

# Restorative justice

## An idea whose time has come?

Restorative justice (RJ) describes efforts to repair the damage caused by an offender's crime through dialogue and negotiation involving the victim and the wider community. Drawing on the findings of a major inquiry undertaken by JUSTICE, this briefing charts RJ's international appeal and sets out ten key lessons that should govern its further growth in Britain.

### Key lessons

- Restorative justice (RJ) should not be narrowly defined. It should be seen as a set of values rather than one particular model of provision.
- RJ provides a framework within which the criminal justice system can both deliver to victims, and move away from over-reliance on punitive imprisonment.
- RJ programmes must be realistic and responsive. There is room to explore RJ with more serious cases, including domestic violence, subject to satisfactory protection for victims.
- RJ must be adequately resourced in terms both of cost and follow-on provision to address the causes of crime.
- RJ must be designed to avoid 'net-widening'; it must not draw in minor young offenders who would have ceased offending anyway. Practice must be consistent with human rights principles.
- RJ must be supported by the development of national standards for practice and the accountability of practitioners.
- RJ should, ideally, be led by independent practitioners.
- RJ should be led by a single body to oversee its development.
- RJ should be championed by Government.

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### **The context**

The Government is to be commended for the aim of ‘max[imising] the use of restorative justice’ set out in *Restorative Justice: the Government’s Strategy*, published in July 2003. Restorative justice can play a valuable role in bringing victims to the centre of the process, and informing credible and constructive alternatives to imprisonment. This is particularly so because, over the last decade, there has been an over-reliance on the use of prison, where the population has risen by about 60 per cent.

The Criminal Justice Act 2003 introduced a range of new measures designed to encourage greater use of community punishments – including ‘custody plus’ – which will replace a prison sentence of under 12 months with a period in custody of no more than three months followed by supervision in the community; increased use of deferred sentences – which, it is hoped, will encourage restorative justice initiatives; and intermittent sentences, where offenders will be in custody for short periods, e.g. over weekends. The Act largely follows recommendations by a review of the criminal courts by Lord Justice Auld. It is important to note that he also called for ‘the development and implementation of a national strategy to ensure consistent, appropriate and effective use of restorative justice techniques across England and Wales’.

### **Definitions, models and principles**

Restorative justice involves a commitment to the idea that victim, offender and the community may repair the damage caused by the offender’s crime through dialogue and negotiation, direct or indirect. An early pioneer, Tony Marshall, described it as ‘a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of an offence and its implications for the future’. Practice can take many forms but restorative methods share an informal, creative, problem-solving approach. They offer a way in which victims – and, sometimes, others such as witnesses – may be involved. Many models involve elements of conferencing – bringing the offender together with others that may include the victim, family members, police officers and representatives of the community to talk through the offence and an appropriate response. Sometimes it is possible to conduct direct

mediation between offender and victim. On other occasions, there may be victim empathy programmes aimed at fostering awareness of the human consequences of offending. Conferencing may be used in addition to diversionary mechanisms such as cautions. In some jurisdictions, a sentencing circle may meet to recommend an appropriate sentence to a judge.

All such schemes must provide protection for all parties from possible abuse. National standards are required. Victims must not be ‘re-victimised’. Offenders must not be unduly humiliated. Human rights must be respected.

### **Human rights and accountability**

International human rights conventions have significantly influenced the spread of restorative justice – particularly in relation to juveniles. These include the *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the ‘Beijing Rules’); the *International Convention on the Rights of the Child*; the *UN Guidelines for the Protection of Juvenile Delinquency* (‘the Riyadh guidelines’); the *EU Framework Decision on Restorative Justice*; and the *Council of Europe Recommendation Concerning Mediation in Penal Matters*. The UN Economic and Social Council has also endorsed *Basic Principles for Restorative Justice*.

The Human Rights Act 1998 provides an essential framework for developments in the UK. In particular, young people must be able to participate effectively and legal representation provided in cases where this cannot be achieved.

### **New Zealand and Australia**

New Zealand made a radical break with the past by introducing family group conferences, now used all over the world, in order to deal with Maori demands for community-based, culturally appropriate solutions to offending. Detention centres were closed and responses to offending de-professionalised. Victims’ views had to be explicitly taken into account for the first time, by virtue of the groundbreaking Children, Young Persons and their Families Act 1989.

New Zealand’s experience was influential in Australia where, independently, the idea of ‘re-integrative shaming’ was developed. This argues that offenders can

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be moved by being shamed by those closest to them, provided that the focus of such shaming is on their behaviour, not just blaming them. Offenders who feel shame can then be reintegrated into the society whose norms they have implicitly acknowledged. Such an approach was taken up by the police, which established a number of projects to provide 'effective cautioning'. As time went on, the use of the police in this process was replaced by various conferencing schemes which, in six of the eight Australian states or territories, have a statutory foundation. New South Wales' Young Offenders Act 1997 is the most detailed Australian legislation. Under this provision, conference convenors are freelance and employed on a sessional basis: police officers are not excluded as such but they may not be convenors as part of their official duties.

### **The United States**

The US has a wide range of restorative justice projects and experimentation in a diverse range of contexts ranging from the traditionally liberal Minnesota to the more conservative Texas. The former has a wealth of grassroots projects such as the sentencing circle developed by a judge in a poor area of St Paul, Frogtown. This is an attempt to identify young African Americans who face a possible sentence of imprisonment and who might respond to a more restorative approach. A restorative approach permeates the criminal justice system at all levels, including prison where, for example, victim empathy work is undertaken in one of the women's facilities.

Texas is renowned for its large prison population and its use of the death penalty. However, since the mid 1980s, Texas has also had a wide range of restorative justice projects including neighbourhood conference committees for dealing with minor, diverted cases and community impact panels to assist drug offenders to give up their habit. In addition, there is considerable use of victim-offender mediation. Evaluation suggests that victims and their relatives can find this extremely helpful even in cases which had involved a death, and where the offender is on death row.

### **Austria and Norway**

These countries provide examples of the use of mediation, thoroughly integrated into the criminal justice system, delivered by professionals in Austria and by members of the local community in Norway.

Austria responded to rising prison numbers by establishing victim-offender mediation pilots in the mid-1980s. They were subsequently extended to adults. The Juvenile Justice Act 1988 introduced a statutory scheme which allows juveniles to be diverted from the courts. Unlike in the UK, the offender has no criminal record at all. Mediators are members of a special association that controls standards. Increasingly, the mediators are working with more serious cases. In 1999, a similar statutory basis was given to victim-offender mediation in relation to adults. Mediation has now been extended to domestic violence cases where, provided there is a thorough screening of suitable cases, it appears to have proved its worth. Thorough evaluation is built into the system and re-offending does seem to have reduced. Victims express high levels of satisfaction.

In Norway, restorative justice also developed as a means of resolving conflicts as well as a reaction against imprisonment. In the early 1990s, municipal mediation boards were established which apply restorative justice principles in their work with both adults and juveniles either as part of a sentence or by way of diversion before trial. Mediators are volunteers from the local community, paid a notional fee for each session. Research reveals high levels of victim satisfaction. There is little evidence on recidivism.

### **Northern Ireland and Scotland**

Restorative justice was developed as part of a grassroots, cross-community desire to lessen violence in Northern Ireland by organisations on both sides of the sectarian divide. It has been successful in providing an alternative to punishment violence as a response to crime and antisocial behaviour and has recently legislated to introduce mainstream family group conferencing for young people – a radical move, and a first in the UK context.

In Scotland, the charity SACRO has built on the non-punitive philosophy and flexible approach of the Children's Hearings and has introduced restorative practice for adults.

### **Youth justice in England and Wales**

Restorative justice has been introduced as a core element of the arrangements for dealing with young offenders. The Crime and Disorder Act 1998 and the

Youth Justice and Criminal Evidence Act 1999 contained some very innovative elements and can generally be regarded as a great success. Between them, they established the Youth Justice Board and gave youth courts the power to make action plan, reparation and referral orders. They created multi-disciplinary youth offending teams (YOTs), which organise youth offending panels containing not only a YOT member of staff but also two volunteer members of the community. The panel, after a referral from the court, decide on a contract to be agreed with an offender and monitor performance under it. Such referral orders now account for one-third of all orders made by youth courts. There was early concern at 'net-widening', the referral in cases where this represented a more serious response to an offence than would have occurred previously. However, the Government responded to this criticism by giving the youth courts more discretion in 2003. There is some evidence of lower reconviction rates, though it is still too early to have worthwhile statistics.

### **Adult provision in England and Wales**

Restorative justice has no statutory basis in relation to adults but there is a growing interest in its use. In the vanguard has been Thames Valley Police, whose restorative cautioning initiative has now been running since it was piloted in 1997. This adds a conference, run by a police officer and generally with victims invited, to a caution. It raises issues of the desirability of police officers organising restorative events. There are undoubted advantages. They have the resources, the access and the interest in reducing offending: police organisation of the process can also prove very supportive to victims. However, in the longer term it may be that, ideally, restorative justice should be organised by an independent agency. Restorative justice programmes are also being run by a range of other statutory agencies, including the probation and prison services, as well as voluntary organisations.

### **The future**

The Home Office is sponsoring a major research programme into the effectiveness of restorative justice both within a magistrates' court (Northumbria) and a Crown Court (London) context. No doubt, the future will be much dominated by the findings, particularly whether restorative justice can justify the tantalising possibility of more inclusion for victims and a more effective and problem solving response to offenders at less cost in the longer term. A major challenge will be the extension of restorative justice practice from juveniles to adults and from use as a form of diversion to integration within the mainstream justice system. Provided this is conducted within a suitably strong human rights framework, restorative justice shows exciting possibilities.

### **Further information**

The following websites contain a wealth of relevant material on restorative justice as well as information about the rethinking crime and punishment project and JUSTICE:

[www.aic.gov.au/rjustice](http://www.aic.gov.au/rjustice)

Australian Institute of Criminology

[www.ssw.che.umn.edu/rjustice](http://www.ssw.che.umn.edu/rjustice)

Center for Restorative Justice and Peacemaking,  
University of Minnesota

[www.justice.org.uk](http://www.justice.org.uk)

JUSTICE

[www.restorativejustice.org](http://www.restorativejustice.org)

Prison Reform International

[www.restorativejustice.org.uk](http://www.restorativejustice.org.uk)

Restorative Justice Consortium in the United Kingdom.

This briefing is based on research carried out by Shari Tickell and Kate Akester. Their report "Restorative Justice: The way ahead" is available from JUSTICE, 59 Carter Lane London EC4V 5AQ. email: [admin@justice.org.uk](mailto:admin@justice.org.uk)

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