

# RESTORATIVE JUSTICE: REVIEW OF EXISTING LITERATURE, INTERNATIONAL NORMS AND BEST PRACTICE.

Princess Chavez, Christine Cinco, Darragh Drennan,  
Aoife Li.



## Contents

Introduction .....	0
Section One - Youth Offenders .....	1
Introduction .....	1
Section Two - Victims .....	14
Introduction .....	14
Section Three - Gendered Violence .....	17
Introduction .....	17
Section Four - England and Wales .....	21
Introduction .....	21
Section Five - Scandinavia .....	28
Introduction .....	28
Section Six - Northern Ireland .....	35
Introduction .....	35
Section Seven – Ireland .....	39
Introduction .....	39
Section Eight – Sexual Offending .....	41
Introduction .....	41
Section Nine - Recidivism .....	43
Introduction .....	43
Bibliography .....	48

# Restorative Justice: Review of Existing Literature, International Norms and Best Practice.

## Introduction

This report is an annotated bibliography of literature on the practice of restorative justice. It is divided into sections focused on specific aspects of restorative justice and the experiences of a number of European jurisdictions. Each section contains a brief overview of the materials discussed and an exposition of a number of relevant articles.

## Section One - Youth Offenders

### Introduction

This section focuses on the practice of restorative justice programmes involving youth offenders. The key concepts, procedures, problems, consequences and overall experience of restorative justice for young offenders are discussed in this section. Here, certain factors about each individual youth are considered whether they influence re-offending. The panel members' experiences have also been taken into account in this section. Theories as to whether the 'age gap' and contrasting backgrounds between the panel and the offenders really matter. Lastly, it examines whether restorative justice really is effective for various types of youth offenders.

Restorative Justice has largely become a practice used for young offenders and victims in the world today. In today's society, restorative justice is used to stop the chances of young offenders from re-offending and to save more money from having to pay for any services needed by them. As well as that, the practice of restorative justice for young victims are theorised to be almost therapeutic for them as it brings about closure for these victims. From the society's point of view, the hurt, pain and trauma that the victims can describe to the offenders can shame them from repeating the same mistakes again.

Restorative Justice is still new territory in Ireland today. It has only been introduced for the first time, as a statutory basis in the Children Act 2001. Under this act, youth offenders are provided with a restorative conference or restorative caution which is included in the Garda Diversion Programme. Another initiative that is provided for youth offenders is a court-ordered restorative justice conference, which is delivered through the Probation Service. In this conference, the victim can speak directly to the child about the consequences of their actions. In some cases, an agreement is made between the child and the victim where they must find a way to compensate for any damage made. While in other cases, children are involved in community service as another way to apologise to their victims.<sup>1</sup>

Our neighbouring countries such as England and Wales, have similar practices on restorative justice for youth offenders. However, they are years ahead of Ireland from the practice of restorative justice. The key concepts under the policy on youth offender panels for

---

<sup>1</sup> 'Restorative Justice Programmes' (Irish Youth Justice Service) [www.iyjs.ie/en/IYJS/Pages/WP08000064](http://www.iyjs.ie/en/IYJS/Pages/WP08000064) last accessed 4 November 2014

them are 'restoration, reintegration and responsibility'. Therefore, the Youth Justice and Criminal Evidence Act 1999 introduced the referral order on youth offenders. This practice applies to all 10-17 year olds who have been convicted for the first time and pleaded guilty in court. This is where they too, like Ireland intend to have a conference between the victim and the youth offender in a panel, where they discuss about the circumstances surrounding the offence(s) and the impact(s) left on the victim.<sup>2</sup>

In court, judges are obligated to explain to the young offender the effect of the order and any consequences to be made if a breach in contract is made or any failure for creating a contract made 'in plain language'. This is to make sure that they are able to understand the extent of the charges and to make them feel less overwhelmed of the situation. The courts may make referral orders depending on the seriousness of the crime for the duration of 3 to 12 months maximum. They must also clearly indicate the length for which any contract made is to start to take effect. When a referral order is made, it establishes the whole sentence for the offence with which the court is dealing and won't be added into their sentence. The panel would contain at least one Youth Offending Teams member and at least two members of the community. The purpose in including at least two members of the community is to help encourage other members of the community to take interest in dealing with the young offenders in their own community. The selection of these members are not to be based on their past experiences with youth offenders, but rather on their personalities where the youth offender would feel comfortable around with. The panel meetings are also held close to where the young offender lives, this is also where panel community members are drawn.<sup>3</sup> The overall intended atmosphere in conference is one as informal and non-institutional as possible. This is done in order to make the young offender and victim as comfortable as possible. YOT's are to be responsible for the preparation of the panel meeting, whilst make sure that the young offender has completed the risk assessment before they partake in the meeting. Meanwhile, the young offender must bring with them their background reports, court papers and any previous convictions. They must also bring their parents or guardian with them if they are under the age of 16. If the parents or guardian do fail to attend the panel meeting, then they are seen to be in contempt against the process under the Magistrates' Court Act 1980 s 63. However, the young offender does not need to bring with them any legal representative as the purpose for this

---

<sup>2</sup> Adam Crawford, Tim Newburn, *Youth Offending and Restorative Justice: Implementing reform in youth justice* (Willan Publishing 2003)

<sup>3</sup> Adam Crawford, Tim Newburn, *Youth Offending and Restorative Justice: Implementing reform in youth justice* (Willan Publishing 2003)

meeting is to only get the youth to confront about the consequences of his actions and to provide a reasonable activity for the youth in order to prevent for them re-offending. As for the victims, they could bring anyone they wish to bring for support.<sup>4</sup>

For these young offenders, a referral order is seen as a positive aspect. They would not need to be placed in jail or detention schools. They wouldn't also have to be taken out of their own community, lessening the chances of them re-offending. They appreciate the discretion of these meetings, since the panel is unable to talk about these meetings outside of the panel. The youths feel that they were still treated with respect and therefore feel it easier to show up and face their victims as well as the consequences of their actions. Another benefit found from a referral order is that it's a great opportunity for early intervention. The seriousness of meeting with your victim and a panel of warm but unfamiliar strangers gives the youth offender a clear image that their offending is unacceptable and will not be condoned. It is hoped that by apologising directly to their victim, they begin to take responsibilities for their actions through acknowledging the seriousness of their offending behaviour. The duration of the time spent in the panel is can be up to 1-2 hours long. This helps to give the youth offender a sense of ease that these panels won't take too long, thus helping to ensure that they show up for these panels. Lastly, another benefit from these panels is the speed of which the decision of a referral order is mandatory or not. This helps the court respond quickly to newer cases passing through the court. However, there is still a pitfall with this benefit. Many became concerned that despite rapid decision makings in court, delays in creating a contract with the young offender would occur. The reason for this is believed to come from the lack of resources.

All panel meetings end with an agreed contract between the youth offender, the victim and the panel members. This is done through negotiations during the panel meeting itself. However, it is also observed that most of the recommendations to be taken were proposed by the panel members instead of the young offender and the victim. It was revealed that victims have only made 14% of the contract's components and only 5% by the youth offenders. This is because some were deemed to be inappropriate by the panel members, the youth offenders did not wish to adhere to some of them. Components made up in the contract by the victims were more liable to be rejected by the panel as some were considered to be impractical or disproportionate for the youth offender to be adhered by. However, the minimal amount of

---

<sup>4</sup> Adam Crawford, Tim Newburn, *Youth Offending and Restorative Justice: Implementing reform in youth justice* (Willan Publishing 2003)

suggestions by the victim should also be noted. Reparative suggestions mostly dominate the contract, which is to be expected as it is a compulsory

The atmosphere of these panels is described to be non-threatening and non-violent. It contains a restorative atmosphere as the panel members are seen as non-judgemental by observers. The young offenders felt that the panel members treated them with respect and that the panel process was fair.<sup>5</sup> However, despite the restorative atmosphere created in the panel, most youth offenders felt awkward and embarrassed by being surrounded by a room full of adults. For most of them, the panel's purpose was not to severely punish them but to help them instead. Where an apology is sincerely given by the youth offender, it gave them a sense of gratification from directly apologising to their victim. A particular youth offender recalls:

‘I felt nervous to speak to her, but after I did speak to her.... I made a point to just apologise to her properly.... And I said it like I did mean it and did say ‘I’m very sorry’<sup>6</sup>

A parent also felt that apologising to their victim was beneficial to their child:

‘It was a good thing for him to meet his victim and the victim to meet him.... Because, you know, it just helped [her son] realise the situation that if you do something to somebody, there are chances that you will meet them again and you have to apologise.’<sup>7</sup>

For the most part, victims left these panels with them a sense of satisfaction and the feeling of leaving a strong and positive impact upon the young offenders. Most felt that by attending and explaining the consequences of the damage that the youths have created, they have made them understand the full extent of their crime. After having met the young offender, most of the victims tend to feel more sympathetic towards them as they too heard the youth's side of the story.<sup>8</sup> Despite the satisfactory results, some victims felt that their expectations for the panels were unmet. Some felt that their views were barely paid attention to, the lack of follow-up information on the young offender, such as any change in the youth's behaviour and their agreed compliance with the agreed contract.<sup>9</sup>

Reparations take a prominent part in these contracts. There are concerns that younger offenders can't do much for the community due to their age. Therefore, as part of their apology

---

<sup>5</sup> Adam Crawford, Tom Burden *Integrating victims in restorative youth justice* (Policy Press 2005)

<sup>6</sup> Adam Crawford, Tom Burden *Integrating victims in restorative youth justice* (Policy Press 2005) 72

<sup>7</sup> Adam Crawford, Tom Burden *Integrating victims in restorative youth justice* (Policy Press 2005) 73

<sup>8</sup> Adam Crawford, Tom Burden *Integrating victims in restorative youth justice* (Policy Press 2005)

<sup>9</sup> Adam Crawford, Tom Burden *Integrating victims in restorative youth justice* (Policy Press 2005)

some youth offenders write letters of apologies to their victims. However, it was found that most letters don't reach the victims as referral order staff had not been given the 'green light' to deliver these letters to them. There were no notifications from either the victim or the referral order staff that the letters had been delivered. Fortunately, there are still cases where the letter received by the victim had a useful and therapeutic effect on them. Another issue that arose was the need to find volunteers willing to supervise with the reparative activities. Some are found to be reluctant due to the challenges that they can find in working with young offenders. Using the same reparative activities are also considered a risk of being disproportionate to the offence. This soon leads to the community delaying the reparative activity in order to wait for a YOT staff to organise an appropriate activity. As a result, there is a huge delay in the contract being fulfilled within the timeline issued. Not only that, but the delay gives a wrong message to the youth offenders. Therefore, reparative activities must already be issued in the contract as well as the supervisor responsible for overseeing the youth's progress in order to prevent such delays. Letters sent to the victims by the young offenders must be given straight to victims and they must also be notified by a YOT member that it has been sent. If the victims have a concern over giving away their addresses, then the YOT may send the letter for the young offender if they so wish.

**Kathleen J Bergseth and Jeffrey A Bouffard, 'Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders' (2013) *International Journal of Offender Therapy and Comparative Criminology* 1059.**

It has been generally agreed that restorative justice programmes for youth offenders are a basic human rights-based approach that endorses democratic practices in international law. The authors believe restorative justice to be of constructive benefit for the victims. Crime in restorative justice has been defined as a violation of relationships and/or harm to the community rather than harm towards the state. Therefore, a reduction in recidivism and the strengthening of a relationship within the community can be established through restorative justice. Several approaches to restorative justice are used with youth offenders. These include mediation between the victim and offender, community reparative boards, circle sentencing, community service or restoration and family circles. Restorative justice programmes are



designed to ‘meet the real needs of victims, offenders and their communities created by the criminal act’.<sup>10</sup>

However, critics of restorative justice for youth offenders believe that restorative justice may only work for less serious offenders. There are also concerns that restorative justice programmes may only work for property youth offenders and not for violent crime offenders. Bergseth and Bouffard also state that the increased risks of re-offending can be easily categorised through the young offender’s age, gender, racial group, history of prior offences and their antisocial attitudes. Nonetheless, a police-run restorative justice programme in Bethlehem, Pennsylvania slightly disproves their theory as it mostly works with violent crime youth offenders, and they have seen a large reduction of rearrests. Although it must also be noted that the group the programme worked with consisted of only a small number who willingly joined the programme; those categorised as most likely to reoffend would decline to participate. In a re-analysis of the restorative programme in Bethlehem, Pennsylvania, it was found that despite age and racial differences, the programme still worked well for the young offenders despite the so-called potential risk level. In a report from Canberra, Australia, it was found that property youth offenders were more likely to reoffend than violent crime youth offenders, which fortifies the theory that restorative justice participation is an important factor in the reduction of recidivism among violent offenders. It is believed that the restorative process may grant ‘a different emotional climate and basis for legitimacy of legal interventions’ than a traditional court process would.<sup>11</sup>

In conclusion, restorative justice programming is just as effective for serious offenders. The type of programme used plays a large role in its effectiveness. Traditional restorative justice interventions such as panels, restitution, community service are useful for property offenders whilst intensive offender rehabilitation programmes are necessary for individuals with previous offences.

---

<sup>10</sup> Kathleen J Bergseth and Jeffrey A Bouffard, ‘Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders’ (2013) 57 *International Journal of Offender Therapy and Comparative Criminology* 4.

<sup>11</sup> Kathleen J Bergseth and Jeffrey A Bouffard, ‘Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders’ (2013) 1059 *International Journal of Offender Therapy and Comparative Criminology* 7

**Deborah Kirby Forgays and Lisa DeMilio, 'Is Teen Court Effective for Repeat Offenders? A Test of the Restorative Justice Approach' (2005) 49(1) *International Journal of Offender Therapy and Comparative Criminology* 107.**

Forgays and DeMilio review research conducted on 26 repeat youth offenders who had gone through the teen court system, in order to establish whether or not restorative justice was effective for repeat youth offenders. The teen court in the programme consisted of teachers assigning student volunteers to make up court personnel with an adult judge model (the equivalent to a panel in England and Wales). On the night of the teen court, prior to their hearing, and following the court session, the youth offenders completed multiple questionnaires including:

- The Harter Self-Perception Profile for Adolescents – Twenty-three out of the twenty-six youth offenders agreed to complete this questionnaire. It measures the youth offender's self-image, academic capacity, social acceptance, athletic skills, physical appearance, romantic appeal, behavioural conduct, close friendships and their overall self-worth.
- The Exit Survey – this is a nine-item survey that asks the youth offender their opinions on the fairness of their sentences.

In order to qualify for the teen court, the youth offender must plead guilty for their crime and their parent or guardian must be willing to support the young offender's sentence completion. The offender must also complete the Northwest Youth Services Intake and Assessment Record at the Northwest Youth Services (NWYS). The young offender must report the progress of their sentencing to the NWYS Teen Court Coordinator, who is also responsible for handling fines and reparation for the victims. A sentence is normally completed after 3 months when the young offender also completes an outcome evaluation and interview with NWYS member in person or by phone.

The crimes committed by the participants varied by gender and age. They normally consisted of assault for girls, and shoplifting and theft for boys. Occasionally, alcohol and/or drugs were also involved. Older offenders were mostly charged with possession of alcohol, vandalism, family conflicts, assault and shoplifting. Only 81% of the youth offenders completed their sentences. 12.5% of those who were charged with theft reoffended and the youths who failed to complete their sentences reoffended. Despite this, most of the youth

offenders had successfully completed their sentence and diversion requirements did not reoffended, which deems the teen court to be a success.

The youth offenders were given the opportunity to state what they thought about the Teen Court process. The majority felt that their sentences were fairly given and didn't feel the need to change it. Many of the youth offenders understood the court process as they felt that they were given clear and concise explanations throughout the entire court proceedings and sentencing. Many of them also stated that they would gladly recommend the Teen Court to a friend. As well as that, many of the Teen Court previous offenders chose to serve in court personnel roles, claiming that it gave them a new perspective of their crime and the impact it had left on their victims, as well as their parents and friends.

The Harter Self-View Profile was given as a questionnaire to the youth offenders in order to measure the adolescents' own self-worth. It seems that the adolescents' low self-acceptance is a cause for concern despite the fact that previous research had shown that youth offenders with a high sense of self-worth may be less receptive to interventions. The authors' goal was to determine whether or not the teen court experience would be effective in preventing youth offenders from reoffending. The results made it clear that the research was a success. The sentence completion rates rose and recidivism six months post-court-appearance was low. These results question previous findings that second-time offenders are more likely to reoffend than first time offenders. As for the youth offenders', they saw community services such as Teen Courts as a bridge of communication with their own community. The evidence of the support that their community was willing to give endorses that. Previous offenders who were willing to take on court personnel roles give youth offenders a sense of fairness in the Teen Court as they had been at the same place as where the adolescent is now. In conclusion, the Teen Courts' success demonstrates the effectiveness of restorative justice amongst repeat offenders.

**David R Karp and Gordon Bazemore and J.D. Chesire, 'The Role and Attitudes of Restorative Board Members: A Case Study of Volunteers in Community Justice' (2004) 50(4) *Crime and Delinquency* 487.**

In this article Karp, Bazemore and Chesire examine the results of a survey carried out on volunteers involved in restorative justice programme panels. They also look into the partnership between the community and the government and its characterisation from the

perspective of the board volunteers, by analysing their behaviours towards the programme and the sponsoring agency, the Vermont Department of Corrections (VDOC).

In the programme, the panel consists of citizen volunteers, who met with the victims and offenders in order to negotiate and finalise the youth's restorative justice contract. A panel commonly consisted of three to five board members at which they discuss the harm the young offender has caused to the victim, the consequences of their actions, and the steps to be taken by the young offender in order to atone for their crimes and to regain the community's trust.

The authors found that only a small minority of the Vermont community would willingly volunteer to be a panel member. It was also found that the Vermont volunteers tend to be older, with the average age 54 years. However, the Vermont volunteers varied in religious, income, sexual and political orientation as well as gender. Most panel members had considerable experience, serving for long periods. Most of the members also lived in the same community as the victim and/or the young offender, which helped to give the impression to both parties that they were all connected as a community. Some members of the community volunteered after having appeared before the board as a victim or offender.

A large number of members were generally happy with their experience in the panel. It enhanced their sense of membership of the community and gave them a positive attitude toward restorative justice. Many of the panel members believed that the programme effectively met their community's needs by increasing public safety and by restoring any harm caused by a young offender. They saw community service as a vehicle for repairing the harm caused by the young offender, and as a way of reintegrating them back into the community. They understood that, although the programme itself won't dramatically change the young offender's life, it can be as a positive step forward.

There were worries of the generational gap between the youth offenders and the panel members as most of them were of an older, creating a social distance between them. It was recommended that welfare mothers, the unemployed, adolescents and even former youth offenders should be included into these panels in order have a variety of opinions and to make the young offenders more comfortable.

Although the numbers of volunteers is increased over time, more research is needed to fully examine their role in the restorative justice process. The community justice volunteers who took part in the authors' research have a new criminal justice role that achieves the goal of criminal justice professionals. The volunteers have stated their enjoyment of their experience

in the programmes, and the determination to commit to the community-justice partnership and its restorative principles.

In conclusion, the authors' find a volunteer's role in the programme to be unique, as they give youth offenders a sense of comfort due to their status in the community. They aren't seen as intimidating figures, such as parole or probation officers, by the adolescents. They can also be seen as the voice of the community rather than the state, which may prompt offenders to listen to them and take the advice given.

**Siobhán McAlister and Nicola Carr, 'Experiences of Youth Justice: Youth Justice Discourses and their Multiple Effects' (2014) 14(3) *Youth Justice: An International Journal* 241.**

In this article, the authors examined Northern Ireland's narratives of 'justice' through restorative justice. They focus on the different discourses that may influence the same intervention and the deployment of multiple rationalities that may highlight the effect of the experience of 'justice'. The expansion of criminal and quasi-criminal interventions and modes of governance across the UK has resulted into many contradictory and competing discourses in the youth justice system.

The current youth justice involves several modes and layers of governance. Contradictory rationales within the youth justice system have resulted from recent initiatives on the prevention of offending through risk management. Despite the encouragement of early intervention with youth offenders for their own and society's benefit, their welfare and rights-based ethos is questionable. A key element of contemporary youth justice is responsabilization where a young offender is acknowledged to be a rational, responsible decision maker and must face the consequences for his actions. Focusing on the restoration and reintegration of the young offender into the community reflects the welfare discourse. Restorative justice therefore demonstrates the tensions between welfare and justice. The young offender is held responsible for their actions, but with the intention to reintegrate them into the law abiding society. An example of this is the language of inclusion, participation and rights. Restorative Justice may be suited to young offenders due to its informality and sometimes diverse nature and its incorporation of rights and views of young people and their victims. However, Restorative Justice may also be shaming, disciplinary and exclusionary.

The initial aim for Restorative Justice in Northern Ireland was to protect the public by preventing children from offending. It encourages young offenders to face the consequences of their crimes, and places a clear emphasis on the importance of responsabilization. In the Justice (Northern Ireland) Act 2002 new diversionary disposals, community and custodial orders and formalised restorative justice through the Youth Conference Service were introduced. Over time, the number of youth conferences has grown and as it expanded and became the primary youth justice response, a decline in youth offenders soon became notable. Despite its success, it did not escape criticisms. The efficacy and proportionality of conferencing has been questioned. Feeling of exclusion and inequality from the young offenders have also been highlighted.

The overall results were a decline in the practise of custody, and an emphasis on the use of reparative programmes. However, this does not necessarily show how justice is perceived in practice. For example, it does not give an indication as to whether or not restoration is found to be re-integrative. A young offender involved in the research stated that the experience had made a clear impact on him. Meeting his victims had brought about a sense of shame towards his behaviour. This fortified the theory of the effectiveness of re-integrative shaming. Where shaming that is respectful of the person, whilst managing to avoid labelling and ending in forgiveness from the victim and/or the community. Responsabilization was also evidently used from the official youth justice discourse and in the young offender's own retelling of their experience. It helped highlight the need to take responsibility for their actions and to make things right again.

For the youth offenders the centre provided for them a period of respite from their own lives. It indicates that their welfare needs had been met whilst they were placed in detention. They were given adequate care where they were given their own room, resources that were unavailable to them on the outside, and they also received regular contact from friends and families, which brought a sense of comfort for many young offenders.

The accounts from young offenders subjected to two types of justice intervention provide an image of which one works best. There is an evident mix of restoration, responsabilization, welfarism and discipline in the programmes. Through the restorative justice approach, the responsabilization approach is seen as a positive yet somewhat punitive approach that may become meaningless for young offenders. Whilst in other cases, it also brings about the need to fix their mistakes and make reparations if the young offenders felt that they had

been treated with respect and not stigmatised in the process. However in this research, the embodiment of restorative justice does not seem to bring the desired effects on these young offenders where it is seen as a disciplinary act.

On the other hand, the young offenders' experiences in custody see it as the means to receive their welfare needs, where it has become preferable for them than the chance to stay within their own community. Although there has been a decline in the use of custody for youth offenders, the advantages that it brings for them can keep the impulse to reoffend alive.

**Brian Williams, 'Restorative Justice and Incarcerated Young Offenders' (2004) 4 *Youth Justice* 191**

In this article, Williams researches the use of, and attitudes toward, restorative justice for youth offenders. The research team stated the need for a more rigid ongoing evaluation. The author lists possible advantages of restorative justice used for youth offenders:

- It enables the victim to explain to the young offender the harm caused by them.
- It helps victims obtain emotional gratification from having been heard as well as having helped ease their fear/anger towards the offender.
- It gives victims a sense of closure which helps them move on with their lives.
- It allows youth offenders to express remorse for their past actions whilst showcasing their want to change for the better.
- It often helps change the young offender's perception on the effects that it caused on their victim(s).
- It may also give youth offenders peace of mind as they feel that they have been able to help their victim.

Restorative Justice views crime as an offence against people and incarceration of an offender should not prevent any chances of making amends. Restorative Justice believes in the equal treatment of both parties where it also offers an alternative prototype of crime intervention.

Most communities involved in the restorative justice programme have the same problems with the young offenders and their victims being geographically too far apart. As a result, it has failed to accommodate youth offenders within a reasonable distance from their homes. Any contemporary projects organised in prison have high chances of being discarded due to the increase in numbers and possible threats to society. However, several establishments

try to overcome this by encouraging young juveniles to write letters of apology to their victims, for youth offenders to participate in community service, mediation, etc. Practices such as these indicate a shift in the replacement of prison disciplinary actions with mediation processes. Despite this, there is confusion on the true representation of what restorative justice really is, which indicates a need to fully establish and educate the community as to what restorative justice really entails.

It is clear that many are willing to take part in restorative practices. Several programmes have the potential of being successful in youth crime intervention which indicates its potential effectiveness. However, the article also highlights the need to further educate, not just those involved in the programme, but those who live in the community as well, in order for these programmes to gain support such as any additional financial aid and staff/ volunteers.



## Section Two - Victims

### Introduction

This section discusses the use of victim impact statements in capital cases. It examines the advantages and disadvantages of victim impact statements in a criminal court. It also considers various other arrangements where they can be most useful instead. This section also investigates the factors surrounding victim satisfaction with restorative justice. Various types of crimes have been considered to check whether victim satisfaction applies in all areas of crime. The support given and the overall impact that the programme leaves on the victims are also investigated in this section.

**Bruce A Arrigo and Christopher R Williams, ‘Victim Vices, Victim Voices, and Impact Statements: On the Place of Emotion and the Role of Restorative Justice in Capital Sentencing’ (2003) *Crime and Delinquency* 49.**

In this article, the author delves into the competence and validity of restorative justice through the use of victim impact statements in capital cases. There has been dispute over victim impact statements that can radiate anger, retribution and hatred towards the offender. Which may then dissolve any chances of a fair trial and a smooth journey through restorative justice as it change the views of the panel. The author explores multiple principles in the restorative justice that has been depicted into, the factual and legal limits of victim impact statements analysed, the society’s need to punish explored and how it connects towards the extent of forgiveness and compassion in the restorative process. The legitimacy and effectiveness of victim impact statements have always been questioned in a criminal court of law, as victim impact statements tend to sensitize the court’s decision to the victim’s perspective. It has also been noted that the victim’s recounting of the crime may be prejudicial and capable of manipulating emotional tendencies. Due to this, the limits of victim impact statements are analysed. It has been found that the courtroom setting in a capital case is not an appropriate setting for victims to seek emotional support. The informal community based panel is found to be a more suitable for victim-offender mediation. Here, it gives victims the chance to be heard, recognised and quite possibly heal from the experience. From further observations, it has been noted that victims as

well as their offenders have as much interest in the process of forgiving. The community in which both the offender and victim are involved in also plays a role in the restorative process, which could result in a victim satisfaction. In conclusion, victim impact statements are found to be unproductive in a courtroom setting. It is clear that accepting the anger, bitterness and resentment that victims have acquired plays an important role for the healing process. As well as that, offenders may see in turn seek forgiveness and see it offered to them, which too helps with the healing process. However should this occur in a capital case, it could set back the possibility of any restorative justice.

**Tinneke Van Camp and Jo-Anne Wemmers, 'Victim Satisfaction with Restorative Justice: More than simply Procedural Justice' (2013) 19 *International Review of Victimology* 117**

In this article, the authors examine factors surrounding victim satisfaction with restorative justice and the extent to which this satisfaction is due to the effects of restorative justice. The authors conducted interviews with victims of violent crime who had participated in restorative justice. They found that fair-minded view of restorative justice and several other factors, had contributed towards victim satisfaction. The victims of violent crime varied, they were either a relative of the deceased victim, victims involving murder and manslaughter, sexual aggression and physical assaults. Each of these victims had participated in restorative justice programmes. The victims were overall satisfied with the restorative approach as it helped them gain an insight as to the reason for the attacks. It also allowed them to take back control, rid them of any unnecessary feelings of shame and responsibility and move them to their rightful place – the offenders. Twenty-five of the thirty-four victims were happy with the programme and its results. Two regarded the mediation procedure negatively, but did not dismiss the notion of the restorative procedure entirely. Three cases were disappointed by the lack of a written arrangement and six felt unsatisfied by the lack of answers that they wanted to get from the offender. It was found that the respondents reacted positively towards the restorative procedure due to the fact that they were able to talk about their own experience and be heard. As well as that, the victims did not feel at all pressured into participating in the panel, which caused those who initially refused to reconsider participating in the programme. In preparation for their face-to-face meeting, the victims met with a mediator in order to fully prepare them. This allowed the victims to prepare emotionally as well as to give them information on what to expect

throughout the procedure. The mediators also help the victims to develop any questions they wish to ask the offender. The mediators also help the offenders prepare for their answers. It's clear that providing emotional support for the victims can help them during their time of healing. For some victims, the dialogue between their offender and themselves was considered key to restorative intervention. Moreover, it enabled victims to further cement the impact of victimization into the offender. They believed that by conveying their stories directly to the offender, they could effectively raise victim awareness. It would give them a chance to check to whether the offender understood the severity of the victimization and be affected by it. This was a clear and sure step towards healing for the victims, allowing them to get the answers they wanted. Overall, the victims were satisfied with the restorative justice procedure. It gave them the chance for some closure as they got the answers that they wanted from the offender. The flexibility and non-judgemental atmosphere of the panel where they did not feel forced to go, made them feel safe and secure throughout the procedure. By providing a mediator for the victims, the victim's emotional needs are catered for throughout their ordeal.

## Section Three - Gendered Violence

### Introduction

This section discusses reservations and concerns from victim advocates towards restorative justice on gendered violence. Concerns over the victims' interests are voiced in this section. It focuses on domestic abused victims and the need to handle restorative justice programmes differently and delicately due to the circumstances of the crime involved. The effects that this programme has on the victims are also mentioned in this section. The importance of an apology from the offender is emphasised clearly in this section as well.

**Sarah Curtis-Fawley and Kathleen Daly, 'Gendered Violence and Restorative Justice: The views of Victim Advocates' (2005) 11 (5) *Violence Against Women* 603.**

In this article, the author researches the arguments for and against restorative justice. Here, we see the reservations and concerns from victim advocates towards restorative justice on gendered violence, despite that most still see the positive elements to it. Over the years, feminist efforts have culminated towards the improvement at all levels of the justice system's responses towards gendered violence and investigation of victim-witnesses. Yet despite all these changes, victims still believe that nothing has changed as victims of family, domestic and sexual violence still do not report any of these offences to the police. Due to this, feminists have now tried to find other means of justice. It would seem that restorative justice is the answer to gendered violence. It generates hope and angst amidst victim advocates as it varies on the individual experiences and their conception of it.

It has been a great cause of concern from most feminist literature that restorative justice for domestic violence and sexual assault may be difficult for the victims involved. This however also shows the lack of knowledge that victim advocates have on restorative justice, as critics mostly focus on the disadvantages of restorative justice on domestic violence. While restorative justice advocates would argue that it can help authenticate the victim's experience as well as ensure that they realise that they are not at all to blame for the attack(s) that they suffered. It also reduces the victim's fear and anger centred towards the offender as they the opportunity to describe the aftereffects that the crime created. It was agreed in the article that caution should be exercised when approaching these cases, most importantly, gendered

violence, for example, cases such as domestic abuse, sexually abused children, etc. Especially as victims, such as domestic abuse victims, may not wish to go to court due to the threat of a reprisal or some may still wish to stay in relationship.

**Julie Stubbs, 'Beyond Apology? : Domestic violence and critical questions for restorative justice' (2007) 7 *Criminology and Criminal Justice* 169**

In this article, the author examines the issues needed to be improved in the restorative justice literature through a feminist viewpoint, whilst focusing on domestic violence. Under the eyes of domestic violence, the article investigates the appeal to contrition, atonement and absolution under restorative justice that highlights and gives importance to the victims' interests. However, it must also be noted that it does not promote or endorse victims' rights campaigns. Although it could not be denied that restorative justice is more beneficial towards the victims of crime, such as; restoring the harm caused, healing, the foreseeable chance of gaining an apology from the offender, the chance to explain their side of the story, the opportunity to hear the offender's side of the story, the possible chance of understanding the offender, the lessening fear of the victims towards the offender, the hope that any residual anger towards the offender lessens that would turn the victim into a more principled person, participating and placing influence on the outcome of the verdict and the less chance of recidivism that may boost the safety of the community and the victim.

In the cases of domestic violence, virtues that apply to victims of crime does not all necessarily apply to victims of domestic violence. Claims such as restorative justice being beneficial for the victim to realise that the crime was not a personal vendetta is irrelevant for victims of domestic abuse. It is clear that domestic violence contradicts this claim. Domestic violence generally occurs overtime that consists of power and control. It may be that the victim's main concern is protection from the perpetrator and the right to live in peace, rather than reparation itself.

Victims of crime are given the chance to talk about the consequences of the crime that the offender has inflicted in order to make the offender feel remorse due to the impact of his behaviour. Contrary to this, it is more likely that the offender knows of the damage that they would cause on the victim. Violence inflicted on the victim would be used by the offender in order to insert power and dominance over the victim. In some cases, the offender may have

total control over the victim that the victim may lay blame on themselves. This may make it difficult to establish a neutral mediation conference between the two parties.

Another difficulty found in the mediation between the offender and victim is apology and forgiveness. Abusive offenders commonly use apologies in order to win back the victim's favour. Failing to recognise this as a strategy for offenders to exercise control over the victims may cause practitioners to be complicit over the abuse. Victims of domestic abuse are divided on receiving an apology from the offender. Some are disinterested in receiving an apology, whilst some express uncertainty and distrust over the sincerity of the apology made. Expressions of love from offenders towards their victims should be questioned as to whether or not it is another form of manipulation. This would make it certainly difficult for victims to judge the sincerity and intent of the apology. It is obvious that the restorative approach of accepting an apology at face value would be difficult in domestic violence cases.

In conclusion, it is quite clear that handling domestic violence cases under the restorative justice practice cannot be placed in the same pedestal as the regular procedures of the programme in order to help stabilise the risk of damaging the victims' interest. Careful planning is of the utmost importance upon creating a programme for domestic violence under restorative justice. The acknowledgement of responsibility and accountability from the offender must be the number one priority in order to establish an effective restorative justice programme for domestic violence.

**Susan L Miller and LeeAnn Iovanni, 'Using Restorative Justice for Gendered Violence: Success with a Post-conviction Model' (2013) *Feminist Criminology* 247**

The programme for domestic violence under restorative justice has faced many criticisms, it is believed to cause more harm to victims as it may fail to attune to the victims' needs. However, it can be argued that the time between the crime and the restorative justice process can be crucial for the victims and the offenders. Throughout that time span, victims may be more willing to engage with their offender whilst, the offender may develop responsibility and accountability over their actions. It helps lessen the possibility of creating more harm than good towards the victims' needs. By learning from previous examples of post-conviction restorative justice programmes, positive justice responses to crimes of gendered violence can be generated throughout.

Critical claims of the restorative justice's informal process programmes, the apology from the offender that is to come and the roles of the family, friends and community must be noted. The informality of the process had become a cause for concern as critics claimed that offenders can easily manipulate the situation which would allow them to blame the victim and/or minimize the harm. Due to this, victims who had grown accustomed to this process may feel unable to further their interests and to find the courage to defend themselves or quickly agree to any solutions, only to find themselves regretting it later. It is important to note that apologies from the offenders may cause harm for the victims, as apologies have been well known to be used as a controlling tactic by the abuser. The role that the community, family and friends play is also questioned. Community norms and the lack of resources play a big disadvantage for all sides of the panel. Family and friends prove unproductive for the panel as loyalties come to play. Offenders may see the process as an easy way out which defeats the purpose of restorative justice, harm the victim and minimising the harm created.

The authors examine an abused victim's experience with the post-conviction restorative justice programme. Post-conviction restorative justice is found to be therapeutic for the victim, with timing proving to be the key issue that aids the victim's healing development. By the time a post-conviction dialogue takes place, the victim may be ready to face their offender, find their voice and be willing to narrate their horrific ordeal to the offender. Through this, it creates validity towards the victim's experience, be secluded from any mixed loyalties by friends and family, as well as ensuring that the offender's burden is responsibility.

In conclusion, despite concerns of manipulation, victim blaming and the minimisation of harm, it has become clear that the time span between the crime and the programme can severely influence the outcome of the proceedings in a positive way.

## Section Four - England and Wales

### Introduction

This chapter focuses on the United Kingdom and its current stance on Restorative Justice and its practices. The articles present varying results, but very much promote Restorative Justice practices with children, and even with more sensitive cases with adults. Restorative Justice is a positive process that is being advertised currently by the government. However, no legislation regarding Restorative Justice or its practices has been currently passed.

**Joanna Shapland and others, 'Situating Restorative Justice within Criminal Justice'(2006) 10 *Theoretical Criminology* 505.**

In this article, the authors are challenging assumptions that Restorative Justice is primarily a youth justice practice. They explore how Restorative Justice can be situated within the criminal justice system. Restorative Justice sessions are hard to place in criminal justice, especially regarding complex cases such. 'Restorative Justice does not normally see itself as a forum for determining guilt',<sup>12</sup> where they try to avoid conflict and tension, unlike in court. Unlike in Restorative Justice, criminal justice already has allocated roles in sessions and cases and these roles are not for negotiation. There are also imbalances in power, especially in abuse cases. The offender already has power established over the victim, and so the victim immediately has less power despite the supposed balance set out in Restorative Justice sessions.

More so, while Restorative Justice is praised for its informality, this simply cannot be completely so in criminal justice. Informality can cause tension with creating fairness, and both lay people and police officers tend to have a pre-conceived idea that offenders are 'scum'<sup>13</sup>. This pre-conceived idea can cause issues if police officers are facilitating Restorative Justice sessions. The power balance is certainly complex, as the offender is still under the power of the state. Complete informality is a very dangerous goal to achieve.

Of 285 sessions the authors have observed there have been few instances that an outcome has not been reached. It is only in the cases where the offender tried to deny offence, tried to

---

<sup>12</sup> Joanna Shapland and others, 'Situating Restorative Justice within Criminal Justice'(2006) 10 *Theoretical Criminology* (ns) 508.

<sup>13</sup> Reiner, R. (1997) 'Policing and the Police', in M. Maguire, R. Morgan and R. Reiner (eds) *The Oxford Handbook of Criminology*, 2nd edn, pp. 997–1050. Oxford: Oxford University Press.



blame others for their offences, or when pre-set expectations were broken that problems occurred. The participants of sessions wanted to be able to speak without being interrupted. This was important as in these sessions, everyone got a turn to speak, one by one. The facilitators ensure that these ground rules were followed. There were no assaults during direct mediation and conferences, despite the seriousness of offences. There were occasionally threats, but even those were rare. Conferences were generally calm, but it was clear that emotion was involved in the sessions between offenders, victims and others involved. There are still issues in the purpose of the Restorative Justice processes. For example, should it impact on a sentence, or be a factor for early release? Would it serve a more concrete purpose in the criminal justice system? However, this article established a key element in Restorative Justice sessions which can be used in all Restorative Justice processes:

The key element is *interaction between the participants* in a safe environment, focusing on acknowledgement of the past hurt and the emotions it has generated, disabusing stereotypes of each other and providing a future orientation which is mutually discussed and agreed.<sup>14</sup>

**Barbara Hudson, ‘Restorative Justice and Gendered Violence: Diversion or Effective Justice?’ (2002) 42 *British Journal of Criminology* 616**

The use of Restorative Justice for more severe cases such as sexual abuse cases have been a subject of controversy and vigorous debate. This article presents many questions in relation to Restorative Justice in cases such as these. Is Restorative Justice appropriate for difficult cases of domestic and sexual offences? How can retribution and restorative principles be reconciled, and to what degree should these due processes play a part? Is Restorative Justice a peripheral practice, or should it be a key element of the criminal justice system?

The use of restorative justice in sexual abuse cases often lies on two sides. One side is that the established formal criminal justice system does little for victims of sexual abuse cases, while the other states that, due to the severity of the crime, the most robust form of justice should be used against them. The latter is an argument that is used by most writers.

Restorative Justice processes are usually used in sexual offence and domestic abuse cases when the most robust form of justice fails to help the victim. Low prosecution rates, low

---

<sup>14</sup> Joanna Shapland and others, ‘Situating Restorative Justice within Criminal Justice’ (2006) 10 *Theoretical Criminology* (ns) 522

conviction rates and re-victimisation of women during proceedings are usual complaints. This is due to lack of evidence due to the privacy of the happenings and the consequences the prosecution. Victims are afraid of more aggression and more violence if offenders are persecuted. Some victims also don't want the offenders prosecuted, just for the violence to stop. This is often the case between children and parents.

Restorative Justice is often being discussed for its potential, rather than the actuality of the approach prison officers and facilitators prefer. It is hard to place restorative justice in such cases as there are already many present support groups for women as victims and men as offenders, and how to reduce their violence. There are many other present options to handle sexual offence and domestic violence cases, such as psychologists and women supports' groups.

At present, it is hard to place restorative justice in these cases due to the controversy and the difficulty surrounding such cases. A key argument for opponents of Restorative Justice in these complex cases is that Restorative Justice exists to divert people away from the criminal justice system. However Hudson concludes that if elements of restorative justice could be adopted and used for serious offences, and accompanied by procedural safeguards, rights and standards, then a 'better justice'<sup>15</sup> could emerge, as it is clear that the criminal justice system has failed in its goal of responding to domestic abuse and sexual offences.

### **Ministry of Justice, *Restorative Justice Action Plan for The Criminal Justice System* (2012)**

From this, it is clear that the Ministry of Justice in England and Wales has put a lot of thought in Restorative Justice processes and schemes. From this report, they plan to handle certain issues in relation to Restorative Justice, both in terms of offenders and victims.

They plan to introduce restorative justice in the form of conferencing between victims and offenders, community conferences, mediation between victims and offenders to discuss the offence and the effect of it, and even indirect mediation through telephones or video conferencing. This indirect mediation can lead to face to face mediation in the future. There are, of course, problems in relation to applying restorative justice processes and schemes. There is low public awareness of restorative justice, especially amongst victims. There is a lack of

---

<sup>15</sup> Barbara Hudson, 'Restorative Justice and Gendered Violence: Diversion or Effective Justice?' (2002) 42 British Journal of Criminology (ns) 631

clarity, and often misunderstanding in what exactly restorative justice processes are to victims. Likewise, criminal justice agencies have a ‘patchy understanding’<sup>16</sup> of the role and outcomes of restorative justice - a common question in relation to criminal justice cases. There also needs to be on-going monitoring and evaluation of restorative justice processes to further improve them.

The Government is taking steady actions to tackle these current issues. They plan to provide high quality and easy access to Restorative Justice processes, to make the public and Restorative Justice practitioners aware of Restorative Justice as an option, to make skilled Restorative Justice facilitators available nationally and to understand its effect on victims, offenders and the community. The Government plan to make Restorative Justice available to all stages of the criminal justice system, and are working hard to do so. However, there is one limitation in lack of statutory foundation for Restorative Justice for adults. There is no legislation currently relating to Restorative Justice, so it tends to vary frequently. It would be good to have an act outlining general guidelines and rules in relation to such practices.

**Helen Easton and Roger Matthews, *Evaluation of the Inspire Women’s Project* (Northern Ireland Department of Justice/London South Bank University 2011)**

Inspire Women’s Project started in Belfast in 2008. The project was managed by the Probation Board for Northern Ireland and the Department of Justice. It was established to provide for the gender-specific needs of women offenders. This was a project that focused mainly on women offenders and had mainly positive outcomes. They arranged, conducted and transcribed interviews with women involved in the project. The project focused on the women in Belfast, rather than their counterparts in England, Wales and Scotland. The project aimed to have a woman-centered approach to tackle their complex needs and to enable women offenders to desist from crime and reintegrate into society. It also examined the cost benefits of the process and examined what would be good practice for gender specific processes in Northern Ireland.

The project interviewed and worked with a variety of women, such as adult women offenders on probation supervision and women waiting for pre-sentence reports. There were also a small number of day release prisoners. A total of 309 women were referred to the Inspire project between October 2008 and July 2010. The women ranged from 19 to 68, with the majority below 50 years old. There was also relatively even distribution of women offenders

---

<sup>16</sup> Ministry of Justice, Restorative Justice Action Plan For The Criminal Justice System (2012) 4

between the ages of 20 and 49. 55% of offenders lived in Belfast, and 89% were on community sentences. 72% of the 309 women were compliant with their community sentences. Of the 309 women offenders, a total of 22% did not comply with their community sentence.<sup>17</sup>

It is clear that this project had very positive effects, as interviews with women offenders found that 78% had not committed any further offences since engaging with the Inspire project. Furthermore, 78% reported improvements in their self-esteem, and a number reported improvements in many other areas such as: physical and mental health, relationships, self-control and various other things. The total cost of running the project between 27 October 2008 and 31 July 2010 was approximately £187,250, or approximately £606 per woman offender. Overall, the Inspire Project had been a success, and is hoped to be continued to further improve the situation of women offenders in Northern Ireland.

**David Miers and others, *An Exploratory Evaluation of Restorative Justice Schemes* (Crime Reduction Research Series Paper 9, Home Office Crime Reduction Unit 2001)**

The report was commissioned by the Crime and Criminal Justice Unit (CCJU). The report presents the results of a 15 month study of the effectiveness of restorative justice schemes conducted between July 1999 and November 2000. It presents results from seven individual restorative justice schemes, two for adults and five for young offenders. The aim of the report was to find what element, or elements, of restorative justice schemes were effective in reducing crime and at what costs. The authors collected and analysed data based on many various things, such as the practical operation of the schemes and the rates of re-offending between those who had gone through a restorative justice process and those who had not. They also took into account victim responses to the restorative justice schemes, and the cost-effectiveness of such schemes.

There were several difficulties encountered during the project, due to the shortness of the time-scale and reliance on the records of the scheme. Some schemes were also relatively new, and had dealt with only a few cases. Many of the schemes had few paid staff, and relied mainly on volunteers and few individuals. Most of the work was non-statutory, placing no obligation on offenders and victims to be involved. More than this, one of the adult schemes was practically inactive due to lack of resources and funding, and most of the juvenile schemes were interrupted by the introduction of the Youth Offending Teams. Through the course of the

---

<sup>17</sup> Ministry of Justice, Restorative Justice Action Plan For The Criminal Justice System (2012) 5

research project, only 23 victims and 43 offenders were interviewed. Direct mediation between offenders and victims were also very rare, and achieving agreement and communication between was ‘labour-intensive and time-consuming.’<sup>18</sup>

However, while there were several problems that they encountered, the project and schemes were generally positive in outcome. Victims who were involved in a form of Restorative Justice held positive opinions towards the idea, and were glad to have the opportunity to express their thoughts and feelings. Some were ‘moved’<sup>19</sup> to receive letters of apology. While some victims were unsettled or sceptical about the motives of the offender, most victims felt that their experience with restorative justice created a beneficial effect on the offender. Offenders also appreciated the chance to apologize and understand the effect of their wrongdoings. More than this, the project presented lower rates of reoffending and high rates of cost-effectiveness. In the case of one of the adult schemes, AMENDS, the estimated cost of setting it up was £63,108 in all over the first two years. These costs included the work with volunteers, payment of mediators, training of staff and such other things. Handling cases would, more than likely, cost over £100.

This article presented both difficulties and successes tied to Restorative Justice schemes, both in adult and young offenders. From this article, it is clear that firmer approaches should be taken in relation to Restorative Justice schemes. There should be more organised staffing, training and aims for schemes, and should encourage not only offenders, but also victims to partake in them. Research should be noted carefully so data can be monitored and evaluated easily.

**Carolyn Hoyle and others, *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning* (Joseph Rowntree Foundation 2002)**

In 1998, the Thames Valley Police launched a restorative caution initiative, where the police officers administering cautions were meant to invite everyone who was affected by the offence, including victims, to a meeting – modelled closely to Restorative Justice Conferences.

---

<sup>18</sup> David Miers and others, *An Exploratory Evaluation of Restorative Justice Schemes* (Crime Reduction Research Series Paper 9, Home Office Crime Reduction Unit 2001) 80

<sup>19</sup> David Miers and others, *An Exploratory Evaluation of Restorative Justice Schemes* (Crime Reduction Research Series Paper 9, Home Office Crime Reduction Unit 2001) 80

However, instead of mediators, a police officer uses a script to facilitate a structured discussion about the harm caused by the offence and how it can be repaired. The researchers from Oxford University found that the implantation of restorative cautioning instead of traditional cautioning had significant positive results for both offenders and victims that participated in the sessions.

Understandably, there were a few problems during the process of implementation, especially during the interim evaluation. The police officers often dominated over the participants, tending to prioritise their own agendas rather than following the structured procedures. The officers frequently made the participants feel like passive observers, as they made the offenders feel as if they had to account to the officer personally. In the worst cases, the officers used these sessions to coerce more criminal information from offenders. However, due to the fact that these problems were documented in the interim evaluation, the Thames Valley Police set up training and provided a revised script to prevent the police from using the cautioning sessions as a policing agenda. This highly improved sessions in the future, with very few problems.

While there is a danger in changing a traditional caution to a restorative caution, which entails more participation of the offender, there were no detailed mentions of serious responses should they fail to participate. Over two-thirds of offenders felt they had no choice but to participate, and the project delved more deeply into the non-participating victims rather than the offenders.

The percentage of reoffending also went down. Out of 56 children from the age of 10 to 17, only 14 percent were re-sanctioned. 28 percent of offenders in the final evaluation claimed that their relationships improved with their family. Evaluations were based on observations and interviews. Over the first three years of the initiative, 1,915 restorative conferences took place at which victims were present. In a further 12,065 restorative cautions, the views of any absent victims were relayed by the cautioning officer. This is the largest scale restorative justice programme in UK to date. Overall, it is a project that has given positive outcomes, and shows that restorative justice is a very positive option for offenders.

## Section Five - Scandinavia

### Introduction

This chapter illustrates the practice of Restorative Justice in Scandinavia, and more particularly in Norway, Sweden and Finland. Victim-Offender Mediation is the most commonly used practice in all three countries, with legislation regulating the use of these practices in these countries. Victim-Offender Mediation, while not without fault, proves to be an effective method of Restorative Justice.

**Ida Hydle, ‘The development of restorative practices in a human security perspective in Northern Europe.’ Paper presented to the International Conference in Restorative Practices, Nova Scotia, 15 – 17 June 2011. Available at: <[www.nova.no/asset/4954/1/4954\\_1.pdf](http://www.nova.no/asset/4954/1/4954_1.pdf)> last accessed 11 March 2015.**

In 2009, the University of Tromsø organised several research seminars at the Norwegian Social Research Institute, Oslo (NOVA) to discuss recent trends in Restorative Justice and its practices. Hydle’s paper discusses the law and practice of Restorative Justice in various countries in northern Europe, including Norway, Sweden and Finland.

In Norway, there are both public and private providers of Restorative Justice schemes. However, only the Norwegian Mediation Service has the legal right to conduct victim-offender mediation (VOM). The Norwegian Mediation Service is a state-funded organisation that operates mediation and conferencing schemes. There are in the region of 600 local mediators and facilitators. The service deals with both civil and criminal legal cases. All mediation and conference facilitators must be laypersons, giving a sense of empowerment to the community. The Norwegian Mediation Service is now a permanent institution of criminal law. In Norwegian criminal law, Restorative Justice is recognised as ‘a practice of justice that emphasizes repairing the harm caused or revealed by contested/ damaging/ criminal behaviour.’

In addition, the Norwegian Red Cross has implemented “Street Mediation”. This is a Restorative Justice program for vulnerable youth groups. Their work involves pro-active conflict resolution workshops, re-active mediation and community conferences. The latter two

are more often used when a victim has been harmed. Prison mediation in Norway is still in development. It is yet to be seen whether it can be developed as cooperative local projects, with the consent of prison authorities.

In Sweden, the Mediation Act of 2002 provides a framework for victim-offender mediation organised by the state. Focused on young offenders, no age groups are excluded. The victim-offender mediation is always voluntary, but the offender must have already acknowledged their fault. The aim of mediation is to heighten the offender's insight into the consequences of offending. It also gives the victim time and opportunities to work through their experiences. The Mediation Act provides general criteria for VOM, but does not give specific detail regarding regulation of mediation.

In Finland, victim-offender mediation has been practised since 1983, and more recently formalised by legislation in 2005. The Act uses VOM in the majority of criminal cases, and civil cases where the dispute is of a minor nature. Mediation is managed, supervised and monitored by the Ministry of Social Affairs and Health, while it is organised at a more local level.

Overall, these countries in Northern Europe aim to achieve an acceptable agreement between both parties and the local community. The parties play active roles in what happens, including the provision of ideas as to how the matter can be solved. In each of these countries the aim is to reach a settlement both quickly and directly, by agreement.

**Lise-lotte Rytterbro, 'Victim and Offender Viewed from the Perspective of Mediation'(2003) 4 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 101.**

The objective of this article is to explore how victims and offenders are constructed in mediation involving the victim and offender meeting and coming to an agreement as to how the offender can make amends. For our purposes, it contains a useful overview of the mediation process in Sweden.

In Sweden, mediation is conducted by the police and social services, though ideally, it should be conducted by lay people. At the end of the 1990s, Sweden had 50 mediation projects, with over 400 mediations per year. While there is no law limiting who can attend mediation, there are restrictions imposed by those who work with mediation in practice, such as social



workers. Mediation is different to a trial as it allows the airing of thoughts and grievances of both victims and offenders;—it is not an alternative to a trial. Though it is difficult to place victims of sexual or domestic abuse in mediation, there is no law preventing their introduction to mediation.

Mediation is usually between a victim and an offender who has already admitted or been found guilty of a crime. In Sweden, crime victims are offered mediation based on the identity of the offender. Young offenders are often deemed suitable for mediation, with under 18s making up 85% of participating offenders in Sweden and 70% in Norway. Shoplifting is the most common crime in both Sweden and Norway, and presents most offenders to mediation.

Victims are those directly, and indirectly, affected by the offence, including the victim's family and those who witnessed the crime. In Sweden, an evaluation of mediation carried out by the National Council for Crime Prevention found that of 460 victims, 60% were representatives of companies and 40% were private individuals. In Norway, 36% were private individuals, the rest being shops and companies. Those who do not talk about the problem or try to demand too much money from the offender are not considered to be suitable victims. There are often problems with older victims and younger offenders, as older victims often prioritise work or studies over attending mediation. There are also problems with victims from shops and companies, who often commend offenders for actually attending mediation rather than discussing issues.

However, mediation in both Sweden and Norway is still a positive process. It is used to prevent further crimes by first-time offenders. As a result, most victims are representatives of companies affected by shoplifting, a common crime in both countries.

**Merete Granrud and Grete Strabekk, 'VOM-Training in Norway.' Paper delivered at European Forum for Restorative Justice, Barcelona, 15 – 17 June 2006. Available at <[http://www.euforumrj.org/assets/upload/Report\\_Barcelona\\_conference.pdf](http://www.euforumrj.org/assets/upload/Report_Barcelona_conference.pdf)> last accessed 18 March 2015.**

The National Mediation Service Act of 1991 regulates the Norwegian Mediation Service and outlines the tasks and purpose of the National Mediation Service Office. The Ministry of Justice has responsibility for the government-run National Mediation Service (NMS). The NMS has 600 mediators and 22 district offices.

The mediation process is operated by lay-people, who work non-professionally as volunteer mediators in their spare time. There is no special training for mediators, but they must be over 18 and have specific skills such as being a good listener and the ability to stay neutral. They must also be deemed trustworthy. Mediators are appointed for four years by a committee including a representative of the municipality and the leader of the district's mediation service. People who have been convicted of a crime five years before or after an appointment cannot be mediators.

Training new mediators lasts over four days altogether, with eight weeks between two training days. This allows the new mediators to observe mediations and test their skills with a more experienced mediator. During their training, new mediators learn and discuss the role of the mediator, communication skills and how different people perceive the same situations in different manners. These exercises, learned through a workshop model, encourage the use of the mediator's own experience. They also learn the five steps involved in the process of mediation, which includes an introduction, a discussion of happenings and experiences, identification of a solution and a settlement on how to make amends. On the final day of training, they are lectured on current legislation and given a manual containing answers to common mediation questions. New mediators can begin directly after their final day of training, usually accompanied by a more experienced mediator. Though the training is relatively short in comparison to other countries, it has proven effective. There are also gatherings throughout the year for mediators to share experiences and hardships, allowing them to develop new skills.

**Erika Uotila and Saija Sambou, 'Victim-Offender Mediation in Cases of Intimate Relationship Violence-Ideals, Attitudes, and Practices in Finland.' (2010) 11 (2) *Journal of Scandinavian Studies in Criminology & Crime Prevention* 189.**

Mediation in Finland started in the 1980s, but the Act (Mediation in Criminal and Civil Cases) only came into effect in 2006. Mediation was provided by cities, municipalities and non-government organisations (NGOs). Only the police and prison authorities, however, could refer cases that included intimate relationship violence (IRV). By 2009, 11880 cases of IRV had been referred to the service. However, where violence is recurring, or the parties have already taken part in mediation, they are not referred. This article, in the main, outlines the problems with the restrictions to, and sensitivity of, IRV cases. The researchers studied 138 agreements

and received answered questionnaires from local prosecution offices (14), and mediators (12 out of 46).

The article presented varying results in mediation practices. There was a clear lack of equality of access to mediation. Most of the IRV cases were handled in the South of Finland. More problems arose in less populated areas due to the lack of police and prison officers referring IRV cases to mediation. Even more than this, some prosecutors held negative attitudes towards mediation. While some prosecutors did refer IRV cases to mediation when requirements were met, some didn't. Prosecutors often saw mediation as complimentary rather than an alternative to the criminal justice system, and were more willing to use it for minor cases rather than IRV cases.

Special attention was paid by the police to the recurrence of violence and the severity of the injuries caused by the violent act, as well as how the act was carried out. These were major factors in assessing whether or not a case would be suitable for mediation. If a case was minor, or related to an act committed by a minor, it would generally be more suited to mediation, but out of the 138 cases, 124 were assaults and only 8 were minor cases.

Mediation was most often between intimate partners, 111 cases out 138. Only 8% of analysed cases involved violence against children, as prosecutors held negative attitudes to power imbalances between parents and children in these cases. The most common causal factor had been abuse of alcohol or illegal substances. Mediation often encouraged the victim to leave the relationship, however this wasn't always the case. Sixty nine percent of 113 couples stayed in the relationship, only 19% separated. A majority of mediation cases were solved before actual mediation. Sixty four percent of IRV cases had a pre-meeting before mediation. Pre-meetings had been used to determine the willingness of both parties to change. Half of the couples involved in IRV cases had discussed and settled issues by themselves prior to meetings. Of the parties that had attended mediation, only one third had included a follow-up period, such as therapy.

There were also a few problems with gender representation in these mediation sessions. Forty per cent of all cases had had female mediators, due to the lack of male volunteers.

**Henrik Elonheimo, ‘ Restorative Justice Theory and The Finnish Mediation Practices’ (Third Annual Conference of the European Society of Criminology, Helsinki, 27 – 30 August 2003) < <http://www.restorativejustice.org/10fulltext/elonheimo> > accessed 23 March 2015.**

This article was written before the passing of legislation regarding mediation in Finland. However, it still presented valid points in regards to victim-offender mediation (VOM) in Finland, such as its positive and negative aspects. A study of 16 VOM cases was carried out by law students of the University of Turku between 2001-2003.

The students observed nine cases including violence and seven property offences. Many of the crimes were committed under the influence, and none resulted in serious injury. The cases had been selected by the local mediation office, focusing on the most common cases of mediation. Students observed at least eight different mediators overall.

This article presented many advantages to mediation. Only three of the 16 cases did not result in an agreement due to the fact that these parties did not even meet. The parties that did meet had an opportunity to express their thoughts and feelings on their experience, and had achieved an agreement quickly and at a low cost. Both the victim and the offender had been treated with respect. Victims were often glad to hear that there had been no personal motive behind the offence, and were generally satisfied with the outcomes of the mediation sessions. Damages had ranged from 25 to 1200 euros, and was often agreed upon without trouble.

However, there were also a few problems in the mediation cases observed. There had been a lack of dialogue, especially with younger offenders. There had been more focus on making the agreement rather than the discussing of emotions and experiences of both parties. There had also been a lack of pre-mediation meetings, meaning that parties often entered mediation confused about what the process involved. In the one case that had involved a pre-mediation meeting, the mediator had already drafted an agreement for the parties, leaving very little time for actual dialogue.

The agreements achieved by the parties had also been unimaginative. Often, the mediator would fill in blanks in a form, and compensation was usually monetary. There had been no suggestion of working, which may have proved beneficial for younger offenders to develop

new skills and improve self worth. There had been no option of rehabilitation either, thought most of the offenders had problems with alcohol and other substances.

There had also been a lack of community, coupled with powerful mediators and victims. There had been a severe lack of supporters, and in the cases when they did attend, they severely dominated the discussion and sometimes even made decisions for the victims. In the case of powerful victims, they often threatened to go to court when their monetary demands were not met.

While mediation had been a generally positive process, there had still been problems with the mediation not being monetary-driven rather than dialogue-driven.

## Section Six - Northern Ireland

### Introduction

There were many similarities in these articles; it seems that the impact restorative justice had on Northern Ireland has overall been very beneficial and proactive. It has proven to be a better alternative than the previous justice system which took a punitive approach. It encourages peace in the communities as opposed to the previous criminal system. The main ideals of any restorative justice practices are to be healing for the victim, offender and community and allowing the victim to have more power in relation to the justice processes. The victim is not the main focus of the processes, and acknowledges the victim more than the criminal system would. The processes of restorative justice aim to prevent offender recidivism, to give a greater victim satisfaction and to act as a less costly alternative to imprisonment. These programs try to benefit all of the participants; they allow the victim and offender to discuss the event and to give closure to those involved, they give the offender a chance to try making amends and aiding them in reintegrating into society. They are more suited towards crimes involving youth offenders but are also effective in more serious crimes such as sexual assault and severe violence. It is clear that restorative justice has grasped a stronger holding in the communities and that it has much potential to become something bigger in the justice system. It requires voluntary cooperation from both victim and offender, a huge dedication from those working alongside the participants as well as an open and supportive community

**Kieran McEvoy and Harry Mika, 'Restorative Justice and the Critique of Informalism in Northern Ireland' (2002) 42 *British Journal of Criminology* 534**

McEvoy and Mika describe the development of community-based restorative justice system as a response to intercommunity violence in Northern Ireland. They favour the practise of 'informalism' based on restorative justice. Informalism refers to processes outside the formal criminal justice system. McEvoy and Mika refer to, and then rebut, common critiques of restorative justice. They note that opposition to informalism in Northern Ireland has supported political tensions surrounding the jurisdiction's justice system. They believe that informalism is possible if it is committed to the principles and practises of restorative justice, has a politically well-controlled and dynamic community, a dedicated workforce and accepts local

standards based on human rights values. McEvoy and Mika encourage others to be less sceptical about restorative justice by outlining its success and in Northern Ireland.

**Christian Mailhes, ‘Northern Ireland in Transition: The Role of Justice’ [2005] 0**  
***Asociación Española de Estudios Irlandeses 77***

Mailhes studies the system of transitional justice put in place in Northern Ireland following the 1998, Good Friday Agreement. Transitional justice refers to the system of judicial and non-judicial processes put in place following incidents of mass human rights abuse. He argues that, following any time of conflict and violence, the State must attempt to redress harm has been done; addressing the past allows for a better future. Mailhes outlines the goals of the transitional justice system, which are; to listen to victims requests for justice and reparation, to bring back peace and confidence that was lost, to make amends for wrong-doings, and to resolve issues between enemies. An independent experiment was set up in Northern Ireland to deal with youth offenders. It acted as an alternative to the then harsh justice system. Mailhes notes that such restorative justice organisations can to amend the victims experience, to restore a sense of community and promote routes to self-improvement for offenders. This article was mainly focussed on transitional justice, dealing with restorative justice in that context.

**David O’Mahony and Catriona Campbell, ‘Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing – the Experience of Northern Ireland’ (2008) International Handbook of Juvenile Justice 93.**

O’Mahony and Campbell study the criminal justice system’s approach to dealing with youth offenders in Northern Ireland. They discuss restorative justice methods practised in that jurisdiction, and critically analyse the youth justice system. Surprisingly, they discovered that Northern Ireland has low levels of crime. Due to the serious terrorists offences reported in the media, people are led to believe that crime common occurrence. They note that although a high percentage of young people commit delinquent offences, there are only a few that commit serious misdemeanours, or will go on to become continuous serious offenders. They believe it to be neither beneficial nor necessary to involve the criminal justice system in every minor misdemeanour, particularly given that young people commonly cease committing offences once they enter adulthood. They mention the Justice (Northern Ireland) Act 2002

and how it allowed the introduction of two procedures focussed on restorative justice. These were reparation orders and community response orders. Reparation orders require the offender to make amends with the victim, rather than just paying compensation. Community response orders are quite similar, save they focuses on community and victim awareness. O'Mahony and Campbell support restorative justice, but acknowledge that it is not suitable for very young children. They also argue that it is not be ideal to mix younger and older youth offenders together. O'Mahony and Campbell feel that the introduction of youth conferencing is a progressive process for victim and offender, even if would not be suitable for all cases.

**Justine Darling, 'Restorative Justice: A Tool In Rebuilding Post-Conflict Northern Ireland' (2011) 1 University of San Diego**

**<[http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1071&context=conflict\\_reconciliation\\_symposium](http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1071&context=conflict_reconciliation_symposium)> accessed 10<sup>th</sup> January 2015**

Darling begins by describing restorative justice as 'people-centred,' with an emphasis on building relationships. She has a positive outlook on the restorative justice system, and feels that it has played a large part in decreasing violence and hatred in Northern Ireland. She notes that the main issue fuelling the conflict, after the Good Friday Agreement, was collective memory. This is because people's beliefs, although stemming from real events, are distorted, biased and selective. Darling stresses the need to address the younger generation during this time of transition because it has less collective memory and therefore is less likely to continue the violence. She argues that the lack of integrated schools means that there are very few opportunities for children to from different religions and political backgrounds to meet. A youth conferencing program was introduced for youth offenders by the Youth Justice Agency (YJA). It is based on restorative justice principles, focusing on the relationship between victim and offender, face-to-face communication, restoration, responsibility of offenders, empowerment of those involved in the healing process and reintegration to society. Darling believes that applying restorative justice methods to the youth could encourage peace and love between the two opposing political groups in the North. Whilst she is a supporter of restorative justice methods amongst the youth, she also believes that it can be effective in community programmes for the reconciliation of adults.



**Brian Payne and Vicky Conway, 'A Framework for a Restorative Society? Restorative Justice in Northern Ireland' (2011) 3 *European Journal of Probation* 47**

Payne and Conway state that certain uses of restorative justice have been studied in detail, but that it is now being used in a much broader range of settings such as schools and youths care homes. They are supporters of restorative justice, and t argue it should be used more widely in Northern Ireland to create a 'restorative society'. Their research shows that restorative justice is commonly used in situations where youth offenders and less serious crimes are involved. However, they also found that it can be successfully used in more serious crimes such as sexual assault, domestic violence and serious violence. Cross-fertilisation between the different groups in the restorative justice system has stimulated the development of restorative methods in Northern Ireland, and has made restorative justice organisations more confident in adapting these practises to meet the needs of different situations and circumstances. Payne and Conway agree that the restorative practices can assist keeping families together and reintegrating people back into their community. They do not doubt that the restorative system and its practitioners have the opportunity to grow this method of justice, restoration and understanding.

.

## Section Seven – Ireland

### Introduction

It is quite clear that restorative justice does not yet have a very strong standing in the Republic of Ireland justice system. It would prove to be less costly and more beneficial for the majority if restorative justice had a larger role in Ireland's society. One factor that prevents the expansion of this practise is lack of knowledge. There are not many articles about restorative justice research in Ireland nor is education provided on this subject. This could change with more support from the Government to achieve a restorative justice society. Somewhat recently they have started to show more of an interest in these methods and approach to justice, which is why there has been a slow growth of restorative justice in some communities. More restorative justice initiatives have been introduced into Ireland, such as the 'Le Chéile' program in Limerick and the Tallaght West initiative in Dublin. They are both extremely successful practises. I believe it would be greatly beneficial to look towards Northern Ireland for guidance and inspiration as their approach towards a new justice system has been very successful. It would be good to slowly start implementing more restorative justice methods into smaller sectors such as schools, before introducing them into the criminal system as time and practise will only improve the restorative justice models.

### **Shane McCarthy, 'Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward' (2011) 8 *Irish Probation Journal* 185**

McCarthy examines legal practitioners' understandings and awareness of restorative justice in the Irish criminal justice system. He describes what restorative justice is, its perceived significance among Irish legal practitioners, and its frequency of use. He used structured interviews with Irish legal to establish their attitudes. The finding that stood out was that 75% of those surveyed did not know what restorative justice entailed. He believes that a lack of knowledge among legal practitioners will hinder the successful establishment of a restorative justice system in Ireland. Another possible hindrance is that a change towards a restorative based system could pose a threat to practice income. McCarthy does not feel that legal practitioners are entirely to blame for the lack of progress. However, he argues that matters will not improve support from the Government to develop restorative justice. In his research

he discovered various benefits including; savings in the resources used to arrest, prosecute, defend, convict and incarcerate or sanction, and reduced injury or damage to the community and victims.

**Sheena Norton, 'The Place of Victims in the Criminal Justice System' (2007) 4 *Irish Probation Journal* 63**

In this article, Norton focuses on how crime affects victims. She notes that victims are often forgotten in the criminal justice system. She believes that it is a fault of the criminal justice system that it concentrates on the offender, and finding a way to penalise him. The victim and his interests are not considered. In restorative justice, victims are encouraged to help with decision-making regarding by giving victim statements and going through a reparation process. This is beneficial for the victim as it acknowledges and respects their experiences, gives them a voice to express their wishes. Unsurprisingly, a victim's outlook also benefits the probation officers. It helps them carry out more accurate assessments and gives them more information that could be useful for work with other offenders in the future. The main aim of restorative justice is to bring together all those affected by the offence; the victim, offender and their families, and members of the community. Essentially, it allows them to discuss the ordeal and collectively come to a solution that benefits all. An important factor is that the offender comes out of the experience with a greater understanding of the consequences of his crime.

## Section Eight – Sexual Offending

### Introduction

Cases of sexual offending entering restorative justice programs are not very common as there are many negative effects that are thought to be likely to occur. It is feared that the experience might traumatise the victim more and cause them to undo their rehabilitative progress. While it could happen, one of the advantages of using restorative justice methods is that they are extremely flexible. The model can be customised according to the cases circumstances and the victim's limits. Another advantage is that victims are able to help direct how the process will go, and are able to voice their needs and wants and very likely have them acted upon. I believe that restorative justice can be applied to many cases, although I do acknowledge that there are going to be areas in which it is not suitable and the criminal justice system would be a better option. It is clear that the models will need to be altered for different scenarios as it would be impossible to create a method that could be successfully practised in all cases. I think that restorative justice is the solution to many types of cases, not just youth offending where it is most commonly used. A considerable amount of research into other models and articles about this topic must be undertaken as it is a fragile area to deal with. Overall, I believe that restorative justice would be a more appropriate method as long as both victim and offender are completely voluntary and that they are encouraged to actively participate instead of letting family or friends take control. I find it to be more effective at making the offender truly understand the consequences of their actions and to feel remorse than to just give them a punishment. I also find that it would be a healthier experience for the victim, as it could help eliminate fear and self-blame, and give them more comfort than an impersonal court trial and punishment

**Keith V. Bletzer and Mary P. Koss, 'Restorative Justice and Sexual Assault: Outcome Appraisal Through Textual Analysis' (2013) 5 *The Open Area Studies Journal* 1**

Bletzer and Koss discuss the application of restorative justice in cases of sexual assault. They note that there are very few situations where restorative justice is used as an alternative to the criminal justice systems in these cases. In this article, Bletzer and Koss focus on the effects of a new model of restorative justice involving a written letter of apology. The adult sexual offenders chosen were all first time offenders, with offences ranging from rape committed by an acquaintance to indecent exposure. None of the participants were married victims or

offenders, or came from cases of child abuse or domestic violence. The sexual offenders were required to undertake a 12 month rehabilitation programme based on restorative justice principles and methods. Following completion of the programme, they were required to write a letter of apology addressed to their victims, and to participate in an exit meeting with the Board of the programme to demonstrate their new-found awareness. The letters were sent to the victims and many of them were read. They were sometimes read aloud in the Board meeting. The content of these letters evidenced the immense change in the offenders. There were signs of a deeper understanding of the harm that they had caused, and a sense of empathy towards the victim. This article demonstrates that there are methods of restorative justice applicable to, and effective in, sexual assault cases.

**Anne-Marie McAlinden, 'Restorative Justice as a Response to Sexual Offending – Addressing the Failings of Current Punitive Approaches' [2008] 3 *Sexual Offender Treatment* 1**

McAlinden begins by discussing the failings of a punitive approach to sexual offending. She states that the development of restorative justice for these cases is largely due to the failing criminal justice response, and the possibility of a more successful resolution for the victim, family and community. She finds the criminal justice system to be quite ineffective; less than five percent of sex offenders are arrested. A huge problem with these cases is that they commonly stay hidden, with many of the victims not reporting the offences, possibly due to anxiety or fear about seeing their offender again in court. Another problem with the criminal justice response is how the offenders are portrayed by the media, making it more difficult for offenders to reintegrate with society and perhaps exposing them to violence from the public. This exclusion from the community and possibly family can also encourage them to reoffend. McAlinden favours restorative justice. She argues that a restorative approach is more likely to help with recovery following an incident than a retributive approach as it takes the victim's needs into consideration. She considers restorative justice to be a more meaningful, progressive and cheaper way to deal with sexual offenses.

## Section Nine - Recidivism

### Introduction

In this section I will discuss the effect of restorative justice on rates of recidivism. I will achieve this through the process of discussing what I, myself, have learned over the course of this assignment and through the use of articles related to this subject.

I think it's very clear that restorative justice has an effect on rates of recidivism but what's up for debate is the extent that it affects these rates, I find that all articles vary in this respect, probably due to the different locations the studies are based in, which leads to an interesting thought, how would restorative justice effect rates of recidivism in Ireland? There's only one way to find out, by establishing a well thought out program and giving it the old college try. There are a substantial amount of studies that focus on young offenders, one to pay particular attention to is Judy Tsui's 'Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago's Juvenile Justice System'. Tsui makes a convincing argument about the lack of effective response mechanisms in a society where detention is the primary focus and I believe this to be somewhat comparable to Ireland's current situation. There is a lack of studies and reports from Ireland on this subject, yet I find it to be a more than suitable place to facilitate such a process, due to this I must focus on reports from elsewhere.

**Judy Tsui, 'Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago's Juvenile Justice System' (2014) 104 *Journal of Criminal Law and Criminology* 635**

This article examines the benefits of introducing restorative justice into the juvenile justice system in Chicago. Judy Tsui focuses on the argument that detention as the primary method of dealing with juvenile crime creates a void in effective response mechanisms, which she believes, can be filled by further integrating restorative justice practices and principles into the juvenile justice system. She notes the primary criticisms of detention, one of which is its inability to address recidivism. Tsui refers to studies which conclude that restorative justice techniques result in lower levels of re-offending than their court process counterparts. She also mentions that studies have shown that low-level juvenile offenders, if they are not incarcerated

and are allowed to remain within their community, have lower rates of recidivism than incarcerated offenders

Tsui notes that one particular study d that the normal recidivism rate three to six months after a young offender is released from traditional juvenile justice programs is between thirty and forty percent. Statistics gathered by Men As Peacemakers found that two of their programs indicated that only one in fifty of the juveniles who completed these programs had reoffended after the six month period.

Tsui also focuses on some of the problems inherent in restorative justice, such as the fact that the juveniles who come forward for restorative justice have natural qualities that make them less likely to reoffend. Also the attrition rate affects the results of studies because offenders fail to report back.

**Gwen Robinson and Joanna Shapland, 'Reducing Recidivism: A Task for Restorative Justice?' (2008)] *British Journal of Criminology* 337.**

In this paper the authors focus on recidivism and whether it is a goal that restorative justice actively seeks to achieve? They acknowledge that a previous view was that reducing recidivism was not a principal objective of restorative justice. This common view is that restorative justice is more effective for rehabilitate than 'rehabilitative justice,' precisely because it does not have rehabilitation as an aim.

The authors note that one of the main reasons that advocates of restorative justice have tended to play down the recidivism-reduction potential of restorative justice has been that to expect reductions in recidivism as an outcome of restorative justice encounters would be unrealistic. Although they agree with this position, they also argue that there is much to recommend a subtle shift in the ways of thinking about restorative justice's potential for reducing recidivism. They argue that instead of perceiving restorative justice as a new style of intervention, it might be better to view it as a tool to facilitate a desire to desist. They note that the definition of desistance implies a reduction of recidivism, and that those agencies which have recidivism prevention as their principle objective might find it useful to view restorative justice as an effective tool to aid in their goal.

**Nancy Rodriguez, 'Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism' (2007) 53 *Crime & Delinquency* 355.**

This study relies on official juvenile court data to measure the influence of a restorative justice program on recidivism in Maricopa County, Arizona.

In this article, Nancy Rodrigues compares juveniles in a restorative justice program with juveniles in a comparison group and finds that a multivariate analysis shows twenty four months after successfully completing a diversion programme, the juveniles in the restorative justice program had slightly lower rates of recidivism than the comparison group. She notes that there were no significant differences between offence types, race or ethnicity, but overall participants were less likely to reoffend than offenders in the comparison group.

Rodriguez also finds that prior record plays an important role in offender recidivism. Studies have indicated that the majority of offenders in restorative justice programs are less serious offenders. This suggests that methods of restorative justice can be less effective for chronic offenders who have well-developed criminal tendencies.

**James Bonta, Rebecca Jesseman, Tanya Rugge and Robert Cormier, 'Restorative justice and recidivism Promises made, promises kept?' in Dennis Sullivan, Larry Tifft (eds) *Handbook of Restorative Justice: A Global Perspective* (Routledge 2006)**

In this chapter, the authors study the impact of restorative justice on rates of recidivism. To achieve this, they take a meta-analytic review of relevant literature. This text is an update and expansion of the meta-analyses by Bonta and his colleagues.

They found through their work that restorative justice does indeed have an impact on recidivism in the form of a 7 percent decrease.

**Mary Rogan, 'Crime Control without The Criminal Law? Perspectives on Emerging Strategies of Dealing With Crime—Part I' (2007) 25 *Irish Law Times* 23.**

In this article, Mary Rogan examines that the criminal law is currently undergoing significant transformations as part of a wider reorienting of the role of the State in the criminal justice system. Rogan argues that such crime control strategies are part of a process highlighted by



Ashworth whereby governments seek to “break free” from the traditional categorisations of civil law, criminal law and regulatory law.

In this article, Mary Rogan discusses the decline of criminal law in the field of modern crime control. Rogan suggests that criminal law is no longer the primary means of preventing and responding to violations of community standards. Techniques other than the law are now used to respond to “offending behaviour”.

A pilot of the Restorative Justice process operates in Nenagh, Co. Tipperary, established by the local judge, Judge Michael Reilly, which is dubbed the Nenagh Community Reparation Project. There is a clear philosophy that states that the process of meeting victims and the formulation of a particular set of commitments by the offender, is considered to be more effective than the ordinary criminal justice responses in the prevention of reoffending.

**Natalie Kroovand Hipple, Jeff Gruenewald, and Edmund F. McGarrell, ‘Restorativeness, Procedural Justice, and Defiance as Predictors of Reoffending of Participants in Family Group Conferences’ (2014) Vol. 60(8) *Crime & Delinquency* 1131**

There was a total of 215 youths participating in observed family group conferences (FGCs) 11% had reoffended at least once by Month 6 and 42% had reoffended at least once by Month 24. The question the authors raise is do restorativeness, procedural justice, and defiance indicators explain the variation in these rates of reoffending.

This journal article states that it has found that youths participating in FGCs have lower rates of reoffending when compared to youths in other types of juvenile justice court or diversion programs. The above sample of FGC cases were drawn from the Indianapolis Restorative Justice Experiment. This study set out to contribute to the understanding of the impact of FGCs by examining whether the degree of restorativeness, procedural justice, and defiance observed in conferences related to reoffending. The more consistent results were found in favour of the restorativeness scale, although the statistical relationship with juvenile recidivism was often weak.

It was found that as the degree of restorativeness increased, reoffending at 6 and 24 months decreased. It was also found that remorse on part of the offending youth related to reduced reoffending. It was found that the reality was that the observational data suggested that the conferences as a whole largely followed principles of reintegrative shaming consistent with

the restorativeness scale, rarely generated defiance, and had high levels of procedural justice in terms of respect among the participants. The consistent relationship between having committed a violent offense and reoffending may be consistent with the point that early life experiences significantly affect future offending. Given the young age of this sample, youths being arrested for a violent offense represent a high-risk category and this may outweigh the impact of these conference processes.

**Gabrielle Maxwell and Allison Morris, 'Restorative Justice and Reconviction' (2002) 5(2) *Contemporary Justice Review* 133**

In this article, the authors found that their most important findings was the key factors of successful family group conferences helped in reducing the rate of reconvictions even when other important factors associated with reoffending, such as early offending, were taken into account. They found that participants in two pilot adult community panel projects which had restorative features were reconvicted less frequently and when an offence was committed it was of a less serious nature than a matched control group that was processed by the courts. The authors also made comparisons of reconviction rates for those who successfully completed restorative justice schemes and those who did not and they found that those who carried out the tasks given by the panels were less likely to reoffend.

Another important finding by the authors is that processes where shame was used had higher rates of reoffending than those without.

## Bibliography

Arrigo B and Williams C, 'Victim Vices, Victim Voices, and Impact Statements: On the Place of Emotion and the Role of Restorative Justice in Capital Sentencing' (2003) *Crime and Delinquency* 49.

Bergseth K and Bouffard F, 'Examining the Effectiveness of a Restorative Justice Program for Various Types of Juvenile Offenders' (2013) *International Journal of Offender Therapy and Comparative Criminology* 1059.

Bletzer K and Koss M, 'Restorative Justice and Sexual Assault: Outcome Appraisal Through Textual Analysis' (2013) 5 *The Open Area Studies Journal* 1

Bonta J, Jesseman R, Rugge T and Cormier R, 'Restorative justice and recidivism Promises made, promises kept?' in Dennis Sullivan, Larry Tifft (eds) *Handbook of Restorative Justice: A Global Perspective* (Routledge 2006)

Curtis-Fawley S and Daly K, 'Gendered Violence and Restorative Justice: The views of Victim Advocates' (2005) 11 (5) *Violence Against Women* 603.

Darling J, 'Restorative Justice: A Tool In Rebuilding Post-Conflict Northern Ireland' [2011] 1 University of San Diego  
<[http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1071&context=conflict\\_reconciliation\\_symposium](http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1071&context=conflict_reconciliation_symposium)> accessed 10<sup>th</sup> January 2015

Easton H and Matthews R, *Evaluation of the Inspire Women's Project* (Northern Ireland Department of Justice/London South Bank University 2011)

Elonheimo H, 'Restorative Justice Theory and The Finnish Mediation Practices' (Third Annual Conference of the European Society of Criminology, Helsinki, 27 – 30 August 2003)  
< <http://www.restorativejustice.org/10fulltext/elonheimo> > accessed 23 March 2015.

Granrud M and Strabekk G, 'VOM-Training in Norway.' Paper delivered at European Forum for Restorative Justice, Barcelona, 15 – 17 June 2006. Available at < [http://www.euforumrj.org/assets/upload/Report\\_Barcelona\\_conference.pdf](http://www.euforumrj.org/assets/upload/Report_Barcelona_conference.pdf) > last accessed 18 March 2015.

Hoyle C and others, *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning* (Joseph Rowntree Foundation 2002)

Hudson B, 'Restorative Justice and Gendered Violence: Diversion or Effective Justice?' (2002) 42 *British Journal of Criminology* 616

Hydle I, 'The development of restorative practices in a human security perspective in Northern Europe.' Paper presented to the International Conference in Restorative Practices, Nova Scotia, 15 – 17 June 2011. Available at: <[www.nova.no/asset/4954/1/4954\\_1.pdf](http://www.nova.no/asset/4954/1/4954_1.pdf)> last accessed 11 March 2015.

Karp D, Bazemore G and Chesire JD, 'The Role and Attitudes of Restorative Board Members: A Case Study of Volunteers in Community Justice' (2004) 50(4) *Crime and Delinquency* 487.

Kirby Forgays D and DeMilio L, 'Is Teen Court Effective for Repeat Offenders? A Test of the Restorative Justice Approach' (2005) 49(1) *International Journal of Offender Therapy and Comparative Criminology* 107.

Kroovand Hipple N, Gruenewald J, and McGarrell E, 'Restorativeness, Procedural Justice, and Defiance as Predictors of Reoffending of Participants in Family Group Conferences' (2014) Vol. 60(8) *Crime & Delinquency* 1131

Mailhes C, 'Northern Ireland in Transition: The Role of Justice' [2005] 0 *Asociación Española de Estudios Irlandeses* 77

Maxwell G and Morris A, 'Restorative Justice and Reconviction' (2002) 5(2) *Contemporary Justice Review* 133

McAlinden A, 'Restorative Justice as a Response to Sexual Offending – Addressing the Failings of Current Punitive Approaches' [2008] 3 *Sexual Offender Treatment* 1

McAlister S and Carr N, 'Experiences of Youth Justice: Youth Justice Discourses and their Multiple Effects' (2014) 14(3) *Youth Justice: An International Journal* 241.

McCarthy S, 'Perceptions of Restorative Justice in Ireland: The Challenges of the Way Forward' (2011) 8 *Irish Probation Journal* 185

McEvoy K and Mika H, 'Restorative Justice and the Critique of Informalism in Northern Ireland' (2002) 42 *British Journal of Criminology* 534

Miers D and others, *An Exploratory Evaluation of Restorative Justice Schemes* (Crime Reduction Research Series Paper 9, Home Office Crime Reduction Unit 2001)

Miller S and Iovanni L, 'Using Restorative Justice for Gendered Violence: Success with a Post-conviction Model' (2013) *Feminist Criminology* 247

Ministry of Justice, *Restorative Justice Action Plan for The Criminal Justice System* (2012)

Norton S, 'The Place of Victims in the Criminal Justice System' (2007) 4 *Irish Probation Journal* 63

O'Mahony D and Campbell C, 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing – the Experience of Northern Ireland' (2008) *International Handbook of Juvenile Justice* 93.

Payne B and Conway V, 'A Framework for a Restorative Society? Restorative Justice in Northern Ireland' (2011) 3 *European Journal of Probation* 47

Robinson G and Shapland J, 'Reducing Recidivism: A Task for Restorative Justice?' (2008)] *British Journal of Criminology* 337.

Rodriguez N, 'Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism' (2007) 53 *Crime & Delinquency* 355.

Rogan M, 'Crime Control without The Criminal Law? Perspectives on Emerging Strategies of Dealing With Crime—Part I' (2007) 25 *Irish Law Times* 23.

Rytterbro L, 'Victim and Offender Viewed from the Perspective of Mediation' (2003) 4 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 101.

Shapland J and others, 'Situating Restorative Justice within Criminal Justice' (2006) 10 *Theoretical Criminology* 505.

Stubbs J, 'Beyond Apology? : Domestic violence and critical questions for restorative justice' (2007) 7 *Criminology and Criminal Justice* 169

Tsui J, 'Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago's Juvenile Justice System' (2014) 104 *Journal of Criminal Law and Criminology* 635

Uotila E and Sambou S, 'Victim-Offender Mediation in Cases of Intimate Relationship Violence-Ideals, Attitudes, and Practices in Finland.' (2010) 11 (2) *Journal of Scandinavian Studies in Criminology & Crime Prevention* 189.

Van Camp T and Wemmers J, 'Victim Satisfaction with Restorative Justice: More than simply Procedural Justice' (2013) 19 *International Review of Victimology* 117

Williams B, 'Restorative Justice and Incarcerated Young Offenders' (2004) 4 *Youth Justice* 191.