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A Different Kind of Justice: a critical reflection

Cassandra Sharp Dr
University of Wollongong, Australia

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A Different Kind of Justice: a critical reflection

Abstract

Despite the accepted success of many restorative justice programs with youth and Indigenous offenders, debate still proliferates about the utility of adult restorative justice programs within the criminal justice system. Many important questions are raised about the efficacy and impact of such programs including: 'What can restorative justice offer adult offenders and victims of crime? What are some of the challenges of using restorative justice in this context? And what can we learn from emerging developments in practice?' (Bolitho et al, 2012). As will be discussed in this review, Russell Finch's BBC Radio 4 production of *A Different Kind of Justice* addresses each of these questions with vigour. Narrated by 'dialogue expert' Karl James, the documentary explores the impact of a restorative justice program from a deeply empirical perspective. In interviewing, and then facilitating discussion between a burglar and his victim, James provides an exquisitely emotional look into the cathartic and potentially transformative impact of one particular restorative justice encounter in Blackburn, UK. *A Different Kind of Justice* expertly uses the interlacing of articulated memories in three distinct movements to re-tell a crime story by weaving together victim and offender perspectives, and in the process reveals not only the profound transformative effects of restorative justice on those participants, but also the impact it can have on the listener.

Keywords

restorative justice, reconciliation, forgiveness, justice

A Different Kind of Justice

Producer: Russell Finch, Somethin' Else, for BBC Radio 4 (UK 2013). 28mins.

Reviewer: Cassandra Sharp

Stories of justice as presented in media reports play an important role in provoking responses to issues such as ethics, crime, punishment and social responsibility. With the punishment of criminal activity frequently attracting public attention and media reporting on sentencing contributing to an increasingly punitive public (Gelb 2008), it is rare to be invited to think differently about how 'justice' might be achieved (whether for the victim or the offender). And yet this is exactly what *A Different Kind of Justice* does. To listen to this documentary produced by Russell Finch for BBC Radio 4 is to take part in a review of one's own perspective on what should be the purpose of 'justice'. It is a challenge to extend what might ordinarily be our primary natural desire for offenders to be punished, into a connected desire for the restoration of relationships and healed lives.

In many criminal justice systems, the question of guilt is paramount, together with the infliction of punishment upon the person found guilty of having transgressed the law. There is a vast literature on the moral and political philosophy of punishment, with the main justifications for punishment given as retribution, rehabilitation, deterrence and reparation. The High Court of Australia has stated that 'the purposes of criminal punishment are various... (they) overlap and none of them can be considered in isolation' (*Veen (No 2) 1988*). Yet, to state it in fairly simplistic terms, the most prominent and publicly visible justification for criminal punishment in contemporary theory and practice has for many decades been retribution, with restoration seen as a secondary measure alternative to criminal justice practices. In more recent times, however, in countries like Australia, the UK and New Zealand, restorative justice programs and conferences have been increasingly used to facilitate dialogue and participation between offenders and victims.

Despite the accepted success of many restorative justice programs with youth and Indigenous offenders, debate still proliferates about the impact and efficacy of adult restorative justice programs within the larger criminal justice system (Bolitho et al, 2012). Russell Finch's production of *A Different Kind of Justice*, narrated by 'dialogue expert' Karl James, explores the impact of a restorative justice program from a deeply empirical perspective. In interviewing, and then facilitating discussion between a burglar and his victim, James provides an exquisitely emotional look into the cathartic and potentially transformative impact of one particular restorative justice encounter in Blackburn, UK. *A Different Kind of Justice* uses three distinct movements to re-tell a crime story by weaving together victim and offender perspectives, and in the process reveals not only the profound transformative

effects of restorative justice on those participants, but also the impact it can have on the listener.

With recent studies suggesting that meetings between victims of crime and their perpetrators can both reduce reoffending rates and provide psychological healing for victims (Bolitho et al, 2012), there has been a significant increase of these 'restorative justice' meetings in the UK. In this program, the story is narratively crafted using the interweaving of articulated memories – both Margaret (the victim) and Ian (the offender) describe their memories of the crime and their subsequent 'restorative interaction'. It is in hearing these descriptions of juxtaposed and personalised memories that the listener is keenly aware of the raw emotion constituting this crime narrative. But what is the particular story that has seemingly entwined their lives? As described in the *Somethin' Else Program Information*, the essence of their story is this:

In November 2008, Margaret interrupted a burglary in her own home. As she came through the backdoor, the burglar left through the front. He had taken a laptop full of photos commemorating her daughter Jessica's 18th birthday. Eight months later her daughter was killed in a tragic car accident. The theft of the laptop meant her parents were deprived of any recent family photos of their daughter. inspired by the memory of her daughter, Margaret agreed to meet the offender in a restorative justice conference in Preston Prison. Ian was that burglar.

However, this is more than just a narrative of burglar meets victim. It becomes a gripping, metaphorical looking-glass through which we can explore the practical realities of restorative justice, and the listener quickly realises that this is a story of restoration, forgiveness, guilt, and burden. It is indeed a story of a different kind of justice.

Weaving justice together through story and conversation

We live in a world where we increasingly consume stories as one stimulant to the transformation and perpetuation of meaning and desire in relation to issues of law and justice. Storytelling is 'essential to the human experience' (Rappaport, 2008) because it enables individual reflection as a way of making sense of the world. And so stories, both fictive and real, can be utilised to view law from various perspectives. They can seek to 'include what has often been omitted, such as the feelings, desires, conflicting impulses and wishes that circulate within the law' (Sherwin, 1996), and it has been my consistent argument that individuals use stories to frame and contextualise normative expectations of the legal system (Sharp 2014, 2011). The story told in this documentary is packed with typical storytelling elements and techniques familiar to our contemporary crime genre sensibilities. It has the build-up of the narrative (the reconstruction of the crime from the twin perspectives), the emotive revelation that underscores the need for restoration (the death of Jessica), and the interspersion of the dramatic and unprecedented recording of the first 'restorative meeting' to historicise and authenticate the participant's descriptions of what occurred between them. It is the conspiracy of these elements that shines the spotlight on the particular cultural understanding of

law and justice that the listener might have previously (and hitherto unconsciously) socially constructed; this challenges us to rethink what we understand and expect of our 'justice' system.

This challenge indeed begins (if not from the dare of the title itself – to see a 'different' kind of justice) from the first moment of the documentary when we hear the narrator speak about the power of conversation. By way of introduction to what is about to unfold in this piece, the narrator opines that when the stakes are high, the act of conversing with someone can create a turning point in people's lives, and particularly within the context of restorative justice, he promises that we will be given insight into what it takes for some to have these conversations. Of course, almost immediately I was intrigued by this. I wholeheartedly believe that it is indeed through conversation that we truly begin to understand ourselves and others, and so the sombre intervening music that cut between the narrator's introduction and the soundtrack to his physical meeting in real time with Margaret produced for me a moment of anticipation. I wondered: what impact would this conversation between a burglar and his victim have? And more introspectively, I wondered what impact this retelling of a criminal history might have on me, and my expectations of 'justice'.

After some awkward introductory comments, the first movement of the documentary begins as Margaret starts to recite the story of coming home one day to find her house mid-burglary. But almost as quickly as she has begun, the story is interrupted by another awkward and 'real time' introduction – the narrator introduces himself to burglar 'Ian', who henceforth tells the same story from his perspective. With minimal intervention from the narrator/interviewer, the structure of this he said/she said dual narrative is skilfully dramatic and suspenseful. The complete picture of this criminal story is then assembled from the splicing together of their individual details: each providing little snapshots that when combined, produce the vivid image of a burglary with far-reaching and unanticipated consequences.

It is only after the crime story has been re-told by the two parties, that Margaret reveals the true tragedy behind the theft of the laptop (which contained precious family photos) – the subsequent death of her daughter at the age of 21. As the narrator interjects empathetically at one point, this would be 'heartbreaking for any parent'. For myself, it was at this moment that I felt myself catch a breath. In the tantalising silences betwixt Margaret's various descriptions of her grief, I understood the complexity of any restorative justice meeting that might occur between these two people. I understood that whether justified or not, the burglary would forever be connected with Jessica's death. The loss of the photos, a visual reminder of special memories, would make her tragic death all that much harder to bear. It was at this moment that I knew that any description of the restorative interaction between Ian and Margaret, would necessarily involve the expression of complex and intertwined emotions such as trauma, guilt, empathy, fear, forgiveness, shame and anger. It was clear that the story would now move beyond the mere description of a crime, to the sharing of emotional reactions to the restorative justice process – a process which demands an attempt at reconciliation and restoration.

This is the appeal of a restorative justice program – that it brings ‘together the individuals who have been affected by an offense and [has] them agree on how to repair the harm caused by [that] crime’ (Braithwaite, 1999). The emphasis of the process is on the achievement of reconciliation between the offender and the victim, and quite obviously requires atonement: the repentance of the offender coupled with the willingness to forgive on the part of the victim. As a listener, I was curious to see if this atonement between Margaret and Ian would be possible. Indeed, despite the fact that restorative justice has enormous potential to provide a ‘more inclusive and holistic approach’ to crime issues, questions are ‘often raised about the extent to which these ideals are achievable in practice, and the conditions under which it might or might not be appropriate’ (Bolitho et al, 2012). These important questions have included: ‘What can restorative justice offer adult offenders and victims of crime? What are some of the challenges of using restorative justice in this context? And what can we learn from emerging developments in practice?’ (Bolitho et al, 2012). As will be briefly demonstrated below, *A Different Kind of Justice* addresses each of these questions with empirical vigour.

What can restorative justice offer adult offenders and victims of crime?

Shortly after Jessica died, Margaret agreed to participate in a restorative justice meeting. The second movement of the documentary details this encounter, again from the dual perspective of victim and offender. For the second time, Margaret and Ian, separately and yet together, tell the story of their restorative justice meeting within the prison walls. Interspersed among their descriptive memories is the real-time recording of their conversation. This apparently unprecedented access to the recording of their interaction authenticates the story we are hearing being remembered. The audio quality of this recording is not great – we can hear Margaret clearly asking questions of Ian, and yet we are straining to hear Ian’s almost inaudible, but repeated response of ‘sorry’. The silence here, as throughout the documentary, is deployed strategically for dramatic effect to give us the emotional space we need to adequately reflect on the process taking place. And it works. The silence is where the emotion sits, and it was listening to this reconstruction of the meeting with real-time audio and narrated context from both Margaret and Ian that unexpectedly brought me to tears. It was riveting, and it effectively painted the picture of their encounter in my mind. I could clearly imagine the picture of their meeting, of Ian’s physical response to the news of Jessica’s death, and to their desperate grasping of each other’s hands as Margaret demanded he turn his life around.

Often, one of the ‘major concerns about restorative justice is that, for most victims, it will not be of any benefit or, worse, that it will cause victims greater harm. A related concern is that victims will be mere “props » on a stage, the function of which is to help rehabilitate offenders, or that they will end up playing “second fiddle » to the offender” (Bolitho et al, 2012). Margaret shows categorically in this documentary that not only was the meeting cathartic for her (as she experienced a release of ‘aggravation and tension’), but also through her forgiveness she played a

significant role in mobilising Ian towards transformation and rehabilitation. Her insistence that Ian must change in order to make her feel that something good had come from their meeting, demonstrates that Margaret was no 'second fiddle' in this encounter. In fact, she was the driving force to transformative action in Ian's life, and as they describe his clean record for two years since the meeting, one cannot help but assume that in this instance, restorative justice might have achieved reparation, rehabilitation, community reintegration, and even healing.

What then, are some of the challenges of using restorative justice in this context?

A further argument often given against restorative justice is that 'it is unrealistic to expect to be able to restore both victims and offenders' and this is because 'the competing interests of participants within the restorative process means that what works for offenders may not work for victims' and vice versa (Bolitho et al, 2012). The third and final movement of *A Different Kind of Justice* brings into sharp relief the challenges inherent in restorative justice encounters as we consider whether it indeed has been a success for *both* participants. In the form of a segue to the final section, the narrator provides his own reflection on the impact on Ian of his meeting with Margaret. He rightly points out that while Margaret does not blame Ian for Jessica's death, her emotional connection of Ian's demonstrated rehabilitation with her loss, places a potentially unfair burden on Ian to carry that loss. So, the last movement provides us with the opportunity to listen to a subsequent meeting between Ian and Margaret in real-time. No longer do we hear their story spliced together – instead we are privy to their conversation as they are reunited two years on from their initial encounter. Empathy is engendered here with nuanced complexity. Embodied in this framing of a restorative justice story, is what I expected – an emotional association with Margaret, as the victim. But I must admit, I did not expect to similarly empathise with the offender, and yet, particularly in this last movement, that's exactly what occurred. I was moved to sympathy for Ian as he listened to Margaret express her daily concern over his rehabilitative process, and as he reveals that she is a constant reminder to him of his own pre-restorative state.

Rossner argues that 'strong emotions within a restorative justice conference... may well provide the "hook » that some offenders need to experience the cognitive change and process of re-identification as a non-criminal that brings about desistance' (Bolitho et al, 2012). It seems in this case as though it indeed was the strong emotional response of Margaret that became the impetus to drive Ian into transformative action. But one must ask, how long will that last? What happens if Ian was to backslide or crumble? Would this still be seen as a success? The narrator concludes by suggesting that despite the possibility of an almost unbearable burden being placed on Ian, restorative justice should be seen as a continuing conversation rather than an end in itself. That is, like any relationship which requires attention, time and hard work to develop and maintain, restorative justice must be seen as an ongoing, iterative conversation that has transformative potential. Again this use of conversation makes sense to me, and so it brings me to the final question concerning the utility of restorative justice practice.

What can we learn from this instance of restorative justice in practice?

The vision of restorative justice is to peacefully address the conflict of crime through a focus on acknowledgement, accountability, relationships, harm and the rights and obligations of citizens in civil society (Bolitho et al, 2012).

A Different Kind of Justice documents through storied conversation, one particular instance where the elements of restorative justice described by Bolitho et al, are successfully implemented. Margaret and Ian were able to empathise with each other, listen to each other, and provide accountability, reconciliation and acknowledgment of life experience within their relationship. This has enormous potential for sensitively but significantly impacting listeners. As we hear the real emotion of victim and offender expressing their crime story, we cannot escape questioning our views and perceptions about criminal justice resolutions and practices. As I sat in the car, at the conclusion of my first hearing of the documentary, I felt compelled to quietly reflect on the often distorted image of crime stories we are so accustomed to accepting in the media, and I recognised the impact this has had on my own perceptions of criminal offenders. You can't help but be confronted in *A Different Kind of Justice* by the context and background to both Margaret and Ian's story. In fact, as stated earlier, I was very surprised at not only the emotional response I had to Ian and his circumstances, but also the resultant reflection about the purpose of criminal justice. In response to this documentary, the listener is provoked to consider: what is the 'justice' that has occurred here? It is certainly not retribution – the seeking of 'an eye for eye' that as a society, we seem to so naturally desire. My own conclusion was that perhaps the 'justice' we encounter instead is the justice of healing and transformation – the kind of justice where a victim is able to confront their offender and positively affect both their lives in the process.

That is ultimately the public impact of this documentary (which brought tears to my eyes more than once) – it challenges us to be forgiving, to not take things at face value, and to use conversation as a method of healing. Knowing that stories told through conversation (which take on a social or collective dimension) are 'fundamental to the way we learn and to the way we communicate' (Steslow and Gardner, 2011), I have no doubt that *A Different Kind of Justice* has the potential (if we allow it) to interrogate our thoughts, change our desires concerning justice, and practice restoration. We just need to give ourselves the time to be still, and listen.

AUDIO of *A Different Kind of Justice* is [HERE](#). (Scroll to end of article).

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Dr Cassandra Sharp is Senior Lecturer, School of Law, at the University of Wollongong, Australia. Cassandra's research is concerned with the expression of law in various aspects of popular culture. In particular, Cassandra has empirically explored the transformative process of first year law; the use of popular stories by students in constructing identity; and the way in which understandings of ethics are challenged or maintained through popular stories of law. Cassandra has developed an international reputation for interdisciplinary empirical research into law and culture (see for eg: 'Let's See How Far We've Come: The Role of Empirical Methodology in Exploring Television Audiences' in Silbey J and Robson P (eds) *Law and Justice on the Small Screen* (Hart, 2012)). Cassandra's interdisciplinary research draws on cultural studies, literary theory, criminology, and legal theory to interrogate public interaction with legal consciousness (see for eg: 'Justice with a Vengeance – Retributive Desire in Popular Imagination' in M. Asimow (ed) *Law and Popular Culture: International Perspectives* (Cambridge Scholars Publishing, 2014)). Her ongoing projects include exploring public ideas of justice; media reporting of sentencing; and the notion of revenge in television dramas. <http://bit.ly/1wKl0ba>

