

Restorative Justice and Police-led Cautioning: Tensions in Theory and Practice

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Background

- Principles of restorative justice have become increasingly influential in the delivery of criminal justice
- We focus on how restorative practices may be applied to police work in the context of police-led restorative cautioning and warnings

Restorative justice in theory and practice

- The restorative process looks to the individual needs of the parties through seeking to repair the injuries caused, restore relationships, and through addressing the needs of the offender as well as those of the broader community
- But, restorative justice programmes worldwide vary considerably in terms of what they do, how they achieve their outcomes and the level of actual 'restorativeness' in terms of outcomes.

What is restorative cautioning?

- Roots in Australia where they were developed in the early 1990's, mostly as an alternative approach to traditional cautioning practices
- UK (Final Warnings) and Northern Ireland 'reintegrative shaming' model
- Diversionary practice

Restorative Cautioning in Practice: How does it work?

- **Australia**
 - developed in Wagga Wagga
 - RISE Project
- "both victims and offenders can name many ways in which they prefer conferences to court"
- Perceptions of fairness amongst victims and offenders were high and observations reported greater participation, emotional intensity, procedural justice, apologies, forgiveness and time and effort given to justice in conferences than in court. Furthermore, conferences were said to increase offenders respect for the law and the police (Sherman et al, 1998).

Restorative Cautioning in Practice: How does it work?

Australia (cont.)

- 'As long as there is at least no difference in both costs and recidivism, the advantages of increased respect for police and greater victim involvement suggest that police-led conferencing is a desirable addition to the criminal justice system' (Sherman et al, 1998)
- Further research has examined how conferences have been used in South Australia, particularly for more serious offences (Daly, 2001) and this has shown the process to be successful in producing high levels of satisfaction for victims, offenders, police and coordinators, in terms of being treated fairly, with respect and having a voice in the process.

Restorative Cautioning in Practice: How does it work?

■ USA

- Findings were broadly similar to those of RISE project.
- Of those who had undergone a restorative conference, over 90% of both victims and offenders expressed satisfaction, felt they were treated fairly, and would recommend conferencing to others.

Restorative Cautioning in Practice: How does it work?

■ England and Wales (Thames Valley)

- Offenders, victims and their supporters were generally satisfied and felt they had been treated fairly. However, a significant minority of victims and offenders felt they had not been adequately prepared for the process. Nonetheless, both victims and offenders believed that the encounter helped offenders to understand the effects of the offence and induced a sense of shame in them.
- Over half of participants reported gaining a sense of closure and felt better because of the restorative session, and four-fifths saw holding the meeting as a good idea.
- However, levels of victim involvement were generally low and there are questions about how 'restorative' the process is in practice.

Restorative Cautioning in Practice: How does it work?

■ Northern Ireland

- Restorative scheme replaces 'traditional' police caution
- Some concerns over different levels of practice
- Low levels of victims participation
- But police were clearly committed to restorative principles and practices
- Some evidence of 'net-widening'

Restorative Cautioning and the Role of the Victim

- Victims are usually glad that they chose to participate in the process
- Victims often report a sense of closure feeling less anger following the encounter
- Some evidence of longer term therapeutic benefits

Restorative Cautioning and the Role of the Victim (cont.)

- Participation rates are variable
- It can be difficult to secure participation in cases of very minor offending or very serious offending
- Alternatives to direct participation include
 - Letters, audio recordings and shuttle mediation
 - The use of 'surrogate' victims

Concluding Thoughts

- The evidence relating to the use of restorative principles in police-led cautioning is largely positive
- Levels of participant satisfaction are generally high
- Practices can be resource-intensive and cases should be carefully targeted
- Practices may be used to complement other community based policing practices and policies, and assist in the longer term project of developing a dynamic and lasting partnership between the police and the community.
