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ORIGINAL ARTICLE

A history of restorative justice in Scotland: The evolving nature of an innovation in criminal justice policy and practice

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Abstract

High-level political support for restorative justice in Scotland is at its strongest for many years, and yet its availability is lower now than in the mid-2000s. To explore the reasons behind this paradox, we undertook an oral history project focused on the origins and development of restorative justice in Scotland. Based on 15 interviews with professionals, we tracked how the nature, objectives and scale of restorative justice has evolved in Scotland over time. Our analysis shows how the meaning and purpose of justice initiatives can shift, providing insight into policy development and broader debates about the role of justice responses.

KEYWORDS

criminal justice policy, history, restorative justice (RJ), Scotland

1 | INTRODUCTION

High-level political support for restorative justice (RJ) in Scotland is at its strongest for many years, with a commitment from the Scottish Government (2018) to make it widely available, and yet its availability is lower now than in the mid-2000s. What lies behind this apparent paradox? Applying an oral history approach, we attempt to demystify this contradiction by identifying the origins, decisive events and key factors that shaped the development of RJ in Scotland, seeking to understand why and how RJ has taken this path. The present study sheds light on how innovation

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in criminal justice policy and practice takes place, the people and factors that facilitate or hinder its development, and how concepts and practices evolve over time.

While RJ is now practised in many jurisdictions internationally, including countries in Asia, Africa, Europe, the Americas, and Australasia, supported by international policy instruments (Marder, 2020), and has long and varied histories, Daly (2002) has warned us to be wary of stories of its grand origins. For example, contemporary RJ practices in Aotearoa/New Zealand began in the form of Family Group Conferencing in the 1980s in response to particular concerns regarding inadequate responses to young people of Māori background and victims of crime. Although sometimes described as the resurgence of Indigenous forms of justice, it is better understood as a contemporary justice mechanism that is influenced by traditional justice practices and intended to be culturally appropriate, operating in a context that tends to prioritise processes over relationships (Daly, 2002).

Boyes-Watson (2018) described the RJ movement as starting in the 1990s, although she noted victim-offender mediation practices developing in the 1970s. She described four main influences: (i) attempted reforms of the criminal justice system; (ii) initiatives aimed at better dealing with the needs and behaviour of children and young people; (iii) peace and democracy movements in post-conflict settings; and (iv) Indigenous rights movements. She argued that these were relatively independent movements that have shaped RJ in different ways, relative to their contexts.

In terms of peace-building and Indigenous movements, Mackay (1992, 2021) highlighted the relevance of the traditional Scottish justice practice of 'assythment', which dealt with blood feuds through mediation, arbitration and financial compensation. However, 'reparation and mediation' schemes from the 1980s are more commonly cited as an early stage of the development of RJ in Scotland (Kirkwood, 2018; Maglione, 2021), initiatives aimed at finding ways of dealing with criminal harm outside of the conventional court process. These were followed, in the 2000s, by initiatives using RJ as part of the response to youth offending (Maglione, 2021; Maglione, Buchan & Robertson, 2022). While victims' rights organisations have often supported the use of RJ in relation to crime committed by young people, raising concerns with the treatment of victims within the criminal justice system, and the need for them to be empowered and helped to heal (Maglione, 2021), feminist movements have tended to support victims' rights while highlighting risks associated with the use of RJ in relation to domestic abuse and sexual offences (Boyes-Watson, 2018). More recently (2017 and onwards), RJ was framed as allowing greater voice and inclusion for people harmed by crime (Maglione, 2021); however, most RJ services in Scotland deal with youth offending, with very few dealing with crime committed by adults (Maglione, Buchan & Robertson, 2022). Maglione (2021) illustrated that RJ in Scotland tends to be framed as a communication-based mechanism for dealing with specific offences between individuals, and argued that the more radical potential of RJ to deal with the societal conditions in which offending takes place, or as providing an alternative to conventional criminal justice processes, was blunted.

Goodman, Page & Phelps (2017) argued that criminal justice policy and practice is best understood to change through struggle. Their 'agonistic' perspective suggests that people and organisations create change, and that practices can be highly variable across places, even within jurisdictions. This requires paying attention to both what is said and what is done, how specific actors are involved in influencing change and stability, and examining variations that coexist within jurisdictions. The objective of this research is, therefore, to trace the path that RJ has followed in Scotland, accounting for the actors and factors that shaped its development, and the different configurations it has assumed over time. Such insight is likely to have broader implications for understanding innovation in criminal justice policy and practice.

2 | METHODOLOGY

We undertook an oral history approach to exploring the development of RJ policy and practice in Scotland. Oral history was used because the formal documentation of the development of RJ is relatively limited, especially before it was institutionalised through government policy, or entered legislation in 2014, and because the label 'restorative justice' was not originally applied to some practices that later came to be known as RJ (Maglione, 2021). Influenced by previous scholarship taking a historical approach to understanding criminal justice policy developments (Loader & Sparks, 2004), especially those using oral history to understand the Scottish context (e.g., Brangan, 2019; McNeill, 2012), we see oral history as providing insight into policy and practice developments at a level of detail that can be inaccessible through other means (Cullen & Messner, 2007). Rather than resulting in an 'objective' account of the past, we treat oral history testimony as providing a variety of perspectives, each coloured by the participants' own interests and viewpoints, which allow us to critically reflect on what has happened, and how different actors account for, and interpret, these events.

The first author has been around RJ issues for many years, and so was able to draw on his existing networks and knowledge to identify potential interviewees who could speak about the development of RJ from first-hand experience. We used a snowball approach to ask interviewees for further recommendations of potential participants to both help confirm we were speaking to the right people, and to identify additional interviewees to recruit. The use of personal knowledge and the snowball sampling approach risks biasing the findings in favour of those who hold similar opinions (Bleich & Pekkanen, 2013). We tried to mitigate this risk by identifying participants from different professional backgrounds, and who would have encountered RJ from different positions and points in time. We focused on the mid-1980s to 2019, as this stretched between two significant points based on our pre-existing knowledge; that is, the 'reparation and mediation' pilots in the 1980s through to the publication of the Scottish Government (2019) Restorative Justice Action Plan.

In 2021 we undertook 15 online¹ interviews with people involved in RJ policy, practice and research in Scotland. The participants were primarily from the third sector and/or academia, as well as the Scottish civil service, judiciary or social work, chosen based on our knowledge of their direct involvement with, or closeness to, the development of RJ in Scotland at various points from the 1980s to the present day. Due to the relatively small pool of people involved in Scottish RJ, we refrain from providing information about their specific roles to protect their anonymity.

The second author conducted one interview with each participant, following a semi-structured interview schedule, with follow-up questions via email in limited instances. Interviewees were asked to state their involvement with RJ, describe how RJ developed over time in Scotland, and give their opinions on the people and factors that enabled, influenced, or inhibited its development. We had the interviews transcribed, and coded them thematically in terms of enablers and barriers to the development of RJ. We created detailed individualised timelines to identify key events and examine similarities and differences between accounts, before creating a master timeline that brought together the key events in chronological order. We moved between the individual and master timelines, and interview transcripts, to identify continuities, divergencies, and factors and individuals that influenced the development of RJ in Scotland. We paid close attention to the way RJ (and practices retrospectively labelled as RJ) was understood to function at the different points in time, including its apparent purposes, target groups and types of crime, and its relationships with other justice processes.

Through this process, we found it useful to conceive of several ‘eras’ that help to distinguish the way RJ has operated in Scotland. These are intended to highlight how the nature, purpose and scale of RJ has evolved over time. However, we take seriously Goodman, Page & Phelps’s (2017) points about the way that categorising time into such eras can simplify or distort developments, and therefore ensure we examine variations and continuities within and across eras.

3 | FIRST ERA: REPARATION AND MEDIATION: 1985–1996

In 1985–1986, a demonstration project was developed, as part of a postgraduate programme, to explore the potential of mediation practices as diversion from prosecution. Subsequently, the voluntary organisation Sacro was funded by the Scottish Office² of the government to run the project for an initial three years. One of the interviewees explained that the initial idea came from a presentation at a meeting of the Scottish Association for the Study of Delinquency on the ‘Columbus Prosecutors’ Project’ in the USA, where law students settled cases using mediation and reparation. The interviewee was involved in discussions regarding the potential of diversion of prosecution in Scotland, and saw this as a way to deal with cases that would have otherwise gone to court. They described how the scheme operated:

[The procurator fiscal]³ would say, look, we’d like you to take this case, but simply having agreement about who’s going to make reparation isn’t enough. We want to have an extra, we want to have a kind of rehabilitative extra, as part of the agreement. So, the agreements became three ways. It wasn’t just between the victim and the offender, but it was also between the victim, the offender and the prosecutor. So, what we had here, if we look at the idea of mediation, which is normally between two parties who are equals, we have something which, in mediation language, or mediation terminology, is known as mediation arbitration, and that is in fact, what we were doing. The arbitrator, the prosecutor, was allowing us to try and find a mediated solution between the parties, but he or she still retained jurisdiction. (Interviewee 1)

These reparation and mediation pilot schemes were initially set up in Edinburgh and subsequently in Glasgow (Scotland’s most populous cities). They operated on a diversion from prosecution basis and were only used in cases of relatively minor crime (although serious enough to warrant going to court). All cases involved adult offenders (i.e., aged 16 years and above). The initial pilots operated until 1990/1991, and Sacro continued to operate ‘mediation and reparation’ services into the 2000s, during which time they were funded by, and operating in, five of Scotland’s 32 local authorities. In 2006, Sacro renamed them ‘Restorative Justice (Diversion) Services’, by which point they collectively received more than 800 case referrals in the year (Kearney, Kirkwood & MacFarlane, 2009).

These original ‘reparation and mediation’ schemes can be thought of as the origins of contemporary RJ in Scotland in at least two ways. Theoretically, underlying principles and practices are in line with some current approaches, particularly the emphasis on directly involving the people responsible for, and harmed by, the offence in deciding how it is best resolved, and the practice of involving a facilitator to help them communicate with each other and come to a resolution. Developmentally, the original services evolved in such a way that they came to be explicitly labelled as ‘restorative justice’, and some of the people and organisations involved in the original schemes continued to be active players in RJ in Scotland in more recent times.

However, we should not be too hasty to label the original schemes as ‘restorative justice’ by another name. As explained by our interviewee, the service operated as ‘mediation arbitration’, whereby the official responsible for prosecution (procurator fiscal) retained power over the shape and acceptability of any agreement about how to deal with the case. Such a model is at odds with, for example, Nils Christie’s (1977) notion of restoring ‘conflicts’ to those directly involved in them, and reducing the direct influence of professionals. The rationale for the initiative was to find alternative ways of dealing with crime outwith the standard court processes, with a focus on relatively minor crime committed by adults. Similar to Boyes-Watson’s (2018) point about the different influences of RJ she identified constituting independent movements that nonetheless shaped RJ in distinct ways, the reparation and mediation schemes can be seen as one of the strands that has shaped the development of RJ in Scotland.

4 | SECOND ERA: THE RISE OF RESTORATIVE YOUTH JUSTICE: 1996–2007

The next phase in the history of RJ in Scotland is characterised by a focus on responding to offending behaviour by young people (usually aged 16 years or younger), coinciding with growing political concern with youth offending and antisocial behaviour in Scotland and other parts of the UK (McAra, 2008). Here it is important to note that Scotland has a distinctive approach to both the welfare needs and offending behaviour of children and young people, in the Children’s Hearings System, which prioritises their needs and interests, and involves a panel of lay people in deciding on formal responses.

Although not explicitly discussed by our participants, from 1996 Sacro operated the ‘Young Offender Mediation Project’ in Fife, which was evaluated by Sawyer (2000). The project was described as ‘based on principles of restorative justice’ (p.i) and was aimed at young people who were ‘showing signs of developing a pattern of offending behaviour’ (p.i). Potential options for involvement included: ‘undertaking a task for the victim or the wider community; meeting the victim face-to-face to discuss their offending behaviour; and, finally, writing a letter of apology or explanation to the victim’ (p.iv).

A significant development in RJ in Scotland came in 2002, when the Scottish Executive⁴ responded to a proposal from Sacro to further develop the use of RJ in relation to young people with an injection of £2 million to mainstream RJ within youth justice across Scotland’s local authorities (Scottish Executive, 2002b). This was followed by funding of £1.5 million in 2005/2006 to double the number of RJ places in youth justice (Scottish Executive, 2005). In 2004/2005 Sacro was providing restorative youth justice services in 19 of Scotland’s 32 local authorities, receiving more than 1,500 referrals that year (Nicol, Kirkwood & MacFarlane, 2006). The training of RJ practitioners – mostly working with young people, but also with adults – became widespread by the mid-2000s. Guidelines for RJ, predominantly in relation to young people, were also published during this period for the first time (Scottish Executive, 2002a; Scottish Government, 2008a, 2008b). An interviewee explained how the funding significantly advanced the use of RJ:

with the injection of funding ... everything took off. And the Children’s Reporters⁵ really got on board, that was really important, because without their referrals, it was entirely voluntary, there was no legislation, so they really had to be on board, believe in what they were doing and trust it. And, so, setting up, getting that trust and the credibility of the services was crucial. So, that took a few years to roll out,

but that was where things started happening. Towards the end, I think, RJ was ... we started to expand beyond youth justice to, as I was saying, prisons and serious cases, police warnings, schools, residential childcare and those sorts of things, so it started to branch out a bit more, beyond the hearing system. (Interviewee 2)

Some interviewees suggested that, during this period, there were tensions between organisations that were positioned as more ‘offender-oriented’ and those that were seen as ‘victim-oriented’. Victim support organisations were predominantly accepting of RJ being applied only within the scope of minor, antisocial behaviour type of offences and those involving young offenders, but sometimes voiced the opinion that RJ was offender-focused and did not sufficiently prioritise victims’ needs. This attitude was reinforced by the fact that at that point in time there was no acknowledgement of the utility of RJ for crime victims in Scottish policy (Maglione, 2021).

An interviewee based in an organisation supporting victims of crime explained that, while discussion of gender violence was not predominant in this context, where it did come up, they were opposed:

I vehemently opposed any discussion about using RJ as a tool to deal with offenses that related to violence against women because at the time I argued it was inappropriate. That it diminished the seriousness of the offenses. It never really came up in relation to sexual offenses. I remember having a discussion with a police officer and a criminal justice social worker⁶ about whether it would ever be appropriate for there to be a meeting between a victim and a convicted accused person. So someone who’d been convicted for rape or sexual assault, was there anything to be gained from them meeting as part of *his* rehabilitation. And I was appalled at the idea and I said, there may be women who would be willing to do that, but what would you have in place to support them? What would you have in place to ensure that they weren’t subject to further threats? How would you ensure that he wasn’t manipulating the situation, and this was particularly in relation to known assailants, that he wasn’t going to manipulate the situation to further abuse the women? So they didn’t go very far those discussions. (Interviewee 3)

Several interviewees argued that RJ presented high compatibility with the Scottish Children’s Hearings System and that this facilitated the rapid development of RJ within the youth justice context. The openness and trust of Children’s Reporters on the effectiveness and robustness of RJ practices was cited as instrumental in the development of RJ within youth justice. Since there was no legislation that imposed any obligation to offer RJ services, it was entirely within the discretion of Children’s Reporters to refer a case to an RJ service. Sacro was also perceived as a driving force of RJ’s development during this time:

Sacro and its commitment to restorative justice, and its existing experience, the commitment of the staff, their experience, their skills, and their spread. They were already in quite a number of local authorities, so they had credibility, they had the experience, they had the skills and the commitment to it, so Sacro was really critical. (Interviewee 2)

Several interviewees discussed the role of international influences on Scotland. For example, in 2000, the European Forum for Victim-Offender Mediation and Restorative Justice was

established. An interviewee argued that the language favouring 'restorative justice' was imported from there around the same time. The use of RJ in relation to young people now greatly overshadowed the scale of 'mediation and reparation' services which engaged with adults as diversion from prosecution, and the name of these services changed to 'Restorative Justice (Diversion) Services', linking them more explicitly with these broader developments around RJ:

The government didn't want to use the words restorative justice. This was in the 1990s and the early 2000s. They only wanted us to use mediation reparation. But from the influence of Europe and listening to colleagues and friends talk about restorative justice within the European framework, I came back and said, this is restorative justice, so let's adapt the names of the services to call them restorative justice so we're getting it on the map ... Government contacts at that time were not happy with that, but we did it anyway ... (Interviewee 4)

In order to distinguish different approaches conceptually and in practice, mediation was defined as an approach that focused on resolving disputes and conflicts, whereas RJ focused on addressing harm, with related differences in practice (Brookes & McDonough, 2006). A notable development in the mid-2000s regarding RJ in relation to offences committed by adults was Talk After Severe Crime (TASC), a 'proof of concept' project that was intended to deal with more severe crimes committed by adults in pre- or post-sentence contexts (i.e., not as diversion from prosecution), but which operated by Sacro on a limited basis, due to the lack of consistent funding (Kearney, Kirkwood & MacFarlane, 2006).

This era is therefore characterised by a significant increase in training and the availability of services focused on responding to offending behaviour committed by young people, enabled by significant funding from central government. The use of RJ principles and practices became more explicit and was taken up by the existing diversion from prosecution services for adults. However, the level of state support was asymmetrical between the youth and the adult justice system, with more resources being funnelled into the former.

5 | THIRD ERA: DISCONTINUATION OF CENTRAL GOVERNMENT FUNDING: 2007–2012

A significant event, mentioned by six of our interviewees, was the discontinuation of 'ring-fenced' funding from central government to support the delivery of RJ services in relation to offending by young people:

We were just left in the dark. That was a dark period ... A lot of ... services were decommissioned, a lot of practitioners, very skilled practitioners, were made redundant with loads and loads of good experiences just started to dry up, because you were no longer able to provide a service. And, what you also found was, a lot of authorities said, we're going to deliver this in-house. And frankly, those were just ... that was polite language for, we're just going to stop doing this. (Interviewee 5)

Once local authorities were no longer receiving central funding to continue the youth justice services, the size and availability of these services started to reduce, and many trained staff stopped delivering RJ. This was in the context of a global financial crisis, resulting in the UK entering a

recession, followed by a period of fiscal austerity. In this context, the Scottish Government made major changes to the way local authorities were funded, with a concordat stipulating that local authorities would deliver on a set of national outcomes, and there would be fewer areas with ring-fenced funding, and instead local authorities would receive a grant with greater flexibility in terms of how they used the money to meet the agreed outcomes (Midwinter, 2009). Moreover, the funding for youth justice was provided by the then Labour-Liberal Democrat run government, whereas the Scottish National Party came to power in 2007 and the political agenda in relation to criminal justice changed, shifting away from antisocial behaviour. One interviewee argued that around that time priorities became more target-driven and traditional criminal justice measures were quicker and easier to justify politically as safe/effective. Another reason given by interviewees for the shifting of policy priorities within the government was the high mobility of civil servants within governmental departments, which meant that new people came in that were not aware of RJ and its benefits. Lack of funding is argued by one participant to have been the result of a wider institutional issue in Scotland, where the third sector is made to compete for funding:

So there's a bigger systemic thing here where third sector agencies have to compete for a limited amount of funding so of course they're going to try to disparage each other or try to get one over, try to muddy the waters ... So Sacro, Victim Support and other agencies, they were all competing for money, and confusion was part of the game, and we all, we had so much limited resources. (Interviewee 4)

What was clear from the interviewees, however, was that the cutting of funding for youth RJ services, and the real-terms reduction in such services, was experienced as a shock and seemed disconnected from the benefits such services seemed to provide.

The interviewees also noted that the period of funding for youth RJ services was leading into more experimentation and work to expand the use of RJ and restorative practices into other areas:

I think the youth justice seemed to have, kind of, settled in, we thought that would just continue because it was going so well. So, we were exploring, you know, the adult system and serious cases and schools, and so on. So, that, sort of, became more of a focus, I think, at that time, and ... So, I think it was a shock when they stopped the ring-fenced funding, that was, kind of, a kick in the guts, I think, for a lot of us, because we ... that was out of the blue, that was unexpected. (Interviewee 2)

In 2007, Restorative Practice Scotland was founded, described by an interviewee as a grass-roots organisation for RJ practitioners and providers to discuss the development of RJ. In 2008, a government-funded seminar brought together RJ stakeholders in Scotland, resulting in a collaboration between Sacro and Victim Support Scotland to extend the use of RJ in adult settings. The proposed project was named the 'Restorative Justice Joint Action Project' (RJJAP), but it did not gain funding or run. One of the interviewees described it in the following terms:

what was being proposed as a result of the RJJAP was, it was a parallel system to criminal justice so that no matter where in the system the offender happened to be ... so, it was a victim's perspective on restorative justice, not what typically some of the academics had said needs to be restorative justice, which is looking after the offender needs. It was much more focused around the victim's needs. And at any point in the process, whether or not there was a criminal justice penalty or system in

place. Then if the victim said that they wish to engage with the offender, no matter where they were, the victim would have an opportunity to find out or to engage in a restorative justice process. So, it was a victim-centred approach to restorative justice, and that was the whole ... that was why it was different. And it was very different as opposed to typically the RJ approaches that were typically from the offender-based organisations. (Interviewee 6)

What was notable about this initiative was that it was developed in partnership between Sacro and Victim Support Scotland, and that it was intended to run in parallel with formal criminal justice processes, bringing greater focus to the needs of people harmed by crime. Another initiative was the founding in Shetland (an archipelago approximately 170km/110miles from the Scottish mainland) of Space2Face, a RJ organisation that draws on creative and artistic practices and works with people of all ages. Both of these were seen as different from previous and existing RJ services, such as the diversion services for adults and the youth RJ services, which were initiated by, and driven by, the response to the person responsible for the offence. Also, in 2010/2011, the Time to be Heard (TTBH) pilot forum took place, which provided an opportunity for former residents of residential schools and children's homes (specifically, Quarriers Homes, formerly known as The Orphan Homes of Scotland) to voice their experiences, particularly abuse suffered while in care, to a panel, and take part in a RJ process if they wished (Shaw, 2011).

This period is therefore marked by a significant reduction in the availability of youth RJ services, primarily caused by the removal of ring-fenced central government funding, the reasons for which are seen as having little to do with the perceived benefits of the services, but which had a very tangible impact on the development of RJ. And yet, around the time that restorative youth justice starts to wane, relatively small-scale initiatives start to emerge, often using RJ to deal with more serious crimes committed by adults, although usually without sustained central or local government funding.

6 | FOURTH ERA: A FOCUS ON THE NEEDS OF VICTIMS: 2012–2018

An important development in 2012 was the European Parliament and the Council of the European Union passing Directive 2012/29/EU ('the EU Victims Directive') establishing minimum standards on the rights, support and protection of victims of crime. It can be argued that the EU Victims Directive was both a key event and a contextual driving force that initiated this new era for Scottish RJ. Some interviewees argued that victims were already at the forefront of political conversations well before this Directive. However, several interviewees cited the Directive as providing a springboard for the Victims and Witnesses (Scotland) Act 2014, which, as a result of lobbying by members of the then nascent Restorative Justice Forum (Scotland), gave RJ a foothold in legislative recognition, and that is why we treat it here as the turning point triggering this fourth era of RJ in Scotland:

So around the time of the Victims and Witnesses Scotland Bill going through the Scottish Parliament, there was an opportunity to lobby some of the members of the justice committee, with a view to an amendment being made to the legislation to include reference to restorative justice. That was tied into the Victims and Witnesses directive ... from Europe. So myself and a number of others were particularly involved and there was a lobbying of the members of the justice committee, and an amendment

was put to the parliament and ultimately accepted, which in many ways has been the basis for where things have moved with restorative justice since. And ultimately this proposal that by 2023 any victim who wishes to access restorative justice should have the opportunity to do so, do you know? And I suppose what that experience highlighted to me was the ease in Scotland of influencing policy frankly and the relatively narrow space between, you know, policy, practice and legislators. And I think that's both a good thing but potentially a bad thing as well, because you can have minority interest groups that maybe have more influence than they ought to. (Interviewee 7)

Interviewees explained that a number of individuals noticed that the original Victims and Witnesses Bill did not make explicit reference to RJ, and they came together in 2013 to lobby the Scottish Parliament around this issue, and form the Restorative Justice Forum (Scotland) to more broadly advance the development of RJ policy in a co-ordinated fashion. This occurred around the same time that Restorative Practice Scotland was disbanded, with its remaining funds being made available to support the Forum. Interviewees noted that the Forum had lobbied for victims to have a right of access to RJ – the lack of which was seen by some as a hindrance to its development – but the legislation that was passed contained a significantly weaker commitment around the ability of the Scottish Government to publish guidance on RJ:

In Autumn 2014 the forum [the Restorative Justice Forum (Scotland)] tabled a proposal from the third reading of the Victims' and Witnesses' Bill ... that there should be a new clause establishing a right to victims to request access to a restorative process with the person responsible for the crime or offence committed against them, and that this would be separate from any particular stage of the formal criminal justice process. When this matter was debated in parliament, a compromise position was reached whereby the amendment was revised removing the duty on Scottish ministers and replacing it with the *ability* for Scottish ministers to issue guidance relating to the referral of individuals to, and the provision of restorative justice services. And that, that, I think is the origins of the commitment to produce the guidance that was eventually published in October 2017. (Interviewee 8)

Several interviewees highlighted that this context brought with it a focus on the needs of victims of crime, and therefore the activity at this time was more directed towards positioning RJ from the perspective of people harmed by crime and the potential benefits for them, which somewhat differed from how it had tended to be positioned in previous eras, in terms of being triggered by the official response to a criminal offence and the person responsible for that offence. Such lobbying work was another instance of collaboration between organisations which provided RJ services – namely Sacro – with organisations that supported victims of crime – namely Victim Support Scotland.

The Restorative Justice Forum (Scotland) continued to lobby the Scottish Government to implement Section 5 of the Victims and Witnesses Act (Scotland) 2014 by publishing national guidance on RJ, and ultimately ended up considerably contributing to the drafting and revising of the guidance, along with contributions from other agencies. During this period, the Restoration in Serious Crime (RiSC) action research initiative also commenced, which was similar to the earlier initiative TASC, and was an attempt to explore how RJ could be used in more severe crime, particularly taking into account the needs of people harmed by crime and applying notions of peace-making (Whyte & Kearney, 2017). A group of academics (including the first author of

this article) and members of the Restorative Justice Forum (Scotland) accessed funding to run a seminar series entitled 'Developing Restorative Justice in Scotland' during 2017, which brought together researchers, practitioners and policymakers to explore the evidence and possibilities for RJ in Scotland. Several interviewees mentioned the importance of these events in driving forward the development of RJ during this era. The Scottish Government (2017) guidance on RJ was launched at the final event in the series in October 2017.

Following the conclusion of the seminar series, in late 2017, the Scottish Conservative Party spokesperson for justice approached the Restorative Justice Forum (Scotland) to gain insight on RJ outcomes and effectiveness. He asked questions about RJ in parliament and brought forward a parliamentary debate about increasing opportunities for RJ delivery in Scotland. The debate took place in May 2018, and resulted in all major parties agreeing on taking action to improve RJ delivery, which was seen as further supporting the development of policy in this area (Scottish Parliament, 2018):

... where that became apparent that there was general cross-party support for trying to get restorative justice up and consistently running within Scotland. Not always ... there's not consistency in when it can get used, I have to say, that's still not there 'cause there's certain ideological differences between things like when it can get used as a diversion from prosecution, because there's a principle part on the part of the Tory Party that they don't agree with diversions from prosecution. So, you know, whatever is ... and if restorative justice is part of that, they wouldn't probably support that. However, the general idea of the benefits it could bring to both the person harmed, and the person who's done the harm, there is the general agreement on it, which gives you a bit of strength to your arm if you're developing a policy. (Interviewee 9)

The next major development was the commitment by the Scottish Government, in their 'Programme for Scotland', published in 2018, where they stated:

Restorative Justice can lead to a route out of crime and provide closure and redress to victims and communities. We know that it can empower victims of crime and reduce offending. We want to have restorative justice services widely available across Scotland by 2023 with the interests of victims at their heart. We will publish a Restorative Justice Action Plan by spring 2019 that will set out how we deliver this aim. (Scottish Government, 2018, p.105)

As evident in the language, RJ was positively positioned as having benefits for people harmed by crime – their needs being prioritised in the Scottish Government's approach – as well as having the scope to reduce offending. In terms of what may have led to this development, interviewees commented on the approach of the justice minister at that time, as well as other political dimensions:

I think that was probably what led to the change, was when it became a victim's issue and not a ... I think my understanding, prior to that, it was seen as a way of addressing, trying to tackle reoffending. ... I think restorative justice is a powerful tool to actually give the victims back the control that they seem to lose because they're not seen as a victim, they're seen as a complainer. And it's all, you know, all the work the whole justice system is not really set round supporting the victim, it's set around

what is best for society. Whereas restorative justice brings back the personalisation and gives back the control. (Interviewee 9)

I think the Scottish justice minister, Mr Humza, at that time, was really important. He was very much in favour of the proper development of restorative justice as a means to bring people together and to create something more positive out of offending. And if it had been a different minister then I doubt we would have had the action plan in quite the words that we have it. A lot more vague, probably. But I think, actually, people were quite surprised about the vision and its emphatic language, even when that came out. (Interviewee 10)

The Scottish Government facilitated workshops in late 2018, bringing together a range of stakeholders to develop an action plan, which was published in June 2019 (Scottish Government, 2019). While there was broad cross-party support for RJ at this time, and collaboration across several different statutory and voluntary sector organisations, several interviewees also commented on tensions and challenges in developing policy on the topic:

One [source of pushback] is from the organisations that support women who have been subject to domestic and sexual abuse. Where they have significant concerns about the risks of re-traumatisation, or particularly where coercive control is involved in harm, could have on the women they support. Now, both in the guidance and in the action plan, their opening position was they thought we should specifically exclude these cases from restorative justice. (Interviewee 9)

Overall, it is evident that in this era a relatively small number of individuals worked to bring attention and support to RJ, framed in relation to victims' rights and needs, using victim-related policy and legislation as vehicles for institutional recognition of RJ. However, while there was general support for RJ to be found across different political parties in Scotland and many organisations, there remained some important points of difference. Notably, conservative politicians tended to see RJ as an addition to the existing criminal justice responses, rather than an alternative to them, while groups that responded to violence against women tended to take a similar position in relation to gender violence, and had specific concerns about the use of RJ in relation to sexual offences and domestic abuse, a point that was evident at least as far back as the 1990s. The actual provision of RJ stands in stark contrast to the political support; whereas RJ was available in all 32 Scottish local authorities in 2006, by 2018 it was available in fewer than half of these (Community Justice Scotland, 2018; Maglione, Buchan & Robertson, 2022).

7 | CONCLUSIONS AND DISCUSSION

This history of RJ in Scotland illustrates that people have experimented with, implemented and lobbied for RJ, and related innovative practices, throughout the decades. In the words of Goodman, Page & Phelps (2017): 'advocates of particular penal orientations do not simply go away once their preferred penal perspective falls out of favor. They keep struggling' (p.14). Some of the same individuals and organisations involved in the initial reparation and mediation schemes in the 1980s were still involved in lobbying for RJ and RJ development work more than 30 years later. So while the availability of RJ services has varied significantly over this period, advocacy

is evident at many points. In keeping with the agonistic perspective of criminal justice policy change (Goodman, Page & Phelps, 2017), according to the interviewees' accounts, the actions of individuals have been pivotal for RJ, whether in terms of advancing or inhibiting its development. However, wider contextual forces are clearly relevant, including the political attention to offending behaviour by young people in the early 2000s, the global financial crisis and the climate of austerity, and international policy developments regarding victims of crime.

While the events we describe can be understood as a story of RJ in Scotland, we believe it is helpful to distinguish between the developmental and theoretical dimensions. That is, developmentally the practical links between initiatives at different points are evident as the same people and organisations are involved at different times – such as in the original reparation and mediation schemes, and some later initiatives explicitly labelled as 'restorative justice' – and earlier practices were renamed as 'restorative justice'. Theoretically, there are also continuities, with a focus on facilitated communication aimed at dealing with criminal harm. However, the rationales, practices and purposes also have identifiable differences across the eras. In the first era, the reparation and mediation schemes developed as an alternative to court processes, which appeared to have a greater focus on deliberative elements (i.e., resolving the crime) than later initiatives that focused more on dialogue (Kirkwood, 2022), and, at least in its earliest manifestation, ultimate decision-making authority remained with the prosecutor. In the second era, RJ was legitimised by the need to find effective responses to crime committed by young people, and often formed part of a broader intervention; here, the explicit engagement with restorative principles and practices were adopted by the diversion from prosecution services, which continued as ways of dealing with criminal cases outside of court, but with a clearer practice framework in which to operate. The third era illustrated the import of central government funding, with funding cuts leading to the significant reduction in service availability, but with greater attention to, and experimentation with, the potential of RJ to address the needs of victims and address more serious crime. The fourth era was characterised by a focus on the scope for RJ to address victims' needs, as an addition, rather than alternative, to standard justice responses, with Scottish Government and cross-party support. So, while the original reparation and mediation schemes can be seen as a *developmental* origin for more recent RJ initiatives, *theoretically* they are rather distinct, as the principle of facilitating communication as the means for resolving criminal cases without going to court has been displaced by empowering those harmed by crime to take part in voluntary dialogue to address the harm they suffered. The appropriate forms that RJ should take, and its relationship with formal criminal justice processes, is a matter of ongoing international debate (Rosenblatt & Mazzucato, 2023).

In their analysis of the development of criminal justice policy, Goodman, Page & Phelps (2017, p.13) argued that contestation is constant whereas consensus is illusory. Even where there appears to be relative consensus regarding RJ – such as in the period following the Scottish Government commitment to expand RJ, where there was cross-party support for RJ and the involvement of many stakeholders – contestation remained, most notably regarding its use in relation to domestic abuse and sexual offences, and its potential as an alternative to court. While Maglione (2021) demonstrated that the commitment to expand the provision of RJ in Scotland was aided by presenting this as meeting the needs of victims of crime, the picture ends up being more complex, with this connection having moved the focus away from alternatives to court, and concerns around its use in relation to sexual offences and domestic abuse having likely slowed and complicated its progress. Indeed, the Scottish Government commitment to make RJ widely available by 2023 was not met and Sacro's RJ Diversion from Prosecution Services no longer operate. While the Covid-19 pandemic inevitably hampered developments, several of the issues identified here – such as limited central government funding, resistance regarding the use of RJ in relation to gender violence,

and a lack of consensus over its place as an alternative or addition to existing criminal justice responses – were likely influential. Also, given that RJ is intended to meet the needs of both those harmed and responsible for crime, artificially categorising people as either ‘victims’ or ‘offenders’, or focusing on one category over the other, is likely to hinder RJ policy development (Marder, 2020). As Buchan & McNeill (2023) argued, progressive political rhetoric on criminal justice in Scotland fails to produce substantive changes in practice when the underlying drivers of criminal justice processes remain untouched.

Putting this in an international context, while several jurisdictions have a more advanced availability and infrastructure for RJ, some appear to be following a similar path to Scotland. For example, governments of the Republic of Ireland (Government of Ireland, 2020) and the Czech Republic (Government of the Czech Republic, 2022) have committed to expand the use of RJ in recent years, and the Northern Ireland Executive has a live strategy for furthering the use of RJ with adults (Department for Justice, 2022). While the specific contexts, resources and pressures are likely to vary, there may be much to learn from the Scottish context about the enablers and pitfalls of seeking to further RJ in this way.

More broadly, the analysis troubles the idea of tracking the development of particular policy initiatives, as their very nature, meaning and purpose may shift over time, may be variable even at the same point in time, and may themselves be contested (see Goodman & Quinn, 2022). And yet, such an analysis – in this case on restorative justice, despite remaining a relatively marginal aspect of the response to criminal harm in Scotland – shines a light on the wider understandings of crime and justice across people, places and time.

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ENDNOTES

- ¹The primary reason for conducting the interviews online was to comply with physical distancing restrictions in the context of the Covid-19 pandemic.
- ²The Scottish Office was a department of the UK government with functions in relation to Scotland. Most of its responsibilities were transferred to the Scottish Executive in 1999 when many powers were devolved from the British Parliament to the Scottish Parliament.
- ³Procurator fiscal is the term for the prosecutor on behalf of the state in Scotland.
- ⁴The Scottish Executive is the devolved government of Scotland, formed in 1999, and renamed the Scottish Government in 2007.
- ⁵Children’s Reporters receive referrals for children and young people on welfare or offending grounds and decide whether to refer them to a Children’s Hearing for potential compulsory supervision.
- ⁶Criminal justice social workers are employed by local authorities and have specified statutory responsibilities for supervising people who have been involved in offending behaviour.

REFERENCES

- Bleich, E. & Pekkanen, R. (2013) How to report interview data. In: Mosley, L. (Ed.) *Interview research in political science*. Ithaca, NY.: Cornell University Press.
- Boyes-Watson, C. (2018) Looking at the past of restorative justice: normative reflections on its future. In: Gavrielides, T. (Ed.) *Routledge international handbook of restorative justice*. Abingdon: Routledge.
- Brangan, L. (2019) Civilizing imprisonment: the limits of Scottish penal exceptionalism. *British Journal of Criminology*, 59, 780–799.
- Brookes, D. & McDonough, I. (2006) *The differences between mediation and restorative justice/practice*. Available at: https://www.researchgate.net/publication/335704100_The_Differences_between_Mediation_and_Restorative_JusticePractice [Accessed 19 August 2024].
- Buchan, J. & McNeill, F. (2023) Progressive penalty as performance. *Howard Journal*, 62, 325–340.
- Christie, N. (1977) Conflicts as property. *British Journal of Criminology*, 17, 1–15.
- Community Justice Scotland (2018) *Restorative justice – baseline survey report*. Edinburgh: Scottish Government. Available at: <https://www.gov.scot/publications/restorative-justice-survey-response-analysis/> [Accessed 19 August 2024].
- Cullen, F.T. & Messner, S.F. (2007) The making of criminology revisited: an oral history of Merton's anomie paradigm. *Theoretical Criminology*, 11(1), 5–37.
- Daly, K. (2002) Restorative justice: the real story. *Punishment & Society*, 4, 55–79.
- Department for Justice (2022) *Adult Restorative Justice Strategy for Northern Ireland*. Available at: <https://www.justice-ni.gov.uk/publications/adult-restorative-justice-strategy-ni> [Accessed 19 August 2024].
- Goodman, P. & Quinn, K. (2022) The palimpsest of outdoor penal labour in California, 1915–2000. *Howard Journal*, 62, 119–141.
- Goodman, P., Page, J. & Phelps, M. (2017) *Breaking the pendulum: the long struggle over criminal justice*. Oxford: Oxford University Press.
- Government of Ireland (2020) *Programme for government: our shared future*. Available at: <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/> [Accessed 19 August 2024].
- Government of the Czech Republic (2022) *Policy statement of the Government of the Czech Republic*. Prague, Czech Republic. Available at: <https://vlada.gov.cz/assets/urad-vlady/vydavatelstvi/vydane-publikace/Policy-Statement-of-the-Government.pdf> [Accessed 25 August 2024].
- Kearney, N., Kirkwood, S. & MacFarlane, L. (2006) Restorative justice in Scotland: an overview. *British Journal of Community Justice*, 4(3), 55–65.
- Kearney, N., Kirkwood, S. & MacFarlane, L. (2009) *Restorative justice (diversion) services monitoring and evaluation report 2006/07*. Edinburgh: University of Edinburgh. Available at: <https://www.research.ed.ac.uk/en/publications/restorative-justice-diversion-services-monitoring-and-evaluation-> [Accessed 19 August 2024].
- Kirkwood, S. (2018) *Iriss insight: restorative justice*. Glasgow: Iriss. Available at: <https://www.iriss.org.uk/resources/insights/restorative-justice> [Accessed 19 August 2024].
- Kirkwood, S. (2022) A practice framework for restorative justice. *Aggression and Violent Behavior*, 63, 101688.
- Loader, I. & Sparks, R. (2004) For an historical sociology of crime policy in England and Wales since 1968. *Critical Review of International Social and Political Philosophy*, 7(2), 5–32.
- Mackay, R.E. (1992) The resuscitation of assythment?: reparation and the Scottish criminal law. *Juridical Review*, 3, 242–255.
- Mackay, R.E. (2021) The shadows of bloodfeud in the development of restorative justice: comparing the histories and literatures of Albania and Scotland. In: Gavrielides, T. (Ed.) *Comparative restorative justice*. Cham, Switzerland: Springer.
- Maglione, G. (2021) Restorative justice, crime victims and penal welfarism: mapping and contextualising restorative justice policy in Scotland. *Social and Legal Studies*, 30(5), 745–767.
- Maglione, G., Buchan, J. & Robertson, L. (2022) The local provision of restorative justice in Scotland: an exploratory empirical study. *European Journal on Criminal Policy and Research*, 28, 617–640.
- Marder, I.D. (2020) The new international restorative justice framework: reviewing three years of progress and efforts to promote access to services and cultural change. *International Journal of Restorative Justice*, 3(3), 395–418.

- McAra, L. (2008) Crime, criminology and criminal justice in Scotland. *European Journal of Criminology*, 5(4), 481–504.
- McNeill, F. (2012) Supervision in historical context: learning the lessons of (oral) history. In: McNeill, F., Raynor, P. & Trotter, C. (Eds.) *Offender supervision: new directions in theory, research and practice*. Cullompton: Willan.
- Midwinter, A. (2009) New development: Scotland's concordat – an assessment of the new financial framework in central-local relations. *Public Money and Management*, 29(1), 65–70.
- Nicol, W.J., Kirkwood, S. & MacFarlane, L. (2006) *Youth justice services evaluation report: April 2004–March 2005*. Edinburgh: Sacro. Available at: <https://www.research.ed.ac.uk/en/publications/youth-justice-services-evaluation-report-april-2004-march-2005> [Accessed 19 August 2024].
- Rosenblatt, F.F. & Mazzucato, C. (2023) On the 'restorative idea': setting boundaries, innovating and exploring the unknown. *International Journal of Restorative Justice*, 6(3), 339–352.
- Sawyer, B. (2000) *An evaluation of the Sacro (Fife) young offender mediation project*. Edinburgh: Scottish Executive Central Research Unit.
- Scottish Executive (2002a) *National standards for Scotland's youth justice services*. Edinburgh: The Stationery Office. Available at: <https://webarchive.nrsotland.gov.uk/3000/https://www.gov.scot/Resource/Doc/46932/0025195.pdf> [Accessed 19 August 2024].
- Scottish Executive (2002b) *Youth crime prevention fund*. Edinburgh: Scottish Executive. Available at: https://lx.iriss.org.uk/sites/default/files/resources/0024003_2.pdf [Accessed 19 August 2024].
- Scottish Executive (2005) *Youth justice*. Edinburgh: Scottish Executive. Available at: <http://web.archive.org/web/20051222034431/http://www.youthjusticescotland.gov.uk/theme.asp?ID=6> [Accessed 1 December 2023].
- Scottish Government (2008a) *Best practice guidance for restorative justice practitioners and their case supervisors and line managers (Scotland)*. Edinburgh: Sacro. Available at: <https://lx.iriss.org.uk/content/best-practice-guidance-restorative-justice-practitioners-and-their-case-supervisors-and-line.html> [Accessed 19 August 2024].
- Scottish Government (2008b) *Restorative justice services: for children and young people and those harmed by their behaviour*. Edinburgh: National Records of Scotland. Available at: <https://webarchive.nrsotland.gov.uk/3000/https://www.gov.scot/Resource/Doc/226988/0061357.pdf> [Accessed 19 August 2024].
- Scottish Government (2017) *Guidance for the delivery of restorative justice in Scotland*. Edinburgh: Scottish Government. Available at: <http://www.gov.scot/Publications/2017/10/8454> [Accessed 19 August 2024].
- Scottish Government (2018) *Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018–19*. Edinburgh: Scottish Government. Available at: <https://beta.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/> [Accessed 19 August 2014].
- Scottish Government (2019) *Restorative justice action plan*. Edinburgh: Scottish Government. Available at: <https://www.gov.scot/publications/restorative-justice-action-plan/> [Accessed 19 August 2024].
- Scottish Parliament (2018) *Meeting of the Parliament 22 May 2018*. Edinburgh: Scottish Parliament. Available at: <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/meeting-of-parliament-22-05-2018?meeting=11548&iob=104738> [Accessed 19 August 2024].
- Shaw, T. (2011) *Time to be heard: a pilot forum*. Edinburgh: Scottish Government. Available at: <https://dera.ioe.ac.uk/2633/1/0114448.pdf> [Accessed 19 August 2024].
- Whyte, B. & Kearney, N. (2017) Peacebuilding and RiSC: elements of a Scottish model for restorative practices in serious crime. *Scottish Justice Matters*, 5(1), 11–12.

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