

EDITORIAL

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Making a restorative criminal justice system a reality

In the first issue of this journal Brian Williams (2003) raised the question of the “Meaning of Community Justice” arguing that *“there is a need for critical debate, because of the widespread confusion and disagreement about both the meaning of the term and the desirability of expanding the domain of community justice.”* Over the years the Journal has continued with this mission, one element of which has been the examination of the potential for restorative practice to be applied to the criminal justice system. This issue addresses that question directly.

Joining forces with the [Criminal Justice Alliance](#) – a coalition of over 160 organisations committed to a fair and effective criminal justice system in England and Wales, working across policing, prison and probation – we are pleased to publish this special issue on the theme of *Making a restorative criminal justice system a reality*.

Restorative justice has become an umbrella term which can conflate a range of approaches/issues: restorative justice as a formal component of a criminal justice system; restorative approaches or practice as a means of resolving or managing conflict between individuals; offenders giving back to the community or victim in some way; and concern for victims and their involvement in decision making processes in criminal justice procedures. In this issue, our authors from the UK and internationally unpick some of these issues, by examining: the challenges of translating restorative justice (RJ) into practice; the discourse around whether RJ adequately (or not) addresses the needs of victims as well as people with convictions; and the application of RJ to all offence types or only certain offences.

We begin with a thought-provoking paper by Giuseppe Maglione who considers restorative justice as a formal component of the criminal Justice system. He calls into question the ability of any formal criminal justice system to deliver the basic tenet of restorative justice - voluntarism. In a detailed consideration of RJ policy in three distinct jurisdictions: England and Wales; Norway; and France, he argues that the values of RJ are incompatible with penal policy which neutralises RJ’s promise. He concludes that *“the incorporation of restorative justice (RJ) into penal policy, as a stage in the wider*

phenomenon of institutionalising RJ...necessarily obliterates RJ's promise to provide a cooperative-transformative approach to social conflicts and harms."

An issue which has dogged RJ since its early introduction has been the question of its application for victimless crimes where it is not possible to bring together the offender and victim to address the harm which has been done. The paper by Phil Edwards reviews the literature on the Canberra Re-Integrative Shaming Experiments (RISE) for drink drivers which posited two mechanisms which might lead to reduced reoffending in the absence of a victim: a victimless variant of reintegrative shaming and the mobilisation of the convicted individual's friends and family to exercise informal coercion over them. The project proved to be ineffective and the paper explores the reasons why this might be. Learning from analysis of the "rich source of evidence" from this failed trial the paper concludes that involvement of a victim is essential for RJ to be successful. *"The negative results of the RISE drink driving trial are eloquent testimony to the power- and the necessity - of the encounter between victim and offender"*.

The involvement of victims in criminal justice processes is also the focus of our next paper by Francois Louw who examines the position in South Africa where victims have a legal right to make representations at a Correctional Supervision and Parole Board (Parole Board) hearing *"promoting a victim-centred approach to criminal justice"*. The paper considers the rights of victims at the parole phase, identifying a lack of research and knowledge about the implementation of victim participation in parole hearings. Although he identifies that huge policy and legislative strides have been made to include victims in parole hearings *"practical challenges remain for both the Department of Correctional Services and the victims of crime. It proposes directions for future research as there is little to no research that has been conducted on the effects of the parole process on victims."*

The necessity of understanding the mechanisms that produce positive or counterproductive outcomes that may be at play in RJ - *"the uncracked black box of restorative justice"* is also addressed in the next paper by Jennifer Lanterman. Drawing on a wide ranging literature from Australia, Canada, New Zealand, the United Kingdom and the United States she identifies the themes of restorative philosophy, models of practice, outcomes of restorative justice practices and highlights limited consideration of the mechanisms that might impact on the success of RJ. She identifies that research on these programmes has yielded varied outcomes and argues that: *"The causal mechanisms of restorative justice are concealed in a black box that must be cracked in order to establish evidence-based practices, develop efficacious facilitator training, and develop or modify restorative justice practices and programmes to fulfil the promise of restorative justice."*

Our next paper by Dave Nicholson offers a historical review and think piece about the concept of restitution and 'payback', an important component of restorative justice. He argues that financial restitution 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 if the notion of payback was widened to involve employers and create a system of 'mutual restitution': *"...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.”

A distinction has been drawn between ‘democratic’ and ‘authoritarian’ models of RJ (Wright, 2000), where authoritarian versions of restorative justice are delivered by a state convinced that it knows best, as in our previous papers, and a democratic model which is operated by the people directly involved in conflict, often described as restorative practice (RP). Restorative practice is about those involved in a conflict situation exploring the event and its impact and agreeing what needs to happen to make it better. Our next paper by Charlotte Calkin describes a piece of qualitative research which explored how RP is understood and operationalised in three English prisons and compares this with similar practices in schools. She found many examples of well implemented RP practice in prisons where benefits were experienced by both residents and staff but also found that *“there is widespread confusion as to the definition of RP and what constitutes RP...RP does not sit at the heart of the prisons’ philosophy, as in schools identifying as ‘restorative’. Instead, they use RP as a form of social ‘lubricant’...”* and argues that prisons can learn from the experience of schools.

The principles and philosophy of restorative justice and approaches are well established and, as these papers show, are acknowledged within many criminal justice jurisdictions, but there is still much to learn about when and how it is best implemented and can contribute to expanding the domain of community justice.

References

- Williams, B (2003). The Meaning of Community Justice. *British Journal of Community Justice* 1(1).
- Wright, M. (2000) ‘Restorative Justice: For Whose Benefit?’, in *European Forum for Victim Offender Mediation and Restorative Justice* (eds.) *Victim-Offender Mediation in Europe: Making Restorative Justice Work*, pp. 19-38. Leuven: Leuven University Press

