

THE DEVELOPMENT OF RESTORATIVE JUSTICE IN THE UNITED KINGDOM: A PERSONAL PERSPECTIVE

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Plenary Speaker, Friday, 4 March 2005

I still recall the evening in 1997 at the Thames Valley Police Training Centre in England when I met then Senior Sergeant Terry O'Connell of the New South Wales Police in Australia. I was simultaneously fascinated and awed by his intensity and focus on all things 'restorative'. Being new to the field, my next five weeks serving as his training assistant would be an intensive and comprehensive period of personal growth. I could not have imagined that eight years later he would invite me to present a plenary speech at the IIRP's first conference in Australia. Terry asked me to present on the development of restorative justice (or RJ) in the United Kingdom, which is both an honour and a challenge. Given the limits of time, I am certain to omit some things of significance and because of where I work and live, I am most familiar with developments in England and Wales. Nonetheless I will do my best to present an overview from the personal perspective of a former police officer who has been fortunate enough to play a role in a movement that is changing how our society responds to crime and wrongdoing.

I will use the typology that defines 'fully restorative' as those processes that respond to crime and wrongdoing by involving victims, offenders and their communities of care, that is, their family and friends. When only two of those stakeholders are involved, the process is 'mostly restorative' and when only one, it is 'partly restorative' (McCold and Wachtel, 2003).



Les Davey

Victim-Offender Mediation

My understanding is that restorative justice made its way to the UK from North America, originating in 1974 with a Canadian victim-offender reconciliation programme. Victim-offender mediation in the UK began in earnest in the early 80s, coinciding with the increased use of cautioning and intermediate treatment by the criminal justice system. Most referrals to restorative justice were from juvenile panels or boards seeking youth diversion, causing some criticism because RJ was supposed to be for the benefit of both offenders and victims.

In the late 80s the Home Office funded four pilot victim-offender mediation projects and a formal evaluation. The projects were wide-ranging, from diversion of cases before court to intervention following conviction. The evaluation found that 'the majority of victims offered the chance of meeting their offender would like to do so' and 'the great majority looked back on the experience as worthwhile'. There was 'some cause for concern, however, in a few programmes that tended to place pressure on victims to take part' (Marshall, 1999). At that time the forerunner of today's Mediation UK organisation established practice guidelines to address such shortcomings.

Although the evaluations of the Home Office pilot projects were largely favourable in terms of participant satisfaction, central funding was withdrawn at the end of the project. Three of the victim-offender projects survived through the support of probation services in those locales, and subsequently other locally supported victim-offender mediation services developed, most of which still operate today. One approach to victim-offender mediation unique to the UK, which developed at that time, is indirect mediation, where the victim and offender have their comments conveyed back and forth by the mediator, without actually meeting face-to-face.

The Family Group Conference

Another form of RJ in the UK is the family group conference (or FGC), which originated in New Zealand in 1989 as a creative response to the dissatisfaction of the indigenous Maori people with the existing child protection and youth justice system. In the same spirit as victim-offender mediation, family members were empowered to make decisions about their own children, subject to the review of the court.

In 1990 the Family Rights Group, a national voluntary organisation in the UK, invited New Zealand practitioners to the UK to talk about their experiences. The Family Rights Group promoted implementation of FGC, especially in the context of child welfare issues. A national pilot began in 1992 and expanded through the 90s (Nixon, 1999, http://www.iirp.org/library/vt/vt_nixon.html).

The model was also adapted for use in schools and in the criminal justice system. Of particular note for youth justice is a project in Essex that deals with serious young offenders from dysfunctional families. Early indications are very positive, in terms of the number of victims satisfied with the process, outcomes for the young persons involved and reductions in offending (Essex County Council strategy document, <http://www.essexcc.gov.uk/>).

The Restorative Conference

In a parallel development, the Thames Valley Police, which serves a large area west of London, implemented restorative conferencing for young offenders. This approach was adapted from the New Zealand model by Terry O'Connell as a community policing initiative in 1991 in Wagga Wagga, New South Wales. Often referred to as the 'scripted' model of conferencing, the facilitator asks all those taking part a set of prescribed questions. The so-called 'script' is intended to discourage the facilitator from intruding into the conference. Although the Wagga Wagga scheme is no longer in existence, it influenced the development of conferencing within Australia, most notably the large-scale Reintegrative Shaming Experiment (RISE) in the Australian Capital Territory, and throughout the world.

In 1994 O'Connell was awarded a Winston Churchill Fellowship, allowing him to tour a number of countries to present his experiences and findings from the Wagga conferencing programme. His enthusiasm for conferencing inspired other individuals and organisations, including the Royal Canadian Mounted Police in Canada, Ted Wachtel in the U.S., who founded the Real Justice programme, and the Thames Valley Police in England, where he was invited to present a seminar to over a hundred police officers.

Following this seminar, a small number of officers based in Aylesbury, Buckinghamshire, began developing their own conferencing practice. In the first 18 months of the project, officers at Aylesbury conducted approximately 300 conferences or meetings, some of which involved victims, representatives of the community, and offenders and their parents, but most of which did not adhere fully to restorative justice principles.

Following an invitation by the Association of Chief Police Officers, Terry O'Connell returned to England in 1996 to speak at a conference. While in England, then Chief Constable Charles Pollard invited Terry to train some Thames Valley officers in conferencing, including those already practising in Aylesbury. The connection between O'Connell and Pollard has proved to be critical, because even since his retirement from Thames Valley Police, Sir Charles Pollard has continued to

be the most influential spokesperson for restorative justice in the UK. Unfortunately, at the time there was little formal support or supervision in place to ensure the training was put to good use. So in April 1997, the Thames Valley Police created the Restorative Justice Consultancy to develop strategies for the effective implementation of high-quality restorative practice. Thus began my own involvement, as the inspector responsible for the development and delivery of RJ training, which was ultimately provided, not only for our own police officers, but also for other police services, schools and agencies in the UK.

In October 1997, a conference was held in London entitled 'Calling Young Offenders to Account: UK Applications of Restorative Justice', featuring presentations by Charles Pollard and others and a re-creation of a restorative conference by a professional theatre company. This was a significant event in re-energizing interest in restorative justice in England and Wales.

The application of restorative justice to the cautioning of young offenders became operational across Thames Valley on 1 April 1998. An evaluation by the Oxford Centre for Criminological Research showed high satisfaction rates among participants, and although it was based on a fairly small sample, it suggested that young offenders receiving a restorative caution had half the re-offending rate during the following year compared to rates in a previous study of conventional cautioning ('Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning', C. Hoyle, R. Young and R. Hill, 2002).

So all this groundbreaking work in the UK using victim-offender mediation, family group conferencing and restorative conferencing was starting to make people take notice of the RJ movement. At the same time, a series of findings, reports and media stories expressed public fear of a rising tide of youth crime. This led the government to start to radically rethink the path of youth justice in England and Wales.

Youth Offending Teams and Other Legislated Changes

Among the key reports of the time, published in November 1996, was the Audit Commission national report entitled 'Misspent Youth: Young People and Crime', which laid the foundation for the 1998 Crime and Disorder Act. This legislation introduced multi-agency Youth Offending Teams, called YOTs, under the guidance of the national Youth Justice Board (with the newly retired Charles Pollard as one of its key members). There is a Youth Offending Team (YOT) in each of the 154 local authorities in England and Wales. They are made up of representatives from police, probation service, social services (welfare), health, education, drugs and alcohol misuse, and housing. Each YOT has a manager responsible for co-ordinating its services.

Because the YOT incorporates representatives from a wide range of services, it can respond to the needs of young offenders in a comprehensive way. The YOT identifies the needs of each young offender by assessing them with a national assessment tool known as ASSET. It identifies the specific problems that make the young person offend as well as measuring the risk they pose to others. This enables the YOT to identify suitable programmes to address the needs of the young person with the intention of preventing further offending.

The Crime and Disorder Act also allowed for contact with victims and for reparation. Although not specifically required under the act, restorative measures were certainly enabled by this legislation and have subsequently become commonplace. As a result of these reforms, a whole new set of youth justice terms developed that warrant some explanation.

The police deliver a Reprimand to first-time offenders, often in the form of a restorative conference or meeting. With second offences the police officers attached to the YOT usually deliver Final Warnings. For more serious matters the young person can go straight to Final Warning for their first offence.

A Referral Order, a concept introduced by the Youth Justice and Criminal Evidence Act 1999, usually is issued for a third offence, when the young person appears in court. Except in very serious cases, the magistrates must make a Referral Order to a Youth Offender Panel, which then meets with the young person to create an action plan to prevent future offending. The panel is selected and trained by the local YOT and consists of two lay members and an officer from the YOT. The Youth Justice Board encourages a restorative conference at this stage as well.

Another option available to courts under the Crime and Disorder Act is the Reparation Order, which must take into account the feelings and wishes of the victims of crime, while allowing the offender to make some amends. The Reparation Order requires the young offender to make specific reparation either to the individual victim of the crime, where the victim desires this, or to the community. Reparation may range from writing a letter of apology or meeting with the victim to apologize, to repairing the damage that was caused. Reparation should be 'in kind' rather than financial, although courts may make a financial compensation order. The Reparation may be decided by a restorative conference. A police officer monitors compliance with the Reparation Order.

The Youth Justice Board set a target in 2004 for RJ processes to comprise 80 percent of each YOT's interventions. According to the government's 'Restorative Justice Strategy' document, issued in 2003, 'during 2002 over half (54.2 per cent) of all Youth Offending Team (YOT)

interventions were restorative or reparative, and 68.8 per cent of victims who had been involved said they were satisfied'. Further, 'the increased use of restorative interventions in Final Warnings also appears to be producing positive results. For example, Oxfordshire YOT requires all young people receiving a Final Warning to participate in some form of restorative activity, from direct apology to the victim to undertaking community reparation. This approach has seen an 18.8 per cent reduction in re-conviction rates over a year in Oxfordshire' (Restorative Justice: The Government's Strategy, July 2003, <http://www.homeoffice.gov.uk/docs2/restorativestrategy.pdf>).

Restorative Practices Beyond Youth Justice

The use of restorative justice with youth beyond the justice system, although not defined by legislation, has significantly impacted disciplinary practices in schools. The Youth Justice Board has funded restorative justice pilots in schools in nine areas. In addition, the Home Office, the Youth Justice Board and the Department for Education and Skills are also offering restorative justice training in Safer Schools Partnerships in England. The training, for one police officer and one school staff member per school, is being rolled out in one hundred schools.

Many schools use approaches loosely related to restorative justice. They are useful in supporting educational outcomes and improving behaviour in schools and can also act as an early intervention to prevent crime. Peer mentoring and mediation, used to tackle bullying, involve the perpetrator seeing how the victim feels and taking part in a group session to find a solution. 'Circle Time' allows everyone in the class to talk and listen to one another, creating a safe environment for young people and children to voice fears, feelings and ideas.

Restorative practices are increasingly used to deal with inappropriate behaviour in care-home settings. There is a growing realisation that criminalising the same behaviours that would not be treated as criminal in a private family setting was unfair and unproductive. A small study following the implementation of restorative practices in one residential unit for young people found that police call-out rates fell by 22 per cent in the ten months following implementation of RJ.

Restorative Justice with Adult Offenders

Three Home Office pilots with adult offenders are now completed or nearing completion. The Justice Research Consortium has been running several schemes at different points of the criminal justice process. REMEDI, a voluntary-sector mediation service in partnership with the South Yorkshire Probation Service, offers restorative justice for victims and both adult and youth offenders who are sentenced to

community and custodial sentences. CONNECT, a South London voluntary-sector organisation, offers restorative justice for adult offenders and their victims, primarily after conviction and before sentencing. The evaluation of these projects is ongoing and due to report in 2007. All of these projects have suffered problems with referrals and case flows in the early stage, which has meant changing their referral criteria to ensure they have sufficient throughput for evaluation purposes (Implementing Restorative Justice Schemes (Crime Reduction Programme): A Report on the First Year, Home Office Online Report 32/04, <http://www.homeoffice.gov.uk/rds/pdfs04/rdsolr3204.pdf>).

As the Home Office will be relying heavily on the eventual results of these pilots, it will be important to measure—in terms of the typology cited at the beginning of this paper—how restorative in nature the projects are. The success or failure will be attributed to RJ, so it is critical that they are restorative according to a widely recognized standard.

The Criminal Justice Act (CJA) 2003 introduced the 'Conditional Caution'. The Home Office has introduced legislation to begin piloting Conditional Cautions for adults that hopefully integrate RJ as part of the process. The conditions must aim to rehabilitate offenders and make sure that they make reparation. At least two of the pilot sites will use a restorative process for its delivery (CJA 2003, Part 3, sections 22-27).

The introduction of 'Victim Personal Statements' in October 2001 gave victims of serious crime the opportunity to explain how they have been affected by the offence. Although Victim Personal Statements are only partly restorative, involving only the victim, they may provide relevant information to the police when considering whether to issue a reprimand or warning to a young offender and whether the victim might be interested in a restorative process.

Restorative justice has been used for some time, but on a limited basis, with domestic violence. Hampshire Police, for example, are working with Daybreak, a voluntary-sector organisation, and other agencies, as part of the Dove project, which is being evaluated by Portsmouth University to ascertain if FGCs are an effective response to domestic violence.

Baroness Scotland of Asthal QC, the Minister of State for the Criminal Justice System and Law Reform in the Home Office, at a major RJ conference in Winchester in March 2004, spoke against the use of RJ with domestic violence (<http://www.homeoffice.gov.uk/docs3/scotlanddrjwinchesterspeech.html>). Similarly, the Association of Chief Police Officers for England and Wales refused to endorse recently developed 'Best Practice Guidelines' unless the document prohibited the use of RJ in cases of domestic violence. This was despite strong opposition from most of the Restorative Justice Training and Accreditation Policy

Group, including myself, who developed the guidelines. Ironically, to my knowledge the experience of restorative justice practitioners who have worked with domestic violence cases has been positive and productive.

Restorative Justice in Prison and Probation Services

The new National Offender Management Service has replaced the old system where responsibility for offenders was split between Probation and Prison Services, with the hope that a unified approach will deliver reductions in re-offending rates. In about a dozen probation areas, victims are also offered access to restorative justice. Operating in partnership with a variety of other agencies, they offer services ranging from direct and indirect victim-offender mediation to family and community group conferencing, and reparation by the offender to the victim or to the wider community.

Also, offenders are encouraged to think about the impact of their crime on the victim through programmes such as the 'Sycamore Tree' courses run in many prisons by the voluntary-sector organisation Prison Fellowship. Partly restorative programmes operate in some prisons that bring offenders into contact, not with the actual victims of their crimes, but with victims of similar crimes. The Prison Service has been working with the Probation Service to facilitate victim-offender mediation and restorative conferencing between offenders and victims at a small number of prisons in Thames Valley, as part of the current Home Office pilots with adult offenders mentioned earlier.

Restorative Justice in the Workplace

Another area of development is within the field of Police Complaints and Grievances. Once again, a combination of Terry O'Connell's pioneering efforts and the Thames Valley Police, particularly the work of Inspector Jackie Keyser, has led the way in piloting the use of restorative conferences with public complaints against police. The Independent Police Complaints Commission, formed in April 2004, now encourages the use of restorative practices, especially in relation to the 'Local Resolution' of complaints from the public. Research by the University of Oxford Centre for Criminological Research suggests that restorative meetings in these circumstances can lead to far greater mutual understanding between the officer and the complainant (Meeting Expectations: The Application of Restorative Justice to the Police Complaints Process, R. Hill, K. Cooper, R. Young and C. Hoyle, November 2003).

Also, new regulations mandated under the Employment Act 2002 now entitle employees, regardless of company size and except in cases of gross misconduct, to informal dispute resolution before they are

dismissed. One recommended form of informal resolution is through restorative practices such as mediation and conferencing. Employees are unable to make claims to employment tribunals unless they have first formally raised the grievance with the employer and have not received a satisfactory response.

Restorative Justice in the Community

A government-funded community facilitation programme was set up in 2001 by the Neighbourhood Renewal Unit (or NRU) and is managed by nine regional co-ordinators. The programme aims to reduce inter-ethnic community conflict in high-risk areas, bridging the gap between divided communities and increasing mutual understanding, tolerance and respect. NRU is now developing a dedicated pool of Conflict Resolution Advisers who can be deployed rapidly when conflicts arise, in addition to a longer-term programme of community conflict resolution.

Restorative Justice in Scotland and Northern Ireland

Since the 1980s, the Scottish Association for the Care and Rehabilitation of Offenders has been using restorative justice as a diversion from prosecution in cases where it would not be in the public interest to prosecute. Services include mediation and restorative conferencing in 20 of Scotland's 32 local authorities.

In June 2004 the Scottish executive announced the national rollout of restorative warnings by police for young first offenders and is looking at how other youth justice practices in England and Wales may be best adopted or adapted to suit the Scottish legal system.

The Restorative Justice Ireland Network is an all-Ireland organisation covering RJ practices in both Northern Ireland, which is part of the UK, and the Republic of Ireland. The organisation is non-political and has wide membership from both countries. I quote from its literature to provide a brief description: 'In Ireland the development of restorative justice has been politicized to a considerable degree...In Northern Ireland policing and the administration of justice are two very highly contested areas of public policy, and both are very closely related to the practice of restorative justice'. Based on my own observations, I have seen that, despite the political challenges, both public and voluntary organisations have advanced restorative justice in Northern Ireland with the development of mediation, restorative conferencing and family group conferencing programmes. Although my topic is limited to RJ in the UK, having visited the Republic of Ireland a number of times to deliver training in the last few years, I am pleased to point out that restorative justice has similarly moved forward there as well.

National Evaluation

A recent national evaluation by the Oxford Centre for Criminological Research provides an overview of a wide range of restorative justice projects in the UK. The evaluation report noted that the projects 'were not equally restorative'. Less than a fifth offered only conferencing or mediation, while others involved direct or community reparation or victim awareness. The report concluded: 'it is apparent that much progress has been made in implementing restorative justice projects within a short period of time. In a little over 18 months of operation, the 46 projects have worked with nearly 7,000 young people. Victims were contacted in the vast majority of cases, and, where they were, most agreed to some form of participation in the process. Reparation or a direct apology was facilitated to victims in around 40 per cent of cases. Just over 13 per cent of cases involved a meeting between victim and offender, which compares favourably with other large scale restorative justice projects nationally. Where the views of participants were sought, the responses were positive. Over three quarters of victims and offenders thought the process was fair, well prepared and that the intervention had helped the offender to take responsibility for the offence' (Two-year Resanctioning Study: A Comparison of Restorative and Traditional Cautions, A. Wilcox, R. Young and C. Hoyle, 2004, <http://www.homeoffice.gov.uk/rds/pdfs04/rdsolr5704.pdf>).

Best Practice Guidelines

The Home Office has fostered the recent development of Best Practice Guidelines. These guidelines are largely a welcome development, setting minimum standards for safe delivery, accreditation and training in restorative justice practices. We do, however, need to be careful that such standards do not have the negative effect of stifling the growth of innovation that pushes the boundaries within the field (as mentioned earlier, in the context of the controversy over restorative justice being used with domestic violence cases). As is often the case with government efforts, political considerations influence the outcomes, sometimes without regard for the evidence produced by practice (Best Practice Guidance for Restorative Practitioners, December 2004, http://www.homeoffice.gov.uk/docs4/rj_bestpractice.pdf).

In Conclusion

We have come a long way in the UK from those early uses of RJ in the mid-80s, through the critical impetus provided by Terry O'Connell linking up with Sir Charles Pollard and the Thames Valley Police, followed by the government embracing RJ and incorporating it into youth justice legislation, the development of a government strategy on RJ,

leading to Best Practice Guidelines and funding of pilots and research, which may further develop RJ in the adult justice system.

If we are to continue the growth of RJ in the UK in a sustainable, safe and widely accessible manner, we need to ensure that what is being measured as RJ is in fact RJ; that systems and legislation changes are enabling rather than controlling; that standards avoid being so rigid that they stifle innovation. This means that future developments of restorative practice must be based upon best evidence rather than political expediency, pressure-group prejudices and vested interests.

It is through the growth of and support for independent bodies such as the Restorative Justice Consortium and the newly formed Association of Restorative Practitioners that we in the UK will be able to ensure that RJ is not hijacked to meet the political expediency of the government of the day. It would be better for restorative justice to develop slowly, in a safe and incremental way, rather than quickly, leaving lots of bad practice in its wake.

If restorative justice is to reach its full potential, then it needs to be integrated into our everyday life, through embedding restorative processes, practices and language into the key areas where it can make a difference. These include workplaces, schools, all areas of the justice system, communities, the looked-after children's sector and families.

I believe we are at the threshold of a new era of justice in the UK, and if handled with care this can only be good news for all of us who have been endeavouring to implement restorative practices in many settings around the world.