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New Directions in Crime, Law and Justice

Restorative Justice

Integrating Restorative Practice into the English Justice System

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Introduction

Restorative Justice has its roots in a number of tribal cultures. These can be traced back to ancient Arab, Greek, Indian and Roman civilisations. Native American sentencing circles and Maori justice in New Zealand are good examples. It has origins in the Australian Aboriginal methods of resolving disputes. Familial perspectives of indigenous people across the globe sought to repair harm done to communities and individuals. They engaged the transgressor of laws or customs in a process that empowered those with a stake in it to restore the equilibrium of the community by addressing the needs of the victim and reintegrating the offender.

The emerging issues from the philosophies focus on responsibility, restoration, reintegration and rehabilitation. Although practised in the 70's in mediation experiments in North America there was no specific model and the process has been known as Re-integrative Justice, Positive Justice, Community Justice, Relational Justice and many other similar terms. The term that has the longest history and is the most common is Restorative Justice and can be used generically to include all such approaches. The evolution of the practice of restorative justice is as diverse as those who practice it. There are many variations in the use of the process and where and how it can be used, but one of the important developments is the use of this problem solving approach in criminal justice systems.

Much of the innovative work was begun in Australia and New Zealand and in North America in the 1980's. A simplistic view of restorative justice describes it as a method that seeks to repair the harm done by a criminal act by bringing together those most affected by the crime. Meaningful conferencing may change the offender's thinking and allow him or her to take responsibility for the behaviour and the effect that it has had on the victim. Criminal Justice systems have been in place from time immemorial and have evolved at a pace to suit the needs of society and those entrusted to make and apply the laws. Restorative Justice is an alternative means of redressing imbalance that may arise from adversarial systems where both victim and offender may feel that their needs have not been adequately serviced. It is difficult to define Restorative Justice and may be more practical to look at the process as a set of transferable values and principles. The Restorative Justice Consortium is a nationally recognised body of academics and practitioners from diverse agencies in the United Kingdom who have an evolving definition and standards and principles that govern it.

“Restorative Justice seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist the recovery of the victim and enable all parties with a stake in the justice process to participate fruitfully in it.”

The aims of the restorative justice approach are outlined below:

- Attending fully to the victim's needs; materially, socially, financially and emotionally, including those people close to the victim who may be similarly affected.
- Enabling offenders and, where necessary, their families to assume active responsibility for their actions.

- Preventing re-offending by enabling offenders to face the consequences of their behaviour and reintegrating them into the community.
- Recreating a working community that supports the rehabilitation of offenders and victims and is active in preventing crime.
- Providing a means of avoiding the escalation of legal justice and its associated costs and delays.

A fundamental principle of the process is the voluntary participation of all parties involved in the process. A clear and reliable admission by the offender is a requirement that must also meet such standards that it could be used in a court of law. Quite often an accused person can feel overwhelmed by formal judicial process and the victim left with a feeling of exclusion after the initial involvement in the system. By giving those directly involved in the offence an opportunity to restoratively resolve issues there is an empowerment of both parties by sharing their perspectives of the incident. The informal setting of a restorative conference allows all of those with a stake in the matter a voice and fruitful participation often not possible in a formal court setting. Direct or indirect contact between offender and victim realises opportunities to have questions answered, apologies tendered and reparation made that may not have been addressed in a rigid court process.

Principles for Effective Practice of Restorative Justice

The victim's wishes and needs are of paramount importance in all stages of restorative justice. The victim must not be pressured to take part nor asked to do anything that will be for the sole benefit of the offender. The victim must feel comfortable and not be placed in any embarrassing situation or distress that may lead to feelings of re-victimisation. There must be an agreement that there may be a withdrawal at any time by the victim and that all work leading up to restorative process is entirely voluntary and with the permission and consent of that person. The victim must be kept informed at all stages and consent obtained for apologies both oral and written. If the victim decides not to take part he or she should still be updated and informed of how the case is progressing. Equally the victim should not be given inappropriate influence over the outcome of the process and careful management of the case will ensure that there is no further risk of harm or intimidation. A full risk assessment is necessary before any face-to-face meetings.

An integrated approach is vital where more than one agency is involved in the intervention. A professional approach is required to avoid conflicting situations and information sharing protocols should be in place to ensure that all those involved are aware of their responsibilities. Confidentiality must ensure that no information is passed to participants without informed consent. The facilitator must ensure that an inclusive approach allows all those who have a stake in the process to participate. Adequate preparation and information must be used to inform all parties of what is involved in a restorative process.

Communication

Robust legal systems that have developed over many years may display their strength at times when notorious felons are arrested by the police, convicted by jury and dispensed to penal institutions for long periods of custody to the satisfaction of society. At the lower end of the scale, at the level of Youth Offending, the set and formal procedure is often not user friendly to a young person or their family. The accused young person may not be given any opportunity to give his or her perspective of the behaviour that led to the court action and frequently have no more say than stating their name and admitting guilt.

A lawyer then conducts the prosecution and another defends or mitigates. The mere fact that the legal representatives have their backs to the defendant forms the first barrier between the youth and the magistrates or justices. The magistrate may often not address the youth other than via the court clerk who orders the young person to stand to hear sentence passed. Until such time as youth courts are redesigned to improve communication and to enable young people and parents to engage in a productive process one

of the only alternatives is the use of restorative justice. Teenagers are not the most effective communicators at times due to inhibitions, being inarticulate or having special educational needs that have not been picked up in a pressured school system. Frustration may arise due to the fact that the system appears to ignore the information that is vital to the defendant. Similarly, the victim's presence is merely acknowledged by a statement in the court bundle that is often not referred to in a plea of 'Guilty'.

Prosecutors often make decisions where alternative lesser charges are brought to prevent an election of trial at a higher court. To a victim who is uninformed this may mean that the offending behaviour is minimalised or simply bewilders a defendant who has a lack of understanding of legal issues. Young persons who continually return to youth courts deserve some opportunity to seek an alternative disposal option. If they are given opportunity for restorative practice and they make decisions not to change attitudes and behaviours then the process is more accountable. No matter what justice system, or what country the young person is from, they are future citizens and members of that society and with motivating professionals a change may be brought about for the benefit of all.

When face to face meetings take place and all participants are properly prepared and the procedure is explained by a non-judgemental facilitator, who conducts the meeting in a congruent manner, views are heard, solutions are found and discussed and realistic outcomes delivered. Reparation is a useful part of the outcome and if all parties are correctly briefed, direct reparation to the victim as well as community-based reparation may be negotiated.

It is important that such specialist practice is delivered or managed by trained professionals working in partnership. Ideally they will be committed to the principles of restorative justice and will have completed relevant training courses to equip them with the required skills to facilitate the processes. Motivated staff that have been properly trained and receive adequate support on a regular basis deliver the most effective practice. In the UK Thames Valley Police pioneered the introduction of restorative practices around 1995. Australia and New Zealand are the sources of training that has spread across the globe through North America and Europe. In 1998 the Crime and Disorder Act introduced Youth Offending Teams in the United Kingdom. The main groups that make up the YOT staff are drawn from Police, Probation, Social Services, Health Services, Education and other young peoples support services.

The very mix of such professionals leads to unending debate about the independence of certain practitioners and their ability to mediate, intervene or co-ordinate dialogue between victim and offender. Much criticism is directed towards police and probation officers who are seen as being in a position of power over the offender and to have more control over them due to the nature of the office that is held. Equally criticism is directed towards social service workers who may be seen to serve the needs of the offender with little more than passing reference to the victims needs. These anomalies can be addressed with correct multi-agency training and identification of the specialist skills required to be a successful mediator, facilitator or co-ordinator.

There is no doubt that police involvement is positive where victims are concerned. Many victims would not become involved without the protective element afforded by contact from the police and victim support services in the first instance. Police officers, particularly those with enhanced training in victim involvement and support during serious crime investigations, may be more suitable to act as facilitators and take part in the restorative processes. Appropriate training in the correct forums where professionals strive to achieve acceptable effective practice standards by working together for the common good is more important than the individual status of any agency. Monitoring and evaluation of the work and practice means that records must be kept and integrity checks put in place. Evaluation of the programmes will indicate whether aims and objectives are being met. If the principles are put in place at the outset, measuring the success or otherwise of any programme will be more effective.

Putting ideas into practice

The principal aim of the youth justice system, established by s.37 of the Crime and Disorder Act 1998, is to **prevent** offending by children and young people. This will end repeat cautioning of young offenders and provide a progressive and effective response to offending behaviour. The effective response will be met by timely and achievable interventions to prevent re-offending. The youth courts will quickly deal with young people who do continue to offend. A young person who has committed a criminal offence and has been arrested for that criminal behaviour is subjected to the same standard of investigation required for a prosecution in the courts. Evidence is secured and preserved and an interview conducted. If an admission is made and other factors such as remorse evident then the police can consider the issue of a reprimand. There must be evidence to support the allegation and prove that an offence has been committed. If there is insufficient evidence then the case against the young person should be dropped or the prosecuting agent or police should seek further evidence as in normal practice. A clear and reliable admission to all elements of the offence is necessary and should include aspects of dishonesty and intent where this applies. There is no consent issue when all factors are present to complete a valid process. The police decide whether to issue a reprimand in accordance with a case disposal gravity factor system.

Young people and parents/carers or other appropriate adults should have access to information about the options available about the reprimand scheme so that they can make an informed decision before the question as to whether they admit the offence is put to them. They should be aware that the police have the power to decide the appropriate disposal under the scheme. The status of the reprimand should be explained. Once reported for the scheme there is legal power to take fingerprints, photograph and a DNA sample from the young person. These will be retained for five years or until the young person reaches the 18th birthday. The reprimand can be cited in criminal proceedings and in some cases can be made available to employers. If the offence is listed under the Sex Offenders Act then there will be a requirement to register with the police for inclusion in the sex offenders' register.

If the young person does not make an admission, he or she cannot be reprimanded. The police will decide whether to take no further action or to charge the young person and refer to the Youth Court and may also seek advice from the Crown Prosecution Service who can decide whether to continue the prosecution. Once it is decided to issue the reprimand the young person is referred to the local Youth Offending Team who complete an assessment of the young person and decide on an appropriate intervention programme. The YOT assessment looks at the risk of re-offending factors. It determines the nature and content of an appropriate intervention programme to deal with the risk factors. They explore the young person's attitude to intervention and assess and encourage them to engage in the programme. They explore the possibility of restorative practices. This is carried out during a four- week period while the young person is on bail. It is important to note that the contact with the victim is made at the early stage to carry out an assessment of their willingness to take part in the restorative process. Aggravating factors such as racial motivation or fear of further victimisation are considered together with mitigating issues such as clear expressions of regret or remorse offered at the interview stage. If the victim does not wish to take part in the restorative part of the programme then their statement of evidence may be referred to. The victim should not be involved in the decision making process on the case disposal.

If a young person who has been reprimanded offends again then the same procedure applies but the second option available if a first reprimand has been issued is the delivery of a Final Warning. This is very similar to the reprimand procedure. This allows for a three- month period after the issue of the Final Warning for the YOT to work with the young person and further assess them. More intensive intervention may take place. This is voluntary on the part of the young person and family. Should this intervention not lead to a behavioural change and the young person engages in further offending behaviour then the only option for the police on the third contact is to charge and take the case to the Youth Court. The Youth Court will have to consider an appropriate sentence but the most likely one is to impose a Referral Order

that legally binds the young person to attend the YOT for a community panel to work with them on a more intensive programme. Essentially this is similar to a 'three strikes and you're out' system with an increasing tariff until the ultimate sanction of the detention and training order, which is a sentence in a youth prison.

A restorative approach to the delivery of a police warning leads to a more meaningful experience. By embracing the principles of restorative practice a reduction in the rate of re-offending is possible. In particular a link to an intervention programme through RJ can be of benefit to victim and offender. A trained police officer can deliver a restorative warning to a young person with parents present together with any other appropriate persons where the victim's views are conveyed. It is also possible to facilitate a full restorative conference in the presence of the victim and supporter. The young offender will face the consequences of his or her actions or offending behaviour and have the opportunity to take responsibility for them and offer reparation or apology to the victim. At all times the need to seek a balance between the views of both parties is paramount. This avoids further victimisation or distress to the victim and also overload from the perspective of the young person who has been brought into police contact for the first or second time.

Current position: Resource implications

It must be recognised that there are resource implications in the delivery of police warnings for both mainstream police and the Youth Offending teams. It is not always possible to make the full range of restorative processes available to every young person who comes into contact with the system. The priority must be to deliver reprimands and final warnings in the most effective way to prevent re-offending with due consideration for the victim.

The process of changing behaviour

Given the correct training any motivated, interested Youth Offending Team worker can instigate a process of change in a young person. This is the point when all agencies must shed their institutionalised outlook on life. The wealth of skills that are available from the training/educational bases of Probation Officers, Social Workers, Health Workers, Drugs and Alcohol workers, Police Officers, Teachers, Parents, Generic Youth Counsellors and any other person with an interest in preventing a young person growing into a persistent state of behaving badly is a phenomenal base from which to draw on experience.

Motivation is a central component in any process of change. Motivating is an 'ing' word: it denotes activity or a series of activities in which practitioner and client engage. The activity has value only to the degree that it leads to valued outcomes in the young person's day-to-day life. A motivational approach helps young people to build commitment to change and to make a decision as to whether to change or not. It has a base in person centred counselling. The model is centred on conditions for Humanistic Counselling. The practitioner retains a strong sense of purpose and direction with the ability to choose moments to intervene in a decisive way. Motivational skills avoid argumentative, judgemental, warnings of negative consequences, logical persuasion, analysing and confrontational means of trying to influence a young person. The technique is useful, purposeful and highly effective because it works to break down resistance, reinforce responsibility and build self-motivation towards change.

An empathic engagement with a young person avoids evoking resistance. The ability to understand the young person's world, while remaining objective towards it, strengthens the relationship and creates a safe and trusting process for change to take place. Unconditional positive regard for the young person shows that they are valued in spite of certain behaviours and builds the relationship so that intervention decisions are timely and positive. Active listening skills are crucial when examining the client's position

with an ability to remain congruent when considering one's own values and those of the young person. This process is based on a model developed by Procheska and DiClemente.

The cycle of change

The model is known as the cycle of change that has six stages:

- Pre-contemplation. The young person has no internal recognition of any problem.
- Contemplation. The young person now has an awareness of a problem but remains attached to behaviour relating to the problem.
- Decision. The time at which the person makes a decision either to change or to remain the same.
- Action. The decision is put into action.
- Maintenance. A state of change exists and the person actively works to maintain the change.
- Relapse. The person falls back into old behaviour patterns.

In the cycle of change there is a clear entrance point and a final exit point but the young person may move backwards or forwards in the cycle but has the power to make a decision to re-enact the change programme. The model fits well with the assessment process and the monitoring and evaluation requirements that examine the impact of the delivery of warnings and the programmes to support them. Independent and comprehensive research by Oxford University published in May 2002 by the Joseph Rowntree Foundation shows that a three year study on restorative conferencing and cautioning found that the restorative approach appeared to be more effective than traditional methods and had a reducing effect on re-offending and produced higher levels of victim and community satisfaction.

The emotional connection

I had been a London Metropolitan Police officer for twenty-eight years and served as a uniformed officer on the streets of central London and as a detective for nine years focused mainly on major crime and homicide. I became involved in the investigation of hate crime and innovative ways of meeting the needs of victims. For eight years I also specialised in 'chaperone' duties where an officer is dedicated to obtaining evidential statements and forensic samples and exhibits from the victims of really serious personal and sexual assaults. I had served as a community officer with responsibility for all crime, social and educational needs of a large part of south-east London. It was a desire to renew teaching training that I had undergone prior to joining the police service that led me towards youth offending. I returned to Greenwich University on a re-trainer's course in 2002 and took up a post almost immediately on the relatively new Youth offending team.

I was introduced to the concept of restorative justice and have to admit that I was sceptical. I went along with my mentor who was the referral co-ordinator on the team and helped him facilitate some conferencing work. I was making the initial contact with victims and hovered around the community panels working with young offenders and victims. I met a 15-year-old female who had been assaulted and had sustained a fracture injury. Her confidence had been shattered by this unprovoked attack by another female of similar age who showed no remorse at all for her actions. The offender admitted full guilt for the attack but took no responsibility for her actions. I watched the procedure for three months. Things remained static. Not even a letter of apology was forthcoming. The offender seemed to be in great pain and the victim even worse, yet no movement seemed possible.

The caseworker reported a change of attitude. Patience and congruence had evoked a change of perspective and attitude in an apparently stubborn and arrogant young lady. A letter of apology was being written and this quickly resulted in a full conference. I was supporting the victim's family in the

conference and was an observer. The offender spoke about what happened and how she thought that it affected the victim. It seemed low key and factual to begin with but when the victim's story was related the offender suddenly appeared to become more aware than she had ever been about the consequences of her actions. I saw her sit up and become tense. Her mother, who was supporting her, sagged low in her seat, her gaze to the floor, ashamed of her daughter's behaviour. I was concerned about what was going to happen next until I saw tears well up in the offender's eyes as she blurted out an apology. The tears flowed unnoticed by the offender's mother and it was the victim's mother whose instincts led her to stand up and offer a tissue to the girl who had hurt her own child. It was this magnanimous gesture that was the turning point or enlightening moment in my experience of restorative justice conferencing.

This confrontation with the thoughts and feelings of the victim moved the offender deeply. She had learned directly how her behaviour had affected the victim and responded in a dignified and meaningful manner. The restorative conference is an emotional and powerful process. It is a healing and rehabilitative action. It works.

Conclusion

My next task was to seek out effective training and consultation took place with many agencies and sources of information that eventually led to the training of eighteen professionals from probation, social services, community safety, police and the criminal justice unit in conferencing. REAL JUSTICE.UK delivered the training. This is part of the global organisation promoting RJ. The remarkable thing about the process is its simplicity. It is recommended and prescribed by the UK Government via the Home Office guidance for Police and Youth offending teams as part of a wider vision to build a safe, just and tolerant society. Many critics are ill informed and rate it as a soft option for young offenders. For the volunteer community panel members, victims, offenders and wider community members it is a real living process and social response to wrongdoing by young people.

I practice restorative justice because I know that it does work. Police officers are being placed in many of the schools in the area where I work. Parental fines are part of new legislation to curb truancy. Anti-social behaviour in and out of school is punished by exclusion and court action. This stigmatises young people and makes them outcasts. The use of restorative justice repairs harm done to individuals and communities. The offender must face the consequences of what they have done and those that were harmed on the way. There will be those who go on to show that they are not willing to change and may end up being confined because of their dangerous activities but the majority respond to conferencing.

The current partnership trends make a solid foundation to open ourselves, and the systems in which we work, to foster and nurture restorative practices. I have not found the road easy and there is much to overcome as we progress towards the vision of a safer, just and more tolerant society.

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