

Alternative Approaches to Preventing Recidivism: Restorative Justice and the Social Reintegration of Offenders

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Abstract Mediation and restorative justice are often praised as efficient alternatives to criminal justice proceedings in dealing with juvenile offenders. However, the most powerful feature of such programmes has perhaps not yet been fully examined—their capacity to facilitate and effectively contribute to the social reintegration of offenders. This chapter seeks to recast mediation and restorative justice programmes as a form of reconciliation between the juvenile offender and the community and a frequent pre-requisite to the offender’s successful social reintegration.

1 Introduction

Many attempts were made over the last few decades to integrate restorative justice principles into the main-stream criminal justice process for juvenile offenders. Early efforts were inspired by concerns for victims of crime who, it seemed, had been progressively excluded from the criminal justice process, except perhaps as witnesses. The purpose of these initiatives was essentially to increase victim participation and access to redress or compensation. Conciliation was another initial objective of these efforts. Some early programmes indeed focused on victim-offender reconciliation. It was only later that the benefits of these alternative processes for offenders—by contributing to their rehabilitation—and to the justice system itself—by providing an alternative to the time-consuming and costly criminal justice process—were formally acknowledged and progressively turned into their main *raison d’être*. As I have argued before, the potential appeal and transformative value of these principles were recognized very slowly (Dandurand 2012).

In 1985, the UN Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power, as it related to access to justice and fair treatment for victims of crime, recommended that “informal mechanisms for the resolution of disputes,

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including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.”¹ Also in 1985, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice emphasized the importance of diversion (A/RES/40/33). In 1989, the Convention on the Rights of the Child (CRC, 1577 UNTS 3) also called for the use of diversion, or measures for dealing with children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected (Article 40 (3) (b)).

In 2007, when the Committee on the Rights of the Child decided to provide some specific guidance on “children’s rights in juvenile justice”, it recommended the use of alternative measures such as diversion and restorative justice, as measures that provide States with “possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children, but also the short and long-term interest of the society at large.” (Committee on the Rights of the Child 2007 (CRC/CGC/10), para 3). The Committee, based on the principle of the primacy of the best interests of the child, concluded that “the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.” (Committee on the Rights of the Child 2007 (CRC/C/GC/10), para 10; 2013 (CRC/C/GC/14), para 28).

More recently, in her publication on restorative justice for children, the Special Representative of the Secretary General on Violence against Children (2013) explained the need to promote restorative justice in terms of her observation that “countless children face violent and degrading treatment throughout the criminal justice process”.

Restorative justice is essentially presented as an alternative to that process. In May 2014, based on the concern that children who are incarcerated or otherwise institutionalized are at a higher risk of being victimized, the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice² recommend the greater use of restorative justice and other diversion programmes.

That thinking led over the years to the development of a host of initiatives, often supported by UNICEF and various international NGOs involved in the field of juvenile justice, to implement diversion programmes based on mediation and other restorative justice models. In most countries, at this point, the vast majority of restorative justice programmes deal principally with young offenders. What is also significant is that the vast majority of these programmes only focus on restorative justice as a means to divert children away from the criminal justice system. They for

¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G. A. resolution 40/34 of 29 November 1985, article 7 (A/RES/40/34, Annex, art. 7).

² United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, approved by the U.N. Commission on the Prevention of Crime and Criminal Justice, UN doc. E/2014/30.

the most part, neglect to recognize the intrinsic value of such processes when applied as part of a criminal justice intervention. What is perhaps even more significant is that these diversion programmes, except in rare instances, have essentially failed to transform how States and communities respond to juvenile crime and, if anything, have sometimes often broaden the reach of the justice system and “widened its net”.³

Restorative justice programmes were first proposed as a means to put the concerns and issues of victims at the centre of the social response to crime.⁴ They are now being valued mostly for their participatory characteristics and their ability to involve a few members of the community and various stakeholders in finding an appropriate response to individual crimes.⁵ In many countries, the idea of community involvement enjoys a lot of support. Together with problem solving courts and community courts, restorative justice programmes offer communities some means of resolving conflicts. A fundamental challenge for participatory justice is, however, to find ways to effectively mobilize the involvement of civil society, while at the same time protecting the rights and interests of victims and offenders.

This chapter reviews the original promises of the restorative justice approach as an alternative to the conventional criminal justice response to juvenile crime. It also notes some of the model’s limitations and the challenges that have shaped and constrained its full implementation. One such promise, the “public safety promise”, was that restorative justice approaches would support rehabilitation and prevent recidivism in a way that other forms of interventions did not or could not. That promise, with a few exceptions, is relatively unfulfilled. At the same time, restorative justice programmes are based on the belief that parties to a conflict ought to be actively involved in resolving it and mitigating its negative consequences. They are also based, in some instances, on a will to return to local decision-making and community building (Dandurand 2012, p. 89). These are the characteristics that make restorative justice such a potentially powerful instrument to facilitate the reintegration of offenders. Unfortunately, there have been relatively few applications so far of the restorative justice principles in the offender social reintegration context.

³ The presence of a “net widening” effect, although a real concern, has not been confirmed in all instances where it has been measured. See: Prichard (2010).

⁴ Many proponents of restorative justice approaches see the centrality of the victim’s concerns as their main defining characteristic. Van Ness and Heetderks Strong, for example, affirmed that “victim concerns and issues should be at the centre of work for restorative justice, and not ancillary” (2006, p. 141).

⁵ See the excellent document of the Law Commission of Canada (2003).

2 Restorative Justice and Its Promises

Restorative justice programmes offer a process for resolving crime by focusing on redressing the harm done to victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. According to the UNODC Handbook on Restorative Justice Programmes, “participation of the parties is an essential part of the process which emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. Restorative justice processes can be adapted to various cultural contexts and the needs of different communities” (UNODC 2006, p. 7).

According to Sherman and Strang (2007), two major claims have usually been made with respect to restorative justice: a procedural claim and an effectiveness claim. The procedural claim is that restorative justice offers victims and offenders a more humane and respectful way to process crimes than conventional justice. The effectiveness claim, or promise, is that restorative justice can produce better outcomes in terms of public safety, victim healing, community health, and offender rehabilitation and social reintegration. The effectiveness promise, including the public safety promise, is perhaps the hardest one to achieve. It certainly is the hardest one to measure.

As mentioned before, restorative programmes are perceived as an ideal diversion mechanism for children in conflict with the law and dozens of countries have experimented with this approach. However, few of these countries have managed to provide such a diversion alternative on a national scale. In fact, existing programmes rarely achieve the required level of public acceptance and support required for their implementation on a broad scale, and criminal justice resources tend to continue to be channelled towards more traditional criminal justice response mechanisms (Dandurand 2012, p. 90).

So far, the institutionalization of restorative justice has taken many paths in different countries (Artsen et al. 2013). The process of institutionalizing restorative justice principles resists any easy generalization. A frequently expressed concern is that the institutionalization of restorative justice leads to a compromise of restorative justice values and a return to a more retributive focus (Broughton 2012). Notwithstanding that concern, there is a case to be made for expanding the use of the restorative justice model to support the social reintegration of young offenders, and in particular, their successful re-entry into the community after a period of detention or institutionalization. As Bazemore and Maruna argued, “restorative justice interventions are too often focused on the ‘soft end’ of the justice process, when a growing body of evidence suggests that restorative practices might be more effectively focused on the reintegration process for more serious offenses” (Bazemore and Maruna 2009, p. 375).

2.1 Impact on Offender and Desistance from Crime

The evidence on the impact of restorative justice programmes on reoffending is limited, but recent reviews indicate that restorative justice may be more effective for prolific offenders and even serious offenders than for offenders involved in less serious crimes, and more effective after rather than prior to sentencing. Some programmes seem to have a greater impact than others on preventing recidivism. This is the case, for example, of face-to-face restorative justice conferences. A recent systematic review of these programmes showed that, on average, these programmes cause a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims (Strang et al. 2013).

Joudo Larsen (2014) who reviewed the outcomes of restorative justice programmes in Australia (mostly for juvenile offenders) concluded that “while the evidence is not overwhelming at present, there is growing body of evidence that supports the assertion that restorative justice can reduce reoffending” (2014, p. 26). Others have reached similar conclusions (Sherman and Strang 2007; Bonta et al. 2009). However, we do not yet have a body of evidence that allows us to conclude that restorative justice, as it is currently implemented, is a less expensive and more efficient way of preventing recidivism than other criminal justice interventions (Weatherburn and Macadam 2013; Weatherburn et al. 2012).

Contrary to assumptions that are often made, a restorative justice process can be quite effective in cases involving serious offences or even offenders entrenched in patterns of serious crime. It can be successfully applied when the offender and victims previously had some form of relationship with each other, even when violence is involved (Sherman and Strang 2012). There is no need to confine our use of restorative justice programmes to cases involving first time offenders or relatively minor offences. (Shaplund et al. 2011) Restorative justice may even have a deeper healing impact on serious offenders than on others; it certainly acquires a great significance to the community when violent offences are involved.

Based on their systematic review of available evidence on the impact of restorative strategy, Sherman and Strang (2007) concluded that restorative justice programmes produce the best results, in terms of helping victims and reducing recidivism, when they focus on offences involving a personal victim and a violent offence and intentional harm, rather than a non-violent property offence.

2.2 Impact on Victims

Victim satisfaction with the restorative justice process, at least for those who chose to participate in it, tends to be fairly high. According to the evidence reviewed by Sherman and Strang, “on average, in every test available, victims do better when they participate in RJ than when they do not” (Sherman and Strang 2007, p. 22). However, restorative justice does not always increase victim satisfaction with the

justice process and we should try to better understand the reasons why victims are sometimes dissatisfied with the process (Choi et al. 2012).

It is also important to keep in mind that victim participation in a restorative justice process tends to be far more limited than it is usually assumed to be, particularly when dealing with juvenile offenders. A large proportion of children and youth referred to restorative justice programmes are essentially involved in victimless crimes (motor vehicle offences, drug possession, etc.), thus limiting the involvement of a “victim” in the process. Victims’ direct involvement is equally limited, or remains largely symbolic, when relatively minor infractions against corporations and businesses (shoplifting) or public agencies (graffiti on the walls of public buildings) are involved. There are also many cases where the offender victimizes a member of his or her own family (Hannem and Leonardi 2014) and where the unmet needs of the offender’s family make the participation of the latter in a restorative justice or the offender’s social reintegration quite difficult.

2.3 *Community Involvement*

Similarly, the involvement of the community in the vast majority of restorative justice programmes for juvenile offenders tends to be more symbolic than real. The community’s involvement remains quite limited and its potential impact on the juvenile offenders’ social reintegration is likely to be limited.

The concept of “community” is a central one in both the restorative justice and the social reintegration fields. How a restorative justice programme defines “community” is a critical factor in determining the nature and extent of citizen ownership of and participation in the process (Bazemore and Umbreit 1999, p. 8). However, Hoyle (2010) argued, there is usually quite a gap between the theory and practice.⁶ In many ways, restorative justice utopian aspirations are still far away from their realization. The rhetoric of restorative justice often bypasses the “incontrovertible fact that harmony, mutuality, equality, reciprocity and respect are hard won even in our most significant and well-intentioned relationships” (Acorn 2004, p. 9).

Hoyle observed that, in operationalizing the concept of community in restorative justice:

Only those restorative justice measures established with the explicit aim of responding to crimes against community, such as truth and reconciliation processes, regularly achieve meaningful community integration in the process. For this reason, most restorative processes involve communities of interest around the victims and perpetrators rather than the offence (Hoyle 2010, p. 18).

⁶This is obviously not the only gap between the theory and the practice of restorative justice (Gavrieldes 2007). In fact, the whole area is characterized by lofty discourses and promises and very pedestrian and limited applications.

Furthermore, many of the communities that embrace the promise of restorative justice are among the least able to mobilize the agency necessary to make it work. Ironically, as Dickson-Gilmore and La Prairie (2005) argued, “restorative justice requires successful communities.”⁷ It is a sad truth that many young offenders neither come from nor are returning to a “successful community”. In fact they are more likely to come from communities which are themselves already challenged by poverty, unemployment, social exclusion, alienation and criminality.

The same challenges are present when practitioners are discussing or trying to influence the relationship between young offenders and the “community”. In the case of young offenders, particularly, the broader involvement of the community is made even more problematic, no matter how it is defined, because of a legitimate preoccupation with protecting their privacy (as required by international child rights law). In practice, there is often a lot more rhetoric about restorative justice than there is an actual practice that brings together victims, offenders and communities in a genuine healing, transformative and offender reintegration process.

The norms and values of a community are offended and sometimes even threatened by youth crime: “(b)y breaking the bonds of their community, offenders might exclude themselves, or be excluded by others, from the community” (Hoyle 2010 p. 24). The reintegration of the young offender requires that these bonds be re-established while the community is reassured that those who have transgressed its norms are censured in order to reassert a shared commitment to these norms. However, as Hoyle rightfully argues, it is not always enough for the community to open its arms and reintegrate the young offender. In some cases, it needs to resocialize the young offender and contribute to his or her education and rehabilitation. It is therefore the potential of restorative justice to resocialize the young offender that makes it so powerful as part of the social reintegration process.

A restorative approach, based on the principle that conflicts are a natural part of life and crime and juvenile misconduct are part of growing up, can conceivably play an important part in the social reintegration of young offenders. The extent to which juvenile misconduct and disruptive behaviour negatively affect the community depends to a large extent on how the community responds to them (Pranis et al. 2003, p. 20). To the extent that a restorative justice process responds to youth crime by encouraging young offenders and the community to be respectful, honest, open, and compassionate, it can bring about personal growth in all concerned and repair or deepen the connection between the offenders and the community.

⁷ Dickson-Gilmore and La Prairie argued very persuasively that this is often the situation, at least in Canada, of Aboriginal communities wishing to improve their ability to deal with conflict and misconduct among their membership (Dickson-Gilmore and La Prairie 2005).

3 Restorative Justice and Its Challenges

As Chris Cunneen observed, one can hardly escape the observation that restorative justice “is essentially a peripheral add-on to the main workings of the criminal justice system” (Cunneen 2010, p. 184). To talk about the role of restorative justice in the offenders’ social reintegration process is not to assume that current restorative justice models will necessarily be equal to that new task. On the contrary, existing models and approaches will likely need to be reconceptualised entirely to create a more genuine opportunity for community involvement and mobilization. In so doing, restorative justice approaches need to re-discover their fundamental commitment to the victims and reconnect with their ability to transform relationships, in particular the relationship between offenders and the community they live in or return to.

3.1 *Transformative vs. Problem Solving Interventions*

A transformative approach to mediation and restorative justice is what is most likely to contribute to the offender desistance from crime and successful reintegration into the community. The transformative approach refers to an approach which sees conflict as an opportunity to transform human consciousness and behaviour. That approach views the “ideal response to conflict as helping parties take advantage of the opportunities presented to actually achieve transformation.” (Baruch Bush and Folger 1994, p. 249) The approach is particularly suited to work with young offenders and communities in facilitating the return and reintegration of the youths who have damaged their relationship with family and community.

Unfortunately, this ideal of restorative justice has largely been replaced by a restorative justice practice focused almost entirely on narrow problem solving and restoration. For example, a recent review of the growth of restorative justice in England and Wales (UK), distinguishing between, on the one hand, approaches based on the offender, victim and community responding together to the aftermath of crime and, on the other hand, programmes more narrowly focused on restoring the harm caused by crime, concluded that criminal justice actors, like the police, tend to be more attracted to the second and much simpler approach (Paterson and Clamp 2012).

Restorative justice should not be equated with conciliation, though the latter can be part of the process. In cases involving young offenders the process labels one party as the wronged and the other as the wrongdoer. It must hold the latter accountable for his or her actions and try to repair the harm caused to the former. It must do so in a manner, which is meaningful to all involved, the offender, the victims and the community. If it does not, it more likely to hinder than help the young offender’s social reintegration.

3.2 Best Interests of the Child and Procedural Protections

The United Nations Standard Minimum Rules for the Administration of Justice (Beijing Rules) emphasize the need for a diverse range of services and facilities designed to meet the different needs of young offenders re-entering the community, and to provide them with guidance and support as an important step towards their successful reintegration into society.⁸ They call for efforts to “provide semi-institutional arrangements, such as halfway houses, educational homes, daytime training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society” (rule 29.1). The Beijing Rules also encourage the frequent and early recourse to conditional release of juvenile offenders in detention. They state that “conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time” (rule 28.1), adding that “juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community” (rule 28.2).

The Beijing Rules also stress the importance of the cooperation of the community in the rehabilitation of juvenile offenders. They promote the mobilization of volunteers, local institutions and other community resources “to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit” (rule 25.1). Similarly, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty state that all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release (Rule 79).⁹ Specifically, the rules require competent authorities to ensure that services are available to assist juvenile offenders in re-establishing themselves in society and to lessen prejudice against them and stipulate (rule 80).

Juvenile offenders often belong to families and communities that cannot accommodate them even under the best of circumstances. Therefore, supportive interventions are particularly important. Restorative justice models could be redesigned to ensure that juvenile offenders receive the help and support they need to successfully reintegrate into the community.

Unfortunately, there remains some scepticism, some of it based on experience, about the ability of restorative justice processes to guarantee children’s safety, respect their rights and act in a manner consistent with the principle of the best interests of the child. Restorative justice processes do not always offer the procedural guarantees and protection that the conventional system can offer, at least in theory.

⁸ United Nations Standard Minimum Rules for the Administration of Justice, General Assembly resolution 40/33 of November 29 1985.

⁹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/113 of 14 December 1990.

In 2002, the United Nations Economic and Social Council adopted a resolution calling upon Member States that are implementing restorative justice programmes to be guided by a set of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.¹⁰ The resolution accompanying the Basic Principles simply noted that restorative justice was an “evolving response to crime”, with some unique benefits, but it stopped short of promoting restorative justice. The strength of these Basic Principles is that the document puts forward a set of procedural conditions and guarantees that could be applied to ensure the proper application of restorative justice principles and avoid practices that might be counter to the rights of participants in a restorative justice process. Unfortunately, the Basic Principles are not well known and they are ignored at least as often as they are respected.

Even as she was writing in support of restorative justice for children, the Special Representative of the Secretary General on Violence against Children, Marta Santos Pais, devoted part of her report to the need to ensure that the necessary procedural safeguards for children are in place in a restorative justice process. She suggested that a competent authority, such as a child justice court, should have effective judicial overview to ensure that the rights of the child are respected at all times and that the process is lawfully conducted. In practice, however, the presence of such an overview mechanism is the exception rather than common practice.

In particular, a reliance on traditional or customary conflict resolution process to apply restorative justice principles to situations involving juvenile offenders is often problematic. These customary dispute resolution mechanisms cannot be assumed to be restorative in nature simply because some form of compensation is ordered. Many of them are not. Although, as we have seen before, the UN Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power recommended a greater use of alternative mechanisms such as customary and indigenous practices, multilateral organizations have become much more cautious about the role of such traditional conflict resolution mechanisms particularly as it relates to children and young offenders. In its General Comment on indigenous children and their rights under the Convention, the Committee on the Rights of the Child (2009) encouraged States to support indigenous peoples to design and implement traditional restorative justice systems, but only as long as the latter are in accordance with the rights set out in the Convention, notably with the best interests of the child.

For her part, the Special Representative of the Secretary General on Violence against Children, in her report on harmful practices in plural legal systems noted that in countries where national legislation interplays with customary and religious law, the potential tensions between them can be problematic. Traditional conflict resolution mechanisms may present themselves as viable alternatives to the formal justice process in dealing with children. However, as explained by the Special

¹⁰ Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Economic and Social Council resolution 2002/12, annex.

Representative, they may allow for the justification of harmful practices on grounds of culture, religion or tradition based on sources of law that may compromise the realization of human rights. Customary law and practices have sometimes placed vulnerable groups, especially women and children at risk of harmful practices (SRSR 2012, p. 17).

4 Restorative Justice and the Reintegration of Juvenile Offenders

Social reintegration refers to various forms of interventions and programmes targeting individuals to prevent them from becoming involved in criminal behaviour or, for those who are already in conflict with the law, to reduce the likelihood that they will reoffend. Social reintegration interventions are therefore attempts by various components of the justice system, in partnership with social agencies, NGOs, educational institutions, communities and the offenders' family, to support the successful social integration of individuals at risk of offending or reoffending (UNODC 2012).

In recent years, there has been a growing emphasis on managing or facilitating the social reintegration of offenders and, in particular, on managing their re-entry into society after a period of incarceration (Borzycki and Makkai 2007; Griffiths et al. 2007; Myers and Olson 2013).

In that context, restorative justice interventions can help offenders take responsibility for their behaviour in a meaningful way, gain insight into the causes of their behaviour and its effects on others, encourage them to desist from crime and help them regain acceptance by their family and community. The rationale behind that kind of intervention is described as follows in a UNODC publication on the social reintegration of offenders:

Restorative justice is based on the principle that the most effective responses to crime are those which hold offenders accountable for their behaviour in ways that reintegrate them into society rather than increase their sense of isolation and stigma. The objective is to help offenders understand the consequences of their actions and to make amends to the community. By showing offenders the full impact of their behaviour on all those around them, restorative justice can encourage real and lasting change. At the same time, the participation of victims of crime and community members may serve to strengthen ties in the community and to facilitate the development of community-based capacities to assist offenders. (UNODC 2012, p. 101).

In reality, the capacity of current restorative justice programmes to achieve these objectives tends to be quite limited. With a few exceptions directed mostly at violent adult offenders, restorative justice models have not been developed to support social reintegration interventions. However, this is not to say that programmes more directly focused on facilitating the social reintegration of young offenders and their desistance from crime could not be implemented on the basis of genuine restorative justice principles.

Many good practices have been identified that need to be both better understood and more systematically evaluated. For example, some restorative justice elements can be integrated into community-based sentences to facilitate the juvenile offender's social reintegration. In a "restorative probation" model, a judge sentences the offender to probation with a suspended sentence, while a volunteer reparative board meets with the offender and the victim to agree on a contract that the offender agrees to carry out. Fulfilment of the contract is the only condition of probation and the contract is based on restorative goals, namely that the offender understands the effects of the crime and learns how to avoid reoffending, that the victim is restored and healed, and that the community is reassured and offers reintegration to the offender (Kurki 2000; Fox 2010).

4.1 The Social Reintegration of Juvenile Offenders

Facilitating the social reintegration of offenders is a complex task and the impact of specific interventions is often difficult to measure (Griffiths et al. 2007). The primary objective of social reintegration interventions is to provide offenders with the support, assistance and supervision that will help them to lead crime-free lives upon release. However, for such interventions to lead to positive outcomes, the community must obviously also be responsive and engaged in the process (UNODC 2012, p. 81).

Positive reintegration outcomes can be produced when factors predisposing someone to criminal behaviour are addressed in a holistic fashion and when that person's physical and social needs are supported. As part of an aftercare strategy, a number of interventions can be delivered to assist juvenile offenders in reintegrating into their families and the community. The interventions must fit the needs and circumstances of the child, and the choice of an intervention should be based on a realistic assessment of the individual's challenges and needs. When juvenile offenders have been detained, support can be offered at the time of their release to assist them in effecting that difficult transition and to ensure that the community is willing and able to receive them.

As mentioned before, very few restorative justice models actually deliver on the promise to actively involve the community in the rehabilitation, healing and reintegration of offenders. At present, two models are sometimes used to implicate communities more directly in the social reintegration of offenders: sentencing circles and circles of support and accountability (CoSA). In addition, there has been some experimentation with conducting a restorative justice process while the offender (usually an adult) is in prison (e.g., Walker 2009). So far, none of these mechanisms has been used very extensively with juvenile offenders. In fact, a restorative model of re-entry and social reintegration for juvenile offenders has yet to be developed.

4.2 Sentencing Circles and First Nations' Courts

In Canada, sentencing circles and now “First Nations Courts” function as sentencing courts or sentencing-aids, with community participation and at least a nominal commitment to restorative justice principles. Their main purposes is not so much to divert cases from the justice system, but to inform and help shape the criminal justice response in ways that not only consider the offender and the victim, but also the needs, circumstances and capacity of the community to which the offender and the victim belong. These mechanisms represent perhaps the most powerful applications of restorative justice principles in the field of criminal law. They can apply to both juvenile and adult offenders and they challenge communities to accept responsibility for their own safety and development, while considering the need and circumstances of both the offenders and the victims.

Circle sentencing provides for a wide variety of options for restitution and punishment.¹¹ They can offer flexible solutions that are responsive to the circumstances of each juvenile offender, the requirements of each case and the capacity of the community. Circles are designed to strengthen the collective sense of community and empower the victim, the offender and community members through a healing and problem solving process. The goal is to heal all those affected, but also to facilitate the rehabilitation and social reintegration of the offender by mending the social relationship between the offender and the community.

4.3 Circles of Support and Accountability

The CoSA initiative was originally conceived in Canada as a means to fill a gap in services left by government policy that is, regarding those adult individuals that had served their entire court sentence in prison and were released at the expiration of their warrant. These individuals were being released without a formal process of aftercare and without any assistance or supervision. CoSA was initiated out of necessity to work with released offenders who were most likely to fail to successfully reintegrate society, presumably because of a lack of community support or other resources. Many of these individuals were untreated sex offenders and their return to the community was very likely to attract significant media attention. On release, these offenders faced significant reintegration challenges.

The CoSA Model is an example of community participation and of partnerships between the community and the justice system to promote public safety while actively supporting the reintegration of offenders. Volunteers are carefully selected from the community, professionally trained, and aptly supported; they constitute the inner circle. A covenant or agreement is established between the core member and up to seven circle volunteers. Participation is voluntary on both sides. However,

¹¹ See for example: Joudo Larsen (2014).

once the covenant is agreed to, it becomes the road map for both the support and the accountability that can be expected by all participants. The outer “professional” circle refers to the support, guidance and interventions that are provided by professionals and official representatives of law enforcement or correctional agencies (Brown and Dandurand 2007).

The CoSA model was evaluated in Canada and elsewhere and it is consistently shown to reduce recidivism and facilitate the reintegration of adult offenders. An evaluation of a pilot project based on that model in Ontario suggests that the levels of reoffending in men who were involved in the programme were markedly lower than for similar high-risk offenders who did not participate (Wilson et al. 2009; Wilson et al. 2005; Duwe 2012).

5 Conclusion

Progress has been made in many countries in involving communities in risk management and the management and reintegration of offenders in the community. Community-based interventions and programmes for young offenders have been developed which have significantly contributed to the young offenders’ desistance from crime and their successful social reintegration. Many of them are making a good use of professionally trained community volunteers. Positive reintegration outcomes can be produced when factors predisposing a young offender to criminal behaviour are addressed in a holistic fashion and when that person’s physical and social needs are supported. As part of an aftercare strategy, a number of interventions can be delivered to assist juvenile offenders in reintegrating into their families and the community. When juvenile offenders are detained, they can be supported after their release and assisted in effecting that difficult transition and to ensure that the community is willing and able to receive them. In all of these instances, restorative justice could play a very beneficial role. If it does not so far, it is because its application in the field of juvenile justice has been largely limited to diversion programmes.

Very few restorative justice elements have been integrated systematically into community-based sentences or into post-release programmes to facilitate the juvenile offender’s social reintegration. In fact, this chapter has argued that the capacity of existing restorative justice programmes to achieve social reintegration objectives tends to be quite limited. Some good practices have been identified, but they need to be both better understood and more systematically evaluated. The role of the community in that process has to be operationalized differently and far more concretely. At this point, a restorative model of re-entry and social reintegration for juvenile offenders has yet to be developed.

Proponents of restorative justice typically deplore the lack of progress in implementing restorative justice within the juvenile justice system. In my view, they will still be deploring that problem in 10 years from now unless they find ways

to unleash restorative justice full potential in contributing to the social reintegration of offenders, particularly those who have been institutionalized.

Five Questions

1. How can the restorative justice approach be used to actively support the reintegration of offenders?
2. Are there situations in which a victim-offender reconciliation process is a pre-requisite to the offender's successful social integration?
3. How can restorative justice programmes, often valued for their participatory characteristics and their ability to involve community members, be used to promote greater and more positive community involvement in the social reintegration of offenders?
4. What remains to be done to verify the claim of restorative justice programme that they can produce better outcomes in terms of public safety, victim healing, community health, and offender rehabilitation and social reintegration?
5. Are there examples of programmes focused on facilitating the social reintegration of young offenders and their desistance from crime that integrate genuine restorative justice principles?

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