

Community Restorative Justice – a new bridge between state and people?*

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The Conflict

I want to start by reminding ourselves where we are coming from. In the late 1960s a violent political conflict developed in Northern Ireland, a small territory geographically part of the island of Ireland but politically a region of the United Kingdom. During its course the conflict claimed the lives of over 3,000 people – not perhaps a huge number as these things go, but this was in Western Europe, on a territory little more than 100 kilometres across and amongst a population of 1.5 million. The casualty rate was the equivalent of 120,000 dead in the UK as a whole. In 1994 ceasefires were declared by the main protagonists and, in 1998, 30 years after it began, a peace agreement was concluded and supported by all the people of Ireland, North and South in simultaneous referenda. However, elements of that Agreement remain to be implemented, sporadic violence continues, the armed groups have not given up their weapons and the state has not fully demilitarised its operations.

The conflict was fought out between the state – British Army, locally recruited soldiers, the police, courts and prisons – Republican armed groups, principally the IRA and Loyalist armed groups. It is important to be clear on a couple of points.

First, this was a political conflict – there were political reasons for it. After ten years of intensive attempts to find a political solution to it in the form of a peace process you might think this a point hardly worth making. However, it appears that there are still some people who regard the whole thing as simply a criminal conspiracy, an extended crime wave. My own opinion is that, if that were the case, there could be no justification for negotiations, for a peace process, for the Agreement, certainly not for prisoner release, for reform of the police or changes in the criminal justice system.

Second, the criminal justice system was not remote from or above the violent political conflict. On the contrary, it was a combatant. The criminal justice system – in the broadest sense – represented one of the “sides” in the conflict. Given that the criminal justice system (in addition to the army) is where the State’s monopoly of the legal use of force is operationalised, it is bound to fight those who challenge that monopoly. Violence which purports to be legal, or at least legitimate, in terms of a competing paradigm (in pursuit of a “new” or different nation state or a revolutionary transformation of society) challenges one of the core reasons for existence of the state.

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The State and the People

Northern Ireland was deeply divided before the conflict and many, especially Catholics, distrusted the state. The conflict, however, clearly had a disastrous impact on relations between sections of the population and the state, particularly the criminal justice system. The police, for example, inevitably took up a “war stance.” A war stance implies a whole range of attitudes and responses. Members of the community are not seen as partners in keeping the peace, but as actual or potential enemies. In this divided society, the “other” community is seen as basically hostile and as the main enemy, even if some of “our” side sometimes get out of order. Physical security is seen as a top priority – guns, fortifications, armoured cars are the accoutrements of policing.

The priority given to the “war against terrorism,” obviously meant that other aspects of policing received a lower priority – community policing in particular suffered.

The war stance is, of course, mirrored on the other side, within the community. In nationalist/catholic areas the police were seen quite simply, in black and white terms, as the enemy, an occupying force. Perhaps as significant was the chorus from elements in the unionist/protestant community that “the hands of our police are tied.” In other words, inadequate powers and political pusillanimity prevented the victory over terrorism that “their” police could otherwise win. In spite of some collusion, Loyalist armed groups were also in conflict with the state and the police were as hated in working class protestant districts as in catholic.

The consequence of all this is the need for change, the need to build a new society, the need to reform institutions of criminal justice, the need to win a new legitimacy from the great majority of the population. That task can be seen as no less than the establishment of a new social contract between the people of this area and the institutions of its government. The criminal justice system, and in particular the police, as the “cutting edge” of the State, is the most important area where that social contract needs to be built.

The Patten Report commits fully to the construction of a new social contract. It contains not just many inspirational statements about policing with the community but a range of practical proposals. In my opinion, it is a text of world importance in the literature on community policing.

However, it takes two to tango. Who are to be the partners of a reformed police and criminal justice system in the community? A formalistic approach to community policing, based on simply rhetorical references to “the public” and “the community,” will end up disastrously. At best formalism leads to a situation where the police have the benefit of considerable “lay” advice given by worthy, usually middle class individuals with little contact with the community. With good PR such a system hides the reality of a totally police-directed agenda responding to their bureaucratic needs and the propaganda purposes of their political bosses rather than the needs of the community. At worst, relations with the community become chaotic and arbitrary based on the use of paid or corrupted informers.

As an alternative to this depressing scenario, I want to examine the claims of community restorative justice projects to be potential, future partners of a reformed police and criminal justice system.

Rough “Justice” to Restorative Justice

From the earliest days of the conflict, the total fracture between state and people led to attempts at “self-policing” with “people’s courts” set up in the “no-go” areas. This led to the IRA, and later to Loyalist armed groups, taking on a policing role. Though without doubt demanded by the community, this alternative justice system relied on the brutality of kneecappings and terrible beatings. This was, and is, directed mainly against those who are allegedly involved in anti-social crime in local communities. Many outside, and some inside, the working class communities decried this violence but many ordinary people supported this particularly brutal version of retributive justice.

After the ceasefires, this punishment activity continued but it began to seem possible to create a peaceful alternative. Many of us felt it was useless and counter-productive simply to demand that a then un-reformed police force should deal with all crime. A solution would have to come from within the communities and be acceptable to them.

In 1996 NIACRO commissioned research by two ex-prisoners with credibility in their own communities. At that time the initiative made no progress on the Republican side, but on the Loyalist side the Winston report called for a peaceful form of community justice. On the Republican side, I and some colleagues from the voluntary sector began a series of private seminars and discussions with Republican activists. We discussed the principles of justice and human rights and the practicalities of community justice. This led to the discussion document that was eventually published as the “Blue Book.” It stated that “this report arises out of our attempts to devise a viable non-violent system of community based justice to replace the existing systems of punishment beatings and shootings in Northern Ireland.”

At that time the ideas of restorative justice were being introduced to Northern Ireland and were adopted by both Republicans and Loyalists as reflecting the desire for community-based justice. For both its principles are those internationally recognised: first, *crime is fundamentally a violation of people and interpersonal relationships*. Second, restorative justice maintains that *crime and antisocial behaviour create obligations and liabilities*. Third, *restorative justice seeks to heal and put right the wrongs*.

I want to make two basic points about the projects that developed from this process. First, their “community” character, which I go on to explore below, and, second, the fact that from the beginning they have engaged members of armed groups, ex-combatants in the conflict, in their work. I want to conclude by arguing that bringing these two aspects together can make an important contribution to the peace process and the construction of a new social contract between the state and the community.

Community Restorative Justice

At about the same time – in 1998/99 – projects were established in both communities – Alternatives on the Loyalist side and Community Restorative Justice Ireland on the

Republican side. Alternatives started in one area but has now expanded into several Loyalist areas in the East of Northern Ireland. Its main model is to work intensively with young people accused of anti-social crime including in the process a victim-offender mediation, reparation to the community and purposeful, learning activity. Projects also engage in mediation of neighbourhood disputes.

The Republican-based project, Community Restorative Justice Ireland, uses a more generalist model. Its projects, funded and voluntary, are in over a dozen locations in Northern Ireland with one associated project in Dublin. Volunteers engage with problems or disputes brought to them by members of the public or by other agencies. Where relevant, they organise mediation sessions where alleged perpetrators, direct victims and community representatives try to work out solutions. They have a high success rate and do a lot of intensive educational work in the communities. They have just started a project in three schools and are in negotiation with the Fire Authority and the CRC.

The parallel developments of community-based restorative justice have been extraordinary by international standards. Instead of the normal model of painstakingly created projects facing community apathy and official disdain, we have seen the ideas of restorative justice sweeping through communities, especially on the Republican side. The ideas of restorative justice have formed the core of what has become a real social movement.

For clear historical reasons, the communities here have become well-organised at a neighbourhood level with a high level of structure and activity. Into this culture of willingness to organise and take collective responsibility for problems has come a set of ideas and practices that actually allow success in an area very close to people's hearts – safety and justice. This is neither just a protest movement nor a limited area of practice – it is a severely practical but also emotionally inspiring way of making a difference in matters of central concern to the community.

These projects were set up in a particular time and place with particular concerns. Their priorities were to help reduce anti-social crime and to provide a peaceful alternative to punishment violence. To carry out these tasks, however, they adopted the principles of *community-based* restorative justice as the best set of ideas around that could give a sensible guide to the necessary practice. Perhaps the most important theme of restorative justice is the wholeness of society and therefore of particular communities. It rejects the concepts of insiders and outsiders and understands that both offenders and victims are part of the community. Everything that happens in a community is the concern of the community.

Restorative justice is also, plainly, about justice. Its concept of justice is different from and critical of the retributive formal system – concentrating on righting wrongs and mending harm – but it is justice nonetheless. The point is that a community-based restorative justice scheme is coming from the community – the housing estates and neighbourhoods where its people live and work – armed with a legitimate and coherent concept of justice. This sense of justice does not want to replace the formal criminal justice system, though it might propose ideas to it. It has the right, however, to be recognised as a theory and practice of justice with equal value, if a different role and scope, to the formal system.

Another crucial aspect of this concept of justice is that it is voluntary. It is understood that a society-wide justice system, a formal system, needs to rely, in the end, on the threat or use of coercion. In total contrast, a community-based restorative justice project can only work if it is wholly voluntary – in the sense that any use or threat of force will destroy its legitimacy and invalidate its co-operative approach.

Peaceful Political Activism

No doubt one of the causes of political violence is the belief that peaceful politics provides no route for the achievement of the goals of some element of society. Certainly, one part of a peace process must be the demonstration that all legitimate goals are achievable through the democratic political system. That involves, first, the reform of any elements of the political, social and economic structures that have excluded people in the past. Second, it involves the reintegration of ex-combatants into society. As President Clinton said in Belfast in 1995: *“Those who renounce violence...are entitled to be full participants in the democratic process. Those who show the courage to break with the past are entitled to their stake in the future.”*

Community restorative justice has provided one way in which ex-combatants can engage in peaceful community activism in a hugely important area – the practice of justice. This daily practice not only provides a continuing example of the benefits of a peaceful way of achieving what they claimed to have taken up arms for, it also demonstrates the need for formal, society-wide structures of justice.

NI Obstruction

During all this process of development, the community restorative justice organisations have faced the unremitting hostility of the Northern Ireland Office. From their introduction into the peace talks in late 1997, the NIO has stuck to a set of rigid criteria for community restorative justice that would effectively cut projects off from their communities. These criteria were the only aspect of the criminal justice system clearly not up for consultation during the Criminal Justice Review, were duly repeated almost verbatim in its report and have guided policy since. The NIO has dragged out the process of preparing guidelines based on these criteria for three years and has still not produced a draft. Meanwhile, it is actively discouraging other government departments and agencies from funding these projects.

In contrast, the Oversight Commissioner for the implementation of the Criminal Justice Review has taken an outspoken and enthusiastic position of support for community restorative justice, as has the new independent Inspector of Criminal Justice. Lord Clyde suggested that there were wide areas of community restorative justice that did not “deal with crime” and therefore did not have to be subject to the strictures of Recommendation 168 and should be supported. So far, however, his ideas have been rebuffed by the Northern Ireland Office. It appears to be the Office view that until the community organisations have passed under the yoke of these still-secret protocols, it would be highly dangerous to fund or otherwise support any of their activities. To my certain knowledge, the NIO has influenced the Probation Board, the Housing Executive and the

Community Safety Unit to either refuse funding or break off negotiations on co-operation with community projects.

Policing

Community restorative justice projects are sometimes accused of trying to create an alternative to the formal police service. The reality is that the community restorative justice projects are in the forefront of the demands for effective, accountable policing. They understand this as meaning policing in co-operation with the community. As Jim Auld, Director of CRJI, said: *“A policing provision must be more than acceptable. Critically linked to **acceptability** is the fact that we want, and need, an **effective** policing structure. We cannot have one without the other. To be effective in any society the policing structure must not be only acceptable to the communities in which it operates. It must be an integral part of the life of those communities.”*

Of course, there is not yet a total political agreement on policing but, in principle if not in time, it is close. We are engaged in the creation of a new social contract between a changed and reformed criminal justice system and a community also prepared to change and embrace the legitimacy of the new arrangements.

At one level, this requires political agreement and to make a democratic reality of the accountability mechanisms that have been established. At another level, there is a need to build a new relationship between community and police at neighbourhood and estate level. This is partly a matter of developing and using accountability and consultative mechanisms but mainly about creating a new, shared culture of cooperation in the cause of community peace.

Community restorative justice projects believe they are in a unique position to be the focus and leader of this kind of community development. Not only have they been working on issues of crime and justice in the communities for six years, they have also been responsible for promoting the ideas of community restorative justice. They believe that these ideas are the only basis on which a shared culture of justice and community safety can be built which unites the community and the agencies of the state including police. On the one hand, restorative justice offers an alternative to the retributive culture prevalent both in the community and the armed groups and, on the other, demonstrates to the state the importance of community engagement in dealing with crime and criminals.

It is in this sense that community restorative justice can provide a new bridge between the state and society. If the processes are handled right, we could leap-frog the “normality” of a justice system that polices a sullen and chronically frightened community to achieve a leading model of community-state partnership in justice.

We cannot fully implement that vision until there is an overall political settlement on policing. Yet on both sides the community restorative justice projects are making gestures of goodwill. Alternatives has police representation on its Board. CRJI has proposed working with statutory agencies in the reintegration of offenders and in helping deal with neighbourhood anti-social behaviour. As I have noted, the Northern Ireland

Office has directly discouraged both the Probation Board and the Housing Executive from taking up these offers of co-operation.

In Northern Ireland, then, community restorative justice projects have been an important part of the peace process. They have reduced the incidence of punishment violence, they have engaged ex-combatants in peaceful community activism, they have engaged thousands of people in practising justice in their neighbourhoods, they have reduced anti-social crime and they have spread the radical principles of restorative justice. They are now poised, assuming goodwill on all sides, to form, necessarily gradually and incrementally, a partnership with the statutory criminal justice system that will fully express the new social contract that must be the result of a genuine peace process. Is the Northern Ireland Office prepared to abandon its obstructive position and show the necessary goodwill?

Afterword

You might think that, after all the recent events and publicity, the NIO has a point. After all, if the armed groups are intent on maintaining some kind of parallel universe of criminality, perhaps every body in which they might be active should be isolated and suppressed. Perhaps those are right who believe that community restorative justice is just a ploy so that armed groups can get their greedy hands on the police.

My first response to these understandable views is that, if there are still unreformed and potentially violent elements in an institution or indeed a community, surely it make sense to support and nurture those manifestations which in fact are peaceful, practice justice and want to work with statutory agencies. If the very initiatives that are at the forefront of peace and progress are snubbed and derided, what message does that give to the die-hards?

My second response is that this idea that paramilitaries will somehow be able to control the police through community restorative justice organisations is not just an insult to those bodies but to the police themselves. Co-operation with bona fide, open and transparent community organisations is the opposite of corruption. And do we really think that a District Commander will be unable to tell which is his boss, the one with the gold braid or the one with the gold necklace?

I am afraid that, from the perspective of the community restorative justice organisations, the current stance of the NIO is to warn off those it influences, delay and prevaricate on protocols of co-operation until the community projects wither on the vine through the exhaustion of charitable funding. It won't happen, because they will continue as voluntary projects even if funding runs out. But why should we come to that pass? Surely it makes every kind of sense to build the new bridge between state and people by encouraging community restorative justice. I hope you agree.