

**SUMMIT ON JUSTICE**

**BRIEF**

**John Howard Society of Alberta**

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The current Canadian criminal justice system claims a number of goals, but the essence of the criminal justice model, that is, retributive justice, can be summarized quite easily: crime is a violation against the state; justice focusses on establishing guilt and administering pain; and justice is pursued through an adversarial process where an offender is pitted against the state and only one side will be victorious. Many of the failures of the justice system - its punitiveness, its lack of offender accountability, its neglect of victims, to name a few - are the result of the implications of this model. A shift must take place in which we replace traditional law and order approaches to crime with concentrated efforts on crime prevention and alternatives to current sanctioning methods, using programs based on restorative justice principles. This transformation should not entail the addition of a small number of alternatives operating in isolation from one another, nor should alternatives be introduced simply as a supplement or as an add-on to the current system. If a change in the structure and practice of the criminal justice system is to be achieved, programs must not simply promise to better achieve traditional goals. Rather, they must question and replace the current system by challenging the assumptions, language and practice that embodies our criminal justice system. Crime prevention strategies and restorative justice alternatives cannot be patched onto the existing fundamentally retributive system if they are expected to have any positive impact on crime.

The criminal justice system is based on an adversarial process which seeks to punish individuals by relying heavily on harsh sanctions such as lengthy periods of incarceration. Our current system of justice relies on retribution, which is troublesome for both philosophical and practical reasons. From a theological perspective, a system of justice based on punishment is not possible since only people free from sin should impose punishment. Since nobody can ever fully live up to moral law, a sinless imposer of punishment does not exist. Moreover, most forms of punishment are actually acts which have been determined to be unlawful (ie. confinement and corporal punishment). To impose harm in response to harms done is revenge, not resolution. Furthermore, retribution is difficult to distinguish from vengeance. Even without the emotionality of revenge, the use of punishment is both morally impractical and practically immoral, given the existence of feasible alternatives.

Another significant problem with the current system of justice is that we use punishment in an attempt to invoke a fear of law in specific individuals and in the general public. Deterrence is the forward-looking use of punishment. We attempt to discourage people from committing crime by making them aware of punishments and their severity. There are several arguments against adopting deterrence as a goal of the legal process. First, legal sanctions will not have a general deterrent effect unless they are widely known; however current studies reveal that few people are aware of present day sanctions (Griffiths & Verdun-Jones, 1994). Second, deterrence will not affect every person the same; some people have more to lose than others. Third, deterrence theory assumes that offenders are rational actors that weigh the relative costs and benefits of crime and make rational decisions that will enhance their best interests. In other words, deterrence theory presumes that crimes are thoroughly planned out in advance. In reality, however, crimes are not calculated acts perpetrated by criminal masterminds. Many crimes are committed by individuals who are affected by alcohol or other drugs or who are acting in a state of extreme emotion. Clearly, these people are not likely to be able to weigh calmly the costs and benefits associated with the commission of a crime.

One goal that the present Canadian criminal justice system can truly accomplish is incapacitation. Imprisonment removes the offender from the community and prevents further offending during the period of incarceration. This is, however, only a “band-aid” solution which ignores problems, not solves them.

Restorative justice, on the other hand, lowers costs associated with incarceration, provides victims with a sense that justice was served, provides offenders with the feeling that the legal process has treated them fairly, addresses victim-offender relation and makes the community aware that it has a responsibility to the offender, victim and the justice system. It emphasizes that crime is a violation of one person by another, rather than merely a crime against the state. The restorative model of justice involves the offender, the victim and the community in negotiation and dialogue aimed at restitution, reconciliation and restoration of harmony. Offenders take an active part in the restorative process, with remorse and repentance being important factors. The restorative model also looks at the social, economic and moral context of the criminal behaviour, while still holding the offender responsible for his or her actions. Restorative justice places victims and offenders together in problem solving roles and impresses upon offenders the actual human impact of their behaviour. Finally, restorative justice is the concept of restoring a community and its specific members back to their lifestyles prior to the commission of the offence. Although reparations cannot entirely compensate for the physical and emotional costs of crime, partial restoration is better than the existing situation (Umbreit, 1992).

Contrary to our current system of justice which alienates the victim, offender and the community, restorative justice attempts to accomplish several goals: justice for the victim, justice for the offender, address victim-offender relations and address community concerns. Victims need to be able to express facts, opinions and concerns to the offender. They need to receive compensation for their harm and they need to participate in proceedings which directly concern them. Restorative justice models, many argue, accomplish these goals.

Offenders also need to be able to feel that the legal process has treated them fairly. An impaired driving study revealed that 22% of the offenders who participated in regular court proceedings felt they were disadvantaged. However, only 4% of offenders who participated in the restorative justice model felt disadvantaged (Sherman & Barnes, 1997, p. 3). Offenders need to be given the opportunity to accept responsibility for their actions and to communicate with their victims.

Restorative justice models also address victim-offender relations. These models encourage interaction between the offender and the victim, providing the opportunity to address issues, ask questions and hear answers from one another. Under restorative models, this type of interaction promotes reconciliation, understanding and forgiveness which are essential to the healing process.

Different restorative justice programs attempt to include the community in varying degrees. It is widely acknowledged in the literature that society must take responsibility for crime. Communities have an obligation to correct social factors that contribute to crime and to allow offenders to

rehabilitate and reintegrate back into the community. In order to do so, the public must be aware of the facts about crime, its causes and outcomes. Finally, the needs of the community must be addressed during dispute resolution. Considering that crimes occur in the community, it is essential that the community also assume responsibility for the act and be involved in the conflict resolution process. Furthermore, if it is appropriate for the community to receive reparation, then that must be discussed.

A great number of programs based on restorative justice principles have emerged over the past several decades. Each program has acknowledged that our current criminal justice system is ill equipped to conduct dispute resolution and achieve an outcome that is mutually beneficial to the victim, offender, and the community.

Victim-Offender Reconciliation programs (VORP) offer an alternative to the formalized criminal justice system in that they are designed to improve conflict resolution, to provide material reparation to victims, to prevent recidivism and to offer a speedier and less costly alternative (Griffiths & Verdun-Jones, 1994). Arrangements are made where the victim and offender are brought together. Both participants are given the opportunity to state the facts from their point of view, then they are allowed to voice their opinions and emotions regarding the event. Once the release of emotions is complete, a verbal agreement is worked out regarding reparation. Once a restitution contract has been negotiated, there is a period of evaluation and follow-up to determine if restitution has been made. Several studies indicate that both victims and offenders are generally willing to partake in such programs (Galaway, 1994, Reeves, 1989).

In terms of success, Umbreit and Coates (1992, p. 2) indicate that “high levels of client satisfaction (victims, 79%; offenders, 87%) and perceptions of justice (victims, 83%; offenders, 89%)” were attained through the mediation process. Given the potential of these programs to relieve the congestion of the formal justice system while at the same time effecting positive and acceptable resolutions, VORPs deserve attention.

The John Howard Society has taken action to promote heightened public awareness of the need for alternatives by publicizing the benefits of alternatives, involving communities and community groups in the establishment of alternative programs, educating politicians and policy makers of the necessity for legislating use of alternatives, and educating the public about community responsibility for crime and its causes.

As previously mentioned, communities have a responsibility and an obligation to correct social factors that contribute to crime and to allow offenders to rehabilitate and rejoin society. In order to do so, the public must be aware of crimes, their cause and their outcomes. Studies consistently show, however, that the public has limited access to and knowledge of the operation of the criminal justice system. The consequences of limited access to accurate information are that the public often become overly anxious and unnecessarily fearful as to the nature of criminal activity and this fear tends to generate stereotypes of the “criminal” and the “victim”. Furthermore, studies reveal that

what little knowledge the public does receive derives from the media that focuses predominately on sensational criminal events.

The results of a survey conducted by Alberta Justice (1997) reveal that the media is a primary source of information for most Albertans. Individuals obtained their crime news from the newspaper (81%), television (75%), and radio (36%). The media also has a high perceived credibility. For example, 79% of Albertans thought the media was very or somewhat accurate on their coverage of crime stories. Moreover, 48% of Albertans thought that the media pays the right amount of attention to crime issues and 15% thought the media could increase its coverage of crime related stories. The same survey also revealed that, contrary to accurate crime statistics, many Albertans felt that the crime rate had significantly increased and that it was a significant problem in their community.

Policy makers and other officials' beliefs about public opinion highly influence criminal justice policy. That is, officials create policy based on the public's distorted view of crime, which is generated from sensational crime stories in the media. There is, however, another important factor that contributes to legislative changes that prove to be ineffective. Politicians often rely on the publication of research findings of opinion polls used to survey public perceptions of the criminal justice system. A significant problem, however, is that most opinion polls use simple questions that elicit simple answers. For example, if a member of the public, who is even slightly inclined to believe that sentences are less severe than they are, is asked to rate whether sentences are "too harsh, about right, or too lenient," the answer by an overwhelming majority will be "sentences are too lenient." Without current and accurate statistics, individuals combine their media-generated knowledge of the criminal justice system with the simplicity of the question to provide answers that appear to be consistent with their beliefs and values and that coincide with other members of their community.

Furthermore, politicians and media create a self-fulfilling prophecy by continuously portraying the crime rate as reaching epidemic proportions. In other words, when the public is repeatedly given particular - that is, slanted - information over a long period of time, they will soon regard the information as fact. As for criminal activity, the public understandably believes that the crime rate is out of control because they have been subjected to distorted and sensationalised information instead of evidence which confirms that the property and violent crime rate decreased over the past several years. Politicians must assume a leadership role and provide information that is timely and accurate. Moreover, they must reassure the public that the way to deal effectively with crime is through crime prevention strategies and effective alternatives to the formal justice system.

Another significant problem lies in the fact that policy makers tend to overestimate the public's passion regarding criminal justice issues. The vast majority of people surveyed on the topic of criminal justice will provide answers to almost all of the questions asked of them. Generally speaking though, as recent study revealed, only 22% of Canadians consider crime to be a "top-of-the-mind" issue (Angus Reid report, 1997, p. 38). Policy makers tend to overrate the importance of justice issues to the public and, therefore, justice reform issues that may not actually weigh heavily in the minds of the public are regarded as a primary concern for policy makers.

The John Howard Society is a leader in educating the public on criminal justice issues. Through research papers and practical criminal justice education programs, the Society ensures that people have access to accurate information about the criminal justice system, about how to best resolve conflicts, and how crime can be prevented. The belief is that positive changes in the justice system can only occur if the public is well informed as to the true nature and scope of criminal behaviour.

Although there will always be those who will favour tougher laws and harsher punishments, lately there has been a significant surge of interest in long term, social development-based crime prevention approaches. Crime prevention through social development (CPSD) is long term, proactive, preventive and is guided by social and economic factors. CPSD does not replace other crime prevention strategies, but instead compliments them by forming partnerships and collaborating with other agencies and groups responsible for dealing with the conditions associated with crime. This includes agencies responsible for planning and development, the family, health, employment and training, housing, social services, schools, the police and other sectors of the justice system. CPSD emphasizes the need to pay explicit attention to the root causes of crime. In doing so, social problem approaches to crime prevention recognize that these root causes lie outside the purview of the formal criminal justice system. The idea that crime and, therefore, crime policies must reflect the relationship of crime to larger problems of community and social structure is essential to crime prevention strategies.

CPSD uses targeted, long term programs aimed specifically at alleviating the combination of social and economic problems that can increase the risk of criminal behaviour. CPSD addresses a wide range of risk factors connected with crime through the efforts of various social development policies, programs and services already in existence, such as housing, education, health, income security and social services. To be effective, they need to be focussed on specific at-risk individuals and must operate in coordination with several other initiatives at the same time. The reason for this is that those most at risk of becoming involved in crime are often struggling with several problems such as unemployment, poverty, family violence, learning problems in school, and/or substance abuse.

Although the existence of risk factors may not inevitably lead to criminality, many of these factors in combination can increase the propensity toward criminal behaviour. These risk factors include, but are not limited to, age, gender, socioeconomic status, family disruption, and peer influence.

Statistics consistently show that particular age groups commit more offences than others. Although adults commit the majority of offences, youths aged 12 to 17 are disproportionately represented in statistics for violent and property crime (Canadian Centre for Justice Statistics, 1994). Although age as a risk factor cannot be analysed in isolation, it will continue to be considered a significant risk factor connected with crime. Crime prevention efforts must focus on the early years of adolescence since many persistent delinquents begin their involvement in anti-social activities before adolescence. In other words, CPSD efforts with the best chance of success in the long term will be those aimed at altering the early childhood experiences which increase the risks of criminal behaviour later in life.

As with age, gender cannot be assessed as a risk factor in isolation from other circumstances that may contribute to delinquent behaviour. However, while males comprise approximately 49% of the Canadian population, they consistently account for a significant majority of both the adults and youths accused of property and violent crimes. When researchers and those responsible for criminal justice and crime prevention are talking about delinquency, or age and gender as risk factors, they are inevitably talking about the effects of being young and male.

Although the relationship between poverty and criminal behaviour is complex and unpredictable, history has shown that many of the conditions that arise from living in poverty can increase the risk of becoming involved in crime, especially for children. These conditions include, but are not limited to, nutrition and health, problems in school, abuse and neglect, family violence, inconsistent or poor parenting skills, and early childhood behavioural disorders. CPSD programs must target those most vulnerable to living in poverty and the multitude of problems that arise from it. Initiatives will have to be specifically designed for those experiencing the effects of poverty conditions, as well as challenging the stigma and blame society has traditionally placed on those living in poverty.

Family disruption is another risk factor associated with crime. Family disruption does not itself cause crime, but it can combine with other stresses to increase the risk of becoming involved in crime. While family disruption takes many forms, there appears to be three primary sources: violence, inadequate parenting and negative peer influence.

Violence against women within the family has a negative impact on both the woman and her children. For example, one Canadian study found that over 50% of violent young offenders witnessed spousal abuse in the home. A Standing Committee dealing with developing a crime prevention strategy for Canada acknowledge that violence against women “poses significant risks to the community” (Standing Committee, 1993, p. 11). Moreover, the Committee found that men who grew up witnessing violence in the home were 1000 times more likely to become abusers of women later in life than men who did not (ibid.).

Lack of parental supervision, parental rejection and lack of parent-child involvement are also consistent indicators of delinquent behaviour. Parenting that features inconsistent, overly punitive or too submissive methods of discipline also increase the risk of delinquency, but to a lesser degree. Although delinquency is by no means the only outcome of ineffective parenting, most of the existing research into the factors contributing to criminal behaviour carry a similar and important message: proper parenting is crucial. In other words, the way children are treated can have serious repercussions, not only for children, but for parents and the larger society (Goetting, 1992).

The importance of parenting indicates that a significant focus on long term preventive strategies must include providing support for families, especially for those family members primarily responsible for the care of children. At the community level, this support for family members can take in a wide range of programs and initiatives. Examples include, home visiting and drop-in centres to combat isolation and promote support systems, programs to assist parents in identifying and responding to

children with special needs, family studies programs, and providing quality child care that is accessible and affordable (National Crime Prevention Council, 1996).

The belief that delinquent youth associate with each other is a point of agreement among most researchers exploring how negative peer influences contribute to delinquent behaviour. Attempts to understand how peer influence relates to delinquency have resulted in three schools of thought. The first, known as the 'peer influence perspective', suggests that inadequate parental supervision and discipline provides adolescents the opportunity to associate with friends who have a negative influence on them. A second theory regarding parenting, negative peer influence and delinquency maintains that the development of delinquent behaviour differs for early and late starters. Due to inadequate parenting, early starters are driven to associate with deviant peers because of their aggressive and uncooperative behaviour toward law-abiding peers. Late starters, on the other hand, experiment with delinquency in late adolescence due to a deterioration in parenting quality which can occur during a family crisis such as divorce or unemployment. According to this model, early starters are at risk of career criminality, whereas late starters tend to grow out of criminal behaviour fairly quickly. Finally, 'control theory' holds that inadequate parenting causes some adolescents to be impulsive, self-absorbed and daring, so they are more attracted to activities that involve delinquent behaviour (Simons, Wu & Conger, 1992).

Crime prevention models acknowledge the risk factors associated with crime and recommend early intervention into the family and young people's lives. Crime prevention models promote the health and well-being of the unborn child by educating expectant mothers of the importance of receiving adequate nutrition and abstaining from smoking, alcohol and other drugs. At birth, efforts are concentrated on preventing child abuse and offering practical supports for parents such as home visiting and drop-in programs, peer support activities, family planning seminars, and educational groups for parents. Crime prevention models also intervene at the preschool level by addressing the aggressive behaviour of toddlers. It is commonly believed that, "not only does early aggression predict later aggression, it also serves as a risk predictor for a variety of other negative outcomes including later delinquency, conduct disorder, school maladjustment and substance abuse" (Olweus as cited in National Crime Prevention Council, 1996). As a result, crime prevention models promote early childhood care and education with family involvement, as well as societal actions to reduce violence in the home. Finally, crime prevention strategies attempt to intervene at the formal education levels. The goal is to improve school outcomes because, "academic, social, and behavioural success in this environment predict[s] adjustment and productivity in later years" (National Crime Prevention Council, 1996). School-based initiatives are programs that are based in the school, but involve cooperation with families and other community agencies because experiences at home and in the community ultimately affect the youth's performance in school. Similarly, events at school can impact the youth in other settings and, therefore, school serves as a link to the family and community.

Crime prevention through social development has been endorsed, and in fact embraced, by many governments and agencies responsible for criminal justice world wide. The Canadian government

is taking a lead role in promoting and funding crime prevention initiatives. The government of Alberta, however, appears less inclined to endorse CPSD initiatives as a key feature in its crime reduction strategies. Rather, Alberta promotes the reduction of crime through punitive measures such as incapacitation and harsh sentences. One simply has to review the Alberta government's proposals for the Youth Justice Strategy for proof of their commitment to retribution, punitiveness, and punishment. We encourage the government to thoughtfully consider the literature, knowledge and experience of criminal justice organizations like the John Howard Society that understand the root causes of criminal activity and stress the value of socially-based crime preventive strategies.

The John Howard Society strongly believes that crime is the consequence of the combination of social and economic pressures which people encounter. The Society has been deeply involved in the promotion and implementation of crime prevention strategies for the past several decades and will continue to play a significant role by encouraging policy makers, criminal justice organizations, and the general public to accept the value and importance of addressing the risk factors proven to be associated with risk of criminal behaviour. The John Howard Society also recognizes the importance of educating the public as to the true nature and scope of criminal activity. The media play a large role in presenting distorted and sensationalised information to the public, which has led to unrealistic perceptions of the justice system. The goals of public legal education reach well beyond simply making people aware of correct criminal statistics. A community that understands the causes and consequences of crime, as well as the nature and scope of criminal activity, will be more willing to accept ownership of the problem and be capable of dealing with it effectively and humanely. As the public becomes more informed, they will become more involved in achieving a positive change. In other words, a cycle develops in which individuals first learn about the causes and consequences of crime and the benefits of crime prevention and restorative justice. Subsequently, these people will become more aware of their responsibility toward crime prevention and restorative justice, and may develop an interest in participating in crime prevention activities which will ultimately lead to further education and thoughtful understanding of criminal activity, its causes and consequences.

Canada's current criminal justice system is a one dimensional, law and order approach to sanctioning based on the principles of retribution. It focuses on establishing blame or guilt and administering pain as punishment, while it ignores the needs of the victim, offender and community. We must accept that the current system of justice is not able to cope with crime and its causes and, therefore, concentrated efforts on crime prevention and alternatives to current sanctioning methods based on restorative justice principles must be employed. We must challenge the assumptions, language and practice of the current criminal justice system and replace it with crime prevention strategies and restorative justice alternatives. We must avoid supplementing or adding-on programs to the current system because crime prevention strategies and restorative justice alternatives cannot be patched onto an existing fundamentally retributive system if they are expected to have any kind of impact. Justice based on restorative principles endeavours to reach a fair solution to a conflict without the use of harsh sanctions. Further, restorative justice addresses victim-offender relations and makes the community aware of its responsibility to the victim, offender and the causes and consequences of crime. Considering that the only goal the current criminal justice system accomplishes well is

incapacitation, there is a real and urgent need for proven crime prevention strategies and restorative justice alternatives.

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