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LINKING CRIME PREVENTION TO RESTORATIVE JUSTICE

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Direct Versus Indirect Pursuit of Objectives

Restorative justice will never become a mainstream alternative to retributive justice unless long-term R and D programs show that it does have the capacity to reduce crime. Restorative justice theorists, including me, have long advanced the claim that restorative justice conferences can deliver their benefits without directly attempting to pursue those benefits¹. This is true of reintegrative shaming, for example. The worst way to accomplish reintegrative shaming is to urge conference participants to shame the offender. That is a prescription for minimizing reintegrative shaming and maximizing stigmatization. No, reintegrative shaming comes as a by-product of confronting the consequences of the crime and what is to be done to put them right.

There is a similar paradox of procedural justice. Court proceedings are explicitly designed to achieve procedural justice outcomes such as equality before the law. With con-

ferences, in contrast, there is no direct pursuit of equality before the law. Yet we know from the RISE experiment that conference participants are more likely to feel that they have experienced equality before the law in conference cases than in court cases (Sherman & Barnes, 1997). Victim-offender mediation studies have also produced encouraging results on procedural justice (Braithwaite, forthcoming).

There is a temptation to generalize these analyses to the claim that all the benefits of restorative justice are rather like the benefits of being spontaneous—the more directly we try to be spontaneous, the less spontaneous we will be. In some ways our work may have fallen victim to a generalized tendency to expect the benefits to flow as an indirect outcome of simply pursuing restoration. In this paper, I will discuss the linkage between crime prevention interventions and restorative justice. My argument will be that crime prevention must be directly pursued as an objective of conferences. Crime prevention benefits do not flow inevitably simply as a result of a restorative dialogue.

Before moving on to explaining why the best way to make crime prevention work may be to link it to restorative justice, I will make some remarks about why crime prevention programs that are not linked to restorative justice generally fail.

Why Crime Prevention Programs Mostly Fail

Crime prevention programs tend to be either police-initiated or community-based, or, perhaps most commonly, some mixture of the two. However originated, my contention will be that crime prevention programs mostly fail for four reasons:

1. Lack of Motivation
2. Lack of Resources
3. Insufficiently Plural Deliberation

4. Lack of Follow-Through

Now I consider each of these reasons for failure and why linkage to restorative justice conferences might respond to them.

Lack of Motivation

I never attend my local Neighbourhood Watch meetings. In this, I suppose I am typical of most citizens. On the other hand, if a next door neighbour asked if I would come along to a restorative justice conference to support them as either an offender or a victim, I would be flattered by the invitation and attend.

Most crime prevention programs are uncoupled from the processing of individual criminal cases. This uncoupling is a lost opportunity in terms of motivating citizens to engage with crime prevention. Every police officer knows that the best time to persuade a householder to invest in security is after a burglary; every business regulator knows that the best time to persuade a company to invest in a corporate compliance system is after something goes wrong and someone gets into trouble. There are some good reasons for this heightened motivation. In the case of the company that has just been in trouble, it is motivated by the knowledge that the regulator is watching it. In the case of the homeowner who has been burgled, there is worry that someone who knows how to get in will be watching for the arrival of brand new replacement products. The latter motivation is well placed: one study has shown prospects of another burglary four times as high as in houses that had not been burgled before (Bridgeman & Hobbs, 1997, p.2). A project in Huddersfield that focussed resources such as temporary alarms on prior victims reduced domestic burglary by 24 per cent, in a Rockdale project by 72 per cent (Bridgeman & Hobbs, 1997, p.3).

eration necessary for the design of crime prevention interventions that work. But why do we need this plurality?

The answer is that most crime problems have multiple causes and can be prevented in multiple ways. The burglary is caused by the offender's drug habit, his unemployment, poor security of the targeted house and by the fact that citizens who saw it happening just walked on by. It follows that what we need is a capacity to read criminal situations from the different angles illuminated by different explanations. Elsewhere I have argued that plural understandings of a crime problem are needed to stimulate a disparate range of action possibilities that can be integrated into a hedged, mutually reinforcing package of preventive policies (Braithwaite, 1993). Discussion of the problem by a group with local knowledge derived from being affected by the crime in different ways is a good path to a nuanced understanding of the crime.

Courts are not good at the acquisition of this kind of understanding. As Lon Fuller (1964, p.33) suggests, only two types of problems are suited to full judicial-legal process: yes-no questions like "Did she do it?" and more-less questions like "How much should be paid?" Polanyi (1951, pp.174-84) distinguishes polycentric problems from these. They require reconciliation of complex interacting consequences of multidimensional phenomena. Polycentric problems are not well suited to the judicial model. Because most questions about crime beyond the determination of guilt are polycentric, courts are rather ineffective at preventing crime. Let me illustrate this analysis with an example of plurality of deliberation coming to grips with preventive solutions to a polycentric problem.

I was a part-time Commissioner on Australia's national antitrust and consumer protection agency when the most widespread and serious consumer protection frauds ever

and self-regulatory changes concerning the licencing of agents and other matters and changes to the law (Fisse & Braithwaite 1993, p.235). This polycentric problem-solving was accomplished without going to court (except with a couple of players who refused to cooperate with the restorative justice process). The disparate array of preventive measures were grounded in the different kinds of theories the rich plurality of players involved in this restorative justice process came up with—theories of education, deterrence, incapacitation, rehabilitation, target hardening, moral hazard, adverse publicity, law, regulation and opportunity theory.

What happens with the best crime prevention practice therefore is that:

1. Dialogue about restoration motivates the engagement of a wide plurality of stakeholders with their analysis of why this crime occurred and how recurrence might be prevented.

2. The polycentric problem is thereby grasped via commonsense versions of a variety of theories, used as metaphors to arrive at a nuanced understanding of the crime by seeing it as many things at once (Braithwaite, 1993).

3. Professionals table with the stakeholders their analysis of the advice available from the research literature on what has worked and what has failed in the past with this kind of problem.

4. Prevention professionals design with stakeholders an integrated strategy that is redundantly responsive to the theoretical relevances understood under point 2, the research findings in point 3 and the contextual differences from the situations in which the research was conducted as revealed by the discussions in point 1.

Now the cynic about restorative justice will say that the Australian insurance cases were unusually sweeping exer-

wealth to set up legitimate businesses for their children so they did not need to bequeath to them the life they had led? How do we know that they do not actually hate killing other human beings in order to survive themselves?

An incipient and only very partially successful model here is the Raskol gang surrenders and gang retreats in Papua New Guinea which have involved surrenders of up to 400 alleged gang members (Dinnen, 1996). Political leaders up to the Justice Minister and Prime Minister and leaders of the church and other organizations in civil society have participated in these ceremonies receiving apologies, surrendered weapons, ammunition, undertakings to do community work and work for the rehabilitation of their own members and youth gangs that have been their recruitment base. Dinnen (1996, p.121) lists just the documented surrenders in a society where little is documented—13 rituals involving 913 alleged gang members. In fact one of the few successful anti-gang programs (Sherman, et al., 1997) in one of the few places where the gang problem is worse than New Guinea, Los Angeles, involved hiring older gang leaders as consultants to assist with the negotiation of truces and the mediation of feuds. Homicides and intergang violence fell among the targeted gangs but not between the targeted gangs and others (Torres, 1981, cited in Klein, 1995, p.149).

With the more banal crimes of screwed-up kids with screwed-up family relationships, plurality of deliberation seems equally relevant. One way of summarizing the literature on the effectiveness of psychotherapy is that in most cases it will do more good than harm and that this is true for most mainstream types of psychotherapeutic interventions in troubled lives (Foon, 1984). For example, there does not seem much empirical basis for claiming that psychoanalysis is better or worse than other schools of psycho-

therapy. But it does seem to be the case that it is better than doing nothing. Even though therapy X is no better than therapy Y on average, it seems plausible that if a group of citizens knowledgeable about the problems of a particular individual are given the full facts about how therapies X and Y work, a marrying of those facts with their contextual knowledge of the case should lead to better-than-average selection of the right kind of treatment for their kind of case.

So my hypothesis is that the plurality of deliberation in restorative justice conferences will increase the effectiveness of rehabilitative programs. The contextual wisdom that issues out of plural discussion from various angles is one reason. The other is that programs are more likely to be effective when the offender and their family freely choose to make a commitment to them and when programs strengthen community support for the offender (Cullen, 1994). It seems therefore that restorative justice does not involve a rejection of the rehabilitative ideal. It means reframing it. Instead of state professionals in social work or psychotherapy deciding that their pet approach is what is best for the family, the family is empowered with knowledge of a range of rehabilitative options and with the right to choose from among a variety of competing public, private and charitable providers of rehabilitative services. This disempowering of state therapeutic monopolies is not only democratically superior for a republican like me who believes in freedom as non-domination (Braithwaite & Pettit, 1990; Pettit, 1997). My hypothesis is that the marriage to conferencing will increase the effectiveness of rehabilitative programs.

Follow-Through

One of the things that rather shocked me during my decade on the Trade Practices Commission was to learn

that offenders would often have fines or community service obligations ordered by courts and then simply not pay them or fail to put in the hours. Mostly nothing would happen to them, even when they were major corporations. Everyone in the Australian criminal justice system seems to believe they have more important things to do than chase offenders who do not comply with court orders.

My hypothesis is that restorative justice conference agreements attain higher levels of implementation than court orders precisely because they are agreements rather than orders. Collective obligation is brought to bear on securing compliance with agreements. There is little collective obligation when a court orders suspension of a driver's licence following a drunk driving offence and implements no targeted follow-through to monitor compliance. So driving without a licence is pandemic. On the other hand, if the agreement is that Uncle Harry (who lives next door) will make sure the offender always leaves his car in the garage on Friday and Saturday nights—the nights the offender consistently goes out drinking with the boys—collective obligation based on kinship and credible monitoring of compliance are structured into the agreement. The voluntary agreement secures superior compliance to the legally mandated one.

Preliminary evidence shows high compliance with agreements at victim-offender mediations or restorative justice conferences—ranging up from 58 per cent in one New Zealand study (Galaway (1992), from 64 to 100 per cent in various U.S., Canadian and British sites (Haley & Neugebauer, 1992; Dignan, 1992; Pate, 1990), 76 per cent in West Germany (Trenczek, 1990), 85 per cent in Finland (Iivari, 1987, 1992), and 86 per cent (Wundersitz & Hetzel, 1996, p.133) and 91 per cent (Waters, 1993, p.9) in Australian programs. The RISE study by Lawrence Sherman and

innovativeness of the New Zealand work on restorative justice, its greatest defect is not to be found in the conferences themselves but in the collapse of the New Zealand welfare state and the paucity of rehabilitative options this leaves available to offenders, victims and their families, especially in rural areas.

Another disappointment is the rarity of moving beyond individual crime prevention to more structural solutions. Corporate crime conferencing cases such as CML which, as we have seen, do grapple with structural remedies, are very much the exception.

Conclusion

Restorative justice can remove crime prevention from its marginal status in the criminal justice system, mainstreaming it into the enforcement process. It can deliver the motivation and widespread community participation crime prevention needs to work and to protect itself from capture by organized interests (including the crime prevention industry itself). Motivation and participation also improve follow-through on conference agreements in comparison with follow-through on court orders. Sometimes, but all too rarely, motivation and participation engendered by restorative process can deliver the political clout to crime prevention that it needs to tackle systemic problems systemically. Plural participation in conferences fosters a capacity to see a crime as many things at once, caused in context by a variety of different true explanations, each of which suggests preventive options. Deliberation in conferences has the potential to increase the effectiveness of crime prevention by a contextual wisdom that better matches the right preventive options (therapeutic, situational or structural) to the right case. That potential seems to be rarely realised at the moment.

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