

Young offenders: an evaluation of restorative justice



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Restorative justice has become a central aspect of much youth justice policy and practice internationally. Within the UK, it has been integrated into many features of the youth justice system, particularly through new police cautioning procedures and referral orders. First, this essay will begin with a brief overview of political and policy developments since the 1960's. Notably, it will analyze recent developments in youth justice and will critically examine restorative approaches in the UK and will investigate how these fit within a system that is attempting to bring 'justice' for children. Secondly, the term restorative justice needs to be defined in order to assess the ways in which restorative approaches have been incorporated into policy and practice and whether such schemes have achieved their objectives. Finally, it will investigate whether restorative justice is located within traditional and punitive models of justice and how the needs of children are included in such approaches.

Following the 1969 Children and Young Person's Act, the juvenile justice system in the 1960's experienced a period of intense activity in England and Wales. The labour party promoted concepts which blurred the lines between the depraved and the deprived child, and attempted to deal with young offenders by way of care and protection rather than criminal proceedings. Their prominent aims were to divert young people from the criminal justice system or, in cases where it was inevitable that they be convicted, send them to court to be 'treated and cared for' rather than to be punished (Gelsthorpe and Morris, 2002). However, in 1970 a conservative government replaced labour and made it clear that they would not implement the act in full. The conservative party took a stance to 'stand firm against crime' and

presented themselves as party that 'could' and 'would' take a strong position to fight crime. This was in contrast to the Labour party which was presented as being too sympathetic towards offenders. Essentially this new theme focused on the appropriate responses to delinquents which were thought to be found in court rooms through punishment and discipline. Indeed, the use of custody for juveniles under the conservative government increased and departed from the use of welfare principles such as care orders (Gelsthorpe and Morris, 2002).

As time progressed, the youth justice system headed towards a reform in its practices and laws, this was abided with the implementation of the 1989 Children Act and the 1991 Criminal Justice Act, which had the joint effect to separate the system in a distinctive manner. Children, who were perceived to be in need of care, could now be dealt with in family courts and those charged with criminal offences, could now be dealt with the newly named Youth Court. Perhaps, the most important change of all was the departure and cessation of the use of care orders which was available to courts in criminal proceedings. This change recognized the seeming inappropriateness of a care order in criminal courts, 'the principle of determinacy in sentencing, and the importance that the government attached to parental responsibility' (Gelsthorpe and Morris, 2002). The 1990's was a period of great concern for juvenile crime, resulting from incidences of joyriding in deprived areas, increased publicity about persistent young offenders and the murder of James Bulger by two ten year old boys. The need for the government to be perceived as tough on crime led to new thinking within political parties. The public regarded the use of cautions and warnings as futile and unsuccessful

and despite many efforts made to ensure the control of crime by young people, the youth courts were still perceived as ineffective. Thus the stage was set for a major reform in the next phase of development under a new government.

Throughout the years in which labour was not in power, the labour party argued that youth crime would be a priority on their agenda. Having produced a white paper titled no more excuses (Home Office, 1997d) the newly elected government was quick to enact new proposals. The Crime and Disorder Act 1998 which followed was described as a 'comprehensive and wide ranging reform program' (Home Office, 1997d: 2). In many ways this legislation appeared to favor punishment to signal society's disapproval of criminal acts and discourage offending. However, the act also contained important provision which introduced restorative justice principles. The central tenet of which is that crime is principally a matter concerning the offender, the victim, and their families and thus should be resolved by means of reparative measures to put right the harm that has been done, this was to be built upon three concepts, 'responsibility, restoration, and reintegration'(Dignan and Marsh, 2001).

Restorative justice has been described as 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future' (Marshall, 1999). The restorative process attempts to mend the injuries caused, repair relationships and address the needs of the victim and the offender (Claassen, 1996). For many, the central precept of this approach is the restoration of the centrality of the victim and its utility in obliging

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offenders to take responsibility for their actions (Umbreit, 1994). Thus, restorative justice can be perceived as primarily a breakdown in relationships between individuals, and only secondly as a violation of the law. Zehr and Mika (2003) have given a different approach to the way the restorative justice system is regarded; they suggest it consists of a number of key rudiments. Firstly, they argue that crime is primarily a violation of people and interpersonal relationships. Therefore restorative justice should attempt to maximize the search for 'restoration, healing, responsibility and prevention' (Haines and O'Mahony, 2008). Secondly, the violation that incurred from the given crime has created obligations and liabilities, both of which the offender is held accountable for. They consequently have the responsibility of putting right what they have done wrong and try to understand the harm caused. Moreover, the offender needs to be an active participant whilst addressing his own needs and the appropriate punishment that would see fit to his actions. Thirdly, the victim's needs are of utmost importance and should always be a starting point, the offender is encouraged to try and rectify the harm done. It is throughout this process that information is exchanged, dialogue is instigated and the possibility of reconciliation and forgiveness is achieved (Zehr and Mika, 2003).

However, the attempt to reach a common agreed definition of restorative justice has proved to be particularly problematic. The reality is that different places throughout the world will adapt the restorative justice system to their needs and will develop its use in whichever way they see fit. Thus, it would seem more appropriate to define restorative justice as an all 'encompassing

concept which has diverse practical implications that are theoretically derived from a number of key principles' (Haines and O'Mahony, 2008: 111). In terms of criminal justice policy and the deliverance of youth justice, this would seem to be advantageous as it comprises of a very open set of principles which potentially can impact upon practices in different ways with a broader variety of outcomes.

There are three different ways by which restorative justice may be practiced: Youth offending panels; Police led restorative cautioning; and restorative conferencing, all of which are relevant to children and young people. Youth offending panels were developed in England and Wales in 1999. Court could refer orders to Youth panels for first time offenders between the ages of 10-17 year olds. Their main goals would be to provide first time offenders with 'opportunities to make restoration to the victim, take responsibility for the consequences of their offending and achieve reintegration into the law-abiding community' (Home Office, 2002). When a young person is referred the course of action is for the panel to decide what form of action is necessary and how the offender needs to be dealt with. The victim is encouraged to attend such meetings and describe how the offence perpetrated against them has affected their lives. Parents are obliged to attend the panels which are usually held in community venues. A solicitor may be present for 'support' although government guidelines state that young people should not have representation in meetings. From this event the panel will devise a plan which will provide reparation to the victim or the community and will comprise of an intervention to deal with the offender's actions. This can consist of counseling, drug rehabilitation, or victim

awareness. The offender must agree to this plan of action or they will be referred back to the courts (Gelsthorpe and Morris, 2002).

As an overall rule, research has shown that such orders were working well and that many young people were benefiting from this alternative. It was found that 86% felt they were treated fairly and with respect, and 75% admitted that it should help them stay out of trouble (Newburn et al., 2002). However, various numbers of concerns have been raised concerning referral orders. For instance Cullen (2001) argues that the notion of informed consent is too light. He found that some parents and children were often induced and forced into agreeing with certain plans, his concern were particularly pertaining to the fact that some children as young as ten year old were forced into traumatic confrontations, in rooms full of adults which potentially could coerce them into signing contracts which could take away some fundamentals aspects of their liberties (Cullen, 2001). More central to the restorative approach was the lack of participation from victims. Newburn (2002) notes that only 13% of victims attended their cases, such low levels of involvement would greatly limit opportunities for 'encounter, reparation, reintegration, and participation' which is an essential aspect of the restorative process (Newburn et al., 2002). Other criticism questions whether such orders are having any unnecessary effect on minors which could draw them back further within the criminal justice system, such as the extent to which order are effectively proportional to the offence and their impact if any on recidivism.

Police led restorative cautioning is similar to youth panels whereby they try to deal with a crimes aftermath, by attempting to make the offender feel

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'ashamed' of their behavior in a way which will promote reintegration into the community. Its main tenant is to try and get the offender to realize the kind of harm they have caused to their victims and families. The focus of this theory is mainly to maximize the wrongfulness of the action and behavior rather than the wrongfulness of the individual. Once the offender has come to terms with his actions and has admitted that it was wrong, the incident can be forgotten and forgiven through means of reparation or with an apology, this allows the young person to be reintegrated back into their community, family, and stay relatively unharmed from their actions. This process is facilitated by a trained police officer; the victim is still encouraged to come forward and express their feelings towards the harm caused by the offender and relay their views on how this ordeal has affected their lives. Hoyles et al., (2002) researched this scheme and found that on the most part the victims who had attended the conference had felt good and 71% reported that they were able to carry on living their lives better following the conference. Victims also reported feeling differently towards their offender after meeting them and 60% admitted that the conference had helped them put the offence behind them. However, attendance by victims was once again very low, only 14% of victims attended the sessions (Hoyles et al., 2002).

Research on this topic in Northern Ireland also proved to be somewhat successful, prosecution was avoided and reintegration was achieved without the offender thinking they were 'bad individuals' but merely by highlighting the harm caused to the victim. In common with research on youth panel, attendance from victims was relatively low limiting the restorative process of

such work. As such, the victim would miss the opportunity to meet their attacker and discuss the outcomes of their offence and the perpetrator was unable to directly experience the victim's perception of the crime. Furthermore, concerns were raised in terms of the issue of net widening, conferencing participants were of very low age and were petty offenders. This process seemed gruesome for what was deemed a high level of accountability and was considered disproportionate to the harm done. Further, very little evidence was found that restoration was used as an alternative to prosecution rather it appeared they were applied to cases which formally would have been dealt with informally. Researchers found that 80% of cases observed were for property offences which were worth less than £15. Despite these concerns, the police was enthusiastic, committed, and well trained. These also seemed to be beneficial in terms of ameliorating relationships between the police and the community (McEvoy and Mika, 2002)

Despite the proliferation of restorative justice measures in recent years, there remains little evaluation and many more questions than answers are found on this topic. Such questions query whether a restorative and retributive approach are compatible, or if there are inherent conflicts between them. Additionally, it looks at the extent to which restorative approaches are appropriately used with children and if any special considerations should apply to their treatments.

Daly (2000) argues that restorative justice contains elements of both retributive and rehabilitative justice whilst at the same time also contributes in its own unique ways. He proposed that it deals with the offence and the <https://assignbuster.com/young-offenders-an-evaluation-of-restorative-justice/>

offender whilst at the same time is concerned with the censure and sanctions for past behavior in ways which she deems are appropriate and proportionate to the seriousness of the offence. Future outcomes are integrated in this process by means of 'making things right'. Daly finds that additionally to this, restorative justice is still found in the role of the victim and that of the offender. The notion of sentencing here is replaced by repairing the harm done, the involvement of third non authorial agents, and the vast degree of dialogue and negotiation which takes place throughout the process. It would seem however that Daly is only concerned with whether or not punishment has a place in the administration of restorative practices which does not adequately enable him to differentiate the two systems of justice (Daly, 2000).

The notion that children represent a category which is different from that of adults has had tremendous positive outcomes. Indeed, the recognition that children are not yet adults mitigates their degree of responsibility, culpability, and provides them with considerations of their cognitive and moral stage of development. The principle that the courts should regard children in different ways from adults and attempt to provide them with adequate help and support in criminal proceedings is well established in England. Such attitudes suggest that young offenders should be treated as children first and offenders second. Thus, there is already a tension between the ideal that children's needs to be considered and that the restorative justice process assumes the mentally competence and 'hence moral culpable actors who are expected to take responsibility for their actions' (Daly, 2000: 35). In fact, it has been found that that one primary aspect of restorative

justice is its utility in 'forcing' young people to take such responsibilities. Questions are being asked whether such justice can work when reparation order are imposed on offenders without their consent. Under the Act, court orders can direct personal apologies, which ultimately may lead to grudging or insolent attitudes from offenders towards the victims. Moreover, victims may perceive their involvement in such schemes to be useless if they are not properly consulted beforehand or are not fully involved in the decision. Furthermore, the potential for coercion or even bullying of young offenders by a room full of adult is more than plausible. Most of which do not have the responsibility to safeguard or promote their best interest especially where there may be a collusion of interest from the victim's side. Whilst 75% of young people responded that they did not feel pushed into anything they had not previously agreed with, 25% still said they had experience some level of coercion (Gelsthorpe and Morris, 2002).

Criminologist Holdaway (2001) found that not all youth offending teams were offering the full range of restorative measures available, and it appeared that there were notable differences in the delivery of such interventions. The notion that victims must be consulted was often overridden so that a quick justice could be achieved. Whilst the offender-victim relationship seems to be central to the restorative justice process, the 1998 Act meant that reparation became 'routine' rather than 'meaningful', with letters of apology which were rehearsed by YOTs team which were eager to get through the process as fast as possible. Amongst reparative orders, it was found that litter collection or conservative work was widely used. Whilst such activities are not denied their place in reparation repertoires, it is hard to comprehend

how they hold any reparative or reintegrative notions. On the whole, it would seem that traditional restorative justice with the offender and the victims as its main participants are being greatly disregarded. It would seem that within the new justice system ethos of restorative justice are quite limited (Holdaway et al., 2001).

In conclusion, it appears that internationally the practice of restorative justice system has been significantly increased. Despite the enthusiasm with which many have embraced this approach, there clearly remains a lack of clarity as to what the precise definition of restorative justice is and what is it trying to achieve. Many issues concerning who it is intended to 'restore' and what makes this process restorative remains controversial and contested. While there is clear evidence which suggests that these practices are being put to good use and are somewhat effective, there remain serious questions as to how effective the use of these approaches are to children. I would argue that it is too soon to say how well this new procedure will work considering its novelty in the system. Nevertheless, there evidently are much grounds for optimism that over time and provided the right agenda from the party at power that a broader and more inclusive form of restorative justice will be integrated into the youth justice system.

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