



**REFLECTIONS ON RESTORATIVE
JUSTICE CONFERENCE – ‘CREATING A
MORE TRANSPARENT, RESPONSIVE AND
EFFECTIVE CRIMINAL JUSTICE SYSTEM’**

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RESTORATIVE JUSTICE – THE CINDERELLA STORY

Casting:

Cinderella – Victims

Glass Slipper – Restorative Justice

Ball – Criminal Justice

Pre-ball dinner – Youth Justice

Step Mother - Government

Step Sisters - Police and Crime Commissioners

Mice - Practitioners

Justice - Prince

The state is not just the arbiter in a trial between victims and offenders; the state is the victim...if victims feel that nobody cares about their suffering, it is because nobody does (Strang 2002, p7).

This quote is emblematic of the position victims of crime once held as the ‘forgotten actors’ or the ‘Cinderella’ (Schafer, 1960) of the criminal justice process. The purpose of this article is to examine how victims and restorative justice have come to prominence recently in the UK, drawing upon the author’s reflections of attending the ‘Creating a more transparent, responsive and effective Criminal Justice System’ conference hosted by ‘Inside Government’ on 14 June 2012 in Central London. As originally set out by Schafer (1960), the author will utilise the story of ‘Cinderella’ as a metaphor to examine such changes, when referring to his reflections of the conference attended.

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It would be difficult in today's society to imagine not having any input or say when a crime had been committed against a person. Indeed over the last 25 years, government policy, the media and academic research has, if anything, come to be dominated by concerns about victims of crime (Garland and Sparks 2000:16), which can also be seen in the growing amount of literature and studies investigating this area (Goodey, 2000).

Victims have obtained an array of 'rights' within criminal justice. According to Garland (2000:41) these range from 'the right to make victim impact statements; to be consulted about prosecution, sentencing and parole; to be notified about the offender's post-release movements; and to receive compensation'. To this list, especially within the UK, 'the right to receive service provision' should be added. By this, Victim Support aims to 'help people address their feelings, as well as offering practical help and assistance...it demonstrates concern on behalf of society, helping to counteract the negative impact of crime' (Reeves and Mulley 2000:127).

Such developments can be viewed as a triumph for the victim's movement and the plight of victim's rights. However on a more cynical note, Wright (1999:102) maintains,

if all these improvements are being made....isn't the system at least on the way to doing almost everything necessary to treat victims with respect. The answer is 'NO', and the reason lies in the nature of the system itself.

This is a view shared by supporters of restorative justice in that existing 'victim reforms' do not fundamentally alter the structural position of victims in the criminal justice system. According to Johnstone (2002:63), 'within a punitive system, the victim's interests will necessarily remain secondary to the wider public interest represented by the crown'. In this light, the argument advocates of restorative justice are proposing is that the criminal justice system must develop practices to meet the needs of victims.

Restorative justice is a concept that would seem to have a clear and distinct definition of what it incorporates in its meaning, that is to restore the wrongs of an offence, empowering victims and allowing offenders to be accountable for their actions. However, this is not straight forward as it does not present an overarching theoretical framework incorporating a specific set of programs or processes. Since the 1970s, there has been a worldwide growth of interest in the implementation and possibilities of restorative justice as it has been used in a number of different ways. For example, restorative justice has shown itself to be remarkably flexible as it has been employed in schools, workplaces, neighbourhoods and for

broader political conflicts such as post-apartheid South Africa and post sectarian Northern Ireland. Yet, in most contemporary debates surrounding the implementation of restorative justice, it is within criminal justice systems where it is mostly applied.

Restorative justice has been defined as 'a process whereby the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of an offence and its implications for the future' Marshall (1996). In referring to the 'parties with a stake in an offence', Marshall includes victims, offenders, together with the possibility of incorporating their respective families, and members of the wider communities who are affected by, and can ultimately contribute in the process of resolving the conflict (Goodey 2005:184). With this in mind, it is the victims who are both directly or indirectly affected by a crime, who are central to the restorative justice process. This in turn showcases restorative justice as an essentially different approach from traditional criminal justice. Moreover, within restorative justice the parties involved come together in a less formal setting than traditional criminal justice to resolve the 'circumstances and aftermath of the event in question' (Goodey 2005:184). Marshall's reference to the 'aftermath of the offence and its implications for the future' denotes that the well-being of the victim and offender, in light of the wider involvement of family and the 'community', is central to the restorative process at the time of the restorative meeting or afterwards (Goodey 2005:185).

Such conflict resolution as highlighted by this definition can take a variety of forms. These can range from a one off meeting between the victim and the offender which is supervised by a facilitator, through to an extensive meeting involving all those with a stake in the offence that is restorative conferencing. However, a major problem with this definition is that it neglects other restorative practice such as shuttle mediation where the facilitator acts as a go-between for the two parties involved or restorative cautioning.

Moreover, restorative justice enables victims to have their say and to talk about the full impact of a crime on their lives. They can participate in the resolution of the offence and can also receive answers to questions they may have about the incident, and reparation for the harm caused (Youth Justice Board 2006:3). Hence, restorative justice promotes the victim to the position of a central actor in dealing with their conflict. This in turn can provide a means as to empower them, provide a forum in which their voices are heard and perhaps more importantly, where they are respected. As Strang (2002:22) has noted, 'all these features have long been recognised as important to the victims of crime, and are good in themselves as well as being an essential component of restorative processes'.

However, it must be noted that, the concept of restorative justice may be viewed as being an 'ideal' form of conflict resolution, one which may never truly be all embracing at a system level, or with all offences. This is especially true when funding for restorative justice derives from the powerful machinery of political government who can at any time, support or reject any model of justice. Therefore to return to the fairy tale story of Cinderella, and to set the trend for the next section on the author's conference reflection, it could be argued that Cinderella (*the victim*) may only get to the ball (*criminal justice*) if and when her step mother (*government*) allows her to do so.

The conference on 'creating a more transparent, responsive and effective criminal justice system' has come at a time when restorative practices are being widely considered as a 'new' approach in criminal justice and local communities. More recently, following the Government's Green Paper 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders' (2010), the Ministry of Justice published a new strategy for victims 'Getting it right for Victims and Witnesses' (2012). This strategy outlines the Government's plans to develop a framework for the provision of restorative justice, including proposals to put victim's needs at the heart of criminal justice system and to increase available resources for restorative justice practices. More recently, on 23 April 2012, the Government published their consultation 'Punishment and reform: effective community punishments' (Ministry of Justice 2012a) setting out proposals for the reform of community sentencing, and introduced the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This Act lays out plans for a new youth remand and sentencing structure, which gives more flexibility to the courts to decide on appropriate disposals, including the use of restorative justice.

Following the opening address at the conference in London, the Chair of the House of Commons Justice Committee, Rt. Hon. Sir Allan Beith, presented that the Government is committed to increasing the use of restorative justice in the criminal justice system, education and local community sectors. He went on to say that this is not only intended as a means of reducing levels of crime, reoffending and criminal justice costs, but as an appropriate alternative to the traditional model of criminal justice to ensure that it is led at all times by the interests of victims. While it is important to provide a better balance for victims of crime to participate and have a role in criminal justice it may be too much to state that the balance will swing in favour of the victim 'at all times'. This is neither possible nor conducive to a process whereby a victim may not always want to be involved when a crime has been committed against them. Also, as presented above, both parties have a role to play that is

the offender and the victim. With this in mind, such a process needs to have the complete involvement and acknowledgement of both parties for it to be effective.

Furthermore, Rt. Hon. Sir Allan Beith maintained the Government are under pressure to reduce spending and cut levels of crime. He went on to cite evidence from the Ministry of Justice who estimated that based on the 27% reduction in the rate of re-offending demonstrated by restorative justice, £185 million in savings could be made across the criminal justice system (Victim Support, 2010). Adding to this, he cited analysis from the Restorative Justice Council (2011) providing that every £1 spent on restorative justice saves £9 in reoffending.

From this, it could be argued that the Government are principally framing restorative justice as a 'cost-effective' and 'cost-saving' enterprise, whose time has come, in light of the current economic climate. Therefore, to return to our story, it could be said that perhaps the 'glass slipper' (*restorative justice*) has been placed on Cinderella's foot (*the victim*) so she can go to the ball, however at a time which suits her step mother (*the Government*).

Furthermore, a key consideration throughout the conference was the impact the new 'Police and Crime Commissioners' (*step sisters*) would have on the rolling out of restorative justice across England and Wales. As this new role is not only responsible for policing but also dealing with crime, there were a number of concerns as to how restorative justice would be embraced and whether they would support a victim balanced position, which restorative justice potentially offers. For example, one delegate felt that 'restorative justice may be used in a piece-meal fashion whereby only certain areas of the country would embrace its values...therefore providing a situation of a post code lottery of victim provision'.

Conversely, the introduction of Police and Crime Commissioners may be seen as an opportunity whereby locally elected individuals could 'drive' restorative practices at the local level. Such sentiments were supported by Kate Morris (Deputy Chief Executive, Youth Justice Board) who stressed the need to develop restorative justice locally whereby local practitioners (*mice*) would have ownership and become 'champions' of local areas. Again, to return to our story, it remains to be seen whether the step sisters will allow Cinderella to dance in her glass slippers across the entire ballroom floor, or whether she will only dance in certain parts. Adding to this, if she gets to the ball, it is the role of the mice (*practitioners*) to ensure that she has a beautiful dress and looks attractive to the Prince (*Justice*).

Moreover, a key observation from attending the conference was the number of references related to and presentations of restorative justice in youth justice (*pre-ball dinner*) rather than criminal justice more broadly. In fact, the Chair of the conference John Graham, Director of the Police Foundation, heralded the Northern Irish model of restorative justice as the model of best practice for us all to learn from. The model of restorative justice in Northern Ireland is based on youth conferencing and is used for all types of offences in youth justice except murder, manslaughter, offences under the Terrorism Act and others carrying a mandatory sentence. This model is the main disposal for Youth Court cases in Northern Ireland and is enshrined in the Justice (Northern Ireland) Act 2002. A major concern with focusing on this model is that the Government in England and Wales are proposing restorative justice across all of the criminal justice system and not only justice in relation to youths. This is supported by a recent report by the Criminal Justice Joint Inspectorate (2012) claiming that there is a need for greater consistency in the use of restorative justice across all areas of the criminal justice system and that there is 'varying in quality' of services across the youth and adult justice system. To this end, the 'Restorative Justice Action Plan for Criminal Justice (2012)' has been set out with the aims to address such weaknesses. As such, it may be viewed that while Cinderella will be wearing her glass slippers and is ready to go to the ball, her step mother needs to ensure that she does not only attend the pre-ball dinner but also the main ball itself.

In summary, what is undeniable is that the past few decades of research and development of restorative justice, it has provided for better evidence and a broader imagination for a new approach to criminal justice. Restorative justice is having an increasing impact upon criminal justice policy makers and practitioners across the UK and beyond. It could be said that restorative justice is both victim-centred and sensitive to the needs of offenders who are willing to accept responsibility for their actions and who want to heal, in theory.

At its best, restorative justice truly represents a very different way of responding to crime through more active involvement of crime victims and the community. At its worst, restorative justice could become another generation of criminal justice euphemisms to make current practices look fairer and cost effective. Such a 'window dressing' effect is clearly not the intent of restorative justice advocates, yet it could become the eventual reality if its underlying vision and values become lost within the system or stuck within a certain system. As the story has hopefully demonstrated, Cinderella's time has come to put on her beautiful dress and glass slippers and attend the ball to meet her prince. However whether she will

get to the ball or only the pre-party dinner, the decision will remain firmly in the hands of step mother and step sisters. Let us hope Cinderella gets her fairy tale ending.

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