

Restorative justice in the English juvenile justice system: A brief account

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Introduction

Arguably, the term 'restorative justice' (RJ) was first introduced in the contemporary criminal justice literature and practice in the 1970s. However, strong evidence suggests that the roots of its concept are ancient, reaching back into the customs and religions of most traditional societies. In fact, some have claimed that the RJ values are grounded in traditions of justice as old as the ancient Greek and Roman civilisations.¹ For instance, Daniel Van Ness believes that the term was probably coined by Albert Eglash in a 1977 article, but the ideas underlying it, as well as many of its practices date back to the early types of human aggregations.^{2, 3}

This paper will provide a brief account of the development of RJ in England and Wales for juvenile crime. This goes back to 1972 where the first victim offender mediation (VOM) programme was introduced. As the evidence on RJ becomes more robust, its relevance to race equality and achieving fairness for Black, Asian and minority ethnic (BAME) groups also becomes clearer. In a criminal justice system where BAME communities are over-represented and issues such as culture, language barriers, ethics and disadvantage are often ignored, a more personalised (criminal) justice paradigm becomes appealing. I have argued elsewhere how timely RJ is for community cohesion policies.⁴

Its contribution to youth justice is easily identified as practice has received robust evaluation and research.

Legislation and policy

As with other jurisdictions, RJ's first development in England and Wales came from the community without any legislative or other support from the government. In 1972 the 'Bristol Association for the Care and Resettlement of Offenders' (BACRO) was looking into the possibility of making offenders become more aware of the harm they were doing by introducing them to their victims. This project helped BACRO to realise that they knew little about victims, and in 1974, it set up a pilot scheme to give victims the opportunity to express how they have been affected by crime. This was then followed by a series of similar programmes, which eventually resulted in the formation of the 'National Association of Victim Support Schemes' (NAVSS) in 1979-now called Victim Support. Enquirers from agencies interested in starting mediation or reparation projects tended to confuse VOM with victim support and contacted NAVSS. After a series of such enquiries, NAVSS set up a working party, which produced several publications, while from 1981 it held regular six-monthly meetings for all those interested. These led to the establishment of the Forum for Initiatives in Reparation and Mediation (FIRM) in 1984, then known as Mediation UK.⁵

1. Braithwaite, J. (2002) *Restorative Justice & Responsive Regulation*, Oxford: Oxford University Press, pages 64-68.
2. Eglash, A. (1977) *Beyond Restitution: Creative Restitution*, in J. Hudson and B. Galaway (eds) *Restitution in Criminal justice*, Lexington, MA: DC Heath and Company.
3. Van Ness, D. and Heetderks, K. S. (1997) *Restoring Justice*, Cincinnati, OH: Anderson Publishing Company, 24.
4. Gavrielides, T. (submitted) *Pushing the Barriers: The use of restorative justice with hate crimes*, *Justice Quarterly*.
5. Liebmann, M. and Masters, G. (2001) *Victim Offender Mediation in the UK*, in *The European Forum for Victim Offender Mediation and Restorative Justice* (ed) *Victim-Offender Mediation in Europe*, Leuven: Leuven University Press.

Since then, the new practice had to find its way in the 'shadow of the law', as no specific legislation was enacted to regulate it. However, this was soon to change. After a 1996 Audit Commission report, which severely criticised the youth justice system as "ineffective and expensive", a White Paper titled 'No More Excuses' was introduced in the British parliament.^{6, 7} The paper argued in favour of a philosophical shift in the approach to youth crime, which "should promote greater inclusion of the views of victims in the youth justice system, while juveniles be encouraged to make amends for their offences".⁸

The result was the introduction of the 'Crime and Disorder Act 1998' (CDA), which according to many writers, is the first enabling legislation for VOM in England and Wales.⁹ With its principal aim as "the prevention of offending by young people", the Act introduced three central innovative features into the youth justice system, which are said to have changed it fundamentally.

The first feature was a new governmental body: the Youth Justice Board for England and Wales (YJB). Since March 1st 1999, the Youth Justice Board has been monitoring the youth justice system and identifying, innovating and promoting good restorative practice.

The second innovative element was the creation of 'Youth Offending Teams' (YOTs). These are multi-agency panels formed by local authorities to

provide reports for courts, supervise young offenders sentenced by the court, and to undertake preventative work. Their staff includes police officers, social workers, probation officers, education and health workers and youth service officers.

Third, the Act introduced a range of new orders and amended existing ones. In particular, it established a specific 'Reparation Order', which enables courts to order young people to undertake practical reparation activities directly to either victims or the community. This needs to be the outcome of a mutual agreement between the parties. The government wanting to make sure that the process would be kept as restorative as possible issued a 1998 guidance note on the Act.¹⁰ In particular, Section 2.4 made it clear that "...it should not be a mechanistic process based upon an eye-for-eye approach; instead any reparation should be tailored to meet both the needs of the victim, if they wish to be involved, and addressing the offending behaviour of the young offender".¹¹ Section 6.1 set down the restorative nature of the outcomes to which such a process should lead. Finally, the guidance notes suggested that VOM could be considered as a part of 'Reparation Order', and that YOTs may wish to consider establishing this restorative process.¹² Tim Newburn and Adam Crawford claimed that RJ is also visible in other elements of the Act such as 'Action Plan Orders', final warnings and reprimands.¹³

6. **Audit Commission (1996)** *Misspent Youth*, London: HMSO.

7. **Home Office (1998)** *The Crime and Disorder Act Draft Guidance Document: Reparation Orders*, London: HMSO.

8. **Ibid.**

9. **Liebmann, M. and Masters, G. (2001)** *Victim Offender Mediation in the UK*, in *The European Forum for Victim Offender Mediation and Restorative Justice* (ed) *Victim-Offender Mediation in Europe*, Leuven: Leuven University Press.

10. **Home Office (1998)** *The Crime and Disorder Act Draft Guidance Document: Reparation Orders*, London: HMSO.

11. **Ibid**, S2.4.

12. **Home Office (1998)** *The Crime and Disorder Act Draft Guidance Document: Reparation Orders*, London: HMSO, S6.1.

13. **Newburn, T. and Crawford, A. (2002)** *Recent Developments in Restorative Justice for Young People in England and Wales: Community Participation and Restoration*, *British Journal of Criminology* 45(2), 476-495.

A year later, the government introduced the 'Youth Justice and Criminal Evidence Act 1999' (YJCEA), which introduced the 'Referral Order'. This is a mandatory sentence for young offenders (aged 10-17) appearing in court for the first time who have not committed an offence likely to result in custody. The court determines the length of the Order based on the seriousness of the offence, and can last between three and 12 months. Once the sentence length has been decided, the juvenile is referred to a 'Youth Offender Panel' to work out the content of the Order. These panels are arranged by local YOTs and can include: the offender and their family and friends; the victim and their family; a representative of the local YOT; and three members of the community. In theory, the process is a restorative one, including honest and sincere understanding of what happened and the pain inflicted and what needs to occur to put it right. The government has described the Order as the first introduction of RJ into the youth justice system, while the Act itself makes specific reference to VOM as a possible agreed outcome of a panel.

Many have argued that none of the above legislative developments would have taken place if it had not been for the change in culture that Thames Valley Police (TVP) brought with its innovative RJ initiatives. TVP is currently the largest non-metropolitan police force in the country, covering 2,200 square miles of Berkshire, Buckinghamshire and Oxfordshire. In the mid-1990s, TVP felt they had to respond to the strong criticisms that were launched against

the system of 'cautioning', according to which the police in the UK has the power to divert young offenders away from a court appearance by giving them a formal police caution as a way of finalising the offence committed, providing certain conditions are met. According to the then Chief Constable, Sir Charles Pollard: "When we looked at our traditional cautioning system, we found that no training was given to police officers on how to deliver them. Police officers just did them, with little thought about how effective they were, and never a thought about whether the victim would wish to be involved in some way" (Pollard 2000).

Research that was carried in this area also showed that cautioning sessions were sometimes used to humiliate and stigmatise offenders. For example, TVP's police officers who were interviewed by a team researching this particular criminal justice feature confirmed that in traditional cautions the usual aim was to give offenders a 'bollocking' and to make them cry.¹⁴ The result of TVP's positive reaction to these criticisms was the introduction of a new restorative feature, the 'restorative caution'. Based very much on the work of Terry O'Connell in Australia at Wagga-Wagga, TVP were the first to launch this initiative, whereby police officers administering cautions were meant to invite all those affected by the offence, including victims, to a meeting. In particular, the police officer uses a script to facilitate a structured discussion about the harm caused by the offence, and how this could be repaired. The first experiment took place in 1994 in Milton Keynes with the carrying out of

14. *Ibid*, S2.4.

the 'Retail Theft Initiative', whereby young people, who had been caught shoplifting, were brought face-to-face with store managers to hear how shop theft affects others. Over the first three years of the initiative, 1,915 restorative conferences took place at which victims were present. In a further 12,065 restorative cautions, the views of any absent victims were relayed by the cautioning officer. To date, restorative cautioning is considered the largest-scale restorative justice programme in the UK.

TVP's restorative cautioning initiative has been the focus of a three-year study (1998-2001) by the Oxford University Centre for Criminological Research. This was led by Richard Young and Carolyn Hoyle, and resulted in the report *Proceed with Caution*, as well as in several articles and chapters in books.¹⁵

Their report concluded: "TVP largely succeeded in transforming its cautioning practices from traditional cautioning to restorative cautioning. In particular, it eradicated much of its earlier poor practice in a relatively short period of time between the interim study and the final evaluation. While there was considerable room for further improvement, the findings suggest that even restorative sessions that were less well facilitated were a substantial improvement on traditional cautions".¹⁶

For example:

- Offenders, victims and their supporters were generally satisfied with the fairness of proceedings and the results.
- Apologies were usually offered to the victims and were mostly viewed as the result of genuine remorse.
- One in three offenders entered willingly into a formal agreement to make some kind of reparation.
- However, additional training and better understanding was still thought to be needed. High-quality facilitation produced the most effective results, but implementation also proved problematic on several occasions.

15. Hill, R. (2002) *Restorative Justice and the Absent Victim: New Data from the Thames Valley*, *International Review of Victimology* 9(3), 273-288. Hill, R. et al. (2003) *Meeting Expectations: The Application of Restorative Justice to the Police Complaints Process*. Occasional paper no 21. Centre for Criminological Research. Hoyle, C. et al. (2002) *The Implementation and Effectiveness of the Initiative in Restorative Cautioning by Thames Valley Police: Research Findings*, York: Joseph Rowntree Foundation.

16. Hoyle, C. et al. (2002) *The Implementation and Effectiveness of the Initiative in Restorative Cautioning by Thames Valley Police: Research Findings*, York: Joseph Rowntree Foundation.

Case law

The aforementioned statutory and policy developments have been reflected in the Court of Appeal's judgement in Regina v David Guy Collins. The appellant, aged 26, had been sentenced to a three and a half-year sentence of imprisonment for unlawful wounding and a consecutive term of three and a half-years for robbery. For the latter, he undertook to participate in a VOM programme, which resulted in the writing of a letter of apology and a report by the mediation authority. The offender agreed to deal with the drugs problems, which to some extent had led to these serious offences, and promised to attend 'Narcotics Anonymous'. He also applied for a change of prison where a drug treatment programme was available, and was required to write to a liaison officer every three months to report upon his progress.

All these were taken into consideration by the Court of Appeal, which said: "We think that was a powerful feature of the sentence, and one to which it is important we draw attention. The judge referred to the fact that the appellant had written to the victim, but we think that it was to the credit of the appellant that he took part in that programme and that it is a factor properly to be taken into account...RJ is a comparatively recent programme designed to ensure effective sentencing for the better protection of the

public...It is by no means a soft option, as the facts of this case reveal...In all the circumstances, having regard to that feature and to the appellant's plea of guilty, we think that the total sentence of seven years was too long. We think that for the period of seven years a total of five years' imprisonment should be substituted...".

Critical reflections

Restorative justice was reborn not out of formal structures and legislation, but of voluntary action by enthusiastic and dedicated practitioners. As the restorative tradition is now expanding to deal with crimes, ages and situations that it has never addressed before - at least in its contemporary version - and as it starts to make sense in national, and also regional and international forums, then the responsibilities of both restorative practitioners and academics redouble.

In their 2007 evaluation study for the Home Office, Sherman and Strang noted: "The evidence on restorative justice is far more extensive, and positive, than it has been for many other policies that have been rolled out. Restorative justice is ready to be put to far broader use . . .".¹⁷ However, RJ is still far from being mainstreamed or even accepted as an official response to crime; least serious crime.

17. **Sherman, L. and Strang, H. (2007)** *Restorative justice: the evidence*. London: The Smith Institute; **Gavrielides T.(2008)** *Restorative justice: the perplexing concept. Conceptual fault lines and power battles within the restorative justice movement*, 8:2 *Criminology and Criminal Justice Journal*, 165-183; **Gavrielides T. (2005)** *Some Meta-theoretical Questions for Restorative Justice*, 18:1 *Ratio Juris*, pp. 84-106; **Home Office (1998)** *No More Excuses - A New Approach to Tackling Youth Crime in England and Wales*, London: HMSO; **Young, R. and Hoyle, C., Oxford University (2002)** *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*, York: Joseph Rowntree Foundation.