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# Restorative Segregation

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***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, Kimmet (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.'<sup>7</sup>

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

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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

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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, 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>

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### 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.

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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.