

# SPECIAL ISSUE: Evidence for Restorative Justice

## Rethinking Effectiveness

Restorative justice is a way of selecting strategies to respond to challenges like healing the hurts of crime. Empathic empowerment of stakeholders who take turns to speak in a circle are at the heart of its strategy. The evidence is encouraging that restorative justice works better than less flexible top-down state decision making. The effectiveness of restorative justice depends mainly, however, on the efficacy of the intervention strategies that are chosen. It is time to redirect R&D efforts to improving the quality of restorative strategy selection.

Asking “Does restorative justice work?” is like asking whether any meta-strategy (a strategy about selecting strategies) works. Consider problem-oriented policing as an example of a meta-strategy. Problem-oriented policing is an approach developed by University of Wisconsin professor Herman Goldstein for improving police effectiveness through examining and acting on the underlying conditions that give rise to community problems. Responses emphasize prevention, go beyond the criminal justice system alone, and engage with other state, community, and private sector actors.<sup>1</sup> The evaluation literature is modestly encouraging that when police are trained to use problem-oriented policing their average effectiveness in preventing crime improves.<sup>2</sup>

Yet the effectiveness of problem-oriented policing in practice is highly variable. Consider a local police unit’s diagnosis of the crime problem in its locality as caused by young black men who sell drugs. They conclude that a good way of solving this problem is to nab a few young black men and beat them senseless in a publicly visible way. This would be a transparently ineffective strategy not only in the sense that it could increase rather than reduce crime, could even trigger city-wide race riots, but also because it would set back other policy objectives like reducing racism in the society. The fact that quite often local police are bound to choose counterproductive local solutions might leave us amazed that the evaluation literature shows modest effectiveness overall.

Restorative justice is likewise a meta-strategy for selecting strategies. Restorative justice is a relational form of justice for selecting problem-prevention strategies. It

empowers stakeholders affected by putting the problem in the center of a circle of deliberation, rather than putting the person alleged to be responsible for it in the dock.

As with problem-oriented policing, there is encouraging enough evidence that restorative justice “works” cost-effectively in preventing a variety of injustice problems that include crime prevention. However, the really important evaluation questions around restorative justice are not at the level of meta-strategy, but at the level of the particular strategies that are chosen.

So the argument of this paper is that it may now be time to redirect evaluation research attention onto how to improve the quality of strategy selection when we do restorative justice. First, in the next section we consider the latest evidence on the effectiveness of restorative justice in crime prevention. Then we consider its effectiveness in enriching democracy and improving justice in other ways beyond crime prevention, like helping child victims of violence to be safe, secure and empowered with voice within their families.

## The Latest Evidence on Restorative Justice Effectiveness

My book *Restorative Justice and Responsive Regulation*<sup>3</sup> summarizes the evidence on the effectiveness of restorative justice in realizing various justice values, including crime prevention. It is cautiously optimistic. The latest important addition to that literature is a meta-analysis for the Campbell Collaboration on the impact of restorative justice on crime by Heather Strang et al.<sup>4</sup> Its conclusions are fundamentally similar to the previous meta-analyses of over thirty tests of the effectiveness of restorative justice by both Latimer, Dowden and Muise<sup>5</sup> and Bonta et al.,<sup>6</sup> each conducted for the Canadian Department of Justice. All three meta-analyses found a statistically significant effect across combined studies in lower reoffending for restorative justice cases (compared to controls). The difference in the Strang et al. study is greater selectivity, more exacting methodological standards for inclusion in the meta-analysis. Only ten studies were included, all randomized controlled trials. The overall result was the same—a modest but statistically significant crime reduction effect.

None of those most intimately involved in the development of restorative justice

ever predicted huge crime reduction effects because we all saw badly managed conferences that made things worse rather than better. A banal kind of counterproductive restorative justice, for example, is where either the victim or the offender did not turn up, pulling out at the last moment, leaving the other side angrier than they would have been had reconciliation never been attempted. We were disappointed in the extreme weakness of the effectiveness of restorative justice in preventing property crime in the Strang et al. evaluation as those results started to come in, with one Canberra experiment actually finding slightly more crime for the property offenders who went to restorative justice (though not a statistically significant difference). At the same time we were amazed at more than a 40% reduction in reoffending (compared to controls randomly assigned to court) in the first year outcomes of the RISE youth violence experiment in Canberra (which reduced in year two), and even more surprised when a reduction in reoffending in one of the British violence experiments also achieved a 45% reduction in offending over two years. The reductions in the other violence and mixed violence and property experiments in the Strang et al. review are still very substantial, but at about half this level.

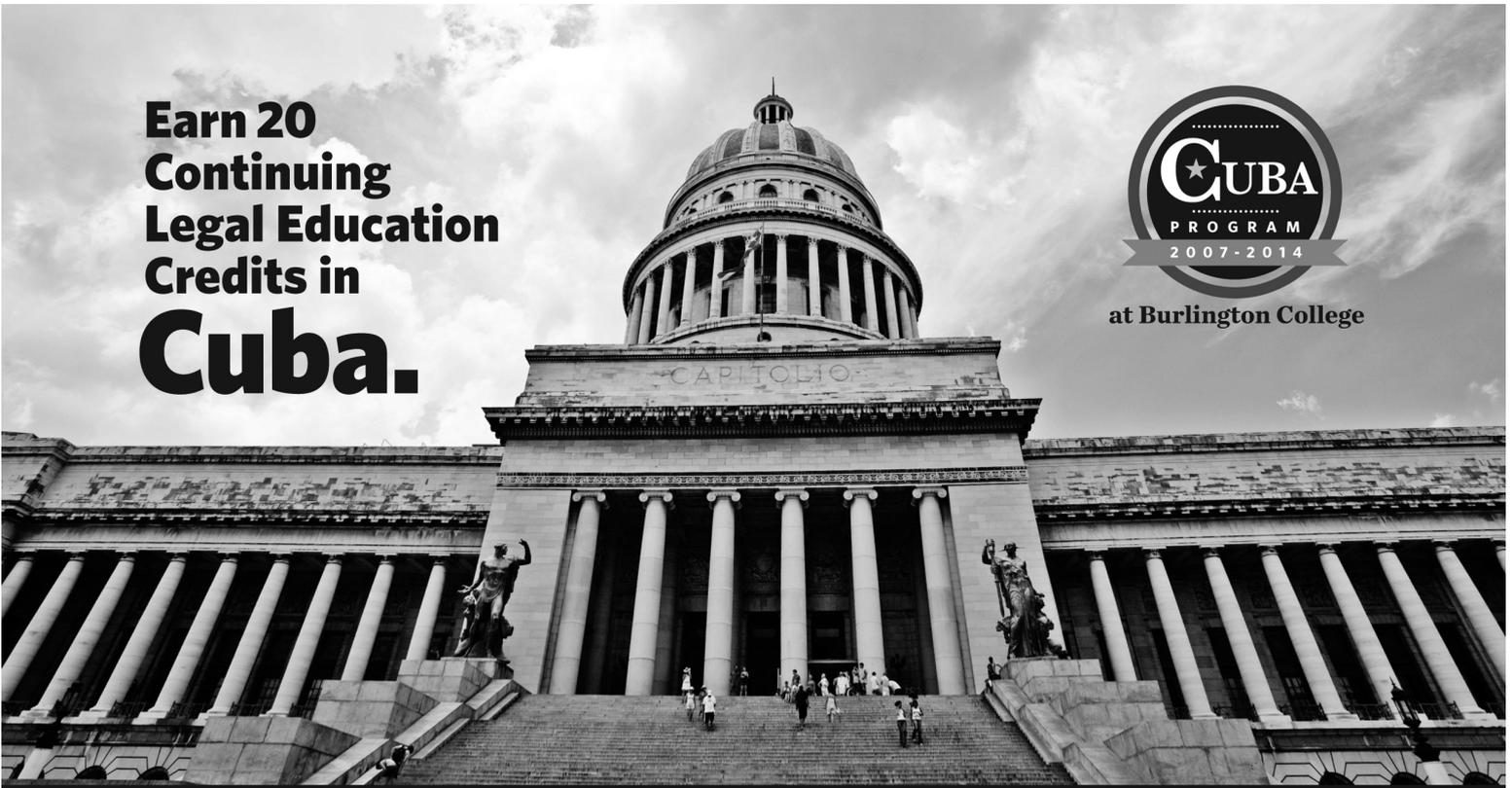
What we have is some studies (mainly with property crimes) showing disappointingly inconsequential effects of restorative justice and others (mainly with violent crimes) showing surprisingly large effects. The puzzle lies before us to explain why restorative justice interventions often disappoint and often surprise with the size of their effects. It was a great surprise to me as the person who initiated the invitation to Lawrence Sherman and Heather Strang to conduct this independent evaluation of what we were doing in Canberra that a two-hour intervention could ever produce a huge reduction in reoffending. How could it be that just two hours in a life is not overwhelmed by all the other things that happen to a person in all the other hours that pass in successive years?

Criminologists in my lifetime became cynical, overly cynical, that even rehabilitative interventions that ran for days, weeks, and years could not have a substantial impact on lives overwhelmed by all manner of toxic elements that are present every day, every week. So what foolishness led us to believe that a two-hour intervention could

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make a difference? I return to that after first balancing the narrative by pointing out that not all literature reviews conclude that restorative justice is effective. Indeed restorative justice sceptics still abound. The most recent important contribution of that kind is by Weatherburn and Macadam.<sup>7</sup> Weatherburn and Macadam do not consider my own more wide ranging review of the literature,<sup>8</sup> but begin their analysis by concluding that many of the early studies have methodological limitations and that the earlier reviews<sup>9</sup> show only modest effects on reduced reoffending). No great disagreement there.

Having concluded that there is nothing up to 2007 to suggest that restorative justice works very well, Weatherburn and Macadam proceed to review studies since 2007. They found only eight of the fourteen studies from 2007 that passed their tests of methodological adequacy reporting any statistically significant reduction in reoffending.<sup>10</sup> None of them concluded that restorative justice made things significantly worse (a different result from earlier reviews that concluded some interventions had made things worse). If one added the results of Weatherburn's post-2006 studies with the numbers from the earlier studies in the meta-analyses of Latimer et al. (2001), Bonta et al. (2006) and Sherman and Strang (2007),<sup>11</sup> the fundamental result would be unchanged—a modest but statistically significant effect overall. That is, the pattern of results in these studies from 2007 on is a rather similar pattern to the earlier work. Indeed, a higher proportion of these post-2006 single studies are reporting a statistically significant effect and a lower proportion (zero) a counterproductive effect.

So I read Weatherburn and Macadam as providing a broadly similar reading of the facts on a narrower set of findings to my own older more wide-ranging review.<sup>12</sup> Weatherburn, Macadam, and I also share some cynicism about meta-analysis in comparison with qualitative diagnosis of many individual studies, which is why we review literatures without doing a meta-analysis. Perhaps I go even further than Weatherburn and Macadam in that regard, in that I am prepared to interpret non-quantitative data, such as that in Braithwaite and Gohar,<sup>13</sup> as providing strong qualitative evidence that restorative justice can reduce serious violence with high cost-effectiveness in the most difficult of conditions.

Those of us who see limits of a myopic focus on meta-analysis of randomized controlled trials, as in the Cochrane and Campbell collaborations, must concede, however, some important strengths to that approach. One was revealed right at the beginning when I first recruited Lawrence Sherman in 1993 to conduct an independent randomized controlled trial of the restorative jus-

tice innovations Terry O'Connell, John McDonald, David Moore, Peta Blood, and others were refining with me in Australia. Sherman asked what my theoretical predictions would be about percentage impacts at different times of follow-up. It was twenty-one years ago so I do not remember exactly the numbers I proffered, though I am sure it was a lower effect size than actually found in Strang et al.<sup>14</sup> What I remember is Sherman's response—"If you only expect an impact as small as that, we will need to randomize many thousands of cases to deliver the statistical power capable of detecting such a small effect." But of course that is one way meta-analysis comes into its own twenty years later. You can end up with a situation decades on that is exactly the current state of play with the evidence on the effectiveness of restorative justice. Many studies are so methodologically flawed that they should be simply dismissed; many useful studies show statistically insignificant reductions of reoffending on sample sizes too small to have the statistical power required; yet when these data sets are combined, the meta-analysis shows a modest statistically significant reduction of offending from the combined data sets. One study at a time, the Strang et al. studies actually show a lower success rate for restorative justice than Weatherburn and Macadam when "vote counting" based on statistical significance is the approach adopted; it is the combined data sets with their greater statistical power that detects a significant reduction of reoffending.<sup>15</sup>

Weatherburn and Macadam also implicitly agree with my<sup>16</sup> view that the most important thing about restorative justice is whether it puts offenders (and victims) into follow-up rehabilitation programs that make things better or worse.<sup>17</sup> One of the many ways restorative justice can make things worse is by putting young people into programs like boot camps and scared straight programs that worsen reoffending. The most important finding of the original Latimer, Dowden and Muise<sup>18</sup> meta-analysis was that by far the largest effect size of restorative justice was not on reoffending, but on completion of whatever is agreed by the restorative justice conference. Counterintuitively, if a court orders the payment of compensation to a victim, attendance at a drug rehabilitation or anger management program, this is much less likely to actually happen (or be completed) than if it is agreed by a restorative justice conference. It is a counterintuitive result because if you fail to do what a judge orders, you are in contempt of court, which can be sanctioned by imprisonment. In contrast, almost everywhere there are no legal consequences if you fail to complete a restorative justice agreement; it is just a voluntary agreement. Probably the reason for this result is that families are more effec-

tive in informally enforcing voluntary agreements they sign than police are in enforcing orders that judges sign. At least that has been my interpretation of the data.<sup>19</sup> Both a weakness and a strength of restorative justice follows. If restorative justice conferences agree on the remedy that the theory and evidence indicates is counterproductive (like a shoplifter wearing an "I am a thief" t-shirt outside the shop, as happened once in the Canberra program), this is more likely to actually happen than if it is ordered by a court. Conversely, if the restorative justice conference agrees on completion of a drug rehabilitation program that actually works, the offender is more likely to complete the program as agreed than if she is ordered to do so by a judge.

Braithwaite<sup>20</sup> and Braithwaite and Braithwaite<sup>21</sup> argue that potentially the greatest strength of restorative justice is as a superior delivery vehicle for rehabilitation programs that work. Then the challenge becomes one of communicating to families that they need to own the rehabilitation options they choose for the family, while putting families in touch with experts they might listen to about what works (and who around here can help put you into it) and what is counterproductive. In this we learnt so much from the empirical work of Joan Pennell and Gale Burford with their family group decision making approach on the Eastern seaboard of this continent, in both Canada and the United States.<sup>22</sup> Braithwaite<sup>23</sup> agreed with Ken Pease<sup>24</sup> that criminology's problem is not in knowing what works in preventing crime, but in motivating stakeholders to implement what works. And I argued that restorative justice is one of the most promising approaches we have for solving this problem. Notwithstanding the paradigmatic advances in the work of scholar-practitioners like Burford and Pennell, we are only at the beginning of learning how to redesign restorative justice so that it improves the quality of the choices empowered families make in how to respond to injustice.

### Widening the Lens

So my reading is that while Don Weatherburn presents himself as a restorative justice sceptic, he actually substantially shares in the consensus about the pluses and minuses of restorative justice that continues to be surprisingly accurately captured by my more wide-lensed qualitative review in 2002.<sup>25</sup> One of the many ways my literature review was more exhaustive was that crime prevention was not seen as the most important outcome of restorative justice. By my civic republican lights, the most promising thing about restorative justice is that it conceives the judicial branch of governance, rather than the executive and legislative

branches, as the best venue for renewing the democratic spirit among citizens who are jaded about the democratic project, who have lost trust in government. Restorative justice gives adult citizens a genuine say in something they deeply care about—what the state is to do about their children when those children suffer some abuse, or perpetrate some abuse, that gets them into serious trouble with the state.

More importantly, restorative justice in schools not only works in preventing school bullying, and thereby prevents future crime. When it teaches children how to confront problems like bullying in their school dialogically and democratically, it teaches children how to be democratic citizens. We are not born democratic. We must learn to be democratic in families and schools. For many of us, that is what restorative justice is most virtuously about.

Because of that quality, the evidence suggests that restorative justice helps victims of crime more powerfully than it helps offenders.<sup>26</sup> Victims are disempowered by the justice systems of modernity (compared with many systems of pre-modern and early modern centuries). Restorative justice reduces victim fear, post-traumatic stress symptoms, victim anger, vengefulness, feelings of personal safety, victim beliefs that victim rights have been violated, and their belief that justice has been done. A problem is that the system has become excessively captured by justice professionals in the interests of justice professionals. Hence, discourtesies as basic as not informing victims of the date of their offender's trial, or what happened in that trial, are endemic in conditions of justice modernity.

Reclaiming voice for families, friends, and victims in justice processes is an important democratic project. Justice professionals retort that they are not in the business of revitalizing democracy or doing justice therapeutically; rather, they are in the business of doing justice justly and effectively and that is all they are given the taxpayer funding to do. Here is where we should go back to the British work of Joanna Shapland et al.<sup>27</sup> discussed in the 2013 Strang et al. review. Shapland et al. found that benefits of restorative justice exceeded costs by a ratio of eight to one. Contrary to the advocacy of many state-funded justice professionals, the likelihood is that if we divert many of the resources currently going into the pockets of justice professionals to restorative justice programs that empower communities, we can enrich the democracy and reduce the cost of the justice system, while advancing narrowly conceived justice objectives valorized by justice professionals and restorative justice sceptics, like crime prevention.

Restorative justice is not just about strengthening justice systems or strength-

ening democracy. It is also about strengthening communities, families, and schools, which have profound value in themselves, independent of the contributions they make to democracy or justice. We have a long way to go in learning how to evaluate more effectively how restorative justice can be improved so as to be more effective in strengthening individual people as human beings, as well as the families, schools, and communities that nourish their humanness.

### Methodological Challenges

The evidence is convincing that restorative justice *can* be powerfully effective. At the same time, the evidence is thin that these strategies *are consistently* effective as regulatory strategies. It seems likely that this pattern will always prevail even as the empirical evidence becomes more illuminating about the limits and strengths of restorative justice. Why is this?

First, it is a general strategy of regulation where regulation is conceived very broadly as "steering the flow of events."<sup>28</sup> By my theoretical lights, restorative justice is conceived as relevant to very micro behaviors such as bullying in schools and workplaces, to intra-family relationships, to intermediate forms of regulation such as the regulation of gangs that engage in crime, of small businesses paying tax or complying with environmental laws, up to the macro regulation of capitalism, its commanding heights, global financial crises and up to the regulation of international conflicts between states and the global war on terror. Reviews of the evidence for the effectiveness of general strategies of this kind can only be systematic if they are focused. So a review such as that of Weatherburn that counts studies that assess whether restorative justice reduces "crime" is no longer the most useful kind of work to do because we know that the effectiveness of restorative justice is weak at best with minor property crimes that account for most of the restorative justice in Weatherburn's timid and conservative jurisdiction (New South Wales); equally, the evidence for restorative justice being effective with serious crime, particularly violent crime, is most encouraging.<sup>29</sup> So we need reviews of the evidence for the effectiveness of restorative and responsive regulation on something as focused as small business tax compliance, as Valerie Braithwaite began to assemble through the hundred working papers of the Centre for Tax System Integrity,<sup>30</sup> of the evidence of the effectiveness of restorative and responsive justice on something as focused as anti-bullying programs in schools, as Brenda Morrison<sup>31</sup> has begun to supply in her research. Very little systematic empirical work of that kind has been done across this myriad of more focused topics.

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Even at that level of enhanced focus, the most useful kind of research is on the effectiveness of different kinds of rehabilitative or preventive strategies that might be selected in a restorative circle. Restorative justice and responsive regulation are strategies for choosing multidimensional approaches to solving problems. As already explained, the success of restorative justice may depend less on those strategies of selection than on the success of the approaches they select. If restorative justice is applied to a particular problem with frequent agreements to do things that the evidence indicates is effective for that problem, then restorative justice will be a more potent delivery vehicle for reducing that problem.

### Conclusion: Restorative Learning

Restorative and responsive regulation listens to the wisdom of stakeholders as to what should be done about the problem in a context where those stakeholders have a lot of contextual experience. It follows up interventions through monitoring by the stakeholders as to whether they are working and ideally a “celebration conference” when an agreement is successfully completed. It is a strategy that is responsive to constantly changing regulatory environments and frequent changes in the responsiveness of those who are regulated. The response that issues is therefore flexible, multidimensional, and layered into trying one strategy after another. Some of the responsively chosen strategies will be duds, counterproductive, others will reflect brilliant contextual problem solving by the stakeholders. Again, outcomes will probably depend more on the substantive choices made at different stages of the restorative justice process than on whether restorativeness was the strategy for choosing them.

More profoundly, restorative and responsive regulation is a strategy that assumes that most regulatory approaches fail in most contexts of their application. Business strategy for becoming more productive and innovative has taken up this prescription in recent years with guidelines like “fail fast, learn fast, adjust fast” and “try, learn, improve, repeat.” Even strategies strongly supported by systematic reviews, as we know from drug therapies in medicine, can fail more often than succeed in practice because doctors do not get the diagnosis quite right, do not get the dosage quite right, get dosage right but forgetful patients take the wrong doses at the wrong time (before rather than after meals, with alcohol), the doctor prescribes the drug too early or too late, prescribes it for patients taking other drugs with which this one has adverse interactions, or simply that the side-effects also found in the systemat-

ic reviews cause a bigger problem for this patient than the treated problem. Clinical method improvement must complement experimental method improvement. In assuming that practitioners of and stakeholders in regulation choose ineffective strategies most of the time, restorative and responsive regulation amounts to a policy prescription for how to keep trying new strategies in the face of recurrent failure. Improving the quality of the deliberative interface between experts who know what the research shows to be effective and local stakeholders with the power to contextually attune and actually deliver those outcomes is one key that will be much discussed at our conference in Burlington.

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<sup>1</sup> Herman Goldstein & Michael Scott, *What is Problem-Oriented Policing?* Centre for Problem-Oriented Policing (2001) at <http://www.popcenter.org/about-what-isPOP.htm>.

<sup>2</sup> David Weisburd et al., *Is Problem-Oriented Policing Effective in Reducing Crime and Disorder? Findings from a Campbell Systematic Review*, 9 CRIMINOLOGY & PUB. POL'Y 139 (2010).

<sup>3</sup> JOHN BRAITHWAITE, RESTORATIVE JUSTICE AND RESPONSIVE REGULATION (2002).

<sup>4</sup> Heather Strang et al., *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*, 2013 CAMPBELL SYSTEMATIC REVIEWS 12.

<sup>5</sup> JEFF LATIMER ET AL., THE EFFECTIVENESS OF RESTORATIVE JUSTICE PRACTICES: A META-ANALYSIS (2001).

<sup>6</sup> James Bonta et al., *Restorative Justice and Recidivism: Promises Made, Promises Kept?*, in HANDBOOK OF RESTORATIVE JUSTICE: A GLOBAL PERSPECTIVE 108 (Dennis Sullivan & Larry Tiff eds., 2006).

<sup>7</sup> Don Weatherburn & Megan Macadam, *A Review of Restorative Justice Responses to Reoffending*, 1 EVIDENCE BASE 1 (2013).

<sup>8</sup> BRAITHWAITE, *supra* note 3. They do refer to Braithwaite, *Crime, Shame and Reintegration* (1989) as reviewing evidence on the effectiveness of restorative justice, which it does not.

<sup>9</sup> Notably LATIMER ET AL., *supra* note 5, Bonta et al., *supra* note 6, and HEATHER STRANG & LAWRENCE SHERMAN, RESTORATIVE JUSTICE: THE EVIDENCE (2007).

<sup>10</sup> Four out of ten if a higher standard of methodological stringency is applied, and then Weatherburn and Macadam, *supra* note 7, argue that the correct interpretation of one of these is that it is only significant at the .01 level. If we buy three out of ten as the best descriptive statistic, my conclusion in the text continues to hold.

<sup>11</sup> LATIMER ET AL., *supra* note 5, Bonta et al., *supra* note 6, and STRANG & SHERMAN, *supra* note 9.

<sup>12</sup> BRAITHWAITE, *supra* note 3.

<sup>13</sup> John Braithwaite & Ali Gohar, *Restorative Justice, Policing and Insurgency: Learning from Pakistan*, L. & SOC'Y REV. (forthcoming 2014).

<sup>14</sup> I think it may have been 10% lower crime in the first year, eroding to a zero effect in the course of a decade.

<sup>15</sup> Weatherburn and Macadam disagree, concluding:

Pooling data from separate studies is unwise

where there is any reason to believe that program effect estimates may be biased in a particular direction. Since RJ is generally reserved for offenders who are not as serious or persistent as those referred to court and the controls in many RJ studies are weak, estimates of the effectiveness of RJ in reducing re-offending are likely to be biased upwards.

*Supra* note 7, at 14. This is an odd conclusion in relation to the Sherman and Strang analyses, which are limited to randomized controlled trials where there should not be (and in the event is not) the kind of bias that they give as a reason for ignoring pooled results.

<sup>16</sup> BRAITHWAITE, *supra* note 3, at 95-102; John Braithwaite & Valerie Braithwaite, *Shame, Shame Management and Regulation*, in SHAME MANAGEMENT THROUGH REINTEGRATION 62-69 (E. Ahmed et al. eds., 2001).

<sup>17</sup> Though Don Weatherburn does have an irritating tendency in his writing and media discussion of his findings to see restorative justice “dogma” as a competitor with other rehabilitation programs rather than a delivery vehicle for those very programs. Oblivious to the restorative justice literature, he wants to position two hours of restorative justice as less effective than sustained investment in repeated rehabilitation sessions of various kinds. This is because the best rehabilitation programs report more consistently statistically significant results. In contrast, Lawrence Sherman (personal communication) reads the effect size for crime reduction in the 2013 restorative justice Campbell Collaboration review as similar to that in the 2012 Campbell review by Anthony Braga et al. and other meta-analyses of hot spots policing (e.g., Anthony A. Braga, *Hot Spots Policing and Crime Prevention: A Systematic Review of Randomized Controlled Trials*, 1 J. EXPERIMENTAL CRIMINOLOGY 317 (2005); Anthony A. Braga, Andrew Papachristos & David Hureau, *Hot Spots Policing Effects on Crime*, 2012 CAMPBELL SYSTEMATIC REVIEWS 8)—the innovation for which Sherman’s work is best known. Sherman is critical of reviews such as that of Weatherburn and Macadam, *supra* note 7, (and indeed my own) for “vote counting” that puts too much emphasis on significance and not enough on effect sizes.

<sup>18</sup> LATIMER ET AL., *supra* note 5.

<sup>19</sup> BRAITHWAITE, *supra* note 3.

<sup>20</sup> *Id.* at 95-102.

<sup>21</sup> Braithwaite & Braithwaite, *supra* note 16, at 62-69.

<sup>22</sup> See Gale Burford & Joan Pennell, *Family Group Decision Making Project: Outcome Report Vol. 1* (1998).

<sup>23</sup> BRAITHWAITE, *supra* note 3, at 102.

<sup>24</sup> Ken Pease, *Crime, Labour and the Wisdom of Solomon*, 19 POL'Y STUD. 255 (1998).

<sup>25</sup> BRAITHWAITE, *supra* note 3.

<sup>26</sup> Strang et al., *supra* note 4; HEATHER STRANG, REPAIR OR REVENGE: VICTIMS AND RESTORATIVE JUSTICE (2002); Heather Strang, *Conferencing and Victims*, in CONFERENCING AND RESTORATIVE JUSTICE: INTERNATIONAL PRACTICES AND PERSPECTIVES (Estelle Zinsstag & Inge Vanfraechem eds., 2012); BRAITHWAITE, *supra* note 3.

<sup>27</sup> Joanna Shapland et al., *Does Restorative Justice Affect Re-conviction? The Fourth Report from the Evaluation of Three Schemes* (2008).

<sup>28</sup> Christine Parker & John Braithwaite *Regulation*, in THE OXFORD HANDBOOK OF LEGAL STUDIES (Peter Cane & Mark Tushnet eds., 2003).

<sup>29</sup> E.g., Strang, *supra* note 25.

<sup>30</sup> See <http://regnet.anu.edu.au/ctsi/publications>.

<sup>31</sup> BRENDA MORRISON, RESTORING SAFE SCHOOL COMMUNITIES (2007).

