



# Restorative Justice in Prisons

A Literature Review

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The Diana Unwin Chair in Restorative Justice at Victoria University was asked to undertake an international literature review on restorative justice in post-sentence settings as part of the Department of Corrections' internal review of the "Prison Restorative Justice Pilot". The available literature is limited in scope and there have been relatively few evaluations of restorative justice programmes inside prisons. The most substantial recent survey is the MEREPS report (Mediation and Restorative Justice in Prison Settings), which was published in 2012 with substantial support from the Criminal Justice Programme of the European Commission.<sup>1</sup> This extensive report was based on the findings from participating countries, England, Germany, Belgium, and Hungary.

The following report is divided into three sections:

- An overview of the landscape in which restorative processes have been trialed within prisons.
- A summary of the findings of various evaluations of these trials.
- A consideration of how best practice applies to restorative justice in a prison environment and the main obstacles to achieving it.

## 1. Mapping the Terrain: Restorative Justice and Imprisonment

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It is not accidental that the primary sites of restorative justice engagements are in diversionary or pre-sentence settings rather than in post-sentence or correctional settings. This is because restorative justice emerged initially as an alternative to the expanded use of imprisonment that directed attention to the resources available in local communities for dealing with wrongdoing. Early advocates of restorative justice would often draw a sharp contrast between the restorative goals underpinning community responses to crime and the retributive impulses that shape criminal justice institutions.

As Russ Immarigeon, one of the early pioneers, writes, "Incarceration is the institutional manifestation of the punitive impulse that restorative justice is designed and intended to challenge."<sup>2</sup> The core difficulty in implementing restorative justice in prisons is that *prisons are intended to punish while restorative justice is intended to heal*.

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<sup>1</sup> Tünde Barabás, Borbála Fellegi and Szandra Windt, ed. *Responsibility-Taking, Relationship-Building and Restoration in Prisons: Mediation and Restorative Justice in Prison Settings* (Budapest: National Institute of Criminology, 2012).

<sup>2</sup> Russ Immarigeon, "What Is the Place of Punishment and Imprisonment in Restorative Justice?," in *Critical Issues in Restorative Justice*, ed. Howard and Barb Toews Zehr (Devon, UK: Willan Publishing, 2004), 150.

Acknowledging this tension does not imply outright incompatibility between the two spheres. But it does mean that restorative justice in a correctional setting will always generate what Boyes-Wilson calls a “creative tension that opens space for the transformation of those institutions.”<sup>3</sup> This creative tension requires a degree of adaptability by both restorative justice programmes and the Correctional system, as both search out ways best to achieve the goals of restorative justice. This need for adaptability and creativity explains in part why *there has been no uniform way in which restorative justice has been employed in prisons*. Some efforts have produced only slight alterations in the usual prison regime while others have sought to model the entire prison on restorative justice principles.

There are many factors that influence the degree to which prisons may become more or less restorative, but according to the literature the single most important factor is the extent to which *prison managers and staff are receptive or resistant to the creative tension created by restorative justice*. This in turn reflects dominant perceptions about the purpose of prison. Is it intended simply to punish offenders or does it have a broader social responsibility to contribute to the restoration of relationships harmed by wrongdoing?

To the extent that prison policy and practice seeks to respond to this broader social responsibility, restorative justice and imprisonment may be seen as complementary. Tim Newell, former governor of Grendon and Spring Hill Prison, argues that restorative justice in prison is complementary where prisons “...begin to address society’s obligations to victims of crime; serve as a place of safety in mediating between people who have been deeply harmed and those who have caused the harm; and when prisons occupy a position in the reintegration of offenders into society.”<sup>4</sup> What a restorative justice philosophy brings to the correctional system, he argues, is not so much a “once-for-all paradigm shift” but rather an “evolutionary development” in how a society’s justice systems respond to crime and its effects.<sup>5</sup>

## **Approaches to Restorative Justice in Prison**

While it may be disputed whether a prison could ever be fully restorative, steps can be taken to situate prisons closer to the kinds of values and outcomes favoured by restorative justice. For Newell, a maximally restorative approach to prison would include:

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<sup>3</sup> Carolyn Boyes-Wilson, "What Are the Implications of the Growing State Involvement in Restorative Justice?," *ibid.*, 216.

<sup>4</sup> Kimmet Edgar, and Tim Newell, *Restorative Justice in Prisons: A Guide to Making It Happen* (Hampshire: Waterside Press, 2006), 22.

<sup>5</sup> *Ibid.*, 37. The reference to a “paradigm shift” comes from the pioneering work of Howard Zehr, who originally argued that retributive and restorative justice are two opposing paradigms. Zehr has since moved away from such a polarised position. See, Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, A Christian Peace Shelf Selection (Scottsdale, Pa.: Herald Press, 1990); *The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002).

- *Restorative operational styles*: Using mediation and conflict resolution within the prison community to make it a safe place where constructive work can be done.
- *Meeting victims' needs*: Ensuring proper care is taken where victims wish to be involved in restorative justice processes.
- *Encouraging victim empathy*: Developed through courses and sometimes with the help of Victim Support.
- *Victim-offender groups*: Meetings where offenders meet either their direct victims or surrogate victims.
- *Building links with Victim Support*:
- *Offenders making reparation to the community*: Through charity workshops; doing work for the community; inviting community groups into the prison.
- *Emphasizing the restoration of offenders*: Through programmes that encourage inmates to take responsibility for their actions and for their lives in the future.
- *Partnerships with the local community*: in all the above.<sup>6</sup>

Most restorative justice initiatives in prison began by addressing just one of these objectives, usually without any significant commitment from or endorsement by prison staff, policy makers or funding bodies. As Guidoni notes, "These projects are almost always limited in time, are often marginal to prison administration, and are the result of local initiatives and not supported by national policies."<sup>7</sup>

Yet there have been some cases where these objectives have been pursued in a more holistic and systematic fashion through the collaboration of prison staff, policy makers and the wider community. Below is a list of restorative engagements in prison that have been ranked in terms of their increasing ambitiousness to address the objectives identified by Newell.<sup>8</sup>

### **a) Victim Awareness and Empathy Programmes**

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<sup>6</sup> Tim Newell, "Restorative Justice in Prisons: The Possibility of Change," (Cambridge: Institute of Criminology, University of Cambridge, 2002).

<sup>7</sup> O.V. Guidoni, "The Ambivalences of Restorative Justice: Some Reflections on an Italian Prison Project," *Contemporary Justice Review* 6 (2003): 58.

<sup>8</sup> I follow here the ranking of restorative justice programmes in prison offered by Dan Van Ness, see Daniel W. Van Ness, "Prisons and Restorative Justice," in *Handbook of Restorative Justice*, ed. Gerry and Daniel W. Van Ness Johnstone (Devon, UK: Willan Publishing, 2007), 314-18. For a detailed list of all RJ projects in prisons see, Barabás, *Mereps Report*, 176-77.

Awareness and empathy programmes are designed to help prisoners understand better the impact of their offending on victims. They focus on the high rates of *victim unawareness* in prisons, and for this reason are often aligned with rehabilitative programmes. Techniques used include discussing the offender's own experiences of victimization; writing an account of their worst offence from the victim's perspective; and writing a letter to their victim but not sending it. Since most prisoners have also been victims, the programmes usually start with the individual's own experience of victimization in the hope of bringing him or her to understand how they have victimized others.

Some of these programmes do not involve actual victims, but it is more common for them to use *surrogate victims* or members of Victim Support. For example, *Bridges to Life* operates in over 20 prisons across Texas and has expanded to many other states. It follows a 14-week in-prison programme using the book *Restoring Peace: Using Lessons from Prison to Mend Broken Relationships*. The programme is comprised of discussions, exercises, role-plays and letters of apology, all of which are personalized through the involvement of surrogate victims. Surrogate programmes like this have been shown to increase awareness of offender accountability, victims' rights and the long-term effects of crime.<sup>9</sup> As Umbreit and Armour explain:

...a surrogate model offers crime victims and offenders an avenue for sharing their stories with people who symbolically carry substantial weight and may serve as catalysts for healing because they share similarities either to the offenders who harmed them or to the victims that they harmed. Moreover, because these projects use a small- or large-group format and multiple meetings, they create communities of support and accountability that reduce isolation, foster empathy and remorse, cultivate trust, reinforce similarities between seemingly disparate groups, and lessen the distance and stereotypical judgments about each other that otherwise block healing.<sup>10</sup>

## **b) Amends Programmes**

Amends programmes are designed to enable prisoners to take active responsibility for their wrongdoing by making financial restitution, either directly to their victim or through victim-related organizations. Since prisoners usually have limited financial resources, Belgium has sought a creative solution by establishing a "Redress Fund." Prisoners apply to join the scheme and are remunerated for undertaking community service hours, with their earnings going either directly to their victim or to a charitable organisation of the victim's choice. The intention behind this approach is to treat compensation to victims differently from other civil judgments. Prisoners take an active, affirmative approach

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<sup>9</sup> Definition cited from Bell, A., and Trevethan, S. "Restorative Justice in Corrections," *Forum on Corrections Research*, 15 (2003): 31-34.

<sup>10</sup> Mark Umbreit and Marilyn P. Armour, *Restorative Justice Dialogue: An Essential Guide for Research and Practice* (New York: Springer Publishing Company, 2010), 304.

towards their responsibilities to victims rather than passively treating their payments as just one of a number of debts that must be paid.<sup>11</sup>

### **c) Victim-Offender Mediation/Dialogue**

There are a number of different programmes that come under this approach, yet they all have in common some form of *dialogue* between the prisoner and those who have suffered as a result of their crimes. Victim Offender Dialogues have been core practice since the inception of restorative justice in Canada and the US in the early 1970s, initially as part of the Victim Offender Reconciliation Project (VORP), then under the Victim Offender Mediation Service.

An in-prison programme emerged in Texas as a response to a request from victims to meet with their offenders who were serving very long sentences or were on death row. This programme is now located within the Victim Services department of Corrections and there is a long waiting list of victims wanting contact with their offenders.<sup>12</sup> The waiting list is so long because the restorative process occurs over several months, sometimes years, and involves numerous preliminary meetings with mediators visiting both parties separately before arranging a joint meeting.

Other forms of Victim-Offender Dialogues have a more *re-integrative* focus, with greater involvement from Correctional services. The New South Wales Department of Corrective Services offers what it calls “Protective Mediation,” which involves shuttle diplomacy between the yet to be released prisoner and the community or family members who might seek reprisals upon their release. This programme grew out of the observation that an offender’s victim(s) often comprises family members or close associates of the offender. Often the agreements made during protective mediation become part of the prisoner’s parole conditions, thereby contributing to a more successful reintegration.

Other examples of restorative dialogues with a re-integrative focus are the “Releasing Circle” developed by the National Parole Board of Canada and the *Huikahi Restorative Circles Process* in Hawai’i. Both use a circle process involving the prisoner, their partner and children, the wider family and community support members, in addition to the primary victim. The aim of such circles is to talk about what led up to the offending and what impact it had on all involved, and to ensure that adequate provisions for support and accountability are available to the prisoner on release.

### **d) Prison-Community Connections**

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<sup>11</sup> Ness, "Prisons and Restorative Justice," 315.

<sup>12</sup> Marian Liebmann, *Restorative Justice: How It Works* (London and Philadelphia: Jessica Kingsley Publishers, 2007), 228-29.

The re-integrative focus of many post-sentence restorative justice programmes has sometimes led to the establishment of direct partnerships between prisons and community agencies. Developing links between prisons and the outside community has a positive bearing on successful reintegration because it breaks down the stereotypes communities have towards prisoners, as well as preparing the community practically to aid prisoners upon their release.<sup>13</sup>

One example is the *Inside Out Trust* that operates in many prisons across England and Wales. Through this programme prisoners are given opportunities to make amends by contributing to something needed by the outside community. This might involve repairing bicycles or eyeglasses, which are then distributed to various charities. Community service projects provide an opportunity to rebuild trust between the outside community and prisoners, while also shifting the offender's self-perception from deviant outsider to productive contributor. In the opinion of Liebmann, "What makes these examples restorative is that prisoners take responsibility for making amends, and communities receive help and see prisoners more positively. This also contributes to the reintegration of offenders on their release."<sup>14</sup>

Another example is the Albert Park project in Middlesbrough, Northeast England, which came about as a result of a partnership between the Middlesbrough Council and the pilot Restorative Prison project comprising of three prisons. This collaboration resulted in the refurbishment of a run-down Victorian public park, with prisoners using metalworking and fitting skills to make new furniture for the park, boats for the lake and artwork for an exhibition. Some low-security prisoners were also employed as visitor guides or park rangers. In 2008 the Attorney General for England and Wales recognized the enormous amount of work undertaken by these prisoners with these words:

The North East Restorative Justice Partnership is an example of a restorative project which...allows offenders, both within prison and under the supervision of probation, to make a real contribution back to the community which was affected by their crime. Providing services or equipment for a community area such as a park or cemetery makes a public statement about the restorative work undertaken by offenders.<sup>15</sup>

## **e) Conflict Resolution Practices**

Some of the more pioneering restorative justice initiatives in prison have grown from the realization that restorative engagements are most effective when they are part of a larger environment that practices the values of restorative

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<sup>13</sup> Mandeep K. Dhami, Greg Mantle and Darrell Fox, "Restorative Justice in Prisons," *Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice* 12, no. 4 (2009): 435.

<sup>14</sup> Liebmann, *Restorative Justice: How It Works*, 205.

<sup>15</sup> Cited in Andrew Coyle, "Understanding Prisons," paper presented at Prison Fellowship New Zealand 25<sup>th</sup> Anniversary Conference, *Changing the Landscape*, 16 May 2008.

justice in everyday life. Rather than seeing restorative justice merely as an intervention to use when something has gone wrong, this more integrated approach attempts to foster restorative relationships in the pursuit of a more harmonious environment. This may sound idealistic, even naïve, given the normal culture of prisons, which is one of disrespect, violence and victimization. Relationships in prison tend to mirror the often-brutal world that gave rise to the inmate's deviancy in the first place. But it is precisely this reality that has challenged some advocates of restorative justice to explore what a restorative philosophy has to say about the prison environment itself.<sup>16</sup>

This transformative approach to prison relationships operates at many different levels: through the use of focus units within a prison; the training of prisoners as peacemakers within the prison community; equipping correctional staff with conflict resolution skills; and using restorative mechanisms in disciplinary and grievance processes. For example, a youth custodial prison for men aged between 15-18 years in Ashfield, trained 16 restorative justice facilitators (including two former inmates) to be "restorative champions" in the prison. When conflict or bullying occurs, inmates are offered a resolution conference as an alternative to the normal adjudication process.<sup>17</sup> A similar example is the Philadelphia City Prison, which has a Conflict Resolution and Team Building programme that teaches conflict resolution skills to staff.<sup>18</sup>

One of the main keys to the success of such conflict resolution programmes is the equipping of the whole community to be peacemakers, so that peacemaking rather than violence becomes the norm. For example, the highly successful Alternatives to Violence Project started by Quakers in a New York prison ensures that prisoners move steadily from being participants to becoming facilitators, with the final module of the course focusing on training facilitators.<sup>19</sup> Such participatory programmes create a high degree of ownership from prisoners, which subsequently shapes the norms of the wider prison culture. However, as will be seen below, the success of these programmes is dependent on prison staff themselves modeling a peaceable and respectful resolution of disputes.

## **f) Systemic Transformation**

At the most ambitious end of the spectrum is the attempt to model an entire prison or a unit within a prison on the values and principles of restorative justice. This approach incorporates many of the kinds of engagement and programmes mentioned above, but goes the additional step of re-envisioning the actual purpose of prisons. Prisons are seen as sites of moral education and virtue

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<sup>16</sup> Barb Toews and Jackie Katounas, "Have Offender Needs and Perspectives Been Adequately Incorporated into Restorative Justice?," in *Critical Issues in Restorative Justice*, ed. Howard and Barb Toews Zehr (Devon, UK: Willan Publishing, 2004), 112.

<sup>17</sup> Liebmann, *Restorative Justice: How It Works*, 238.

<sup>18</sup> D. Roeger, "Resolving Conflicts in Prison," *Relational Justice Bulletin* 19 (2003): 5; cited in Ness, "Prisons and Restorative Justice," 313.

<sup>19</sup> cf. Liebmann, *Restorative Justice: How It Works*, 248.

formation, which are fostered through practices that emphasize pro-social behaviour, collaboration and reciprocal obligation.

The Director of The International Centre for Prison Studies, Andrew Coyle, developed the “Restorative Prison Project” in the North East of England from a collaboration of three prisons (the Middlesbrough Albert Park scheme discussed earlier emerged from this project).<sup>20</sup> Coyle lists four elements essential to the success of this project:

- *Linking the prison and the community*, with the prison explaining itself to the community and asking the community to get involved with the prison and to find out more about the prison.
- Encouraging prisoners to do work for the benefit of others that is publicly recognized, thus allowing *prisoners to be altruistic*.
- Encouraging greater involvement of *victims’ groups in prison* and raising awareness among prisoners of the sufferings of victims of crime.
- Creating an *alternative model for resolving disputes and complaints inside prison*.<sup>21</sup>

In Coyle’s opinion, much of the success of a restorative prison comes from the attitude of prison staff and the learning environment of the prison:

A truly restorative regime in a prison would, on a daily basis, present prisoners with a series of duties, challenges and learning opportunities. It would invest trust in the prisoners’ capacity to take responsibility for performing tasks, for meeting challenges and for using learning opportunities. The task for prison staff at every level and in all departments would be to work with prisoners to identify the skills, guidance and support they need to restore their lives, equipping themselves for renewed citizenship and a life away from crime. Potentially a restorative regime would offer growth of mutual understanding, learning and co-operation between prisoners, prison staff and society, with rich opportunities to experience the value of working together and developing positive attitudes and behaviour of lasting influence.<sup>22</sup>

Other examples of restorative prisons can be seen in the APAC prisons in Brazil and in prisons in Belgium. In each of the 32 prisons in Belgium, a restorative justice consultant is assigned whose responsibility it is to “create a culture of respect in prisons” and to promote restorative justice practices among

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<sup>20</sup> The first of these prisons was a large local prison that held a wide cross section of pre-trial and convicted prisoners, the second was low security preparing prisoners for release, and the third was for young offenders.

<sup>21</sup> Andrew Coyle, “Understanding Prisons,” paper presented at Prison Fellowship New Zealand 25<sup>th</sup> Anniversary Conference, *Changing the Landscape*, 16 May 2008.

<sup>22</sup> Andrew Coyle, “Understanding Prisons,” paper presented at Prison Fellowship New Zealand 25<sup>th</sup> Anniversary Conference, *Changing the Landscape*, 16 May 2008.

staff and prisoners.<sup>23</sup> In Brazil there has been a lack of government resourcing for prisons, which has led to prisons becoming self-governing with all the attendant problems of over-crowding and corruption. This has created the opportunity for some prisons to enter into partnerships with Christian organizations to operate the prison according to the Christian principles of love and mutual respect, and to envelop inmates in a community of care that challenges the normal prison culture of bullying, intimidation and violence.

A key operating principle in these prisons is to “*Treat imprisoned people the way you want them to treat others.*” This is why instead of calling them prisoners, inmates or convicts, inhabitants are called *recuperandos* – “people who are undergoing the process of rehabilitation.”<sup>24</sup> The *recuperandos* are taught essential pro-social skills, based on the belief that for successful transformation, “it is not enough to avoid wrongdoing; it is necessary for them to do good.”<sup>25</sup> Many of these APAC prisons allow family members to have unlimited access to the *recuperandos*, as well as providing work opportunities for them even before their release. The success of APAC prisons has seen its unique approach extend to over 30 prisons across Brazil, as well as influencing the work of Prison Fellowship in the United States and the Kainos Community Programme in the United Kingdom.

One of the unique features of APAC prisons is their governance structure, which is a board comprised of members elected from the community. Representatives are drawn from the usual fields of justice, law, police and corrections, but also include community and church members.<sup>26</sup> While the *recuperandos* and selected community volunteers carry out the actual running of the prisons, the governing board ensures that the operating fundamentals of the prison remain restorative. Community participation, the healing of victims and the rediscovery of worth and dignity by offenders are central to the restorative ethos of this approach.<sup>27</sup>

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<sup>23</sup> Ness, "Prisons and Restorative Justice," 313.

<sup>24</sup> Cited in Katherine S. and Lorenn Walker van Wormer, ed. *Restorative Justice Today: Practical Applications* (California: Sage Publications, 2012), 153.

<sup>25</sup> M. Ottoboni, *Transforming Criminals: An Introduction to the Apac Methodology* (Washington, D.C.: Prison Fellowship International, 2003), 52.

<sup>26</sup> *Ibid.*, 156.

<sup>27</sup> The list of twelve fundamental operating principles can be found in van Wormer, *Restorative Justice Today: Practical Applications*, 154-55.

## 2. Restorative Justice Outcomes

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To date there have been a limited number of evaluations of restorative justice in prison and they tend to focus on specific programmes rather than assessing the whole field. This is understandable given the variety of in-prison programmes that call themselves restorative, some of which work to very different objectives. However, the studies that have been completed indicate some promising outcomes, while also highlighting the importance of careful implementation. The following is a brief survey of the most salient findings from these evaluations.

### a) Victim Offender Satisfaction

A 2003 evaluation of Victim-Offender Mediation programmes in the correctional services of Texas and Ohio, involving 47 meetings, found that 60% of victims and families believed their meeting had contributed to personal growth and healing, as well as improving their feelings about the offender, while 82% of prisoners felt that the meeting had contributed to their rehabilitation or personal growth and healing and had changed their understanding about how the crime had affected others. There was also an increase in victims' and offenders' perceptions of being treated fairly; all but one participant were satisfied with the mediation process.<sup>28</sup>

### b) Pro-social Behaviour/Victim Empathy

Restorative justice has been shown to increase offenders' understanding of the impact of their crimes while also encouraging pro-social skills in building healthy relationships. A 2005 evaluation of the Sycamore Tree Project focusing on 42 prisons, with a follow up report in 2009, concluded that there were significant post-programme improvements in prisoners' empathy with victims, their attitude towards offending and their perceptions of reoffending.<sup>29</sup> This attitudinal change persisted irrespective of age, gender and the prison category. This confirms a 2004 evaluation of the Sycamore Project in New Zealand that focused on 49 prisoners comparing pre- and post-programme attitudes, which showed significant increases in prisoner empathy towards victims in comparison to the general prison population.<sup>30</sup>

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<sup>28</sup> M.S. Umbreit, Vos, B., Coates, R.B., and Brown, K., "Victim Offender Dialogue in Violent Cases: The Texas and Ohio Experience," *VOMA Connections* 14, no. 1 (2003).

<sup>29</sup> S. Feasey, Williams, P., and Clarke, R., "An Evaluation of the Prison Fellowship Sycamore Tree Programme," (2005); Simon Feasey, and Patrick Williams, "An Evaluation of the Sycamore Tree Programme: Based on an Analysis of Crime Pics Ii Data," (United Kingdom: Hallam Centre for Community Justice and Sheffield Hallam University, 2009).

<sup>30</sup> Retrieved February 5, 2015

<http://www.pfnz.org.nz/Site%20PDF/Sycamore%20Tree%20and%20its%20Effectiveness.pdf>

### **c) Effect on Prison Environment**

When the values of restorative justice become embedded within prisons, informal evidence suggests that prisons can be more humane and just, less violent, more democratic and with greater levels of trust between prisoners and between inmates and prison staff. Dhami *et al.* point to how restorative engagements can humanize the prison culture such that prisoners make more of the opportunities they have for personal transformation.<sup>31</sup> Restorative justice also leads to a less adversarial prison environment, improving the often-tenuous relationship between prison staff and prisoners. One study shows that prison staff experience reduced work-related stress after restorative justice had been introduced.<sup>32</sup>

### **d) Community Involvement**

Restorative justice has been shown to be valuable in developing links between prisons and the outside community in ways that support successful reintegration.<sup>33</sup> The restorative process provides a format for prisoners to take responsibility for their actions, recognize the harm they have caused and make amends to the communities they have wronged. The process also helps victims, families and communities communicate their needs and expectations to the prisoner. Studies have shown that restorative justice processes help communities become more aware of their responsibilities in the reintegration of released offenders.

### **e) Reductions in Reoffending and its Seriousness**

While in-prison restorative justice programmes are generally not used as tools to reduce recidivism, such programmes still promote successful reintegration by addressing some of the root causes of reoffending.<sup>34</sup> Analyses of recidivism rates in a few restorative justice pilots have shown some promising results.

A 2007 study found that *Bridges to Life* participants had a recidivism rate of 13.4% compared to 18.7% for nonparticipants in the same prison unit, and of those who did reoffend only 1% were for violent crimes. More significant was the attitudinal changes that inspired prisoners to “do good” as a result of feeling transformed by the programme, and studies have found significant differences in “offender’s empathy and related compassion for others, relationship and interaction with others, forgiveness from others and

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<sup>31</sup> Dhami, "Restorative Justice in Prisons," 435.

<sup>32</sup> Edgar, *Restorative Justice in Prisons: A Guide to Making It Happen*.

<sup>33</sup> Dhami, "Restorative Justice in Prisons," 435. V. Stern, *Prisons and Their Communities: Testing a New Approach, an Account of the Restorative Prison Project 2000-2004* (London: International Centre for Prison Studies, 2005).

<sup>34</sup> Armour, *Restorative Justice Dialogue*, 301.

God, vengefulness, and spirituality or religiousness". Similar attitudinal changes and recidivism patterns are found in programmes like Sycamore Tree.<sup>35</sup>

*APAC prisons:* Recidivism rates in these prisons are 10-15% compared to 70% in general prisons across Brazil.<sup>36</sup>

The *Huikahi Restorative Circles Process* in Hawai'i conducted initial surveys based on 50 completed circles for the 2005-2012 period. Of these, 100% of participants reported a *very positive* to *positive* experience of the process. After two years since a circle, 70% were still out of prison with no known new charges, which can be compared to the overall recidivism rate of 54.7%. Of the 30% who did reoffend, a telephone survey showed that most of the loved ones of those who relapsed still highly valued the circle process, and attributed the reoffending to issues like drug addiction.<sup>37</sup> Nugent noted that the children and adolescents of those participating in restorative mediation programmes committed fewer further offences than those who did not go through such programmes.<sup>38</sup>

## f) Summary

The above list of findings from the research literature is not extensive, but they do show that restorative justice in prison is an effective way of addressing the needs of victims and offenders, contributing to victim awareness and pro-social behaviour, providing a format for community involvement, fostering a better prison environment, and reducing the chances of reoffending and the severity of reoffending. There are also studies that suggest restorative justice is a cost-effective and efficient way of dealing with offenders post-sentence, although a more detailed analysis would be needed to show where costs are reduced.<sup>39</sup>

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<sup>35</sup> Ibid., 302-03. For findings see, Armour, M., Sage, J., Rubin, A., and Windsor, L.C. "Bridges to Life: Evaluation of an in-prison restorative justice intervention," *Medicine and Law*, 24 (2005): 831-851; Armour, M., Windsor, L.C., Aguilar, J., and Taub, C. "A pilot study of a faith-based restorative justice intervention for Christian and non-Christian offenders," *Journal of Psychology and Christianity*, 27:2 (2008): 159-167.

<sup>36</sup> Based on study done by Johnson, 2002, the general recidivism rates for Brazilian prisons are not officially recorded but based on reliable sources, cf. Skalmusky, 2010.

<sup>37</sup> Lorenn Walker and Ted Sakai, "Restorative Justice Skills Building for Incarcerated People," in van Wormer, *Restorative Justice Today: Practical Applications*, 177-80.

<sup>38</sup> W. Nugent, "Participation in Victim Offender Mediation and Re-Offence: Successful Replications," *Research on Social Work Practice* 11, no. 1 (2001): 5-23.

<sup>39</sup> Evaluations that suggest cost-efficiency: M.K. Dhama, and Joy, P., "Challenges to Establishing Volunteer Run Community-Based Restorative Justice Programs," *Contemporary Justice Review* 10 (2007); D. Miers, Maguire, M., Goldie, S., Sharpe, K., et al., *An Exploratory Evaluation of Restorative Justice Schemes* (London: Home Office, 2001); Joanna Shapland, Anne Atkinson, Helen Atkinson, James Dignan, et al., *Does Restorative Justice Affect Reconviction? The Fourth Report from the Evaluation of Three Schemes*, Ministry of Justice Research Series 10/08 (London: Ministry of Justice, 2008). See also the cost analysis work of English in-prison restorative justice in Barabás, *Mereps Report*, 184-88. The APAC prisons claim to run on a third of what other Brazil prisons expend.

### 3. Best Practice for Restorative Justice in Prison

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There is no consensus on what best practice for restorative justice in prisons might look like, although many of the principles of pre-sentence restorative justice would be equally applicable to post-sentence. This is the position taken by the Ministry of Justice's best practice standards:

The Principles focus on the use of restorative justice processes pre-sentence, and do not apply to the use of these processes after sentencing. However, the Principles are likely to be broadly applicable to the use of restorative justice processes at any point in the criminal justice process, as well as in other sectors.<sup>40</sup>

What follows is not a comprehensive list of best practice standards but an identification of how the more generic principles of restorative practice should apply to the prison context.

#### a) Victim-focused

Restorative justice is fundamentally a victim-centred process because of its emphasis on the healing of those who have been most directly harmed by crime. Any process that is genuinely restorative must therefore proceed in a way that is sensitive to the needs of victims and gives voice and validation to their experience. The offender-focus of prisons, however, is not conducive to prioritizing the needs of victims. Victims who seek a restorative justice conference in prison are not always treated with sensitivity and the needs of correctional staff and prison routines often trump the needs of victims. Some suggested considerations:

- Victim Offender conferences could be held while the prisoner is on temporary release, at a place where victims feel more comfortable. If that is not possible, holding the conference in the visitors' wing rather than inside the wire is preferable.<sup>41</sup>
- Prison transfers should take into account the impact of such transfers on victims and on their access to restorative justice processes.
- Care should be taken to reassure victims when taking them inside prison to avoid them being intimidated by security-conscious prison staff.

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<sup>40</sup> Ministry of Justice, "Restorative Justice: Best Practice in New Zealand," (Wellington: Ministry of Justice, 2011), 11.

<sup>41</sup> Dhama, "Restorative Justice in Prisons," 436.

- Contact with victims to discuss a potential restorative justice meeting should only be made by trained restorative justice facilitators who are familiar with the process and with the questions and emotions victims often have.

## **b) Safety**

Edgar and Newell argue that restorative justice will only work in a prison setting if there is a commitment to participant safety; “the need to create and sustain safe, healthy prisons is vital for the future development of restorative justice in prisons.” Without a commitment to safety, offenders will struggle to be genuinely honest and accept personal responsibility, and agreed outcomes will feel coerced.<sup>42</sup>

There is also a need to take into account what Van Ness calls the “unrecognized power imbalances among prisoners, between prisoners and staff, and among staff.”<sup>43</sup> As well as safety from coercion or reprisals from other prisoners, prisoners also need a sense of fairness or justice in the restorative process.<sup>44</sup>

This is clear from an anti-bullying programme in one youth-custodial setting where 24 out of 52 bullying incidents were resolved through restorative conferences because inmates viewed the process and outcomes as fairer than the usual adjudication process.<sup>45</sup> Without this sense of fairness participants are unlikely to follow through on any agreements made at the conference. Some suggested considerations include:

- Ensuring the process remains voluntary and respectful of all participants.
- Ensuring prisoners are not placed in a group where other participants might intimidate them or use what they say against them subsequently.
- Giving prisoners the opportunity to request that certain unsupportive prison staff do not attend the conference.

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<sup>42</sup> Dhami et al. argues that prisoners need to have at least the following: “limited solitary confinement, opportunities for rehabilitation, dignified and humane treatment, and a sense of personal safety and security from other inmates.”Ibid.

<sup>43</sup> Ness, "Prisons and Restorative Justice," 319.

<sup>44</sup> Andrew Coyle has argued that “the experience of imprisonment will only be positive and capable of rendering prisoners more law-abiding if it occurs within a just environment, where justice is the ‘guiding star.’ Restorative justice, in the form of the restorative prison regime, offers the potential to create and preserve such an environment for offenders, enabling victim empathy to come to the fore and be nurtured,” Mel Lofty, "Restorative Justice in Prison," *Prison Service Journal* 140 (2002): 15-16.

<sup>45</sup> Liebmann, *Restorative Justice: How It Works*, 235. The anti-bullying programme was pioneered at Medway Secure Training Centre.

### **c) Confidentiality**

Closely related to safety is the need to protect and respect the confidentiality of the process to the extent possible. Considering that prisoners live in such close quarters, information sharing about inmates can lead to undesirable outcomes. For this reason, the *Partners in Healing* project has ensured that participation in their programme is not included in the inmate's file and parole officers are not notified of their participation. This not only ensures confidentiality, it also protects the programme from being perceived as having institutional benefits for its participants.<sup>46</sup>

### **d) Honesty**

Restorative justice relies on the values of trust and honesty in order for justice to be experienced. Honesty is important not simply for disclosing the facts of a situation and establishing who is responsible, it is also essential for recounting the experience of the offending and its emotional impact on others. Without truthful speech there can also be no trust between people. But honesty and trust are a scarce commodity in a prison setting; prisoners are often extremely distrustful of each other, and even more so of staff. Some suggested considerations:

- Facilitators need to be highly skilled and perceptive in order to move inmates beyond scripted answers and guarded statements. The survey of a Hungarian juvenile institution and an adult prison both revealed the need for facilitators to understand what contributed to genuine repentance, in particular an offender's commitment to truth and personal integrity.<sup>47</sup>
- Where victims are present, offenders need to express genuine remorse. This was a problem in the Belgium restorative prison project where, as a result of restorative justice programmes becoming institutionalized, prisoners quickly learnt what they needed to say in order to appear "victim aware." Their attitude often fell far short of genuine remorse and the ownership of responsibility.<sup>48</sup>

### **f) Preparation**

Facilitators of restorative processes often note that preliminary meetings with each of the participants are essential to any constructive conference. This is no less true in a prison context. The pre-conferencing process is essential to

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<sup>46</sup> Diane Crocker, "Implementing and Evaluating Restorative Justice Projects in Prison," *Criminal Justice Policy Review* 26, no. 1 (2015): 58.

<sup>47</sup> Barabás, *Mereps Report*, 53-54.

<sup>48</sup> See Ria and Johan Verduyssen Bastiansen, "Commentary on 'Responding to the Crisis'," *Prison Service Journal* 140 (2002): 19.

understanding and assessing the underlying motives and emotional competencies of the various participants.<sup>49</sup> Some considerations for preliminary engagements:

- *Who is ready for a conference?* In her evaluation of circle groups in the *Partners in Healing* programme, Crocker notes that the only unsuccessful circle was where one participant had not yet taken full responsibility. The impact from this one inmate led to the dissolution of the group. Crocker concludes that only inmates deemed ready for the experience should be invited to participate, which means that there needs to be adequate preparation of inmates before commencement of any programme.<sup>50</sup>
- *How might the restorative process affect participants?* Restorative justice work in prison will likely encounter offenders with much higher rates of intellectual and personality disorders than in the general population.<sup>51</sup> One factor for practitioners to consider is the prevalence of depression and self-harming in prison communities and how a poor restorative justice process might contribute to these.<sup>52</sup>
- *What are the emotional and verbal competencies of participants?* A restorative justice conference often evokes strong emotions, yet many prisoners lack the skills for articulating such emotions in a non-threatening way. In-prison restorative justice needs to be attentive to the linguistic and emotional competencies of the participants and may possibly have to utilize scripts of some kind. Attention also needs to be given to how strong emotions can be expressed without creating an unsafe situation or provoking post-conference reprisals.

## **g) Community Involvement**

As the examples above show, a goal of many restorative engagements is the successful reintegration of offenders back into the community. This re-integrative process needs to happen from both sides: prisoners need to feel they have made amends and can begin to be contributors once again to society, and communities, while expressing their disapproval of the wrongdoing, need to extend their resources to support the prisoner's transformation. Restorative justice is uniquely suited to address the range and complexity of the needs that arise from the relationship between returning prisoner and community. The following factors need to be considered:

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<sup>49</sup> Liebmann, *Restorative Justice: How It Works*, 253-55.

<sup>50</sup> Crocker, "Implementing and Evaluating Restorative Justice Projects in Prison," 58.

<sup>51</sup> See Barabás, *Mereps Report*, 58. Who cite that at the very minimum 27-46% of prisoners are in a mentally anomalous state.

<sup>52</sup> Berit Albrecht, "The Limits of Restorative Justice in Prison," *Peace Review: A Journal of Social Justice* 23, no. 3 (2011).

- Communities need to be aware of how the prison is assisting in the offender's rehabilitation so that they might prepare themselves to address the specific needs of reintegration.<sup>53</sup>
- Prisoners need to be made aware of how their offending has had an impact on the community, as well as their own victims. Dinsdale's 2001 survey found that while 91% of prisoners recognized their crime had caused harm, only 14% realized the community had been affected by their offence.<sup>54</sup>
- Inclusion of community members in restorative programmes has been shown to be critically important for prisoners, as it gives them hope for a life outside of prison as well as providing them with supportive connections to the outside world.<sup>55</sup>

## **h) Regime Resistance**

One of the most important pressure points in implementing restorative justice in prison is the degree of co-operation or resistance of prison staff. No other factor is cited as frequently in the literature as this.<sup>56</sup> Restorative justice initiatives often encounter resistance from staff and are repeatedly obstructed by the prison regime. This resistance can be as a result of any number of factors: a view amongst staff that restorative justice is unnecessary or a soft-option; annoyance at the time and energies required of staff; fear that restorative processes invalidate the traditional role of prison officers; or worry that restorative justice will lead to a questioning of the dominant values and practices of the prison.

In their book *Restorative Justice in Prisons*, Edgar and Newell note that many of the limitations of the prison environment for fostering restorative justice relate to the role of prison staff. Prison officers administer a regime that is characterized by features that militate against restorative outcomes:<sup>57</sup>

- *Coercion* – the practice of giving of orders and backing them up with sanctions limits individual empowerment;
- *Separation* – structures designed to maintain physical separation between the perpetrator and the victim make dialogue more difficult;

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<sup>53</sup> Stern, *Prisons and Their Communities: Testing a New Approach, an Account of the Restorative Prison Project 2000-2004*.

<sup>54</sup> J. Dinsdale, "The Restorative Prison Project: Restorative Justice in Hm Prison Holme House."; cited in Dhimi, "Restorative Justice in Prisons," 445.

<sup>55</sup> Crocker, "Implementing and Evaluating Restorative Justice Projects in Prison," 58.

<sup>56</sup> See, Dhimi et al. (2009) and Newell (2006)

<sup>57</sup> Edgar, *Restorative Justice in Prisons: A Guide to Making It Happen*, 24.

- *Controlled regime* – the limited autonomy of prisoners makes it more difficult to make amends directly to the victim, for example by painting his fence or digging her garden;
- *Punishment* – the punishment at the heart of imprisonment is the deprivation of liberty, which only restricts the options available to prisoners but often makes them feel like victims themselves. This makes it much more difficult to accept responsibility for what they have done to others.<sup>58</sup>

Other factors could be added to this list:

- *Power imbalance* – the balance of power in prisons is asymmetrical and hierarchal, whereas restorative justice presupposes equality between participants as a way of reinforcing mutual respect and dignity.
- *Lack of responsibility* – the prison regime tends to render prisoners passive in order to achieve conformity and order, while restorative justice encourages participants to take on an active role in viewing their responsibilities and finding ways to put things right.
- *Hopelessness* – restorative justice encourages offenders to view themselves and their responsibilities in a prospective light, viz., they are not wholly determined by their past actions and have the opportunity to make things right in the future. In Guidoni's opinion, prisons do not tend to encourage this way of viewing identity and responsibility because they degrade prisoners by treating them according to their past actions.<sup>59</sup>

The example of the restorative prisons in Belgium offers an insight into some of the complexity involved.<sup>60</sup> When a restorative justice consultant was introduced into each of the 32 Belgium prisons with the job description of creating "a culture of respect," the underlying message picked up by prison staff was that prisons had no respect culture, which led to most prison officers becoming resentful of the introduced changes.

This underscores the importance of preliminary work in addressing the concerns of prison staff and hierarchy and validating their roles before implementing change. It also highlights the importance of prison managers leading by example. This did not happen in Belgium because the directors and governors were exempt from having to do the restorative justice induction course. This shifted the burden of change to lower level staff and the prison psychosocial

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<sup>58</sup> This point is made clear in Guidoni's evaluation of the Italian restorative prison unit where the social conditions of the prison made it very difficult for the prisoners to see beyond their treatment and begin to address how they have harmed others.

<sup>59</sup> Cited in Ness, "Prisons and Restorative Justice," 319.

<sup>60</sup> See Bastiansen, "Commentary on 'Responding to the Crisis'," 19.

workers, with the result that restorative justice was viewed as just another bureaucratic intervention.

Examples like this have led researchers to raise the question of whether it is more successful to introduce restorative justice in a top-down manner or whether it is better for it to remain a grassroots affair. The first approach focuses on establishing the policies and programme structure before implementation, as happened in Belgium. The second approach focuses on outside volunteers entering the prison without any conscious support of the correctional system so as to retain its grassroots origins and critical distance from the penal system.

After surveying the strengths and weaknesses of the two approaches, Dhami et al. argue that successful implementation requires a dual pronged approach: "RJ is a grassroots approach to justice and needs to be perceived as such in the prison setting, but at the same time, RJ can only be sustained if prison officials are committed to it and resources are made available for it."<sup>61</sup> A similar opinion is expressed by Liebmann and in other evaluations. The following are some of the features of successful programmes:<sup>62</sup>

- Recognition and support from senior prison staff.
- A good relationship between prison staff and restorative justice providers, especially to navigate security and fluctuating prison schedules.<sup>63</sup>
- Patience and perseverance by restorative justice groups, as prison staff and prisoners may be dubious about programmes that attempt to humanize the penal process. One survey of prison staff showed that due to intense stress many staff "displayed apathy and disillusionment which came from a lack of interest and appreciation;" it is only as restorative philosophy and practices come to be seen first-hand that staff attitudes can begin to change.<sup>64</sup>
- A clear presentation of the goals and essentials of restorative justice, otherwise prison staff will have false expectations about what is being offered. Guidoni notes that a restorative prison unit in an Italian prison failed due to a clash of perceived outcomes between staff and prisoners.<sup>65</sup> Staff were more interested in creating a different kind of prison culture and tended to see restorative justice as a way of gaining more control over prisoners, whereas prisoners viewed restorative justice more

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<sup>61</sup> Dhami, "Restorative Justice in Prisons," 444-45.

<sup>62</sup> Liebmann, *Restorative Justice: How It Works*, 253-55.

<sup>63</sup> Crocker, "Implementing and Evaluating Restorative Justice Projects in Prison," 58.

<sup>64</sup> Szandra Windt, "Opportunities for Prison Mediation Based on the Opinions of Prison Staff, Inmates and Victims," in *Responsibility-Taking, Relationship-Building and Restoration in Prisons: Mediation and Restorative Justice in Prison Settings*, ed. Tünde Barabás, Borbála Fellegi and Szandra Windt (Budapest: National Institute of Criminology, 2012), 74.

<sup>65</sup> This programme was called *A Bridge Towards New Horizons*, and it was trialed in Turin, Italy.

instrumentally as a way of shortening their sentence or aiding their chances of getting work experience and time outside the prison.<sup>66</sup>

Another potential resource for understanding the complexities of introducing restorative justice into an existing institutional environment comes from schools. Liebmann highlights some of the potential overlaps between restorative justice initiatives in these contexts. Both are closed communities, with their own sets of rules and sanctions, and both are shaped by power relationships between those who manage and those who are managed.<sup>67</sup>

In addition both schools and prisons are sites of moral and intellectual formation where their members are shaped by both bad and good influences. Many schools have shown a remarkable transformation in how they approach issues of discipline, management, learning and fostering healthy relationships as a result of moving towards more restorative and relational practices. Prisons could draw upon the experience of schools in transitioning from a traditional punitive model to a more restorative one.

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<sup>66</sup> Guidoni, "The Ambivalences of Restorative Justice: Some Reflections on an Italian Prison Project."

<sup>67</sup> Liebmann, *Restorative Justice: How It Works*, 233.

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