

# Evaluation of restorative justice programs



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It is simple to suppose that prisoners are not human beings. In some way once an individual is found guilty of a crime and incarcerated, they become, in the sense of the law, almost more like an object than a person. Many prisoners suffer the loss of not only their independence, but their right to vote, their ability to settle with victims of their crimes, their right to personal safety, their right to parent, their right to be assumed innocent until proven guilty and indeed their right to dignity. A requirement for punishment and retribution is the compelling philosophy behind our penal system. But is incarceration always necessary for those who have committed a crime and, moreover, what of those defendants who will not repeat the crime?

Furthermore, the adult prison population in England and Wales has grown from 36, 000 in 1991 to 62, 000 in 2003. Indeed, this is one of the central problems facing contemporary penal policy and another reason why we should seek alternatives to incarceration. This essay considers the need for restorative justice as a substitute for incarceration in many cases.

Restorative justice is one of the most commonly considered advancements in the region of crime and justice. Its proponents argue that retributive justice, society's conventional answer to crime, neither meets the needs of crime victims nor prevents re-offending. Instead, it supposes a disconnected, adversarial procedure and ' sees crime as a violation of the state, defined by law breaking and the establishing of guilt. It determines blame and administers punishment in a contest between the offender and the state.' [1]

As an substitute, they suggest, should be restorative justice, in which families and communities of offenders persuade them to take responsibilities

for the consequence of their conduct, express repentance and restore the destruction that they have caused:

Restorative justice encourages all of us involved in the criminal justice system to see justice in a new light. In many cases it helps victims of crime have a say in what happens to an offender. It can also be part of the rehabilitation process for offenders themselves.

Restorative justice is about helping every victim get over the crime they've suffered. When a victim chooses to meet the offender it often helps them feel safer and more satisfied that justice has been done.

So as we reform the criminal justice system to put victims and communities first, restorative justice should have a key place at the heart of our reforms.

[2]

The fundamental rudiments of restorative justice symbolize a procedure based, among other things, on values of participation, respect, honesty, accountability and empowerment. <sup>[3]</sup> As established by the Home Office, restorative justice is not a 'unified concept.' <sup>[4]</sup> Restorative processes concern victims, offenders, their families and the community, to cooperatively recognize and address harms, needs and requirements, so as to heal and put things as right as possible.

This was recognized in Johnathan Carter's case, where the restorative justice process resulted in an agreement that went some way to remedying the harm caused to the victims, whilst also understanding the harm that the offender had brought upon himself. Johnathan Carter's case is a classic

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example of a crime that was committed but will never be repeated. It is submitted, in agreement with the principle established in this case, that restorative justice is a valuable alternative to incarceration, where the crime will never be repeated.

The driver, Johnathan, of a car had been drinking that afternoon but had felt fit to drive. About fifteen minutes into the drive, the driver failed to drive the vehicle around a severe bend and he lost control. As a result, the car hurtled into a bank and Aaron Calvert, one of the passengers, was thrown out of the car and died at the incident. Soon after the disaster, the Johnathan was tested for alcohol consumption. The test revealed a blood alcohol reading in excess of the legal limit. He stated that he was guilty to a charge of driving with surplus blood alcohol causing death. Throughout sentencing, the Judge had to reflect on the appropriate sentence for a man who had killed ' his lifelong best friend.' [5] The law at the time of the sentencing imparted that the maximum sentence was five years imprisonment. [6]

On the other hand, preceding sentencing, Johnathan had agreed to take part in a restorative justice conference. During the conference an understanding was reached recommending definite results to the sentencing Judge. However, the Judge's ruling was constrained by legal standards and legislation which did not then require him to take into account restorative justice effects. During the time of the case, a sentence of incarceration almost always resulted in a charge of alcohol-related driving causing death. [7] All the same, directing his comments to Johnathan, the sentencing judge conveyed the following, sensitive declaration:

To hear the effect of the death of their eldest child on his parents would draw tears from stone. Even more moving, was their heartfelt and tearful plea, made in Court, that you, who have been like a brother to their son, and in some ways like a son to them, not be imprisoned. For them, that would be a second tragedy on top of the first, and would achieve nothing. [8]

Subsequent to an appraisal of all the concerns, the Judge determined that a fair result was 18 months imprisonment. He suspended that sentence for the duration on the grounds that Johnathan was quite young, he had a previous 'almost spotless' record, he needed rehabilitation, had 'diminished culpability,' had been accommodating with the Police, was repentant and there was loving family and community support. The results of the restorative justice conference were taken into contemplation. Employing the conference agreement, the Court suspended Johnathan's license for three years, ordered him to contribute \$4, 000 towards the headstone, perform two hundred hours of community service and to address specific assemblies at five secondary schools in his neighbourhood relating to the dangers of drinking and driving.

Jonathan Carter's case represent a feasible process of dealing with crime in our communities and an improved way to consider the victim's interests. It also demonstrates how restorative justice procedures are not fundamentally an alternative for, but can also act in combination with the current retributive methodology. The conference acknowledged the needs of the family, some of which were at odds with sentencing practice at that time, and balanced these with the needs of the community. Restorative justice is therefore process rather than outcome driven.

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Increasing empirical evidence demonstrates substantial settlements of restorative justice, with benefits prevailing over harms. From a crucial account, known as the Reintegrative Shaming Experiments (RISE), carried out in Canberra, Australia over five years, from 1995 to 2000, offenders who recognized accountability for one of two categories of crime- personal property crime executed by juvenile offenders and middle-range violent crimes committed by offenders aged up to twenty-nine years, were allocated at random either to go to court or to act at a restorative justice conference.

[9] The conference concerned a meeting assembled by a trained facilitator between offenders and their family and friends acting as supporters, collected with the victims and their supporters. At the conference, members deliberated what had happened when the offence took place, who the offence had influenced and in what regard, and what could be done to reinstate the harm caused. In the sequence of the conference, often a highly representing encounter, victims explained candidly to their offenders the total consequences of the offence. Offenders had the possibility to take accountability for their actions and understand the result in means not available in the courtroom. The conference concluded with an outcome agreement intended to repair the harm caused by the offence. [10] The appraisal of RISE test was incorporated into understanding of the conferences and court measures, interviews with the victims after their cases were organized, and reassessing of official information. The assessment provides evidence of the benefits, and harms, that victims and offenders experienced from restorative against conventional justice.

Restorative justice conferences are under test in the United Kingdom. <sup>[11]</sup> In none of these procedures have offenders lost rights or had legal procedures abused because of their voluntary contribution in restorative justice procedures. While there is mounting discussion of sentencing offenders to meet with victims as a requirement of a community sentence, as a substitute for imprisonment, it is not obvious that this solitary procedure would abuse the rights of an offender permitted to choose imprisonment rather than a meeting with a victim. While offenders reported in the above study that restorative justice conferences are stressful, stress as a solitary reason is not an infringement of human rights and prosecution and incarceration are also stressful. The stress or disgrace of restorative justice may be a required part in the reforming process that eventually benefits the offender. <sup>[12]</sup> Offenders derive an increased sense of respect from restorative justice processes. When they are diverted to restorative justice preferably than being imprisoned, they can evade a criminal record and its related disabilities.

In order for this alternative to incarceration to work however, it is fundamental to restorative justice that everyone at present, including the victim and offender, is there voluntarily. If this is not case then alternatives and incarceration is more favourable. In supposition however, it is determined and consistent punishment of crime that discourages offenders from committing crime. In common economics, the fundamental mechanism of this theory is a reasonable choice in support of cost-benefit ratios of compliance with the law, relative to cost-benefit ratios of breaking the law. Until very recently, restorative justice has been regarded chiefly as an innovation to be used with young offenders to dissuade them from pursuing

a criminal career. However, research has revealed that in opposition of this conventional wisdom, restorative justice is more useful in deterring violent crime than property crime, for example. <sup>[13]</sup> It seems that the higher level of emotional engagement in these conditions is relative to reducing re-offending.

It is submitted that imprisonment should be ruled out for minor offences and instead replaced with restorative justice. Furthermore, there is the controversial issue of when offences cannot and will not be repeated. An example was the case illustrated above, where restorative justice was combined with methods of incarceration. In the grey area of euthanasia and mercy killing, this system could be used, depending on the individual circumstances of the case in question.

Owing to prison overcrowding and the notion of unfairness connected with incarceration for one off offences, restorative justice appears to be in a superior position to improve that problem. Furthermore, in consequence of the substantial evidence of injustice and contempt in reference to victims by criminal justice, restorative justice appears to be in an effective alternative. Arguments may be made against an assertion in theory, but the evidence from practice provides little assistance to the theoretical objections. The more rapidly criminal justice opens its doors to restorative justice, the sooner we can begin to restore a positive and just system of criminal justice.

## **Bibliography**

As per footnotes and Ashworth reference provided by customer



**Footnotes**

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[5] Police v Carter (unreported, District Court, New Zealand 2001 April)

[6] Section 30AB Transport Act 1962

[7] R v Brodie [1999] 2 NZLR 513

[8] Section 21(A) Criminal Justice Act 1985 repealed

[9] Ibid

[10] <http://www.aic.gov.au/rjustice/rise/index.html>

[11] <http://www.crim.upenn.edu/jrc/faq.html>(2001)

[12] Nathan Harris, Shaming and Shame: Regulating Drink Driving, 73 Alfred Blumstein and David Farrington eds 2001

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[13] **Ibid**