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Linking Crime Prevention to Restorative Justice

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Published: August 8, 1998

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By John Braithwaite, Australian National University. Discusses how research needs to show that restorative justice prevents crime in order to make it mainstream, and how restorative justice programs can improve their crime prevention capacity. Presented at the First North American Conference on Conferencing, August 6-8, 1998, Minneapolis, Minnesota.

Restorative justice will never become a mainstream alternative to retributive justice unless long-term R and D programs show that it does have the capacity to reduce crime. Restorative justice theorists, including me, have long advanced the claim that restorative justice conferences can deliver their benefits without directly attempting to pursue those benefits.¹ This is true of reintegrative shaming, for example. The worst way to accomplish reintegrative shaming is to urge conference participants to shame the offender. That is a prescription for minimizing reintegrative shaming and maximizing stigmatization. No, reintegrative shaming comes as a by-product of confronting the consequences of the crime and what is to be done to put them right.

There is a similar paradox of procedural justice. Court proceedings are explicitly designed to achieve procedural justice outcomes such as equality before the law. With conferences, in contrast, there is no direct pursuit of equality before the law. Yet we know from the RISE experiment that conference participants are more likely to feel that they have experienced equality before the law in conference cases than in court cases (Sherman & Barnes, 1997). Victim-offender mediation studies have also produced encouraging results on procedural justice (Braithwaite, forthcoming).

There is a temptation to generalize these analyses to the claim that all the benefits of restorative justice are rather like the benefits of being spontaneous—the more directly we try to be spontaneous, the less spontaneous we will be. In some ways our work may have fallen victim to a generalized tendency to expect the benefits to flow as an indirect outcome of simply pursuing restoration. In this paper, I will discuss the linkage between crime prevention interventions and restorative justice. My argument will be that crime prevention must be directly pursued as an objective of conferences. Crime prevention benefits do not flow inevitably simply as a result of a restorative dialogue.

Before moving on to explaining why the best way to make crime prevention work may be to link it to restorative justice, I will make some remarks about why crime prevention programs that are not linked to restorative justice generally fail.

Why Crime Prevention Programs Mostly Fail

Crime prevention programs tend to be either police-initiated or community-based, or, perhaps most commonly, some mixture of the two. However originated, my contention will be that crime prevention programs mostly fail for four reasons:

1. Lack of Motivation

2. Lack of Resources

3. Insufficiently Plural Deliberation

4. Lack of Follow-Through

Now I consider each of these reasons for failure and why linkage to restorative justice conferences might respond to them.

Lack of Motivation

I never attend my local Neighbourhood Watch meetings. In this, I suppose I am typical of most citizens. On the other hand, if a next door neighbour asked if I would come along to a restorative justice conference to support them as either an offender or a victim, I would be flattered by the invitation and attend.

Most crime prevention programs are uncoupled from the processing of individual criminal cases. This uncoupling is a lost opportunity in terms of motivating citizens to engage with crime prevention. Every police officer knows that the best time to persuade a householder to invest in security is after a burglary; every business regulator knows that the best time to persuade a company to invest in a corporate compliance system is after something goes wrong and someone gets into trouble. There are some good reasons for this heightened motivation. In the case of the company that has just been in trouble, it is motivated by the knowledge that the regulator is watching it. In the case of the homeowner who has been burgled, there is worry that someone who knows how to get in will be watching for the arrival of brand new replacement products. The latter motivation is well placed: one study has shown prospects of another burglary four times as high as in houses that had not been burgled before (Bridgeman & Hobbs, 1997, p.2). A project in Huddersfield that focussed resources such as temporary alarms on prior victims reduced domestic burglary by 24 per cent, in a Rockdale project by 72 per cent (Bridgeman & Hobbs, 1997, p.3).

Lack of Resources

Linking crime prevention to existing cases of victimisation also mainstreams crime prevention to where the policing resources are –street-level enforcement–rather than leaving it ghettoized in specialist prevention units. Police services are famous for rhetoric about community policing and crime prevention, and then setting up special units for the purpose that attract a minuscule proportion of the police budget. Governments are famous for saying they believe in community crime prevention and then giving over 90 per cent of the crime prevention budget to the police. As David Bayley and Clifford Shearing (1996) have pointed out, the remedy here

may be to abandon the *police* budget in favour of a *policing* budget, so that citizen groups can contest police control over crime prevention resources. In the meantime, however, linking crime prevention to case management by the police may be the way to mainstream crime prevention. A discussion of both household-based and more widely community-based crime prevention options in restorative justice conferences is the path to mainstreaming I want to develop.

Plurality of Deliberation

The theory of crime prevention says "involve the community"; the practice says "citizens don't turn up to Neighbourhood Watch meetings except in highly organized communities that don't need them." The empirical experience of restorative justice conferences is that citizens are willing to attend, often in large numbers. Indeed, in the design of conferencing, getting a diverse group of citizens affected by the crime to attend is critical to assuring that no one person or perspective dominates the meeting. Hence, if we achieve what is necessary for a well designed conference, we also lay the foundations for the plurality of deliberation necessary for the design of crime prevention interventions that work. But why do we need this plurality?

The answer is that most crime problems have multiple causes and can be prevented in multiple ways. The burglary is caused by the offender's drug habit, his unemployment, poor security of the targeted house and by the fact that citizens who saw it happening just walked on by. It follows that what we need is a capacity to read criminal situations from the different angles illuminated by different explanations. Elsewhere I have argued that plural understandings of a crime problem are needed to stimulate a disparate range of action possibilities that can be integrated into a hedged, mutually reinforcing package of preventive policies (Braithwaite, 1993). Discussion of the problem by a group with local knowledge derived from being affected by the crime in different ways is a good path to a nuanced understanding of the crime.

Courts are not good at the acquisition of this kind of understanding. As Lon Fuller (1964, p.33) suggests, only two types of problems are suited to full judicial-legal process: yes-no questions like "Did she do it?" and more-less questions like "How much should be paid?" Polanyi (1951, pp.174-84) distinguishes polycentric problems from these. They require reconciliation of complex interacting consequences of multidimensional phenomena. Polycentric problems are not well suited to the judicial model. Because most questions about crime beyond the determination of guilt are polycentric, courts are rather ineffective at preventing crime. Let me illustrate this analysis with an example of plurality of deliberation coming to grips with preventive solutions to a polycentric problem.

I was a part-time Commissioner on Australia's national antitrust and consumer protection agency when the most widespread and serious consumer protection frauds ever came before the agency. They involved a number of insurance companies systematically ripping off consumers through misrepresentations about policies that in some cases were totally useless. The worst abuses occurred in 22 remote Aboriginal communities and these were tackled first. Top management from the insurance company visited these communities for days on end at meetings with the victims, the local Aboriginal Community Council, the regulators and local officials of the Department of Social Security in cases where useless policy premiums were being deducted from welfare checks. Some of those executives went back to the city deeply ashamed of what their company had done.

Back in Canberra meetings were held with insurance regulators and industry associations and even with the Prime Minister about follow-up regulatory reforms. The plurality of participants led to a plurality of remedies from the first agreement (with Colonial Mutual Life). CML voluntarily compensated 2,000 policy holders and also funded an Aboriginal Consumer Education Fund to "harden targets" for future attempts to rip off illiterate people. It conducted an internal investigation to discover failings in the company's compliance program and to identify officers responsible for the crimes. A press conference was then called to reveal the enormity of the problem. No one realised quite how enormous until a police union realised that its own members were being ripped off through the practices of another company (in this case, there were 300,000 victims and a payout of at least \$50 million and perhaps \$100 million by the company). As a result of the CML self-investigation, 80 officers or agents of CML were dismissed, including some senior managers and one large corporate agent, Tri-Global. CML also put in place new internal compliance policies. Some procedures relating to welfare checks changed in the Department of Social Security and there were regulatory and self-regulatory changes concerning the licencing of agents and other matters and changes to the law (Fisse & Braithwaite 1993, p.235). This polycentric problem-solving was accomplished without going to court (except with a couple of players who refused to cooperate with the restorative justice process). The disparate array of preventive measures were grounded in the different kinds of theories the rich plurality of players involved in this restorative justice process came up with—theories of education, deterrence, incapacitation, rehabilitation, target hardening, moral hazard, adverse publicity, law, regulation and opportunity theory.

What happens with the best crime prevention practice therefore is that:

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1. Dialogue about restoration motivates the engagement of a wide plurality of stakeholders with their analysis of why this crime occurred and how recurrence might be prevented.
 2. The polycentric problem is thereby grasped via commonsense versions of a variety of theories, used as metaphors to arrive at a nuanced understanding of the crime by seeing it as many things at once (Braithwaite, 1993).
 3. Professionals table with the stakeholders their analysis of the advice available from the research literature on what has worked and what has failed in the past with this kind of problem.
 4. Prevention professionals design with stakeholders an integrated strategy that is redundantly responsive to the theoretical relevances understood under point 2, the research findings in point 3 and the contextual differences from the situations in which the research was conducted as revealed by the discussions in point 1.

Now the cynic about restorative justice will say that the Australian insurance cases were unusually sweeping exercises in crime prevention. True, most crime prevention is more banal. Yet this process was so sweeping in its ramifications precisely because it was restorative. What would have happened if we had prosecuted this case criminally? At best the company would have been fined a fraction of what it actually paid out and there would have been a handful of follow-up civil claims by victims. At worst, illiterate Aboriginal witnesses would have been humiliated and discredited by uptown lawyers, the case lost and no further ones taken. The industry-wide extensiveness of a pattern of practices would never have been uncovered; that was only accomplished by the communitarian engagement of many locally knowledgeable actors.

To take another extreme example, a court to my knowledge has never convicted 48 adults of child abuse in one town of 600 people, a town in which it is estimated that a majority of the citizens were at some time in their lives victims of sexual abuse.² Healing circles in the Manitoba community of Hollow Water have accomplished that (Ross, 1996, pp.29-48; Lajeunesse, 1993). And the crime prevention accomplishments of the preventive measures put in place as a result of the restorative justice process seem creditable too: only two known cases of reoffending (Ross, 1996, p. 36).

Restorative justice rituals can be a lever for triggering prevention of the most systemic and difficult-to-solve crimes in contemporary societies, like sexual abuse in families, like the crimes of finance capital. We should take seriously the possibility of family group conferences with leaders of Colombian cocaine cartels. How do we know they are beyond shame? How do we know that they would not like to retire at 70 instead of fear violent usurpation by a rival?³

How do we know that they might not find very attractive an agreement that allowed them to pass on some of their wealth to set up legitimate businesses for their children so they did not need to bequeath to them the life they had led? How do we know that they do not actually hate killing other human beings in order to survive themselves?

An incipient and only very partially successful model here is the Raskol gang surrenders and gang retreats in Papua New Guinea which have involved surrenders of up to 400 alleged gang members (Dinnen, 1996). Political leaders up to the Justice Minister and Prime Minister and leaders of the church and other organizations in civil society have participated in these ceremonies receiving apologies, surrendered weapons, ammunition, undertakings to do community work and work for the rehabilitation of their own members and youth gangs that have been their recruitment base. Dinnen (1996, p.121) lists just the documented surrenders in a society where little is documented—13 rituals involving 913 alleged gang members. In fact one of the few successful anti-gang programs (Sherman, et al., 1997) in one of the few places where the gang problem is worse than New Guinea, Los Angeles, involved hiring older gang leaders as consultants to assist with the negotiation of truces and the mediation of feuds. Homicides and intergang violence fell among the targeted gangs but not between the targeted gangs and others (Torres, 1981, cited in Klein, 1995, p.149).

With the more banal crimes of screwed-up kids with screwed-up family relationships, plurality of deliberation seems equally relevant. One way of summarizing the literature on the effectiveness of psychotherapy is that in most cases it will do more good than harm and that this is true for most mainstream types of psychotherapeutic interventions in troubled lives (Foon, 1984). For example, there does not seem much empirical basis for claiming that psychoanalysis is better or worse than other schools of psychotherapy. But it does seem to be the case that it is better than doing nothing. Even though therapy X is no better than therapy Y on average, it seems plausible that if a group of citizens knowledgeable about the problems of a particular individual are given the full facts about how therapies X and Y work, a marrying of those facts with their contextual knowledge of the case should lead to better-than-average selection of the right kind of treatment for their kind of case.

So my hypothesis is that the plurality of deliberation in restorative justice conferences will increase the effectiveness of rehabilitative programs. The contextual wisdom that issues out of plural discussion from various angles is one reason. The other is that programs are more likely to be effective when the offender and their family freely choose to make a commitment to them and when programs strengthen community support for the offender

(Cullen, 1994). It seems therefore that restorative justice does not involve a rejection of the rehabilitative ideal. It means reframing it. Instead of state professionals in social work or psychotherapy deciding that their pet approach is what is best for the family, the family is empowered with knowledge of a range of rehabilitative options and with the right to choose from among a variety of competing public, private and charitable providers of rehabilitative services. This disempowering of state therapeutic monopolies is not only democratically superior for a republican like me who believes in freedom as non-domination (Braithwaite & Pettit, 1990; Pettit, 1997). My hypothesis is that the marriage to conferencing will increase the effectiveness of rehabilitation programs.

Follow-Through

One of the things that rather shocked me during my decade on the Trade Practices Commission was to learn that offenders would often have fines or community service obligations ordered by courts and then simply not pay them or fail to put in the hours. Mostly nothing would happen to them, even when they were major corporations. Everyone in the Australian criminal justice system seems to believe they have more important things to do than chase offenders who do not comply with court orders.

My hypothesis is that restorative justice conference agreements attain higher levels of implementation than court orders precisely because they are agreements rather than orders. Collective obligation is brought to bear on securing compliance with agreements. There is little collective obligation when a court orders suspension of a driver's licence following a drunk driving offence and implements no targeted follow-through to monitor compliance. So driving without a licence is pandemic. On the other hand, if the agreement is that Uncle Harry (who lives next door) will make sure the offender always leaves his car in the garage on Friday and Saturday nights—the nights the offender consistently goes out drinking with the boys—collective obligation based on kinship and credible monitoring of compliance are structured into the agreement. The voluntary agreement secures superior compliance to the legally mandated one.

Preliminary evidence shows high compliance with agreements at victim-offender mediations or restorative justice conferences—ranging up from 58 per cent in one New Zealand study (Galaway (1992), from 64 to 100 per cent in various US, Canadian and British sites (Haley & Neugebauer, 1992; Dignan, 1992; Pate, 1990), 76 per cent in West Germany (Trenczek, 1990), 85 per cent in Finland (Iivari, 1987, 1992), and 86 per cent (Wundersitz & Hetzel, 1996, p.133) and 91 per cent (Waters, 1993, p.9) in Australian programs. The RISE study by Lawrence Sherman and Heather Strang in

Canberra will be the first to compare compliance with agreements for cases randomly assigned to restorative justice conferences versus court.

The other important part of follow-through is to learn from evaluations what aspects of restorative justice processes succeed and fail in putting in place credible preventive responses to crime. Evaluation of court processes in these crime prevention terms has been rather lacking. It is hoped that more of an evaluation culture will grow up around restorative justice processes.

Early Disappointments of Restorative Justice Conferences

Not everywhere has an open approach to evaluation and sharing of mistakes been evident among restorative justice practitioners. Many seem sure they have hit upon the right formula without seriously engaging with evaluation research.

In most restorative justice programs of which I have experienced, there is limited linkage of crime prevention follow-through to the restorative justice process. Time and again in Canberra conferences, we see offenders with serious underlying drug and alcohol problems that are not even discussed, let alone confronted with a dialogue about the different treatment programs available. We see problems of unemployment, school drop-out and dim future educational and employment prospects swept under the carpet.

The recently released Award-Winning Health Canada video, *Widening the Circle: The Family Group Decision Making Experience*, based on the work of Gale Burford and Joan Pennell with family violence, advances best practice in this regard. We see on the video a social worker put up on pieces of butcher paper the range of options available locally for dealing with family violence. The problem in many places is that the range of options genuinely available for the family to choose is not very wide. For all the innovativeness of the New Zealand work on restorative justice, its greatest defect is not to be found in the conferences themselves but in the collapse of the New Zealand welfare state and the paucity of rehabilitative options this leaves available to offenders, victims and their families, especially in rural areas.

Another disappointment is the rarity of moving beyond individual crime prevention to more structural solutions. Corporate crime conferencing cases such as CML which, as we have seen, do grapple with structural remedies, are very much the exception.

Conclusion

Restorative justice can remove crime prevention from its marginal status in the criminal justice system, mainstreaming it into the enforcement process. It can deliver the motivation and widespread community participation crime prevention needs to work and to protect itself from capture by organized interests (including the crime prevention industry itself). Motivation and participation also improve follow-through on conference agreements in comparison with follow-through on court orders. Sometimes, but all too rarely, motivation and participation engendered by restorative process can deliver the political clout to crime prevention that it needs to tackle systemic problems systemically. Plural participation in conferences fosters a capacity to see a crime as many things at once, caused in context by a variety of different true explanations, each of which suggests preventive options. Deliberation in conferences has the potential to increase the effectiveness of crime prevention by a contextual wisdom that better matches the right preventive options (therapeutic, situational or structural) to the right case. That potential seems to be rarely realised at the moment.

Endnotes

¹ This is true in a longer review essay I have recently revised (Braithwaite, forthcoming) from which some sections of this paper have been taken. One problem, extensively discussed in that paper, is that when criminal justice programs are seen as directly setting out to change people, even by the most benign forms of mandated rehabilitation, they risk psychological reactance on the part of the offender (Brehm and Brehm, 1981). What follows is the virtue of directly pursuing restoration and only indirectly pursuing rehabilitation, deterrence or shame.

² La Prairie (1994, p.iii) in a profoundly sophisticated study of this problem from a restorative justice perspective in another context found that 46% of inner-city native people in Canada had experienced child abuse.

³ Even common thieves give up because they find managing a criminal identity takes its toll: "[Y]ou get tired. You get tired trying to be a tough guy all the time. People always expecting this and that " (Shover 1996, p.137).

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