Who’s in control?
Restorative policing and managed empowerment

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‘Some days you bang your head off a brick wall, it’s like turning an oil tanker, when you talk about implementation of the policy, you’ve gotta be mindful that you’re changing organisational culture with this’

Policymaker/manager 3, Durham

‘The police are very good at knowing, in inverted commas, what’s right for the victim and then imposing that knowledge on the victim. It’s what we’ve always done. I think it’s a huge change of culture to actually ask victims what they want. It’s like turning around a supertanker, it takes a long time.’

Policymaker/manager 5, Gloucestershire
Restorative policing as fleeting

• Thames Valley – Hoyle, et al. (2002), Hoyle (2009), Cutress (2015)

‘Once [Pollard] left the police service Thames Valley struggled to nurture [RJ]. [...] It fell into ‘benign neglect’. [Interviewees] felt that without a strong drive from the senior command team, and the Chief Constable in particular […] it is unlikely to be revived to full health.’ (Hoyle, 2009: 197)


Restorative policing in England is characterised by ‘a degree of drift from restorative principles over time’ (Clamp and Paterson, 2013: 304).
Restorative policing: a Sisyphean task?
A never ending process?

‘It’s not a case of just implementing, it’s a constant implementation which goes on and on and on. So you’ve gotta be tenacious, it never goes away. You just have to keep plugging away at it.’ (Policymaker/manager 3, Durham)

‘I am concerned that restorative justice seems to be personality driven, because all the systems seem to be hardwired against it.’ (Policymaker/manager 2, Durham)

‘Implementing change with fidelity to restorative principles and then resisting the tendency to drift back are significant challenges facing restorative practitioners.’ (Wachtel, 2014: 361)
The operational policing role

• The police are similar to teachers, social workers, judges and other frontline public servants – the police are ‘street-level bureaucrats’, who exert power and allocate benefits and sanctions on behalf of the state, and have considerable discretion when doing so (Lipsky, 2010).

• However, three factors combine to differentiate the police from other occupants of frontline, discretionary, public service roles: the breadth of the tasks they are expected to undertake; the urgency with which they are required to act, and the coercive force which they are authorised to use.
Operational policing as a unique task

• The ability to exert power and authority through processes of arrest, search and detention, *inter alia*, means that their function is ‘an anomaly in a free society’ (Goldstein, 1977: 1).

• They are responsible for intervening in a wide variety of situations ‘that-ought-not-be-to-happening-and-about-which-someone-had-better-do-something-now’ (Bittner, 1990: 249).

• There is ‘pressure put on the police to “produce” – to be efficient rather than legal when the two norms are in conflict’ (Skolnick, 1966: 231).

• The police are expected to ‘keep the peace’ (Banton, 1964) i.e. to maintain order, as well as to enforce the law (Wilson, 1968, 1968b)

• They have to deal with ambiguous real-world situations, before distilling this down to comply with legal and bureaucratic requirements (McConville, et al., 1991)

Overall: lots of discretion and lots of responsibility to balancing competing goals and priorities, and the needs and interests of various stakeholders
Tensions between facilitating RJ and policing

• Aertsen, et al. (2011), Richards (2011) and Stahlkopf (2009) have identified the prevalence and centrality of stakeholder empowerment across RJ discourses, while Barton (2003) argues that empowerment is the unifying principle of RJ.

• RJ seeks to empower stakeholders by enabling them to participate in the addressing and repairing of harm *via* dialogue and collective decision-making

• The primary difference between traditional and restorative forms of policing lies in ‘the removal of the police officer from their traditional sovereign position as the owner of the conflict’ (Clamp and Paterson, 2017: 168).

• RJ requires the police to devolve/relinquish control, but policing enables/incentivises/requires them to maintain control
The gap between theory and practice

• Stakeholders are not always empowered to engage in dialogue or to make outcome decisions collectively
• Relational outcomes are neglected
• Deviation from principles of non-domination, equal treatment and other principles relating to empowerment and procedural fairness


‘The mainstreaming of restorative justice may lead to a clash between safeguarding the quality of restorative justice and institutionalising these programmes’ (Laxminarayan, 2014: 43)
Lots of restorative justice being used by the police?

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<td>157</td>
<td>109</td>
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Total crime outcomes in Force X in 2013/14: 14,085 (of which 9840 resulted in a charge or summons)

Taken from [http://data.gov.uk/dataset/crime_outcomes_in_england_and_wales](http://data.gov.uk/dataset/crime_outcomes_in_england_and_wales)

579 cases ‘dealt with by means of an RJ outcome’

The research
Aims and research questions

Aim:
To explore the nature and implications of the institutionalisation of RJ within two English police forces.

Research questions:
• How do the police explain their use of restorative justice?
• To what extent does the institution of policing shape the meaning and use of restorative justice in that context?
• What are the implications of these findings for participants and for restorative policing?
Force characteristics

• Durham and Gloucestershire as ‘critical cases’ (Flyvbjerg, 2006)
• Reasonably similar populations, areas, ASB/crime rates and officer numbers
• Relatively small forces with some relatively deprived urban centres and large rural areas
Methods

• Multiple case study
• Data from three organisations in each area: police force, OPCC and RJ Hub
• Documentary analysis (42 from Durham, 52 from Gloucestershire)
• Descriptive statistics
• Semi-structured interviews w/ expert interviewees (36 from Durham, 35 from Gloucestershire)

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<tr>
<th></th>
<th>Durham</th>
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<tr>
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<td>- 4 NPT PCs</td>
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<td>- 3 Others</td>
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<tr>
<td>Volunteer facilitators</td>
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<tr>
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<tr>
<td>- 2 middle managers</td>
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<tr>
<td>- 1 police staff</td>
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<td>PCC staff</td>
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<tr>
<td>Others</td>
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<tr>
<td>- 3 steering group members</td>
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<tr>
<td>- 1 associated facilitator</td>
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</tr>
<tr>
<td>Totals</td>
<td>36</td>
<td>35</td>
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</table>
1) Virtually all frontline officers in both areas were expected to deliver RJ in some form

2) All community resolutions had to be delivered as street RJ/conferencing
Use of restorative justice

• The banality of restorative policing – street RJ was mostly used in response to criminal damage, anti-social behaviour, shoplifting, young people fighting, petty disputes, etc.

• Conferencing mostly used for neighbourhood conflicts, cases without clear V&O, and cases which were on the cusp of arrest or prosecution
Institutionalised restorative justice

- RJ as ‘victim-focused’
  ‘Your ultimate result has got to be for the victim, obviously, right? Because, I don't know if I should say this or not, do we really care how the offender feels at the end of if?’ (PCSOD6)
  ‘You have someone that’s lost something as a result of somebody else’s actions, and it gives them the opportunity to take control over how the offender is dealt with.’ (POG4)

- RJ was instrumentalised as a way of managing demand (while satisfying victims)
  ‘We’ve lost a lot of officers, there’s more time constraints on us to resolve issues, this allows us to, very, very quickly resolve issues to the satisfaction of the victims, very quickly.’ (PCSOD8)
  ‘It reduces paperwork and, in the long run, rules out having to go to court. So, it's sort of swift justice, really, which helps everybody.’ (POG3)

- Balancing needs and ‘managing’ stakeholder empowerment
Techniques to retain control (i.e. to withhold the opportunity to participate)

• Don’t offer RJ in the first place
‘That victim may want that, but they need to be kept in check. [...] So, I think we do need to have a little bit of control.’ (POG4)

• Don’t offer all the options i.e. expedient not to offer dialogic approaches
‘What some staff do is, “well, just write a letter of apology to the store”, and that’s it. It’s not restorative in any way. [...] That’s the sort of misunderstanding by people because they don’t fully buy into the concept.’ (PPMMD2)
‘Officers were telling offenders: “You’re going to pay £20” to whatever the charity was. Which, in effect, is a fine. There’s nothing wrong with paying for goods stolen, paying for damage caused, and so on. But when you start talking about fining people or compensation, that’s not the police’s role.’ (PPMMG5)

• Don’t allow indirect stakeholders to participate
‘Do I want to get it done or not? If the answer is yes, include as few people as possible.’ (PCSOD7)

• Don’t allow offenders to participate in deliberations on decision-making
‘We’ve got a booklet, so I fill out the form and have a chat with the shop or the victim, see what they’re happy with of the different options. Then I go to the offender and say, “right, this is the option we’ve got, you can either pay and write a letter of apology or whatever, or be arrested and go to court”.’ (POG6)
Techniques to exert control (i.e. to obstruct participation)

• **Intervene in/stop/direct dialogue**
  ‘They just argued and I had to ask everybody to leave, and that was that.’ (PCSOG1)
  ‘Especially with the kids, you have to be a bit more sort of firmer with them, you know, “Have you got anything you want to say then?”’ (PCSOD3)

• **Impose authority on outcome decisions by blocking/selecting/suggesting outcomes**
  ‘I say: “Well, does that actually fit the offence? I agree, it is a punishment and a humiliation for them, and it is a benefit to somebody, but it doesn’t actually fit what they’ve done. So, shall we think about something else?” We tend to lead them.’ (PCNPTD2)
  ‘The victim wants [the offender] hung up or locked up in prison. Well, that's not gonna happen, that's not justifiable. Now, if [the offender]’s mum and dad say “sorry” and offer £100 to pay for the damage, I think, even if the victim is not happy with that, there should be a line where police use common sense and go: “This is the right outcome.”’ (POG1)

Stakeholder empowerment was usually neither enabled nor denied *entirely* – usually, it was *managed* by the officer.
Managed empowerment

• Healthcare professionals ‘adopt[ed] managed empowerment as an expedient means to enable the patient to make “any kind” of choice as long as it aligns with (or is pre-sanctioned by) the [professional]. (Daley, 2015: 261-2)

• Healthcare professionals as ‘knowledge brokers’, ethical agents’, and ‘enablers’ (Daley, 2015: 228)

• This power imbalance should arise in almost any situation where the state attempts to devolve control to citizens, in matters where power would otherwise be vested entirely in its representatives.

Conclusion: the balancing act of restorative policing

• Restorative justice tries to get the police to relinquish control and devolve power to citizens (i.e. victims, offenders and communities)

• This created tensions where the police perceived the needs and interests of participants to conflict with 1) each other, 2) their own goals, 3) their organisation’s goals, or 4) the interests of ‘justice’ and wider society, however defined

• What restorative policing looked like in practice was shaped by the way that individual officers exercised their discretion when they enacted their responsibilities to empower citizens AND to balance the needs and interests of various stakeholders