

RESPONSE

Towards a ‘restorative country’? An English view of Dutch developments

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In the 1970s, the Netherlands had a strikingly low prison population of 27 per 100,000 of the general population, as against 81 in England and Wales (Tonry & Bijleveld, 2007). In the next thirty years, this difference almost disappeared, with incarceration rates of 134 and 142 respectively, in 2005. However, now England and Wales has maintained its heavy policy (148 per 100,000), while the Netherlands has halved its use of prison (to 69 per 100,000) (Walmsley, 2016) and is reporting a ‘problem’ of empty prisons, some of which are being used to house asylum seekers (Smith, 2018). Fewer crimes are being reported (partly, it has been suggested, as an unintended consequence of closing police stations), but that is not enough to account for the fall. Where should we look for an explanation? Clearly, there is no single simple answer, but the development of restorative justice described by Wolthuis and her co-authors must be linked to changes in the penal, and perhaps the social, climate. The Netherlands came to restorative practices later than some neighbouring countries, but they seem to have profited from what was going on around them. Wolthuis and colleagues present it in a context of restorative practices in schools and the community, which suggests a welcome trend away from treating incidents as criminal – a trend recommended by an earlier Dutch criminologist, the late Louk Hulsman. Rob Van Pagée, of the Dutch organisation *Eigen Kracht Centrale*, was only half joking when he said that although designing a restorative city was a good idea, he hoped that the Netherlands would become the first restorative country. This article suggests that unless there are political changes, it may be heading in that direction.

Civil society is a good place to begin: it is encouraging to know that mediation in neighbourhoods, schools, youth care etc. is increasingly flourishing, and especially that neighbourhood mediation is now being delivered as a voluntary service by trained volunteers in many places. The use of volunteers spreads knowledge of restorative values through the community, and the use of peer mediation in schools is another way of spreading a climate of non-adversarial conflict resolution. It is good to know that volunteers are being used (in Utrecht) for restorative justice for adults also. But there are barriers to implementation, as the authors say, such as a lack of clear policies, and advocates of restorative practices would do well to pay attention to the structural basis that they need.

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The Dutch Notes focus on the criminal justice sphere, and mention several points that others could usefully note when developing restorative justice in their own countries. One of the most important, of course, is a legal basis, and the Dutch Code of Criminal Procedure now provides an obligation for the police and the public prosecutor to inform victims and offenders about the possibility for mediation. However, as has been found in England and Wales, this is of limited use unless arrangements are in place to provide a service and to refer cases to it. In London, for example, the mayor launched a £ 1.3 million project (about € 1.47 million) in 2016 to deliver restorative justice to London; this sounds a large amount of money, but it was spread over 3 years and 32 boroughs, or about £ 13,500 (about € 15,300) per borough per year. It was run by a consortium of four organisations, and at the launch a spokesperson for one of them said candidly, ‘First things first; what exactly is it that we will be delivering? The straightforward (and exciting) answer is that we don’t know!’¹ To be fair, he went on to say that they would map the current landscape, talk with stakeholders and plan a service, but two years later the service does not have high visibility. It is also limited by being focused on victims, with apparently little provision for referrals of offenders. Wolthuis et al. comment, ‘The Ministry of Justice must develop a clear policy on restorative justice’; British advocates of restorative justice will strongly agree. In England and Wales, there are not even centrally collected statistics for restorative justice. The Dutch are showing flexibility by using other methods such as ‘restorative conversations’ and family group conferences. They have noticed one point that others have missed: that cases where the parties know each other or are likely to meet each other are especially suitable for mediation – and it could often be done in a civil, not criminal, context even though the act was technically an offence.

The Dutch initiators seem to have proceeded in a systematic way, with pilots followed by implementation. The authors comment that ‘Some participants did, however, report unsatisfactory experiences’. The latter is only to be expected, but it would be useful to know what these shortcomings were so that lessons can be drawn from them: unsuitable cases, inadequate preparation, or ...? Similarly, it would be interesting to know why, in their opinion, few cases were referred.

The idea that ‘restorative detention’ need not be an oxymoron is not new: see for example, Goulding et al. (2008). It is encouraging to know of the plan that ‘every detention centre should develop a restorative justice action plan by the end of 2017’ (although it is not clear whether ‘detention centre’ is a synonym for ‘prison’ or a different type of institution). We look forward to hearing whether this was achieved. Prisons offer an obvious possibility of victim-offender mediation, and Dutch prisons have filled a gap by bringing in the Prison Fellowship to offer a service to victims whose offenders are unwilling or unable to take part, and conversely to offenders whose victims do not want it. No mention is made, however, of mediation between prisoners, or between prisoners and staff – but this may be implied by the extensive training of detention centre staff. This could

1 Taken from www.catch-22.org.uk/news/catch22-working-restore-london/ (last accessed 15 December 2018).

also reduce the use of physical restraint of 'difficult' prisoners, which can have unfortunate results.

Even the Netherlands suffer from one common problem: the experimental project, which is evaluated, shows good results, but then has its funding discontinued. This should be forbidden by law! Many projects can affect the prison population. For example, Article 51h of the Code of Criminal Procedure provides that, 'If mediation between the victim and the accused has led to an agreement, the court is to take this into account in imposing punishment or a measure'; if this contributes to a substantial fall in the prison population, as appears to have happened in the Netherlands, at least part of the savings should be applied to funding the projects that made the savings possible.

The Dutch are to be congratulated on having two special professorships, on restorative justice and mediation respectively; on being able to assemble eighty experts to draft a legislative proposal; and creating a massive and successful protest from civil society and criminal justice organisations and professionals against the decision of the Ministry of Security and Justice not to create a budget to implement restorative justice.

These comments have only referred to some of the points in the article by Wolthuis and colleagues, but I hope enough has been said to show that other countries may find here helpful examples to follow.

References

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