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Rethinking Prison Disciplinary Processes: A Potential Future for Restorative Justice

ABSTRACT:

The movement for restorative justice (RJ) has struggled with marginalization on the soft end of the criminal justice system where the threat of net widening and iatrogenesis looms large. To realize the full potential of RJ as an alternative philosophy of justice, restorative practices need to expand beyond the world of adolescent and small-level offences into the deeper end of the justice system. Disciplinary hearings inside of adult prisons may be a strategic space to advance this expansion. This paper presents findings from a study of prison discipline in four UK prisons. The findings strongly suggest that in their current form, such disciplinary proceedings are viewed by prisoners as lacking in legitimacy. Although modeled after the adversarial system of the criminal court, the adjudications were instead universally derided as ‘kangaroo courts’, lacking in the basic elements of procedural justice. Based on these findings, we argue that restorative justice interventions may offer a viable redress to these problems of legitimacy which, if successful, would have ramifications that extend well beyond the prison walls.

KEY WORDS:

Restorative Justice, Prison Misconduct, Prison Discipline, Procedural Justice, Legitimacy

Restorative justice (RJ) has been a rare success story in the world of criminal justice activism, growing from a disparate collection of grassroots efforts into an international movement that has seen its ideas institutionalized in jurisdictions across the world (Aertson, Daems & Roberts, 2013). As others have pointed out, this success is despite the lack of a single coherent theoretical framework, agreed upon definition or even a clear understanding about what RJ involves (see e.g. Johnstone, 2011, 2014; Mika & Zehr, 1998). Johnstone (2014, p3) argues that RJ “is best described as a distinctive way of thinking about how we should understand and respond to crime (and other troublesome conduct)”. Unlike traditional criminal justice approaches to wrongdoing, RJ focuses on the interpersonal dimensions of wrongdoing and how people behave towards each other (see e.g. Johnstone, 2014, Zehr, 2005). Traditional criminal justice approaches tend to focus on determining guilt or innocence, awarding a punishment proportionate to the offence and establishing neutrality through distance from the alleged perpetrator and victim (see Johnstone, 2011, 2013; Zehr, 2005). By contrast, RJ assigns responsibility to those who are responsible for and most impacted by a behaviour for coming up with a solution for repairing the harm, emphasising dialogue as a key means of resolving conflicts and mending interpersonal relationships (Johnstone, 2011, 2014; Van Ness & Strong, 2006; Zehr, 2005).

The success of RJ has been uneven, however, with most RJ growth being in the domain of low-level, adolescent crimes and misdemeanors (Dzur, 2011; Larsen, 2013). In particular, RJ is making clear in-roads into mainstream, institutional environments, settling disputes and addressing disciplinary infractions on college campuses (Karp & Sacks, 2014) and schools

(McCluskey, 2015), for example¹. However, the use of RJ for dealing with more serious adult crimes remains controversial and rare across justice systems, even in jurisdictions like Northern Ireland and New Zealand where restorative approaches has become mainstreamed across other domains of society. The result, as bluntly stated by Greene (2013, p380) is that, “Trivial offenders who would barely register on today’s criminal justice radar (misdemeanants and non-violent juveniles) are front and center in the restorative justice movement.”

This marginalization has clear implications for the future of RJ as a transformative justice philosophy. First, it appears likely to be limiting the success of RJ in reducing recidivism and promoting positive outcomes for those victimized by crime. In fact, restorative theory would suggest that RJ would be particularly impactful for more serious, interpersonal crimes of violence (see e.g., Van Camp, 2014), and emerging research evidence supports this. Sherman (2003, p17), for instance, writes: “The first seven RCTs [Randomized Control Trials] provide some surprising... results on the effects of RJ on victims and offenders. Rather than supporting predictions that restorative justice would work better for minor offenses, the research tends to show just the opposite.”

Wood (2015) argues that this marginalization of RJ accounts for why restorative practices have not successfully reduced the use of incarceration even in those countries where RJ is widely institutionalized as an alternative to traditional justice. Worse, the focus on first-time offences and misdemeanors raises the specter that RJ practices are contributing to net-widening in criminal justice, increasing rather than decreasing the reach of the justice system (but see Morris, 2002; Pritchard, 2010). Critics also suggest that at times restorative practices are used as

¹ Although, somewhat predictably, Payne and Welch’s (2013) national survey found that schools with proportionately more African American students are less likely to employ restorative techniques in response to student misconduct than schools with majority-white student populations.

“boutique” (Bazemore and Maruna, 2009, p. 379) showpieces to cover up or distract from wider justice practices that remain punitive, bureaucratic and clearly non-restorative in nature. As a result, the radical nature of the restorative vision as a new way of conceiving justice is often undermined by existing RJ practices (Greene, 2013; Wood, 2015).

In this paper, we hope to make a case (indirectly, an empirical one) for one future of RJ that would focus on the heavy end of the criminal justice system, in particular, incarcerated adults. In doing so, we join the emerging literature advocating for the use of RJ inside prisons (see e.g., Edgar & Newell, 2006; Hagemann, 2012; Johnstone, 2014; Wallace, & Wylie, 2013). We reached this view as a result of a mixed-method study of disciplinary practices inside four UK-based prisons, involving field observations and interviews with prisoners, prison staff and management. In what follows we focus primarily on interviews with prisoners with frequent involvement in disciplinary proceedings in order to highlight the limitations of current practices in promoting prisoners’ perceptions of legitimacy. This is preceded by a review of the literature on procedural justice as it pertains to incarceration. We conclude by arguing that the institutional environment of the prison may be an opportunity for RJ to make in-roads amongst a large population of adults involved in the heavy end of criminal behavior, and that this may serve as an important gateway to the wider use of restorative practices in the criminal justice system writ large.

The Prison Adjudication Process and Procedural Justice

In order to function normally, prisons depend on prisoners voluntarily accepting the prison’s authority and/or resigning themselves to their powerless position within the system (see Carrabine, 2004; Sparks, Bottom & Hay, 1996). This compliance cannot be taken for granted given the deprivations and frustrations of prison life and the fact that prisoners are usually

unwilling captives (see Crewe, 2009; Sparks et al., 1996; Sykes, 1958). Extant research suggests that one key to obtaining prisoners' compliance is the extent to which the prison service is viewed as 'legitimate' (Sparks & Bottoms, 1995; Sparks et al. 1996). Legitimacy involves the perception that prison service authorities are "legally valid, that officials act fairly, and that they justify what they do to those affected by their decisions" (Liebling, 2004, p471). It involves a feeling that one should voluntarily comply with rules and regulations out of an obligation rather than the threat of punishment or anticipation of rewards (see Tyler, 2006). If a prison is viewed as illegitimate it is thought to lead to widespread defiance and disorder (e.g., McEvoy, 2001; Scraton, Sim & Skidmore, 1991; Woolf, 1991). In contrast, perceptions of legitimacy are thought to be associated with greater cooperation and a more durable form of compliance achieved in a cost-effective and ethically more desirable manner (Tyler, 2008).

In prison, the manner in which people are treated, and 'right' staff-prisoner relationships, are viewed as key to this process as these day-to-day experiences form the basis on which people judge the legitimacy of the prison (Liebling, Price & Shefer, 2011; Sparks et al., 1996). Liebling (2004) argues that 'right' staff-prisoner relationships are respectful, have clear boundaries, address conflict rather than avoid it, are consistent and provide justification for variations from the norm. In this way, 'right' relationships should foster feelings of legitimacy as people feel listened to and considered.

Research suggests that all people (not just prisoners) care deeply about being treated fairly and respectfully because it indicates that we have value and do matter (Lind & Tyler, 1988). Such treatment is especially critical, however, for those who feel marginalised or socially excluded (e.g. prisoners) (see Anderson, 1999; Bourgois, 2003; Butler, 2008; Sennett, 2003). A failure to treat people fairly and respectfully can lead to feelings of anger, shame, denial,

aggression and feeling justified in ‘lashing out’ at others, especially amongst those from individualistic orientated cultures (Butler & Maruna, 2009; Katz, 1988; Miller, 2001; Scheff 2002). According to defiance theory, those who perceive they have been dealt with unfairly, disrespectfully or in a stigmatizing manner and do not feel bonded to society are especially likely to react with defiance or indifference to sanctions (see Bouffard & Piquero, 2010; Sherman, 1993; 1995). These dynamics can be magnified in an environment like the prison (Pfundmair et al. 2015).

Procedural justice theory would suggest that prisoners need to feel that they are being treated fairly, justly and respectfully if they are to continue to view the prison service as legitimate, even when accepting adverse outcomes (Jackson, Tyler, Bradford, Taylor & Shiner, 2010; Liebling et al., 2011; Sparks & Bottoms, 1995; Sparks et al., 1996; Tyler, 1990). Procedural justice involves individuals’ feeling that their ‘voices’ have been heard, that rules are consistently and neutrally applied, that those in authority are sincerely concerned about their well-being and that they have been treated with dignity and respect (see Jackson et al., 2010; Tyler & Huo, 2002). Tyler (1990, 2006, 2008) proposed that the relationship between procedural justice and compliance is mediated by perceptions of legitimacy.

Although a considerable body of evidence supports these propositions in the wider criminal justice system (see e.g. Tyler, 2006; Sunshine & Tyler, 2003), Reisig and Mesko’s (2009) research raises questions about the applicability of this model to a prison context. They suggest that in the prison they studied, procedurally just processes may have been used to render unjust outcomes, which over time eroded prisoners’ sense of obligation to obey prison officials. Secondly, they suggest that prisoners base their perceptions of legitimacy on less frequent but more dramatic interactions with prison officials (e.g. grievance and/or misconduct hearings).

More recent research by Beijersbergen and colleagues (2015) identified a longitudinal relationship between prisoners' perceptions of procedural justice and involvement in prison misconduct. They found that perceptions of procedural justice significantly influenced prisoners' involvement in misconduct in a lag period of approximately three months, and that this relationship was fully mediated by feelings of anger. Previously, Beijersbergen and colleagues (2014) highlighted the links between procedural justice and prisoners' psychological well-being, with those reporting higher levels of procedural justice also reporting higher levels of psychological well-being (Beijersbergen, Dirkzwager, Eichelsheim, van der Laan & Nieuwebeerta, 2014). Beijersbergen (2014) suggests that procedurally unjust treatment in prison may provoke negative feelings such as anger, frustration and marginalisation which can in turn lead some to act outwards (e.g. aggression, disobedience), while others may direct these feelings inwards (e.g. depression, anxiety). Of course, not all prisoners react defiantly when they are treated in an unjust or disrespectful manner (see Beijersbergen, 2014; Butler, 2007, 2008), but our own previous research (Butler & Maruna, 2009) likewise found that feelings of disrespect by authority figures can lead prisoners to feel *justified* in using violent behaviour in self-report accounts.

A Study of Perceptions of Prison Discipline

In order to better understand these dynamics of compliance and defiance in the prison context, we draw on data from a mixed-method study of disciplinary practices that involved interviews with prisoners and staff and observations of misconduct hearings in four UK prisons (two adult male prisons, one young offender center and one female prison) over a six month period. The study was originally commissioned in order to better understand why individuals

from certain minority groups within the prisons appeared to be punished more often than prisoners from other groups (for a full methodology of the wider study, see Maruna & Butler, 2015). However, this necessarily involved an exploration of the perceptions and interpretations of those individuals at the frontlines of the punishment process – staff and prisoners, including the most frequently punished prisoners in each establishment.

In-depth, semi-structured interviews were conducted with 34 prisoners across the four facilities. Rather than a random sample, potential participants were identified using a stratified, purposeful sampling approach. Each facility represented a different strata in the sample and potential participants were purposefully identified from anonymized Prison Service records, listing prisoners by their previous punishment history, prison number, age, offence type, religious background, ethnicity, sentence length and regime level. On the basis of this information, the research team identified two matched samples:

High Punishment Group – Prisoners who had experienced prolific cycles of punishment within the prisons. The mean (average) number of adjudication (misconduct) hearings each prisoner in this group had participated in was 23.37.

Comparison Group – Prisoners who had *not* experienced prolific cycles of punishment within the prisons. The mean (average) number of adjudications (misconduct) hearings that each prisoner in this group had participated in was 0.1.

The two samples were intentionally ‘matched’ on factors such as length of time in prison, the offence that led to the person’s imprisonment, the prison where they were serving their sentence, sentence length, age, ethnicity, gender and religious background (see Table 1). The comparison

sample was included in order to provide perspective on the high punishment group's experiences and interpretations.

Table 1 About Here

Fourteen staff members including prison officers and governor-level members of prison management were also interviewed across the four establishments. Each was chosen because he or she had considerable involvement in adjudication processes. Observations of misconduct hearings were also facilitated in the four prisons in order to allow the researchers to become familiar with how these hearings were conducted in practice and to provide a context for the interview material. Audio recordings of all interviews as well as ethnographic fieldnotes were transcribed and content-coded using NVIVO software. Thematic patterns were identified and used to inform the coding of the data. All necessary ethical approval and security clearance was sought and obtained for the research prior to its commencement and relevant ethical and security policies and procedures were adhered to throughout the research (see Butler & Maruna, 2011).

Perspectives on a 'Kangaroo Court'

In UK prisons, the 'adjudication process' refers to the formal disciplinary system designed to help maintain order, control, discipline and a safe environment, by investigating offences and punishing those responsible, as well as to ensure that the use of authority in a prison is lawful, reasonable and fair (HM Prison Service, 2005). Although most misconduct is dealt with informally, more serious charges against prison rules can result in an 'adjudication hearing' in which both the accused prisoner and his or her accuser on the prison staff present their cases in

an audio-recorded session (HM Prison Service, 2005). These court-like hearings are facilitated by a governor-grade member of the prison management, who acts as the judge in the case determining both guilt and a sentence (almost always cellular confinement of a certain number of days) according to pre-set guidelines. One adjudicator explained:

Staff: There are guidelines. I wouldn't overly follow them simply because I think they're a bit too prescriptive and a bit too harsh in truth. Every single award I think, bar one, is cellular confinement and that's not appropriate at all times.

Int: *It does sound like a 'one size fits all' approach...*

Staff: Yeah, although look, the guidelines would give you a low-range/high-range spectrum [to choose from] (Staff 5).

The stated purpose of the adjudication process is to "provide fair and just treatment for prisoners (and victims) within the prison discipline system by ensuring that all adjudications are conducted in accordance with the principles of natural justice and without unfair discrimination" (HM Prison Service, 2005, p9).

On the other hand, nearly all the prisoners we interviewed described the misconduct hearings at the prisons as 'kangaroo courts' in which prisoners were always found guilty regardless of what they say or do not say in the hearing:

It's kind of kangaroo court. [...] One of the officers' charge you and they say you're guilty, that's it. Even if you're in the right or not (Int. 31)

Yeah it's what they call in prison 'kangaroo court' cause it's very, very, very unlikely that you're gonna be found 'not guilty' down there like unless it's, oh it's -- I've never heard about it like you know. [...] It's very rare. You're always found guilty, in my

experience you are. A lot of other people I've heard as well. Say another officer is charging you and going to all that trouble with the paperwork and charging you for you to go down in the adjudication. For you to come off [not guilty] you know? They don't like that (Int. 30).

Although such a negative perception of the misconduct hearing may be expected from the high punishment group, this view was also shared by the comparison group, who generally had no first-hand experience of the adjudication process themselves:

[The misconduct hearing is] A load of rubbish. [...] They don't listen to anything. They have their mind made up. [...] And all you get is put behind a door [in segregation] (Int. 2).

If I had been a different person and had a different attitude I would have turned very, very quickly against the whole system. [...] You're not gonna win. [Adjudicators] are not going against the [officer] they work with every day of the week 'cause prisoners come and go [...]. [Officers] have to stay together for maybe 30 years, they're not gonna fall out with each other over a prisoner, cause they think we are the scum of the earth as it is (Int. 28).

The explanation for these views of adjudications appears to be related to both the assignment of adjudications by prison officers but also to the dynamics of how the process is handled. Both are discussed below.

Court of Last Resort or First?

Prison staff fully acknowledged that the majority of prisoners were likely to be found guilty in adjudications, but attributed this to accompanying evidence such as CCTV footage.

On average 95% [are found guilty], but quite often you have other evidence, you know, you'd be sitting there with a mobile phone, drugs [in someone's cell], [or] video evidence (Staff 11).

Interviewed prison staff also expressed understandable skepticism about prisoners' denials and self-exculpations in the adjudication hearings. One sarcastically explained:

When you talk to prisoners the first thing you find out is that we don't lock up any guilty men, everybody in here is innocent, nobody ever did anything (Staff 13).

Most frequently, the prison governors we interviewed argued that the effort involved in completing the paperwork required to charge someone through the adjudication process was substantial enough to discourage officers from abusing the system. Because prisoner misconduct hearings involved a significant amount of paperwork, staff only charge prisoners for serious breaches of behavior and used alternative mechanisms, such as incentive schemes, to discipline prisoners for more minor infractions:

You also have to bear in mind that it is a fair bit of hassle for an officer [to charge a prisoner with misconduct] [...]. Officers by and large do not [want to] write anything down on paper (Staff 8).

This argument about the select and serious nature of adjudication offences was somewhat contradicted by prisoner interviews and the observations we made in the fieldwork component of this research. The typical charges made during our own observational study of adjudications included ‘disobeying any lawful order’, ‘damage to prison property’, and ‘charges against good order and discipline’. This largely reflects administrative data from the four establishments which revealed that over a two-year period the most common misconduct charges were having an unauthorized possession, using foul and abusive language, damaging prison property, offences against good order and discipline, and disobeying direct orders.

In two striking examples, one individual was charged with disobeying an order because he was too slow making his toast at breakfast, while another was charged with damaging prison property for peeling some of the plastic off his prisoner ID card. Although these are likely extreme cases, these would confirm the views of both frequently punished prisoners and at least one member of staff we interviewed:

As I said there they’ll charge you or adverse you for the most minuscule thing, you know what I mean? You know you get some lunatic staff in here. (Int. 2)

In any other jail, an incident like the one you just heard about [an adjudication involving an overly long shower], you’d handle that informally. You’d use some wit, some interpersonal skill. [...] You’d have a chat with the guy if he kept doing it and was causing some sort of problem, but you wouldn’t go immediately to an adjudication. [At this prison], it is ‘break a rule, you get punished’ (Staff 4).

Particularly worrisome was that interviewed prisoners did not attribute their charges to their own behaviors but rather to the individual characteristics of staff and their relationships with those staff:

They don't like you, not your behavior, it's just you. [...] It's not on my behavior, it's whether you're liked or not. (Int. 18)

Our observations suggested that the over-use of adjudications in some establishments was both a symptom and a cause of poor staff-prisoner relationships inside the prison. That is, formal adjudications were used precisely because staff felt that they lacked enough perceived legitimacy to reason with prisoners about minor infractions, because they felt that they needed the authority of a court-like setting in front of a prison governor to achieve order in the prison. At the same time, the greater recourse that was made to these formalized proceedings, the more prison officers' authority and legitimacy was eroded and undermined among prisoners. Interviewees on both sides (staff and prisoners) said they felt distinctly 'dehumanized' by those on the other side, and trust between the two groups was nearly non-existent.

Procedure without Justice

Prison staff argued, not unfairly, that the adjudication process as practiced was uniform, transparent and accountable:

I have to be 100% squeaky clean when I do adjudications. I cannot run a slipshod, corrupt system here because every word I say on adjudication is taped. [...] I'm far too accountable for that (Staff 8).

The consistency with which staff administered adjudication hearings was obvious throughout our observations. In each case, care was taken to hear both sides of the case, and identify any evidence that could verify or contradict the charges at hand.

However, when we asked prisoners whether they felt they had an opportunity to have their voices heard in the adjudication process, some argued that there was a difference between hearing and listening:

You can talk all morning, but there's no question, you're guilty. All prisoners have no faith in the adjudication system whatsoever. [...] It's a kangaroo court. There's no fairness, no equality to that. They read out the statements and that's it really (Int. 17).

No, they listen but they don't pay no heed. They will listen. They have to listen. They have to be seen to be listening, but at the end of the day a governor's role is to back up one of his officers over 2 prisoners, 3 prisoners, 1 prisoner, whatever it is (Int. 29).

These perceptions discouraged many of the interviewees from arguing their cases at all, despite the opportunity to do so:

No matter what you say or anything in the adjudication, they ask you 'how do you plead?' I plead guilty. At the end after hearing all the evidence 'I find you guilty'. If I plead innocent, [they say] 'I now find you guilty.' I done about 3 or 400 adjudications, I mean I hold the record in [prison name], and never once was I ever found innocent, never ever once like. It's an unfair process (Int. 13).

In fact, some of the comparison group sample had heard that if you defended yourself in an adjudication, pleading 'not guilty' or offering mitigating circumstances, that you would be making the process harder on yourself and risking both more severe penalties from the adjudicating governor and, more worryingly, repercussions from prison officers:

Look I would just go in and tell them 'guilty' and that's it and you might be OK. You know the words my friend said to me? 'If you go in and plead guilty he might let you keep [some privileges] but if you go in 'not guilty,' deny it, say that you didn't do it, he is going to find you guilty anyway and give you more. That's the way it is, you know what I mean (Int. 23)

One interviewee in the high-punishment group supported this argument from a position of some experience:

Prisoner: But then that [defending yourself] could make it worse for you.

Int: *Can it? In what way?*

Prisoner: It's just -- obviously you get more days [in segregation as punishment] (Int. 12).

Similar to many of the prisoners we observed in the adjudication hearings, then, these interviewees said they kept their heads down, refused to engage with the proceedings, and just pleaded 'guilty' or 'no comment' to get the process over with as quickly as possible. This in turn added to the number of guilty verdicts, creating something of a self-fulfilling prophesy regarding the unwinnable nature of proceedings.

Generally, prisoner interviewees argued that the majority of adjudications they were involved with came down to the word of a member of staff over the word of the prisoner. This was not, they felt, a competition they could win:

Unfortunately no matter what happens in here, do you see, if I walked out through that door [...] and a prison officer turned round and hit me with a baton over the head and I said 'He hit me,' the rest of them would say 'No he didn't'. You don't win, like you've got to learn you will never ever ever win in jail, you are never going to win, it doesn't matter what evidence you have, you are not going to win. They stick by each other (Int. 28).

And no matter what, you're up against the staff in anything, you're always losing, even if it's not true. [...] because the Governor in here now, his brother is a PO [Prison Officer], and his other brother is a PO, then there's one in security. So no matter what, if you complain about something and [...] he's going to back his brother (Int. 12).

Of course, such allegiance can be found among many occupational groups, and from the point of view of staff interviewees, this is almost a necessity in the difficult world of prison work:

You have to be united to run a jail like this. That's not about 'us' and 'them', but you do have to be together to make it work. (Staff 2)

When staff were asked about this issue of balancing the word of an officer against the word of a prisoner, all agreed that it was a highly delicate process fraught with power imbalances:

Staff: Yeah, that would be a fairly standard situation. I would say that half of the cases I face are about disobeying an order. I could check that statistic though.

Int: That has to be difficult as one would think it would often come down to an officer's word against a prisoner's. You have to feel some obligation to side with the officer in such situations, no?

Staff: You do, yes. In cases of 'disobeying an order' it is nearly impossible to be found innocent. I have had situations before where the person has been able to prove their innocence through CCTV or testimony, but you saw in there how difficult that can be (Staff 8).

On the rare occasion when one officer did testify against the word of another officer, in one of our interviewees' stories, the adjudication process gained remarkable legitimacy in the eyes of the prisoner involved and their relationship with that prison officer improved as well:

Int: I mean has that incident kind of changed your perception of that officer in any way or is it still the same what you would have thought of him before...

Prisoner: No, well I actually think, well, I think differently of him now, because, well, they're all obviously supposed to stick together, but for him to go down there [to the adjudication] and say a different story from his colleague, well, I would say 'hello' every time I see him, and things like that. I've no bad feelings against him. (Int. 30)

Likewise, some of interviewees suggested that they wanted to call witnesses to testify on their behalf, but could not. They say that the only witnesses who would likely support their side

of the story are fellow prisoners, and other prisoners are reluctant to appear in the adjudication for fear of angering staff and finding themselves in similar trouble.

Prisoner: [Any witnesses] would be afraid of getting grief from the staff after.

Int: *Has that been your experience?*

Prisoner: I've seen it loads of times.

Int: *Really? And do [witnesses] then testify or would they just say 'no?'*

Prisoner: The harder ones, the ones that can do the time can do it [act as witnesses]. But not the vulnerable ones. They will break down and not do it because they'd know what they'd get from the staff (Int. 2)

Another said that prison staff would not allow him to call witnesses of his own, even though the prison officer accusing him was able to bring his own witnesses:

See if I go down and plead not guilty, I call my witnesses, this happened to me there a couple of weeks ago. I called my witnesses. They wouldn't let my witnesses come. [...] Basically staff witnesses obviously are going to bring the staff [against] me without bringing my witnesses, do you know what I mean? The adjudication is not fair. They'll find you guilty no matter what. (Int. 4)

Prisoners are also allowed to consult a solicitor regarding their adjudication in a variety of ways (often by video link), but legal representatives are rarely ever present in an adjudication itself. As one adjudication governor explained:

There's a thing called the Tarrant principles. Basically it's three or four different ways in which a prisoner can ask for representation on an adjudication. I have never in the past

granted it. Under the Tarrant principles I've never found a reason why I should. The vast majority of them, the vast majority of them are more than capable of representing themselves. More than capable. And I have to also look at it from our staff's perspective. A lot of our staff aren't the brightest. You don't need a huge amount of qualifications to be a prison officer you know. And to have them be in, being given the third degree by a solicitor, I have to be fair to everybody. (Staff 11)

Still, staff recognized that adjudication proceedings could be particularly difficult for prisoners with learning disabilities, low literacy skills or mental illnesses to follow. This was supported by prisoner interviewees who said they often felt alienated by the adjudication proceedings:

In my opinion I was just, ye know, I was [...] how can I put it to you [...] I was there at the other side of the table and they were just talking among themselves about me. Ye know. It's very, very rude. You know they were just having a full blown conversation about me and I was sitting there and I was like 'hello'. (Int. 27).

The worst thing is the communication with prisoners and staff. Communication is a big thing. They treat you like you're a wee kid. But, this is a man's jail. We aren't wee kids, but they will treat you like that. Talk to you like you're an idiot (Int. 17).

Prisoners described feeling that they were interrupted, talked down to, silenced, intimidated and manipulated in the adjudication proceedings:

Int: So do people then try and present their side of the case?

Prisoner: Well you're given a few minutes before the governor tells you whether he finds you guilty or not guilty, but when you go into it, there's about four officers, security or governors sitting there. You're only trying to put your point across and just as soon as you've started, you see they're not really listening to you. They have it down as being recorded and stuff but the attitude they're giving. They're not listening. There's not even time. Sometimes as you were trying to put your point across they're talking at the same time. I don't find it very fair to be honest. (Int. 30).

Overall, almost all of the prisoner interviewees we spoke to objected to the entire adjudications process:

I've always found the adjudication process to be a bunch of fucking jumped-up power-hungry fucking scumbags that think they are something (Int. 13).

Although others were more circumspect and sociological in their assessments:

Do you want the quick bottom line of adjudication? See the adjudication see once you're charged, you'll be found guilty simple as that, forget all this 'I'll beat the system' all that craic, cause you won't, it's as simple as that, but the reason for that there is the rules of influence in the adjudication aren't the same as what they would be in a court, cause law and order would break down right. And I can understand all that you know because if everybody was getting off with what they've done, the rules of evidence and all the same there'd be fucking anarchy in the jails right? But for that reason, that's open to abuse too, you know what I mean? (Int. 33)

Yet, when asked how they would improve the process, many were at a loss as they felt that it did not matter what changes they would make:

Int: *OK. So if you could change anything about the adjudication process then, what changes would you make?*

Prisoner: I don't know, make it fairer?

Int: *How do you think you might do that?*

Prisoner: Get somebody else from outside in to do it?

Int: *So rather than prison staff members doing it?*

Prisoner: Yeah. (Int. 31).

A Restorative Future?

Our own conclusion, after completing the project described above, was that the prisons would benefit enormously by replacing their adjudication process with a restorative procedure in which those individuals charged with rule breaking infractions engage in the adjudication process in collective, participatory, problem-solving fashion, guided by restorative theory (e.g., Zehr & Mika, 1998) in responding to incidents of misconduct. For instance, imagine the following scenario, based on one of the adjudications we observed: A male prisoner tosses a plastic cup half-full of liquid toward a prison officer, nearly hitting her. The officer refers the case to an adjudication hearing. In the traditional hearing, the officer will be asked to explain the charge, the prisoner will be asked how he pleads and whether he would like to say anything in mitigation. A large number of prisoners will, with heads down and eyes averted, mumble 'guilty,' especially if there is CCTV footage of the incident, as they do not see any way of avoiding the charge. Others, less experienced with adjudications, will mount a case for

mitigation, often claiming some sort of harassment or provocation on the part of the staff member. In either case, the result, almost inevitably, will be cellular confinement (segregation) and a loss of privileges of some sort (loss of television, gym, association). During this time, the prisoner's anger at the officer will potentially increase, exacerbated by the painful conditions of solitary lockdown. When the prisoner returns, he or she will make life difficult for the officer and the officer may in turn make life difficult for the prisoner. The cycle continues.

Alternatively, in a more restorative framework, the adjudication process would instead be used for problem-solving. Like in an adversarial model, both sides would tell their story, but they would tell their stories to the other person involved in the incident, in a dialogue, and with supporters on both sides. So, perhaps the officer would begin by explaining the harm that the prisoner's act did to her. She was intimidated. She did not know what liquid was in the cup. Perhaps the incident brought back other, more traumatic episodes during her time in the prison. The prisoner would then have the chance to apologize and also to account for his behavior. Perhaps he was going through a particularly difficult struggle at the time. Perhaps he felt the officer had been demeaning him or pushing him in various ways. Both sides would likely learn a great deal more about the other individual as a human being in extraordinarily difficult circumstances, as keeper and kept. Each might find, in such a discussion, that there were things he or she could have done differently and want to do differently in the future.

The role of a restorative moderator (ideally a prisoner trained in restorative theory and practice) would be to mediate the discussion, making sure that both individuals had the opportunity to speak and be listened to. She or he would listen for opportunities for a forward-moving intervention, a way to make the situation right between the officer and the prisoner and restore a good working relationship on the wing. The focus would be on the fact that 'No matter

what we decide at this hearing, the two of you need to go back on that landing and co-exist,' as such 'what is needed to repair this relationship.' Perhaps the prisoner will volunteer an apology to the staff member, and perhaps the staff member will agree to try to be more sensitive or less demeaning in her treatment of the prisoner in the future. Both could agree that the prisoner will do some form of service work around the wing as a way of making amends. The goal is to promote restoration of peace or the resettlement of the individual back onto the wing in the best circumstances.

Such a scenario is clearly an idealized version of what would occur in a restorative adjudication process. However, echoes of restorative practice can already be heard in some of the practices of adjudicating governors even in the prisons we studied. For instance, one prison governor explained:

Staff: Now, what I will quite often do is I will say, 'Well, I'll tell you what I am going to do. I am going to make an award [punishment] and I am going to suspend the award if you will make a written apology to the officer. [...] What it does is that puts the onus of responsibility back on the person with the offending behavior and if they are man enough. And, quite often -- [...] I have had the officer sitting there saying, 'Well, that's not normally par for the course.' [...] But] what am I going to do? Nail him to the cross? Absolutely not. So, 'Say you're sorry.' So it's a bit about mutual respect.

Int: *So you use your discretion with the tariffs and sometimes suspend it if they do give an apology.*

Staff: Oh aye, and that to me is, everybody is entitled to make a mistake. Well not entitled to [...] that's the wrong terminology but if you make a mistake, well so what? It's not a mistake if you learn. Now if that inmate is willing to learn from the mistake, I'm willing to

take a chance on it. (Staff 4)

In fact, the call for utilizing RJ in prisons is anything but new (see e.g. Carroll & Warner, 2014; Edgar & Newell, 2006; Johnstone, 2014; Szego & Felligi, 2012). Attempts to incorporate RJ practices into the prison environment have included victim awareness and empathy programmes, encouraging prisoners' to make amends for their crimes, facilitation of mediations, RJ conferences, developing relations between prisoners and the community as well as using RJ to deal with conflicts within the prison (e.g. Edgar & Newell, 2006; Johnstone, 2014; Van Ness, 2007; Stamatakis & Vandeviver, 2013). Yet, despite these developments, Dhami, Mantle and Fox (2009) argue that RJ has had little impact on prison policy, is frequently used in an ad-hoc, piecemeal fashion, is dependent on the presence of professionals who have bought into the benefits of RJ and is marginalised within prison administration. In addition, while some prisons have experimented with using a RJ approach to resolve conflicts within prison (e.g. Petrellis, 2007; Stack, 2013; Szego & Felligi, 2012), this is the least common approach to incorporating RJ into prisons (see Johnstone, 2014).

The advantages of replacing prison disciplinary hearings with restorative processes are three-fold in our view. First, they could enhance the perceptions of legitimacy of the disciplinary process, which is badly needed in prison (see Reisig & Mesko, 2009). Second, it would be an interactive opportunity to morally 'educate' individuals (both prisoners and staff) at the 'heavy end' of the justice system about restorative methods for conflict resolution. Ultimately, this could reduce both in-prison conflicts, but also recidivism post-release by increasing the perceptions of the legitimacy of the justice system more widely.

Ironically, the reason prisons resort to formal adjudication procedures is to lend the process of discipline a semblance of legitimacy. As total institutions, prisons are the location of a near

infinite variety of arbitrary practices that both feel like and are experienced as punishments, from cell searches to sleep-depriving night checks. The adjudication process on the other hand was specifically designed to be consistent across individual cases and prison sites, transparent in its truth-finding methodology, and fair in its delivery. However, the same rituals of propriety can be interpreted as a mimicry and mockery of real justice by participants. When prison staff members are, in many cases, the victim, the primary witness, and ultimately the judge, it is clear that the deck remains thoroughly stacked against the prisoner.

A restorative alternative to prison discipline would be far more inconsistent across cases. Situations that sound similar on paper may be resolved in entirely different ways based on the dynamics that emerge in a restorative process. One “charge against good order and discipline” might be resolved in a fifteen-minute conversation between two prisoners, who agree to avoid one another. Another case with the exact same charge might lead to a three-hour restorative conference, involving five prison officers, two governors, and a dozen prisoners, and encompass an on-going issue on the wing that has been causing repeated flare-ups and tensions. It may be resolved by a fundamental re-organization of prisoner or officer placements or a re-think of prison policy. Yet, the flexibility of the restorative process is necessary in order to recognize the situational complexity of conflicts and their resolution. Whereas a “one-size fits all” approach to punishment may be uniform and consistent, it appears to be perceived as uniformly unfair: No matter what the cause of an offence, “all you get is put behind a door” (Int. 2). Restorative solutions that are mutually agreed upon in a dialogical process may achieve greater legitimacy.

Some have expressed concerns that the stigmatizing nature of prison, its coercive regime and use of incentives to motivate compliance will undermine the transformative potential of RJ and lead to participation in RJ schemes without committing to its goals or ethos (see e.g.

Guidoni, 2003; Van Ness, 2007). Based on the findings from this research, we would argue that these issues are already undermining perceptions of, engagement with and responses to existing prison disciplinary processes so the incorporation of a RJ approach can hardly do worse.

Restorative adjudications would also provide a daily opportunity to educate both prisoners and prison staff in restorative models of conflict resolution. Like many complex ideas, RJ is not something that can be easily taught in the abstract, rather one may learn it best through engagement, by doing. The lived experience of several hundred restorative adjudications per year inside a prison would therefore reinforce a considerably different moral education than is on offer in the traditional, punitive model. While there is a dearth of quantitative research on the effects of using RJ to resolve conflicts in prison, qualitative research confirms the potential of such an approach to breakdown negative stereotypes of prisoners and staff, encourage pro-social attitude and behavioural change and contribute to a more positive environment to live and work (see Edgar, 2015; Johnstone, 2014; Petrellis, 2007; Stack, 2013; Szego & Felligi, 2012).

The possible implications of this vast training in restorative practices for prisoners involved in serious crimes and prison officers involved in serious punishment would seem to be considerable. Certainly, embedding these practices throughout an institution could have implications for the overall climate of the facility, promoting “right relationships” between prisoners and staff (Liebling, 2004) and potentially contributing to a reduction in misconduct if prisoners feel they are being dealt with in a more procedurally just manner (see Beijersbergen, 2014; Beijersbergen, Dirkzwager, Eichelsheim, Van der Laan, & Nieuwbeerta, 2015; Bierie, 2013). The benefits of a lived education in RJ may also carry on outside of the institution upon release.. Just as prisoners (and some prison staff) may carry the bitterness and anger of repressive treatment with them on the outside, efforts to increase the perceived legitimacy of prison

treatment may also impact wider perceptions of the legitimacy of the rule of law and promote compliance (Sparks & Bottoms, 2007; Tyler, 2006). Indeed, recent research by Beijersbergen, Birkzwager and Nieuwbeerta (2015) has found that prisoners who felt treated in a procedurally just manner were less likely to be reconvicted 18 months after release. However, this effect was small and perceptions of legitimacy were not found to place a mediating role in this relationship (Beijersbergen, Birkzwager & Nieuwbeerta, 2015)

Finally, the utilization of RJ in adjudications also represents a potential opportunity for advancing the spread of restorative justice more generally in society. The closed environment of the prison should prove a fertile ground for establishing restorative practices, as RJ has found some of its greatest successes to be in institutional environments like schools and universities (Karp & Sacks, 2014). However, once embedded in such institutions, there would likely be impacts outside of the prison as well. For instance, our vision here clearly differs from that of most versions of restorative justice in prison (see e.g., Dhimi et al. 2009) in that we are not advocating for opportunities for prisoners to make amends to the victims of their crimes on the outside through restitution or engage in victim impact work (Sedelmaier & Gaboury, 2015), as valuable as such work may be. However, such efforts may be more possible in an environment where prisoners are already socialized into restorative means for problem resolution. In general, punishment in the prison, as the “hardest end” of the criminal justice system, carries important symbolic weight. As Dostoyevsky famously stated, the way that prisoners are treated says a great deal about a society. If prisons began to successfully model restorative practices, it is likely the theory would have greater impact on the rest of the justice system.

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