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Restorative Justice in Prisons

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In recent years there has been a significant development of restorative justice in prisons.¹ 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.²

The precise meaning of 'restorative justice' is a matter of some debate.³ 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'.⁴ 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.⁵ 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.⁶

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).⁷ 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.⁸ 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 – 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.⁹

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

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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.¹⁰ Such schemes emerged in Canada, Switzerland and the USA in the 1980s and early 1990s.¹¹ There are currently highly developed schemes in Hungary¹² and Belgium.¹³

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.¹⁴ Second, agencies working within prison services, often with experience of mediation and conference from previous work, start a prison-based scheme.¹⁵

The basic objective of such schemes is to achieve some degree of reconciliation between the imprisoned offender and their actual victims.¹⁶ 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

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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).¹⁷ 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 – 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 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’.¹⁸ 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.¹⁹ 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.²⁰ 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.²¹ 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'.²²

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.²³

Why the prison?: Whilst the practice of imprisonment goes back to ancient and medieval times²⁴ 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.²⁵ 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,²⁶ it has the potential to provide a new 'working ideology' for the prison.²⁷

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.²⁸ 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.²⁹ Perhaps one of the most important potentialities of restorative justice in prisons is, however, its capacity for prompting a 're-imagining of imprisonment'.³⁰ 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.³¹

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.

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.