Looking back to the future: threats to the success of restorative justice in the United Kingdom

Carolyn Hoyle and Fernanda Fonseca Rosenblatt

Abstract: Recent years have witnessed an entrenchment of restorative justice principles and practices in the youth and adult criminal justice systems of the UK. This research presents a comparative analysis of the findings of two empirical studies – one of a police restorative cautioning scheme conducted fifteen years ago, and the second a contemporary study of youth offender panels. In this research, we argue that restorative justice practices in the UK are repeating history, rather than learning from it. Specifically, we argue that if restorative justice programmes continue to proliferate with the same shortcomings – most notably, inadequate victim involvement, failure to provide a genuine role for the community, and targeting only relatively low-level crime – the future for restorative justice in the UK is likely to be bleak.

Keywords: restorative justice, victims, youth justice, community participation

INTRODUCTION

The recent revival of government interest in restorative justice (RJ) in the United Kingdom (UK) is evidenced by a flurry of new legislation and an increase in funding over the past few years. In 2013 the Youth Justice Board[1] announced its plan to distribute around £2 million to the 158 Youth Offending Teams (YOTs)[2] across England and Wales to expand RJ training, and the Ministry of Justice announced that almost £30 million of additional revenue will be made available to fund RJ provisions over the coming years.

In 2013, a new *Code of Practice for Victims of Crime* (the Victims' Code) came into force in the UK, giving victims the right to information about taking part in

[1] A non-departmental public body aimed at monitoring the operation of the youth justice system and the provision of youth justice services in England and Wales.

[2] YOTs are multi-agency teams, which are responsible for the delivery of "the bulk of youth justice services" in England and Wales (Souhami, 2007, p. 19).

RJ schemes.[3] The Victims' Code is explicitly aimed at implementing the Directive 2012/29/EU (the EU Victims' Directive). Launched by the European Commission, it establishes minimum standards on the rights, support and protection of victims of crime – including "the right to safeguards in the context of restorative justice services" (Article 12 of the Directive) and the provision of appropriate training to those officials who are likely to come into contact with victims (see "training of practitioners", in Article 25 of the Directive). The EU Victims' Directive must be incorporated into UK law by November 2015, and the new Victims' Code is seen as a significant step in this undertaking (Ministry of Justice, 2013).

The Crime and Courts Act 2013 introduced RJ for victims of adult offenders in England and Wales, and since April 2014 courts have had the power to defer sentencing to allow for an RJ activity to take place, provided that the offender and "every other person who would be a participant in the activity concerned" agree (Part 2 of the aforementioned Act). The Act is not prescriptive on the types of cases, restorative processes, or the profile of offenders; "it merely encourages judges to consider restorative practices" (Gavrielides, 2015: 7).

RJ schemes in the UK are increasingly expected to follow the *Best Practice Guidance for Restorative Practice*,[4] set by the Restorative Justice Council (RJC).[5] The UK Government has explicitly supported various RJC initiatives and recently tasked the RJC with delivering a quality mark for services that meet their standards. In a similar vein, the latest Referral Order Guidance, published in April 2015, states

[3] See, https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime.

[4] See, http://restorativejustice.org.uk/resources/best-practice-guidance-restorative-practice-2011.

[5] The RJC is an independent third sector membership body for the field of restorative practices in the UK; see: http://restorativejustice.org.uk.

that “YOTs should keep up to date with changes in practice as set out by the Restorative Justice Council” (Ministry of Justice, 2015).

Finally, in November 2014, the Ministry of Justice published a new *Restorative Justice Action Plan for the Criminal Justice System for the Period to March 2018*,[6] which makes a number of commitments around three key areas: *equal access* (RJ should be available to victims at all stages of the criminal justice system irrespective of age, offense, or country of residence); *awareness and understanding* (people should have an awareness and understanding of RJ, its benefits, what it entails and how to access it, so that they can make informed decisions about participating); and *good quality restorative justice* (RJ should be delivered by a facilitator trained to recognised standards). This is the third such action plan, all directly or indirectly related to the developments or “good intentions” mentioned above.

This renewed interest in and commitment to the accessibility and quality of RJ delivery is good news. Nevertheless, no matter how much legislation is passed, or funding made available, RJ programmes will only realise their potential if they avoid the errors of the past. We argue however that RJ schemes in England and Wales are repeating history, rather than learning from it. In making this case, we draw on comparative analysis of the findings of two different empirical studies. The first is an in-depth study of the implementation of restorative cautioning in the Thames Valley, conducted fifteen years ago, by the first author and colleagues (Hoyle, Young & Hill, 2002).[7] The second is a recent study of youth offender panels conducted between

[6] See, https://www.gov.uk/government/publications/restorative-justice-action-plan-2014.

[7] This was a three-year research project, funded by the Joseph Rowntree Foundation, and completed in 2001. Conducted in the wake of the “roll-out” of restorative cautioning across the Thames Valley Police force, the study’s aim was to evaluate the implementation and effectiveness of this police-led model of RJ. Data collection comprised interviews with cautioning police officers and RJ co-ordinators, as well as observation of cautioning sessions and interviews with the participants.

2011 and 2013 (Rosenblatt, 2015a).[8] Drawing on these studies, we consider the recurring shortcomings of the practical application of RJ in England and Wales and conclude by reflecting on how these case studies can inform the RJ movement in the UK.

RESTORATIVE JUSTICE IN THE UK OVER 15 YEARS: CONTINUITY NOT CHANGE

Following a period of *ad hoc* experimentation, the Thames Valley Police initiative in restorative cautioning began formally in 1998, for youth (78%) and adult (22%) offenders. It grew out of a concern with the "old-style" cautions (Hoyle, Young & Hill, 2002), widely used in England and Wales throughout the second half of the twentieth century, where police officers often used cautions to humiliate and stigmatise offenders (Hoyle, Young & Hill, 2002; Lee, 1995; Sanders & Young, 2008; Wilcox & Young, 2007; Young & Hoyle, 2003).[9] At the time it was introduced, the Thames Valley model was innovative because police officers administering cautions were meant to invite all those affected by the offence – the offender, the victim and the (victimised) community – to a *restorative session*.[10] Under this model, instead of

[8] This study was aimed at reaching a better understanding of what *community involvement* means and what work it does in RJ. For the empirical component of the research, Rosenblatt used a case study approach to explore the *whys* and *hows* of community involvement in youth offender panels in England and Wales, including 127 interviews with key stakeholders involved in the referral order process (community panel members, YOT workers and young offenders), as well as observation of 39 panel meetings.

[9] A police caution in England and Wales is a formal disposal of a criminal case without the involvement of prosecutors or the courts. Cautioning for *young* offenders was put on a statutory basis by the Crime and Disorder Act 1998, which replaced "police cautions" with "reprimands" and "warnings". The system of reprimands and warnings for young offenders had yet to be fully implemented by the time Hoyle and colleagues completed their study. They have therefore used the term "cautions" throughout their full report. We will do the same here. More recently (2012), "reprimands" and "warnings" were abolished and replaced by "youth cautions"; see https://www.gov.uk/government/organisations/youth-justice-board-for-england-and-wales.

[10] A session was classified by the police as a "restorative conference" if a victim was present. Where there was no victim able and willing to meet with the offender, the session was called a "restorative

giving offenders a “telling-off”, cautioning police officers were trained to act as facilitators and to follow a “script” containing an ordered set of explanatory statements, questions and prompts. The objective was to guide the participants through a structured discussion about the offence and its implications (Hoyle, Young & Hill, 2002). As Wilcox and Young (2007, p. 143) note,

> [t]he key differences from traditional cautioning lie in the wider range of people (most notably victims) invited to participate in the cautioning session, the emphasis on working with offenders (rather than just doing something to them), and the stress on harm and its repair.

Although in practice cases could be characterised as “least restorative”, “mid-restorative”, and “most restorative” (Hoyle, Young & Hill, 2002, p. 14), the initiative was conceived to operate according to RJ principles. Sessions were structured according to a “script” derived from a police-led model of restorative justice developed in Wagga Wagga, Australia (Hoyle, Young & Hill, 2002). The Wagga Wagga model, in turn, was strongly influenced by the New Zealand system of family group conferences (Hoyle, Young & Hill, 2002; Moore & Forsythe, 1995). Moreover, the Thames Valley model was explicitly committed to the use of a coherent criminological approach, namely Braithwaite’s (1989) theory of reintegrative shaming.

The evaluation of the Thames Valley Police’s initiative in restorative cautioning was fairly positive. Researchers concluded that it largely succeeded in transforming traditional cautioning to restorative cautioning. Offenders, victims and their respective supporters appeared generally satisfied with the fairness of the process and the outcomes achieved.

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caution”. We use the terms “restorative session”, “restorative conference” and “restorative caution” interchangeably.

More germane to our argument here however were shortcomings identified by Hoyle and her colleagues in their study of the Thames Valley initiative. In this study, the researchers used an "action-research" design, meaning that they sought to assist the police in improving their practices throughout the study. The research project was divided into distinct phases so that the police could use interim findings from each phase to reshape further aspects of their initiative (Young & Hoyle, 2003). The interim evaluation in 1999 included observation of 23 restorative sessions and 135 interviews with participants. The final evaluation a year later included a further 56 restorative sessions, and 483 more interviews.

Although by the end of the research project implementation appeared much better, it was often deficient. Be that as it may, the practices of Thames Valley Police in the 1990s were the basis for the introduction of RJ measures into the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999 (Hoyle, Young & Hill, 2002; Wilcox & Young, 2007). The 1998 Act is often referred to as the first enabling legislation for the use of RJ with young offenders in England and Wales, in particular for the prominence it affords to reparation (Dignan, 1999). The "most significant expression of restorative justice principles in the youth justice arena" (Earle & Newburn, 2001: 4), however, came with the creation of referral orders and youth offender panels as part of the 1999 Act.[11]

A referral order is currently the main sentencing disposal in England and Wales in cases where the young person (aged 10 to 17) pleads guilty and is convicted for the first time. When making a referral order, the court specifies how long the order will last, which must not be less than three nor more than 12 months. The court does *not* decide upon the content of the order, only upon its appropriate

[11] The 1999 Act was later consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 (hereafter, the Sentencing Act).

length. Young people are subsequently referred to a *youth offender panel* within the local YOT, and it is this panel that decides the content of the order (Rosenblatt, 2014).

The youth offender panel is a group comprising at least two members of the community (recruited and trained by the YOT) and one YOT member. Within 20 working days of a referral order being made in court, this panel should meet for the first time to determine a *youth offender contract* with the young offender, her family and, where present, the victim (Home Office, 2002; Ministry of Justice, 2009; 2012). Since the work of youth offender panels are said to be governed by "the restorative justice principles of responsibility, reparation and reintegration" (Home Office 2002; Ministry of Justice, 2009, 2012), the aforementioned contract is supposed to include an element of reparation to the victim or to the wider community, in addition to a programme of activities aimed at prevent reoffending.

Following the initial meeting, the panel oversees the contract by way of reviews (or "progress meetings"), which must be conducted at least every three months. Finally, towards the end of the order, a final meeting is held to decide whether the offender's compliance with the terms of the contract has been sufficient to justify the discharge of the referral order.

Despite some criticism concerning the restorative nature of youth offender panels (e.g. Walgrave, 2008), a closer look at the guidelines, legislation, and the policy documents leading up to the introduction of referral orders indicates that panels were *intended* as a restorative practice. Youth offender panels draw on the experiences of family group conferencing; they involve lay members of the community in facilitating proceedings; they seek to involve victims in dialogue about the offence and the response to it; and, they seek to involve family members or other

members of the young person's (and the victim's) community of care (Crawford, 2007); all of which are in line with a restorative approach to crime.

Youth offender panels are also explicitly aimed at involving the community, and in a way that other RJ programmes, such as victim-offender mediation do not. In fact, a core rationale for referral orders is the intention to broaden lay community involvement in the youth justice system. Accordingly, at panel meetings, "the discussion with the offender, victims and family members and the drawing up of the contract should be led by the community panel members", while YOT workers sitting on panels have a merely advisory role (Ministry of Justice, 2012: 11). In the same vein, the Guidance recommends that community panel members should be encouraged to suggest activities for inclusion in contracts "that draw on community rather than just youth offending team resources" (Ministry of Justice, 2012: 11). Altogether, the stated role of the community panel members in the referral order process should be one of great significance. It is their responsibility to lead all panel meetings; to return young offenders back to court (for a breach); to "sign off" the young offender once the referral order has been successfully completed; and so forth (Rosenblatt, 2015a).

In practice, referral orders and youth offender panels suffer from many of the same shortcomings Hoyle and her colleagues witnessed in the Thames Valley Police's initiative in restorative cautioning more than a decade earlier. These shortcomings, which we discuss below, include limits to reparation, poor victim involvement, failure to genuinely involve the community, and a culture that is not readily compatible with RJ principles.

Limits to reparation

The primary aim of RJ initiatives should be to encourage appropriate forms of reparation by offenders towards their victims and/or the wider (victimised) community (Rosenblatt, 2015; Walgrave, 2008; Zehr, 1990). As Bazemore (2000, p. 48) notes, "unless repairing harm is at the core of the definition of restorative justice, [...] stakeholders and [criminal/youth justice] staff will often slip into the traditional and comfortable mode of simply trying to help or hurt the offender." An offender making financial restitution, fixing the window she has broken (material reparation), or apologising to the victim (symbolic reparation) are all examples of how reparation *to the victim* may be achieved in practice. However, although direct reparation to the victim is preferable, it is not always possible. Community reparation is another option that can be done through community service (e.g. cleaning and repairing trails in a city park). In any case, reparation should be achieved through a process that allows offenders to recognise and accept responsibility for the harms they have caused, and that brings together the affected parties for respectful dialogue and mutual agreement on how to repair such harms. The nature of reparation, then, should be determined, as much as possible, by those most directly affected by crime.

With this in mind, the primary aim of the Thames Valley's scripted model was to encourage offenders to take responsibility for repairing the harm caused by the offence (Young & Hoyle, 2003). And the "script" was designed to guide participants through an inclusive, dialogical, personalised and, ultimately, restorative process. On the ground, however, reparation efforts were limited. On only rare occasions was some form of *material* reparation agreed at the restorative session. Most reparation agreements involved *symbolic* reparation only, and where victims were absent this was almost always a commitment to send a letter of apology, even where there was no prior indication the victim would welcome this form of reparation (Hoyle, Young &

Hill, 2002). Victims who had chosen not to meet, but were willing to engage in some form of "shuttle mediation," were usually unimpressed with written apologies; particularly when they wanted an offer of compensation. This was usually a reflection of the poor level of communication between victims and the police regarding the process of restorative cautioning. In some cases, for example, "non-participant victims" claimed that the police had told them that compensation would be forthcoming and they were thus naturally disappointed when they received "only" a letter of apology (Hoyle, Young & Hill, 2002). In other instances reparation agreements included commitments to material reparations that were not fulfilled. In one case, the offender paid only a tenth of what he had promised, and the victim felt very strongly about this:

> That's just a symptom that the thing hasn't worked. We actually suggested that the money should be paid back, not because that was important to us, but we thought it was important for him to try and work it off as it were, and if he had over a month to struggle to pay it back, having paid it back, it would be a kind of burden lifted, if you see what I mean. But we're not going to achieve that, I'm afraid. It's pretty clear that that's not what's going to happen.

The researchers also found that *symbolic* reparation (apologies promised or given in the meeting) was considered by most facilitators as one of the key variables by which they could measure the "success" of the process (Hoyle, Young & Hill, 2002). That is, police officers tended to view a restorative caution as successful when the offender apologised at the meeting (when the victim was present) or agreed to send a letter of apology to an absent victim. Hence, when apologies did not flow naturally from the process, facilitators often "extracted" apologies from offenders in a fairly coercive way. In such cases participants typically felt that the apology was not genuine.

The researchers also saw many instances of police officers over-stepping their remit by pursuing their own reparative agenda, rather than enabling a discussion among the key participants. For example, while dominating the discussion about reparation, facilitators often forgot to ask the victim what they wanted to see come out of the conference or to "theme in" the victim's view when they were not present. Although this was more common in the interim study, the researchers concluded in their full evaluation that there remained substantial room for improvement in facilitation practice. Indeed, fifteen years ago, the process appeared to be more rehabilitative or pedagogical and less about repairing the harms caused by crime. Which leads us to ask: to what extent have restorative schemes improved in their aims to secure reparation? In order to answer this question, we examine reparation in the context of youth offender panels.

Youth offender panels have the stated purpose to "operate on the restorative justice principles of responsibility, *reparation* and reintegration" (Ministry of Justice, 2012: 10). Thus, in addition to activities aimed at preventing reoffending, the *youth offender contract* should always include an *element of reparation* to the victim or to the wider community. In practice, however, Rosenblatt's more recent study of community involvement in youth offender panels (2015a) found that the whole referral order process tends to focus on the programme of activities at the expense of reparation. Some contracts had *no* element of reparation. In other cases the panel decided that the referral order should be discharged even when the young person had not made reparation as part of their contract. In one way or another reparation is still *not* being paid consistently – to the victim or to the "wider community". As one community panel member commented:

> When I came into it five years ago you could set how many hours' reparation a kid had to do, and when they had to do it. […] You could be flexible about how many hours and there were different things you could send them to. Nowadays they hardly do any reparation because [the YOT is] short staffed, they haven't got the staff to do the reparation with. […] Anger management, and stuff like that, that all goes on, while reparation, which is the community element … I haven't sent anybody on reparation for I don't know how long.

Furthermore, when reparation was recommended, it stemmed not from deliberation at the panel meeting, but was picked from a "set menu" of reparation activities from which the panel or the young people may choose. Regardless of the crime committed or the harms caused, reparation activities tended to be chosen from "a one-size-fits-all" list of reparation programmes available to the YOT, with litter-picking, painting and carpentry among the most popular. Within a supposedly *restorative* process, where it is expected that the nature of reparation will reflect the needs and wishes of those directly affected by the offence – imposed "generic" solutions are taking precedence over more "personalised" outcomes. If anything, this is only *slightly* more restorative than the agreements reached 15 years ago in the Thames Valley.

Rosenblatt (2015b) also found a blurring of lines between reparation and rehabilitation, with activities aimed at addressing the young person's offending behaviour being packaged as "reparation".[12] For example, young people were asked to write letters of apology that were *not* sent to victims – either because the victim had chosen not to take part or simply because the YOT had not been able to make victim contact. Writing these letters may well be pedagogically effective in helping young people understand the consequences of their actions – but this is an exercise in "consequences of offending" or "consequential thinking", not a route to reparation. The fact that such exercises in rehabilitation and/or responsibilisation are included in

[12] This has also been found in other studies; see Crawford and Burden (2005).

youth offender contracts as an element of reparation sends confused messages about the role and value of reparation within referral orders (Crawford & Burden, 2005). Or, indeed, it comes to show how, within the referral order process, rehabilitative goals may be taking precedence over reparative ones.

Altogether, while the primary goal of any RJ initiative should be to encourage appropriate forms of reparation by offenders towards their victims and/or the (victimised) community, referral orders and youth offender panels are *not* primarily aimed at reparation. The prioritisation of rehabilitative interventions over reparation, on the one hand, speaks to the YOT's typical concern about the welfare of young people – that is, it is about challenging "YOT culture", as we discuss below. On the other hand, as the apology letters with no recipient suggest, it also does nothing towards integrating victims into the process.

Poor victim involvement

Over the first three years of the Thames Valley Police initiative in restorative cautioning, 1,915 restorative conferences involved direct victim participation, and another 12,065 sessions involved communication of victim views by the cautioning officer (Hoyle, Young & Hill, 2002). At the time this was the largest-scale RJ programme in the UK. However, with a victim attendance rate of about 14 per cent, it was nowhere near as high as some other countries. In South Australia, for example, during the same period (early 2000s), the rate of victim attendance was about 50 per cent (O'Connell & Hayes, 2012).

Poor victim involvement sometimes led to the construction of victimisation in the conference. Indeed, in certain cases facilitators in the Thames Valley Police study "constructed" victims out of parents, family members, the police, and so forth,

either because they failed to get the “real victim” or because there was no obvious victim (e.g. some motoring offences as well as drugs and public order offences). Moreover, in their quest to show offenders the seriousness of their actions, facilitators often exaggerated the impact of the offence (Hoyle, Young & Hill, 2002, p. 31). For example, in response to minor offences, such as the theft of a chocolate bar, facilitators sometimes spoke at length about absent ‘institutional victims’, such as department stores, having to raise prices as a result of shop theft. Such attempts, of course, were unlikely to induce shame, particularly where the offence in question was common amongst the offender’s peer group. As one parent commented:

> […] at the end of the day, I don’t think she did feel that ashamed because she doesn’t understand that what she did actually did anybody any harm. […] she says; “oh everybody at school has been in trouble at least once for shoplifting”.

In various studies of meetings involving victims and offenders, preparation is identified as the most important route to success (Hoyle, 2012; O’Connell & Hayes, 2012; Strang, 2002). Indeed, adequate explanation of and information about the process is crucial if victims are fully to understand what is being offered and make an informed choice regarding participation (Hoyle, 2002). Despite this, Hoyle and colleagues found in the Thames Valley study that most “non-participating-victims” interviewed had at best a sketchy understanding of what was being offered and therefore could not make an informed choice about attending a restorative session. Moreover, non-participating-victims were asked whether or not they felt that the police had wanted them to participate. Only one victim suggested the police were keen for them to attend, although not keen enough to arrange the meeting at a time when the victim could come. In many instances police efforts to include the victim in

the process were clearly insufficient, suggesting the police were not fully motivated to include victims and did not consider them to be integral to the restorative process.

For the most part, the Thames Valley scheme failed to view victim participation as a continuum, rather than a dichotomous, one-off choice. Victims' decisions not to participate in restorative cautions were often interpreted by facilitators as a lack of interest in "their" case; an interpretation which, along with other factors, lead to limited opportunity for indirect participation (Hoyle, 2002). There were some instances in which the facilitator "themed in" the victim's view, but this often came with a failure to accurately reflect the victim's experiences and wishes, and a failure to feedback to that victim information about the restorative session.

Fifteen years later, Rosenblatt (2015a) found little change, with victims rarely attending panel meetings. In a pilot study a decade earlier, Newburn (2002) and colleagues found a victim attendance rate of 13 per cent. A few years later, in their study of the Leeds YOT, Crawford and Burden (2005) found an even lower average of 9 per cent. In Rosenblatt's in-depth observational study of 39 panel meetings, only one had a victim present.

Research suggests that there are many reasons why victims may decide to not participate in RJ initiatives.[13] In the context of Rosenblatt's (2015a) study however, in the case of referral orders, community panel members were *not* trained to contact victims or prepare them for panels. Unless the victim attended a panel meeting, they did not have any involvement with panel members. All the "victim work" was carried out by a YOT worker. The problem was that most YOTs did *not* have a full-time victim liaison officer. Instead, contacting and preparing the victim was the responsibility of busy YOT staff already grappling with existing tasks of

[13] For a more detailed analysis, see Hoyle (2002, 2012) and Strang (2002).

attending court, writing reports, attending panel meetings and recording their work onto databases.

In the absence of a “real” victim, community panel members tended to bring very limited “victim perspectives” to panels. In comments similar to police cautioning facilitators 15 years ago in Hoyle’s study of Thames Valley, community panel members often said, “this is how I would feel if it happened to me”. For young offenders these guesses or attempts at victim empathy did not ring true. Neither did they allow the offender to empathise with a victim they had not met nor heard directly from. For example, in one of the YOTs within Rosenblatt’s (2015a) study, community panel members typically used an empty chair in the room as a means of representing the victim throughout the panel meeting. A community panel member reported that once she was explaining the meaning of the chair to a young person – “this empty chair is to remind us of someone that isn’t in this room but has also been affected by your behaviour” – the young person giggled dismissively: “Yeah … right!”

In the victim’s absence, panel members often tried to make a victim out of someone in the room – typically the young offender’s mother or parents. This was a practice Hoyle also witnessed in the Thames Valley study. Panel members also “produced” victims in cases of “victimless” crimes, for example in cases of cannabis possession, where community panel members made long, moralising speeches on how “the community” is severely damaged by drugs. None of the young people appeared to be convinced by this (Rosenblatt, 2015a).

Hoyle and colleagues saw many similar failed attempts at constructing victims from victimless crimes in their Thames Valley Police study (Young, 2001). Hoyle (2002: 116) concluded that, even if victims are provided with sufficient information to make informed choices about attending meetings, some will decide not to attend,

"and then the facilitator needs to explore with the victim the alternative ways of participating: most obviously by making a statement and by receiving feedback after the session". Despite this early lesson, on only two occasions did Rosenblatt witness a victim statement being read at a panel meeting.[14] Indeed, youth offender panels' victim awareness efforts appeared quite limited. In most cases, the panel asked the young people to write a letter of apology and/or to attend victim awareness sessions with the YOT worker. This is typically how far victim "involvement" and "input" go in the context of referral orders and youth offender panels. As mentioned already, such letters were often not sent out to victims. Moreover, victim awareness sessions with a victim worker is not itself a restorative intervention, and there is no evidence about whether such sessions increase offenders' awareness of victims (Adler & Mir, 2012). Clearly, while in theory victims should play a crucial role in any restorative justice programme, on the ground, if anything, youth offender panels in Rosenblatt's study were only *slightly* victim aware and demonstrated no clear improvement on the "restorative" activities of Thames Valley Police fifteen years ago.

Failure to "widen the circle" and genuinely involve the "community"

In most conceptual frameworks of RJ there exists a triangle of relationships between the victim, the offender, and the community (Hoyle in Cunneen & Hoyle, 2010). However, in Thames Valley Police's restorative cautioning programme there was little community involvement. In the full evaluation, only two of the 56 cases included a community representative, both school teachers, and in a further case the offender's probation officer participated in the conference (Hoyle, Young & Hill, 2002:

[14] In both cases, the YOT had a victim liaison officer, which further supports the need for a full-time practitioner properly trained to contact victims if restorative justice initiatives are to get better at involving victims.

11). Facilitators described victims' and offenders' "supporters" as the "community" representatives. However, given that the supporters were usually parents or other relatives, they constitute "communities of care", rather than representatives of a wider community harmed by the offence.

The introduction of youth offending panels should have brought about genuine inclusion of the community. According to the legislation, "any person who appears to the panel to be someone capable of having a good influence on the offender" (see section 22 of the Sentencing Act) may be allowed to attend panel meetings. That is, in addition to the young person's parents (or "appropriate person"),[15] friends or schoolteachers, for example, may also be invited to panel meetings. This is "to encourage the restorative nature of the process" (Crawford & Newburn, 2003: 61). In practice, however, only five people usually attend panel meetings: two community panel members, one YOT worker, the young person and her "appropriate person." This was the case in nearly half (46 per cent) of the meetings observed in Rosenblatt's study. YOT workers and community panel members also confirmed this was typical. Moreover, in over half (54 per cent) of cases observed, the young person attended with only *one* appropriate person. In a further 29 per cent of panel meetings the young person attended *alone*. Thus, in *83 per cent of cases observed, the young offender attended either alone of with only one person*.

In their evaluation of the pilot areas over a decade ago, Crawford and Newburn (2003: 122) argued that panel meetings were "significantly less inclusive of young offenders' family members and supporters than family group conferences". They suggested that "those organising panels should be encouraged to facilitate the

[15] For offenders under 16 years of age, panel meetings must be attended by her "appropriate person", a parent, a guardian, or a representative of the local authority (section 22 of the Sentencing Act). For those 16 or older, parents' attendance is voluntary.

attendance of a wider group of people", such as "extended family members or other people that matter in a young person's life" (Crawford & Newburn, 2003: 131–132). Rosenblatt's observations suggest that their recommendations have not been taken on board; it is clear that the panels do not significantly involve a "community of care".

This might not be a cause for concern if the community panel members provided for meaningful community representation. The involvement of lay volunteers facilitating panel meetings – a marked change from the Thames Valley Police initiative – should translate into *more* community involvement and help to widen the circle. On the ground, however, the involvement of the community in youth offender panels, for a variety of reasons, has been found to be more theatrical (or rhetorical) than real (Rosenblatt, 2015a). Far from community members being part of a geographical community shared with the young offender, many choose to serve as a panel member in a neighbouring area, town or borough to reduce the chances of knowing the young offenders.

Again, this may not be antipathetic to restorative ideals if it extended the community of support to the young person by providing further supportive relationships with pro-social adults. However, community panel members are of the opinion that it would be "inappropriate" to maintain any type of contact with the young people after the completion of their order. For example, when asked if she had ever kept in contact with a young person, one community panel member commented: "No, no. That never happens. You're not allowed to, you know, sort of ask any personal details. All we know is their first name; we don't know the surname, their address, and they are the same with us". Yet "keeping in touch" with the offender is not only accepted but clearly an aim in other restorative practices such as healing and sentencing circles, both of which place emphasis on the idea of reconnecting

offenders to their communities and encouraging new supportive relationships to be formed in the circle (Stuart, 1996, 2001).

While youth offender panels fall within a "hybrid model" of community involvement, where the community panel members are expected to act both as facilitators *and* community representatives (Bazemore, 1998; Rosenblatt, 2015a), the truth is that, on the ground, they act solely as mediators – or indeed, very similarly to the Thames Valley police officers facilitating restorative cautioning sessions. That is, while the legislation and all the guidance documents require a community presence and role, actual practice has not allowed for *more* community involvement. The circle has not apparently widened in any meaningful way.

A failure of culture shift

Before entering the field, Hoyle and colleagues anticipated that the Thames Valley Police initiative would involve some accommodation and conflict between restorative justice principles and entrenched policing practices. They expected that established policing culture, structures and patterns of behaviour would shape and often distort the intended restorative nature of cautioning sessions (Hoyle, Young & Hill, 2002; Young & Hoyle, 2003). They were not wrong.

The main conclusion in the interim study, for example, was that only two of the 23 cases observed could be labelled "restorative justice", *because in the majority of cases facilitators tended to dominate the exchanges which took place and some participants, notably offenders' supporters, were side-lined* (Young & Hoyle, 2003). While dominating the discussion, police officers often asked questions that took the form of judgemental statements or moral lectures – this occasionally meant sending a message that the offender was perceived as a persistent offender or someone at

risk of becoming so. The influence of wider policing understandings and processes could plainly be seen. In the worst examples, more fully documented elsewhere (Young, 2001), the researchers saw instances of facilitators re-investigating the offence, seeking admissions to prior offending, and asking questions that appeared to be attempts to gather useful criminal intelligence. More frequently observed, the facilitator behaved as if the offender had to account to her personally, with the other participants reduced to passive observers (Hoyle, Young & Hill, 2002). In such cases, the script was often abandoned and replaced by a set of investigative questions about the offence.

While the researchers witnessed some improvement in facilitation practice over the study period, the full evaluation data suggested that facilitators remained the dominant figures that the interim study had showed them to be (Young & Hoyle, 2003) leading Hoyle to question whether the police should take a key role in what is supposed to be a restorative process (Hoyle, 2007).

In the early days of referral orders and youth offender panels, it was hoped that the involvement of lay members of the public (the community panel members) would mitigate the managerialist pressures on youth justice (Burnett & Appleton, 2004; Crawford, 2004). In fact, community involvement is often thought of as an enabler to the *informalising* and *deprofessionalising* aspirations of restorative justice-*inspired* initiatives. On the ground, however, the involvement of statutory justice agencies, key to the Thames Valley Police's work, still drives the restorative justice agenda. In other words, although referral orders promised a departure from the formal and professionalised bureaucratised approach of the Thames Valley model, in practice they represent continuum rather than change.

As with police officers in the Thames Valley experiment, the facilitators in youth offender panels – that is, the community panel members – do most of the talking. That said, community panel members do not truly "own" the process either; heavy bureaucratic processes working backstage direct them. Before each panel meeting, they receive a report produced by an allocated YOT worker. Instead of a script, as in the Thames Valley experiment, these are thorough reports that give details about the offence and the offender, and that recommend the outcomes of the panel meeting – that is, which activities should be included in contracts. Hence, contracts tend to be a "copy and paste" of the YOT workers' recommendations. If the report suggests a drugs or alcohol programme and anger management, as well as litter picking as the community reparation deal, these *will be* the activities included in the contract (Rosenblatt, 2015a). Clearly, youth offender panels do not demonstrate transference of responsibility from professionals to lay people.

Moreover, Rosenblatt's interviews and observations suggest that YOTs are welfare oriented and that YOT workers are very much offender focused in their approach to youth crime. The "professionalization" of community panel members facilitates their assimilation into the YOT culture, leading them towards an offender-focused approach to panel work. This helps to explain why discussions at panel meetings were often about the well-being of the young person and why reparation was often side-lined.

Ashworth (1993) may have been right when he said that the danger with RJ was that it was either in the service of offenders (witness the YOTs' welfarist approach) or in the service of severity (witness the Thames Valley Police facilitators exaggerating harm and using the process to intimidate young offenders). In other

words, in neither case, was the restorative justice-*inspired* initiative about victims and community.

FROM RESTORATIVE CAUTIONING TO YOUTH OFFENDER PANELS: NO EVIDENCE OF A PARADIGM SHIFT

Youth offender panels suffer from many of the same pitfalls and limitations that compromised the restorative nature of the Thames Valley Police initiative. Indeed, both schemes suffer from poor victim involvement and from facilitators "constructing" victims out of parents, other family members, the police, etc. Fewer victims participated in the referral orders, maybe because the YOTs conceived of the community representatives as standing in for victims. The "tactics" developed to compensate for poor victim attendance have further compromised the restorativeness of the process.

Both schemes failed to provide a genuine role for the community in large part because of a wider "general failure to engage with the concept of community and thus a failure to develop a fuller appreciation and understanding of the nature of contemporary communities" (Green, 2014, p. 143). In times of "liquid modernity" (Bauman, 2001), "communities of care" are more likely to allow for the creation of informal support systems or safety nets for victims and offenders than can be provided for by people who are not acquainted with the victim or the offender. However, neither the Thames Valley Police initiative or youth offender panels widened the circle of support and positive influence for the offender.

Most typically when young offenders are invited to participate in RJ encounters, the assumption is that the involvement of their parents is sufficient to provide a community of care. Although this may be appropriate in many cases,

sometimes it is not. Indeed, given the strong emotional bonds between young people and their parents, many of the moralising and responsibilising messages directed at the offender find currency with parents in a way that makes them feel ashamed and embarrassed. Their reactions to this discomfort render them unprepared and sometimes unable to provide the support their children need, both during the meeting and beyond (Hoyle & Noguera 2008). If RJ programmes are serious about making community involvement more contemporary and meaningful for participants, notions of community of intimates cannot be confined to traditional family arrangements. In the modern world, "the family structure has evolved in response to important changes in the political, social and cultural landscape" (Green, 2014: 157) and RJ programmes must be sensitive to this diversity. In times where the internet "increasingly disconnects the individual from the constraints of birth, family or environment" (Green, 2014: 136), friendships and social networks, rather than families, are becoming more significant as traditional forms of social glue decline or are modified (Pahl & Spencer, 2004). Young people need to be asked about whom they consider to be their "significant supporters". If not their parents, then a friend, a schoolteacher, a cousin, or a partner.

Both studies reveal the problem of a professional culture shaping and often distorting the restorative process, whether that be "cop culture" or the more welfarist culture of the YOT. This has influenced both schemes' limited reparation capacity, resulting in a failure to realise their potential to provide tailored responses to individual and community needs. In the early 2000s, in a national evaluation of RJ programmes, Wilcox and Hoyle (2002) found that most young people took part in "community reparation" or "victim awareness training", with almost no direct

reparation to the victim. Nearly 15 years later, this remains true for referral orders, albeit with little community reparation either.

Both schemes were introduced only to deal with low-level crime. In the Thames Valley experiment, conferencing was used mainly for cases “which would not have been prosecuted in any event” (Hoyle, 2002, p. 102). In fact, both studies provide support for Hoyle’s critique of RJ being stuck in the “shallow end” of criminal justice (Hoyle in Cunneen & Hoyle, 2010). The consequent risks are of net-widening and greater state encroachment into the lives and communities of “suspect communities” (Hillyard, 1993); and the potential of RJ to reduce crime and to repair victims and damaged communities – apparent when it is used with serious offences (Sherman & Strang, 2007) – will not be realised. While RJ programmes remain stuck in the “shallow end” of the criminal justice system, professional domination, poor victim involvement and lack of genuine community participation are likely to continue, and facilitators will continue to feel the need to create ‘victims’ from those unharmed by the offence.

IN CONCLUSION

In her analysis of the RJ movement in the US, Greene (2013: 375) found that when RJ actors were asked about future objectives their answers forecasted more of the same: goals centred on expanding the volunteer base, raising more money, and increasing the volume and types of cases. The future was said to be about making more and bigger programmes. The same may be true in England and Wales, where there has been no paradigm shift; indeed there appears to be a lack of imagination for envisaging a significant move towards “fully” restorative processes (McCold 2000).

While the past few years has witnessed considerable legislation and policy apparently committed to widening the use of RJ practices in England and Wales, a more strategic and coherent approach to the use of RJ is not likely unless those responsible for implementation make considerable progress in involving victims; broadening the circle to include more meaningful members of the community; educating the public about the principles and aims of RJ; and take seriously the need for reparation for victims and the wider communities affected by crime. RJ scholars, as well as RJ reformers, practitioners and/or activists, need to be clear about one thing: RJ programmes in England and Wales do not need more of the same.

Discussing the deficiencies in implementation of the Thames Valley model, Hoyle and colleagues suggested that the results of their study provided "a new incentive for Thames Valley Police *to intensify the process of securing good implementation of its model*" (Hoyle, Young & Hill, 2002, p. 66-67 – emphasis added). Over a decade ago, the shortcomings of the sort discussed above could be dismissed as problems of implementation. While many criminal justice programmes fail not because of the weakness of the underlying ideas but because of poor implementation (Young & Hoyle, 2003), the proliferation of RJ programmes in England and Wales with the exact same shortcomings suggest that a concerted effort towards change is needed to avoid the common pitfalls and realise the potential of restorative justice.

REFERENCES

Ashworth, A. (1993). 'Some Doubts about Restorative Justice'. *Criminal Law Forum*, 4 (2): 277–299.

Adler, J.R. & Mir, M. (2012). Evaluation of The Forgiveness Project Within Prisons. London: Forensic Psychological Services at Middlesex University.

Bauman, Z. (2001). *Community: Seeking Safety in an Insecure World*. Cambridge: Polity.

Bazemore, G. (1998). The “Community” in Community Justice: Issues, Themes, and Questions for the New Neighbourhood Sanctioning Models. In D. Karp (ed.) *Community Justice: An Emerging Field* (pp. 327–372). Lanham, MD: Rowman & Littlefield.

Bazemore, G. (2000). Rock and Roll, Restorative Justice, and the Continuum of the Real World: A Response to “purism” in Operationalizing Restorative Justice. *Contemporary Justice Review*, 3(4): 459–477.

Braithwaite, J. (1989). *Crime, Shame, and Reintegration*. Cambridge: Cambridge University Press.

Burnett, R. & Appleton, C. (2004). Joined-up Services to Tackle Youth Crime. *British Journal of Criminology*, 44(1): 34–54.

Crawford, A. (2007) ‘Situating Restorative Youth Justice in Crime Control and Prevention’, in E. van der Spuy, S. Parmentier and A. Dissel (eds), Restorative Justice: Politics, Policies and Prospects, Cape Town: Juta.

Crawford, A. (2004). Involving Lay People in Criminal Justice. *Criminology & Public Policy*, 3(4): 693–702.

Crawford, A. & Burden, T. (2005). *Integrating Victims in Restorative Youth Justice*. Bristol: The Policy Press.

Crawford, A. & Newburn, T. (2003). *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Abingdon: Routledge.

Cunneen, C., & C. Hoyle. (2010). *Debating Restorative Justice*. Oxford: Hart Publishing.

Dignan, J. (1999). The Crime and Disorder Act and the Prospects for Restorative Justice. *Criminal Law Review*, 48–60.

Earle, R. & Newburn, T. (2001). Creative Tensions? Young Offenders, Restorative Justice and the Introduction of Referral Orders. *Youth Justice*, 1(3): 3–13.

Gavrielides, T. (2015). The Victims’ Directive and What Victims Want from Restorative Justice. *Victims & Offenders*, 00: 1–22.

Gray, P., Moseley, J. & Browning, R. (2003). *An Evaluation of the Plymouth Restorative Justice Programme*. Plymouth: University of Plymouth.

Green, S. (2014). *Crime, Community and Morality*. Abingdon: Routledge

Greene, D. (2013). Repeat Performance: Is Restorative Justice Another Good Reform Gone Bad? *Contemporary Justice Review*, 16(3): 359–390.

Hillyard, P. (1993). *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain*. London: Pluto Press in association with Liberty.

Home Office (2002) Referral Orders and Youth Offender Panels: Guidance for Courts, Youth Offending Teams and Youth Offender Panels, London: Home Office/Lord Chancellor's Department/Youth Justice Board.

Hoyle, C. (2002). Securing Justice for the 'Non-Participating' Victim. In C. Hoyle & R. Young (Eds.) *New Visions of Crime Victims* (pp. 97-131). Oxford: Hart Publishing.

Hoyle, C. (2007). Policing and restorative justice. In G. Johnstone & D.W. Van Ness (Eds.) *Handbook of Restorative Justice* (pp. 292-311). Cullompton: Willan Publishing.

Hoyle, C., & Noguera, S. (2008). Supporting Young Offenders Through Restorative Justice: Parents as (In)appropriate Adults. *British Journal of Community Justice*, 6(3), 67-85.

Hoyle, C., Young, R., & Hill, R. (2002). *Proceed with Caution: An Evaluation of the Thames Valley Police Initiative in Restorative Cautioning*. York: Joseph Rowntree Foundation.

Lee, M. (1995). Pre-court diversion and youth justice. In L. Noakes, M. Maguire, & M. Levi (eds.) *Contemporary Issues in Criminology* (pp. 314–335). Cardiff: University of Wales Press.

McCold, P. (2000). Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model. *Contemporary Justice Review*, 3(4): 357–414.

Ministry of Justice (2015). *Referral Order Guidance*. London: Ministry of Justice/Youth Justice Board.

Ministry of Justice (2013). *Code of Practice for Victims of Crime*. London: The Stationery Office.

Ministry of Justice (2012). *Referral Order Guidance*. London: Ministry of Justice/Youth Justice Board.

Ministry of Justice (2009). *Referral Order Guidance*. London: Ministry of Justice/Department for Children, Schools and Families/Youth Justice Board.

Moore, D. & Forsythe, L. (1995). *A New Approach to Juvenile Justice: An Evaluation of Family Conferencing in Wagga Wagga*. Wagga Wagga: Charles Sturt University.

Newburn, T., Crawford, A., Earle, R., Goldie, S., Hale, C., Hallam, A., Masters, G., Netten, A., Saunders, R., Sharpe, K. & Uglow, S. (2002). *The Introduction of Referral Orders into the Youth Justice System: Final Report*. Home Office Research Study 242, London: Home Office.

O'Connell, M. & Hayes, H. (2012). Victims, Criminal Justice and Restorative Justice. In H. Hayes & T. Prenzler (eds) *An Introduction to Crime and Criminology*. Frenchs Forest: Pearson Australia.

Pahl, R., & Spencer, L. (2004). 'Personal communities: Not simply families of fate or choice', *Current Sociology*, 52, 199 – 221.

Rosenblatt, F.F. (2015a). *The Role of Community in Restorative Justice*. Abingdon: Routledge.

Rosenblatt, F.F. (2015b – forthcoming). Restorative Justice and the Blurring between Reparation and Rehabilitation. In T. Gavrielides (ed.) *Offenders No More: An Inter-disciplinary Restorative Justice Dialogue*. New York: Nova Science Publishers.

Rosenblatt, F.F. (2014). Community Involvement in Restorative Justice: Lessons from an English and Welsh Case Study on Youth Offender Panels. *Restorative Justice: An International Journal*, 2(3): 280–301.

Sanders, A. & Young, R. (2008). Police Powers. In T. Newburn (ed.) *Handbook of Policing*. (pp. 281-312). Abingdon: Routledge.

Sherman, L. & Strang, H. (2007). *Restorative Justice: the evidence*, The Smith Institute

Souhami, A. (2007). *Transforming Youth Justice: occupational identity and cultural change*. Abingdon: Routledge.

Strang, H. (2002). *Repair or Revenge: Victims and Restorative Justice*. Oxford: Oxford University Press.

Stuart, B. (1996). Circle Sentencing: Turning Swords into Ploughshares. In B. Galaway & J. Hudson (eds) *Restorative Justice: International Perspectives* (pp. 193–206). Monsey, NY: Criminal Justice Press.

Stuart, B. (2001). Guiding Principles for Peacemaking Circles. In G. Bazemore & M. Schiff (eds) *Restorative Community Justice: Repairing Harm and Transforming Communities* (pp. 219–242). Cincinnati, OH: Anderson Publishing.

Walgrave, L. (2008). *Restorative Justice, Self-Interest and Responsible Citizenship*. Cullompton: Willan Publishing.

Wilcox, A. & Hoyle, C. (2002). *Final Report for the Youth Justice Board on the National Evaluation of Restorative Justice Projects*. Oxford: Centre for Criminology, University of Oxford.

Wilcox, A. & Young, R. (2007). How Green was Thames Valley?: Policing the image of Restorative Justice cautions. *Policing and Society*, 12(2), 141–163.

Young, R. (2001). Just Cops doing 'Shameful' Business?: Police-led Restorative Justice and the Lessons of Research. In A. Morris and G. Maxwell (eds.) *Restorative Justice for Juveniles*. Oxford: Hart Publishing.

Young, R., & Hoyle, C. (2003). New improved restorative justice? Action-research and the Thames Valley Initiative in restorative cautioning. In A. v. Hirsch, J. Roberts, A.E. Bottoms, K. Roach, & M. Schiff (Eds.) *Restorative Justice and Criminal Justice: Competing or Complementary Paradigms?* (pp. 273-291). Oxford: Hart Publishing.

Zehr, H. (1990). *Changing Lenses: A New Focus for Crime and Justice*. Scottdale, PA: Herald Press.

Zinsstag, E. (2012). Conferencing: A Developing Practice of Restorative Justice. In: E. Zinsstag & I. Vanfraechem (eds.) *Conferencing and Restorative Justice: International Practices and Perspectives* (pp. 11–32). Oxford: Oxford University Press.