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AN UNCHRISTIAN SOLUTION?

Andrew Coyle reflects on the roots of imprisonment



Organised religion carries a great deal of responsibility for the development of the modern prison. In historical terms, much of the treatment meted out to prisoners over the centuries took place in prisons which were nominally under the control of one or other institutional church. Modern prisons had their genesis in Western Europe and the United States of America and the principles of imprisonment which exist in our society today owe much to institutional Christianity and the concepts of admission of guilt (sin), expiation and a firm purpose of amendment, leading to forgiveness.

Students of ecclesiastical architecture and those of penal history might usefully contrast the hermits' cells of early monasticism, grouped around a central church building, with the Victorian prisons still in use today. These consist of tiers of rooms, also described as cells, grouped around what often remains the most impressive building in the establishment, the prison chapel. The similarities between the monastery and the prison go beyond those of architecture. The principles underlying imprisonment are based on the Christian concept of wrongdoing, expressed as sin. Each of us is responsible for our own actions. If we do wrong, we have to admit our guilt and we have to undergo punishment. Through this punishment we may be reformed and may expect forgiveness. These beliefs underlie criminal justice in most western societies.



and then as a convicted criminal. The sympathy and support which he had built up within the community over three years was virtually forgotten. Accused by the leaders of his own people and found guilty by the establishment, popular support evaporated. Even his own followers deserted him and he was executed between two other convicted criminals. There can be little doubt that this Jesus associated himself more closely with the outcasts of society than with those who were its leaders.

According to the philosophy of 19th century imprisonment, prisoners were to be separated from all negative influences. They were not allowed to talk to

or even to see each other. They were to be subject only to good influences, including regular work, Bible study and regular visits from the chaplain and the governor. The personal reformation of the prisoner became important. This was to be measured by admission of guilt, by expiation and by a strong determination to change. In a religious context, these processes are only to be measured

between God and the individual. In the context of the prison, they were to be measured by third parties, that is, by those who administered the prison system.

The imposition of such a structure bore within it the seeds of its own failure. Technically, this reform of the prisoner was described as rehabilitation. As applied in the prison system, this principle was at best patronising and at worst arrogant, for it contained the assumption that it is possible for one group of human beings to impose personal change on another human being. If only the prisoner would do as he was told, as we told him, he would be won away from his life of crime. Yet rehabilitation, properly understood, involves putting on the garb of citizenship. It is not a strait-jacket into which one can be forced. It is a garment which must be donned freely. One can, and must, be assisted in putting it on but, in the final analysis, one must freely choose to do so. This is something which must always be kept in mind when we develop new programmes for prisoners aimed at what we now call reducing their re-offending. Whilst we are obliged to encourage others to change, the individual must always be left to make his or her own choice.

PERSONAL REFORMATION

That is not to suggest that prisons are necessarily part of a Christian worldview. On the contrary, the emphasis in the New Testament is on remedial punishment as seen, among other ways, by the exercise of discipline in the early church [see article by Bruce Winter in a forthcoming edition of the *Bulletin*]. This suggests that had the nineteenth-century church reflected more deeply on its own sources it might have not have favoured imprisonment as a form of punishment, even though it may have been a more humane penalty than other options at the time, including execution and transportation. They might also have stopped to consider the sort of people who find their way into prison. During the many years I spent as a prison governor I was constantly reminded that Jesus spent the time before his death first as a remand prisoner

PLACE OF EXILE

Prisons, as originally conceived, were places of exile. The first modern prisons were built about 150 to 200

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years ago to replace transportation to the colonies. Convicts were exiled behind the high walls of the new fortress prisons to be punished for the crimes they had committed by being deprived of their liberty. But the notion of prison as a place of exile is a flawed concept. The reality is that, whatever our ambivalence about the prison as an institution, it is as much a part of our society as is the school, the hospital or the university. Those who are sent there do not forfeit their rights either as human beings or as members of society. Indeed, the vast majority of them will return to society after a relatively short period in prison.

Contact between the prison and its local community is a vital way of facing up to this reality and it can take many forms. It may involve members of the community coming into the prison on a regular basis as volunteers to assist prisoners or their families. It may involve prisoners who are not a threat to the public going out of the prison during the day to enrol in skills and vocational training courses in the community or to work with voluntary agencies. It may involve groups of senior citizens or handicapped people coming into the prison to be entertained by prisoners at Christmas or other times. The chaplain frequently plays an important role in many of these forms of contact. The important point is that this link should never be denied or ignored.

DOES PRISON WORK?

Crime and the criminal justice system which exists to deal with it come at the end of a very long continuum. Take a young criminal in his late teens. (Remember that most crime in this country is committed by young men in this age

group). He has probably been a failure in his family life. He may well have been a failure at school. He has been a failure in his church, if he has one. He has been a failure at employment, if he ever had any. He has even been a failure in his criminality, because the successful criminal is still on the streets. Do we really think that by locking up this young man in a prison we can reverse this trend and, after a few months in prison, turn him into an honest and law-abiding citizen?

The debate a few years ago about 'Prison Works' was useful insofar as it made us face up to the question of what imprisonment is really about. It is not primarily about reforming people or rehabilitating them. It is not really about deterrence, since only about three in every hundred offences result in a conviction and only one in a hundred results in a prison sentence. The main purpose of imprisonment is to incapacitate people by depriving them of their liberty. The law says that people should only be sent to

prison for one of two reasons. The first is that the offence is so serious that deprivation of liberty is the only appropriate punishment. The second, in the case of those who have committed offences of a violent or sexual nature, is that the protection of the public requires it.

This is the law of the land, and it is a sensible law. 'Prison works' in that it punishes those who commit serious crimes by depriving them of their liberty and by so doing protects the public. The question then arises as to whether everyone in prison meets these two legal criteria. There can be little dispute in respect of serious criminals, murderers, rapists and armed robbers. Their incarceration for as long as the court deems necessary is proper punishment and

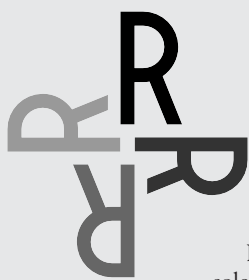
protects us all. But such criminals make up a relatively small proportion of the population of our prisons.

AN OMNIUM GATHERUM?

Many of the men who are in local prisons like Walton or Strangeways or Brixton are inadequate men who have found it impossible to survive in our materialistic, highly competitive society. Many are rootless, homeless and unemployed. In local prisons a significant proportion of them suffer from mental illness of one form or another. One has to question whether prison is the most appropriate and effective way of dealing with many of these men. The issue of women in prison, whose number has doubled in recent years, is even more problematic. That is not to say that the offences of which people have been convicted should be ignored. In deciding how they should be dealt with the court is faced with a real dilemma. One is reminded of the words of Sir Alexander Paterson, the famous English Prison Commissioner in the first half of the last century: 'A prison is variously regarded by the casual outsider as a cloakroom for trial prisoners, a dustbin for nuisances, and a limbo for those whom society is reluctant to see again. The word merely connotes a place of confinement, where men have to be kept in custody for many different reasons. As a result the prison is apt to become an *omnium gATHERUM*, a convenient receptacle into which a puzzled Court may put anyone for whom no alternative method of disposal is very obvious.'

During the six years I was Governor of Brixton Prison I came into daily contact with men who had been accused of all sorts of crimes and offences. At one end of the spectrum were those who by any definition had been involved in the most serious breaches of the criminal law. At the other end were the casualties of our

"Rehabilitation means putting on again the garb of citizenship. This is not a strait-jacket into which one can be forced. It is a garment that must be donned freely."



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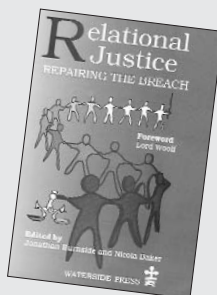
WHO WE ARE

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.



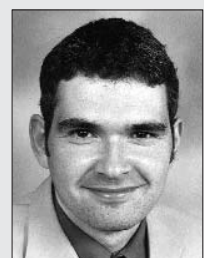
The **Relational Justice Bulletin** has been launched as a platform for discussion of the ideas at the heart of **Relational Justice** as well as exchange of good practice across the system.

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.

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Dr Jonathan Burnside is Editor of the Relational Justice Bulletin



modern, pressurised society. They were unable to cope with its demands. Their need was more for care than for custody. In between the two extremes was a large number who had fallen foul of the law because of wrong decisions which they had made or because of the circumstances in which they had found themselves. There was also a significant proportion who would be found not guilty of the offence with which they had been charged and who would in due course be released.

In one of the *Letters to Olga*, which were smuggled out of his prison cell, Vaclav Havel, President of the Czech Republic, wrote, 'It's interesting, though, that I never feel sorry for myself, as one might expect, but only for the other prisoners and generally, for the fact that prisons must exist and that they are as they are, and that mankind has not so far invented a better way of coming to terms with certain things.'

HUMAN MISERY

It is sad, then, to report that the last twenty years have seen a massive expansion in the use of imprisonment across the world. It is an increase found in democratic countries as well as in totalitarian states, rich countries as well as poor, countries in the north as well as in the south, east and west. In the Netherlands in 1975 the rate of imprisonment was 17 people per 100,000 of the population. It is now about 87 per 100,000. In December 1992 the prison population in England and Wales stood at 40,600. There are now more than 65,000 men and women in prison in this country. In 1980 the total number of people in prison in the USA was just below half a million. It has now risen to 2 millions. In the last few years of the 20th century there was a slogan voiced in some parts of the US, "2 million by 2,000", as though it was a worthy ambition to aim to have 2 millions of their fellow countrymen and women behind bars.

What does this mean in terms of human misery? Allow me to put some flesh on these figures. South America provides several graphic examples of what happens when a massive increase in the prison population fails to be matched by an increase in resources. A few years ago when I visited Judicial Unit 40, a detention centre in Bogota, Colombia, cells were so full that prisoners were forced to lie on top of each other. Up to 19 prisoners were crammed into cells designed to hold four. The Modelo Prison is the main pre-trial prison for Bogota with a capacity for 1500 prisoners. When I visited, it held 3450 male prisoners. At any one time there are about 150 guards on duty to look after these men, a hopelessly inadequate number to effect proper supervision.

IMPOSSIBLE TASK

The International Centre for Prison Studies has a number of prison reform projects in the Russian Federation. Here, too, one witnesses the terrible consequences which result when the

infrastructure of the State is unable to support a massive increase in its prison population. There are 1 million people in prison in Russia. Conditions for these prisoners are worst in the pre-trial prisons. Kresty Prison in St. Petersburg, so named because its two massive accommodation blocks are in the shape of crosses, is the biggest single prison in the world. It has an official capacity of 3,000, although that in itself is a gross over-estimate. In actual fact, Kresty Prison regularly holds over 10,000 prisoners within its walls. The two main accommodation blocks have four large wings coming out from a central point. Cells are built on the western European model, each measuring approximately 8 square metres and originally intended to hold one person. The British definition of overcrowding is to have two prisoners in a cell this size. Imagine such a cell holding up to 15 men for over 23 hours each day. Two sets of triple bunk beds are squeezed in to the cell for a total of 6 beds. One option is that prisoners sleep in shifts. The other option is that the strong prisoners take the beds. The weak sleep as best they can curled up on the floor of the cell.

Addressing a parliamentary hearing in Moscow on 24 October 1995, General Yuri Kalinin, Head of the General Penitentiary Department, said, 'I have to confess that sometimes official reports on prisoners' deaths do not convey the real facts. In reality, prisoners die from overcrowding, lack of oxygen and poor

prison conditions... Cases of death from lack of oxygen took place in almost all large pre-trial detention centres in Russia.' I know Mr Kalinin well. He is a man of great professional integrity who is now Deputy Minister of Justice with overall responsibility for prisons. He faces an impossible task. One-tenth (approximately 100,000 prisoners) in Russia are infected with active tuberculosis. Men go

into prison in a healthy state and return to the community infected with TB. Kalinin himself has referred to a prison sentence as being 'sentenced to die'.

Some of the worst prison conditions are to be found in countries which are former colonies. In Nigeria there is significant overcrowding in most of the country's prisons. A prisoner in Zaria Prison has described what this overcrowding means in practice, 'We have three batches in my cell, and I am in Number Two. Other cells have four, even five, when there are many prisoners. When it is time to sleep, we all make space for the first batch. We stand at one end of the cell, or sit. Some of us sleep while standing, but you do not lie down. Only the first batch lies down. After four hours, they get up, and we lie down

to sleep. After four hours, we get up, and the third batch will sleep.'

CHRISTIAN PRINCIPLES

The debate about law and order in this country and the attempt by some commentators to produce simple, quick fire solutions to eternal problems of human behaviour underline the need for a new statement about the principles on which criminal justice is based. The principles remain as valid as ever they were. But they have to be articulated in a language which can be understood today rather than with tired and outworn clichés. This should take us beyond the notion of retribution, suffering and the infliction of pain and on to the concept of repairing the damage which has been done, to restoring the balance between the victim and the offender, to bringing the offender to a realisation of the harm which has been done and of the need to make amends. It will give victims the satisfaction of knowing that the pain and hurt which they have suffered is understood and regretted. We must not allow public commentators to expropriate the Christian principles of guilt, punishment and retribution without going on to the final principle of forgiveness. Relational Justice, with its close affinity to Judaeo-Christian beliefs, has the possibility of offering a more Christian solution that is based, not on a wish to compound the damage and destruction which has been caused by a criminal act, but the belief that crime itself can be used as a vehicle to repair and reconstruct relationships within society.

Dr Andrew Coyle is Director of the International Centre for Prison Studies, King's College, University of London. For 25 years before taking up this post he held senior positions in the UK Prison Services, latterly as Governor of Brixton Prison in London.

A response to this article will appear in a forthcoming edition of the Bulletin.



Hamid Gholer

THE BODILESS ETHER

Shirley Shipman looks at harm on the Internet from a relational perspective



Internet usage is at an all time high. The speed of the Internet has changed the way in which people receive information and – crucially – the way in which they relate to each other. For better or worse, we have entered the bodiless ether of cyberspace where, more than ever, we do not meet others face-to-face but through a world of mediating technology.

In relational terms, the rise of the Internet amounts to an explosion in the number of contingent, or in other words, indirect relationships. The Internet allows one user to communicate with another anywhere in the world for less than the cost of a local phone call. Of course, doing things at a distance is not new. But it only became possible in the past hundred years and commonplace in the last twenty-five. The result is that more of our relationships are 'stretched' than at any time in human history.

"The Internet has arguably greater power to influence behaviour because it is relationally diffuse."

Face-to-face conversation, which for most of human history characterised the majority of social relations

and exchanges, is increasingly being replaced by tertiary relationships mediated by phone, fax and computer.

HYPERPERSONAL INTERACTION

As regards the Internet, this 'stretching' can have positive as well as negative results. After six years of research into computer-based interaction, the Open University's Institute of Educational Technology found that personal information exchanged online is not just more intimate but far more likely to be accurate. Researchers also found that people disclose four times more about themselves on-line compared with face-to-face communication. This is partly because communicating with computers makes a person more self-focused, which encourages truthfulness. It may also reflect the belief that it's easier just to be yourself in cyberspace. Adam Joinson, a psychologist at the Institute believes that this 'hyperpersonal interaction' (unusually intimate computer-mediated communication) develops stronger bonds between people because 'self-disclosure is the glue of social interaction that tends to build trust and lead to intimacy and strength in personal relationships'.¹ Another reason for this extreme emotional closeness is the impact of 'visual anonymity' in the way we communicate. Because there's no such thing as a 'bad hair day' on the net, people can concentrate on the deeper, more individual aspects of personality by sharing their inner thoughts and feelings.

Yet human nature being what it is, the net has arguably an unrivalled potential to bring

willing users into contact with the seamy underbelly of life, not least in the form of pornography. Again, there is nothing new in this. Sex has always sold, in every era and in every medium and the Internet is no exception. Pornography is accessible through multiple media (chatlines, cinema, magazines and video) and to this extent the issues raised in this article regarding the Internet apply equally to other formats as well. Yet arguably the Internet has greater power to influence behaviour because it is relationally diffuse. You might not buy a top-shelf magazine from your local newsagent because the personal contact might engender shame, but you might log on to a pornographic website in the privacy of your home when no-one is watching.

HARM AND CENSORSHIP

Online earnings for the adult industry topped \$1 billion, according to Forrester Research, up about 30% from 1997. "The Net is the natural medium for adult content" declares Seattle's Seth Warshavsky who has made millions from his cybermall of adult websites. His members-only Clublove site boasts 115,000 subscribers who pay up \$24.95 a month for a variety of salacious fare. Pornographers make more money from their websites than anybody else for the simple reason that their pages have content that people will pay for.

There is considerable debate over whether there should be restrictions on pornographic material in a free and democratic society. Article 10 of the European Convention on Human Rights states that, 'Everyone has the right to freedom of expression' a right that includes 'freedom to...receive and impart information and ideas'. The European Court of Human Rights has stated that Article 10 is applicable 'not only to information or ideas that are...regarded as inoffensive, but also to those that offend, shock or disturb the state or any other sector of the population', *Handyside v UK* (1976).

The liberal position is generally to oppose censorship of pornographic material unless there is clear evidence of harm caused by its free availability. The rationales adopted in defence of this position are varied. One argument is that truth arises out of the free exchange of ideas. The 1979 Williams Committee recommended that there should be no censorship of the written word since this would amount to interference with the "free flow of ideas and artistic endeavour" that would rule out in advance possible modes of human development. Against this, truth is not always discovered by debate and, more often than not, debate leads merely

to confusion and to further debate. In any case, pornography is not disseminated for the noble purposes of human progress and the quest for truth but rather for the ignoble purposes of titillation and sexual gratification. The Williams Committee recognised this with regard to visual material and suggested a system of censorship. Much liberal philosophical debate revolves around the 'harm' principle; *viz.* the belief that legislation is justified only where it prevents harm to others. One problem with this approach is determining what is meant by harm, whether physical, moral, emotional or social harm? Feminist writers have argued that harm to women as a social group should be considered. Pornographic material shapes how women are viewed and this in turn determines their position in society. Whether this results in actual harm depends on the number of people in a particular society who view material that is degrading to women and the positions of influence that they hold, either over women or over society.

A RELATIONAL APPROACH

Perhaps the strongest argument for freedom of expression in this area is that of moral autonomy, the belief that everyone has the right to make his or her own moral choices. However, Article 10 of the European Convention states that the exercise of freedom of expression carries with it duties and responsibilities and so can be subject to restrictions and penalties, prescribed by law and necessary, amongst other things, for the protection of health or morals. The European Court of Human Rights has allowed a 'margin of appreciation' for Convention signatories in determining what is necessary for the protection of morals. The basis is that there can be no uniform conception of morals and state authorities are in a better position to determine the needs of the society.

Perhaps, however, it is worth considering a relational slant in this debate. A relational approach has as its starting point the belief that right relationships are essential to a stable and secure society. For a relationship to

deepen from the superficial to the intimate there needs to be a developing knowledge, acceptance and trust. A sexual relationship is surely the most intimate of relationships and, at its best, evolves out of a loving, self-giving relationship developed over time. Pornography, however, reverses the focus of the sexual relationship, being concerned with self-gratification rather than self-giving. The emphasis is rather on arousal and gratification without the need to form a relationship with the arousing person or object. Sex in the hyperreal world of digital connections

"Sex in the hyperreal world of digital connections is characterised by a complete absence of the component commitments of care, time, knowledge and acceptance."

is characterised by a complete absence of the component commitments of care, time, knowledge and acceptance.

NO HIDING PLACE

A relational critique of Internet pornography would emphasise that whereas sexual longing compels us into relationship, 'virtual sex' hinders the adult desire to connect meaningfully with others. Digital sex is not a real connection and gets in the way of our capacity to relate to real people. One of the goals of sexuality is to draw us outside of ourselves and into the light of others. The 'fast food' of Internet pornography inhibits commitment to real-life relating and our capacity to be wholly present to others. Why risk intimacy with a real person when you can conjure up what C. S. Lewis described as the 'harem of imaginary brides' with the click of a mouse? In the end, the cheap trick of pornography disfigures our view of other people, reducing them from men and women of worth to players in a pornographic scenario.

A relational critique might also emphasise the anonymity afforded users of Internet pornography. In fact this much-vaunted anonymity is a myth. The vast majority of ordinary users in the UK either use one of a number of (rapidly vanishing) free Internet Service Providers (ISPs) or are paying for an ISP with a credit card. All ISPs keep a record of the phone number dialled in by the user (the Caller Line Identification) which allows them to track a path back to the user's machine, if they are

required by the law to do so. There is no hiding place on the net. Every computer has an IP (Internet Protocol) address whilst it is connected to the Internet and the ISP retains a record of its activities because they are bound by an 'acceptable user' policy.

The only way of being anonymous on the net is by having an ISP account that is not traceable back to you. This means either hacking

"There is no hiding place on the net."

into another person's machine and using their username and password when they are off-line, or 'ripping off' another person's credit card numbers and charging the cost of the ISP

account to that person or, lastly, having a (prohibitively expensive) dial-up account in Russia or Ukraine where the police do not have the resources to tackle Internet crime.

Significantly, the recently busted so-called 'Wonderland' Internet child

pornography ring went to astonishing lengths to cover their tracks and yet were still caught, despite the fact that they were using state-of-the-art technology.

Anonymity is very hard to maintain on the net because any traffic across the data network can be traced. For this reason, paedophiles and other abusers are becoming more conspicuous by gathering on the net. By making such people more vulnerable and easier to catch, the Internet may be contributing in some way to child protection, although that is small comfort for the global victims of child pornography.

"Whereas sexual longing compels us into relationship, 'virtual sex' hinders the adult desire to connect meaningfully with others."

false identity and this may afford some protection to the abuser. The dangers of such chat rooms are evident although these dangers are most present to those who do not realise that the other person isn't who they say they are.

Geographical distance and a measure of anonymity (the other person sees just what you want them to see) makes it easier for people to impart important and personal information to another Internet user, creating deep relationships very quickly. Teenage lads who in real-life situations would usually use their friends as 'go-betweens' brazenly ask girls in chat rooms whom they have met only two seconds before to message privately with them. Since 'flirty' chat rooms are the most popular, one can only guess at the nature of the private messages that emanate from such rooms, often based on a relationship a few seconds old. Here too the

Internet offers the possibility of sexual excitement without any relational dimension. This can happen where the teenage bravado of a chat room, or even adult sex chat room, enables sex talk and more but without any other knowledge of the person.

It is, of course, possible then for the recipient to use such

knowledge to his or her advantage, gaining some sort of emotional hold as a result. The Internet makes it easier to impart an emotional secret that goes to the core of the person, or to send an intimate photograph. This makes the Internet a powerful tool for abuse when the abuser is determined to find a vulnerable victim, especially for the determined paedophile who seeks to 'groom' young victims and opens up further possibilities for exploitation.

STRANGER DANGER

What is the answer? Since most chat rooms in the UK tend to have titles that make it clear they are 'Adult rooms' or deal with 'Adult themes', the people who are really vulnerable are children under the age of 16. Parents need to teach their children the same discrimination in dealing with strangers over the Internet as they would about people their child would meet in the flesh. Parents with concerns about harm over the Internet should supervise their children's surfing and not abrogate their responsibility to some electronic baby-sitter. Close proximate relationships are needed to get the best out of the brave new world of contingent relationships, recognising its positive qualities and eschewing its negative ones.

Shirley Shipman is a recent Law graduate of Oxford Brookes University. She is about to commence the BCL course at Oxford University before embarking on the Bar Vocational Course in the Inns of Court School of Law, London.

With special thanks to Ronan Collins for additional reporting.

1 A. Hobbsbawn. 2000. 'Technology: No bad hair days.' Financial Times Business. 29 April 2000.

2 B. Appleyard. 1995. 'Cyberrelations'. The Independent. 22 March 1995.



Hamide Orkhan

THE FACELESS ONES

A final relational issue concerns the use of chat-rooms. A cartoon has two dogs sending an e-mail to each other with the legend, 'On the Internet, nobody knows you're a dog.' Although the person can be traced if they are acting illegally, they are anonymous or 'faceless' to the other user. Bryan Appleyard observes, 'Step into cyberspace and you can be anybody you like because people only know you by the messages you send. There is no body, no eye contact... You become nobody and nothing, a disembodied voice, perfectly irresponsible, perfectly free to tell any lie, to construct any fantasy that springs to mind.'² This presents dangers for naïve children who don't understand duplicity and for the emotionally vulnerable. It is easy to construct a

RHETORIC AND REALITY: CLOSING THE GAP

Aidan Wilcox and Catherine Appleton evaluate what works in national restorative justice strategies



In 1999 the Youth Justice Board (YJB) launched an ambitious range of programmes aimed at reducing and preventing youth offending by tackling known risk factors and strengthening the young person's relationships with 'positive others'. But how successful is this new restorative or 'relational' approach? What are people actually doing at a grassroots level? What's working? What isn't? And how do we go about solving the problems that remain? As researchers involved in the national evaluation of restorative justice projects for the Youth Justice Board, we have been asking these questions of 46 different restorative justice projects. The results so far are summarised in an Interim Report.¹ This article presents an overview of the promise and the pitfalls of a restorative or relational approach, not in theory, but in actual practice.

The problems of youth crime are widely documented. A quarter of convicted offenders are under-18s who commit approximately 7 million offences per year. The cost to the public services of detecting and processing youth crime is approximately 1 billion pounds per year. In the past, many young people were successfully cautioned by the police but a minority were repeatedly cautioned with little attempt made to challenge their behaviour. The youth justice system was thought to be excessively slow and none of the various approaches adopted ('short, sharp, shocks' and diversion schemes) seemed effective with those whose damaged relationships led to persistent involvement in crime.

"Some of the most promising preventative approaches are those based on relational ideas and restorative justice."

MAJOR CHANGE

Until recently, there was no coherent plan for youth justice and few programmes were geared to changing behaviour and restoring good relationships between offenders, their victims, their families and their communities. Nor were the agencies involved in youth justice working in partnership to achieve this. The needs of victims and the community took backstage to an offender-centred criminal process.

The Crime and Disorder Act 1998 represented a radical break from the past. The Act is the first attempt to address the problem of youth crime in a 'joined-up' way. Its aims include: confronting offenders with the consequences of their offending – for themselves, their family, the victim and the community; encouraging reparation to victims; reinforcing parental responsibility and ensuring a swift response to offending. The Act also created a new infrastructure to deliver this. In April 2000 the Youth Justice Board (YJB) was set up to tackle youth crime with an emphasis on local youth

justice plans and over 150 multi-agency youth offending teams (YOTs) across England and Wales.

AT THE GRASSROOTS

Some of the most promising preventative approaches are those based on relational ideas and restorative justice. Most projects offer more than one type of restorative activity, which include victim offender mediation (VOM), family group conferencing (FGC), direct and indirect reparation, victim awareness and restorative conferencing. The first VOM has been in use for over 20 years. It provides victims and offenders with opportunities for communication. In most cases the communication is through indirect methods, such as correspondence or via a mediator and usually only involves the victim and offender. While VOM offers the opportunity for reparation to the victim, it is the communication that is most valued by victims. Of the 46 YJB

funded projects, 36 provide either direct or indirect VOM and 30 provide direct reparation from the offender to the victim.

Restorative conferencing is a recent variant of VOM, which has been pioneered in this country by Thames Valley Police. Restorative conferencing usually includes 'supporters' of both the victim and the offender. The conferences follow a script which explores the wider impact of the offence and our

evaluation involves sixteen projects which offer restorative conferencing. Family Group Conferences (FGCs) are slightly different and follow the New Zealand model.² In a FGC the offender's family or carers are involved in creating a plan to meet the needs of the young person, while agencies attend to provide the information and resources to bring this about. The plan should also address the needs of victims. The evaluation includes 13 projects which offer FGCs.

HOW RELATIONAL IS IT?

All of these projects move power from the state to those principally affected by crime, that is, the victim, the offender and the community. The overall philosophy is relational inasmuch as it involves responsibility (on the part of the young person), reparation (to the victim) and reintegration (of the young person back into the community).

Approximately 2,300 young people were referred to restorative justice interventions between July and December 2000. The majority (81%) were male and two thirds were aged between 15 and 17. Most had no previous

convictions. The most frequent disposal leading to an intervention was the reparation order (35%) followed by final warning (19%) and action plan order (18%). The offence leading to referral was most likely to be theft (31%) followed by violence (23%).

But how relational is the process and the outcomes? Strikingly, there was no contact between the project and the victim at all in a quarter of cases. Indeed, only 7% of interventions resulted in any direct contact between victim and offender, such as a family group conference. The most likely outcome of any agreement was an apology (usually in the form of a letter) from the offender (31%) followed by work for the community (22%). One-fifth of all cases involved 'community reparation', which is a more diluted form of reparation. On the plus side, 70% of interventions resulted in successful completion and only 5% resulted in a breach.

WHO TAKES PART?

What sort of people take part in these programmes? The selection criterion mentioned most frequently in local evaluators' reports³ was the willingness of the young person to participate, followed closely by their suitability. For projects concentrating on direct victim-offender contact, the existence of an identifiable victim was obviously important, as was the willingness of the victim to participate. Most projects also mentioned that the offender should demonstrate remorse and/or admit their guilt before being accepted onto the intervention. Other factors that were taken into account included the nature of the offence (sexual or racial crimes are usually excluded) and concerns for the safety of both victim and offender.

Forty one per cent of projects are 'in-house', that is, they are managed and run by YOT staff, while 52% are independent of the YOT (more likely where projects concentrate on direct mediation or conferencing). In-house projects tend to experience fewer and less serious problems than those which are independent of the YOT. Independent projects are more likely to encounter problems of communication and access to data as well as lower levels of referrals.

TEETHING PROBLEMS

As one would expect, there are problems involved in new departures of this kind. More than 80% of project staff say they have concerns about their project. What sort of problems have been identified?

Firstly, data protection. The Crime and Disorder Act requires that the police officer in the YOT makes the initial contact with the victim. The police officer has to ask for the victim's consent if their details are to be passed

on to other members of the team or project staff in partner agencies. Because YOT police officers face numerous other demands on their time, victim contact can be delayed. In the context of tight deadlines for court reports, this makes the project's task of engaging the victim more difficult. Also, in many cases the police officer may not be trained in restorative principles and may therefore provide misleading or insufficient information about the process, thus reducing the take-up rate. It seems that an unintended consequence of the legislation is that many victims are not invited to participate in a restorative intervention. This is supported by our finding that in over one quarter of the cases for which we have information there was no contact between the project and the victim. Different projects, police forces and YOTs have arrived at various interpretations of the Data Protection Act and the Crime and Disorder Act. They would undoubtedly benefit from a definitive statement from the Home Office or the Youth Justice Board giving national guidelines on information sharing.

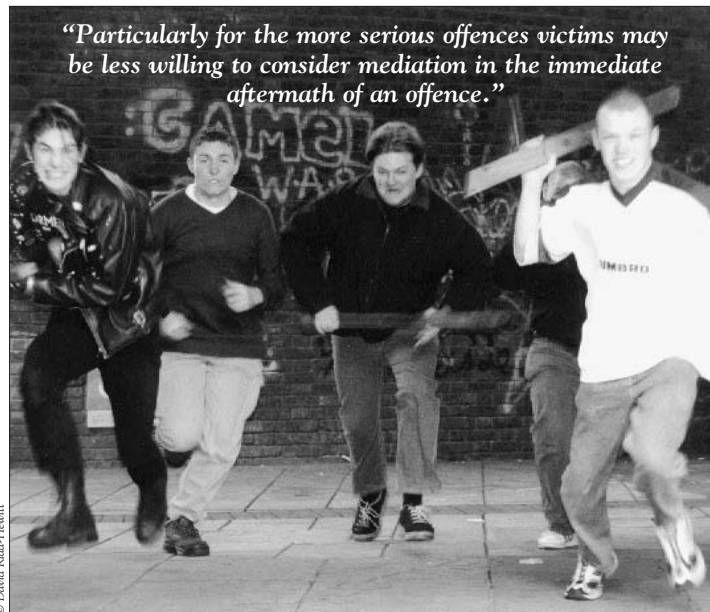
HOW TO GET PEOPLE INVOLVED

A second problem is the low number of referrals (affecting 41% of projects). This affects more of the independent projects offering direct work. The reasons for low referral rates are linked to a number of issues, especially communication difficulties between the YOTs and the projects, the marketing of the projects and problem of gaining access to victim data. Contributing factors also include how victims are being approached, the short timescales in contacting victims before court and the limited information available to the project when making contact with victims. Possible solutions to the low level of referrals might include, for example, educative work with YOT staff and other agencies, project staff attendance at YOT meetings and developing protocols for information sharing.

Thirdly, nearly a quarter of referrals do not progress to an intervention. Again, this is a problem most likely to affect independent projects. For some in-house projects, the YOT claims to deal restoratively with every young person, so there is no difference between the numbers referred and the numbers progressing to the intervention. If a young person is not suitable for mediation they will still be put onto a victim awareness course, for example. For an independent provider of conferencing, on the other hand, there can be a significant difference in the numbers referred and the numbers actually progressing to the intervention. There are various reasons for this. For example, the young person may be considered unsuitable for the intervention (e.g. not remorseful), the victim or offender may be unwilling to participate, the referral made by the YOT may be inappropriate (e.g. type of offence) and there may be problems with victim consultation (e.g. not getting victim

consent, or getting the victim's details too late).

How can we boost the proportion of referrals which progress to an intervention? The best way is to avoid inappropriate referrals by clearly explaining the referral criteria to the YOT and the courts. This may involve project staff producing a leaflet or giving a presentation. While voluntary participation is a key principle of restorative justice, to some degree the willingness of an offender or victim to participate will depend on how they have been approached, by whom, and what they have been told. Good practice requires that those making contact with



potential participants should be fully trained and able to offer the range of choices without coercing the victim or offender. Contact, whether by letter, telephone or visit should be respectful and informative. There should be a process in place to record victim feedback, which may reveal reasons for non-participation.

LOSING THE LINK WITH VICTIMS?

A fourth problem is an over-reliance on community reparation – 'diluting' the impact of restorative justice in nearly a third of cases. Community reparation does not involve the victim directly and it could therefore be argued that community reparation is not a truly restorative or relational approach. Local evaluators for over 40% of the projects felt that the reliance on community reparation was somehow 'diluting' the impact of restorative justice. One commented: "I feel there is little understanding of the principle of paying reparation to the community...the link has been lost with victims, whose views at present are not widely sought".

If community reparation is being offered as an alternative to seeking the views of victims, this is cause for concern. Community reparation tends to be used when the project staff have problems gaining access to victim details, when there is no personal victim in the crime or when the victim or offender is reluctant to participate in mediation. Practically, community reparation is also easier to organise and it is more easily accepted in court. Direct reparation is harder

to organise, as it is reliant on the victim's willingness to co-operate within a given time frame.

COMMUNITY REPARATION?

Community reparation can, however, be conducted in a restorative manner if victims are consulted, if the reparation is used as a means of making amends by engaging young people in their community and if the activity is related to the offence and tailored to the young person. Sometimes this is not the case. One local evaluator commented: "Some use of the community reparation site is purely to accommodate reparation and is not in keeping with the offence, or the young person's interests or abilities". Where activities are not related to the offence or young person's needs there is a danger of community reparation becoming a "form of junior community service with minimal reparative benefits".⁴

There are two things to address here. The first is how to encourage victims and offenders to communicate with each other in the first place. Some suggestions are given above regarding how to progress referrals to an intervention. A number of other suggestions are offered by the national supporters for restorative justice (Crime Concern) in their guidance on victims and community reparation. These include drawing up a victim policy, distributing this to all relevant parties and applying the policy consistently, establishing a practice standards group to monitor implementation and providing promotional and written materials about what restorative justice is and how it works in the community.

The second issue is how to make community reparation as restorative as possible. Again, national supporters suggest setting up an assessment system for offenders, exploring the range of possibilities with them and assessing their interests, skills and abilities. It is important to match the placement as closely as possible with the offence so as to make a meaningful connection for the young person. One project, for example, has encouraged young people to register as Millennium Volunteers. An example of bad practice is an emphasis on manual work or stigmatising activities such as litter collection.

QUICK JUSTICE OR QUALITY TIME?

A final problem is the tension that often arises between 'fast tracking' cases and having quality time to work with victims. One of the key aims of the Crime and Disorder Act is the swift administration of justice. Prior to the Act the average length of time between arrest and sentence was over four months and the government thought that these delays were a problem. The main reason for wanting to shorten this gap was economic, but the Home Office also believed there was a case to be made that the shorter the gap between offence and official

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RHETORIC AND REALITY: CLOSING THE GAP (Continued from page 7)

sanction, the greater the deterrent impact of the sanction on the offender. It could also be argued that some victims would benefit from a swifter official 'closure' to the crime. Hence, this key aim is not likely to be rescinded. It can, however, create problems, especially for restorative justice programmes which seek to involve the victim. As one local evaluator noted: "The time for the assessment process to be undertaken is at odds with...fast tracking". Another complained that: "The time is too short for meaningful contact with the victim".

There is concern that 'fast-tracking' does not give sufficient time to 'get the victim on board'. Particularly for the more serious offences, victims may be less willing to consider mediation in the immediate aftermath of an offence. Sometimes when an order has been made, there has not been enough time to monitor the agreed plan of reparation. The three-month time stipulation to carry out 24 hours of reparation fails to recognise the need for flexible deadline dates. In one case a local evaluator reported that "a school (community victim) closed for holidays half way through the young person's reparation".

RELATIONSHIPS WITH COURTS

The courts are a key partner in the implementation of restorative justice and their response to it has varied. Some courts are very prescriptive in the orders they give and want to specify in detail what the mediation and reparation activity will actually involve, whereas, as one local evaluator put it: "...really the outcomes of the mediation should be about determining what the reparation should be". If courts are overly restrictive, this limits the scope for victims to engage with and influence the process. However, a number of projects have found ways to ensure that the quality of their work is not affected adversely. In some areas projects have been able to negotiate with their courts a degree of flexibility about the exact content of reparation orders, so that cases do not necessarily have to be adjourned for victim assessments. The most important factor is for projects to build up a good relationship with their courts and it would seem to be a worthwhile investment on the part of projects to inform, consult and liaise with the courts. Ways of improving this relationship include conducting joint training with the courts and providing courts with feedback on the outcomes of their cases.

Since restorative justice is such a central part of the youth justice reforms it is surprising that magistrates and court clerks have not all been offered training on it. A number of projects have addressed this themselves but it would have been more effective had a national training programme been devised. This may have reduced some of the inconsistencies in sentencing and increased understanding of the new orders. It could be argued that defence solicitors should also have had some training on restorative justice, since anecdotal evidence from one local

evaluator suggests that: "solicitors are not always promoting restorative practice with young people in the spirit it is intended".

GOOD PRACTICE, BAD PRACTICE

Many examples of good and bad practice have already been covered. However, local evaluators have identified some further examples that are worth a brief mention. In one project it has been agreed to develop, in partnership with the courts, a three stage sentencing process to take account of victims' views, with referrals to victim support where mediation is not possible. In another project, seminars were held for magistrates, duty solicitors and other court personnel to promote restorative practice. With regard to victim contact one project has found that

using community police officers instead of YOT police officers has resulted in a higher proportion of victims engaging in mediation. The same project has worked hard to provide victim-directed reparation, for example the suggestion that one violent offender spend a night at the local A&E to see the consequences of violent crime.

To conclude, the past few years have witnessed major changes in the way youth crime is perceived and dealt with. With an injection of £85m, the YJB has enabled the widespread use of intervention programmes in recognition of the fact that new, more relational, approaches are necessary to tackle youth crime. It is striking that the proportion of direct meetings between victims and offenders has been so small

(6%) and that in at least a quarter of cases the victim is never contacted. A number of other problems remain that currently limit the relational potential of restorative interventions. However, these do not appear at this stage to be insurmountable. The jury is still out on the effectiveness of these strategies but it is hoped that the massive investment in juvenile justice will lead to a significant contribution to the reduction and prevention of youth crime through the strengthening of relationships between offender, victim, families and the community.

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1 *Interim Report for the Youth Justice Board on the National Evaluation of Restorative Justice Projects*. 2001. Aidan Wilcox, Carolyn Hoyle and Richard Young 2001. Oxford: Oxford Centre for Criminological Research.

2 See e.g. McElrea, F 'The New Zealand Experience'. In J. Burnside and N. Baker (eds.) 1994. *Relational Justice: Repairing the Breach* Winchester: Waterside Press.

3 Each project has an independent local evaluator who reports regularly to the national evaluator.

4 Dignan, J 2000. *Youth Justice Pilot Evaluations – Interim Report on Reparation Work and Youth Offending Teams*. London: HMSO, 24.

"One suggestion is that violent offenders should spend a night at the local A&E to see the consequences of violent crime."



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