

Restorative Justice Practice: Rejection or Reflection of Social Work Values?*

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Summary: The field of restorative practice has in recent years extended beyond its origins in the justice sphere into many areas of public discourse. This paper confines itself to the practices of restorative justice. Even within that narrower field, the approach encompasses a number of models delivered by a range of personnel from the public, private or voluntary sectors. Given these variables, there is a risk that restorative justice could be rendered an ‘amorphous’ concept, representing all things to all people. The author explores the congruence between restorative justice practice and social work values in the Probation Service.

Keywords: Restorative justice, social work, probation, reflectivity, reflexivity, anti-oppressive practice, social justice, mediation, facilitation, conferencing.

Introduction

In this paper the author aims:

- to explore challenges in developing a shared understanding of restorative justice and establishing a common meaning for related terms and concepts
- to examine the extent to which the social work values of reflective, anti-oppressive and anti-discriminatory practice, social justice and client narrative are embodied within the philosophy of restorative justice
- to examine the professional social work environment in the Probation Service, and its congruity with restorative justice practice.

* This paper is based on a review of literature from New Zealand, Europe and North America undertaken by the author as part of a Master’s in Social Science (Social Work) degree.

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Working definition of restorative justice

Defining the concept of restorative justice can pose challenges. For the purpose of this study the author has adopted this working definition:

Restorative justice seeks to redefine crime, interpreting it not so much as breaking the law, or offending against the state, but as an injury or a wrong done to another person or persons. It encourages the victim and the offender to be directly involved in resolving any conflict through dialogue and negotiation. (Department of Justice, New Zealand; Cunneen, 2002)

The origins of restorative justice

The origins of restorative justice in this jurisdiction derive in large part from a New Zealand Maori tradition of conflict resolution. The Maori argued that a wrong committed hurts the entire community and that the involvement of the family, community representatives and the formal criminal justice system were key to the success of their restorative justice process. They recognised a retributive element of that process, as the wrongdoer would be expected to feel a sense of shame for their actions: a quasi-punishment in itself.

The New Zealand government passed landmark restorative justice legislation in 1989,¹ following which the first family group conferences were convened (O'Driscoll, 2007). Conflict resolution through family conferences culminated in the formulation of a plan intended to empower the offender and the family by identifying strengths and so to support the offender in taking responsibility for the offence, making reparation and avoiding further offending. This practice model values reflectivity, social justice, victim healing, client empowerment and narrative.

The role of social work in victim–offender mediation in Canada is evident from its inception in Kitchener, Ontario, in 1974 (Umbreit, 1999). The John Howard Society of Alberta (1997) traces the origins to the recommendation of Mark Yantzi, a Probation Officer, who proposed to court that two offenders with whom he was working might benefit from a meeting with their victim. This intervention became the early template for victim–offender mediation work in Canada and acknowledged the importance of narrative and dialogue.

¹ Children, Young Persons, and Their Families Act, 1989 (CYPF Act).

In the United States from the 1970s onwards, Howard Zehr, Eastern Mennonite University, pioneered the development of restorative justice (Zehr, 2003). His approach was concerned with: ‘who is hurt?’, ‘what are their needs?’, ‘who is obliged to meet these needs?’, ‘what led to the harm taking place?’, ‘who has a stake in finding a solution?’ and ‘what process needs to take place to involve the stakeholders to address the causes of the hurt and to put matters right?’

Wachtel *et al.* (2010) date the introduction of restorative justice in North America to 1994, through victim–offender mediation. They contrast the US retributive justice system negatively with Zehr’s focus on the restoration of the wellbeing of the victim, an approach that values social justice, narrative and reflectivity.

The philosophy and values of probation practice vary significantly. Practice in the Probation Service in Ireland is informed by the values, principles and ethical standards of social work.

The Probation Service has championed and supported the development of two restorative justice projects – the Tallaght Restorative Justice Services (RJS)² and Restorative Justice in the Community (RJC)³ – since their establishment in 1999 and 2000 respectively. RJS and RJC provide offender reparation panels and victim–offender mediation as appropriate. Both projects receive referrals from District Courts of summary or minor offences and, in recent years, from higher courts for more serious offences.

McNulty (2005) documents the introduction of family conferencing in the Children Act, 2001⁴ as an intervention directed by courts to address offending by young people. McNulty notes that, from a social work standpoint, the main thrust of family conferencing is the empowerment of victims’ or offenders’ families. The conference, he says, offers a forum for their narrative, reflective account and dialogue.

In 2006, the Probation Service made a submission on restorative justice to the Joint Committee on Justice, Equality, Defence and Women’s Rights. Michael Donnellan, Director of the Probation Service, in his presentation to the committee said:

We heard this morning that restorative principles in Ireland are at an early stage. We need to develop a model of restorative justice suitable

² <https://rjs.ie/>

³ <http://rjc.ie/>

⁴ <http://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/index.html>

to our District Court structure. We do not seem to be clear about that and we need to investigate and see how it can be embedded in our everyday work. We have a unique opportunity to do this and we in the Probation Service, with the help of the Department [of Justice and Law Reform], hope to clarify that in the next few months, taking on board expert international advice. (Houses of the Oireachtas Report on Restorative Justice, 2007: 36)

In reviewing the report of the National Commission on Restorative Justice (Department of Justice, Equality and Law Reform, 2009), O'Donovan (2011) argued *inter alia*, that four main stakeholders are involved in restorative justice – victims, offenders, the community and the state.

Obfuscation in terminology

Obfuscation is defined in Wikipedia as ‘the obscuring of intended meaning in communication, making the message confusing, wilfully ambiguous, or harder to understand. It may be intentional or unintentional.’ Seen more positively it could be referred to as ‘constructive ambiguity’.

Cuneen’s (2000) definition of restorative justice from New Zealand is used here as a working definition. However, restorative justice is a difficult concept on which to achieve agreement. It is often used interchangeably with the broader term ‘restorative practice’. According to Restorative Practices Ireland:

Restorative practice is used in a wide range of settings including criminal justice agencies, educational settings, and community services, statutory and voluntary organizations. Restorative practice can be used anywhere along the continuum of supports from prevention and early intervention, right through to victim offender mediation for serious harm. (Restorative Practices Ireland, n.d.)

Comparing this definition of restorative practice with Cuneen’s definition of restorative justice, the term ‘restorative justice’ may be more clearly understood as confined to criminal or civil justice matters, and ‘restorative practice’ used in the broader context of family support, educational services, etc. In reality and common parlance, however, the terms are not clearly differentiated.

In restorative justice the distinction between the roles of mediator and facilitator is often obfuscated in discussing victim–offender dialogue. Mediation usually implies an impasse likely to require managed negotiation or an imposed resolution. Facilitation is usually focused on achieving a ‘win-win’ situation through the use of personal narrative and dialogue. Again, they are often used interchangeably.

The United Nations *Handbook on Restorative Justice Programmes* (2006) tends to maintain the power differentials associated more often with mediation. While it promotes the role of non-governmental organisations (NGOs) in restorative justice practice, a top-down structure and the forging of links between NGOs and government agencies is advocated.

In the Czech Republic, the Probation and Mediation Service, a government organisation, employs Probation Officers, who are described as ‘mediators’. However, it could be argued that their role is more facilitative, reflecting social work values.

Their task is to manage the negotiation process, to create conditions allowing understanding between the participants, the reaching of a solution, taking into account both parties’ interests. The mediators neither assess the conflict, nor do they decide on the form of its solution. (Ourednickova *et al.*, 1996)

Van Wormer (2003) asserts that social workers engaged in restorative practice with families should take the role of facilitator for the parties and not adjudicator. The focus is, in her view, on dialogue and narrative and not the guilt or innocence of the parties.

Mediation assumes an expert knowledge and, by implication, a shift in the balance of power, towards the worker who has a gate-keeping role. This role assumes the ability to control resources and also the proceedings (Christopherson, 2009).

Shapland and colleagues (2011) evaluated three UK Home Office-supported restorative justice programmes: two offered mediation and one offered conferencing. Shapland *et al.* found that conferencing was conducive to opening up avenues for further discussion and for the parties to move on with their lives. This model appears to accord best with social work values and methods, in that facilitation of the participants was largely focused on their arriving at sustainable solutions.

O’Donovan’s (2011) concept of ‘community’ as one of four stakeholders in restorative justice is difficult to define, as it may be located as

either a geographic or a social entity. Within a restorative justice context, both victim and offender are stakeholders in their own right while also part of the separate entity of 'community'. In a restorative justice context, it is most often assumed that the 'community' is those who are closest to the victim and/or the offender, and act in a support role. At other times, however, the community is seen to represent or even replace the victim. For example, if a victim does not wish to attend a conference, a member of the community may be invited to represent the victim's interests.

The United Nations *Handbook on Restorative Justice Programmes* (2006) includes the following example of restorative justice as practised by the Probation and Mediation Service in the Czech Republic.

As part of the pre-sanction process, a plan is put before the Court involving an assessment of the personal strengths of the offender and how their risk factors might be addressed.

In Ireland these tasks were a central part of Probation Service work for many years before the relatively recent advent of restorative justice, and have been conducted consistent with the social work code of practice. Many elements of good practice in probation have been retrospectively acknowledged as restorative practices.

Restorative justice: All things to all people?

Restorative justice has been variously described as a 'philosophy', a 'movement' and a 'practice'. Daly and Immarigeon (1998: 21) argue that restorative justice has 'sprung from sites of activism, academia and justice'. Within the criminal justice systems of most countries it is relatively recent in its introduction and still at a developmental stage.

Dale and Hydle (2008) describe a plethora of restorative justice models in Norway, from a national mediation and reconciliation service, which deals with criminal and civil cases, to street mediation operated by the Norwegian Red Cross. They also discuss the child welfare service, which is active in approximately 70 municipalities and uses restorative practice including family conferencing.

Hydle (2011), a researcher at the University of Tromsø, points out the difficulties encountered in attempting to define these separate entities and their fundamental differences: public and private organisations, civil and criminal law distinctions and the use of volunteers. The interchangeable

use of the terms ‘facilitator’ and ‘mediator’ adds to the problem of defining meaning, describing structure and understanding processes.

In the Irish context McNulty (2005) identified the families of victim and offender as the key players in restorative justice family conferencing. As mentioned above, O’Donovan (2011) identified four distinct players in the restorative justice process: offender, victim, community and state.

Despite the difficulties in terminology, semantics and varied, sometimes almost all-encompassing models of practice, restorative justice can be understood as a form of conflict resolution used to resolve disputes which exist between parties and which can be viewed through the lens of civil, criminal and political arenas.

Probation models as ‘fluid entities’

Probation practice internationally varies significantly (Van Kalmthout 2009). In some jurisdictions probation agencies are staffed by social workers; in others a variety of professions with other qualifications and experience are employed. Links between Probation Services and Prison Services also vary. In some jurisdictions the services are combined and in others they are separate. The role of Probation Officers in civil or criminal courts is also varied (Van Kalmthout, 2009).

The use of social work skills by Probation Officers in restorative justice practice will be influenced by the paradigm and discourse favoured by the particular jurisdiction. Duffee and O’Leary (1986), cited in Whitehead and Braswell (2000), suggest that from a social policy stance, probation agencies may follow one of four models, determined by the level of emphasis placed on the offender, the community, or both. They discuss *restraint, rehabilitation, reform and reintegration*, the last of these being viewed as offering an emphasis on both the offender and the community, consistent with restorative justice practice.

Brown (n.d.) argues that the safety of staff and the increasing number of high-risk offenders subject to community sanctions may move Probation Officers away from casework towards increasing social control. Brown cites Sieh (1990) in concluding that the increase in offenders subject to community supervision has forced a change in the role of Probation Officers, leading to an emphasis on the management and control of offenders exemplifying a ‘law enforcement’ bias. This focus, by implication, upholds and maintains power differentials between offender and Probation Officer, impacting on the application of both social work values and restorative justice practices.

Whitehead and Braswell (2000) discuss the pathways leading to the redefining of the role of Probation Officers in the US. They describe a move away from the Probation Officer as ‘avuncular advisor’, a role that was largely that of a social worker working in a law enforcement context but acting as a mentor. They describe a move towards an almost ‘Dirty Harry’ role, as adjuncts of the police, engaged in the monitoring of electronically tagged individuals and testing clients’ urine. The concept of enforcement and overt social control is now paramount and the authors suggest that probation represents one of the two ‘correctional options’ – the other being prison.

There seems to be very little impetus for such probation work to encompass restorative practice. Although Whitehead and Braswell (2000) support Probation Officers’ focus on working to equip offenders with prosocial and problem-solving skills for reintegrative purposes, there is a tension between the idea of probation as purely law enforcement and its more human restorative-led face. They argue that the US probation model should be refined to encompass ‘what works’ principles and evidence-based practice, incorporating elements of rehabilitation and restoration principles as well as law enforcement.

Wachtel *et al.* (2010) argue that the terminology employed in the US criminal justice system leans towards punitive-influenced language even when discussing restorative justice conferencing. Wachtel notes contrasts between current US criminal justice practice and what he terms ‘real justice’ or restorative justice. He points out that the two models are opposed. It may be ironic that probation’s move towards a more correctional or punitive approach has coincided with the emergence of restorative justice practice.

Victim involvement

Sheena Norton (2007) describes how any restorative justice work in probation must always be mindful of the other parties and that the victim and the community that has been harmed should have equal importance with the offender. She says that the social work values of anti-oppressive/anti-discriminatory practice are evident in the ‘voice’ of the victim being clearly involved. However, Norton (2007) cites Spalek (2003) in noting that research has not established a link between the development of the offender’s victim empathy and reduced reoffending.

Whether in the form of facilitation, mediation or reparation, restorative justice can provide an opportunity for the victim and the offender to meet, to arrive at a mutual resolution and for the victim to feel a sense of empowerment by getting answers to their questions. Asking a question of the offender can prove liberating for the victim, independently of any answer given.

Collaboration and the rebalancing of power should be evident in restorative justice as practised with victims, encompassing principles of reflective social work practice. The process is in principle voluntary for all concerned and although invited to participate as an important stakeholder in the restorative justice process, not all victims wish to engage in the process. It could be argued that the victim's perception of the harm suffered influences their willingness to participate.

Victim–offender dialogue: Narratives and scripts

McNulty (2005) cites Palazzoli Selvini *et al.* (1980), Cecchin (1987) and Tomm (1988), and concurs that the use of circular questioning can be helpful in working with a family involved in a restorative conference. This reflexive technique can be used to establish both commonality and difference in the narrative accounts. Circular questioning involves the facilitator undertaking:

investigation on the basis of feedback from the family in response to the information he solicits about relationships and therefore about differences and change. (Palazzoli Selvini *et al.*, 1980: 8)

With circular questioning, it is possible to identify patterns of family functioning and possibly problematic norms. This may offer an opportunity for the family and offender to reflect, consider new options and uncover and utilise strengths. Circular questions can help separate or externalize the problem for the client and, as such, offer a safe space for re-authoring their social scripts.

It is important for change and healing that participants have an opportunity for dialogue and for the offender to acknowledge the view of the victim within the conference. The acknowledgement of both the offender and the victim in restorative justice programmes influenced by social work values has the potential to restore equilibrium. The offender

is able to explore their offending behaviour and the victim is able to give an account of the harm experienced, which can be empowering for both.

Offender: Identification of strengths

Hall (2012) recommends a strengths-based approach or collaborative working with Probation clients aimed at identifying and using their personal strengths. For this to be successful, an understanding of the interaction between collaboration, power and the choice of language is important and restorative justice work can facilitate this.

If there is a bias towards language and power to the detriment of collaboration, the intervention is likely to fail. Hall (2012) encourages client narrative to allow for free expression and uncover the client's perspective. This lends itself to client and worker being able to reframe situations, to drill down and discover a client's inner resources and resilience and to identify how these could be utilised to achieve a positive solution.

Watson and West (2006) argue that a solution-focused method of working with clients adopts a middle position between the management or professional agenda and the empowerment of the client. As there is a focus on moving forward with a positive outlook, this can work well as it positions the client as the expert in their own life. A strengths-based approach in working with clients in a restorative justice programme allows for rebalancing of power even within a structured and mandated setting.

Community models: The way forward?

The Probation Service Restorative Justice Strategy (Probation Service, 2013) discusses how the philosophy of restorative practice has underpinned the mandate of the Probation Service for many years and emphasises the importance of the broader community as a vital stakeholder. The strategy includes a number of actions including the expansion of community-based programmes and the inclusion of additional categories of offenders. It commits to the wide application of restorative practices in the work of the Probation Service.

The state, the court and the role of the Probation Service

Working as an agency of the Department of Justice and Equality, the Probation Service employs staff with social work qualifications to provide

court-ordered assessment and supervision and to provide a through-care and aftercare service in prisons.

Social work ethics and values are visible in everyday practice with clients and in multidisciplinary settings. The Code of Ethics of the Irish Association of Social Workers (2006) acknowledges power imbalances and consequent tensions in the care and control functions of social work. These are particularly prominent in working with mandated or involuntary clients.

Trotter (2002) argues that particular critical skills used by workers with involuntary clients in mandated settings are directly related to positive outcomes. Trotter identifies these as role clarification between worker and client, the use of empathy and a collaborative problem-solving approach. These skills are consistent with the promotion of social justice and human rights when delivered to a high standard and meet the requirements of the Code of Ethics of the Irish Association of Social Workers.

Dalrymple and Burke (2003) illustrate a framework for anti-oppressive practice in the social work profession involving the interaction of knowledge, values and skills and requiring the ongoing use of reflective practice by practitioners. Schoen (1983) has argued that social work practice needs to be reflective in the context of the 'uncertain and complex world of service users'. In this context of professional values and practice, Probation Officers apply 'what works' principles and evidence-based practices as envisaged by Whitehead and Braswell (2000) in their assessments of and interventions with offenders.

The final report of the National Commission on Restorative Justice (Department of Justice, Equality and Law Reform, 2009) advocated the existing criminal justice bodies as the preferred vehicle for implementation of restorative justice in Ireland. The report eschewed the creation of a separate agency while noting that this had been the preferred option in several other jurisdictions. It recommended that the Probation Service should be the lead agency in the development of restorative justice practice in the criminal justice system in Ireland.

Conclusion

The practice of restorative justice in a European context traces its origins to the New Zealand Maori model of conflict resolution, the value system of the US Mennonite religion and the practice of a Canadian Probation Officer. From these origins emerge key principles: the reframing of an

offence as a wrong that hurts the entire community, the consideration of an offence as harm that can be viewed from multiple perspectives, and the potential benefits of victim–offender mediation.

The diverse origins perhaps best explain the diverse models of restorative justice involving public and private entities and that employ volunteer or professional staff or a mixture of the two. Language and semantics remain ill-defined or ignored in the development and delivery of restorative justice services. The interchangeable use of terms such as ‘mediation’ and ‘facilitation’ can obfuscate important power and status differentials and, together with the plethora of models available, may risk rendering restorative justice ‘all things to all people’.

The multiple models of restorative justice practised in Norway made it difficult to establish with certainty whether elements of social work values are implemented in the delivery of services. In the United Kingdom restorative justice programmes based on a facilitation rather than a mediation model seem a better ‘fit’ with social work values.

In Ireland the Probation Service has remained at the forefront of restorative justice development through its role in the criminal justice system and the wider ‘justice family’, its support for community-based restorative justice projects and its engagement in family conferencing. This role includes the provision of a framework for restorative justice, and the establishment of standards and criteria for training and service delivery.

The Probation Service’s involvement in restorative justice is congruent and consistent with social work values. Restorative language and practice is employed to explore the offender’s worldview and to develop the offender’s understanding of the victim perspective and the harm caused. The use of anti-oppressive/anti-discriminatory language in social work practice is central to its compatibility with restorative justice.

In my literature review on the congruity between restorative justice practices and social work values, findings were inconclusive. To a greater or lesser degree social work values can be consistent with the practice of restorative justice, depending on the model of restorative justice and practices employed.

In addition to the plethora of models of practice espousing a restorative justice ethos, the absence of a shared meaning and definition of terms and language makes it difficult to draw firm conclusions about the fit between restorative justice practices and social work values generally. Compared with developments in other jurisdictions, restorative justice in Ireland has significant and substantial congruity with social work values.

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