

# The Challenges that Restorative Justice faces in Europe

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# Summary: the rise of Restorative Justice

- Term first used in 1958 by psychologist Albert Eglash:
- Creative restitution:
  - an offender, under appropriate supervision, is helped to find some way to make amends to those he has hurt by his offense, and to ... help other offenders
- Restitution leads to rehabilitation

# Precursors

- 1960s - Neighbourhood justice
- Alternatives to professionalized justice
  - Justice without lawyers
  - Alternative dispute resolution (ADR)
  - Informal justice
- Peace Movement

# The Surfacing of RJ

- 1974 The Kitchener experiment
  - Victim/Offender reconciliation projects (VORP)
- Early 1980s UK
  - abolitionism
- 1986 – North America
  - Zehr, 'Retributive justice, Restorative Justice'
- 1989 - New Zealand
  - *Family Group Conferencing*
- 1980s – Europe
  - Walgrave - A way beyond punishment vs treatment of juvenile offenders

# Surfacing . . .

- Early 1990s – Australia, Canada
  - Police-run conferencing (Wagga Wagga model)
  - Circle sentencing
  - Reintegrative shaming
    - (John Braithwaite, *Crime, Shame and Reintegration*)
- Mid1990s UK
  - Thames Valley Police Experiments
  - New Labour crime strategy
- Mid-late 1990s
  - South Africa, Truth & Reconciliation Commission

# The Aspirations of Restorative Justice

- A new paradigm of crime and justice
  - Zehr – *Changing Lenses*
  - Van Ness – *A New Pattern of Thinking*
  - Wachtel – *Revolutionize our response to wrongdoing*

# Old Paradigm

- Crime = violation of society's fundamental rules
- Justice = Punishment of the transgressor
- Responsibility – the state & its justice professionals

# New paradigm

- Crime = concrete harm to people and relationships
- Justice = Repair of that harm
- Responsibility – those with a direct stake in the matter
  - Victims
  - Perpetrators
  - Local communities

## 2 or 3 Key questions

- To what extent is this paradigm change
  - Feasible?
  - Desirable?
- *As restorative justice has developed, has it remained true to such a vision?*

# Key dangers

- Large-scale and widespread use of 'restorative practices'
- But – these operate within existing institutions without significantly altering the 'master patterns'
- assumptions and aims of *societal* responses to wrongdoing remains unchanged

# VISIONS OF SOCIAL CONTROL



STANLEY COHEN



- Effects of early ‘destructuring movements’

- The old institutions remain
- Overall – the system expands
- New deviants are drawn in and intervention intensifies on the same old ones
- The same old things are still *done*

# Key challenge facing RJ in Europe

- How to 'grow' restorative justice practices while avoiding the Cohen effects
- How to make sure that the growth of practice fundamentally changes – for better - the societal response to wrongdoing

# Key issues

- Requires more than good intentions!  
Also needs hard, critical thinking
- Zehr – well-intentioned reforms often go wrong
- Why?
  - Outcomes are over-determined
  - Vision insufficiently thought-through

# Solutions?

- Retrieve critical message:
  - Positive goal: Justice as peacemaking beyond professionalized courtrooms & penal systems via reparation
  - Combine with critical goal:
    - significant reduction in size and intensity of conventional crime control industry
  - Replace rather than add

- A more sophisticated critical engagement with state criminal justice
  - Replace: crude denunciations of retribution, punishment, legal justice etc.
  - With: a critique which acknowledges what is of value in state punishment of crime
  - *Diagnose* its limitations, contradictions and dangers

- A coherent account of how - precisely and essentially - restorative justice interventions differ from more conventional interventions into wrongdoing.
  - What constitutes justice
  - Processes for achieving justice
  - Values or socio-ethical roots

- Specify more precisely the scope of restorative justice
- Develop a rigorous account of how the rights of various parties will be met in a future in which the 'default' response to wrongdoing is restorative:
  - Offenders
  - Victims
  - Communities

# Above all

- Need to replace evangelical boosting of restorative justice and restorative practices with arguments that will convince intelligent sceptics.