

# Open Research Online

---

The Open University's repository of research publications and other research outputs

## Restorative justice and the right to move on: toward deinstitutionalising the stigma of a criminal conviction

### Book Section

How to cite:

Earle, Rod and Wakefield, Alison (2012). Restorative justice and the right to move on: toward deinstitutionalising the stigma of a criminal conviction. In: Gavrielides, Theo ed. Rights and Restoration within Youth Justice. Canada: de Sitter.

For guidance on citations see [FAQs](#).

© 2012 de Sitter

Version: Accepted Manuscript

Link(s) to article on publisher's website:  
<http://www.desitterpublications.com/rightsandrestoration.html>

---

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's data [policy](#) on reuse of materials please consult the policies page.

---

[oro.open.ac.uk](http://oro.open.ac.uk)

Abstract

**Restorative justice and the right to move on - toward  
deinstitutionalising the stigma of a criminal conviction**

Moves toward restorative justice have tried to reclaim the resolution of conflicts from the exclusive grasp of the state. While much has been achieved in developing new ways of theorising and resolving disputes the consequences of acquiring a criminal record that is retained and deployed by the state have been largely overlooked. In this chapter the authors explore the emergence of the Criminal Records Bureau (CRB) in England and Wales and the ways in which the widespread use of criminal records compromises the rights of people to be considered free from the stigma of a criminal conviction. Contemporary developments in legislation and policy regarding the status of criminal convictions are considered and their implications for young people and those who work with them. The authors argue that the principles and practice of restorative justice must address these elements of permanent and increasingly active intrusive scrutiny by the state.

Rod Earle – The Open University

Alison Wakefield – Portsmouth University

**Of crime, criminals and criminal records**

The first thing that needs to be said is that most people commit crime. Although some people might commit more than others, self-report surveys, such as the widely respected British Crime Survey, suggest that only about 3% of crimes result in convictions. During 2007, for example, 30% of young people aged 10-17 admitted

having committed an offence in the last 12 months but just 5% of them had been arrested (Nacro 2009). Conventional criminal justice systems are notoriously imperfect and imprecise mechanisms for establishing the extent and impact of crimes. Notwithstanding this imprecision, in the UK Home Office research shows that approximately one in three males in the population has a criminal conviction and that 25% of the population of working age has a criminal conviction (Nacro 2006). Disclosure of a criminal record can be a major impediment to a former offender wanting to put their past behind them and live a law-abiding life. A survey conducted in 2005 by the Chartered Institute of Personnel Development found that 36.6% of employers would exclude all ex-offenders from their recruitment process (Nacro 2006).

Most of those that do offend as young people move on to live largely within the law. Committing crime and getting caught tends to happen early in life for most people, particularly young men, and declines quite dramatically and significantly as they grow older (Rutherford 1986; Bottoms et al. 2004; McNeill 2006; Ward and Maruna 2007). Results from the longitudinal Cambridge Study of Delinquent Development showed that, out of the sample of men born in 1959, the vast majority were living law-abiding lives at the age of 48. Specifically, this applied to 95 per cent of the men without convictions, 96 per cent of those convicted before the age of 21, 84 per cent of 'late onset offenders' convicted only after the age of 21, and 65 per cent of those convicted both before and after their 21st birthday (Farrington et al., 2006).

Notwithstanding the weight of this criminological evidence around desistance from crime, in many 'Western' Anglophone countries, there is intense anxiety over access to children by dangerous adults. It has been driven forward by an actuarial political

orthodoxy that previous convictions are a valuable and indeed preeminent indicator of ongoing risk (Simon 2006). This has been demonstrated most overtly in the establishment of sex offender registration schemes in the US, UK and Canada. In developing such programmes governments dramatize particularly heinous crimes and notorious perpetrators, and 'marks them out' for specific scrutiny and open execration (Wacquant 2009). Meanwhile, the more extensive and 'ordinary' forms of abuse and assault, particularly those committed inside the family, are rendered marginal by the focus on exceptional and easily demonised individuals. The social problems of sexual violence and misogyny are reduced to individual pathology. Restorative justice initiatives, such as the Circles of Support pioneered in Canada (Hannem and Petrunik 2006), have been notable in resisting these moves to identify and expose 'suitable enemies' (Christie 2004) to particularly virulent stigma by developing more socialised and inclusive remedies.

The concerns we outline in this chapter however, relate, for the most part, to the handling of less serious and sensational past convictions. We will argue that as restorative justice perspectives gather pace and help to shape the re-structuring of criminal justice systems, they need to ensure there is a more appropriate balance between civil rights, privacy and public safety concerns when considering matters of criminal record disclosure. In the first section of the chapter we outline recent developments in the United Kingdom, a country of just over 60 million people, where, between 2002 and 2009 over 19 million criminal record disclosures have been issued by the Criminal Records Bureau (Change The Record 2011).

### **A short history of criminal records vetting in Britain**

Criminal record checks in England and Wales are carried out by the Criminal Records Bureau (CRB), which was established under Part 5 of the Police Act 1997 and became operational on 1 April 2002. Its stated aim was: 'to help employers and voluntary organisations make more informed recruitment decisions through improved access to Government and police records' (CRB, 2002:7). The Bureau acts as a 'one-stop-shop' for organisations, checking police records and, in some cases, information held by the Department of Health (DH) and the Department for Education and Skills (DfES). There are two levels of CRB check currently available, called Standard and Enhanced Disclosures.

The two CRB checks are available in cases where an employer is entitled to ask exempted questions under the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974 (see below for a discussion of the significance of this Act). Such exemptions from the Act's provisions are made in the interests of national security, the protection of particularly vulnerable people, maintaining confidence in the administration of the law and ensuring probity in areas of banking and financial services. Exempted professions include teachers, healthcare and childcare professionals.

The 'standard disclosure' procedure is primarily undertaken for anyone involved in working with children or vulnerable adults, as well as certain other occupations and entry into professions as specified in the Exceptions Order to the Rehabilitation of Offenders Act (ROA) 1974. Standard Disclosures show current and spent convictions, cautions, reprimands and warnings held on the UK's Police National Computer. The enhanced disclosure is intended for those involved in regularly caring for, training, supervising or being in sole charge of children or vulnerable adults. The enhanced

disclosure can involve the addition of 'intelligence' held on record and deemed relevant by local police forces.

Before the advent of the CRB in 2002, access to police checks for criminal convictions was mainly confined to organisations in the statutory sector for staff members who had 'substantial unsupervised access' to children. The process of checking for criminal convictions was relatively obscure and private, a procedural routine that accompanied being recruited to certain jobs. It was regarded as somewhat cumbersome and notably imperfect but otherwise attracted little public attention.

All that changed with the launch of the CRB in 2002 because the procedures it established involved a massive expansion in the procurement of criminal records and a phenomenal rise in their public profile. Criminal record checks rapidly became a significant part of public life as they acquired vastly increased social visibility. The 'CRB check' quickly became part of the everyday experience of volunteers and increasing numbers of youth justice workers in and around the public sector.

In its first year of operation a mere 1.4 million checks were issued by the CRB, and by 2005 this annual number had risen to 2.5 million. In 2007 it issued its 10 millionth check and by 2008-9 it was issuing 3.8 million checks per year. In 2010 it issued 4.3 million, and, by 2011 it had issued 19 million since its inception in 2002 (Change the Record 2011). When it was established the CRB anticipated that of the two available disclosures, the majority would be for Standard disclosures regarded as suitable for most occupational categories. The extent of the confused enthusiasm for criminal records and the defensive anxiety they foster is revealed by the fact that in 2004 89% of disclosures were of the enhanced variety, and only 11% were 'standard'.

Disclosures made on behalf of specific organizations, such as schools or voluntary associations like the Scouts, are provided to nominated representatives of those organisations. These are the people who scrutinise the disclosure record and decide on an appropriate course of action. They are identified as 'registered persons' by the Bureau but may have no legal or human rights training. They may, for example, be the school secretary. The individual applicant also receives a copy of the disclosure. The fee of up to £54 for an enhanced disclosure may be met by the individual or the registered body, according to local procedures and circumstances of the application for disclosure.

Among the requirements upon registered bodies and their nominated representatives are obligations to sign up to its code of practice for handling such information, including prohibitions on sharing the information with any persons who are not themselves registered persons, and to adhere to a written policy within the organisation concerning the recruitment of ex-offenders. The National Association for the Care and Rehabilitation of Offenders (Nacro), a UK charity that promotes the rights of offenders, reports widespread neglect, misunderstanding and abuse of this code of practice, and little effort to promote it or police compliance (Nacro 2006). In the next section we consider what this has meant, in practice, to some people affected by the explosive rise in the public profile, distribution and scrutiny of criminal records.

### **Collateral consequences**

The unintended consequences of the extraordinary proliferation in the use of criminal record disclosures in the UK have been relatively slow to attract critical scrutiny. In 2008 the experiences of Majid Ahmed attracted national media attention and came to

exemplify rising concerns over the obscured negative impacts of CRB disclosures (Shepherd 2008). Seventeen year old Majid had secured an offer to study medicine at Imperial College, London. Growing up in an impoverished part of Bradford, northern England, where unemployment rarely dipped below 37%, Majid had defied expectation by securing the best ever A-level results in his school. Despite growing up in a small house shared with his three brothers, three sisters and mother in area where 49% of the inhabitants have no formal qualification, Majid felt he had earned his right to study medicine. He wanted to become a doctor. However his offer was withdrawn by Imperial College when he told them that he had failed to disclose on his application form that he had a criminal conviction. The College routinely run Criminal Record Bureau checks on all their applicants for medical courses but Majid had been misadvised by a friend that he need not make a disclosure. Aged 16 Majid plead guilty for his involvement in a local burglary, for which he received one of the new 'restorative justice' type sentences introduced by the New Labour Government – a referral order. In this type of order the young person must attend a panel made up of local community volunteers, the victim or their representatives, and any other relevant individuals. The panel discuss the circumstances of the crime and agree a contract setting out a plan of action to remedy the situation. Majid accepts that for a short while he fell in 'with a bad crowd' but was utterly overwhelmed by the decision of the College to bar him from the course. Under the restorative justice provisions of the referral order, young people are told that their convictions will immediately be regarded as 'spent' (dismissed) under the provisions of the Rehabilitation of Offenders Act 1974 if they satisfactorily complete their order. What Majid was not told, and what few people involved with referral orders, or restorative justice more broadly in the UK, appreciate is that this kind of dismissal of a criminal conviction



has become largely meaningless. A criminal record is for life. It has become a negative credential certifying a person's eligibility for discrimination and exclusion.

Majid's case is far from being a rare exception and organisations such as Nacro and UNLOCK, the National Association of Ex-Offenders, have become increasingly alarmed by the proliferation of checks that are both unlawful and unnecessary. Their damaging collateral consequences are also becoming increasingly obvious. Nacro's 'Change The Record' campaign, launched in 2010,

[\(www.changetherecord.org/stories/\)](http://www.changetherecord.org/stories/) presents a series of case studies, many of which describe the lasting impact of minor convictions imposed on children. What they repeatedly reveal, that should be of interest to restorative justice practitioners, is the way complex life events are reduced to a single explanatory coda, a criminal offence. Take the case of 'Vicky' whose life spiralled out of control following her being raped at the age of 15. Unable to talk about the event, the trauma precipitated a sustained period of behaviour destructive to herself and others. However, subsequent convictions for criminal damage and assaulting the police continued to trump her self-rehabilitation as one of Europe's leading practitioners of Taekwondo. She says that after years training others with her instructor "I set up my own franchise. However, as soon as I tried to go solo, I started facing problems. I would get asked for a CRB check and when it came back I would be told I wasn't suitable. Recently I have been told I am not suitable to volunteer either." With the help of Nacro Vicky has managed to get such decisions overturned. She says it hasn't been easy but she wants to "overcome some of the difficulties in my past and move on with my life. I want to be able to give that chance to others and be able to teach other young people about my passion. I just need employers to see past the piece of paper that is stopping me from

fulfilling my dream.” (<http://www.changetherecord.org/stories/vickys-story,676,NAP.html>, accessed 15/05/11)

### **If the CRB is the solution, what was the problem?**

Prior to the establishment of the CRB in 2002 there was no central access point for police checks on previous criminal conviction. What had become common practice was that in some employment sectors, individuals would be ‘required’ to obtain a copy of their record of offending from police files using the provisions of the 1988 Data Protection Act. This practice was challenged as inappropriate by, among others, the Data Protection Registrar. Growing misuse of the Act for these purposes propelled what was initially seen as a marginal, procedural, reform. In addition, also in 2002, the government published its review of the 1974 Rehabilitation of Offenders Act (Home Office 2002). This report, ‘Breaking the Cycle’, promised a comprehensive and largely progressive reform of disclosure procedures affording people greater protection from discrimination and clearer guidelines around disclosure.

However, other events that coincided with emergence of the CRB in 2002 brought the issue of past offending and criminal record checks to the top of the political and media agenda in Britain. The most significant of these was the Bichard Inquiry, commissioned in December 2004 by the Home Secretary, in response to concerns arising out of the police investigation into the murders of two primary schoolchildren from the village of Soham in south east England in August 2002. Jessica Chapman and Holly Wells were found to have been abducted and murdered by their school caretaker, Ian Huntley, who was subsequently revealed to have changed his name and deliberately concealed a suspicious past, including allegations of rape, to secure his post at the school. The specific concerns related to the management and handling of

intelligence about Ian Huntley by the police and social services. Although he had no previous convictions, police intelligence regarding accusations against him in his former home town in the north east of England that was on their files were not passed onto Cambridgeshire Constabulary. The appalling events of the children's abduction, the media focus on the protracted search for them and its tragic outcome were followed by the subsequent murder investigation that eventually identified Huntley and exposed his dubious past. The outrage that followed these revelations resulted in the inquiry by Lord Bichard, and all combined to propel the issue of criminal record vetting procedures firmly into the public domain. What is more surprising is that, despite their evident failure to protect the schoolchildren as they were intended to do, CRB checks have entered the vernacular of popular culture in much the same way as Anti-Social Behaviour Orders. They are commonly referred to by their acronyms, ASBO and CRB, as a knowingly skeptical shorthand for possessing a certificate of, respectively, unspecified menace or general virtue.

Throughout the first decade of the 21<sup>st</sup> century in the politics and media of the UK, heightened sensitivity over the vetting of teachers in particular became widespread, durable and politically volatile. There was, for example in 2006, extensive media coverage of the case of Paul Reeve, a young man who had been cleared by the Education Department to work as a physical education teacher in schools having previously accepted a caution, in 2003, for accessing paedophile pornography on the internet. Following this, also in 2006, there was re-newed political furore over the ministerial level clearance of William Gibson to teach, despite his conviction for indecently assaulting a 15-year-old girl in 1980. Interestingly, the pair went on to marry and have three children in a relationship that lasted 19-years.

Deleted:

### **Certifiable practice or institutionalised suspicion?**

The Bichard Inquiry in 2004 produced extensive recommendations concerning police IT systems, data quality and sharing, and recording standards concerning allegations of sexual offences against children. It also proposed that all those working in schools should be subject to enhanced disclosures but the most far-reaching recommendation was for the establishment of a new registration scheme for those working or wanting to work with children or vulnerable adults. These recommendations went on to form the basis of the Safeguarding Vulnerable Groups Act 2006 which attempted to revise and consolidate CRB procedures into a more comprehensive and co-ordinated national vetting procedure. It established a Vetting and Barring Scheme to be overseen by a new Independent Safeguarding Authority (ISA) under which it was estimated that over 11 million people would be required to register to secure a 'passport' to work with children and vulnerable adults on the basis that their criminal records had been checked. They would then remain 'subject to monitoring' on a continuing basis. In 2008, these provisions moved toward implementation. As they did so they gathered increasingly critical publicity, particularly after a group of well known novelists, among them the multi-award winning writers Phillip Pullman and Michael Morpurgo, indicated they would boycott such procedures or suspend their visits to read to children in schools. They had been informed that to accept invitations to read in schools they would be required to present CRB disclosures and register with the ISA to continue their voluntary work in schools. They protested that it was absurd that their occasional visits to school classes should prompt such a bureaucratic intervention. They also pointed out that the implication of such certification procedures was to reverse the presumption of innocence, that they were guilty until

proven innocent. They resented the shadow of suspicion being placed over them, and the responsibility of paying to have it lifted.

In June 2010 in the face of mounting concern over the both the cost and viability of the proposed Vetting and Barring Scheme the newly elected Coalition Government suspended the implementation of the scheme. In February 2011 it recommended the merger of the ISA with the CRB and promised to develop new procedures for vetting the criminal records of people seeking work with children or vulnerable adults.

Taking account of this rapidly changing policy context for the use of criminal record checks in England and Wales, and the uncertainty over future developments our overriding concern in this chapter is to consider the implications of the routinisation of checks, specifically in relation to its implications for restorative justice theory and practice. This involves understanding something of the history of the current procedures in England and Wales, and an appreciation of wider international developments. These are considered in the next two sections.

### **The ‘right to move on’ – restoring the rehabilitative ideal**

The origins of the current disclosure arrangements in the UK are to be found in the Rehabilitation of Offenders Act 1974, and the wider efforts in the 1960s and 70s to promote welfare and rehabilitation in criminal justice. The Act itself was the culmination of a sustained lobbying campaign from the three most prominent criminal justice pressure groups in England, the Howard League, Justice and NACRO. They established a committee, led by a Conservative peer, Lord Gardiner, to consider the problems of a criminal record to ‘rehabilitated persons’. Their 1972 report ‘Living It Down – The Problem of Old Convictions’ catalogued the indignities endured by offenders having to reveal their convictions to potential employers or others of social

authority. It also pointed out that, at the time, of all the countries in the Council of Europe, only Britain had no form of rehabilitation law that constrained disclosure of previous convictions. Parliament was urged to draft legislation that would ensure that after a certain period of time a person should be “no longer liable to have his present pulled from under his feet by his past”. The committee report demonstrated how someone with a ‘past’ was frequently unable to shake off the label and faced considerable discrimination, stigma and prejudice, particularly in the field of employment, insurance and in the courts.

The Act that was eventually passed two years later in 1974 was a long way from the original proposals of the Gardiner committee, but it did establish in law the principle that criminal convictions need not, and should not, mark someone out for life. It introduced the idea of ‘spent convictions’ and gave formal effect to the concept of ‘a rehabilitated person’. In its simplest form, this establishes that after a specified period of time without further offending a rehabilitated person is to be treated as never having committed the offence, they are restored to full rights of citizenship and the slate is wiped clean, the offence is dismissed. He or she is not obliged to disclose the offence, except under the specific circumstances set out in the clauses of the Act.

These include the judicial scrutiny of spent convictions in court processes and certain specified areas of employment. The intricacy and complexity of these exclusions, and subsequent additions and amendments to them, somewhat undermined the ensuing practice of legally prescribed rehabilitation. However, the symbolic significance of the Act was more extensive and established both the legal principle of a ‘spent conviction’ and the general responsibility of the state to limit the damage incurred by

social stigma, prejudice and stereotypical views that accompany a criminal conviction.

The importance of the Act for those interested in restorative justice is that it gave legal effect to the principle of restoring a person's full civil status, to lifting the civil disability (van Zyl Smit 2003) imposed by a criminal conviction. Its focus was not so much the reform of individual offenders' character or behaviour, or the treatments and interventions offered by the state to lawbreakers, rather it was correctional of society at large. It recognised that some obstacles to reintegration lay beyond the individual and were located in the stigma attached to a criminal record. It was an unusual gesture toward a Government 'pay-back' which offered the prospect of an entitlement to be seen as a citizen again without qualification. The Act recognised that 'to wipe the slate clean' the person needed the help of the state, on whose slate their conviction was otherwise indelibly marked. It is this emphasis on the state taking responsibility for its actions in 'marking the criminal', so frequently at a young age, and hence unmarking them in later life, that we feel is somewhat neglected in restorative justice theory and practice.

### **Criminal vetting internationally**

In the early 1970s England and Wales was regarded as out of step with the rest of Europe in not having rehabilitative legislation. Most countries now have procedures for the erasure and/or disclosure of criminal records. A brief international review of criminal record disclosure provision in other countries was included in the 'Breaking the Circle' review of the Rehabilitation of Offenders Act 1974 (Home Office 2002). It revealed a wide range of disparate practice that reflects the diversity of criminal

procedures in the various jurisdictions examined. It is not the intention of this chapter to assess whether there is an international trend toward more routine disclosure, although this would not be surprising, but some jurisdictions have adopted models that appear more assertive of a positive 'right to move on' or to be protected from undue suspicion, unnecessary scrutiny and unwarranted discrimination.

In the Netherlands there are detailed provisions for both retaining and erasing penal convictions, and employers have no right to consult criminal records. However, employers can request an employee's Mayor to provide a 'declaration of good conduct', an official statement indicating that the state has 'no objection' to this person's employment in the specified position. Furthermore, for certain public sector jobs, such as the civil service, the Mayor can scrutinise a complete criminal record including those otherwise 'erased' (spent convictions). This bears some resemblance to the provisional procedures of the UK Independent Safeguarding Authority (ISA) in that it circumvents the direct scrutiny of criminal records by employers and thus reduces the potential for improper discrimination or informal dissemination of disclosure information. Screening decisions are not devolved to individual people in each particular application, as they are under current CRB procedures, but are retained within an accountable and identifiable external authority, the Mayor. The personal information about an applicant therefore remains less widely circulated and more private in a way that potentially safeguards their rights.

Two jurisdictions with strong historic links to the UK and its legal & cultural traditions have recently taken a path that attempt a more explicit balance between disclosure and the right to rehabilitation. In New Zealand legislation was passed in



2004 that, nominally at least, appears to prioritise rehabilitative sentiments rather than security-minded vetting priorities. The Criminal Records (Clean Slate) Act is relatively unique in this respect and addresses a long standing deficiency in New Zealand whereby there had been no such pre-existing legislation of this kind. The Act provides for criminal records to be erased, the slate to be cleaned, after a period of seven years with no convictions. Specified offences involving offences against children or sexual violence are exempt, as are all custodial sentences. The Clean Slate Act, as it is commonly referred to in New Zealand, is not an absolute prohibition on disclosing an eligible individual's previous criminal career but it is notable for seeming to respond to a prevailing concern about rehabilitation rather than a generalised sense of threat and risk posed by certain people. In this respect it bears much similarity to the Rehabilitation of Offenders Act. The Act is significant in that it not only makes it a criminal offence to disclose someone's criminal record inappropriately, but also makes it an offence to ask someone to disclose their convictions if they are not eligible for such an inquiry to be made. The penalties are substantial and had a high profile in government sponsored public education programmes accompanying the passage of the Act. These combine to assert that those with criminal convictions have rights and that these rights require both recognition and protection if they are to be fully restored as citizens.

In Australia legislation varies across its eight states and territories but most limit disclosure and one jurisdiction, the Northern Territory, provides positive protection against discrimination on the grounds of 'an irrelevant criminal record'. A national review of 'guidelines for the prevention of discrimination in employment on the basis of criminal records' conducted by the Australian Human Rights and Equality

Commission in 2005 affirmed an anti-discriminatory framework for disclosure. This framework cites the significance of the 1958 International Labour Organisation Convention, ratified by Australia in 1973, which requires signatories to actively pursue 'equality of opportunity and treatment' along the by now conventional grounds of race, ethnicity and gender but also leaves open further grounds for inappropriate discrimination to be included. In 1989 Australia added clauses to the ILO convention specifying that unfair discrimination in respect of a criminal record could occur if the 'inherent requirements' of a particular job were not in conflict with their criminal record. The significance of the 'inherent requirement' clause is that it helps to disaggregate the generic criminal record as applying to a general category of persons (criminals) to something more behaviour-specific. Unless the crime(s) in question can be connected positively to the qualities of the employment a prima facie possibility of discrimination is established. This offers some clarity, and simplicity, to those individuals concerned by indicating that their earlier misdemeanours will not be so entirely removed from their wider context, nor will they be allowed to be seen as representative of their general character and personal qualities.

Deleted:

None of the jurisdictions discussed above have encountered the explosive rise in criminal record disclosure facilitated by the establishment of the CRB in the UK. In Australia, a country perhaps more sensitive for historical reasons to the stigma of criminal convictions, there is an overarching anti-discriminatory framework endorsing positive human rights.

### **Restorative justice and the state of crime**

Restorative justice is undoubtedly a complex and diverse body of theory and practice. As its influence and presence has grown it has come to contend with a broader variety of competing theories and practices in the criminal justice arena. These developments, in turn, expose 'fault lines' (Dignan 2002) and prompt reappraisal of the emerging relationships between conventional institutions of criminal justice and their systems of thought about crimes.

Much of the early impetus that propelled restorative justice derived from recognition of the marginalised status of victims. One of the strengths of restorative justice is the acknowledgment that the establishment of apparently mutually exclusive categories of 'victim' and 'offender' in criminal justice procedures is largely unhelpful. These dichotomous constructions are dismissed in favour of a more inclusive spectrum of people affected and influenced by disputes and harmful incidents. As Crawford (2002:101) puts it "[P]ractical expressions of restorative justice seek to recognise that crime is more than offence against the state." It is a hopeful vision based on the viability of more lateral relations between people and posed against the destructive top-down ordering power of the state. As such however, Crawford argues, it is prone to its own simplistic dichotomies of virtuous communities and tyrannical state powers. The challenge of developing sufficient analysis of both energises restorative justice (Walgrave 2002) but also stretches its credibility as a dynamic or progressive movement (Ruggerio 2011).

Restorative justice has done much to bring victim's experiences and perspectives into procedures from which they had been excluded. But as Sebba (2000) points out this valuable 'individualisation of the victim' has coincided with its opposite in respect of people convicted of offences. They have been increasingly considered simply as 'biographical aggregates' by a criminal justice system driven increasingly by the

managerialist convenience of actuarial, risk-based categorisation (Crawford 2002).

This de-personalisation of offenders coincides, in England and Wales, with increasingly harsh punitive responses to the things they have done. The rights of offenders to be considered 'as people' appears to have diminished as the rights of victims to be heard 'as people' has grown.

The concern of this chapter is to highlight the extent to which criminal convictions have become the official coinage of criminal stigma, minted and distributed by the state. This new currency operates apparently irrespective of those developments in restorative justice that seek to operate in parallel, independently or within the conventional parameters of criminal justice. Notwithstanding the constructive critique Crawford offers of Christie's conceptualisation of 'crime as property' stolen from people by the state, the development of the CRB establishes a further dimension of the commodification of crime by the state and its expropriation as a means of distributing stigma. Through the CRB, as our examples have shown, the state copyrights a narrow, instrumental conceptualisation of crime, projecting those positivist legacies and actuarial strategies that restorative justice so frequently attempts to unpick. Restorative justice offers numerous alternative conceptualisations of crime but operates uneasily under the shadow of this increasingly pervasive monopoly image of 'criminals'.

### **Restoring rehabilitation?**

In conclusion, we argue that, to retrieve any meaningful commitment to rehabilitation, there must be much more explicit respect for 'the right to move on', for people who have been caught and convicted to build a future free from the taint of suspicion. To

do this the rehabilitative sentiments that underpinned the establishment of the Rehabilitation of Offenders Act 1974 need to be restored. There are many ways that a person may seek to put their past behind them and repair the harms they have caused. Advocates of restorative justice have been at the forefront in developing these and promoting a more inclusive, less harmful approach to the distress and injuries that 'crimes' can cause. Governments, instead of actively marketing the stigma of a criminal record as an indelible stain on the character and integrity of the individual, should promote and endorse the value of rehabilitation and the restoration of a person's civil rights. As more and more people and governments come to see the benefits and viability of restorative justice, and invest in its procedures, the promotion by the state of criminal records checking appears deeply inconsistent. The idea of a fixed criminal record is the antithesis of much that restorative justice stands for and represents a considerable challenge to the consistency of its theorisation of crimes and their consequences.

## **References**

- Bottoms, A. Shapland, J. Costello, A. Holmes, D. and Muir, G. (2004) 'Towards Desistance: Theoretical Underpinnings for an Empirical Study' *The Howard Journal* 43(4): 368–389 .
- Change the record (2011) <http://www.changetherecord.org/about/> (accessed 13/05/2011)
- Christie, N. (2004) *A Suitable Amount of Crime*, London Routledge
- Crawford, A. (2002) 'The state, community and restorative justice: heresy, nostalgia and butterfly collecting, in L. Walgrave, (Ed) (2002) *Restorative Justice and the Law*, Cullompton. Willan.

Dignan, J. (2002) 'Restorative justice and the law: the case for an integrated, systemic approach' in L. Walgrave, (Ed) (2002) Restorative Justice and the Law, Cullompton, Willan.

Farrington, D. P. et al (2006), Criminal Careers up to Age 50 and Life Success up to Age 48: New Findings from the Cambridge Study in Delinquent Development, Home Office (Research Study No. 299).

Hannem, S. and Petrunik, M. (2007) 'Circles of Support and Accountability: A Community Justice Initiative for the Reintegration of High Risk Sex Offenders', Contemporary Justice Review: Issues in Criminal, Social, and Restorative Justice Volume 10, Issue 2, pp. 153 - 171

Home Office (2002) 'Breaking the Circle: A report of the review of the Rehabilitation of Offender's Act', London, Home Office'

McNeill, F. (2006) 'A desistance paradigm for offender management' Criminology and Criminal Justice Vol. 6. No.1 39-62.

NACRO (2006) 'Getting Disclosures Right – A review of the use and misuse criminal record disclosures, with a guide to best practice and assessing risk' Clapham, NACRO.

NACRO (2009) 'Some facts about children and young people who offend', Clapham, NACRO.

Ruggiero, V. (2010) Penal Abolitionism, Oxford, Oxford University Press

Rutherford, A. (1986) Growing Our of Crime, Penguin, Harmondsworth, Middlesex.

Sebba, L. (2000) 'The individualisation of the victim', in A. Crawford and J. Goodey (eds) Integrating a Victim Perspective within Criminal Justice. Aldershot, UK Ashgate.

Shepherd, J. (2008) 'Medical Ethics?' Guardian, 1/7/2008,

[http://www.guardian.co.uk/education/2008/jul/01/pupilbehaviour.highereducation/pri  
nt](http://www.guardian.co.uk/education/2008/jul/01/pupilbehaviour.highereducation/pri<br/>nt) , accessed 16/05/11

Simon, J. (2006) *Governing Through Crime*, New York. Oxford  
University Press

Wacquant, L (2009) *Prisons of Poverty*. Minneapolis, MN: University of Minnesota  
Press

Ward, T. and Maruna, S. (2007) *Rehabilitation*, Abingdon. Routledge

Walgrave, L.(Ed) (2002) *Restorative Justice and the Law*, Cullompton. Willan.

van Zyl Smit, D. (2003) Civil disabilities of former prisoners in a constitutional  
democracy: Building on the South African Experience, *Acta Juridica* 221