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John Braithwaite: standards, 'bottom-up' praxis and ex-combatants in restorative justice

Kieran McEvoy and Allely Albert[*]

1   Introduction

In 2000, John Braithwaite was one of many senior international scholars invited to participate in a restorative justice conference in Belfast. Unusually for such a gathering, the political stakes were high. As is detailed below, the backdrop to the event was the fact that McEvoy and other colleagues had been involved in a process of dialogue with the Irish Republican Army (IRA) aimed at supplanting their system of violent 'informal justice' with community-based restorative justice, led and staffed by former IRA combatants (McEvoy & Eriksson, 2007; McEvoy & Mika, 2001, 2002).[1] Ex-combatant-led community-based restorative justice was viewed by some as a more subtle but no less invidious means of maintaining paramilitary control in local communities (Gormally, 2001). The two-day conference – organised by the project's evaluator, Harry Mika and McEvoy – was designed to debate the merits of this model. It had been preceded by three days of meetings with the police, government officials, other criminal justice agencies as well as community organisations – in effect, a wide variety of supporters and detractors. At some of those meetings, the international speakers heard at length about the perceived risks, including that the 'brand' of restorative justice would be co-opted or sullied by the prominence of ex-combatants in the Northern Ireland variant thereof. The conference itself was attended by more than 200 individuals, including all of the key players in the preceding debates and a cross-section of the local television and broadcast media.

In light of these intense pre-conference meetings, on the night before his presentation, Professor Braithwaite told the organisers that he had decided to depart from the script of his keynote address. Inspired by what he had heard, he delivered a paper about the central role of convicts and ex-prisoners in the development of Australia, the complexities of their social and economic 'reintegration' in

1   An analogous process was also undertaken by an ex-combatant focused on one of the loyalist paramilitary factions. The project that emerged was ultimately named as Northern Ireland Alternatives (Winston, 1997).

the penal colony and the long-term consequences of that contribution to Australian legal and political culture. In short, he argued that where ex-prisoners were most engaged in civic and social life – underpinned by 'mutually reinforcing policies of reintegration and procedural justice towards convicts' – crime was at its lowest in nineteenth century Australia (Braithwaite, 2001: 49). Braithwaite's paper was an intellectual, political and moral *tour de force*.

John Braithwaite's work regularly goes against the grain in such ways, challenging others to think beyond conventional comfort zones to improve structures of justice. He has been at the forefront of endeavours designed to give voice to marginalised people and populations, routinely emphasising the need for justice to bubble from the bottom-up (Braithwaite, 1989, 2000). His work has moved the restorative field forward by advancing restorative justice as a mechanism to establish positive peace in society and promoting sustainable peacebuilding designs that provoke deeper understandings of justice as well as more effective outcomes (Braithwaite, 2007, 2014).

In this brief article, we wish to sketch the influence of elements of Braithwaite's work on the evolution of community restorative justice in republican communities in Northern Ireland. In particular, we will look at two key issues: the importance of standards of practice and the utility of ex-prisoner and ex-combatant-led 'bottom-up' restorative justice in challenging cultures of violence and complementing the limits of 'top-down' state formalism in justice delivery. Before doing so, however, we will offer some very brief background on the projects under discussion.

2 The origins and evolution of CRJI

As discussed at length elsewhere, the broader 'military' conflict in Northern Ireland between republicans, loyalists and the British state also saw a contest at community level over who had the legitimate right to police local crime and anti-social behaviour (Mulcahy, 2006). Republicans and loyalist groups were both involved in the 'policing' of their own communities through a brutal system of punishment violence that included beatings, shootings and expulsion of alleged criminal and anti-social offenders from local communities (Feenan, 2002). The republican and loyalist ceasefires of 1994 were effectively cessations of 'military' violence (assassinations, bombings, etc), but allowed ongoing 'policing' activities in the guise of punishment violence. Such violence took place in a context wherein the state police (the Royal Ulster Constabulary) were frequently attacked by the IRA and other republican groups, and were widely discredited within republican communities as the armed wing of unionism and the most potent symbol of the state's lack of legitimacy (Ellison & Smyth, 2000; Weitzer, 1995).

In that context, McEvoy and a number of colleagues engaged in a process designed to persuade the IRA to 'disengage responsibly' from punishment violence. Following an extensive process of dialogue, training and engagement with republican activists and other stakeholders, a document, titled the 'Blue Book', was produced by way of a road map to end republican punishment violence (Auld,

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Gormally, McEvoy & Ritchie, 1997). The 'Blue Book' specifically identified restorative justice as a viable alternative to such violence, drawing explicitly from Braithwaite's work on reintegrative shaming to offer a rationale for affording a prominent role to community in challenging cycles of social exclusion and re-offending (e.g. Auld et al., 1997: 7). The report highlighted the right and indeed the responsibility of communities to deal with crime and to have ownership within the justice process. Crucially, the report emphasised that whatever the shape of such community involvement, the actual practice of the projects needed to be entirely lawful, compliant with human rights and based on the theory and practice of restorative justice.[2] This emphasis on the primacy of community responsibilisation contrasted sharply with the state's wariness of the capacity of communities in working-class republican areas at the time.

As a result of the conflict and republican distrust of the state, many republican communities had a strong tradition of organised self-reliance, often with a politically resistant tone (Kilmurray, 2017). Efforts by the state from the mid-1980s onwards to cut funding to community organisations in republican areas had the effect of hardening those distrustful attitudes towards the state as well as galvanising the process of grassroots organisation and mobilisation (Ó Hadhmaill & Watt, 1990). Given that context, community support and perceptions of grassroots legitimacy were 'an absolute prerequisite' for any proposed model of community restorative justice to succeed (Auld et al., 1997: 31).

The Blue Book therefore outlined a system in which the community played an integral role, delineating a model led by trained volunteers, composed of both ex-prisoners and ex-combatants as well as 'ordinary' civilian community members, who would investigate offences, facilitate mediations and coordinate links

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2   The term 'community' can obviously have a range of meanings. In this paper, we refer to a notion of community that occurs in situations where 'members of a social grouping *feel* bound together by shared interests or identity' (Crawford, 1997: 154, emphasis in original). In terms of the areas in which CRJI offices operate, this encompasses not only a geographic component – comprising close-knit and self-sufficient neighbourhoods (Rolston, Tomlinson & McAteer, 1988; Sarma, 2007; Spencer, 2015) – but also the identities as well as cultural and political histories associated with these republican neighbourhoods. Such communities are generally segregated along ethno-national and religious affiliations (Hayes & McAllister, 2013). They are often communities that have suffered directly as a result of the conflict, in terms of both casualties but also the widespread experience of political imprisonment as well as socio-economic deprivation (Shirlow & McEvoy, 2008). They are undoubtedly communities that are in some senses 'imagined' in Benedict Anderson's terms (1983: 8) as having 'deep horizontal comradeship' as part of the broader republican notion of an Ireland free from British rule. In reality, of course, such communities are never homogeneous, and, indeed, the Blue Book explicitly points out the need to respect a pluralistic understanding of communities as having a range of political beliefs, incomes, interests, etc. (Auld et al., 1997). In order to function successfully, therefore, any community-based restorative organisation would have to strive to be as diverse as the community it served and build partnerships with a range of statutory, voluntary and religious organisations beyond that community.

between services.[3] The proposal was subsequently endorsed by both the IRA and Sinn Féin, the IRA's political wing. In 1999, four pilot projects were launched within republican areas, resulting in the official formation of Community Restorative Justice Ireland (CRJI) – an organisation committed explicitly to the principles detailed in the Blue Book concerning the use of restorative justice, upholding human rights and guarantees of non-violence (McEvoy, 2001; McEvoy, Gormally & Mika, 2002; McEvoy & Mika, 2002). Those four pilot projects have now expanded to ten, spread across Belfast, Derry, Newry and South Armagh – all still located in republican communities most affected by the conflict. Their remit has developed well beyond alternatives to punishment violence to include community dispute resolution, anti-racism efforts, support services and regular work with Probation Services, the Northern Ireland Housing Executive and indeed the Police Service of Northern Ireland.

In this article we focus on two key features of these projects – both of which resonate strongly with Braithwaite's work. First, since their inception, the projects have been governed by strict standards of practice. Second, these are explicitly 'bottom-up' projects, firmly based in communities and led by former IRA prisoners and ex-combatants.

3   Human rights, practice standards and legitimacy

Northern Ireland actually has a more mature debate on standards and principles of restorative justice than any society I know … I suspect this is because Northern Ireland has a more politicized contest between state and civil society models of restorative justice than can be found in other places. Such fraught contexts are where there is the greatest risk of justice system catastrophes. But they also turn out to be the contexts with the richest prospects for rising to the political challenges with a transformative vision of restorative justice (Braithwaite, 2002a: 572).

Given that the origins of CRJI lay in direct dialogue with people affiliated to the IRA, there were inevitable concerns that the projects might be a 'front organisation' with the ensuing power to dominate or intimidate in local communities. Certainly, such misgivings were a constant theme in the early years of the projects, particularly from political opponents of republicanism. As one dossier from a rival nationalist political party summed up,

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3   In the early days, those who became involved included republican ex-combatants, seasoned community activists (many of whom were already involved in other grass-roots activities such as residents' associations, youth groups or women's organisations) and those who were attracted by the notion of restorative justice, including those from a religious background (McEvoy & Mika, 2001; Mika, 2006). Ex-prisoners and ex-combatants constituted the majority of staff and volunteers in CRJI during the formative years. Today, some twenty one years later, although the leadership remains prominently composed of ex-prisoners, the majority of the staff and volunteers are civilians, and the organisation is relatively evenly split between male and female personnel.

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> What is bad is when this concept [restorative justice] is abused by a political party, allied to a private army, in order to keep control of nationalist areas. What we are faced with then is not, in fact, restorative justice, it's vigilantism (SDLP, 2006: 1).

In such a context, rigorous standards of practice were key to allaying such concerns. Braithwaite has long been a key advocate of such standards, arguing that principles must be established in order to defend restorative practice from co-option, as well as from risks of malpractice (2001). He contends that strong standards can prevent domination by safeguarding the rights of participants and warding off state tyranny (Braithwaite, 2001). Beyond ensuring high performance, tapping into established frameworks and practices also enables local efforts to connect to a broader 'circuitry' of knowledge (Braithwaite, 2014: 219), thus 'respectabilising' fledgling initiatives of restorative practice (Braithwaite, 2007; Braithwaite, Charlesworth, Reddy & Dunn, 2010). In Northern Ireland, CRJI intentionally linked itself to this wider praxis, grounding its practices in respected standards in a number of ways, which are detailed below.

First, several of the authors of the Blue Book had a strong background in the local human rights movement. The projects therefore drew explicitly from the relevant international human rights standards from the outset as detailed in chapter five of the Blue Book. As Braithwaite himself argued in reviewing the community restorative justice standard in Northern Ireland, they sat '... comfortably beside the values I have derived from the UN human rights instruments and beside those that the Northern Ireland Office has derived from European human rights instruments' (Braithwaite, 2002b: 573). Indeed, in the early days of discussions with republicans, stressing the *international* dimensions of these rights guarantees (as opposed to requirements under *British* Law) was a useful persuasion technique for that community. For those outside republicanism, continuously pointing towards the international human rights antecedence in the restorative justice practice framework was an important way of stressing the legitimacy of that practice – a common feature of restorative justice in many transitional contexts (e.g. Clamp, 2013). Human rights discourses thus had a legitimating role for both internal and external audiences (see further Bottoms & Tankebe, 2012).

Second, the projects were very publicly open to external visits, oversight, evaluation and inspection. For example, Harry Mika, a widely respected US-based restorative justice scholar, carried out a lengthy evaluation of both CRJI and their equivalent organisation in loyalist communities, Northern Ireland Alternatives (Mika, 2006). The Justice Oversight Commissioner, a body designed to oversee criminal justice reform mandated by the Good Friday Agreement, concluded that projects were 'engaged in valuable and effective work' (JOC, 2004: 101) which '... should not be seen as a threat but a possible advantage for the whole [Criminal Justice] system' (JOC, 2005: 105). Similar conclusions were reached by the International Monitoring Commission (a body designed to assess the effectiveness of the ceasefires) (IMC, 2004: 36, 2005: 42). Finally, the Criminal Justice Inspection Northern Ireland (the statutory agency responsible for inspecting all criminal justice agencies) has repeatedly praised the work of the community restorative jus-

tice schemes – pointing in particular to their adherence to the UN Basic Principles on the Use of Restorative Justice in Criminal Matters (CJINI, 2011, 2014).

Third, in order to make human rights 'real' in the daily lives of community restorative justice practitioners, it was necessary to subject what are often quite abstract legal principles to what Braithwaite has termed 'vernacularisation' for a local post-conflict context (Braithwaite, 2014: 221). At one level, this was a technical exercise, wherein complex legal terms were translated into more simple language and usable practice directives. At another, it required a more profound process of providing a normative base for practice. It required concerted attempts to shift practitioners away from seeing human rights primarily as a 'top-down' state-centric expression of obligations towards what Skelton (2018: 40) has described as a 'horizontal, mutually respectful rights relationship which allows for dignified rights-conscious participants to be agents in their own justice processes'. As is discussed further below, one of the key challenges for community restorative justice in Northern Ireland was the durability of deeply embedded cultures of violence built up over three decades of conflict wherein those 'punished' by paramilitaries for alleged crimes or anti-social behaviour were widely viewed as 'unsympathetic victims'. Human rights within community restorative justice provided a route to what Gearty (2006: 43) has termed *compassion*, involving a cognitive element (understanding of the other), an affective element (feeling for the other) and a voluntarist element (doing something about the other).

In sum, John Braithwaite's notion of human rights and standards of practice in restorative justice as speaking to multiple audiences and constituencies as well as providing a normative and practical framework for practitioners was embodied in the way in which these projects went about their business. Indeed, by connecting to respected and established field standards, CRJI was able to legitimise itself to the community and the state, while additionally forming a more robust restorative organisation. However, Braithwaite has warned that standards and accreditation should never be so strict as to prevent or discourage innovation and indigenous empowerment that would in turn inhibit the potential of such local programmes informing and progressing international knowledge (Braithwaite, 2002b). The next section will examine the particular contribution made by ex-prisoners and ex-combatants in the Northern Ireland context in doing precisely that.

4   The agency of ex-prisoners and ex-combatants

As noted above, a second defining characteristic of community-based restorative justice in Northern Ireland has been the prominence of ex-combatants and political ex-prisoners among its staff and volunteers. It was this issue in particular – the legitimacy and social utility of ex-prisoners and ex-combatants being involved in community restorative justice – that was the subject of Braithwaite's intervention at that conference in Belfast in 2000.

In Northern Ireland, all political prisoners belonging to factions on ceasefire were released on licence within two years of the signing of the Good Friday Agree-

ment in 1998. Twenty one years later, less than 5 per cent have had their licences revoked for reinvolvement in political violence compared with a recidivism rate of 41 per cent within one year for 'ordinary' criminal offenders (DOJ, 2018: i).[4] Those released early joined at least 30,000 ex-prisoners who had served their sentences for politically motivated offences. Jamieson, Shirlow & Grounds (2010: 10) estimate that between 13.5 per cent and 30.7 per cent of the male population in Northern Ireland aged between 50 and 59 have served time for politically motivated offences, with the highest concentration in those working-class communities most affected by the conflict. Most families have a relative or family friend who was imprisoned for politically motivated offences. Therefore, ex-prisoner and ex-combatants were and are an organic feature of such communities, with many civil society and community organisations led by such individuals. Inevitably, the role of such ex-prisoners and ex-combatants in grassroots peacemaking has been the subject of considerable academic analysis (e.g. Dwyer, 2012; Emerson, 2012; Joyce & Lynch, 2017; Shirlow & McEvoy, 2008). Summarising, for the sake of brevity, a key feature of much of that analysis has been a focus on the agency[5] of such individuals in peacemaking, rather than viewing them as a 'security problem' to manage – the approach which arguably dominates much of the literature on former combatant reintegration in other former conflict zones (e.g. Kilroy, 2015).

In such a context, the conspicuous presence of such ex-combatants and ex-prisoners has been central to the development of community restorative justice for a number of reasons.

First, it is difficult to imagine that the IRA would have been persuaded to disengage from punishment violence had there not been republicans who were willing to put their own credibility on the line by working or volunteering in these restorative justice programmes.

Second, as one of the authors has argued previously (McEvoy & Mika, 2002), ex-combatants have exercised significant community-facing leadership in challenging cultures of violence through these projects. In contexts where violence as a response to social problems became normalised and routinised, it is precisely those who had 'walked the walk' who had the most credibility in challenging violence. No one can criticise ex-combatants as 'soft' or 'weak' in promoting non-violence to such communities. They are widely respected in the communities from which they come (Dwyer, 2012; McEvoy & Shirlow, 2009). Their public championing of reintegrative shaming – emphasising, in particular, the importance of seeing 'ordinary' offenders as members of the community and the need for effective routes back into that community once offending has been addressed – reso-

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4   Sentence Review Commission email correspondence to authors, 20 September 2019.
5   Unfortunately, ex-prisoners or ex-combatants in post-conflict contexts are often viewed as objects – threats to be managed – rather than subjects with their own agency and capacity to contribute to the transition from violence (Dwyer, 2012). The privileging of the agency of ex-prisoners and ex-combatants was designed to maximise the opportunities for such individuals to be involved in improving the lives of those who lived in their own neighbourhood and thus contribute to what Braithwaite has described as 'positive peace' (Braithwaite, 2007, 2014; see also Galtung, 1969).

nates with Braithwaite's notion of shame being most effective when it is promoted by those who have legitimacy and respect in the affected community, including the offenders themselves (Braithwaite, 1989; Braithwaite & Strang, 2000). In such contexts, reintegrative shaming is deployed not only against offenders, but also against reactionary voices within the community or dissident armed groups still advocating punishment violence.

Third, in republican communities that have historically had an estranged relationship with the police, these ex-combatant-led projects have become 'an important bridge between the community and the Police Service of Northern Ireland (PSNI) in areas where policing was not yet fully integrated' (CJINI, 2014: 4). Community Restorative Justice Ireland continuously challenges the activities of dissident republican groups that are involved not only in punishment violence but also in attempting to kill police officers. A serving senior PSNI officer sits on the management committee of the projects. Local projects work closely with local police officers in agreeing which cases are appropriate for the projects and which for the police. As one Assistant Chief Constable said recently,

> These are ex-combatants affiliated to an organisation [the IRA] who used to be involved in killing police officers and soldiers. I literally trust the leadership of CRJI with my life. I meet them on a regular basis, coming in and out of republican communities, doing police business with them. They provide the leadership to the community saying it's ok to engage with the police. I believe they are 100% committed to restorative justice and to the peace process. This is what practical reconciliation looks like to me.[6]

The prominence of ex-combatants in challenging violence, providing leadership to local communities and developing critical partnerships with the police and the formal justice system in Northern Ireland embodies Braithwaite's views on the 'capacity of bottom-up restorative justice … to build state legitimacy, heal ethnic division, and undercut hatemongers' (Braithwaite, 2002a: 169). As noted above, a core theme running throughout Braithwaite's work has been his belief in the need for justice from below, using local input to design strategies that are culturally relevant and particular to each site (Braithwaite, 2000, 2014). CRJI placed ex-prisoners and ex-combatants in positions of responsibility, thereby giving indigenous actors the agency to contribute to peace processes in meaningful ways (Braithwaite, 2000, 2002a, 2007, 2014). As Braithwaite has observed – both in Northern Ireland and in his studies on Indonesian peacebuilding – ex-combatants have a unique role to play, serving as sources of exceptional knowledge, insight and expertise (Braithwaite, 2007, 2014), and driving the process at the local level, deepening justice and the prospects for peace (Braithwaite, 2000, 2002b, 2007; Braithwaite et al., 2010; Nickson & Braithwaite, 2013).

6   Assistant Chief Constable speech, Dublin, 13 September 2019.

5   Conclusion

> Northern Ireland has a more politicized contest between state and civil society models of restorative justice than can be found in other places. Such fraught contexts are where there is the greatest risk of justice system catastrophes. But they also turn out to be the contexts with the richest prospects for rising to the political challenges with a transformative vision of restorative justice (Braithwaite, 2002a: 572).

One of the easy critiques of Braithwaite's work – not one that we share – is that it is too 'optimistic' about human nature, law, peacemaking, the power of restorative justice, etc. (e.g. Acorn, 2004). Northern Ireland offers a useful antidote to such cynicism. For decades, the received wisdom in British politics was that the Northern Ireland conflict was 'insoluble' (Powell, 2008). More than twenty years on since the Good Friday Agreement – despite the exigencies of a collapsed government, Brexit and much else – our peace process remains battered but intact. More specifically, former IRA activists continue to practice and advocate for restorative justice with, if anything, even more enthusiasm than John himself.

This experience demonstrates that new restorative developments must be given the space not only to tap into the field's prominence for respectability and legitimacy, but also to modify the practice to suit the particular circumstances of their locality. In this way, the global community can benefit from local adaptation, improving approaches to peacemaking and pushing the boundaries of current understandings (Braithwaite, 2001). At the same time, the field must be careful that the borrowing of restorative justice terminology does not debase or devalue the work that has been done, maintaining respectability and guarding against co-option. In this sense, the field must continue to set standards and promote good practice but also leave room for innovation. As Braithwaite has astutely observed, 'Recent experience is ground for optimism that if we regulate flexibly, being mindful of all the local ideas for innovation, richer models of restorative justice can blossom' (Braithwaite, 2002b: 575).

Indeed, the 'indigenous distinctiveness' (Braithwaite, 2002b: 573) of Northern Ireland's programmes and the particularised form of restorative practice that developed played a key role in disrupting cultures of violence, fostering new relationships across historical divides and transforming wider society (Eriksson, 2009; Mitchell, 2008; Shirlow & McEvoy, 2008). In turn, these improvements have established novel avenues that can be harnessed on a broader level within the restorative justice field today (McEvoy, 2014).

In conclusion, we echo Braithwaite's contention that an openness to bottom-up innovation must be encouraged if societies are to see the true potential of restorative justice in resolving disputes and fostering genuine justice innovations. As noted above, Braithwaite's personal intervention at a key moment in the debate on community restorative justice in 2000 was a 'signal event' in the history of restorative justice in Northern Ireland. Before and after that event his writings have been the 'go to' place for those of us trying to help steer these projects through the challenges of an occasionally bumpy post-conflict transition. As

the great punk singer Ian Dury used to say, 'We have reasons to be cheerful'. Thank you, John.

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