

Discussion following Lord Charles Falconer's Paper

The discussion in the session centred around ideas of whether the criminal justice system (CJS) is similar or different from the education system. They are similar in the role that they both have in being seen to take punitive action in the most serious cases in order to ensure safety and maintain the confidence of the community. They are different in that, while the role of the CJS is primarily to reassure the public that justice has been done after the event, the role of education is more preventative and educative. There are overlaps, but each has a different focus.

Questioners included Gwynedd Lloyd, Bill Whyte, Helen Holman, Belinda Hopkins, Hilary Cremin,

Lord Falconer (CF) had three questions of his own about RA in schools, mentioned in his presentation;

- 1. How do we translate RA into the Criminal Justice System?**
- 2. How do we avoid the need for a detailed and rigorous finding of facts?**
- 3. How do you (seminar delegates) respond to what I am saying and how can you help?**

Q. What society demands, and what parents demand, is often perceived to be punishment. However, what most people actually seem to want is [for themselves and their children] is to be safe and happy. Is the role of punishment in schools and in criminal justice the same, and do we need to spend more time addressing it?

CF. Custodial Sentences are not intended to work. You would be mad to think that. They are the result of a lack of other options. What could we do with a rapist to make the public feel safe?

Q. Is there adaptability allowed in criminal justice?...In schools, we are a community, we see what the child needs and seek to address it. Is the criminal justice system fixed upon the idea that we have to punish, even though we know it doesn't work?

CF. Custody is *not* the only alternative ... The criminal justice system (CJS) is very similar to a school – but not as intense. If you look at the journey of an offender you will see that he will go through all sorts of alternatives beforehand. Custody is not used as often as is perceived. There are many other sentencing options that are more commonly used (fines, community sentences etc). Forty to fifty per cent of offenders don't reoffend again. It is the repeat offending that is the problem. Schools are pupil focused, but the role of the criminal justice system is not about the individual. The role of the criminal justice is more for the rest of the community.

Q. Schools do tend to deal with individual well-being, but we are not too dissimilar from the CJS. We also need to find other ways of appeasing parents and communities...(eg. exclusions). We also have to use sanctions, I am not sure we are so different

CF. Exclusions are the school equivalent of prisons. We do not want to necessarily do it, but know we have to. They are ultimately needed to mark the seriousness of certain behaviours (eg. rape).

Q. Yes... and community safety...

CF. Where is the Criminal Justice System getting it wrong? Is it that too many people going to prison? Generally it is the last resort...

Q. I want to question the whole idea of 'last resort'. Exclusion went up after Education Reform Act. There are other forces that push for exclusions in schools and punitive approaches in Youth Justice. This is not to question that you have to do something... but more to question the *nature* of custody...

CF. I don't know about exclusions...I assume that they *are* a last resort. Perhaps government has rewarded some things that have led to a high rate of exclusions... A sensible school, or sensible court, will try to avoid it if possible. It does not necessarily have to be a binary choice (between custody and RJ). For example in a burglary case, if someone has got a two year custodial sentence, they can meet the victim after the sentence is served. The two can be parallel. There are a variety of restorative options. Sometimes things are not seem to work though. For example private prisons made lists of savings that state prisons mimicked. They spent hundreds of millions of pounds on more interventions for drugs/ courses etc. but this did not change reoffending rates at all. Restorative justice at least attempts a **transformative approach**.

Q. Schools got scared that with RJ they have to give up the sanction systems, but with RJ you have a chance to put things right. You can have an overlapping venn diagram with restorative approaches, sanctioning and diversion. Where there is overlap, there is a chance of putting things right.

CF. I can't imagine that in a well-run school this is not the case. Doesn't this happen anyway?

Q. No. It is good you can see the value base in restorative approaches in schools, but more needs to be done. We need a more consistent message from

government. Government documentation should communicate underpinning values for education and criminal justice. RJ is not mentioned in any government documentation, or at best it is given scant recognition. Schools are now sending kids onto alternative service providers without being required to consult with parents and the young people involved. The 21st Century Schools paper just says that they just have to tell them it's happening. Likewise, in the Crime Reporting in Schools paper, when schools call in the police, the police often have to 'crime' the incident due to their own performance indicators. We want restorative values BUT much that we have to do mitigates against it.

CF. The Police are getting frustrated with resources and targets. There is a need to communicate better and set out roles and understandings.

Q. Schools sometime use the No Blame Approach for bullying. Perpetrators are confronted with consequences, BUT the process does not necessarily require acknowledgement of responsibility. Facts can be very difficult in a school context...

CF. This shows the difference between the schools and the CJS system. You cannot do the above with the CJS. It is based on a sanctions system. First come facts, then sentence, then possibly RJ – which is at odds with what you are saying how RJ can be used in schools. In schools restorative approaches can still be useful, even if there is no acknowledgment of facts or responsibility. The CJS cannot do this. As a 'sanctions system', we are adding on restorative approaches on at the end – using them to stop people from reoffending, afterwards. This is totally at odds with schools and bullying etc.

Q. But there is a problem in adult life when people think that if they stick with the facts and the rules, they can act in immoral ways. We are in the House of Lords today at a time when the expenses scandal has yet again raised its ugly head. People think that if they stick with the letter of the law, or a system of rules, they

can do things that are patently wrong. How can we get people to act justly because they feel a moral obligation rather than because of rules or laws, when the education system appears to be at odds with the criminal justice system and other systems in public life?

CF. I would like people to understand the effects of what they do and take responsibility for it. That's the best way to behave, that's how we need to behave in a community. RA are a way of teaching people to behave better. We do need to take steps to repair harm. But if it's a criminal act, then there needs to be a gathering of facts, it needs to go further than an RJ experience.

Q. But there are different levels of ambition here – reducing reoffending vs effecting the number of people coming into the system. Probation and the use of custody have increased. We have a criminal justice industry, with stable offending and convictions through the roof. We are drawing them in and then helping them out with RJ, but more things are needed to stop people entering the CJS. There is strong symbolism in a criminal conviction – it is morally dangerous to label young people as solely and personally responsible as it indicates that we don't need to bother doing anything about it. However, society is often to blame. Placing shame on the individual, rather than on society is wrong, especially under 18. The binary difference between CJ and schools needs to be addressed.

CF. The last two comments have revealed that the debate is about the CJS. The CJS is adversarial, hard and fast, fact-based, largely symbolic for the public. We do need to think of ways to deal with people *before* they get to CJ. I believe we do need a CJS, and society demands it. It would be incredibly hard to have one without clear safeguards etc.. Society is to blame for many issues, but what is the problem with having a CJS?

Q. No problem having a CJS, we just use it too much. There has been a 40% increase in the criminal justice industry.

F. I am strongly in favour of using restorative approaches in schools. It is not a binary choice, but part of the armoury. I am in favour of the need to divert young people from the CJS, but I am more inclined to believe that more people should enter it at an earlier point than you.