



NOT A MAP, BUT A COMPASS

Mel Lofty explains how seeking restored relationships can be a guide to justice

One evening, not long ago, on a farm somewhere in England, a barn caught fire. The farmer called the fire brigade, and as news spread amongst the inhabitants of the nearby village a crowd gathered to watch. Excitement quickly turned to concern however as it emerged that two young boys, teenage brothers from the village, were missing. Were they in the barn? The fire was dealt with and eventually the missing boys turned up, but the relief at their well-being was tempered with anger as it emerged that they had indeed been responsible for starting the fire.

In due course a meeting was convened, chaired by a specially trained police officer and attended by the boys, their parents, their schoolteacher, the farmer and a fire brigade officer. At the meeting the boys' mother told how she was so ashamed of what they had done that she felt like crossing the road whenever she saw the farmer, to avoid the embarrassment of meeting him. She and her husband were even considering moving the family away from the village.

GREAT REMORSE

The farmer was shocked to hear this – whilst extremely annoyed by the damage, more than anything he was relieved that the boys hadn't come to any harm and he certainly didn't want the family to move. The fire brigade officer highlighted the risks incurred by his colleagues in dealing with the incident, whilst the schoolteacher expressed surprise that the boys, who were well liked at school, could do such a stupid act. The boys themselves had been unaware of the concerns surrounding their safety, or the effect of their actions on their family and the wider community. They showed great remorse and apologised for what they had done. Indeed, they agreed to assist the fire brigade in preparing an educational video, to be shown in schools, which highlighted the dangers of playing in barns. Formal police final warnings were issued to the boys, and the meeting ended with everybody shaking hands. In this way the damage done to the close-knit community was repaired.

Closely based on true events such a meeting – a so-called 'restorative conference' – is just one way of putting relationships at the heart of justice. Restorative conferencing gives victims the opportunity, if they so wish, to be involved in the process in a way that is not possible in conventional

court proceedings. It also makes offenders give an account of their actions themselves, as opposed to via an advocate. As a result they are confronted effectively with the impact of what they have done to others, and are held directly to account for the consequences. The outcome is often deep remorse, an apology to the victim, an offer to make amends in some way (financially or otherwise) and some careful reflection about their future. The victim in turn has the opportunity to hear first-hand how the offence came about, dispelling any myths they may have held about the offender. The effect is usually one of considerable reassurance which allows the incident to be put behind them. Through the restorative process, we shift from a punitive, adversarial approach to one that focuses on repairing, or restoring, the damage inflicted on victims of crime. It also makes offenders directly accountable for their actions at the same time as re-integrating them within the community.

IMPRESSIVE RESULTS

Thames Valley Police have been making use of restorative justice since the mid-1990s when a criminal justice audit of Milton Keynes established that, of the annual £16

million cost of exercising youth justice in the area, only just over one per cent was actually spent on working with young offenders. Less than one per cent was spent meeting the needs of victims. The vast majority was spent on administration, viz. processing information between agencies. In the light of these findings, and conscious that shoplifting was a particular problem in the city, the multi-agency city Youth Crime Strategy Group set up a new initiative. The Milton Keynes Retail Theft Initiative, which began in May 1994, targeted the large number of youngsters

arrested for shoplifting from the main shopping centre. Recognising the spiralling cost of shoplifting, and the drain on resources imposed by dealing with cases in the conventional manner (with apparently little impact on reoffending), the scheme cut through



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the bureaucracy of the formal system and placed the emphasis firmly on dealing with the offending behaviour.

When a youngster is arrested, admits the offence and is considered suitable for a "caution" (now a reprimand or final warning), they are put

"Crime control should lie primarily in the community instead of the criminal justice process."

through a series of interviews and interactive sessions, including an interview with a shopping centre store manager. The purpose of the programme is to "problem-solve" why the young person has offended and to assist

them and their parents to prevent it from happening again. The results so far have been impressive. Offenders tracked over a five year period from 1994 to 1999 show levels of reoffending reduced by one third compared to a control sample. Notably, store managers also now see shop theft in a very different light and are involved in working with others to reduce it, rather than merely seeking a punitive sanction.

The Retail Theft Initiative in Milton Keynes is a relatively recent example of an intervention that demonstrates relational elements, viz. an encounter between offender and victim (in this case the store manager), and confronting offenders with the effects of their behaviour. In Thames Valley, following the success of the work in Milton Keynes, a pilot project was set up in the Aylesbury police area to apply restorative principles to a much wider range of offences than just shoplifting. The pilot was established through the inspiration of Senior Sergeant Terry O'Connell of New South Wales Police, who had pioneered the development of restorative justice

in the Australian town of Wagga Wagga. The practice model developed by O'Connell and adapted in Thames Valley involves police officers facilitating restorative conferences. These proceed according to a highly structured yet flexible "script" in which the facilitator starts by asking the offender to explain and account for their actions. Following this, the victim and their family and supporters are asked how they feel about the incident, followed by the offender's group, after which the offender is given the opportunity to respond. If all goes according to plan, the focus then shifts towards restitution and reparation. An important point to note is that the facilitator must remain neutral. They must not ask questions to suit their own agenda, nor actively solicit apologies and offers of reparation. The emphasis is on direct mediated discussion between victim and offender.

EXPANSION

Building on the success of these early initiatives, restorative conferencing has been "rolled-out" forcewide, such that since April 1998 all police cautions have been delivered in a restorative style, via eleven restorative justice units distributed amongst the ten police areas, all

working in partnership with the headquarters-based Restorative Justice Consultancy. Officers are also increasingly making use of community conferencing techniques as a tool to resolve incidents of non-criminal or semi-criminal behaviour, such as neighbourhood disputes and bullying within schools.

Putting relationships at the heart of justice is about returning power to victims of crime, giving opportunities for offenders to face up to the consequences of their behaviour and enabling them to make amends

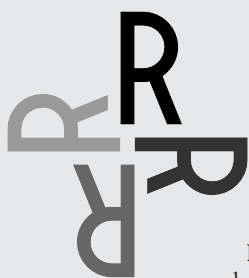
for their actions. It is not suitable for everyone, but it gives those willing offenders and victims an opportunity to repair the harm caused by crime. It is not a soft option, nor is it a replacement or an addition to the existing criminal justice system. Rather, it is a way of seeing fair justice for all. Crime control lies primarily in the community instead of the criminal justice process and offenders are defined less by their deficits and more by their capacity to make reparation and repair the harm they have caused.

'TOUCHY-FEELY'?

The development of restorative justice globally has been accompanied by the growth of misunderstandings as to its aims and intentions. It is not a "touchy-feely" soft option for minor crime. Perhaps surprisingly, restorative justice abroad has been successfully used in the most extreme cases. Indeed, the evidence suggests that the more severe the case, the greater the potential benefits to those involved. It is not forgiveness or reconciliation. Such feelings may arise as a result of restorative justice, or they may not. It does not necessarily involve an encounter between victim and offender – as with forgiveness this is enabled but not required. It is not a particular programme or blueprint for how to proceed. As Howard Zehr, a leading expert in the field has noted, it is not a map, but may be a compass. Nor is it a recent "fad", rather it builds on strongly embedded cultural and religious notions of natural justice.

One of the most interesting examples of restorative justice in action is the Victim Offender Mediation/Dialogue Program of the Texas Department of Criminal Justice, Victim Services Unit. Staff there have for several years been facilitating dialogue sessions between offenders and victims of violent crime – up to and including surviving family members of

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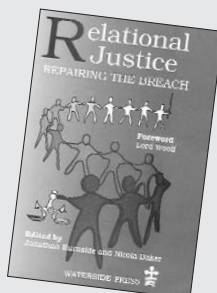
WHO WE ARE

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.



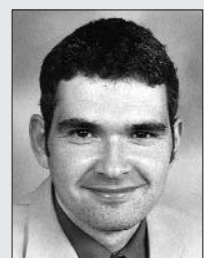
The *Relational Justice Bulletin* has been launched as a platform for discussion of the ideas at the heart of *Relational Justice* as well as exchange of good practice across the system.

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Editor of the *Relational
Justice Bulletin*



murder victims. Again, it may be surprising to learn that there are literally hundreds of victims and victim family members on their waiting list.

AN UNNERVING BOND

Jim and Sue Manley, for example, met up in prison with Gary Evans, who had the previous year collaborated with another man in the abduction, rape and murder of their daughter Carol. They saw the meeting as a possible way to obtain answers to questions about Carol's death that continued to plague them. Throughout the trial process they had had to piece together bits of information as they emerged, but had been unable to construct a full picture. The meeting with Gary lasted three hours. He "walked" them through the incident in graphic detail and although they did not fully accept his version of events, in which he portrayed himself as a subordinate to the other man, they clearly appreciated the opportunity to learn more about events on the night of the murder.

Meetings revolving around such serious crimes clearly serve a different purpose to conferences for minor offences. They are not intended as an alternative to imprisonment, but more as a joint attempt to find a common ground; a shared understanding of events that might aid healing. As Mark Umbreit from the University of Minnesota, puts it: "This mirroring of one another, this search for common ground, may be what draws the participants together in the first place. As a result of a heinous, inhuman event, there is a quest for humanity. When they find it, there is a desire to grasp on to it and build upon it. As strange as it may seem to observers and mediators, one fact binds the offender and victim together in a very elemental way. The offender may be the last person to have seen their child alive or to have heard their child's last words. This unnerving bond should not be minimised by those of us who have not sat at the table as victim or offender." Surprisingly the dialogue in such meetings rarely betrays the animosity or enormity of the events being described.

In part victims are seeking some kind of closure that will enable them to move on; not to forget or necessarily to forgive, and not to mitigate, but to manage their loss. Offenders in turn are also trying to move on through helping the victims' families in the small way that is still possible. The Manley's met Gary several more times, discussing ways in which they could share their stories in an effort to help young people take control of situations and be able to say "no", before being dragged into events beyond their control. Afterwards both parties felt a sense of closure and a desire to move on.

Another interesting use of restorative principles is via *Sentencing Circles*. Sentencing circles build on traditional forms of justice developed amongst the indigenous populations of Canada and the United States. Limited to post-court conviction scenarios, sentencing circles are designed to address the criminal behaviour of the offender as well as the needs of victims and the

wider community, within a re-integrative context.

A sentencing circle will comprise victim and offender groups, together with community and police representatives, legal representatives, and a judge. The prosecution lawyer will start by outlining the circumstances of the incident and the recommended sentence. The victim then expresses their views, after which the defence lawyer and the offender respond in mitigation. Other participants are then invited to speak in turn – a ceremonial feather, or "talking stick" is sometimes passed around to denote who is speaking. Everyone is involved in the debate about the appropriate sentence, although the final decision rests with the judge.

A 'BOLT ON'?

Until recently in England and Wales, restorative justice was viewed very much as a "bolt-on" to the conventional criminal justice system. However, the 1998 Crime and Disorder Act has instigated fundamental reform of the youth justice system, replacing the discredited system of multiple cautions with a system of reprimands, followed by final warnings. This effectively (in most cases) gives young offenders a maximum of only two chances before a mandatory court appearance. A youngster who receives a final warning must be referred to the YOT for assessment and intervention, if appropriate. The Youth Justice Board, in conjunction with the Home Office, has issued guidance notes which strongly urge that police forces and YOTs deliver

reprimands and final warnings as part of a restorative process.

Other progressive elements include the action plan order (a short but intensive and individually tailored response to offending behaviour) and reparation orders (which aim to take into account the feelings and wishes of victims of crime and allow young offenders to make amends). In addition, probation orders, supervision orders, combination orders and the new detention and training order (served half in custody and half in the community) may where appropriate include a restorative element. The Youth Justice Board's goal is for effective restorative procedures to be in operation in 80% of YOT areas by the end of the financial year 2001/2. The 1999 Youth Justice and Criminal Evidence Act has gone a stage further, making the young offender who pleads guilty on a first court appearance subject to a mandatory Referral Order, whereby they are referred to a Youth Offender Panel. Referral Orders are being piloted in seven areas and are due for national roll-out in Spring 2002.

Reflecting the importance given to restorative practices within YOT work, the Youth Justice Board has recently issued draft good practice guidelines for restorative work with victims and young offenders. The guidelines acknowledge the different approaches that restorative justice can take – be they



victim/offender mediation, family group conferences, restorative conferences etc. Indeed the board are currently developing an assessment tool to determine whether, and if so which, approach is most appropriate in any given situation.

TRUE NORTH

It is early days yet. Youth Offending Teams have been fully operational for just over a year, and moreover the speed with which the new teams – over 150 of them – have been set up is impressive. This very speed has in some cases caused problems. There are not enough staff to fill all the new posts, and much energy has been expended in putting the basic infrastructure in place. Difficulties have emerged surrounding differing work practices and cultures, and particularly around different pay rates and employment terms and conditions amongst staff working together, but employed by different agencies. Funding inequalities are also causing "friction" in some areas – social services are required to foot 63% of the bill, with police, probation, education and health services contributing 13%, 11%, 7% and 6% respectively. The Youth Justice Board have committed "seed money" funding until the end of 2001/2, but beyond this the situation is uncertain.

What can be said with certainty, however, is that YOTs are one of the few concrete examples of real multi-agency co-operation amongst much rhetoric about "joined-up" working. If the issues surrounding funding and cultural differences can be resolved, and if YOT work can be effectively "knitted-in" with other initiatives such as the Children's Fund and "Connexions", then there is a real prospect of youth crime levels significantly reducing in the coming years. If restored relationships are 'true north' on the compass, current practice is heading in the right direction.

Supt. Mel Lofty is Head of Youth and Restorative Justice, Thames Valley Police.

1 Umbreit, M.S., W. Bradshaw and R.B. Coates, 'Victims of Severe Violence Meet the Offender: Restorative Justice Through Dialogue', *International Review of Victimology*, Vol. 6, No. 4, 1999, pp321-344, p338.

“THEY DIDN’T EVEN LOOK AT ME”

Diana Medlicott explores the importance of relationships in prison for suicidal prisoners



Each suicide in prison results in grief, anger and shame for families, friends, prison staff, voluntary workers and other prisoners. Over the last ten years, 639 prisoners committed suicide in prison, the equivalent of an entire medium-sized prison population. In 2000, 1500 prisoners attempted hanging, strangulation or suffocation, a rise of 50% over 1999.

Recent policies implemented by the Prison Service to combat the problem have succeeded in promoting greater awareness and a shared sense of responsibility amongst all prison staff. ‘Listener’ schemes, which are supported by The Samaritans and operated by prisoners trained in supportive listening skills are now widely available for inmates who need their help. But Prison Service policies have not been implemented evenly across all prisons. Recent audits reveal that less than a half of all prisons have achieved an acceptable rating on suicide awareness procedures over the last three years. Nor has the policy achieved a reduction in self-harm or suicide, with the overall increase in suicide from 1983 to 1999 standing at 300%.

HIGH RISKS

Prisoners’ personal histories often include multiple family breakdown, sexual abuse, severe violence, periods in care, low educational attainment, school truancy, bullying and substance abuse – all factors associated with increased suicidal risk. On top of this, prison itself fractures relationships with families and friends, heightening this risk still further. As a result, Prison Service policies must be extremely proactive if they are to be effective with such a vulnerable population. A risk assessment strategy has sought to identify those who are especially at risk, and once identified, they are made the subject of special documentation (‘F2052SH’). On any one day, up to one thousand prisoners are managed on F2052SHs, and undoubtedly many are helped through their crises.

However, the efficacy of this strategy is limited. Around 80% of prisoners who commit suicide are not managed on an open F2052SH. They have not been identified as being ‘at risk’ at that time, and so have not received special support or observation. This has led many commentators to suggest that the Prison Service should concentrate on providing a supportive and caring environment for all prisoners. But with an increasing population and decreasing resources, this is a huge task. For there are longstanding and serious problems with overall prison culture, which was described by the former Chief Inspector of Prisons, Sir David Ramsbotham (in relation to some prisons)

“Prisoners described a situation in which they felt in competition with each other for staff attention”.

as ‘unhealthy’, in that prisoners are not routinely treated with dignity, care and compassion. The message of the 1999 thematic review, *Suicide is Everyone’s Concern* is that, whilst staff/prisoner relationships vary widely, they fall far short of what could and should be normal good practice.

A new strategy is currently being developed, which will be implemented over the next three years. One of its elements is “a supportive culture based on good staff/prisoner relationships”. This is indeed an urgent priority, and arguably the most important. Others have eloquently pressed this case but in this brief article I will concentrate on prisoners’ own experiences. My focus is both the pain and suffering caused by failures in this area, as well as the benefits of strong and mutually reinforcing staff/prisoner relationships.

THE COLD SHOULDER

The following narratives were gathered over twelve months at a large local male prison; the very type of prison that is the most prevalent site of prisoner suicide. I interviewed more than fifty prisoners on various locations, in two hour, semi-structured, and recorded interviews. Half were on open F2052SH documentation (i.e. at serious risk of suicide), and half were defined by senior wing officers as coping well with prison. Of the latter group, some used to be on F2052SHs, but had moved through from crisis to coping.

Although it was not my main focus, prisoners wanted to talk about aspects of staff/prisoner relationships which seemed, to them, to have been significant and responsible for changes in their own well-being. This material was all the more significant because it was not solicited. It came spontaneously from prisoners’ own convictions that such aspects mattered deeply to them, and they wanted to convey these to me. Additionally, it demonstrated that in prison, there are no issues which can logically be separated out from their context in actual relationships, and so the nature and quality of these is of the highest importance.

The most keenly felt deficiencies in staff/prisoner relationships were, in this prison, experienced in contact with healthcare staff. Repeatedly, prisoners recounted that during the initial healthcare screening process, the medical officer did not make any eye contact with them, and concentrated on filling out a form. When Marty, a rape victim who subsequently suffered depression on entering prison said bitterly, “They didn’t even look at me”, he was expressing a

need to be considered as a human being and to have his pain taken seriously. He added: “Nothing bothers them, they don’t care what you’ve been through”.

Other prisoners pointed out that this kind of indifference made them feel degraded. This was felt all the more keenly because it was from professional healthcare staff that they had expected the fairest treatment.

STRANGE ATMOSPHERE

Most prisoners housed in the healthcare unit were there because of their vulnerability and need for compassion. Even prisoners who were there for reasons to do with physical health experienced what Gerry described as a “strange atmosphere”, and a feeling that “you are cut off, and you are isolated”. Marty, placed in the healthcare unit on an open F2052SH, endorsed this, adding: “What I’ve found is that you tend to lose your sense of dignity, there’s no privacy... It’s as if you don’t have anything to do with your own life in here...I mean, children don’t even have to do what we have to do in here”. It was clear he felt infantilised and as if he had lost control over his own life.

These characteristics of the healthcare unit partly reflected its ambiguous functions. It was a place of care, in which inmates were patients, but of course they were also prisoners, and the normal punitive culture of prison still applied. Strong, proactive and professional caring relationships would be needed to dilute this culture, but in this healthcare unit, these appeared to be lacking, so that prisoners actually experienced the culture as more punitive than on the normal wing locations.

About two-thirds of the prisoners interviewed had had some contact with healthcare staff. Of these, only one reported having a proper conversation with a doctor, in

which the latter actually made eye contact and listened to what the prisoner had to say. This particular prisoner had a history of post traumatic stress syndrome, as a result of military service. This made his case unusual and interesting in its own right. Perhaps it was only a clinical decision to respond in

this way, but the prisoner himself experienced it as an aspect of a humane relationship, in which he felt cared for, because his suffering was acknowledged. The attention given to him had encouraged him to tackle his outbursts of stress and hostility, and staff reported that he was making significant progress. Though near the start of a life sentence, his self-esteem had risen, and he was beginning to believe that he could make changes in his behaviour.

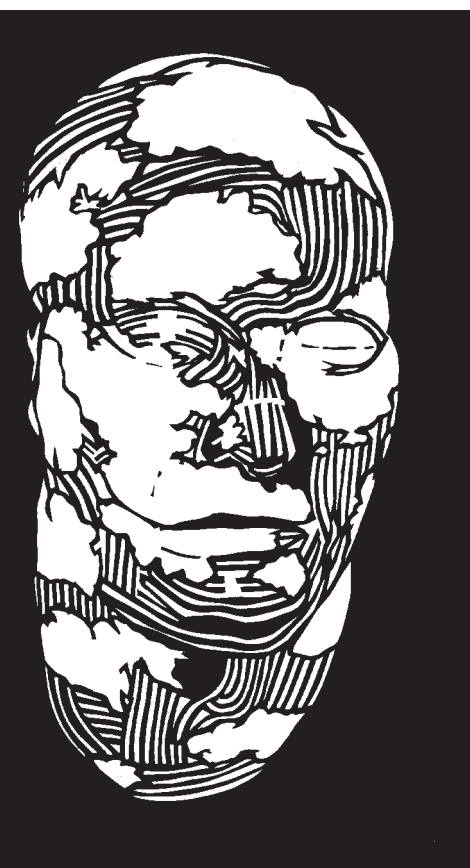
“Good staff-prisoner relationships existed because of outstanding professional competence by senior wing officers, who led other staff by example and encouragement”.

Prisoners on F2052SHs and resident in the healthcare unit were normally located in locked wards, managed from an observation hatch. Les, a prisoner who had survived a serious suicidal crisis and was now integrated on a normal wing location, spoke feelingly about staff at the hatch when he had been on an F2052SH and on a ward: "They'll always talk to you, and sit and listen. So I did find that helped. The fact that I could always talk to someone when I was feeling down".

POT LUCK

Other prisoners were not so lucky. When Marty, also on an F2052SH, had tried to talk to a member of staff at the hatch about his rape prior to prison, that individual made a joke out of it, broadcast it to the entire ward and encouraged the ward to continue ribbing Marty about it. He felt humiliated, angry, disparaged and worthless.

These contrasting experiences emphasise that, in this location, there was not an



established or consistent culture for healthy staff/prisoner relationships, and so it was largely a matter of luck in terms of an encounter at a particular time of need. When terrible things happened on the ward, such as a prisoner slashing himself with a concealed razor, the others had to watch the clear-up operation and deal with the tumultuous feelings that such events provoked. George described his time on the ward with a shudder as: "Terrible. It's like everything that goes on there is right in your face".

Staff did not have the time to think about care and reassurance for those who watched such an event, even when the incident had been severe and life threatening.

Prisoners on the wards, although housed communally, did not appear to build strong relationships with each other. They described a situation in which they felt in competition with each other for staff attention, thinly spread because of a lack of resources. Additionally, there was a system of bullying, in which some prisoners would oppress others for extra helpings of dessert or cigarettes. If this was reported, the informing prisoner would be viewed as a "grass", and the bullying would intensify. In this atmosphere, supportive relationships between inmates did not blossom easily.

RESPECT AND GRATITUDE

In contrast, prisoners on one particular wing told a different story. Prisoners feeling suicidal described life there as less isolated. The potential was there both for a wider range of prisoner relationships, and more constructive staff/prisoner relationships. Good staff/prisoner relationships were not embedded into every location: they seemed to exist on this particular wing because of outstanding professional competence by senior wing officers, who led other staff by example and encouragement.

On this wing, a "compact" system existed, in which prisoners at risk entered into a promise not to take any action in relation to self-harm without discussing their feelings at length with one of two particular officers. Many prisoners on this location spoke of these officers with gratitude and respect. A relationship that valued prisoners was on offer, and it made them feel as if their pain and suffering was recognised and could be tackled. The encounters were obviously not easy: some prisoners said how tough the officers could be if they felt the prisoner was deceiving himself and not facing up to reality. Sometimes a prisoner had to listen to some uncomfortable straight talking. But all agreed that such interventions had helped them to adjust and to move into a coping frame of mind. Their self-esteem was raised, and they felt a bond had been forged on which they could rely in the future.

Not only had this initiative eliminated self-harm on the wing, but it had also set the tone for relationships between prisoners. Many spoke at length about their relationships with each other, about their sensitivity to each other's distress, and about their increased awareness of cellmates' needs. Gerry was serving a long sentence, and was well adjusted to prison, but he said: "I still have my bad days – I go very quiet. We all have those, and we have to learn to leave each other alone then."

THE BEST COMFORTERS

George often experienced the support and tolerance of others when he was overwhelmed by thoughts of his life sentence: "Most people know that once you've gone to your cell and shut the door, you kind of want to be alone. Maybe a few friends'll pop their head in the door and see if I'm all right".

Gerry had a clear idea of the best way to care for suicidal prisoners: "If people are suffering, talk

to them. Help them to get out of it. Tell them that we are all here to understand. By 'we', I mean all of us on the wing. The best comforters are those that have gone through the experience themselves".

Naturally, this wing had its fair share of troublemakers and violent incidents. But its overall moral tone was set by the sort of relationships that senior staff had chosen to implement. Prisoners constantly stressed that prison was a violent, oppressive and isolating place, but on this location at least, respect for them had been tangibly demonstrated by staff on very many occasions. In return, they respected those staff members, and held them responsible for moving them through difficult crises. It was moving to hear these macho prisoners talking about the value they placed on being able to talk, being listened to, and being treated with respect. This success does not just 'happen'. It requires strong leadership, effective training, a celebration of successful cultures and an intolerance towards uncaring and indifferent ones.

THE RELAY RACE

It is important to point out that even in negative cultures, there may be staff of high integrity who are simply overwhelmed by failures of leadership, lack of training and resources, and non-existent professional support. Staff in the healthcare unit in this prison, for instance, undoubtedly suffered because of the bluntness of policy. Identifying prisoners as either 'at risk' or 'not at risk' meant that the former included a challenging

mixture of highly vulnerable prisoners along with those who occasionally self-injured as a form of coping. This heterogeneous mix was overwhelming in relation to scarce resources.

This brief article has focused on two locations only in a large local prison. The contrast shows that inconsistent or uncaring staff/prisoner relationships produce great pain in those already in despair. Equally, where strong staff/prisoner relationships are implemented in good practice, prisoners are helped through crises and are enabled to forge good relationships with other prisoners. In this sense, good relationships in prison are like batons in a relay race, handed on until everyone in the team has carried them successfully.

All prisoners' names have been changed.

Dr. Diana Medlicott is Reader in Crime and Punishment at Buckingham Chilterns University. Her new book, *Surviving the Prison Place: Narratives of Suicidal Prisoners* is published by Ashgate.

1 HM Prison Service (2001), *Prevention of Suicide and Self-Harm in the Prison Service*, An Internal Review, Crown Copyright.

2 Ibid.

3 HM Chief Inspector of Prisons for England and Wales (1999), *Suicide is Everybody's Concern: A Thematic Review*, Home Office, London.

4 *Prevention of Suicide and Self-Harm*, 4.

5 See for example reports on individual prisons, as well as thematic reviews, from HM Prisons Inspectorate; A. Liebling (ed) 1996, *Deaths in Custody: Caring for People At Risk*, Whiting and Birch, London; M. Ryan (1996), *Lobbying from Below – Inquest in defence of Civil Liberties*, UCL Press, London.

6 D. Medlicott (2001), *Surviving the Prison Place: Narratives of Suicidal Prisoners*, Ashgate, Aldershot; Chapter Two.

IN THE HANDS OF THE PUBLIC?

Adam Crawford considers the scope for increasing public participation in criminal justice



The last twenty years in the UK have witnessed a radical transformation in relations between the public and the state with regard to criminal justice policy and practice. There has been an increasing acknowledgement and recognition of the state's own limitations in its capacity to guarantee and maintain public order. In part, this stems from a series of

"In one way and another, the public has been left behind."

recent crises in the apparatus of criminal justice established over the preceding 200 years or so, in which the role and involvement of the

public have been pivotal sources of concern. It is a relevant issue for Relational Justice, which has as its motif a chain of persons holding the sword and the scales of justice at either end. This article explores the scope for public involvement and participation in an age of increasing 'punitive populism' and, crucially, the form that this might take.

The current limitations of the state stem from a fourfold crisis of effectiveness, efficiency, cost and confidence in the criminal justice process. Firstly, increased recorded crime rates have placed growing pressure upon criminal justice institutions. This has left them unable to respond in a traditional manner, continually looking for novel ways of managing the mass of cases through efficiency gains (e.g. 'fast-track' prosecution). Secondly, there has been a pervasive sense of failure as to the capacity of formal criminal justice systems to meet their own objectives of crime reduction, leading to what Garland has called, a 'crisis of penal modernism'.¹ Thirdly, traditional modes of crime control place an increasing financial burden upon the public purse. Fourthly, there has been a simultaneous crisis of confidence, with public attitudes towards the criminal justice system (including the police) becoming apparently more critical and less deferential. Given the crucial role that the public plays within criminal justice, as witnesses and victims particularly, a loss of confidence can adversely affect the flow of information between public and criminal justice institutions.

'LEAVE IT TO THE PROFESSIONALS'

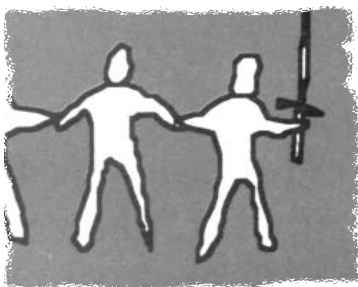
Part of the problem has been that, over the last two centuries, the criminal justice apparatus has placed increasing emphasis on bureaucratisation, rationalisation and professional specialism as the pillars of legitimacy and public confidence. During the same period, public involvement has declined. Recent managerialist and modernising

agendas have implied a reduction in lay participation in court processes and an increased reliance on paid and legally qualified professionals. In one way and another, the public was left behind. The result is that the state has assumed a monopolistic and paternalistic approach to the public with regard to crime control and prevention. The underlying message was 'leave it to the professionals'.

Victims, in particular, have been marginalised to the point of constituting the 'forgotten party' in criminal justice, whose own conflicts, according to Nils Christie have been 'stolen' by professionals and experts.² The result is 'an outsourcing approach to crime'³, in which the public have come to expect specialist institutions to solve most problems for them. The same trend, of increasing professionalism at the expense of lay involvement, can still be recognised today. The central practices of participatory democracy at the heart of traditional criminal justice have been the institutions of the jury system and the lay magistracy, both of which share the notion of 'judgement by one's peers'. Yet both are currently under threat.

PARTNERS AGAINST CRIME

Of course, the public is involved in different forms of public participation and involvement at the different stages of criminal justice. They are involved, in different capacities and to varying degrees of satisfaction, as victims, as witnesses, as offenders, as active private citizens (in community safety initiatives), as lay volunteers and as a wide variety of community representatives. There are all sorts of practical barriers to voluntary participation (including not having enough time, conflicts with domestic commitments, difficulties getting employers to grant time off from



work commitments, and so on) but perhaps the greatest deterrent is that participation itself is perceived to be tokenistic, pointless or a waste of time.⁴ Volunteers need to feel, not only supported and valued, but also that their time commitments are meaningful: that they are affecting change. Instead of seeing participation as an add-on to what the criminal justice system already does, we must ask: what is it that lay people can bring to the workings of criminal justice that is of intrinsic social value and in what way can volunteers themselves benefit?

Policy-makers have recently come to realise the fundamental role that the public plays in crime control and prevention, in the provision of information as witnesses or victims, through

informal social control – as parents, peers, friends and family, kinship and community members – and in giving legitimacy to the system. As a result, citizens are being reconfigured as 'partners against crime' as governments seek to mitigate and reverse the decline of social capital in civil society.⁵ Successive governments have sought to increase the level and commitment to 'voluntary activity' on the part of the public. For example, currently one of the Home Office's performance targets is of 'substantial progress by 2004 towards one million more people being actively involved in their communities'.

A MIXED MESSAGE

Yet the rhetoric remains ambiguous. Certainly, it has not filtered down to the level of practice, where public participation in criminal justice remains minimal. It is a 'mixed message' that is undermined in practice by contrary messages.

There are a number of important reasons why public involvement matters and why facilitating public participation is an essential government responsibility. Firstly, public involvement can increase public confidence and assuage public fears. This can be achieved through greater information and by moderating public expectations of what criminal justice can deliver.

In particular, it can be a means of addressing misperceptions by explaining sentencing policy through information and education. In this way, greater public involvement in criminal justice could be a check against more punitive Government responses and the growing use of imprisonment. Secondly, public participation may help encourage greater synergy and increase the flow of information from the public. However, a genuine 'partnership' of this kind is a two-way relationship which imposes responsibilities upon the criminal justice system. This includes facilitating (and in some cases protecting) people in exercising and maximising their involvement with the criminal justice process.

A RELATIONAL DYNAMIC

Thirdly, public participation may strengthen and reaffirm communal bonds and encourage a civic responsibility. Fourthly, it allows those involved to develop a keener understanding of the workings, principles and values of the system. This is important because criminal justice is a highly 'public' process in the sense that it occurs in the name of the public, but in practice it is something about which the public remains considerably uninformed. Fifthly, it can help to

break down inward-looking cultures and ensures a degree of transparency and accountability. Finally, it assures a relational dynamic. It can help ensure that proceedings which may otherwise be dominated by technical, bureaucratic or managerial demands also accord to the emotional and expressive needs of responses to crime and in a similar vein, ensures fairness.

Contrary to popular belief, public involvement does not necessarily reduce costs. Lay volunteers tend to work at a slower pace than do professional counterparts. Just because a system is based on unpaid volunteers (such as the lay magistracy and youth offender panels), this, of itself, does not mean that it is necessarily cheap. There are significant costs associated with providing training, advice and information for volunteers, which are required simply because volunteers are involved. In any case, to couch public participation in terms of 'value for money' maintains a paternalistic relationship between the public and criminal justice institutions and professionals.

'CITIZEN ACTION' VERSUS 'VIGILANTISM'

Public involvement can take a number of diverse, and sometimes competing, forms. Clearly, the capacity for public participation is greater at the 'front-end' of the system with regard to policing and community safety than it is in relation to forms of punishment, such as imprisonment.

Public participation is not a self-evident good (recall the stocks and public executions). Strategies aimed at empowering the public with regard to crime have injected ambiguity into the power to define the legitimate use of force. Most notably, this is apparent in struggles over the distinction between appropriate 'citizen action' and 'vigilantism'. There is a need for government and criminal justice authorities to synchronise private and public provision of security services and active citizenry. The question is whether the state (either local or national) can adapt to this new role as 'power container' without slipping back into pretensions of monopolistic authority.

In addition, there are a number of limits to the potential scope of public participation. Public participation is limited by practical difficulties as well as by the potential unintended consequences of participation. For one thing, it is becoming harder to attract lay volunteers. Given the time demands of training, the travel demands (which may require lay people travelling across a county – particularly with the closure of local police stations, courthouses etc) and the difficulties for those in employment of matching voluntary work with their careers, whilst those unemployed may jeopardise their chances of obtaining a job.

LIMITS TO PARTICIPATION

There is not always an unambiguous correspondence between volunteering and

representativeness. As a consequence, representatives may poorly represent the diverse publics from which they are drawn, and may be perceived by others to be unrepresentative and, therefore, less legitimate. In addition, lay people drawn into criminal justice may become 'professionalised' and lose the very qualities which made them valuable in the first place.

Also, there tends to be an inverse relationship between activity and need. Participation in local crime prevention activities is highest (and success most likely) among people who are moderately concerned about crime but where crime levels are low. High levels of fear of crime can become incapacitating.

Moreover, there are limits to what citizens can accomplish through institutions of civil

society alone as well as knock-on consequences (through crime displacement) of private or collective activity for others. One person's (or community's) security may adversely impact upon that of others. Furthermore, we need to be as aware of dangers of 'unsocial capital' as the advantages of 'social capital'. Also, criminal justice, by its nature, is coercive, hence, absolutist notions of voluntariness are unhelpful. In addition, there will be situations – given the nature of the offence or the relationship between the parties – in which participation is undesirable and safety issues may be a particular consideration. Finally, the involvement of lay people within the processes of justice necessitates that due concern is given to any conflict of interests that lay people may bring to their participation, particularly where they are cast in a decision-making role.

RETHINKING PUBLIC PARTICIPATION

Rethinking public participation means moving the debate on from seeing public participation in criminal justice as merely a question of how lay people can act as (cheap) adjuncts to the current justice system. Instead, we need to move on to the point where we begin to rethink the nature and purpose of criminal justice itself and the role of public participation therein.

We need to develop a language which speaks of active citizenship, community participation in public life, and the stimulation of ethical values as necessary ingredients in a more socially just public polity. But such a language would not see these as the antithesis, or instead, of 'public' provision. Rather, the state has a fundamental role in seeking to empower and enable individuals, groups and communities to realise their potential and to integrate them within a wider social frame. But in rethinking the role and value of public participation in criminal justice and the precise terms upon which such participation should be organised, we must tread a careful path between two recently fashionable tendencies: the managerialisation of public services and the communitarian appeals to local justice.

LIMITS OF COMMUNITY

On the one hand, there is the managerialist obsession with speed, cost reductions, performance measurement and efficiency gains, which in the field of criminal justice has often led to a move away from 'local justice' – understood as local people contributing to the handling of cases in their own local area – and a professionalisation in which lay members of the public have less involvement. On the other hand, there is the communitarian lobby which calls for communities to take control of their own policing, crime control and dispute processing: the 'policing by communities rather than the policing of communities',⁶ such that 'the more viable communities are, the less the need for policing.'⁷ Despite decades of research to the contrary, this implies, rather simplistically, that more 'community' equals less crime.

The problem with the managerialist impulse is that it allows little space for the human, expressive and emotive aspects of criminal justice. As a consequence, it rides rough-shod over questions of party involvement, fairness, legitimacy and public confidence. It prioritises organisationally defined outputs over social outcomes. By contrast, the communitarian urge over-exaggerates the role that communities can play in responses to, and preventing, crime. It over-idealises as unproblematic the nature of communities' moral orders. 'An assertion of "community" identity at a local level can be beautifully conciliatory, socially nuanced, and constructive but it can also be parochial, intolerant, oppressive, and unjust.'⁸ Appeals to 'community justice' often fail to address the relations that connect local institutions to the wider civil society of which the locality is a part or the manner in which local justice may impact upon neighbouring areas. The role of community as a force for social cohesion is limited by the current reality of geographic inequality, the spatial concentration of wealth and poverty and increased social polarisation.

DELIBERATIVE JUSTICE

An alternative to both the technocratic and managerialist notions of bureaucratic justice, on the one hand, and communitarian inspired notions of community justice as parochial and local forms of control, on the other hand, might be a version of deliberative justice. 'Deliberative' justice occurs where people 'deliberate' over the consequences of crimes and how to deal with them and try to prevent their recurrence.⁹ The form of deliberative justice I have in mind is one in which public participation is contained within a framework which accords to standards of procedural fairness and human rights.

Deliberate justice encourages public discussion and emphasises reasoning, debate, communication and normative appeals, offering proposals for how best to solve problems or meet legitimate needs. Deliberation opens up

"Public participation is a relevant issue for Relational Justice, which has as its motif a chain of persons holding the sword and the scales of justice at either end."

"Greater public involvement in criminal justice could be a check against more punitive Government responses and the growing use of imprisonment."

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IN THE HANDS OF THE PUBLIC? (Continued from page 7)

opportunities for changing conditions of injustice and promoting justice. Within this should be embodied elements of both procedural and substantive justice. We need to maximise the opportunities for participation while constructing minimal, yet critical, limitations on the nature and form of participation.

As an element of democratic renewal, public participation in criminal justice implies representation. All of the public cannot (nor will they necessarily want to) participate all of the time. Certain members of the public – through their participation in criminal justice – will need to act as representatives of public interests. As such, they need to be authorised and held to account. This suggests further anticipatory and retrospective discussion as to public participation and representation. Participation should not stand as an opposite to representation but one should require and imply the other. Without citizen participation, the connection between representative and constituents is most liable to break down – potentially turning the representative into a detached élite. Certainly, there is a need for professionals and procedures to contain and regulate aspects of public participation by mitigating power differentials between the parties, challenging arbitrary outcomes, rendering procedures open, accountable and contestable under the rule of law. However, it is not clear that this cannot occur in interest-based and party-centred negotiations as distinct from rights-based and lawyer-centred proceedings.

“Increasing appropriate public participation is an essential government responsibility.”

UNTAMED JUSTICE

Formal legal rights and due process should act as bounding mechanisms that empower and constitutionalise informal processes. For example, the notion of proportionality – with regard to the relationship between the harm done and the agreed outcome – has a role to play as a principle in deliberative justice.

“Criminal justice occurs in the name of the public, but it is something about which the public remains ill-informed.”

This does not suggest that all outcomes will be the same for the same offence, but that there are accepted boundaries as to both minimum and excessive outcomes. What is not being argued for is the replacement of criminal justice by an untamed form of community justice – as some commentators advocate¹⁰ – but that the two be held in a complementary, dynamic tension such as to enhance a form of deliberative justice: reducing but not eradicating the specialist professional management of crime.

‘Relational’ and ‘restorative’ justice can be described as forms of ‘deliberative’ justice.¹¹ Deliberative justice is facilitated where there are existing relations of care and trust and where a commitment to collective problem-solving is apparent. However, there will be circumstances in which deliberation cannot even begin and individuals who refuse to engage in deliberative processes for a variety of reasons. In these instances, a greater emphasis upon the professional management of cases

and problem-solving will be required. Moreover, the role of criminal justice in solving problems remains severely limited. Hence, synergy with other policy arenas – education, health, employment, housing and so on – more able to deliver solutions is paramount.

COMMUNAL MORALITY

To sum up, much more can be done to encourage greater public participation in criminal justice and this has the potential to reverse the vicious circle of punitiveness in recent policy-making. As well as considering public participation as an add-on to existing criminal justice institutions, in which the public supplements organisational practices, we need to re-examine the role of the public at the heart of criminal justice. There is

considerable scope for criminal justice to be a more deliberative process which, in drawing upon public participation, strengthens active responsibility and fosters a more civic public polity.

However, at the same time as maximising the opportunities for public participation, we also need to set minimal, yet critical, limitations on the form of that participation. We need a socially inclusive process – particularly with regard to traditionally neglected and suppressed groups – to protect against majoritarian rule and safeguard vulnerable minorities from the coercive and oppressive power of communal morality. We also need procedural mechanisms – particularly with regard to conflict negotiation and communication – to check power differentials and guarantee a minimum respect for the different parties involved. In this way, we can envision a form of public participation that is fair and just, which acts as a check upon state power, but which also maximises its democratic and civic potential.

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