Should restorative justice be used <u>more extensively</u> in the criminal justice system?

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The challenge

How can the criminal justice system deliver less reoffending, <u>improve</u> public confidence and at <u>no greater</u> <u>cost</u>?

Problems

- What "works" does not always satisfy public demands for tougher sentences
- Satisfying public demands can lead to more, not less, reoffending which, in turn, can make satisfying public confidence more <u>difficult</u>
- ► So, what to do?

Restorative justice - a promising first step

Less reoffending

► Up to <u>25% less</u> than alternatives

Greater participant satisfaction

► Victim, offender, community members

Less costly

► Up to £9 saved for every £1 spent



But which version (of restorative justice)?

- 'Restorative justice' (RJ) captures a wide diversity of practices - an approach, not a single application
 - Different forms
 - ► Victim-offender mediation
 - Restorative conference
 - Different applications
 - Alternative to trial and sentencing
 - Post-sentencing
 - ► Use in schools and Truth & Reconciliation internationally

Defining "restorative justice"

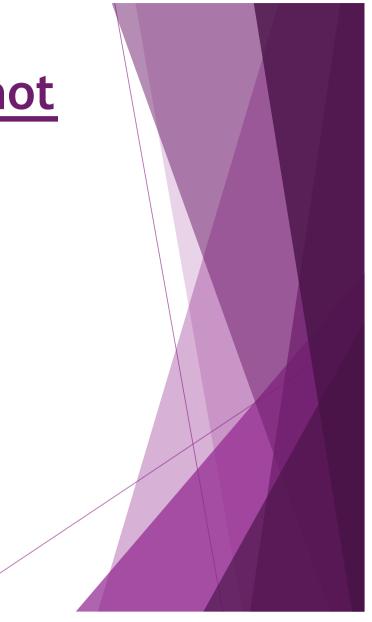
 'Restorative justice is a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future'.

► T. F. Marshall, *Restorative Justice* (Home Office, 1999)

What restorative justice is not

Not 'victim displacement'

- Should be heard, not silenced or side-lined
- Not formal
 - Informal discussion about resolving problems
- ▶ <u>Not</u> inflexible
 - Outcomes to be tailored to specific needs
- Not 'punishment'
 - Outcomes do not include 'hard treatment'



Restorative problems

- Diversity of applications makes difficult talking about RJ as one entity
- RJ has limited application minor offences by minors, by and large
- RJ has limited public confidence
- AND RJ outcomes are too limited (e.g., no hard treatment)
 - ► ALSO who is restoring and what is restored?

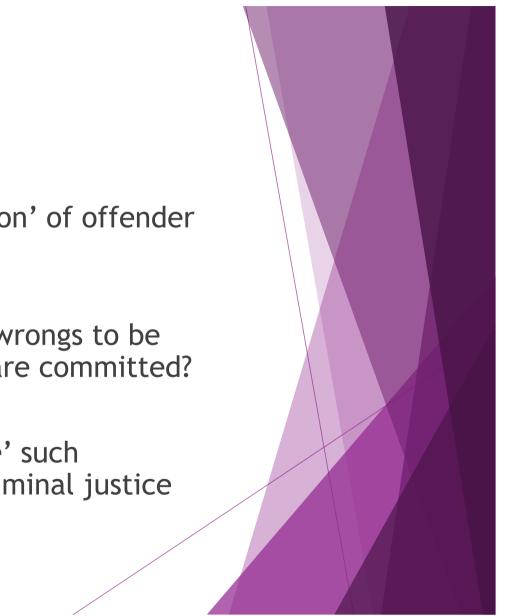
Who is restoring?

- If the broad aim is to restore the "communities affected by the crime", as well as the victim and the victim's family, this will usually mean a geographical community; but where an offence targets a victim because of race, religion, sexual orientation, etc., that will point to a different community that needs to be restored'.
 - Andrew Ashworth, 'Responsibilities, Rights and Restorative Justice', British Journal of Criminology (2002).



<u>What</u> is restored?

- Restorative justice aims at 'restoration' of offender with his or her community
- If moral inequalities/separation are wrongs to be restored, why only act after crimes are committed?
- Can any restorative contract 'restore' such differences - or is this beyond the criminal justice system?



RJ as "punitive restoration"

A distinctive application of restorative justice:

- Alternative to trial and sentencing
- Conference meeting
- Restoring rights of stakeholders
- Wider range of potential outcomes, including more 'punitive' measures
- Consequences for failing to honour agreed contract for specific outcomes

Restoring stakeholder rights

T. F. Marshall - 'all parties with a stake'

- Stakeholding those with a stake in penal outcomes should have a say in decisions about them (some have more stakes than others)
 - Victim, offender, those closest to them and the community (public)
 - Supports conference model
- Restoring rights
 - Crimes undermine rights restoration confirms these rights exist and should be honoured

Typical restorative contracts

- Drug and alcohol treatment programmes
- Cognitive Behavioural Therapy (CBT)
- Community service
- Employability training
- Reparations to victims



Making restorative contracts <u>matter</u>

- Failure to honour agreed contracts may have trivial consequences
 - Can lead to trying RJ again
 - Can lead to a formal trial but right to plead 'not guilty' without consequences
- Punitive restoration takes contracts more seriously
 - Requires we ensure offenders fulfilled agreement
 - ► Failure to do so leads to possibility of brief time in prison
 - Guilt is admitted, punishment agreed why does such 'thick' consent not count for more?

Punitive restoration

Making prison work <u>if necessary</u> in short-term

- Most receive sentences of 12 months or less
- ▶ 60% reoffend on release
- No rehabilitation usually offered reserved for offenders with longer sentences
- Promising results of brief, intensive drug and alcohol treatment and/or CBT interventions (at reduced costs 1.8 to 5.7x) - benefits of early intervention
- NOTE: by making RJ outcomes more punitive and increasing applicability, can reduce punitiveness of overall system

Objections

Restoration is contrary to punitiveness

- Being constructive vs being hostile
- Should heal, not hurt
- Duff on 'restorative punishment' -
 - 'Moral reparation for the harm done' requires pain
- What about violent crimes?
 - Punitive restoration inapplicable to all crimes, but should this be the case?



Conclusion

- Challenge of less reoffending with greater public satisfaction
- Restorative justice is promising in these areas, but no single approach, suffers from several limitations and problems about who restores and what is restored
- Punitive restoration a single application, permits any outcome that can legitimately enable restoration of rights open to stakeholders
- Provides opportunity for public to gain in satisfaction through active, voluntary participation - and without being counterproductive

