



**Should restorative justice be
used more extensively in the
criminal justice system?**

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The challenge

- ▶ How can the criminal justice system deliver less reoffending, improve public confidence and at no greater cost?
- ▶ 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 difficult
 - ▶ So, what to do?

Restorative justice - a promising first step

- ▶ **Less reoffending**
 - ▶ Up to 25% less 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
- ▶ Not 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).

What 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 matter

- ▶ **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 if necessary 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

