

REACTION ESSAY

INVOLVING LAY PEOPLE IN CRIMINAL JUSTICE

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Despite the contemporary academic and policy interest surrounding restorative and community justice, rigorous and extensive evaluations of initiatives are only recently coming to the fore, to take their place alongside small-scale case studies and anecdotes as ways of understanding and storytelling about restorative and community justice in public policy discourse. In their article, Karp and Drakulich have added a further important layer to our comprehension of the possibilities and pitfalls in implementing particular models of justice informed by restorative ideals.

In what follows, I want to reflect on a fundamental, but often unasked, public policy question raised by the Vermont Reparative Boards and the thoughtful evaluation of them provided by Karp and Drakulich; namely, why involve lay people in criminal/restorative justice interventions? As they note, “there are still important questions to ask about the increased involvement of volunteers in the criminal justice system.” In reflecting on these questions, I will draw on some recent developments in England and Wales, referred to by the authors in their article, notably, research conducted into Youth Offender Panels, which share some (qualified) similarities with Reparative Boards (see Crawford and Newburn, 2003).

RECENT POLICY DEVELOPMENTS IN ENGLAND AND WALES

The idea of justice as entailing participation and deliberation by citizens has deep normative and historic roots. In England and Wales, the central practices of participatory democracy at the heart of traditional criminal justice have been the institutions of the jury and the lay magistracy, both of which share the notion of “judgement by one’s peers.” However, both of these have become increasingly circumscribed in recent years under managerialist pressures. In the name of cost savings, speeding up court processes, and efficiency benefits, modernizing reforms have encouraged a reduction in lay participation in court processes and an increased reliance on paid and legally qualified professionals. The right to trial by jury has been increasingly eroded by successive legislation. So too, there has been

an increased reliance on professional stipendiary magistrates,¹ in part, at the expense of the lay magistracy. To an extent, this is due to a perception in government circles that the lay magistracy “as a symbol of the unmodernised court” is “now under pressure as never before” (Raine 2000:19).

In sum, recent managerialist reforms have had ambiguous effects within criminal justice. On the one hand, they have promoted the voluntarization and civilianization of public services through contracting out and challenging professional cultures and practices. On the other hand, they have encouraged a reprofessionalization and delocalization on the basis of centralized standards, performance measurements and cost efficiencies.

YOUTH OFFENDER PANELS

The Youth Justice and Criminal Evidence Act 1999 established the Referral Order as a new primary sentencing disposal for 10–17-year-olds pleading guilty and convicted for the first time by the courts. Under it, the courts are required to refer all young offenders not given an absolute discharge, a hospital order, or custody, to a Youth Offender Panel for a specified period of 3 to 12 months depending on the seriousness of the crime, as determined by the court. Therefore, unlike Reparative Boards, Youth Offender Panels deal with more than just “minor crimes.” They have become the mandatory criminal justice disposition for most young offenders appearing in court for the first time and pleading guilty to at least one offense for which they are charged. They are also available throughout England and Wales, in both “quaint and not-so-quaint settings.”

Like Reparative Boards, however, the intention is that the panel will provide a forum away from the formality of the court where the young offender, his or her family, and where appropriate, the victim can consider the circumstances surrounding the offense and the effect on the victim. The panel agrees a “contract” with the young offender, which lasts for the duration of the Referral Order (as laid down by the court). It is intended that the work of Youth Offender Panels is governed by the principles underlying the concept of restorative justice, defined as “restoration, reintegration and responsibility” (Home Office, 1997).

Unlike Reparative Boards, Youth Offender Panels consist of a mix of at least two community volunteers, recruited and trained by the Youth Offending Service (YOS),² and a professional YOS member. One of the two community volunteers has responsibility for chairing and leading the

1. Now referred to as District Judges.

2. The YOS is a multidisciplinary team comprising representatives of the police, probation, education, and health and social services charged with delivering youth justice.

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panel deliberations. The intention is that panel meetings are held in locations as close as possible to where the young person lives and from which the volunteers are drawn. After initial pilots, Youth Offender Panels were implemented across the 155 YOSs in England and Wales as of April 2002.

Research evidence from the Referral Order pilots suggests that Youth Offender Panels provide a constructive new forum in which to address young people's offending behavior in novel and different ways (Newburn et al., 2002). In this, the involvement of community panel members has been at the heart of the changes. Although not unproblematic, it may nevertheless be one of the most important safeguards against the excesses of recent managerialist pressures on youth justice. Ensuring diverse volunteer involvement in panels can lead to the inclusion of a broader range of approaches and values than perhaps had been anticipated at the outset. It may also lead to the development of localized practices that, because they are fostered, determined, and owned by volunteers rather than professionals, are relatively resistant to the demands of bureaucratic managerialism. In this manner, panels potentially open a space for a different type of dialogue to occur in response to incidences of crime.

Nevertheless, the implementation of Youth Offender Panels presents a number of fundamental challenges to the culture and organizational practice of youth justice. First, working with victims presents deep-rooted difficulties for YOSs. Integrating victims as people and a victim perspective as a way of working into the core of their services is no easy task, and it may appear to sit awkwardly alongside concerns for the young people with whom they work. Presenting victims with real choices over attendance, input, and participation requires adaptations of cultural assumptions and working practices.

One broad lesson for restorative justice from the experience of Youth Offender Panels in England and Reparative Boards in the United States may be that in practice there can be a tension between community involvement and victim participation. As Karp and Drakulich note, their research found "substantial *community involvement* and limited *victim involvement*," as did the Youth Offender Panel evaluation. Although panels received high levels of satisfaction from victims on measures of procedural justice, including being treated fairly and with respect, as well as being given a voice in the process, it was estimated that victims only attended in 13% of relevant cases. The concern is that involvement of community representatives can serve to sideline or operate at the expense of direct victim input. The community may be felt to be capable of bringing a victim perspective through its own role as an indirect or secondary victim of the crime. This expanded notion of victim feeds into restorative justice models of harm, but it may limit the involvement of actual victims. This is not to suggest that community involvement will always function in

this way, but rather that in a system that is unwilling or reluctant to accord to victims a central stake, community participation can be used as an excuse for victim nonattendance. The low level of victim participation at English panels and Vermont Reparative Boards raises important questions about the cultural and organizational challenges presented by attempts to integrate victims into the heart of criminal justice processes.

Second, working with volunteers as equal partners in an inclusive process presents real challenges to the way in which professional YOS staff work. In the pilot sites, although making significant progress, panels only uncovered a small part of the potential contribution of volunteers. There is clearly still much more that can be done in relation to their involvement as a broader resource in delivering a form of justice that links panels to wider communities in which they are located and the latent forms of social control that reside therein. Panels in England potentially suffer the same dichotomy identified by Karp and Drakulich that “competency building is one of the most theoretically exciting but practically disappointing parts of the program.”

Third, organizing Youth Offender Panels presents considerable administrative hurdles that challenge traditional ways of working. Holding panels in the evening and on weekends requires different working patterns; facilitating the attendance of the diverse stakeholders presents difficulties of organization and timing; and finding appropriate venues challenges the extent to which panels are rooted in local community infrastructures. Moreover, administering panels creatively and flexibly often sits awkwardly within a risk-averse professional culture.

Nevertheless, there are strong political arguments for greater public involvement in criminal justice, especially youth justice, as a cultural restraint against more punitive policies. Public participation may challenge the presupposition in policy discourse that the public, at every turn, demands more punishment. Although broad opinion surveys in the United Kingdom often reveal a more punitive public, we need to distinguish between “public opinion” and “public judgment.” The former is impromptu, not informed by serious discussion or weighing the facts and the arguments of others. Neither is it followed by taking responsibility for the argued-for position. Public judgment incorporates all these characteristics. Research suggests that when provided with more information about offenders and the circumstances under which they offend, the public is more tolerant and less punitive than politicians would have us believe (Hough and Roberts, 1998). People tend to respond in more moderated and thoughtful ways to events and issues about which they are well informed or personally involved than those to which they are more abstractly connected. It is public judgment that volunteer involvement in panels seeks to enlist.

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Certainly, the experience of the Youth Offender Panels is a testimony to the seriousness and thoughtfulness that lay people can bring to such forums and to the task of facilitating discussion. They may go a small way toward restoring the deliberative control of justice to citizens. Informed public debate and dialogue as a central aspect of criminal justice potentially allows for regulated ways in which people can deliberate on and search for ways of resolving conflict. By contrast, the punitive sentiments of public opinion may be the powerless expressions of a largely impassive audience observing a drama in which they have no role nor for which do they exercise active responsibility over any outcomes.

The participation of ordinary citizens in the deliberative processes of criminal justice can also help to ensure that proceedings that may otherwise be dominated by technical, bureaucratic, or managerial demands also accord to the emotional and expressive needs of responses to crime. It can facilitate the “opening up” of otherwise introspective professional values, whereby practitioners are guided by detached and disinterested performance standards, often of a kind that are more concerned with internal organizational priorities than with responsiveness to public interests. It can help break down inward-looking cultures and paternalistic attitudes held by professionals and, in their place, encourage responsiveness to the concerns articulated by citizens.

Volunteers may also help to cement relations and encourage greater synergy between local formal and informal systems of control. Involving lay people potentially affords processes of restorative justice to operate through relations of interdependencies and mutual understanding. In so doing, it promotes the importance of local capacity. Lay participation may bring with it local knowledge and an attachment to “the affective and effective world of local affairs” (Shapiro, cited in Doran and Glen, 2000:10).

REPRESENTATION

This local knowledge can be a rich source for norm-clarifying and norm-reinforcing purposes. However, it implies that lay participants are genuinely embedded in local interactions, interests, and normative orderings. The extent to which this is evident from the Youth Offender Panels remains uncertain. The pilots highlighted the practical difficulties of ensuring a representative composition of lay volunteers (Crawford and Newburn, 2002).

Research conducted eight months after the national implementation of Referral Orders suggests that by the end of December 2002, there were 5,130 panel volunteers across England and Wales who had completed training and were sitting on panels, with a further 2,009 people awaiting

training (Biermann and Moulton, 2003). The research also found that, despite an overrepresentation of women (65% of all volunteers), panel members broadly reflected the general population, as against recent census data (see Table 1). Certainly, panel volunteers are more representative of the population than lay magistrates, particularly with regard to age and ethnic origin.

TABLE 1. THE REPRESENTATIVENESS OF PANEL VOLUNTEERS AND LAY MAGISTRATES AS AGAINST CENSUS DATA

	Census 2001	Youth Offender Panel Volunteers 2002	Lay Magistrates 2001
Female	52%	65%	49%
Under 40	35%	37%	4%
60-75	19%	12%	32%
Black	2%	7%	2%
Asian	4%	3%	3%
Other non white	2%	1%	2%
Unemployed	3%	3%	N/A

Source: Adapted from Biermann and Moulton (2003)

If the role of community panel members is to reflect the profile and composition of the wider community, then YOSs appear to have done well to attract a representative group of volunteers. Naturally, there are important local variations.³ However, the research also highlighted the fact that YOS managers remained keen to attract a greater number of people from ethnic minority backgrounds and younger people, notably, young men. There are good reasons to suggest that the overrepresentation of volunteers from these groups is consistent with the idea that volunteers should reflect those young people referred to panels.

LEGITIMACY

Research suggests that volunteers may be seen by young offenders, victims, and parents as according legitimacy to the process by the very fact that they are not professionals (Crawford and Newburn, 2003). Community involvement can counter scepticism on the part of participants (notably, offenders) that decision-makers are removed from their concerns and

3. For example, the percentage of black people sitting as panel members ranged from 0 to 62% across different YOSs.

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understandings, precisely because of their professional attachments. Community members at panel meetings often emphasize their sincerity in their concern for the welfare of the offender and the wider community. This is reinforced and given legitimacy through reference to their own status as volunteers, implying something unique and important about the voluntary participation of local citizens.

These issues are significant in that, as Tyler (1990) suggests, people are more likely to comply with a regulatory order that they perceive to be procedurally just. There is some evidence emerging from the Australian research into the community conferencing initiative (RISE) in Canberra that citizens' personal judgment that the law is moral may depend on their judgment that the human agents of the legal system have treated them with respect (Sherman et al., 2003). The more legitimacy that such agents can create, the more likely they are to impact positively on higher levels of future compliance with the law.

Allied to this, there is some recent research in England to suggest that jurors had a more positive view of the jury system after completing jury service than they did before (Matthews et al., 2004). Not only did the experience enhance their confidence in the system, notably in terms of the fairness of the process, but it also increased their understanding of the criminal trial.⁴ Interestingly, the positive factors affecting confidence were the diversity of social and economic backgrounds of the jurors themselves and the fairness of the trial, including due process and respect for the rights of the defendants.

CHALLENGES FOR LEGITIMACY

Lay involvement also presents certain challenges for legitimacy. These by no means only relate to the involvement of nonprofessionals, but they also apply to criminal justice officials and legal authorities. First, despite implicit (or sometimes explicit) desires of government to use lay people as a cheaper alternative to established and costly professionals, lay involvement may not amount to a cost saving. Volunteers often introduce new costs and perceived "inefficiencies" into practices as well as frequently generating new workloads. Even though a system may be based on unpaid volunteers (such as boards and panels), of itself, this does not mean that it is necessarily cheap. There are significant costs associated with training, advice, and information provision for volunteers, as well as with other supporting infrastructures that are required simply because volunteers are involved. There is also a growing recognition that lay volunteers tend to work at a slower pace than do professional counterparts. This may itself be

4. Some 57% of jurors interviewed said that the most positive aspect of engaging in jury service was having a greater understanding of the criminal court trial.

a positive outcome of lay involvement, in that they allow greater time and space for the human and deliberative aspects of restorative justice. However, for governments keen to speed up justice and remove inefficiencies, such consequences of lay involvement may jar with wider managerialist goals.

Second, as already mentioned, volunteer involvement raises questions regarding the representativeness of those involved. If lay involvement is intended to reflect the parties “peers” or the general citizenry, then this accords a significant import to their representative composition. Such questions of representation also affect professionals who may be seen to be out of step with ordinary people because they are unrepresentative or whose legitimacy is undermined by their lack of representativeness. However, representation has a slightly different order of importance for lay people, whose primary justification for involvement may be their representativeness, as against professionals whose primary justification lies in their accountability and expertise: an amalgam of their specialisation, training, education, and professionalisation, which to a degree, sets them apart from the general citizenry.

Third and more fundamentally, lay involvement may affront cherished notions of “nonpartisanship” that are key criteria in the legitimate exercise of power, particularly in criminal justice, both at a normative level and in terms of how justice is experienced by individuals. There is an ambiguity in that the more attached to the community lay panel members are, the less likely they are to hold the required “detached stance,” which constitutes a central value in establishing facilitator neutrality and legitimacy. The more that facilitators or panel members represent particular interests or value systems the greater the danger that the interests of one of the principal parties may become sidelined or lost altogether.

Ironically, it is exactly this pressure to provide neutral and detached facilitators that increases the likelihood of professionalisation of lay panel members and the formalization of otherwise fluid and open restorative processes. Experience suggests that over time many schemes come to rely on a group of “core” staff who increasingly are seen as semiprofessionals by virtue of their work turnover, their training, and their experience. The early evidence from the Youth Offender Panel pilots suggests that a core group of panel members are increasingly relied on for much of the work. As a result, panel members may begin to look and behave more like “quasi-professionals” than ordinary lay people. In this context, lay volunteers raise questions about the appropriate competencies and skills that particular personnel should have in delivering a given service and, hence, about the nature and quality of the service to be delivered, as well as the accountability of volunteers and panel outcomes.

Lay-connectedness also raises issues regarding potential conflicts of

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interest. Herein lies an inherent tension. On the one hand, the intention is for the social distance between panel members and participants to be reduced, but on the other hand, it is undesirable for justice to be compromised by prior personal relations. The experience from Youth Offender Panels is that the civilians themselves preferred not to work in areas where they lived or knew people too well. As well as concerns for personal safety and reprisals, this was often explained in terms of the inappropriateness of exerting power and authority over those with whom they have close social relationships. Both psychologically and normatively to do so would conflict with justice.

The ambiguous evidence with regard to the role of lay people at the heart of criminal justice responses highlights the need for greater public policy attention to the normative principles, purposes, and practical implications of community involvement. As Karp and Drakulich's research admirably shows, there is still much to learn about the benefits and limits to the role of volunteers and lay people in criminal justice processes. Also, considerable scope remains for justice to be a more deliberative process in contrast to both the "professional justice of lawyers" and the managerialist understanding of "justice as efficiency." Constructively engaging the public in ways that provide an investment in, and understanding of, justice remains a central public policy challenge.

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