RESTORATIVE JUSTICE AND THREE INDIVIDUAL THEORIES OF CRIME

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ABSTRACT

The conceptual relationship between restorative justice and punishment has already attracted a great deal of attention in the literature. A similarly rich body of work has considered the two main aims of punishment, retributivism and reductivism, in relation to criminological theories. It is surprising, therefore, that relatively little (direct) attention has been paid to the relation between restorative justice and theories of crime. This paper first reviews the concept of restorative justice, and then examines the affinities and tensions between restorative justice and three 'individual' criminological theories: classicism, individual positivism, and 'law and order' conservatism. These theories have been selected because of their significance in the development of present criminal justice policies.

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Restorative justice (RJ) is both an 'idea' and a 'movement.' As an idea, it carries many different understandings and as a movement it brings together adherents who hold widely differing aims. In both senses, restorative justice is as yet ambiguous and a number of authors have highlighted the need for more clarity and made useful attempts to construct a more coherent frame of reference for it (Walgrave, 1995; Zehr and Mika, 1998; McCold, 1999; Braithwaite, 2002a; Weitekamp and Kerner, 2002; Dignan, 2003). Daly and Immarigeon (1998) argue that, in order to achieve this new paradigm, "scholars and activists must (1) get beyond oppositional retributive-restorative caricatures of justice models, (2) address the relationship of retributivism and (of) consequentialism to RJ, and (3) use more precise terms and promise less" (p. 23). They also critically consider a number of attempts by advocates of RJ to (favourably) contrast their model with other justice approaches - one major pitfall in such attempts arises from the different meanings attributed to retribution and to rehabilitation (pp. 32-3). The debate is often clouded by questionable assumptions, for example, that the punishment goals of just deserts, incapacitation and deterrence are all retributive. It is also possible to treat reductivism and rehabilitation as synonymous even though the latter is only one way that reductivism may be manifested.[2] This article begins with a review of such earlier work before examining the relationships between RJ and three criminological theories – classicism, individual positivism and law and order conservatism - each of which has had a significant role in shaping present-day criminal justice systems. The aim is to make a modest contribution to the understanding of RJ.

[2] The other two manifestations of reductivism are incapacitation and deterrence (Cavadino and Dignan, 2002: 34-40).

Restorative Justice: Principles and Practice

There has been considerable attention paid to the concept of RJ in the criminological literature recently.[3] Based on this literature we can put forth some key principles and practices of RJ. Key principles of RJ include a view of crime as a conflict between individuals rather than between offender and the State. Closely related to this is a belief that the responsibility for governance of security, crime and disorder is to be shared among all members of the community. Restorative justice is viewed as a humanitarian approach that brings to the foreground ambitions of forgiveness, healing, reparation and reintegration (Zehr, 1990; Zehr and Mika, 1998).

Therefore, RJ 'programs' bring together the offender, victim, their respective families, friends and community representatives, and attempt to engage them in a process of reconciliation and reparation. The aim is to allow offenders and victims to meet in a face-to-face context (although indirect contact is often employed), to voice their experiences and understandings, and to achieve a mutually agreeable resolution. There are several different modes of practice in RJ. Victim-offender reconciliation, family-group conferencing, and sentencing circles are three popular models – and these vary in terms of the facilitator's role and the number and type of participants included (Sharpe, 1998).

Restorative justice has its roots in a number of indigenous cultures, embracing traditions of 'spirituality' and holistic healing, and aiming to reconnect the offender with his/her environment and community (Sharpe, 1998). Restorative justice also draws from the non-retributive responses to harm promoted by many faiths (Hadley, 2001). Finally, Braithwaite and Pettit (1990) have also promoted a secular foundation – civic republican theory – for RJ.

[3] See the special issues of the British Journal of Criminology (vol. 42, 2002) and Contemporary Justice Review (vol. 1, 1998) devoted to RJ. Good introductory sources include Zehr (1990), Sharpe (1998), and Johnstone (2003). See also Roach (2000) on the future of RJ.

Restorative Justice as 'New'

Restorative justice is frequently represented as innovative and thus to be differentiated from more established justice approaches (Morris and Young, 2000). At one extreme, RJ is considered to be a 'third way,' distanced from both retribution and rehabilitation (for example Graef, 2000). At the other extreme, the scale of RJ's novelty has been much more limited: Daly (2000) describes it as a mix of more traditional justice modes, with several new elements that make it unique (p. 35). Similarly, RJ has been announced as a welcome replacement, a solution to shortcomings, or as a useful adjunct to traditional arrangements. Restorative justice is also viewed as a way of achieving the aims of the present system or as a set of new aims (Brown, 2002): more generally, as (new) process or outcome. Finally, RJ has been attributed a downside, as a 'new colonialism,' supplanting the established regime (Cunneen, 2002).

Daly (2000: 33-54) asks what the role of punishment might be within RJ. This is an important question because it seeks to gain a picture of 'the new' by comparing and contrasting it with 'the old.' There is also a strong sense of challenge in Daly's question, as she argues that RJ processes and sanctions could be understood as 'alternative punishments' rather than 'alternatives to punishment' (Duff, 1992; Garvey, 1999). She suggests that proponents of RJ should not attempt to disassociate themselves from a number of common-place understandings about what to do in response to crime, including the need to punish offenders; prevent them from further offending; separate them from the community; teach them a lesson; and aid them to help themselves (p. 45).

On the heels of distinction, contrast and opposition, comes the issue of propitiation. An early contribution to discussion about the characteristics of RJ vis-à-vis other approaches was Zehr's (1985) account of retribution and RJ as different paradigms. Zedner (1994), in a similar vein, asked whether reparation and retribution were reconcilable, and the question has since attracted the attention of a large number of scholars (see edited works by von Hirsch et al., 2003). The notions of reparation and RJ are closely related – RJ is commonly understood to embrace reparative ('repairing the damage' or 'making good') elements within a wider frame that might also include rehabilitative and retributive features.

Mindful of the need for clarity, it is reasonable to query the aptness of the (now widely-used) term reconciliation in this context. After all, to reconcile implies some form or measure of previous accord that is lost, but subsequently revived: the concept of 'rapprochement', carrying meanings of both the creation and the revival of cordial relations, might be a more appropriate term.

As a remedy for failings in the current criminal justice system, a number of different emphases are apparent, including the victim perspective (Strang, 2002), female offenders (Gelsthorpe, 2001), gender (Hudson, 2002), and community (lay) involvement in conflict resolution (Christie, 1977). Hudson (2003) considers aspects of the 'bringing together' of victims and offenders, concluding that RJ should attend more closely to balancing rather than sacrificing the rights of one side or the other (p. 192), echoing the work by Wright (1991). Because of its concern with the repairing of relationships (Burnside and Baker, 1994), RJ has been positioned alongside feminist conceptions of justice (Heidensohn, 1986), and closer to the 'ethic of care' than more familiar justice approaches (Gelsthorpe, 2001: 142-4). On the other hand, the implications of RJ for female offenders have yet to be fully considered (Alder, 2000) and there is some evidence to suggest that women's experiences of RJ may not

be wholly positive (Stubbs, 1997). Christie (1977) argued that the responsibility for conflict resolution has, in effect, been taken away from the individual and from their local community. Mika and Zehr (2003: 149) make two proposals: first, that the historical growth of criminal law and state justice, inter alia, may have caused a destabilisation of local community justice systems; and, second, that state justice may have gained ascendancy because local justice has declined. In either case, the aim of RJ is to return the responsibility for responding to crime and victimization to the community (Dhami and Joy, in press).

In a more general solution context, hard empirical evidence for the relative effectiveness of RJ remains sparse (Maxwell and Morris, 2000), although this situation is changing rapidly, given the spread of RJ world-wide and the increasing level of related research activity. There is evidence that RJ programs may be effective in achieving victim and offender satisfaction and in encouraging (their) favourable perceptions of fairness in process and outcome; in producing high rates of negotiated agreements for restitution and high compliance rates with such agreements; as a way of reducing the victim's fear of crime; and in reducing re-offending (Latimer et al. 2001; Miers, 2001).

Bottoms (2003) argues that, overall, RJ is unlikely to work as well in contemporary (urban) societies as it does in more traditional ones. This is because RJ, even in traditional societies only works well if the victim and offender have either a 'thick' (family) or 'thin' (culture) relationship with each other. In modern societies, there may be no relationship at all, other than that related to the criminal event. Bottoms concludes that any attempt to use a 'blanket' delivery of RJ will always achieve modest and/or patchy results (p. 110). Finally, the introduction of RJ raises important questions of accountability: Roche (2003) has considered

how this accountability might be achieved within the 'semi-formal' arrangements usually associated with the delivery of RJ.[4]

Restorative Justice as 'Old'

In sharp contrast to the rendition of RJ as energetic youth, sits its portrayal as a wise and venerable elder. This is often accompanied by a sense of the unexpected: RJ becomes something with a much longer history than initially might be thought. Braithwaite (1998) makes the bold claim that "restorative justice has been the dominant model of criminal justice throughout most of human history for all the world's peoples" (p. 323). Restorative justice may be regarded then as offering a return to an earlier justice that had withered away over the intervening years through the actions of the State and powerful interest groups within it. Proponents of RJ are able to cite this heritage as a justification for its revival.

The emphasis given in bygone times to the interests of the victim is frequently at the centre of calls for a return to restorative approaches. For instance, in early Anglo-Saxon England, wrong was to be atoned by the payment of *bot*, compensation to the injured person, and by *wite*, to the king or other person in authority. Compensation could also be sought by the extended family of the victim and was payable in the proportion of two-thirds to the paternal and one third to the maternal kin. Two other payments were required under later Anglo-Saxon law – the *fightwite* was due to a lord having jurisdiction within the location where the wrong was committed and the *man bote* was paid to a lord whose man had been killed. Needless to say, this set of arrangements could prove rather complicated. Dangerous too, if the payments were not made – the English proverb "buy off the spear or bear it" refers to the fact that, if compensation was unpaid, the injured party or their relatives might legitimately prosecute the feud and that "the defaulter was outside the law, and as a wild beast could be

[4] Drawing on evidence from 25 RJ programs across six countries, Roche (2003) argues that many programs demonstrate a combination of 'modes of accountability' and that critics of RJ may underestimate the less formal checks and balances on decision-making.

pursued and slain" (Holdsworth, 1936: 46). von Hirsch and Ashworth (1998) point out that, in the twelfth and thirteenth centuries, the *wite* began to be more important than the *bot*, as the king took over payments and replaced them with other sentences (p. 300).

It is tempting to over-gild the past. With regard to tenth century England, and most famously King Athelstan's fourteen year rule, it is important to say that, while Athelstan's law codes are widely accepted as an improvement on the earlier, lex talionis approach followed by King Alfred, his predecessor, Athelstan's penalties were still very harsh.[5] Furthermore, Wood (1987) cites the shift towards humanity within the context of a movement away from tribal thinking, towards the need to enact justice on a wider scale, to embrace a number of different peoples.

In addition to its focus on the victim's perspective, RJ has also been presented as worthy because of its concern with community. For instance, in the UK, the criminal justice system has been portrayed as remote from the majority of the population and, to an extent, imposed (Graef, 2000: Morris and Young, 2000). Indeed, the disenfranchisement of communities is often associated with the imposition of new systems of governance and justice after military conquest and/or, as an aspect of colonialism. Thence, the Saxon *wite* and *bot* were replaced by the Norman colonialists in England: while Findlay (2001) describes how the criminal law in Australia was imposed on an indigenous population who were denied any real influence over its development (p. 121). Given its origins in Maori traditions, RJ readily derives strength from the anxieties about colonialism now widespread. Restorative justice, as a movement, may thus be founded on the view that the historical growth of criminal law and the State adversely affected earlier systems of justice. As Mika and Zehr (2003) remind us,

[5] Wood (1987) vividly makes the point: "The king has sent word to the archbishop by Bishop Theodred that it seemed too cruel to him that a man should be killed so young (i.e., twelve years), or for so small offence, as he had learnt was being done everywhere. He said then that it seemed to him and to those with whom he had discussed it, that no man younger than fifteen should be killed unless he tried to defend himself or fled" (pp. 134-5).

local justice may have declined for a variety of reasons, thereby leaving State justice to gain its ascendancy.

A different, albeit controversial view is that present arrangements constitute a series of developments arising, at least in part, in response to perceived shortcomings and over-complexities in RJ. Thus, the lack of inclusion for victims in sentencing can be seen to reflect the very real practical difficulties in allowing victims to participate. Similarly, current criminal justice structures and processes can be perceived as having arisen because of the incoherence of earlier more restorative forms, their (internally) competing rationales and very different implications for policy and practice (Edwards, 2001). The present mix of retribution, rehabilitation and reparation characterising the UK and similar justice systems may be thought of as the result of a series of adjustments, not only to politically motivated pressures but also towards a more satisfactory operation. It would be foolhardy to claim that all change constitutes progress and, yet, it would be equally foolish to regard all aspects of change as detrimental. This is not, in any way, to discount the two propositions advanced by Mika and Zehr: all three understandings, inter alia, may be helpful.

Before moving on to consider RJ in the context of criminological theory, it is important to acknowledge one further representation of RJ as ‘old and venerable’. To such qualities, Gelsthorpe and Morris (2002: 238-53) add ‘frailty,’ and ask whether RJ in the youth sector can be seen as representing the last refuge of welfare. They picture youth justice as essentially actuarial and retributive, a system with little interest in the well-being of the young people involved, other than through the final traces of concern held within restorative policies and practices. Gelsthorpe and Morris conclude that RJ is likely to remain on the margins of the youth justice system, a system essentially now driven by a ‘moral agenda’

rather than the welfare agenda originally introduced in the UK in the Children and Young Persons Act 1969.[6]

Three Individual Theories of Crime

In launching his idea of 'reintegrative shaming,' Braithwaite (1989) endeavours to consider the respective relations between RJ and a number of 'dominant theoretical traditions' in criminology (pp. 16-43) - these are labelling, subcultural, opportunity and learning theories (his account of learning theory emphasises the influence of (social) differential association theory). All of these traditions, apart from learning theory, are normally understood as social, rather than individual theories, in that they locate the cause of crime within society rather than within the offender. It is fair to say, therefore, that Braithwaite and later contributors to the literature have spent little time directly examining the characteristics of RJ in the context of the three major individual theories of crime, namely, classicism, individual positivism, and law and order conservatism. While it is important to acknowledge the subsequent work by Braithwaite (2002a: 73-136) that does consider RJ in the contexts of deterrence, rehabilitation and justice theories, it remains the case that these relations have been relatively under-explored in the literature. Furthermore, Braithwaite, as an architect and advocate of RJ, has sought to demonstrate the overall superiority of RJ as a theory of crime reduction (p.73), rather than to systematically map it against other theoretical traditions.

Young (1981) provides a straightforward introduction to the three individual theories considered here, and, using the analytical frame that he provides, it is possible to identify their differences and similarities in terms of: the view they each take on 'human nature'; their

[6] Gelsthorpe and Morris set a distinction between 'moral' and 'welfare' here in order to make their point about the retributive characteristics of contemporary youth justice: it is acknowledged that, more generally, the two ideas are nor opposites. Their description of youth justice as 'actuarial' is also important in that it flags up the effects of the 'new penology' (Feeley and Simon, 1992), 'managerialism' (Bottoms, 1995) or 'paradigm shift' inherited from criminal justice (Kempf-Leonard and Peterson, 2002). While the significance of managerialism/actuarialism for RJ is accepted, we have chosen not to go into detail about it here.

understandings of the origins of social order; their definitions of crime; their assumptions about the extent and distribution of crime; their view on the causes of crime; and, finally, the implications they hold for policy and practice. Without doubt, the three theories are each of central significance within current penal policies and systems. Classicism, with its focus on offence seriousness and concern with 'rights,' remains at the heart of the legal framework used for sentencing offenders (for example, in the UK see Powers of the Criminal Courts Act, 2000, section 79(2)(a) for the imposition of discretionary custodial sentences). Individual positivism underpins much of the rehabilitative work of the probation service, especially its use of cognitive behavioural programs. Reflections of law and order conservatism can readily be observed in the 'toughness' of present penal policies (Cavadino and Dignan, 2002; Pratt, 2002). This is not to suggest that these three theories can be found as a 'pure' type, or that they are, or have been, influential only as discrete forces. Each theory has its own lengthy history and, as a result, embraces a number of sub-types with different emphases, predilections, strengths, and weaknesses. Furthermore, as Young (1981: 256) reminds us, aspects of classicism and individual positivism were combined to form the 'neo-classicism' that came to dominate British and North American criminology. For the purposes of this paper, however, the three theories are 'disentangled' and presented in their ideal form. Finally, it is important to acknowledge that, although law and order conservatism continues to feature strongly in public discourse about crime and how society should best respond to it, the approach has received less attention in academic criminology than either classicism or individual positivism (Lanier and Henry, 2004: 81-2).

Although classicism, individual positivism and conservatism are similar in their shared individual focus, they differ in terms of their notion of what, specifically, causes crime. Classicism presents the offender as making the wrong choice; positivism draws attention to

internal factors beyond the control of the transgressor; and law and order conservatism looks to individual 'wickedness' as the cause of crime. The three theories are similar in their view of the origins of social order. Each theory assumes a consensus, albeit from different sources. Classicists posit a set of equal contracts between the individual and the State; positivists suggest that consensus has its roots in a common socialisation; and law and order theorists emphasise the role of tradition.

The individual focus of the three theories presents some connectional difficulty for RJ that, as Braithwaite and others (Cote, 2002) suggest, has considerable affinity with social theorising. Social interactionism (labelling theory), as its name suggests, locates the cause of crime in the ways in which society responds to deviance. Restorative justice, correspondingly, seeks to repair the relationship between offender, victim and community. In regard to social order, fewer difficulties in relating RJ and the three theories might be predicted, given their shared assumption of consensus in society. Smith (1995) argues that, "for reintegrative shaming to work, a broad moral consensus must exist on what is good and bad conduct, on right and wrong" (p. 157). Braithwaite (1989) contends that such a consensus does exist, although only for 'predatory' – rather than victimless – crimes (p. 39).

Restorative Justice and Classicism

Classicists view humans as voluntary and rational beings, governed by self-interest. Individuals are regarded as equal in that they each have free-will and faculty for reasoned action. They are also equal in the sense that each person is obliged to enter into a contract with the State – essentially, to give up some of their liberty in return for the State's protection. Social order is, therefore, understood in terms of this contract, and crime as an act that violates it. Classicism adopts a legal definition of crime, concentrating on the criminal

act itself. Individuals who break the law are to be punished, and the responsibility for deciding guilt and the level and form of punishment lies with the State.

It is important to distinguish between classicism and the 'justice model' of corrections. Our position is that while early formulations of the justice model closely mirrored classicist thinking, later manifestations of the approach embrace elements of law and order conservatism (see also Cavadino and Dignan, 2002).[7] According to classicism, offenders should be punished, and that punishment should be dispensed in accordance with the two key principles of proportionality and parsimony. The latter has, arguably, never been given its intended prominence, leaving the door open for later versions of the justice model to include law and order 'toughness.'

In the interests of clarity, it is also necessary to acknowledge that classicist theory aligns itself with both retributivism and reductivism. Punishment, though justified primarily through the idea of desert, is aimed at deterring the individual offender from further infractions of the criminal law. Similarly, RJ may be seen as having both retributivist and reductivist ambitions, although reductivism is enacted via the mechanism of rehabilitation rather than deterrence. However, there are significant divisions within the community of RJ theorists on this issue. Daly (2000), for example, states that theoretically and philosophically, RJ and retribution can be compatible. Braithwaite (2003), on the other hand, argues that the alliance can only be with reductivism.

Finally, there is a view that while RJ and retribution are able to co-exist theoretically, this may not be so easy in practical situations. Drawing on their knowledge of the practice of RJ

[7] Hudson (1987: 37-58) provides a useful description of the origins and characteristics of the justice model. Young (1981: 253-66) captures the essence of Beccaria's classicism.

in Canada, Roberts and Roach (2003: 243-4), for example, suggest that 'circle sentencing' may lead to violations of three retributive sentencing principles – proportionality, restraint (parsimony) and equity. Different emphases may be given to the 'seriousness' of the offence, in terms of its perceived emotional, financial and physical effects. Different offenders may receive very different levels and types of sanction for offences that may be regarded by outsiders as similar. Ensuring restraint may be especially problematic, given RJ's incorporation of both retributive and rehabilitative aims. Both the offender's past and future behaviour are of interest – the past offence must be censured and the propensity to re-offend must be reduced. The role of the judge who presides over the circle is regarded as crucial in ensuring that the sanctions recommended by participants are commensurate, parsimonious and fair.

Classicism draws attention to the criminal act: it is not concerned with the actor, the actor's history, nor personal or social circumstances. The seriousness of the offence must be dispassionately appraised and then matched with a commensurate amount of punishment using a set tariff. Because of this sharp focus on the (objective) seriousness of the offence, classicism and RJ make uneasy bedfellows. Restorative justice demands a more complicated and subjective process. The offenders' circumstances are afforded relevance, so too their motivation to alter their ways and any past record of criminality and responses to previous sentences. The victim is expected to make a contribution to proceedings, as are other members of the community, meaning that the outcomes of RJ are much less predictable than could be countenanced within a classicist approach. The relationship between classicism and RJ is thus strained, not only by classicism's advocacy of punishment but also by the method it commends for determining the amount of punishment to be used. On the other hand,

classicism and RJ have some affinity in their shared concern for the offender's future: both wish for a return to law-abiding citizenship, with classicism expecting to achieve it via simple deterrence and RJ espousing a more complex route.

Under classicism, the State has full responsibility for establishing the guilt of, and for punishing, those who break its laws. In contrast, RJ seeks to place responsibility for dealing with crime in the hands of the communities in which it occurs, with the State system being used as a last resort. Youth crimes, for instance, may be dealt with at the pre-charge stage, or pre-charge and post-conviction. RJ may be employed with behaviour that has caused harm to others but which is not strictly illegal, in terms of the State's definitional framework and orbit of responsibility.[8] Restorative justice is used in schools (for example, Karp and Breslin, 2001) and other organisations to settle disputes. When responding to crime, RJ practices focus on the harm caused by the act and on its antecedents. The offender is encouraged to make amends, restore the harm, or make restitution or reparation. Moreover, communities are encouraged to support offenders so that they are able to achieve these ends (perhaps using mentors) and so they deal with the factors that are seen to have led to the crime. Communities are also asked to support the victim as they deal with and recover from the effects of the crime committed against them.

For classicists, the independence of the individual is sacrosanct. As rational beings who have contracted freely with the State, all are equal before the law and everyone who breaks that law deserves to be punished. Sentencing offenders may be regarded within this frame of reference as a private matter, without need for display other than to demonstrate that due process has been observed. Similarly, the execution of punishment should allow offenders a

[8] Using Young's (1981) terms, this relaxation of definition from 'legal to social' may have the unexpected effect of drawing individuals into the criminal justice system through net-widening rather than diverting them from it.

private space to reflect on the error of their ways, without recourse to public spectacle. This drive for singularity results in a further tension between classicism and RJ. Restorative justice places community on par with the individual and, in so doing, opens up the processes of sentencing and the process of sentence to wider view. A public display of guilt and remorse, a 'shaming' in front of others: this is what many proponents of RJ commend and promote (Braithwaite, 1989).

Classicism affords a special prominence to the rights of the individual offender to be upheld through strict adherence to due process, and any serious cross-mapping of RJ and classicist theory is obliged to include this rights issue. It is fair to say that discourse about the rights of the accused/offender does feature significantly in much of the RJ literature (Ashworth, 2002; Johnstone, 2003) and important to acknowledge the strides already made in the specific area of youth justice (Newburn, 1997; Rutter et al. 1998; Muncie et al. 2002).[9] Warner (1994) considers how the rights of offenders may be infringed and best upheld in family-group conferencing. Hudson (2003) argues that too strong an orientation to crime reduction could hamper RJ and calls for greater attention to the offender's rights (p. 192). Braithwaite (1989) highlights one of the hazards of RJ as follows:

"….informal means of control are, because of their informality, probably more likely to convict the innocent, even when dealing with defendants who accept the rightness of the standards under which they are oppressed. If it means punishing more innocent people, do we really want to support policies that shift social control somewhat away from the formal, with its guarantees of due process, to the informal?" (p. 158).

The question that Braithwaite does not address, however, is the magnitude of the risk: 'probably more likely' is, perhaps, acceptable if the resultant risk is still small, but what if

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empirical studies, sensitively designed, could show that, say, one in ten convictions were questionable? This line of thought serves to emphasise one of the incompatibilities of RJ and classicism: due process is readily lost as the degree of informality increases (see Braithwaite, 2002b for further debate on standardisation in RJ).

Restorative Justice and Individual Positivism

The primary contention of individual positivism is that crime arises because the offender has not been sufficiently or effectively socialised, or 'schooled' in society's values. Crime or deviance is caused by the under-socialisation of the individual: this may be due to innate factors (the person is incapable), the family's ineffectiveness in providing proper socialisation, or to wider (social) influences. Behaviour is seen as determined by the person's antecedents and, therefore, the policy to be followed is one where offenders are treated, rather than punished. For those who are incapable of achieving a satisfactory level of socialisation, treatment may be replaced by containment.

Although restorative justice and individual positivism are not entirely at peace with each other – the determinism of positivism lies uneasily with the emphasis within RJ on personal responsibility, for example – they do share a number of important assumptions. Their views on social order are similar, they define crime in a similar 'social' way and they both aim to 'reintegrate' offenders. This can be observed in the following statement about the aims of RJ:

> *"Mediation encourages offenders to:*
>
> - *own the responsibility for their crime*
> - *become more aware of the effect of their crime on the victim*
> - *reassess their future behaviour in the light of this knowledge*
> - *apologise and/or offer appropriate reparation."*

(Mediation UK, Victim-Offender Mediation Guidelines for Starting a Service, Bristol: Mediation UK, 1993, cited in Graef [2000: 33]).

The first three of these points could readily be interpreted as rehabilitation and be located within a policy and practice agenda founded on individual positivism (Young, 1981: 266-74) and yet they are presented here as restorative.[10] The difference appears to be that rehabilitation has usually concentrated on changing the attitudes of the offender through individual or group therapy delivered by a professional possessing the required expert knowledge and skills – be it probation officer, prison psychologist, or social or youth worker. However, there is no reason in principle why re-socialisation could not include some form of dyadic encounter between offender and victim, or supervision by community mentors. Indeed, Duff (2003) calls for the probation service to be much more closely allied to the aims of RJ, through the remoulding of punishment as 'communicative penance' (p. 191) and it would be reasonable to suggest that RJ's long-term contribution could be in spurring the development of rehabilitation within the penal system. Alternatively, as Gelsthorpe and Morris (2002) contend, RJ may represent the last vestiges of welfare in the field of youth justice, a final foothold that may be increasingly difficult to retain given the emphasis afforded by government to punishing offenders. Restorative justice may thus be especially vulnerable because of its proximity to positivism. However, with an increasing focus on punishment and toughness in penal policy, positivism's focus on treatment becomes ever more difficult to accommodate within the political agenda, thus RJ may be especially vulnerable.

[10] The STOP (Straight Thinking on Probation) Programme includes many similar elements (see Raynor et al., 1994: 95-6).

RJ has been on the receiving end of a great deal of criticism because of its rehabilitative features.[11] Daly (2000: 45) writes, "For many critics, restorative justice already sounds like a repackaging of rehabilitation in that it seems to give wrongdoers a second chance or appears to be a soft option" Hudson (2003) expresses concerns that RJ may become too involved with crime reduction, and insufficiently concerned with rights issues. In the interests of clarity, it is useful here to distance individual positivism from reductivism, in that the former relates closely with (only) one expression of reductivism that is rehabilitation or reform. Reductivism may also be pursued by deterrence, individual or general, and by incapacitation (Cavadino and Dignan, 2002: 34-40). The relationship between individual deterrence and RJ has already been charted in the preceding section: its relationship with general deterrence is considered in the section below devoted to law and order conservatism. Incapacitation (or 'containment') is an important aspect of current policy, most directly in terms of the use of custodial sentences where issues of public protection are uppermost. At first glance, the scope for RJ here may appear limited, although restorative work could form part of the offender's rehabilitation after release (Wilson, Huculak, and McWhinnie, 2002) and there is also an interest in the role of RJ in the prison context (see Francis, 2001).

Braithwaite (2002a) argues that the resort to containment would occur "when both restorative justice and deterrence repeatedly fail to protect the community from a serious risk" (p.122). In light of the pressure on welfare in present penal policies and practices, it is not surprising that RJ has made its greatest inroads in the youth justice sector, wherein the worlds of child care and criminal justice continue to find a meeting place (Harris and Webb, 1987: 9), and there is already a significant, diverse and swiftly growing literature examining RJ for young

[11] RJ has also been criticised for not retaining a sufficiently sharp focus on the interests of victims, the risk being that victims might be 'co-opted' in order to help or rehabilitate offenders.

offenders (Blagg, 1997; Carlen, 2000; Morris and Maxwell, 2001; Crawford and Newburn, 2002; Skelton, 2002; Crawford, 2003).[12]

Restorative Justice and Conservatism

According to conservative theory, human beings are obliged to curb their drive for self gratification. There is a need for "sacrifice, discipline and the submission to authority" (Young, 1981: 275). Social order is thus maintained by eschewing self-interest for the general good, enshrined in traditional values. Offenders are to be punished harshly in order to provide them with a moral lesson and to serve as a general deterrent.

At first glance, RJ and conservatism appear to share little in common, especially in regard to how best to respond to crime. On closer inspection, however, some features of the two approaches are similar. For example, both adopt a broader definition of crime than the legal one associated with classicism: technically non-criminal, yet 'anti-social', activities are included. It is also the case that RJ's interest in strengthening community ties and values appears to move it closer to conservatism. Proponents of RJ tend to reject the idea of State coercion and, in fact, RJ is often proposed as an alternative to State control – individuals within communities are encouraged to support the offender and the victim, and so *they* take the responsibility of dealing with the crime, something that is beyond their personal self-interest and for the common good. Restorative justice programs in Canada, for example, are frequently run by volunteers and based within the community (Dhami and Joy, in press).
At the centre of law and order conservatism lies the belief that crime is caused by a breakdown of traditional social and legal authority, a breakdown that allows the release of individual wickedness. The 'new' ideas of classicism and positivist criminology are regarded

[12] There is also work on adult offenders (for example, Maxwell and Morris, 2001).

as being part of this threat to social order, while social theories of crime are likely to be perceived as even more misguided and dangerous. Law and order theory keeps its eye closely on the need to punish transgressors and to punish them harshly so that others who might be tempted think better of it: 'toughness' becomes the keystone of penal policy and RJ, presented as a radical, new development, faces a particularly steep struggle for acceptance in such a climate.[13] Involving the victim may be less difficult to introduce but any attempt to move away from punishment is likely to receive short, sharp shrift.

On the other hand, there are a number of points where the terrains of law and order theory and RJ might conceivably overlap. Restorative justice seeks to include the community much more directly in the delivery of justice, with the ambition of strengthening social ties. Conservatism, too, has a natural concern with community given its position on the source of crime. There are grounds for some affinity here and this may be especially so if RJ can be promoted as a revival of past orthodoxy, as something 'old' and worthy of veneration, as hailing from a time when community loyalties were, allegedly, much more vital and robust. Similarly, law and order theorists may be attracted to the 'shaming' aspects of RJ, sensing that their aim of general deterrence could be well-served through opportunity for public spectacle. Many advocates of RJ present the shaming of offenders as a way of setting the foundation for future reintegration of the offender, although they are much less concerned with its wider (deterrent) ramifications. Nevertheless, in approaches to RJ that place a central emphasis on shaming offenders, RJ may inadvertently be all the more palatable in a penal policy climate characterised by toughness.

It is often assumed that RJ would secure a more lenient response to offences, for example, Cavadino and Dignan (2002) argue that,

[13] The law and order meaning of 'tough' is in terms of harsh punishment, while the RJ understanding is a strictness of expectation in accepting responsibility and making amends.

"…one virtue of many reparation schemes is that they afford both offender and victim a say in determining the nature of the offender's punishment. This increases the positive freedom of the victim as well as the offender, a consideration which should normally justify a downwards departure from the proportional tariff" (p. 57).

As stated, this is likely to distance RJ from law and order penality. However, there are two ways in which the gap might be lessened. First, Cavadino and Dignan, among others, may be underestimating the desire for harsh punishment amongst the general population and, indeed, in quarters wherein toughness might be much less expected. For example, in the UK, *The Times* 22.9.03 reports the results of a pre-party political conference poll carried out by Populus that asked "what would make people more likely to vote Liberal Democrat?" Forty-nine percent of the public said 'tougher policies on crime', 76% of Liberal Democrat voters and 62% of swing voters agreed.[14] Persuading the proponents of law and order theory that RJ can be 'popular and tough' might therefore open doors for the restorative approach. Put more neutrally, the implications of involving the community in criminal justice systems may not necessarily result in greater leniency. Second, in a law and order world, powerful individuals who offend may risk additional punishment for their crimes (Young, 1981: 279; Braithwaite, 1989: 41) - this is readily understood in terms of the additional threat to social order apparently posed by such individuals. By the same token, offenders who represent little threat, because of the trivial nature of the offence, the temporality of their failing, or because of their personal characteristics, may be treated more charitably. Leniency has a place in law and order conservatism, although its exercise may be difficult to predict given the subjectivity of gauging the level of threat in any particular case.

[14] See Lee (1996) for an account of public attitudes towards RJ.

Relating the Three Theories to Restorative Justice Schemes?

Having addressed the respective conceptual interfaces between the three theories of crime and restorative justice, the article now briefly turns to consider classicism, positivism and law and order conservatism in the context of 'real' RJ programmes (for descriptions of these see Miers'(2001), Miers et al.'s, (2001) and Shapland et al. (2004)[15]).

Attempting to connect accounts of RJ schemes with criminological theory has proven difficult, for a number of reasons. Many descriptions of schemes make little reference to theoretical or philosophical underpinnings, while statements about aims and objectives, rationale, procedures and models of intervention are often unclear and relate unevenly with what happens in practice. For example, even though RJ can be characterised by the principle of centrality of the victim, Miers et al. (2001) found that, real schemes were of two main types – those with a primarily offender-oriented approach and those that afforded equal emphasis on the victim. Three of the seven schemes included in the research team's evaluation had little or no contact with victims during the fieldwork period and, furthermore, while the aim was to interview approximately 100 victims from the remaining four schemes, difficulties in making contact and gaining consent meant that only 23 interviews were eventually secured (p.29). Claims for 'centrality of the victim' would thus be difficult to uphold, either in many of the schemes or in this particular evaluation, and similar findings have emerged from contemporary studies (Newburn et al. 2002; Shapland, 2003). It might be argued that 'centrality of the offender' was more readily apparent in the schemes visited by Miers et al., an understanding that, perhaps, makes it easier to connect schemes with the three

[15] Miers' (2001) international review of RJ spans 12 European and four common law jurisdictions - Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Netherlands, Norway, Poland, Slovenia and Spain (Catalonia) – brief descriptions of RJ in Ireland, Italy, Russia and Sweden are also provided. The four common law jurisdictions were Australia, Canada, New Zealand and USA. Miers et al.'s (2001) evaluation of UK schemes focuses on Amends Waltham Forest Victim Offender Mediation Service, Gloucestershire Diversion Unit, Leicestershire Young Offenders Diversion Scheme, Mansfield Restorative Conferencing Programme, Suffolk County Council (Youth Justice) Caution Plus Scheme, West Midlands Probation Service Victim Offender Unit (Coventry), and West Yorkshire Victim Offender Units. Shapland et al. (2004) provide accounts of the 3 schemes funded by the Home Office under its Crime Reduction Programme, namely: CONNECT – run jointly in London by NACRO and the Probation Service - the Justice Research Consortium – in London, Thames Valley and Northumbria - and REMEDI – providing mediation in South Yorkshire.

individual theories of crime, all of which focus on the offender.

It is indeed possible to find resonances of the three theories in what schemes write about their aims and rationale, although, as Shapland et al. (2004:6) suggest, it is useful to compare such declarations with what staff say happens in practice. Broad statements of ambition and scope usually do carry echoes of classicism, positivism and conservatism: the 'Leicestershire caution plus' scheme, for example, aims for:
'clear and consistent cautioning, diversion and prosecution criteria which emphasise the nature of the offence, the characteristics and antecedents of the offender and which take account of the effect of offending on victims as well as public interest factors' (Miers et al. 2001:17), a text that reflects all three theories: 'clarity and consistency' suggests classicism; 'characteristics and antecedents' individual positivism; and 'public interest' connects well with conservatism. However, the statement of aim tells us little about how much weight is given to each of its constituent parts nor how the inevitable tensions between those parts – being even-handed, while remaining sensitive to individual difference and, yet, being obliged to protect the public - are to be managed.

A further line of analysis arises from an international perspective, locating RJ in relation to its respective criminal justice context. On the not unreasonable assumption that the three theories of crime have, at least to some extent, shaped current retributive systems across the world, it would then be possible to relate discrete RJ approaches and schemes to the theories via their degree of connectedness with the national justice system. Models of RJ that are formally linked with the wider criminal justice system might be predicted to mirror much more closely the particular mix of classicism, positivism and conservatism characterising that country's policies. Miers (2001), in his account of RJ in 12 European and four common law jurisdictions, builds on work by Groenhuijsen (2000), to differentiate provision as 'integrated,

alternative or additional' (p.81). A jurisdiction offers 'integrated' provision where victim-offender mediation is part of the criminal justice system: most jurisdictions studied by Miers used this model. 'Alternative' provision is defined as when victim-offender mediation is employed instead of the system: this approach is used by Norway, Slovenia and in some initiatives in the Netherlands. A jurisdiction offers 'additional' provision where victim-offender mediation is situated alongside the criminal justice system: this is used for serious crime and in the prison context – Miers identifies this as occurring in the Netherlands and as the least common model. In terms of this analytical frame, it would be fair to identify the 'alternative' model as having the greatest freedom to define itself as different from its wider justice context. However, other factors would have to be taken into account, importantly the 'scope' of RJ in a given jurisdiction and its 'ownership' - the agency wholly or mainly responsible for its delivery. In terms of scope, RJ provision may exist for adults and juveniles, or it may be reserved for younger offenders. So, provision in a particular jurisdiction might be 'integrated' but only in the juvenile sector of its operation. Norway, for example, offers mediation to both young and adult offenders, although it is regarded as most appropriate for the 'young and impressionable'. In terms of ownership, one agency may be especially powerful - in Australia, the Wagga Wagga scheme was entirely run by the police – and the approach adopted by a powerful professional group may have important consequences - in Belgium, the predominantly rehabilitative (positivist) ethos of social workers working with young offenders may have limited the attention given to the victim's perspective (Miers, p.16).

Restorative justice schemes do not, as a rule, provide exacting accounts of how their programme might connect with criminological theory and it would perhaps be unreasonable to expect them to do so. After all, schemes are obliged to satisfy a number of different

audiences and their fragility means that they need to meet a range of requirements from sponsors and key players within the criminal justice system. In such circumstances, a measure of ambiguity in language may allow RJ to appeal to views across the political spectrum (Roach, 2000). Finally, it is also important to acknowledge just how little systematic attention is given to crime theory by more established parts of the criminal justice system.[16]

Conclusions

Perhaps the major limitation of RJ is that, to date, it has paid little attention to the causes of crime. As a result, the difficulties of mapping RJ alongside criminological theories that have firm views on the issue of cause are inevitably exacerbated. That said, of the three theories of crime discussed here, individual positivism would appear to have the strongest affinity with RJ. The re-socialisation of offenders, commended by positivists as a cure for crime, resonates with much of the restorative agenda. In recent times, the positivist effort has concentrated on achieving re-socialisation via cognitive behaviourism and the like, but this could be remoulded to involve significant others - including victims, family and community members – and, thereby, to embrace the goal of conflict resolution and healing preferred by RJ.

Both individual positivism and conservatism, for different reasons, would aim to enhance or repair social ties. Restorative justice might therefore be sustained by either theory or by a combination of the two. A shared focus on rights also implies a measure of compatibility between classicism and RJ. However, many tensions exist and there are powerful critiques to

[16] This is not to say that individual practitioners within parts of the criminal justice system have no interest in ciminological theory: police officers, for example, would be expected to share views about the causes of crime and how best to respond to it. The points we want to make are: first, that established parts of the system do not, as a rule, provide systematic accounts of their policies and practices in terms of crime theory; and, second, that there is value in attempting to do this. See Mantle and Moore (2004) for an analysis of the UK probation service in terms of its underpinning crime theories. The authors begin by linking many of the service's current ills to its dependence on individual positivism and law and order conservatism, and then suggest a radical shift for the probation service towards strain and rational choice theories.

be faced. A major criticism of individual positivism is its assumption of a consensual culture and set of social values, while RJ seeks to be community-based, in recognition of cultural differences within society. Furthermore, RJ aims to 'reintegrate' offenders - but into what? As Sullivan and Tifft (2001) point out, communities may disable people, leading to the view that RJ might never be successful unless radical changes were made in existing social structures and processes: in other words, the relationship between criminal and social justice cannot be skated over. The three theories of crime examined here each place the source of crime within the individual offender and also adopt a consensus view of social order. As a consequence, each theory has important points of contact with RJ, while, in the same breath, it is true that classicism, positivism, and law and order conservatism all fall some considerable way short of providing RJ with the coherent frame of reference that is needed.

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