

# **Is Restorative Justice the way forward to repair the harm experienced by crime victims?**

Rebecca Brooks

Date of completion:

## Contents

What is Justice and why is the current criminal justice system flawed?

The Alternative: Restorative Justice

Benefits

Limitations

Conclusion

Appendix

Bibliography

## **What is Justice and why is the current criminal justice system flawed?**

*“A criminal offence has caused a breach in relationship and the purpose of the penal system is to heal the breach, to restore good relationships and to redress the balance.”<sup>1</sup>*

Justice is at the heart of our criminal prosecution system. Despite its differences in varying circumstances, it centralises around similar key themes; it offers fairness, accountability and punishment based upon the grounds of what is ‘right’.

Stemming from the biblical notion of ‘an eye for an eye, and a tooth for a tooth’<sup>2</sup>, those who commit a crime are exposed to a proportionate level of punishment which is commensurate to the crime committed. We can use the analogy of a ladder connected by rungs. On the right side of the ladder is the offence committed, from the least serious offence up to the most serious offence. On the left of the ladder is the punishment, stemming from complete dismissal from court to a life sentence with no opportunity for parole. The rungs that join the sides of the ladder together are proportionate in the way that dismissal from court would join up to the theft of a candy bar, and a life sentence by the Crown Court would join up with more serious crimes such as an accusation for murder. The sentencing of the offence should establish the point at which justice is achieved - the unjust act has been addressed and the victim feels complete again. Hereby, the problem arises - if criminal punishment does not resolve the situation or harm caused by the crime, can we then say that justice is achieved?

In terms of justice, it can be said that “the fundamental purpose of the entire exercise is to heal”.<sup>3</sup> This statement and other empiricist literature, is both contentious and crude.

---

<sup>1</sup> Archbishop Desmond Tutu

<sup>2</sup> Matthew 5:38 King James Version

<sup>3</sup> Give Restorative Justice a fair crack of the whip: The Times Archbishop Desmond Tutu. This article from March 9<sup>th</sup>, 2004, was written by Roger Smith and explains the developing need for Restorative Justice in

It ignores the key issue of sentencing and overlooks the fact that the criminal system does not aim to heal, but that it aims to punish. Criminal justice refers to the statutory responses to crime; it draws on 'a set of normative and theoretical justifications'<sup>1</sup> that attempt to control the citizens within a society by implementing physical constraints. However, our current system is flawed and a lack of fulfilment in resolving crime, created by our system of judicial punishment and justice, has created a feeling of distance between society and the legal system. Therefore, justice based on punishment is not helping to reduce crime.

Society has adopted the attitude of hostility and intolerance towards criminals. They are now represented falsely as 'some kind of external threat, as people who are different from ourselves and who do not properly belong in our society and against whom we need to raise physical defences, or who ought to be contained in their ghettos, or failing that in prison'.<sup>2</sup> As stated in the recent Green Paper,<sup>3</sup> a reform of the justice system is increasingly required, as currently, the reparation of the victim is not considered in the court process. It seems questionable that although the victim is the one that is most seriously affected by the crime, they are the ones who have the least input in the adversarial prosecution process. But as the main aim of the criminal system is to punish not heal, it is therefore no surprise that they are taken into little consideration.

Only 36 percent of the public believes that the Criminal Justice system meets the needs of the victims of crime<sup>4</sup>. The concept of justice is widely debated, but all of the different forms seem to be forward-looking. The three main concepts of justice, deterrence (persuading people not to reoffend), incapacitation (physically preventing them from

---

the current failing punishment system. It describes the positive effects that it has globally and suggests the positive outcome of adopting this system in the UK.

<sup>1</sup> The Case for Restorative Justice: Carolyn Hoyle (2)

<sup>2</sup> D. Faulkner, cited in Cayley 1998:32

<sup>3</sup> The Green Paper released on the 7<sup>th</sup> December, 2010, was a product of the recently formed coalition. It stated the reforms of the legal system that are to be imposed in the near future.

<sup>4</sup> British Crime Survey (2008) Public perceptions, in 2007-2008, online:  
<http://www.homeoffice.gov.uk/rds/pdfs08/hosb0708chap5.pdf>

reoffending) and rehabilitation (using an alternative, such as education, to prevent reoffending)<sup>1</sup>, each have a different aim but they all move in a forward direction as they do not reflect on previous actions. On the other hand, retributive justice follows a more backward-looking philosophy as it reflects upon the offence committed rather than preventing further offending. In most circumstances, the level of punishment the offender receives has little effect on the victim's well being, but instead leaves important issues unresolved. Therefore, the concept of a hybrid of both forward and backward looking systems of justice may be a more appropriate way in which to develop the justice system.

The nature and diversity of crime is also ignored; all cases of a similar nature are treated equally (in terms of court process) no matter what the circumstances. This dismisses the affect of the offence on the victim as their wishes and feelings are often ignored. Despite being given the opportunity to give a victim impact statement in court, little consideration of this takes place. Victims need *real* information, not legally constrained speculations from the court which leave so many of their questions unanswered and only heighten the level of frustration felt. The current system denies the victim one of their key civil liberties-the right to ask the two most important words that they can and need to ask, why me?

Reducing crime and improving the justice system is a central part of the Government's effort to build safer communities and drive down crime. In a recent survey, 32 percent of 16 to 25 year olds said that they had experienced at least one personal crime in the past year<sup>2</sup>. The government are committed to achieve their goal of reducing crime levels in order to reduce these statistics. Despite their best efforts, and a 50 percent budget increase (*Green Paper*) in the legal system, half of the adult offenders re-offend within the next year. This highlights that something in the current punishment system must be flawed as the rate of re-offending is not being reduced. This style of justice used in the

---

<sup>1</sup> The Case for Restorative Justice: Carolyn Hoyle (2)

<sup>2</sup> Why Me?: Charity Organisation Peter Wallis

UK, which inflicts proportionate levels of harm (via punishment) on the offender in line with the offence committed, causes increased frustration as there is no sense of closure for both victim or offender. Ultimately this increases the likelihood of recidivism in the next year. In addition, the level of seriousness of any subsequent offence will normally either stay the same, or increase in seriousness<sup>1</sup>. For example, in 2009, there were 501 serious violent re-offences compared with 470 serious violent re-offences in 2008.<sup>2</sup> This shows that

The aim of justice is to provide fairness and moral rightness where every person receives his or her due from the system. In the UK, justice has become a laborious task and victim consideration *is* a neglected part of the legal system that rejects those most in need. The UK concept of justice is not working, but becoming increasingly worse, and an alternative must be implemented that takes a more emotive approach. By adopting this attitude, it is more likely that justice in the UK will become more efficient and close the dichotomous gap between the offender and victim, created through a loss of communication.

---

<sup>1</sup> Restorative Justice Consortium (13)

<sup>2</sup> [www.justice.gov.uk/publications/.docs/adult-reoffendingstatistics-09pdf](http://www.justice.gov.uk/publications/.docs/adult-reoffendingstatistics-09pdf) Ministry of Justice Paper. Adult Re-Convictions 2009 England and Wales.

## **The Alternative: Restorative Justice**

*“Restorative Justice is a problem solving approach to crime”.<sup>1</sup>*

Marshall’s bold statement summarises the increasingly popular alternative method to the justice system which is becoming more apparent in the UK. It aims to reduce the number of repeat offenders, whilst simultaneously reprimanding the devastating effects of crime to the victim and has proven to have genuine potential for transforming the current justice system and aiding in the healing process.

By definition, restorative justice refers to the process of bringing both the victims and offenders together, directly or indirectly, so that the victim’s questions can be answered.<sup>2</sup> It occurs in the aftermath of a crime in a secure environment and allows the offender to have the opportunity to recognise the physical and psychological harm that has been caused, to the victim and their families, because of their actions. The aim is to highlight the impact of the crime, to offer resolution by helping to deal with the situation created, and to discuss any implications for the future. Surrounding the idea that crime is a violation to a *person*, not just a violation to the legal system, morally it brings recognition and acknowledgement from both parties. It allows them to close the gap, caused by a loss of communication, and repair the broken relationship, whilst enforcing a form of justice in a less formal, yet emotive way. It centralises around certain key general principles<sup>3</sup> in order to maintain its success:

1. Participation to be voluntary and based on informed choice.
2. Avoidance of discrimination, irrespective of the nature of the case.
3. Access to be available to relevant agencies for help and advice.
4. Protection of personal safety.
5. Protection and support for vulnerable participants

---

<sup>1</sup> Tony Marshall Speech on Restorative Justice July 2008.

<sup>2</sup> Restorative Justice: Youth Justice Board (6)

<sup>3</sup> Practitioner Guide to Restorative Approaches (revised and updated) Walker Research and Training (24)

6. Respect for civil rights and the dignity of persons.

The process is as follows;

1. Preparation by a facilitator
2. The victim and the offender are brought together
3. There is an opportunity for each party to state what happened, who has been affected and how, and to express thoughts and feelings
4. Decisions are made as to what future actions and reparations are needed to make amends.

It is a natural method of combating crime as both parties gain a positive outcome of both reassurance and responsibility. An offender who has committed a more serious offence requires more courage to attend a restorative justice meeting than a simple court sentencing. This is because the impact is greater as the offender has to confront and acknowledge demanding concepts such as what they have done and how their actions have affected others. This may evoke emotion and an element of self-reflection. It is this powerful effect that has assisted the increasing success of Restorative Justice in recent years for both the offender and the victim. In 2009, it was found that 80 percent of offenders in the Justice Research Consortium conferences expressed themselves as very, or quite, satisfied with the restorative justice process.<sup>1</sup>

However, in the minds of sceptical Western lawyers, social scientists and politicians, many questions and criticisms arise when presented with the idea of reviving restorative justice in the UK. Therefore it is useful to reflect upon the positive effects that have been noticeable and apparent for many years. as it has been used in many ancient cultures, such as the Aborigines, Maoris and even in Anglo Saxon England. They used Restorative Justice to deal with and overcome issues and disputes which took place within their society. Those who committed a crime had to directly address those who they had harmed and make reparation to the society. This process was extremely

---

<sup>1</sup> Joanna Shapland Evaluation 2008 (7)



successful until the 19<sup>th</sup> century when Western powers imposed their model of state punishment onto these colonised peoples throughout the world.<sup>1</sup> This suppression led to the loss of key native Restorative Justice traditions. In the 1980's this traditional model of Restorative Justice, that has been at the heart of these native cultures for years, was implemented into pilot projects in the UK. It is now being disseminated into schools, care homes,<sup>2</sup> prisons and neighbourhoods and the benefits are becoming more widely spread. Restorative Justice is becoming increasingly apparent and effective in terms of repairing the damage caused by low level crime, and this can only improve.

During the 1990's and 2000's, it has been the political and historical changes experienced in the legal system that have made Restorative Justice a well broadcasted issue. The increasing demand for Restorative Justice can be based upon the changing contemporary world and society's demand for another form of justice that both resolves conflict and is appropriate for the times. This can be due to a number of factors; the rise in social movements, such as feminist campaigns against male violence and civil rights demands, in the 1960's and 1970's (which highlighted the ineffectiveness of the crime system); the use of neighbourhood resolution schemes to deal with support; decline of trust in the legal system; the demand for reform of the system by groups representing both the victim and the offender.<sup>3</sup>

A shift from the current judicial method of punishment will have more positive effects in benefitting both society and, most importantly, the victim. It is, of course, a more demanding option that requires a large amount of time, effort, commitment and money. However, it offers reparation for both the victim and the offender allowing them to earn back their respect in the community. To adopt Restorative Justice into the UK would require more than simply introducing a new programme or new techniques. It would require a fundamental change in attitude towards our response to crime, and our

---

<sup>1</sup> Restorative Justice- Ideas, Values, Debates: Gerry Johnstone (36)

<sup>2</sup> A review of the use of restorative justice in children's residential care 2007 National Children's Bureau

<sup>3</sup> The Limitations of Restorative Justice: Chris Cunneen (118)

behaviour towards those who commit the crime and the victim, and for the public generally not to see a restorative response as a 'soft' option. It is important to consider if the benefits of Restorative Justice (against traditional judicial punishment), with particular reference to the well being of the victim, outweigh its disadvantages and mean that it is therefore both feasible and desirable in the current society.

## **The Benefits**

*“We have come a long way since it was said the victim is ignored, kept in the dark, and treated like just another witness, rather than as the person who was on the receiving end of crime”.<sup>1</sup>*

One of the greatest criticisms of the punitive system of justice is the lack of consideration, satisfaction and reparation that the victim, the individual who has been the most affected by the crime, receives. In terms of Restorative Justice, the victim, being central to the process, is paramount and it is this which aids towards the overall healing process. Restorative Justice has been subjected to more evaluations and examinations than any other criminal justice innovation ensuring its success in aiding the healing process.

It is true that some victims may not want greater involvement in a crime. They simply want to recover, free from the interference of others, and allow those whose duty it is, the police or other authorities, to deal with the implications of the crime. In many cases, the responsibility that comes with deciding an offender’s future is far too much for some.<sup>2</sup> However, it is also true that seventy percent of victims desire to meet the offender in order to receive an explanation, to help them to heal, and because it is their human right to meet.<sup>3</sup> They must be given the opportunity to ask the significant, in other words, to ask the questions that they themselves believe matter. Therefore, the benefits of Restorative Justice must be considered to evaluate its overall effectiveness

The initial impact of a crime, and the time in which it takes a victim to fully heal depends on the extent of the crime and the help which they receive. The trauma caused is often great and can materialise in many different forms such as psychological trauma, in the

---

<sup>1</sup> Restorative Justice: issues, values, debates Wright 1999:91

<sup>2</sup> ‘Restorative Justice from the Perspective of Crime Victims’ S Garkawe

<sup>3</sup> Green Paper

example of nightmare, or physical trauma, for example stress. The process of victim recovery after a crime is demonstrated in the four stage model of recovery. The cycle is explained as;<sup>1</sup>

1. Shock/denial
2. Disorganisation/depression
3. Reconstruction/acceptance
4. Normalisation/adjustment

Restorative Justice may help to speed up the process of recovery which is very important for the well being of the victim. It brings a sense of reassurance and empowerment back to the victim which had previously been lost, ultimately helping to bring their life back to normality as soon as possible. It follows the pattern that as time increases, so does self esteem and it is this which contributes to the reparation of the victim. The factors that influence the time taken for recovery to occur include the support available to the victim, whether the victim is known to the offender, and their life situation. Although restorative justice cannot efficiently target the latter, it has been proven to speed up the recovery time of the victim as it responds to two of these three basic needs.

Victims require *real* information- not the 'legally constrained speculations'<sup>2</sup> that they are provided with in court. In a court hearing, even if where there is a guilty plea, mitigation is still put forward by the defence solicitor to excuse or justify the behaviour of the offender which is not helpful to the victim. Securing this real information, that has not been altered or said indirectly, is one of the victims key needs. In the case of Martin<sup>3</sup>, a young school boy who attempted suicide at the age of 15, the actions of two bullies drove him to this desperate act. The restorative process helped him to ask why the victims targeted him and he was able to see it was nothing he had personally done wrong. He was able to hear that it was the result of problems at home which had led to

---

<sup>1</sup> Practitioners Guide to Restorative Justice

<sup>2</sup> The Little book of Restorative Justice (21)

<sup>3</sup> Restorative Justice Consortium (name changed for identity protection)

the two boys exerting their violence on Martin. It is important for the victim to understand why they were victimised, in order to put it behind them and allow further progression in their lives<sup>1</sup>.

Having an emotional outlet to describe personal feelings is beneficial to both the person who was directly affected and to those around them. Even if the offender is not present, to transcend crime, the opportunity to describe what happened must exist. By recollecting their experiences through the emotions they felt, victims are able to receive the acknowledgement that they desire and are more able to move forward. Restorative Justice will also benefit the family (who are normally secondary victims), and help quicken their grieving process in a similar way. Dealing with the aftermath of crime demonstrates active communities at their best. They are helping to heal the breach in relationship that has been caused by crime. The use of Restorative Justice has seen a 27% reduction in reoffending, and 90% of victims eventually receive an apology compared to the 10% who do in court<sup>2</sup>. In other words, community is being restored in terms of the relationship between the offender and the victim, through communication.

The symbolic recognition that they are not to blame is one of the most important factors that a victim can draw from a Restorative Justice conference. For many victims they feel as if their empowerment has been lost and that they have lost the feeling of safety that they once had. By engaging with the offender to form emotional connections the victim is able to receive the vindication that they need in order to regain control of their lives. By being honest, Restorative Justice offers the peace of mind that victims need to reduce the fear and long felt need for revenge that is often experienced.

Restorative Justice offers a range of advantages for the victims that are often ignored in the current justice system. It is only by targeting the emotional side of a crime that we are able to repair fully, the harm that is caused.

---

<sup>1</sup> Howard Zeer, *The little book of Restorative Justice*, outlines victims needs

<sup>2</sup> Restorative Justice Consortium (7)

When defining a victim we describe them as ‘a person who has suffered harm as the direct result of an offence or offences’.<sup>1</sup> Therefore, it is important to also consider the harm that is caused to the offender, close supporters and the community and how restorative justice can be used as a form of reparation for them.

Exploring the harm that offenders themselves have experienced, it is clear that in the eyes of some, they can also be seen as having been victimised. For example, the case study of Peter Woolf and Will Riley<sup>2</sup> can be used to demonstrate this. In his own words, three things ruled Peter’s childhood: crime, drink and violence, and from the age of six he was involved in crime and excluded from the educational system at the age of twelve. It is this victimisation from an early age, that came as a result of being part of a broken home, that resulted in Peter committing over 20,000 offences (ranging from petty crime to more serious offences), before opting to participate in Restorative Justice. Harvard Professor and former prison psychiatrist James Gilligan argues that all violence is an effort to achieve a justice or to undo injustice, in other words, to undo a sense of victimisation. If right, Gilligan suggests we cannot expect offensive behaviour to stop without addressing the victimisation and trauma that has triggered it. In the same way we could argue that we could not have expected Peter to stop offending without addressing the traumatic events of his early years through a process such as Restorative Justice. This may be considered as an excuse as not all people who feel victimised turn to crime, and cases of people in similar situations show that where one individual’s behaviour results in crime the other does not. Unresolved trauma tends to be re-enacted via the means of violence. By addressing the harm done (to the victim) and addressing the cause of the harm (the trauma), the possibility of a future offence is reduced. Of course, in most cases there are a number of criminogenic factors which have contributed towards a person displaying criminal behaviour (examples of these

---

<sup>1</sup> <http://www.cdpp.gov.au/Victims-and-Witnesses/Glossary.aspx>

<sup>2</sup> See Appendix 1. The Sunday Times May 11, 2008. How Restorative Justice turned my life around

may be poor education, poor parenting and substance misuse). Addressing these causal elements may help to break the cycle of offending.

Restorative justice benefits close supporters of the victim and the offender, along with offering the opportunity for community involvement. The close relatives of the victim and the offender often suffer from their actions but in different ways. Whereas the families of the offender suffer from a feeling of shame, the family of the victim often have to come to terms of the physical and mental impact of the offence. In the case of Will Riley, after having walked in on Peter Woolf during a burglary on his home, his close supporters had to come to terms with the feeling of vulnerability and weakness that he felt after deeming himself inadequate to protect his family home. Community involvement is also important as many criminals are the result of a failing community system. Therefore, the community must take responsibility for the actions of its citizens and show some interest in helping them progress. For many, crime and offences affect a large proportion of the community, not just those immediately affected by the offence. The feeling of a lack of security is enough to encourage communities to take action. Restorative Justice offers a way for those in the community to express their concerns and contribute towards changing the individual for the better. Peter and Will did form a relationship as a result of a restorative Justice meeting. Will wanted to support Peter in making something of his life, which he has done, and has not re-offended. Both Peter and Will are advocates of the Restorative Justice process and speak publically together about what happened.

Therefore, restorative justice can offer both victim and offender satisfaction. This is important in the reparation for offenders and others affected as well as victims, as they are also often ignored and their emotions disregarded in the current legal system.

In social and economic terms, Restorative Justice may also offer a long term benefit to society with regard to financial savings. If fewer offences were committed, the cost of

police arrests, court appearances and custodial sentences would decrease. This would be a short term investment for a long term gain by saving more money in the future and would hopefully also result in a more restorative society.



## **The Limitations**

The use of restorative justice makes a compelling case, or so it would seem, based upon literature although there is little empirical evidence to date, given that restorative justice is a fairly recent initiative in the UK, is not consistently delivered at the present time, and is difficult to measure outcomes. However, with a deeper analysis and understanding, we can highlight a few underlying problems which demonstrate that although beneficial, there are limitations on the use of restorative justice within the criminal system.

The Crime and Disorder Act of 1998, created a form of coercive Restorative Justice which contributed towards the hindrance of the flourishing of society, and the lack of focus on the needs of those involved with an offence. In terms of youth offending, this Act enabled courts to make reparative orders against the wish of the young offender. As Restorative Justice is supposedly voluntary and based upon the offender or victims own initiative to participate, this Act has restricted the effects and detracted from the true ethos of Restorative Justice. It may lead to an unwilling and resentful attitude which stifles involvement in conferences, leading to a less cooperative attitude and therefore the likelihood of the process being unsuccessful. If a victim feels coerced then this is secondary victimisation<sup>1</sup> not victim empowerment. However, the purpose of justice must be retained. The role of justice is to punish, and if Restorative Justice is being integrated within the legal system, it should be used as part of the rehabilitative process not so that offenders can receive reduced sentences, as this would encourage participation for the wrong reasons.

True Restorative Justice is purely about meeting the needs of the victim. While the current court process excludes victim input and focuses solely on the offender, they still remain two separate dichotomous groups. A Restorative Justice conference does not

---

<sup>1</sup> Debating Restorative Justice: Carolyn Hoyle and Chris Cunneen (135)

replace the court process, but is an addition in which the victim has a wider participation bringing the victim and the offender closer together.

In addition, more than half of the victims in a Restorative Justice conference believe that their apology is not sincere<sup>1</sup>. Of course, it is key to note that forgiveness is not a goal of restorative justice but the product of the meeting that develops over time. Despite this, an apology and explanation is often what the victim seeks in order to heal, if this is overlooked, the success of Restorative Justice can be questioned.

Discretion for each case must be used when deciding to use Restorative Justice, and we must question its effectiveness in some more serious cases. Restorative Justice makes an assumption that the victim will benefit from the process but this is not always the case and each case should be assessed on an individual basis. In some circumstances and normally in more serious offences, the use of Restorative Justice may cause more harm, trauma and grief than positivity and reparation. In the case of murder, it may be unwise to consider a mother, who is introduced to the man who murdered her daughter in a conference, as an appropriate and beneficial concept. Instead of repairing the harm caused, it could cause more harm and create a feeling of revenge and hate which would hinder the process of restorative justice and have little effect. However, very effective Restorative Justice conferences have been undertaken with murder cases with very positive results for family members.<sup>2</sup> The deciding factors must be whether the victims family instigate the process. Restorative justice therefore has to be considered very carefully as an appropriate option, and a lot of planning and preparation has to take place for serious cases.

The use of Restorative Justice in Sexual Offences and Domestic Violence, is generally viewed as inappropriate by most Restorative Justice practitioners. This is because of the

---

<sup>1</sup> The limits of Restorative Justice: K Daly. (139-140)

<sup>2</sup> See Appendix 2. Can murder ever be forgiven? A Restorative Justice case study, Sharon Goldstone 2009. RJC Resolution 33.

complex issues associated with power and control of the perpetrators of these types of offences. The risks of the possibility of re-victimising the victim in a restorative meeting are increased because of this. If, in exceptional circumstances, a meeting is considered appropriate, the facilitators should be skilled and experienced in both Restorative Justice and in understanding how offenders of these offences operate. The process should be entirely victim prompted with as much planning and preparation taken to ensure the safety and well being of both parties.

There are, of course, always exceptions and in one particular case study<sup>1</sup>, a young woman was raped twice at knife point on her way home from work by a man released from prison just 24 hours before. When faced by the court, the judge, wanting to spare the distress of the woman, did not allow her to speak in court. Although the man received a life sentence, the effects on the woman were devastating as she turned to alcoholism, domestic violence and became isolated from her family which eventually led to the break down of her marriage. For her, Restorative Justice, at her request, was a way of getting her life back on track, as she was able to get answers to her questions which helped in the healing process and enabled her to move forward. Despite showing that Restorative Justice can be use in more serious cases, it is important to remember this is an exception of the norm. For many in the same situation, a face to face meeting with the man who had raped them would be traumatic and self-destructive. Therefore, careful analysis of each case must be taken when considering whether to use Restorative Justice and its effectiveness.

Another way in which Restorative Justice is limited is by its inability to integrate the community into the process, despite this being one of its aims. Restorative Justice attempts to unite the community, offender and the victim and assumes that the practice of Restorative Justice requires the existence of community. In reality, the community is often exempt from the process as the main focus remains on the victim

---

<sup>1</sup> Restorative Justice Conference, Worcester College, Oxford, 3<sup>rd</sup> February 2011

and the offender. The needs of the surrounding citizens are often ignored and sometimes the citizens themselves lack the interest to become involved. Therefore, Restorative Justice is limited because its efforts to integrate the community into the process are not always successful. However, with the David Cameron's current policy on creating a 'Big Society', there is more emphasis and focus on community involvement, so this may well improve community participation.

Restorative Justice is a time consuming, labour intensive and costly intervention which may be a limiting factor to implementing the process fully into our criminal justice system. However the long term benefits and cost savings to our society in the future have to be considered. Evidence shows that for every pound spent on Restorative Justice, there is a nine pound<sup>1</sup> saving due to the reduction of frequency of re-offending which one report claimed was around 27%<sup>2</sup>.

Finally, restorative justice is limited in that it treats every person as a moral agent when this is not always the case. Restorative justice strives to allow participants to be aware of the moral responsibility of their actions. It ignores the fact that people are not always morally responsible, remorseful and may lack empathy. The restorative process is also very much about thoughts feelings and emotions and understanding the impact of actions on others. It does not take into consideration that some groups of people are unable to express emotions, lack consequential thinking skills, and do not have the same social norms as society would expect. For example, those with Attention Deficit and Hyperactivity Disorder may lack the ability to understand and consider another point of view. Similarly, someone with an Autistic Spectrum Disorder, such as Autism and Aspergers, will often have problems with social interaction, social communication, and social imagination.<sup>3</sup> In a Restorative Justice Meeting, those with these traits will find it

---

<sup>1</sup> See Appendix 3. Ministry of Justice. Does Restorative Justice affect reconviction? Joanna Shapland Sheffield University 2008. Repot 4

<sup>2</sup> Restorative Justice- The Evidence. Professor Lawrence Sherman and Heather Strang 2007

<sup>3</sup> <http://www.autism.org.uk/about-autism/autism-and-asperger-syndrome-an-introduction/what-is-autism.aspx>

harder to accept moral responsibility and may show little empathy or understanding of the consequences of their actions. It must therefore be considered whether, in these cases, a reparative conference is really the best option as the situation created may only cause more frustration. If it is decided that this is the best option, the victim must be made fully aware of the circumstances of the offender and be in agreement for the meeting to go ahead in the knowledge that the offender may not show any signs of empathy or remorse.

## **Conclusion**

In the current legal system the rights and needs of the victim are ignored. Currently, the needs of the victim are often left unattended to in the courts and this can be both physically and mentally demanding, which can result in secondary victimisation. In order to ensure that the victims needs are integrated more fully, Restorative Justice may well be the way forward and seems a beneficial alternative to the current system. There are certainly indications that outcomes are more positive for both victim and offender if they have undertaken a restorative meeting, in that victim satisfaction levels are increased and offender recidivism is decreased.

Politically this feeds into the Governments agenda of Safer Communities and a Reduction in Crime, and the recent Green Paper<sup>1</sup> shows the Governments commitment to the growth of Restorative Justice, as a way forward in the criminal justice system, and their acknowledgement of the benefits of Restorative Justice. There are limitations as previously outlined, and Restorative Justice should not be considered as a replacement to the current legal system. For example, careful consideration in more serious cases is important. The circumstances must be analysed to ensure that it is the best possible option, and that it will be the most beneficial process to both the victim and the offender. The risk of creating more harm must be taken into account.

Restorative Justice puts mutual respect, honesty and integrity at the heart; these are values that society should surely strive to achieve. Offenders are able to take responsibility for their actions, make reparation to both the victim and society, whilst being re-integrated into the community. Victims gain empowerment by taking control of their lives, and quicken the healing process in order to 'move on'. Therefore, the possibility of a more integrated and formalised Restorative Justice System should result in improved outcomes achieved for all concerned.

---

<sup>1</sup> 'Breaking the cycle'- Effective punishment, rehabilitation and sentencing. Ministry of Justice.

Despite this, it would be optimistic to believe that pure Restorative Justice is the best option. It is important to remember that the main aim of the justice system is to punish and therefore it should be seen as an additional way of dealing with appropriate cases. In other words, as an alternative or used coherently with the current legal system so that a hybrid system is formed. This would maintain that the appropriate amount of punishment is exerted, whilst also tending to the needs of both the victim and the offender.

On reflection, it would appear that the benefits of Restorative Justice far outweigh the limitations, with regard to improved outcomes for individuals and society, creating a restorative community and economic savings. Therefore, Restorative Justice is the way forward to repairing the harm experienced by crime victims.

**Appendices**



## **Bibliography**

### **Books**

**Keen, Shellie, Lott, Tracey and Wallis, Pete.** *Why me?* Jessica Kingsley, 2010.

**Zehr, Howard.** *The Little book of Restorative Justice.* Good books, 2002.

**Watchel, Ted.** *Real Justice.* The piper's press, 1997.

**Braithwaite, John.** *Crime Shame and Reintegration.* Cambridge University Press 1989.

**Strang, Heather.** *Repair or Revenge.* Oxford University Press, 2002.

**Johnstone, Gerry.** *Restorative Justice, Ideas Values and Debates.* Willan publishing, 2008.

**Daly, Kathleen.** *The limits of Restorative Justice.* Griffith University Press, 2006.

**Cunneen, Chris, Hoyle, Carolyn.** *Debating Restorative Justice.* Heart publishing, 2010.

**Wallis, Peter and Tudor, Barbara.** *The Pocket Guide to Restorative Justice.* Jessica Kingsley, 2008.

**Walker research and training.** *Practitioner Guide to Restorative approaches.* Walker and research training, 2005.

### **Articles**

**Smith, Rodger.** "Give Restorative Justice a fair crack of the whip". *The Times*, March 9, 2004.

**Pollard, Charles and Riley, Will.** "Restorative Justice is not just a simple fad- it really works". *The Observer*, August 1, 2010

**Woolf, Peter and Riley, Will.** "How Restorative Justice turned my life around". *The Sunday Times*, May 11, 2008.

**Goldstone, Sharon.** "Can murder ever be forgiven? A Restorative Justice case study." *Restorative Justice Consortium*, 2009.

### **Web Sites and links**

**Commonwealth Director or Public Prosecutions.** <http://www.cdpp.gov.au/Victims-and-Witnesses/Glossary.aspx>  
 Restorative Justice Council. <http://www.restorativejustice.org.uk>

**Victims' Voices Heard.** <http://www.victimsvoiceheard.org.restorative-justice/goals-of-restorative-justice.html> The goals of Restorative Justice and Case Studies.

**Justice.** "Working with victims, Restorative Justice".  
<http://www.justice.gov.uk/guidance/youth-justice/working-with-victims/restorative-justice/index.htm>

**Autism.** "What is autism?" <http://www.autism.org.uk/about-autism/autism-and-asperger-syndrome-an-introduction/what-is-autism.aspx>

**Restorative Justice Council.** "The Woolf Within" video. The Woolf Within (DVD)  
[http://www.restorativejustice.org.uk/?Resources:DVDs:The Woolf Within](http://www.restorativejustice.org.uk/?Resources:DVDs:The%20Woolf%20Within)

### Reports

**Strang, Heather and Sherman, Lawrence.** *Restorative Justice The Evidence.* Smith Institute, 2007

**Ministry of Justice.** *Breaking the Cycle- Effective punishment, rehabilitation and sentencing.* The Stationary office limited, 2010.

**Shapland, Joanna.** *Does Restorative Justice affect reconviction? The fourth report from the evaluation of three schemes.* Crown Copyright, 2008.

**Marshall, Tony.** *Restorative Justice an Overview.* Home Office Information and Publishing group, 1999

The Green paper. *A report by the Home Office,* 2010.