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'Temporality in Restorative Justice: On Time, Timing and Time-Consciousness'

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Abstract:

Restorative justice has been the subject of much theoretical criminological debate and policy innovation. However, little consideration has been given explicitly to issues of temporality and the challenges they raise. Yet, at its heart, restorative justice provides a rearticulated understanding of the relationship between the past and future; one that seeks to marry otherwise tense and ambiguous dynamics of instrumental and moral reasoning, along with risk-based and punitive logics. This article explores a number of dimensions in which questions of time, timing and time-consciousness are implicated in conceptions and practices of restorative justice. It highlights the social, plural and contested nature of time and temporalisations with relevance to restorative justice. It points to new lines of enquiry and analysis with inferences for the implementation of restorative values and conceptions of justice. It concludes with reflections on the multiple temporalities inferred in shifts of scale in the application of restorative justice.

Keywords:

Restorative justice – temporality – past/future – prevention - early intervention

Introduction

Restorative justice may be thought of as set of interlocking normative claims about how individuals, groups and societies should respond to conflict. More narrowly, restorative justice can be defined as a deliberative process governed by principles of procedural fairness in which the parties with a direct stake in a particular offence (or incident) come together (preferably face-to-face) in a encounter collectively to resolve how to respond to the offence (or incident) such that the harm caused is acknowledged and the implications for the future of the parties are considered with an emphasis on reparation and reintegration (Crawford 2010). This refined definition underscores the process-related principles of restorative justice in terms of both the nature of deliberation and encounter between the parties, as well as the extent to which outcomes adhere to restorative values. Regardless, restorative justice challenges many of the assumptions of traditional criminal justice, its norms and practices, not only with regard to the role of the community and the active involvement of victims but also with regard to the ethics that inform the process of conflict resolution, party deliberation and reparative outcomes. It embeds and accords time and space to the manifest centrality of human emotions and affect in managing and responding to how individuals, groups and societies govern and experience crime, conflict and (in)security (Braithwaite 2002). At its heart, restorative justice provides a rearticulated understanding of the relationship between the past and the future that seeks to marry otherwise tense and ambiguous dimensions of instrumental and moral attributes along with risk-based and punitive logics. It offers processes for envisioning the future by thinking forward through the past. Yet, strangely, little theoretical consideration has been given, thus far, directly to issues of temporality in the volumes of writings that have proliferated on the subject over the past two decades or so.

In an effort to redress this lacuna, this paper explores some theoretical and normative questions regarding temporality in both conceptions and practices of restorative justice. It begins by outlining a number of issues concerning temporality and time, more generally, in the context

of modes of regulation and models of justice. It then goes on to consider the manner in which temporality is expressed in restorative practices and raises questions about the resultant implications of such insights for research and critical thinking in the field. It focuses primarily on conceptions and experiences of restorative justice drawn from the UK, North America and Australasia, albeit with broader implications. Five dimensions of temporalisation and timing are explored under the headings: (i) thinking forward through the past; (ii) prevention and early intervention; (iii) time-consciousness and differing experiences of time; (iv) questions of timing in restorative justice practices; and (v) the dominant temporalisation of restorative justice. In relation to each, the theme of temporality is explored to raise critical questions for restorative justice theory and practices and to reveal new dimensions of analysis and avenues of enquiry. The paper concludes with some thoughts on the multiple temporalities implied in the question of scale in the application of diverse restorative practices. Accordingly, by drawing on developments in social theory, the paper seeks to contribute to revitalising the critical potential of restorative justice values, principles and practices and, in so doing, highlights possible directions for future research.

Temporality and Time

Time is irrecoverably bound up with the spatial constitution of society and *visa versa*. Time and space are interdependent in ways that defy a coherent or simple ‘theory of time’ (c.f. Adam 2004). Models of justice and systems of social regulation expresses what Bakhtin described as the ‘intrinsic connectedness of temporal and spatial relationships’ (1990: 84). Hence, it is not my intention in the arguments that follow to privilege time but rather to acknowledge that in contrast to the predominance of discussions about space and spatiality, there has been very little debate about time and temporality, especially in criminology and socio-legal studies. More recently, however, Mariana Valverde (2011a; 2014) has compellingly argued that temporality is central to all security projects (see also Farmer 2010; 2014). It is this spur to which I wish to

respond by exploring temporality in restorative justice, incorporating: relations of time (between past, present and future); perceptions and experiences of time (what I refer to as time-consciousness); and the social organisation of time (including dominant temporalities in regimes of social organisation).

Time affects and informs the experience and perception of justice and our understanding of regulatory practices in diverse ways. Feeling secure demands not only the absence of direct harms in the moment but also a reasonable confidence that the conditions assuring our safety will continue into the foreseeable future. Correspondingly, technologies, projects and practices of security and justice offer assurances about the future and generate expectations that people can count on and build upon. In contrast to what Jeremy Bentham derided as ‘dog’s law’, criminal law and criminal justice aspire to engender certainty to provide fair warning and place limits on the state’s capacity to infringe the freedom of the individual (cited in Ashworth and Zedner 2014: 31-2). When we think of our safety, we think not just of the present moment but also of projections into the future. Our current sense of security is to some considerable degree predicated upon forecasts about future security. Likewise, confidence in the assurances that people can pursue their goals without harmful interference engenders subjective or existential security. Yet, in anticipation, we project towards the future, but frequently what delineates our future is our past, our inter-subjective and culturally informed assumptions, experiences and beliefs that all inform our present insecurities and our attempts to govern the future. Like security practices and mentalities more generally (Crawford and Hutchinson 2014), restorative justice seeks to govern the future in the present and through the past. Restorative justice seeks explicitly to restore the victim’s security, self-respect, dignity and sense of control, as well as the wider community’s sense of security, order and well-being. Likewise the reintegration of the offender into the law-abiding community offers her/him the basis from which to move beyond their offending and secure their status within that community. Thus the relationship between the

past, present and future shapes our understanding of the security in the world around us and directly informs systems and norms of justice.

Nonetheless, in much of the literature, restorative justice is discussed and theorised as if it is a free-floating concept untouched by time or temporality. Proponents often extol the virtues of restorative justice as a traditional, 'authentic' or universal form of inter-personal conflict resolution, rooted in indigenous and pre-modern practices that were believed to have been eclipsed and overshadowed by the modern, state-based, retributive and victim-remote (Christie 1977) criminal justice system. Braithwaite, for examples, goes as far as to suggest that 'restorative justice has been the dominant model of criminal justice throughout most of human history for all the world's people' (1998: 323). This offers an ahistorical and atemporal understanding of restorative justice as an homogenous and essentialised practice. As Daly notes: 'Advocates' constructions of the history of restorative justice, that is, the origin myth that a superior justice form prevailed before the imposition of retributive justice, is linked to their desire to maintain a strong oppositional contrast between restorative and retributive justice' (2002: 63). This 'origin myth' not only constructs an overtly romanticised version of human conflict across time and an unnecessarily bifurcated interpretation of the connections between restoration and punishment, but also erases pivotal questions of temporality. Furthermore, it fails to acknowledge the processes, technologies and conceptualisations that configure dominant assumptions about time and timing in restorative principles and the manner in which plural temporalities inform our understanding and experience of restorative justice practices.

Valverde notes that 'temporalisation differs not only by directions (forward versus backward) but in other ways as well' (2014: 386). Time is social, plural and contested. It is social in that time is actively produced by and through various social practices. This is well illustrated by the development of a uniform official time across European states by the spread of the railways in the nineteenth century (Schivelbusch 1986). The train timetable constitutes, what Giddens (1990: 20) refers to as, 'a time-space ordering device' permitting 'the complex ordering

of trains and their passengers and their freight across large tracts of time-space'. Moreover, social time as a frame of reference fixed by the rhythm of collective life differs qualitatively from the Newtonian concept of astronomical time. As Sorokin and Merton note: 'Quantitatively equal periods of time are rendered socially unequal and unequal periods are socially equalized' (1937: 623-4).¹

Time is plural in that these social practices are specific to different contexts, locations and activities. The ancient Greeks had two words for time, *chronos* and *kairos* (Smith 1969). Chronos refers to chronological or sequential time that can be measured – quantitatively in seconds, minutes, hours, days and years – as the present extends backwards into the past and forwards into the future. It suggests a constant, inexorable passing of time flowing steadily forward like a river, providing coherence and a line linking the past and future. Kairos, by contrast, is a moment of indeterminate time, one not marked by the past, the present or the future. It points to the special position that an event or action occupies. It identifies time as opportunity. Kairos, therefore, also refers to the 'right time' or 'opportune moment'. Kairos measures moments, not seconds. *Kairos* time is the length of an experience required to make meaning of that experience. It conveys notions of unboundness and of fluidity. It infuses the present with (possibilities of) richness in meaning, rather than rendering it fleeting. Whereas chronos is quantitative, kairos is qualitative and has an existential quality which evokes a plural – rather singular – time. In this vein, psychological perceptions of time are not experienced as flowing at a constant rate but are affected by the speed or slowness of events and the motion of occurrences. Moreover, perceptions of time are influenced by subjective changes in the person, for instance, ill-health (Toombs 1990). The same space of time seems shorter as we grow older. In this sense, time cannot simply be understood as a linear, progressive or evolutionary process,

¹ Sorokin and Merton add: 'It is a gratuitous assumption that astronomical or even calendrical time systems are best fitted for designating or measuring simultaneity, sequence and duration in social phenomena' (1937: 627).

flowing inexorably in one direction. It also highlights the importance of narratives in connecting past experiences and future possibilities.

Time is contested in that the specific time-frames that governs a particular context is the outcome of challenge, conflict and contestation. Different modes of temporal practice and perception may work to privilege certain viewpoints while marginalising others. Hence, time is both a resource and an interest in social struggles of various kinds. EP Thompson (1967) showed how different modes of production imply different forms and experiences of temporality. Significant power rests with those dominant groups who are able to impose their construction of time on others. Notions of time, Fabian argued, are not 'natural resources', but 'ideologically construed instruments of power' (1983: 144). Hence, different formations of time reinforce and reproduce different inequalities and regimes of social order. Just as there are distinctions between objective and subjective security, so too there are differences in perceptions of time as fixed and fluid. Thus, different ways of thinking about time can, not only shape our sense of connection to the past, but also our conceptions of the future.

May and Thrift (2001: 3-5) usefully identify four domains in which time and social practices can be understood: first, natural rhythms and cycles (such as the rhythms of the body, tide and seasons); second, systems of social discipline (be they secular or religious); third, their relation to instruments, devices and technologies; and fourth, their relation to texts and conceptualisations which serve as vehicles of translation in that by setting out a particular understanding of time they regulate it. Technological innovations allow for significant time compression and enable attempts to control rhythms and restructure temporalities. Of particular relevance for our purposes are the ways in which restorative practices deploy or interrupt natural rhythms and cycles and relate to 'technologies' (mechanisms and procedures) and 'texts' (ideas and conceptions) that imply elements of time. More directly, a sense of time (or 'time-consciousness') is thus both shaped by and enacted through restorative practices as a distinct system of social discipline. Additionally, restorative practices take shape within particular settings

and achieve authority according to the spatial and temporal arrangements evident within those settings.

These insights raise interesting and important issues for a critical analysis of restorative justice principles and practices. Let us consider five dimensions of analysis that foreground questions of time, timing and time-consciousness.

1. Thinking Forward through the Past

Commentators have rightly highlighted the preventive principles and features of criminal law, criminal justice and policing evident, notably in the late eighteenth and early nineteenth centuries, and the manner in which these continue to inform criminal justice institutions and practices (Ashworth and Zedner 2014). Despite the eloquent arguments of Jeremy Bentham, Patrick Colquhoun, Edwin Chadwick and their contemporaries, a future-oriented preventive model of policing and criminal justice was regarded as being inconsistent with individual liberty, limitations on the exercise of state power and necessary procedural safeguards. Hence, criminal justice remains largely (but not exclusively) a retrospective system of prosecution and punishment. It is pre-occupied with matching punishment to the harm done; to making right the violation to the societal order caused by crime. The criminal trial, for the most part, is based on the reconstruction of past events and is primarily concerned with the moral reordering of that past, in the present. Hence, punishment is justified where it corresponds proportionately to culpability for acts (or omissions) that have occurred. Any punishment for violation of the criminal law therefore must be retrospectively deserved. This is so whether the justification for punishment is seen in terms of retribution, rehabilitation or deterrence. Hence, the logic of criminal justice and the procedural safeguards that attend to it are often argued to be incommensurable with the logic of risk and security with their future orientation and consequentialist concern for prevention.

By contrast, restorative justice is forward-looking in ways that differ from the ‘forensic gaze’ of crime investigation, criminal justice and the courtroom drama. Restorative principles and

values decidedly look to what is to come. Restorative justice has an explicit future-orientation; it endeavours to engender responsibility amongst the parties to a conflict and to prevent future harms. It is concerned not simply with responding to past harms and dealing with existent conflicts but also with governing as yet unknown futures. As such, restorative justice seeks to engender processes for thinking forward through the past. A primary focus of restorative justice (notably in its restorative outcomes) is on directing, steering and influencing prospective behaviour rather than merely accounting for and holding individuals responsible for past conduct. Hence, restorative justice - like crime prevention more generally - presupposes a conscious awareness of the future and an effort to regulate future conduct in the present. As such, restorative justice connects with preventive logics and security-based mentalities that seek to 'govern the future' (O'Malley 2004).

To this end, restorative justice operationalises two forms of responsibility (Braithwaite and Roche 2001). The first is passive responsibility, which is generally backward looking and after the event – namely the idea of being held to account which translates into the question 'what did you do?' Where an obligation exists, one is called to account afterwards for one's conduct or inaction. This *post-hoc* accounting for the past – evident in traditional criminal justice proceedings - is particularly important for victims in restorative processes and encounters. The second is active responsibility which involves taking responsibility for addressing a problem. It is generally future-oriented and informs the notions of 'being responsible' and 'taking responsibility' for what is yet to come. Prominence is given to action in the present and to the prevention of unwanted situations or events in the future. This translates into the question 'what is to be done?' (Bovens 1998: 27). Consequently, participants to a restorative intervention - be they victims, offenders or members of the wider community - are charged with responsibility for how they act in the future in ways that foster restoration, reparation and reintegration and reduce the likelihood of future crime. As such, restorative justice represents a significant shift whereby offenders are held accountable for their past behaviour and required actively to take

responsibility going forward, with the aim not of condemnation but of reintegration, harm prevention and conflict avoidance. In so doing, it separates blame for past harms from responsibility for ‘making good’ in the future (Maruna 2014: 14).

Janus-faced, therefore, restorative justice simultaneously looks backwards and forward across time. Some commentators suggest that restorative justice – uniquely perhaps - may be able to provide an approach to justice that combines both the risk-based, instrumental and consequentialist approach to governing the future with a moral space for confronting the past (Shearing 2001). This space is particularly associated with the role of the victim within restorative justice, as victims are ‘more emotionally involved and less sanguine about the idea of leaving the past to take care of itself’. Rather, they require a ‘response that acknowledges the importance of symbolically reordering the past’ (Shearing 2001: 214). Hence, restorative justice may possibly offer a resolution to a fundamental schism within penal and criminological theory and practice that lies in the tension between future-oriented security concerns, on the one hand, and doing justice on the other hand. Yet, this raises questions about the extent to which, in practice, restorative justice processes are able to juggle these potentially tense and competing demands. In practice, restorative justice face-to-face encounters frequently move quite swiftly from the question ‘who did what?’ to the question ‘what is to be done?’ Can restorative justice manage to look simultaneously to the past and the future, whilst accommodating both the expressive and morally toned elements of justice together with the instrumental demands for future security? Can the burdens of future problem-solving adequately address the need (particularly that held by the victims) to reorder the past? Or is the past deployed in the service of, and subsumed under the priorities of, the future strains for security and prevention? In reality, one of the fault-lines in people’s experiences of restorative practices may relate to the extent to which these polarities are reconciled. Contrary to Shearing’s assertion that ‘this tension is being lessened where the mentality and practice of restorative justice is taking hold within criminal justice’ (2001: 217),

what may be noteworthy about restorative justice is that its practices express this tension in both visible and tangible ways that are not necessarily resolved but rather always immanent and latent.

2. Prevention and Early Intervention

As the preceding discussion suggests, there are close similarities between the values of restorative justice and logics of crime prevention, more generally. Not only does this find expression in a future-orientation, but it also presages a logic of early intervention with manifest temporal implications. In this regard, restorative justice is often considered to be an ‘up-stream’ intervention.² This is particularly evident in the fact that most restorative justice interventions are used predominantly in relation to both young people and low-level offences (and often a combination of both) or what Karp and Drakulich (2004) refer to as ‘minor crimes in quaint settings’. As such, restorative justice is largely targeted at ‘at risk’ groups and situations in an attempt to intervene before crime problems become deeply entrenched either in children’s and young people’s lives or in the cumulative neighbourhood effects that tip some communities into ‘spirals of decline’ (Wilson and Kelling 1982). There is a temporal and developmental logic at play here. The assumption evident in a large amount of restorative justice practice is that low-level behavioural problems are harbingers of more serious criminality (either at an individual or community level), if not pre-empted, prevented or - in contemporary policy parlance - ‘nipped in the bud’. Thus conceived, restorative justice represents an attempt to intervene in the developmental life-course and pathways of offending and victimisation associated with particular individuals or problematic situations. Without intervention, the assumption is that problems escalate, either in terms of the nature of the problem itself and its seriousness or with regard to children and young people, as they grow older. In this light, restorative justice constitutes a form

² The very notion of ‘up-stream’ is a temporal one and returns us to the chronological analogy of time as likened to the flow of a river.

of secondary, risk-based crime prevention which presumes a developmental trajectory across time.

This early interventionist logic within the institutionalisation of restorative justice, results in a focus on low-level crimes and anti-social activities which themselves may fall outside or on the cusp of the frame of 'crime' narrowly defined and the processes of criminalisation. Restorative cautioning and police-facilitated conferencing often operate in this liminal space (Hoyle *et al.* 2002). This highlights various forms of troublesome behaviour, rule-breaking and activities which may not themselves be defined as criminal or may not be subject of criminal processing but which - from a developmental perspective - may be interpreted as in some way precursors to more serious 'criminal' behaviour (Crawford 2009). This includes behaviour that is not-yet-criminal but which is deemed to be an indicator of likely future criminal conduct. Hence, anti-social behaviour, for example, is conceived as a precursor to more serious crime and an indicator of future criminality. Here, as Zedner astutely notes, the focus on early intervention - as a form of 'pre-crime' - 'shifts the temporal perspective to anticipate and forestall that which has not yet occurred and may never do so' (2007: 262). Examples of this kind of preventive restorative justice include the use of mediation, conferencing and 'circles' in, for example:

- schools to address issues such as bullying and rule-breaking;
- housing disputes over complaints of noise and nuisance;
- response to occupational complaints and workplace disciplinary proceedings;
- communities to address experiences and perceptions of anti-social behaviour; and
- community disputes through mediation boards (such as the Norwegian initiatives).

However, as Zedner also notes: "The shift is not only temporal but also sectoral; spreading out from the State to embrace pre-emptive endeavours only remotely related to crime" (2007: 262).

This proliferation of restorative justice as a technology of conflict processing may be a good thing if it accords with Christie's (1977) goal of public participation in conflict processing as a social activity. However, it has long been recognised that the (unintended) consequences of state

interventionism in regulating deviant behaviour are that alternatives easily become supplements. In the process, the criminal justice and regulatory 'net' both gets bigger and increasingly teams with minnows (Cohen 1985). It may be unsurprising, therefore, that the implementation of restorative justice as a major plank of British youth justice has coincided with a rise in the resort to youth criminalisation and with the responsabilisation of young people at an earlier age (Crawford *et al* 2012). Accordingly, preventive restorative justice as early intervention may have wide-ranging net-widening effects and/or prompt more intensive and extensive regulation.

Additionally, this emphasis on 'up-stream', early intervention, at particular moments in time, raises vexed issues concerning the knowledge and evidence upon which causal assumptions and developmental trajectories are premised. In reality, the scientific knowledge-base underpinning prevention and pre-emption remains too ambiguous, and the fallibility of prediction too great, to be reliable (Harcourt 2007). Research continues to show that predictions of future offending and serious harm are more frequently likely to be wrong than right. Hart and colleagues argue that the margins of error surrounding individual risk assessments of violence are so wide as to make such predictions 'virtually meaningless' (2007: 263). In the context of childhood risk factors, developmental criminological research shows substantial flows *out of* as well as *in to* the pool of children who develop chronic conduct problems (Sutton *et al.* 2004). Consequently, false positives and false negatives abound. Cooke and Michie concluded; 'it is clear that predictions of future offending cannot be achieved, with any degree of confidence, in the individual case' (2010: 259), whilst Skeem and Monahan argue that the predictive capacity of violence risk assessment 'may be reaching a point of diminishing returns in instrument development' (2011: 41).

3. Time-Consciousness and Differing Experiences of Time

Valverde notes that "duration" – the phenomenological time of human experience — is not the same as objective, calendar time' (2014: 386). Put another way, there are very real differences

between lived and represented time. People's time-consciousness differs according to context.

More than a century ago, William James observed:

'In general a time filled with varied and interesting experiences, seems short in passing, but long as we look back. On the other hand, a tract of time empty of experiences seems long in passing, but in retrospect short' (2007: 624).

What James highlighted was the salience of experiences and events for understandings of time.

In the same vein, Armstrong (2014), more recently, illustrates the manner in which people experience the time associated with punishments – notably detention - in very different ways.

Such that juridical theories of proportionality misunderstand experiences of time. Armstrong and Weaver's (2013) research into prisoners' experiences of penal time

'contradicted in almost every way the time assumptions of proportionality theory... Short sentences felt longer than long sentences to those who had done both. Sentences of the same length did not have the same "time feel" as each other for those who had done several such sentences' (Armstrong 2014: 395).

This recognition of plural experiences of 'time feel' raises a number of intriguing questions about the lived experiences of restorative justice, especially given the heightened dimensions of human emotion and affect that are often central to such practices. How does time 'feel' in such contexts of heightened senses and sensibilities?

In this regard, restorative justice proponents and theories place considerable salience and import on the properties and power of an 'encounter'. According to van Ness and Strong the key elements to encounter are: 'meeting, narrative, emotion, understanding and agreement' (2006: 71). Meetings are characterised by each party telling the story from his or her perspective (*narrative*), the expression of *emotion* in the communication, a growing *understanding* of the others, and a concluding *agreement* that is particular to the situation and achievable by the parties. More generally, it is argued that whereas the conventional court fosters a culture of denial, restorative justice promotes a culture of apology (Braithwaite 2000: 188). That these are emotionally charged

encounters is central to their subjective value, humanising potential and capacity to foster change that proponents argue is pivotal to their appeal. As David Moore argues in relation to conferences:

‘in this context of shared emotions, victim and offender achieve a sort of empathy. This may not make the victim feel particularly positive about the offender but it does make the offender seem more normal, less malevolent.’ (Cited in van Ness and Strong 2006: 72)

For offenders, hearing the victim’s story, and in the face of the emotions and distress that has been caused by their acts, humanises the victim and renders the consequences of the crime real and tangible. It is also believed that such emotional face-to-face meetings can prompt attitude and behaviour change on the part of offenders. The encounter, it is argued, serves to foster empathy which is an important pre-requisite for genuine remorse and a willingness to repair the harm done (Harris *et al.* 2004). Restorative justice encounters hold out the desire and aspiration of prompting ‘turning points’ and life-changing ‘epiphanies’ (Miller 2011: 77, 100). Restorative encounters can play a pivotal role in life narratives of change that inform new social identities in a journey to desistance, providing an offender with a language and framework for forgiveness, and allowing her/him to exert a sense of control over an unknown future (Maruna *et al.* 2006). This is not to suggest that such epiphanies can be manufactured or scripted but rather that they might be a by-product of facilitated encounters that allow sufficient space for human emotions.

In this vein, Collins (2004: 111) conceptualises restorative justice encounters as an example of a larger category of social events that he terms ‘interaction rituals’. Where successful, restorative encounters can foster feelings of - what Durkheim called - ‘collective effervescence’ and social solidarity with other participants *in the moment*, as they get ‘caught up in the rhythm and mood of the talk’ (Collins 2004: 48). Over time, these repeated social encounters constitute ‘interaction ritual chains’ which inform (in positive or negative directions) people’s longer-term emotional energy, sense of group solidarity and commitment to shared standards of morality. For Collins, these ‘rituals’ are defined by four key features. First, people are physically assembled

together (in time and space) so that they are influenced by each other's bodily presence. Second, the boundaries of interaction membership are clearly defined so that everyone knows who is taking part and who is excluded. Third, participants focus on a common object or purpose. Fourth, participants share a common, if dynamic, emotional mood or 'entrainment' experience. Feedback between these elements via 'mutual entrainment of emotion and attention' (Collins 2004: 48) produces a shared experience at both emotional and cognitive levels. Developing Collins' framework, Rossner has shown how 'it is the dynamic process of building rhythm and a shared focus over time in the conference that culminates in expressions of group solidarity' (2013: 11). Drawing from detailed empirical analysis of Australian and UK experiences, she shows that whilst a restorative conference may 'at first lack continuity', nevertheless, 'over time a rhythm emerges and participants develop a mutual focus of attention' (2013: 87).³

Collins argues that both negative and positive emotions can drive an interaction ritual event towards success. His claim is that it is the intensity of emotions, rather than their content, that increases the chances of successfully informing people's longer-term emotional energy, sense of group solidarity and commitment to shared standards of morality. Anger, friendliness, fear or a variety of other emotions may dominate the initial mood. However, emotional contagion may then take place because the participants are focusing intensely on the same feeling. Emotional contagion can allow rituals to transform emotions from negative to positive ones, binding together the participants in their commitment to shared standards of morality and 'righteous anger for violations' (Collins 2004: 48). Rossner refers to these moments as 'emotional turning points' (2013: 60-65); specific moments when the rhythm changes from one of conflict to one of mutual solidarity. Crucially, both Rossner and Collins provide important insights into the conditions for successful restorative encounters, in which time and timing play pivotal roles.

³ Whilst Rossner's (2013) valuable contribution to our understanding of emotions and rituals in restorative justice can be read as an inductively constructed, micro-sociological theory about timing and restorative justice, at no point in her book does she address directly notions of time or temporality.

One implication is that such encounters produce both short-term and long-term outcomes. Where successful, short-term and possibly transient effects include feelings of group solidarity and an increase in emotional energy. Interviews with offenders held two years after their restorative event suggest ‘the potential for these conferences to act as a turning point in their life, providing them with the long-term emotional energy needed to stop offending’ (Rossner 2013: 145). However, long-term effects are likely to require individuals to participate in other interaction rituals in order to maintain, or increase, their emotional energy and sense of social solidarity. This is because emotions have a short half-life and decay over time (Elster 2004). Consequently, some restorative practices include periods of ‘time out’ or ‘private time’, if emotions get too heated or to allow participants to reflect on proceedings (Morris *et al.* 1993: 308; Shapland *et al.* 2011: 83). More generally, analyses of the emotions stirred up during periods of transitional justice show how individual experiences and memories ‘play a decreasing role in the formation of the *longue durée* of collective memories’ (Karstedt 2009: 28). However, where reinforced by other ‘interaction rituals’, individual memories of emotionally-charged events may struggle to fade and be recharged over time.

There are, therefore, two possible temporal effects that might benefit from differentiation, both of which inform personal narratives that make sense of continuity and change over time. First, there are the experiences of time during the encounter, and the extent to which time takes on a *kairos*-type moment of itself in which time-consciousness is related to the fluid experience of time required to make sense and derive meaning of the moment. Second, there is the subsequent (possibly longer-term) perception of time as influenced by the restorative justice encounter; the new meaning accorded to the past and the future on the basis of the ‘opportune moment’. These prompt different (empirical) questions. First, how does ‘time feel’ to the participants of a restorative encounter? Second, if restorative encounters do prompt key turning points – that either allow victims to ‘move on’ or ‘find closure’ and enables offenders to experience epiphanies – what impacts on subsequent experiences of time do they have?

Nonetheless, a restorative justice encounter, however spectacular and emotionally charged, ‘is not likely to magically undo the years of social marginalization and exclusion experienced by so many offenders... or remove the need for victims to receive long-term support or counselling’ (Morris 2002: 605). There are evident limits as regards what can be achieved in restorative justice encounters, even where the exceptional nature of the experience lasts long in the memory. This highlights the manner in which restorative practices have both short-term implications and longer-term consequences, both of which suggest a plurality of temporalities in terms of how they are experienced across time. It also raises questions about the (appropriate) timing of an encounter and the values that inform such decisions, to which we now turn.

4. Questions of Timing in Restorative Justice Practices

What is the ‘right time’ or ‘opportune moment’ (*kairos*-time) for restorative interventions? How soon after the incident should encounters between victims and offenders occur? Moreover, at what point during the processes of criminal justice responses should restorative justice interventions be staged? Today in the UK (as elsewhere), one can find examples of restorative justice in neighbourhoods, outside of the criminal justice process, performed by police at or instead of a caution, pre-trial, in court, out of court, deferred from the court, during sentencing, after sentencing or many years later when the offender is in prison or on probation. Each of these implies different temporal inferences. Furthermore, in the US, restorative justice has been applied to capital crimes with offenders on death row, sometimes only shortly before execution (Vos and Umbreit 2000; Beck *et al.* 2007). In these extreme cases, the fact that restorative processes take place long after a sentence has been imposed is frequently justified precisely because of the length of time required for the survivors to arrive at the point in time when they are ready for this form of intervention. Victimological research has highlighted the emotional and psychological impact of victimisation. It has also pointed to the variable rates of recovery from trauma by different victims, dependent upon their (subjective) capabilities. Different

reactions to similar experiences of victimisation result, not only from the seriousness of the offence, but also from the variable capacities of victims to recover from the event (Gottfredson 1989).

One of the explicit attributes of restorative justice is that unlike courts, restorative practices offer means by which victims can experience emotional restoration (Strang 2001). Restorative justice is said to allow time and space to recognise and address the emotional dimensions of the harms that victims suffer. Yet, it takes time for victims to recover from the trauma of crime to such an extent that they may be ready to face such an encounter (Morris *et al.* 1993). Furthermore, the notion of ‘closure’ is often held out as an important psychological benefit and outcome of restorative justice processes. ‘Closure’ has a distinct temporal dimension; it takes time to reach closure. The question often used in surveying victims attitudes towards and satisfaction with a restorative justice is frequently something along the lines of whether it had made victims feel ‘you could put the whole thing behind you’.⁴ Hence, recovery from trauma and the receptiveness to closure for victims have significant implications for the timing of restorative justice encounters and interventions. Failure of justice systems to provide ‘closure’ can leave victims feeling abandoned with resultant long-term implications. The same has been noted of survivors in post-conflict societies where: ‘Truth commissions can assert an over-simplistic view of what it takes to move on from the past’ (Hamber and Wilson 2002: 37).

What is more, the experience of trauma induced by crime victimisation may itself affect the victim’s experience of time. Cognitive psychological research suggests that the shock and pain associated with trauma may have temporal effects. Bennett contends that:

‘in the normal course of events experiences are processed through cognitive schemes which enable familiar experiences to be identified, interpreted and assimilated to narrative. Memory is thus constituted as experience transformed into representation. Traumatic or extreme experience, however, resists such processing. Its unfamiliar or extra-ordinary

⁴ This wording is taken from the Canberra RISE research study (Strang 2002).

nature renders it unintelligible, causing cognitive systems to balk; its sensory or affective character renders it inimical to thought – and ultimately to memory itself.’ (2000: 81)

Such effects may not be restricted to the most serious victimisation of extreme violence or rape. They may also attend to instances when victims experience a disorder of memory whereby traumatic events ‘free-float in time’ and the victim continues to be haunted by continuing nightmares and ‘flash-backs’.⁵ The overcoming of trauma, therefore, is in part a process of resituating and re-embedding that which resists temporalisation.

By contrast, timing has implications for offenders as well.⁶ The importance of alacrity has been highlighted in holding ‘offenders’ to account for their offences, both in term of the benefits to justice and for behavioural change. Roche concludes his study of accountability in restorative justice, identifying ‘timeliness’ as one of seven key criteria by which to assess the quality of an accountability mechanism. He argues:

‘The process of giving an account should occur in a timely fashion. When accounting does not follow quite soon after the making of a decision, it becomes less likely that this prospect will provide an incentive for the decision-maker to make a good decision.’ (2003: 52)

Furthermore, delayed accountability mechanisms render it harder to correct mistakes: ‘the passage of time makes it more difficult to scrutinize a decision-maker’s performance, to detect mistakes and abuses, and to correct them’ (Roche 2003: 52). For young people and adolescents, in particular, time between an incident and the formal response (or encounter) may seem elongated especially during periods in which they are undergoing significant change themselves. A month to a teenager may feel like a year to an adult. Research in developmental psychology suggests that young people have a tendency to place greater salience on short-term benefits over long-term costs. The high level of risk-taking activities undertaken by young people suggests that

⁵ The trauma of burglary - having one’s privacy and home violated - is one such example.

⁶ So too, it has implications for the wider community, whose members may feel that undue delays are problematic. Space prohibits any exploration of this dimension, here.

they suffer what appear like excessive myopia expressed in trading-off present versus future consequences but, in essence, may be a product of projection bias – projecting their present preferences into the future (O’Donoghue and Rabin 2001). Young people’s shorter time-horizons imply very different temporalities.

Strang (2002: 155-91) forcefully demonstrates that victims’ and offenders’ experiences of justice in restorative conferences do not constitute a ‘zero-sum’ game and that restorative justice does indeed offer the potential to allow both parties to benefit more often than adversarial justice. The same may be true for temporalities. Nevertheless, a victim-sensitive temporalisation will undoubtedly be very different to one that is rooted in the experiences, perceptions and needs of offenders. The dominant temporality in restorative justice might look very different, therefore, from a victim-perspective, as opposed to a regime that prioritises offender’s interests. Furthermore, there are ‘system’ temporalities that accord to the organisational demands, administrative necessities and/or bureaucratic rationalities. These are rooted in the prevailing requirements of the system of control and the professions that populate it. These may not be consistent with either offenders’ or victims’ needs.

‘Speeding up justice’ has become a major policy goal in the UK and other jurisdictions.⁷ In many ways, restorative justice practices have benefitted from such a preoccupation for swiftness, ‘speed’ and ‘tackling delays’. As a more informal model of justice, restorative justice is often associated with quicker – often out-of-court or pre-court - interventions that avoid the delays implied in the evidence gathering, fact-finding and procedural safeguards apparent in courtroom proceedings. Speed is frequently justified in terms of accountability: ‘so that offenders are quickly made to face the consequences of their actions’ (Ministry of Justice 2012: 11). More broadly, the valorisation of speed and time, in the politics of efficiency mean that the idea of

⁷ For example, British Government plans, outlined in *Swift and Sure Justice: The Government’s Plans for Reform of the Criminal Justice System* (Ministry of Justice 2012), placed emphasis on the ‘use restorative justice techniques to get a firm and early grip on offending, preventing problems escalating unnecessarily’ (p. 7). In the White paper, restorative justice is aligned with ‘re-conceiving summary justice’ (p. 38). One of New Labour Government’s five key pledges in the 1997 election was to ‘fast-track punishment for persistent young offenders by halving the time from arrest to sentencing’.

saving and compressing time are dominant features of the modern age. Time, after all, is money – as the adage goes. Speed, therefore, becomes an important economic value. The managerialist impulse to measure performance frequently takes the form of timing. Hence, efficient and economic performance is routinely measured against time; the quicker the better.

These institutionalised temporalisations can serve to undermine restorative principles. Some examples from the implementation of youth offender panels in England and Wales serve to illustrate these points (Crawford 2006).⁸ First, despite commitments to placing victims' needs at the centre of the referral order, the requirement to hold the first youth offender panel meeting within 20 working days (where a victim is involved), in large part, led to the very low participation of victims at panel meetings; 13% of relevant cases in the national pilots (Crawford and Newburn 2003) and 9% in subsequent research in one youth offending team area (Crawford and Burden 2005). The research concluded that the emphasis on speed was a significant impediment to victim input with the resultant diminution to the restorative potential of the orders. A similar conclusion was reached in relation to the reparative work of youth offending teams by Dignan (2000: 3).

Second, like much criminal justice, the referral order retains the unit of time as a means of structuring sanctions. Upon making a referral order, the Youth Court is required to determine the length of time that it will last, from 3 to 12 months, depending on the seriousness of the offence. Informed by concerns for proportionality, this temporal demarcation of the work of the youth offender panel and timescale over which it will meet with a young person to review progress, does little to accord with the specific needs of the parties or to the speed at which a young person may subsequently perform the agreed activities.

⁸ Introduced by the Youth Justice and Criminal Evidence Act 1999, the referral order is the primary sentence for first time young offenders under the age of 18 who appear in court and plead guilty. The court refers the young person to a youth offender panel - consisting of one professional youth offending team member and two lay (volunteer) panel members who facilitate the meeting, the purpose of which is 'to provide a constructive forum for the young offender to confront the consequences of the crime and agree a programme of meaningful activity to prevent any further offending' (Home Office 2002). In line with restorative principles, youth offender panels are designed to provide a less formal context than court for the offender, the victim, their supporters and members of the community to discuss the crime and its consequences. Victims should be invited to attend.

Third, within a managerialist framework in which time and speed are valorised, the administration of panel meetings through rotas of community volunteers and back-to-back scheduling of meetings appeared rational means of managing them, given the challenges entailed. However, such preoccupations jarred with the ideas that panels might be held in relevant informal settings, be flexible to the parties and allow time for the emotional, expressive and human dimensions of restorative justice encounters. It also conflicted with the intention to foster the inter-personal relations and rapport between the volunteer panel members and the parties over the life-course of the initial and subsequent review meetings.⁹ Ultimately, the routinised demands of time and speed left youth offender panels looking and feeling not a great deal dissimilar to an informal courtroom.

5. The Dominant Temporalisation of Restorative Justice

The above discussions prompt normative enquiries about what the dominant temporalisation of restorative practices should be. A key question in this regard, therefore, pertains to the temporal scope of moral responsibility. How far back in time and how far forward should we go to fix the terms of moral praise and blame? How far into an offender's past do we venture in search of causation and how far forward into her or his future do we wish to extend the regulatory gaze? Criminal justice frames the response to this by focusing quite explicitly on the offender's mental attitude at the time of the incident. Criminal liability and punishment are 'determined primarily according to the wickedness or danger of the defendant's conduct... on what he was trying to do or thought he was doing, not upon what actually happened in the particular case' (Ashworth 1986: 97). Yet the particular time-frame in which a specific incident is located may itself be the subject of question and debate. So too, the chain of causation may reach considerably into the

⁹ Interestingly, however, the community volunteers were less likely to be influenced by the managerial demands of speed than the professional youth offending team members. They were more likely to take the time they saw as necessary. As such, they served as something of a bulwark against the pressures of bureaucratic managerialism and helped to break down inward-looking cultures and paternalistic attitudes held by professionals, encouraging greater responsiveness to the concerns articulated by the parties (Crawford and Newburn 2003).

past. Some time ago, the critical legal theorist, Mark Kelman (1981) argued that whereas we might employ a more or less broad or narrow time-frame in understanding when a particular event or incident begins and ends, the criminal law looks at acts generally in a narrow time-frame. This time-frame, he suggested, has significant ideological and political implications as it is both partial and prefers a free will theory of human action that by implication eschews earlier decisions, actions or events. By delimiting the temporal frame certain ideological assumptions about causation are brought to the fore.

However, morality and time stand in an awkward relation to one another. Whilst it may seem obvious that, as individuals, we are morally responsible for what we did and also for what we will do, it throws up particularly vexing complications in relation to cross-generational matters. Take, for example, questions of doing restorative justice in relation to the histories of slavery. Catherine Hall (2014) and colleagues have identified and traced the histories of the three thousand or so British-based slave owners who received almost half of the £20 million compensation following the Abolition of Slavery Act 1833. With input from the public, they have created an online searchable archive of those who benefited from the compensation payments made to slave owners.¹⁰ Their research shows how the compensation money directly benefited industry, the development of merchant banks and marine insurance as well as families, who amassed art collections and built country houses. Although many of the families named in the Slave Compensation Commission – on which the research is based – have died out, nevertheless, some have survived to produce famous descendants, notably George Orwell, Graham Greene and David Cameron (Jones 2013). Just as moral responsibility may extend to future generations – especially highlighted in the context of our knowledge about global warming - there are questions about the extent to which moral responsibility reaches into the past for the historic inequalities of wealth and power that it has contributed to in the present. Despite the length of time passed and given the scale of the injustices inflicted, the scope for restorative

¹⁰ See the Legacies of British Slave Ownership website at: <http://www.ucl.ac.uk/lbs/>

justice and reparations may be argued to apply in such instances. This begs the question; do those alive today who benefited from compensation payments, owe something – by way of reparation - to the contemporary descendants of those who suffered as a result of slavery?

Nonetheless, restorative justice offers the potential to break free from the narrow time-frame of criminal justice that is tied to the criminal intent and blameworthiness of the offender. It allows us to think about causation and responsibility in more nuanced ways that looks to underlying causal mechanisms with a view to how their propensity for producing harm might be mitigated or prevented in the future. It might foster an approach that foregrounds notions of moral responsibility and agency in ways that are more than simply blame-allocation (Lacey and Pickard 2013) and avoid swinging between the polarities of free will and determinism that have bogged much criminology over the years (Cohen 1979).

In Conclusion: Issues of Scale

Returning to where we started, with the interconnectedness of time and space, the issues of temporality in restorative justice also have fundamental implications when we consider questions of scope and scale. Scale is a fundamental feature or component of all efforts to understand and render the social world conceivable. Scale effects pervade all visualisation and conceptualisation of conflicts, crimes and responses to them (Valverde 2012), most especially restorative practices. For restorative justice offers a philosophy of conflict resolution and a model of justice that transcends and cuts across different scales of activities and social relations. Restorative justice norms and values, it is argued (Braithwaite 1999), have resonance and application at various different scales from the micro-local, city/regional, national to the global, whilst simultaneously encompassing inter-personal, inter-group, mass atrocities and/or inter-national conflicts. From victim-offender mediation with juveniles to truth and reconciliation commissions (Wilson 2001), movement between scales has repercussions, not least with regard to temporality. Different scales have different temporal registers. Different temporalities exist at diverse scales and levels

of experience. For example, the economy, the nation state and individual consciousness are all marked by varied temporalities (Edensor 2006). Moreover, conflict resolution processes progress at a different pace between nations – sometimes very fast, sometimes very slow – as contrasted to relations between individuals. So too, the frames of relevance and the experiences of time are different. Hence, diverse and multiple temporalities are at play as restorative justice values take on scalar moves. We cannot assume that insights from the local neighbourhood can be unproblematically transferred to the regional or international arena, nor *visa versa* (Valverde 2011b). This should foreground and highlight the need for attentiveness to differences across settings. It should also prompt questions regarding the implications for restorative justice when utilised at a local level of interpersonal conflict as compared and contrasted to when deployed in inter-group, international or transnational conflicts.

In sum, this paper has attempted to outline selected contours for some critical thinking about time, timing and time-consciousness in conceptions and practices of restorative justice and, by implication, justice regimes more broadly. It challenges restorative justice theories and practices to confront the implications of plural temporalities and consequences of institutionalising differing temporalisations. Hopefully, it provokes questions about the temporally bounded criminal justice assumptions and principles of proportionality - that all similar offences should be treated in similar ways, regardless of the differential impact of the offence on different victims – and raises challenges for how victim-sensitive temporalities might be accommodated within restorative justice without sacrificing the rights of offenders in the process. In so doing, it has sought to sharpen the critical potential and prompt a revitalisation of restorative justice values, principles and practices, whilst at the same time highlighting possible directions for new lines of research and future enquiry.

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