

scottish justice matters

Volume 5 | Number 1 | April 2017



RESTORATIVE JUSTICE

Restorative Justice and Desistance from Crime: **THREE LINKS**



Fergus McNeill

MY CONTRIBUTION to this special issue concerns the potential links between restorative justice (RJ) and desistance from crime, both in theory and in practice. I will briefly address three connections: related to reducing reoffending, the role of 'generativity' in desistance and the need to re-articulate rehabilitation.

Reducing reoffending

The first of these connections is perhaps, the most obvious. The starting point of much of desistance literature lies in the question of how and why offending ends. It is perhaps unsurprising, given the policy priority given to reducing reoffending in Scotland and elsewhere, that this literature has become important to policymakers, practitioners and others. However, it is not a literature about programmes and interventions; it is a literature about complex processes of human development in their social contexts. The more we pursue an understanding of these processes, the more they draw us into much wider, and ultimately more important, questions than how to reduce reoffending.

These wider questions echo RJ's complex and contested relationship to reducing reoffending. Some researchers have presented evidence and formulated convincing analyses of how RJ can facilitate a desire to desist, or consolidate the willingness to do so (Robinson and Shapland, 2008). But for others, RJ needs to be viewed and evaluated not as a promoter of desistance and therefore a mechanism of *crime reduction* but rather as a means of delivering *justice*. For that task, the satisfaction of the participants with the fairness, legitimacy and outcome of the process is more important than the 'offender's' future conduct.

That said, the apparent separation between these two issues (crime reduction via 'offender' change, and a sense of justice in the process and the outcome), is perhaps not so complete. Many victims are concerned about potential re-victimisation of themselves or of others. That creates a potential stake in rehabilitative processes.

'Generativity'

This takes me to a second connection. The desistance literature offers 'generativity' as an empirical and conceptual link between the inter-related issues of crime reduction and justice. 'Generativity' refers to a concern for the wellbeing of others (often, but not always, the next generation). In studies of people in desistance processes, generativity often surfaces in their stated desires and active efforts to 'give something back' or to 'make good' on a troubled past. These processes are important perhaps in securing the changes in identity sometimes associated with desistance from crime. It may also suggest tacit recognition of the need to make good in order to be seen *by others* as a 'reformed' person. In these senses, there seems to be evidence of a link between 'giving up crime' and 'giving back' to victims or communities, or future generations (McNeill and Maruna, 2007).

Rehabilitation

This leads me on to the third and most complex connection. The role of generativity in particular and the desistance literature in general, suggest that rehabilitation is not simply a personal project. Rather, rehabilitation is a social (and legal) process that raises profound political questions about the nature of (good) citizenship, about the nature of society, about the relationship between citizenship, society and the state, and about the proper limits of legitimate state power. The same could be said of RJ, of course.

At least some of the oft-debated practical problems (and conceptual weaknesses) around rehabilitation come from a failure to engage adequately with these wider moral and political questions. Such engagement requires '*personal rehabilitation*' (which is principally concerned with promoting positive individual level change in the offender) to articulate its relationships with at least three other forms of rehabilitation.

The first of these concerns the problem of '*legal or judicial rehabilitation*': when, how and to what extent a criminal record and the stigma that it represents can ever be set aside, sealed or surpassed. Maruna (2011) argues that efforts to sponsor rehabilitation and reform must address the collateral consequences of conviction, mostly notably its stigmatising and exclusionary effects, or be doomed to fail. No amount of supporting people to change themselves can be sufficient to the tasks and challenges of rehabilitation and desistance, if legal and practical barriers to reintegration are left in place.

But these barriers are not just legal: they are moral and social too. A solely personal conception of rehabilitation is inadequate to the moral and social offence that crime represents. Put simply, doing something for or to the person who has offended, even something that aims at somehow changing them so as to reduce future victimisation, fails to engage with other key aspects of justice. Perhaps most importantly rehabilitation offers no moral redress *per se*; it operates only on the individual 'offender', not on the conflict itself and not on the victim or the community. Rehabilitation is typically a private and secretive business, incapable of responding to the late modern re-emergence of demands for more expressive forms of justice.

By contrast, RJ speaks to the insistence that moral communication must be secured and moral demands satisfied before *moral rehabilitation* can be recognised (see also Duff, 2001). The people concerned need to recognise one another's interests, to engage in a dialogue and to agree on how the 'debt' is to be settled before the debtor can secure a restored social position as a citizen of good character.

However, there is a problem with this logic, and it is a big one. Casting the problem as one of *individual* indebtedness (of the 'offender' to the victim) may have the merit of engaging the parties most directly concerned in the conflict, but it also risks privatising the social issues involved. For example, if we take the view that social inequality is a result of our collective political choices, and that social inequality is criminogenic, then we must accept *collective* responsibility for (much) offending. Moreover, if we accept that punishment often creates more harms than it intends, then those on whose behalf punishment is executed may owe debts to the punished. Even if punishment only ever imposed proportionate, finite and

intended harms, we would still owe a duty of reintegration to the punished person. Privatised inter-personal conflict settling forms of RJ may fail to recognise these wider issues of social justice.

Ultimately, even where personal issues are tackled and skills developed, where legal requalification is confirmed and where the 'offender's' individual moral debts are settled, the question of '*social rehabilitation*' or reintegration remains. In European jurisprudence, that entails *both* the restoration of the citizen's formal social status *and* the availability of the personal and social means to do so (Van Zyl Smit and Snacken, 2009). I have also sometimes used the term in a different sense that is perhaps broader, deeper and more subjective; referring to the informal social recognition and acceptance of the reformed person, and of the debts owed to him or her (McNeill, 2014).

If the desistance literature pushes us towards an understanding of the inter-relatedness of these forms of rehabilitation (personal, legal, moral and social), then perhaps it offers both hope for and a challenge to RJ. Hope because RJ offers us the best available model for the kinds of dialogue that moral rehabilitation requires; at its best, it can help us fumble towards justice, integration and solidarity together, and it can help to reduce reoffending (Rossner, 2013). The challenge is that the dialogue needs to be much broader than we have sometimes imagined; there are collective as well as individual debts and conflicts to be recognized and settled. In other words, RJ dialogue needs to explore questions of social in/justice as much as inter-personal in/justice.

Of course, some of RJ's most prominent advocates have long-since recognised this and moved in precisely that direction, for example in working for and exploring the limits of 'truth and reconciliation' in post-conflict societies. As we seek to develop RJ in Scotland, I hope we will follow their lead. Scotland may not be in a post-conflict situation, but it is in a constitutional flux and in a process of 'state-building' that creates both opportunities and threats. We are also, once again, at a moment in which the nature of 'community justice' can be explored and re-shaped. Maybe these contexts create an opportunity to support desistance from crime by supporting desistance from (counter-productive) punishment. I am sure that RJ (in its widest sense) can help us support both.

Fergus McNeill is professor of criminology and social work at the University of Glasgow.

Duff, A (2001) *Punishment, Communication and Community*. Oxford University Press.

McNeill F (2014) 'Punishment as Rehabilitation' in G. Bruinsma and D. Weisburd (eds.), *Encyclopedia of Criminology and Criminal Justice*, Springer Science and Business Media.

McNeill F and Maruna S (2007) 'Giving Up and Giving Back: Desistance, Generativity and Social Work with Offenders' pp. 224-239 in McIvor G and Raynor P (eds.) *Developments in Social Work with Offenders. Research Highlights in Social Work 48*. Jessica Kingsley.

Robinson G and Shapland J (2008) 'Reducing Recidivism: A Task for Restorative Justice?' *British Journal of Criminology* 48 (3): 337-358.

Rossner M (2013) *Just Emotions: Rituals of Restorative Justice*. Oxford University Press.

Van Zyl Smit D and Snacken S (2009). *Principles of European Prison Law and Policy*. Oxford University Press.