

Abolitionist Restorative Justice in the UK: Theory and Practice

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Objectives & Primary Research Question

- ▶ To what extent are there abolitionist elements in the alternatives to custody in the UK?
- ▶ Breakdown with further required questions:
- ▶ What is abolitionism? What is Restorative Justice?
- ▶ Is RJ really an alternative to custody? (parallel process to custody / post incarceration / post release?)
- ▶ Who is the victim? Who is the offender? What are we restoring?
- ▶ Alternative to Custody or Alternative to Freedom?
- ▶ Widening the net?
- ▶ Letting off the offender easy?
- ▶ Apology – genuine or forced/manipulative?

Key Terms & Definitions

- ▶ Abolitionism: “....the criminological perspective that dismisses penal definitions and punitive responses to criminalized problems, and proposes their replacement by dispute-settlement, redress, and social justice. In more general, historical terms it refers to the abolition of state (supported) institutions that are no longer felt to be legitimate. The word abolitionism as we currently understand it in criminology is adopted from the North American anti-prison movement of the early 1970s.” – Ritzer, G. (2007) *Blackwell Encyclopaedia of Sociology*, eISBN: 9781405124331
- ▶ Restorative Justice: "a process through which parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future. RJ can take the form of victim-offender mediation either through direct contact between the offender and victim or indirect communication involving third parties. It can also involve restitution or reparation where this is agreed between offenders and their victims." (Crown Prosecution Service, 2017)

Types of RJ in the UK

- ▶ Direct / Indirect RJ processes
- ▶ Shuttle Mediation
- ▶ Mediation (impartial third party)
- ▶ Community Conferencing (ASB)
- ▶ Referral Order Panels (youth offences)
- ▶ In almost all of youth offences in N. Ireland, RJ is used as an alternative to custody via *youth conferencing*
- ▶ Mostly used by CPS as diversion from prison for petty crimes under 'Conditional Caution' route in England and Wales.

Objectives for CC in Adult Offenders UK:

- ▶ CC must fulfil one or more of following objectives:
- ▶ Rehabilitation – conditions which help to modify the behaviour of the offender, serve to reduce the likelihood of re-offending or help to reintegrate the offender into society;
- ▶ Reparation – conditions which serve to repair the damage done either directly or indirectly by the offender;
- ▶ Punishment – conditions which punish or penalise the offender for their unlawful conduct: only one condition exists at present: the payment of a financial penalty.

Conditional Cautions - Adult offenders aged 18 or over

- ▶ According Revised Code of Practice for Conditional Cautions - Adults, under Section 25 of the Criminal Justice Act 2003 (as amended by the Commissioners for Revenue and Customs Act 2005, the Police and Justice Act 2006 and the Criminal Justice and Immigration Act 2008), CC may only be used if it is:
 1. appropriate,
 2. proportionate to the offence,
 3. achievable, and
 4. meet the public interest requirements.
 5. **where RJ is permitted in CC**, bail may be allowed to give time for RJ conditions to occur (under s.37(7)(a) of the Police and Criminal Evidence Act 1984)
 6. participation in an RJ process may also be a condition of a CC (participation - only legal necessity, any further actions arising out of it - voluntary agreement)
 7. both parties must consent for RJ to take place.

Implementing RJ in CJS

- ▶ Code of Practice for Victims of Crime (Victims' Code 2015) came into force on 10 December 2013: RJ should be made available at all stages of the criminal justice process, across all ranges of crimes, **where available and appropriate**. The intention of this is to raise awareness of RJ amongst victims of crime. Under the revised Code victims are entitled to receive information on RJ from the police. The Code emphasises that RJ is voluntary and that appropriate measures will be put in place to ensure the safety of the victim.
- ▶ Introduced pre sentence RJ through the Crime and Courts Act 2013;
- ▶ Pre sentence RJ is through two separate pathfinder projects- one in the magistrates' courts looking at processes and the other based in 10-12 specific Crown Courts focusing on outcomes.

Case Studies, Serious Crime, anonymised (under Data Collection stage)

- ▶ Domestic Violence - care has to be taken to curtail risk of re-victimisation, recommended: stricter scrutiny of subjects' applicability, timing and appropriateness. Power and control dynamics.
- ▶ Burglary, Robbery, Serious Physical Assault – “Success of RJ not to be measured purely objectively, or ticking boxes, or strictly regarding financial savings, or even Victim - Offender both being satisfied. Sometimes it is only the victim who gets what they need from it, and offender may go out and re-offend, but that should not be seen as complete failure of RJ.” - The victim, "I was able to sleep with lights off in my own house after 95 days because of RJ.”
- ▶ "RJ not to be considered a panacea for all crimes.”
- ▶ "In court proceedings, victim/families are the most affected by this crime, but they are the least involved in the process.”
- ▶ Rape, Serious Sexual Offences - "Coming out of the RJ meeting, I felt I transitioned from being a victim to a victor." | "RJ was more difficult for me than any SOTP.”
- ▶ “The more serious the crime, the more critically RJ is needed.” Maggie Donnelly, ex Prison Governor, current RJ Practitioner, Trainer, Mediator with Thames Valley, Restorative Solutions CIC, CALM, and Consultant on Prison Reform

Preliminary Findings & Recommendations 1

- ▶ RJ currently subject to a “postcode lottery” and regional buy-in.
- ▶ (For serious crimes) While acknowledging the real and substantial risks, while restorative justice will not be appropriate in every case, it should not be excluded simply by reason of the type of offence committed. RJ can be of various kinds - there is no single theory of RJ.
- ▶ Offence-specific exclusions from access to restorative justice services should be removed, as they breach the Code of Practice for Victims of Crime.
- ▶ Levels of awareness about restorative justice are low.
- ▶ RJ is offered more to victims than to offenders.
- ▶ Current use of restorative justice is limited. Legally, RJ must be present *before* sentencing, but it is usually offered *after* sentencing.
- ▶ RJ provides a wholesome sense of meaningful closure to both victim and offender. It is not one-sided.

Preliminary Findings & Recommendations 2

- ▶ Where there is not an existing restorative justice partnership, restorative justice services should work with the PCC in their area to establish local partnerships that involve key local agencies which have a role in the delivery of restorative justice.
- ▶ Restorative justice services should work with the police and the PCC to explore how the requirements of the Code of Practice for Victims of Crime around sharing victims' information by means of ISAs (Information Sharing Agreements) can best be enacted, with the aim of ensuring that services have access to all available victim information.
- ▶ (Ref.: Triangulated data from 4 researches combined: My research, Theo's research, House of Commons Justice Committee, *Restorative Justice*, Fourth Report of Session 2016-17, and RJC's Victim Take-Up Report, 2017)

Further Work to be Done

- ▶ To what extent is all this practice *Abolitionist*?
- ▶ Is Penal Abolitionism in the UK – an Ideal? Ideological? Idealistic? Practical?
- ▶ Typological Thematic Analysis to be done with further interviews.



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