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INTEGRATING JUSTICE

Adrian James evaluates the significance of Relational Justice, as opposed to restorative justice, in the light of recent policy developments.



The history of criminal justice over the last decade has hardly been inspirational. Under the previous government and the thrall of Michael Howard, we witnessed the emergence of what was arguably the most damaging and oppressive period of criminal justice and penal policy during this century, with an almost unprecedented emphasis on punishment, incapacitation, surveillance, exclusion and managerialism. What was, in the view of many, so disconcerting about such policies and the simplistic solutions they sought to offer was that they betrayed a profound lack of understanding of offending and offenders.

PENAL OPPRESSION

It would undoubtedly have been difficult politically for the new Labour Home Secretary to chart a radically different course from his first day in office. Nonetheless, there are disconcerting signs of policy continuities. These are particularly evident in terms of sentencing policy and private-sector involvement in the criminal justice system but also, more generally, in an extension of the net of social control and the range of mechanisms designed to achieve this, witness the provisions of the Crime and Disorder Act 1998. Whilst there is apparently a much greater recognition of the complex relationship between structural factors and individual behaviour, many of the emphases reflected in the thinking of the present government appear disconcertingly similar to those of their predecessor.

Lest we be carried away by the pessimism that such a scenario might engender, however, there have also been policy developments which are to be welcomed. Both governments have rightly identified the importance of ensuring that the criminal justice 'system' should begin to operate systematically - as component parts of a much larger whole, working towards shared objectives. Both governments have also placed increasing emphasis on the needs of victims, the

importance of incorporating these into criminal justice policies, and the importance of community involvement in crime prevention.

EXCITING DEVELOPMENTS

In addition to such trends, for me as an ex-probation officer turned academic teaching criminology and criminal justice policy in the early nineties, there were other exciting developments. Of particular note was the publication of Braithwaite's book *Crime, Shame and Reintegration*¹ followed a few years later by Burnside and Baker's *Relational Justice*². This built upon Braithwaite's work and sought to apply it to criminal justice policy.

Why these two books in particular? Not all will agree, of course, but one of the difficulties which has beset academic criminology historically is not so much a shortage of theories about crime but a shortage of theories which were sufficiently powerful to encompass the wide range of factors associated with the causation of crime. Braithwaite's work has arguably come the closest of all so far to achieving this. He succeeded in integrating a wide range of theories in a way which not only has the all-important 'ring of truth' about it but which incorporates both structural and psychological factors, both social and individual perspectives. Such integration is a rare achievement in the context of a branch of social science that seeks to understand a phenomenon as complex as crime.

Burnside and Baker's contribution built upon these ideas in a way which sought to provide a framework of values within which Braithwaite's emphasis on the importance of re-integrating offenders into the community could be legitimised and, more importantly, applied to all of those involved in the criminal justice system. As I argued several years ago,³ such a framework was arguably of particular importance to the probation service, since its work had, more than most criminal justice agencies, been the focus of a major ideologically-driven onslaught under the previous government and was in dire need of a new sense of direction.

"Relational Justice provides a value framework that can potentially be embraced by all criminal justice agencies."

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Tagging,
Relationships
and justice:
What are the
issues?

Rebecca Sampson

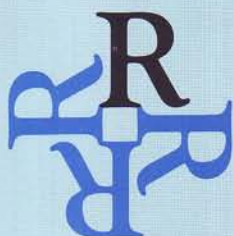
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Tel: 01223 566333
Fax: 01223 566359

E-Mail: r.f@clara.net

Enquiries to Rochelle Moody

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WHAT RESTORATIVE JUSTICE MISSES

There can be little doubt that between them, these books made a significant contribution to the appearance of another welcome development - the growth of interest in restorative justice. By focusing on victims, their needs, and on community involvement in the 'provision' of justice (through a range of developments including reparation, family group conferencing, and other forms of victim/offender encounters), it sought to encourage criminal justice agencies to co-operate, not only with each other but also with other statutory agencies, with communities and community-based organisations. Such thinking is clearly evident in the initiatives stimulated by the provisions of the Crime and Disorder Act 1998 and the government's steadily unfolding Crime Reduction Programme.⁴

Such developments are to be welcomed. A note of caution should be added, however - such provisions might all too easily encourage the emergence of less desirable aspects of communitarianism. Whilst the focus on victims and their needs is important, we must not fail to focus also on offenders and their needs and



problems, some of which may be of their own making but many of which are not. The failure to include this as part of our understanding can lead all too readily to an extension of exclusionary and potentially oppressive policies, like zero-tolerance and locally-driven initiatives for the surveillance and control of groups labelled as 'problems' (such as some families and young people). What is missing from restorative justice is a broader framework of values that will give both coherence and direction to such developments.

WHAT RELATIONAL JUSTICE PROVIDES

Relational Justice provides such a framework, by understanding crime as the failure of the relationships that should exist among and between individuals, communities and institutions. In seeking to rebuild those fractured relationships, Relational Justice is much more than restorative justice. The latter provides a mechanism or series of mechanisms that seek the restoration of something that has been lost by victims of crime. As such, it provides an important element of Relational Justice.

Relational Justice is more than this, however - it provides "the basis for a reconceptualisation of

criminal justice policy and practice throughout the criminal justice system, based on an integration of criminological theory and communitarian politics".⁵ It also provides a value framework that can be generalised to all of those who are victims of injustice in our criminal justice system - offenders, victims, their families, or whoever - that can potentially be embraced by all criminal justice agencies. As communities begin to engage with their new responsibilities for crime reduction, it is to be hoped that the principles and values of Relational Justice will provide a sense of direction and purpose that has been missing from criminal justice in recent years.

Professor Adrian L. James is Professor of Applied Social Studies at the University of Bradford.

¹ Braithwaite, J. 1989. *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.

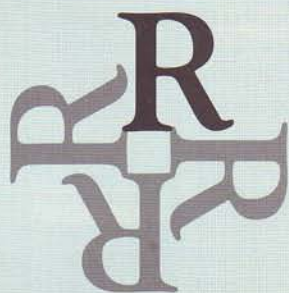
² Burnside, J. and Baker, N. (eds.) 1994. *Relational Justice: Repairing the Breach*. Winchester: Waterside Press.

³ James, A. 1995. 'Probation Values for the 1990s - and Beyond?' *The Howard Journal of Criminal Justice*, 34(4), 326-43.

⁴ Home Office 1999. *Reducing Crime and Tackling its Causes: A briefing note on the Crime Reduction Programme*. London: Home Office Communication Directorate.

⁵ James, A., *op cit*, p.341.

WHO WE ARE



The *Relational Justice Bulletin* is a quarterly publication by the *Relationships Foundation*, a Cambridge-based charity, as part of its *Relational Justice* initiative.

Relational Justice is a fresh approach to crime and punishment. Rather than looking at crime solely as an offence against the state, it sees it as a breakdown of relationships between offenders, victims, families and the community.

The concept was developed by the *Relationships Foundation* in the early nineties. It first gained public exposure with the publication of the book 'Relational Justice: Repairing the Breach' (Waterside Press, 1994), which was welcomed by Lord Woolf as 'a radical new approach which anyone with any concern about the criminal justice system needs to be aware'. Since then, it has been shown to have wide implications for policy

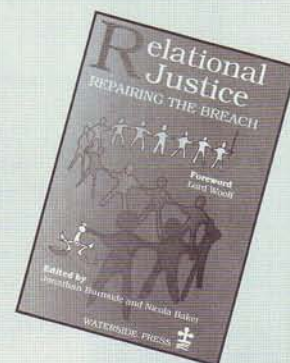
and practice.

The *Relational Justice Bulletin* has been launched as a platform for discussion of the ideas at the heart of *Relational Justice* as well as exchange of good practice across the system.

You are warmly invited to join the growing number of professionals and practitioners who are already receiving it (see subscription form on the back page), and to contribute your own ideas and experience.

The *Relationships Foundation* is a registered charity dedicated to developing new 'relationships-based' approaches to social, economic and political issues.

Your help would be welcome in publicising the *Relational Justice Bulletin*. Free A5 leaflets are available for your use. You can request copies on the form on the back page.



JONATHAN BURNSIDE IS EDITOR OF THE RELATIONAL JUSTICE BULLETIN

Views expressed are those of the authors and do not necessarily reflect the policies of the Relationships Foundation.

FIGHTING FOR JUSTICE: A PERSONAL VIEW

Judge Christopher Compston discusses what lessons can be learned from the Westminster Abbey case.



Since March 1998 I have been heavily involved in the dispute between Dr. Wesley Carr, the Dean of Westminster and the then organist and choirmaster, Dr. Martin Neary and his wife Penny. My son Rupert is an Abbey Chorister. Putting the matter very simply, this was a civil dispute over sums of money gained from concerts involving Dr. Neary and the choir outside the Abbey. The new Dean said that these monies belonged to the Abbey. The Nearys disagreed, claiming that they belonged to the Neary Company.



For the record, I supported the Nearys. I still do. Despite the dismissal of their appeal to the Queen as Visitor in December 1998 and their departure from the Abbey in February 1999, many consider that they have been shabbily treated. When the dust has settled (if it ever does!) the details can be publicly explored. Whatever the rights and wrongs of this particular case are, I suggest there are five general lessons to be learned now.

First, if you take up a fight for justice, appreciate what you are taking on. The cost is high, in time, energy and money. Appreciate that many people who should help you won't. "Don't rock the boat." "It's nothing to do with us." "I am sure that they know what they are doing" etc. etc. Some will even stab you in the back while appearing to support. Furthermore, in the heat of the moment, you tend to do and say things which are not always wise. So, always have a small close circle of friends.

AVOID LAW

Secondly, the case confirmed that Law should always be the last resort, not the first. Except in grave circumstances, avoid Law like the plague. What are grave circumstances? Where the offence is so serious that the police, ultimately the Law, have to be involved, particularly so when the offender is likely to repeat the offence. For instance, murder, rape, child molesting or drug dealing are so serious that they cannot be overlooked.

If, instead, there is an assault, indecent assault, a minor indiscretion with a child or a mere possession of drugs, then other factors may apply. You may have to go to Law. It all depends. Furthermore, if the offence is a civil offence between you and someone else, with little or no public significance at all there is even less

justification for going to Law. The Neary dispute was civil; the Dean ultimately conceded that there was no question of dishonesty although he dismissed them for gross misconduct.

This view does not condone the offence or apparent offence nor does it suggest that nothing should be done. Action should be taken in three stages. First the offender should be approached on a personal basis, preferably one to one. No one else should be informed, certainly not the press or the public. Many problems can be resolved, one to one, especially if the investigation is handled with justice, compassion and humility - of this more later. The Dean publicly suspended Dr. and Mrs Neary before the first hearing so all the world knew.

FAIR HEARING

If one to one fails, the second stage should be an internal investigation, within the organisation, before an independent tribunal. The hearing should be fair, an even playing field, no press, no public. The Dean refused to allow an independent tribunal, though some distinguished people offered to help. The hearing was "gamma-minus", in other words, it scored a very low rating. For instance, it was heard by the Dean who had already suspended the Nearys. He could hardly go back on that. Moreover, the Canon Treasurer who prosecuted later decided, as a member of chapter, on their guilt! a very elementary breach of natural justice.

If an internal investigation is declined or defective, then the third stage, litigation, may be needed, as a last resort. Even so, this litigation must be in proportion to the problem it has to solve. Lord Woolf, Master of the Rolls, in his fundamental reforms of the civil law has stressed that cost must be controlled and cases kept in proportion. The Neary case clearly breached these principles. The Dean is reputed to have spent over £400,000 on the case and, to clear their good name, the Nearys had to spend over £200,000. £600,000 wasted on a case which concerned a mere £12,000 and which could have been resolved over a cup of tea with lawyers and accountants tidying up the details afterwards. £600,000!

MERCY AND HUMILITY

My final three points are from Micah 6:8. Whatever you believe, the finest epitome of the judicial challenge is: "And what does the Lord

require of you? To act justly and to love mercy and to walk humbly with your God." These three qualities are required at the same time.

Justice is more than law and the problem is that with the increasing sophistication and complexity of the Law, a judge can get the law right and the justice wrong. Many consider that this happened in the Neary case. The result is that although the legal remedies are exhausted (bar one which is too expensive to attempt) a feeling of injustice remains. I have encountered the same dichotomy in family, civil and criminal cases over the years.

Mercy and humility are the two final ingredients of the judicial function and they surely apply both to the Judge and, in a civil case, to the "winner".

In other words, before making his decision a Judge should bring mercy and humility into play. The conventional attitude is that you find the facts (justice) and then apply mercy and - on the rare occasions - a touch of personal humility. Usually, this must be so. After all, a fact is a fact. However, in some instances - and the Neary case was one - if all three ingredients are applied simultaneously a different conclusion can be reached.

MUTUAL APOLOGIES

Let me give an example of where, years ago, a jury did just that. A young man was spotted by a zealous policeman in a council estate, test driving his car with his elder brother. He had been disqualified from driving and he had eight days to go before his disqualification ran out. I have no doubt that he was driving the car but I was glad when the jury acquitted him. They clearly took the view that he had been driving (justice) but he was a nice lad and the policeman was not (mercy) and wouldn't we all have done the same? (humility).

As for the "winner" who has "obtained justice" he can still decide whether or not to exercise mercy and humility in enforcing his judgment. It is entirely down to him. No one else. In the Neary case, this would have entailed reinstating Dr Neary, his wings clipped, with mutual apologies and a new clearer contract. This would have been a triumph of Relational Justice. Without it, and with much more pain to follow, the case has left a festering wound at Westminster Abbey.

"A judge can get the law right and the justice wrong."

His Honour Judge Christopher Compston has been a Circuit Judge since 1986, after twenty years as a barrister. He now sits in London, in civil, family and criminal work, spending two months a year as President of Mental Health Tribunals.

TAGGING, RELATIONSHIPS AND JUSTICE: WHAT ARE THE ISSUES?

Rebecca Sampson examines the pros and cons of electronic tagging from a Relational perspective.



Comic strips are an unlikely source of inspiration for criminal justice policy. Yet 'electronic tagging' evolved from being the stuff of Spiderman comics to a fully-fledged alternative to custody. Remarkable faith is currently being shown in this initiative, which so far has had a short and rather chequered history.

Its popularity in the U.S. where it began in the early eighties stems from: disillusionment with traditional probation methods; prison overpopulation; and optimism in the power of technology. Recent U.K. policy suggests that we are no less zealous. Plans are in hand to release up to 4,000 inmates over the next three months. The first prisoners were released on January 28th. The idea is to let them live at home for up to two months before the end of their sentence, whilst being electronically tagged. It is estimated that about 30,000 prisoners a year will benefit from the scheme. Move over Beccaria and Foucault. The new source of inspiration on crime and punishment is the Webbed Wonder.

The rise of electronic tagging poses important questions for Relational Justice. The key question is whether electronic tagging is an example of the sort of punishment that would help us to create a more Relational criminal justice system.

Potentially, the answer is yes. Used wisely and constructively, electronic tagging could be a way of helping offenders to resettle in their community. Indeed, the Government sees this as its main objective. There are several reasons why electronic tagging is a potentially Relational policy.

FAIRER PUNISHMENT

Firstly, it allows the offender to spend time in the community, and, if applicable, with his family. This is more constructive than an equivalent period spent 'inside.' By remaining in the community the offender is more likely to sustain and develop friendships. The curfew restricts the movements of the offender, but it does not prevent other people from visiting him. Evidence from the U.S. suggests that offenders with stronger family ties, who are married, or who are

cohabiting are better candidates for the tag than those whose living arrangements are less formal.¹

Secondly, where electronic tagging is used as an alternative to custody, it may help to keep families together. The deleterious impact of imprisonment on family ties is well-documented. The deprivation of normal contact with the spouse puts many marriages at risk and robs offenders of a legitimate outlet for their sexuality. It also breaks contact between fathers (typically) and their children. By contrast, electronic tagging may help to keep a family together whilst the offender is being punished.

Thirdly, electronic tagging is a fairer punishment, in Relational terms, than imprisonment. Tagging helps to ensure that the offender is the one who really suffers, and not his family. Too often families are forced to serve the 'second sentence' (by the offender's absence) through no choice of their own.

RESPONSIBILITY

Fourthly, electronic tagging tends to promote the five dimensions of good relationships that are set out in Schluter and Lee's The R Factor.² These are: directness (the ideal that people should meet face-to-face, rather than having contact through a third party or impersonal media); continuity (that people should meet frequently, regularly and over a period of time); multiplexity (that people should have contact in more than one role or context); parity (that people should meet as equals, not in terms of role or status but in terms of their sense of personal worth or value); and commonality (that people should have, as far as possible, common purpose and common experience). Each of these factors is stifled by imprisonment, yet all are facilitated by tagging. Tagging promotes directness, continuity, parity, and commonality within the family and, to a lesser extent, within the community. Multiplexity is also possible as the offender can, for example, be a partner, parent, friend or even an employee.

"The technology advances that have made tagging possible must be used constructively, to enhance relationships and rehabilitation, not demean them."

Fifthly, whilst movement is restricted, choice and responsibility are maintained. Choice is retained because the offender can choose how to spend time in the home.

Responsibility is promoted because offenders remain members of the community, albeit restricted. It fosters trust and upholds values of 'dignity' and 'respect for the person.'

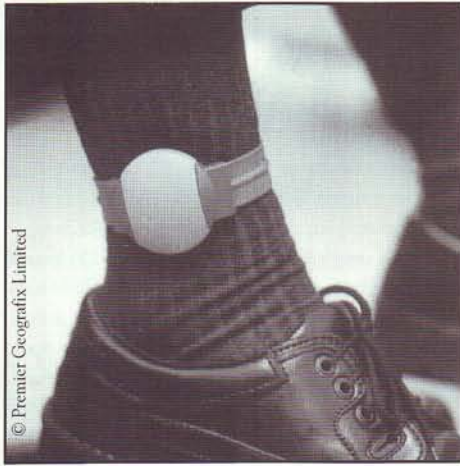
DOUBLE-EDGED SWORDS

However, turning the home into a place of custody is a potentially double-edged sword, and not least in Relational terms. Tagging may actually result in increased familial problems and friction. It follows that it is not always preferable for the offender to be confined to the home. Careful research into the offender's home situation is needed before a sentence of electronic tagging is administered. There is a danger that insufficient heed will be paid to the offender's domestic situation in making tagging orders.

Related to this problem is the question whether it is ethical to use the home as a place of confinement. Lilly and Ball suggest that it "appears to take 'community corrections' to the limit by converting that most private of realms, the home, into a place that actually functions as a correctional facility"³. This concern reflects the high value attached to the home in contemporary society. We draw a clear distinction between the public and the private; seeing the home as a private domain that should remain so. From this perspective, tagging is



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example, if electronic tagging is used in conjunction with community service or with some form of counselling, it is likely to be more effective than if used on its own. In Sweden, for example, offenders are not simply restricted by a curfew. They are also encouraged and helped on a personal level. Emphasis is placed on activities that are likely to enhance the offender's adaption in society. The tagging order is always enveloped in an appropriate treatment programme for the offender.⁸ In April 1996, 92% of tagging orders in Sweden had been successfully completed.⁹ These results mean that a prison that would otherwise have been opened is no longer needed.¹⁰

ENHANCED RELATIONSHIPS

Nearly twenty years ago the Home Secretary, William Whitelaw, said: "we shall need... to see that the prisons are not cluttered up with trivial and inadequate offenders who are no real threat to anyone, except possibly themselves".¹¹ The hope must be that electronic tagging will reduce the number of people who are incarcerated, but whose crimes do not deserve a prison sentence.

To sum up: I contend that electronic tagging, like technology as a whole, is neutral in terms of its potential impact on relationships. It can be used either for good or evil; for strengthening relationships or for putting them under further strain. The fundamental issue is the inherent personhood of the offender. The

technological advances that have made tagging possible must be used constructively, to enhance relationships and rehabilitation, not demean them. For this reason a Relational approach is essential if we are to get the best out of electronic tagging, welcoming its positive qualities and eschewing its negative ones.

Rebecca Sampson is a graduate in Theology who authored a thesis: 'Electronic Tagging: 21st Century Punishment' whilst at London Bible College in 1998.

an affront because it invades the right to privacy. Against this, we ought to recall that the tagged offender is being punished for a crime and that punishment involves forfeiting certain rights. Tagging at present, in my estimation, is not over-intrusive. The offender's presence is required at certain times, but monitors and probation officers cannot see the offender. They are unaware of specific movements, activities or conversations within the home.

RECONCILIATION

A third potential drawback to electronic tagging from a Relational perspective is that it may be dehumanizing. Some fear that it may be seen as a 'cop-out' for probation officers. "[Electronic tagging] has solved one of the probation officer's problems - they no longer have to meet up with difficult, dangerous clients, they can stay in the office and watch the computer."⁴ Lilly and Ball, for example, claim that volunteers should be used instead of tagging equipment, as this increases the possibility of reconciliation between the offender and the community.⁵

However, whilst electronic tagging could easily be dehumanising, there remains potential for developing good relationships, for example between offenders and those who monitor them. Geografix, a company responsible for monitoring tagged offenders, claim to have been surprised at the relationships that developed between their staff and tagged offenders.⁶ Evidence from the States suggests that "small-scale contacts build up both the relationship and the effectiveness of supervision".⁷

Of course, 'depersonalization' is an ever-present danger in the use of the tag. This is why it is so important that its operation should be motivated by Relational values. Relationships must be valued throughout the tagging order. Research suggests that this makes the difference between success and failure. For

"Relationships make the difference between the success and failure of tagging orders."



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¹Baumer, Terry L. and Michael G. Maxfield. 1995. "Electronically Monitored Home Detention." In *Intermediate Sanctions in Overcrowded Times*. Michael Tony and Kate Hamilton (eds.). Northeastern University Press, 112.

²Schluter, Michael and David Lee. 1993. *The R.Factor*. London: Hodder and Stoughton.

³Lilly, Robert J. and Richard A. Ball. 1990. 'The Development of Home Confinement and Electronic Monitoring in the United States.' In David E. Duffee and Edmund F. McGarrell. *Community Corrections: A Community Field Approach*. Cincinnati: Anderson, 77.

⁴Marc Mauer. 1997. Quoted in Dick Whitfield. *Tackling the Tag*. Winchester: Waterside Press, 37.

⁵Lilly and Ball, *op. cit.*, 89.

⁶Stephen Shaw. 1997. 'Wrestling with the Tag.' *Prison Report* 41, 8.

⁷Whitfield, *op. cit.*, 103.

⁸Norman Bishop. 1996. 'Intensive Supervision with Electronic Monitoring: A Swedish Alternative to Imprisonment.' *Vista Perspectives on Probation* 1(3), 30.

⁹Only 6% had been breached or abrogated, and 2% were continuing; Whitfield, *op. cit.*, 62.

¹⁰Whitfield *op. cit.*, 62.

¹¹William Whitelaw. *Speech to Conservative Central Council*. Bournemouth, 21 March 1980. Cited in Vivien Stern. 1987. *Bricks of Shame*. London: Penguin. 35-36.

Will electronic tagging lead to probation officers staying in and watching the computer?

WHY RELATIONAL JUSTICE WORKS

Judge Fred McElrea offers his further reflections on the Family Group Conference system five years after Relational Justice: Repairing the Breach.

In my contribution to the book on Relational Justice, I wrote about the impact which the Family Group Conference (FGC) was having upon the youth justice system in New Zealand. The FGC describes a meeting of about six to twelve people who typically include: the offender; the victim; their family representatives and supporters; a youth advocate; a policeman; a social worker; and any others who have a particular reason for being present. The goal

is to agree a plan of action that is satisfactory to all the parties concerned. Often, this is much more imaginative and personal than anything that a regular court can offer.



My chapter on Relational Justice

flagged the possibility of extending the principles of this model to adults in the form of Community Group Conferences (CGCs).¹

It is exciting to report that, since then, CGCs have emerged as a successful and welcome addition to dispute-resolution in New Zealand. These adult conferences have been held on an informal, non-statutory basis (mostly but not entirely in Auckland), encouraged by a number of like-minded judges with the blessing of the Chief District Court Judge. More recently they have come to be organised independently of the courts. I see them as a working model of Relational Justice and its close cousin, Restorative Justice. My involvement to date has been principally as a Youth Court judge and as a District Court judge, but one with an eye to reform of our justice structures.

Relational Justice, as exemplified by FGCs and CGCs, works:

● Because it is consistent with how people intuitively think about justice:

FGCs and CGCs are close to the 'family' model of justice. They are like the way most families work. This means that people can readily understand it. Families do not operate like courts and yet they grapple with very basic issues of justice, punishment, having a fair hearing,

reparation and reconciliation. Most importantly of all, families seek to keep the peace and to find positive outcomes to conflict. They try to repair and build damaged relationships.

The trouble with the criminal justice system, as a former Saskatchewan Deputy Minister of Justice observed, is that it encourages you to deny responsibility in the hope you might get off. In a family, he said, such behaviour would be considered dysfunctional, and in a community it is the same.

● Because it is inclusive and respectful:

As a Youth Court judge I feel that we have to throw off the language of professionals and use the more inclusive language of the people we serve. This is essential if we are serious about operating a new model of justice built on principles of respect. Thus for example, in New Zealand, we deliberately use the term "youth justice" instead of "juvenile justice".

● Because it is not dominated by professionals and is much more satisfying to victims:

Good practice requires that professionals (be they lawyers, social workers or police) play their part in an unobtrusive but supportive way. This is the only way to encourage lay people to claim the criminal justice process as their own. It is really the reverse side of being 'inclusive' of lay people. This approach releases the ingenuity of ordinary people. Creative outcomes result from the collaborative imagination of victims and families. I recall the wonderful example of the boy who had to take a bunch of flowers to the victim along with his apology letter; and the youth whose eight



victims recently asked him to write out a list of his goals in life and how he would achieve them. Regular courts, by contrast, frequently stifle such outcomes. This is mainly because their sentences are based on statutes that offer only a few standard (and often stale) alternatives.

● Because it empowers the victim:

One advantage of FGCs and CGCs is that they move the principal power of sanctions away from the impersonal state and into the affected community. Such conferences successfully integrate the victim, who is so often pushed aside, into the process. This involvement frequently helps to heal the victims' wounds. For an offender, facing one's victim can be much harder than facing a court. The result is responsible reconciliation, repaired relationships and enhanced respect.

● Because it acknowledges the whole person:

When I studied the traditional theories of punishment as a law and philosophy student in the 1960s they seemed to make sense, but since 1988 as a judge I have found them profoundly

unsatisfactory - especially the deterrent theory. Levels of crime do not seem to drop when levels of punishment increase, and yet they should do if people acted rationally. More punitive sentencing for crimes of violence was introduced in New Zealand in 1985. Over the following seven years, violent offending increased by 41% and yet the average length of prison sentences for such offences had increased by

58%. The problem with the deterrent theory is that it assumes it is dealing with rational creatures who respond to threats of punishment.

Whilst of course Relational Justice processes can and should operate at the cognitive or rational level, it also builds on normal and vital human emotions. This emerges when: victims express hurt and anger to their offenders in a palpable way; offenders feel remorse and empathy for their victims; forgiveness is present; shared optimism for the future emerges; and when dignity is restored to victim and offender. Here, the offender is not a theoretical construct, born of a narrow, utilitarian model. Relational Justice engages with the whole person, in heart, mind and spirit.

"Since my chapter on Relational Justice, Community Group Conferences have emerged as a successful and welcome addition to dispute-resolution in New Zealand."

● **Because it is not just a decision-making process:**

FGCs are also an experience. In more explicitly Relational terms, they are an opportunity for human encounter. This is one reason why the victim's presence is so essential. Without a victim present, it is almost impossible to get that essential element of encounter and confrontation. This is what challenges a young person's perception of their actions and shows them the human face of crime. In the experience of such an encounter a change of heart is possible. Courts hardly ever see that occur.

● **Because it lacks the paternalism of welfare models:**

Like deterrence, reform theories of punishment also lack credibility because punishment hardly ever seems to reform, in the sense of reshape, anyone. Leaving aside a few outstanding programs such as those for paedophiles now operating in some New Zealand prisons, no-one seems to believe that people are improved by going to prison - quite the contrary. Mike Dolan, in an illuminating article on the origins of New Zealand's youth justice system, explains that 60 years of paternalistic welfare legislation has had little impact on levels of offending behaviour: "Youth justice reform in New Zealand then, beckons the practitioner away from the excessive pursuit of rehabilitation... from dispositions which are frequently more intrusive, coercive and inherently unjust, and from an approach which provides little opportunity for the viewpoints of victims, and even of offenders themselves, to be recognised."²

● **Because it does not presuppose a monolithic and all-knowing state:**

Relational Justice impacts on ideas about the nature of justice and the role of the State in



delivering justice. It is consistent with the current radical rethinking of the role of the State, which is no longer assumed to be the best vehicle for

delivering solutions in a variety of areas that were traditionally its preserve. It is consistent with the movement towards a more communitarian approach to justice. We query the traditional sway of 'just deserts' theory which presupposes that the deserved amount of punishment can be objectively known and delivered by the State through the courts. A suitable outcome, no less 'proportional', may equally be derived from the input of family, victim and

community. Here, punishment may be only one factor in a balanced sentencing approach.

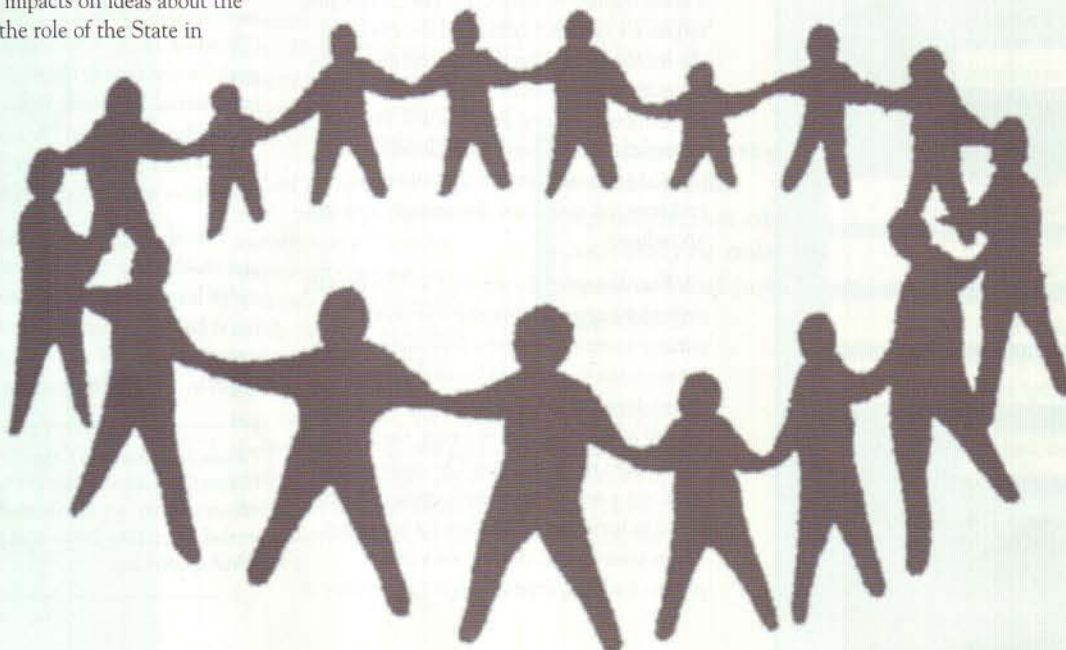
To conclude, the application of Relational Justice and Restorative Justice thinking, for all of the above reasons, has been a revelation. It has broken the traditional mould. According to recent Australian research, conferences are seen as fairer

than courts by both victims and offenders. It has also broken some of the stereotypes that permeate criminal justice. Victims are regularly found not to be vengeful people demanding their pound of flesh. Police Youth Aid officers are involved as constructive, helpful participants. Lawyers play non-adversarial roles. Judges can be enablers and servants. What a breath of fresh air it is to be free of those rusty old shackles, to be hopeful, to be inspired by the prospect of a better way of doing justice.

Judge F. W. M. McElrea is a District Court Judge in Auckland, New Zealand. This article is based on a paper given at the Second International Conference on Restorative Justice for Juveniles, Florida, in November 1998.

¹McElrea F. 1994. 'Justice in the Community : The New Zealand Experience'. In *Relational Justice: Repairing the Breach*. Jonathan Burnside and Nicola Baker (eds.). Winchester: Waterside Press.

² Cited in F. McElrea. 1994. 'Restorative Process and Outcome: Emerging Theories of Restorative Interventions'. Paper given at the Second International Conference on Restorative Justice for Juveniles, Fort Lauderdale, Florida, November 7-9 1998.



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INSPECTOR MORSE GETS RELATIONAL



Pamela Reilly, OXFORD's Crime Strategy Co-ordinator, explains why relationships are central to tackling crime.

As Oxford's 'Crime Strategy Co-ordinator' (a job known as 'Community Safety Manager' in many districts), the greater part of my work is spent, at present, ensuring that Oxford City Council, along with its partner agencies, fulfils its statutory obligations acquired under the Crime and Disorder Act (1998).

This Act placed a new responsibility upon local authorities, police and other agencies to work in partnership to reduce crime and disorder. As part of this process every three years the partnership has to: conduct and publish an audit of local crime and disorder problems; consult locally on the audit; agree and publish a crime and disorder strategy; and monitor progress.

TACKLING CRIME & DISORDER

In Oxford we set up a multi-agency partnership group to tackle crime and disorder, carried out the first audit and public consultation and are now putting together a three year long crime and disorder strategy.

This identifies the following six areas as potential priorities: burglary; city centre; specific geographical areas (East Oxford and St Clements); vulnerable young households; young people and heroin.

The theme of citizenship runs throughout all six of the above proposed priority areas, alongside the commitment to improve the quality of information available and data sharing practice.

Our strategy will contain a small number of achievable but challenging targets for reducing crime and disorder, and the means of tackling these problems will be a combination of social and situational crime prevention measures. Progress will be measured annually, and more detailed, focused audits will ensure that emerging problems are noted and the strategy updated accordingly.

The success of the strategy will be heavily dependent upon relationships between partner agencies, between communities, and between the agencies and communities themselves. Although Oxford has a good history of multi-agency working, there are still bridges to strengthen. The audit process itself was a test of faith, with agencies being asked to hand over their data for comment. Yet to some extent the accuracy of the picture built up, depends upon the honesty of

agencies within the partnership group.

In addition to the information provided by agencies, we held focus groups with different sections of the community, to discuss their experiences and perceptions of crime. These groups highlighted areas where community relationships need to be strengthened, perhaps by building stronger support networks (eg for young and single parents). The fact that we experienced difficulty in pulling together focus groups and questionnaire responses from some sections of the community indicates that we need to pay attention to the relationships which we, as agencies, have with our communities.

Although the audit did not analyse the causes of crime and disorder, many of the problems highlighted by the audit, would seem to be at least exacerbated by the breakdown and lack of supportive and understanding relationships. The strategy will aim to build more networks for supporting young people, whether through mentoring projects or work with families and schools to increase the number of caring relationships, based on mutual respect.

THE NEED FOR NEW RELATIONSHIPS

Delivering an effective strategy depends on true, good quality partnership work, with honest and open evaluation and monitoring procedures. Success will correlate with the standard of

"We've learned that, as agencies, we need to strengthen our own relationship, before we can begin to sort out those of our communities."

communication, respect and trust among agencies and their users, with the achievement of objectives often requiring new structures or patterns of working relationships.

The need to link with other local plans, such as those of the Drug Action Team and Youth Offending Team, as well as individual agencies' goals for the next three years, is of paramount importance. In Oxford this means working with county based plans and recognising that crime and disorder problems cross geographical boundaries when people do so.

Trite though it may sound, these are exciting and challenging times for community safety. If we've learned one thing from the audit process so far, it has to be that as agencies, we need to strengthen our own relationships, before we can begin to sort out those of our communities.

Pamela Reilly has been Crime Strategy Co-ordinator for Oxford City Council since 1998. She is a former policy adviser on crime for the Automobile Association and worked with Crime Concern on projects for young people at risk of offending.