UNA PADEL, OBE, 1956-2006

It is with great sadness that we have to report the death of BJCJ editorial board member Una Padel at the end of August.

Una worked for some years as a probation officer before joining the voluntary penal reform sector, working for the Prison Reform Trust, SCODA, Clinks and most recently the Centre for Crime and Justice Studies at King's College, London. As director of CCJS she ensured that a small organisation had a big impact. She served on the BJCJ editorial board from the foundation of the journal, and she was one of its most active members.

She will be greatly missed.

Our sympathy goes out to her family.

EDITORIAL
RESTORATIVE COMMUNITY JUSTICE

Restorative Justice and Community Justice are two different concepts, although they overlap in certain respects. Advocates of each have tried to argue either that restorative justice is just one among many types of community justice, or conversely that community justice is an umbrella term which fails to recognise the unique contribution which restorative justice has to offer (McCold, 2004). Far be it from me to add to the confusion, but another issue is perhaps more pressing. With the rise of state sponsored forms of restorative justice, there is a danger that community and victim involvement may become tokenistic or marginalised. Restorative justice is an attractive idea to many people for a wide range of different reasons, and it could easily be co-opted by governments which are keen to deal with the legitimacy crises facing their statutory criminal justice systems, using its terminology and concepts without embracing its principles. Rather than getting unduly enmeshed in semantic arguments about the distinctions between community justice and restorative justice, there is an important debate to be had about the need for community involvement (and meaningful victim involvement) in restorative justice.

Much of the literature on restorative justice asserts, or at least implies, that restorative justice has potential to assist in rebuilding demoralised communities (Braithwaite, 2002, pp. 67-9 cites both anecdotal and research evidence). Where non-governmental organisations have employed restorative justice methods as part of an attempt to strengthen their communities, however, this has not always been welcomed by the state. For example community restorative justice agencies in Northern Ireland, which mediate between alleged offenders and paramilitary informal 'justice' agents to avoid the infliction of brutal punishments, have been characterised almost as puppets of the terrorist organisations, not least because in some cases their active volunteers include ex-paramilitaries who have served long prison sentences. This is at odds with the image they promote of themselves, of community leaders and ex-combatants engaging in a consultation process in search of alternatives to paramilitary policing and punishment attacks (Schrag, 2005). In the case of Northern Ireland, the *Review of the Criminal Justice System* concluded that:

> coercion or threat, real or implied, are ever-present dangers which cannot be ignored, even with well-intentioned schemes which on the face of it include safeguards for the rights of offenders and victims
> (Northern Ireland Office, 2000, p. 215).

A more recent consultation document on draft guidelines for community-based restorative justice schemes acknowledged their potential usefulness, but laid down a number of apparently non-negotiable conditions for their continuing involvement in delivering restorative interventions (Northern Ireland Office, 2005; 2005a). The criminal justice minister spoke of the absolute requirement of police involvement in community restorative justice schemes (despite continuing widespread mistrust of the Police Service

of Northern Ireland, and several years of successful operation of a number of community restorative justice agencies without formal police involvement) and said there was "absolutely no question of the Government approving a two tier system of justice". The consultation document argued that restorative interventions should be limited to "low-level crime" but nevertheless specified that young people taking part must report to police stations to have their fingerprints and DNA taken.

The Northern Ireland community organisations seem likely to be offered a role parallel to that of the very successful statutory Youth Justice Agency (see Campbell et al, 2005 and O'Mahony and Doak's article in this issue of BJCJ), whereby both will be working with minor young offenders and no restorative interventions will be available in more serious cases. This seems to risk squandering the social capital generated by agencies such as Alternatives, which have been working with a range of offenders for a period of years – and to do so largely for political reasons. Clearly, in post-conflict situations it is vital to insist that human rights are respected, but successful transition to peace in other countries has taken time and a degree of accommodation of alternative forms of justice which develop during prolonged conflicts (see Roche, 2003 for a discussion of South Africa in this context; see also the discussion of the threat posed by 'mainstreaming' of Aboriginal justice programmes in Canada by Rudin, 2005).

Overall, O'Mahony and Doak take a positive view of the role of 'communities of care' in the new youth restorative justice arrangements in Northern Ireland. While acknowledging the political obstacles to involving some community agencies, and recognising the contested nature of the notion of community in societies in transition, they argue that youth conferencing is contributing to the legitimacy of the criminal justice system by fostering "a sense of civic ownership of disputes" in the way Nils Christie (1977) advocated when he argued for returning the process of settlement of conflicts to those directly involved in them. Although political 'communities' in Northern Ireland have been and remain polarised, community agencies have a considerably greater role in service delivery and policy development there than they do in England and Wales. However, O'Mahony and Doak note that the community restorative justice agencies mentioned above have to date largely been (and have felt) excluded from the new arrangements, despite their invaluable experience in the field.

Another society in transition, South Africa, is also experimenting with restorative justice – although, in view of the hardening of public opinion in recent years in the face of increased rates of serious crime, this is, as Venter and Rankin note in their article in this issue, in its infancy. New child justice legislation has been under debate for a number of years, which would include provision for statutory restorative justice, but it seems likely to remain stalled in the current political climate (Stout, 2003; 2006). Interestingly, however, Venter and Rankin show that there are grounds for optimism in terms of the views of victims, offenders and criminal justice professionals involved in pilot projects (of which, more below).

In England and Wales, the community involvement aspect of restorative justice is threatened for other reasons. The original youth justice reforms included the introduction, under the Crime and Disorder Act 1998, of the reparation order. This created the possibility of creative matching of young offenders who wanted (or were willing) to undertake reparation with the wishes and needs of their victims. Although this is a time-consuming process, it can be satisfying for both parties and beneficial to the community when attempts are made to involve local communities in providing appropriate work for young offenders to undertake. However, this three-way process has not always been successful in practice: instead, in some areas, a mechanistic, 'sausage-machine' approach developed, in order to get as many young people through reparation orders as possible (Dignan, 2002). Reparation orders were then largely superseded, under the Youth Justice and Criminal Evidence Act 1999, by referral orders, which have experienced very similar problems. These would appear to arise from ambivalence about restorative justice on the part of central government: on the one hand, its benefits are recognised (Home Office, 2003), but on the other, crime prevention is a higher priority than either the rehabilitation of young offenders or community involvement in youth justice (Dignan, 2005, p.123). As a result, both victim involvement and community involvement are given considerably lower priority in some parts of England and Wales than dealing appropriately and swiftly with young offenders. Combined with the cultural preference in many youth offending teams for helping offenders rather than engaging with victims or communities, this can lead to a debased, almost unrecognisable version of restorative justice (Williams, 2005, p. 70).

Thankfully, however, there are exceptions. Crawford and Newburn (2003, pp. 220-1) show how effectively public involvement in referral order panels can work, both in terms of legitimation of the youth justice system and as a safeguard against excessively managerialist priorities within it. This kind of lay involvement in the youth justice system, at its best, informs citizens of the workings of the system, sensitises them to the feelings of victims and offenders involved in it, and encourages panel members to use their local knowledge to address social issues which arise from discussions in panel meetings. To this extent, the referral order system offers hope of a more successful tripartite relationship between offenders, victims and communities, but those members of Youth Offending Teams involved in delivering restorative interventions remain hugely outnumbered by - and much less well-resourced than - the staff who work directly with young offenders, and this seems unlikely to change.

Arguably an even more effective way of involving local communities in the criminal justice system (Umbreit et al, 2002; Maxwell, 2005), family group conferences were also part of the 1998 changes to the youth justice system in England and Wales, although they were not specifically mentioned in the legislation. The Youth Justice Board made funding available for a number of pilot projects, although these were poorly-evaluated (Wilcox, 2003) and subsequent decisions appear to have been more dependent upon calculations of the financial cost of delivering FGCs than on other measures of their success. Few family group conferencing projects survived beyond the period for which experimental funding

was provided, although no reasoned explanation has been provided for the plug being pulled. Nikki McKenzie's article, however, describes a project which continued with the support of a range of local statutory and charitable funding bodies; her findings are moderately encouraging in terms of reconviction rates, but perhaps more importantly, family group conferences appear to change the attitudes of young offenders participating in them in a significant proportion of cases. This is consonant with the evidence available internationally (Morris and Maxwell, 2000; Masters, 2002) and it is encouraging to note that the project has survived without central government financial support because other funding bodies have apparently recognised its merits.

Crawford and Newburn's (2003) research referred to the difficulties experienced in many countries in involving victims of crime in restorative interventions. Some victims had good reasons for not wanting to take part (ranging from fear of reprisals to not thinking the offence was serious enough to merit such involvement), but some projects failed to take elementary steps to make their involvement convenient. It appeared, in relation to referral orders, that:

> experiences from similar restorative initiatives across the world and the fact that some pilot areas were more successful than others at encouraging victim attendance and input suggest that the low level of victim attendance is largely a result of poor implementation, rather than problems with the general principles underlying referral orders.
> (Crawford and Newburn, 2003, pp. 185-6)

If victims are invited to meetings at short notice, during working hours, without adequate preparation, they are less likely to want to (or to be able to) become involved. Nevertheless, the figures for victim participation in youth conferencing in Northern Ireland are at first sight startling: 69% of conferences have victim involvement. This headline figure is somewhat misleading, though, as O'Mahony and Doak go on to explain. Presumably for public relations purposes, the Northern Ireland conferencing project reports victim involvement in a way which includes 'proxy victims', and this accounts for 60% of victim 'attendance', bringing the true figure of direct victim attendance down to around 28% (which is still quite respectable given the range of reasons victims might have for not attending, and considerably higher than the rate of victim attendance reported by McKenzie's article on a smaller research project, also in this issue). Although comparative research has yet to be undertaken, it would appear that cultural differences may partially explain the wide variations in the rate of victim participation, in addition to the explanations already identified in terms of varying willingness to accommodate victims' needs and wishes in relation to the timing of meetings, preparation for meetings and so on.

The case of Northern Ireland serves as a reminder, if any were needed, of the extraordinary diversity within the various jurisdictions in the UK. Yet another reminder is the very particular situation in Scotland, where devolution has been taken much further

and a coalition government is in power. Niall Kearney, Steve Kirkwood and Lucinda MacFarlane show in their contribution to this edition how much further restorative justice can be taken even without fundamental change to the overall philosophy of a basically retributive criminal justice system. In a preview of fuller findings to be published shortly, they demonstrate using case study material the possibilities of implementing restorative justice with young people and adults, at different stages in the criminal justice process, with a very wide range of offences including the most serious. Financial reparation, largely spurned by youth justice practitioners (if not by courts) in England and Wales, figures quite largely in the Scottish reparation system, a significant difference which merits further exploration. Restorative justice is clearly being used imaginatively and creatively in parts of Scotland, and the full research report will have much to tell practitioners elsewhere about the range of possibilities open to them.

Margarita Zernova's article considers some of the practice implications of delivering restorative justice within the existing criminal justice system, as many European countries do. Beginning with abstract questions relating to the differences of philosophy between criminal law and restorative justice, she then focuses on case studies arising from her own research. These demonstrate empirically some of the problems that many practitioners are intuitively aware of; for example the imperfections of our systems for labelling individuals as victims and offenders, the overlap in practice between the categories of victim and offender, and the ineffectiveness of a legal system based upon individual cases when it comes to dealing with complex sequences of events in which a single offence is a relatively insignificant part. Criminal justice is not designed to address wider social injustices, but when restorative justice is welded onto criminal justice, the system's inability to deal with social injustice can be amplified in the eyes of participants. The article goes on to argue that this can also lead to the abuse of restorative justice practitioners' 'neutrality' in the service of crude right/wrong categorisations which belong in the domain of law but not in restorative conferences. While space permits only a few examples to be given in this article, the author is also preparing a book which will be awaited with considerable interest in restorative justice circles.

The South African Child Justice Bill has been under debate for six years at the time of writing (August 2006) and there is bound to be some doubt about whether it will ever be enacted (Stout, 2006). However, Anette Venter and Pedro Rankin show that even without enabling legislation it is possible to innovate and to evaluate the responses of interested parties to restorative interventions in the youth justice system. Perhaps not surprisingly, South African professionals express concern about the need for appropriate training before embarking on restorative justice: social workers there can specialise in probation work, but professional training for this work is relatively new. The question therefore arises of who should act as independent mediators – a question which has been raised in many jurisdictions and answered in many different ways.

One of the 'selling points' of restorative justice in South Africa is that it can be characterised as fitting in with traditional notions of *ubuntu*, or brotherhood – the idea

that our existence depends upon our relationships with others, our common humanity, characterised in the Christian tradition by such notions as 'do as you would be done by' (see Stout, 2003; Tutu, 1999). Venter and Rankin note that this concept reinforces the sense of obligation victims in other countries feel towards young offenders; elsewhere victims may express the feeling that young people are capable of change, and that therefore there is something to be gained by taking part in restorative interventions aimed at changing their attitudes. In South Africa there may be additional cultural incentives. In any event, the article, although based on a small qualitative study, takes forwards our understanding of the processes involved in the interplay of victims' feelings of empathy towards young offenders and the ways in which restorative processes can engage offenders' potential empathic interaction with their victims.

The range of articles in this special issue demonstrates that criminological and social work research into restorative justice is in a healthy state and much of it is critical of orthodox thinking. It is particularly gratifying that several of the articles are by researchers in the early stages of their academic careers, and that two are based upon doctoral research projects and another on a master's dissertation by a practitioner. The range of jurisdictions covered in the articles also allows an element of comparison, and tests the robustness of some of the claims of advocates of restorative justice in a variety of settings. This both fulfils the aims of the *British Journal of Community Justice* to provide a platform for previously unpublished or little-published authors and to disseminate original work, and will, one hopes, stimulate the lively ongoing debate about the role and potential of restorative justice.

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