

‘GIVING BACK’ BY ‘PAYING BACK’: RECASTING COMMUNITY PAYBACK AS ‘MUTUAL RESTITUTION’ THROUGH FINANCIAL PAYBACK - MAKING A RESTORATIVE CRIMINAL JUSTICE SYSTEM A REALITY THROUGH CO-OPERATIVES AND VALUES-BASED PURPOSEFUL COMPANIES?

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Abstract

‘Giving back’ is both a central tenet of restorative justice and a key element in desistance. In this historical review and think piece I argue that giving back financially – financial payback - is not only the oldest form of restorative justice but also a way of making a desistance-enabling restorative criminal justice system a reality today. But neither restorative justice nor desistance can ever be achieved if the offender is unable to make the financial payback required. I argue that widening the scope of existing Community Payback arrangements to include unpaid work with co-operatives and values-based ‘purposeful’ employers would provide both a means of making financial payback, as well as a progression route into desistance-supporting paid employment. The monetary value of the offender’s unpaid work would be paid by the host employer as a charitable donation to victims’ or other appropriate charities to fulfil the community benefit required by Community Payback. On successful completion of the unpaid work, progression into paid work would then be made available to the offender. In this way the offender’s unpaid work effectively acts as a work trial as well as a Community Payback placement. This ‘mutual restitution’ would see the community, in the form of the host employer, enabling offenders to make financial pay back as well as providing access to the sort of desistance-enabling employment opportunities from which many for most of their lives have been excluded. Running such a scheme with cooperatives aligns with the co-operative sector’s concern for community, one of the key principles of the cooperative identity¹. But it would work equally well with those public or private sector values-based ‘purposeful’ employers committed to creating long-term value through serving the needs of society². Building on contemporary developments in the co-operative sector and private sector initiatives to embed purpose into the heart of business, I argue that existing Community Payback practice together with the recommendations of the 2008 Scottish Prisons Commission can all be combined to create a system of ‘mutual restitution’ providing a practical and realistic way of making a desistance-supporting restorative criminal justice system a reality through financial payback.

Key words

Restorative Justice; Mutual Restitution; Community Payback; Financial Payback; Co-operatives; Purposeful Companies.

Article

‘If someone robs me, I want my money back; plus a bit of compensation for the pain and inconvenience caused. What I don’t want is to pay thousands of pounds to keep them in prison. That way I pay for their crime instead of them. They should just pay me back and give me some compensation and that’d teach them not to do it again (Jay, Ex-Cell Justice Solutions)³.

¹ ‘Concern for Community’ is Principle 7 of the International Cooperative Alliance’s Statement on the Cooperative Identity <https://www.ica.coop/en/cooperatives/cooperative-identity>

² The Purposeful Company (TPC) Task Force was established in 2015 with the support of the Bank of England to transform British business with purposeful companies committed to creating long-term value through serving the needs of society <https://thepurposefulcompany.org/>

³ Quoted in Nicholson, D. (2019) ‘Putting the community back into payback’ In Fox, A. & Frater, A. (Eds) *Crime and*

Giving back by paying back

Maruna (2016) argues that 'giving back' is both a central tenet of restorative justice as well as a key element in desistance. Both restorative justice and desistance share a common interest in the benefits that come from offenders actively helping others, particularly their victims. In that sense 'giving back' is of mutual benefit to victims and offenders alike. It is restorative for victims insofar as it helps repair the harm caused by crime. But it is also restorative for offenders insofar as it supports their desistance from future offending and helps restore them to the wider law-abiding community. It is enabling this to happen that helps make a restorative justice system a reality.

For Jay, speaking as a victim (above), giving back by offenders is best achieved by *financial* giving back – paying back stolen money, together with financial compensation for the pain and inconvenience caused. For her, financial payback is both a means of restorative justice as well as a means of supporting the future desistance of those who have committed crime. It is a fairer form of justice because it means she will not have to pay for the offender's punishment in prison, while at the same time it encourages the offender to desist from further offending behaviour in the future. Financial payback '*teaches them not to do it again*' and helps make a restorative justice system a reality for both victims and offenders.

Financial payback is in fact arguably the oldest form of restorative justice and an equally tried and tested way of supporting desistance. A restorative justice system based on financial payback has been a reality for centuries. Paying back through financial restitution to individual victims and to the wider community is virtually an anthropological and historical constant - a default setting for responding to crime across the world and throughout human history that is mutually restorative for both victims and offenders (Galaway, 1977; Jacob, 1977; Harding, 1982).

The origins of financial payback

Financial payback was central to the Anglo-Saxon system of justice in the form of 'wergild', literally a man's monetary value (Stenton, 1971). Early Anglo-Saxon law was more concerned to compensate the victims of crime financially than to punish or rehabilitate offenders and the responsibility for agreeing the amount of financial payback lay primarily with the parties concerned ie with the community rather than with the state in the form of the king. It was a *mutual* responsibility of all those with an interest in the crime – offender, victim, and the wider community.

But to cover cases where the community could not agree on the amount of financial payback, the state, in the form of the king, set a tariff fixed according to the social status of the victim – the wergild. Punishment was simply the financial compensation paid by the offender to the victim based on their wergild. This was also seen as a financial deterrent, discouraging further offending and encouraging desistance (Jacob, 1977).

Similar codes of law were developed as guidelines for financial payback for both personal injury as well as material loss among the ancient Babylonians (the code of Hammurabi), the Hebrews (Mosaic law), the ancient Greeks, the Romans and the ancient Germans as well as the Celts and Anglo Saxon English (Harding, 1982); and similarly under Islamic law (Nader & Combs-Schilling, 1977) and in the African philosophy of Ubuntu, financial payback is key to restoring the harms done by crime and encouraging the perpetrators to desist from similar activity in the future (English, 1996; Mokgoro, 1998; Louw, 2008). All of these ancient legal systems also saw financial payback as a *mutual* responsibility. It was not solely the victim who had to ensure their own financial payback, or solely the responsibility of the offender concerned, or even solely the responsibility of the wider community or the state/king acting on their behalf. It was everyone's responsibility.

In England and elsewhere in Europe financial payback initially took the form of a civil indemnity, but over time a second indemnity to the king became due as a fee for assisting the parties concerned in the negotiation process. By the twelfth century the king's share of financial payback had increased and the victim's share decreased in proportion. Finally the state, in the form of the king, took the entire payment and the victim's right to financial payback was replaced by a fine for the offender payable to the state rather than to the victim (Hostettler, 2009; Bianchi, 2010). The state thus appropriated financial payback from both the community and the victim (Campbell, 1977; Christie, 1977). It was no longer everyone's responsibility to negotiate, agree and

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enforce payback. It was solely the responsibility of the state.

This was generally accepted though because the system itself came to be seen as unfair on those offenders who could not afford to pay back and unfair on their victims who consequently received no financial payback at all (Harding, 1982). The link between financial payback and punishment was further weakened as victims increasingly had to resort to the separate body of civil law for any form of financial payback. But this too proved not very fair or effective because the chances of collection following a claim were not high, again because most offenders were poor, out of work and destitute (Jacob, 1977).

The survival of financial payback

But 'giving back by paying back' nevertheless survived. Proposals and pilots for financial payback that overcame these problems resurfaced repeatedly over the years. State monopoly, unfairness on the offender and ineffectiveness for the victim continued to be challenged by politicians, philosophers, and criminologists alike. Thus Sir Thomas More in *Utopia* (Moore, 1998) suggested that financial payback should be made by offenders to their victims and that they should be required to labour on public works to raise money for such payments if they were poor, out of work or otherwise unable to pay. The state on behalf of the victim and wider community was required by Moore to enable the offender to make financial payback to the victim by making paid employment available to them to do so. It was a *mutual* responsibility for Moore – the state was required to provide the means and the offender required to take up that opportunity to pay their dues to victim and community whilst also using that opportunity to keep themselves out of trouble in the future.

Jeremy Bentham went further and called for payback in both money and kind for property offences together with a state-sponsored compensation system for the victims of impecunious offenders (Harding, 1987. P. 195). Similarly the English philosopher Herbert Spencer advocated a prison-based work system whereby the prisoner earned money to pay back to the victim and pay for their own maintenance in prison (Harding, 1987.P 195)).

In the twentieth century the English 1907 Probation of Offenders Act made provision for offenders subject to Probation Orders (or their parent or guardian) to make financial payback to their victims. But here again the provision was little used because most of the offenders were unable to make the payments because they had little or no employment to enable them to do so (Glover, 1949).

The idea though was revived in the 1930s by reformers such as Margery Fry inspired largely by the African Ubuntu system (Huws-Jones, 1966) which she saw as both compensating the victim and supporting desistance of the offender from future offending. But she came across the same practical difficulties faced by the 1907 Probation Act and later advocated state compensation schemes instead, whilst acknowledging that these may help compensate the victim but were unlikely to do anything to deter or support the desistance of the offender (Fry, 1951).

Kathleen Smith, a former assistant governor at HMP Holloway advocated '*self-determinate prison sentences*' (Smith, 1965) as a means of financial payback to victims and the rehabilitation of offenders. In a manner similar to the Anglo Saxon wergild, she proposed that an offender's sentence should be set in terms of money owed instead of time served (Harding, 1982). The offender's earnings whilst in prison would be used as financial payback to victims and/or to a state-run victim support and compensation fund and as these payments were made, the sentence would be reduced accordingly. So the length of sentence served would be determined primarily by the efforts made by prisoners themselves to make financial payback directly to their victims and to the wider community in the form of fines to the state (Harding 1982). Smith's proposals applied just as much to community sentences as to custodial sentences in an echo of the 1907 Probation Act: -

"Whether placed on probation, ordered to pay a fine, or given a conditional discharge, every convicted offender would be required, as an integral part of his penalty, to pay compensation to the victim of his offence, wherever this applied and/or to pay a fine for his offence against society in general" (Smith, 1965. p. 111)

Proceeds from fines would go to a National Compensation Fund which would pay compensation to victims of those too sick (physically or mentally) to work. For those who were unable to find work for other reasons, it would be the duty of the wider community and the state to help them find work to pay their compensation, and it would primarily be the duty of the Probation Service to arrange this, working in partnership with the wider

community and employers. This would both enable restoration for the victim through financial payback as well as rehabilitation of the offender by getting them legal means of earning a living. It would return to being a *mutual* responsibility of the whole community to enable offenders to make financial payback to their victims and restore themselves to legal society, so making a restorative justice system a reality through financial payback (Barnett, 1977).

Schafer (1960) echoed this by arguing that the wider community in the form of the state has an obligation to ensure criminal injuries are compensated for, as well as a right to punish breaches of the law, and that for the offender such restitution (whether financial or in kind) would be reformative, corrective and rehabilitative. (Cohen (1944); Eglash (1975) all argued that 'giving back' including financial 'paying back' was both restorative for the victim as well as supportive of desistance for the offender. Furthermore Maruna (2014) actually credits Eglash with the invention of the term 'restorative justice' as a new name for this very ancient practice.

In the same way some argued (Cohen, 1944; Mower, 1968) that 'paying back' is more rehabilitative than other correctional measures because it is related to the number of damages done and thus is perceived as more just by the offender. It is perceived as a sanction that enhances self-respect and in doing so enhances desistance.

The return of financial payback

All these ideas began to bear fruit in the late 1960s and early 70s with new initiatives in the US and the UK focused on restitution through financial payback and community service. Both were seen as ways of making a restorative criminal justice system a reality through payback and it was the *mutual* responsibility of offender, victim and the wider community to make sure that it happened (Harding 1982).

Payback in this context referred to the payment of money to victims of crime (victim financial payback), payment of money to other community organizations (community financial payback), and community service (non-financial payback to victims and more often the community). Its purposes included redress to the victim, rehabilitation for the offender, reduction of demands on the criminal justice system, and the reduction of retribution as a criminal sanction (Eglash, 1975; Schneider, 1991; Wright, 1991). Payback began being used in the US in this way as a sanction for crime in pretrial diversion programmes, special probation projects, and community correction centres (Galaway, 1977).

The Minnesota Restitution Centre, established in 1972, was the prototype for this return of financial payback (Hudson & Galaway, 1974). This was a residential financial payback scheme where the offender, the victim and the wider community in the form of the Restitution Centre staff had the *mutual* responsibility of negotiating and agreeing a financial payback agreement and enabling the offender to keep to that agreement by securing a job for him. This employment would then continue to support his desistance once he had completed his payback. This was not a state-run scheme, but a state-enabled scheme, where the work of Restitution Centre staff ensured that 'giving back by paying back' restored the harm done to victims and restored offenders to gainful employment and the wider law-abiding community. It thus made a restorative justice system a reality for victims, offenders, and the wider community through financial payback to victims and the community.

Innovations in payback in the UK during this period however followed a different pattern, with the main thrust of development being in community service, set up by the 1972 Criminal Justice Act. Community service did not involve any financial payback to either victims or communities, but the Powers of Criminal Courts Act of 1973 enabled courts to make compensation orders in respect of losses or injuries sustained by the victims of crime. This was a state-run, rather than state-enabled scheme whereby payments were made direct to the state for onward transmission to the victim and there was no provision to enable offenders to pay by getting them suitable employment (Harding, 1982).

This is largely what eventually happened in the US as well, but all the old problems returned. Many offenders simply cannot afford to make financial payback to their victims or to the community in symbolic financial payback to charities and community organisations. Moreover, there is now little provision for criminal justice agencies to enable them to do so by getting them a job - to the extent that by 2007 total restitution debt in the US was nearly \$40 billion (Dickman, 2009).

Nevertheless, financial payback is still seen as a way of repairing the harm inflicted upon victims and advocates still insist it can also benefit offenders (Evans, 2014). The evidence tends to back this up. There is an inverse

correlation between financial payback and recidivism, such that offenders who pay a high percentage of their payback obligations have a lower likelihood of committing a new crime (Kempinen 2002). The same correlation has not been found for payment of fines, which suggests that financial payback direct to victims or in symbolic form to the community has a more positive impact on offender rehabilitation than paying fines to the state (Fetsco 2012).

Similarly securing suitable, good quality employment has been shown to be both a consequence and a cause of desistance and in both cases provides support to ongoing desistance from future offending (Uggen, 2000; MacKenzie & De Li, 2002; Skardhamer & Savolainen, 2014). Enabling offenders to make financial payback by helping them secure suitable employment therefore supports their desistance and rehabilitation as well as providing restorative justice for their victims. In this way, securing employment for offenders to make financial payback to their victims helps make restorative justice a reality.

Mutual Restitution: the future of financial payback?

This review of financial payback as a desistance-supporting restorative justice practice can be seen as a series of variations on a theme of mutuality: -

- Financial payback is of mutual benefit to victims and offenders.
- It works best when it is a mutual endeavour of victims, offenders, and the wider community and not solely the prerogative of the state.
- Mutual responsibility includes finding good quality paid work for offenders to enable them to make financial payback and support their future desistance.

To these can be added: -

- Restorative justice is itself a mutual enterprise, co-produced by all the parties with an interest in any particular crime (Crawford & Clear, 2003)
- Desistance is itself a mutual enterprise co-produced by all the parties with an interest in any particular offender (Weaver & Nicholson, 2012; Weaver, 2016)

All these variations can be seen as manifestations of an underlying social and political philosophy of mutuality with a distinctive mutual approach to responding to crime. Not only does such a philosophy underlie the ancient responses to crime referred to above (Harding, 1982; Hostettler, 2009; Bianchi, 2010), but it also finds a home in modern social and political thought. Liberalism (Stafford, 1998; Baum, 2007; Elliot & Scott, 2007; Persky, 2017), conservatism (Blond, 2010; Ellis, 2010) and socialism (Kellner, 1998; Gosling, 2000; Hargreaves et al, 2001; Pritchard et al, 2017) all have long traditions of mutuality in their political philosophy. Consequently, the mutuality inherent in 'giving back by paying back' should sit well in liberal, conservative and socialist justice systems alike, and in so doing, help make a fully restorative justice system a reality in the modern world.

The review above also shows that without access to the means of making financial payback, attempts to enforce it become unfair on the offender and ineffective for the victim. The implication is that there is consequently a mutual responsibility on offender, victim, and the wider community to make those means available as well as a responsibility to enforce it.

In the case of community service payback schemes the role of the scheme itself in improving employability and opening up access to desistance-supporting employment has long been recognised. But apart from the US Restitution Centres, little consideration has been given to it in financial payback schemes.

Contemporary Community Payback in England and Wales allows up to 20% of Unpaid Work hours ordered by the Court to be credited for time used for education, training and pre-employment activity. Her Majesty's Prison and Probation Service Community Payback Practice Guidance (HMPPS, 2019) recommends that community payback should itself provide a route into desistance-supporting paid employment: -

“Organisations working in partnership to deliver Community Payback, such as placement providers or local authorities may also provide valuable employment opportunities for service users such as apprenticeships. Where possible guaranteed interview arrangements should be established with placement providers and partner agencies. Arrangements of this nature have the potential to provide opportunity for service users to move into paid employment with a beneficiary or their subsidiary following the completion of the Community Payback sentences” (HMPPS, 2019. Para 4.37).

Some earlier UK community service schemes even used community service to create new permanent paid employment or self-employment opportunities for offenders on successful completion of their community service sentence (Morgan & Ruffles, 1980; Nicholson, 1985).

So, there are good precedents for arguing for the mutual responsibility of the wider community to ‘pay back’ offenders by enabling them to access paid employment to make their own payback to victims possible, and in so doing help support their own future desistance.

Some see enabling payback by enabling access to employment as part of a process of *mutual* restitution: the state and wider community themselves paying back both victim and offender for letting crime happen in the first place, particularly by failing to address the social and economic conditions within which it arises. This is seen as particularly important where poverty is a significant criminogenic factor. Financial payback in this context becomes a vehicle for *social* justice as well as *criminal* justice by restoring offenders to equality of access to employment; enabling them to make financial payback by getting them a job (Silbert, 1984; McNeill, 2010; McNeill, 2011; Carlen 2013).

Delancey Street Foundation in San Francisco provides an example. Established in 1971 by Silbert (1984), it is not involved in formal payback in any way – financial or otherwise – but it does describe its philosophy of change as ‘mutual restitution’:-

‘The residents gain the vocational, personal, interpersonal, and social skills necessary to make restitution to the society from which they have taken, illegally, and often brutally for most of their lives. In return, Delancey Street demands from society access to the legitimate opportunities from which the majority of residents for most of their lives have been blocked (p. 45).

Carlen (2013) advocates something similar, but state-run rather than community run. She argues for restitution rather than rehabilitation as the most socially just response to crime. She argues that rehabilitation programmes tend to be reserved for poorer law breakers, while white collar and corporate lawbreakers tend not to be subject to the same level of attention. The payback she proposes is to and by the state, rather than to and by the community. The purpose is nevertheless the same: -

‘One way to stop thinking of criminal justice as being primarily about the crimes of the poor, might be to rethink crime and its regulation within a new social justice applicable to all classes: a justice seeking payback from lawbreakers from all classes **to the state** in proportion both to the harms committed and the ability to pay; and payback **from the state** to all those – whether law abiding or law breaking – whom it has failed materially and culturally in terms of ensuring satisfaction of their minimum needs’ (Carlen, 2012; emphasis in the original).

McNeill (2010; 2011) makes the same point in relation to both the moral and practical arguments for mutual restitution: -

‘...the persistence of social injustice, and its criminogenic role, begs certain important questions about whether the community, society or state does not also owe something to the offender whose limited life chances have played at least some part in the genesis of his or her offending. If the underlying social contract – the reciprocities and co-operation...- never really worked for the offender, if they never really were socially integrated or included, then their stake in making reparation (and the moral case for compelling them to do so) is affected’ (McNeill, 2010, p 5)

He makes these observations in the context of the radical change in Community Payback in Scotland brought

about by the Scottish Criminal Justice and Licencing Act of 2010, which following the recommendations of the 2008 Scottish Prisons Commission Report (Scottish Government, 2008), sought to recast both court services and community sanctions around the concept of ‘payback’. This recasting allowed for several ways of paying back – restorative justice practices, financial penalties, unpaid work, restriction of liberty (meaning in this context electronically monitored curfews) and through ‘paying back by working at change’ (McNeill, 2010). But just as importantly the Commission’s recommendations also restored the principle of the community rather than solely the state negotiating, determining, and supervising the nature and extent of the payback to be made through a form of judge-enabled community sentencing process (Scottish Government, 2008).

Delivering financial community payback through co-operatives and values-based ‘purposeful’ employers: making restorative justice a reality through mutual restitution?

Building on Silbert (1984), the Scottish Government (2008), McNeill (2010; 2011), Carlen (2012;2013) and HMPPS (2019) some have called for the recasting of community sanctions around ‘mutual restitution through financial community payback’ rather than simply ‘payback’. They argue for its delivery through co-operative structures of employment and service delivery. Together with the full implementation across the UK of the recommendations of the Scottish Prison Commission (2008) they argue this would make restorative justice a reality for the mutual benefit of victims and offenders through mutual restitution – a community-led, state-enabled delivery of mutual restitution (Weaver & Nicholson, 2012; Mills & Nicholson, 2015; Co-operatives UK, 2016; Nicholson, 2019).

In practice this would mean widening the scope of community payback to include unpaid work with commercial employers, including co-operatives and other ‘purposeful’ values-based employers.⁴ The monetary value of the offender’s unpaid work would be paid direct to victims’ or other charities by the host employer as financial payback by the offender and as a charitable donation by the employer. On successful completion of their financial payback, paid employment with the employer would be made available to the offenders concerned through the sort of ‘*guaranteed interview arrangements*’ recommended by HMPPS (HMPPS, 2019. Para 4.37).

This mutual restitution would mean the community through the host employer would pay offenders back by providing access to the legitimate employment opportunities from which the majority of them for most of their lives have been excluded. In so doing this would enable them to pay back financially to the communities against whom they have offended, as well as strengthen and support their own desistance from future offending (Co-operatives UK, 2016). This, it is argued, solves the problem of the indigent offender that has bedevilled the history of financial payback for centuries. In this scheme, even the poorest offender can now afford to pay back because the community pays him back with access to a job to enable him to do so. It also potentially helps solve a problem that has bedevilled Community Payback – the problem of compliance (Weaver *et al*, 2020). The prospect of a paid job on successful completion of payback potentially gives more meaning to the unpaid work and thus provides an incentive to full compliance (Boother, 2014).

But the scheme would not be dependent solely on co-operatives for hosting the financial payback placements and guaranteed interview arrangements. It would work equally well with similarly values-based ‘purposeful’ employers in the private or public sectors. The Purposeful Company⁵ initiative was set up in 2015 with the support of the Bank of England to enable employers to serve wider society at the same time as remaining commercial and profitable. Providing opportunities for offenders is just one way in which this and other similar regional public and private sector initiatives⁶ seek to serve the wider society. Providing financial payback opportunities as work trials would provide another way of doing this and build on other successful models of offender work trials leading to permanent employment.⁷

Community Payback in the UK already enables offenders to pay back financially to the community by using their

⁴ The Purposeful Company (TPC) Task Force was established in 2015 with the support of the Bank of England to transform British business with purposeful companies committed to creating long-term value through serving the needs of society <https://thepurposefulcompany.org/>

⁵ <https://thepurposefulcompany.org/>

⁶ See for example Greater Manchester Good Employment Charter <https://www.gmgoodemploymentcharter.co.uk/>

⁷ See for example The Ex-Cell Programme Memorandum to House of Commons Select Committee on Work and Pensions February 2007. <https://publications.parliament.uk/pa/cm200607/cmselect/cmworpen/63/63we03.htm>

unpaid labour to provide commercial services and donating the income generated to victims or other charities – commercial car washes run by offenders on Community Payback are but one example of this (Argyll, Bute & Dunbartonshire Criminal Justice Social Work Partnership, 2012/13).

The largest UK retail co-operative, the Co-operative Group, has extensive experience employing ex-offenders (Co-op News, 2004). So do the larger regional UK retail co-operatives. While operating outside a formal community payback framework, the Central England Co-operative runs what is effectively a mutual restitution programme with drug addicts caught shoplifting from their stores. Once the offenders have committed to ‘paying back by working at change’ as the Scottish recasting of payback would have it (McNeill, 2010), Central England co-ordinates the community response to pay them back in turn by working with police and rehabilitation agencies to help them in their journey of recovery. This also includes mentoring to help access paid employment, including where appropriate with Central England itself (Voinea, 2020).

East of England Co-operative runs a similar scheme with young offenders caught committing crimes in their stores and brands this explicitly as ‘giving back to our communities’ (East of England, 2018). They also provide employment opportunities in their stores for serving prisoners released on temporary licence (East of England, 2019).

Schemes like these could act as hosts for piloting the widened scope of Community Payback envisaged by Co-operatives UK (2016). The ‘through the gate’ values-based and purposeful social enterprise experiments in the UK identified by Armstrong and Maruna (2016) and Conaty (2014) would also potentially provide similar opportunities.

Italian Social Co-operatives provide community service placements for offenders (Weaver & Nicholson, 2012) which simultaneously act as unpaid work trials for progression into permanent employment along the same lines recommended by HMPPS (HMPPS, 2019). This too provides a possible template for innovation in the UK.

In the US, Silbert’s (1984) mutual restitution is put into practice in ‘Community Wealth Building’ strategies (Guinan & O’Neill, 2020). These use corporate procurement policies to create new co-operatives in low income areas, many particularly targeting offenders (Bhatt & Dubb, 2015; Kelly, 2018). The adoption of this strategy in the UK by the ‘Preston Model’ (Manley, 2017) potentially provides further opportunities for mutual restitution as envisaged by Co-operatives UK (2016) and others (Weaver & Nicholson, 2012; Mills & Nicholson, 2015; Nicholson, 2019).

But such a financial payback and guaranteed interview scheme is by no means dependent solely on the creation of new co-operatives specially for this purpose. On the contrary, as has been demonstrated above, there are plenty of opportunities and indeed appetite for this model within the existing co-operative, private and public sectors to make the creation of new co-operatives for this purpose unnecessary. This also obviates concerns about cost and who should incur it in the creation of new enterprises for the scheme – there is already a market for it with existing co-operatives and values-based ‘purposeful’ employers as demonstrated above.

But why co-operatives? Why purposeful and values-based businesses?

The first reason is philosophical. Just as restorative justice can be seen as the criminal justice expression of a mutual social philosophy (Barnett, 1977; English, 1996), so co-operatives can be seen as its economic expression (Department for Business Innovation and Skills, 2011; Mayo, 2017). Moreover, if it is the *mutual* responsibility of the whole community to enable offenders to make financial payback to their victims and restore themselves to legal society, then co-operative structures enabling that service delivery would be just as appropriate, as with other public services based on mutuality rather than solely state-led (Le Grand, 2012; Brecknell, 2014; Mills & Nicholson, 2015). And if it is the *mutual* responsibility of the whole community then that by definition includes all employers in the community, particularly those with a purposeful and values-based commitment to promoting inclusion and social mobility by providing opportunities for offenders.

Secondly, the processes and practices of social capital-building intrinsic to working in a co-operative also enable the co-production of desistance (Weaver, 2014; 2016). As well as enabling the payment of financial payback by providing paid employment, co-operatives’

'...emphasis on the centrality of reciprocal relationships and mutuality in supporting resettlement is the distinct contribution that co-operatives and mutuals have to offer to current approaches to supporting desistance and contributing to penal and public-sector reform (Weaver and Nicholson, 2012, p. 15).

Co-operatives can perhaps here be seen as the fullest expression of social-capital building supporting resettlement – a process which is nevertheless characteristic of any values-based, purposeful enterprise committed to good employment practices (Fletcher, *et al*, 2001).

Thirdly, the co-operative and mutual sector is particularly suited to the delivery of mutual restitution because it has a demonstrable and foundational commitment to the principles of 'Concern for Community' and to 'Education, Training and Information' on the nature and benefits of co-operation - and particularly in this case, the nature and benefits of co-operation in the rehabilitation of offenders (International Cooperative Alliance, 1995).

In the same way, values-based and purposeful companies have a demonstrable and foundational commitment to social purpose and education and training as central concerns of good employment practice (Greater Manchester Good Employment Charter, 2021).

Conclusion

Recasting Community Payback as financial payback through placements with purposeful co-operative and values-based employers provides a practical and realistic way of making restorative justice a reality. It reinterprets traditional approaches to financial restitution to create a form of mutual restitution where Community Payback placements enable offenders to make financial payback to the community (and potentially their individual victims) whilst at the same time opening up access to the legitimate employment opportunities from which many for most of their lives have been excluded. This can be made a reality today by building on existing Community Payback practice and co-operative and private sector initiatives to embed social purpose into the heart of business.

Future implementation of the recommendations of the 2008 Scottish Prisons Commission across the UK would further develop mutual restitution by enabling the community rather than solely the state to negotiate, determine and supervise the nature and extent of payback through a form of judge-enabled community sentencing process.

Together with recasting Community Payback as financial payback this would create a comprehensive system of mutual restitution, restorative for victims insofar as it helps repair the harm caused by crime, restorative for offenders insofar as it supports their desistance from future offending and helps restore them to the wider law-abiding community, and restorative for the community itself insofar as it puts them back in the driving seat of justice.

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