

Closing Plenary '*Building restorative justice in Europe: what have we learned?*'

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A conference based around plenary sessions, workshops and café conferencing is intended to provide opportunities to share knowledge and experiences as an end in themselves. The expectation is that when you return to your respective jurisdictions, you will feel re-energised to carry on your work with new hope, new knowledge, many more questions to be considered and possibly a few more doubts. Most importantly, many will have renewed contacts or established new relationships with people from different countries who can act as 'critical friends' for developments in restorative practice. As a consequence I won't attempt to try and capture the myriad of exchanges that have occurred at this conference.

I will use the time available to reflect on a few issues - around the themes of language, concepts and meanings; victims; cultural specificity; evaluation; and the role of national and European guidance, which have come to my attention. These issues have emerged as 'work in progress' that require further attention and development. If time allows I hope you will be able to have the last word by responding or adding to them.

A consistent theme throughout the conference has been the importance of beliefs, values, principles and empirical evidence. The value of 'critical friends' has emerged as important in assisting us examine the advantages and disadvantages of the 'mix' we utilise or that is required to establish and sustain restorative practices in our respective countries in what has been described here as a 'journey of exploration' and of 'continuous improvement'.

It is a reasonable assumption that most of us accept or 'believe' that restorative practices or approaches can make a positive difference to responding to crime or other harms caused whether in schools, as alternatives to traditional justice processes or within formal justice systems. However the question has been raised - 'can practices as wide ranging as these – reducing and addressing harm, reducing re-offending, maintaining social cohesion – have the same purposes and meaning?'

A major theme emerging from workshops and plenary sessions has been the issue of language, concepts and 'meaning'. Many of you, whose first language is not English have communicated extremely effectively throughout the conference while prefixing your comments or presentations with apologies for your English. (I suppose as a Scot I should do the same as many of our English colleagues consider that the Scots don't speak English as they understand it!). However I was struck by a presentation on collaboration between two non English speaking countries (Norway and Albania), where English was being used as the common language. Eventually they found that translating directly from Norwegian to Albanian and vice versa seemed a much better way of achieving shared understanding of key concepts and of achieving shared meaning than using existing English concepts, which often meant different things once translated. It may be that relying on established English concepts may not be the most effective way of achieving new shared meaning, never mind provide the basis for communicating the meaning and value of restorative practices to the general public in your jurisdiction.

Equally interesting was the experience of the collaboration in this project- a well established democracy with a long standing tradition of restorative approaches offering its expertise to a newly established Eastern European democracy with major issues of social cohesion. The expectation was that the latter would learn from the former. The reality was that the learning was mutual and indeed the 'new democracy' had, in many ways, more reason to focus meaningfully on healing, peacemaking and social cohesion than the 'older' where, it was acknowledged very honestly, there is a tendency to marginalise restorative practices for use with minor offences committed by young people. A constant theme in this exchange was the importance of continuing to explore and make explicit what we are trying to achieve and why the

methods adopted can do this; why they are likely to be better than what is already in practice and how this can be measured, 'captured' or communicated.

Fundamental questions have been raised and challenged in the last few days on what we mean by 'restorative' practice and particularly by restorative 'justice' -

Is reparative activity necessarily restorative?

Is reconciliation an objective of restorative practice?

Is mediation restorative?

to mention but a few.

The responses seem to suggest these methods or objectives can be restorative but need not be - there needs to be clarity about purposes. It was suggested that local partnerships between academics and practitioners can help explore, develop and clarify concepts and meaning. Questions were raised on whether or not restorative activity should address harm and/or result in change - and of what kind; changes in understanding, in attitudes, in behaviour including re-offending? Should it assist in improving social cohesion or personal and social integration?

These are not the same purposes or objectives and require some care in the application of restorative practices. In English speaking countries reparative practice and 'making good' through, for example, compensation can be associated with vengeful attitudes ('pay back time') and need not promote restorative values or outcomes. Nonetheless in many countries reparative practice is well established and can provide a 'platform' or context for developing restorative practices.

Are dominant restorative values always appropriate? Anthony Pemberton challenged us to consider how we really know what victims want. Many may well want vengeance as an important step in their healing. Is this compatible with our vision of restorative practice? Social philosophers, such as Anthony Duff, have long debated the nature and value of punishment as 'communicative'.

Can we operate within a neat dichotomy of punishment - bad!; restorative practice - good!- without exploring meaning to victims, to offenders and to the community or public at large? Social psychologists have demonstrated that punishment in the form of negative stimulus can result in positive change and learning under certain conditions. However Bonta has argued that the empirical data tends to suggest that with humans, punishment works best when it is immediate, directly associated with the 'disapproved' behaviour, when provided in the context of a meaningful relationship, on subjects with limited previous experience of punishment, particularly harsh and inconsistent punishment. These are conditions that State justice can rarely if ever replicate. So the practice issue may be less one of philosophy or values as such and more an empirical one of what is 'fit for purpose'?

If denunciation, condemnation and public shaming are the objectives of justice then a traditional justice paradigm of 'crime detection-conviction-punishment' may be 'fit for purpose'. If the objectives are addressing harm, healing, positive personal change, social integration or building social cohesion then there is less evidence to suggest these can be achieved by state punishment as it currently operates in most western judicial systems. Restorative objectives might require a new practice paradigm for example 'crime detection-assistance-restoration' which, in turn, requires an infrastructure to support its operation.

The debate in the second day final plenary incorporated an honest examination of the 'purposes' of restorative practices required to establish its relative or absolute value in any given jurisdictions. This included many fundamental questions raised in workshops and plenary sessions. Who should it be used for and with? For what kind of offences? Should outcomes relate only to victims' needs? What kind of impact should it have on existing justice systems - should it transform them, replace them or 'humanise' and reinforce them?

I understand that in New Zealand restorative practices resulted over a 10 year period in 70%-80% reductions in young people appearing in youth courts. For over 40 years in Scotland since youth courts were replaced with welfare hearing tribunals around 95%- 97% of young people under the age of 16 have not appeared in court without the assistance of restorative practices.

In 2004 government put substantial resources into restorative practices for youth and re-established a pilot criminal youth court. Which of these examples represents a good outcome for victims, the community or young people? A concept or vision such as 'restorative justice' that seems to unite right and left wing politicians across the western world has to be constantly under scrutiny for 'political doctoring'.

Questions have been debated and advice offered on who should deliver restorative practices - professionals within justice, professionals in NGOs and voluntary organisations, trained volunteers, the private sector. There was no real consensus, other than agreement that whoever does it needs to be well trained.

It was stressed that in many countries methods such as mediation and reparative activity pre-existed restorative practice and were 'absorbed' or located within a restorative paradigm. This seems encouraging for jurisdictions where restorative practice is unknown but where reparative, problem solving or conflict resolution methods already exist in some form. The experience shared suggests that it may be possible to build restorative practice around existing systems providing there is some clarity on restorative practices' essential qualities and purpose(s) which have been articulated in different ways throughout the conference. The common strands presented related to addressing harm in a way that is meaningful to victims, also to offenders and possibly to the community. Should all three conditions be met or any combination of two or even simply one to merit the term restorative?

Some have stressed the confirmatory and amplifying effects of formal justice on offenders, whose processes also exclude victims and victims' interests. It has been argued that restorative provision should be available to all victims and offenders to deal with the impact of crime as a form of conflict resolution, using formal justice processes as a last resort; or where criminal processes are activated, to 'humanise' them in ways that can be evidenced as satisfactory and meaningful to victims and other participants.

The debates and tensions articulated are reflected in the research presented. This seems consistently to confirm high levels of participant satisfaction, at least in the short term, but shows more equivocal outcomes against other kinds of measures. The general message seems to be that if justice processes and intervention are activated, there is a good case for using restorative practice as a positive and meaningful approach within the justice system. At the same time because a practice is restorative should not mean that 'justice' interventions are necessary. There has been a great deal of discussion and examples given of the tendency for restorative practices to focus on the least serious cases. In at least one workshop, net widening was acknowledged and that restorative practices were being used to justify formal interventions that otherwise may not have occurred.

The debates we have had over the last two days, highlighted the importance of the legitimacy and integrity of restorative practice. Advice was offered to those countries 'starting up'. 'You need legitimacy'. 'You need finance'. It was suggested that these generally require the cooperation of civil servants and political support. However this very legitimacy may prove to be a 'limiting factor' on the scope and focus of restorative activity in your country. One presenter stressed the importance of recognising that there will be a 'price to be paid' for legitimacy of restorative practice within formal criminal justice. He presented a challenge to everyone - 'what price are you willing to pay' in finding a balance that will result in restorative practices having a positive impact in your jurisdiction. The impact is likely to be different in different jurisdictions.

Risk avoidance is well recognised tendency in most political regimes and the debate on the focus on using restorative practices in relation to serious violent offences highlighted the tension in finding this balance. It was argued that the more serious an offence the greater the harm and as a result the greater the potential for restorative practice. This was reinforced by evidence that direct victim – offender work may be more meaningful and effective with serious offences. However the greater the seriousness, the greater the political risk and the tendency in formal systems to seek to avoid risk by using mainstream justice approaches and limiting restorative practice to a marginal role.

Victims

A further theme that emerged related to the question of whether or not victims get enough focus in debates on restorative practice. Undoubtedly the discussions seemed to assume a victim focus but it was pointed out on a number of occasions that most practice concerns and indeed most research has been about offenders. Balanced restorative justice practice has to start from the needs and wishes of the victims, it was argued. Can these be fulfilled without meeting the needs of the offender and vice versa? We heard in one workshop the challenge for many Victim Support Agencies in responding to the evidence that the typical offender and the typical victim often have very similar and overlapping characteristics including multiple needs and living in areas of multiple deprivation. If restorative practice is to have a positive and long term impact as a tool rather than as a short term end in itself, services need to be made available equally for victims and for offenders on a sustained basis. Longitudinal research on victim impact is required. This more 'balanced' approach may, in turn, support the case for a change in paradigm from crime-conviction-punishment to crime-restoration-help. Assisting offenders make amends to a victim when both are from areas of multi-deprivation may be of little consolation or value to either if there is no community development strategy to deal with the social context in which the crime has occurred.

Cultural Specificity

A major theme underpinning the discussions throughout the conference was the issue and importance of cultural specificity. Different legal frameworks and different purposes set different baselines against which individual jurisdictions must judge how 'fit for purpose' their restorative practices are.

Charles Pollard in his energetic style enthused about the role of restorative practice in the UK. There is, however, a warning here for mid European countries. Over 20 years ago the UK embarked on building a multi-million pound criminal justice 'industry' that has seen the rise of community disposals by a factor of 3 while custody levels have doubled. The pressure to criminalise became the norm rather than the exception or 'last resort'. To use restorative practices in a UK context to decriminalise people who would never have appeared in the justice system in the past can be seen to have real benefits in the short term. However there is little evidence that well established central European democracies followed this Anglo-American correctional pathway. For these countries, the use of restorative practices should possibly be aimed at different objectives.

One presenter advised that restorative practices need space to develop and to grow providing the purposes are explicit. Flexibility in the pace of development and in meaning was encouraged, suggesting that at this stage, as a community of interest, our concern should be unity in difference as much as in uniformity. Advice was offered from the platform - 'do not simply copy' but 'grow you own' restorative practices within the context of the needs and requirements of your jurisdiction. Build on your own indigenous problem solving or conflict resolution traditions if you have them and 'wrap' restorative practices around the positive aspects or customs of your existing system. Use them to replace those that are harmful to victims, to the community and to offenders. This is likely to result in outcomes and achievements that are positive relative to the context in which they take place. This, of course, creates challenges for comparative evaluation.

Evaluation

Cultural specificity makes it difficult to establish classical comparative evaluation. It was reported that although restorative practices are growing across Europe, the EC funded COST survey could find little comparative data for analytical purposes. Rather than a weakness, this may reflect a vibrant, dynamic and culturally specific approach to restorative practice in Europe, which is supporting innovation and creativity from which all of us can learn. This is quite a different approach from trying to replicate the use of a 'Wagga Wagga script' in Eastern Europe.

The emphasis on action research and on developmental as well as evaluative approaches to research seemed to feature strongly in the COST findings and suggested there is a widespread culture of 'learning by doing'. This is consistent with a continuous improvement approach, while stressing the importance of 'built-in' and on-going evaluation as a feature of effective practice which emerges from the criminological literature on effective practice.

The EC survey results presented seem to support the value of a dynamic and developmental approach where respondents seemed more in favour of EC strategies providing 'permitting circumstances' and 'drivers' for the development of restorative practice rather than prescriptive policies which attempt to outline the kind of restorative practices to be developed in the diverse contexts of European countries. The findings echo the emphasis which I heard stressed in the conference on the importance of time, space and flexibility for practice to grow and for learning to be established and shared.

This raises real challenges, in a 'quick fix' – does it work?' political climate, of how to communicate 'work in progress' to key stakeholders, in particular to the public without over selling what can be achieved or under rating the potential that can be achieved.

The conference returned to some of the themes outlined at the start. Restorative practice needs the collaboration of 'critical' supporters or friends from different perspectives – policy makers, practitioners, funders, the public - if it is to be given the scope to be imaginative and 'risk taking' in its development and provide evidence that it can achieve its intended, even if at times limited, purposes.

The final discussion in the second day's plenary – which can't be done justice in this short presentation – was a 'means – end' debate. Clear objectives and processes are essential for evaluation but the objectives set may well be culturally, legally or politically constrained. There was evidence of the importance of maintaining a vision of restorative 'justice', but many questions as to whether or not such a 'justice' in any jurisdiction.

The evidence presented at this conference suggest that restorative practices can have and are making an important contribution to many if not at all stages in justice systems in many jurisdictions, particularly as 'an alternative', and can contribute, alongside other developments, to meeting victim's needs, to better community cohesion, and to individual positive offender change.

This speech is supposed to be a sum of all the main issues that have been raised during the conference. The most important opportunity given by the Conference was the possibility of exchanging knowledge and experiences, bringing new hopes, doubts, renewing of acquiescence and building relationships. The biggest issues were:

- 1) terminology
- 2) cultural specificity
- 3) victims
- 4) national or international direction

Most of the people participating at the Conference believe that RJ can add something positive within the criminal justice, still It is particularly important to share values and principles with critical friends as in every jurisdiction there are really different aspects.

The first issue concerns terminology: can the same terminology mean the same in different areas? What is RJ? Is reconciliation restorative? is mediation restorative? sometimes it can be but you cannot assume if it is or not. It is important to explore these concepts through academic partnerships. In the UK jurisdiction, for instance, reparative practices can be a really vengeful concept, but is it really that simple that criminal procedures are evil and RJ practices are good? Strictly connected to it another question raises: can punishment fit the purposes of RJ? Again it is discussed whenever RJ practices should be used: who should they be used for? Which specific offenses? Should it benefit the community? or the offender? or the victim? or everybody? More over should it be made by professionals? within the justice system or NGO? What about the training? It was stressed, in the different workshops, that many restorative practices existed long before the restorative justice theory was created, this is the

case of mediation. It was proposed to wrap Restorative practices around the things that are good in our systems and hopefully replaced what is bad within the jurisdiction.

This leads to another issue: the importance of cultural specificity. It is important just not to copy restorative procedures from different countries, as every nation has different cultural habits and needs. It is then crucial to improve our own systems in order to make them better. Real world says that you cannot do anything without money, civil services need to fit regulation and then legislation. Apparently in any country there is a price that is needed to be paid: but we have to know which it is. The price could be represented by a controlling legislation on restorative practices instead of a permissive one.

More over it is important to give attention to the victims. How can we know what they really want? Do they really have enough focus on them? In a balanced restorative approach : where is the right balance between needs of victims, offenders and community? How can we prepare victims in order to participate in a restorative procedure such as a victim-offender conference? One of the biggest problem is that is not easy to divide people into good and bad, as one day they could be victims and the day after they could became offenders. There is a complex array of what we mean by victims, and it is important to understand the connections between our social justice services and restorative practices.

In the Conference a debate has taken place which kind of crimes should be involved in restorative practices. Some people stated that the more serious the offense the greater the achievement gained through restorative procedures. However, this is not a shared opinion.

The importance of research and evaluation was also stressed: if we do not know where we are, we could not tell where we are going. Through research it will be possible to share the goals and the results with the general public in order to let people understand more about restorative justice. Finally, there is the issue of which type of legislation, on both a national and an international basis, one needs to implement restorative practices.