



Situating restorative justice within criminal justice

JOANNA SHAPLAND, ANNE ATKINSON,
HELEN ATKINSON, EMILY COLLEDGE,
JAMES DIGNAN, MARIE HOWES,
JENNIFER JOHNSTONE, GWEN ROBINSON
AND ANGELA SORSBY¹

University of Sheffield, UK

Abstract

Drawing from the evaluation of three major restorative justice schemes in England and Wales, the article considers the theoretical implications for process and outcomes of situating restorative justice for adults within criminal justice, including the allocation of roles, the balance of power, the importance of procedural justice, and the tasks of restorative justice (such as apology, rehabilitation, reparation, healing, restoration, and reintegration and its relation with social capital). Given that restorative justice events are by definition unique, because of their participative nature, the ability to make generalizations across cultures is problematic, stemming from whether participants bring normative assumptions about justice to the event.

Key Words

criminal justice • procedural justice • restorative justice

Though restorative justice initiatives are one of the main new policy initiatives for dealing with offending in many western countries (Council of Europe, 1999; European Union, 2001; Home Office, 2003; van Ness, 2003), there has been relatively little experience of actually running schemes as a routine part of criminal justice, particularly in the context of

adult criminal justice.² Restorative justice has typically been introduced as a measure for young offenders, often not breaking through subsequently to use with adult offenders. As a result, we would argue, some key theoretical assumptions about the tasks of restorative justice and its expected outcomes have not been challenged. Our ongoing evaluation of the three restorative justice schemes funded by the Home Office in England and Wales, as part of the Crime Reduction Programme, has enabled us to include in the evaluation some 840 restorative justice events, including conferencing, direct mediation and indirect mediation, most of them involving adult offenders.³ We have ourselves observed some 285 conferences or direct mediations. All the restorative justice events have been cases which are directly involved with criminal justice, either at active decision points within criminal justice (such as just prior to sentence or release from prison), or for offenders undertaking criminal justice sentences (in prison or in the community). They have led us to question some of the tenets and assumptions put forward by both restorative justice and criminal justice theorists. Our discussion in this article concentrates upon what happens during the restorative justice meeting. It does not include any subsequent reaction or pronouncement by criminal justice actors (such as sentencers), nor whether what is agreed during the meeting is then actually achieved, nor the eventual relation between restorative justice outcome and criminal justice outcome.

It is now an accepted truism to say that restorative justice is an ‘umbrella concept’, sheltering beneath its spokes a variety of practices, including mediation, conferencing, sentencing circles and community panels, and with no universally acclaimed definition. This situation itself promotes a proliferation of potential tasks and roles for restorative justice, such that different schemes or commentators can stress the importance of different aspects, and continue to disagree about what is its ‘essence’. It means that, when considering, as we are, the interaction between restorative justice set in the context of adult criminal justice, it is necessary to look at the main claims and tasks—a slightly lengthy process!

To narrow things down slightly, however, both we, and the Home Office in the funding of the schemes themselves, have taken the commonly accepted definition of restorative justice by Marshall (1999): ‘Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.’ This is narrower than the idea of restorative practice or indirect reparation set out, for example, in the Home Office (2003) consultation document, because it restricts restorative justice events to those in which offender and victim are present and participate (possibly with others). Our definition encompasses, therefore, meetings between victim, offender and potentially others, with a facilitator or mediator—which we shall term direct mediation (if just victim and offender are involved) or conferencing (if offender and/or victim supporters are present

as well). It also includes indirect or shuttle mediation by a mediator between victim and offender—but only if information is passed in both directions by the mediator. It does not include indirect reparative punishments such as community service, where victim and offender have no contact with each other. It is important to realize that all restorative justice between individuals is predicated upon the ‘offender’ having acknowledged that the offence has occurred and having taken at least some responsibility for having committed the offence.⁴ The relevant stage in criminal justice is hence sentencing or the penal process, not the trial process/determination of guilt.

Stemming directly from Marshall’s definition, the fundamental nature of restorative justice is hence that the parties themselves consider and decide what should happen. This is the ‘democratic’ or, in Braithwaite’s (2002) terms, ‘republican’ element of restorative justice.⁵ We would argue, therefore, that one implication of this republicanism is that each restorative justice event is unique, because each offence and consequent set of participants is unique. In other words, our thesis is that restorative justice, by definition, is created anew each time a set of participants come together to consider that offence and what should happen as a result.⁶ So, restorative justice is not a ready-made package of roles, actions and outcomes that can be plucked off the shelf, but has to be, often quite painfully, made from its basic ingredients by the particular participants who have been brought together as a result of the offence. This aspect has not, in our view, been sufficiently emphasized and its implications explored in the literature—even though, for many restorative justice advocates, it is this very uniqueness which gives restorative justice its power and its creativity to change lives. It can attend to the needs of the individual participants.

The result of there being a different set of participants engaging in each restorative justice event could theoretically be an infinitely variable process and set of outcomes. Yet, when restorative justice occurs within criminal justice, as in our schemes, we shall be arguing strongly in this article that the extent of democratic unpredictability is constrained—not by the state or the national criminal law in any top-down way, but by participants’ normative ideas about justice which they bring to the restorative justice event and which shape both the process and the resulting outcomes. So, if operating in the context of criminal offending, we shall conclude that restorative justice, compared to sentencing or disposal decisions in criminal justice, can be more democratic or republican, more plural in the actors it allows to speak and act, more innovative in the precise forms its outcomes take—but we see it as bound to its society in many of the same ways that sentencing is. Similarly, we shall argue that restorative justice, in relation to offending, could be transformative in reining in and grounding criminal justice towards the way in which that society is thinking about justice, but we see it as highly unlikely to be transformative towards a different society based on different justice principles.

We need to justify and argue these statements, which challenge many of restorative justice theorists' hopes and principles. We shall start by examining the uneasy relationship between restorative justice and criminal justice, focusing particularly on the allocation of roles within restorative justice, procedural justice and power balances in the restorative justice event, all of which speak to the ability of participants to be able to produce the restorative justice event. We then look at the tasks restorative justice theorists have seen as being accomplished through the process and outcomes of such events, to see whether these can be similar in events constrained by being part of adult criminal justice. Finally, we can take these conclusions and return to our central theme, set out earlier: the ways in which participants' own ideas about justice can shape the form and nature of restorative justice within criminal justice.

Allocation of roles within restorative justice

A key difference between restorative justice situated within criminal justice and other forms of restorative justice (such as community restorative justice or peace making) is that the roles are already set by criminal justice. In the schemes we have been evaluating and in most schemes receiving referrals from criminal justice agencies, throughout the world, the roles of offender and victim are already assigned. Restorative justice normally only occurs after the offender has pleaded guilty or admitted responsibility for the offence. Indeed, should the offender indicate at any stage that they dispute responsibility, it is highly likely that the case will be referred back to the police or courts and proceed to trial. Restorative justice does not normally see itself as a forum for determining guilt.

The result is that many of the parameters of the dispute have already been fixed. Restorative justice situated within criminal justice is not Christie's (1977) ideal dispute resolution forum, where the main parties to the dispute (the offender and victim) can explore the way in which the particular act occurred in the presence of the community.⁷ It is not the same as a neighbour dispute, where there may be an element of blame on both sides, though even here restorative justice requires some acceptance of responsibility (Dignan et al., 1996). It is not even the same as a housing dispute, where, though there is clearly a power imbalance between housing authority and tenant, again both sides may be in error or in breach of their contract.

In criminal justice, the offender has already admitted a particular offence, committed on a particular occasion. The victim would like acceptance of responsibility by the offender for that offence, remorse and an apology for that particular behaviour which has already been defined as criminal. The offender's supporters have already been cast as the supporters of the offender, there to try to perform the difficult balancing act of condemning the offender's behaviour on that occasion (and possibly apolo-

gizing to the victim), while not rejecting the offender as a person. The victim's supporters are there to comfort the victim in their hurt and, sometimes, to be indirect victims themselves. The state/community, embodied by the facilitator and sometimes other criminal justice system personnel or lawyers, has already exercised its power to bring the offender to book—and its residual powers over the offender loom constantly in the background. Though this has only rarely been acknowledged by restorative justice theorists, the role and the identity of the different participants are, fundamentally, not up for negotiation.

Despite all this, discussion of the offence, what has led up to it and what has occurred since, is not nearly as constrained as in the traditional process between conviction and sentence, or in relation to decisions to divert from prosecution. The slice of time containing the offending behaviour is not rigidly chiselled by the laws of evidence.⁸ Participants can skip from that time to activities which seemed to them to lead up to that behaviour, on to possibilities in the future, and back to the immediate surroundings of the offence, without necessarily being accused of being irrelevant or unhelpful. The language is not the interrogation-style question-and-answer format of a trial or police station, nor the stage speech monologue of mitigation (Shapland, 1981). Emotion is allowed, indeed, in some restorative justice encouraged (Harris et al., 2004; see later). Hearsay, reputations, gossip relating to the offence, group dynamics and community politics are all potential subjects for discussion. But the assigned roles are pre-cast and cannot be rejected.

We have seen very few instances, out of the 285 or so we observed, when the restorative justice conference or direct mediation broke down and no outcome was reached. On the few occasions where it did, or where its existence was threatened, one of the reasons may have been the rejection or apparent rejection by one party of their pre-cast role. Typically, from our observations of what was being said, this was where the offender attempted to deny responsibility for the offence, either entirely or by saying that a co-offender had played the major part. Where the offender denied it entirely, unless the offender was persuaded to backtrack rapidly by agreeing that they had done the offence (even though they might not, for example, have stolen all the property involved), the meeting could end without resolution. If the offender tried to blame others, we witnessed on occasions long discussions where other participants attempted to gain consensus as to who had done what in relation to the offence. The victim seemed also to end up dissatisfied with the extent to which the offender was prepared to admit the offence, spilling over into scepticism of any apology. The difficulty of assigning blame to co-offenders was one of the reasons why one of our schemes stopped taking cases with co-offenders at some sites.

The second reason why, from our observations, meetings might occasionally go awry was if one of the other key pre-set expectations was broken. All the participants in these restorative justice schemes expected to be able to tell their story and to have the time to do so, without being interrupted

by others. Facilitators and mediators were trained to deal with participants who were essentially trying to take over the conference, by talking too much, by stopping others talking or by constant interruptions. They would reiterate the ground rules—everyone should have their say, one by one. Everyone should respect the right of others to do this. If necessary, they might stop the meeting briefly, in order to emphasize this and reset the meeting to where it should be. The idea of everyone having the chance to have their say was very important in all three schemes, as it has been in other restorative justice schemes.⁹

Restorative justice theorists have praised the informality of restorative procedures, comparing them favourably to the enforced formality of criminal justice (Johnstone, 2002; Strang, 2002). Complete informality and participant-centred direction of the process may possibly characterize other restorative justice settings. However, restorative justice situated within criminal justice, because it is centred on the offence and its consequences, cannot be characterized as completely informal. There is always a topic guide, often an order in which the topics will be introduced and certainly expectations about the ability of everyone present to be able to have their say. The major difference between sentencing and restorative justice, however, is that the whole sentencing procedure is controlled by the judge.¹⁰ It is an arbitration process. Restorative justice, in contrast, is intended to be largely in the hands of the lay parties. In our schemes, in fact, unlike some police-led previous schemes using restorative justice as diversion (see Hoyle et al., 2002), facilitators and mediators did not generally seek to control discussion or outcomes. They had a set order in which they wished to approach the major topics, but participants were free to introduce factors or issues they wished to discuss.¹¹

Ideas of fairness and of everyone having their say, which we may term aspects of procedural justice (Daly, 2003) are very important in restorative justice theory, where creating a proper process is as important or even more important than creating particular outcomes (Braithwaite, 2003). Espousing informality, another restorative justice ‘good’ (Strang, 2002), however, can be in tension with creating fairness. In a very different field, Dingwall and Greatbatch (1994) have argued that mediation in divorce cases favours the more dominant partner and can exacerbate power imbalances, particularly where there is abuse such as domestic violence. Criminal justice is one of the key areas in which power imbalances proliferate and so informality may be problematic.

The power imbalances in relation to criminal offences and criminal justice are complex and multiple. In the context of the original offence, the offender has clearly exerted power over the victim. The concept of secondary victimization itself signifies the way in which the criminal justice system may continue to render the victim powerless, as Shapland et al. (1985) and Strang (2002) have argued. Holstein and Miller (1990) and Kenney (2004), similarly, see the victim identity placed upon victims by some medical and support personnel as making them feel helpless and unable to take control

of their future. In addition, once within criminal justice, the power balance in relation to the offender also changes. The panoply of human rights is based on the premise that the offender needs protection from the potential overwhelming power of the state. Police have been described as seeing many offenders as a lower class of being—‘scum’ or ‘police property’ (Reiner, 1997). Courts tend to regard all lay witnesses, victims and offender supporters as ‘outsiders’, potentially emotional, worrying creatures, to be kept at arm’s length and in their place (Rock, 1993).

By the time that we come to consider restorative justice situated within criminal justice, we can see that the position in terms of power balances, at least in England and Wales, is extremely complex. The facilitator is acting as a public agent and may be a state official,¹² but is supposed to have abjured decision-making power. Yet, if the mediation or conference outcome agreement is to be reported back to a decision point in criminal justice (sentence, terms of licence, terms of final warning), as many of the cases in these schemes were, then the power of the state still towers over the offender. The victim–offender relationship hence has a typically complicated power balance. Harm was initially caused to the victim, and those effects may be ongoing and may have been exacerbated by criminal justice, but criminal justice has also pre-set the offender in a more vulnerable role. In these circumstances, despite its advocacy by some restorative justice advocates and theorists, we see complete informality as a very dangerous goal for restorative justice. Complete informality is likely either to cause harm to one party, or to result in the facilitator having to make spot judgements to pull out of cases or direct proceedings—which would immediately disempower the participants.

Instead, we see the principles of fairness, respect and letting everyone have their say as providing rules to create a more equal and safe space for the discussion. Imposing fairness—in terms of giving everyone an equal time, or letting everyone continue until they have no more to say—is one way of attempting to balance, in that space and at that time, what has been a very unbalanced set of relationships prior to that time. This, however, is beginning to sound very like a set of principles that has also been advocated for criminal justice—the idea of procedural justice linked primarily with Tyler’s work. Lind and Tyler (1988), following the work of Thibaut and Walker (1975), showed that the general public judged an adequate and fair process more important than a particular outcome in relation to criminal justice. If we consider victims’ position in relation to this, the British Crime Survey and in-depth studies of crime victims have shown that information flow between victim and criminal justice system is so poor that a substantial minority of victims are highly dissatisfied with the criminal justice system (Shapland et al., 1985; Mirrlees-Black, 2001; Strang, 2002). For victims, the provision of information in relation to the progress of the case in the criminal justice system may be so poor that, we would argue, not only do victims feel they have not been treated fairly, but they may not believe that criminal justice professionals and courts have sufficient

information to deal with their case and produce any outcome which takes into account what has happened to them. Criminal justice outcomes may be degraded by the lack of procedural justice.

Tyler and Huo (2002) show that people are more willing to consent to the directives of legal authorities (such as the police and the civil courts) when police and court procedures are more in accord with people's sense of a fair process for handling a dispute and when people believe that the motives of the authorities are trustworthy. What we may be finding is that restorative justice situated in criminal justice, is advocating, attempting to carry out and, in our evaluation, mostly succeeding in operationalizing, procedural principles which participants see as highly desirable for criminal justice itself. Daly (2003), who sees procedural justice and reparation as key principles in restorative justice, has documented the importance of procedural justice in the conferences she and her team have observed in South Australia. So, is current criminal justice merely a failing example of a much more basic set of principles which people see as justice and which restorative justice may be able to deliver? Certainly, the ability to achieve procedural justice is a prerequisite for restorative justice events, to facilitate the pooling and discussion of views among the participants.

The tasks of restorative justice

But is restorative justice merely a more successful and better implemented form of procedural justice—so essentially just a processual tool, but otherwise identical to the concerns of criminal justice? Or does it add further dimensions? Restorative justice advocates have also made major claims for its outcomes in both instrumental and expressive terms, compared to those of criminal justice. Do these apply to restorative justice in the context of adult criminal justice? Or does criminal justice so constrain restorative justice by its forms of sentencing etc. that outcomes are necessarily similar?

In order to start to answer these questions, we need to look systematically and critically at the many different (and potentially sometimes conflicting) key elements which have been said to be the goals of restorative justice—communication, apology, talking about the future, rehabilitation, reparation, healing, restoration, reintegration and transformation—and at the extent to which they were shown and could have been expected to be shown in the context of our schemes (and by extension, other schemes working with adult offenders within criminal justice).

The tasks during restorative justice: communication, apology and looking towards the future

We start with the expressive functions advocated for restorative justice. Does and can communication happen? Can that communication include communication of emotion without losing procedural justice? The first task

in restorative justice events is communication about the past and the present. Offenders are asked to say what led up to the offence and to answer victims' questions about the offence (was that person targeted, why was that stuff stolen). Victims, victim supporters and offender supporters describe the effects the offence and its consequences have had on them. Participants in restorative justice expect there to be communication. They expect procedural fairness, including people listening respectfully to each other's point of view—even if they don't agree with it.¹³

One key result from our evaluations was that we saw no assault during any direct mediation or conference, despite the seriousness of the offences, which included many tried at the Crown Court, and the violent nature of many offences.¹⁴ Occasionally there were threats, but threats were rare. The atmosphere in conferences and direct mediations was generally calm, sometimes rather tense, but controlled. Sometimes participants were agitated and upset, sometimes quite blasé. There was certainly emotion—criminal offences, particularly violence offences, are serious disputes. Their effects and consequences, for victims, offenders and supporters, can be major and the telling of these effects will be charged with emotion. Indeed, facilitators in our schemes, particularly in JRC, valued emotion for its potential for change.

Harris et al. (2004), with experience of very similar conferences in Australia through RISE, have argued that emotion is integral to restorative justice interventions, because emotions such as empathy, remorse and guilt lead to feelings of shame (in the offender) and it is the resolution of these emotions and feelings that creates the opportunity to acknowledge, apologize to and produce reparation for the victim. Their analysis of the 'ideal-typical' conference is largely offender-focused, but we would argue that emotion is natural for victims communicating the effects of the offence on them and their families as well. Indeed, victims' main criticisms of court processes are courts' disparaging and corralling of normal, emotion-laden speech, that: 'I couldn't tell it in my own way, as it was' (Shapland et al., 1985). Elements that could cause conflict during conferences were often linked to misinterpretation of emotion and its cultural cues, for example when facial expressions were seen as smirking, rather than nervousness.

A key element and second task of this communication is intended to be apology. Apologies are extremely complex forms of communication (Goffman, 1972; Shapland, 1981; Tavuchis, 1991; Bottoms, 2003):

In its fullest form, the apology has several elements: expression of embarrassment and chagrin; clarification that one knows what conduct had been expected and sympathizes with the application of negative sanction; verbal rejection, repudiation, and disavowal of the wrong way of behaving along with vilification of the self that so behaved; espousal of the right way and an avowal henceforth to pursue that course; performance of penance and the volunteering of restitution.

(Goffman, 1972: 143–4)¹⁵

In criminal justice, as Shapland (1981) has argued, the account containing the apology has to examine both the offence as regards the actual victim, and the offence as a crime breaching the law and so offending against the wider society. In restorative justice situated within criminal justice as well, therefore, there are at least two audiences for these apologies, so apologies are an even more complex task, needing to reach out in two directions—to the victim and to the court/society.¹⁶ As Strang (2002) has indicated, an apology in the criminal justice setting of mitigation at court only fulfils one of these tasks. The victim is not normally present at court. The apology is being presented by the defendant to the judge, representing society. It may even be characterized as contrition, remorse or an acceptance of guilt, rather than an apology to the victim. That is certainly how it has been seen in mitigation of sentence (Ashworth, 1995).

The previous literature on restorative justice has primarily considered apologies as they are offered towards the victim. Apologies are one of the most common features of restorative justice communication (Braithwaite, 1999), as they were in our own evaluation. As in mitigation, offenders may also not feel that a simple verbal apology is enough. Just saying 'I'm sorry', even acknowledging the specific norm that has been broken (Taft, 2000), can be too small for a serious offence. Facilitators are also aware of this, sometimes suggesting offenders apologize to all those in the group who have been affected by the offence, not just the direct victim. Offenders clearly feel they should repeat the apology or in some way emphasize their verbal offering, yet are aware that a repetitious apology is not a normal social act when one has caused hurt (Shapland, 1981). Hence they may jump eagerly at the opportunity to write a letter of apology in addition or emphasize their apology by turning to what they are doing to stop offending, or, more rarely, offering reparation.

In normal social life, victims will immediately indicate, when an apology is offered for some slight hurt (accidentally knocking against someone, dropping something), that they accept it. As Bottoms (2003) argues, an apology normally needs to be dyadic. In our restorative justice schemes, immediate acknowledgement by victims that they accepted the apology was rarer. Sometimes this might have been because victims were sceptical that offenders really meant their apologies. Was the offender really remorseful—or was this just part of acting out a role, as in criminal justice (where a guilty plea is normally taken by the court as evidence of remorse and so attracts the 'guilty plea discount', even though it may be motivated by quite different considerations)? We think, however, that the lack of immediate verbal acceptance was, in many of our conferences, deriving from the same effect that made offenders feel a simple verbal apology was insufficient. Tavuchis (1991) has postulated the same process. These were serious offences, so, for an apology to be accepted required further emphasis of the offender's remorse through action: 'Sorry is a word: I've been really affected' (victim). Nor could the victim accept on behalf of the others in the meeting, nor of society. So victims tended to feel it was better to reinforce

the offender's willingness to take action to stop offending, than to indicate immediately that the past was resolved. In other words, we are suggesting that apology can be achieved in restorative justice within criminal justice, but that, for adult offenders and serious offences, apology has to become a more complex and more evidenced entity—addressed to several audiences and backed up with the symbolic reparation of acting to change one's life.

The third task during the process arose as the conference turned from describing what the effects of the offence had been towards what should happen in the future. There was often a slight pause at this point. Why was there this pause? One possibility is that people had become so immersed in the meeting itself and the effects of the offence that asking them to move on and think about the future took them a time to accomplish. Another possibility might have been that the offender (and their supporters) might not have felt able to meet or respond to the magnitude of the victim's needs and losses—but this was not in fact the case, because victims largely talked not of their own need for reparation, but of what the offender might need to reduce their offending. In addition, the pause was not confined to offenders. Victims as well needed confirmation that they should be talking of the future.

We think that the key reason for the pause lies in the situation of these restorative justice events within criminal justice. Where there was less guiding by facilitators to a future-oriented stage of the meeting, to think about what would happen next (as in CONNECT and REMEDI meetings), then participants were less likely to get to this future-oriented stage and produce definite suggestions for the future.¹⁷ If they were to talk about the future, would this not be interfering in judges' or prisons' or probation's domain? Participants seemed to need to be given a 'licence' to talk about the future.

This view of restorative justice meetings would make them potentially empowering, compared to criminal justice. We think western criminal justice has, through the state adoption of powers of trial and punishment, removed not only responsibility for the future from participants, but even the need and the habit of thinking about the future consequences of offending. People, as members of the public reading about criminal justice in the media, are used to commenting on others' decisions on the future (sentences or prison programmes). They are not used to trying to reach such decisions themselves. The pause was, we think, because the facilitators and the structure of the conference were encouraging participants to break a taboo—to talk about their future and what might be best. Yet the ability to think constructively about the future and discuss it together had not been lost (not surprising, given that 'talking it through' is a normal characteristic of dispute resolution in all other areas of people's lives, such as family and school disagreements). After the initial pause, participants were quite happy to think about what might be done about offending and the instant offence. Offender supporters were also often prepared to take

responsibility for relevant areas of the eventual agreement, even though, in JRC conferences, this was a major step—it was signing a formal document which was likely to be given to criminal justice personnel dealing with the offender.

Sometimes victims also wanted to keep in touch, to find out how the offender was doing. Interestingly, facilitators had rather mixed reactions to this prospect of future contact. Some were pleased or relatively encouraging, particularly if victim and offender were likely to be seeing each other in any event, because they came from the same geographical area, or knew each other before the offence. Others, particularly police officer facilitators, were concerned and often themselves took responsibility then to find out about the future progress of the offender and tell the victim. This could be construed as taking back the dispute, possibly to protect the victim (though there may well have been other reasons not obvious to observers). The trend in criminal justice services for victims is predominately to separate and protect victims, by using special support services, separate waiting rooms at court and witness protection measures (JUSTICE, 1998; Crawford and Goodey, 2000). It is potentially in tension with the restorative justice method of encouraging further contact between victim and offender in safe conditions after the offence. Here, then, the more democratic potential of restorative justice is opposed to the centralizing tendency of criminal justice, where power and responsibility are kept by officials of the nation state.

Outcomes and looking towards the future: rehabilitation, reparation, healing and restoration

A key element of restorative justice and a potential difference from some sentencing justifications is that it is not only past-, but also future-oriented. In Marshall's (1999) definition, the parties 'collectively resolve how to deal with the aftermath of the offence and its implications for the future'. Indeed, a major motivation for victims in agreeing to restorative justice was helping to stop the offender reoffending.¹⁸ Participants in direct mediation or conferences, whether they were victims, victim supporters, offenders or offender supporters, were very motivated to talk about potential rehabilitative measures for the offender.

However, we need to bear in mind that, if the restorative justice meeting is taking place while the offender is in prison or undertaking a community sentence, then rehabilitational measures may already be ongoing. Restorative justice situated within criminal justice often takes place in the middle of rehabilitation that has started under a criminal justice umbrella. Equally, the initial preparatory meetings for the conference or direct mediation may have sparked rehabilitational activity. Similarly, where victim and offender already know each other, the restorative justice meeting is just part of a longer process of interaction. In all these instances, the conference or mediation meeting may be an important point in that

process, but it cannot be seen necessarily as the start of something new. There has been a danger in both restorative justice evaluations and theories that all that occurs after a conference or meeting can be traced back to that meeting.

All participants were in general keen to discuss measures to address the offender's problems. One of their difficulties, however, was a knowledge gap. They had heard about the offender's drug or alcohol abuse problems, for example, in learning about what had led to the offence. But they did not necessarily know what programmes might exist or be available. Often, facilitators or other professionals attending, or the offender himself or herself, would need to step in and describe potential programmes. This still created difficulties, because it could not be known whether the offender would be accepted or would gain one of the very rare places available. Olson and Dzur (2004) propose a 'democratic professionalism' to facilitate informal justice, both in terms of professionals as resource persons (as Christie (1977) also advocated) but also as trustees of public interests. They would see rehabilitational professionals as necessary for restorative justice as 'task sharers' with participants, to research relevant options and constructively to facilitate participants' discussion of them. Their experience is of restorative practice with community panels working with offenders, aided by professionals, rather than of direct restorative justice between victim and offender. None the less, a similar concept was clearly needed in our schemes to provide some knowledge of potential offender options.

The difficulty of participants in choosing relevant options was, at the time we undertook the evaluation, probably exacerbated by the move towards professionalizing and franchising rehabilitational opportunities for offenders in the prison and probation services in England and Wales.¹⁹ A diverse, and largely unevaluated, set of different tasks and groups for offenders in different establishments was being replaced by a consistent and limited range of programmes which were only to be provided after proper evaluation and assessment of offenders as suitable for that programme (Rex et al., 2003). The overall move to a limited set of programmes could have caused some difficulties for restorative justice. The essence of restorative justice is for the participants to devise appropriate measures that are relevant to the individual case. Again, we see the tension between a more democratic diversity and centralized order. Picking from programmes set up for general types of offender may not be appropriate. It is a classic problem of professionally generated, generalist measures evaluated by group comparison versus individually chosen, targeted measures, dependent upon giving agency to offenders, which can only be evaluated as individual case studies. Such a move may also compound the conceptual distance between the perspective of participants in restorative justice meetings and the professionals choosing and operating programmes.

Theoretically, one of the main outcomes for restorative justice is supposed to be meeting the needs of victims. One of the major needs is for the offender to answer questions the victim may have about the offence, which

we have discussed above in relation to the key processual issues of communication. Another element often advocated by restorative justice theorists is that the offender should provide reparation to the victim. But is this relevant or wished for in adult criminal justice cases? In fact, financial compensation per se was a very rare element in our schemes (Shapland et al., 2004b).²⁰ Direct work for victims was also rare, though there were some examples (such as painting a door, or litter picking at a school). This may be because there were relatively few corporate victims, who may find organizing such direct reparation easier (Junger-Tas, 1988).

Material reparation, however, is only one form of reparation. Symbolic reparation was far more prevalent. We have already discussed apologies, which are forms of symbolic reparation, acknowledging the harm done and reinstating the victim as someone to whom respect and reparation is due. In one sense, indeed, the whole restorative justice process, if it goes as intended, could be seen as symbolic reparation, in that the offender has acknowledged responsibility for the offence, has agreed to come to a meeting, has stated they have done the offence and has acknowledged that at least some harm has been done to the victim.

A difficult issue is whether rehabilitation, in the sense of preventing re-victimization, can also be seen intrinsically as symbolic reparation. In the traditional criminal justice sentencing formulation of rehabilitation, which is offender-centric, this is not considered. However, thinking in terms of restorative justice, we could see the offender offering to change his or her ways as nearly equivalent to the offender offering to repair damaged goods (themselves)—particularly since victims may have been seeing rehabilitation as a confirmation of apologies? Perhaps the better distinction for restorative justice is not that between ‘reparation’ and ‘rehabilitation’, but between a direct gift to/work for the victim and the offender trying to reduce his or her potential future offending. In that sense, our schemes showed few direct gifts, except those embodied in apologies, but very considerable expression of potential reparative change. The offender was taking responsibility and agency, to offer something which would be for the benefit of the victim or to make the victim feel better—in other words, to change themselves.

Another victim-oriented aspect of restorative justice is said to be the potential for healing (Zehr, 1990; Fattah, 1997; Wright, 2002). The mechanisms of ‘healing’ the breach between the victim and offender are very rarely made explicit in the literature, except for early work on ‘VORPs’ (victim-offender mediation) in the Mennonite tradition (Zehr, 1990). Sometimes previous theoretical discussion has referred directly to the relation between victim and offender and here the potential for healing must reflect whether there was any pre-existing relationship (such as between relatives or neighbours, or within the same community), which could have been affected by the offence. In the conferences we observed, it was surprising to us how often, in the context of offending within a western, urban environment, such a relationship did actually exist, though

perhaps less surprising given the finding from the environmental criminology literature that most offending is very local (Shapland and Vagg, 1988; Wiles and Costello, 2000).

The idea of ‘healing’ itself is a very difficult concept to pin down from the writings cited above. In some senses, and certainly where there is no prior relationship between victim and offender, it is very close to ideas of symbolic reparation (discussed earlier) and reintegrative shaming: it allows the harm caused by the offence to be acknowledged and addressed. Another aspect may be to promote a feeling of closure, so that both parties can move on, and this was certainly a motive for the offender in several conferences. Part of this for the victim may be to achieve a more realistic perception of the offender: to calm fearful stereotypes of being targeted or of the offender’s nature or personality.

However, we would take issue with the idea that healing, in the sense of reducing a sense of conflict, is invariably positive, to be expected or correct. As Daly (2004) has also argued, the idea of ‘healing’ could be seen as patronizing to victims, if victims are made to feel that they should be ‘healed’ or are given an expectation that they will be healed (i.e. their anger quelled) by the meeting or restorative justice process, such that they should no longer feel hurt, or that they should forgive the offender. Though sentencing itself may see forgiveness by the victim as mitigatory (Edwards, 2001; see also *Roche* [1999] 2 CrAppR(S) 105; *Perks* [2000] Crim LR 606), neither criminal justice nor restorative justice can, we feel, ‘demand’ that a particular victim should forgive the offender at a particular point.²¹ Doing so both demeans the harm caused to the victim and goes against the democratic nature of restorative justice, by compelling the victim to serve others’ interests. Equally, there is a process of recovery from victimization, which depends upon the individual victim and their situation, as well as upon the nature and extent of the offence. A restorative justice process situated within criminal justice can rarely be sensitive to the stage the victim has reached. It is highly likely that, in general, victims of serious offences, particularly in relation to physical or sexual violence, may need to take longer to come to a point where their anger or fear can be diminished by restorative justice. It may be that for serious offences, in fact, restorative justice may need to be offered to the parties at several points subsequent to the offence.

Reintegration and social capital

Braithwaite (1989) and his colleagues have emphasized the potentially reintegrative nature of restorative justice, compared to the doubly punitive and stigmatizing nature of conventional criminal justice, which is seen as responding to the original harm caused by the offence to the victim, by causing pain (punishment) to the offender. Reintegration means moving from shaming the offender by emphasizing the harm caused by the offence (Harris et al., 2004)—without demeaning the offender as a person—

towards reintegrating the offender back into the community.²² McCold (1996) makes the important point that the relevant community for a particular restorative justice event is the one affected by the offence—it cannot be predetermined.

Johnstone (2002) has queried the ability of restorative justice to produce reintegration into a community, given the anomic nature of late modern urban communities, where geographical communities have thin, weak social bonds and are rarely interdependent. Even interest communities and attachment communities²³ (Willmott, 1987), by their nature, can be changed or left by the offender. Equally, offenders can have few ties or links with anyone, having lost contact with family and friends (Johnstone, 2002). Braithwaite (1993) has responded by suggesting that all that is necessary is to activate the micro-community surrounding each offender, which means the few people with whom the offender has some contact or who care for him or her. Restorative justice advocates have seen part of the task of restorative justice as being to identify or if necessary build such micro-communities.²⁴ So Johnstone (2002) has advocated the adoption of a traditional criminal justice rehabilitation or treatment model to create and nurture bonds between the community and those excluded from it. Blackwell and Cunningham (2004) have advocated a very similar idea in their project in Georgia, USA, where defence legal representation and social work have been merged, with the idea of the restorative contract with offenders being to support them rebuilding their lives and strengthening their micro-communities.

We think this debate mirrors the discussions around the nature of communities in late modern society (Bottoms and Wiles, 1996) and the literature on regeneration of run-down urban communities. Wilson (1996) has shown how, in very poor US neighbourhoods, where, economically, wages have been replaced by a drug economy, the poverty of social bonds and the extent of social disorganization fragment social ties and incapacitate attempts to regenerate the area. Sampson et al. (1997, 2002) have shown how higher crime areas in the USA are afflicted by lower collective efficacy and social capital. This is similar to Christie's (1977) ideas of 'killed communities'. We can see anomic conditions as not just a feature of late modernity, but as amplified by areas of increasing crime and victimization, with the two being strongly related.

One of our schemes, JRC, operating mainly in large urban centres, very much focused on Braithwaite's (2000) idea of micro-communities around the offender and victim as individuals. They sought to find family members and others still in contact with the offender or with whom the offender would like to be in contact. Where the offender was in prison, relatives may not have visited for months or the offender might not want his or her family involved with prisons. Our evaluation found the resulting groups of offender supporters often to be small in number and not always in constant contact. The groups of offender and victim supporters were largely star-shaped patterns of relationships, where each supporter had an individual

relationship with the offender, but might not know each other well or closely. Though some relationships between offender and supporter were 'thick' (many-stranded, laden with emotional content, some mutual interdependency), relationships between offender supporters were often 'thin'. Offender and victim were often connected merely through the offence.²⁵

In this kind of situation, how can reintegration take place or even be discussed? Certainly we only rarely saw reintegration into a 'community', either in the sense of a close-knit group of family and supporters, or in the sense of reacceptance into a geographic or interest community.²⁶ This was not because restorative justice had 'failed' or was not reintegrative, but simply because a community in this sense did not exist. However, there were several instances where the bonds between the offender and offender supporters appeared strengthened and thickened, both along the individual spokes of the star and even between different offender supporters.²⁷ A similar effect appeared for some victims.

The same scheme envisaged successful conferences as producing formal outcome agreements, which would be reported to criminal justice agencies (another aspect of situating restorative justice within criminal justice). Each element of the outcome agreement required finding someone to be responsible for monitoring that element (as well as the facilitators taking on a formal monitoring role). Offender supporters were normally prepared to take that responsibility, implying a reintegrative and often more active, though temporally limited, interaction with the offender. On the rare occasions when they demurred from this task, it was in fact when roles were blurred—when a family member was also being portrayed as a victim, even if not the direct victim ('you are upsetting your mum/partner'). Here it was the thickness of the pre-existing bond which could stand in the way of taking on the monitoring task: close informal social control unable to take on the burdens of the formal, criminal justice mandate.

So, though we observed various signs of welcoming the offender back into society, through the participants at conferences shaking hands with the offender or wishing them well, there was rarely a sense of welcoming the offender back into a specific community. Instead, the more specific sense of reintegration was that of strengthening or thickening the individual bonds between offender and supporters, or victim and supporters, or, occasionally, creating 'bridging' social capital through new bonds between victim and offender. Bazemore and O'Brien (2002) and Bottoms (2003) have suggested that part of the potential for restorative justice is that it may create social capital for offenders. There is a long conceptual and practical distance between thickening social bonds in a micro-community of star-shaped relationships around offenders, the potential for increasing social capital for marginalized individuals, and creating greater social capital in a geographically small area. It is fascinating, however, to see how areal and individual explanations are coalescing around social networks, as ideas of communities become more complex and richer in our late modern world.

Restorative justice is not a zero sum game, but is it transformative?

Our discussion of the processes and outcomes of restorative justice, as situated within criminal justice for adult offenders, has shown that the key element is *interaction between the participants* in a safe environment, focusing on acknowledgement of the past hurt and the emotions it has generated, disabusing stereotypes of each other and providing a future orientation which is mutually discussed and agreed. In creating this future orientation, often expressed in an outcome agreement, people's original ideas are often modified or amplified through the discussion, as they respond to the concrete situation of the offender and victim. In relation to victims, the interaction is about recognizing their right not to have suffered, but also their right to the identity of 'victim', to permit them to ask for reparation (though not necessarily to receive it) and to problem solve in relation to future offending. In relation to offenders, it is about recognizing their right to have a voice and responsibility, to have agency, to change, to try to make good and to reinforce their bonds with supporters.

Yet, in discussing all these matters, we have in fact been making generalizations about the nature and tasks of restorative justice, as it has occurred, situated within criminal justice. These generalizations are not just statistical averages, nor armchair theorizing or wishful thinking. The fact that we can make empirical generalizations itself needs analysis, given that we have seen that restorative justice is a unique creation in terms of its content in each case, because of its democratic nature. It is highly personalized. Its form and outcomes are in the hands of each set of participants. Generalization, as we saw at the beginning of the article, is itself problematic.

Why can we generalize? One easy answer would be if there was one strict script so that this restorative justice, like criminal justice, was producing similarity through procedural rigidity. Another possibility would be if the offences were being committed in the same way involving relatively similar people, so that they came up with the same tasks and same outcomes. Yet neither of these was correct. The hard answer seems to be that participants, because they are being encouraged to engage in the discussion that is restorative justice, are bringing to it their similar, normative assumptions about justice, offenders and victims, which are propelling them culturally to similar activities and expressions. In other words, situating restorative justice within criminal justice has brought in justice values. The justice values on which these participants in these schemes seemed to concentrate were both participative/processual (procedural justice, mitigating power imbalances, communicating effects, possibilities and emotions) and outcomes (apologies, rehabilitation, symbolic reparation, increasing social capital—but not so much financial reparation, direct reparation, healing, community reintegration).

Clearly, these normative assumptions are cultural, so the tasks of restorative justice we have described are culturally specific to England and Wales in the early years of the second millennium. We can make no claims about restorative justice elsewhere. As local, cultural values, they are also subject to all the criticisms correctly made of local justice (Baumgartner, 1988; Johnstone, 2002), which can be intolerant of minorities and highly punitive. However, it is equally possible for greater punitiveness to lie on the state side of the state/lay divide, if state criminal justice is being propelled by political rhetoric towards an exclusionary, punitive penology.²⁸

These normative values were not straight criminal justice values—they did not mimic slavishly the values of the different criminal justice facilitators involved (police, prison officers, probation, community mediators etc.), nor the legal values relating to specific mitigation and aggravation of the particular offence.²⁹ They did not parallel the strict retributive logic which sees the necessity for exactly measured punishment to match the state view of the hurt suffered by the victim, though there was clearly a limiting retribution of proportionality involved. Above all, they did not see justice as a zero sum game, whereby what is given to one person in terms of punishment or measured as the likelihood of risk is what has been suffered or may be suffered by the other.³⁰ They were normative justice values which emphasized procedural justice, symbolic reparation and rehabilitation of the offender.

Some previous restorative justice theorists have hoped that restorative justice would ‘transform’ criminal justice (Zehr, 1990; Braithwaite, 2003). It has never been quite clear how this would happen, particularly in relation to cases that are still seen as offences and so subject to criminal justice. Situating restorative justice within criminal justice removes the possibility of the participants being diverted or ‘out-posted’ to separate restorative systems that are informed by a different philosophy, such as the abolitionist preferences of Christie (1977). However, we would argue that the fundamental democratic nature of restorative justice also militates against a different, ideologically driven, ‘pure’ restorative justice. If restorative justice is to be created anew each time by the participants, then it is the participants’ normative ideas of justice, brought to bear on the problem of the offending, which will inform its procedures and outcomes. If the problem is a criminal offence, then the relevant norms will be participants’ normative ideas of criminal justice.

Though there cannot be a different, pure form of restorative justice, there may still, however, be the opportunity to influence and even slightly moderately transform criminal justice. Sentencing is constrained by parliament’s and judicial imagination as to what constitutes the generality of a particular offence class, with very limited opportunities to build opportunities to combat reoffending or restore victims in the instant case. Restorative justice is directed to the offending situation at hand and to what

is relevant to that. Restorative justice situated in criminal justice is necessarily operating in the shadow of criminal justice—but that shadow may be reflected back in far more complex and more resonant ways.

Notes

1. All the authors are members of the team based at the University of Sheffield evaluating the restorative justice schemes funded by the Home Office under the Crime Reduction Programme. The views expressed in this article are those of the authors, not necessarily those of the Home Office, nor do they reflect government policy. We are very grateful to Tony Bottoms and Kathleen Daly, among others, for providing comments on draft versions of this article.
2. There is considerable experience with restorative justice for youth offenders within criminal justice, for example in New Zealand and Australia, where family conferencing is statutory. In England and Wales, there is the possibility of using restorative sentencing through reparation orders, provisions in action plan orders and referral orders.
3. The three restorative justice schemes were CONNECT, Justice Research Consortium (JRC) and REMEDI. A description of the schemes, the evaluation methods and the struggles the schemes faced in their first year of operation is given in Shapland et al. (2004a). The evaluation continues until the end of 2006. Most of the conferences we observed were JRC conferences and thus much of our empirical data referred to in this article comes from JRC work, but most findings were mirrored in direct mediations run by CONNECT and REMEDI. Further quantitative findings in relation to the conferences and direct mediations can be found in Shapland et al. (2006). Data on the observed conferences and direct mediations included details of who was present and who spoke, quantitative ratings by a researcher and a free text qualitative account, which was subsequently analysed using MAXqda.
4. Restorative justice processes between states or in transition societies do not necessarily have the same presumptions of 'offence' or 'offender'. Processes involving individuals outside criminal justice (for example, in schools and between landlords and tenants) do, however, seem to require acceptance that there has been hurt caused or a breach of an agreement and that responsibility is taken for that (see, for example, Dignan et al., 1996).
5. The term 'democratic' is most often used as indicating the opportunity for all members of the nation state to participate (as in a general election). In one sense, therefore, Braithwaite is restricting the population who can participate to the more limited set of people who are affected by the offence itself, without allowing the formal active participation of the whole populace of the nation state who might see themselves embodied in such phrases as 'the public interest' or 'l'ordre publique'. Criminal justice at sentence, however, has moved decisively away from the active participation

of the whole populace (as in a lynch mob) towards its symbolic embodiment in the person of the judge alone. In comparison, restorative justice is far more ‘democratic’, in allowing active participation by all who were involved/are actively affected.

6. It can be argued that decision making on sentencing, for example, is also ‘unique’ because each offence is different. However, in sentencing, it is intended that similarly trained decision makers should apply constant principles in a consistent way to the varying facts of different cases. In restorative justice, decision makers (the participants) necessarily vary from case to case.
7. Much ‘community mediation’ does not deal with occurrences called offences and discourages apportioning blame. Equally, roles are not only not pre-defined, but allocation of ‘offender’ roles during the conference is avoided. Even here, only small numbers of people may be involved (see Dignan et al., 1996). We are not, however, advocating a rigid distinction between criminal justice-based restorative justice and community mediation. There are situations, including some in our own evaluation, where victim and offender roles were less clear (for example, in some public order situations and violent offences) and where a process more neutral in its allocation of blame than ‘normal’ restorative justice situated within criminal justice may be more helpful.
8. For instance, in these schemes, unlike, for example, in South Australia (Daly, 2003), participants could talk about other offending.
9. More complex forms of restorative justice, such as sentencing circles (Stuart, 1996; Lilles, 2001), have been more inclusive in terms of who should be involved in having their say. Western restorative justice has tended to focus on the victim–offender dyad, but all forms have sought to produce time and space in which all participants who are included are allowed to say what they wish.
10. At least in England and Wales. Other legal actors (prosecutor, defence solicitor, probation officer) may play a role during the process between conviction and sentence, but their input is always controlled by the judge (Shapland, 1981).
11. There is a considerable debate within restorative justice as to whether facilitators should use a script, whereby they say the same words in each meeting. In relation to our schemes, CONNECT and REMEDI did not use any particular script, but mediators were primed to introduce particular topics in certain orders (e.g. to ask the victim what the effects of the offence had been and whether they had any questions for the offender about the offence, to ask the offender whether there was anything they wished to offer the victim). Justice Research Consortium facilitators were trained to follow the Transformative Justice Australia proforma, whereby certain words were normally used to introduce each stage of the conference, after which facilitators would use non-verbal or verbal prompts, without offering issues or topics themselves. See Shapland et al. (2004b) for a brief description of the scheme’s normal modes of operation.

12. In many restorative justice schemes, facilitators have been criminal justice system personnel, such as police officers or probation officers/social workers. Justice Research Consortium facilitators were police officers (in London and Northumbria), probation officers, prison officers, community mediators or victim support personnel (in Thames Valley). CONNECT and REMEDI mediators were employed by those voluntary-sector organizations, but many had a previous criminal justice system background. We discuss the consequences in terms of the tensions between their statutory and restorative justice roles in a forthcoming article.
13. Both Strang (2002) and Daly (2003, 2004) have argued that victims are far more likely to obtain procedural justice in restorative justice than in criminal justice (sentencing) settings, even though Daly (2003) has shown that in South Australia, in practice, facilitators and police officers present at the conference can have a dominant role in suggesting outcomes. This was not the case in our schemes.
14. One of our schemes, Justice Research Consortium, conferenced only robbery and burglary cases in London, only violence cases in Thames Valley and a mixture of assault and property cases in Northumbria. Our other schemes took a variety of offences, but the result, overall, was a predominance of violence offences in our evaluation.
15. Tavuchis (1991), however, argues that Goffman's formulation is insufficient, partly because it focuses on the offender, rather than the interaction between offender and audience, partly because it downplays the necessary attachment between the offender and the offence via sorrow and regret, and partly because it sees an apology as an account in which the offender can split his identity and argue that 'another self' has done the offence. We would certainly agree that any resilement from the offence by the offender will render the apology very dubious to its audience, particularly victims.
16. See also Brown (2004), who advocates teasing out audiences for apologies in civil and criminal litigation, and the discussion by Bottoms (2003) of apology as the generative social mechanism for restorative work.
17. Note that indirect or shuttle mediation very rarely included this future-oriented stage and was normally restricted to an exchange of information between victim and offender about the offence itself and its effects. Apologies might well be offered about past conduct, but reparation was rarely mentioned and rehabilitational measures the offender was proposing to take were not normally discussed. This may have been partly a mediator-based effect, but we also suspect that it is only in the context of a direct meeting that offender and victim are able to have sufficient information about each other to feel they have the ability to start to talk about what could now happen.
18. An analysis of the reasons why participants chose, prior to JRC conferences, to come to the conference is given in Shapland et al. (2004b).
19. Now the National Offender Management Service (NOMS).
20. Though slightly more common at CONNECT, whose cases were largely at

- the lower court pre-sentence (and so the court could order a compensation order), than for other schemes, which were either working with offences likely to obtain prison sentences, or not working pre-sentence.
21. We are not suggesting that our schemes or any facilitator did in practice 'demand' forgiveness from victims at any particular point. Those streams of the restorative justice literature which emphasize the healing potential of restorative justice, however, appear to have an implicit expectation that an outcome of restorative justice or a 'good' restorative mediation/conference should result in the victim forgiving the offender or being able to 'put the offence behind them'. One illustration of this is the use of indicators of whether the victim 'accepts' or 'acknowledges' an apology offered by the offender.
 22. The idea of reintegration, which has sprung from common law jurisdictions, has resonances in common with the continental European idea of 'reinsertion' or 'resocialization' of young offenders through conditional sentencing involving educative and community-based activity, as well as with social control theories of crime prevention (Junger-Tas, 1988).
 23. An interest community is a group sharing a common leisure pursuit or membership (e.g. a church, sports team). An attachment community is bound largely by affective bonds. Willmott argues that, in modern cities, interest and attachment communities are far more important to people than 'neighbourhoods'—local, geographical communities.
 24. It is interesting that these discussions are almost entirely focused on offenders—such advocates do not seem to see similar difficulties for victims or wish to take on board creating micro-communities for victims.
 25. The cases divided sharply between those where there was an existing relationship, often over many years, which were discussed earlier in relation to 'healing', and those where there was no relationship at all and, for property offences, the victim and offender had often never met.
 26. Note that pre-sentence restorative justice is very problematic in relation to 'community', because it will often not be clear whether the offender is likely to be sent to prison. Indirect and direct mediation, which only involve victim and offender can, by definition, not create reintegration back into a larger community, and Zehr (1990) would see such dyadic work as failing to empower the community. The exception to the majority of individualistic conferences were a few conferences and meetings which were dealing with offences which had gone beyond affecting individual victims to impinge upon the geographical area or, for example, the main leisure facilities in a village (pub etc.), and which created some very large conferences with many people from the locality.
 27. At the conference itself, reintegration was often shown by shaking hands, wishing the offender well in the future etc. More concrete examples of strengthening bonds included enabling offenders to go back to live with their family, to educational establishments or pubs, and encouraging them to tackle particular problems affecting their family.

28. Garland (2001) has strongly argued there has been an increasing, rhetorically inspired punitiveness in England and Wales since the early 1990s. However, this may now have reached the stage of populist punitiveness, rather than popular punitiveness, such that the views of victims, offenders and the general public are more 'lenient' than the expressed views of those representing the state (Bottoms, 1995; Hough and Roberts, 1999).
29. Nor were outcomes and the content of conferences/mediation largely governed by facilitators, as has occurred in some other schemes. Facilitators were mostly involved in ensuring procedural justice.
30. On the dangerous assumption that risk-based criminology is a zero sum game, whereby the risks to potential victims are created by potential offenders, see O'Malley (2004).

References

- Ashworth, A. (1995) *Sentencing and Criminal Justice* (2nd edn). London: Butterworths.
- Baumgartner, M. (1988) *The Moral Order of a Suburb*. New York: Oxford University Press.
- Bazemore, G. and S. O'Brien (2002) 'The Quest for a Restorative Model of Rehabilitation: Theory-for-Practice and Practice-for-Theory', in L. Walgrave (ed.) *Restorative Justice and the Law*, ch. 3. Cullompton: Willan Publishing.
- Blackwell, B. and C. Cunningham (2004) 'Taking the Punishment out of the Process: From Substantive Criminal Justice through Procedural Justice to Restorative Justice', *Law and Contemporary Problems* 67(4): 59–86.
- Bottoms, A.E. (1995) 'The Philosophy and Politics of Punishment and Sentencing', in C. Clarkson and R. Morgan (eds) *The Politics of Sentencing Reform*. Oxford: Clarendon Press.
- Bottoms, A.E. (2003) 'Some Sociological Reflections on Restorative Justice', in A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, pp. 79–114. Oxford: Hart Publishing.
- Bottoms, A.E. and P. Wiles (1996) 'Crime and Insecurity in the City', in C. Fijnaut, J. Goethals, T. Peters and L. Walgrave (eds) *Changes in Society, Crime and Criminal Justice in Europe, Vol. 1: Crime and Insecurity in the City*. Antwerp: Kluwer Law International.
- Braithwaite, J. (1989) *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.
- Braithwaite, J. (1993) 'Shame and Modernity', *British Journal of Criminology* 33(1): 1–18.
- Braithwaite, J. (1999) 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', *Crime and Justice: A Review of Research* 25: 1–127.
- Braithwaite, J. (2000) 'Survey Article: Repentance Rituals and Restorative Justice', *Journal of Political Philosophy* 8(1): 115–31.

- Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation*. New York: Oxford University Press.
- Braithwaite, J. (2003) 'Principles of Restorative Justice', in A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, pp. 1–20. Oxford: Hart Publishing.
- Brown, J. (2004) 'The Role of Apology in Negotiation', *Marquette Law Review* 87: 665–73.
- Christie, N. (1977) 'Conflicts as Property', *British Journal of Criminology* 17(1): 1–15.
- Council of Europe (1999) *Mediation in Penal Matters*. Recommendation R(99)19, adopted 15 September 1999.
- Crawford, A. and J. Goodey (eds) (2000) *Integrating a Victim Perspective within Criminal Justice*. Aldershot: Dartmouth.
- Daly, K. (2003) 'Mind the Gap: Restorative Justice in Theory and Practice', in A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, pp. 219–36. Oxford: Hart Publishing.
- Daly, K. (2004) 'A Tale of Two Studies: Restorative Justice from a Victim's Perspective', in E. Elliott and R. Gordon (eds) *Restorative Justice: Emerging Issues in Practice and Evaluation*. Cullompton: Willan Publishing.
- Dignan, J., A. Sorsby and J. Hibbert (1996) *Neighbour Disputes: Comparing the Cost-Effectiveness of Mediation and Alternative Approaches*. Sheffield: Centre for Criminological and Legal Research, University of Sheffield.
- Dingwall, R. and D. Greatbatch (1994) 'Divorce Mediation—the Virtues of Formality?', in J. Eekelaar and M. Maclean (eds) *Oxford Readings in Socio-Legal Studies: Family Law*, pp. 391–9. Oxford: Oxford University Press.
- Edwards, I. (2001) 'The Place of Victims' Preferences in the Sentencing of "Their" Offenders', *Criminal Law Review* September 2002: 689–702.
- European Union (2001) *Council Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings*. Brussels: EU.
- Fattah, E. (1997) 'Toward a Victim Policy Aiming at Healing, Not Suffering', in A.J. Lurigio, W. Skogan and R. Davis (eds) *Victims of Crime*, pp. 257–72. Thousand Oaks, CA: Sage.
- Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press.
- Goffman, E. (1972) *Relations in Public*. Harmondsworth: Penguin.
- Harris, N., L. Walgrave and J. Braithwaite (2004) 'Emotional Dynamics in Restorative Conferences', *Theoretical Criminology* 8(2): 191–210.
- Holstein, J. and G. Miller (1990) 'Rethinking Victimization: An Interactional Approach to Victimology', *Symbolic Interaction* 13(1): 103–22.
- Home Office (2003) *Restorative Justice: The Government's Strategy. A Consultation Document on the Government's Strategy on Restorative Justice*. London: Home Office.
- Hough, M. and J. Roberts (1999) 'Sentencing Trends in Britain: Public Knowledge and Public Opinion', *Punishment and Society* 1(1): 11–26.

- Hoyle, C., R. Young and R. Hill (2002) *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Justice*. York: York Publishing Services for the Joseph Rowntree Foundation.
- Johnstone, G. (2002) *Restorative Justice: Ideas, Values, Debates*. Cullompton: Willan.
- Junger-Tas, J. (1988) 'Strategies against Vandalism in the Netherlands', in J. Jager (ed.) *Gewalt in Unseren Stadten: Als Beispiel fur Aufgaben der Kommunalen Kriminalpolitik*. Munster: Polizei- Fuhrungsakademie.
- JUSTICE (1998) *Victims in Criminal Justice*. Report of a JUSTICE working group. London: JUSTICE.
- Kenney, J.S. (2004) 'Human Agency Revisited: The Paradoxical Experiences of Victims of Crime', *International Review of Victimology* 11(2): 225–28.
- Lilles, H. (2001) 'Circle Sentencing: Part of the Restorative Justice Continuum', in A. Morris and G. Maxwell (eds) *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, pp. 161–82. Oxford: Hart Publishing.
- Lind, E.A. and T. Tyler (1988) *The Social Psychology of Procedural Justice*. New York: Plenum.
- McCold, P. (1996) 'Restorative Justice and the Role of Community', in B. Galaway and J. Hudson (eds) *Restorative Justice: International Perspectives*. Monsey, NY: Criminal Justice Press.
- Marshall, T. (1999) *Restorative Justice: An Overview*. Occasional Paper. London: Home Office. Also at <http://www.homeoffice.gov.uk/rds/pdfs/occrsjust.pdf>
- Mirrlees-Black, C. (2001) *Confidence in the Criminal Justice System: Findings from the 2000 British Crime Survey*. Home Office Research Findings no. 137. London: Home Office.
- Olson, S. and A. Dzur (2004) 'Revisiting Informal Justice: Restorative Justice and Democratic Professionalism', *Law and Society Review* 18: 139–76.
- O'Malley, P. (2004) 'The Uncertain Promise of Risk', *Australian and New Zealand Journal of Criminology* 37(3): 323–43.
- Reiner, R. (1997) 'Policing and the Police', in M. Maguire, R. Morgan and R. Reiner (eds) *The Oxford Handbook of Criminology*, 2nd edn, pp. 997–1050. Oxford: Oxford University Press.
- Rex, S., R. Lieb, A. Bottoms and L. Wilson (2003) *Accrediting Offender Programmes: A Process-Based Evaluation of the Joint Prison/Probation Services Accreditation Panel*. Home Office Research Study no. 273. London: Home Office.
- Rock, P. (1993) *The Social World of an English Crown Court*. Oxford: Clarendon Press.
- Sampson, R., J. Morenoff and T. Gannon (2002) 'Assessing Neighbourhood Effects: Social Processes and New Directions in Research', *Annual Review of Sociology* 28: 443–78.
- Sampson, R., S. Raudenbush and F. Earls (1997) 'Neighbourhoods and Violent Crime: A Multilevel Study of Collective Efficacy', *Science* 277(5328): 918–24.
- Shapland, J. (1981) *Between Conviction and Sentence: The Process of Mitigation*. London: Routledge.

- Shapland, J. and J. Vagg (1988) *Policing by the Public*. London: Tavistock.
- Shapland, J., J. Willmore and P. Duff (1985) *Victims in the Criminal Justice System*. Aldershot: Gower.
- Shapland, J., A. Atkinson, E. Colledge, J. Dignan, M. Howes, J. Johnstone, R. Pennant, G. Robinson and A. Sorsby (2004a) *Implementing Restorative Justice Schemes (Crime Reduction Programme): A Report on the First Year*. Home Office Online Report 32/04. London: Home Office, at <http://www.homeoffice.gov.uk/rds/pdfs/04/rdsolr3204.pdf>
- Shapland, J., A. Atkinson, H. Atkinson, B. Chapman, E. Colledge, J. Dignan, M. Howes, J. Johnstone, R. Pennant, G. Robinson and A. Sorsby (2004b) 'Restorative Justice: An Independent Evaluation', paper given to the conference on 'Restorative Justice at the Coalface: Working with Victims, Offenders and Stakeholders in Crime', Newcastle-upon-Tyne, 23–4 June.
- Shapland, J., A. Atkinson, H. Atkinson, B. Chapman, E. Colledge, J. Dignan, M. Howes, J. Johnstone, G. Robinson and A. Sorsby (2006) *Restorative Justice in Practice: The Second Report from the Evaluation of Three Schemes*. The University of Sheffield Centre for Criminological Research Occasional Paper 2. Sheffield: Faculty of Law. Available at http://www.ccr.group.shef.ac.uk/papers/pdfs/Restorative_Justice_Report.pdf
- Strang, H. (2002) *Repair or Revenge: Victims and Restorative Justice*. Oxford: Clarendon Press.
- Stuart, B. (1996) 'Circle Sentencing: Turning Swords into Ploughshares', in B. Galaway and J. Hudson (eds) *Restorative Justice: International Perspectives*, pp. 17–36. Monsey, NJ: Criminal Justice Press.
- Taft, L. (2000) 'Apology Subverted: The Commodification of Apology', *Yale Law Journal* 109(5): 1135–60.
- Tavuchis, N. (1991) *Mea Culpa: A Sociology of Apology and Reconciliation*. Stanford, CA: Stanford University Press.
- Thibaut, J. and L. Walker (1975) *Procedural Justice*. Hillsdale, NJ: Erlbaum.
- Tyler, T. and Y. Huo (2002) *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York: Russell Sage Foundation.
- Van Ness, D.W. (2003) 'Proposed Basic Principles on the Use of Restorative Justice: Recognising the Aims and Limits of Restorative Justice', in A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, pp. 157–76. Oxford: Hart Publishing.
- Wiles, P. and A. Costello (2000) *The 'Road to Nowhere': The Evidence for Travelling Criminals*. Home Office Research Study no. 207. London: Home Office.
- Willmott, P. (1987) *Policing and the Community*. PSI Discussion Paper 16. London: Policy Studies Institute.
- Wilson, W.J. (1996) *When Work Disappears: The World of the New Urban Poor*. New York: Alfred A. Knopf.
- Wright, M. (2002) 'The Court as Last Resort: Victim-Sensitive, Community-Based Responses to Crime', *British Journal of Criminology* 42(3): 654–67.
- Zehr, H. (1990) *Changing Lenses: A New Focus for Crime and Justice*. Scottsdale, PA: Herald Press.

JOANNA SHAPLAND is Professor of Criminal Justice and Director of the University of Sheffield Centre for Criminological Research. She has researched widely in criminology, criminal justice and victimology and is Executive Editor of the *International Review of Victimology*.

ANNE ATKINSON is currently Researcher/Administrator on the Home Office funded Evaluation of Three Restorative Justice Schemes. She has a BA in Applied Social Studies from Sheffield Hallam University and an MA in Applied Research and Quality Evaluation from the University of Sheffield.

HELEN ATKINSON worked as a researcher in the team evaluating restorative justice schemes for two years and is now researching pathways out of crime for young adult offenders. She studied criminology and social policy at the University of Lincolnshire and did the Masters in Criminal Justice Studies at Leeds University.

EMILY COLLEDGE is currently completing her PhD in the area of criminal justice. She has worked as a researcher on a number of projects including the Independent Evaluation of Restorative Justice Schemes at the University of Sheffield.

JAMES DIGNAN is Professor of Criminology and Restorative Justice at the Centre for Criminological Research, University of Sheffield. He has conducted research in the fields of restorative justice and community mediation and has written on a variety of theoretical, practical and policy issues relating to the development and implementation of restorative justice.

MARIE HOWES is a social anthropologist with a background in teaching and probation work. Her anthropological fieldwork was carried out in Chicago with Peruvian immigrants. She has worked on several Home Office funded projects at the Institute of Criminology, Cambridge University and at Sheffield University.

JENNIFER JOHNSTONE is a lecturer in Law in the Law School and a member of the Scottish Centre for Crime and Justice Research at the University of Glasgow. She has been involved in numerous research projects in the area of restorative justice and youth justice.

GWEN ROBINSON is a lecturer in Criminal Justice at the School of Law, University of Sheffield. Her primary research interests are offender management and rehabilitation, the correctional services, and restorative justice.

ANGELA SORSBY completed her PhD in developmental psychology in 1991. She has been working for the University of Sheffield since 1993, and is currently working on the restorative justice project funded by the Home Office, as well as a survey of pupillage for the General Council of the Bar.
