>12</sup> which, as Elliott has recognised, is essential if the learning environment is to be 'experienced as a safe and empathetic place . . . itself a necessary pre-requisite for the development of those values'.<sup>13</sup>

Volunteer facilitators exhibit the characteristics recognised as important by McNeill and Farrell:

*Some human concern for [offenders] as struggling fellow citizens seems likely to be a necessity if we are to engage with people in the process of change. If we don't show people virtue and phronesis (prudence) in the ways that we treat people (especially when they offend us), we are unlikely to convince them of the beauty of society and to draw them towards good citizenship of the good society.<sup>14</sup>*

#### **Just like any other course?**

Participant feedback suggests that the straightforward approach frees them from worrying about desirable responses, giving 'time to develop your thoughts' without worrying because there was 'not so much psycho-analysing' or even tricks to elicit unguarded responses ('Tell us about a crime you haven't committed' has been cited as an example of that approach). Sycamore Tree delivers an opportunity to explore personal issues in a setting that encourages openness and honesty. One said the approach which requires participants to explore their lives and their crimes was much more challenging than considering the hypothetical situations typical of some other courses. Another described it as 'more real — it puts the stamp on it — on all I have done' and recognised that the proactive approach meant it wasn't about 'just ticking boxes'.

## **Victim involvement**

During the course offenders are introduced as a group to a victim of crime unconnected with any of them. The crime they have suffered will, by definition, therefore only bear similarity to the offending behaviours of some of the participants. An exception can be in the delivery of Sycamore Tree with longer term prisoners where most of the victims of crime who volunteer to come in to talk on the course are people who have lost a family member to murder or manslaughter.

The victim joins in session three to tell their story and explain the impact of crime on their lives and the lives of those around them. As a prelude, the offenders explore the experiences of a victim of crime through role-play and discuss the likely feelings and needs of victims and communities affected by crime. Sycamore Tree departs from the format of a restorative justice conference, as the meeting is not based around dialogue. Offenders do not share their stories or explanations of their offending with the victim but do listen to the visitor who shares, often with great emotion, the challenging events and impact of a crime on their lives. If the victim is willing, this group session is usually followed by conversations between the victim and the participants in small groups. At this point dialogue can open up:

**Offenders do not share their stories or explanations of their offending with the victim but do listen to the visitor who shares, often with great emotion, the challenging events and impact of a crime on their lives.**

frequently the immediate response is one of sympathy and apology but it may also include elements of 'confession' as some offenders chose to say a little about their own offending. It is in the follow up that an empathetic reaction and response develops. As personal work supporting the session, offenders are asked to write up the experience, to reflect on how the victim has been affected, to examine the wider impact and to explore how they feel. In subsequent sessions they are invited to translate that experience and to think about what their own victims or their own family might wish to

11. Rex, S. (1999). Desistance from offending: experiences of probation, *The Howard Journal of Criminal Justice*, 38, 366–383.

12. Elliott, L. (2007). Security without care: challenges for restorative values in prison. *Contemporary Justice Review*, 10, 193–208.

13. Ibid.

14. McNeill and Farrell (2013), 'A moral in the story? Virtues, values and desistance from crime', in 'Values in Criminology and Community Justice', Policy Press 2013.

say or to ask them if they were given the opportunity in a similar way.

Sycamore Tree is not unique in working with unrelated victims and offenders. Feedback and research suggests that even though the victim has no connection, and that there is no homogeneity in the selection of participants on the course by reference to crime type, Sycamore Tree is still successful in raising victim concern and victim empathy in offenders, which can be a key factor in increasing motivation to change.<sup>15, 16, 17</sup>

Victim preparation is key and tutors are trained to work with victims of crime to ensure they are prepared and supported through the experience. Some victims of crime choose to volunteer more than once as the experience gives them a voice. Many say they are encouraged to see the positive responses in offenders that listening to their story has brought about. One said: 'It was overwhelming that so many cared about what happened to me and that it had such a strong impact on them — enough to give them a thought to change. It helped me realise that not every person is bad and that there is hope for everyone.'<sup>18</sup>

### Taking Responsibility

Offender responsibility and making amends is a core value in restorative justice. Sycamore Tree encourages offenders to explore taking responsibility both for their offending and the impact of their crimes but also for their lives going forward. The course explores excuses, challenging techniques of neutralization<sup>19</sup> and recasting these as matters offenders need to recognise and take responsibility for. This process of reviewing personal offender narratives is intended to develop a practical approach to working out how to take steps forward but also to initiate ideas of developing a new non-offending identity.<sup>20</sup>

Victim preparation is key and tutors are trained to work with victims of crime to ensure they are prepared and supported through the experience.

Participants are encouraged to tell their stories but to adopt new 'prison-free' ordinary language; to think how others would want to hear their explanations of what happened and why, and their intentions for the future. The involvement of outsiders in the weekly input of the volunteer team transforms the environment and reduces the 'carceral tightness'.<sup>21</sup> At the start of the course it is made clear that there are no 'right answers' and that the certificate awarded on completion of the course is not dependent on a response in the final session but on active participation throughout.

In the final session, the victim of crime returns and in front of invited guests representing 'the community'; participants are offered the opportunity to make a personal response through a 'symbolic act of restitution'. The idea of the obligation on offenders to 'make amends' being quite separate from the concept of punishment through serving time gives rise to interesting debate. For some it can involve something practical; others relate their personal stories and the impact the course has had on them in encouraging a new understanding. That may include expressions of responsibility, commitment to change or a new understanding or motivation acquired on the course. The presence of visitors

representing the community in session six can be seen as an opportunity for public approval of the rehabilitation of the offenders; the tension before and the relief after, and often the tears shed and emotion shared, are palpable. It offers an opportunity for offenders to feel they can 'earn redemption',<sup>22</sup> an especially powerful concept to those on long sentences. In some prisons family members attend the final sessions, which can be the catalyst for the powerful reconciliation of broken relationships, in some cases after many years.

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15. Armour M.P., Sage, J., Rubin, A. & Windsor, L. (2005). Bridges to life: evaluation of an in prison restorative justice intervention. *Medicine and Law*, 24, 831.
  16. Feasey, S. & Williams, P. (2009). An evaluation of the Sycamore Tree programme: based on an analysis of Crime Pics II data. Sheffield Hallam University available at <http://shura.shu.ac.uk/1000/1/fulltext.pdf> (last accessed 01/05/15).
  17. Beech, A.R. & Chauhan, J. (2012). Evaluating the effectiveness of the Supporting Offenders through Restoration Inside (SORI) Programme delivered in seven prisons in England and Wales, *Legal and Criminological Psychology*.
  18. Response from a victim of crime to the author after returning to visit session 6.
  19. Sykes, G.M. & Matza, D. (1957). Techniques of neutralization: A theory of delinquency. *American Sociological Review*, 22, 664–670.
  20. Stevens, A. (2012). 'I am the person now I was always meant to be': identity reconstruction and narrative reframing in therapeutic community prisons. *Criminology and Criminal Justice*, 12, 527–547.
  21. Crewe, B. (2009). *The Prisoner Society: power, adaptation and the social life in an English prison*, Oxford: Clarendon Press.
  22. Bazemore, G. (1998). Restorative justice and earned redemption: communities, victims and offender reintegration. *American Behavioral Scientist*, 41, 768–813.

The final session and its form of public ceremony is a unique outcome of Sycamore Tree that may speak of both Braithwaite's ideas of re-integrative shaming<sup>23</sup> and McNeill's ideas of a public reparation forming part of an offender's moral and social rehabilitation.<sup>24</sup> Those who choose to respond in session six, who make amends in a symbolic way marking an intention to change, report an increase in self esteem and a sense that they have drawn a line under their offending past.

### **This is the best thing I ever did in prison**

The seemingly mutual exclusivity of prison and restorative justice is overcome in Sycamore Tree by the unique atmosphere created by the team who deliver the course. Participants recognise something different in the volunteers and the course offers a culture change from life on the wings. This is key for restorative practices to be effective,<sup>25, 26</sup> and it counters concerns about punitive values and the risk of restorative practices being co-opted by the prison regime.<sup>27</sup>

Sycamore Tree introduces restorative concepts and principles in an effective way to groups of offenders, providing the opportunity of a transformative experience to many for whom a restorative conference is not possible. It delivers a powerful positive emotional experience. Recent work by Meredith Rossner has unpacked the micro-dynamics of restorative conferencing and she argues that the combination of ritual outcomes of solidarity, reintegration and emotional energy (effervescence) can be used to predict the prevalence and frequency of reoffending.<sup>28</sup> Sycamore Tree produces powerful connections with victims and volunteers; session three where the offenders meet a victim of crime and session six, where they explain their offending behaviour and offer reactions to the course, each

create an intense emotional experience which therefore has the potential to impact on propensity to reoffend in a similar way to a restorative justice conference.

### **But does it work?**

Anecdotal evidence abounds. Research evidence to satisfy the rigours of the 'what works' evidential requirements of NOMS is still awaited with the first randomised controlled trial to be conducted in prisons for 30 years being conducted under Professor Larry Sherman at the Institute of Criminology at Cambridge University. This will examine whether participation in Sycamore Tree has an impact on reducing reoffending. In the meantime, reliance is placed on a large cohort study using Crime Pics II pre- and post-course published by Sheffield Hallam University in two phases<sup>29</sup> which shows a statistically significant change in attitudes to victims and an awareness of own needs which may be taken as proxy indicators of a reduced likelihood of reoffending.

The history of Sycamore Tree predates any practical steps to deliver direct restorative justice in England and Wales and, importantly, it continues to offer a way of broadening the scope and availability of restorative justice in prisons, reaching a far wider audience and allowing a much greater participation in restorative justice practices than direct restorative justice ever will. Direct restorative justice may represent a holy grail for some, but in the meantime and for the vast majority who will not be able to go on to meet their victims in a conference, Sycamore Tree offers a unique opportunity to explore the impact of crime and how to take meaningful responsibility in a course that most report to be both challenging and encouraging and which motivates offenders to start to build a new, non-offending identity.

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). *Crime, Shame and Reintegration*, Cambridge University Press, New York.

24. McNeill <http://blogs.iriss.org.uk/discoveringdesistance/useful-sources/http://blogs.iriss.org.uk/discoveringdesistance/files/2011/09/McNeill-2012-Four-forms-of-offender-rehabilitation.pdf> (last accessed 26/04/2015).

25. Coyle, A. (2001). Restorative justice in the prison setting. International Prison Chaplains' Association (Europe) Driebergen, The Netherlands.

26. Edgar K. & Newell, T. (2006). *Restorative Justice in Prisons: A Guide to Making it Happen*, Waterside Press.

27. Toews, B. & Katounas, J. (2004). Have offender needs and perspectives been adequately incorporated into restorative justice. In: Toews, B. & Zehr, H (eds) *Critical issues in restorative justice*. Cullompton, Devon, Willan Publishing.

28. Rossner, M. (2013). *Just Emotions: Rituals of Restorative Justice*, Oxford University Press.

29. Feasey, S & Williams, P. (2009).

# Restorative Justice in New Zealand Prisons: Lessons from the Past

*Kim Workman is a former Head of the New Zealand Prison Service and the Founder of Rethinking Crime and Punishment, a strategic initiative that raises the level of public debate about the use of prison and alternative forms of punishment in New Zealand.<sup>1</sup>*

**Until recently, the major focus for adult restorative justice practice in New Zealand was in the provision of pre-sentence restorative justice (RJ) conferencing. There was however, an exception. Despite the absence of funding, Prison Fellowship New Zealand (PFNZ), with the initial support of the Department of Corrections, facilitated 65 in-prison conferences between 2003 and 2008.<sup>2</sup> This is the story of that journey; its processes, issues, highlights and challenges.**

In taking a retrospective look, it was important to compare the approach taken by PFNZ more than a decade ago, with what is considered 'best practice' today. In 2003, there were no existing standards or best practice principles for the implementation of in-prison restorative justice conferences. Even today, the available literature about restorative justice in prisons is limited in scope. In writing this article I was greatly assisted by a recent literature review completed by Thomas Noakes-Duncan, which included a consideration of how best practice applies to restorative justice in a prison environment and the main obstacles to achieving it.<sup>3</sup>

## The Halcyon Days

According to some commentators, non-indigenous restorative justice in New Zealand evolved out of our experience with family group conferences, following the implementation of the Children and Young Persons Act 1993. While they were not designed as a victim-centred process, once participants saw the powerful difference made by the presence of victims, and the way in which the important needs of both victims and offenders were met, the connection with RJ became obvious.<sup>4</sup>

Adult restorative conferences evolved from 1994 as a pre-sentencing initiative in the District Courts and

eventually gained Government support for pilot funding in four courts. As a parallel the Department of the Prime Minister and Cabinet's Crime Prevention Unit funded about 20 community panel diversion schemes. For the period 1999 through to around 2004, a co-operative relationship developed between the Government officials, the Courts and the voluntary sector. By 2002, the Sentencing Act had enshrined the principles of RJ into legislation — its place in the sentencing process seemed secure. The Act required courts to take RJ outcomes into account in sentencing, while the Victims' Rights Act 2002 required justice officials to encourage meetings between victims and offenders where appropriate. The Parole Act 2002 had provisions concerning restorative justice, and in 2004, and as the result of a submission by PFNZ to the Law and Order Select Committee, the 2004 Corrections Act included an obligation on the Chief Executive to promote restorative justice principles and processes for offenders and prisoners. The collective impact of these four pieces of legislation could potentially have impacted on penal policy in New Zealand. But there were other forces in play.

From 1990, sentencing law and practice in New Zealand gave greater priority to retributive, incapacitative and deterrent aims and prisons became more punitive, and more security-minded. Between 1998 and 2008, prisoner numbers climbed from 4,500 to 7,700 — a 71 per cent increase. By 2008, those convicted of aggravated murder had a minimum term starting at 17 years in prison up from 10, preventative detention had been applied to a wider group, and offenders sentenced to over two years were serving an average of 72 per cent of their sentence, up from 52 per cent seven years before. The same legislation hailed by restorative justice practitioners as a world first, in that it enshrined within it, the principles and practice of restorative

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1. For more information see [www.rethinking.org.nz](http://www.rethinking.org.nz)
  2. The author was the National Director of Prison Fellowship New Zealand from 2000 to 2008.
  3. Thomas Noakes-Duncan (2015) 'Restorative Justice in Prison: A Literature Review' an unpublished paper
  4. McElrea, Judge FWM (Fred) (2006) "Restorative Justice – The Long View", a paper to the Prison Fellowship Conference, Beyond Retribution: advancing the law and order debate, Silverstream, New Zealand, 12-14 May 2006.

justice, also included a range of measures which extended prisoners sentences and restricted parole.

PFNZ's hopes were raised when in 2004, Section 6 (1) (d) of the new Corrections Act 2004, reflected the government's support for restorative justice, by providing that offenders must, where appropriate and so far as is reasonable and practicable in the circumstances, be provided with access to any process designed to promote restorative justice between offenders and victims. However, in correspondence with the Department of Corrections, about the impact of this legislation on government's future commitment to restorative justice, PFNZ received the following response:

*The Ministry's view of the legislation is that the provisions do not impose obligations on justice sector agencies to facilitate, arrange, hold, or resource restorative justice processes. The reason for this view is that the necessary arrangements (that allow restorative justice processes to be considered appropriate, reasonable and practical), including accreditation of providers and funding, are not in place.<sup>5</sup>*

Despite the enlightened legislation, the expansion of restorative justice slowed from 2003, and continued to do so. That trend supported David Garland's view that in the culture of control, RJ is allowed to operate on the margins of criminal justice offsetting the central tendencies without changing the overall balance of the system.<sup>6</sup>

If RJ is 'marginalised' within the criminal justice system, it would seem that in-prison restorative justice teeters on the very edge. As Noakes-Duncan observes:

*It is not accidental that the primary sites of restorative justice engagements are in diversionary or pre-sentence settings rather than in post-sentence or correctional settings*

*. . . As Russ Immarigeon, one of the early pioneers, writes, 'Incarceration is the institutional manifestation of the punitive impulse that restorative justice is designed and intended to challenge'.<sup>7,8</sup>*

In-prison RJ conferencing was able to sustain itself for six years, and did so largely incognito, unfunded, under cover, and 'hard to reach'. It was a 'ground up' initiative, and as Guidoni notes, 'These projects are almost always limited in time, often marginal to prison administration, are the result of local initiatives and not supported by national policies'.<sup>9</sup> That it did so is the story of one woman's persistence and courage.

## One Woman's Vision

The person largely responsible for the implementation of in-prison conferences was uniquely placed to do so. Triggered by her father's suicide, Jackie Katounas' crime career started at age 12. She graduated from a girl's home to Auckland Maximum Security Prison by age 16, and spent the next 20 years in and out of Australian prisons. She was addicted to heroin for 12 years, and she had 138 convictions including drug dealing, armed robbery, and fraud. Jackie's life changed

She was addicted to heroin for 12 years, and she had 138 convictions including drug dealing, armed robbery, and fraud.

when she returned to New Zealand in 1994. She received stolen furniture, only to realize that she knew the victim, a hotel owner who had been very good to her. Overcome with remorse, Jackie went to the publican, asked for his forgiveness, and offered to get his property back. She then began a personal journey of forgiveness, redemption and reconciliation. It led to her involvement in the restorative justice movement first as a facilitator for the Hawkes Bay Restorative Justice Network and from 2003, as the Manager, Restorative Justice Services for Prison Fellowship. Over the next six years, Jackie worked with those offenders and victims who expressed a desire to meet and engage in a process

5. Correspondence from Department of Corrections, 20 September 2005

6. Garland, David (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago, IL: University of Chicago Press.

7. Russ Immarigeon, (2004) "What Is the Place of Punishment and Imprisonment in Restorative Justice?," in Howard and Barb Toews Zehr (eds.) *Critical Issues in Restorative Justice*, Devon, UK: Willan Publishing, p. 150.

8. Thomas Noakes-Duncan (2015) 'Restorative Justice in Prison: A Literature Review' an unpublished paper

9. O.V. Guidoni, (2003) "The Ambivalences of Restorative Justice: Some Reflections on an Italian Prison Project," *Contemporary Justice Review* 6: 58.

which in some cases, led to expressions of forgiveness and reconciliation.

Jackie recognised at the outset that she needed to get the support of prison staff for the process to succeed. With the support of a sympathetic Unit Manager at Hawkes Bay Prison, she began to visit the prison and shared her story with both prisoners and staff. Prisoners were quick to seize on the opportunity to take up the offer of a restorative conference, and as the idea gained acceptance, she was invited to the weekly Unit Managers meetings, and meetings of the Unit PCO's (Principal Corrections Officers).

While Prison officers and management became supportive, it became clear that it would be important to limit the role and participation of prison staff, for two reasons. First, staff would be more supportive of RJ meetings, if it didn't require a significant investment in time and energy; both of which were often in short supply. Secondly, prison staff were accustomed to working within a custodial paradigm, in which decisions were usually based on security ratings and risk assessment, rather than on a person's suitability to take part in a restorative justice conference. A local protocol was developed which confirmed the role of the Department of Corrections as an 'enabler' with the initial request being referred through the Programmes Manager to the relevant Unit Manager, and copied to the Prison Chaplain and Social Worker (a position which no longer exists). The Unit Manager had the opportunity to comment on safety and security issues, but the assessment as to suitability of the prisoner to participate in a restorative justice conference, was the primary responsibility of the RJ facilitator, who carried out a pre-conference interview for that purpose.

The process worked well within the prison, due primarily to regular discussion and communication between prison programme staff and the RJ facilitator. Separate pre-conference interviews with both the prisoner and the victim were facilitated by the RJ Coordinator, with the first meeting usually occurring with the person requesting the intervention. As the relationship between the prison and the RJ provider strengthened, they developed a

common understanding about how restorative justice would work within the prison environment.

In 2004 the Ministry of Justice produced its first set of Principles for Best Practice of Restorative Justice.<sup>10</sup> While there was no mention of in-prison conferencing in the 1st edition of the Ministry's standards, that position was later corrected in the 2011 revision, which acknowledged that seven years after the Corrections Act included a reference to restorative justice, there were still no processes or policies in place:

*The Principles focus on the use of restorative justice processes pre-sentence, and do not apply to the use of these processes after sentencing. However, the Principles are likely to be broadly applicable to the use of restorative justice processes at any point in the criminal justice process, as well as in other sectors.<sup>11</sup>*

PFNZ recognised that not all prisons operated in exactly the same way. If this initiative expanded, then it would be important to develop a strong local relationship between the facilitator and prison, so that there would be maximum flexibility in ensuring that local processes were the subject of mutual agreement.

Jackie recognised at the outset that she needed to get the support of prison staff for the process to succeed.

#### *RJ Projects and supporters*

Jackie's appointment as the Restorative Justice Manager for Prison Fellowship, was not primarily for the purpose of facilitating in-prison RJ Conferences. In 1998, Prison Fellowship introduced the Sycamore Tree programme, which would today be described as an RJ victim awareness and empathy programme. Evaluations of the Sycamore Tree programme, attest to its effectiveness in both furthering the healing of victims, and motivating attitudinal change in prisoners, with significant increases in prisoner empathy towards victims in comparison to the general prison population.<sup>12</sup> As the demand for the Sycamore Tree programme grew, so did the demand for personal victim-offender reconciliation. About one third of prisoners completing the Sycamore Tree programme requested PFNZ to initiate a personal meeting with their victims, so as to make amends.

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10. Ministry of Justice (2003) *A restorative justice standards discussion paper*, available at: <http://www.justice.govt.nz/publications/publications-archived/2003/draft-principles-of-best-practice-for-restorative-justice-processes-in-the-criminal-court-discussion-paper-may-2003/1.-restorative-justice-discussion-paper>, last accessed 11/05/2016.
  11. Ministry of Justice (2011) *Restorative Justice: Best Practice in New Zealand*. Wellington: Ministry of Justice, p. 11.
  12. Prison Fellowship New Zealand (2007) Report on the Evaluation of the Sycamore Tree Programme available at: <http://www.pfnz.org.nz/Site%20PDF/Sycamore%20Tree%20and%20its%20Effectiveness.pdf>, last accessed 11/05/2016.

The other major source of referral was the faith based unit (FBU) at Rimutaka Prison. Established in July 2003 as a partnership between the Department of Corrections and PFNZ, the unit's principles and values were firmly aligned to those of restorative practise.<sup>13</sup> This more integrated approach attempted to foster restorative relationships in the pursuit of a more harmonious environment.<sup>14</sup> In his recent literature review, Noakes-Duncan comments:

*This transformative approach to prison relationships operates at many different levels: through the use of focus units within a prison; the training of prisoners as peacemakers within the prison community; equipping correctional staff with conflict resolution skills; and using restorative mechanisms in disciplinary and grievance processes.*<sup>15,16</sup>

The other source of support was the New Zealand Parole Board, and particularly the Chairperson, Judge David Carruthers, (now Judge Sir David Carruthers). In its interface with offenders and their victims, it was ideally placed to identify when a victim or offender were receptive to, and would benefit from a restorative justice conference.

PFNZ initially planned to promote RJ Conferencing in prisons nationwide. It became clear early in the process, that it would be unwise to do, in the absence of stable funding. It responded to requests as far as resources would enable, and before long was facilitating conferences at a growing number of prisons. However, in September 2005, the Department of Corrections issued an instruction to regional prisons not to develop local protocols with restorative justice service providers, 'until the national policy was clearer'.

In September 2005, the Department of Corrections,<sup>17</sup> advised that the Ministry of Justice was working on a large project, to investigate how restorative justice fits into the criminal justice system, and the future of in-prison restorative justice would be subsumed within that project, with funding being available in the latter part of 2007. PFNZ decided to 'hang in there' but limit its delivery to existing networks.

Initial funding for both the Sycamore Tree programme and RJ Conferences in prisons came from philanthropic sources, but with an underlying expectation that funding would cease once government funding became available in 2007. When that didn't happen, some of the philanthropic trusts withdrew support. PFNZ didn't facilitate any Conferences in 2007, but found the resources to facilitate 14 conferences in 2008, and a further 20 in 2009. The level of service fluctuation was unsatisfactory, but unavoidable.

### **Training, Best Practice Standards and Accreditation**

Commitment to high professional standards and training led in 2005, to Jackie Katounas and Kim Workman being awarded the Prison Fellowship International Kamil Shehade International Prize for Restorative Justice. By 2006, and in the absence of any official guidelines, PFNZ published its own standards and guidelines, which it fed into the departmental process.

Seeking official training accreditation became the next stumbling block, as the Ministry of Justice would only train and accredit facilitators who were members of organisations they funded. For that reason, PFNZ facilitators could not be officially accredited and without official sanction, were unlikely to receive funding when it became available. At the time, Jackie Katounas was a part of the panel to develop the accreditation process, and a member of the Hawkes Bay Restorative Justice Board, and mentored facilitators trained by the Ministry. In 2010, the Ministry of Justice issued new contracts, which stipulated that facilitators and board members with criminal convictions could not be involved. She had no option but to resign from the Board, and withdraw from the accreditation process

#### *Practical issues*

It was clear from the outset that the facilitation of restorative justice conferences involving prisoners was a far different business than pre-sentence facilitation. The prison cases were at the serious end of the offending spectrum, and often involved offenders with

The level of service fluctuation was unsatisfactory, but unavoidable.

13. PFNZ (2003) Faith Based Unit at Rimutaka Prison – Manual of Policies and Procedures. Wellington: PFNZ, p.17.

14. Barb Toews and Jackie Katounas (2004) 'Have Offender Needs and Perspectives Been Adequately Incorporated into Restorative Justice?', in Howard Zehr and Barb Toews (eds.) *Critical Issues in Restorative Justice*. Devon, UK: Willan Publishing, p. 112.

15. Liebmann, M. (2007) *Restorative Justice: How It Works*. London: Jessica Kingsley Publishers, p. 238.

16. D. Roeger (2003) 'Resolving Conflicts in Prison', *Relational Justice Bulletin* 19: 57.

17. Correspondence from Kirsty Ruddleston, Department of Corrections, 20 September 2005.

complex personal issues, and who came from highly dysfunctional backgrounds. Effective facilitation required someone who had well developed insight into offending behaviour, and the social skills and maturity to deal with difficult and complex situations. PFNZ set caveats in place, to deal with offenders and victims who were psychologically unstable, or had a history of sexual offending. Sex offenders were not considered unless they had first undergone the Department of Corrections Sex Offender's Treatment Programme. Where there were concerns about the mental state of an offender, or other issues, PFNZ took advice from prison staff and Psychological Services. PFNZ found that experienced RJ facilitators would often avoid facilitating in-prison conferences, and often asked Jackie Katounas to conduct them on their organisation's behalf. Her personal prison experience in that situation, changed her criminal history from being a liability to an asset.

Criminological research generally supports the engagement of transformed offenders in the rehabilitative process, and most of the contracted service providers to government have staff who have committed criminal offences, some of whom have spent time in prison. It was therefore difficult to understand why, given the abundance of former offenders involved in service delivery and rehabilitation, that the provision of restorative justice should be singled out for attention. Workman, in his 2008 address to the Restorative Justice Aotearoa Conference had this to say:

*Restorative Justice does not exist in a pure state — it does not have that sort of pedigree. Restorative Justice is a mongrel — it was conceived not in the ivory towers of the state, but in the dusty streets of despair and guilt. It will sleep with anyone that wants it. Some of our most effective practitioners come from those same dusty streets — those whom Henri Nouwen called 'wounded healers'.<sup>18</sup> Their strength of character and commitment has been forged in the crucible of criminality, addiction or mental illness. Stringent*

Given that 54 per cent of prisoners are Māori; these numbers indicate a higher level of interest in, and comfort with, restorative justice ...

*conditions which require practitioners to withstand a criminal history check, deny the origins of restorative justice and its practice in the community.*

### **Māori Responsiveness to Restorative Justice Conferencing**

PFNZ did not keep a record of the ethnicity of prisoners seeking a restorative justice process, but it estimated that about 80 per cent of those seeking restorative justice conferences were Māori. Given that 54 per cent of prisoners are Māori; these numbers indicate a higher level of interest in, and comfort with, restorative justice as a process to restoring relationships and balance within the whānau (extended family) and community. The relationship between restorative justice and Māori processes of conflict resolution are explored elsewhere; but the evidence suggests that those connections are extremely strong.<sup>19,20</sup> The other significant difference was the preparedness of Māori offenders and victims to involve whānau members in the restorative justice process. Again, it was seen as an opportunity to restore right relationships across the community, rather than as an individual process of redemption and potential forgiveness.

### **Doing the Business — Some Case Studies**

At the completion of each RJ Conference, PFNZ completed a report, copies of which were sent to the Department of Corrections. A selection of these case studies provides a useful insight into the motivation of those who sought RJ Conferences, and the quality of outcome for those taking part. In all cases, names of participants have been changed.

*Anton Darcy, 18 March 2004*

Anton aged, 18 years, received a life sentence in 1977 for the murder of Jack Brown during an armed robbery. Jack's sister, Faye Furlong, asked to meet with Anton 'face to face', and on meeting, talked about the

18. Nouwen, Henri, (1979) *The Wounded Healer – Ministry in Contemporary Society* Image Books; Doubleday : New York.

19. Workman, Kim (2014) 'The Social Integration of Māori Prisoners' *He Komako: Māori Social Work Review*, Issue 26, Number 1.

20. Toki, Valmaine, (2011) 'Is the Parole Board Working?' Or is it time for an Indigenous Re-Entry Court? *International Journal of Law, Crime and Justice* 39, pp. 230-248

impact the murder had on her family, challenged him to change, and make something worthwhile of his future. He agreed to do so, and they discussed the education programme he was undertaking. It was agreed that she would be kept updated on his progress prior to release.

This is a common scenario, with the victim wanting to get more information about the offender's motives, and to describe the suffering that the offender's actions had caused to the victim's family. The victim also wanted assurance that the offender's punishment was not in vain, and that he would make something of his life in the future.

*Ian Morgan: 13th July 2005*

Ian Morgan was serving a seven year term of imprisonment for his part in an aggravated robbery along with three co-offenders. Ian had completed a Sycamore Tree programme, and requested to meet with the victim. He wanted to explain what was going on in his life, before he committed the offence, and personally apologise. The victim shared about a staff member who was present during the robbery and had to undergo counselling, and had time off work as a consequence. Ian Morgan offered an apology for the harm that had resulted from his offending, and offered to meet the staff member and do likewise.

Many prisoners express remorse about their behaviour, and seek an opportunity to articulate that to their victim. They do not have any expectations beyond that, and in this case, the victim accepted the apology, enabling both of them to move on.

*Rana Parata: 7th June 2005*

This referral was lodged by a Prison Principal Corrections Officer (PCO) to consider Rana Parata for a restorative justice meeting with his two victims, his ex-wife Margy Tihai, and Anthony Waitoa. Rana Parata and Margy Tihai have eight children together and Mr Waitoa is currently the partner of Ms Tihai. Rana Parata was charged with causing grievous bodily harm to both victims. Rana had recently appeared before the Parole Board where he learned a letter had been sent by the victims saying that both parties wished to support Rana Parata being released back into the community. The restorative justice facilitator felt that to proceed with this referral would be beneficial for all

involved; particularly as Rana would continue to have contact with both the victims once he was released from prison. Both victims agreed to participate in a restorative justice meeting to restore the broken relationship for the sake of the children. Rana commenced by saying that he was very sorry for what he'd done, and Mr Waitoa responded by saying that he accepted the apology and also wanted to apologise for his role in the event. He went on to say that he tried very hard to take care of Ms Tihai and the children. Ms Tihai asked her son Thomas if he would speak. Thomas said he was there to support both his mother and father that he and his brothers and sisters are proud that Rana had now learnt to read and write while in prison.

Boi Pirikahu, a Māori service provider, spoke of his involvement with Rana and Rana's efforts to control his anger. A prison officer spoke of her involvement with Rana, and the progress he had made while in prison. She felt honoured to be invited to participate in this meeting. Discussion focused on the issues around the children particularly the two older ones who have been affected by their father being in prison and how they have taken out their frustrations on Margy and Anthony. The conference moved on to discuss how this situation could be restored now that everyone had reached a place of unity, and a plan agreed to for future engagement.

This meeting was triggered by a PCO, as the result of a Parole Board hearing. It is an excellent example of the importance of restorative justice meetings in preparation for prisoner reintegration. As confirmed by Noakes-Duncan:

*Restorative justice has been shown to be valuable in developing links between prisons and the outside community in ways that support successful reintegration. The restorative process provides a format for prisoners to take responsibility for their actions, recognize the harm they have caused and make amends to the communities they have wronged. The process also helps victims, families and communities communicate their needs and expectations to the prisoner. Studies have shown that restorative justice processes help communities become more*

This is a common scenario, with the victim wanting to get more information about the offender's motives, and to describe the suffering that the offender's actions had caused to the victim's family.

aware of their responsibilities in the reintegration of released offenders.<sup>21</sup>

PFNZ recognised the potential of restorative justice in relation to prisoner reintegration in the early stages of its work. Its 2006 'Target Communities' programme reflects that thinking, and in 2011, Workman presented a paper to the Restorative Justice Aotearoa Conference, progressing those ideas further.<sup>22</sup>

#### *Robert Summers: 14th February 2005*

In August 2003 a referral was lodged by a Community Probation officer, Veronica Lake, to consider Robert Summers for a RJ meeting with his victim. The Parole Board had requested Robert attend a treatment programme before release and had endorsed the possibility of a restorative process with his victim. The victim Agnes Dupree had agreed to participate in an RJ meeting. Robert was concerned that Agnes would live in fear of him, once released. Agnes was pleased for this opportunity to meet with him and had been anxious at the prospect of him being released. Robert affirmed that he had no interest in going back to his past behaviours. He said he was prepared not to go back to that community if it was something that she wanted. Agnes said she was OK with the situation and now felt safe. She did not consider that a formal agreement was necessary.

There are times when the primary outcome of an RJ Conference is to provide assurance to the victim, that he or she will be safe upon the prisoner's release. The successful meeting also provided added assurance to the Parole Board.

#### *Robert Walker 12th June 2006*

Robert Walker was sentenced to four years four months imprisonment as a result of discharging a firearm into the home of police officer Peter Cunningham. A restorative justice referral was received from a PFNZ field worker. Robert was going to be released back into the community and wanted

an opportunity to apologise and put things right with Mr Cunningham. Constable Peter Cunningham agreed to attend the conference. Robert said that this offence had nothing to do with Peter or his family, but that he had put a shot through the Constable's window to warn him away — in hindsight it was the stupidest thing he had ever done. He acknowledged the hurt that had resulted from his behaviour and again apologised to Peter. Peter said it had impacted on his family and in particular his eldest daughter who had received counselling as a result. He explained that she had wanted to be there, but he felt it better if she didn't.

Constable Cunningham said he didn't hold any grudges towards Robert, but that once Peter returned, he needed to keep a low profile. He offered to help Robert find work. Discussion then took place around what strategies and structures would be in place upon Robert's release. The PFNZ field worker spoke and described the support Robert would be offered, to help him reintegrate safely back into the community. As a result of the meeting a formal agreement was considered unnecessary. However, it was agreed that Robert would write a letter of apology to Peter's daughter, through the RJ facilitator.

RJ Conferences of this kind can play a major role, not only in the safe reintegration of offenders back into small communities, but in reducing the likelihood of future offending.

PFNZ recognised the potential of restorative justice in relation to prisoner reintegration in the early stages of its work.

### **Key Issues and Challenges**

There were issues that arose repeatedly over the six year period; and at times the prison's security focus and strong commitment to risk avoidance meant that clashes were inevitable. Boyes-Wilson refers to this as a 'creative tension that opens space for the transformation of those institutions.'<sup>23</sup> This creative tension requires a degree of adaptability by both restorative justice providers and the Correctional system, as both search out the best ways to achieve the goals of restorative justice.

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21. V. Stern (2005) *Prisons and Their Communities: Testing a New Approach, an Account of the Restorative Prison Project 2000-2004* (London: International Centre for Prison Studies).
  22. Workman, Kim (2011) 'Toward a Model of Restorative Reintegration' A paper presented to the 5th Restorative Justice Aotearoa Conference, and the 3rd Restorative Practises International Annual Conference, 23-27 November 2011, Amora Hotel, Wellington, New Zealand.
  23. Boyes-Watson, Carolyn (2004). *What are the Implications of the Growing State Involvement in Restorative Justice?* In, Howard Zehr and Barb Toews (eds), *Critical Issues in Restorative Justice*. Monsey, New York and Cullompton, Devon, UK: Criminal Justice Press and Willan Publishing. p. 216.

Experienced RJ Facilitators are able to assess the suitability of prisoners and victims following one-to-one interviews, to participate in a restorative justice conference. Unfortunately, prison staff without a clear understanding of RJ principles and values, tended to assess suitability on the basis of other criteria, such as security classification or risk assessment. As a result, some prison managers excluded some prisoners on the grounds that they didn't 'deserve' to take part in an RJ Conference, or on the grounds of earlier incidents, without realising that in many cases prisoners carried a heavy load of guilt and remorse, and that RJ Conferences often resulted in behaviour improvement.

In other cases, they considered prisoners to be 'high risk', and insisted that a prison officer accompany the prisoner at the conference. This was unacceptable to PFNZ as there is a need to protect and respect the confidentiality of the process to the greatest extent possible. Considering that prisoners live in such close quarters, information sharing about inmates can lead to undesirable outcomes.<sup>24</sup> This matter was settled when the General Manager of Public Prisons determined that if prisoners were considered to be too serious a safety risk to attend on their own, they should not take part at all. On the other hand, prisoners often asked that supportive prison staff be present at the conference.

The offender-focus of prisons means that the needs of victims are often not prioritised — or for that matter, assessed. Prison staff, however, see their role as contributing to the reduction of re-offending, and do not factor into that, measures which meet the needs of victims. There were occasions when staff had to be reminded that the Victim's Rights Act 2002 required that victims be treated with dignity and respect. Some prison staff attempted to exclude victims with criminal convictions from taking part in a RJ Conference. In 2009, the then Victim Support CEO, Tony Paine, reminded us who the victims were;

*It is very easy to talk about victims and offenders as if they were two quite separate groups (both demographically and morally). Of course the world is not that black and white.<sup>25</sup> A recent survey tells us that 50 per*

*cent of all victimizations are experienced by only 6 per cent of New Zealanders and that the social and demographic indicators that identify those who are most likely to be victimized are identical to the markers for those likely to be offenders.<sup>26</sup>*

The harsh reality is that those 50 per cent of victims come from marginalised communities, and are very likely to have criminal convictions. To exclude them from restorative justice processes on the basis of a criminal history counters the underlying values and principles of restorative justice.

### **Restorative Justice is a Process not a Programme**

Prison Staff are well practised in the contracting of services, and the formulation of contracts within a tight set of criteria. Service providers are usually required to target a specific location, type of prison unit or offender. The programme criteria spells out at what point of a prisoner's sentence they are eligible for the service, and what criteria have to be satisfied. Restorative Justice does not work like that. First, it is a process, not a programme. There is no 'right-time' to hold a conference, other than that all who take part are

willing participants. There is no evidence to show whether RJ conferences are of greater benefit at the beginning or end of a sentence. What we do know is that prisoners often carry a burden of guilt and shame associated with their offending. There is often a positive change in attitude and demeanour following a RJ conference, and that prisoners who resisted taking part in rehabilitative programmes before an RJ Conference, demonstrated a willingness to change their lives after the experience. As Noakes-Duncan comments:

*Dhami et al. point to how restorative engagements can humanize the prison culture such that prisoners make more of the opportunities they have for personal transformation.<sup>27</sup> Restorative justice also leads to a less adversarial prison environment, improving the often-tenuous relationship between prison staff and prisoners. One study*

There is often a  
positive change in  
attitude and  
demeanour  
following a RJ  
conference ...

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24. Diane Crocker, (2015) 'Implementing and Evaluating Restorative Justice Projects in Prison', *Criminal Justice Policy Review* 26, no. 1 p. 58.
25. Mayhew P., and Reilly J. (2007) *The New Zealand Crime and Safety Survey 2006*. Ministry of Justice, Wellington, New Zealand, p.46
26. Paine, Tony, (2012) 'Victim Support, Victim's Rights: an agenda for prevention' – an address delivered at Addressing the underlying causes of offending; What is the evidence? – Thursday 26 and Friday 27 February, Institute of Policy Studies, Victoria University
27. Dhami, MK, Mantle, G., and Fox, D. (2009) 'Restorative Justice in Prisons', *Contemporary Justice Review*, 12(4) 433-448 at p. 435.

*shows that prison staff experience reduced work-related stress after restorative justice had been introduced.*<sup>28</sup>

### **Promoting the Benefits of In-Prison Restorative Justice**

It is unlikely that targeting a prison, or type of prison unit in isolation will generate interest and willingness to participate in RJ, unless there is considerable investment with prison staff beforehand. Our experience is that those people who participate in RJ Conferences are the best salespeople. They talk about the experience to other prisoners, many of whom will then request a conference. Prison staff who see transformational change in prisoners afterwards, are often effective ambassadors, as are victims who relate the positive impact of the experience to others. Around 90 per cent of all victims who take part, say they would recommend the experience to another victim. RJ Conferencing in prisons should be regarded as an organic process, with the role of prison staff being that of 'enablers', able to respond to the needs and requests of prisoners, victims and prison and professional staff.

In PFNZ's view, the key to the success of in-prison restorative justice derives from developing a culture of mutual respect between prison staff and restorative justice facilitators and service providers. That relationship recognises and affirms the expertise of RJ providers, and trusts it to make sound choices about who should participate in the process. In turn, RJ providers must be careful to consult with prison and professional staff, to consider additional information about a prisoner, especially in terms of psychological and behavioural factors. In that way, it can be a learning experience for all involved in the process.

### **The Demise of RJ Conferencing and the Sycamore Tree Programme**

In 2009, PFNZ delivered 40 Sycamore Tree programmes nationally, and facilitated 20 RJ

conferences. The Department of Corrections continued to fund Sycamore Tree at the same level as in 2006; amounting to \$60,000<sup>29</sup> a year. RJ conferences were still not funded. Both services were adjudged by participants, to be highly effective. The two processes were fast becoming an integral part of the prison system. In April 2010, the Department of Corrections made a decision to discontinue with both. There is no evidence of anything that prompted this decision, in terms of performance, other than these two initiatives no longer fitting the department's purpose.

### **A Glimmer of Hope**

There is a current upsurge of interest in, and commitment to, restorative justice within the New Zealand criminal justice system. The Government agreed to fund an additional 2,400 restorative justice conferences — totalling 3,600 in 2014/15 — following the Government's \$4.4 million investment in adult pre-sentence restorative justice as part of Budget 2013, based on local evidence that restorative justice can result in a reduction in the reoffending rate of up to 20 per cent, compared to those who don't participate.<sup>30</sup> A 2014 amendment to the Sentencing Act now requires the Court to adjourn all proceedings to enable inquiries to be made as to whether a restorative justice process might be appropriate in the circumstances of the case. Government agencies have co-funded, with charitable trusts, the establishment of the Diana Unwin Chair in Restorative Justice at the Victoria University of Wellington, which is currently filled by Professor Chris Marshall.

It is now time to bring in-prison RJ conferencing, back from the outer islands of oblivion, to a place where it can join with its family members, as New Zealand explores further, the place of restorative justice in education, in policing, in community development, and offender reintegration.

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28. Newell, T. and Edgar, K. (2006) *Restorative Justice in Prisons: A Guide to Making It Happen*. Hook:2 Waterside Press

29. The pound currently trades at about \$2 NZ.

30. Ministry of Justice (2011) *Reoffending Analysis for Restorative Justice Cases: 2008 and 2009 – A Summary*. Wellington: Ministry of Justice.

# Restorative Segregation

*Kimmett Edgar is Head of Research at the Prison Reform Trust.<sup>1</sup>*

***Applying restorative principles to practice within prisons can create a culture in which people understand how their behaviour affects everyone in the prison community, and where mutual respect ensures that people can live free of violence and fear.<sup>2</sup>***

## Introduction

Most segregated prisoners spend too many hours idle in their cells. Some are segregated for far too long, especially when there is a lack of attention to resolving the original reasons for segregation. And, for many, reintegration to normal location is hastily planned and applied without the required support. This article advocates a very different sense of the core function of segregation units, which is to:

- ❑ Facilitate short periods of separation from the main population
- ❑ Build up a detailed understanding of the problems which resulted in segregation
- ❑ Work together to find solutions
- ❑ Provide activities through which the segregated person helps to resolve the problems and
- ❑ Promote a sense of personal responsibility in the person who was segregated.

Restorative justice (RJ) principles and practices provide essential tools to enable segregation units to operate in this way and achieve better outcomes for social order.

## Segregation practice

*Deep Custody*, a report published by the Prison Reform Trust, describes segregation units and close supervision centres in England and Wales.<sup>3</sup> Segregation units perform complex tasks. Segregation can be used for people, who have harmed the prison community, but for others, it is for their own protection, or they have been harmed and are at risk of future harm. Other reasons for

segregation might not involve any obvious harm, including people who engineer a move to segregation.

All too often 'activities' in segregation units comprise eating, a bit of exercise, a shower, and perhaps a phone call — all the rest of the person's time is spent in their cell. Time spent idle does nothing to provide an incentive to think about the behaviour that harmed the prison community; nor does it give an opportunity for the person to do anything to resolve the problems or harm caused. As one prison governor said:

*I have never understood the empty regime in segregation. It is not a 'regime': you're providing the bare entitlements and that's it. Why not get them to engage? . . . They should have to come out, engage with officers, and earn rewards by engaging. Everyone should have a care plan with short-term targets that challenge their behaviour.<sup>4</sup>*

Gerry Johnstone (author of the second article in this edition) is a Professor of Law at the University of Hull, where his work focuses on the principles and practice of RJ. He observed that punishment typically means a passive role for prisoners: serving time involves no effort on their part to resolve the problems caused by their behaviour.<sup>5</sup> There is a parallel to the way many prisoners spend their time in segregation units: they passively endure hours of confinement; they are buffered from the effects of their behaviour on other prisoners; and many see time segregated as an occupational hazard. Virtually all prisoners who serve time in segregation return to normal location, but for some, reintegration is difficult. *Deep Custody* describes how managers, staff and prisoners engaged in negotiations over segregation. The prisoner might begin by making promises of improved behaviour, but then cooperation ends. When their needs are frustrated, they might submit complaints, refuse orders, and eventually rebel by dirty protests, cell damage, or

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1. The author would like to thank Peter Dawson, Kate Gooch and Sharon Shalev.
  2. Shalev, S. and Edgar, K. (2010) *Deep Custody: Segregation Units and Close Supervision Centres in England and Wales*. London: Prison Reform Trust.
  3. Shalev, Sharon and Edgar, Kimmett (2016) *Deep Custody: Segregation Units and Close Supervisions Centres in England and Wales*, London: Prison Reform Trust.
  4. Ibid. p. 49.
  5. Johnstone, Gerry (2014) *Restorative Justice in Prisons: Methods, Approaches and Effectiveness*, Strasbourg: European Committee on Crime Problems, Strasbourg: Council of Europe, p. 9.

assaults. A manager could respond to someone who wants to remain segregated first by offering alternatives, then by issuing a direct order, then by imposing deterrents such as fewer showers per week, and then resorting to force to move the prisoner. When these sequences arise, they suggest that segregation is not working. Too often, these negotiations reflect each side trying to force the other into concessions. Coercive stand-offs reveal the need for a different style of management, characterised by conflict resolution, problem-solving, and shared decision-making.

### **Restorative justice, punishment, and responsibility**

*Restorative Justice works to resolve conflict and repair harm. It encourages those who have caused harm to acknowledge the impact of what they have done and gives them an opportunity to make reparation. It offers those who have suffered harm the opportunity to have their harm or loss acknowledged and amends made.*<sup>6</sup>

RJ is being used in a variety of institutions and settings to resolve conflicts and repair relationships. The basis of RJ is a simple moral principle: harming someone creates a personal obligation to make amends. Focussing on the role of offenders, RJ processes aim to effect three changes:

1. Increase awareness of the harm done;
2. Engage offenders as agents in repairing that harm; and,
3. Promote acceptance of offenders back into their community.

Awareness, agency, and acceptance are three attributes which indicate a particular role for restorative justice processes in a prison's core functions. By promoting awareness, agency and acceptance, restorative practice could play a part in the reintegration of prisoners from segregation units.

In contrast to the passive role that punishment assigns to the offender, RJ builds on the person's capacity to take responsibility. Stephen Pryor, a former prison governor, pioneered the idea of the responsible prisoner. He said that 'The single most important

change of culture is the notion that prisoners should be required to maintain and develop responsibility while under sentence in order to continue as citizens, albeit citizens with reduced rights.'

Given that time in segregation can be used to develop a sense of responsibility, it is useful to describe the concept of responsibility in some detail. Personal responsibility is the basis of agency. It shows itself in how we relate to others, in taking initiative, and being accountable for tasks. It requires autonomy to make decisions, and opportunities to work with others as members of teams. Responsibility starts with informed decision-making — prisoners are better able to make important decisions about their lives when they have all the information they need to make informed choices. Responsibility thrives when the person has self-confidence. Desistance is more likely to occur when the person feels capable of adopting new and more positive

**Desistance is more likely to occur when the person feels capable of adopting new and more positive roles.**

roles. In prison, this can be promoted by extending trust, providing opportunities to be productive and which have a positive influence, and recognising achievement. With information and confidence comes the third principle: responsible people recognise that they have options. Someone who feels that life just happens to them is not in a position to exercise responsibility. Taking

responsibility applies a future oriented, problem-solving response to problems. A fourth principle is shared responsibility: prison managers and staff consistently discussing with prisoners any decision that has an impact on them and their family. For example, this means that transparent dialogues about risk are the norm.

Responsibility means that decisions and actions are always reciprocal: my decisions affect you and your decisions affect me. Encouraging responsibility requires the managers and staff to see the person within their wider personal web of relationships. A sense of belonging and acceptance encourages responsibility and provides the person with support and motivation when problems arise. A further dimension to responsibility, one which no one achieves all the time, is global responsibility. Perhaps climate change has raised awareness of the ways each individual is responsible to everyone else, to the whole planet and to future generations. Global responsibility shows that the decisions we make have effects far wider than we can

6. Restorative Justice Consortium (nd) 'What is Restorative Justice', available at: <http://www.bristol-mediation.org/wp-content/uploads/2011/03/What-is-Restorative-Justice.pdf>, accessed 23.5.2016.

7. Cited in Prison Reform Trust (2011) *Time Well Spent: A practical guide to active citizenship and volunteering in prison*, by K Edgar, J Jacobson and K Biggar, London: Prison Reform Trust, p. 39.

appreciate. It also demonstrates that every single person matters. This global awareness, this connection between everyday choices and the world we will leave behind, reflects an altruistic thought pattern which is central to desistance theory (where it is termed 'generativity').

Processes which promote an offender's sense of responsibility will:

- ❑ Share decision-making;
- ❑ Provide a range of options;
- ❑ Ensure the person is fully informed of policies and practical options;
- ❑ Build up the person's self-confidence and open paths to more constructive roles; and,
- ❑ See the person in their wider web of relationships.

Furthermore, Gerry Johnstone describes the power of restorative justice to build a genuine sense of responsibility:

*A restorative process . . . encourages and empowers perpetrators of harm and conflict to take meaningful responsibility for their actions. . . . They begin to see compliance — and the social order in prisons — as something in which they have a stake. The social order is not just something imposed by the authorities upon them, purely for the benefit of the authorities. Rather, it exists for the benefit of each member of the prison community.<sup>8</sup>*

### **Prison discipline and conflict**

RJ can be applied at different stages of the disciplinary process. Behaviour warnings can initiate an open process of mediation and direct communication to establish what happened, who was affected, in what way, and what should be done to put things right. Trained peer mediators can persuade offenders that their behaviour has a negative impact on other prisoners. Adjudications can be adjourned to facilitate an RJ process to suggest how the prisoner can make amends to the whole prison community. In these ways, RJ supports good order by attending to conflicts and resolving them, exploring the harm done and finding remedies. The new United Nations Nelson Mandela

Rules (Standard Minimum Rules for the Treatment of Prisoners) recognise the importance of conflict resolution in prison management. Rule 38 (1) states: 'Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.'<sup>9</sup> Engaging offenders in resolving conflicts can make specific contributions to reducing violence. RJ can prevent retaliatory assaults by resolving the disputes that gave rise to violence. Involving prisoner representatives in planning measures to prevent violence will produce policies that are better informed by the lived experience on the wings. Moreover, it promotes the awareness that prisoners also bear some responsibility for maintaining a safe community.

Prison officers often employ conflict resolution or problem-solving skills, as described in *Deep Custody*.

On morning rounds in one segregation unit, a prisoner on a three-officer unlock requested his afternoon exercise. Later, a different governor re-deployed some of the segregation staff, which meant that no one was available to escort him to the yard. No one informed the prisoner. When the time came, he was dressed in his kit and ready for the yard. An officer told him, through his door, that exercise was cancelled. The prisoner became abusive and

Moreover, it promotes the awareness that prisoners also bear some responsibility for maintaining a safe community.

threatened to harm anyone who opened his cell. The Use of Force Co-ordinator prepared a team in protective equipment to deliver the evening meal. Before they arrived, an officer who knew the prisoner went to his door. She asked him to calm down and tell her what was wrong. She waited until he settled down. She heard his grievance and agreed that he should have been informed earlier of the cancelled exercise. She explained that he would not resolve the problem by making threats, and asked him to focus on what could be done now. She agreed to ask if his exercise could be extended tomorrow. She also asked him if he would cause trouble if she brought him his meal. Thus, in the space of ten minutes, this segregation officer brought calm to a tense standoff. She de-escalated the conflict by hearing the man's reasons for being so angry. She encouraged the prisoner to take responsibility for his conduct, getting him to agree that abusive shouting and threats were

8. Johnstone, Gerry (2014) *Restorative Justice in Prisons: Methods, Approaches and Effectiveness*, Strasbourg: European Committee on Crime Problems, Strasbourg: Council of Europe, pp. 11–12.

9. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), available at: <http://www.penalreform.org/priorities/global-advocacy/standard-minimum-rules/>, accessed 23.5.2016.

counter-productive for him. Her approach shifted the prisoner's focus from perceived wrongs done to him to future solutions. She also encouraged the prisoner to discuss options in a reasonable and respectful manner. The Use of Force Co-ordinator chose instead to send the team in protective equipment to deliver the meal. But the officer's handling of the conflict demonstrated genuine de-escalation and the benefits of a problem-solving response.

### A balance of confidence and caution

The Restorative Justice Council has published best practice guidance. The research on which it is based showed that restorative processes are 'overwhelmingly safe and positive experiences for the participants, including for very serious offences.'<sup>10</sup> Among the key principles are the following:

- ❑ The critical importance of restorative practice based on a set of core skills, knowledge and principles, of time for preparation for all participants and of follow-up and feedback after a restorative process has been confirmed and reinforced.
- ❑ Participants in restorative processes should themselves make the choice whether or not to participate.
- ❑ [Facilitators should . . .] give participants space and time to discuss what they want to come out of the meeting, and use those discussions to formulate an agreement.<sup>11</sup>

Some caveats are also in order. First, it is vital that restorative processes are delivered by people who have received appropriate training. Attempts to make someone aware of the impact their behaviour has on others can lead to defensiveness, denial and anger. Research demonstrating that RJ is effective consistently emphasises the importance of strictly following this guidance. Second, while the benefits of awareness-raising, agency and acceptance show how RJ can help with reintegration, each of these

outcomes requires safeguards that are built into proper RJ processes. For example, one prison referred to procedures delivered by senior officers designed to shame offenders as RJ, distorting the concept to dress up punishment as restorative. If someone is forced to take part, then it's unlikely to be restorative. Third, restorative justice may be poorly suited to work with prisoners who have serious mental health needs. The Nelson Mandela Rules make clear that prison managers should make every effort to ensure that segregation is not used in these circumstances:

*Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.<sup>12</sup>*

There is however emerging evidence that RJ can work with people who have mental health needs, so they should not be excluded. But it does reinforce the importance of highly skilled restorative practitioners. Here again, the Restorative Justice Council can help with guidance.<sup>13</sup>

... it is vital that restorative processes are delivered by people who have received appropriate training.

### How restorative processes can improve reintegration from segregation

Segregation units can function as a place of temporary separation from the general population, to give the people concerned time to resolve the problems that resulted in segregation. If those are legitimate aims of segregation, then principles of RJ — including awareness, agency, and acceptance — can provide segregation managers and staff with effective tools which contribute to good order. This claim is based on the premise that restorative justice processes are ideally suited to:

10. Restorative Justice Council (nd) *Best Practice Guidance for Restorative Practice*. London: Restorative Justice Council, available at: <https://www.restorativejustice.org.uk/sites/default/files/resources/files/Best%20practice%20guidance%20for%20restorative%20practice%202011.pdf>, accessed 23.5.2016.

11. Ibid.

12. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 39.3, available at: <http://www.penalreform.org/priorities/global-advocacy/standard-minimum-rules/>, accessed 23.5.2016.

13. Restorative Justice Council (nd) *Best Practice Guidance for Restorative Practice*. London: Restorative Justice Council, available at: <https://www.restorativejustice.org.uk/sites/default/files/resources/files/Best%20practice%20guidance%20for%20restorative%20practice%202011.pdf>, accessed 23.5.2016.

- ❑ Building a sense of responsibility in people who have caused harm;
- ❑ Bringing diverse perspectives to light;
- ❑ Resolving conflicts;
- ❑ Enabling people to make amends for the harm done; and,
- ❑ Generating workable solutions to problems linked to the harmful behaviour.

In *Deep Custody*, a prison governor stated:

*A lot of seg units are still about containment; consequences for inappropriate behaviour. They haven't got it — segregation must be about so much more. ... There's been recognition of the specific skills set for seg staff. You need conflict resolution. You need to be able to help people to recognise how their behaviour has to change. Punishment can be ineffective at changing behaviour. ... The old style seg unit is long gone. But how to run the new one is not yet defined.*<sup>14</sup>

Problem-solving segregation is in line with current policy. The Segregation Prison Service Order specifically identifies reintegration as part of an officers' role: 'It is expected that segregation staff focus on helping prisoners manage their behaviour and problems rather than simply on punishment.'<sup>15</sup> *Deep Custody* spelled out wider aspects of segregation practice that contribute to reintegration: 'Reintegration good practice and principles included: multi-disciplinary support; ensuring that the prisoner's sending wing maintained responsibility for the prisoner; a problem-solving approach; engaging the prisoner in decisions about reintegration; a phased return; and effective communication between the segregation unit and the wing.'<sup>16</sup>

Prison managers can shape segregation functions so that they foster personal responsibility and lead people to feel more responsible for their actions, for others, and for their prison. The relevance of restorative principles and processes is clear: if the aim of segregation is to encourage a change in behaviour from the person who has caused harm, then

restorative practices provide an important resource. A restorative segregation unit would work with the person to:

- ❑ Focus attention on how their behaviour affected others;
- ❑ Decide what needs to be done to repair the harm; and,
- ❑ Ensure a smooth return to normal location.

Ensuring that time in segregation has a purpose and preparing the person for reintegration requires a problem-solving process. The person's role in their own reintegration will depend on the reasons for their segregation, but the general principle should be that they be encouraged to take their share of responsibility for resolving the problems that led to segregation. This should begin with a focus on who was affected by their behaviour, the harm they did to others or to the prison community, and/or what they can contribute to solutions to the problems which resulted in their segregation. The Scottish Prison Service, in its review of purposeful activities, wrote:

*People are sent to prison not to be punished or to have their fundamental human rights derogated, but to be deprived of their liberty. Prison . . . should not equate to permanent banishment from the communities from which they have been temporarily separated. There has to be some mechanism through which people can take responsibility to repair the damage caused as a result of their behaviour and which allows them to reintegrate and contribute as active citizens.*<sup>17</sup>

The same should be said of segregation. People may need to be segregated for a short time, but segregation should not be indefinite banishment. To work effectively, segregation units need to establish mechanisms through which segregated people can repair the damage or resolve the conflicts that resulted in their segregation; and through those processes, all segregated persons should be enabled to reintegrate and actively contribute to their prison community.

14. Shalev, Sharon and Edgar, Kimmet (2016) *Deep Custody: Segregation Units and Close Supervisions Centres in England and Wales*, London: Prison Reform Trust, page 63.

15. HM Prison Service (2006) Segregation, Special Accommodation and Body Belts, Prison Service Order 1700. London: HM Prison Service.

16. Shalev, S. and Edgar, K. (2010) *Deep Custody: Segregation Units and Close Supervision Centres in England and Wales*. London: Prison Reform Trust, page 135.

17. Scottish Prison Service (2014) *Delivering a strategy for purposeful activity in the Scottish Prison Service*. Edinburgh: The Scottish Prison Service, p. 117.

# From Exclusion to Inclusion:

## The role of Circles of Support and Accountability

*David Thompson is Lecturer in Criminology at the University of Sheffield.*

**This article presents findings from a recently completed research project on Circles of Support and Accountability (CoSA) and their work with sex offenders. CoSA is a community based initiative which first emerged in Canada in 1994, before being piloted in England and Wales in 2002. CoSA uses volunteers to work with convicted sex offenders who are living in the community.**

The majority of the sex offenders, or Core Members as they are referred to in CoSA, join CoSA following their release from a custodial sentence, though some Core Members will have received sentences which they serve in the community. Each CoSA project has at least one CoSA coordinator who is responsible for recruiting, training and selecting the volunteers who will work with the Core Member in the 'Circle'. A Circle is made up of four-six trained volunteers and one Core Member. The volunteers work with the Core Member to help them resettle into the community after their conviction. CoSA projects also work with the police and probation services to ensure that any relevant information on the Core Member is fed to the volunteers, or to statutory agencies. At a national level, *Circles UK* is the umbrella organisation of all regional CoSA projects in England and Wales.<sup>1</sup>

The statutory management and supervision of sex offenders in the community is primarily undertaken by the police and probation services. The prison service also has a requirement to work with the police and probation service within the Multi-Agency Public Protection Arrangements (MAPPA). These arrangements have very much focused on the 'containment' philosophy whereby convicted sex offenders are managed and monitored in the interests of public protection. The perceived limitations of such an approach were seen as a partial reason for the

emergence of CoSA in England and Wales. Combined with an emerging body of research advocating a more holistic and long-term view of reintegration and resettlement,<sup>2</sup> CoSA sought to fill the gap in assisting Core Members in their reintegration post-conviction. This article is based on research into CoSA carried out by the author as part of his PhD studies and as part of a wider national research project.<sup>3</sup>

### What are Circles of Support and Accountability?

CoSA are voluntary arrangements to help sex offenders as they reintegrate into society after their conviction and return to the community. Offenders are invited to join a Circle of volunteers who befriend them and advise them in their efforts to re-integrate back into the community. The idea started in Canada with the Mennonite religious group seeking to provide an alternative environment to the widespread hostility and even vigilantism directed towards high risk sex offenders when they came out of prison. Early research of CoSA found strong support for its work. In one of the first qualitative studies of 12 Core Members, 10 felt the circle had aided them by offering practical and or emotional support, while six of the Core Members felt they would have re-offended without their circle.<sup>4</sup> In a more recent evaluation of the model, CoSA participants showed an 83 per cent reduction in sexual recidivism compared to sex offenders who had not participated in CoSA.<sup>5</sup> Starting with three early pilot projects in Hampshire, Thames Valley and through the Lucy Faithfull Foundation, the number of projects in the UK has grown to 13 active projects and one emerging project. At the time of writing, approximately 400 Core Members have or are currently participating in CoSA in England and Wales.<sup>6</sup> Each of these projects are accredited by *Circles UK*, and follow a nationally agreed *Circles UK* Code of Practice.

1. See *Circles UK* web site at <http://www.circles-uk.org.uk/>
2. Ward, T. and Maruna, S. (2007) *Rehabilitation*. Oxon: Routledge.
3. Thomas, T. Thompson, D. and Karstedt, S. (2014) *Assessing the impact of Circles of Support and Accountability on the reintegration of adults convicted of sexual offences in the community*. Leeds: University of Leeds. Thompson, D. (2016) 'Moving on After Getting Out: Support and Accountability for Convicted Sex Offenders'. *PhD Thesis*. University of Leeds.
4. Cesaroni, C. (2001) 'Releasing Sex Offenders into the Community Through "Circles of Support" – A Means of Reintegrating the "Worst of the Worst"'. *Journal of Offender Rehabilitation*. 34 (2) 85-98.
5. Wilson, R.J. Cortoni, F. and McWhinnie, A. (2009) 'Circles of Support and Accountability: A Canadian National Replication of Outcome Findings' *Sexual Abuse: A Journal of Research and Treatment*. 21 (4) 412-430.
6. Personal Communication with *Circles UK*.

Early CoSA projects in Canada aligned closely with the principles of restorative justice (RJ).<sup>7</sup> However, the association to RJ is not a traditional one. Whereas most RJ schemes occur at the beginning of the criminal justice process, CoSA is innovative in being an 'end-point' scheme. Moreover, CoSAs RJ commitment was never stated as being to work as a direct service to the victim. Instead Core Members seek to restore and repair damage they have caused to the community in the form of their 'volunteers'. Thus, the Quakers believed the work of CoSA could successfully prevent sexual reoffending and in doing so prevent future victims.<sup>8</sup>

In recent years CoSA has been increasingly linked to 'strengths-based approaches' and the Good Lives Model in particular.<sup>9</sup> In utilising trained volunteers from the community, the Circle provides instant social capital to Core Members who might otherwise be quite isolated. The Core Member receives advice on practical matters such as accommodation, finances, health matters, employment and also receives emotional support where possible — all this constitutes support. The Core Member is also reminded of his or her offences and his or her behaviour is observed, challenged and reported on if necessary. This constitutes the accountability role of CoSA. The Circle in turn receives support and training from a CoSA coordinator.

### The Research

For this research, interviews were conducted with 70 individuals participating in or involved in the delivery of CoSA throughout England and Wales. The interviewees comprised of 30 Core Members, 20 volunteers and 20 'stakeholders'<sup>10</sup> from 11 CoSA projects. A further short questionnaire was also used to collect basic demographic information on Core Members and volunteers. The research team also received permission to access administrative data held by CoSA projects of each Core Member interviewed. The research team used semi-structured interviews developed with the principles of Appreciative Inquiry

(AI) in mind. AI is a form of interviewing which encourages participants to focus on and recall the positives or 'best' experiences rather than just focusing on the negatives. In this research it was combined with the use of generative questions. The use of generative questions adds an additional dimension by encouraging participants to reflect on what might be, or how things might be improved.<sup>11</sup>

Themes common to all interviews included initial expectations of CoSA and why individuals stated they wanted to become involved. All groups were also asked about their experiences of CoSA meetings, the concepts of Support and Accountability and their perceptions of how CoSA can assist in Core Member reintegration. Core Members were also asked about their experiences of other interventions and their future plans. Eligibility to participate in the study was based on Core Members being aged over 18 years and having been a participant in CoSA for approximately six months. Access to all groups was facilitated in cooperation with CoSA coordinators. Each interviewee received an information sheet detailing their role in the research and requirements. Core Members also received £20 in gift vouchers to cover any travel expenses. This is a common practice in criminal justice research.

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### The Findings

#### *Key findings from the Volunteers*

One of the most unique aspects of the work of Circles is the use of volunteers to work with individuals who have been convicted of sexual offences. While volunteers have a long history of working with offenders in the criminal justice system, their use in the contemporary era, working with high-risk sex offenders is virtually non-existent. This and the high levels of hostility towards sex offenders by the general public — reported in the media — prompted the researchers to explore volunteer motivations for joining CoSA and their experiences of training. The research also explored volunteer experiences of working in a Circle, their relationship with Core Members and other volunteers, and how they perceived and recognised signs of success. The research also probed volunteer understandings of the

7. Hannem, S. (2011) 'Experiences in Reconciling Risk management and Restorative Justice: how Circles of Support and Accountability work restoratively in the Risk Society' *International Journal of Offender Therapy and Comparative Criminology*, 57 (3): 269-288.
8. Nellis, M. (2009) 'Circles of Support and Accountability for Sex Offenders in England and Wales: their origins and implementation between 1999-2005'. *British Journal of Community Justice*, 7 (1): 23-44.
9. Carich, M. Wilson, C. Carich, P and Calder, M. (2010) 'Contemporary Sex Offender treatment: Incorporating Circles of Support and the Good Lives Model' in Brayford, J. Cowe, F. and Deering, J. (eds.) *What Else Works? Creative Work with Offenders*. Cullompton: Willan.
10. Stakeholders are taken to be the police, probation officers, project coordinators, and senior managers with funding responsibilities
11. Bushe, G.R. (2012) 'Foundations of Appreciative Inquiry: History, Criticism and Potential' *AI Practitioner*, 14 (1): 8-20.

central concepts of support and accountability and how they managed this in their working with Core Members.

All of the volunteers were highly enthusiastic about the work of CoSA and in their efforts with Core Members. When asked about their motivations for participating in CoSA, almost half (N= 8) stated to have initially done so in an attempt to progress their career by gaining experience working with offenders. The remaining volunteers stated a more altruistic or outwardly motivated reason. Interestingly, we found that many of those volunteers, who joined CoSA with the intention of gaining career experience, later exhibited more altruistic tendencies which led them to want to continue in CoSA for some years. For instance, two volunteers explicitly stated joining simply to gain experience for their CV, proclaiming:

*I thought it would look good on my CV as much as anything and I suppose now I've finished my degree and I've continued it. I think I still do it because I think it works and you can see the changes in a Core Member (V17).*

*I am in university as well so it was a good opportunity to get a bit of experience in as well as doing my course...I suppose at the start it was to support a future career but now I suppose it is that I would like to carry on regardless really (V4).*

The relationship between the volunteers and CoSA coordinator was often spoken as a factor behind volunteer motivation. In some cases it was the 'sales-pitch' or enthusiasm of the CoSA coordinator which encouraged the volunteers to join CoSA, for others it was the knowledge and ever-present support of CoSA coordinators that volunteers valued.

Nearly all of the volunteers reported a degree of anxiety about meeting the Core Member for the first time. Building a relationship with the Core Member was seen as vital and the meetings were the primary means to do this. What constituted a good meeting varied between the Circles and the individual needs of Core Members, though free-flowing and humorous meetings were seen as important. As the duration of the Circle progressed, and the relationship becomes more established, volunteers

and Core Members would meet outside of the formal meeting rooms. These activities included visiting libraries, art galleries and bingo, as well as cafes. Some volunteers spoke of tailoring the venues to the needs of the Core Members, for others the change of venue away from the formal settings was seen as pivotal in developing the Core Members' social skills and relationships, but also in helping them to recognise the progress they were making. Activities outside of the formal setting also had an accountability function for some volunteers as they were able to monitor how the Core Member would react in social settings.

Volunteers had a realistic assessment of what they could achieve with Core Members. The majority did not claim to be able to control or force change in the behaviour of Core Members, instead the volunteers felt they could influence positive behaviour through pro-social modelling. In addition, the volunteers implied the work of the Circle produced a number of subtle positive changes among all Core Members such as changes to their appearance, mannerisms and provided a degree of structure to their life. Thus, the Circle provided Core Members with an alternative environment to that offered by other professionals in supervision and management meetings or through treatment programmes. In doing so, CoSA, in line with

## Building a relationship with the Core Member was seen as vital and the meetings were the primary means to do this.

the principles of re-integrative shaming<sup>12</sup> expresses society's disapproval for criminal behaviours while accepting the convicted and stigmatised individual back into society. Through this process, the Circle helps to prevent future offending through a process of active reintegration.

Although the word 'accountability' is an integral part of the title Circles of Support and Accountability, there was some confusion amongst the volunteers regarding the meaning and limits of the word. For some volunteers 'accountability' involved past behaviours and actions which contributed to and formed the Core Members original offence, others saw accountability as being about Core Members present and future behaviours. Despite such uncertainty, volunteers provided accounts and situations where Core Members had been challenged and held to account and this had some effect on Core Members attitudes and behaviours.

12. 'Re-integrative shaming' is a form of shaming that still wants to rehabilitate as opposed to 'disintegrative shaming' which just shames and leaves the offender with the consequences i.e. the stigma and possible move toward more criminal subcultures – see Braithwaite J (1989). *Crime, Shame and Reintegration* New York, NY: Cambridge University Press.

### *Key findings from 'Stakeholders'*

'Stakeholders' is the term used here to refer collectively to the professionals who work with Core Members and CoSA volunteers. Professionals include coordinators of CoSA Projects, Police Officers, Probation Officers and MAPPA Coordinators and Senior Managers. Only the CoSA project coordinators have a direct role in the activities of the Circle, while Police and Probation Officers have a more distant role from the actual Circles but have clear views on the work they do. MAPPA and Senior Managers had very little involvement in the running of Circles but had an awareness of the fit of CoSA in broader risk management and criminal justice structures.

The role of CoSA coordinators was pivotal in gaining a positive reputation of the CoSA project. All of the CoSA coordinators had previous or current employment as a Probation Officer. This status as a trained probation officer facilitated positive relations with the Police and Probation Service. The role of the CoSA coordinator was diverse and did not just involve them managing the Circle but also recruiting and training volunteers, administrative tasks, marketing the project as well as 'pulling' together all the individuals and agencies to ensure a good service is delivered. All stakeholders spoke highly of the work of CoSA with many believing/stating CoSA added an extra dimension to the work that they themselves could do with sex offenders. The extensive professional training given to volunteers, combined with the common-sense views which volunteers brought to the Circle were stated as particularly beneficial to the 'package' of measures provided to Core Members. Perhaps most illustrative of this contribution was explained by one CoSA coordinator who stated:

*Quite often the volunteers go 'You what!' and they give very real reactions to that. But if they did that to police and probation you get a very deadpan professional response of 'Oh right OK, well you know what we need to do now' (C3).*

Because of the 'good deed' of working with Core Members, most of the stakeholders stated some level of concern about wanting to protect the volunteers from anything untoward from Core Members. This could be inappropriate attention towards the volunteers from Core Members (i.e. grooming or offending) or through the consequence of Core Members actions (mistreatment). Police officers usually saw protection in

terms of ensuring that the volunteers had sufficient information about the potential Core Members. In contrast, Probation Officers were concerned to directly intervene if they saw any risk to the volunteers, and if necessary even by stopping a Circle. The work of volunteers was also regarded positively by all stakeholders, with many being surprised by the levels of commitment offered by volunteers. At the same time, some stakeholders, especially police officers admitted to having initial doubts over the motivations of volunteers to do this type of work and the level of training they received. One explanation for this is the lack of involvement criminal justice professionals have in the recruitment and training of volunteers.

### *Core Members' Perspectives*

A recurring feature of interviews with Core Members was the discomfort, uncertainty and fears that their 'new' status as sex offenders gave them.

Many had lost family, social networks and the familiarity of a home town. The media hostility towards sex offenders on an individual level added to their feelings of rejection. A number of Core Members (N= 10) also reported being required to move to a 'new' and unfamiliar place as a result of the conditions imposed. The result was all Core Members reported high levels of

isolation, increased by their self-imposed withdrawal from the community. In this context then, the offer of support from CoSA represented an opportunity to overcome or at least counteract some of the barriers to their reintegration. This optimism of the improvements CoSA could offer came despite many Core Members reporting initial uncertainties of the role of CoSA, such as the members of CoSA providing 24-hour surveillance or the Core Member even being handcuffed to the volunteers during meetings! Fears were also abound amongst Core Members about how volunteers would react to, and judge Core Members.

Early meetings were the most 'scary' for Core Members. This is understandable given the requirement to disclose their offences and risk factors to a group of strangers. As one Core Member explained: 'You're in the hot seat and that's what it felt like [with CoSA] that I was in the hot seat you know what I mean, that I was getting a psychological evaluation at times' (Eddie). As the length of the 'Circle' progressed, meetings would move from discussing their past offending to a variety of 'general' topics. Core Members reported the meetings with the Circle to be different to those they had with statutory agencies, with the CoSA meetings being more

The role of CoSA coordinators was pivotal in gaining a positive reputation of the CoSA project.

comfortable and settled. However, volunteers could and often did challenge Core Members about their thoughts and behaviours since the last meeting. In most cases Core Members remarked that this induced stress but recognised this to be part of the role of CoSA and was of some value later on.<sup>13</sup>

The value of participating in activities outside of the formal meetings was of great significance to the Core Members. Many of the Core Members in CoSA did not have the finances or social networks to enable them to visit a coffee shop, art galleries, or sporting events. Meals with the volunteers to celebrate birthdays and seasonal events were also popular. For Core Members, these activities took the focus away from their offending and were seen by Core Members as activities which 'normal' people would do. The relationship Core Members had with volunteers was on the whole positive. Core Members were especially appreciative of the time given up by the volunteers, for the advice and support from volunteers and the creation of a 'safe' environment for Core Members to meet, discuss, and practice appropriate social norms.

A further finding of the research focused on Core Members understandings of Support and Accountability. Given the centrality of Support and Accountability to the work of CoSA, Core Members understandings are important. Support was well understood by all Core Members and they provided numerous instances of support being received from the Circle. Accountability on the other hand was a more difficult concept for them to understand. Most Core Members initially were confused by the very word accountability and its meaning as Anthony and Christopher illustrate:

*I don't even know what it means! (Anthony)*

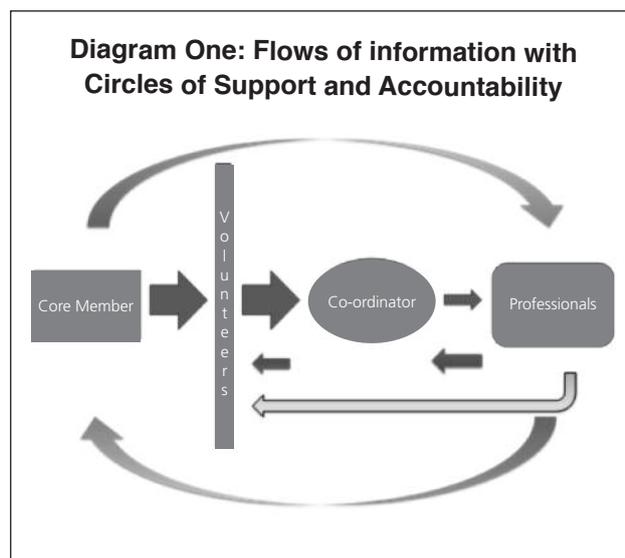
*Blimey I would have to get a dictionary out to figure it out (Christopher)*

Despite this, throughout the interviews, Core Members were able to give examples of where the volunteers had challenged them about risky behaviours or held them to account for their past offending. When asked who was responsible for accountability in the future, the majority of Core Members stated it was only themselves who were responsible for their actions and it was they who made their own decisions, therefore accountability lay with them. The value of CoSA came in the form of advice and support from the volunteers which contributed to more accountable decision-making or a more accountable lifestyle. Core Members also

reported to have improved their working relationship with statutory agencies such as the police and probation and being more appreciative of themselves. For a small number of Core Members the changes they identified were not solely the result of the CoSA, but also could be attributed to the influences of family, statutory agencies, and learning from treatment providers. Overall CoSA, the volunteers and CoSA coordinators were seen positively by the Core Members.

#### Information Exchange

The Circle is in effect an information exchange mechanism whereby personal information on Core Members can be passed to the professionals supervising and managing them in the community. Police and probation officers can then use this information as part of their risk assessment work and the supervision and management work that follows. This element of information exchange is what contributes to the 'accountability' part of CoSA. Information on Core Members will also pass the other way from the professionals to the volunteers that make up the Circle for them to know who they are working with. An illustration of the information flows involving CoSA can be seen in the diagram below.



#### Conclusions

The extent to which CoSA in England and Wales could ever adopt a fully RJ approach is questionable given the growing punitive response to the supervision and management of sex offenders. The top-down implementation of the CoSA pilots in England and Wales also affected the level of RJ principles. However,

13. Thomas, T. Thompson, D. and Karstedt, S. (2014) *Assessing the impact of Circles of Support and Accountability on the reintegration of adults convicted of sexual offences in the community*. Leeds: University of Leeds.

as this research has found, and the title suggests, CoSA does adopt the inclusionary ethos of traditional RJ approaches.

The research and report focuses on the national experiences of those who are involved in CoSA using accounts from Core Members, volunteers and stakeholders. Rather than being an assessment of the impact or efficiency of CoSA projects in reintegrating Core Members, lowering recidivism or other factors, the research assessed the experiences of those being in and working with a Circle, those who organised the Circle and those who worked with CoSA in statutory agencies. The accounts provided show strong support for the work of CoSA among all participants, in particular, the Core Members. CoSA was seen as especially useful in helping Core Members to break the vicious cycles of isolation and stigmatization that sex offenders experience on their re-entry into communities. On a cautious note however, even where subjective accounts suggesting Core Members benefit from a certain type of intervention, without objective measures of behavioural problems, recidivism, and

other indicators, the extent to which this is true will remain contested.

The research found strong support for CoSA among professionals working within the criminal justice system. Not only have projects routinely established a reputation for themselves as reliable partners, but in light of the current developments in probation provision and the desire to expand provision to the private and voluntary sectors, Circles UK and CoSA projects are well placed for these changes because the volunteers are committed to what they do with CoSA.

One of the weak points of CoSA has always been its ad hoc funding arrangements. The Ministry of Justice has always been verbally supportive of CoSA but when it comes to funding it has only supported the central Circles UK office. Elsewhere, throughout the regions, the projects have had to find their own funding; not the easiest task in these times of austerity. Indeed, as of 31 March 2015, Correctional Services Canada, ceased funding 14 regional CoSA projects operating under CoSA Canada, illustrating the fragility of CoSA provision worldwide.



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# The truth about restorative justice in prisons

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**Over the last decade, the debate on the use of restorative justice in the secure prison estate gathered momentum internationally.<sup>1</sup> In the UK, the interest in restorative justice practices was revived post the coalition government election. Through their 'Breaking the Cycle' Green Paper, the new administration stated their intentions for key reforms to adult and youth justice sentencing philosophy and practice.<sup>2</sup> In fact, in its 2014 Commissioning Intentions document, NOMS specifically asked its prisons to deliver restorative justice.<sup>3</sup> This was supported by a government-led Restorative Justice Action Plan<sup>4</sup> covering all parts of the criminal justice system as well as an investment of over £30 million, most of which was given to the newly formed Police and Crime Commissioners. An additional half-million was given to two organisations to provide training to prison officers on restorative justice. The biggest investment, however, is said to be the pre-sentence restorative justice provisions in the Crime and Courts Act 2013, which is already in force. These make it explicit that the courts can use their existing powers to defer sentencing to allow for restorative justice to take place before passing a sentence. There are no limits as to the age or type of offence.**

As the interest in restorative justice continues to grow, this paper aims to provide the developing policy field with further evidence on the effectiveness of restorative justice in the secure estate. On many occasions, I have argued that the emphasis of restorative justice researchers should not be to prove the superiority of restorative practices, but to help develop its potential through pilots and evaluation.<sup>5</sup> I have also argued that

although many claim to be using restorative justice, the practices are in fact still scant, and the evidence on their effectiveness thin.<sup>6</sup>

This article is based on evidence from a three-year research programme that was funded by the European Commission and focused on the use of restorative justice in the secure estate with a particular emphasis on juvenile offenders.<sup>7</sup> The project was carried out by The IARS International Institute<sup>8</sup> in 2009-13. It started with an overview of the extant literature. It was then officially launched with an expert three-day seminar that took place in London in November 2009. Thirteen Hungarian criminal justice professionals (i.e. prison governors, probation staff, judges, prosecutors, and researchers) attended workshops organised by IARS in partnership with the Prison Reform Trust, NACRO, Southwark Youth Offending Team, London Probation, Dr. Martin Wright, and the Register of restorative justice Practitioners.<sup>9</sup>

The preliminary findings from the workshops were complemented with a literature review, followed by original qualitative research that was carried out throughout the UK and combined 20 in-depth interviews with prison governors, restorative justice practitioners, policy makers and academics. The fieldwork also included observation of restorative justice practice and five in-depth interviews with young people who had received a custodial sentence and had direct experience with restorative justice.

The UK research was concluded with an expert half-day seminar that was held in London in November 2010. The seminar was organised by IARS in partnership with Open University.<sup>10</sup> Forty experts in the field of restorative justice, policy and criminal justice attended the seminar.

1. Gavrielides, T. (2011) *Restorative Justice and the Secure Estate: Alternatives for Young People*. IARS: London.
2. Ministry of Justice (2010) *Breaking the cycle*. London: Ministry of Justice.
3. NOMS and HM Prison Service (2014) *NOMS Commissioning Intentions from 2014*, available at: <http://www.justice.gov.uk/about/noms/commissioning>, accessed 23.5.2016.
4. Ministry of Justice (2014) *Restorative Justice Action Plan: 2014*, available at: <https://www.gov.uk/government/publications/restorative-justice-action-plan-2014>, accessed 23.5.2016.
5. Gavrielides, T. (2007) *Restorative justice theory and practice: addressing the discrepancy*. Helsinki: HEUNI.
6. Ibid.
7. In England and Wales, the main custodial sentence for young people (10-17 at the time of conviction) is the detention and training order. Young people may also be sentenced to extended determinate or indeterminate sentences under Sections 226 and 288 of Criminal Justice Act 2003.
8. See [www.iars.org.uk](http://www.iars.org.uk)
9. Gavrielides, T. (2011). *Restorative Justice and the Secure Estate: Alternatives for Young People*, IARS: London.
10. See <http://www.iars.org.uk/content/drawing-together-research-policy-and-practice-restorative-justice-0>

Participants included public bodies such as the Ministry of Justice, NOMS, Home Office, Youth Justice Board, the Equality and Human Rights Commission and Probation, independent organisations such as Prison Reform Trust, the Restorative Justice Council and Victim Support, restorative justice community based practices and prison staff. Academics and researchers in the field of restorative justice also participated in the discussions.<sup>11</sup>

### Is there restorative justice in prisons?

Based on our research, there can be no doubt that restorative justice is practised in prisons. However, this practice is most of the times hidden, scatty and inconsistent. The truth is that it is difficult to map restorative justice whether practised in prisons, in the community or elsewhere. Any funder with an ambition to see a map of restorative justice practices will inevitably be faced with the fluidity of restorative justice, a notion that was born out of community's passion to find a bridge in doing justice at a local level. Nevertheless, attempts to classify restorative justice practices in prisons have been numerous.<sup>12</sup> These codifications tend to change depending on a range of factors such as the origin of the programmes' agencies,<sup>13</sup> the programmes' objectives,<sup>14</sup> the programmes' inclusion of all, few or none of the harmed parties, or the programmes' impact on the organisational and cultural aspect of prisons.<sup>15</sup>

The latest literature groups prison-based restorative justice projects into five broad categories.<sup>16</sup> The first category is 'offending behaviour programmes' such as Alternative to Violence (AVP) workshops. They are attended voluntarily by prisoners, but they do not include

victims.<sup>17</sup> The second is 'victim awareness programmes' such as the Sycamore Tree Project, developed by Prison Fellowship (see the article in this volume by Penny Parker). They are attended voluntarily by prisoners who are given the opportunity to interact (either in a direct or indirect way) with 'surrogate victims'.<sup>18</sup> They are usually delivered in group sessions and do not include restitution to their own victims, but provide opportunities to offenders to make symbolic acts of remorse such as poems, letters and craftwork. The third is 'community service work' which includes projects that teach prisoners skills through work in the community that not only benefits the public but also prisoners' prospects for post-release success and integration.<sup>19</sup> They do not involve interaction with the victim and are fairly prevalent in British prisons.<sup>20</sup>

The fourth category is 'victim offender mediation' which includes an encounter (direct or indirect) with the prisoner and their victim. The final category refers to prisons with a complete restorative justice philosophy. This refers to institutions that have adopted restorative justice not just as a practice for the prisoners, but also as an ethos and philosophy that guides their policies and

procedures, induction programmes, anti-bullying strategies, staff disputes, race relations, resettlement and release strategies.<sup>21</sup>

I caste doubt as to how many of the aforementioned categories can actually be labelled as restorative justice.<sup>22</sup> In fact, looking at the evidence from our study, there seemed to be consensus among the sample that their experience of restorative justice on the ground had little to do with the normative vision of the notion. For instance, the interviewed prison governors/ staff and restorative justice practitioners/ proponents agreed that when

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aforementioned  
categories can  
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justice.

11. To download the expert seminar report see [http://iars.org.uk/sites/default/files/restorativejustice%20Seminar%20Nov%202010%20report\\_Final.pdf](http://iars.org.uk/sites/default/files/restorativejustice%20Seminar%20Nov%202010%20report_Final.pdf)
12. Immarigeon, R. (1994) *Reconciliation between victims and imprisoned offenders: Program models and issues*. Akron, PA: Mennonite Central Committee USA, Office of Crime and Justice; Liebmann, M. (2004). 'Restorative justice and the prison system: A view from the UK'. *VOMA Connections*, 17(Summer), 3–4; and, Edgar, K., and Newell, T. (2006). *Restorative justice in prisons – A guide to making it happen*. Winchester: Waterside Press.
13. Immarigeon, R. (1994). *Reconciliation between victims and imprisoned offenders: Program models and issues*. Akron, PA: Mennonite Central Committee USA, Office of Crime and Justice.
14. van Ness, D.W. (2007). 'Prisons and restorative justice'. in G. Johnstone & D.W. Van Ness (Eds.), *Handbook of restorative justice* (pp. 312–324). Uffculme, Devon: Willan Publishing.
15. Johnstone, G. (2007) 'Restorative justice and the practice of imprisonment', *Prison Service Journal* 140, pp. 15-20.
16. Dhami, M.K., G. Mantle, and Fox, D. (2009). 'Restorative justice in prisons', *Contemporary Justice Review*, 12: 4, p. 438.
17. Bitel, M., & Edgar, K. (1998). 'Offending prisoners on alternatives to violence'. *Prison Service Journal*, 118, 42–44.
18. This is a term used to refer to victims who are involved in similar crimes but they do not relate to the offender directly.
19. Carey, M. (1998). *A voluntary organization in the prison system*. Inside Out Trust. London: Prison Governors Association Magazine.
20. Liebmann, M. (2007). *Restorative justice: How it works*. London: Jessica Kingsley.
21. Robert, L., & Peters, T. (2002). 'How restorative justice is able to transcend the prison walls: A discussion of the project 'restorative detention''. In E. Weitekamp & H. Kerner, (Eds.), *Restorative justice in context: International practice & directions* (pp. 95–122). Uffculme, Devon: Willan Publishing.
22. Gavrielides, T. (2011). *Restorative Justice and the Secure Estate: Alternatives for Young People*, IARS: London.

restorative justice is implemented in the secure estate there is little awareness about it, even by the agents implementing it. 'Most of the time, prison staff will not realise they are doing restorative justice, when they are', one policy maker said. 'One of the difficulties of identifying, measuring and rolling out restorative justice in the secure estate is that in the everyday reality of prison staff and in the chaotic lives of offenders, it cannot be pinned down as one isolated practice or phenomenon', one practitioner pointed out. The interviewee continued, 'when there is an appetite for restorative justice in a juvenile institution, it will mostly be done in bits ... some will use it for educational purposes, others for psychological support and mentoring and others for healing, whether of the young person or the affected community'. This finding resonates with many restorative justice authors who have continuously warned the movement to be cautious when claiming a practice to be restorative for funding or evaluation purposes.<sup>23</sup>

On the other hand, some of the practitioners interviewed who were open to the idea of a consistent and identifiable model of restorative justice within the secure estate warned of a potential threat of a 'narrow version' of the practice. 'A narrow version of restorative justice will not allow us to apply the educational and other preparatory stages that are needed in order for any encounter to be attempted', one interviewee said. The interviewed practitioners and prison staff also highlighted the extremely vulnerable nature of juveniles who tend to be fragile and insecure individuals. A few interviewees also quoted examples to illustrate the fear that these individuals carry not only in relation to their environment and themselves, but also of society and their victim. A juvenile offender who was interviewed and had undergone a restorative justice programme while in a secure institution said how scared he felt when he was confronted with the idea of meeting the victim he had assaulted. According to the interviewee, the prison staff had to give him reassurances that the victim's bag was searched for a gun that he thought would be used to get revenge for his wrongdoing.

A psychologist who was interviewed stressed the significance of being able to instil a sense of hope and

confidence in young people while involving them in a restorative justice programme. The development of skills and the right attitude that will allow these convicted youngsters to be integrated back into society as successfully as possible were also highlighted. All in all, the interviewees advocated for a restorative justice model that is flexible enough to accommodate the educational, psychological and other needs of young offenders but at the same time retain the core of the values underlying the restorative justice ethos.

Overall, there seemed to be a consensus in the interviews that current restorative justice practices in prisons should simply be classified into two groups: 'preparatory' and 'delivery'. In the 'preparatory practices'

group, our research placed all practices that targeted only one party (i.e. offending behaviour programmes, victim awareness programmes and community service work). These practices were also characterised by a restorative justice *intention*, but not necessarily a restorative justice *outcome*. 'Delivery practices' referred to programmes that involve a (direct or indirect) encounter (i.e. victim-offender mediation and prisons with a complete restorative justice philosophy). Delivery practices must be run with a restorative outcome in mind — irrespective of whether this is successful or not.

### **Does restorative justice work in prisons?**

Any attempt to answer the 'effectiveness question' assumes that there is a level of homogeneity in the development and implementation of restorative justice in the secure estate. It also assumes that there are enough scientific studies and evidence that will allow a worthwhile account of that practice. It should also be taken as a given that these evaluations are robust enough, and that they have received enough attention from funders and researchers to produce viable scientific data. However, as argued, there is lack of consistency in the delivery of restorative justice as well as scant data on their effectiveness. The interviewees stressed that it is rather common for prison staff to practise restorative justice (principally the preparatory version) without any awareness or proper training. It was also pointed out that the evidence on restorative justice's effectiveness in the

A psychologist who was interviewed stressed the significance of being able to instil a sense of hope and confidence in young people while involving them in a restorative justice programme.

23. Roche, D. (2003). *Accountability in restorative justice*, London: Clarendon Press; Zehr, H. (2005). 'Evaluation and restorative justice principles' in Elliot, E. and R. Gordon (Ed) *New Directions in Restorative Justice*, Devon: Willan Publishing.

secure estate is still accumulating. This finding chimes with the extant literature.<sup>24</sup> Moreover, as suggested by the various mapping exercises, including the one carried out by this study, 'there is currently little restorative justice intervention of any kind taking place either in YOIs or in the secure estate generally'.<sup>25</sup>

Our survey interviewees who had experienced restorative justice in prisons highlighted examples to show the unique benefits that can be gained. It is important to stress that the majority of them did not believe that these benefits could be achieved via any other practice or ethos. For instance, one practitioner said:

*I have been working in prisons for most of my life. The anxiety and fear that young prisoners experience prevents them from hoping for something better, while their motivation to do something for others is non-existent. It is only through a process of transformation that they can genuinely be offered a chance to change. To help them deal with their realities, prisons should be more than just punishing them. The system should be about giving hope, skills... helping them change their attitudes, educating them and yes even sometimes providing them with qualifications. I haven't come across any practice that can do all these and transform lives other than restorative justice.*

Another practitioner commented:

*Restorative justice is not just about conflict and crime; it is also about psychological support, learning and personal development... that is why it works with young offenders. I am not saying that all young people in prisons are appropriate for restorative justice, but those who need that break through restorative justice can develop the empathy that they are lacking and that the world has deprived them of.*

Someone else said: 'by developing an understanding, you also develop compassion and emotional maturity. Their lack leads to violent crime and it is not surprising that most young offenders in institutions have no emotional intelligence or the ability to sympathise and relate to the external environment. Dialogue and restorative justice has strong potential in changing this'.

In short, the benefits of using restorative justice in prisons, as recorded by our fieldwork and triangulated

through the extant literature, can be summarised as follows:

For victims	An opportunity to ask 'why me', to understand what happened to them, express the full impact of the harm they experienced and obtain emotional relief from the process of being heard
For victims	Alleviate their fears and in some cases rage
For victims	Achieve a greater sense of closure so that they can move on with their lives
For offenders	An opportunity to express remorse and that they are trying to change since the offence
For offenders	Change their perceptions about the impact of their offence and increasing self-awareness and as a result not re-offend
For offenders	Achieve peace of mind as they feel that they have been able to help the victim
For communities	A sense of involvement and ownership of the conflict that impacted on the locality and its residents; participation and engagement in tailored problem solving and deterrence strategies.

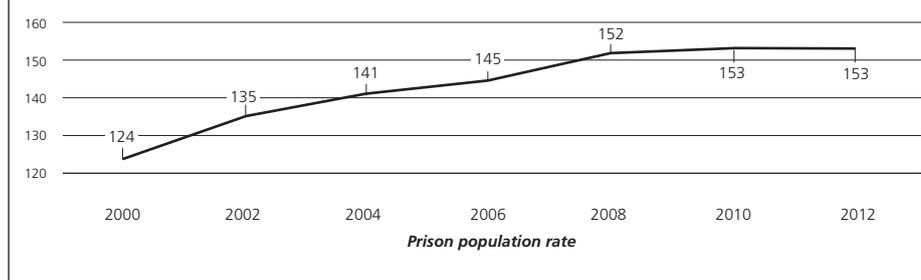
### **Why restorative justice appeals today?**

There can be no doubt that there are benefits in using restorative justice in the secure estate. My research and policy experience, however, have made me a bit more sceptical about the true reasons that drive social policy. In the UK and internationally, the growing numbers of prisoners, the disappointing recidivism rates and the various scandals taking place within secure institutions (including the increasing suicides, rapes, drug trafficking etc.) have cast doubt on the effectiveness of incarceration. In a difficult economic climate alternatives are being sought. For example, in England and Wales, in the week ending 13 March 2015, there were 85,567 people in prisons and young offender institutions in England and

24. Francis, V. (2001). *Restorative practices in prison: A review of the literature*. London: ICPS. <http://www.kcl.ac.uk/depsta/rel/icps/downloads.html>; Curry, D., Knight, V., Owens-Rawle, D., Patel, S., Semenchuk, M., & Williams, B. (2004). *Restorative justice in the juvenile secure estate*. London: Youth Justice Board; and, Johnstone, G. (2007) 'Restorative justice and the practice of imprisonment', *Prison Service Journal* 140, pp. 15-20.

25. Williams, B. (2004). Restorative justice and incarcerated young offenders, *Youth Justice: 4*, at 191.

**Figure 1: Prison population rate (per 100,000) in England and Wales (2000–2012)<sup>27</sup>**



Wales. It is estimated that there are three more people in prison than last week and 32 more people compared to this time last year.<sup>26</sup> Sadly, the child custody population at the end of December 2014 was 981. This represents a rise of 24 since November 2014. (see Figure 1)

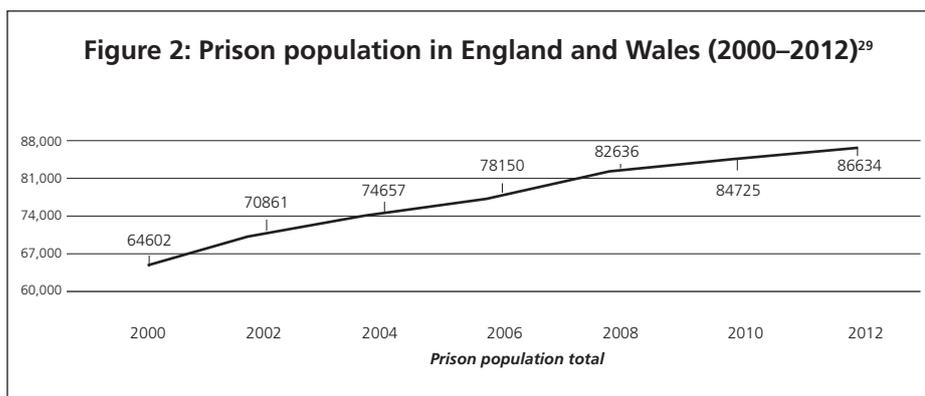
In June 2010, the justice secretary launched a scathing attack on what many newspapers called the 'Victorian bang'em up prison culture' of the past 20 years.<sup>28</sup> 'Banging up more and more people for longer is actually making some criminals worse without protecting the public' the justice secretary said in his speech at the Centre for Crime and Justice Studies in June 2010. (see Figure 2)

The Ministry of Justice as a whole receives funding of £9.5 billion per annum (as of 2010). Keeping a prisoner in custody costs £41,000 annually (or £112.32 a day). This means that the present 85,076 prisoners cost as much as £3.49 billion. According to Home Office statistics, it costs £146,000 to put someone through court and keep them in prison for a year. Putting one young offender in prison costs as much as £140,000 per year (£100,000 in direct costs and £40,000 in indirect costs once they are released).<sup>30</sup> Two thirds of the Youth Justice Board (YJB) budget, or about £300 million a year, is spent on prisons, while the money it uses for prevention is roughly one-tenth.<sup>31</sup> More worryingly, according to the

145 crimes. Out of these crimes about 1.7 are 'serious' (homicides, sexual crimes or serious violent offences). Given that a prison sentence is estimated to increase the likelihood of continuing to offend by 3.9 per cent, this translates into an average of about 5.5 [additional] crimes caused, out of which about 0.06 are serious'.<sup>32</sup> In 2010, the Justice Secretary said that prison often turns out to be 'a costly and ineffectual approach that fails to turn criminals into law-abiding citizens'.<sup>33</sup> He also indicated the new government's appetite for seeking new and more cost effective ways of reducing reoffending and serving justice.

For some reason, restorative justice seems to have many convinced that it is a cheaper option than prisons.

**Figure 2: Prison population in England and Wales (2000–2012)<sup>29</sup>**



Nevertheless, true data on the financial viability of restorative justice is extremely limited let alone in its use in prison settings.<sup>34</sup> I have argued that before trying to reach conclusions or even develop our thinking about the cost-benefit analysis of restorative justice one has to ask what 'the unit costs' and the benefits that we

26. The Howard League for Penal Reform (2015) *Latest prison population figures 2015*, available at: <http://www.howardleague.org/weekly-prison-watch/>, accessed March 2015.

27. Taken from the International Centre for Prison Studies, <http://www.prisonstudies.org>, accessed March 2015.

28. Travis, A. (30 June 2010). 'Ken Clarke to attach bank' em up prison sentencing' Guardian accessed on 7/1/2011 <http://www.guardian.co.uk/uk/2010/jun/30/clarke-prison-sentencing-justice-jail>, p. 1.

29. Ibid.

30. Knuutila, A. (2010). *Punishing costs: How locking up children is making Britain less safe*. London: New Economics Foundation.

31. Youth Justice Board (2006). *Developing Restorative Justice: An Action Plan*, London: Youth Justice Board.

32. Knuutila, A. (2010). *Punishing costs: How locking up children is making Britain less safe*. London: New Economics Foundation, p. 40.

33. Travis, A. (30 June 2010). 'Ken Clarke to attach bank' em up prison sentencing' Guardian accessed on 7/1/2011 <http://www.guardian.co.uk/uk/2010/jun/30/clarke-prison-sentencing-justice-jail>, p. 1.

34. Matrix Evidence (2009). *Economic Analysis of interventions for young offenders*, London: Burrow Cadbury Trust; and, Victim Support (2010). *Victims' Justice: What victims and witness really want from sentencing*, London: Victim Support.

should be assessing are. One of the very few studies on the matter is the 2002 report *Economic analysis of interventions for young adult offenders* prepared by Matrix Evidence.<sup>35</sup> The report proposed the following 'unit costs':

- ❑ **The cost of diversion:** *that is the cost of diverting young adult offenders away from the criminal justice system or into different paths through the criminal justice system.*
- ❑ **The cost of the alternative sentences:** *that is the cost of community orders instead of custody, or restorative justice conferencing instead of community orders.*
- ❑ **The economic impact of changes in re-offending both during and after sentence:** *that is the cost to the criminal justice system of responding to a crime, the healthcare costs of treating the victim of a crime, the victim's financial cost of a crime, and the pain and suffering experienced by the victim of a crime.*<sup>36</sup>

Looking at the 'crimino-econometrics' of restorative justice, we used the analogy of the basic economic theory whereby the price (cost) of a commodity or service affects the relationships or quantity of that commodity that people (service users) would wish to purchase at each

price. The scarce evidence suggests that the savings that flow from the contribution made by restorative justice to reducing reoffending rates are impressive; crime by former prisoners costs society more than £11 billion per year,<sup>37</sup> while restorative justice can deliver cost savings of up to £9 for every £1 spent.<sup>38</sup> According to Victim Support,<sup>39</sup> 'if restorative justice were offered to all victims of burglary, robbery and violence against the person where the offender had pleaded guilty (which would amount to around 75,000 victims), the cost savings to the criminal justice system — as a result of a reduction in reconviction rates — would amount to at least £185 million over two years'. In relation to prison related services, the 2010 Victim Support report findings are summarised in Figures 3 and 4 below.

According to Matrix Evidence,<sup>40</sup> restorative justice practices would likely lead to a net benefit of over £1 billion over ten years. The report concludes that diverting young offenders from community orders to a pre-court restorative justice conferencing scheme would produce a life time saving to society of almost £275 million (£7,050 per offender). The cost of implementing the scheme would be paid back in the first year and during the course of two parliaments (10 years) society would benefit by over £1 billion (2009).

**Figure 3: Cost saving analysis for restorative justice**

Table 1: Cost savings where restorative justice is offered to all victims of burglary, robbery and violence							
Number of offenders	Number of RJ Interventions 40% Take Up	Net cashable CJS savings over 2 years	of which Police	of which Prisons	of which Legal Aid	Net cashable NHS savings	Non-cashable net savings
75,000	29,000	£185m	£65m	£56m	£14m	£55m	£741m

Based on Victim Support / Restorative Justice Council modelling

**Figure 4: Cost saving analysis for restorative justice in prisons**

Table 2: Cost savings where restorative justice conferencing is used to divert some custodial sentences			
	Number diverted from immediate custody	FTE 1 year prison places saved	Saving to prison budget from diversion
TOTAL	6,540	11,000	£410m
Violence against the person	3,000	4,400	£166m
Burglary	2,300	3,300	£124m
Robbery	1,200	3,200	£120m

Based on Victim Support / Restorative Justice Council modelling

35. Matrix Evidence (2009). *Economic Analysis of interventions for young offenders*, London: Burrow Cadbury Trust.
36. *Ibid*, p. 3.
37. Prison Reform Working Group (2009). *Locked up potential: a strategy for reforming prisons and rehabilitating prisoners*, The Centre for Social Justice.
38. Shapland, J., Atkinson, A., Atkinson, H., Dignan, J. et al. (2008). *Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes* (Ministry of Justice Research Series 10/08). London: Ministry of Justice.
39. Victim Support (2010). *Victims' Justice: What victims and witness really want from sentencing*. London: Victim Support, p. 29.
40. Matrix Evidence (2009). *Economic Analysis of interventions for young offenders*, London: Burrow Cadbury Trust. P.3.

Although some of our interviewees used their own practices as examples to illustrate restorative justice's cost benefit for prisons, no one from the sample was able to provide hard statistical evidence. Most of their case studies revolved around time spent on processing young offenders via traditional criminal justice practices and prison as opposed to a restorative justice encounter or practice. Time as a 'unit cost' has also been recorded in the scarce available literature. For instance, according to the 2010 Association of Chief Police Officers (ACPO) survey on restorative justice, the average time taken by Hertfordshire police officers dealing with minor crimes through 'street restorative justice' was 36 minutes as opposed to 5 hours 38 minutes spent on issuing reprimands. Translating this into cost meant £15.95 for restorative justice and £149.79 for a reprimand. Similar savings were found for Cheshire police (£20.21 vs. £157.09). All in all, the scarce financial data seems to be encouraging, but the lack of scientific evidence remains.

### A word of caution

Increasing pressure is put on governments to reduce the financial cost of imprisonment and recidivism internationally. This paper is written as the UK Commons Justice Select Committee publishes its 9th Report on Prisons and Policies. There it stated that there were budget cuts of 24 per cent in prisons — equivalent to £900 million — over the lifetime of the Coalition. In other words, close to £2,000 less is being spent on individual offenders than five years ago. The Committee concluded: 'It is impossible to cut so deeply without having a damaging impact on standards and safety behind bars'.<sup>41</sup> This was only two years after the warnings of the House of Commons Justice Committee: 'We have grave concerns about the impact of efficiency savings on practice at the frontline for both prisons and probation, which will undoubtedly undermine the progress in performance of both services. Neither prisons nor probation have the capacity to keep up with the current levels of offenders entering the system. It is not sustainable to finance the

costs of running additional prison places and greater probation caseloads from efficiency savings in the long-term'.<sup>42</sup>

The belt-tightening in public spending presents restorative justice with a chance to test its cost-benefit analysis. The scarce evidence seems to be encouraging, but the lack of hard data remains. This is particularly true for restorative justice within prisons. While it appears that it is economically advantageous to society to adopt a restorative approach to crime, our research suggests that an appeal solely on this basis may undermine restorative justice in the long run. For instance, there was consensus among the interviewed practitioners that this could lead to quick fix policies, a lack of a coherent and long term strategy and high expectations.

Our fieldwork also raised concerns around the factors that drive social policy and criminal justice reform. For example, all the interviewed policy makers and the majority of interviewees made reference to the government's past commitment for a national strategy on restorative justice. The discussions were made within a climate of disappointment and suspicion. Specific reference was made to the 2003 Home Office consultation document on the government's strategy on restorative justice.<sup>43</sup> The debate and promises that were made at the time raised the restorative justice movement's expectations.<sup>44</sup> Soon after the publication of the draft strategy, and despite the plethora of evidence it collected through submissions from the public and individuals, the flurry of activity and interest in restorative justice waned. The restorative justice unit that was set up within the Home Office was dismantled and the majority of the strategy's recommendations were left in draft format.

The biggest strengths of restorative justice lie within the passion and commitment of its practitioners. Braithwaite<sup>45</sup> warned that if this passion is tampered with, there is real danger that restorative justice may lose its authenticity. The study continues to be sceptical about top down approaches that attempt to define the future of restorative in the UK as a regulated and centralised mainstream methodology.

41. <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/30902.htm> (accessed March 2015).

42. [www.parliament.uk](http://www.parliament.uk) (nd) *Cutting crime: the case for justice reinvestment*. Available at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/9404.htm>, accessed 23.5.2016.

43. Home Office (2003). *Restorative justice: the government's strategy*, London: Home Office.

44. Gavrielides, T. (2003) *Restorative Justice: Are we there yet?* Responding to the Home Office's Consultation.

45. Braithwaite, J. (2002) *Restorative Justice & Responsive Regulation*, Oxford: Oxford University Press.

# Through the Belly of the Beast?

## The Promises and Problems of Restorative Justice in Prisons

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**Since the late 1970s advocates of restorative justice (RJ) have argued that this approach to justice represents an alternative to the dominant social logics of punishment. Critical of rehabilitation and retribution in particular, proponents argue that traditional criminal justice practices exclude victims, limit the ability of offenders to take responsibility and make amends for harms, and place the needs of state policies of crime control over those of individuals and local communities. Moreover, many early RJ proponents were drawn from the prison abolition movement and other social movements, and in its early growth, RJ was frequently articulated not only as a response to victim exclusion or offender accountability, but also in terms of larger goals of transforming the criminal justice system, including the argument that RJ could function as a viable redress to the use and growth of incarceration.**

In the 1980s, there were attempts at RJ programmes that functioned to divert more serious offenders from prison, mostly in the United States (US). From the 1990s onwards, however, there have been very few RJ programmes focused on this goal.<sup>1</sup> Rather, over the course of the last quarter century, RJ advocates have increasingly abandoned if not their critique of prisons, then at least the notion that RJ can serve as a viable alternative to them. The growth of RJ practices in most English speaking countries has in fact emerged largely within youth justice and/or in dealing with less serious offences,<sup>2</sup> where incarceration is unlikely. The exception to this, however, has been the growth of RJ within prisons since the late 1990s. Since this time, an increasing number of RJ advocates and practitioners have made the argument that prisons, at least for the time being, are a *fait accompli*, concluding, as Johnstone notes, that 'if imprisoned offenders, their victims and society are to get the benefits of restorative justice, it will need to be used within prisons.'<sup>3</sup>

Yet the movement of RJ into the prison has come in ways that looks something much different than how it has generally been used otherwise. Conferencing, mediation, and other practices that include victims, offenders, and other parties in face-to-face meetings in order to seek resolution to harms are generally not used in prison RJ programmes. Moreover, while the development of RJ since the 1970s has resulted in a general, if sometimes contentious consensus regarding what RJ 'looks like' in terms of best practice of 'fully' or 'partially' restorative practices, and of identified goals, there is far less consensus regarding these questions as they relate to its use within prisons.

Conversely, as the use and development of RJ in prisons has grown, it has done so with a plethora of definitions, differing programme structures and purposes, and distinct and even contradictory aims and goals. Devoid of the victim as a central driver of restorative processes or outcomes in most cases, RJ programmes in prisons have in turn sought ways to introduce surrogate victims into vignettes that discuss victim harms, have developed victim empathy and/or self-awareness curriculums, and have reoriented community service towards restorative justice 'outcomes' for offenders and for those that such work may benefit. Beyond the ad hoc development of RJ programmes in prisons, moreover, is the more recent development of the idea that RJ can function towards the goal of institutional transformation of correctional settings and practices, an idea set forth in the concept of 'restorative prisons'.

In this article I set forth a critical assessment of the use of RJ in prisons, both in terms of the use and growth of such programmes, as well as in relation to the concept of the restorative prison. My analysis is focused primarily on Anglophone countries, for two reasons. First, while Belgian and Hungarian experiments are now being cited as examples of how RJ might work to transform prison settings, it is not clear that these

1. Wood, W. (2015) 'Why Restorative Justice Will not Reduce Incarceration.' *British Journal of Criminology*, published online first January 05, 2015. Doi 10.1093/bjc/azu108.
2. On this point see Daly, K. and H. Hayes (2001) 'Restorative Justice and Conferencing in Australia.' *Trends and Issues in Criminal Justice*, 186, Australian Institute of Criminology; Kurki, L. (2000) 'Restorative and Community Justice in the United States', *Crime and Justice: A Review of Research*, 27: 235–303; Shapland, J., Atkinson, A., Atkinson, H., Colledge, E., Dignan, J., Howes, M. and A. Sorsby (2006) 'Situating Restorative Justice Within Criminal Justice', *Theoretical Criminology*, 10: 505–32; and Strang, H., Sherman, L. W., Mayo-Wilson, E., Woods, D. and B. Ariel (2013) 'Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction, A Systematic Review', *Campbell Systematic Reviews*, 9: 1–59.
3. Johnstone, G. (2014) *Restorative Justice in Prisons: Methods, Approaches and Effectiveness*. Strasbourg: Council of Europe, p. 2.

examples are transferrable to an Australian, United Kingdom (UK), or US prison context. Second, Anglophile countries, with the exception of Canada, have seen some of the largest increases in prison populations within OECD (Organisation for Economic Co-operation and Development) countries. These are the countries that both embraced the punitive turn most markedly, and are now some decades later faced with the legacies of financially untenable correctional systems that have functioned less to reduce crime than to amplify and solidify increasing systems of social marginalization and exclusion not only for offenders, but also for victims and communities.

### Restorative Prisons?

The idea of a restorative prison is one that most proponents agree exists in concept only. Specific attributes of what such a prison might look like vary within the literature. There is agreement that such a prison would include not only the implementation of RJ programmes, but institutional transformation and even influence over the social use of punishment itself. Edgar and Newell have defined a restorative prison as ‘a whole prison commitment to incorporate restorative justice into its mission, so that the establishment chooses restorative justice as its paradigm,’<sup>4</sup> where ‘the whole function of imprisonment could be devoted to restorative aims.’<sup>5</sup> Wallace and Wylie argue that, ‘a restorative prison would be one in which prisoners are encouraged to face up to the impact of their actions; the handling of disputes and conflict within the prison community is remodelled and relationships are supported and developed between prisoners, staff, family members, friends, and communities.’<sup>6</sup> Towes argues that, ‘To be fully restorative, prison would offer more than restorative practices. It would also transform its goals, values, culture, and even architecture.’<sup>7</sup>

There are reasons to be wary of the concept of restorative prisons, however, or at least the idea that such transformation is possible. First and foremost, the

notion that prisons are amenable to such transformations is not borne out in their history, particularly within English-speaking countries. McGowen notes that by the middle of the nineteenth century, ‘While reformers and retributivists tried to shape the prison regime to suit their purposes, both the reality of the prison and the use made of imprisonment by the judicial system displayed the substantial limits of their achievements.’<sup>8</sup> But this observation could have been written at almost any point since then, with little difference save the addition of legislatures alongside with or in lieu of the judicial system.

In seeking to limit the role of the judiciary in determining punishments, Beccaria argued over two hundred years ago that punishment should remain the sole discretion of duly elected representatives.<sup>9</sup> Since this time, control over the determination and administration of punishment has constituted a remarkable field of political and social power, to the effect that such control over punishment has more often than not remained fundamentally disconnected from the effects of the practices of punishment, and in particular imprisonment. This is hardly a novel observation. Foucault noted some forty years ago that:

The idea of a restorative prison is one that most proponents agree exists in concept only.

*For the observation that prison fails to eliminate crime, one should perhaps substitute the hypothesis that prison has succeeded extremely well in producing delinquency, a specific type, a politically or economically less dangerous — and, on occasion, usable — form of illegality . . . So successful has the prison been that, after a century and a half of ‘failures’ the prison still exists producing the same results, and there is the greatest reluctance to dispense with it.*<sup>10</sup>

Control over the determination and administration of punishment, in this respect, isn’t merely the idea that the powerful criminalize the powerless. Rather, it is the recognition that the modern prison has remained, through all its iterations, a ‘failure’ for the reason that it

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4. Edgar, K., and T. Newell (2006) *Restorative justice in prisons: A guide to making it happen*. Waterside Press, p. 80.  
 5. Ibid, p. 81.  
 6. Wallace, R. and K. Wylie (2013) ‘Changing on the Inside: Restorative Justice in Prisons: A Literature Review.’ *The International Journal of Bahamian Studies*, 19(1), 57-69, p. 60.  
 7. Towes, B. (2006). *The Little book of restorative justice for people in prison: Rebuilding the web of relationships*, Intercourse, PA: Good Books, p. 75.  
 8. McGowen, R. 1999. ‘The Well-Ordered Prison,’ pp. 79-109 in *The Oxford History of the Prison* (Eds N. Morris and D.J. Rothman), Oxford: Oxford University Press. P. 105.  
 9. Beccaria, C., A. Thomas and J. Parzen. 2009. *On crimes and punishments and other writings*. Toronto: University of Toronto Press.  
 10. Foucault, M. 1977. *Discipline and Punish: the Birth of the Prison*, New York: Vintage, p. 277.

creates the very class of people it is ostensibly designed to correct. Every epoch of failure brings with it the seeds of its rebirth in a new, if often recycled, emergence of control over the use and administration of punishment.

The 'nothing works' crisis of the 1970s illustrates this point well. Following Martinson's report on the failure of correctional rehabilitative programmes,<sup>11</sup> the result was not a crisis of the 'prison', but rather of its primary social function. Indeed, while Martinson's report is often credited for this crisis, its influence was a result of already shifting political attitudes towards the use of punishment, providing evidence for what everyone 'already knew', namely that rehabilitation did not work.<sup>12</sup> As with every crisis before it, however, what never happened was any serious questioning of the need for or legitimacy of the prison itself. Rather, in the face of an institution that was by most accounts failing in its purported mission to rehabilitate offenders, the response of policymakers on the right and increasingly on the left was to reconfigure the social logic of punishment towards 'tough on crime' approaches that eschewed rehabilitative ideals in lieu of longer prison sentences, determinate sentencing schemes, more punitive prison environments, and decreased discretion on the part of the judiciary and correctional officials. Within a quarter century, prison rates in America soared. Australia, Ireland, New Zealand and the UK also saw substantial increases.

Yet the radical reconfiguration of punishment under the punitive turn since the 1980s suggests that while the prison itself may not disappear anytime soon, it is an institution that is in fact amenable to social transformation. Indeed, the shift from judicial discretion towards more direct legislative control over

the application of punishment as well as the functioning of correctional institutions suggests that prisons may be less resistant to change than often imagined. In this respect, why might the notion of a 'restorative prison' be so far-fetched? Such a question ignores, however, the most salient feature of the transformation of prisons over the last three decades, namely that the locus of such changes have not originated within prisons, but rather from changing social and political-economic factors that precipitated both their growth as well as changes to correctional administration and practices.

While advocates frequently juxtapose RJ practices against 'punitive' uses of punishment or 'retributive' justice, incarceration growth has not been merely a result of more punitive sentencing. Rather, such punitiveness has been part of a larger set of discursive practices of social marginalization and social control that have emerged in areas such as social welfare, mental health, labour, and education. The drivers of such changes have been the subject of much debate, but recent comparative research on incarceration growth suggests that Australia, New Zealand, the UK and the US share several

factors related to the growth of prison populations, including the adoption of neoliberal economic policies,<sup>13</sup> moderate to significant reductions in social welfare provisions to the poor,<sup>14</sup> and increases in wage and wealth inequalities.<sup>15</sup> Few criminologists believe that the sustained prison growth that has occurred in these countries is tied in any real sense to rising crime rates.<sup>16</sup>

In this respect, the goal of transforming correctional institutions fails to account for the fact that prisons themselves are by and large reflective of the

... however, what never happened was any serious questioning of the need for or legitimacy of the prison itself.

11. Martinson, R. 1974. What works?—Questions and answers about prison reform. *The Public Interest* 35 (Spring): 22–54
12. Cullen, F. T., and P. Gendreau (2000). Assessing correctional rehabilitation: Policy, practice, and prospects. *Criminal Justice*, 3(109-175).
13. See Cavadino, M and J. Dignan (2012) 'Penal Policy and Political Economy,' *Criminology and Criminal Justice*, 6: 435–56; Esping-Andersen, G. (1996) *Welfare States in Transition: National Adaptations in Global Economies* Sage Publications; Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford University Press; Lacey, N. (2008) *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies*, Cambridge University Press.
14. See Esping-Andersen (1996); Korpi, W. and J. Palme (2003) 'New Politics and Class Politics in the Context of Austerity and Globalization: Welfare State Regress in 18 Countries, 1975–95,' *American Political Science Review*, 97: 425–46; Garland (2001); Kingfisher, C. (2002) *Western Welfare in Decline: Globalization and Women's Poverty*, University of Pennsylvania Press.
15. See Clayton, R. and J. Pontusson (1998) 'Welfare-State Retrenchment Revisited: Entitlement Cuts, Public Sector Restructuring, and Inegalitarian Trends in Advanced Capitalist Societies', *World Politics*, 51: 67–98; Korpi, W. (2000) 'Faces of Inequality: Gender, Class, and Patterns of Inequalities in Different Types of Welfare States', *Social Politics: International Studies in Gender, State & Society*, 7: 127–91; Ortiz, I. and M. Cummins (2011) *Global Inequality: Beyond the Bottom Billion—A Rapid Review of Income Distribution in 141 Countries*. Unicef, available online at [http://www.unicef.org/socialpolicy/index\\_58230.html](http://www.unicef.org/socialpolicy/index_58230.html).; Whiteford, P., Redmond, G. and E. Adamson (2011), 'Middle Class Welfare in Australia: How Has the Distribution of Cash Benefits Changed Since the 1980s?', *Australian Journal of Labour Economics*, 14: 81.
16. See for example Smith, K. B. (2004) 'The politics of punishment: Evaluating political explanations of incarceration rates,' *Journal of Politics*, 66, 925-938; Zimring, F.E (2006) *The great American crime decline*, Oxford University Press.

social, political and economic factors that not only correlate to differing philosophies of punishment, but also determine to a great degree how prisons operate and function, how they are managed, and even how (and how often) they are built. Loic Wacquant's work explicates this point well when he argues the massive growth of incarceration in the US cannot be separated from the social and political-economic confines of the ghetto. Wacquant argues that the prison and the ghetto constitute a *carceral continuum* for African Americans 'who circulate in closed circuit between its two poles in a self-perpetuating cycle of social and legal marginality with devastating personal and social consequences.'<sup>17</sup> His analysis is focused on the US, but there exists similar socially-historical continuums as they relate specifically to the over-incarceration of Aboriginals in Australia,<sup>18</sup> for Māori in New Zealand,<sup>19</sup> for indigenous people in Canada<sup>20</sup> and the US,<sup>21</sup> and for ethnic minorities in the UK.

It is difficult to see how the notion of a 'restorative prison' can be reconciled with carceral continuums of punishment where incarceration exists less as a reflection of individual behaviors than in the social application of punishment. Australia, Canada, New Zealand, the UK and the US all have significant rates of overrepresentation of ethnic and indigenous minorities in prison. In Australia, there is recognition that RJ has not worked well for indigenous people.<sup>22</sup> In the US, hugely disproportional numbers of Blacks and Latinos have been incarcerated as a result of low level drug offences,<sup>23</sup> and the war on drugs coupled with stop and frisk

policies has resulted in (or exacerbated) the institutionalization of racism throughout the criminal justice system.<sup>24</sup> In New Zealand, there is a widely held perception from Māori police and institutional bias.<sup>25</sup> Will restorative prisons acknowledge these and other social structural drivers of incarceration? If so, how will RJ confront them within the walls of the prison? If not, then how will it encourage offenders to 'take responsibility' for being Black, Brown or poor? Or how will it seek to create a restorative

institution within a society where the state itself acts as an offender of civil rights and due process?

Some advocates of restorative prisons have acknowledged these contradictions. Towes and Harris have given attention to social-structural drivers of incarceration and the degree to which RJ must contend with the fact those in prison are not simply there for reasons of doing harms to others. They note,

*Few restorative practices address the contextual factors that give rise to crime such as poverty, education disparity and racism, or policies that unfairly construct who and what is considered criminal along racial and economic lines . . . Restorative justice*

*in prison calls practitioners to do community work to eliminate the social conditions that give rise to crime, such as poverty, inequality, racism, and violence.*<sup>26</sup>

Yet such acknowledgements only complicate the argument that RJ can serve to redress the social and

It is difficult to see how the notion of a 'restorative prison' can be reconciled with carceral continuums of punishment where incarceration exists less as a reflection of individual behaviors than in the social application of punishment.

17. Wacquant, L. (2000) 'The New Peculiar Institution': On the Prison as Surrogate Ghetto' *Theoretical Criminology*, 4(3), 377-389. P. 384.
18. See Cunneen, C. (2009) 'Indigenous Incarceration: The Violence of Colonial Law and Justice'. In Scraton, P. and McCulloch, J. (eds) *The Violence of Incarceration*, Routledge Taylor and Francis Group, London.
19. See Jackson, M (1988) *Māori and the Criminal Justice System: He Whaipaanga Hou: A New Perspective*. Department of Justice, Wellington.
20. For Canada see Laprairie, C. (1997). *Reconstructing theory: Explaining aboriginal over representation in the criminal justice system in Canada*, *Australian and New Zealand Journal of Criminology* 30(1), 39-54.
21. For the United States, see Strickland, R. (1986). 'Genocide-at-Law: An Historic and Contemporary View of the Native American Experience,' *University of Kansas Law Review*, 34(4), 713-756.
22. Braithwaite, J. (2002) *Restorative justice and responsive regulation*. Oxford; Oxford University Press.
23. Fellner, J. and Walsh, S. (2000), *Punishment and Prejudice: Racial Disparities in the War on Drugs*. Human Rights Watch.
24. Nunn, K. B. (2002). 'Race, crime and the pool of surplus criminality: or why the war on drugs was a war on Blacks,' *Journal of Gender Race & Justice*, 6, 381-445.
25. Maxwell, G. and C. Smith (1998) *Police perceptions of Māori*. Wellington: *Institute of Criminology*, Victoria University of Wellington.
26. Towes, B. and M.K. Harris. 2010. 'Restorative Justice in Prisons,' In Beck, E., Kropf, N. P., & Leonard, P. B. (Eds.) *Social work and restorative justice: Skills for dialogue, peacemaking, and reconciliation*. Oxford University Press.

institutional practices and contradictions that shape the use of punishment. If the success of restorative prisons depends, even in part, on the confronting and addressing of social-structural conditions that engender crime and social marginalization, then RJ is faced with the task of addressing not only harm as it relates to individual experiences, but social harm on a grand scale. In this respect, such an argument is not much different than those made by some RJ advocates in the 1970s and 1980s, namely that RJ practices *could* lead to larger social transformations in relation to criminal justice policy and practices, albeit more as an alternative to formal criminal justice practices (including prison) than as part of them. But this has not happened.

It is perhaps not difficult to think of a restorative prison, where the right types of offenders can participate in programmes that, while generally exclusive of victims, are nevertheless oriented towards goals of victim empathy, reflection of harms caused to others, and community redress and restitution. There are already examples of restorative units in American, Canadian and UK prisons, as evidenced elsewhere in this volume. Yet, if the goal is merely one of seeking a smaller number of such institutions or units within prison systems that are otherwise faced with overcrowding, violence, abysmal health care and mental health care, wanton punitiveness, and populations who are largely socially marginalized, then RJ will likely be co-opted and tamed within correctional settings as much as it has been outside of them. On the other hand, if the goal is larger institutional transformation, RJ must contend with the fact that prisons in the early 21st century are very much a product of the contemporary societies that are creating larger classes of throw-away people — not only offenders, but victims as well, and a nexus of crime and victimization bound up in the growth of superfluous people and expendable communities.

The use of RJ in prison generally includes victim awareness and empathy programmes, re-entry and reintegration programmes, and community service or work programmes.

The use of RJ in prison generally includes victim awareness and empathy programmes, re-entry and reintegration programmes, and community service or work programmes. Relatively few RJ prison programmes in English speaking countries involve direct participation of victims in conferencing or other forms of participation.<sup>27</sup> The exclusion of victims from RJ prison programmes poses several problems. Notably, one of the primary ways that RJ has legitimized itself against other criminal justice approaches has been on the basis of its 'victim-centred' approach. Predicated on the notion that crime can be better conceptualized as 'harms' caused by one party to another than as a violation of criminal law, RJ has given significant emphasis on the inclusion of victims in terms of their 'ownership' of the harms caused to them, and in terms of how the restoration of such harms may better meet the needs of not only victims but also offenders towards the goal of reintegration.

The exclusion of victims in most prison RJ programme begets a fundamental question — or one that should be fundamental to a 'victim driven' approach to justice. If most RJ prison programmes exclude the possibility of victim involvement, not only in the opportunity to meet face to face, but in terms of having any input into the resolution of harms caused to them, then what becomes the primary basis on which the notion of 'restorativeness' is predicated? And what in fact is being restored?

A second problem extends from the first. Without the possibility of victim involvement, and within a system that relies on 'traditional' sanctions and formal processes of adjudication, it is difficult to see how measures of success are or will not be linked implicitly or explicitly to crime control and reduction strategies. This is a problem that has been acknowledged by RJ advocates, particularly in relation to seeking support or funding for such programmes in prison.<sup>28</sup> In this respect, it is not clear

27. For lack of victim involvement in RJ prison programmes see Dhami, M. K., Mantle, G., and D. Fox (2009), 'Restorative justice in prisons' *Contemporary Justice Review*, 12(4), 433-448; Wilcox, A. and C. Hoyle (2004) *Restorative justice projects: the National Evaluation of the Youth Justice Board's RJ Projects*, Oxford; Oxford University Press.

28. See for example Gavrielides, T. (2014) 'Reconciling the Notions of Restorative Justice and Imprisonment,' *The Prison Journal*. Published online before print, doi:10.1177/0032885514548010.; ARCS (No Date) *Restorative practice in prisons: assessing the work of the Inside Out Trust*. Available online: <http://www.margaretcareyfoundation.org.uk/wp-content/uploads/2011/11/ARCS-research-report.pdf>

the degree to which prison RJ programmes will not (or have not) become increasingly oriented towards benchmarks of offender compliance and recidivism. Dhami et al. note, for example, that RJ should be 'used to improve prisoners' experiences of imprisonment which may result in an increase in prisons' utility in terms of their efforts to reduce crime via these alternative strategies.'<sup>29</sup> Yet such a position appears geared predominately towards the use of RJ for crime reduction strategies where correctionalism, and not the restoration of harms, becomes the primary goal.

Research from practitioners and advocates of RJ in prison suggests that while they are concerned about the reduction of success to such benchmarks, they also believe that RJ affords important, if less immediately measurable benefits.<sup>30</sup> Even conceding that such benefits may exist, in abnegating its more critical challenge of incarceration in lieu of approaches that work towards more 'traditional' correctional goals and benchmarks, there is a significant risk in relying (to borrow from Audre Lorde), on the master's tools to dismantle the master's house.<sup>31</sup>

Many proponents of RJ prison programmes are not naive to such problems. On the contrary, as Presser has argued, 'Given the logics of prison — harm-seeking, exclusionary, individualistic, state-dominant, irrelevant to victims, passivizing to victims — restorative justice is, in fact, most compatible with its abolition.'<sup>32</sup> Yet Presser also argues that 'Until they are abolished, it behoves us to make prisons more restorative — for the sake of prisoners, their victims, their families, and their jailers.'<sup>33</sup> Conceding that 'full restorative justice is likely beyond reach in the prison context,'<sup>34</sup> Presser nevertheless draws from the work of another RJ prison advocate, Cheryl Swanson, in arguing that 'prison objectives include key restorative justice

values — namely safety, respect, purposeful activity, and successful re-entry.'<sup>35</sup> These values and goals are regularly repeated throughout RJ prison literature as 'restorative values', or goals of the use of RJ in prison. But no correctional administrator today would disagree with these goals, and no proponents of other justice paradigms, even retribution, would argue that prisons should be unsafe, disrespectful, idle places, or criminogenic.

The problem is not that these are bad goals. The problem is rather that the concepts of 'safety' or 'respect' are hardly unique to RJ. Indeed, they reflect at worst the correctional doublespeak of what the German philosopher Uwe Poerksen has called 'plastic words' — words that are frequently used by policymakers and technocrats as to mean anything.<sup>36</sup> In such a modular language, words like 'safety' are so slippery that they can encompass virtually all correctional practices, including solitary confinement in supermax prisons. Clearly, RJ advocates do not support such practices, but the adoption of dominant correctional goals as RJ raises the critical question of how far RJ has come from its theoretical foundations, as well as its grounding in practices of direct stakeholder participation, in order to accommodate the social logic of the prison in the early 21st century?

This shift towards the adoption of more normative correctional goals has occurred in other ways as well. Hurley, for example, notes that the movement into the use of RJ in prison settings represents an emerging view within RJ that 'embraces the concept of offender-oriented restorative justice,'<sup>37</sup> a view that 'reflects the needs of offenders and victims along with emphasizing the fact that the offender must make amends, change, and engage in rehabilitative efforts.'<sup>38</sup> Yet the concept of

... Presser also argues that 'Until they are abolished, it behoves us to make prisons more restorative — for the sake of prisoners, their victims, their families, and their jailers.'

29. Dhami, M. K., Mantle, G., and D. Fox (2009), 'Restorative justice in prisons' *Contemporary Justice Review*, 12(4), 433-448: p. 434.

30. Gavrielides, T. (2014) 'Reconciling the Notions of Restorative Justice and Imprisonment,' *The Prison Journal*. Published online before print, doi:10.1177/0032885514548010.

31. Lorde, A. (1984). 'The master's tools will never dismantle the master's house,'. In A. Lorde (Ed.), *Sister Outsider* (pp. 110-113). Trumansburg, NY: The Crossing Press.

32. Presser, L. (2014) 'The Restorative Prison,' in F.T. Cullen, C.L. Jonson, and M, K. Stohr (Eds) *The American Prison: Imagining a Different Future*, Thousand Oaks, CA: Sage. P 21.

33. Ibid. 21.

34. Ibid. 21.

35. Ibid 21. Also see Swanson, C. (2009). *Restorative justice in a prison community: or everything I didn't learn in kindergarten I learned in prison*, Lanham, MD: Lexington Books.

36. Poerksen, U. (2010) *Plastic words: The tyranny of a modular language*. University Park, PA: Pennsylvania State University Press.

37. Hurley, M. H. (2009) 'Restorative practices in institutional settings and at release: Victim wrap around programmes,' *Federal Probation*, 73: 16-22: p. 17.

38. Ibid, p. 17.

an 'offender-oriented' RJ, without the inclusion of a victim as a *subject*, and not merely an object of offender change or rehabilitation, brings such a view of RJ almost totally in opposition to much of RJ's critiques of and opposition to 'offender driven' uses of punishment towards the interests of the state.

How then are prison RJ programmes not emblematic of 'offender driven' criminal justice systems focused primarily on law violation and state interests of crime control and reduction? Without victim involvement, one way that many RJ prison programmes have sought to address the concept of making amends is through the use of community service programmes. Many RJ programmes in prison involve community service as a central or even defining feature of the restorativeness of such work. This is not surprising, as focus on community has been a central feature of RJ practice and theory for over thirty years, including attention to how crimes harm communities, and how offenders can thus make amends for such harms.<sup>39</sup>

Yet there is nothing inherently restorative about community service. On the contrary, much like prisons, community service has been repeatedly moulded to successive and even contradictory justice paradigms. In its most punitive form, such service is often conducted using tactics that are specifically intended to shame or humiliate the offender and fundamentally *separate* them from the community. On the other hand, there are more well-researched uses of community service that have sought to delimit these tactics, to include victim input into service work, and to seek when possible the use of such service as a means of inclusion into the community.<sup>40</sup>

However, there is markedly little research on the restorative uses of community service in prisons. We know little about the conditions under which such service is performed, whether it in fact serves to restore harms to offender's communities, or if it is in fact reintegrative. Research that does exist on the restorative use of such service work is problematic. One of the more

notable RJ prison programmes in the UK, the Inside Out Trust programme, has been widely cited as an example of the effective use of RJ in a prison setting. According to an evaluation of this programme, the Trust 'developed prison projects based on restorative justice principles'<sup>41</sup> in several UK prisons between 1994 and 2007, including 'activities as repairing bicycles, refurbishing wheelchairs, upgrading computers and producing Braille and large print books for charities, both in the UK and in poorer countries.'<sup>42</sup> However, the evaluation also makes it clear that very little of this work was conducted outside of prison workshops. Thus, while it was called community service, this was work performed behind bars. Communities served by such work were frequently far removed from the offenders' own communities. The programme also afforded no possibility of offenders meeting with victims or even surrogate victims, no curriculum oriented towards self-reflection of harms caused to others, and no other restoratively oriented programmes.

In effect, such a programme is labelled 'restorative' for the reason that it provided a sense of meaningful work for offenders, and had social benefits for others. Clearly these are important goals. But neither of these is unique to RJ in any sense. On the contrary, prison work has been used for decades (with varying success) towards reintegrative goals, and has not infrequently also been used towards more altruistic ends. There is little about such work that cannot be readily subsumed into most social logics of punishment. Nor is there anything peculiar about the notion that incarcerated people, faced with the pains of imprisonment, might find meaning in such work. The reduction of RJ, in this sense, to practices that would be readily identifiable and amenable to prison administrators and reformers fifty, one hundred, or even two hundred years ago should at the very least give pause to the question of whether RJ is in fact transforming prisons, or rather if it is being fundamentally transformed by them.

39. See Walgrave, L. (1999) 'Community service as a cornerstone of a systemic restorative response to (juvenile) crime,' *Restorative juvenile justice: Repairing the harm of youth crime*, 129-54; Bazemore, G., & Maloney, D. (1994). Rehabilitating community service toward restorative service sanctions in a balanced justice system. *Fed. Probation*, 58, 24.

40. See Bazemore, G., & Maloney, D. (1994). Rehabilitating community service toward restorative service sanctions in a balanced justice system. *Fed. Probation*, 58, 24; Wood, W. R. (2012). Correcting community service: From work crews to community work in a juvenile court. *Justice Quarterly*, 29(5), 684-711.

41. ARCS (No Date) *Restorative practice in prisons: assessing the work of the Inside Out Trust*. P. i. Available online: <http://www.margaretcareyfoundation.org.uk/wp-content/uploads/2011/11/ARCS-research-report.pdf>

42. Ibid. p. i

# Drugs Courts in New Zealand: the use of Restorative Justice

## Interview with Judge Lisa Tremewan, Auckland District Court Judge

*Steve Hall is a former Prison Governor now living and working in New Zealand.  
The interview took place in April 2015.*

**The New Zealand Drug and Alcohol Court Initiative known as *Te Whare Whakapiki Wairua* (translated as ‘the House that lifts the spirit’) began its five year pilot in November 2012 at two of the Auckland District Courts (Auckland central and Waitakere) with a view to managing 100 offenders through the process each year at a cost of \$2 million per year for the five years of the pilot initiative. The project embodied much of the international learning around drug and alcohol courts as well as a Restorative Approach to Defendants and Victims involved. The style of the programme was therefore Participatory rather than Retributive, and participants were expected to actively engage in treatment as well as community service and other measures to address the route causes of their addiction and offending. Key themes were therefore Domestic Violence and Drink driving. In December 2014 New Zealand introduced Section 24 A of the Sentencing Act 2002 and in doing so took the bold step of requiring all sentencing judges to investigate Restorative Options prior to sentencing.**

Judge Lisa Tremewan was appointed to the District Court at Waitakere in 2005 and sits in the general, youth and jury trial jurisdictions. With a strong interest in restorative justice and therapeutic interventions, Judge Tremewan and her colleague Judge Emma Aitken, have overseen the introduction of the Alcohol and Other Drug Treatment (*Te Whare Whakapiki Wairua*) Court at the Waitakere and Auckland District Courts.

### **SH: What is the Alcohol and Other Drug Treatment (AODT) Court pilot?**

**LT:** The AODT Court pilot arose out of an initiative that involved a review of the 3000 or so Drug Courts that exist in the USA, and applying the best of what was found to shape the AODT pilot in New Zealand. Based in Auckland, New Zealand’s largest city, the pilot programme focuses on treating the alcohol and other drug (AOD) dependency that has contributed to someone’s offending. It aims to positively impact on their health and wellbeing and help prevent them from

committing further crime. If someone is selected for the Court and agrees to take part, their case will be put on hold before sentencing to allow them to undergo intensive treatment for their addiction. If the treatment is successful, it will be taken into account by the judge when they are eventually sentenced. This is not an easy option — successfully treating an addiction will take significant commitment from the offender. Because it is a pilot, the AODT Court data about those in the programme will be included in the evaluation to assess whether the court will be continued.

### **SH: Has the reality of the programme matched the early vision of the pilot project?**

**LT:** The court had five clear aims which were mandated by Parliament: There was a clear expectation that the participants would be on the programme for approximately 12 months during which time they would be actively engaged in treatment and be required to report back to the court on progress. Each court therefore manages around 50 people at any one time; we currently have 47 people in the programme with a further four coming on stream. This has been fairly consistent over the last couple of years. In practice participants have remained on the programme for around 16 months, sometime because they are waiting for treatment, sometimes because they are remanded in custody and we are awaiting assessments to be completed. We deliberately targeted offenders with high risk and high need as we wanted to see the greatest impact on some of the most serious offenders who had been in the system a long time. So we have seen most cases in the ‘moderate to severe’ category in terms of their AOD dependency.

### **SH: Is there a philosophical approach to the treatment process?**

**LT:** The Programme is based on ‘abstinence’ rather than ‘harm reduction’, although there is a degree of tolerance around other forms of offending behaviour, reflective of the fact that we see people who are essentially addicted to ‘offending behaviour’ as much as the drugs and alcohol. Wherever possible we will try and involve victims and families, as they also play a big part in the process. There are five key roles: Judge,

Court Coordinator, Police Prosecutor, Defence Counsel, Case Manager (Treatment), and a culturally specific role known as the Pou Oranga (translated as Healing post). This latter role allows the court to focus on culturally specific practice but also brings a restorative element to the approach since Māori custom requires some sort of reparation and healing on the part of the perpetrator and victim of the crime. The Pou Oranga (Māori adviser) was a new role established in October 2013. The Pou Oranga gives advice on how to engage with Māori participants and works alongside the team and participants to ensure that kaupapa (cultural beliefs) Māori aspects are included in the court process and treatment plan. The role is intended to make the court more appropriate and meaningful for Māori participants. The person in the role has had a similar role in the treatment and recovery process and is well engaged in the community. He supports both the judges and respective AODT teams, giving guidance on appropriate responses to Māori. He brings knowledge of Te Reo and tikanga Māori, and opens and closes court sessions with karakia. He also works with Māori participants. Research suggests that people respond positively when judges talk to them. Interactions of more than three minutes have a real impact. It's simple psychology. If you acknowledge someone's progress, they obtain a better sense of self-worth. If you say you're disappointed in them, that's hugely crushing. In the AODTC, this translates into a real ongoing commitment to abstinence as well as getting the right support to ensure that.

**SH: Given the court was based on learnings from International experience are there any differences or distinctive features of the AODT Court in New Zealand ?**

**LT:** Distinctive features of the New Zealand AODT Court are:

- ❑ the inclusion of Māori cultural practices and support to meet the needs of Māori participants;
- ❑ the ability of the AODT Court to require participants to attend 12-step meetings (mainly Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings);
- ❑ the inclusion of case managers from the health sector and peer support workers;
- ❑ the AODT Court is a pre-sentence rather than a post-sentence initiative; and,

- ❑ the court includes participants charged with driving while intoxicated.

**SH: What about the participants? What is their reason to want to participate and stay in the programme?**

**LT:** 'Not wanting to disappoint Judge Wendy' is amongst the most popular of responses. Furthermore, the process is non-adversarial and the focus is on changing aspects of the lifestyles of the people who come through the Courts to ultimately change them. Another dimension is about getting lawyers to redefine what we mean by success. These 'addict' labeled offenders want what we take for granted — a normal life. Success then becomes successfully turning their life around.

**SH: And victims? What is their part in the process?**

**LT:** There is no formal requirement for victims to participate, and in many cases it is impractical for them to do so (a large Department store that has been subject to regular shop lifting to fund a drug users habit for example will not want to give up their time to attend court). However in every case the court will attempt to communicate with any victims that have been identified and offer the opportunity to participate. One of the measures of success long-term will be the extent to which

we build public confidence in the process. Most victims are pretty clear about what they want: 'to see the offender drug and alcohol free'. Because the programme typically takes 18 months to two years to complete most victims will inevitably have moved on at this point and are not likely to participate formally. Having said this we have had a number of conferences which have involved 'letters of apology' and in some cases offenders will attend meetings at a Marae (cultural meeting house) where the offender will be expected to reference their understanding of victim impact and look for a way of providing some form of restitution — usually by volunteering or giving back to the community in some way. Police prosecutors are now taking time to follow up with past victims to feedback participant success and any details of things like voluntary and other work completed.

**SH: What is the most important aspect of this restorative work?**

**LT:** It will vary depending on the circumstances. Almost all participants will complete around 200 hours of community work that they have chosen (we

If you acknowledge  
someone's progress,  
they obtain a better  
sense of self-worth.  
If you say you're  
disappointed in  
them, that's hugely  
crushing.

try to avoid making this a punitive response); they are expected to be in work, looking for work or studying as an outward demonstration of turning their lives around. Writing a 'letter of account' to explain to victims that the offender fully understands and accepts responsibility for their behaviour can equally be important.

**SH: Given the fact that RJ has now become a 'mandatory' process for judges how is this impacting on the criminal justice system generally?**

**LT:** As with any approach of this type which steps outside the more familiar judicial process there is a lot of variation in application. Many of my colleagues believed that RJ would just not be relevant in some areas. An example of this is family violence; whereas the reality is that victims are engaging in and welcome the process. Many victims are pragmatic about what happens to perpetrators and that they also need to move on with their lives. One issue will of course be access to Third Sector Organisations which have the capacity and capability of delivering RJ services — we are to some extent a victim of our own success in this area. There is huge support for the approach right across government, not just from the Ministry of Justice, equally in Health which is a key player in this space if perpetrators are to access and receive treatment.

**SH: How do you think the process can improve?**

**LT:** In many ways we are still breaking new ground. In the early years it has been very much about collaboration across departments and in areas that are traditionally not based on cooperation. For example Prosecutors and Defence Lawyers have to work together. Families are also part of this process, in the past they may have seen themselves as victims of the system, whereas now their role is to support the offender and encourage them to seek and continue in treatment.

**SH: What is your perception of the reaction of participants and how effective the process has been?**

**LT:** The Interim evaluation<sup>1</sup> of the pilot perhaps provides the best evidence for this:

#### **Participant Experiences of AODT**

*At first, it's really daunting because it's so different, the judge is there and she addresses you as a person and [the] same as the court, you've got the lawyers and counsellors and support people sitting there but then everyone claps for you and it's supportive, and it's just different — it's humbling. (AODT Court participant 10)*

*I think it's good. Every time we go there we sit at the back of the court and everyone's there so we hear everyone else's story and there's some sort of strength there and support and it's really good. Even if it's not about you, it's about someone else you still connect [with] and you pick up everything from that person and it's quite different; it's good. It makes it easier, because when you go back after court you've got that energy to carry on, and everything is sort of explained. Like when you're in rehab, you have your ups and downs and everything, but when you're [in] court you have a breather and hear other people's stories, and everything sort of fits in and then when you go back you're refreshed and you can carry on. Being around the same people that are like me. (AODT Court participant 13)*

*It's good. This one here is a lot better than normal District Court. In District Court you get in the box or whatever but this one here they welcome you and they acknowledge you — your clean time or the good things that are going on. If I'm slacking in places, they sort of explain that I need to ... but not in a harsh way. They encourage well, and they're not hard — they're not soft either, but yeah. You feel like you want to be here but with other courts you don't want to go. (AODT Court participant 7).*

1. Litmus (2014) Formative Evaluation for the Alcohol and Other Drug Treatment pilot. Available at: <http://www.justice.govt.nz/courts/district-court/documents/alcohol-and-other-drug-treatment-court-formative-evaluation>, accessed 23.5.2016.

# Reviews

Book Review

## ***Mercy: A Restorative Philosophy***

By David Cornwell,  
Publisher: Waterside Press,  
Hampshire, UK, 2014, 136pp,  
ISBN 978-1-909976-0106  
Paperback £12.95

David Cornwell locates the central concerns of this book carefully within current debates on crime and punishment. His explanation of the transition from a restitutive to a retributive understanding of crime, with the state rather than the victim at the centre, covers well-explored ground in a crisp, clear way which will be helpful to newcomers. His long experience at the intersection of practice and theory gives a realistic tone to his account, for example, of the systematically ambivalent attitude to restorative justice of almost all those whose hands are near to the levers of power in the UK system.

Coming to the main focus of his argument, Cornwell opens up the contested relationships of meaning between justice, equity, mitigation and mercy. He is emphatic that the latter two are quite distinct from one another. He studies the debate which followed the early release on compassionate grounds of Abdulbaset Al-Megrahi, convicted of murder in connection with the Lockerbie aircraft bomb in 1988. One distinguished philosopher held that strict justice forbade the exercise of mercy in that way; another, that mercy is an executive power, often vested historically in the monarch, which lies outside and in some way beyond the calculation of strict justice. Cornwell is clear that if the category of mercy finds its way

into the actual administration of justice, confusions will follow.

He returns to familiar ground in mapping the punitive turn in UK politics from the 1990s. He does not like an accelerating retributivism, and he especially dislikes 'general deterrence', that is punishing people 'pour encourager les autres'. However, when he comes to his central discussion of mercy, the argument gains power from his reading of moral philosophers who have discussed the nature of mercy. Which better reinforces the 'moral credibility' of the administration of justice — strict desert or the exercise of mercy? He traces arguments back to a seminal paper by Alwynne Smart in 1968, from which a continuing debate on the place of mercy has flowed.

He begins to make his serious play for a new approach in a chapter 'Institutionalising mercy'. The phrase is from Paul Robinson, whom Cornwell follows to some extent. However, on pp 58-9 he makes his decisive move. He says that as retributive justice is based on desert — which he acknowledges to be a problematic concept — so may mercy be, in a restorative process where the victim wishes to 'show mercy', and the perpetrator shows some remorse. He brings into the foreground a notion of 'desert of mercy', while retaining the position that mercy 'is for victims of crime to extend as both forbearance and forgiveness when (or if) they feel gracious enough to do so' (p 59). Later he asserts conversely that 'the state ... has no responsibility or capacity to extend mercy' (p.100).

There is some crunching of gears as Cornwell moves into a chapter setting out his two-track

model for criminal justice (adumbrated in an earlier book). One track, dependent on the offender accepting responsibility and showing remorse, would follow a restorative approach; the other, for the rest, a 'traditional' model. The upshot would be more community-based programmes, paid for by a big drop in prison numbers. In the course of defending this position, Cornwell makes clear his view that punishing remorseful and remorseless people alike for the same offence 'would be an injustice done to the remorseful. (p. 67). The remainder of this chapter is a continuing spirited defence of the effectiveness of community and restorative interventions, done right.

A chapter on victims raises some awkward issues. It begins to seem that we should take victims seriously if they want a restorative process, but not if they want exemplary punishment. A risk of paternalism seems close to the surface here — Cornwell definitely does not wish victims to address the court lest they be vindictive and cloud a jury's judgment. He points out that victims' rights are still not enshrined in law in England and Wales, but his enthusiasm for such rights sits oddly with his very partial valuing of them.

As a theoretical account of restorative justice (the subtitle is 'a restorative philosophy'), the book describes the background without achieving a convincing integration of the core concepts. As an account of the place of mercy in criminal justice, it opens up a useful new area of discussion. The concept of mercy is, incidentally, prominent in current theological discussion, and a Roman Catholic

Cardinal has recently published a major book called, like this one, 'Mercy'. The idea that 'mercy' typically describes a situation where a forgiving victim and a remorseful offender come together seems to this reviewer a little narrow.

The book will be a useful introduction to its general topic, and will set more informed readers thinking along new lines. If it does not solve as many knotty problems as it sometimes claims, well, it is far from being the only book of which that may be said.

#### Book Review

### ***The Role of Community in Restorative Justice***

by Fernanda Fonseca Rosenblatt.

Publisher: Routledge (2015)

ISBN: 978-1138858954

Price: £85

Another title from the Routledge 'Frontiers of Criminal Justice' series, *The Role of Community in Restorative Justice* is the culmination of a PhD thesis completed by Fernanda Fonseca Rosenblatt at the University of Oxford. Although the title (and the book's minimalist cover) suggests a stark, sterile and somewhat bland regurgitation of what is already known about restorative justice and where it fits in modern day criminal justice circles; what lies beneath is a breath of fresh air. It is thorough, well considered and has a flow which takes the reader through a journey that neatly introduces her research aims, objectives, methods, analysis, discussions and conclusions. Her style of writing allows the reader to truly understand the flow

of the book and makes for pleasant reading.

The overall content of the book is a reflection of Rosenblatt's qualitative study into the role that people from the community play in youth justice panels. These panels are an area of restorative justice in England and Wales. Comprising a total of 127 semi structured interviews with Youth Offending Team (YOT) workers, community panel members and young offenders themselves, Rosenblatt has demonstrated a sound methodology for the conducting of this case study. She has three primary aims to her work, which have been designed to establish:

1) why . . . the community is involved in the youth offender panel process;

2) to examine how . . . the community is involved in the youth offending panel process; and,

3) to investigate the overall role of the community in the referral order process (emphasis in original, p 78).

These aims are more than adequately achieved throughout the eight chapters and her conclusions will be discussed below. She guides the reader through the history of restorative justice, placing her research within the gaps in the literature so that we are under no illusion that this is an important and timely piece of work. As with many qualitative studies she brings to life the many people with whom she met and who so kindly gave up their time to talk to her in the first place. For example her participants like to explain what they think of the panels:

Random People. They don't know me. They only sit there once or twice (p. 136).

Just people from the street? (p.136).

Although the use of the 'voice' of the participants is nothing new in the world of qualitative research, Rosenblatt neatly fits their narratives together; helping her to show how well informed her conclusions are.

Therefore, if restorative justice's goal is to give power to the people who are most affected by the criminal act especially when they are deciding what to do with a particular offence and offender, then Rosenblatt has shown how the theatrical nature of youth offender panels does not fully include community members and does not allow them to be entirely utilised; especially not in the original way it was intended. She argues how she has demonstrated that community members do not have sufficient creativity when it comes to dealing with offenders and contradicts previous research,<sup>1</sup> alongside Ministry of Justice guidance on how restorative justice should be delivered in the community. Community members rarely bring 'local knowledge' to the panels and when they do, this knowledge is not as good or as detailed as the YOT workers themselves. Some community members choose to sit on panels of neighbouring areas (to reduce the chances that they know the offenders) which in turn does not provide the panel with adequate local knowledge. Rosenblatt therefore believes that youth justice panels should rely more on the professionals involved and not expect so much from the lay people, as their input and knowledge is often minimal and does not 'help to strengthen social ties' (p. 210). Indeed in Rosenblatt's own words the study 'advances our empirical and theoretical understanding of community in restorative justice's talk and practices, but it does so mainly by

1. See Newburn, T., Crawford, A., Earle, R., Goldie, S., Hale, C., Hallam, A., Masters, G., Netten, A., Saunders, R., Sharpe, K. and Uglow, S. (2002). *The Introduction of Referral Orders into the Youth Justice System: Final Report*, Home Office Research Study 242, London: Home Office.

suggesting what 'community involvement' *does not* mean and what work it *does not do*' (emphasis in original, p. 207). The very nature of the sound methodology and the use of the 'voice' of those people involved, means the reader is left with little choice but to consider her findings respectfully.

All in all, from a practical sense, Rosenblatt has started to untangle the quagmire that is restorative justice, especially in relation to youth justice panels. She has provided evidence that the UK position of these panels is outdated and under researched; practitioners should therefore take note and use this book to their advantage, as it

offers useful insights and would help to inspire change in a positive and modern fashion.

**Darren Woodward** is a criminology lecturer at the University Centre Grimsby. He is an ex-prison officer and a current PhD Student at the University of Hull.



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The editor is responsible for the style and content of each edition, and for managing production and the Journal's budget. The editor is supported by an editorial board — a body of volunteers all of whom have worked for the Prison Service in various capacities. The editorial board considers all articles submitted and decides the outline and composition of each edition, although the editor retains an over-riding discretion in deciding which articles are published and their precise length and language.

**From May 2011 each edition is available electronically from the website of the Centre for Crime and Justice Studies. This is available at <http://www.crimeandjustice.org.uk/psj.html>**

## Circulation of editions and submission of articles

Six editions of the Journal, printed at HMP Leyhill, are published each year with a circulation of approximately 6,500 per edition. The editor welcomes articles which should be up to c.4,000 words and submitted by email to [jamie.bennett@hmps.gsi.gov.uk](mailto:jamie.bennett@hmps.gsi.gov.uk) or as hard copy and on disk to *Prison Service Journal*, c/o Print Shop Manager, HMP Leyhill, Wotton-under-Edge, Gloucestershire, GL12 8HL. All other correspondence may also be sent to the Editor at this address or to [jamie.bennett@hmps.gsi.gov.uk](mailto:jamie.bennett@hmps.gsi.gov.uk).

Footnotes are preferred to endnotes, which must be kept to a minimum. All articles are subject to peer review and may be altered in accordance with house style. No payments are made for articles.

## Subscriptions

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