

ENCOURAGE RESTORATIVE JUSTICE

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At the 2000 United Nations (U.N.) Congress on the Prevention of Crime and Treatment of Offenders, many were surprised that a resolution for all nations to encourage restorative justice passed unanimously. Restorative justice comprises the idea that because crime hurts, justice should heal, and especially heal relationships. It is a process in which all stakeholders have an opportunity to discuss the hurts of a crime, how they might be repaired, how recurrence might be prevented, and how other needs of stakeholders can be met. Even the societies with the highest imprisonment rates in the world—the United States, Russia, and South Africa—and most executions—China—have been sites of important innovations in restorative justice. Although most societies have many small programs (perhaps even thousands now in the United States; Bazemore and Schiff (2005) were able to list 773 programs for juveniles alone), and tens of thousands in China (Wong, 1999), mostly the support is rhetorical, not extending to the mainstreaming of restorative justice evident in New Zealand, Norway, and much of the German-speaking world.

A surprisingly universal experience is that restorative justice has not proved politically unpopular. As Frank Cullen points out with rehabilitation (2007, this issue), politicians can be punitive in many respects but still support restorative justice because it makes sense to citizens, and because 80% to 99% of people report good experiences with it, whether they are victims, offenders, supporters, or attending police officers (Braithwaite, 2002; Poulson, 2003). Politicians are unafraid to vote for it at the U.N. and at home because when demands for law and order run amok, they can always say they do not mean for restorative justice to be used in “that” kind of case. Since leaders of all religions have tended to be supportive of restorative justice, seeing it as creating spaces where spiritual experience flourishes, the conservative side of politics at least learns to live with restorative justice.

RESTORE A BIT OF DEMOCRACY

One reason restorative justice is popular is that it hands a little piece of power back to the ordinary people. We have become such mass democracies that face-to-face meetings on important questions of governance only include the elite. Not only are New England town meetings a democratic form that is hard to translate to a mass society, but also most citizens do not want to participate in community meetings. Most citizens do want to

attend restorative justice conferences, however, when asked by a victim or offender to come along to support them. There is something humbling and ennobling about being asked to help someone in trouble; people tend to be honored to be chosen as a supporter. The personal touch makes it a little opportunity to salvage some democratic participation, and the evidence indicates that most people relish being able to participate (Braithwaite, 2002:45–55,130–134). The procedural justice findings, moreover, show this feature of “process control” by ordinary citizens engenders a sense of fairness (Tyler, 1990).

The Western social science literature on procedural justice, trust building through democratic engagement, and the contribution of restorative justice to all of this has bigger implications in societies recovering from violent conflict than for the West itself. The empirical experience of peace building has been that although democratic elections, national reconciliation, and forgiveness are fundamental ingredients of sustainable peace, they cannot be rushed. The recent mistakes in places like East Timor have been giving postconflict societies an election quickly, and then getting out. We know now that electoral outcomes that do not share power and leave one faction totally in control will exclude ethnic minorities and are not conducive to sustainable peace. Nor do elections work where warlords bribe village heads to get their entire village to vote for their man. Another thing we have learned is that although the time is taken to get electoral institutions to take root, control over most criminal justice can be taken away from hated central police institutions, with their torture chambers and secret dossiers, and returned to villages. There are always survivals of traditional restorative justice practices in villages. These practices have their human rights worries, even if they are less than the abuses of the wartime state. Ali Wardak (2004) has shown how traditional male-dominated village justice might be balanced by an internationally funded female-dominated new central Human Rights Commission to educate village elders about involving women and respecting a new order of human rights. Although warlords blocked Wardak’s ideas in his homeland Afghanistan, other postconflict areas such as Bougainville have observed what locals regard as a meaningful form of democratic participation restored through local control over (restorative) criminal justice (Howley, 2002). Restorative justice then becomes much more than a better way of managing crime; it becomes a way to help village societies become more rights-respecting and to learn to become democratic.

RESTORE VICTIMS

When victims have an opportunity to actually participate in restorative justice, they benefit much more consistently (compared to controls) than

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do offenders (Sherman and Strang, 2007:62–65). Yet victims who want restorative justice are demoralized when it fails to happen or when the offender refuses to attend the meeting (Strang, 2002). Angel (2005) found in an experiment that restorative justice benefits the victim's mental health by reducing post-traumatic stress symptoms. Victims emerge from restorative justice with reduced fear and anger, increased forgiveness, and feel more satisfied. The victim has a stronger sense that his or her rights are respected and that justice was done compared to controls (Strang, 2002; Braithwaite, 2002:45–53).

DELIVER COMMITMENT TO DO WHAT WORKS

Criminology is making progress on what works. But justice systems are not good at motivating people to do what works. Police know that the best predictor of being a victim of burglary is having recently been burglarized (Pease, 1998:v). Getting burglary victims to act preventively on this is the hard part. Routinely, people are imprisoned because this seems politically safer than cheaper, more effective interventions. Restorative circles can invite experts to present the evidence to lay stakeholders. This can overcome the propensity to do the safe punitive thing in favor of effective prevention or rehabilitation. If the victim and other stakeholders in an assault sign an agreement for anger management and compensation (rather than imprisonment), then it can become politically safe for the system to fill fewer prison cells. A small number of restorative programs that steer high-end minority offenders away from prison has shown that restorative justice can motivate a politics of evidence-based, emotionally intelligent justice (Sherman, 2003) to supplant incarcerative justice (Bonta et al., 1998).

A Canadian Ministry of Justice meta-analysis of evaluations of restorative justice with credible control groups was encouraging on many fronts (Latimer et al., 2001). Its biggest effect was that the implementation of agreements was 33% higher in restorative justice cases than in controls. We should not be surprised that a court order is less likely to be complied with than an agreement consensually signed by an offender, his mother, his girlfriend, and his victim even if the court order can be legally enforced by another court order! Family and close friends are more powerful regulators of behavior than are the police and the courts.

So the largest promise of restorative justice is not that it is more directly effective than alternatives such as court or plea bargains. It is that evidence-based restorative justice is a superior delivery vehicle for interventions that work when compared with traditional criminal justice. As criminology discovers more ways of reducing crime at lower cost in dollars and injustice, restorative justice can deliver the bottom-up commitment to realize implementation.

REDUCE CRIME DIRECTLY

That said, the evidence has progressively become stronger that restorative justice in itself is directly effective in reducing criminal reoffense. Moreover, restorative justice is a learning tradition. In an update and tightening of the methodological criteria of the Latimer et al. (2001) meta-analysis, Bonta et al (2006) found the recidivism effect was notably higher for second generation post-1997 restorative justice programs. All meta-analyses suggest significant but only modest direct effects in reducing reoffending. This result is what most restorative justice theorists predicted. Why would you expect the direct effects of interventions of an hour or two to be large? Actually, the most recent review by Sherman and Strang (2007) suggests that we were wrong in that the modest positive result overall combines some very large positive effects, especially with violence, zero effects, and occasional negative effects when compared with controls. We do not yet understand the drivers of these big variations in success and failure.

It is also with violence that we get some surprisingly huge healing effects. In the Canberra RISE experiments, 45% of court case victims wanted to harm their offenders, compared with 9% for victims who went to a restorative justice conference (Sherman and Strang, 2007:63). For property offenses, this difference more than halved. Restorative justice delivers more apologies to victims, and apologies they view as sincere, than do court cases. This difference is also particularly strong with violence cases. Again, because it is with violence that we find the biggest effects, I suspect evidence-based criminology has a major contribution to make to how we can be more effective in peace building after war.

INCREASE JUSTICE

Criminology was born with too myopic a concern with preventing crime. Some healthy developments have balanced that in recent decades. The rise of victimology has helped us prioritize better recovery for victims. Most nations have moral equivalents to Rodney King, O.J. Simpson, Klan killing and cover-up, the Japanese internment camps of World War II, and the contemporary diaspora of internment camps for Muslims alleged to be terrorists. Therefore, all nations' justice systems should be evaluated in terms of how successful they are in affecting reconciliation within and between communities after cases that question discrimination and respect for rights. The restoration of a sense of justice and reintegration of communities thus stands beside reintegration of victims and offenders as outcomes that should concern criminologists. The social psychology of procedural justice is another recent tradition that adds a set of facets—consistency,

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decision accuracy, correctability, process control, impartiality, and ethicality (Lind and Tyler, 1988)—in terms of which the “justice” in “justice systems” is evaluated.

The criminological community working on restorative justice, community justice, and cognate innovations deserves credit for being theoretically serious, nondogmatic, and plural. This effort has led them to be evidence-based and remarkably assiduous in a short space of years in generating a large body of outcome evaluation that explores the entire range of dimensions mentioned above. Moreover, so far restorative justice has fared well against these tests (for a now out-of-date survey, see Braithwaite, 2002). The restorative justice research tradition has advanced criminology’s normative conversation on how justice should be defined, and its explanatory conversation on what responses to crime do best in promoting justice for victims, offenders, families of offenders, and other stakeholders.

Justice can be conceived in a republican way (Braithwaite and Pettit, 1990). The evidence suggests what is good for republican justice is good for crime control and for democracy (when democracy is conceived in a civic republican way as contestatory and deliberative democracy, as opposed to the rule of opinion polls (Pettit (1997))). This combination of normative and empirical conclusions runs against the intuitions of many who view justice, rights, and democracy as obstacles to crime control. Yet the restorative justice literature is increasingly compelling that we can get less crime through more justice and more democracy.

One of the shocking things about law school debate on justice is the assumption that justice ordered is justice delivered. Criminologists from many jurisdictions have always known that one half or one third of all fines that are imposed are never collected (Sherman and Strang, 2007). Here is where the superior implementation certainty of restorative justice increases the consistency of justice as delivered. In addition, the Sherman and Strang (2007:4) review concludes that diverting cases to restorative justice at least doubles (and can quadruple) the proportion of offenses that actually go to justice. Just-deserts advocates of formal prosecution rather than of restorative justice ignore the realities of absconding, loss of files, and no shows of witnesses, which means surprisingly often the prosecution never happens. Attrition can even be a primary reality of prosecutorial justice in experiments (Sherman and Strang, 2007:82). Perhaps this is because some are allowed to abscond because they are innocent. Yet randomization should deliver equal numbers of innocents in control and experimental groups. Another important finding in this respect is Daly et al. (2005): that there is more “charging down” of sexual assaults that are prosecuted than sexual assaults that go to restorative justice conferences. The latter has particularly important implications for justice as victim vindication (see also McAlinden, 2007).

NO PANACEA

The evidence suggests that all justice interventions, including restorative justice, frequently fail with terrible consequences. If it is right that restorative justice is the best delivery vehicle for other interventions that work, then it can be applied to interventions that can repair the harm done by bad restorative justice itself. Moreover, responsive regulatory theory (Braithwaite, 2002) argues that restorative justice should be a presumptively preferred option at the base of a regulatory pyramid. Such responsive justice pyramids cover the weaknesses of one strategy with the strengths of other strategies higher up the pyramid, including more deterrent and incapacitative options.

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