SCHLESWIG-HOLSTEINISCHER VERBAND
FÜR SOZIALE STRAFRECHTSPFLEGE
Straffälligen- und Opferhilfe e.V.

SCHRIFTENREIHE SOZIALE STRAFRECHTSPFLEGE

BAND 2

Ricarda Lummer
Mario Nahrwold
Björn Süß

(Eds.)

Restorative Justice –

A Victim Perspective and Issues of Co-operation

RESTORATIVE JUSTICE –

A Victim Perspective and Issues of Co-operation

Ricarda Lummer
Mario Nahrwold
Björn Süß

(Eds.)

Schleswig-Holsteinischer Verband für soziale Strafrechtspflege; Straffälligen – und Opferhilfe e.V.

Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim and Offender Treatment

in Zusammenarbeit mit / in co-operation with

Fachhochschule Kiel, Fachbereich für soziale Arbeit und Gesundheit

Kiel University of Applied Sciences, Faculty of Social Work and Health

FACHHOCHSCHULE KIEL
University of Applied Sciences

SCHRIFTENREIHE

SOZIALE STRAFRECHTSPFLEGE

BAND 2

Layout: Björn Süß

Druck: dbusiness.de digital business and printing gmbh, Berlin

ISBN: 978-3-00-039727-1

Veröffentlichung im Rahmen des durch die EU geförderten Projektes/Publication as part of the EU-Project `Improving Knowledge in Practise of Restorative Justice in Criminal Matters by International Comparative Research´ JUST/2009/JPEN/AG/0641 funded by the EU. The sole responsibility lies with the authors. The Commission is not responsible for the content contained.

Foreword

Ricarda Lummer

This is the second publication as part of the transnational project "Improving Knowledge and Practice of Restorative Justice". This will be achieved through "A Comparative Research Study on Restorative Justice" funded by the European Commisson.

The two-year project firstly aimed at improving knowledge of Restorative Justice amongst legal professionals, decision makers, practitioners and researchers mainly by means of international networking. Thus, three international conferences were held in Kiel, Tallinn and Estonia. The first book publication covered the presentations and results of the first conference in Kiel, which focused on the Status Quo of Restorative Justice in the partner countries. The contributions made at the second and third conference are published in this second project book. Overall, best practices shall be identified and strengthen the further implementation of Restorative Justice in the partner countries and beyond.

The following content is divided into two parts: firstly the contributions from the Tallinn conference, "Restorative Justice from the Victim Perspective", which took place in September 2011. The aim of this conference was to concentrate on the victim perspective within Restorative Justice, get insight into the organization of victim support in the partner countries, and widen the knowledge on applied RJ measures, with particular focus on Estonia. An official opening speech was held by the Minister of the Interior Ken-Marti Vaher, followed by greetings from the Ministry of Justice of Schleswig-Holstein represented by the prosecutor Jana Bewersdorff.

Jim Hilborn from the Baltic Institute for Crime Prevention and Social Rehabiliation, introduces the topic through a broader historical perspective, pointing out the importance of the RJ movement to be aware of its foundations. Hilborn furthermore elaborates his concept of "the just three",

namely revenge, peacemaking and retribution, which shall allow better understanding of justice and how remorse and desistance can lead to peacemaking. Another interesting thought that deserves mentioning is his relation drawn to the Health System, by emphasizing the question "How healthy is our justice?" Based on the quote of the WHO constitution – "health is more than the absence of disease" – he claims that "RJ is more than healing, it should promote health".

The next article by Prof. Dr. Otmar Hagemann from Kiel University of Applied Sciences focuses on victim needs and coping strategies, and thus the impact of victimization and the benefits of Restorative Justice in dealing with the aftermath. His central message is that most victims have an interest in participating in RJ and should have the right to access Restorative Justice procedures and to be sufficiently informed in order to be able to make their own decision. Subsequently, the workshop results on "Victim support in the partner countries" are summarized by Mario Nahrwold for Germany and Zsófia Tóth for Hungary.

Isabel Thoß and Elmar Weitekamp specifically describe Canadian Peacemaking Circles in their German article, "Friedenszirkel, ein wiederentdecktes Verfahren zur Konfliktbewältigung". They introduce the circle methodology with a short historical overview, leading on to its main characteristics and a comparison to court proceedings. This procedure becomes more and more relevant and popular as part of the Restorative Justice toolkit, also in Europe. An EU Project on Peace Circles is being carried out by Germany, Belgium and Hungary since 2011, trying to implement this particular RJ procedure.

The second part of the book comprises contributions from the Oxford conference, "Making Justice Systems More Restorative", which took place in April 2012. The aim of this conference was to explore how the agencies involved in the Criminal Justice System and outside can produce benefits for victims, offenders and the wider community by working together to deliver Restorative Justice. The conference was officially opened by Malcolm Fearn,

the Chair of Thames Valley Probation, and Gerry Marshall, Chief Executive of Thames Valley Probation. The opening speech from Crispin Blunt MP of the Ministry of Justice introduces the second part of this publication.

Sari Stacey, who became a victim of a burglary and participated in a restorative process, writes about her perspective on RJ and the experiences before and during the restorative conference. This is a rather emotional article and allows the reader a different insight into Restorative Justice processes, moving away from purely theoretical inputs. At this point, we would like to thank Sari Stacey for her openness in sharing her experiences during the project conference and in written form. This is a very powerful way of understanding the impact RJ may have.

Lawrence Kershen QC, Chair of the Restorative Justice Council (RJC) and former Crown Court Judge, shares his experiences as a judge, particularly underlining the importance of remorse in sentencing, in the next article. If remorse is of such importance to reduce reoffending, he asks how one can awaken that conscience, that sense of connectedness and empathy. In the process of searching for an answer, he found Restorative Justice and has since had the vision of a Restorative Justice legal system.

Jo Tein, managing director of the Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim and Offender Treatment, reflects on the relevance of combining regional and European networking as a means for "making justice systems more restorative". He particularly stresses the importance of European projects in strengthening awareness for European regulations in the participating countries and how each of those can benefit from international experiences. The German perspective is supplemented by that of the European perspective through Leo Tigges, the Secretary General of the CEP. In his article, he addresses the difficult question of how to make probation in Europe more restorative. To approach that question, the background, role, and aims as well as values of the CEP are pointed out. Furthermore, he reports about the European criminal justice platform,

which is made up of four organizations: Europris, Victim Support Europe, the European Forum for Restorative Justice and the CEP, in order to improve cooperation in the field.

The workshop results on "Restorative Justice and Links with Civil Society" by Pete Wallis. Belinda Hopkins contributes an article on "Restorative Justice and Problem-Solving", moving beyond Restorative Justice in criminal matters. Her wide approach embraces the application of RJ procedures in various fields. In her article, she pleads for more open training of mediators, including the ability to apply a wide range of restorative responses depending on the individual case rather than only formal, scripted VOM or conferencing.

Following this, Geoff Emerson has contributed an article on "What a Difference a Year Makes", regarding some remarkable changes that have occurred in the development of RJ in Thames Valley and the UK over the past year.

Independent of the conferences and the European scope, the seriousness of crimes suitable for RJ occurs over and over again as an important subject matter that requires further attention and therefore leads us to include an international article by Allan MacRae. "Restorative Justice with Youth in the Community in New Zealand" is an article on an initiative that won the Supreme Award for Innovation, as it reduced youth offending by two-thirds over three years in Wellington, the capital of New Zealand. It specifically focuses on more serious gang crimes, which is something that has not been part of RJ procedures in any of the partner countries but could and should be considered in the future when looking at the success rates this article reveals in New Zealand.

In the name of the project leader Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim and Offender Treatment and as co-editor of this publication, we would like to thank all authors for their

contributions. For the layout, translations and editorial services we thank Otmar Hagemann, Arne Tüchsen, Katharina Flemming and Catherine Salzinger, Jessica Read.

Restorative Justice as an appropriate reaction in penal proceedings?

Jana Bewersdorff

According to §155a of the German Code of Criminal Procedure (StPO), the prosecutor's office and the court are requested in any stage of the proceedings to check the possibility of a settlement between the defendant and the injured. Therefore it has to be determined whether or not the prerequisites for victim-offender-mediation are given, not only during the investigative proceedings but also during the intermediate, main and enforcement proceedings.

Where applicable, an implementation shall be realized. By law, all proceedings in which the defendant is suspected, has confessed and genuinely shows intention to reach a settlement with the victim, given that the victim can be individualized, are suitable for victim-offender-mediation. In those cases, the police, the prosecutor and the court shall point out victim-offender-mediation to the defendant. As a consequence, the case can be closed or at least lead to a reduced sentence, depending on the seriousness of the offence.

The duty of notification on behalf of the court is regulated by §136, section 1, p.4, StPO. On the part of the police and the prosecutor's office there is reference in §163a, section 4, p.2, StPO (respectively §163a, section 3, p.2, StPO). It has not been regulated by the legislature in what form the notification has to take place. It has also not been determined in the Code of Criminal Procedure how the victim-offender-mediation shall be accomplished. The legislature consciously left room for the different concepts of settlement developed by the federal states.

In Germany, victim-offender-mediation is defined as an out-of-court conflict settlement in which the defendant – having confessed – and the aggrieved party talk to a mediator and finally meet at the mediation service. By following communication rules that have been determined by the mediator beforehand, the conflict can be solved. Although victim-offender-mediation is well established, there are numerous other procedures of settlement or

reconciliation. All those procedures are, in fact, measures of restorative justice. The project Improving Knowledge and Practice of Restorative Justice – supported by the European Union – analyzed which concept reacts best to a certain record and is therefore especially suitable and efficient.

The participating countries presented different methods and standards that had been applied as well as their statutory basis. Scientists and practitioners discussed the efficacy and sustainability of individual procedures, also in terms of financial aspects. If suitability criteria are given, victim-offender-mediation can be useful in the case of out-of-court conflict settlement. It can deeply influence the defendant and help reestablish legal concord.

Victim satisfaction is particularly high in cases of extrajudicial settlement. The victims' satisfaction rates increase even with the severity of the criminal offence. This can be explained by the fact that especially victims of a serious criminal offence are not mainly interested in atonement and settlement. They rather hope for a full investigation of the offence, they want to know why they have become a victim, to make the offender aware of his wrongdoing, to vent their feeling, to have a positive influence on the offender's behaviour and, by this, to regain control. The formal setting in court often makes it difficult to meet these interests.

Along with the recognized simple victim-offender-mediation, there are different existing models in which other people – for example, persons indirectly affected by the offence such as neighbours, the police, family or the government office for youth welfare – can be included in the mediation. These conference models are nearly unknown in Germany and are only used in exceptional cases. In other countries, they are very common, sometimes even mandatory, and can precede the main court proceedings, for example in New Zealand and Belgium.
The family group conferences in Elmshorn carried out in the context of a youth pilot scheme include the defendant and the victim, a police officer and, if possible, a juvenile legal support agent and especially so-called supporters. Usually, these supporters are partners, friends or relatives or other close confidants of the victim.

The aim is to find constructive solutions and suitable measures by making the people who are interested in the offender's future work together. Every person involved has the possibility to examine aspects that seem important to them. The supporters can help when the accused is only reacting with resistance to the victim's reproach. They can listen to the victim's explanations without being personally affected by them and they can tell the defendant in their own words what is essential from their point of view. If no connection between the offender and the victim develops, the supporters can indirectly influence this and help find solutions. In addition, they have a greater social control than in simple victim-offender-mediation. On the other hand, it is important to mention that organising conferences is usually more time-consuming than victim-offender-mediation as there are more people involved. In my opinion, that is why the choice of model has to be made carefully despite the obvious advantages of the conference model.

It seems reasonable to expand the offer of out-of-court settlement by taking into consideration concepts that were tested and evaluated in other countries in order to achieve an appropriate and lasting influence on the defendant while also considering the victim's interests.

Justice: Found & Lost

Jim Hilborn[1]

Justice is more than the Rule of Law

1. Introduction

This short paper is a very personal reflection on the different meanings of justice. I am writing in the first person to communicate directly with you, the reader. I hope that I will get feedback from you with comments and suggestions for clarification and improvement.

I would like you, the reader, to now take a moment, and make a note about what makes a particular justice event "good" or "right" for you. Some questions to assist in your reflection: Can revenge be just? When is peacemaking and forgiveness just? When is retribution just? What satisfies you, and makes it feel right?

I am now working on the development of two concepts – "the just three" and "salutogenic justice" – in my ongoing quest to fully understand justice, and the way that remorse and desistance can lead to peacemaking. In this paper I have had to leave salutogenic justice for another time.

2. The Just Three

If you try to visualize justice, what do you see? I see a scene that provides me with a meaningful context, and a diagram for further analysis and rational discourse.

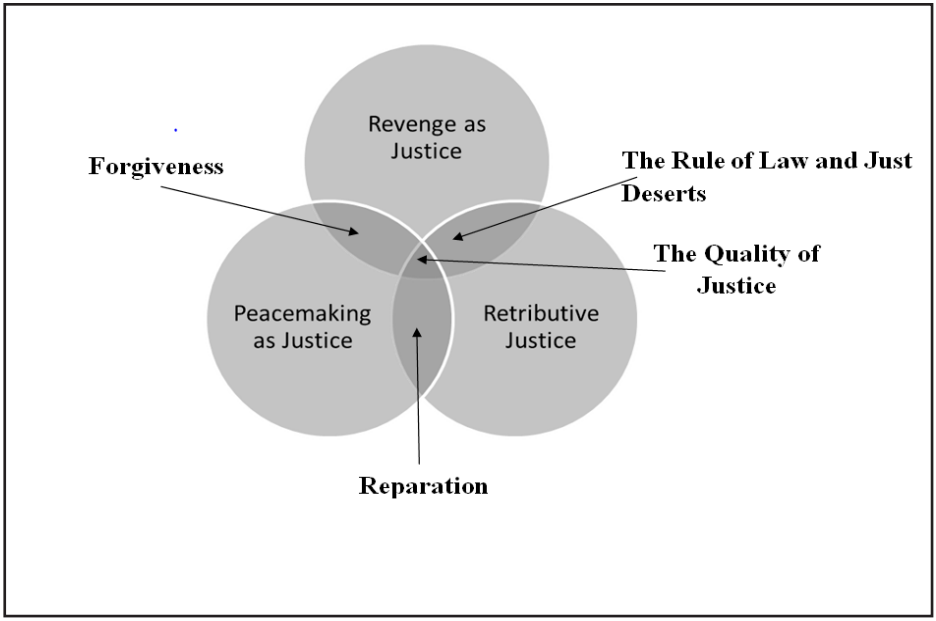
In my vision of justice, I see three human figures standing close together on a barren moor, at the scene of a crime. These three figures represent revenge, retribution and peacemaking. The first figure paces back and forth, eager for action, full of righteous rage mixed with a cold hunger for vengeance; the second figure stands just a little apart from the other two, the body is tilted forward, listening on every sound, and the face is blindfolded, a sword and scales of justice are held ready in the two hands; finally, the last figure sits peacefully on the ground, calm and compassionate, waiting to hear

1 Baltic Institute for Crime Prevention and Social Rehabilitation www.crimeless.eu jimhilborn@gmail.com

the truth, to try to heal what can be healed, and to endure the burden of the rest. Each trusts the other two companions, and each knows both the wisdom and also the limits of the others. Together, they are justice.

That's my picture. What would be your vision?

Next there is a Venn diagram on the relationship between the three: revenge, retribution and peacemaking. In Retributive Justice, the "rule of law", with its proportional punishment or "just desserts" (as defined in the criminal code), is the State's way of managing the human thirst for vengeance against those who have harmed us. Reparation or the making of amends is another tool developed in most cultures to manage the dangerous potential for vengeance to become an ongoing vendetta. Reparation is also often part of the Peacemaking process, along with the potential transformation that can occur when there is Forgiveness, which replaces the righteous need for Revenge.



"The Just Three"

All "the just three" are equally necessary, equally just; none is better or more "real" than the other. All three have their time and place. In practice I think that justice is best achieved as a blend of all "just three". The exact balance between revenge, retribution and peacemaking will depend on the specific situation and the time and place. Each justice is unique like each individual human being, but the call for justice demands all three be present.

> "No man is an Island, intire of it selfe; every man is a peece of the Continent, a part of the maine; if a Clod bee washed away by the Sea, Europe is the lesse, as well as if a Promontorie were, as well as if a Mannor of thy friends or of thine owne were; any mans death diminishes me, because I am involved in Mankinde; And therefore never send to know for whom the bell tolls; It tolls for thee."
>
> – John Donne, 1624

In suggesting that revenge or retributive justice can be as valid as restorative justice and peacemaking practices, and even in some situations, a better solution, I know that I am questioning the widespread assumption that restorative justice must be better or more effective. I don't think that is true, it is just a naive prejudice of some in the Restorative Justice movement. Revenge is as much a part of human nature as Peacemaking, and Revenge is as important for our well-being as Forgiveness. Before an examination of the role of Forgiveness, Revenge needs to be appreciated in its role in Justice.

3. Revenge: Justice as Tit for Tat

In Game Theory, "Tit for Tat" as a strategy is simple and often effective. The strategy is dependent on four conditions:

1. Unless provoked, the agent will always cooperate.
2. If provoked, the agent will retaliate.
3. The agent is quick to forgive.
4. The agent must have a good chance of competing against the opponent more than once.

It is important to remember that both vengeance and forgiveness are part of our human neurobiology. In Beyond Revenge, Michael McCullough notes:

> Truth #1: The Desire for Revenge Is a Built-In Feature of Human Nature
>
> "A century of research in the social and biological sciences reveals a crucial, unsettling truth about the place of revenge in human nature: though we might wish it were otherwise, the desire for revenge is normal—normal in the sense that every neurologically intact human being on the planet has the biological hardware for experiencing it." (2008: xvii)

McCullough defines vengeance as an attempt to redress an interpersonal offense by voluntarily committing an aggressive action against the perceived offender. Vengeance can be viewed as a basic expression of the reciprocity norm. The basic inclination is to return harm for harm. McCullough argues that vengeance might encompass at least three subsidiary goals:

- Vengeance as balancing the scales. One possible goal underlying vengeance is the desire to "get even", "balance the scales" or "give tit for tat".

- Vengeance as moral instruction. Vengeance can also involve the desire to "teach the offender a lesson". Vengeance, in this sense, is symbolic behavior designed to convince the offender that a particular type of behavior will not be tolerated or go unpunished. This is very similar to the deterrent theory in retributive justice.

- Vengeance as saving face. Vengeance also might be motivated by the goal of saving face. Victims typically attribute to their offenders a belief that the victim was not worthy of better treatment.

McCullough writes that:

> "Vengefulness refers both to (a) beliefs and attitudes about the morality or desirability of

> vengeful actions for attaining certain goals (e.g., restoring the moral balance, teaching an offender a lesson, saving face) and (b) self-reported use of vengeance as an interpersonal problem-solving strategy." (2001:602)

It is clear that the emotion of vengence is part of being human. It is an emotion that homo sapiens shares with other species such as the other primates and the dogs that share our homes. If there is a perception of unfairness, then people and dogs will pay a cost to see that the unfairness is punished (Gintis, 2010, de Waal, 2011). It is the foundation stone for Justice, and provides room for the other inherent capacity of Forgiveness.

3.1 Vengeance is Valuable

A lot of the legal philosophy and restorative justice literature suffers from a lack of appreciation of vengeance. The philosopher Robert C. Solomon appreciated the value of vengeance. He wrote a essay on "Sympathy and Vengeance" where he agreed that the positive emotions such as:

> "Sympathy, empathy, care, and compassion together constitute the sentimental core of justice. Without that sentimentality, not even the clearest notion of rationality can get a hold on us." (2004:31)

Yes, these "nice" emotions are critical to justice, but Solomon went on to argue that:

> "…justice also involves the often despised and dismissed emotion of vengeance, which may, in fact, be (both historically and psychologically) the seed from which the plant of justice has grown. Vengeance is the original passion for justice. The word 'justice' in the Old Testament virtually always refers to revenge…"

Sometimes vengeance is wholly called for, even obligatory, and revenge is both legitimate and justified. Sometimes it is not, notably when one is mistaken about the offender or the offense. But to seek vengeance for a grievous wrong, to revenge oneself against evil—that seems to lie at the very foundation of our sense of justice, indeed, of our very sense of ourselves, our dignity, and our sense of right and wrong. Even the sentimentalist Adam Smith writes, in his Theory of Moral Sentiments: "The violation of

justice is injury…it is, therefore, the proper object of resentment, and of punishment, which is the natural consequence of resentment". We are not mere observers of the moral life, and the desire for vengeance seems to be an integral aspect of our recognition of evil. But it also contains—or can be cultivated to contain—the elements of its own control, a sense of its limits, a sense of balance. Thus the Old Testament instructs us that revenge should be limited to "eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe" (lex talionis; Exodus 21:24–25).

> "Evolutionary theory, if not common experience, has shown—conclusively, I think—that there is demonstrable advantage for groups and species, if not always for individuals, in the evolution of cooperation. But cooperation has two sides—the willingness to cooperate, first of all, and the resentment and punishment of those who do not co-operate. (This includes the expectation that one will be punished if one does not cooperate.) One cannot imagine the evolution of cooperation without the evolution of punishment, and R. M. Axelrod's now-classic "tit-for-tat" model of the latter explains the former as well. In a repetitive "prisoner's dilemma" type of situation, or in any ongoing situation in which one person frequently has the ability to cheat the other(s), an optimum strategy for discouraging such cheating is to respond, dependably, with retribution." (emphasis added, 2004:36-37)

Vengeance is powerful and can be quite an intoxicating, even addictive, activity.

The Nazis preached revenge against the Reich's enemies, which justified the persecution, and then the elimination, of the Jews (along with the Gypsies, Sexual Minorities, Communists, the mentally ill and disabled, and so on). The Final Solution was seen as being necessary for the security of the Nazi State, as well as the deserved vengeance for the Jewish crimes such as the betrayal of Germany in World War 1.

I have argued (2012) that similar dynamics of political expediency and racism are behind the massive increase in incarceration in the United States and in many other countries. Fear and revenge are powerful emotions that can be easily manipulated for political ends.

Solomon was well aware of the potential danger of uncontrolled vengeance.

> "Of course, we can agree that there is danger in vengeance. It can become increasingly violent, further disrupting the present order of things in an often mistaken attempt to get back to a prior order that has been disrupted. Such an impossibility breeds frustration, and violence—even justified as vengeance (if, indeed, this is possible)—typically leads to more violence. An act of revenge results in a new offense to be righted. And when the act is perpetrated not against the person who committed the offense but against another who is part of the same family, tribe, or social group (the logic of vendetta), the possibilities for escalation are endless." (emphasis added, 2004:40)

Uncontrolled acts of vengeance violate human rights and undermine any sense of justice. The rights and wrongs of the original events are buried in blood. The "Troubles" in Ireland, or the "tit-for-tat" killings in the Israel–Palestine conflict are good examples.

Despite the danger of abuse, Solomon warned against neglecting the emotion of vengeance in retributive justice:

> "To the dangers of vengeance unlimited it must be added that if punishment no longer satisfies vengeance, if it ignores not only the rights but also the emotional needs of the victims of crime, then punishment no longer serves its primary purpose, even if it were to succeed in rehabilitating the criminal and deterring other crime (which it evidently, in general, does not). The restriction of vengeance by law is entirely understandable, but the wholesale denial of vengeance as a legitimate motive may be as much of a psychological disaster as its unlimited exercise is dangerous…
>
> "…vengeance deserves its central place in any theory of justice; and, whatever else we are to say about punishment, the desire for revenge must enter into our deliberations along with such emotions as compassion, caring, and love." (emphasis added, 2004: 40-41)

3.12 Just Revenge

In the period after the fall of Nazi Germany, there were times when the American and British crime investigators had to deal with many low-rank SS members who had been active participants in the killing. It was clear that these men were lowly cogs in the killing machine, and no one at Allied Command was going to be interested in someone at that level. Nothing would be done. Arnold H. Weiss described one of these killers in a 2005 interview:

> "In some cases it was clear that the individual had an utter lack of remorse. He was oblivious, like he'd done nothing wrong… I guess what got me was the complete absence of humanity. To him, Auschwitz had just been a job. The fact that more than a million people were killed there didn't seem to faze him in the least bit. He didn't see Jews as people." (Brzezinski, 2005)

The Army Counter Intelligence Corps investigators decided that something had to be done with these individuals – they should not escape justice. Arnold H. Weiss described the development of a quasi-legal process.

Each case was discussed with the other agents. The key was to make sure that the man was guilty. The SS men would have to own up to their participation in mass murders of their own volition, never as a result of torture. The investigator would have them write out a detailed history of their war record including who they served with, when and under whose authority. The facts were double-checked against captured Nazi records to make sure that the person was indeed who they claimed to be. Only then was the decision taken to hand the SS men over to the Displaced Persons (DPs) who had survived the camps for "further debriefing". The CIC agents knew the SS men would be torn apart. This process of ensuring that these guilty men would experience the revenge of the DPs was considered by the American and British agents to be better than doing nothing. It was revenge as justice.

In 2005 Ferencz told the interviewer a story of how he once saw DPs beat an SS man and then strap him to the steel gurney of a crematorium. They slid him in the oven, turned on the heat and took him back out. Beat him

again, and put him back in until he was burnt alive. Ferencz did nothing to stop it. He knows that he could have brandished his weapon or shot it in the air, but he was not inclined to do so. He then asked the interviewer the question: "Does that make me an accomplice to murder?"

I believe that the answer is yes, he was an accomplice to murder. The real question is whether or not it was more just to observe and do nothing, or to stop the DPs from taking revenge. Ferencz did not act to stop the torture and murder. What should he have done?

On May the 3rd 2011, Benjamin B. Ferencz wrote a letter to the New York Times regarding the killing of Osama Bin Laden.

> To the Editor:
>
> Your superb report "Behind the Hunt for Bin Laden" leaves key questions unanswered. Jubilation over the death of the most hunted mass murderer is understandable, but was it really justifiable self-defense, or was it premeditated illegal assassination?
>
> The Nuremberg trials earned worldwide respect by giving Hitler's worst henchmen a fair trial so that truth would be revealed and justice under law would prevail. Secret nonjudicial decisions based on political or military considerations undermine democracy. The public is entitled to know the complete truth.

I think the critical difference for Benjamin Ferencz is that Bin Laden could have been given a fair trial while the SS man would have escaped justice without the Displaced Persons' savage revenge.

3.13 Where is the Just Retribution?

In addition to situations where revenge is the only justice, there are situations where the retributive justice system is not activated. Such inaction is an injustice that cries out for revenge.

I recently watched the documentary Gray Matter (2004), which is about the burial in 2002 of the preserved brains of over 700 children who had been killed at the Am Spiegelgrund clinic in Vienna. The clinic was used by the Nazis to do research on eugenics and to murder those individuals classified under

the "Lebensunwertes Leben" (Life Unworthy of Life) program. Dr. Heinrich Gross was the head of the Spiegelgrund children's psychiatric clinic during this period. Gross took photographs of the children he treated. The records are quite precise: 772 children died in his clinic and the professor signed the death certificates of 238 of them.

After the war Dr. Gross continued his research for several decades using the preserved brains of the murdered children. He published numerous well-received papers on his neurological studies of these children's brains. He also served as a well-paid expert witness for the Austrian courts. He provided psychological profiles on criminal defendants and would give his expert opinion on their ability to stand trial (these examinations were revealed by the Gray Matter documentary to have been conducted at an average rate of two per working day, which does cast serious doubt upon their objectivity and the validity of his "expert" opinions). He retired in 1998 after a long and very public career with a good pension. This was no Dr. Mengele hiding in Latin America, he was in the public eye and his actions were well known to many.

Gross was never found guilty of anything, with the third and last attempt at a trial in 2000 being indefinitely suspended after only one hour due to a successful claim that, due to his advanced age and alleged senility, Dr. Gross was unfit to stand trial. However, he then gave an interview at a coffee-house where, though he was a very old man, he seemed to be mentally sound and quite able to understand the charges against him and participate in his defense. He carefully avoided some of the reporter's questions by claiming that he could not remember. It seems quite likely that justice was denied for many decades because of lack of interest by the State and a common desire to evade such unpleasant issues. Dr. Gross died in 2005.

At the end of the film, one of the survivors of his abuse bitterly states that Gross had won. I found the Gray Matter documentary to be very disturbing since it was clear that there was no justice, and Dr. Gross had no remorse for his actions. Instead he was quite proud of his neurological research. I felt anger and wanted revenge on those who failed to act. Justice delayed and evaded is justice denied.

4. Retributive Justice as Fairness not Vengeance: The Einsatzgruppen Trials, 03 July 1947 – 10 April 1948

It is hard to fully comprehend the crimes against humanity such as those that happened in Nazi Germany, or in Rwanda, or South Africa. Reading the transcripts of any of the different Nuremberg trials or the Truth and Reconciliation Commission in South Africa is quite painful. It is a vicarious trauma. But it is important to look into the abyss even if the abyss looks back.

I use examples of Nazi crimes against humanity not because I believe that Nazi Germany was that unusual, or that the Holocaust was unique. There was genocide before 1933 and after 1945. We might have said never again but it was never true. The main reason for using examples of Nazi crimes against humanity is the level of documentation, and the massive literature on this period in history.

In 1947, Benjamin Ferencz was the Chief Prosecutor at the trial of 22 senior members of the Einsatzgruppen. He notes that no satisfactory English translation has been found for the German term "Einsatzgruppen" (EG). An accurate description might be "special extermination groups".

In a 2005 article he said that "There were 3,000 members of these killing squads who did nothing but kill women and children for three straight years. These 3,000 men alone were responsible for almost one million murders. Do you know how many I brought indictments against? Twenty-two. The rest were never tried."

Ferencz relied totally upon the captured official German documents and the defendants' statements to prove the guilt of each defendant. The defendants had provided all the necessary evidence in their own reports. Ferencz writes that:

> "When EG leaders were convicted at Nuremberg for their crimes against humanity, they showed no remorse. They argued that Hitler had declared that Germany was fighting a defensive war and they were bound to follow his orders. In 'total war': against Bolshevism,

> they said, all potential enemies had to be eliminated by every possible means. Secret killing squads were a military necessity. They left no doubt that they would do it again."[2]

SS Gruppenführer (Major General) Otto Ohlendorf is a good example. Einsatzgroup D, the unit under his direct command, had reported that they had killed 90,000 Jews. Benjamin Ferencz decided to pay Otto Ohlendorf a visit in the prison beneath the courtroom after the court had given him the death sentence. Ferencz remembers that:

> "I knew that Ohlendorf was the father of five children and that he was an intelligent and relatively honest man. Perhaps there was something that I could do for him before he died, such as telling his family that he loved them. We met in a small cubicle with a strong glass partition through which we could speak. I asked him, in German, whether there was anything I could do for him. Some small favor, perhaps? His bitter reply was that the Jews in America would suffer for what I had done. I was stunned by his answer. The man had learned nothing, and regretted nothing. I looked him in the eye, stood up and said slowly, in English, 'Goodbye, Mr. Ohlendorf.' I never saw him again." (emphasis added)

Benjamin Ferencz was always certain that the defendants would be found guilty. He never asked for the death sentence, since…

> "I was keenly aware that there was no way for the scales of justice to balance the murder of more than a million innocent human beings against the lives of two dozen of their executioners. It was my hope that the trial would serve a more useful and enduring purpose; that it might somehow help to deter the repetition of such horrors in the future. I was determined to do whatever I could to help lay a foundation for a more humane world than the one that had indelibly traumatized me during World War Two…
>
> "Vengeance was not our goal, nor did we seek merely a just retribution. The victims had been killed solely because they did not share the race or ideology of their killers. We asked the Court to affirm the legal right of all human beings to live in peace and dignity, regardless of their

2 I have used material from http://www.benferencz.org/, especially Bernie's Stories. This site has his personal recollections as well as his writings on international law.

> race or creed. 'The case we present is a plea of humanity to law.' That theme, of trying to use international law for the protection of the most fundamental rights of human beings everywhere, has guided me throughout my life."

In 1947 he ended the Opening Statement for the Prosecution with these words:

> "The defendants in the dock were the cruel executioners whose terror wrote the blackest page in human history. Death was their tool and life their toy. If these men be immune, then law has lost its meaning and man must live in fear." (emphasis added)

For those who have learned nothing, and regret nothing, what are the options other than either revenge or retributive justice? Forgiveness without either learning or regret rings hollow. A victim may still decide to forgive as a valuable therapeutic measure for oneself, but justice demands that the crime is never forgotten and some sanction – even if it is only a symbolic reparation – needs to follow the judgement of guilt unless there is real remorse and desistance on the part of the offender which can be a legitimate trigger for forgiveness.

It feels right that the offender ought to be punished. We have a need that is rooted in our neurobiology that cries out for justice if there is no punishment. If evildoers are immune from the state's retribution then, as Ferencz warned, law has lost its meaning and man must live in fear. Without the "rule of law", people will take justice into their own hands with acts of revenge.

If the certainty of the State's retribution cannot be trusted, then the very legitimacy of the State is called into question. It is also true that excessive retribution that is not proportional or mass incarceration can also undercut the legitimacy of the State (Hilborn, 2011).

4.1 The Nuremberg Principles: the International Rule of Law

The Einsatzgruppen Trials were only one of the twelve Nuremberg Trials that followed the more famous International Military Tribunal where the most senior Nazis such as Goring and Speer were tried for Crimes against Peace

(planning, preparing and waging aggressive war), War Crimes (such as those condemned in The Hague Conventions of 1899 and 1907), and Crimes Against Humanity (such as genocide).

Desmond Tutu has commented that the Nuremberg Trials were an example of the "winners" judging the "losers". Throughout the different trials, the German defense counsel would try again and again to raise the issue of war crimes committed by the Allies. There is some truth in Tutu's comment but it does not reduce the value of the Nuremberg Trials. For all its omissions of Allied crimes, the Nuremberg trial laid the foundations for the development of international criminal law in the post-war years and the establishment of the International Criminal Court fifty years later.

Nuremberg is important because it established the idea that the "rule of law" could be applied at the international level. In his opening statement at the Nuremberg trial on 21 November 1945, the US Chief Prosecutor Robert Jackson said that:

> "While this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by any other nations, including those which sit here now in judgment."

The Nuremberg principles state that:

1. Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

2. The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

3. The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

4. The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

5. Any person charged with a crime under international law has the right to a fair trial on the facts and law.

6. The crimes hereinafter set out are punishable as crimes under international law: a) crimes against peace; b) war crimes; c) crimes against humanity.

7. Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

4.12 International Retributive Justice: Going beyond the Nation State

Crimes against humanity, genocide and war crimes may in principle be tried by the normal criminal courts of any country under the principle of universal jurisdiction. This principle has long been part of international law. When prosecuting on this basis, the courts of one country act in the general interest of all (law-abiding) states. Some countries' legal systems make it relatively easy to bring such prosecutions; others make it difficult unless their own nationals are involved.

Universal jurisdiction hit the headlines in October 1998 when the former Chilean dictator Augusto Pinochet was arrested in London on the basis of a Spanish warrant. This intervention by foreign courts led to Pinochet facing charges in his home country. The very fact that Pinochet had to in the end face trial was a victory for justice. Sadly, his age and health prevented Pinochet from being properly tried and found guilty of crimes

against humanity but at least the "truth" of what he had ordered became very public. I doubt that Pinochet ever felt any remorse. And when I think of Pinochet, I feel no charity or desire to forgive – I knew some survivors of his terror and mass killing.

Some examples of the use of universal jurisdiction include the following:

Spain
Proceedings against the former Chilean dictator Augusto Pinochet; members of the Argentine military dictatorship; members of the Guatemalan military dictatorship; members of the Honduran military forces.

France
Proceedings against members of the Chilean dictatorship; members of the

Argentine
military dictatorship; the Libyan President Muammar Gaddafi; defendants from Rwanda

Great Britain
Proceedings against the former Chilean dictator Augusto Pinochet; an Afghan warlord.

Senegal
Proceedings against the former dictator of Chad, Hissein Habre.

Belgium
Proceedings against the former Israeli army chief Ariel Sharon; the Cuban head of state Fidel Castro; militia leaders and politicians from the Congo; defendants from Rwanda.

Germany
Proceedings against defendants from the former Yugoslavia.

Netherlands
Proceedings against the former dictator of Suriname, Desi Bouterse.

USA
Proceedings against the son of former Liberian president Taylor, Charles "Chuckie" Taylor, Jr., charged for torture.

The different International Criminal Trials, such as the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda (ICTR), did show that those responsible for genocide may have to face justice at some future time. This may be a deterrent against the abuse of power. If States have at last begun to meet their obligation to punish genocide, they have barely begun to meet their duty to prevent it in the first place or, at the least, to stop it in its deadly tracks.

The failure to act to stop the killing in Rwanda was a shameful example of the failure of the UN and the moral cowardice of the Clinton administration. There will be many new examples – such as the killing in Syria – as the different States play their political games. Hopefully, just as those who are responsible for genocide may face justice, those who fail to act to stop genocide may also face public shaming and contempt for their inaction.

4.13 The International Criminal Court in the Hague

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide may have come to embody the conscience of humanity but the reality is that the Rome Statute of the International Criminal Court was only signed in 1998, and the International Criminal Court did not start its work before 2003 with the first case being sent to the Hague in 2006. And the USA, China, Russia, Israel and India are still opposed to parts of the Rome Statute.

The American Nuremberg prosecutor Benjamin Ferencz, now in his nineties, has been very critical of the US refusal to become a member. He has said that Nuremberg was little more than a beginning. He believes that the matrix for a rational world system is gradually and painfully being pressed into place with the ICC being a part of that evolutionary process.

Ferencz argues that clear laws, courts and a system of effective enforcement are vital for justice at both the national and international level. I believe that he is right, and that anyone working in the area of Restorative Justice should be aware of the slow and painful process to develop a system of national and international criminal law. I have already argued that Restorative Justice Policies and Practices are not always a better answer to crime and injustice than Retributive Justice.

5. Before Restorative Justice: Critical Events 1933–1974

In the last decade of the 19th century there was a general belief in science and the certainty of progress, human rationality, and the domination of the West. After 1945 there was much less belief in science and progress, human rationality, or the legitimacy of global domination by Western Nations. The impact of the first part of the 20th century continues to be felt today.

Some critical defining events are the following:

1. Nazi Germany 1933-1945 with its policy of mass incarceration and its numerous crimes against humanity.

2. The Nuremberg Trials 1945-1946 with the Nuremberg Principles became a cornerstone for the development of international criminal law and finally the establishment of the International Criminal Court.

3. Universal Declaration of Human Rights 1948. This is a profoundly radical document that states there are some universal, fundamental human rights.

4. WHO's Constitution 7th April 1948, where health is defined as being more than the absence of disease.

I believe that the Restorative Justice movement is a combination.

1. A reaction to the critical events in the first part of the 20th century, and the massive social unrest in America in the 1960s and 1970s, such as the Civil Rights Movement, the Women's Movement and the Students Movement.
2. A growing awareness of the limits of Retributive Justice (with its complicated legal rationality) to meet our emotional needs.
3. The negative criminal justice evaluation of offender rehabilitation and police effectiveness in the early 1970s.
4. The failure of liberal penal reform and the rise of penal populism in the USA that resulted in mass incarceration with its negative community impact. Restorative Justice is an alternative.

It is important to remember that the early restorative justice innovations such as the Victim Offender Reconciliation Project in Kitchener, Ontario in the early 1970s, or the Sentencing Circles in the Canadian North, or the Wagga Wagga in New South Wales, Australia in 1991, were all innovations created by practitioners working within the traditional criminal justice system. These practitioners (probation officers, judges and police) believed in Retributive Justice but wanted a system that was more humane and meaningful.

6. Restorative Justice: the truth made public to all

There are many competing RJ interest groups with different definitions of restorative justice. Theo Gavrielides (2007) has argued that:

> "If the restorative justice movement does not restore it own power struggles, the consequences will be severe. This book . . . posits recommendations on how to reconcile our different views and practices as 'restorativists'." (2007:12)

I believe that he is right in his concerns. The "just three" is a complex and fuzzy model because justice is complex and highly contextual. What is just in one time and place may not be just elsewhere. The truth in any specific crime event can be found through a process that is inclusive of all the stakeholders. Each stakeholder's "truth" is layered together with the voices of the others to create a common area of agreement along with respected areas of disagreement and ambiguity. We must construct our truth together. If there is sufficient shared understanding of what was done then we can

work together to contain and perhaps heal the harm, renew or restore the common ground, and prevent or desist from further harming. There needs to be a real encounter between the different people caught up in the criminal event, a respectful listening and sharing that is grounded in the attempt to "see" the world through the other's eyes. This does not mean that there will necessarily be agreement or reparation or forgiveness; however, it is the foundation stone.

So I define Restorative Justice as first the telling and hearing of the truth as each of us sees it – accepting the uncertainty, the ambiguity, the lies to self and others, and in this encounter we may find the meaningful pattern that we can share together. Revenge tends to hear only one's own pain and the need to hurt the other in response. Retributive Justice is a controlled rational process with evidence that is acceptable and evidence that is not acceptable. Restorative Justice wishes to hear from everyone and everyone's narrative, trusting that if there is real dialogue then together we will weave our "Truth", which will hopefully serve our needs to understand, to accept, and to heal, no matter how painful the pattern revealed.

> "We allowed those who came to testify to mainly tell their stories in their own words . . . we soon discovered that . . . there were in fact different orders of truth which did not necessarily mutually exclude one and another. There was forensic factual truth . . . and social truth, the truth of experience that is established through interaction, discussion and debate." (Tutu, 2000)

When our "Truth" is made public, and when there is some remorse, a heartfelt apology, an attempt at amends, then there is an option other than revenge or retribution. Now there may be an opportunity for healing. But "truth telling" is always demanding, always a risk.

> "Forgiving and being reconciled to our enemies or our loved ones are not about pretending that things are other than they are. It is not about patting one another on the back and turning a blind eye to the wrong. True reconciliation exposes the awfulness, the abuse, the hurt, the truth. It could even sometimes make things worse. It is a risky

undertaking but in the end it is worthwhile, because in the end only an honest confrontation with reality can bring real healing. Superficial reconciliation can bring only superficial healing." (Tutu, 2000)

6.1 The Role of the Truth and Reconciliation Commission

There have now been many Truth and Reconciliation Commissions – it has almost become the norm for transitional periods, a kind of public demonstration of good intent. Too often there is too little attention paid to the findings or an implementation of the TRC's recommendations. Rather, governments and people just try to forget about the past.

Desmond Tutu has said that there are three options that are often used when dealing with the crimes of the past. The three options are:

1. Revenge against the individuals who committed the crimes. But that can easily lead to a new cycle of violence as revenge is now taken for the new crimes. Blood feuds can go on for decades until both sides are bled out.

2. A criminal trial process. However, Tutu argues that can easily be seen as just the "winners" or the powerful judging the "losers". In many criminal trials, even the simplest ones, the individual can easily escape facing the reality. There are many "techniques of neutralization" such as denial, blaming the victim, minimalization, justification, pointing at other injustices, etc. that help the individual to evade "knowing" personal ownership for one's actions and the consequences.

3. People can just say that it is the past and let's forget about it. But Tutu emphasizes that the past, the pain and the hurt, and above all else, the desire to understand why and how it all happened, does not go away. For Desmond Tutu, there can be no peace without forgiveness, and there can be no forgiveness without the truth being told and heard.

Desmond Tutu was the chair of the 1995 South Africa Commission of Truth and Reconciliation (TRC). The mandate of this best-known of all truth commissions was part of the negotiations over the transition from the apartheid regime towards the democratically elected government of Nelson Mandela. Established in 1995 by the South African parliament, the TRC was to investigate human rights violations during the apartheid era since 1960. The commission held public hearings throughout South Africa. It also had an amnesty committee which could decide whether an accused could be granted amnesty because of the veracity of his confession.

The transcripts of the SA TRC are very painful to read:

> "We abducted him. We gave him drugged coffee, and we shot him in the head. And we burned his body. And as his body was burning, because it takes so long for a human body to burn, we had a barbecue on the side. Turning two kinds of flesh—cow flesh on one side and human flesh on the other." (Tutu, 2001)

There were wonderful cases where the individual made a confession and it was clear that there was remorse and a desire to make whatever amends could be done by telling the truth. Often the survivors and the victims were able to share their pain with the security officer and also forgive. Restorative Justice and real Reconciliation can happen even in cases of state-sanctioned torture and murder.

> "We have been incredibly privileged to have been part of a process of seeking to heal a traumatized people. Many times I have said, 'Really, the only appropriate response is for us to take off our shoes, because we are standing on holy ground'.
>
> "And so one comes away from the experience of some of the most gruesome evil, exhilarated at the fact that people can be so good, that people can be filled with such magnanimity, that people can have certain incredible gifts of generosity." (Tutu, 2001)

However, there were also situations where the individual told the truth but it was clear that there was no regret or remorse. The truth was being told to escape punishment. In such cases, the truth was now known – guilt was

established – but many of the victims or the survivors of the murdered or disappeared did not feel that there was justice – and there was no way to forgiveness.

In such cases people still wanted justice, which meant some form of retribution for what that person had done. Thus, the South African TRC was often successful at getting the truth of the crimes done by the government and the ANC out into the public domain, but much less successful in reconciliation. And that is a bitter drink; it may be a necessary one, but it also leaves a bitter taste.

There have been a lot of different TRCs, and their success and also their failures show the limits of TRCs in much the same way as some of the sentencing circles that have been used by indigenous communities to avoid dealing with the real pain of the victim who wants retribution. Truth is a critical first step but reconciliation is a much slower process.

I believe that restorative justice practices can be used in almost any case, especially when there was horrific violence. I have also experienced people's real remorse and the profound ability of others to understand and to forgive. However, there are situations in which either there is no remorse and no interest in making amends, or else there is no forgiving by the victim or the survivors of the victim. We still need the criminal justice system with its penal sanctions.

We should not expect, or demand, the expression of shame or remorse from the "offender", but we should also not expect or demand forgiveness from the victim. When either healing process happens it is good, but it does not always happen, and there are times when retribution is more just an outcome than the pretence of remorse or forgiveness.

The victim, or the representatives of the victim, may choose to "forgive" – but without an acceptance by the offender for personal responsibility and accountability for the harm and evil done, and perhaps real remorse, what does it all mean? How can there be reconciliation? I agree with Desmond Tutu

that without forgiveness there can be no future, but without an acceptance of the evil done, how can there be a forgiveness that is just? I know that there are people who forgive even when the offender shows no awareness or remorse. It may be good for the victim's recovery but I do not see any justice.

6.12 Real politics and the TRC model

Bishop Desmond Tutu is a strong advocate for forgiveness rather than retributive justice. In part, this is because of his deep and profound Christian faith and his understanding of the African concept of ubuntu:

> "It is to say, 'My humanity is caught up, is inextricably bound up, in yours'. We belong in a bundle of life. We say, 'A person is a person through other persons'.
>
> "A person with ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good, for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are." (Hill, 2007; Tutu, 2000).

Tutu also knows that the TRC was dedicated by the political realities that exist in South Africa. In Simon Wiesenthal's story, The Sunflower, a dying SS man begs for forgiveness from Wiesenthal, as a representative Jew. Wiesenthal was silent and then left the dying man without a word. Wiesenthal asks the reader the question: "What should I have done?" In his response, Desmond Tutu made the following comment:

> "It is clear that if we look only to retributive justice, then we could just as well close up shop. Forgiveness is not some nebulous thing . . . Without forgiveness, there is no future." (1998)

There was a very real fear that retributive justice could trigger a civil war, so the TRC was a compromise solution. The truth would be made public, but retributive justice would be avoided. It is clear that the TRC was the necessary price that needed to be paid for the maintenance of peace in the critical transition period.

I would argue that pushing forgiveness can be a form of secondary victimization – it can even be abuse. Many women have expressed concern about how restorative justice practices such as sentencing circles have been used even when the victim wanted the traditional criminal justice with the appropriate punishment. The victim should have the ultimate say in what form of justice is used.

The emotion of vengeance is very deep in our human nature. The different legal systems of Retributive Justice developed as a way of managing revenge. Solomon has argued that it is right that we thirst for revenge. I have tried to show that there are situations in which it necessary to take justice into our own hands when retributive justice does not act. Desmond Tutu accepts that we have that right even if he believes that forgiveness is better:

> "Forgiving means abandoning your right to pay back the perpetrator in his own coin, but it is a loss that liberates the victim." (Tutu; 2002)

7. Forgiveness: Justice as Truth, Remorse and Forgiveness

There is a growing body of literature on Forgiveness. Much of the research has been summarized by Michael E. McCullough in his Beyond Revenge.

> Truth #2: The Capacity for Forgiveness Is a Built-In Feature of Human Nature
>
> "Our capacity for forgiveness is every bit as authentic as is our capacity for revenge. The human capacity for forgiveness, like the human capacity for revenge, solved critical evolutionary problems for our ancestors, and it's still solving those problems today. And the capacity for forgiveness, like the capacity for revenge, isn't even a

> uniquely human characteristic. Many animals—including most primates, dolphins, hyenas, goats, and even fish—do some very forgiving-esque things." (2008: xvii)

As a Christian, McCullough shares with Bishop Desmond Tutu a deep belief that Jesus expects his followers to forgive as God forgives our sins. The title of his review, Beyond Revenge, is rather ironic when he makes it very clear that:

> "Both the desire for revenge and the ability to forgive are behavioral adaptations that exist as human capacities today because of the social problems they helped ancestral humans to solve."

Homo sapiens will never move beyond the emotion of revenge or the capacity for forgiveness.

8. Both retributive justice and restorative justice are necessary

I believe that it is important to appreciate the value and the limits of both retributive and restorative justice. Nils Christie has written about the danger of "mediation imperialism" and the belief that mediation and other restorative justice practices can lead to the abolition of penal law. However, he sees this as an impossible idea. Mediation or various forms of restorative justice can relieve the pressure on the criminal courts and sentencing but they do not abolish the need for such courts.

Christie sees a well-functioning criminal court as being essential to protect some of the basic principles of mediation, particularly its non-compulsory nature. People need to be able to say no to mediation – whether they are the victim or the offender.

For Christie, and most people working within a restorative justice framework, there are four key themes:

1) Revealing what happened, and why, as the different parties see it.
2) Healing wounds for both parties by listening to what they see as their reasons for what happened (one example from South Africa

from a white policeman: "I thought in those days that apartheid was the only possibility. I now understand how wrong I was").

3) Reestablishing values ("I agree," the robber might say, "I should not have threatened you, but I was not aware that you became that scared").
4) Finally, at the very center is the creation of peace, bringing the conflict to an end.

Christie is well aware that the peace may be no more than the possibility of living with the other person in the same neighborhood – to coexist without more violence, without more revenge.

He has also seen the real potential for healing and peacemaking. He had a victim of torture visiting his institute in Oslo, Norway, who told his personal story at a seminar. After the seminar, another man from the same country (Uruguay, under the former dictatorship) came up and said that he had acted as a torturer. It all ended with the tortured man inviting the torturer out for coffee.

I remember a seminar where some of these same issues came up, and afterwards several ex-priests and ministers shared the sexual abuse offences that they had done, and several women shared about being victims. All had become alcoholics as a way of coping, and now the sharing – the telling of the truth – was part of their way to maintain sobriety.

Though it is necessary to have both retributive and restorative systems, it is critical not to confuse or try to merge the two since the purpose of each is fundamentally different. The criminal justice system is involved in the rule of law, due process, the finding of guilt and the administration of punishment. Dan van Ness is correct when he says that it is basically a control system, and I accept that punishment such as incarceration in a prison may be a necessary evil. Restorative Justice is all about healing and creating peace, and Dan van Ness also argues that can only be done by the community.

Though Christie accepts the need for criminal courts, he has argued that the International Criminal Court is a setback for peacemaking and the ideals of restorative justice. I would suggest that demanding either form of justice be the only one can be very damaging. What is just depends on the situation. In South Africa it was good justice when there was real healing, but I do not feel that it was just when the person only told the truth in order to avoid punishment without any reintegrative shame or remorse.

The "Just Three" for Forever

Revenge, Retribution and Peacemaking are all necessary parts of our humanity. I have tried to show the value of revenge, the necessity for retributive justice, and the hope for peace. I feel that too often both revenge and retribution are devalued in the restorative justice discussion. I see this paper as an attempt at achieving a balance where all three are appreciated equally. I would argue that what is just, what is the best action, will depend on the context, which is often messy and morally grey (no simple black and whites). I find no moral certainty but I do accept the existential responsibility to act and try to make the world a more just and peaceful place.

That's what real justice is all about – telling the Truth and together creating the best just solution for that time and place – sometimes bloody revenge, sometimes retribution, sometimes peace.

References

Brzezinski, M. (2005) `Giving Hitler Hell´, Washington Post Magazine.

Christie, N. (2009) Restorative Justice: five dangers ahead. Chapter 9 in Urban crime prevention, surveillance, and restorative justice: effects of social technologies. CRC Press, Taylor & Francis Group, Boca Raton, FL, USA.

de Waal, F. (2010) The Age of Empathy: Nature's Lessons for a Kinder Society. Three Rivers Press.

Ferencz, B. (n.d.) Bernie's Stories at http://www.benferencz.org.

Gavrielides, T. (2007) Restorative Justice Theory and Practice: Addressing the Discrepancy. HEUNI, Helsinki, Finland.

Gintis, H.; Bowles, S.; Boyd, Robert & Fehr, E. (2005) Moral Sentiments and Material Interests: On the Foundations of Cooperation in Economic Life. Cambridge, MIT Press.

Gintis, H. (2009) Game Theory Evolving: A Problem-Centered Introduction to Modeling Strategic Interaction. Princeton University Press, 2nd edition.

Gintis, H. and Bowles, S. (2011) A Cooperative Species: Human Reciprocity and Its Evolution. Princeton University Press, N.J., USA.

Helmick, R. G. S. J. and Peters, R. L. (2002) Forgiveness and Reconciliation: Religion, Public Policy and Conflict Transformation. Templeton Foundation Press, Philadelphia & London.

Hilborn, J. (2011) SEL SID SON: A Neurocriminology Model of the Re-entry and Desistance Process. Chapter 1 in Global Perspectives on Re-Entry. Tampere University Press, Tampere, Finland.

Hilborn, J. (2012) On Being Old, Healthy and in Prison in Graying Prisoners: Exploring the Quality of Life for Aging Prisoners. Baltic Institute for Crime Prevention and Social Rehabilitation, Tallinn, Estonia.

Hill, J. B. (2007) The Theology of Martin Luther King, Jr. and Desmond Mpilo Tutu. Palgrave Macmillan, Hampshire, England.

Ekunwe, I. O. and Jones, R. S. (2011) Global Perspectives on Re-Entry. Tampere University Press, Tampere, Finland.

Knepper, P.; Doak, J. and Shapland, J. (2009) Urban crime prevention, surveillance, and restorative justice: effects of social technologies. CRC Press, Taylor & Francis Group, Boca Raton, FL, USA.

McCullough, M. (2008) Beyond Revenge : the evolution of the forgiveness instinct. Jossey-Bass, San Francisco, CA, USA.

McCullough, M. E.; Bellan, C. G.; Kilpatrick, S. D. and Johnson, J. L. (2001) Vengefulness: Relationships with Forgiveness, Rumination, Well-Being, and the Big Five, Personality and Social Psychology Bulletin, Vol. 27 No. 5. Society for Personality and Social Psychology, Inc.

Solomon, R. C. (2004) In Defense of Sentimentality. Oxford University Press.

Tutu, D. (2000) No Future Without Forgiveness: A Personal Overview of South Africa's Truth and Reconciliation Commission. Rider Books, Ebury Publishing, London, UK.

Tutu, D. (2002) Foreword in Forgiveness and Reconciliation: Religion, Public Policy & Conflict Transformation. Templeton Foundation Press, Philadelphia & London.

Restorative Justice in the Context of Victim Needs and Coping Strategies of Victims[1]

Otmar Hagemann

Abstract

Despite many very positive findings about Restorative Justice worldwide in many countries, victims seem to be reluctant to use it. This article deals with the impact of victimization – which can cause trauma – with victims' needs, their coping behaviour, and the benefits for victims that Restorative Justice has to offer. From that my central message evolves: Most victims have a legitimate interest in participating in RJ procedures. However, many of them are not aware of the benefits partly because they are not well informed, and partly because they are not able to access their own needs. Victims (should) have a right to access RJ. There is no justification to deny that access, neither for specific types of victimisation nor for particular victims.

0. Introduction

In 2011, at the Kiel conference on Restorative Justice – A European and Schleswig-Holsteinian Perspective, it was outlined that there is a relatively low referral rate to restorative justice programs in many countries and nearly a total absence of self-referrals (see Lummer, Hagemann & Tein 2011). Despite the positive evaluations of Restorative Justice (RJ) programs (see Maxwell & Morris 2001; McCold & Wachtel 2002; Shapland, Robinson & Sorsby 2011; Sherman & Strang 2007; Vanfraechem & Walgrave 2005) and particularly with regard to the inherent benefits for victims, there is a relatively low enthusiasm on the victim side. Are we brainwashed by politicians and the media, in a sense that they make us think victims need punishment of offenders first of all? There seems to be a strong punitive attitude. However, Gelb (2006) has pointed out that many studies have found a much more complex position for victims where punishment is just one – and certainly not the most important – aspect.

1 This article is based on the presentation at the Tallinn conference, Restorative Justice From the Victims' Perspective, of 7-8 September, 2011.

Focusing on the German situation, Schädler (2011) stated that nearly right from the beginning of RJ in Germany there was a conflict between RJ proponents and victim assistance advocates. In modern societies there is a tendency for social groups to drift apart (see Heitmeyer 1997) and for people to delegate working on their own problems to specialists in service agencies. We consult a medical professional for all issues concerning our health, a stylist for our outfit, a nutritionist for eating and drinking, a banker for managing our financial resources, a career service consultant for the working sphere, an interior designer for decorating the living sphere… In this logic of alienation one hardly listens to Christie's (1977) warning not to let lawyers steal our conflicts.

This article first deals with basic victimological knowledge about terms and concepts and the impact of victimization before the needs of victims and their coping strategies to respond to them are presented. The core question is the relationship between these psychosocial processes and RJ programs which offer help for victims, offenders and communities. It will be shown for some crucial aspects that participating in RJ is often in the best interest of many victims (see Hagemann 2010).

1. Terminology: what or who is a victim?

In victimology there exist different conceptions regarding who should be defined as a victim, and which group of people is grasped by that term. However, a victim is always a natural person, a concrete human being or a group of human beings. In the context of criminal law which is prevailing in this article, the term victim has been defined in transnational documents:

> "Victim means a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member state. The term victim also includes, where appropriate, the immediate family or dependents of the direct victim." (CoE Recommendation Rec(2006)8, 1.1)[2]

2 The first sentence is also included in the Framework Decision (of the Council of the European Union) of 15 March 2001 on the Standing of Victims in Criminal Proceedings (2001/220/JHA) Art. 1 (a); see similar by UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Annex A, art. 1 and 2, A/RES/40/34, General Assembly 96th plenary meeting 29 November 1985.

The United Nations do not focus only on crime victims but also on victims of abuse of power in this context (see UN Declaration 1985), that is, victims of institutional racism like apartheid, corrupt governments or victims of religious or political persecution and discrimination because of political attitudes, ethnic origin, sexual orientation, etc. Child soldiers are not only regarded as offenders but also as victims. However, there is a debate about whether the losers of modernization or globalization – people who have lost their work and are in danger of being unemployed and deprived of "normal" living conditions, people whose natural and cultural resources were taken away by elites or foreign countries, or who are affected by man-made ecological or natural disasters like shortage of drinking water or food, climate change and the like – should also be considered as victims of power abuse. Following the decision of the European Court of Human Rights, the term "victim" has been broadened in recent years (see Parmentier 2009).

As this article emphasizes the psychological challenges for persons concerned, the term must be scrutinized critically regarding being accepted by them. In some cultures and languages there is a connotation with religious rituals of sacrifice (see Wemmers 2009: 33), with weakness and being a loser. Therefore, despite having experienced victimization, many victims reject the use of this label for themselves. Terms like "the injured party" or "the harmed person" are perceived as less stigmatizing (see Hagemann 1993).

Sticking to the term despite all objections, it is important to understand that not only might the directly affected person suffer, but that partners, family members, friends or even bystanders might consider themselves as indirect or co-victims and thus face similar challenges as the direct victim. Direct victims are people who are personally victimized in a direct encounter with an offender or by other causes, respectively. Indirect or co-victims are people who are not victimized directly but are affected by somebody else's victimization. Partners or relatives and family members of a homicide victim are affected and would be classified as indirect victims. It is evident that they can suffer from the victimization and its consequences. However, it is not easy to draw a clear line because neighbours in an apartment house can adopt a burglary as one's own, but is this also true for friends or adult children who live in another city? And what about far-reaching empathy that makes a person suffer or even feel victimized herself although (s)he does not even know the direct victim, perhaps in the case of a homosexual who reads

about drastic punishment or persecution of homosexuals in other countries? What about Europeans who identify with victims of civil war or drought or other disasters in other parts of the world? Normally one would not attach the status of an indirect victim to them; in specific circumstances, however, humans might adopt the pain and suffering of third persons as one's own and may act and feel like victims (see Thomas-theorem[3]).

Another distinction concerns the vulnerability of victims[4]. Children, the elderly or handicapped and mentally ill people or members of minorities can often not rely on the same strength and resources as the average adult person. Probably we should also add females in patriarchic societies in their relationship with ordinary males to that category. The legislator, too, classifies the deeds of adults against children or of custodians against people in their care as more condemnable[5]. Some people are not vulnerable per se, but in a given situation, e.g. re-victimized people or long-term victims, drug addicts, and people with low/no power to complain (including prisoners, patients and "the poor"!).The status of a foreigner implies increased vulnerability (see Hauber 2009, regarding tourists as victims). Concerning participation in RJ programs, we have to find ways for these victims to be empowered, supported and protected to play a part in solving a problem or conflict and make sure their own interests are well represented. Some RJ procedures which allow for the inclusion of private and professional supporters are more suitable than others in which a single individual is relying on him- or herself.

Although this article deals only with criminal victimizations, it must be stressed that various causes including crime, illness, accidents, blows of fate and natural or man-made disasters can lead to victimization and thus might reveal valuable clues for our subject, too. For the purpose of this article it is sufficient to point out structural commonalities – the powerlessness to influence or prevent the causes and the critical consequences for one's own life – but also to mention differences: the latter processes usually take place

3 "If men define situations as real, they are real in their consequences." (Thomas & Thomas 1928: 571 f.)

4 Article 18 of the EU draft applies this concept to "minors, persons with disabilities, victims of sexual violence and victims of human trafficking" (see proposal of a directive on establishing minimum standards on the rights, support and protection of victims of crime, 2011, COM(2011) 275 final).

5 See Section 225 of the German Criminal Code (Abuse of position of trust) and Chapter Thirteen on Offences against sexual self-determination, especially Section 174 ff.

over a much longer period of time and with societal legitimacy at least of the ruling classes. In the following we restrict ourselves to victims of crime and abuse of power in the narrower sense, but we will not leave out a hint to emphasize that RJ deals with a much wider spectrum.

2. Impact of victimization

What is the meaning of victimization? In which respect does victimization affect people? Often at first glance we focus on the material and physical dimension of harm. Consequently, Martin Symonds (1980) is referring to "invisible wounds" when he deals with psychological consequences. Most experts will only differentiate between these three dimensions. However, in interviews with direct victims and in group work with prisoners responsible for harming others, three more categories have been named: psychosomatic harm refers to a kind of interaction between psychological and physical harm; mental harm originally was meant as a sub-category of physical harm, but may also refer to the spirit or the mood of a person, thus tying it with the psychological or social dimension; and social harm can evolve from psychological harm, meaning new forms of behavior, especially staying at home or away from bigger audiences, changing attitudes in expecting hostility from others and the like. What constitutes the seriousness of a victimization?

Impact means the aggregate effect (the total of all influences) imposed on the victim as a whole. Thus, impact is a kind of quantitative entity for the problem to cope with. The impact varies, not only according to the different characteristics of the event which has occurred, but also according to the subjectively different perceptions.

We have a clear understanding about the impact and consequences of victimization. From the perspective of a person victimized by an offence, victimization can be characterized as something negative which perhaps generallycould have been predicted, but occurs in a given situation – contrary to all expectations – as a big surprise, leaving the victim with no opportunity to prepare for it. Thus, a complete victimization is associated with an experience of faint or powerlessness. In the case of a successful defence (e.g. attempted offences) this aspect is not necessarily present.

However, in this case, too, essential basic assumptions (see Lerner 1980) will be challenged. The aggregate of all consequences of a victimization leads to a psychological status, which in a mild form can be labelled as stress and in the most serious case as trauma (see Lazarus & Folkman 1984; Janoff-Bulman 1985). Accordingly, the consequences can be temporary or long lasting, with a relatively short duration until a permanent impact occurs, meaning that they dominate the life of the person thereafter.

Experiencing victimization changes the affected person, at least temporarily. In my study on coping with victimization, one interviewee stated: "nothing is, as it was before". Victims described "feeling paralyzed" (being unable to act) or wanting to be left alone. They report pain, emptiness, sadness, despair, helplessness, anger, fear, lack of safety and a feeling of insecurity in the aftermath of victimization accompanied by losses and damages, the search for making sense of it and to reproach oneself with guilt (see Hagemann 1993). Often the victim referred to himself as a person he did not know, and to the accompanying feelings as completely unknown or at least not at all typical for himself. This means that stress, crisis, or even trauma, which in the extreme case can be inherited by the next generation (see Yehuda et al. 2010), might emerge.

From this arises the question concerning the concept of the self or identity of a person. Swiss psychologists Petzold and Mathias (1982) have developed an identity concept which is supported by five dimensions: the given physicality (corporeality), the social context, work and achievements, material safety and a value system. I have added two more dimensions: support by our private sphere and by personal belongings of sentimental value (see Hagemann 1993). These sources of identity support correspond with the afore-mentioned dimensions of harm: material, physical, psychological, psychosomatic, mental and social. Of course we must take into account that we change ourselves permanently both by intention (e.g. new friends, new hobbies, changes of profession or social mobility) as well as by experiences which happen beyond our control and aspiration. Victimization is part of the latter, where a person responsible for the cause can be identified. In this sense, crime differs from other intrusions into the self, e.g. "my real estate is used to construct a new road", "my partner decides to end our relationship" or "I am reaching the age of retirement". These changes, too,

can pose grave problems – probably much more challenging than a criminal victimization – and can question or even shatter an accustomed identity, but from a moral point of view they constitute something very different.

We have already tackled the topic of seriousness of victimizations, and there is some plausibility in postulating a continuum of seriousness which is hardly determinable objectively but must be assessed on a subjective basis, taking into account the vulnerability and the specific situation of the victim. Despite these limitations, we can specify some aspects which influence the probability for a classification as more or less serious: the duration of the victimization incident, the power relationship between offender(s) and victim(s), and the consequences in regard of physical, psychological or material harm. Thus, head injuries tend to aggravate the problem compared with injuries imposed on extremities. The use of weapons or being victimized by a group will also aggravate the impact. Being taken as a hostage for several hours or days will regularly weigh much heavier than a robbery which lasts only a short time better measured in seconds than minutes. It is also important whether the victimization takes places in one's own home, at the workplace or at a place which can easily be avoided in future. Being beaten in public or in front of one's own children, for example, will usually be rated more serious by the victim because of the humiliation linked with it compared to being hit without witnesses present. On the other hand, third persons (bystanders) may form a source of hope and confidence in a critical situation. Obviously it is important whether harms and damages will be permanent or temporary and will heal or be replaced (see Hagemann 1993).

On an abstract level, victimizations can be regarded as violations of or attacks against the identity of the victim. From the victim's perspective it means:

I am no longer the person, that I was before.
I must do something in order to regain normality (coping).

This theory (Hagemann 1993) goes along very well with insights of symbolic interactionists like Mead (1934) and Goffman (1967), ethnomethodologists like Garfinkel (and his crisis experiments, 1973), but also cognitive psychologists like Lazarus.

Thus it can be summarized that victims have to regain their "normality", that is, the previous status or a subjectively acceptable new "status of normality". These terms, "normality" and "status of normality", are used to describe a dynamic individual equilibrium. Each person defines his or her own equilibrium, which oscillates within subjectively acceptable limits over time. The analogy with the term "health", which is a similar variable but must be clearly differentiated from the concept of illness where illness is something negative, is not acceptable and must be overcome. This "status of normality" includes less favourable deprived life circumstances like chronic diseases, bad luck, the better and the less good days. Perhaps we can extend this concept thus far, so that it includes for some people repeated experiences of physical violence (e.g. domestic violence or violence as a "traditional educative measure" by the parents – see the subculture of violence concept by Wolfgang & Ferracuti 1967). In this case it will be likely that single incidents will not even be discerned consciously by the victim as "victimization", but instead the life situation as a whole may be regarded as a victimization or a very specific incidence that differs from the general pattern. It could be referred to these people as chronic victims. The negative aspects and the powerlessness stay as dominant features in this case, striving for a new and better status of normality. From the outside of these subcultures, neither physical victimizations nor having personal belongings taken away or other forms of crime belong to that range that people see as normal or acceptable.

Similar to stressing the difference between direct and indirect victims, victimological theory also differentiates between primary, secondary and tertiary victimization. Primary victimization means direct victimization by an offender (or any other cause). Secondary victimization is usually separated from the initial incident, a victimization that occurs – unwillingly, mostly by negligence – in the aftermath by the police, during trial, during medical treatment or by potentially supportive people from the (close) environment. This concept was originally invented in the context of hearings in court when the defendant's attorney or other people challenge the victim's story. Viewed from the victim's perspective, this was perceived as harming behavior, sometimes more intimidating than the original behavior of the offender. Also, in the police investigation phase or during medical examination in rape cases, victims frequently reported non-empathetic and non-supportive treatment,

at least in the early years of the victims movement. Tertiary victimization is defined differently by different authors. It is related to "the system", or to organizations arguing on behalf of victims' interests while following their own agenda (see Sessar 1990)[6]. Some authors use this term to describe the consequences on people within the victim's life who suffer loss or who are also affected by the victimization(see Hartmann 2010), which I am calling indirect victimization.

3. Victims' needs[7]

Human psychologist Abraham Maslow (1943) has proposed to classify universal human needs in a hierarchical model often presented in the form of a pyramid consisting of five levels. According to Maslow, physiological needs, safety needs and love needs have to be fulfilled before esteem needs and the need for self-actualization become apparent. More recently, Staub-Bernasconi (2007) and Obrecht of the Zurich school of social work have proposed a revised concept from systems theory perspective. They differentiate between 4 biological needs, 6 biopsychological needs and 7 biopsychosocial needs. These needs apply universally to all humans, including victims. From these needs, culturally appropriate wishes can be derived. Wishes are needs that have become aware to the person and materialize in the form of more or less concrete aims. The stronger the character of a human need is involved, the more likely a victim will formulate or express an expectation instead of a wish. On asking victims after victimization about their wishes and expectations, we get an idea about their needs. Hagemann (1993) found the following list:

- First of all, victims want their normality back.
- They want to regain their previous status; this can include compensation or reparation of material damages.
- Victims want to make the offender feel and realize what s/he has caused.

6 Sometimes these "professional victims" are named "victimists" (see Brittanica blog new words, 2009)

7 According to Zehr (2002), RJ focuses primarily on the needs of all involved persons in a RJ process.

- Victims appreciate the offender taking responsibility for his/her actions.
- Victims want to be certain that there will be no repetition of the victimization.
- Victims want to know why they have been victimized.[8] [see also Bard & Sangrey 1986]
- Victims appreciate the offender asking for an apology.
- Victims want a confirmation that they faced injustice.
- Although victims do not ask for others to have pity on them, they want to be assured that it was not their fault.
- Some victims also want retaliation or for the offender to be punished. [see Sessar 1992]

Being confronted with a need for punishment, we should take Herbert Marcuse's (1964) notion of false needs into consideration. Marcuse stressed the point that needs could be formed by the given society and their power elites. The "advanced industrial society" as faced in the 1960s or today's postmodern society might create false needs to consume goods, mass media, culture and contemporary modes of thought, which integrates individuals into the existing money-based system of production and consumption. Instead, a non-repressive society should further real needs as freedom and happiness – and social peace.

Heather Strang (2002) found similar answers in her research in Canberra. Focusing on the process to (re-)establish justice after a victimization, victims want a less formal process than the court, where their views are taken into account. They ask for more information about both the processing and outcome of their cases. They want to participate in their cases and wish to experience respectful and fair treatment, material restoration and

8 In a world where everything can be explained this seems to be the most crucial and most precarious question because in the case of an unknown offender (or if he refuses to answer), the victim is left alone with speculations involving a high potential for self-blame. In addition to several psychological books, there is even an organization running a victimological website www.why-me.org (1.8.2012) under this title.

emotional restoration, including an apology by the offender (Strang 2002: 60). Basically, the same tendency was found by Shapland and colleagues (1985) in the pioneering study of this kind in England. Victims were left feeling very unsatisfactory without having an alternative option to court at that time.

Some needs seem to be obvious and are not stated explicitly in research studies using open questions, e.g. shelter, protection, first aid and medical treatment. These expectations are addressed by the agencies which have the first contact with the victim, like the police and medical services, but also at people from the close environment like partners, relatives and friends. Often it takes a while – if it happens at all – before victim support organizations[9] or counselors find out about the necessity of help and offer their services, or are contacted by the victim, respectively – this is also an issue of data protection laws and privacy.

We might differentiate between immediate needs which must be addressed during the incidence or shortly afterwards, and needs which become clear in the long run. To offer a RJ procedure does not seem to make sense in a crisis situation – the question of preparedness for participating in RJ (including facing the offender) asked by the police immediately after the incident must get a lot of refusals because there are more urgent problems to solve (shelter, first aid) before thinking about reconstructing what has been destroyed. This does not mean that this type of question should not be asked any more, but that it must be asked again in another situation where the victim's perspective is about recovery. This aspect is linked to the problem of coping with the stressful or traumatizing event.

4. Coping Strategies of victims – attempts to overcome the consequences of victimization

It follows from the previous description that victims – but because of the solidarity[10] and its own interests, society also – are interested in overcoming the problematic situation. Seen from the perspective of individual victims, they have to cope with a critical life event. From the outside perspective

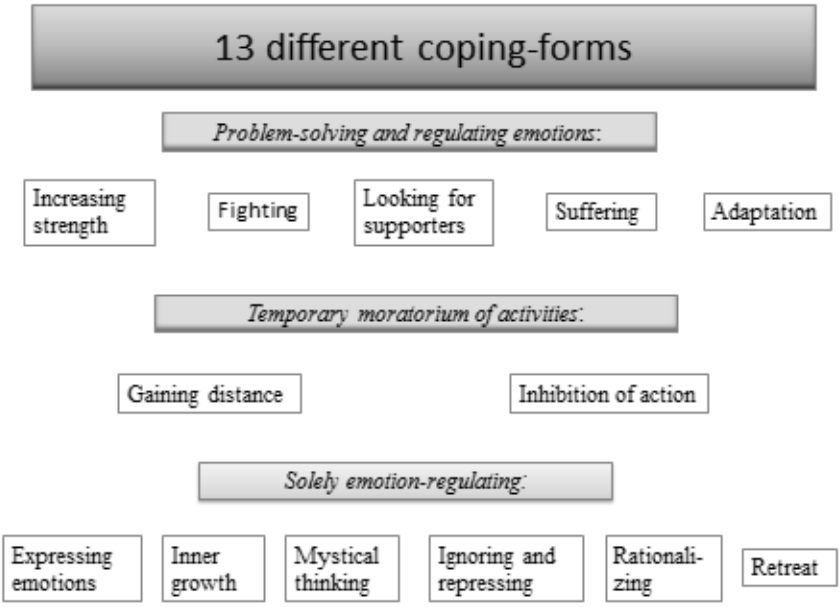
9 The question arises whether victim support should get a referral and take the initiative to make contact or whether it should be left upon the victim to contact such an organization.

10 The state has to guarantee the integrity of each citizen.

it is about restoration of a harmed and partly damaged identity and the relationship with a community – which did not prevent what happened – to be reintegrated as a normal member of that community as soon as possible. Of course, the community is also concerned with re-socialization of the offender.

Thus, coping describes all efforts to regain normality or a new and acceptable equilibrium. In principle it means that the consequences have to be overcome or that they should no longer be of major importance (e.g. a scar may constitute a bodily sign but unless it is visible or causing troubles it is not affecting daily life). Either the victim builds a new identity or is in a position to restore his old identity.

The following coping forms can be used (see Hagemann 1993; Lazarus & Folkman 1984):



These forms reflect the condensation of all reported concrete activities practised by victims in my research study. The combination of all forms used by an individual is called the coping repertoire of that person. The broader the coping repertoire, the better. Coping is a dynamic process. Victims are

relying on different coping forms at different points in time (also depending on the type of person, the type of offence and other aspects). However, some individuals stick to the "more of the same" strategy, implying that a very limited range of coping forms is used – in the extreme case it could be restricted to only one or two of these forms. The likelihood that such a limited coping repertoire may successfully solve the problem is quite low, but if the activities are chosen from the top category, according to Lazarus & Folkman (1984), they help a lot.

The middle category is only suitable temporarily and can be effective to escape from a threatening situation, but not in the long run. The bottom category may offer relief, but does not change anything in the reality outside the person, thus leaving him or her in a very vulnerable state.

For our purpose of RJ research we must analyze the potential links of specific coping forms with RJ practices. Therefore, we must keep in mind that people use different forms at different points in time. If the choice of the victim is in favour of "retreat", for example, there is – temporarily, at least – no chance of engaging the victim in a mediation process. Whereas if the current choice favours "fighting", the person may see a chance to interrogate the offender or to pay back to him/her and thus welcome a mediation involving direct dialogue (see Hagemann 1991).

These examples are derived from a research study with victims of burglary or assault (Hagemann 1993). They do not necessarily represent all possible coping forms, especially given the level of aggregation. Lazarus & Folkman (1984) refer predominantly to the two functional aggregate categories of a) coping forms which are problem-solving and regulate emotions; and b) those that are solely emotion-regulating. Some authors refer to the more active and more passive forms of coping (but even what seems to be passive, e.g. suffering, can in fact be an unconscious outcry addressed at others, like self-harming or attempted suicide).

The coping theory has been developed for explaining the mastery of all kinds of problems in life, not only victimization by crime. Therefore, I do not go deeper into the general process or into coping theory, but just pick out two

scenarios which may differ from many other problems: How to deal with one's own vulnerability?[11] And what about the role of the offender in the coping process of a victim?

The first aspect constitutes a crucial problem. Contrary to bad luck or a blow of faith, a criminal victimization can be avoided. If there had not been this motivated offender, or if society had been able to take effective preventative measures, the incident would not have taken place. And as Lerner (1980) has shown, we need this basic trust in order to go on with our everyday activities. People who are constantly aware of the risk of criminal victimizations might be constrained in their behaviour, e.g. not leaving their house unoccupied, not visiting certain areas of a city, not participating in public life and so on. Instead of avoidance and retreat, people can improve their strength to be better prepared for the next attack. To be permanently on alert will lead to inner tension and a significant loss in quality of life. Furthermore, people may exaggerate their consequences, e.g. arming themselves, distrusting others more than acceptable. Self-blame is a great danger attached to this strategy. A contrary strategy may be to attribute the locus of control outside of one's own power, becoming fatalistic and believing it will all come to God's will (in this case there will be no reason to participate in RJ for the purpose of coping better or more successfully with the victimization incident).

In coping with victimization caused by crime, there is another particular aspect – the person responsible for the problems and suffering of the victim. Without him the incidence would not have occurred. By the incident taking place, a new link (not a relationship) has been established. The offender is present (although sometimes unknown), he has invaded the victim's life and thoughts (personal communication by C. von Braunmühl, see Becker 1987). It is like falling in love with someone, but with negative emotions of hatred. He or she, or a group or an organization, has to be blamed, but that does not help much (on the contrary it can become an obsession, as in the Moby Dick story). It would help to act out on that person, to (see wishes!) make him feel what one has felt. It would help to know about his motives to prepare better for similar situations in the future. Victims spend a lot of time and energy on this aspect. Sometimes the offender changes into a monster that

11 This does not seem to differ much from being exposed to a negative medical diagnosis like cancer.

might grow bigger and bigger over time. Many aspects can be projected on to this imaginary person and thereby they have power over the victim. In this regard coping means to cut the tie, but that is easier said than done.

A specific aspect of the general coping problem is related to the offender, especially in cases committed by unknown perpetrators. Then victims construct their own image of the (unknown) offender. In my study I was able to identify three different types of this image construction. Type 1 is no normal human being, a socially inferior person, potentially dangerous. Type 2 is socially superior, with no rational motivation for committing the offence (this, again, is an indication of dangerousness). Only type 3 is a rationally acting offender. This person is less dangerous because if he gets what you might be able to offer, he will not be interested in causing further trouble for the victim and for himself. The trouble with this type of offender is that the victim often blames himself because of the rationality of the offender. He would not have committed his offence if the victim had taken necessary precautionary measures. It is unlikely that victims want to meet type 1 offenders, whereas they might hope to gain insights into reducing their vulnerability by meeting the other types. Regarding type 2, it would help to discover the weakness and vulnerability of the offender in a restorative meeting. Closely connected with the image of the offender and also relevant for our RJ approach are the victims' ideas about sanctioning. Partly this is the result of (unsuccessful) coping; at least the coping process and this attitude are closely interrelated. However, the attitude may have existed before the victimization. Some victims neither expressed a real interest in the person of the offender nor in clearing up the conflict. Others expressed a willingness to punish the offender themselves in order to pay back in his own coin, not relying on abstract formal sanctioning. The victims who were committed to social issues and were not too seriously victimized expressed a need for more flexible and individualized sanctioning. The second and third group were motivated to take part in RJ because they would be able to influence the outcome.

In the next section it will be shown how coping behaviour matches with RJ.

5. Needs and requests of victims can be met by Restorative Justice

Some coping forms offer good chances for an involvement in RJ, while others do not. We have to find the best point in time for the given personality and background to propose participation in RJ measures or programs because victims are relying on different coping forms at different points in time. Another important question in this context is who will propose these supportive actions?[12]In many countries – including Germany and probably most of the other European countries – people are, in general, not well informed about RJ. Instead, many inhabitants take for granted that there is only the criminal justice system or private help. We need reliable multipliers to spread the message, preferably in a setting where the victim is able to listen to it. Therefore, it is not wise to rely only on the police, because that contact may be too early. Probably medical doctors, nurses and priests may be more suitable – they are often regarded as reliable and with these groups there are situations of intensive or more focused and private contacts. Furthermore, people meeting potential victims in environments that allow for private communication, e.g. the teacher, sports trainer, or other instructor in a spare-time activity, may be such a person. Of course, ordinary people who meet the victim as friends, neighbours, colleagues or relatives would be ideal, but at this point our dilemma is closing the circle – why should they know anything about RJ?

Let us assume we find a channel to deliver the message – what will be the content, what are the benefits for victims resulting from RJ dialogue with the offender? Which needs of victims match with RJ processes best?

One of the objective central needs of a victim is to become free again from being tied[13] to the offender. Psychologists frequently use the term "closure". This can best be achieved by a direct meeting with that person, especially when the offender is remorseful and empathetic and the meeting is arranged in a safe, calm and supportive atmosphere. In such a mediation setting the victim will also be able to ask the necessary questions (why me?), to describe the consequences and to receive restitution and being asked for an apology. Thereby the victim will be able to correct the image of the offender replacing

12 The implication for the RJ information policy after answering this question is to find out which kind of information is needed for whom.

13 C. von Braunmühl, whose brother was killed by terrorists, described how the incident has tied the victim and the offender together. To free himself from the offender and achieve a kind of closure he began a dialogue.

the construction of a monster with the more realistic picture derived from this meeting. McCold and Wachtel (2002) pointed out that it must not just be fully restorative procedures but also partly restorative programs that serve this purpose, like victim-offender meetings and probably also indirect VOM-exchanging video messages. Alternatively, it must be the outcome of a (quasi-)therapeutic process or of simple repression[14].

RJ procedures offer dialogues in relatively safe settings and can thus contribute to healing, (re-)establishing of social relationships and community building. If the offender shows remorse, asks to be excused or offers redress, many victims find relief. The offender can work for the community or help others to keep away from similar careers (see Project "prisoners help juveniles").

According to Strang (2002), emotional restoration is the most important aspect. She found in her study that sympathy, anger, anxiety and trust showed very positive results after Restorative Justice. Fear of re-victimization decreased, nearly perished. Victims received an apology, which was very rare in court. Victims were very satisfied about the fair and respectful treatment they received. Regarding material restoration, neither court nor conferencing provided a great deal financially, but victims in conferencing received alternative material compensation more often. There was no category in which the court showed better results from the victims' point of view!

6. Conclusion

It has been shown in detail what the problem is from the victim's point of view: Victimization constitutes a challenge and there is someone to blame for one's own misery: the offender. As a victimization is an attack against the self or the identity of a person, psychological aspects are very important, often more important than material losses and physical harm. The victim is forced to do something to get back to normality, to restore his or her acceptable dynamic equilibrium. Society must also be interested in restoring and re-integrating the victim like in non-crime cases. It has been shown how the coping process can be conceptualised, and especially which links we have to make in consideration with the offender's side. The offender

14 Freud would argue that it is not possible to forget things without working through them – however, the many new experiences in life may push back/repress the victimization. See coping strategy to compare one's lot with worse outcome or extreme examples of others.

is the only person who can give an answer to the "why" question. Many victims are especially curious to learn about that and many would like to teach the offender something. It helps them to experience the offender being under stress, being confronted with his deed, being forced to think about restitution. Victims stress that a genuine apology by the offender and his acceptance of responsibility for what happened is very helpful for them and can lead to closure.

Victims are usually not aware of the benefits of RJ for themselves. Given the low level of general knowledge about RJ, currently the failure of the criminal justice system seems to be the most effective push-factor for RJ programs.

Some victims refuse to take part in RJ procedures. Of course, this is their right and must be accepted. However, this can be a result of misinformation and not in their own interest. We have to find ways to improve the information about the gains of RJ for victims. And we must convince victim support organisations – as well as offender support organisations – of the beneficial effects of RJ dialogues. For the advancement of RJ, victim participation and support from the victims' side is crucial. The current punitive societal climate may contribute to fear of the offender and to a lack of interest in social peace. The drifting-apart of social groups in current societies constitutes a big challenge because people do not see themselves in their counterparts, nor the mutual relationships between themselves and others. We must find a way to promote social peace, including equal opportunities and mutual respect. As Wachtel (2003) and others have argued, RJ practice in everyday life can be a first step.

Victims have a right to access RJ. There is no justification to deny that access, neither for specific types of victimisation nor for particular victims!

7. References

Bard, M. & Sangrey, D. (1986)[1979]. The Crime Victim's Book. 2nd Ed. Secaucus: Citadel Press.

Becker, T. (1987). Die Antwort der Brüder des Gerold von Braunmühl an die RAF. Eine Dokumentation. "Ihr habt unseren Bruder ermordet." Reinbek: Rowohlt.

Christie, N. (1977). "Conflicts as Property" in The British Journal of Criminology 1977, 17, 1-15

Garfinkel, H., (1973). "Das Alltagswissen über soziale und innerhalb sozialer Strukturen" in Arbeitsgruppe Bielefelder Soziologen (eds.) Alltagswissen Interaktion und gesellschaftliche Wirklichkeit. Reinbek: Rowohlt, Vol. 1, pp. 189-262.

Gelb, K. (2006). Myths and Misconceptions: Public Opinion vs. Public Judgement about Sentencing. Melbourne: Sentencing Advisory Council. http://www.sentencingcouncil.vic.gov.au/content/publications/myths-and-misconceptions-public-opinion-versus-public-judgment-about-sentencing (25.07.2011)

Goffman, E. (1967). Stigma. Über Techniken der Bewältigung beschädigter Identität. Frankfurt/ M.: Suhrkamp.

Habermas, J. (1981). Theorie des kommunikativen Handelns. 2 Volumes. Frankfurt/M.: Suhrkamp

Hagemann, O. (1991). "Coping and Mediation. Implications of a Research Study on Victims of Assault and Burglary" in G. Kaiser, H. Kury & H.-J. Albrecht (eds.), Victims and Criminal Justice (pp. 655-673). Freiburg i.Br.: Max-Planck-Insitute.

Hagemann, O. (1993). Wohnungseinbrüche und Gewalttaten: Wie bewältigen Opfer ihre Verletzungen? Pfaffenweiler: Centaurus.

Hagemann, O. (2010). ""Conferencing": Ein Ansatz zur Aufarbeitung von Straftaten und Opfererlebnissen in erweiterten sozialen Kontexten" in Praxis der Rechtspsychologie, 12, (306-324).

Hartmann, J. (Hrsg) (2010). Perspektiven professioneller Opferhilfe. Theorie und Praxis eines interdisziplinären Handlungsfelds. Wiesbaden: VS Verlag.

Hauber, A. (2009). "Development of Anti-Victimization Experiments in the Netherlands: Upgrading or Decline?" in Hagemann, Schäfer & Schmidt (Eds.), Victimology, Victim Assistance and Criminal Justice. Perspectives Shared by International Experts at the Inter-University Centre of Dubrovnik. Mönchengladbach: Fachhochschule Niederrhein Verlag (pp. 225-232).

Heitmeyer, W. (Hrsg.) (1997). Was treibt die Gesellschaft auseinander? Vol. 1, Frankfurt: Suhrkamp.

Janoff-Bulman, R. (1985). "Criminal vs. Non-criminal Victimization: Victim's Reactions" in Victimology: An International Journal, 10, pp. 498–511.

Lazarus, R.S. & Folkman, S. (1984). Stress, Appraisal, and Coping. New York: Springer.

Lerner, M.J. (1980). The Belief in a Just World: A Fundamental Delusion. New York: Plenum Press.

Lummer, R./Hagemann, O./Tein, J. (eds.) (2011). Restorative Justice – A European and Schleswig-Holsteinian Perspective. Restorative Justice – Aus der europäischen und Schleswig-Holsteinischen Perspektive. Kiel: SH Verband für Soziale Strafrechtspflege.

Marcuse, H. (1964). One Dimensional Man. Boston: Beacon Press.

Maslow, A.H. (1943). "A Theory of Human Motivation" in Psychological Review, Vol. 50, 4, (370–396).

Maxwell, G. & Morris, A. (2001). "Family Group Conferences and Reoffending" in Morris, A., Maxwell, G. (eds.), Restorative Justice for Juveniles. Conferencing, Mediation & Circles, Oxford and Portland: Hart, S.243-263.

Maxwell, G. & Liu, J.H. (eds.) (2007). Restorative Justice and Practices in New Zealand: Towards a Restorative Society. Wellington.

McCold, P. & Wachtel, T. (2002). "Restorative Justice Theory Validation" in Weitekamp, E.G.M. & Kerner, H.-J. (eds) (2002), Restorative Justice: Theoretical Foundations. Collumpton: Willan. S. 110-140.

McCold, P. & Wachtel, T. (2000). Restorative Justice Theory Validation. A paper presented at the 4th International Conference on Restorative Practices for Juveniles, Tübingen, Germany

Mead, G.H. (1934). Mind, Self and Society, ed. by C.W. Morris. Chicago: University Of Chicago Press.

Parmentier, S. (2009). "To Be or Not To Be a Victim. On the Developing Notion of Victimhood under the European Convention on Human Rights" in Hagemann, Schäfer & Schmidt (Eds.), Victimology, Victim Assistance and Criminal Justice: Perspectives Shared by International Experts at the Inter-University Centre of Dubrovnik. Mönchengladbach: Fachhochschule Niederrhein Verlag (pp. 43-60).

Petzold, H. & Mathias, U. (1982). Rollenentwicklung und Identität. Paderborn: Junfermann.

Schädler, W. (2011). "The Relationship between Victim Support and Victim-Offender Mediation" in Lummer, R./Hagemann, O./Tein, J. (eds) (2011), Restorative Justice – A European and Schleswig-Holsteinian Perspective. Restorative Justice – Aus der europäischen und Schleswig-Holsteinischen Perspektive. Kiel: SH Verband für Soziale Strafrechtspflege. (pp. 17-23).

Sessar, K. (1992). Wiedergutmachen oder strafen. Pfaffenweiler: Centaurus.

Sessar, K. (1990). "Tertiary Victimization: A Case of the Politically Abused Crime Victims" in B. Galaway and J. Hudson, Criminal Justice, Restitution, and Reconciliation. Monsey, NY: Criminal Justice Press, pp. 37-45.

Shapland, J./Willmore, J./Duff, P. (1985). Victims in the Criminal Justice System. Aldershot: Gower Publishing.

Shapland, J./Robinson, G./Sorsby, A. (2011). Restorative Justice in Practice: Evaluating What Works for Victims and Offenders. London & New York: Routledge.

Sherman, L. & Strang, H. (2007). Restorative Justice: The Evidence. London: The Smith Institute.

Staub-Bernasconi, S. (2007). Soziale Arbeit als Handlungswissenschaft. Systemtheoretische Grundlagen und professionelle Praxis – Ein Lehrbuch. Bern u.a.: Haupt

Strang, H. (2002). Repair or Revenge: Victims and Restorative Justice. Oxford: Clarendon Press.

Symonds, M. (1980). "The 'Second Injury' to Victims" in Evaluation and Change. Special Issue. Pp 36-38.

Thomas, W.I. & Thomas, D.S. (1928). The Child in America: Behavior Problems and Programs. New York: Knopf.

United Nations (1985). Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. UN Department of Public Information, Resolution 40/34.

Vanfraechem, I. & Walgrave, L. (2005). Conferencing Serious Juvenile Delinquents in Belgium. www.restorativejustice.org/editions/2005/March/belgium (21.2.2008)

Wachtel, T. (2003) "Restorative Justice in Everyday Life: Beyond the Formal Ritual" in Reclaiming Children and Youth, 12 (2), pp.83-87

Wemmers, J.-A.M. (2009). "A Short History of Victimology" in Hagemann /Schäfer /Schmidt (eds.) (2009), Victimology, Victim Assistance and Criminal Justice: Perspectives Shared by International Experts at the Inter-University Centre of Dubrovnik. Mönchengladbach: Fachhochschule Niederrhein Verlag (pp. 33-42).

Wolfgang, M . & Ferracuti, F. (1967). The Subculture of Violence: Towards an Integrated Theory in Criminology. Reprinted 2003. London et al.: Routledge.

Yehuda, R./Bierer, L.M./Schmeidler, J./Aferiat, D.H./Breslau, I./Dolan, S. (2000). Low Cortisol and Risk for PTSD in Adult Offspring of Holocaust Survivors. American Journal of Psychiatry, vol. 157, No. 8, pp 1229-1235.

Zehr, H. (2002). A Little Book of Restorative Justice. Intercourse: Good Books.

Legal Protection of Victims in Germany[1]

Mario Nahrwold

In addition to losing a job, the fear of becoming a victim of crime remains a concerns of the German citizenry.[2] A citizen-oriented policy must therefore make efforts to prevent "victimization" or at least contain existing "primary victimization." The State has failed to the extent that it should be doing everything so that the victim can find his or her way back into their life. It is paramount to further counteract secondary victimization, which can arise through inappropriate confrontation with the perpetrator. However, this is understood not only as a political and moral obligation but rather a constitutional mandate. The State recognizes the responsibility to protect its citizens including potential or actual victims, if they cannot protect themselves.[3] In order to do justice, the State can and should not only institute pure safety mechanisms, but also have available programs for clarification, prevention and follow-up that are oriented towards both victims as well as offenders.

A mandatory protection of victims shows in other respects the fact that the State established its goals in legal regulations. The goal of this article is to provide a short overview of the legal protection of victims in Germany. First, a short historical overview of the legal protection of victims in Germany will be presented. Next, an overview of how victim protection systematically rediscovered a place in German Law will be provided. This paper can not address every aspect. The goal is rather to provide a rough overview of victim protection in Germany's legal system.

I. History

In order to improve the protection of victims, the Federal Republic of Germany introduced a range of reforms.

The Victim Protection Act of 1986 led to the improvement of witness protection, especially before exposure in the main trial of the criminal proceedings. In addition, victims of crime could more easily demand

1 Translated by Catherine Salzinger.
2 3. Victim Protection Report S-H, P. 10.
3 Jarass, Vorb. Vor Art. 1 GG, Rn.7.

compensation claims from the offender. Beyond that, this reform held for the first time the entry of victim-offender-mediation (VOM) (or in Germany known as offender-victim-mediation) in the German criminal law and to be exact as sentencing guidelines. In other words, the court could mitigate the sentence or possibly even completely wave the sentence, when the offender is serious about engaging in VOM and/or compensation.

The Fight Against Crime Act of 1994 was established following VOM and reparation for harm caused was a typical mitigation of punishment in adult criminal law.

The Witness Protection Act of 1998 authorized video recording for example of child victim witnesses and video broadcast of witness statements in the courtroom.[4]

Due to the protection of witnesses, primarily victims, the principle of immediacy, which provides for obtaining evidence only directly at the trial, was limited. A concern of the Victims Claim Security Act also from 1998, which granted victims a legal lieu of claims from offenders, was that victims might exploit their offenders in the media.

With the Act establishing VOM in the criminal procedure from 1999 should counteract or work against the sluggish application of VOM to date, in which prosecution and the criminal judge were obligated 'at every stage of the process' to consider whether a case is suitable for VOM.[5] Furthermore, the law led to the advanced setting of possibilities by balancing efforts of the perpetrator.

With the First Vitim's Rights Reform Act (2004) and the Second Victims' Rights Reform Act (2009), procedural rights of victims in criminal proceedings were strengthened. Central elements of the act include: the expansion of the use of victims as accessory prosecution, the strengthening of witness rights and the prevention of multiple hearings and the extended protection of child and adolescent victims.[6] The German accessory prosecution (Nebenklage) may allow a victim of a charge to join with the prosecution, and thereupon remain active in influencing the criminal procedure through application, clarification and questions. The use of accessory prosecution, however, is

4 Schroeder; § 27 Rn. 250 ff.
5 See Meyer-Goßner, § 155a Rn. 1.
6 3. Victim Protection Report S-H, P. 12; Kilchling, P. 140.

only designated for specific types of criminal offenses. The Second Victims' Rights Reform Act (2009) expanded the range of offenses for the inclusion of accessory prosecution, for example forced marriage and special conditions of serious coercion. In addition a catch-all element was created, whereupon the accessory prosecution is possible, regardless of the respective crime. If the consequences of crime are very serious, the accessory prosecution is an option in order to be able to recognize the victims' interests

The strengthening of witness rights was partly due to enhanced disclosure of information requirements. Injured persons and relatives are referred at an early stage to assistance through victim services and the possibility of psychosocial process support. If there is a risk of disclosing data, witnesses also have increased rights and may refuse statements about their residence or personal identity.

In order to protect adolescent witnesses, the 'Protection Age Limit' was raised from 16 to 18 years. Until this age a juvenile cannot be sworn in and the public can be excluded or barred from the criminal process.[7]

II. Legal System Overview

The protection of citizens before and after criminal offenses through legislative measures can be found in Germany in all three major branches of law. For victim protection the criminal law is most important, but also civil law is essential, as it regulates the legal relationship between the private citizens and manages important aspects of victim protection. The same applies for the public law, which regulates the rights and obligations of citizens against the state. In order to prevent victimization, the authorities in power may grant or allow emergency legal regulations benefiting potential crime. Actual victims of crime may receive compensation.

1. Protection of Victims of Crime in Criminal Law

The protection of victims of crime takes place on two levels. Firstly, it should be aimed through the criminal provisions of the substantive criminal law. Furthermore, the rules of the procedural rights of victims in the criminal procedure should be used to protect them.

a. Substantive Criminal Law

7 3. Victim Protection Report S-H, P. 14.

Substantive criminal law[8] contains standards making certain behaviors against victims punishable. According to the preventative purpose of punitive theories, it can be said that, in principle, any criminal provision, provided that it seeks to protect the personal legal interests of the individual and also serves the protection of victims.[9]

Potential perpetrators may shy away from committing an actual crime through the abstract threat of punishment. More significant, however, is that the state, acting by criminal standards, tackles social problems and through this makes criminal offenses visible. In this respect, criminal provisions promote appropriate public awareness, which ultimately serves the protection of victims. From the victim perspective, the substantive criminal law therefore serves primarily to prevent victimization. This article, however, will not aim to address this, nor can all criminal provisions be explained here.

The crime of stalking, for example, helps to clarify how the legislature responded to socially undesirable behavior. After a long discussion in 2007, stalking was criminalized.[10] Thus behaviors that were extremely uncomfortable for victims, and in some cases resulted in a deadly escalation, were outlawed. The different forms of stalking demonstrate that these are punishable behaviors by law that are not trivial and must be taken seriously. This safeguards victims, as they are not left alone with their problems. Due to increased public awareness of the dangers of 'stalking', victims can expect more assistance for their individual case.

b. Procedural Rights of Victims in Criminal Proceedings

The procedural rights of victims in criminal proceedings can be divided into participation, information and protection rights.

aa. Participation Rights of Victims

Crime victims may be involved in various forms of the criminal proceedings. They can occur as joint plaintiffs (accessory prosecutor), private plaintiffs, and applicants in a civil action or without special role.[11] In the case of particularly serious crime, victims receive the possibility of accessory prosecution or co-plaintiff allowing a real influence in the course of the

8 In Germany mainly found in the Criminal Code (StGB).
9 See 3. Victim Protection Report, P. 45.
10 See Fischer, § 238 Rn. 1 ff.
11 3. Victim Protection Report, P. 29.

criminal proceedings.[12] Provided, however, that the prosecution has in turn filed charges. The accessory prosecutor, or co-plantiff, then has the right to be present at any time of the trial. In contrast, the victim, who is simply the witness, may only be present during the witness examination. The accessory prosecutor has the right to ask questions at any time. He can reject judges or experts for bias, may pass orders of the judge and may even himself submit admission of evidence, which will be followed by the court and can also make a formal declaration. The accessory prosecutor has the right to his own closing argument, including proposals of concrete penalties for the case, and if the guilty party is not convicted, he can appeal, which usually only the prosecutor can do. Through this elevation position, the accessory prosecutor is to a large extent procedurally equivalent to the perpetrator and prosecutor.[13] This is also indicated in his placement in the courtroom. Because he represents the charge, he sits across from the accused and his counsel at eye level, so that a criminal proceeding with accessory prosecution is factually a three-party process.[14] However it is limiting to say, that victims' rights are actually suppressed by the very strong possibility of dismissal of the charges from discretionary reasons (§§ 153 ff. StPO[15]). In this regard, the victims have neither formal participatory rights nor legal remedies available, although it is about criminally relevant issues.[16]

For less serious offenses that primarily violate the legal interests of individual citizens and not the public's interest, victims have the option to file a private suit. This therefore gives them the ability to take over the role of public prosecution by pressing charges through private prosecution instead of the prosecution through criminal action. Examples include trespassing, insults and damage to property. A private suit may be especially relevant in cases where the prosecutor refuses to charge due to lack of public interest in prosecution. The injured party may therefore seek reparation through the initiation of a criminal process.

From the victim's point of view, it is of particular interest, that the perpetrator amends the damage caused by their actions. This is actually a question under civil law protection for victims. However, the criminal law

12 Kilchling, P. 141 ff. with a list of offenses where an accessory prosecution is possible
13 Kilchling, as above
14 Kilchling, P. 143.
15 German abbreviation for code of criminal procedure.
16 Kilchling, as above

in this regard has incentives at hand. On the one hand, the offender can provide restitution – be it was one-sided, or as part of a VOM – leading to sentence mitigations (abatement of action, suspension of a prison sentence to probation or reduced sentence). Should the offender not be willing to settle the damage, the victim must press charges if necessary in a separate civil proceeding. To spare him this and especially a different judgment by the Civil Court, in criminal proceedings a civil action is available. Thereafter, the criminal court may already have a say in the civil claims for damages by the victim. The victim is spared further proceedings and is therefore faster to seeking justice.

Regardless of the power of the role of the accessory prosecution and the private suit, any injured party may challenge the decision of the prosecutor through a forced criminal proceeding. This is provided, however, that the injured party reported the crime beforehand. This process gives the injured party the ability to enforce legal action through prosecution at the Higher Regional Court if the prosecutor refused to indict due to lack of evidence and therefore closed the case.

Another important component in the protection of victims is victim-offender-mediation (VOM). With VOM, the victim is in contrast to the simple role of being a witness, actively involved in the processing of a crime. As a mere witness without a special role, in the criminal proceedings the injured person provides the role of evidence establishing. After providing testimony, the injured party is then released from the proceedings. Therefore, desires and emotions that move the victim have no place in the process, as the victim is only relevant to the obtaining of evidence. Traditional criminal law is therefore offender-oriented. VOM gives the victim the ability to use the criminal proceedings as well as come to terms with their own victimization. Through VOM, the victim can ask the important questions such as the why, find a way for reparation, confront the offender with what the crime has done to them (how the crime has affected them). An offender-oriented criminal system refers the victim to a civil lawsuit for damages regarding the reparation. For the offender there is also no incentive in this respect, to deal with the concerns of the victim, particularly when they have previously been convicted in the criminal proceedings. With VOM there is an incentive instrument, so that victims and perpetrators can make an effort at an early stage towards a settlement of their conflict through a sustainable balance of

interests, by creating lasting peace under the law. A successful VOM therefore relieves not only the participants, but also the judiciary as compensation proceedings are abundant.

How has the legislature now created the criminal law, in order to give VOM the broadest possible space in German criminal law?

First, there is the possibility that the sanctions for the perpetrators will be mitigated, if they endeavor to participate in a VOM. In the case of less serious offenses (misdemeanors), the prosecutor or court can set the criminal proceedings for the time being against the condition of participating in a VOM. If the offender has made insofar genuine efforts, the final proceeding will be terminated. Where this is not a termination of the proceedings, the court may mitigate the sentence or completely waive it, if only a small punishment is forfeited (§ 46 a StGB[17]). The court can also suspend a prison sentence and probation, if there is an effort of the convicted person, to make amends for the damage caused by the offense – possibly by means of a VOM (§ 56 II 2 StPO).

The question is, however, how a case results in a VOM. In principle, all parties at any time can initiate a VOM.[18] In order to strengthen the practice of VOM, in 1999 both the prosecution and courts were obliged to consider the possibility for a VOM at each stage of the process and encourage suitable cases (§155 a StPO). It must be noted that under German criminal law any offense is suitable for a VOM. Practitioners complain, however, that even after this law, the potential for the VOM is not exhausted. Even when victims and perpetrators wish to take part in VOM, it often does not take place. Legal policy is therefore to complain that the decision of prosecution and the court to classify a case not suitable for VOM, according to the current legislation, is not justiciable and does not need to provide an explanation.[19]

bb) Victims' Rights to Information

The injured has various rights to information in criminal proceedings. First, the injured party should be informed whether and for what reason a criminal process has been set against the accused (§172 StPO). At the

17 German abbreviation for criminal code.

18 Meyer-Goßner, § 155a Rn. 3.

19 A legally enforceable right to carry out VOM would be helpful (if the offender agrees).

victim's request, they are informed on the outcome of the judicial process, their offender's relief measures and release from prison. This regulation is intended to help primarily victims of violent and sexual offenses, who fear a random encounter with the perpetrator.[20] Injured parties have the right through an attorney to access the criminal records, or without an attorney, the right to information contained in record (§ 406 e StPO). Furthermore they are notified of this and additional rights as early as possible, written regularly and in a language they understand. This includes the right to accessory prosecution, claiming the possibility of adhesion proceedings and entitlement to maintenances by the Victims Compensation Act or protection orders by the Violence Protection Act.

cc) Protection Rights

Victims may be represented by an attorney at their own expense in the process or take advantage of a counsel (§ 406 f StPO). In particular, this "counsel" has the right to be present during interrogation with the victims.[21] Victims of particular serious crime, as accessory prosecutors, may appoint a victim attorney at the public's expense, irrespective of their income (§ 397 a StPO).[22]

To protect against secondary victimization, the law provides various measures. Witnesses can refuse to provide information about their residence or identity, if there is reason to fear that they are at risk (§ 68 II, III StPO). In addition, the public may be excluded from all or part of the trial in order to protect the victim's privacy or if their inclusion would otherwise endanger the witnesses body, life or freedom (§172 Nr. 1 GVG[23]). The court may remove the defendant for the duration of the examination of witnesses from the courtroom if intimidation of the witness is feared (§ 247StPO).

In addition, the witness may be questioned during the trial at a different location via video-audio live broadcast if it is feared that the victim's presence in the courtroom brings serious drawbacks for their welfare (§ 247 a StPO). To avoid multiple interrogations, including those conducted by police and prosecution, witness testimonials may also be recorded through video and audio media and be introduced and used as evidence in the criminal

20 Kilchling, P. 140.
21 3. Victim Protection Report S-H, P. 33.
22 More information on the support of victims through a third party see Kilchling, P. 146ff.
23 German abbreviation for Judicial System Act.

proceedings (§ 255 a StPO). This applies in particular to the protection of child and juvenile witnesses (§ 58 a I Nr. 1 StPO).

2. Protection of Victims in Civil Law

In addition to the criminal law, civil law also serves the protection of victims by allowing for claims between the victim and the perpetrator.

a) A few examples include claims for damages to compensate for intangible losses (medical/treatment costs, repair costs, etc.) and immaterial damage (compensation for pain and suffering). These claims are supported through other regulations. Contrary to the normal limitation of three years, compensation claims that are based on injury to life, body, health or freedom may be filed up to 30 years after the incident (§ 199 II BGB[24]). The statue of limitations for claims of sexual offenses does not begin to start until the victims age of 21 (§ 208 BGB). In addition, in cases of an intentional crime a larger portion of the perpetrators earned income may be seized in order to pay back towards victim compensation (§ 850 f II ZPO[25]). The Victims Claim Compensation Act finally grants the injured the right of lien to secure its claims for damages on receivables by the perpetrator, which were achieved from the exploitation of their perpetrators actions. The victim is a priority over other secured creditors of the perpetrator, seeking access to their demands for satisfaction of their claims.

   Victims can make their civil claims for damages in a separate civil suit. As previously discussed, there is also the possibility of making these claims already in criminal proceedings (Adhäsionsverfahren) in order to avoid a potential additional process with possible incriminating evidence.

b) Both the criminal law and the compensation for damages deal with crime of the past. The victim is often concerned that harm or harassment will not reoccur in the future. To combat violence, especially in the home, in 2002 the Violence Protection Act was enacted. The act provides for two things:

   aa) Firstly, the civil court, can take protection orders at the request of the injured person, which are designed to prevent further injury. A violation

24 German abbreviation for the German Civil Code.
25 German abbreviation for the Code of Civil Procedure.

of the protection orders against the perpetrator constitutes a crime, even if his behavior would not be punishable without the protection order. Such protection orders come into question if:

- The offender has violated the body, health or liberty of the victim
- The offender has made threats
- The offender has entered the apartment of the victim
- The offender has harassed the victim

In these cases, the court may order that the offender shall refrain:

- From entering the apartment of the victim
- To reside in a certain radius of the apartment
- From visiting specific places, where the victim often stays
- Contacting the victim (by phone, internet)
- Meeting the victim

bb) In addition, the court may order the offender to temporarily leave the shared home of the injured person. This applies even if the perpetrator is the owner of the property.

In order to properly protect the victim and so that the victim must not wait for a lengthy court process, they can achieve these arrangements in a short timeframe through a temporary order of the court. For this purpose it is a sufficient rule, when the victim is given a detailed affidavit.

3. Protection of Victim in Public Law

Finally, it should be examined to what extent provisions under public law can contribute to the protection of victims. As the public law regulates the legal relationship between the citizens of the state, the victim is entitled to protection by the state. The aim of public protection for victims firstly is to prevent victimization (primary victimization). Therefore in addition to the abstract criminal law the concrete emergency response law regulates the prohibition of certain forms of action. For cases that still result in victimization, there is a possibility for state compensation.

a) Security Measures

The emergency response law is used to combat possible dangers in advance, before they can come to an injury. The emergency response authorities (police and law enforcement authorities) can thus take measures so that actions do not result in the injury or harm of any persons. Practical significance here is the apartment cross reference (§ 201 a LVWG[26]).

Then the police can refer a person for up to 14 days in an apartment and the surrounding area and forbid them from returning there if it results in an actual threat to body, life, or liberty of their roommates. The arrangements, which aim to protect victims of domestic violence against their perpetrator, are made by court orders following the Violence Protection Act and can be implemented if necessary by force of the police. They thus allow an encroachment on the fundamental rights of the offender to privacy of the home in favor of the victim.

As it comes to the protection of individual rights of the potential victim, the victim also has a legally enforceable right to have the police intervene when in particular risk.

b) Compensation Law

If a German citizen, despite all measures to prevent crime becomes a victim of crime, he is entitled to compensation against the state under certain conditions set forth by the Victims Compensation Act. When the state has failed to prevent a crime, the Victims Compensation Act requires the state to pay compensation to the injured party.[27] It is required under the Act that the injured must be a victim of a deliberate, violent act. The victim then receives compensation from the State, due to health and economic consequences, in the form of reimbursement of the costs for medical treatment and if necessary a pension.

III. Conclusion

The legislature has to a great extent fulfilled its constitutional obligation to protect the victims of crime in Germany. It can be said that the legal protection of victims is well established, although it is still lagging behind in some areas. This is especially the case with victim-offender-mediation.

26 Abbreviation for Administrative Law of Schleswig-Holstein.

27 See Kunz, § 1 Rn. 1.

Despite its long-standing legal establishment, it is not practiced to the extent it should be. Perhaps more education is needed on VOM among relevant stakeholders. In order to strengthen VOM, it has been proposed in this article, providing perpetrators and victims the right for an option to take part in VOM. This may be better supported through referral of more appropriate cases to VOM so that one is not only dependent on the referral though court or the prosecution alone.

References

Fischer, T. (2011) Strafgesetzbuch und Nebengesetze, 58. Auflage, München.

Jarass, H. D. and Pieroth, B. (2011) Grundgesetz für die Bundesrepublik Deutschland, 11. Auflage, München.

Kilchling, M. (2006) `Rechtliche Rahmenbedingungen für die Opferbegleitung in Deutschland´, in: Die Begleitung des Verbrechensopfers durch den Strafprozess von Jessionek, Udo, Hilf, Marianne (Herausgeber), S. 139 – 164.

Kunz, E.; Zellner, G.; Gelhausen, R. and Weiner, B. (2010) Opferentschädigungsgesetz, Kommentar, 5. Auflage, München.

Landesregierung Schleswig-Holstein (2011) 3. Opferschutzbericht, Schleswig-Holsteinischer Landtag, 17 Wahlperiode, Drucksache 17/1937 vom 31.10.2011 http://www.schleswig-holstein.de/MJGI/DE/Service/Broschueren/Justiz/opferschutzbericht_blob=publicationFile.pdf

Meyer-Goßner, L. (2011) Strafprozessordnung mit GVG und Nebengesetzen, 54. Auflage, München.

Schroeder, F.-C. and Verrel, T. (2011) Strafprozessrecht, 5. Auflage, München.

Victim Support in Hungary -

Zsófia Tóth[1]

1. Introduction – a history of victim support in Hungary before 2006

Victim support activities in Hungary started in 1989, and in the 1990s – firstly by non-governmental organizations – several steps were taken in order to help victims of crime. In 1989 the White Ring Nonprofit Association was founded, which has been providing services for victims ever since. (The German Weisser Ring NGO was the model of this association.) There are other civil organizations working in this field, but most of them are specialized in victims of different types of crime, like NANE, which deals with victims of domestic violence, or the ESZTER Foundation, which offers services for victims of sexual violence.

Besides these non-governmental efforts, the Hungarian State also began taking actions for crime victims at the end of the 1990s. Between 2000 and 2005, the Public Foundation for a Secure Hungary dealt with the compensation of the victims of violent crimes, providing compensation for approximately 1700 victims from the Hungarian State during these years. The police have also been taking part in victim protection since 1999. Currently, there are victim protection police officers working within the police's crime prevention units in the whole country (however, victim protection is not their primary duty).

The most important organization in victim support in Hungary today is undoubtedly the Victim Support Service, a government institution which was established in 2006 according to Act Nr. 135 of 2005 on Crime Victim Support and State Compensation (hereinafter called the Victim Support Act), under the supervision of the Ministry of Justice. The Victim Support Act was based on two EU regulations: Council Framework Decision 2001/220/JHA

1 Justice Service of Ministry of Public Administration and Justice, Victim Support Department, Hungary, toth.zsofia@kimisz.gov.hu

of 15 March 2001 on the standing of victims in criminal proceedings, and Council Directive 2004/80/EC of 29 April 2004 relating to compensation for victims of crime.

2. Legal and institutional framework

2.1. Legal framework – the definition of a victim and the scope of the Victim Support Act

According to the Victim Support Act, a victim can be the injured party of a crime committed in the territory of Hungary or any natural person who has suffered injury as a direct consequence of a criminal act, in particular bodily or emotional harm, mental shock or economic loss. Victims can not only be Hungarian citizens, but also citizens of any EU Member State, citizens of any non-EU country residing lawfully in the territory of the European Union, stateless persons residing lawfully in Hungary, victims of human trafficking or any other persons deemed eligible by virtue of international treaties or on the basis of reciprocity.

The essence of victim support is that on the basis of social solidarity and equity, the State provides services for those it has not been able to protect from crime. According to the Act, victim support aims to mitigate the social, moral and pecuniary injuries of victims whose quality of life has been endangered due to a criminal act.

2.2. Institutional framework – the organization and victim support advisors

The Victim Support Service started its activity in 2006 as part of the Office of Justice (also covering other services such as Probation, Victim-Offender Mediation, Legal Aid, Restitution and Lobby Authority) under the supervision of the Ministry of Justice. The Office of Justice's main body was the Central Office of Justice and there were 20 local offices at the county seats of Hungary and in the capital, Budapest. (Hungary consists of 19 counties and the capital, making 20 administrative units altogether.)

In 2011 the institutional framework was amended and the Justice Service of the Ministry of Public Administration and Justice was established as the successor of the Office of Justice. This is a central budgetary agency with nationwide competence, which is responsible for the professional leadership and supervision of probation, legal aid and victim support in Hungary. The task of the Victim Support Department is to provide methodological help and organize trainings for the local victim support services, consider appeals on the second instance and petitions under the principle of equity, and also to deal with international cooperation matters. The local justice services – demonstrating the practice of victim support (and also probation and legal aid) at the county seats and in the capital – became part of the Government Offices of each county of Hungary. Since the ministerial structure was changed in 2010, the professional supervision of victim support now belongs to the Ministry of Interior, while the organizational background is supervised by the Ministry of Public Administration and Justice.

The Victim Support Service has been operating with around 48 paid workers in the whole territory of Hungary. At most local justice services, Victim Support Departments employ one or two lawyers as victim support specialists.

3. Forms of victim support

Besides providing basic and general information to everyone turning to the Victim Support Service (regardless of their victim status), the Hungarian system consists of two main forms of help for victims of crimes. One is the system of victim support services and the other is the form of state compensation. Victim support services consist of facilitating the protection of the victim's interests, granting instant monetary aid, and providing legal aid (through the Legal Aid Service). The main difference is that while victim support services are available for victims of all types of crimes, only victims of violent intentional crimes may be eligible for state compensation. However, in order to provide both forms of help, the Victim Support Service needs a certificate issued by the police, the public prosecutor or the court verifying that the crime has been reported to the authorities. If the victim cannot provide the certificate, it must be obtained by the Service.

3.1. Information and advice

Everyone who turns to the Victim Support Service is entitled to information and advice free of charge. This means that anybody, not just victims, can get information from the Service on the following:

- the rights and obligations of victims in criminal proceedings;

- the forms of victim support available to him/her and the conditions for application therefore;

- any other available benefits, allowances and opportunities to assert his/her rights;

- the contact details of state, local government, civil and church organizations involved in helping victims of crime; and

- the opportunities to avoid secondary victimization with a view to the type of the criminal act.

3.2. Victim Support Services

a) Facilitate the protection of victims' interests

The Victim Support Service helps victims, in a manner and to the extent that they may require, through the enforcement of their fundamental rights and in having access to healthcare, health insurance and social welfare services. Moreover, the Service provides legal advice and assistance to help the victim to get remedy for the injury. There is no deadline for submitting an application for this kind of service. This type of help is very similar to the work of social workers.

b) Instant monetary aid

This monetary aid may cover the victim's extraordinary expenses in connection with housing, clothing, nutrition, travel, medical and funeral expenses if he/she is unable, as a consequence of being victimized by a crime, to cover such expenses. The application for this aid must be submitted within 5 days of the crime being committed. The victim can be entitled to this aid irrespective of his/her general financial standing. The maximum amount of

aid available changes every year (according to the nationwide gross monthly average income in Hungary). In 2011 the maximum amount is approximately 300 euro.

c) Legal aid

If the injury to a needy victim can only be remedied by means of legal aid and help defined in the Legal Aid Act, the Victim Support Service refers the case to the competent Legal Aid Service. Only indigent victims can get free legal aid. This means that their regular monthly income may not exceed a certain amount of money (approximately 600 euro in 2011). There is no deadline for submitting an application for this aid.

3.3. State Compensation

Only those indigent victims who have suffered a violent and intentional criminal act and whose physical integrity or health has been seriously damaged as a direct consequence are entitled to state compensation. Furthermore, compensation can be provided to a natural person who is the next of kin, a spouse or a common-law spouse of the deceased or injured victim of a violent intentional crime, or is someone whom such a victim is or was obliged to maintain or who has arranged for the funeral of such a victim. The form of state compensation can be lump-sum cash payment or regular monthly instalments. The application form for state compensation has to be submitted within three months of the crime being committed. State compensation has a special procedural system. The procedure – in harmonization with the EU Council Directive relating to compensation for crime victims – consists of two phases: the assistance and the decision-making phase. The assisting authorities (in Hungary, all of the local victim support services) provide help for victims in connection with their compensation claim, whereas the deciding authority (the Budapest Victim Support Service) makes its decision on the merits upon the attached receipts and documents.

4. Financial background and statistics

Instant monetary aid and state compensation are paid from a separate budgetary fund. In the Budget Act, a not-maximized Appropriation Chapter is regulated under the name 'Victim Support'. The Appropriation Chapter contains a certain amount of money every year which can be filled up by the Ministry of Interior during the year if it runs out.

The next table shows the growing number of clients and contacts at the Victim Support Service year by year since 2006:

	2006	*2007*	*2008*	*2009*	*2010*
Information and advice	*4765*	*3802*	*4359*	*8546*	*8651*
VictimSupport Services	*3526*	*7288*	*8536*	*13904*	*12993*
State Compensation	*458*	*411*	*359*	*501*	*425*
Altogether	*8749*	*11501*	*13254*	*22951*	*22069*

According to the Criminal Statistics of 2010, there were around 248,000 registered natural-person victims in Hungary in that year. About 7.8% of these people were helped and supported by the Victim Support Service. (In 2006, when the Service started its activity, this rate was 4%, in 2007 it was 5%, in 2008 it was 5.7%, and in 2009 it rose to 9.24%.) The rising case numbers are mainly due to the growing reputation of the Service. In this regard, the role of the police has to be highlighted because the police have an obligation to inform every victim about the Victim Support Service

when they report a crime. Moreover, most (approximately 95%) of the victims turn to the Service during the police investigation, and as a result, effective cooperation between the Victim Support Service and the police is essential.

5. Links to Victim-Offender Mediation (VOM) and Restorative Justice (RJ)

Since 2007, in the case of certain criminal offences (crimes against the person, traffic-related offences and crimes against property), victims have had the option to request victim-offender mediation during the criminal procedure and to ask for restitution from the known perpetrator of the criminal offence. Since both services (victim support and victim-offender mediation) are quite new in Hungary, there is no structured way of collaboration regarding VOM (RJ) cases. However, there are some contact points. The Victim Support Service can give information – either verbally or by handing over a leaflet on mediation – to the victim about applying for victim-offender mediation. Moreover, under facilitating the protection of the victim's interests, the Victim Support Service can help the victim with initiating VOM as part of the criminal justice system (mostly at the prosecution phase of the criminal procedure).

6. Conclusion

6.1. Chances and possibilities

As can be seen from the above-mentioned, victim support is rather law-oriented in Hungary, operating almost exclusively through legal professionals. However, the defaults of the victim support system became visible during the first years of operation and steps were taken to supplement the system within a project called TÁMOP 5.6.2. (Social Renewal Operational Programme) which is co-financed by the European Union and the Hungarian Government. The project – running in three regions of the country between 2010 and 2012 – has three main developmental goals regarding victim support: to ensure instant help for victims provided by psychologists; to establish a free 24-hour helpline for crime victims; and to create a volunteer network for

victims, with volunteers available in rural areas outside the county seats. One of the newly employed psychologists is an expert in family group conferencing in Hungary.

6.2. Possible risks

As the number of victim support advisors is limited (one or two advisors per county), growing case numbers might cause difficulties in the future. Since we cannot provide regular supervisions for the local victim support specialists due to financial reasons, the prevention or treatment of burnout might be the key issue for them in the long run. From the victims' point of view, too much bureaucracy in the administrative procedure (e.g. paperwork, procedural deadlines) can be a problem.

6.3. Recommendations for further development

Providing instant psychological and emotional support, better accessibility of the existing services (not only at the county seats, but also in smaller towns and villages, and beyond the official working hours) and finally, upon the request of the victim, better availability of restorative justice services, might be the plans and strategies for the future. Organizing RJ training for victim support advisors and raising knowledge about victim support and restorative justice possibilities are also key issues in Hungary that need to be handled in order to reach further developments in these fields.

Friedenszirkel, ein wiederentdecktes Verfahren zur Konfliktbewältigung

Eine im englischen Sprachraum als „Peacemaking-Circle“ bezeichnete Methode der Restorative Justice

Isabel Thoß und Elmar G.M.Weitekamp[1]

Konflikte sind unbequem und lästig. Am liebsten wollen wir sie aus unserem Leben verbannen. Wie um uns das Leben absichtlich schwer zu machen, sind sie jedoch allgegenwärtig in menschlichen Beziehungen. Vielleicht müssen wir uns von dem Gedanken verabschieden, dass der friedliche, reibungslose Ablauf unseres Lebens den Normalzustand darstellt. Wenn wir uns daran gewöhnen, dass die Krise unser Leben bestimmt, auch wenn dieses sich immer wieder wandelt, können wir vielleicht effektivere Wege finden mit ihr umzugehen. Ist nicht Akzeptanz der erste Schritt, um sich überhaupt mit einem Konflikt auseinandersetzen zu können? Und ist nicht das Bewusstsein der Ort, wo Veränderungen eingeleitet werden? Hätten wir ohne Konflikte und Krisen überhaupt Anlass zu Veränderungen? So könnte man den Konflikt im Leben eines Menschen auch als Trigger für dessen Entwicklungspotential ansehen. So wäre die Krise nicht mehr der Tiefpunkt, sondern der Anlauf zu einem Höhenflug.

Doch all diese Erwägungen machen nur Sinn, wenn wir uns unsere Konflikte bewusst machen und uns mit ihnen beschäftigen. Konflikte in Systemen, Organisationen oder Gemeinschaften sind Konflikte zwischen Menschen. Dennoch gehen wir in unserer modernen Gesellschaft Konflikte oft system- oder organisationsgebunden an. Dies ist auch wichtig, da wir die Eingliederung eines Menschen in ein System nicht außer Acht lassen dürfen. Konfliktbewältigungsstrategien können nur erfolgreich sein, wenn sie auch innerhalb von Systemen umgesetzt werden können. Der Ursprung unserer Konflikte liegt jedoch immer noch bei den einzelnen Menschen selbst. Werden diese ungenügend in den Prozess einbezogen, helfen auch systemorientierte Lösungsansätze nicht weiter, da zwar die Flammen an der Oberfläche gelöscht sind, jedoch im Untergrund weiter schwelen.

1 Institut für Kriminologie der Universität Tübingen Sand 7, 72076 Tübingen

Die wohl komplexesten Konflikte entladen sich oft so, dass einzelne Handlungen gegen die Grenzen des Systems, also Recht und Gesetz verstoßen. In vielen Fällen ist die allein systemorientierte Behandlung dieser Verstöße innerhalb eines Strafprozesses vor Gericht unumgänglich. Dies sind beispielsweise Fälle, in denen keine Akzeptanz und kein Unrechtsbewusstsein der Täter existieren. Nachhaltige Veränderungen sind hier nahezu unmöglich, was sich in hohen Rückfallraten widerspiegelt.
Allerdings gibt es auch Situationen, in denen Menschen Fehler eingestehen, das Geschehene sichtlich bereuen und Bereitschaft signalisieren, sich für die Zukunft in den Konfliktheilungsprozess einbringen zu wollen. Für diese Fälle fordert Nils Christie (1977, 1-15) einer der Urväter der Restorative Justice Bewegung: „Gebt den Menschen ihre Konflikte zurück!". Er meint damit, dass Ansätze der Konfliktbewältigung von jenen Menschen diskutiert werden sollten, die sich unmittelbar im Konflikt befinden. Nur so werde ein Bewusstsein geschaffen, dass das Verhalten der Menschen nachhaltig verändere.
Ist eine solche Bereitschaft bei den Beteiligten erkennbar, sollte „das System" ein Medium für den aktiven Bewältigungsprozess zur Verfügung stellen. Hier existiert eine echte Chance auf Behandlung der Ursachen des Konflikts, wenn nicht sogar auf Ursachenbeseitigung. Diese Nachhaltigkeit kommt dem System zugute, als ein Plus an Sicherheit und Zufriedenheit in der Gesellschaft und als ein Minus an finanziellem und personellem Aufwand im Rahmen des Strafprozesses.

Solche aktiven Konfliktbewältigungsprozesse sieht die Restorative Justice Bewegung in drei verschiedenen Formen vor, deren man sich je nach Situation und Konflikt bedienen kann: den bereits in Europa etablierten Täter-Opfer-Ausgleich, die in Deutschland immer häufiger praktizierten Gemeinschaftskonferenzen und eben jene Friedenszirkel, die im Folgenden näher betrachtet werden. Letztere wurden in den USA und Kanada in den vergangenen Jahrzehnten wieder neben dem herkömmlichen Strafrechtssystem integriert, sind jedoch den Europäern noch weitgehend unbekannt.
Bei all diesen Mediationsformen, denen gleiche Werte und Ziele zugrundeliegen, gibt es Unterschiede in der Art der Kommunikation und der Quantität der Beteiligung.

Bei einem Täter-Opfer-Ausgleich sind, wie der Name schon erkennen lässt, im Allgemeinen neben dem Mediator lediglich Täter und Opfer anwesend. Gemeinschaftskonferenzen sind hauptsächlich darauf ausgerichtet, Konflikte und Problemlagen im Familienkreis zu bearbeiten. Der Friedenszirkel ist bezüglich der Beteiligung der Offenste dieser Kommunikationsprozesse. Hier können Familienmitglieder, Freunde, Bekannte, aber auch Staatsanwälte, Richter, Polizeibeamte und betroffene oder interessierte Gemeindemitglieder einbezogen werden. Hintergrund dieser diversen Partizipation ist das Ziel, einen ebenso diversen Aktionsplan bzgl. der Konfliktbearbeitung entwerfen zu können. Charakteristisch für Friedenszirkel sind außerdem, wie der Name schon erkennen lässt, die kreisförmige Sitzordnung und die Verwendung eines Redestabes. Dieser Redestab wird von Teilnehmer zu Teilnehmer gereicht und erteilt der Person, die ihn in den Händen hält, das Wort, welches von keinem anderen Beteiligten gestört oder gar unterbrochen werden darf. In den USA und in Kanada bedient man sich der Friedenszirkel bereits seit einigen Jahren nicht nur innerhalb des Strafsystems, sondern auch in anderen Bereichen, wie Schulen, Universitäten oder auch Justizvollzugsanstalten. In Deutschland, Belgien und Ungarn startete nun ein erstes Pilotprojekt, um diese Form des erweiterten Täter-Opfer-Ausgleiches in Europa eventuell einzuführen bzw. zu etablieren.

Geschichtlicher Hintergrund der Friedenszirkel

Die Ursprünge von Heilzirkeln oder Friedenszirkeln, im Englischen „Peacemaking-Circles“ genannt, liegen in der Kultur indigener Stämme. Weltweit kamen Stammesgemeinschaften in Zirkeln zusammen, um ein Problem zu besprechen. Diese Zirkel wurden von Personen initiiert, die ein besonderes Gespür für Menschen und ihre Konflikte hatten. Ihnen gelang es, die Gemeinschaft wieder zusammenzuführen. Deshalb wurden solche Personen „Peacemaker“ genannt. Jeder Stamm hatte dabei seine ganz eigenen Traditionen und Rituale. Die Grundstruktur und vor allem die Regeln für den gegenseitigen Umgang der Menschen innerhalb eines Zirkels waren jedoch unabhängig von Stammestraditionen allen Zirkeln immanent.
In Kanada und Nordamerika ließ man die Konfliktbewältigungsstrategie der Vorfahren in den vergangenen Jahren bewusst wieder aufleben. Friedenszirkel werden dort neben vielen anderen Bereichen vor allem alternativ oder

ergänzend zum gängigen Strafprozess durchgeführt. Ein Blick auf die Rückfälligkeitsraten eines großen Teils der Straftäter führte zu der Erkenntnis, dass ein Bedürfnis für eine ursachenorientierte Behandlung von Straftaten besteht. Tätern gelingt es immer wieder, den gesamten Prozess von der Strafverfolgung bis zur Entlassung aus dem Strafvollzug zu durchlaufen, ohne sich tatsächlich mit der Tat auseinanderzusetzen oder Verantwortung dafür zu übernehmen. Oftmals bestünde sogar eine Bereitschaft der Täter, doch es fehlt an Zeit, Mitteln und Personal, um intensiver mit ihnen zu arbeiten.

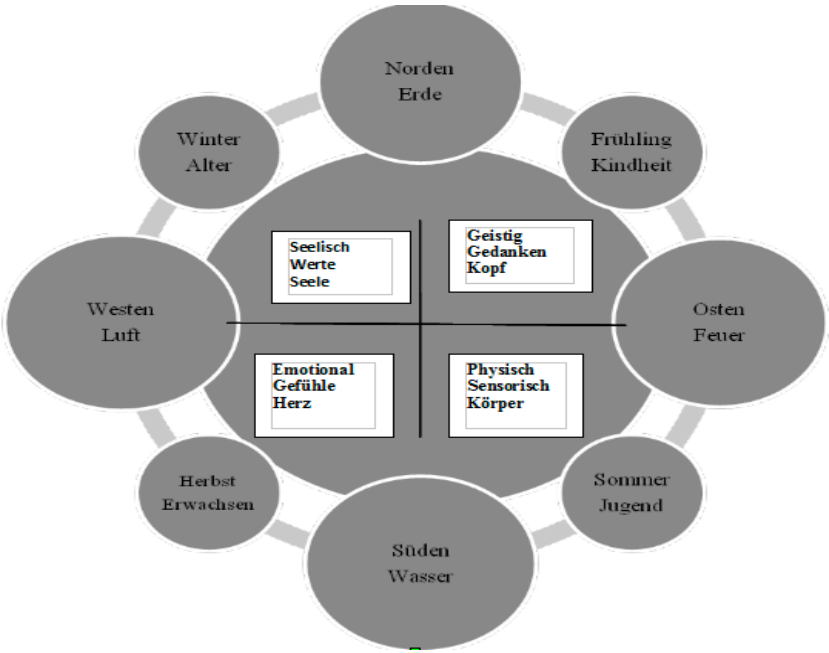
Die zugrundeliegenden Wertvorstellungen

Die Form des Kreises und die Zahl „4“

Jene Zirkel, die in Amerika und Kanada nun praktiziert werden, sind ein Vermächtnis der indianischen Ureinwohner. Die Arbeit der „Peacemaker“ schlägt sich in der Funktionsweise eines Zirkels nieder. Daher ist es auch für die Arbeit der heutigen Zirkelmoderatoren von essentieller Bedeutung, zu verstehen, welche Wertvorstellungen die Zirkel geprägt haben.
Die „Circlekeeper“ Harold und Phil Gatensby, zwei „First Nation“-Indianer aus dem Stamm der Tlingit (White Horse, Kanada) überliefern in ihren Zirkeln regelmäßig die Weltanschauung und Traditionen ihres Stammes: „Die Form des Zirkels prägt Erde und Leben. Die machtvollsten Erscheinungen dieser Erde, wie Wind (Tornados) und Wasser (Strömungen) entfalten in dieser Form ihre größte Kraft. Tiere bauen runde Höhlen. Erde, Sonne, Mond und Planeten sind kreisförmig. Was hat es also mit dem Kreis auf sich, wenn die Natur ihn derartig bevorzugt?
Unserem Stamm erschien die Wahl der Natur gerechtfertigt: Alle Teile eines Kreises sind gleich, kein Teil kann herausgenommen werden, ohne, dass der Kreis zerbricht. Es gibt kein oben oder unten, keine Hierarchie. Unsere Gemeinschaft bediente sich somit der Vorzüge des Kreises um schwierige Situationen zwischen Stammesmitgliedern zu meistern: In Konfliktsituationen kamen wir in einem Kreis zusammen.

Doch nicht nur der Kreis, sondern auch die Zahl „4“ prägte unseren Umgang mit Konflikten. Es gibt vier Kammern in unserem Herzen, vier Jahreszeiten; vier Windrichtungen etc.. Welche Bedeutung dies für den Zirkel hat, erklärt das sogenannte „Medizinrad“ („medicine wheel“).“[2]

Das Medizinrad



Die Bedeutung des Medizinrades für den Zirkel

Das Medizinrad ist eine Metapher für die Bedürfnisse eines Menschen. Diese Bedürfnisse sind physischer, geistiger, emotionaler und seelischer Natur. Die Einheit von Körper und Geist ist eine elementare Grundvoraussetzung für das Wohlbefinden des menschlichen Organismus. Wird ein Bereich unzulänglich bedient oder ganz und gar vernachlässigt, werden Menschen krank. Schwierige Lebenssituationen wirken dabei wie Katalysatoren für

2 Gehört von Isabel Thoß, Peacemaking-Circle-Training von Harold and Phil Gatensby, Oslo, September 2007

diese Virulenz und münden schlimmstenfalls in kriminellem Verhalten. Um Konflikte und vor allem Kriminalität nachhaltig zu bearbeiten, genügt es nicht, die konfliktträchtige Situation aufzugreifen und zu diskutieren. In erster Linie sollte das Augenmerk auf den betroffenen Menschen liegen. Erst wenn zum Vorschein kommt, was dem einzelnen Menschen in welchem Bereich fehlt, kann die Gemeinschaft bedürfnisorientiert handeln.

Immer wieder erscheint es jedoch schwer, aufeinander zuzugehen. Sogar Familienmitglieder haben oftmals das Gefühl, völlig die Verbindung zueinander verloren zu haben. Diese Problematik greift der Zirkelprozess mit der Vorstellung auf, dass alle Lebewesen, schon allein durch ihre physischen Grundlagen, miteinander verbunden sind. Alle Menschen bestehen aus der gleichen Art von Zellgewebe, ihre Körper enthalten 60-70 % Wasser, ihre Körpertemperatur beträgt ca. 36°C und sie benötigen alle dasselbe Luftgemisch zum atmen. Diese genetischen Anlagen verbinden die Menschen schon in biologischer Hinsicht miteinander. Egal, wie weit sich also Menschen durch einen Konflikt oder auf sonstige Weise voneinander entfernt haben, sie bleiben bezüglich dieser Tatsachen unweigerlich miteinander verbunden. Aber nicht nur aus dieser biologischen Abhängigkeit allein, sondern vor allem aus ihrer Sozialisation ergibt sich für sie die Pflicht zur Übernahme gegenseitiger Verantwortung.
Aus diesem Hintergrund versucht der Friedenszirkel gebrochene Beziehungen so ganzheitlich wie möglich zu betrachten und die Verantwortung für den Heilungsprozess bei den Betroffenen selbst zu belassen. Ganz ohne Hierarchie und Dominanz gelingt es Friedenszirkeln zwischenmenschliche Bande wieder zu stärken, die zuvor unter einer Zerreißprobe standen. Zirkel arbeiten mit den Grundbedürfnissen eines jeden Menschen, nämlich: Vertrauen, Respekt, Offenheit, Hilfsbereitschaft, Zusammengehörigkeitsgefühl und Freundlichkeit. Sie schaffen das Bewusstsein für unser Sein.

„Story-telling" – Geschichten erzählen

Damit diese Grundbedürfnisse Eingang in den Zirkel finden, bedient sich dieser des sogenannten „story-telling", auf Deutsch: dem Geschichtenerzählen. Durch eine Geschichte kann indirekt ein Thema angesprochen werden, ohne dieses direkt zu benennen. Wer sich von dem Thema angesprochen fühlt, wird die Geschichte zu interpretieren wissen. Es kann jedoch auch

eine Geschichte sein, die ein Grundbedürfnis des Erzählenden aufgreift und damit jeden im Zirkel anspricht. Diese Art des Sich-Mitteilens ist geeignet, eine Atmosphäre des Vertrauens zu schaffen und sollte damit vor allem die Anfangsphase des Zirkels prägen.

Der Moderator, der in der englischen Terminologie „Circlekeeper" genannt wird, kann dieses Geschichtenerzählen auch als konkrete Aufgabe stellen. Er wird beispielsweise die Teilnehmer auffordern, sich eines ihrer Grundbedürfnisse (Offenheit, Akzeptanz, Hilfsbereitschaft usw.) vorzustellen und dazu eine Geschichte zu erzählen.

In einem Zirkel soll das Zuhören eine zentrale Rolle spielen. Durch die Geschichten der anderen Menschen erreichen uns auch deren Gefühlen und Gedanken. Entgegen unserer Gewohnheit, in einem professionellen Rahmen allein unseren Verstand einzusetzen, wird in einem Zirkel für Emotionen bewusst Raum geschaffen. Die menschliche Gefühlswelt gilt nach dem hier zugrundeliegenden Verständnis als unabdingbarer Teil unseres Selbst, ohne den die Ursachen eines Konflikts nicht erreicht werden können. Manche Menschen erleben in einem Zirkel zum ersten Mal, was es bedeutet, Empathie zu empfinden.
Der beste Weg zu verdeutlichen, um was es in einem Zirkel geht, ist es, sich der für ihn typischen Arbeitsformen des Geschichtenerzählens zu bedienen:

„Zusammengesackt in seinem Stuhl, die Beine ausgestreckt, die Arme gefaltet und den Kopf hängen lassend, hörte Jamie zu, als die Feder im Zirkel umher gereicht wurde. Die Leute redeten über ihn oder seine Straftaten. Er hörte die Wut in Stimmen der Menschen, aber hauptsächlich hörte er auf viele verschiedene Weisen: Warum? Warum hat er so viele Jahre durch Alkoholkonsum und Straftaten verloren? Wann wird er sich ändern? Was muss noch passieren, damit er sich ändert? Hat er kein Mitgefühl mit denen, die er verletzt? Er sei nun 21 Jahre alt, wann würde er erwachsen werden? Wann würde er Verantwortung für sein Leben übernehmen?
Neben den Fragen und der Wut kommentierten einige sein bisheriges Leben - auch die guten Dinge, die er tat. Einige kommentierten sein Verhalten gegenüber Alten und Kindern und was aus ihm werden könne. Diese Kommentare überraschten ihn. Bei diesen Kommentaren schaute er auf. Ein

flüchtiger Blick auf die, die über ihn redeten, entspannte seine ansonsten eingefrorene Haltung, die signalisierte, dass ihn all dies nichts angehe und er nicht einmal zuhöre.

Aber Jamie hörte zu. Er war nervös, ja sogar sehr nervös. Er wusste, dass die Feder bald ihm überreicht würde. Und dann müsste er reden und Fragen beantworten. Ein Gerichtsverfahren würde ihm erlauben, mit seiner Wut und Feindseligkeit davonzukommen, ohne dass er sich in das Verfahren einbringen müsste. Hier ging das nicht!

Die Feder kam zu ihm. Er hielt sie in der Hand und ließ sie spielerisch durch seine Hand gleiten. Er holte Atem und sagte: ,,Ich weiß nicht, was ich sagen soll. Ich bin hier, um mich zu ändern. Das ist alles."

Er gab die Feder an John weiter in der Hoffnung, dass John alle Fragen beantworten würde. John, ein in der Gemeinde hoch geschätzter älterer Herr, hatte in den letzten Wochen viel mit ihm geredet und ihn auf den Zirkel vorbereitet. John nahm an dem Zirkel teil, um Jaime zu unterstützen. Und Jamie glaubte auch daran, dass John ihn nun unterstützen würde.

John hielt die Feder in der Hand. Aber er sprach nicht. Jamie fürchtete, John würde ihm die Feder zurückgeben. John griff allerdings in seine Tasche und holte eine andere Feder heraus. Diese Feder konnte nur mit Mühe und Not noch als eine Adlerfeder identifiziert werden. Sie war zerknittert, zerrupft und machte einen sehr ungepflegten Eindruck . Sie war mit Sicherheit kein "heiliges" Objekt. John hielt die Feder in die Luft, damit sie jeder sehen konnte.

„Dies ist eine sehr hässliche Feder. Ich kann mich nicht erinnern, wann ich eine so hässliche Feder zum letzten Mal gesehen habe. Diese Feder erinnert mich an mich, als ich noch wild und verrückt unterwegs war. So wie es schien, fehlten auch mir viele Teile. Ich war innerlich zerrissen, von Alkohol und Wut zerfressen. Empathie war für mich ein Fremdwort. Mitleid mit mir selbst hatte ich jedoch auch nicht. Ich war eine hässliche Feder.

Damit jeder sieht, wie hässlich diese Feder wirklich ist reiche ich sie herum, während ich spreche. Haltet die Feder für eine Weile. Seht sie euch an; fasst sie an und seht wie hässlich und vernachlässigt sie ist.“

Während die Feder im Zirkel die Runde machte, sprach John über seine Jugend und sein missliches Leben:„Meine Wege führten nirgendwo anders hin als wieder in die Irre. Ich brauchte Hilfe, wusste es aber nicht. Ich brauchte jemanden, für den ich sorgen konnte, aber ich wusste auch das

nicht. Dann trat eine alte Dame, namens Agnes, in mein Leben. Wenn ich sie traf, lächelte sie mir zu und grüßte mich. Ab und zu fragte sie, wie es mir ginge und was ich mache. Manchmal lud sie mich sogar auf einen Tee zu sich nachhause ein und wir unterhielten uns eine Weile. Eigentlich redete ich die meiste Zeit und sie hörte zu. Einmal arrangierte sie auch ein Treffen mit ihren Freunden. Diese alten Damen und Herren bezogen mich mit ein, obwohl ich so viel jünger war als sie. Einer von Agnes Freunden nahm mich sogar mit auf die Jagd.

Der Alkohol war zwar noch immer ein Bestandteil meines Lebens; jedoch trank ich lang nicht mehr so viel wie früher. Agnes und ihre Freunde hielten mich auch weiterhin ständig auf Trab, sodass sich für mich immer seltener die Gelegenheit zum Trinken ergab.

Agnes Ehemann Pete starb in diesem Herbst, was ein schwerer Verlust für sie war. Sie wandte sich an mich und bat um Hilfe. Ich wusste nicht, wie ich mich verhalten sollte, aber versuchte mein Bestes. Ich verbrachte viel Zeit mit ihr, kaufte für sie ein und hielt ihre Wohnung in Schuss. Sie verließ sich auf mich und das war es wiederum, was in mir den Ehrgeiz weckte für sie da zu sein.

Bald schon konnte mich Agnes´ Nichte, Sue, dazu motivieren an dem von ihr unterrichteten Kurs teilzunehmen und meinen Schulabschluss nachzuholen. Sie ließ mich sogar wieder teilnehmen, nachdem ich erneut eine Gefängnisstrafe verbüßt hatte, diesmal wegen Trunkenheit im Straßenverkehr. Es war jedoch das erste Mal, dass ich mich wirklich schämte im Gefängnis zu sitzen. Ich sorgte mich um Agnes. Wer würde ihr Essen bringen? Wer würde sie besuchen? Sie hatte zwar ihre Freunde, doch die konnten sich nicht rund um die Uhr um sie kümmern. Ich machte mir ernsthaft Sorgen. Agnes dachte aber auch an mich und sorgte dafür, dass mich viele ihrer Bekannten im Gefängnis besuchten. Sie organisierte sogar ein großes Festessen als ich entlassen wurde. Das Trinkgelage meiner Mitgefangenen, die am selben Tag entlassen wurden, verpasste ich dafür gerne.

Agnes sorgte und kümmerte sich um mich und sorgte dafür, dass auch ich mich sorgte. Agnes füllte mein Leben mit Menschen, die sich kümmerten. Es war ein langwieriger Prozess, aber er fand statt und veränderte mein Leben."

Als John seine Jugendgeschichte beendete, hatte die alte, hässliche Feder im Zirkel die Runde gemacht. Jaime hielt die Feder und strich kurz mit seiner Hand darüber. Dann gab sie an John weiter. Während John die alte Feder hielt, sagte er: ,,Nun seht euch an, wie schön diese alte, hässliche Feder nun geworden ist. Die Feder war bereits einmal anders; vielleicht nicht hübsch, aber sicherlich auch nicht hässlich. Ein jeder hatte sie ganz unbewusst, während er John´s Geschichte lauschte, gestreichelt.
Die Feder noch in der Hand haltend, sagte John: „Diese Feder ist wie ich. Ich war einmal hässlich, verrückt und halb wahnsinnig vor Aggression. Es existieren große Lücken in meinem Leben. Viele Dinge, die einem Menschen ein gutes Leben bescheren, fehlten einfach. Doch dann traten Agnes und ihre Freunde in mein Leben. Sie gaben mir Halt, sorgten für mich und veränderten damit mein Leben. Das ist es, was wir alle mit Jamie machen müssen. Wenn ein jeder von uns ihn mit einer sorgenden Hand berührt, können wir dafür sorgen, dass er wie diese Feder wird.
Jamie lebt zwischen uns und mit uns. Damit er sich verändern kann, müssen wir ihm auch den Raum für diese Veränderung schaffen. Veränderung liegt nicht nur in der Verantwortung des Einzelnen, sondern auch in der Verantwortung jener, die ihn umgeben.“[3]

Diese Geschichte macht deutlich, welche Funktion der Anfangsphase des Zirkels zukommt: Es soll zwischen den Teilnehmern Vertrauen geschaffen werden. Jeder soll das Gefühl vermittelt bekommen, dass dies ein sicherer Ort ist, an dem er seine Gedanken und Gefühle teilen kann. Diese Sicherheit entsteht jedoch nicht automatisch. Sicherheit muss geschaffen werden.
Dies gelingt in einem Zirkel zum einen durch Anwendung spezieller technischer und funktionaler Mittel und zum anderen durch seine besondere inhaltliche Vorgehensweise und Philosophie. Die funktionalen Mittel bilden dabei das Grundgerüst und somit den „Äußeren Rahmen“ des Zirkels, der dann durch die Philosophie des Zirkels ausgekleidet wird („Innerer Rahmen“). Nur durch das Zusammenwirken von äußerem und innerem Rahmen wird ein Zirkel zu einem ergiebigen Konfliktbearbeitungsprozess.

Bestandteile des äußeren Rahmens sind dabei:

- Der Redestab
- Der „Hüter des Zirkels“ (der Moderator)

3 Pranis, Stuart, Wedge: Peacemaking Circles, From Crime to Community, S. 3-6

- Die Richtlinien
- Die Zeremonie

Der innere Rahmen ist geprägt von:

- Den Werten
- Den Grundsätzen
- Der gemeinsamen Philosophie

Der äußere Rahmen

Der „Redestab"

Ein Schlüsselelement aller Zirkel ist der „Redestab":

„Nina[4] saß nun in diesem Zirkel, mit all diesen Menschen. Einige kannte sie nicht einmal, andere mochte sie nicht. Sie war hier um ihre Freundin, Christina, zu unterstützen, die durch einige der hier Anwesenden so viel Leid erfahren musste. Doch Nina war von Natur aus ein stiller Mensch und löste Konflikte am liebsten, indem sie sie totschwieg. Sie wusste beim besten Willen nicht, wie gerade sie ihre Freundin unterstützen sollte. Nina hatte Angst vor hitzigen, aggressiven Diskussion. Dabei würde sie sowieso nicht zu Wort kommen. Was der Zirkel-Moderator, Herr Kehl, ihr im Vorgespräch über den Zirkel erzählte, konnte sie nicht wirklich ernst nehmen. Er hatte ihr erklärt, dass jede Stimme im Zirkel das gleiche Gewicht haben würde und dass durch den Redestab jeder die Gelegenheit bekommen würde zu sprechen ohne unterbrochen zu werden. Ihrer Erfahrung nach streiten sich die Menschen immer laut und beleidigend und lassen den anderen grundsätzlich nicht ausreden. Was soll da dieser Redestab helfen? Die Vorstellungsrunde verlief äußerst friedlich. Doch Nina bezweifelte, dass dies so bleiben würde, wenn es um das Geschehene ging.

Nun war es soweit. Herr Kehl wollte, dass jeder davon erzählte, was er über die Tat wusste und welche Auswirkungen diese auf ihn hatte. Er reichte einen kleinen, weich geformten Stein, den „Redestein", der Person, die links von ihm saß. Als der Stein den Jungen, Alex, erreichte, der Christina so schlimm zugerichtet hatte, stieg in Nina eine enorme Wut auf. Entgegen ihrer Natur spürte sie das Bedürfnis dieses Monster, das ihr da so frech gegenüber saß, zu schütteln und anzuschreien. Er sollte ihr gefälligst Rede

4 Alle Namen sind geändert

und Antwort stehen, was er sich dabei gedacht hatte, ihre Freundin so schlimm zu verprügeln. Doch sie wusste, sie musste die Regeln akzeptieren und warten bis der Stein in ihren Händen lag, da sie sonst nicht weiter teilnehmen dürfte. Ihr blieb also nichts anderes übrig als weiter zuzuhören.

Sie hörte wie Alex schilderte, was passiert war und was ihn so dermaßen hatte ausrasten lassen. Dafür konnte Nina kein Verständnis aufbringen. Doch gleichzeitig hörte sie, wo Alex an jenem Tag herkam, wo er hinging und was er an anderen Tagen seines Lebens tat. Ein guter Freund von Alex berichtete weiter über dessen Lebensgeschichte. Nina erfuhr, dass Alex ohne Eltern in einem Heim aufgewachsen war und sich seit einem Jahr eher schlecht als recht auf der Straße durchschlug. Das Bild, das Nina von diesem Jungen hatte, verschob sich mehr und mehr.

Nina war verwirrt. Ihre Wut, die sie anfangs empfand, war zwar nicht verschwunden, doch sie war plötzlich gepaart mit einer Art Mitgefühl für das Leben dieses Jungen. Als der Stein zu ihr kam wusste sie nicht, was sie sagen sollte. Sie spürte, wie nun die Aufmerksamkeit nur ihr galt. Es war tatsächlich kein hitziges, aggressives Streitgespräch. Nina verstand nun besser, was Herr Kehl ihr im Vorgespräch über den Redestab erklärt hatte; auch ihre Stimme hatte hier eine Bedeutung. Sie dachte: „Es war doch gut, dass ich warten musste bis der Stein in meine Hände gelangt. Es war gut zuzuhören". Daher reichte sie den Stein vorerst wortlos weiter. Sie wollte erst weiter zuhören und das Bild in ihrem Kopf komplettieren. [5]

Der Redestab soll eine Atmosphäre des intensiven Zuhörens schaffen. Jedem Teilnehmer soll die volle Aufmerksamkeit der Anwesenden zukommen. Wortwörtlich aus dem Englischen übersetzt, müsste der Redestab eigentlich Redegegenstand heißen („Talking-Piece"). Der „Redestab" muss daher nicht zwingend ein Stab sein. Es kann jeder Gegenstand sein, den der Zirkel für sich selbst auswählt und der für ihn eine besondere Bedeutung hat.
Für den Einen stellt es eine Herausforderung dar, lange zuzuhören und die eigenen Worte kurz zu fassen. Für Andere wiederum ist es schwer, überhaupt das Wort zu ergreifen und Gefühle auszudrücken. Der Redestab trägt dazu bei,

5 Pranis, Stuart, Wedge: Peacemaking Circles, From Crime to Community, S. 3-6

diese Schwierigkeiten zu überwinden. Der Redner wird erinnert, dass noch andere darauf warten, sprechen zu dürfen. Einem verschwiegenen, scheuen Menschen wird vermittelt, dass auch seine Worte den Zirkel bereichern.
Der Zirkel-Moderator übergibt den Redestab üblicherweise der Person, die links neben ihm sitzt. Ausschließlich die Person, die den Gegenstand in den Händen hält, hat zu diesem Zeitpunkt das Rederecht. So wird der Redestab von Teilnehmer zu Teilnehmer gereicht, bis er wieder beim Zirkel-Moderator ankommt.

Für die Startrunde des Zirkels gilt es jedoch zu beachten, dass die erste Person, die reden darf, den Ton für den folgenden Gesprächsablauf prägt. Andere Teilnehmer fühlen sich bestärkt vor der Gruppe zu reden, wenn bereits einer den ersten Schritt getan hat. Haben diese ersten Worte auch noch eine angenehme Atmosphäre geschaffen, wird dem ein- oder anderen Teilnehmer die Angst vor der Auseinandersetzung mit dem Konflikt genommen. Der Moderator sollte sich bereits in der Vorbereitungsphase überlegen, welche Person er für geeignet hält, mit dem ersten Beitrag dem Zirkel zu einem positiven Start zu verhelfen. Nach Absprache mit dieser Person und deren Einverständnis setzt sich der Moderator im Zirkel rechts neben sie.

Die Gefahr, dass eine Person während ihres Beitrags die Zeit vergisst, ist zwar durch den Redestab eingedämmt, jedoch nicht gebannt. Der Zirkel-Moderator kann dieser Situation vorbeugen, indem er sie gleich zu Beginn des Zirkels mit den Teilnehmern bespricht. Es kann ein Zeichen vereinbart werden (z.B. der Moderator legt ein Blatt Papier auf den Boden), welches den Redenden an die Zeit erinnert, ohne ihn jedoch verbal zu unterbrechen.

Eine solche Kommunikationsstruktur fordert von den Teilnehmern Respekt vor den Beiträgen aller Anwesenden, Geduld und Reflektion. Dies ist jedoch nur möglich, wenn die Teilnehmer die Art der Kommunikation selbst, also den Redestab, respektieren. Deshalb wird ihnen vom Moderator in den Vorgesprächen die Funktion und die Anwendung des Redestabs erklärt. Nur wer sich damit einverstanden erklärt, den Redestab zu respektieren, kann am Zirkel teilnehmen.
Natürlich besteht auch in einem Zirkel die Möglichkeit, dass es zu Regelbrüchen kommt. Unterbricht ein Teilnehmer wiederholt andere Personen oder beleidigt diese sogar, muss der Zirkel unterbrochen werden. Der Moderator sollte

das Zwiegespräch mit dieser Person suchen, um sie an ihr Einverständnis bezüglich der Kommunikationsform zu erinnern. Hilft auch das nicht, muss ein Ausschluss dieser Person erwogen werden.

Der Zirkel-Moderator (Hüter des Zirkels)

Ein Zirkel wird von ein oder zwei Personen initiiert, deren Hauptaufgabe es ist, den Zirkel vorzubereiten.

In einem ersten Schritt ermitteln die Moderatoren (es hat sich die gute Praxis entwickelt, Friedenszirkel mit zwei Modearatoren durchzuführen), welche Personen unbedingt anwesend sein sollten. Die Konfliktparteien werden gefragt, wen sie zu ihrer Unterstützung in den Zirkel einladen wollen, aber auch welche neutralen Personen sie sich im Zirkel vorstellen könnten.
Die Teilnahme neutraler Personen ist für einen Zirkel von essentieller Bedeutung. Gerade durch ihre neutrale Position haben sie das Potential, eine aufgeladene Atmosphäre zu neutralisieren. Ob jedoch im Einzelnen die Teilnahme von Staatsanwälten, Richtern, Jugendgerichtshilfern, Polizeibeamten oder Gemeindemitgliedern für den Zirkel förderlich ist, muss von Fall zu Fall entschieden werden und hängt letztendlich auch von den rechtlichen Vorgaben des jeweiligen Staates ab.
In einem zweiten Schritt erklärt der Moderator den potentiellen Teilnehmern, wie ein Zirkel funktioniert, was es mit den Leitlinien auf sich hat und welche Funktion dem Moderator zukommt.
Der Zirkelmoderator klärt schon in dieser Vorbereitungsphase ab, was die Teilnehmer beunruhigt. Er fragt sie nach ihren Bedürfnissen und wie für sie der Zirkel zu einem sicheren Ort werden könnte.
Während des Zirkels selbst soll der Moderator lediglich regulieren und unterstützen, jedoch nicht kontrollieren. Im Englischen heißt der Moderator „Circle-keeper", was so viel bedeutet wie „Erhalter oder Hüter des Zirkels". Der Moderator ist Diener für alles, was der Zirkel hervorbringt. Ihm soll es nicht darum gehen, besonders charismatisch zu sein oder anzuklagen. Er soll lediglich helfen einen offenen, respektvollen Raum zu schaffen, in dem die Zirkelteilnehmer selbst in ihrer Gesamtheit den Zirkel vollziehen. Jeder Teilnehmer trägt damit selbst, jedoch nicht allein, die Verantwortung für das Resultat des Zirkels. In diesem Sinne ist jeder Teilnehmer ein sogenannter „Co-Keeper". In den produktivsten Zirkeln arbeiteten die Moderatoren nahezu unsichtbar.

Diskussionen können jedoch sehr intensiv und anstrengend werden. Auch kann die Runde, die der Redestab durchläuft, sehr viel Zeit in Anspruch nehmen. Die Moderatoren müssen daher einen Sinn dafür entwickeln, wann es angebracht ist, Pausen anzusetzen, keine weitere Runde mit dem Redestab mehr in Gang zu bringen oder den Zirkel gar für einen Moment zu unterbrechen.
Zirkelteilnehmern wird es erleichtert, sich weiter zu öffnen, wenn der Moderator schwierige Konversationen richtungweisend unterstützt und dabei Genügsamkeit und Geduld ausstrahlt. Um dieser Aufgabe gerecht zu werden, muss ein Moderator selbst die Werte, Leitlinien und Übungen von Friedenszirkeln verinnerlicht haben und auch im konkreten Fall über einen hinreichenden Kenntnisstand bezüglich der Gemeinschaft und deren Umfeld verfügen.

Die eigenen, oft schmerzhaften, Erlebnisse zu schildern oder Emotionen zu zeigen, ist für jeden Menschen ein Kraftakt. Genau diese Beiträge geben dem Zirkel jedoch die Chance, zu einer Konfliktbewältigungsmethode zu werden, anstatt „nur" eine Konfliktbehandlung zu sein. Um die Teilnehmer weiter zu Beiträgen zu ermutigen, in welchen sie schildern, was sie in ihrem tiefsten Inneren bewegt, bedarf es der ständigen Wertschätzung dieser Einlassungen durch den Moderator.

Die Richtlinien

Wie bereits bei der Beschreibung des Redestabs erwähnt wurde, müssen sich die Teilnehmer vor einem Zirkel mit bestimmten Grundregeln einverstanden erklären. Diese Grundregeln sind so wichtig für den Zirkel, dass sie unverzichtbar und zu jedem Zeitpunkt einzuhalten sind. Im Zirkelprozess werden diese Grundregeln als Richtlinien bezeichnet.

Von jedem Teilnehmer wird erwartet, dass er/sie:

- den Redestab respektiert,
- er im Circle anwesend ist und bleibt,
- Vertraulichkeit anerkennt,
- mit Respekt spricht,
- mit Respekt zuhört,
- aus seinem Herzen heraus spricht, so gut er kann.

Die Richtlinien schaffen formell die Grundvoraussetzungen, damit der Zirkel inhaltlich die Grundwerte und Grundsätze für sich entwickeln kann. Jede Gemeinschaft kann zusätzlich weitere Regeln bestimmen. Jeder hat die Möglichkeit, seine persönlichen Werte in den Zirkel einzubringen und einen für ihn sicheren Raum zu schaffen. Sind alle Beteiligten mit der Geltung einer bestimmten Regel einverstanden, gilt diese für den Prozess als verbindlich.

Die Zeremonie

Dem Wort „Zeremonie" haftet in unserer westlichen Kultur ein seltsamer Beigeschmack an. Wir verbinden den Begriff mit Religionen, Sekten oder gar Okkultismus. Mit den Inhalten der meisten Zeremonien können wir uns nicht identifizieren oder bringen sie sogar mit negativen Erfahrungen in Zusammenhang, z.B. wenn eine Zeremonie nicht wegen ihrer Botschaft zelebriert wird, sondern weil es sich nach sozialen Erwartungen so gehört. Aufgrund dieser Vorbehalte sollte mit Zeremonien vorsichtig umgegangen werden.

Die Teilnahme an einer Zeremonie ist, wie die Teilnahme am Zirkel selbst, freiwillig. Üblich sind Eröffnungs- und Schlusszeremonien. Sie können den verschiedensten Kulturen entstammen und unterschiedlichste Formen annehmen: Gebete, Lieder, Geschichten oder einfach ein Moment der Stille. Die einzige Bedingung ist, dass jeder die Bedeutung dahinter versteht und sich damit wohl fühlt. Durch die Zeremonie soll ein Gefühl der Gemeinschaft und der Verbundenheit geschaffen werden. Sie soll ermutigen, Gedanken und Emotionen in den Zirkel einzubringen. Die Schlusszeremonie gibt Gelegenheit, Dankbarkeit für das bereits Erreichte auszudrücken.

„Steven[6], ein Zirkelteilnehmer erzählt von seiner Erfahrung mit Zeremonien im Zirkel: Als das Ende dieses langen, anstrengenden Tages, nämlich dem Tag meines ersten Zirkels nahte, schlug der Tlingit-Indianer Harold Gatensby vor, diesen Tag mit einer Zeremonie zu beenden. Ehrlich gesagt hatte ich nicht viel Lust an einer Zeremonie teilzunehmen, da ich kein bisschen religiös bin. Ich ließ mich aber dennoch darauf ein. Wir stellten uns in einem Kreis auf und legten die Handflächen jeweils unter bzw. über die Handfläche unseres rechten und linken Nachbarn. Einer sollte beginnen seinem Nachbar „ein

6 Name geändert

Wort in die Hand zu geben“. Dieses Wort sollte ausdrücken, was man dem Andern für den Rest des Tages oder auch für das weitere Leben wünscht. So reichte der eine seinem linken Nachbarn eine Portion Glück, dieser wiederum seinem Nachbarn Geborgenheit, bis jeder in der Runde sein Präsent erhalten hatte. Die kleine, zierliche Frau, zu meiner Rechten, sah mich wissend an und drückte mir eine Portion Ruhe in die Hand. Sie schien meine Anspannung während der vergangenen Stunden bemerkt zu haben. Die Ruhe, die sie mir in die Hand gab, nahm ich mit nach Hause. Ich spürte, wie sie langsam zu wirken begann und ich seit Wochen das erste Mal bewusst entspannen konnte. Da hatte ich verstanden, dass diese Art von Zeremonie nichts damit zu tun hatte, die Menschen zu einer Religion bekehren zu wollen.“[7]

Die Pausen

Die Pausen, die während eines Zirkels stattfinden, sind keine leeren Momente. Sie erfüllen einen wichtigen Zweck im Zirkelprozess. In einer Pause kann Gehörtes und Gesagtes nochmal überdacht werden. Die Begegnung der Menschen in einem informellen Rahmen bringt diese einander wieder näher. Beispielsweise können gemeinsam Mahlzeiten eingenommen werden oder man trifft sich im Nebenraum auf einen Kaffee. In dieser Zeit besteht die Chance, dass sich Emotionen wieder beruhigen.

Bei einem Zirkel, der in einem strafrechtlichen Kontext stattfindet, gilt allerdings abzuwägen, ob den Parteien überhaupt zugemutet werden kann, informell aufeinander zutreffen, bzw. für welche Personen eine solche Begegnung hilfreich sein könnte und für wen dies erneut zu Verwundungen führen kann. Insofern können die Pausen in getrennten Räumen stattfinden. Es ist jedoch wichtig, dass sie stattfinden.

Wann Pausen eingelegt werden und wie oft, entscheiden alle Teilnehmer gemeinsam gleich zu Beginn des Zirkels. Entscheidend ist dabei, auf welche Dauer der Zirkel angelegt ist. Existiert eine zeitliche Begrenzung von zwei bis drei Stunden, wird wohl höchstens eine Pause stattfinden können.

Entscheidungsfindung durch Konsens

7 Gehört von Isabel Thoß, Peacemaking-Circle-Training von Harold and Phil Gatensby, Oslo, September 2007

Hauptanliegen des Zirkels ist es, für den zukünftigen Umgang mit konfliktbehafteten Situationen und Beziehungen einen Aktionsplan zu entwerfen. Welchen Inhalt dieser Aktionsplan hat, entscheiden die Teilnehmer des Zirkels gemeinsam.

Bezüglich jedes einzelnen Punktes des Aktionsplans gilt es eine Entscheidung zu treffen, die den Interessen der Betroffenen bestmöglich gerecht wird. Bereits zu Beginn des Zirkels entscheiden die Teilnehmer gemeinsam über die zusätzlichen Richtlinien, die Pausen und die Umgangsformen, die innerhalb des Zirkels herrschen sollen.
Es stehen damit zahlreiche Entscheidungen aus, die eine große Gruppe gemeinsam zu treffen hat. Erfahrungsgemäß ist es nahezu unmöglich, so unterschiedliche Interessen in einer Entscheidung zu bündeln. Wie kann also eine Entscheidungsfindung innerhalb einer größeren Gruppe aussehen, damit alle Interessen bestmöglich gewahrt werden?
Der Zirkelprozess („Prozess" wird hierbei als dynamische Entwicklung, nicht als formalisiertes Verfahren verstanden) antwortet hierauf mit der sogenannten „Entscheidungsfindung durch Konsens". Der Begriff „Konsens" erscheint allerdings nicht ganz kongruent mit der Bedeutung, die ihm in einem Zirkel zukommen soll. „Konsens" stammt von dem lateinischen Begriff „consentire" ab, und bedeutet „übereinstimmen". Auf völlige Übereinstimmung kommt es in einem Zirkel jedoch gerade nicht an. Konsens in einen Zirkel meint weder, dass jeder die Entscheidung als optimal betrachten muss, noch, dass beide Seiten zu einem Kompromiss gezwungen werden. Wesentlich ist, dass die Situation in ihrer Gesamtheit erfasst wird und alle Interessen so gut wie möglich berücksichtigt werden. Letztendlich müssen alle Zirkel-Teilnehmer mit dem Ergebnis „leben können". Solange der Aktionsplan noch Punkte enthält, mit denen einzelne Personen im Zirkel nicht leben können, gelten diese auch noch nicht als beschlossen und müssen weiter diskutiert werden.
Je zahlreicher die Beteiligung am Zirkel ist, umso mehr Geduld und Offenheit wird den Betroffenen abverlangt. Doch die Diversität der Beiträge schlägt sich letztendlich in einem kreativen und vor allem individualisierten Ergebnis nieder. Gebiete, auf denen Uneinigkeit herrscht, müssen vorerst herausgefiltert und Interessen intensiv abgewogen werden. Erst wenn die Zirkelteilnehmer

herausgearbeitet haben, in welchen Punkten ihre Differenzen liegen, kann zur Entscheidungsfindung angesetzt werden. Dabei hat jeder Teilnehmer zu jeder Zeit und bei jedem Diskussionspunkt das Recht zu widersprechen.

Gerade für Konflikte mit strafrechtlich relevantem Hintergrund stellt eine derartige Entscheidungsfindung einen Kontrast zum gerichtlichen Strafverfahren dar. Im strafprozessualen Verfahren erfolgt die Feststellung über den Tathergang und die Schuld des Angeklagten durch die Beweisaufnahme (Strengbeweis oder Freibeweis). Die Angaben des Angeklagten bzw. vormals Beschuldigten, sowie die Aussagen des Geschädigten dienen der Beweiswürdigung durch den Richter, der letztendlich auch über die Konsequenzen (gegebenenfalls gemeinsam mit Schöffen, §§ 28 ff., 76ff GVG) entscheidet (§§ 133 ff., 243 Abs. 4, 254 StPO bzgl. des Angeklagten/ Beschuldigten; §§ 48 ff. und 250 ff. StPO bzgl. des Geschädigten als Zeugen). Ein aktives Mitwirkungsrecht an der Entscheidungsfindung besteht weder für den Beschuldigten, noch für den Geschädigten oder die Zeugen. Wie bereits in der Einleitung erwähnt, kann es jedoch unter Umständen nachhaltiger sein, dem Beschuldigten eine Mitverantwortung bezüglich seiner Zukunft einzuräumen. Die Grundvoraussetzungen dafür sind jedoch, dass das Geschehene eingestanden wird und eine innere Bereitschaft zum Wandel besteht.

Täter-Opfer-Ausgleich, Friedenszirkel und Gemeinschaftskonferenzen sind somit geeignet, die Reaktionsmöglichkeiten von Staatsanwaltschaft und Gericht situationsbedingt und individualisiert zu erweitern. Für die Staatsanwaltschaft besteht insofern bereits vor Anklage die Möglichkeit, einen Fall zum Täter-Opfer-Ausgleich, einer Gemeinschaftskonferenz oder einem Zirkel (letztere können normativ als erweiterter Täter-Opfer-Ausgleich gelten) zu übermitteln (§§ 155 a, 155 b StPO) und das Verfahren aus Opportunitätserwägungen einzustellen (Diversion im Rahmen von § 153 a I StPO bzw. § 45 JGG). Das Gericht kann diese Verfahren nach Erhebung der öffentlichen Klage, ggf. auch während der Hauptverhandlung, noch erwägen und danach bei den Beratungen zur Urteilsbildung und Strafzumessung (§§ 46 Abs. 2, 46 a StGB) berücksichtigen oder aber das Verfahren einstellen (§ 153 a II StPO, § 47 JGG).

Der innere Rahmen der Friedenszirkel

Die Anfangsphase des Zirkels

Wurden die Grundregeln über den Redestab, die Funktion der Moderatoren, die Richtlinien und die Zeremonien in Vorgesprächen verdeutlicht und von den Teilnehmern akzeptiert, kann der eigentliche Zirkel beginnen. Wie auch im Strafprozess vor Gericht[8], sollte jedoch auch in einem Zirkel in gewisser Weise vom Unmittelbarkeitsgrundsatz Gebrauch gemacht werden. Das bedeutet, dass jegliche Informationen aus den Vorgesprächen, die den Zirkelablauf betreffen, wenn auch zusammengefasst, direkt in den Zirkel einzubringen sind. Noch bevor der Moderator eine Vorstellungsrunde beginnt, erklärt er noch einmal in verkürzter Form die wichtigsten Regeln im Zirkel.

Keine Regeln im eigentlichen Sinne, aber dennoch für die Funktionalität des Zirkels unabkömmlich, sind die Werte, die das Miteinander für die Dauer des Zirkels bestimmen sollen. Mit der Frage, welche Umgangsweisen sich die Teilnehmer für die gemeinsame Zusammenarbeit wünschen, eröffnet der Moderator entweder eine offene Diskussion oder eine Runde mit dem Redestab. Hier fallen üblicherweise Begriffe wie Respekt, Offenheit, Freundlichkeit, Akzeptanz u.ä.

Auch diese Entdeckung der gemeinsamen Werte fällt, wie auch das Geschichtenerzählen, in die Phase der Vertrauensbildung am Anfang eines Zirkels. Die Werte sind aber nicht nur das Mittel zum Schaffen von Sicherheit und Vertrauen. Sie verkörpern vielmehrgleichzeitig eine Herausforderung, vor die der Zirkel seine Teilnehmer stellt. Aufgabe eines jeden Teilnehmers ist es, die Wertbindung des eigenen Verhaltens ständig zu überprüfen.

Die Werte

Unabhängig von der Herkunft, der Sprache oder der Lebensgeschichte eines jeden Menschen, tragen wir bestimmte Grundwerte in uns und treten in Beziehung zu anderen Menschen mit der Erwartung, dass uns diese Werte entgegengebracht werden. Das Fundament menschlicher Wertvorstellungen ist überall auf der Welt, unter allen Generationen und in allen sozialen Schichten gleich: es ist immer positiv. Genannt werden Respekt, Ehrlichkeit, Vertrauen, Bescheidenheit, Anteilnahme, Rücksicht, Mitgefühl, Mut, Vergebung und

8 §§ 250 ff. StPO

Liebe. Was jedoch auf dieses Fundament aufgebaut wird, fällt von Mensch zu Mensch unterschiedlich aus: Was ist Respekt? Was bedeutet Vertrauen? Wie wichtig ist Vertrauen? Dies gilt es zu diskutieren

Über eine solche Diskussion der Werte kann in den Zirkel eingestiegen werden. In einer Runde mit dem Redestab oder auch in einer offenen Diskussion nennt jeder Teilnehmer ein Grundbedürfnis, das er für die Zusammenarbeit im Zirkel als essentiell empfindet. Bevor eine Liste dieser Werte schriftlich festgehalten wird, sollte jedoch Konsens bezüglich der tatsächlichen Bedeutung dieser Werte bestehen. Erfahrungsgemäß weicht das Verständnis verschiedener Menschen bezüglich ein und desselben Worte enorm voneinander ab. Menschen werden ehrgeizig bezüglich des Inhalts eines ihnen besonders wichtigen Wertes. Da Meinungsverschiedenheiten bereits kleine Konflikte darstellen, bieten diese Übungspotential für das Finden von Konsens.

Kommen die Teilnehmer letztendlich in weiteren Runden mit dem Redestab oder offenen Diskussionen bezüglich der wichtigsten Umgangsformen und ihrer Bedeutung überein, werden diese schriftlich fixiert und für jeden sichtbar an eine Wand gehängt. So wird Sorge dafür getragen, dass sich die Teilnehmer der Vereinbarung ständig bewusst sind, bzw. dass durch einen kurzen Hinweis auf die Liste daran erinnert werden kann.

Je nach der zur Verfügung stehenden Zeit können die Werte jedoch auch in den Vorbesprechungen mit den Zirkelteilnehmern diskutiert werden. Im Zirkel selbst bestehen dann unterschiedliche Möglichkeiten die Werte einzuführen:

1. Besteht ein sehr kurzes Zeitlimit, kann der Moderator die Werte, die ihm in den Vorgesprächen genannt wurden, auf einer Liste zusammenfassen und die Teilnehmer fragen, ob sie mit diesen Umgangsformen einverstanden sind.

2. Nach einer Vorstellungsrunde kann eine weitere Runde folgen, in der jeder Teilnehmer ein Grundbedürfnis nennt. Die genannten Werte werden auf einer Liste zusammengefasst und der Moderator fragt diesbezüglich das Einverständnis der Teilnehmer ab.

3. Wie anfangs beim „Geschichtenerzählen“ beschrieben, kann der Moderator die Werte auch durch eine Geschichte verkörpert abfragen.

Im folgenden Prozess kann sich nun jeder auf diese Werte berufen, sie einfordern, muss sie jedoch auch dem eigenen Verhalten zugrundelegen. Als Idealziel tragen die Zirkelteilnehmer die Werte aus dem Zirkel hinaus und integrieren diese in ihren Alltag. Ist das Bewusstsein über die eigenen Werte irgendwann stark genug, können Konflikte zur Chance werden Beziehungen positiv zu verändern.

Das Bewusstsein bzgl. unserer Werte zu stärken und dafür einen geeigneten Ort zu schaffen, ist die Aufgabe der sogenannten Grundsätze des Zirkels. Auch die Grundsätze sind Philosophie und Werkzeug zugleich. Auch sie dienen dem Sicherheitsgefühl der Teilnehmer und schaffen Vertrauen.

Die Grundsätze

Gleichheit

Die griechische Mythologie legt die Herrschaft über die Menschheit in die Hände von Zeus. Zeus wiederum erteilt den ihm untergebenen Halbgöttern Weisungen. Die Menschen wiederum sind nur Marionetten in der Hand der Götter.

Sind derartige Strukturen ein Mythos aus längst vergangener Zeit? Findet nicht jeder Mensch, der in einem westlichen Gesellschaftssystem lebt, auch heute diese Strukturen in seinem Leben? Wir gehen morgens ins Büro, wo der Abteilungsleiter bereits einen neuen Auftrag auf unseren Schreibtisch gelegt hat. Wollen wir uns bei ihm beschweren, zuckt dieser nur mit den Achseln und weist uns ab mit der knappen Aussage: „Anweisung vom Chef…". Sitzen wir im Gerichtssaal wird schon durch die erhöhte Sitzanordnung deutlich, wer Zeus ist und wer die Halbgötter sind.[9]

Diese Pyramide der Macht stellte einst einen großen Fortschritt in der Organisation einer Gesellschaft dar. Die Aufgaben waren klar verteilt, die Befugnisse abgegrenzt. Solange eine solche Gesellschaftsstruktur demokratisch legitimiert ist und kontrolliert wird, sollte sie auch vor Machtmissbrauch und Selbstjustiz schützen. Dennoch ordnen wir uns ständig unter.

9 Phil Gatensby, Peace-Making-Circle-Training, Oslo, 2007

Dieses Unterordnen ist jedoch kein Vorgang, um den wir bemitleidet werden müssten. Wie oft dient uns die Flucht hinter die Grenzen unseres eigenen viel zu kleinen Kompetenz- oder Befugnisbereichs dazu, die Verantwortung andern zu überlassen.

Ein Zirkel ist jedoch radikal demokratisch. Bricht ein Teil aus dem Kreis heraus, bricht der gesamte Kreis. Jede Person ist gleich in ihrer Position, ihren Rechten und vor allem auch in ihrer Verantwortung. Jede Stimme ist von gleicher Bedeutung für die Entscheidungsfindung. Alter, Rasse, Geschlecht, persönliche Geschichte oder beruflicher Status spielen für die Wertigkeit des Menschen und für dessen Beiträge im Zirkelprozess keine Rolle. Einzig und allein eines jeden Teilnehmers Erkenntnisse, Gefühle oder Erfahrungen bringen den Zirkel voran.

Freiwilligkeit der Teilnahme

Die Pyramide der Macht wird durch einen Kreis der Gleichheit ersetzt. Dienstgrad, Status und Titel werden abgelegt. Da es in einem Zirkel keinen Machtüberschuss einer Person gegenüber anderen gibt, kann auch keiner gezwungen werden teilzunehmen, zu sprechen oder etwas anderes zu tun. Ist aber einmal die Entscheidung getroffen, an einem Zirkel teilzunehmen, erfolgt jede Handlung innerhalb des Zirkels direkt und ausschließlich für sich selbst. Keiner wird, wie vor Gericht, durch einen Anwalt oder eine andere Person vertreten. Für das, was eine Person im Zirkel hervorbringt, soll diese sich auch verantwortlich fühlen.

In einem Zirkel, der eine Straftat zum Gegenstand hat, ist die Wahlfreiheit des Beschuldigten bezüglich seiner Teilnahme selbstverständlich eingeschränkt. Er kann den Zirkel als Alternative zum gängigen Gerichtverfahren wählen, wenn dieser Weg ihm seitens der Staatsanwaltschaft oder des Gerichts vorgeschlagen wird. Die Konsequenzen seiner Wahl sollten dem Beschuldigten vor Augen geführt werden: Im Gerichtssaal dient seine Antwort Beweiszwecken; der Zirkel macht sich zur Aufgabe, die Hintergründe der Tat zu verstehen, Missstände aufzuarbeiten und Perspektiven zu schaffen. Da auch die Stimme des Beschuldigten von gleichem Gewicht ist wie die eines jeden anderen Teilnehmers, kommt ihm eine gewisse Einflussmöglichkeit auf den Ausgang des Zirkels und somit auf seine Zukunft zu. Damit entscheiden sich die meisten Beschuldigten für den Zirkelprozess, wenn sie, wie das

in einigen Ländern bereits üblich ist, vor die Wahl gestellt werden. Ihnen steht jedoch auch jederzeit offen, den Zirkel wieder zu verlassen und die Verantwortung für ihre Zukunft wieder in die Hände des Gerichts zu legen.

Ermöglichung der Teilnahme

Wie vielen und welchen Personen der Moderator eine Teilnahme am Zirkel vorschlägt, ist abhängig von der konkreten Situation. Bei komplexen Konflikten, denen eine schwere Straftat zugrunde liegt, kann ein Zirkel mit hoher Partizipation sinnvoll sein, da das Geschehene aus vielen Perspektiven beleuchtet und analysiert wird. Auch der Entwurf des Aktionsplans gestaltet sich kreativer und vielfältiger, je mehr Personen ihre Ideen einbringen. Andererseits wird es umso schwieriger oder dauert umso länger, Konsens bezüglich des Aktionsplans zu finden. Um den Zirkelprozess möglichst effektiv durchzuführen, kann es deshalb bei einfacheren Konfliktsituationen angeraten sein, weniger Teilnehmer einzuladen.

Die Entscheidung, welche Personen eingeladen werden, sollte der Moderator unter folgenden Gesichtspunkten abwägen: Wer unterstützt den oder die Geschädigte/n? Wer unterstützt den Beschuldigten? Wer könnte neutral die Sachlage wiedergeben (Staatsanwalt/Polizeibeamter)? Welche neutralen Personen könnten den Konfliktlösungsprozess, vielleicht aufgrund ihrer persönlichen Erfahrungen, ihres Berufs, ihrer Wohnlage etc., fördern (Gemeindemitglieder)?
Hierzu kann der Moderator auch die einzelnen Personen in Vorgesprächen befragen.
Unabhängig davon, welche und viel viele Personen letztendlich tatsächlich teilnehmen, sollte ihnen gegenüber deutlich gemacht werden, dass die Möglichkeit ihrer Teilnahme nicht von Faktoren wie Geld, Wissen, Beziehungen oder anderen Faktoren abhängig ist. Zeit und Ort werden so ausgewählt, dass jeder den Zirkel gut erreichen kann. Die Wertschätzung der Teilnahme der Menschen am Zirkel gebietet es auch, Umstände wie z.B. Baby-Sitting, den Transport Behinderter oder Aufwandsentschädigungen zu berücksichtigen.

Das Anvisieren der Ziele

Die Teilnehmer in einem Zirkel haben in jedem Fall zumindest ein gemeinsames Ziel: Sie wollen die konfliktbehaftete Gegenwart in eine verträglichere, wenn nicht sogar versöhnliche Zukunft verwandeln. Je tiefer die Konflikte verwurzelt sind, umso länger und steiler ist der Weg, den die Gemeinschaft in Richtung Versöhnlichkeit zu gehen hat. Diesen Weg zu meistern bedarf eines starken Willens und viel Energie. Eine gemeinsame Vision hat die Kraft, Menschen zu vereinigen und die Gemeinschaft zu stärken. Wobei der Bedeutungsgehalt der Vision eines Zirkels ebenso wenig mit spirituellen Glaubensformen verknüpft ist, wie seine Zeremonien. Vision meint hier das Verbildlichen der Zielsetzung vor dem inneren Auge. Der Zirkel soll sich die Ziele, die er erreichen will, bewusst herausarbeiten. Damit im folgenden Zirkelprozess dieses Bewusstsein nicht verloren geht, können diese Ziele schriftlich fixiert werden. Die Zirkelteilnehmer können sich auch dafür entscheiden, ein Motto zu entwerfen, das als Leitgedanke all ihre Ziele vereint.

Ein Ziel anzuvisieren hilft, um nicht vom Weg abzukommen. Damit auch ein Zirkel-Moderator das Ziel des Zirkels nicht aus den Augen verliert, sollte auch er sich ständig bewusst machen, in welcher Phase sich der Zirkelprozess befindet. In der Startphase geht es lediglich um das gegenseitige Kennenlernen. Sind die Rollen der Teilnehmer geklärt, kann der Fokus auf die Entwicklung einer vertraulichen Atmosphäre gerichtet werden. Diese Phase kann unter Umständen einige Zeit in Anspruch nehmen, je nachdem wie tiefgreifend ein Konflikt ist. Erst wenn die Betroffenen genügend Vertrauen aufgebaut haben, um sich weiter öffnen zu können, wird auf die konkrete Konfliktsituation eingegangen. Erst jetzt werden die Teilnehmer auf ihre Befürchtungen, Ängste und Wünsche angesprochen. Zum Entwurf eines Aktionsplans geht der Zirkel also erst über, wenn der Bestand der gegenwärtigen Situation hinreichend klar herausgearbeitet wurde.

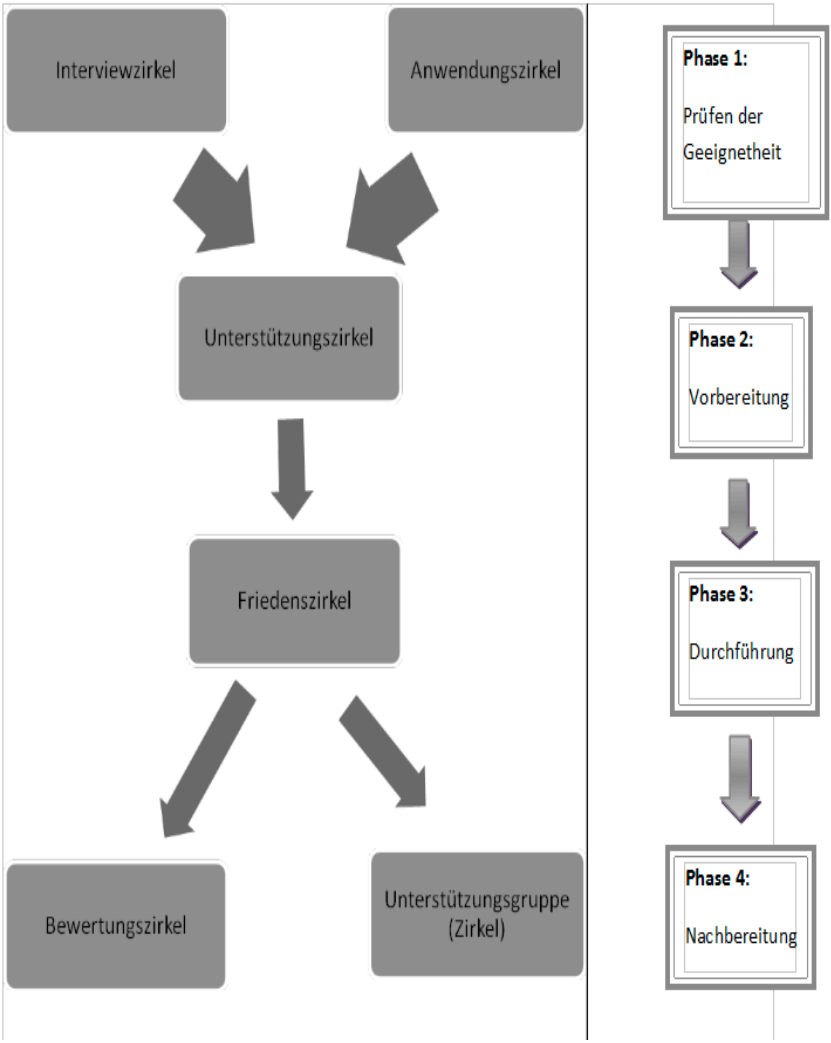
Vor-und Nachbereitung eines Zirkels

Die Art und Weise der Durchführung eines Zirkels ist mindestens genauso wichtig wie sein Inhalt. Bereits die Vorbereitung auf den Zirkel kann anhand von Zirkeln durchgeführt werden.

Die Zirkel-Moderatoren können die Teilnehmer in kleineren Gruppen in sogenannten Interviewzirkeln über den Zirkelverlauf informieren und bezüglich ihrer Bereitschaft und Akzeptanz der Regeln befragen. Auf nächster Stufe besteht für die Konfliktparteien die Möglichkeit, sich getrennt in Unterstützungszirkeln zu treffen und dabei ihre Hauptanliegen und Befürchtungen besprechen. Ob derartige Vorbereitungszirkel stattfinden, ist abhängig davon, welchen Umfang der einzelnen Fall einnimmt und wie viel Zeit für den gesamten Zirkel zur Verfügung steht.

Erst auf dritter Stufe würde dann der eigentliche Friedenszirkel stattfinden. Der Entwurf eines Aktionsplans bedeutet jedoch nicht, wie bei Gericht, das Ende des Prozesses, sondern erst den Anfang. Entscheidungen, Veränderungen und Wiedergutmachung beginnen zwar im Kopf, warten aber auf Umsetzung. Um den Betreffenden dabei zu helfen, kann sich eine Teilgruppe wieder regelmäßig im Zirkel treffen.

Einige Zeit nach Erprobung des Aktionsplans sollten sogenannte Bewertungszirkel stattfinden. Sie gewähren einen Rückblick auf das bereits Erreichte, kontrollieren und geben weitere Hilfestellung in der Umsetzung. (Zu den verschiedenen Zirkeln im Zirkel: siehe Schema: „Zirkel in jeder Phase des Zirkels“)



Anhang 1: Zirkel in jeder Phase des Zirkels

Für die praktische Anwendung soll das Schema über die fünf Phasen des Zirkels den Moderatoren eine Orientierungshilfe bieten:

Anhang 2 : Die 5 Phasen des Zirkels

Phase 1 Die Grundlage für den Dialog schaffen	•Begrüßung •Eröffnungszeremonie •Zweckerläuterung des Zirkels •Vorstellungsrunde/check-in •Einigung über Richtlinien (keeper oder Runde) •Geschichtenrunde •Danksagung an die Anwesenden
Phase 2 Herausarbeiten von Interessen und Bedürfnissen	•Sachlage, Erlebnise und Empfindungen bzgl des Geschehenen •Bedürfnisse, Interessen und Ziele für die Zukunft •Gemeinsame Ziele und divergierende Ziele herausarbeiten
Phase 3 Möglichkeiten erforschen	•Zusammenfassung der Ziele und Interessen •Entscheidung, welche Ziele in den Aktionsplan aufggenommen werden •Sammeln von(Lösungs-)Möglichkeiten für die einzelnen Interessenlagen
Phase 4 Entwerfen eines Aktionsplans - Entscheidungsfindung durch Konsens	•Gemeinsame Entscheidung bzgl. jedes einzelnen Punktes des Aktionsplans durch Konsens •Wie werden die Entscheidungen praktisch umgesetzt? •Wer übernimmt wofür Verantwortung?
Phase 5 Schluss	•Zusammenfassung der Entscheidungen im Aktionsplan •Abschied/check-out •Schlusszeremonie

Bibliografie:

Baldwin, C. (1998) Calling the Circle: The first and future culture.

Christie, N. (1977) `Conflicts as Property´, in: British Journal of Criminology Vol.17, No 1.,1-15.

Dickson-Gilmore, J. and La Prairie, C. (2007) Will the Circle be unbroken? Aboriginal Justice and the Challenges of Conflict and Change. Toronto Buffalo London, Canada.

Hoyle, C. and Cunneen, C. (2010) Debating Restorative Justice. Oxford, 2010.

McCaslin, W.D. (2005) Justice as Healing Indigenous Ways. St.Pauls, Minnesota.

Pranis, K; Stuart, B. and Wedge, M. (2003) Peacemaking Circles, From Crime to Community.
St.Pauls, Minnesota.

Pranis, K. (2005) The Little Book Of Circle Processes A New/Old Approach to Peacemaking.
Intercourse, Pennsylvania.

Sawatsky, J. (2009) The ethic of Traditional Communities and the Spirit of Healing Justice
(Studies from Hollow Water the Iona Community and Plum Village) London.

Umbreit, Mark and Armour, M.P. (2010) Restorative Justice Dialogue, An Essential Guide for Research and Practice. New York.

Zehr, H. (2002) The Little Book of Restorative Justice. Intercourse, Pennsylvania.

Open and Welcome

Crispin Blunt[1]

Good morning. Thank you for the opportunity to speak here today. I am very pleased to be contributing to this important event and to be preceding such a distinguished array of speakers from across Europe as well as from England and Wales. I'm certain this will spark an interesting and informative discussion about each other's practices to develop a greater understanding of how agencies involved in the criminal justice system can work together to deliver restorative justice.

My focus today is the Government's approach to restorative justice in England and Wales, some of the specific actions we are taking to build capacity and encourage its use, and how the agencies involved in the criminal justice system are working together to deliver restorative justice to produce benefits for victims, offenders and the wider community.

I will also touch on how restorative justice practices in some other countries are reflected in the approaches and practices in this country.

Let me say at the outset that I am an ardent supporter of the principles of restorative justice and believe it offers an important opportunity not only to assist the rehabilitation of offenders, but also to give victims a greater stake in the resolution of offences and in the criminal justice system as a whole.

We have a criminal justice system that is meant to protect the public, to punish, reform and rehabilitate offenders, to ensure that there is reparation by offenders to persons affected by their offences, and to reduce crime. However, the system is failing on preventing re-offending and on victim satisfaction. Therefore, the whole thrust of this Government's policy on

1 Speech held at the "Making Criminal Justice Systems More Restorative" conference on April 25th 2012

criminal justice is to reorient the system so that it focuses relentlessly on tackling re-offending. Victim-led restorative justice can play an important part in a reformed system.

Most of you will be aware that the evidence for the effectiveness of restorative justice is very promising. Analysis conducted by my department of a number of restorative justice pilots showed that 85% of victims who participated in the pilots were satisfied with the experience and there was an estimated 14% reduction in the frequency of re-offending. Whilst I'm not sure we can generalise from those data to make assumptions about the potential impact on the whole system, I do think they support wider use of the technique.

This Government is therefore committed to making use of restorative justice in more areas, and in more circumstances across the criminal justice system in England and Wales. We believe that restorative justice is best delivered when it can be tailored and flexible according to local circumstances and local budgets.

I recently had the opportunity to read a report by Dr. Theo Gavrielides of the Independent Academic Research Studies (IARS), whose work you may be familiar with. I agree with his view that any restorative strategy that is too prescriptive is likely to fail and that the biggest strength of restorative justice is the passion and commitment that exists among its practitioners.

Crucially, increasing the use of restorative justice should not be about imposing rigid legal duties; it is actually about supporting a culture change in the mind of practitioners to develop and deliver effective restorative justice practices that are rooted in local need and responsive to local crime and re-offending. It needs to be based on how practitioners, victims and communities want to respond to crime in their area. Instead of enforcing top-down approaches, I believe our role instead is to help enable local areas to have the capacity and capability to develop and deliver restorative justice practices which are effective and victim focused. Therefore, in order to

ensure that restorative justice is delivered in the way most appropriate for each area, we are working with partners such as the Association of Chief Police Officers, the Restorative Justice Council and other restorative justice practitioners to provide local areas with the tools to make greater use of restorative justice with confidence.

In many areas restorative justice is already becoming a more integral part of our response to tackle low-level, often first time, crime. Over 18,000 police officers have been trained in restorative practices and make use of this to resolve offences directly or to form part of conditional cautions to create formal out-of-court disposals which require offenders to repair the harm done to their victims. To enhance practices in these areas, we are in the process of developing and expanding on the use of restorative justice – both informally and formally – within the out-of-court framework.

We are also working with a number of local areas to develop a new part of the justice system, so-called Neighbourhood Justice Panels. These will bring together the offender, the victim and representatives of the community to respond to low-level crime by using restorative justice and other reparative processes. Panels are not a diversion route for offences which should be dealt with formally, but where the interests of justice, the perpetrator and the victim are best met through agreeing a restorative justice outcome. Panels are a way of facilitating this process, whilst engaging the wider community, including through recruiting and training Panel facilitators from community volunteers. We will be evaluating the work of these panels to assess whether they are effective in reducing re-offending, but also to gain a better understanding of what impact they have on victim satisfaction and public confidence in the system.

We also want to explore opportunities for – and the effectiveness of – restorative justice to be undertaken pre-sentence for offenders who admit guilt and are able and willing to participate alongside the victim. Where pre-sentence restorative justice takes place, this would inform the court's decision about what the right type of punishment should be. Consideration would need to be given alongside the priority of the court to deal with

offences efficiently with the aim of providing swifter justice to victims. It is vital, therefore, that pre-sentence processes gain the confidence of sentencers, and avoid the incurrence of unnecessary costs and delays which could be seen to outweigh the benefits. We therefore need to build an evidence base for such processes, and hope to work with one or more local areas to test out pre-sentence RJ. We ask questions around this as part of our community sentence consultation, which I will come on to shortly, and I would appreciate views of practitioners here today on such practices.

I mentioned earlier that this Government is committed to building capacity and capability for restorative justice so that more victims will have the opportunity to participate in the process and we are injecting provisions into the system for this purpose.

We are doing this by providing, through the Youth Justice Board, over £600,000 of funding to Youth Offending Teams to provide training to Youth Referral Panel members to deliver more restorative and reparative panels involving the young offender, their parents and the victim, where possible. We are also taking forward provisions in the Legal Aid Sentencing and Punishment of Offenders Bill to allow courts to make wider use of Youth Referral Orders which are focused upon restorative and reparative outcomes.

In the adult system, through the National Offender Management Service (NOMS), with part funding from the Monument Trust, we are providing over £1m in grant funding to Restorative Solutions, who have a strong track record in delivering training in restorative methods, to train about 1000 staff and volunteers in probation trusts and prisons to become restorative justice facilitators and, importantly, to also undertake "train the trainer" training, so prison and probation trust areas can continue to build practitioner capacity in their area.

I am particularly pleased that Thames Valley Partnership are also involved in this work. They are internationally renowned in the provision of restorative justice and we have awarded them funding to develop and establish

templates for the effective introduction, implementation and delivery of face-to-face conferencing across NOMS within existing sentencing and offender management frameworks.

In terms of building capacity in the community, the work NOMS are undertaking forms an important part of our wider plans to improve the effectiveness and credibility of community sentences, ensuring that they include a punitive element whilst still improving the ways in which we can tackle the causes of offending. On 27 March we published a consultation on community sentences that sets out these plans, which includes a chapter on reparation and restoration, looking at core issues to ensure that restorative justice is more regularly considered and used in the sentences of the court. It asks questions about what more we can do to strengthen and support the role of victims in restorative justice, the right approaches to building capacity and capability, and how we can embed a cultural change for restorative justice. And, as I have said, we want to hear the views of practitioners on these issues so I encourage you to participate in the consultation.

We cannot hope to achieve our aims without the crucial involvement of victims. As I mentioned, one of the key purposes for expanding the use of restorative justice is to give victims a greater stake and voice in the resolution of offences and in the criminal justice system as a whole. In order to do this, we are looking at victims' access to restorative justice as part of wider work to review the role of victims and witnesses throughout the criminal justice system.

On 30 January, we published our Victims' Strategy consultation which sets out a number of proposals to strengthen victims' voices in restorative justice processes. This includes reforming the Victims' Code which will allow us, for the first time, to give victims an entitlement to request restorative justice and to receive this where it is available; making better use of the "victim of crime letter" to inform victims of the availability of restorative justice and its

potential benefits, signposting them to local services; and making better use of the Victim Personal Statement to help assess and inform practitioners as to the victim's suitability and willingness for restorative justice.

We are running a number of consultation events at the moment to speak to practitioners in the field and look to refine and design proposals that will provide for practicable and effective delivery. If you have not already contributed your views, I encourage you to visit the Ministry of Justice website where you can have your say.

In all of the work we do, none of it will be effective if we do not ensure that there is sufficient capability within the system. I am also under no illusion that restorative justice is appropriate for all circumstances, and there will be many cases where either the victim or offender does not, and cannot, effectively engage and participate. Restorative justice has to be the right response to the right circumstances, and it is therefore vital that we have practitioners in the field who are fully trained and best placed to make these decisions.

To help ensure that restorative justice is delivered to a high standard, we funded the Restorative Justice Council's "Best Practice Guidance for Restorative Practice". This sets out the minimum requirements which must be met by practitioners and service providers to deliver restorative justice interventions effectively, and to the benefit of the victim as well as the offender.

Last year the Ministry of Justice and the Restorative Justice Council launched a National Register of Restorative Justice Practitioners and a professional qualifications accreditation. This allows criminal justice staff and the voluntary sector organisations supporting victims to recommend accredited individuals who can safely and effectively support the victims with whom they work to participate in restorative justice.

We will continue to work with the Restorative Justice Council and other organisations, such as Victim Support, to improve best practice and ensure greater availability of restorative justice.

I particularly advocate the use of restorative techniques because I have seen in practice how beneficial they can be. I recently had the opportunity to visit Southwark and see for myself how their Youth Offending Team used restorative justice to respond to the civil disturbances there last August. During the aftermath, Southwark Youth Offending Team contacted every business which had been identified as a victim of a convicted Southwark young person. Five of these businesses agreed to undertake restorative processes and talk about the impact that the offences had on them. This is a particularly important opportunity to give voice to those affected, but also to get those young people to realise the consequences of their actions and take responsibility for the damage to individuals and to the wider community.

I have also had the opportunity to look at the experiences of other jurisdictions in the practice of restorative techniques. I had the opportunity to visit Northern Ireland to witness the work of their Youth Conferencing Service. It was apparent to me that this process was by no means an easy option for the young person. In addition to informing the public about the benefits of restorative justice, I think this is also an important point to make.

The high levels of victim participation in youth conferences in Northern Ireland indicates to me that people are not inherently opposed to participation in restorative justice if they are adequately prepared, supported and have confidence in the system.

Whilst within current budget restraints we are unable to replicate the Northern Irish restorative justice model, we are learning lessons from their work to help build capacity and capability across the criminal justice system in England and Wales. We are also particularly interested in looking at international uses of restorative justice to develop lessons further, which is why this conference is such a valuable learning and information-sharing

event. I have been very interested in looking at practices in countries such as Australia, New Zealand and Canada, which have similar justice systems to ours, and how they have embedded restorative justice into their criminal justice systems.

I know in Australia and New Zealand, restorative justice has been introduced explicitly into legislation to enable conferencing between the victim and offender and ensuring that the agreed outcomes and next steps are legally binding. I believe that in Australia, this is used widely across the youth justice system.

In New Zealand, restorative justice was first developed to improve the way in which the criminal justice system responded to offending by Maori people who were over-represented in the offending population. And I am also particularly interested to look at the use of restorative justice for tackling particular types of crime or offending groups where it can be most effective. For example, there are some encouraging examples of cases where restorative techniques have been used to tackle gang-related or hate-related crimes. These can be particularly complicated and emotive cases and I believe that the use of restorative practices has potential to help tackle the issues involved.

Our vision, therefore, is for a system which understands and addresses the issues involved for victims, offenders and wider communities, and responds intelligently. A system which protects communities and gives them a stake in turning around the lives of people.

The ultimate test for our justice system is that it must improve outcomes for victims and offenders as well as communities. Everybody in this room will share this goal. This is why we will continue to work with all of the agencies involved in the criminal justice system and across the sector to help make this vision a reality.

Q & A

Q: What are you doing on restorative justice?

A: Our focus is upon taking action to support and enable the delivery of RJ in more areas, and in more circumstances across the criminal justice system in England and Wales. We are undertaking work in a number of areas:

introducing Neighbourhood Justice Panels to help tackle low-level crime through restorative and reparative practices;

providing new guidance on the use of restorative justice as part of conditional cautions;

investing over £1.5m to help build capacity and capability across the system.

Q: Has there been any evaluation of RJ?

A: A recent Ministry of Justice/Home Office evaluation of RJ pilots found that overall the pilots saw an estimated 14% reduction in the frequency of re-offending. The evaluation also found that 85% of victims who participated in the schemes were satisfied with the experience.

Q: Why are you not pursuing a statutory duty to offer RJ?

A: We are determined to move away from a top-down approach to the criminal justice system. Too much central direction has eroded professional discretion and disempowered the frontline. We want to particularly avoid doing this with RJ which we believe is most effective when based on how local areas want to respond to crime.

Increasing the use of restorative justice is not about imposing rigid legal duties – and necessary legal provisions are already in place to enable restorative justice to take place as part of the sentencing process. Instead, it's about supporting a culture change in the mind of practitioners to develop and deliver effective restorative justice practices, and building capacity across

the system – all of which must be rooted in local need and responsive to local crime and re-offending (all of which can be achieved within existing legislation).

Q: How is the Government's investment being used?

A: Restorative Solutions CIC (comprising a NOMS grant and joint funding from the Monument Trust, worth £500,000 each) has received funding of £1m to create and deliver:

training for approximately 1000 prison and probation staff to become restorative justice facilitators;

"train the trainer" training for a further 140 (approx.) members of staff;

a total of approximately 200 days of technical advice to support implementation of restorative methods in prisons and Probation Trusts; and

ongoing evaluation of the scheme by the Institute of Crime Policy Research at Birkbeck College.

A further grant of £130,000 has been awarded to Thames Valley Partnership to develop and establish templates for the effective introduction, implementation and delivery of face-to-face conferencing across NOMS within existing sentencing and offender management frameworks.

Through the Youth Justice Board we are also providing £600,000 of funding to Youth Offending Teams to train to Youth Referral Panel members to deliver more restorative and reparative panels involving the young offender, their parents and the victim, where possible.

Q: What will Neighbourhood Justice Panels involve?

A: Panels will bring together the offender, the victim and representatives of the community to respond to low-level crime by using restorative justice and other reparative processes. Panels are not a diversion route for offences which should be dealt with formally, but where the interests of justice, the perpetrator and the victim are best met through agreeing a restorative justice outcome, panels are a way of facilitating this process, whilst engaging the wider community, including through recruiting and training Panel facilitators

from community volunteers. We will be evaluating the work of these panels, to assess whether they are effective in reducing re-offending but also to gain a better understanding of what impact they have on victim satisfaction and public confidence in the system.

Q: What offences will Neighbourhood Justice Panels deal with?

A: Our intention is that Neighbourhood Justice Panels will deal with low-level offences (e.g. criminal damage) and anti-social behaviour which would not have gone to court, but which is of concern to local communities, and can be more satisfactorily resolved within the community setting.

Q: What does the consultation on community sentences include about restorative justice?

A: The consultation includes a chapter on reparation and restoration and considers core issues relating to the consideration of restorative justice throughout the criminal justice process, including its use pre- and post-sentence. It asks questions about what more we can do to strengthen and support the role of victims in restorative justice, the right approaches to building capacity and capability, and how we can embed a cultural change for restorative justice.

Q: Why do you not introduce the Northern Irish conferencing system in England and Wales?

A: There are many differences between the jurisdictions which mean that it is not appropriate to adopt identical measures. In Northern Ireland the youth conferencing system sits alongside the sentencing system, but it is a separate, ancillary disposal. It can be court-ordered or an out-of-court disposal. To set up an equivalent separate system would require considerable additional resources.

Our aim is to encourage greater use of restorative justice in England and Wales. We want local areas to retain the discretion on how best to deploy restorative processes most effectively and efficiently according to local

circumstances and budgets. In the youth system, a central part of this will be to increase the restorative nature of Referral Orders, which are already based on restorative principles and offer a pre-existing framework on which to build and encourage victim participation. The Ministry of Justice is working closely with the Youth Justice Board to take this agenda forward in the most effective way possible in the current funding environment. In doing this we will ensure that we learn as much as possible from the experience of Northern Ireland's youth conferencing service.

Q: What are you doing about victims?

A: More needs to be done to embed the role of victims in restorative justice and there is further opportunity to better engage them in these processes. We are reviewing this as part of wider work to review the role of victims and witnesses throughout the criminal justice system. But we must also ensure that sufficient safeguards are in place to protect them and ensure the right outcomes. Our Victims' Strategy consultation was published on 30 January and sets out a number of proposals to help strengthen victims' voices in RJ processes.

Q: What is the Government proposing in this consultation?

A: Our proposals will allow us, for the first time, to give victims an entitlement to request restorative justice and receive this where it is available and where resources allow. We will also amend the standard "victim of crime letter" to provide more information on restorative justice and its potential benefits, signposting victims to local services. We also propose, with the victim's consent, to ensure that effective use is made of the Victim Personal Statement to help assess and inform practitioners as to the suitability for restorative justice and record outcomes from the victim's perspective.

Restorative Justice – A Victim's Perspective

Sari Stacey – May 26th 2012

First of all, I should perhaps explain how I became a victim. It was Hallowe'en 2008 and I was away for the weekend celebrating one of my daughter's birthdays with some of my grandchildren. I came home late in the afternoon on the Sunday, and noticed a window open by the back door of my house. Inside, all the plants from the windowsill were lined up on the floor very neatly in the kitchen. I walked through the kitchen to the hallway, and saw my two phones on the floor at the bottom of the stairs. I started up the stairs and halfway up saw the debris and knew I had been burgled. Anyone who has been in the same position will know the feeling of sickness, and almost violation, to know that someone unknown has been in your private space, possibly taken precious things and turned your drawers and filing cabinets out, carelessly throwing things on the floor. This was the first time I had experienced how it felt to be a victim.

The neighbours and police were very kind and helpful, while the clearing up and dealing with the insurance were both nightmares. After about a month the police said they had no more lines of inquiry to follow, and that they were unlikely to find the perpetrator. I was left feeling extremely vulnerable. Who had invaded my space? Would they come back? What paperwork could they have kept? Did they know more about me than I would want them to know? I hated going out, because I had to come back – on my own. When I was out, even just for shopping, I wondered who was watching me, knowing me from pictures in the house, and yet I did not know them! At the same time that the police stopped their inquiries, my youngest granddaughter died. Sadly it was not unexpected, but I had not been able to be the support I could have been to my family, as I found not being in my home difficult.

One unhappy year later, I received a letter from the police to tell me that they had arrested someone for burglary and he had asked for 62 other burglaries to be taken into consideration. One of those was mine. I could not write a victim impact statement for the court hearing, but I could go to court to see who he was and hear his sentence. I wanted to confront him. I needed to speak to him and I had questions he needed to answer. I asked

for Restorative Justice, to which he agreed. It took another nine months to arrange this through the police and the probation service, and finally, in September 2010, we met while he was in prison.

Restorative Justice is not easy to set up. On reflection, I now understand that it is unusual for a "victim" to ask for RJ. It is offered to victims after the offender has been asked if they would consider meeting their victims to apologise, at the same time allowing the victim to share with the offender how they felt and what they went through at the time. Perhaps I expected everything to be arranged instantly, but it felt as if no one knew what to do. The trial came, and the Judge was told that the offender had agreed to RJ, and that the victim was in court. Before leaving the dock, the offender acknowledged me and mouthed, "I am sorry". The police, the judge, the prosecution, the defence solicitor and the probation service were all aware that RJ had been requested and agreed to, and yet it still took another four and a half months of waiting until I finally was heard by a very senior Police Officer, and preparations for a conference began.

Now that the probation service was involved, I was kept informed. Both the offender and I were interviewed separately at some length by the facilitator. I remember my own interview, at home, and now that I felt I was being heard, I felt safe and ready to speak to the burglar face to face. We talked through whether I would like a member of my family to accompany me, or perhaps a friend. My neighbour had been very upset and frightened as a result of my burglary, and she was offered the chance to talk to the facilitator and also come with me to the RJ conference, but she declined. In the end I decided that I was OK to go on my own, although I would not really be on my own, as I knew there would be people there who would not let me feel alone. My burglar also declined to ask someone, a family member perhaps, to be with him.

So, nine months after the police informed me that they knew now who had committed the burglary, and a year and ten months after the actual burglary, we met, face to face, in prison.

Some years ago I had worked in a prison as a volunteer, so the keys and heavy metal gates and doors were not new or frightening for me. Perhaps for someone who had never been "inside", a meeting like this may not have been possible. It was not the first time the burglar had been inside, but this

must have been terrifying for him – to be escorted into a room where six people were sitting in a circle, and to be seated opposite the person he had burgled, while wardens and police and probation officers all looked on. He was very much on his own, maybe even feeling trapped. He was asked to speak first, to express his regrets for what he had done, and to say sorry, which he did with his head down, looking at the floor.

And then I was asked to tell him how I felt about the burglary. I told him the story of my coming home, and my shock at finding the upstairs in such a mess. I told him of my surprise that downstairs nothing had been damaged, how my flower pots had been put neatly on the floor so the window could be opened for his escape – why had he taken such care with my plants? I wanted to know why he had chosen my house, how he had known which window to get in, what he had wanted, and why he had left in a hurry but had been so careful and tidy downstairs? It just seemed to pour out, and then I noticed his head had come up and he was looking at me and saying, over and over, "I am sorry" – and he meant it. But I did not stop there. I told him how difficult it had been after the burglary, about my feelings of anxiety about leaving the house, and coming back on my own, my not wanting to go to stay with my family in case it happened again, and my feelings of loss over personal pieces of jewellery which were not costly but emotionally precious. I was very aware that what I had said had been hard for him to hear, and that he had listened.

Now, after all this time, I recognised him as someone who had once been a rare attendee in a maths class I had taught at school. I asked him if he remembered anything about his time in school, and his reply confirmed to me that he had had little, if any, schooling. He had moved around a lot with a dysfunctional family and had been introduced to a life of "crime" from an early age. He honestly could not remember me and this helped me to get over having felt targeted. What it did do was open up a conversation about what he would really like to do (be) in the future. He wanted to be helped to change his lifestyle, to paint, maybe get some basic qualifications, kick the drugs, and try to become a useful member of society. At this point the "conference" finished. We sat together drinking tea and eating peanuts, and we both liked them! The facilitator compiled a contract for him to agree to and sign. It summarised what he wanted to do in the future, and included what I wanted him to do, which was to write to me and let me know how

he was progressing, to keep in touch through his probation officer, and to let me know if I could help with books and schemes of work to help him with his need to achieve basic qualifications. The grey and worried face actually smiled and looked less grey by the time we had finished our tea.

We left the meeting, having promised to keep in touch, with what I can only describe as feelings of relief and promise. I had faced my "demons" and had come to realise that the person who had burgled me and violated my private space had shown genuine remorse and gratitude for having had the opportunity to start on a new phase in his life, and that there were people who would help and support him in his efforts. It did not completely wipe away the past two years of anxiety, but it certainly allowed me to move on, feeling that perhaps some good could come from the restorative justice conference we had just concluded. I felt very positive and full of hope for the offender's future. I remember the probation officer who had been my escort for the day asking me to evaluate the future, as a percentage, for the offender successfully changing his lifestyle. At that moment I did begin to question my 100% for a successful transition from a lifetime of criminal activity to a more regular and positive lifestyle. Nevertheless, I did feel that by giving him the opportunity to participate in RJ and to think about his own future and how he might make changes, he had made a promise not only to himself, but to others, who would be there to encourage his own efforts to change. I thought a lot about the fact that he had chosen to come on his own, without a supporter. That took courage, as the people in the room at the conference were all figures of authority, apart from me, and I also was to be feared. I had not taken a "supporter", partly from choice. My family had been willing to come if I'd really needed them, but I felt very safe and supported by the facilitator and the probation officer who drove me to and from the conference. This was something I wanted to do, and in a way I did feel disappointed that some of my friends and family thought that I should not put myself through what they saw as an ordeal, when I had already been through the ordeal of the burglary. I did, however, feel relieved that I had taken this opportunity to say how I felt to the offender, and that it seemed that he too was relieved, and wanted to make very basic changes to his life.

So, nearly two years on from that Restorative Justice conference, can I still say that I am pleased we had that meeting? Yes! The offender worked towards all the points on his agreement. He wrote to me, telling me of his progress, and he worked hard to get his drug dose down and was almost clear when he was released. When released, he worked to get basic qualifications, and had plans to start his own work. About five months after his release, he was about to be found separate accommodation when he met up with old "mates", got drunk and found himself trying to break in to a house. Consequently he was recalled to prison and then resentenced. His latest letter has a different tone. He is completely off drugs, dealing with other health problems, and making plans for the future. He has asked for another RJ meeting with the victims of his break-in. Is he pleased that we had the RJ meeting? I have not asked him directly, but his response has been positive. He knows he should not have met up with old mates and gone along with them. He wants to put that right. I hope that the future will now be a straight road for him, and that will make Restorative Justice a very worthwhile process for me.

Making justice systems more restorative – a view from the Bench

Lawrence Kershen QC

What might a justice system which embodied restorative principles look like? What might be the judge's view – the view from the Bench – of a more restorative justice system? To answer such questions we need to give ourselves permission to dream. And what a wonderful dream it is – of a justice system where healing and changing behaviour, not retribution, is central. Where the victim comes away restored and empowered, where the offender learns from his mistakes and develops understanding.

Of course this isn't all going to happen overnight. Working out the practicalities of implementation are live issues that also have to be considered – indeed, the Restorative Justice Council (RJC) has been preoccupied with them for some time now[1], and Professor Joanna Shapland's careful work has addressed some of them[2]. What is key is that many of the foundations for this new environment are already in place.

The court experience

I sat as a crown court recorder, a part-time criminal judge, for a dozen or so years. Before I had heard of restorative justice, it struck me that an important factor judges tended to look for when they were sentencing in criminal cases was remorse. It was sometimes a theme over lunch in the judges' dining room. Remorse seemed to have a big effect on the sentence.

Although not as big an effect as how recent the judge's last meal was, as research suggests: "You are anywhere between two and six times as likely to be released if you're one of the first three prisoners considered versus the last three prisoners considered.[3]" It seems that the more time there is

1 www.restorativejustice.org.uk

2 Restorative justice in practice – Shapland, J., Robinson, G. and Sorsby, A. (2011) Routledge

3 Extraneous factors in judicial decisions, Shai Danziger, Jonathan Levav and Liora Avnaim-Pesso, Proceedings of the National Academy of Science (Feb 2011)

between the judge's last meal and his sentence, the more severe the penalty. I found this both disturbing and a little familiar. So there's a practical tip if you have to be there – try to get into court soon after breakfast or lunch.

This idea of remorse was clearly something that was significant for all of us as sentencers, myself included. I concluded that its importance lay in the fact that if someone is remorseful, there is a better chance they will be less likely to repeat the offence – in other words, that at some level their conscience has been touched. It may be that the notion of "conscience" and "offenders" may not often sit in the same sentence. Those of us who work at criminal courts often see people who are pretty case-hardened, who have little empathy – probably since before they became involved with the criminal justice system – for those that they violate through crime.

So one of the questions I started to puzzle over was how one could awaken that conscience. On the assumption that we all have the capacity to feel for another person, but that due to circumstances and upbringing it can become dulled, how could one awaken that sense of connectedness?

These thoughts crystallised with a particular case: a nasty robbery at knife-point of two ladies employed in a travel agents. Yet each of the four teenage defendants had his own appalling personal history. As I heard their mitigation, it seemed to me that they were themselves victims, and had been in a cycle of punishment/wrongdoing/punishment since their early years. If there was any chance of changing the cycle, the offenders definitely needed to understand the consequences of what they had done to the victims. And maybe, I thought, the victims would benefit from hearing the offenders' backgrounds and how they, too, had been victims. Certainly if I was going to pass a sentence that might change the pattern I needed the understanding and agreement of the victims.

Sadly it was not to be. But it led me to construct a rather simple model in my mind. Then I learned from the probation service that the process already existed, that there were people already doing it, and that it was called restorative justice. It became a really interesting and challenging notion for me, at the heart of which was this idea of building empathy and the connectedness between human beings, whether they be victims or offenders. I committed myself to support restorative justice as far as I could, and although I have now come to the end of my term as Chair at the RJC, I continue wholeheartedly to support restorative justice.

Victim-centred justice

To fast forward these ideas to today and dream of what a restorative legal system might look like, the best summary for me is that it would be a victim-centred justice system. Many will be familiar with Professor Howard Zehr's seminal work[4] where he offered a definition of a victim-centred system. En passant, I want to observe that the label "victim" can be really unhelpful, as can the label "offender". One of the benefits of restorative justice is to separate the idea of who someone is from the acts that he commits. So we are talking here about people's behaviours rather than their identity. Still, it's a useful shorthand, so victim and offender for these purposes.

The headline is "The Needs of Victims". These, says Zehr, are for information, validation, vindication, restitution, testimony, safety and support. These are the starting points of justice. Then he adds four sub-points:

- the safety of the victim is an immediate priority;
- the justice process provides a framework that promotes the work of recovery and healing that is ultimately the domain of the individual victim;
- victims are empowered by maximizing their input and participation in determining needs and outcomes; and
- offenders are involved in the repair of the harm so far as possible.

4 Changing Lenses: A New Focus for Crime and Justice – Prof Howard Zehr (1990) Herald Press

That is a pretty good description of what a victim-centred legal system might look like – certainly it's my vision and the vision the Restorative Justice Council is working towards – that every victim will have access to a quality restorative process, and implicitly every offender who is connected with such a victim will have similar access.

Key steps

So how might this ideal world come into being? One of the key steps must be legislation. Although the UK government has been less than enthusiastic about it so far, I believe that we are quite close to achieving what Joanna Shapland has called a statutory requirement or expectation for RJ to be part of every criminal process. While there might be some debate about whether it should be a requirement or an option, legislation is needed which would mandate a judge to adjourn a case so that a restorative justice process can take place. With our partners, the RJC has prepared a draft amendment and I hope – indeed, am quite optimistic – that within 12 months we will have legislation in place.

Another element of this ideal world we are speaking of is safety. Safety for victims is Howard Zehr's point of departure. There, clearly, the quality and standards of practice are absolutely essential. The RJC has been concerned in setting up a register of practitioners to provide safety, both for victims and for the agencies that might use restorative process in the criminal justice world. Such standards would ensure quality and would build confidence in a restorative process, both in the community and in criminal justice professionals, and of course for the users. Ensuring this safety is one of the foundation stones of this brave new restorative world that we are talking about.

In addition, the RJC has promoted Best Practice Guidance[5] and National Occupational Standards[6], all of them aiming at a situation where you can be as sure as you reasonably can that if you are to engage in a restorative process, it is going to be properly prepared for, properly managed and properly facilitated.

Implementation

So, how and where might be the restorative process be implemented in building this restorative legal system? There are, of course, different stages at which it might be used. What happens before someone even starts to offend is a critical period that is beyond my scope here. But it could be said that the whole developmental process would ideally start with restorative approaches and attitudes in schools, with looked-after children and even – dare I say it – in families and family relations. A good example of this wider picture is the pioneering work with RJ in youth settings being done by Belinda Hopkins[7].

Then there is policing. Increasingly we see police officers who, perhaps after initial scepticism, are taking up RJ because it offers them a highly effective tool in doing their jobs. They are using diversion schemes as an alternative to charging, e.g. the conditional caution, where someone may be arrested but not charged, and instead may participate in a "street RJ" process. Provided that the agreed actions are followed up, no prosecution follows. An important factor encouraging police use of RJ is that, since April 2012, the Home Office has agreed that such disposals will count as detections in each constabulary's "clear-up" statistics.

The key idea is that prosecution does not necessarily follow arrest if some restorative process is agreed to and is, of course, complied with. This seems to me to be a step change in terms of our attitudes to crime, and the

5 http://www.restorativejustice.org.uk/resource/best_practice_guidance_for_restorative_practice_2011

6 http://www.restorativejustice.org.uk/resource/2010_national_occupational_standards_for_restorative_practice_skills_for_justice

7 http://www.transformingconflict.org

State's notional ownership of its resolution. Similarly, the Neighborhood Justice Panels recently introduced into 15 areas by the Ministry of Justice as an 18-month restorative justice pilot scheme are opportunities to divert from the criminal justice system. Designed to give both the victim and the wider community a voice, and the offender an opportunity to make amends and repair the harm they have done, the Panels will look at how to resolve issues affecting the local area. Ensuring that communities have a say in their response to crime and the anti-social behaviour that affects them is an essential part of the picture that we aspire to, and I believe are moving towards.

Other offending behaviour will be brought into the criminal justice system. At this stage, prosecutors will also have the opportunity to divert. The idea of prosecutors initiating some diversionary restorative process is infrequent as yet, perhaps because awareness of RJ is not widespread. In Northern Ireland, however, something like one-third of cases are diverted by prosecutors to a non-judicial – and non-retributive – process. That is an approach that can and will become part of this restorative legal system that we are envisaging.

And then comes the stage when the case has gone into the criminal justice system proper, and the offender has pleaded guilty and is going to be sentenced. Prior to sentence there is the opportunity for a restorative process, where the judge may initiate or allow an adjournment in order that the process can take place. Typically, the resulting accord or agreed actions are reported back to him or her so that the restorative process can be incorporated into any community sentence passed, for example: action plan orders or reparation orders. Those actions might include drug treatment, or finding work, or even relocation (which seems to be a very significant factor in reducing reoffending). A hallmark of such a restorative legal system is surely that pre-sentence RJ is a matter of routine, both to the courts and the public.

Serious Crime

The evidence from the Government's research is that RJ is even more effective with serious crime than it is at lower levels[8]. The principles are the same in both – that stakeholders affected by an injustice need the opportunity to tell their story about its consequences and what needs to be done to put things right. So while it is little used in serious crime at present, one can imagine that in future an opportunity for RJ will always accompany and dovetail with the courts' own process. The victims of a substantial financial fraud might derive far more satisfaction from an opportunity to confront the fraudsman than a multi-million-pound trial in which they have no more than a walk-on part. It might even be that the perpetrator learns something from it too.

What might be possible in serious crime can also be built into regulatory offences. Professor John Braithwaite at the Australian National University has done a lot of work on responsive regulation.[9] His real-life examples demonstrate that a process in which restorative justice is part of a regulatory enforcement process is perfectly feasible. His model is one in which the regulatory pyramid starts with persuasion and ends with licence revocation. There is a hierarchy of interventions, of which restorative justice and dialogue is the presumptive starting place.

Even in cases of sexual offences, we know there are circles of support – innovative and successful community contributions in close partnership with criminal justice agencies – which have been shown to result in a 70% reduction in sexual recidivism. Such processes will usually take place after sentencing while the offender is still in prison, and also post-release.

8 http://www.restorativejustice.org.uk/resource/ministry_of_justice_evaluation_of_restorative_justice/

9 Restorative Justice and Responsive Regulation – Prof. John Braithwaite (2002) Oxford University Press

A final example of the use of RJ in serious crime is the proposed crime of Ecocide. There is a powerful movement to make ecocide the fifth crime against Peace of the International Criminal Court[10]. Broadly defined as the destruction, damage to or loss of ecosystem(s), and aimed at individuals rather than corporations, the use of a restorative process prior to sentence is built into the draft legislation. At a mock trial last year, two chief executives (played by actors) were found guilty of this crime. One, who accepted responsibility for his acts, agreed to take part in a restorative process.

The victims included representatives of indigenous peoples, future generations, wider humanity, bird life and a guardian ad litem on behalf of the Earth. As well as the CEO, the oil company representatives included the chair of the Pension Fund shareholders. The exchanges between them were fascinating. The oil company position was "we are providing what the world seeks, what all of us need". The leader of the Haisla First Nations – who are in reality affected by shale-oil extraction in the Athabasca tar sands in Canada – articulated very powerfully how the lives of his people and many others were being destroyed by the extraction processes. By the end of the restorative conference, all the competing needs were somehow integrated in an action plan with a number of agreed points. They were made part of the CEO's sentence, which was deferred for six months in order that those steps might be carried out.

Interestingly, there was a substantial difference between that sentence and that of the other executive who did not go through a restorative process, and was sentenced to four years imprisonment. I was so horrified that I approached him afterwards to advise him that he should appeal immediately because of the disparity of sentence. I hasten to say we were both out of role at that stage. Indeed, both the trial and sentence were imaginary – except that sadly the oil extraction and environmental damage are taking place, and maybe there will be a crime of ecocide before too long. What was clear was that even with large-scale crime of that kind it is possible to have a restorative process that is not only feasible but highly workable and productive.

10 http://eradicatingecocide.com

Prisons

The Penitentiary Act of 1779 provided for prisoners to be confined at night to meditate on penitence or remorse over their bad deeds. As a penitentiary, it was a place for reflection. This seems to have been the origin of a restorative prison, first and foremost as a humane alternative to the death penalty. But it also set out to provide people with an opportunity to reflect and to make amends in some way for what they had done.

Today imprisonment presents an opportunity for prisoners not only to reflect but to develop understanding with victims and survivors through RJ and other processes like the Sycamore Tree project. At present, it is happening sporadically. In future, the potential is for RJ to be used to address all disputes within the prison, with prisoners, staff and outsiders alike. The work of Tim Newell as a former prison governor has been very influential in bringing it into being.[11]

Civil disputes

Of course, justice systems include more than criminal justice. In the civil and commercial world of the law, some of these changes are already taking place. Mediation is starting to seep into civil and commercial justice systems, both in the UK and elsewhere. As one example among many, the judges of the Egyptian economic court, similar to our Commercial Court, have been training in mediation skills. And not only training in mediation skills, but a smaller group of them have been training as trainers.

To impart the principles of dispute resolution by dialogue in that country at this time was a real privilege for me, and a real pleasure to know that this development can be sustainable. Knowing that lawyers and judges in many countries from Iceland to Bangladesh are taking up these ideas, one can see that the principle of resolving disputes by dialogue is being

11 Restorative Justice in Prisons: A Guide to Making It Happen – Tim Newell and Kimmett Edgar (2006) Waterside Press

increasingly accepted and incorporated into civil legal systems. So, in the civil commercial field, this more restorative approach is gaining ground, both in this jurisdiction and beyond.

An overview

In conclusion, what might an overview of a restorative legal world look like?

- Restorative policing, with street RJ being part of every police officer's armoury (if that is the right word in a restorative context), or in his or her toolkit
- Police officers might actually be peace-officers, where conflict resolution is their primary role, where those who are sent to prison are those who are dangerous and not susceptible to the kinds of change possible through RJ
- Restorative lawyers (although some might say that is an oxymoron) – e.g. collaborative lawyers who look to resolve their clients' problems through negotiation
- Restorative magistrates. "Every magistrate trained as a restorative justice facilitator" is a wonderful vision that came from then Justice Minister Crispin Blunt MP, and should give us all real hope that this dream can be realized
- Lastly, the idea of restorative sentencing – as an example, the sentencing circles taking place in Canada, where the judge is part of a circle that sets out to arrive at a consensus for an appropriate sentence.

These seem to me to be the high points of such a restorative legal system – and I'd suggest that these are ideas whose time has plainly come.

Making Justice Systems More Restorative – Bringing Agencies Together – An Example from Germany

Some thoughts about the relevance of EU funding and regional networking for the success of criminal justice systems

Jo Tein

This publication is part of the international project "Improving knowledge in practice of restorative justice (in criminal matters) by international comparative research". It has its roots in a conference on the topic of European funding that was organized by CEP, the European organization for Probation, in the city of Cambridge in 2009. At this event, the first thoughts and contacts for the now-existing partnership were developed and eventually led to a successful application for European funding in a very important and innovative field of research and practice of criminal justice.

As representative of the applicant organization, the Schleswig-Holstein Association for Social Responsibility in Criminal Justice: Victim and Offender Treatment, I would like to reflect on the relevance of combining regional and European networking as a means for "making justice systems more restorative".

I will start with a few remarks about the context and the political relevance of international project activities from the point of view of a German citizen.

The participants in the project "Improving knowledge in practice of restorative justice (in criminal matters) by international comparative research" were given the opportunity to work together because the European Commission was willing to fund these international activities. This would not have been possible 20 years ago and there is an ongoing discussion, at least in my professional contexts in Germany, about the relevance of such funding and therefore the relevance of sharing knowledge and developing concepts in the criminal justice and other sectors on a European level in general.

There are two main reasons for me to very strongly believe in the benefits of the so-called European project, and in European funding in particular:

1. The – as I would put it – negative motivation for my conviction results from the 20th century European history in which my native country Germany played an absolutely disastrous role. Having grown up in the 1960s and 70s, not all too long after World War II, with the iron curtain only 25 kilometres away from my parents' home, most of the thoughts and political discussions that my own West German generation was concerned about was how to make it impossible for Germany to ever again come under a fascist rule whereby it would violate basic human rights for xenophobic, racist and other unacceptable ideological reasons and bring war to its neighbouring countries and the rest of the world.

The most visible public sign for this struggle within the German society was demonstrated by the first post-war social democrat Chancellor of the Federal Republic of Germany on the 7th December 1970. Willy Brandt fell down on his knees before the memorial of the victims of the Warsaw Ghetto in the capital of our neighbouring country, Poland. I was and I am grateful for this gesture and it very much reflected the feelings and the helplessness of both myself and my generation and the will to change Germany for the better.

Today, more than 40 years after Willy Brandt's visit to Warsaw and almost 70 years after the war, Germany has developed into a country that I would regard as a stable democracy and that (after a long struggle) I can proudly identify as my native country.

The struggle that I was concerned with for most of my younger life, however, was the danger of Germany falling back and showing its ugly face once again, and this concern still exists. A clear sign for this fact is the series of right-wing terrorist murders that have come into the knowledge of the country last year, after having been undetected for a period of more than 10 years.

We as German citizens must therefore never stop to think about and develop strategies and mechanisms to secure democracy and human rights against the dangers of totalitarianism, chauvinism, jingoism, xenophobia and racism.

How can this best be achieved in my country? The political answer for me lies to a large extent in the development of a close and reliable political European Union as well as in the development of something like individual European identities.

The political structures we have built at European level so far are still under development, but nevertheless I am deeply convinced that they will have a healing and a preventative influence on my native country. The members of the EU have agreed on basic principles that can be enforced in the member countries and all of them are principles committed to democracy, human rights and tolerance, respecting cultural differences at the same time as the word "unity in diversity", one of the key principles of the EU, expresses (and this seems to be inevitable once different cultures and different nations develop common rules). We have agreed on the Lisbon Treaty that, for example, includes the European Charter of Fundamental Rights and many other regulations that from my German point of view are extremely important for securing democracy in my own country and a peaceful life with our neighbours.

In my own experience, and this concerns the individual European identity (which possibly even is a topic of restorative justice in the wider sense of the expression), the most important factor was personal contacts to people from foreign countries. Such contacts have been made much easier with every border that has opened and with every new country that has been integrated into the European Union.

Which leads me to the second and conclusive reason for being committed to the European project…

2. The European Union that I have described as an organization that helps protect Germany against a fall-back into totalitarianism has developed into an organization that actively promotes its common values by financing a large variety of activities.

It does so by giving Europeans the opportunity to meet and work together, especially within the funding streams that are concerned with juveniles explicitly aiming at personal contacts between nationals of different EU and neighbouring countries. But, of course, the aspects of meetings and

the development of personal relations between different nationals are very important in projects like ours, where adult specialists meet to discuss issues of developing their fields of expertise.

The European Union also grants funds with the aim of helping to implement European policy on national and regional levels in the community, and sometimes also in countries outside of the EU. The criminal justice funding streams, for example, that the project "Improving knowledge in practice of restorative justice (in criminal matters) by international comparative research" participates in, are actively promoting EU positions in the field of our criminal justice professional work. These positions can basically be found in contracts I have already mentioned – for example, the Lisbon Treaty – but also in so-called soft law, such as the European Prison Rules or Framework Decisions like the one on Probation or the one on the standing of victims in criminal proceedings. Projects like ours aim at strengthening awareness for these European regulations in the participating countries.

And at this point we are approaching the original question of my remarks:

How can this effectively and efficiently be done in a regional context, and are there advantages for these regional professional contexts in adapting European policy and in sharing knowledge with other European countries that – in our case importantly – have differing legal systems?

To give my obvious answer to the last question first: Yes, of course we at home in Schleswig-Holstein can benefit from international experience, and yes, of course we should as serious members of the European Union be interested in discussing and implementing policy that has been agreed upon at a European level regionally.

So how can this best be done? It can best be done by participating in European projects and this makes most sense if there is not only a single organization from each country taking part in such measures, but where the participation is embedded in a network of relevant actors in the field

in question. The Schleswig-Holstein Association for Social Responsibility in Criminal Justice: Victim and Offender Treatment is trying to do exactly this.

To make the practice of our work transparent and understandable in the context of the project "Improving knowledge in practice of restorative justice (in criminal matters) by international comparative research", I think it makes sense to have a look at the following three aspects:

1. What does the Schleswig-Holstein Association have to do with Restorative Justice?
2. In which way does it bring agencies together?
3. What has the effect of this structure been on our common RJ project so far?

It is therefore necessary to start with explaining a little bit of the background and the tasks of our organization.

The Schleswig-Holstein Association is a registered charitable NGO according to German law. It was founded in 1951 and currently has 51 member organizations that professionally and voluntarily work in the field of victim and offender treatment in the German state of Schleswig-Holstein.

Schleswig-Holstein is the northernmost federal state, with roughly 3 million inhabitants, stretching from Lower Saxony and Hamburg in the south up to the Danish border and the Baltic and North Sea coasts in the north. In the Federal Republic of Germany, penal law itself is a federal issue, whereas the legislation and administration concerning prisons and ambulant sanctions on the other hand is, to a large extent, the responsibility of the 16 Federal States. Schleswig-Holstein is well known for a liberal prosecution, court and sanctioning practice. Ambulant sanctions have a very high priority and therefore the conviction rate, with currently 48 per 100,000 inhabitants

(03/2012)[1], is on a very low level, even on a worldwide scale. The average rate in Germany is around 83 (03/2012), while countries like the USA and Russia have an imprisonment rate that is more than 10 times higher than that in Schleswig-Holstein[2]. A system like this can only be successful if there is a sufficient qualitative and quantitative offer of ambulant sanctions and a functioning network that keeps the different actors that are needed in the system in contact.

In the 1990s, the Schleswig-Holstein government decided to boost the range and quantity of ambulant sanctions as well as measures of support to reach the goal of the successful reintegration of offenders in and outside of the prisons. The government did this by strengthening the role of the public probation service but also by outsourcing a whole lot of services in the criminal justice system and by funding the activities of many NGOs that deliver these services in Schleswig-Holstein. To make this approach successful, the regional government at the same time decided to professionalize the formerly voluntary Schleswig-Holstein Association, with the aim of having a coordinating body that delivers a professional networking service in the field of Schleswig-Holstein's criminal justice system.

Since the beginning of the 1990s, as part of this strategy, the Schleswig-Holstein Association has been funded by the regional Ministry of Justice for delivering the following services:

- Organization of working groups for experts in different fields of social work in the criminal justice system. Developing standards, detecting problems and future tasks and possible developments, discussing different approaches, etc.
- Publishing the "Magazine for social responsibility in criminal justice"
- Organizing conferences and workshops

1 Information given by the Schleswig-Holstein MoJ on 5th September 2012.
2 http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poprate

- Advising the regional parliament and the Ministry of Justice in victim and offender treatment issues
- Doing public relation work
- Development of innovative concepts
- International cooperation

In this context, Restorative Justice has gained a very important role over the last few years. The main RJ activity in Schleswig-Holstein has been victim-offender mediation as a pre-sentence measure.

By getting into international cooperation in this field, we have learned that there is a much larger methodological range that might be worthwhile taking into consideration in Schleswig-Holstein. We have, on the other hand, learned that our VOM system and the standard of procedures and experts in the field are comparatively high. The persuasion among decision-makers has grown; RJ is a field of criminal justice activities within our system that should be strengthened for the sake of lower recidivism rates, and also in order to develop an even more efficient criminal justice system.

Through the initiative of the project "Improving knowledge in practice of restorative justice (in criminal matters) by international comparative research", a specific network outside of the general professional network of the Schleswig-Holstein Association was installed within the Ministry of Justice. It is the so-called Schleswig-Holstein RJ steering group, which consists of decision-makers from the following groups:

- The Ministry of Justice itself
- The public prosecution service
- The courts
- The Ministry of the Interior (police)

- The Schleswig-Holstein Association
- Kiel University of Applied Sciences
- The Consortium of VOM Mediators
- Victim Support organizations

What has been achieved by this steering group in close cooperation with our international project activities?

- PR for RJ issues in the media, in politics and in the justice system has been initiated
- Preparatory discussions for a reformed directive concerning VOM were led by the steering group member from the public prosecution servicer
- Higher numbers of VOM cases, especially in the field of adult VOM, have been achieved, most importantly resulting from the multiplying commitment of the steering group member from the public prosecution service
- Conceptual work on a pilot project for juvenile VOM and other methods that will eventually be financed by the Ministry of Justice from 2013 onwards
- Broader awareness for other RJ methods, such as group conferences, could be achieved among RJ experts
- A new application of the Schleswig-Holstein Association for an EU-funded project concerning RJ in prison settings was developed

Talking about Schleswig-Holstein, this seems like a whole lot of movement and I would say we can be very grateful for the opportunity the EU has given us with its funding and for the inspiration our international partners have given us so far. Making justice systems more restorative by international and by regional networking is an approach that helps develop all our criminal justice systems.

Making Probation in Europe More Restorative?

Leo Tigges[1]

Thank you so much for inviting me here for this event. In less than a week I will leave CEP for a new job in the Caribbean for the Dutch Ministry of Justice. On my way to Oxford I was thinking about my time with CEP, and it came to my mind that over the years it became more and more easy to give presentations, because I was repeating myself somewhat, with a little bit of adapting here and there. However, giving a presentation about making probation services in Europe more restorative is a challenge. And I hope that during this presentation it will become clear why.

But before I do that I want to share another thought that I had on my way to Oxford, which is about the origins of this event that brought us all together. Did you know that this conference was started off by a CEP event in Cambridge in 2009? The subject of the conference was "Funding Innovation and Collaboration in Probation". It was there that Jo Tein and Geoff Emerson met each other at breakfast. That was an event that was financed by the registration fees and financial contributions of the conference organisers. No European funding was involved at the time. Now, only three years later, one third of the budget of CEP is financed by the European Union. In addition, CEP participates and has participated in eleven EU-funded projects. I think we have to thank the European Commission for their contributions to probation, restorative justice and other sectors in the realm of criminal justice.

I am sometimes a little bit worried about the increasing Euro-scepticism that is occurring in many countries across our continent, not in the least in my own country.

1 Leo Tigges was for eight years the Secretary General of CEP, the European umbrella organisation for the probation sector. After many presentations all over Europe and beyond, he gave a presentation in Oxford at the April 2012 conference "Making Justice Systems More Restorative", the third and final conference held in the framework of the EU-funded project "Improving Knowledge and Practice of Restorative Justice (in Criminal Matters) by International Comparative Research". The title of Mr. Tigges' presentation during this event was "Making Probation in Europe More Restorative?".

But I feel comforted by the fact that more and more people are travelling from one country to another within Europe. That trend will not stop; it will even increase. Young people are going to study in other countries, families are going on holidays abroad, and professionals and pensioners are going to live in other parts of Europe.

As long as our citizens feel that they should be able to have the same rights abroad as they have in their home country, there is the a need for a further integration of the European Union in the realm of justice, which is supported by an increased inter-European exchange of information and good practices. I believe that this conference is an excellent example of this trend.

For those of you who are not familiar with CEP, I would like to give a brief introduction to our organisation. CEP was established in 1981 as an association. The reason for the establishment was the fast-growing number of European foreign nationals in national prisons. Ever since, the number of this special group of prisoners has been rising in almost every European country, notably in the last ten years. As a consequence of that, several EU regulations – for instance, Framework Decisions on the transfer of sentences – have been designed and adopted.

When CEP was established, its network represented 14 European countries. Nowadays it encompasses 34 European countries, of which 26 are EU Member States (the only EU Member State that is "missing" is Cyprus). Members of CEP are mainly ministries of justice. However, we are welcoming an increasing number of universities that are carrying out research into the effectiveness of probation, which stimulates the further professionalization of probation practice and the sector of probation in general.

Regarding its activities, CEP is best known for organising conferences. We organize around six conferences a year. In 1997 we even organised a conference on victim offender mediation and restorative justice. That makes it about time to have another conference on this topic!

Organising conferences is one expression of our three aims. We try to unite all those organisations and individuals who share the same values in probation. We want to contribute to the professionalization of probation across Europe. And we want to raise the profile of probation, which is very important not only on a national level, but also on a European one. I think we have the wind at our back, and although we have done a lot to achieve that, there is still a lot more to be done.

In realizing our aims, we are driven by a set of values. Our main value is our belief that the social inclusion of offenders is the best way of protecting society from further crimes. We believe in the ability of human beings to change. People are really able to change once they are motivated, stimulated and supported – and sometimes forced. Of course, we believe in human rights. And we believe in the delivery of effective sentences, which has become very topical in these times of cost reductions and value for money. I think being a member of the European Union – the feeling of being a European citizen – is the background to the big boost probation has had in Europe.

Now let me briefly describe our field of work: probation. There is a great diversity in probation concepts and probation practices all over Europe. However, there are three tasks that the probation service executes in almost every country: pre-sentence report assessment, community service, and resettlement of offenders. However, the impact of probation and the strength of the probation services differs enormously. This can be explained in large part by the different legal systems. But in some countries – like in the Netherlands and the United Kingdom – probation started a long time ago. In contrast, probation services in so-called "new democracies" may only have existed for ten years; in several of these countries the services are even (much) younger. Then there are different visions on what place probation should take in the criminal justice system. In some countries probation is only applied in the case of very minor offences. In other countries it is used as much as possible to limit the use of custodial sentences. This last vision is also the one propagated by CEP: we believe that custodial sentences are

a last resort, meaning that the use of alternatives should always be made, where appropriate. CEP believes that the use of custodial sentences can be prevented by having good alternatives, even for more serious offenders.

In my career at the Dutch ministry of justice I have twice seen a real expansion of the prison population and the ensuing prison capacity in my country. I have also twice seen a real decrease, and I am very proud of that. One of these decreases has been taking place over the last few years; we currently rent a big prison in Tilburg to Belgium, where there is a shortage of prison cells.

There are many factors contributing to this present decrease, for instance, the actual composition of the population. People tend to live longer nowadays, and when people become older they are less inclined to commit crimes. Another contributing factor is a strong political will to avoid prison sentences as much as possible by providing alternatives and building up an effective probation service that is reliable in the view of the judges and public prosecutors. I think that in this regard the Netherlands has developed a definite "best practice" that may be of use to other countries.

In all the diversity in probation across Europe, there have also been attempts to unify probation across the continent. I mention, for instance, the European probation rules of the Council of Europe. In the last twenty years or so, the Council of Europe has published a lot of things about probation. But as developments in probation moved faster, the publications of the Council of Europe began to feel outdated; they were focused on different topics and there was no integral approach. In order to truly focus the policy of the Council on probation, and not on a variety of aspects of probation, CEP stimulated the formulation of the European Probation Rules, which the Council of Europe was happy to take on.

One could say that the European Probation Rules are "just" soft law. Countries do have a moral obligation to implement the Rules, but they are not legally binding. In other words, countries can deviate from the Rules without

further consequences. However, I do believe in the positive effects of the Rules. When a country is updating its probation laws, they tend to look at what is in the Probation Rules. For example, while in the process of redrafting its probation law, the Romanian Republic has copied the Probation Rules almost exclusively.

Another regulation that has strongly contributed to unifying the probation on the European continent is the group of Framework Decisions regarding the transfer of sentences, and more specifically the Framework Decision on the transfer of community sentences. Contrary to the European Probation Rules of the Council of Europe, the Framework Decisions of the European Union are binding. Every country has to implement Framework Decisions by creating new national law or by adapting existing law. With Framework Decisions on the transfer of sentences it becomes possible for the sentence of a judge in one country involving a foreign national offender to be carried out by the offender's country of origin. The Framework Decision on the transfer of probation sentences thus implies that countries that do not yet have a full-scale probation service should develop one in the years to come.

Now I touch upon the topic of this presentation: restorative justice practices in probation. When you look to the literature you always read that restorative justice is carried out in in three different phases of the criminal procedure. In studying that literature, it is my impression that in those countries where restorative justice is organised within the probation service, the majority of RJ practice takes place in the pre-sentence phase – mainly in the form of mediation between the victim and the offender. If carried out successfully, the judicial authorities can accept the outcome of the mediation processes and the offender can be diverted from further interference by the justice system.

Community service is also often seen as a means to achieve restorative justice or to contribute to restorative justice; it is about giving something back to society for the benefit of the community, or as a pay back. This is also mentioned in the European Probation Rules: "Community service is a com-

munity sanction or a measure which involves organizing and supervising by the probation agencies of unpaid labour for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatizing nature and probation agencies shall seek to identify and use workings tasks which support development of skills and social inclusion of offenders."

If a prison sentence is unavoidable then there is the possibility of mediation or restorative justice practices during the time the offender is serving his prison sentence. This possibility is only practiced on a very small scale and in a limited number of jurisdictions. But I know that the Board of Europris – the European Prison Organisation – is interested to develop this possibility and to pilot it in more prisons across Europe. In my opinion there is a real underdevelopment of restorative justice practices in probation all over Europe. Because of this underdevelopment, it was difficult for me to gather material for this speech. There do not seem to be systematic reviews or systematic information about a state of affairs of restorative justice across the different probation systems.

In 2008 CEP published the book Probation in Europe, in which probation systems in 32 European jurisdictions and countries are described. CEP is currently working on an update of this book. On the basis of the information that is provided by Probation in Europe, I can conclude that victim-offender mediation is relatively strong in Austria, Belgium, the Czech Republic and Hungary. I am puzzled by the fact that in two former communist countries – the Czech Republic and Hungary – victim-offender mediation is stronger than in the so-called "traditional" democracies. There are some patches of mediation practice in Catalonia, in Germany and the United Kingdom. With regard to the United Kingdom I understand that mediation is not an element of work in every Probation Trust, and where mediation is in place, it differs from region to region.

Moreover, the use of mediation is often limited to minor offences and juvenile crimes. That worries me. When countries start with alternative sentences or start building up a probation organisation, probation is generally targeted

towards light cases. After all, judges need to be convinced of the use of probation, and public prosecutors should be made aware that you really can "do business" with probation and that it can be effective. Sometimes, however, the development of probation gets stuck in this phase and the jump to apply probation and mediation to more serious offenders is not made. This is not in agreement with the aim of probation: to prevent custodial sentences as much as possible. If custodial sentences are applied exclusively, the majority of offenders return to society after release in a worse condition then when they were arrested. I therefore hope that restorative justice practice will be applied to more serious offences all over Europe in the future. I am glad to have heard this morning that there are positive experiences of NGOs and probation services with using restorative justice practice in more serious offences.

Nonetheless, the situation in most countries remains that restorative justice and probation maintain separate procedures and are organised in separate organisations that do not really interact with each other. What is the background of this underdevelopment? It's a bit of a guess, but my guess is that the organisations in the justice chain have no strong tradition of cooperation. They are working mainly for themselves, on their own goals. The probation service tries to increase its output, but it does so on its own. The same is true of the prison service and the public prosecutors service. The cooperation is weak or, in other words, "it leaves room for improvement". And, in my view, the probation service should seek for this improvement, because probation is so dependent on other justice organisations to achieve the successful resettlement of offenders. Moreover, when we cooperate more, it becomes easier to promote the use of restorative justice.

In order to do this, we should be able to describe clearly what RJ is, what it does and why it works. But here we touch upon something which needs work: there is confusion about restorative justice. I read a wonderful article that Theo Gavrielides wrote in 2008. The article is complex, with a highly abstract character, but these are the themes I inferred from this article. There are different visions in the field of restorative justice. Is it an abolitionist paradigm or a complementary model? Does restorative justice have to

be placed within or outside the criminal justice system? Is it an alternative punishment or an alternative to punishment? And finally there is the issue of freedom of participation: should everybody be free to cooperate or should there be a push from the criminal justice system? In my opinion the sector of restorative justice has not yet answered these questions sufficiently.

This is perhaps a recommendation that I would like to give to the restorative justice movement. It was a long time ago that the Council of Europe made a recommendation on restorative justice. It's now more than twelve years old. So it's time to make an update of it. If the restorative justice movement manages to get that on the agenda and if the Penological Council of the Council of Europe takes on the work to prepare such an update, there is a big chance that other aspects of the criminal justice field will be integrated. It is likely that there will be a discussion about the draft recommendations at ministerial level around Europe. A recommendation will have a more unifying influence that will also cause the restorative justice movement to have more influence in Europe and in the member countries.

Presently there is still underdevelopment but there are encouraging signs on a European level. There is an article in the European probation rules which I will quote for you: "Where probation agencies are involved in restorative justice processes – mind the term "where" so they are not in a lot of cases – the rights and those possibilities of the offenders, the victims and the community shall be clearly defined and acknowledged. Appropriate training shall be provided to probation staff. Whatever specific intervention is used, the main aim shall be to make amends for the wrong done." I think that this is a kind of stepping stone for some countries to start from with regard to restorative justice activities.

In Europe the position of victims is more generally acknowledged. There is an EU Directive on support for victims of crime. EU Commissioner for Justice Viviane Reding is a strong supporter of victims' rights, and victims' rights are even mentioned in the Framework Decision on the transfer of community sentences, as the Framework Decision not only aims for a better reintegration, but also for a better protection of the interests of victims of crime.

On the level of European professional organisations that are active in the field of criminal justice, such as CEP, we thought that we should practice what we preach.

CEP was working too much in isolation of other European professional organisations, such as EuroPris for the prison sector, the European Forum for Restorative Justice for the restorative justice sector, and Victim Support Europe for the victim support sector. As we believe that there are clear benefits for all our organisations in cooperating, we decided last year to start the European Criminal Justice Platform in which all four organisations are represented. The aim is to come together on a regular basis. Only two meetings have taken place at this point, but I think that the Platform is going to have a major impact on the work of each organisation. We talk much more to each other now and we already have a better mutual understanding of each other. We want to link our websites to each other. We want to share our experiences in organizing conferences and we want to identify the possibilities for joint conferences and running joint projects. We are sure that this will also have a stimulating effect on other countries.

Already in our first meeting it became clear that the victim perspective needed to have a more prominent role in probation and prison practice. Therefore CEP took the decision to start in the framework of the Platform a special exercise to see how restorative justice and victim support arrangements could be promoted within probation. First we needed to map out the arrangements that were already in place in the different probation systems in Europe – and we found out there is no single person who has a thorough knowledge of this. To me, this already indicated the need to cooperate. In the network of CEP we found someone who might carry out a mapping exercise for us, identify best practices in Europe, and make recommendations on the promotion of restorative justice and victim support in probation. This person is Professor Mike Nellis, who has done research in restorative justice and extensive research in probation, and who is currently assigned by CEP for this task.

When discussing this topic in the Criminal Justice Platform meeting, Victim Support Europe stressed that in any case there may be no pressure at all on the victim to cooperate. That was acknowledged by all our organisations. I think this is very interesting to keep in mind with regard to the examples we had today and yesterday of the victim and the offender who did not know each other. However, in the majority of the cases prison and probation are dealing with, offenders and victims do know each other. They interacted in some way with each other before the crime happened. They saw each other in the neighbourhood or they were part of the same family. That surely has an effect on the way the change process has to be started and the way in which the supervision should take place. It should be kept in mind that offenders and victims are much more diverse than the examples we saw today and yesterday.

A last remark about the outcomes of our Criminal Justice Platform meetings is that the delegates from the prison sector in particular have become convinced that restorative justice should also be practised in prisons, and pursued.

Outside the framework of the Criminal Justice Platform there is an increased cooperation between restorative justice and probation on the level of European projects. Jo Tein, who spoke earlier today, already mentioned the plan to start a project: Restorative Justice at Post-Sentencing Level – Supporting and Protecting Victims. CEP is an associate partner in that project. So together we hope that the European Commission will decide to support this project with a grant.

Another project bid was submitted by the European Forum for Restorative Justice, called Desistance and Restorative Justice: Mechanisms for Desisting from Crime Within Restorative Justice Practices. This project takes place in three countries which have a longer experience in applying restorative justice in a probation setting. These countries are Austria, Belgium and Northern Ireland. Cases of restorative justice will be used to study the extent to

which restorative justice has contributed to the process of desistance. As such, this research links to the growing body of knowledge on how people can desist from crimes.

I think this will also eventually pose a more fundamental question, because in the majority of cases we are confronted with in probation, people have multiple problems. They do not have one problem – they have a lot of problems. Entering a restorative justice process can, for some offenders, be a revelation because they will start to see what impact their offence has on the victim. This can be the development of empathic skills. However, other problems that offenders have should also be addressed in order to achieve a successful desistance. Yesterday, during the play performance, we saw that although restorative justice had an impact on the offenders, they were still confronted with a lot of problems during prison time and afterwards.

So let us not think that just by starting or increasing restorative justice practices in probation, all problems will be solved. A lot of our offenders are still quite difficult to handle and we know that desistance in the majority of cases does not mean that "people understand they shouldn't offend any more, so they won't do it". It is about unlearning some aspects of their behaviour, about getting rid of their addiction, about learning new skills – and that takes time.

I have come to the end of my speech. You will have understood that there is not sufficient knowledge about the use of restorative justice practices in probation. We need to fill this gap; therefore, we want to organize an expert meeting about restorative justice practices in probation. Once we have seen the similarities and differences of our sectors, the advantages and disadvantages of our practices, and the composition of our target groups, we will be in a better position to step up the cooperation between the organizations of victim-offender mediation and restorative justice.

RJ and Links with Civil Society

Pete Wallis

I work with the local council in the Youth Offending Service. The Youth Offending Service supervises young people who commit crime, and who are referred by the police or courts. When I was first asked to talk about Restorative Justice and the links to civil society, it caused me a problem because I didn't know what civil society was! I therefore consulted my colleague Eric Fast. Eric is a Canadian mediator who works alongside me in our Restorative Justice Team in Oxford. Eric knew exactly what civil society was, and his wife is actually researching civil society. Eric helped me to realise that it is almost more a question of what civil society is not. This is the understanding that I've now gained. Civil Society is not the family unit. It is not business and finance companies. It is not what I am working for, which is a governmental organisation. Exactly what it is, though, I think is a little bit fuzzy and unclear. It's interesting on reflection that I wasn't clear about it myself; it may be it's more of a term used in other countries than it is in the UK. You may be more familiar with the concept of civil society than I am.

I would like to share a quote that Eric found for me: "Civil Society is the arena outside the family, the state and the market, where people associate to advance common interests."

So there is something about coming together for a common purpose that is at the heart of civil society. But I think that introduces a huge range of different organisations. Our previous speaker from the adult probation system talked about schools, religious groups, charities, and special interest groups. There are a lot of different meanings to that term, "Civil Society".

So I was asked to explore three different questions with you in the workshop:

1. How can cooperation with civil society organisations be developed to inform the public and create broader support for restorative justice?

Here in the UK there are organisations set up purely to promote Restorative Justice. Why me?, which you may want to look up on the internet, is a wonderful British organisation which is purely about sharing stories about Restorative Justice. They organize talks and videos, and they have some very powerful stories promoting restorative justice. The Forgiveness Project, which you may have heard of, similarly shares very powerful stories of people who have been through a restorative process. I think that using stories is a wonderful way of promoting restorative justice.

Civil society organisations also work more directly with people who have been involved in crime. Sycamore Tree is a project which takes people who have been the victims of a crime – often serious crime – into prison to meet groups of people who have committed crime as part of what we call a "victim awareness program".

Civil Society organisations also work directly with people who have been on the receiving end of crime – the victims of crime. The biggest organisation for victims in the UK is Victim Support, which is a national organisation working with people who have been victims of crime. More locally, in my area we have a little project which is called Safe! – Support for young victims of crime. It started as a result of a recognition that the state isn't providing enough support for young people who are struggling when they have been the victim of a crime, so in Oxfordshire we set up this little charity which has received funding from the state, and is also supported by individuals who give money – so it's a perfect civil society example.

I think that both supporting the person who commits a crime to have more awareness of what they have done and who they have hurt, and supporting the victims of the crime to feel more confident and safe, is good preparation for bringing people together in a restorative justice meeting or conference.

Several years ago we were talking about how we can promote Restorative Justice, and we had a brilliant idea – we would organise lunchtime talks. Ever since then – it must be four or five years ago now – we've been running talks in one of the Oxford colleges. For example, we had a talk from Dr. Peter Carey, who was at the time a Professor of Modern History at Trinity College in Oxford, talking about Restorative Justice in East Timor. It is a wonderful way of learning about restorative justice from different parts of the world, like we are doing today. In East Timor they sacrifice a chicken at a beginning of a restorative meeting and read its entrails. They won't go ahead with the meeting unless there is good vibes from the chicken. They also have another tradition where they roll out a carpet at the beginning of the meeting, and unless things are resolved they won't roll the carpet back up again. So you are stuck there until everything is sorted out.

We had another talk at the college, which was very interesting, about Restorative Justice in Islam. I have just got a quote from our speaker who said that "Islamic resolutions encourage the victim and offender to meet face to face with truthfulness and honesty in order to heal one another". Our speaker then shared this lovely quotation from the Qur'an, which actually reminds me of the Old Testament as well, and speaks of the need to move beyond an "eye for an eye" towards compassion and resolution: "Forgiveness and reconciliation supersedes for injury for injury" (Qur'an 42:20).

I do not know if it is the case in your countries, but I think in the UK we are becoming a more secular society, so for me Restorative Justice is built on principles which are common to all faiths. Christianity, Buddhism, Islam – all faiths are grounded in forgiveness, repentance, honesty, reconciliation and mercy. These are principles which we may be losing in society as we become more secular, and I think that Restorative Justice is helping to reinforce those values and principles – the ones we all hope would be the bedrock of a good society.

2. How can the involvement of civil society be increased?

I have learned a huge amount from my colleague Dr. Belinda Hopkins, who is considered a leader in the UK in the area of restorative approaches in schools and other youth settings. What started maybe more in a criminal justice system is spreading out into all different arenas of civil society. It is moving from just repairing damage to relationships towards building relationships; helping people to communicate and work well together as well as repairing harm when it has been caused. This broader focus of restorative justice we like to call "restorative approaches". I believe that Belinda may have been the person who introduced that term. Within the term "restorative approaches", which as you know is very widely used now, is this wonderful process of the restorative approach moving out from the criminal justice sphere and reaching into the widest possible areas of human relations.

Here are some further examples of restorative approaches. Two boys caused a lot of damage in their old school. There was a lot of upset, and they went back and talked to the school, and created a beautiful little garden as reparation. In another example, my colleague Eric and I did mediation in a neighbourhood recently, showing how restorative approaches can spread out into civil society. With this mediation we worked with the Residents Association, the Housing Association who built the houses, the University (which was right next door) and the Urban Wildlife Group. Together with all of these people and the City Council (which is not civil society), we did a lovely problem-solving approach to antisocial behaviour in this troubled housing estate. We learnt what the children thought would improve their neighbourhood. One of them wanted the traffic to go very slow, because that was a big safety issue, and they thought they might feel safer if there were CCTV cameras there as well. The process helped the children to feel part of the restorative solution to the problems in their community.

When you are dealing with this kind of civil society, people often do not like the "justice" word. You can talk about restorative justice in a criminal justice setting, but "restorative approaches" is a much broader term and "justice" may not be a helpful term in non-criminal contexts.

3. Should Restorative Justice be integrated into the existing criminal justice system and/or be established as a more or less independent resource to do justice outside the more formal processes?

You will be aware of the austerity and the hard financial times that we are facing in this country. Our Prime Minister has a notion about civil society which you might have heard about. He calls it "the Big Society". Have you come across the Big Society? The idea is really about building civil society institutions in this country and encouraging them to take on some of the work that would normally have been done by the public sector – by the councils and the government – and having a leaner public service.

This has led to interesting developments, such as private prisons which are run by companies and not by the government. In some areas it is bringing in other civil society organisations, such as charities, to manage restorative justice services. It is interesting because that becomes restorative justice being delivered by civil society organisations – charities or small community interest companies. It leads to more of a mixed economy of delivery. I am going to explore one or two thoughts about the drawbacks and the benefits of Restorative Justice being taken out of the government or state sphere and into civil society.

In terms of drawbacks, I think there is a slight danger that there will be a pressure to save money. And if you have to compete with other organisations to get contracts, or you have to tender to get a contract, this may (but not necessarily) lead to a poorer service.

So, for example, in the delivery of training in the Thames Valley area, when Restorative Justice started under our esteemed Chief Constable Charles Pollard, training took place over five days. Pressure of money and lots of competition from different providers has led to a typical restorative justice training being reduced down to two days, which in my mind raises a bit of a concern about quality.

Another problem with civil society taking on Restorative Justice is that the contracts can be short term, and you can spend an enormous amount of time bidding for contracts; you hardly get started before you have to start winding down to bid for the next contract. It can also be challenging having a good relationship with the state, for example, in sharing confidential information. So there are complications with civil society delivering Restorative Justice.

However, I think that there are huge benefits also. I think that civil society organisations can bring fresh ideas from the community; from the grassroots. Bringing in a broader range of providers means that different people are coming in with different ideas, and they may, in the context of Restorative Justice, be seen to be more independent than the state. So that may be important for the people who are benefiting from our service.

So, my final point as I finish: I do work for the government in Oxfordshire, but I'm very interested in developing Restorative Justice and restorative approaches, and taking them out into the community. We've got a vision, which the county council is promoting, of helping Oxfordshire to become a restorative county. I am on a working group nationally with the Restorative Justice Council to get a Quality Mark for Restorative Justice and restorative approaches.

My final story involves a lovely link between Restorative Justice, my work in the Youth Offending Service, and Civil Society. It involves a bike workshop, and I had to talk about this because we are in Oxford – you might have noticed that we do bicycles well in Oxford! This story involves a student whose bicycle was stolen. Millions of bicycles are stolen each year. I went to talk to this student and asked him, "What could help you to feel better?" He replied: "I don't have a bicycle", so I said "Well, we have a bicycle workshop, recycling old bicycles which they recover from the Police. Maybe this person who stole your bicycle could build you a new bike." The student said: "Yeah, it's great, it's a lovely idea – and I would like to do it with him!" So, for me, that was pure Restorative Justice. A student who was the victim working together with the young man who stole his bike over a practical project

to get a new bicycle for the student. It was also a lovely link because the community bicycle workshop is pure civil society, run by volunteers; it is a charity working to recycle bicycles. A good Oxford story to finish with.

Restorative Justice and Problem-Solving

Belinda Hopkins

If you only have a hammer, you tend to see every problem as a nail. – Abraham Maslow

Abstract

If restorative facilitators, or a restorative whole service, have only been trained in formal, scripted restorative conferencing or formal victim-offender mediation then every problem must fit the criteria for one of these responses. Situations which do not fall within the remit of the learned model may be rejected by the facilitator or the service. Situations which could have been addressed restoratively, to the benefit of all sides, risk being dealt with differently, if at all. This may be because the situation does not fit the "victim-offender" paradigm, or because the offender is not admitting culpability, to name a few possibilities. When a case is deemed unsuitable for a restorative response all those potential beneficiaries – offenders, victims and the wider community of family, friends and neighbours – miss an opportunity to have their needs met.

The majority of conflicts, challenges and even bullying incidents in civic, as opposed to criminal, settings, are rarely clear-cut and so restorative facilitators in civic settings need training in a wide range of responses which they can adapt as they learn more about the situation, or even during a restorative meeting itself. This paper argues that the cases criminal justice professionals face are often similarly complex and nuanced, so they need a similar flexibility, and therefore training and practice in a wide range of restorative approaches.

Introduction

This short paper has developed from a presentation this author gave at a conference in April 2012 in Oxford, entitled "Restorative Justice and Problem-Solving". In this presentation, two questions were posed at the outset:

- What type of restorative process is most suitable for which type of problem?

- What type of restorative process is most suitable for which type of participant?

Questions are rarely neutral or agenda-free and this author was interested in the assumptions behind the questions she was asked to address. The first question implies that there is a range of restorative processes to choose from and that a variety of problems can be dealt with restoratively. It might even imply that there could be a restorative process for most problems. The second question suggests that there may be a match between a particular restorative process and particular individuals. This paper explores both these issues and makes a few suggestions based on this author's experience, which is not in the criminal justice field, but in that of youth settings, including schools, residential care and youth services.

It is important to set the context for this discussion as the author's practice is governed by standards set by the Restorative Justice Council (RJC), the membership organisation that supports restorative practice across England and Wales in whatever setting. In her professional role as Director of an organisation that is constantly developing better restorative practice, and offers training in this practice, she has signed up to the RJC's National Code of Practice. This means that everything that is taught meets the standards set out in three key documents governing all restorative practice in England and Wales. These documents, available from the RJC website (www.restorativejustice.org.uk), are Principles for Restorative Practice (RJC, 2004), Best Practice Guidelines for Restorative Practitioners (RJC, 2011) and the National Occupational Standards for Restorative Practice (Skills for Justice, 2010). Earlier this year she was awarded the prestigious Accredited Practitioner status by the RJC, in recognition of her experience and competence in working according to the National Occupational Standards for Restorative Practice in her specialist field of education.

However, in addition to the standards set by these critical documents, the author will also draw on her own practice and the model of practice she has developed over 18 years, which forms the basis of her own work (Hopkins 2004, 2006, 2009, 2011, 2012) and the work of her organisation, Transforming Conflict: the National Centre for Restorative Approaches in Youth Settings (www.transformingconflict.org). The focus of this organisation's work has been on educational and residential care settings, but in recent years this has been extended to any service or agency working with young

people. This work has taken the developing field of restorative justice in criminal settings as the inspiration for its model since the mid-1990s, and it is a great honour to now offer this approach back to the criminal justice setting as a potential benefit to the work done there.

1.0 What type of restorative process is most suitable for which type of problem?

Before exploring whether there is, in fact, a match between a particular restorative process and a particular problem, it is important to consider what is meant by the term "restorative process" and what types of process are generally accepted as part of the restorative practitioner's "toolbag". To decide what makes a process "restorative", one could simply take the principle found in the RJC Principles for Restorative Processes (RJC, 2004) – that the primary aim of any restorative process is "to be the repair of harm". However, who is involved in this process of repair, how it is done and what is meant by the word "harm" are issues also considered at the heart of a definition of restorative practice.

The issue of what is meant by "restorative" and what processes should be considered part of restorative practice remains contested (Liebmann, 2007). The restorative community, and especially those developing the theories that underpin the practice (since this has been an emerging practice that initially had no theories to explain it), are still debating these issues. There are those who believe that for a process to be truly restorative it needs to involve at the very least a victim, an offender and members of the community, however this is defined (McCold & Wachtel, 2002). This might suggest that a victim-offender mediation, involving a facilitator and two parties, falls somewhat short of the definition. At the very least, the use of terms such as "victim" and "offender" could imply that restorative justice can only be properly applied in the field of criminal justice, and only in the event of a criminal offence. Some would make this case. Others seek to establish degrees of restorativeness with reference to essential elements, a process being more or less restorative in so far as it contains these elements (Van Ness, 2002). There are those who believe passionately that if the net is extended too wide to include the field of community building, conflict resolution and conflict mediation, the uniqueness of restorative justice is lost (Walgrave, 2003).

At the level of practice, there is also much debate. For example, best practice (RJC, 2011) would be that unless there is an identified "offender" (sic) and

unless this offender admits responsibility, it would be dangerous to proceed and the victim could risk being re-victimised. However, in many civic and even potentially criminal cases, responsibility is disputed and yet progress can be made if all sides can listen to each other and find ways to move forward. The fraught discussion about the difference between community or conflict-focused mediation and restorative justice conferencing further muddies the water (Brookes & McDonough, 2006; Hopkins, 2007). Are the skills used by a mediator different in kind from those used by a restorative justice conference facilitator? Is the intention of one different from the intention of the other? Should this intention be different?

As for the prime aim of repairing "harm", some people interpret this to mean reparation of some kind, not necessarily solely to the primary victim or victims, but to the community from which the offender comes (YJB, 2011). Others see the main repair being to the relationship or connection between those involved. Still others talk of the healing that a restorative meeting can bring about to the individuals involved, in terms of self-esteem and self-respect – and consider the long-term harm that may already have damaged those individuals responsible for an offence, as well as those more recently affected by it.

This paragraph raises, rather than answers, these questions by way of illustration. Any restorative practitioner or service certainly needs to have considered the issues and be able to explain and defend their own practice. Continuing research helps to keep these questions alive and it is certainly true that as practitioners we must never become complacent. However, by the same token, those of us who do work in the field, as practitioners or trainers or managers of a service, face the day-to-day issue of real live people with pressing and urgent needs. We do not often have the luxury of time to consider our theoretical position. We need a working model that is "good enough" to address these needs in as restorative a way as possible, ideally with and between staff teams, as well as with and between service users. This model needs to be simple enough for everyone to understand and use in a consistent way. This author is aware that there is a risk of offending purists in what follows, as her own model of practice has evolved to be flexible enough to address a wide range of issues, many of which do not even emerge until one has already embarked on engagement with all the parties.

1.1 Defining a restorative "event"

How can one establish whether a response, a conversation, an encounter, a meeting or an intervention can be described as "restorative"? Having studied the wide range of models of practice that exist across the world, this author, in collaboration with colleagues, has identified five core concepts that we believe contain the essence of a restorative "event". Whatever happens during this "event", the following five core ideas will be informing the practice of the restorative facilitator:

1. Unique and equally valued perspectives. Everyone has their own unique perspective on a situation or event and needs an opportunity to express this in order to feel respected, valued and listened to. Our own perspective is only one of many, regardless of our status. Thus, during a restorative conversation or meeting everyone present is given the opportunity to share their perception of what happened.
2. Thoughts influence emotions, and emotions influence subsequent actions. What people think at any given moment influences how they feel at that moment, and these feelings inform how they behave. The thoughts and feelings are "beneath the surface" and yet very important to understand. Being in touch with our thoughts and feelings, and being able to express them, is key to engaging restoratively with others. From there we can be compassionate towards what is going on for others even if they cannot express things themselves. Thus, during a restorative conversation or meeting everyone present is given the opportunity to share what was going through their mind during the incident being discussed, and what emotions arose for them.
3. Every behaviour is a choice, and every choice has an impact on ourselves and others. To live in harmony together, people need empathy and consideration so they understand who is likely to be, or to have been, affected by their choice of action in any given situation, and how. Thus, during a restorative conversation or meeting everyone present is invited to consider who has been affected by what has happened.
4. Unmet needs inform our decision-making. To make informed decisions we need to identify our own unmet needs and those of others affected by the situation, and then develop strategies designed to address as

many of these needs as possible. Thus, during a restorative conversation or meeting everyone present is invited to consider what they need in order to be able to repair the harm and move forward.

5. 'Nothing about us without us'. The solutions to problems or conflicts need to come from those who are affected by the problem or conflict. The process of collaborating on agreed ways forward enhances the restorative nature of the process, and can start to re-build respect and trust, develop pro-social skills and confidence, and strengthen connections. We do not "fix" others' problems, provide solutions or offer unsolicited advice. We are humble and empowering, open-minded and respectful. We encourage dialogue and collaborative problem-solving whether we are talking to one other person or helping a group to move forward. Thus, during a restorative conversation or meeting everyone present is invited to discuss what can be done to repair the harm and move forward and the assembled company is given the time to come to a mutually acceptable agreement without the intervention of the facilitator.

These five key concepts provide a framework for engagement in one-to-one situations and when more people are involved. Restorative meetings may be convened for all sorts of reasons, and can be informal and spontaneous, lasting a few minutes, or more formal, requiring plenty of private preparation with each party beforehand. They work best when all attendees have opted to be there and have been in some way affected by what has happened.

There is, in this author's experience, no need to differentiate between mediation – when people are in conflict, possibly both blaming the other for what has gone wrong between them – and conferencing – when one or more people have caused harm to others by their actions[1]. It can be unhelpful to make assumptions about who may be responsible for the harm at the outset – so often in youth settings the more one finds out the less clear-cut a situation can become. Any framework for a meeting needs to be robust and flexible enough to adapt to a changing situation as more of the

1 In European countries where the prevailing model of restorative practice is victim-offender mediation, this assertion could be re-framed as "There is no need to differentiate between conflict mediation – when people are in conflict, possibly both blaming the other for what has gone wrong between them – and victim-offender mediation - when one or more people have caused harm to others by their actions."

story emerges.

So when considering the question "What type of restorative process is most suitable for which type of problem?", the larger the range of options the better. Whatever process is chosen, the starting point is the mental attitude of the restorative interlocutor or facilitator with regard to those he or she is engaging with. The five key concepts provide a structured set of questions this person must rehearse, in their own minds, before they proceed:

Restorative thinking

	Concept	Suggested Language
1	**Everyone has their own unique and equally valued perspective**	What's happening from my own perspective? What am I seeing and hearing?
2	**Our thoughts influence our emotions; our emotions influence our behaviour**	What's going through my mind ? What sense am I making of this? How is this interpretation affecting my own emotional response?
3	**Empathy and consideration**	Who am I affecting? How? How am I being affected?

4	**Needs and unmet needs**	What unmet needs were behind this behaviour? What is this person's behaviour telling me now about their underlying unmet needs? What does this person need now and how can I meet that need? Will I invite the others here to consider my needs as well? Can I support them to find ways forward without my interference, or do I need extra support myself?
5	**Collective responsibility for the choices made and for their outcomes; collaborative problem-solving**	How can I support this person (these people) to find ways forward without my interference?

This fifth question leads one to thinking about the most suitable process to address the presenting issue. The more processes a facilitator is able to offer, the wider the choice for the potential beneficiaries.

1.2 Identifying a range of restorative processes

The range of restorative options may include:

Restorative process	Number of participants	Number of facilitators	Description
Restorative Enquiry	1	1	A semi-structured format that incorporates the five key concepts, useful for the private preparatory meetings before a face-to-face restorative encounter. This structure enables the restorative facilitator to re-frame, where necessary, what the speaker may be saying so that their perspective, thoughts, feelings and needs are heard and clarified.
Restorative conversations, a.k.a. conflict resolution or de-escalation	2	n/a	A semi-structured format that incorporates one or more of the five key concepts as required. This would be a format for the facilitator to use when they find themselves personally in conflict with the person to whom they are talking, and so as such they are no longer a facilitator but a participant.

Mediation or mini-conferencing	2	1 or 2	An informal (or at times more formal) structure in which all sides tell their stories, express what their thoughts and feelings were during the incident and have been since, consider who's been affected and how, identify their personal needs and then discuss together how to put things right. In cases of clear-cut harm, the person most affected would not necessarily be expected to identify what they could do but in fact often these so-called "victims" find it empowering to be actively involved in finding ways forward.

Restorative conferencing	2 – any reasonable number	1 or 2 depending on size and needs of group	A formal meeting format, often facilitated by one or two facilitators who follow a script or a structure where the same stages as the smaller meeting described above are followed. Whereas sometimes an informal mediation may not require private preparation beforehand with all parties, for a restorative conference this is now considered imperative. Best practice would require the same facilitator to do both the individual preparation and the facilitation of the actual meeting.
Shuttle/indirect restorative processes	2 – any reasonable number	1 or 2 depending on size and needs of group	This process can be used when participants choose not to meet face-to-face for whatever reason. It is possible to offer them a way to communicate indirectly, either via a neutral facilitator acting as a go-between, or using video or written communication.

Circle (community) problem-solving	Any reasonable number (the larger the group the longer each “round” takes)	1 or 2 depending on size and needs of group	A less formally structured process. Some circles use the five key concepts and everyone takes it in turns to respond to each of the five key questions in turn. In some places this format is replaced by a more “freestyle” mode of discussion. A talking piece is used and everyone takes it in turns around the circle to speak but the nature of their contribution is up to them. Its length may be agreed beforehand in order to balance power and ensure a sense of fairness and mutual respect for each contribution.

Pro-active circles to build community	Any reasonable number (the larger the group the longer each "round" takes)	1 or 2 depending on size and needs of group	It is increasingly recognised that community building circles for teams, units, groups, etc can pre-empt misunderstandings and conflicts. The same five core concepts can be used to develop an ethos of mutual respect, care and consideration in any environment, including restorative services.

Each one of these processes uses similar language. Everyone involved is asked similar questions.

	Theme	Language
1	**Everyone has their own unique and equally valued perspective**	What's happened from your perspective?
2	**Our thoughts influence our emotions; our emotions influence our behaviour**	What was going through your mind, and how were you feeling at that point? (These questions can be used frequently in relation to different parts of the speaker's story.)
3	**Empathy and consideration**	Who has been affected and how?

4	**Needs and unmet needs**	What do you need so that things can be put right and everyone can move on?
5	**Collective responsibility for the choices made and for their outcomes**	How can you (all) address these various needs (together)?

1.3 Can a particular process be matched to a particular problem? Who decides?

Having identified a range of restorative options, the question remains – how to choose the most appropriate process for the situation, and whose role it is to make this choice anyway. The choice of process in a given incident is influenced by certain factors: a) knowledge and competence within an agency of the full range of restorative processes; b) availability of the appropriately trained staff at the time; c) appropriateness of a particular process for the situation; and d) the informed decisions, choices and preferences of those parties most affected by the incident.

With regard to the knowledge and competence within an agency, the RJC Best Practice Guidelines (RJC, 2011) state that the Core Knowledge and Skills for any restorative practitioner includes being able to "explain why, when and how a range of restorative processes and responses can contribute to positive outcomes in your environment".

Could it be safe to assume that a restorative practitioner needs to have had training in a wide range of restorative processes to be able to explain them clearly, and also understands when each one might be most appropriate? Could it also be reasonable to assume that if a member of the public has these options explained, they can reasonably assume they are being offered the choice between them. If so, this would mean that the service or agency has staff trained in the full range of processes and is able to offer them.

With regard to the availability at any given time of competent staff for any restorative process, there may be resource issues involved. Initial training, advanced training, ongoing continuing professional development (CPD) and

appropriate supervision are all resource-intensive. Maintaining all of these across a wide range of restorative processes may be a challenge for some small services.

With regard to the appropriateness of a particular process for the situation, part of the initial preparation for any restorative process does involve some assessment of potential risks, such as prior incidents, mental health and substance abuse, power imbalances between those involved and the risk of re-victimisation or intimidation, and an awareness of particular needs that some participants may have involving special support (learning difficulties, speech and language issues, etc.). The National Occupational Standards place great store on risk assessment – to such a degree that it is now recognized that there is too much emphasis on risk. The question for a facilitator, if all participants are willing to progress a restorative way forward, is not "whether to proceed", but "how to proceed".

With regard to the importance of those most affected being involved in the decision-making process, this is one of the most essential aspects of restorative practice. Christie (1977) warns against professionals taking over the ownership of conflict and this is pertinent when making decisions about which restorative process to use in which situation. Barton (2003) would argue that the success of a restorative process is in very large measure correlated to the degree of empowerment participants have felt throughout the process, and this would include which process.

Despite the tendency to be risk averse, mentioned earlier, there is a huge emphasis in the Best Practice Guidelines on offering participants an informed choice, explaining in depth what each process can offer, what is involved, how the process links to criminal justice proceedings, and the implications of choosing a restorative way forward.

Nevertheless, there are risks to giving those responsible for causing harm too much say in what process to use. Theorists argue that much of the power of the restorative conference comes from the presence in the meeting of significant community members (friends, family, mentors) who can relate how they have been impacted by what has happened and also offer support in taking things forward. Best practice (RJC, 2011) is suggests to "Ask the primary victim/person harmed and the offender/perpetrator who they want to be involved in the process, ensuring that no one is involved against their

own wishes or the wishes of the victim/person harmed." [p.14]

However, this author has an example of a school where facilitators offered the choice to a young person who had been engaged in bullying as to whether they wanted their parents to be present. There are many reasons why a young person may not want their parents to be present. If one of these is to keep them in the dark about their actions, then I would argue that this is unfair practice and could re-victimise the victim, who may well want a conference with his or her family present. In effect this would mean, in order to be fair to both sides, that instead of a conference the facilitator would be bound to offer a face-to-face mediation involving only the person bullied and the person who has been bullying. This does happen in schools – and sometimes with success. However, this is a situation families need to be involved in, not just so that everyone knows what has been going on, but because they are likely to have needs too – whether their child is the one who has been bullying or the one being bullied, they need to be able to tell their story and be part of the healing and the way forward. This type of situation may also be familiar in youth justice settings.

In summary, then, pragmatism and common sense, as well as best practice guidelines, govern the decision as to which process to use with which problem. None of the practice documents available from the RJC lays down what process to use and when, as this would not only be unwise but it could risk ossifying a decision-making process which, by its very nature, is dependent on so many variables in every case.

In general terms, the less serious the incident the less formal the restorative response. Many potentially serious conflicts in schools, residential care settings, and indeed anywhere young people congregate, can be de-escalated and "headed off at the pass" with a "Restorative Chat" – an informal and spontaneous conversation that uses some but maybe not all of the five key questions. The more serious the event, the more likely that a face-to-face meeting – whether a small mediation process, a larger conference-style meeting or a problem-solving circle – is preceded by private meetings between the facilitator using some form of structured conversation such as "Restorative Enquiry".

The most important point is that the decision must not be based on the fact

that only one model is offered because it's the only one the available staff can facilitate!

1.4 Are any problems unsuited for a restorative process?

This author is known as a maximalist, or possibly even an idealist in some quarters, but is not alone in the view that restorative practice is a way of being, applicable in all walks of life. The core values of restorative practice are identified in the original Principles for Restorative Practice as Empowerment, Honesty, Respect, Engagement, Voluntarism, Healing, Restoration, Personal Accountability, Inclusiveness, Collaboration, and Problem-solving[2]. It is hard to see where these values are not applicable and necessary, aligned as they are to essential humanist principles and most Human Rights legislation. The five core themes identified in section 1.1 are similarly applicable in most domestic, social, professional and civic settings. Therefore, the contention in this paper is that most problems are at least amenable to being dealt with using restorative skills, if not a formal restorative meeting per se.

The reality is that worldwide restorative methods are being applied in the aftermath of civil disputes, anti-social behaviour, hate crimes, rioting and war atrocities, and advocates suggest using them for environmental disasters, corporate crimes, and when there are occupations and protests.

Many different communities are adopting a restorative ethos and restorative approaches, including schools, residential care homes (children; disabled folk; elderly), prisons, workplaces and communities (geographical, etc.). Whole cities and even counties are aspiring to become totally restorative and the RJC is developing a quality mark, at three different levels, to help these community-wide aspirations.

However, idealism is one thing, naivety is another. Clearly some situations are more complex than others and some participants may be more vulnerable than others. The Best Practice Guidelines for Restorative Practitioners (2011) has a whole section on these issues and specialist training is increasingly on offer. One particularly controversial topic is whether cases of domestic violence should be addressed with a restorative process. Some would argue

2 These core values have been omitted from the most recent version of the Principles but can still be found in the Principles applied to School Settings, RJC (2005) Restorative Justice Principles applied in a School Setting.

it is too dangerous, while others contend it is up to those involved. Clearly extensive risk assessment must precede an encounter, but those who have been involved in this work have reported success.

Another highly sensitive area is that of issues which for one culture might be commonplace, but for another are seen as abhorrent and abusive, such as forced marriage, honour killings and genital mutilation. In our increasingly multi-cultural societies, criminal justice professionals and social workers are faced with how to address such occurrences using the legislation, policies and protocols of the resident country's culture, which may not sit well with the customs and beliefs of the people with whom they are dealing. These are not easy issues to address and it may be that formal restorative processes, whilst they may well offer a voice to those denied such a voice, may not be acceptable to all involved.

2.0 What type of restorative process is most suitable for which type of participant?

Once again, there are possible assumptions behind this question that need exploring in order to come to some conclusions. One such assumption is that there are types of participant for whom some restorative processes may not be appropriate. Another is the converse assumption – that there may be some restorative processes more suitable for certain types of participant. Another question lurks behind both of these premises – are there types of participants for whom no restorative process is suitable? The discussion in the previous section has a bearing on these questions.

Awareness is growing about the needs of certain sections of the population who would need specialist support and the existing list of suggested restorative processes would need to be adapted for them. Such groups might include those with speech and language difficulties, mental health issues, learning difficulties, people on the autistic spectrum, those who need interpreters or signers, or those with physical challenges or conditions for whom sitting still is a challenge or whose concentration span is limited. However, once again the question is not "whether" to offer a restorative process to such people, but "how" to do it. To refuse any of these people

the opportunity of a restorative process, whether they are "victims" or "perpetrators" is to fail to give them an opportunity offered to others and is therefore an infringement of their human rights.

In this author's experience, the wisdom and expertise applied to those with special needs can greatly help the practice of those also working in "the mainstream".

If one takes as a point of reference the list of possible restorative processes offered in section 1.2, then it could be possible to develop a questionnaire that would help practitioners ensure that the most appropriate process has been chosen and, by extension, that this process has been adapted as best as possible to meet the needs of those attending.

This questionnaire might include questions about concentration levels, speech and language competence, developmental stage, physical challenges, cultural sensitivities, allergies, environmental factors such as sensitivity to noise or light, appropriate refreshments, accessibility to toilets and rest facilities, and the need for visuals to help make sense of the process. These are only some of the issues that might be necessary to consider – not just for those with special needs, but perhaps for a wider section of the community than first realised.

Restorative facilitators are often renowned for their creativity and flexibility. It is important that they do not feel hidebound by a single model of practice or a "script". Every single situation is different and every participant is different. The key is to identify each person's need and then be creative in order to adapt the restorative process to address these needs.

Conclusion

This paper may have raised more questions than answers. However, there are no easy answers to the two questions raised at the outset. In this author's view, it is neither possible nor desirable to create a list of processes which must be used in certain circumstances. The factors influencing the choice of processes are too numerous, and part of the preparation for any restorative encounter is precisely this kind of careful, sensitive and responsive decision-making.

What this paper has argued for is informed decision-making based on real choice. In order to even think about what restorative process is appropriate for what problem, restorative practitioners need to know about the full range of options. This paper has suggested a range of options and there may be others. In order to empower participants and give them real choice, restorative practitioners must be fully trained in a wide range of options, and restorative services must ensure that there are personnel available to offer the full range of options. Evaluation and monitoring of its provision will gradually mean that expertise will develop about what processes have proved to be more successful in certain circumstances. This should not mean that choice is reduced, nor that practice and policies become more rigid, but that the service can offer more informed support and advice.

With regard to what processes best suit which individuals, this is certainly an equal opportunities issue and every restorative service must develop strategies for ensuring that no one is excluded from a process by virtue of their age, gender, status, developmental level, mental or emotional health or physical state, or due to their fear, anger or initial resistance. The concept of "inclusive restorative practice" is becoming increasingly important and rightly so, even though expertise and understanding is lagging behind will and commitment.

The two questions posed at the outset are very important. Let us keep them alive in our services. They can serve as stimulation to maintain top quality practice for the benefit of our teams and our service users.

Bibliography

Barton, C. (2003) Restorative Justice - The Empowerment Model. Sydney: Hawkins Press.

Brookes, D. & McDonough, I. (2006) The Differences between Mediation and Restorative Justice/Practice. http://www.restorativejusticescotland.org.uk/MedvsRJ-P.pdf

Christie, N. (1977) "Conflicts as Property" in British Journal of Criminology, 17(1), pp. 1-15.

Hopkins, B. (2004) Just Schools. London: Jessica Kingsley Publishers.

Hopkins, B. (2006) The Peer Mediation and Mentoring Training Manual. London: Optimus Publishing.

Hopkins, B. (2007) Restorative Justice in Scottish Schools – a response to Brookes and McDonough. http://www.rpforschools.net/files/ResponseHopkins.pdf

Hopkins, B. (2009) Just Care - Restorative justice approaches to working with children in public care. London: Jessica Kingsley Publishers.

Hopkins, B. (2011) The Restorative Classroom. London: Optimus Publishing.

Hopkins, B. (2012) "Restorative Justice as Social Justice", Nottingham Law Journal, 21(2012), pp. 121-132.

Liebmann, M. (2007) Restorative Justice: How It Works. London: Jessica Kingsley Publishers.

McCold, P. & Wachtel, T. (2002) "Restorative Justice Theory Validation" in E.G.M. Weitekamp & H.-J. Kerner (eds.) Restorative Justice: Theoretical Foundations. Cullompton: Willan Publishers.

RJC (2004) Principles of Restorative Processes. London. http://www.restorativejustice.org.uk/resources/pdf/Principles_final_doc_2004.pdf

RJC (2005) Restorative Justice Principles applied in a School Setting.

RJC (2011) Best Practice Guidelines for Restorative Practice. http://www.restorativejustice.org.uk/resource/best_practice_guidance_for_restorative_practice_2011

Skills for Justice (2010) National Occupational Standards for Restorative Practice. http://www.restorativejustice.org.uk/resource/2010_national_occupational_standards_for_restorative_practice_skills_for_justice

Van Ness, D.W. (2002) "Creating Restorative Systems" in L. Waldegrave (ed.) Restorative Justice and the Law. Cullompton: Willan.

Walgrave, L. (ed.) (2003) Repositioning Restorative Justice. Cullompton: Willan.

YJB (2011) Restorative Justice. http://www.justice.gov.uk/youth-justice/working-with-victims/restorative-justice

What a Difference a Year Makes - The Changed Context for RJ in Criminal Justice in the UK

Geoff Emerson[1]

Introduction

The purpose of this paper is to outline the changes in context for the development of RJ in the UK over the last 18 months. I know this period of time is not exactly a year as the title suggests, but the title was chosen to reflect a song entitled "What a Difference a Day Makes". This song, written by Renee Olstead and made famous by Dinah Washington, describes how much a difference twenty-four hours can make in the context of a romantic relationship. Well, in the worlds of criminal justice, politics and social change, a longer time span is usually required to observe significant change, although a former British Prime Minister famously said that "a week is a long time in politics"! Nevertheless, the point of this article is to suggest that the recent changes in the outlook for RJ within the criminal justice system in England and Wales are nothing short of remarkable. These changes offer opportunities for the development of RJ which can be reasonably described as a "once in a generation" chance for those of us working in the RJ field.

Background

The baseline to be used to measure the extent of this change is the article I wrote for the publication "Restorative Justice – A European and Schleswig-Holsteinian Perspective" which was presented to the Kiel Conference of this European collaboration in February 2011. The article described the history of RJ in England and Wales for both adult and youth offenders and outlined the "status quo" for RJ at the beginning of 2011. The status quo at that time can be summarised briefly, as follows:

- Youth Justice: a well-developed legislative framework for RJ, with patchy quality of delivery and inconsistent rates of victim involvement in key RJ processes.

1 RJ Manager for Thames Valley Probation and Associate with Thames Valley Partnership

- Police: a large number (18,000) of RJ trained staff, with some Police services using RJ extensively to deal with low-level crime by way of an approach called "street RJ". There was, however, no national pattern of implementation and a wide variation in approaches.

- Probation and Prisons: a few pioneering areas and establishments were delivering a small number of RJ interventions post sentence, with no national strategy or consistent pattern of delivery.

- Government Policy: demonstrated a tendency to see RJ as an approach to be used with youth and less serious crime, despite an evidence base (Shapland 2011) which suggests the opposite. The government, however, had at that time just published a consultation paper, "Breaking the Cycle", which set out the commitment to the increased use of restorative practices. It included questions related to the potential for RJ to play a future role in criminal justice policy.

The Changes

The following sections of this article will look at the government's emerging intentions with regard to RJ and the practical developments in the world of Prisons and Probation, which demonstrate a changed landscape for RJ and reason for optimism, albeit cautious optimism, for the future of RJ within the criminal justice sphere.

Government consultations on RJ

The government has issued a number of further documents which develop its policy on RJ (since the publication of "Breaking the Cycle" in December 2010). The first was a response to the consultation presented in "Breaking the Cycle", published in June 2011, which set out very positive intentions in relation to RJ. Specifically, this response indicates that the government intends to use restorative justice interventions at each stage of the justice system. The government also issued a consultation and provided a response

in relation to services to victims, entitled "Getting it Right for Victims and Witnesses", in January and June 2011. Two further consultations related to "Punishment and Reform" within the criminal justice system (as part of what the government calls a "Rehabilitation Revolution") were issued in March 2012. One focused on a re-organisation of probation services, which will not be dealt with here, whilst the other sets out plans for "Effective Community Sentences".

Punishment and Reform: Effective Community Sentences

This latter paper contains a full chapter entitled "Reparation and Restoration". It describes a whole range of potential restorative processes whereby the offender can make reparation to their local community; to society as a whole; and to victims, through the payment of financial compensation and other means. Most importantly, it states the following:

> *"Victims and communities also want offenders to face up to the consequences of their actions. Through restorative processes, victims and offenders can come together to collectively resolve how to deal with an offence. The outcome of this process may be reparation, but it may also involve a range of other outcomes including the offender accepting responsibility for their crime, giving the victim an opportunity to have their say and helping the victim to move on from the offence committed against them."*

This explicit intention to create a framework for the implementation of restorative justice conferences even uses Marshall's definition of the process. The commitment is extremely encouraging for those of us in the field who have struggled with current legislation (Criminal Justice Act 2003 Sec 201) which, whilst designed by Parliament to facilitate RJ, fails to include victims in ways which most effectively meet their needs and to respond to their wishes with regard to the timing of RJ. Sentencers (judges and magistrates) have largely failed to make use of these provisions and have tended to remain sceptical of the potential benefits of RJ.

The document goes on to restate the commitment to RJ expressed in "Breaking the Cycle", stating that the government wishes to increase the use of restorative justice practices; aims to increase the provision of restorative justice practice; and seeks to improve the level and standard of practice of delivery, to ensure restorative processes are effective. The paper seeks views as to how the community sentence framework can enable the courts to demand that offenders pay back to society. It is implicit that RJ will be part of that process.

The document struggles with the precise use of RJ terminology and demonstrates the difficulties we all have – whether policy makers, RJ practitioners, or academics – to use the language of RJ consistently and precisely, so as to avoid creating confusion in our audiences. It is interesting that this difficulty with the lack of precision of RJ language occurs both in the UK and in other countries, as well as across any European dialogue.

A fairly detailed discussion goes on to outline the process of RJ conferencing. It quotes the evidence of the government-funded trials (in which Thames Valley Probation were involved) – that RJ reduces reoffending and increases victim satisfaction with the justice process. The paper suggests that local initiatives can often be the best way forward. This statement indicates that the government is reluctant to create a prescriptive legislative framework to support the introduction of RJ into the sentencing process.

The paper also describes the recent implementation of Neighbourhood Justice Panels which bring together the offender, the victim and representatives of the community to respond to low-level crime by using restorative justice and other reparative processes. The government intends to evaluate these initiatives and include them within a White Paper (usually signalling intention to create legislation) on Criminal Justice Reform.

Of more direct relevance to us (Thames Valley is not an area piloting Neighbourhood Justice Panels) are proposals to:

- Produce guidance on the use of RJ within out-of-court disposals;
- Increase capacity to deliver RJ post-sentence within the National Offender Management Service, through training up to 1,000 staff within Prisons and Probation;

- Provide best practice templates for the effective introduction, implementation and delivery of face-to-face conferencing across prison and probation services.

The contract to do this latter piece of work has been awarded to Thames Valley Partnership. A draft document entitled "Wait 'til Eight" is already in circulation amongst those prisons and probation trusts which have put forward staff for training. "Wait 'till Eight" refers to eight checklists of action and preparation, which are required to be undertaken before an effective RJ scheme can be launched, in a prison or probation setting. The checklists are backed up by detailed guidance and examples of forms, leaflets and other supporting documentation which can be adapted for local use. The final document (improved after feedback from "early starters") will be available at the end of 2012.

The paper on Effective Community Sentences then goes on to look at the potential for RJ pre-sentence. The difficulties of undertaking RJ pre-sentence include:

- identifying which agency should be responsible for undertaking such work;

- how to ensure that RJ processes are properly linked to the decision of the court in a way which does not undermine confidence in the system;

- issues related to RJ processes causing delays in the process of justice;

- establishing mechanisms to ensure that offenders are suitably motivated and willing to take part in a manner that will not cause further harm; and

- establishing mechanisms to ensure that RJ processes take proper account of the wishes and needs of victims, who must understand fully what such processes involve and take part with informed and willing consent.

The paper seeks more evidence on how these practical difficulties can be resolved. It proposes that one or more local areas develop pre-sentence RJ schemes as pilots to test pre-sentence RJ processes. In particular, the paper asks:

- How can we establish a better evidence base for pre-sentence RJ?
- What are the benefits and risks of pre-sentence RJ?
- How can we look to mitigate any risks and maximise any benefits of pre-sentence RJ?

Thames Valley Partnership and Thames Valley Probation have both responded to these questions in written submissions. We have also indicated to the government that we would like to pilot pre-sentence RJ processes, given our experience of post-sentence RJ and the willingness of local agencies in Thames Valley to work together to develop and deliver RJ across the criminal justice process.

The section on victims in the paper on Effective Community Sentences then goes on to ask two further questions:

- Is there any more we can do to strengthen and support the role of victims in RJ?
- Are there existing practices for victim engagement in RJ that we can learn from?

Finally, the paper focuses on building capacity and the dissemination of best practice. It describes how the Ministry of Justice has provided funding to the Restorative Justice Council to pilot the new Skills for Justice Diploma in Restorative Practice, for which Thames Valley Probation has been a pilot area. Thames Valley Probation has trained four assessors for this Diploma and to date seven RJ practitioners have been registered as accredited practitioners, following rigorous assessment of their practice. Most encouragingly, the paper explains that the government wants to "help drive the culture change of developing effective evidence-based RJ practices". The intention is to provide guidance to local practitioners on how approaches can be effectively developed and when they will be appropriate.

Two further questions are posed at the conclusion of the section devoted to RJ:

- Are these the right approaches? What more can we do to help enable areas to build capacity and capability for restorative justice at local levels?

- What more can we do to boost cultural change for RJ?

Government Consultations on Services to Victims and Witnesses – "Getting it Right for Victims and Witnesses"

The government have also published a strategy for victims entitled "Getting it Right for Victims and Witnesses", following a consultation process. This document sets out how they propose to undertake to enhance the role, and engagement, of victims in RJ. This is most welcome because victims have tended to be neglected in the process and their involvement has tended to follow the interest and motivation expressed by the offender. Focusing attention on the needs and wishes of the victim, particularly in relation to the timing of RJ processes, will redress this balance. The particular proposals are to:

- give victims an entitlement to request RJ;

- notify all victims who report a crime about the availability of RJ and its potential benefits, giving details of local services;

- use the Victim Personal Statement to support the delivery of RJ; and

- to enable local commissioners to commission RJ services in response to local needs. This relates to the advent of local Police and Crime Commissioners who will be elected in November 2012.

The Government Response to the consultation goes further than the intentions expressed above and states that:

- no categories of crime will be excluded from the potential for inclusion with RJ processes;

- the Victims Code will include reference to RJ for victims of crime

committed by adults as well as young offenders; and

- RJ will be considered for more serious crime as part of the consultation on "Effective Community Sentences".

Other positive changes in the context for RJ

Whilst the paper on "Effective Community Sentences" has been the most explicit statement of changing government policy towards RJ to date, there have been other encouraging developments which combine to suggest a much more supportive environment for the future. NOMS have published a Commissioning Intentions Document which indicates clearly to Probation Trusts and Prisons that face-to-face restorative justice conferences have a firm evidence base as to their potential to reduce re-offending and that such activity will be commissioned (funded) by NOMS in the future. It is made clear in this document that the evidence base relates to adults and more serious offending. This document also indicates that there is no such evidence base for general victim empathy work, but that this kind of work may be undertaken in those RJ cases where the victim cannot be located, or does not wish to take part. This demonstration of confidence in RJ has encouraged prisons and probation trusts to develop interest in the delivery of RJ and to respond positively and enthusiastically to the NOMS capacity-building programme already referred to.

Government ministers have spoken enthusiastically about RJ on public platforms, including at the Oxford Conference in April 2012, "Making Justice Systems More Restorative", which formed part of this European collaboration. The then Minister, Crispin Blunt MP, followed this up by visiting Thames Valley Partnership and Thames Valley Probation with his ministerial colleague from the House of Lords, Lord MacNally. During this meeting both ministers voiced their commitment to RJ and demonstrated a desire to seek practical solutions as to the process of implementation.

Media Coverage of RJ

A further important change in context for RJ has been the extent of the nature and quality of RJ coverage in the media, which has contributed to a change in the public perception of RJ. RJ has been presented positively

and extensively on television, radio and through the newspapers. A major documentary programme on TV, Panorama, has been followed by exposure on Women's Hour on the radio (on a number of occasions) and RJ stories have found their way into local and national newspapers. What is most remarkable is that the vast majority of these stories are both accurate and positive. One negative and inaccurate story, about a hostile letter being prepared for a victim, was quickly exposed to be inaccurate and followed up by a story from a victim, who recounted her story of a positive experience of RJ. The effect of this coverage is to make the public more aware of RJ, but in our recent experience it has not led to an increase in participation rates by victims. Maybe the recent stories told by victims of rape and the parents of a murder victim convey RJ as something exceptional, rather than as an everyday way of responding to crime.

Developments in Thames Valley

The most recent piece of good news for us in the Thames Valley is the awarding of further funds to continue the European collaboration. This funding includes a small element to test out our ability to deliver victim-initiated RJ. In our work over the last eleven years, the overwhelming majority of cases have been initiated by the willingness of offenders to take part. European funding will enable a small project to provide the opportunity to those delivering services to victims (Victim Support and Thames Valley Probation Victim Liaison Unit) to offer the chance to victims to meet the offender, if the offender is willing and it is safe to do so. This is an exciting opportunity to test take-up rates and to learn more about the needs of victims in relation to the timing of RJ within the criminal justice process. Victims whose offenders do not wish to meet them will be offered a visit to a prison, in order to learn about prison regimes. The structure and nature of these visits still have to be planned in conjunction with victims and victim service providers.

Conclusion

There are many other less significant changes which contribute to a sense that RJ's time has come, not least of which is that one's friends have a more accurate understanding of one's job! So, a year and a half has made

a big difference to the context in which we practice RJ. Primarily, this has been to do with a profound shift in the attitude of the government, which had previously seen support for RJ with adults and more serious crime as representing a potential political risk. Government support has led Probation Trusts and prisons to seek the opportunities to train staff and build organisational capacity enthusiastically and with commitment. With the training and capacity building programme, supported by new frameworks for pre- and post-sentence, RJ will create a momentum which, if supported by high quality practice, will ensure the place of RJ as an important element of the criminal justice processes of the future. The focus on the needs of and benefits to victims has been an important element in changing the perception of politicians and wider society as to the potential benefits of RJ. The organisation Victim Support is now an advocate for RJ, which significantly broadens the basis of support.

Thames Valley Restorative Justice Service, including Thames Valley Probation, Thames Valley Partnership and their partners, has played an important part in this changing context. We have pioneered the use of RJ as part of community sentences and enabled participants (victims and offenders) to speak publicly about the benefits of their experience. We have responded fully to government consultation papers and included in those responses the experience of learning from innovative practice in Europe. As part of the NOMS Capacity Building Programme, we have prepared a valuable document which guides prisons and probation trusts through the complex process of setting up RJ schemes, based on sound principles and good practice. We now seek to take the opportunities to build on the improved context for RJ, to extend our work into victim-initiated and pre-sentence RJ, and to continue to improve the quality of our own work and the work of others, through the provision of training, advice and consultancy.

References:

Emerson, G. (2011) `The State of Restorative Justice in England and Wales´, in Restorative Justice – A European and Schleswig-Holsteinian Perspective. Schleswig-Holsteinischer Verbrand fur Soziale Strafrechtspflege Straffaligen- und Opferhilfer e.V

Marshall, T. (2003) `Restorative Justice: an Overview´, in A Restorative Justice Reader: Texts, Sources, Contexts. Gerry Johnstone, Willan Publishing.

Ministry of Justice (2010) `Breaking the Cycle: effective punishment, sentencing and rehabilitation of offenders´, Consultation Paper (London, Ministry of Justice, December 2010).

Ministry of Justice (2012) `Getting it Right for Victims and Witnesses: Consultation & Response´ (London, Ministry of Justice, January & July 2012)

Ministry of Justice (2011) `Breaking the Cycle: Government Response to Consultation´ (London, Ministry of Justice, June 2011)

Ministry of Justice (2012) `Punishment and Reform: Effective Probation Services´, Consultation (London, Ministry of Justice, March 2012)

Ministry of Justice (2012) `NOMS Commissioning Intentions Document´ (Sets out services to be commissioned by the National Offender Management Service) (London, Ministry of Justice, 2012)

Shapland, J.; Robinson, G. and Sorsby, A. (2011) Restorative Justice in Practice: Evaluating What Works for Victims and Offenders. Routledge.

Thames Valley Partnership (2012) `Wait 'til Eight´ (Draft document prepared for the National Offender Management Service Capacity Building Programme)

Restorative Justice with Youth in the Community

An initiative that won the Supreme Award for Innovation and reduced youth offending by two-thirds over three years in Wellington, the Capital of New Zealand

Allan MacRae

This is a build on the Family Group Conference process that was developed, piloted and put into legislation in New Zealand during the 1980s. The Family Group Conference process was very successful and has played a major role in reducing crime, the costs incurred by Courts, and the incarceration of young people in New Zealand.

The main focus of the Family Group Conference is working with an individual and their family. What I am sharing with you is the success of using the same process to work with a peer group that offends (Youth Gang). It is a process that was so successful it reduced Child and Youth Crime in Wellington, the capital of New Zealand, by two-thirds in three years. This is Community Group Conferencing that addresses the disconnects that caused the offenders to become isolated from their communities and contributed to their offending. Where Family Group Conferencing addresses the needs and deeds of the individual, Community Group Conferencing addresses the needs and deeds of the peer group (the gang).

Co-operation & Partnership

To be effective in addressing youth offending, you need to work in partnership. Government and non-government agencies need to be able to work together in a fully collaborative way. Prior to this way of working, agencies competed against each other for resources and their survival.

At a Family Group Conference I facilitated, I had a victim come to me and state that this was not going to work. I asked him what was wrong with the conference that gave him that feeling. He said, "It is not the conference, it is my experience as a public servant. We just didn't work co-operatively

with other government agencies, let alone community agencies. This plan requires six agencies to work together, half government and the rest non-government, and it just won't happen."

Six months later he phoned me back to say he was amazed that the plan had been successfully completed, and that he was now going to change the way he was going to work with other agencies, as the advantage was now very clear to him. What we had learnt was that Family Group Conferences not only promoted restorative outcomes between the young person and their victim, their family and their community, but it actually promoted restored relationships between agencies within that community. The Family Group Conference process was giving agencies common goals to achieve, and it was giving them the experience of working together around the needs of a young person. This realization was the light bulb that led to the start of a new way of working with youth.

Youth (Human Development)

At this point we knew we could do better with youth if we could provide wraparound programmes, developed through fully collaborative projects based on a partnership of organizations. The Family Group Conference process was not only a good planning process – it was a classroom that provided unique learning opportunities that enabled us to enhance our effectiveness. So what did we learn about youth?

It is natural for young people to want to have a strong need to belong. It is natural for them to start developing their independence at around 14 years of age. This is often reflected in them not liking their parents, their choice of food, clothing and music etc., but they do seek an adult role model similar to their own families' values. From the Family Group Conference we learnt that they will seek membership or associate with a peer group with similar experiences and interests to their own. In fact, once we had completed two or more Family Group Conferences for young people in the same peer group, we knew the full membership of that peer group and the experiences they had in common. What we learnt was that a youth gang was a peer group that offends, and they had the same needs as other youth peer groups. The

main difference was that their experiences were more extreme and therefore their behaviour was more extreme. They had additional common factors in their lives and this list illustrates some of them.

1. They are culturally isolated

We found that young people who were disconnected from their tribe or extended family were more likely to offend. Sometimes this disconnect occurred through marriage break-up, families moving to find employment or better economic opportunities, both parents having to work long hours, or where youths had been placed for care or safety outside of their family networks.

2. They have no adult role models, or inappropriate ones

We found that successful youth groups had a range of connections with the adults around them, like coaches, the parents of their friends, and teachers or adult leaders in clubs they had joined. This gave them a number of opportunities to find an appropriate adult role model. The young people that were coming to our notice had none of these; they were disconnected in every possible way, so their behaviour become ever more extreme, and they became more angry, more isolated from the community they lived in. Adults in one gang said they did not recruit the young people, the young people came to them. I found this hard to believe until I could see first-hand through the Family Group Conference process how isolated these young people were, and how desperate was their need to belong. It was clear that if we as a society did not address the disconnects between them and their community, they would start to interact more and more towards the established gangs until they were so involved they could not find a way out by themselves.

3. They had suffered a trauma in their lives (often abuse)

This became very obvious in one situation where we discovered that every male offender who had come to our notice from the eastern suburbs was a victim of the same paedophile group. All, most without exception, young people who were in offending youth groups had been victims of adults through physical or mental abuse and on many occasions that abuse was sexual. This gave them a good reason to be very angry and contributed to their isolation from adults.

4. They are self-medicating on drugs

These youths are suffering a lot of pain, so it is easy for them to become dependent on drugs. This dependency becomes enhanced after they are expelled from school, which often is their last tangible link with the community. Once this link is broken they have totally moved outside of any adult supervision or positive role modelling. Their dependence on drugs increases so they become more motivated to offend to support that dependency. Adult gangs have been known to give them drugs on credit to sell to support their own use. At first they sell within their past schoolmates, because this is a safe network that is unlikely to result in them getting caught. It was clear to us that schools that expelled young people for drug use were not addressing the problem; they were unknowingly contributing to it. This often caused the young people to get into debt with the adult gangs, so to avoid getting a severe bashing they would commit other crimes, like burglary or aggravated robbery, to raise the money.

5. In school they came to notice for behaviour difficulties, but often have learning difficulties that had not been addressed

I had the opportunity to complete a three-month placement with Special Education. During this time I was able to explore what was behind young people being expelled from school. I was advised by the psychologist that most of the young people who were referred for behavioural difficulties actually had learning difficulties that became clear after some investigation. Students were hiding the fact they could not cope by gaining the acceptance of their peers by challenging the authority of the teacher or by bullying their peers and gaining an alternative form of respect. Both behaviours, if not addressed, lead to offending within the school, and in most cases it was assault.

6. They had school attendance difficulties as far back as primary school

I have also completed research on school attendance difficulties which covered ten schools for students between five and twelve years of age. I wanted to complete this research because a common factor of young people being admitted to a residence for offending in New Zealand had school attendance difficulties in their early years of schooling. This research highlighted that most were missing five hours or more a week by being late

or missing a full day a week. The research highlighted that nearly all the reasons for missing school were welfare related, like being kept at home because of bruising, to look after another sibling, or where the parents were not motivated to prepare the children and get them to school. This group of young people got so far behind in their schooling that they became more and more uncomfortable, so they would truant and compound their difficulties by hanging out with others with a similar history and this, in most cases, led to another peer group involved in offending.

They develop the same behaviours to move towards independence, but do it to far greater extremes. The life experiences of these young people have put them through the extremes of our society, so it is not hard to understand why their transition to adulthood will be more extreme, and very unlikely to be successful unless their community pools its resources to reconnect them.

7. Youths in gangs feel isolated from the community

I have taken you through a summary of how young people get isolated from their communities and get caught up in peer group offending. These are the young people who also make up the top 10% of recidivist offenders in any community. Traditional forms of justice have proven to be ineffective with this group over and over again. This is because most of the traditional criminal justice responses tend to group them together in institutions. Institutions further isolate them from the community at the very time in their lives where they need to develop the skills to live successfully in a community. When they are in a prison, boot camp or other institution, they need to develop the skills and allegiances to survive in an environment where gangs are a major influence. Wellington found the answer in a fully restorative process that was aimed at bringing justice for all who were involved. It was a process that brought accountability, learning, engagement and a chance for a future free of crime.

The success was outstanding and rewarding; it was a great way to work and strengthened everyone's abilities – the police, the youth workers, the social workers, the court and the young people themselves. Judge Carruthers, the Principal Youth Court Judge for New Zealand at the time, stated that we had proven that you can work successfully with the top 10% of offenders and we did it by creating communities around those young people.

Working with an individual in a gang is rarely successful

We needed to find out why that was the case, and this is what we found out from a number of Family Group Conferences. In most cases, the young person's only emotional attachment was with the other members of the gang. Their acceptance within the gang gives them their only sense of belonging as an individual. They feel emotionally dependent on the gang, and find it almost impossible to make a successful break from the gang and its activities. In Family Group Conferences they show very sincere remorse towards their victim and leave the conference committed to put right the harm they have caused, but within weeks they are being drawn back into the activities of the gang and away from their commitment to the victim and their family. We found that we were often dealing with nearly every member of the gang, but not at the same time. This meant the culture of the gang was always intact. We knew what they were all doing, but waited until the police had enough evidence to charge them. It became obvious that the gang was the key to change – if we left it as it was, it changed young people's commitment to turn their lives around, it drew them back in. Therefore, it was not rocket science to see that we needed to get the gang to change: we needed the young person's peer group that gave a chance to belong, to also be the agent for positive change.

Maori Youth at Risk

The first programme we attempted was for Maori youth and was called TuRangatahi (Stand Tall Young People). In Wellington, a lot of burglaries occurred over the summer break while people were away on holiday. This was an attempt to keep the young people who we knew were responsible for those burglaries under supervision and positively occupied, in the hope that fewer burglaries were committed.

Key partners

MokaiKainga

MokaiKainga was a Maori social service that worked with young people and families from different tribes. It was highly respected within the Maori community and ran a number of different programmes as well as a community garden.

Child, Youth and Family Service

Child, Youth and Family Service is the Government agency that I work for. It is a nationwide service and manages care and protection and Youth Justice for young people from birth until they turn seventeen. They run the Family Group Conference process and the social workers who implement the Youth Court orders and some Family Group Conference plans. I say some, because the conference can elect to have the plan monitored by a community organization or individual from within the family or wider community.

Police

The police are the police, but in New Zealand they are trusted with wide powers of discretion and they have a special section called Police Youth Aid. They attend to the majority of youth offending matters and work closely with the youth and the community and represent the Police in the Family Group Conference process, so they also have the opportunity to learn from the Family Group Conferences and increase their effectiveness. The Police funded the first aid course for the programme and provided a road safety workshop.

Wellington Safer Community Council

The Wellington Safer Community Council funded the initiative, which only cost $17,000, and two partially funded salaries for the youth workers from a programme called Task Force Green, a programme that creates opportunities for the unemployed to develop skills that are likely to lead to employment.

Target Group

Youth causing 68% of court appearances. They were the group that were constantly before the court, they had had a number of Family Group Conferences, and we were unsuccessful at making any long-lasting change with them. They were culturally isolated. They lived in Wellington but did not belong to the local tribes (Iwi), and this meant their cultural identity and extended family were not in touch with them. They did not speak their native tongue, nor did they understand the values or treasures of their culture. They

were the prospectors for the adult gang. Being the prospectors of the gang meant they would find the gold, and to do this some of them used younger children to commit the burglaries. They received drugs and other rewards for stolen property. In one case, an adult woman was giving them sex as a reward for what they had stolen.

Achievement

Only one youth returned to court after the programme started. The programme was an outstanding success, with only one of the fifteen young people returning. Burglaries had not only dropped over the summer break, but they stayed down permanently and caused a major reduction in the court list. By the end of the six-month programme, all the young people were in one of the following: education, work experience, or employment.

The group participated in the Ratana Church celebrations which ended cultural isolation. The Ratana Church is a Maori Christian Church which holds its annual celebration on the banks of one of Maori's sacred rivers, the Whanganui. The celebrations are held in the Maori language and traditions, and for the young people to participate in the way they did, they needed to be able to understand the protocols, sing their waiata in Maori and know how to respect the very special places of Maori like the whare (meeting house) on the Marae (sacred area). They learned to do this during the course of the six-month programme. This was a success beyond our wildest dreams. Those that had them completed their Restorative Justice Plans, they completed work for the community in the community garden and for others in need. The greatest success of all was that they had a future without crime.

Samoan Youth at Risk

With our first success behind us, we focused on the next group of offenders. This group was older and were now in the adult system, but they had a major influence over the younger Samoan youth. Through the Family Group Conference process for the younger youth associating with them, we knew who they were and a lot of what they were up to. Again we used the same process as a Family Group Conference to develop a proposal. One of the key differences about this way of working is that we were not out to

develop a programme to send young offenders through. We were developing a programme that would wrap around an identified group of youth. The programme had a set life, with clear goals to achieve within its life, just like any restorative justice plan that was developed for an individual.

We started by bringing on board some key people in the community that wanted to work with Samoan youth, and we asked them to assist in bringing together those that could help. Next, we held a public meeting to share the information about the needs and deeds of the group of youths we wished to engage with. Then we asked them to take time to consider the information and we would ask them to bring any ideas they had to the next meeting. This included the young people themselves being consulted by members of the Samoan community. We got back together, and it was really amazing what people in the community felt they could do. During the meeting it was suggested that the programme should start about midday, as it was felt it would be difficult to get the youths out of bed in the mornings. However, the youths had rejected this and asked for the programme to start at 9:00 a.m. They were really open to the programme and gave some really positive feedback on what they would like to see in it, like sport, and help to get employment.

The key partners were identified, a proposal was drawn up, and a multi-agency approach was taken to advocate for resources. A total of $86,000 dollars was raised to start the programme. It was decided to call this project Loimata O Apa'ula, which means "the tears of the mother". This relates to a culturally significant place for Samoans in Samoa.

Target Group

We focused on Samoan Youth over seventeen years old that were drawing younger youths into their offending behaviour. They were culturally isolated. We knew from what had been shared in Family Group Conferences that the young people had been isolated from the traditional support of the Church. Almost every village in Samoa has a church that is a significant part of their lives. This was a natural link and a support when they immigrated to New Zealand. However, families that were struggling found it too hard to keep up the weekly donations to the church, so they became embarrassed and stopped attending. This led to their children losing their links to the leaders in the Samoan community and eventually the family became isolated and

disconnected from their support networks within New Zealand. Some of the group were facing serious charges – one was in jail for aggravated robbery, and a second also was sentenced to a jail term during the programme for offences committed previously. Newtown, the suburb of Wellington where most of them lived, was becoming increasingly unsafe, and the referral rate for younger Samoan children was increasing rapidly.

Induction Camp

The immediate aim of the programme was to build a rapport between the youths and the adult youth workers. This was achieved through a five-day camp. This was not a Boot Camp, it was a camp where the Police Youth Aid, the Youth Workers and the young people would experience a range of activities to assist them in building a working relationship. These activities included canoeing, caving, climbing, tramping, and bungee jumping off a bridge, and they also cooked and looked after their daily duties together. The enhanced relationship with the youths was then used to facilitate an intensive twenty-five-week programme that followed immediately after the camp.

Intensive Community Programme

The Group Programme was run from 9:00 a.m. into the evenings Monday to Thursday, and in evenings on the weekends, and included a number of non-negotiable goals within six months. These goals were for every youth in the programme to be in a recognized education, work experience or employment programme that fully occupied them every weekday. Offending in the group was to be eliminated. The group was to be linked with the leaders in their community and have good community relations which would be achieved by the young people undertaking projects for the community. An effective network for the parents had to be established. Youth with a Youth Justice Plan had to complete it.

Life Skills

To achieve this we would build up their life skills, so they could live successfully in the community rather than be dependent on crime and institutions. These young people were moving toward independence so the programme covered the skills that would enhance their opportunity to do that. The life skill sessions included flatting and budgeting advice. The police "DARE TO MAKE A CHANGE"; this is a well-known programme that has been adapted for New Zealand and was a successful way of engaging the youth in discussion and assisted them to identify solutions that could work for them. These skills included:

First Aid

Youth and the Law. This covered a wide range of laws that clarified rights at different ages in New Zealand, the laws that cover flatting and consumer rights and other areas that would assist them to make the right decisions as they moved to independence.

Interactive and personal skills

This covered how to appropriately resolve disputes, how to handle themselves in a job interview and how to negotiate successfully. It included anger management and respect for others.

Cultural Development

Values. As mentioned earlier, Christianity plays a major role in the Samoan culture, so each day started with a half-hour of Bible study and prayer before the commencement of the day's activities.

Crafts

The Samoan are carvers. The carving can be a piece of art in its own right or used to print cloth as seen in this photo [photo to be supplied?]. They work natural fibers to make mats, baskets and twine.

Gagana (Speaking the Language)

Helps them understand and maintain links with their extended family and to gain insight into their history as told in their culture's stories and song. I got to learn two of these stories while in Samoa: one told why girls swim in one pool and boys in the other. The other told how cannibalism stopped in Samoa.

Aganu'u

> Often when young people do not know the customs of their culture, they dismiss it as not being relevant to today's world, when this is far from the truth. It is the lack of understanding of these customs that has left them without a sense of identity. Re-linking youth to their cultural customs has evidenced a better state of well-being and established a sense of belonging that negates the need to be part of a gang based on a sub-culture seen in a movie.

Matai System

> The cultural development included linking them with the leaders of the Samoan community, the Matai (the leader within a family group). It helped them understand what being Samoan really meant and to have pride in their heritage.

Dances

> Sport and Recreation. On the West Coast of the South Island and near one of the South Island's airports, I have seen billboards stating "A youth in sport is a youth not in court". I am not sure how true the statement is, but I do know that young people under the guidance of well-meaning adults do better, so having coaches contributing to that guidance can only add to the team. Also included was martial arts training for discipline.

Police Youth Aid also involved the group in WakaAma to develop teamwork and commitment. WakaAma are outrigger canoes and they are used for both national and international competition. One of the most significant points here was that crime had started to drop to the point that the Police Youth Aid Section had more and more time to interact in a more personal relationship with youth and organize activities where that could occur. The Police found this way of working very rewarding and it gave them a far greater insight into the community they served.

Individual Programme

As mentioned earlier, the young people with Family Group Conference plans would complete them. When they appeared in court to report their progress or completion, the youth workers running the programme would be with them and give a progress report directly to the court. Now the youth were supporting each other to complete the obligations to their victims and the court, they were no longer a distraction; they took pride in each other's and the peer group's achievements. They were so proud of their change that they allowed themselves to be interviewed and photographed for the National Police magazine. You couldn't get away with anything after that.

Social and Family Help

The Youth Workers were trained in using a well-being assessment tool by a social worker. This informed the programme of each young person's individual needs, and was used to measure their progress and to assess the success of the programme. Because of their past activities and drug use, their relationship with their families had been strained so relationship guidance between the parents and the young person was included in their individual programme.

Driver's License

The police Youth Aid Team took the young people who were eligible through road safety and driver's license training.

Education

The education sessions included homework support for one to two hours. It covered numeracy, literacy, social and global issues.

Work Experience and Employment

These sessions included the youth meeting with various tradespersons and career people. They were instructed on employment contracts, job-seeking strategies and interview techniques. They were also assisted to develop their own Curriculum Vitae.

Counselling

Counselling was available for individuals who had alcohol and drug or anger management issues.

Low Intensity Follow-Up (26 weeks)

The final stage of the programme was aimed at maintaining the youth with low-intensity monitoring towards their long-term goals. The youth by this time were actively involved in education, work experience or employment. They were making use of the resources within their community and involved in their own personal pursuits, which meant they were fully occupied during the day. The youth workers facilitated the occasional group activity during the evenings and weekends, focusing most of their efforts on those needing extra support to maintain the gains they had achieved. This facilitated the youth moving from dependence on the youth workers to self-reliance. It also freed up the youth workers and the financial resources to focus on another group of youth.

Achievement

Offending almost stopped completely in the area they lived (as reported in the "Dominion Post" five weeks after the programme started). The Samoan caseload dropped from 45% of total referrals, to just one youth. I heard that the people who ran the programme established an enduring rapport with the youths, and are now attending their weddings.

Children at Risk

While working with the older youths, we got to hear the stories of their journey through childhood. This gave us an insight into how we could intervene to reduce the risk of other youth following in their footsteps. We found at this age they were not jelled into a peer group and were of mixed gender and culture, so it was decided it would be best to set them up with individual mentors.

This would also help us avoid bringing young people at risk together and creating another peer group that might offend. We had learnt our lesson about this in the past, where we used to bring young people together in institutions and place them in programmes with other young people they did not know. That practice put them in a situation where they learnt other offending skills and built relationships with young people that often led them into other forms of offending, sometimes more serious.

Key Partners

- Strathmore Community Base
- Blue Light (Police)
- Child, Youth and Family Service
- Project Adventure
- Wellington City Council
- Wellington Safer Community Council

Target Group

8 to 13 year olds who were identified by police, schools and youth workers as those most likely to offend and who had little or no role models. They had school attendance difficulties and many had older brothers or sisters who had been in trouble with the law.

Achievements

None of the children and youths on the mentoring programme offended. None of their siblings offended. None of their associates offended.

The above was reported by the police, and they had the view that for every ten young people we successfully mentored, we turned around a hundred children as teenagers from offending. We had turned around the leaders and they took the others on their new path with them. Parents attended a

support programme while their child, the youth, was being mentored. The support programme enabled parents to work together to cover each other's care of the children. It linked them to other supports within the community that could assist them with their parenting. It empowered parents to work in a collaborative way and share different ways of coping.

Other Projects:

Youth Night Club (Zeal)

A partnership between City Council and a community provider called "the Rock" (where youths had a safe place to meet; a drop in assaults on youth). On Friday and Saturday nights we found a lot of assaults occurring. From the information we had gained from Family Group Conferences and the diversion work of the police, we knew that young people were hanging around in the streets outside night clubs so they could hear the music and experience the nightlife scene. Looking into it further, we found this made them vulnerable to being victimized, so providing a safe place for them to meet and enjoy their music together had an immediate effect on the number of assaults. It was not economically viable for a business to meet the needs of youths, because they were not of an age where they could purchase alcohol, the main profit-maker for every night club.

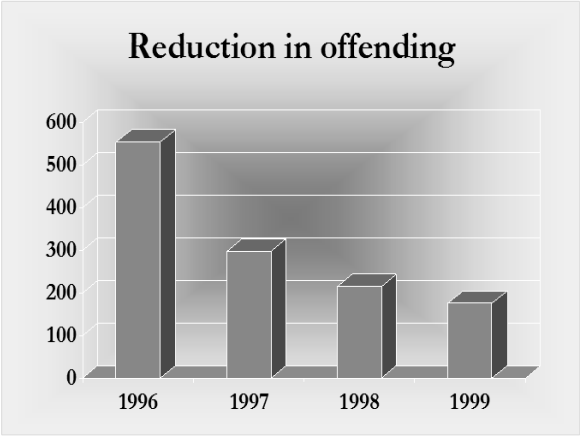
Late night buses out of the city (reduction in car conversions)

We found that youth did not have a safe way to get out of the City in the early hours of the morning, so some stole cars. Providing the buses had a major effect in reducing car conversions.

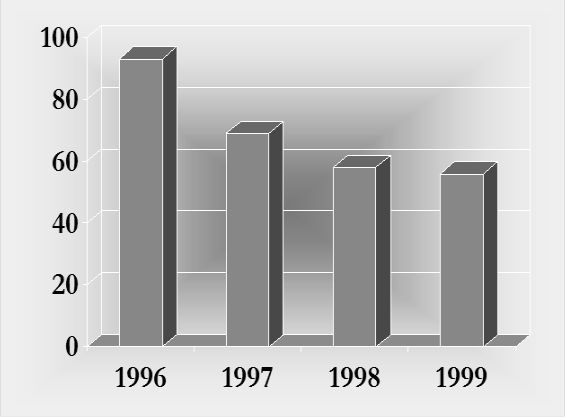
Achievements

These are Wellington's achievements through using restorative justice approaches within its communities:

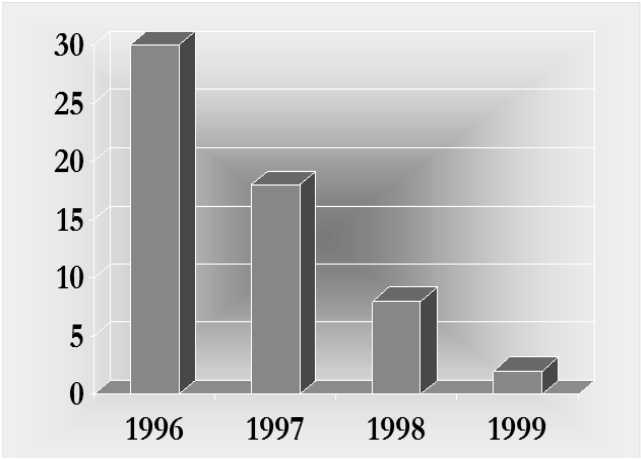
The number of charges that needed to be addressed dropped from 554 to 176.



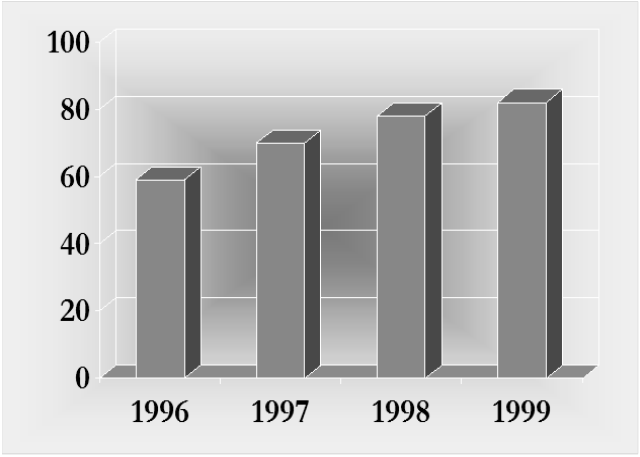
The number of individuals had dropped from 93 to 56



The recidivist offenders dropped from 30 to 2 and the community was able to restrict their activities



Victim attendance at Family Group Conferences increased from 59% to 82%



The positive results Wellington was achieving encouraged greater community involvement and an increase of organizations and trusts wanting to invest in that success. We ended up with more resources than we could use. It was amazing to see the number of community people who wanted to work with youths when they could see and experience the success.

Community Success

This was a whole of community success, and a clear demonstration that restorative justice practices could facilitate change and reduce offending amongst our most serious youth offenders.

Youth Justice

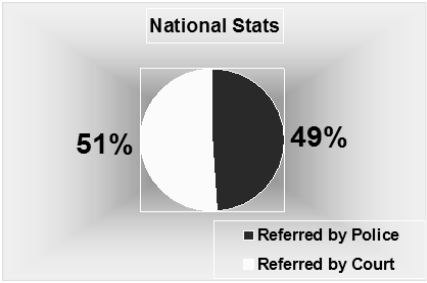
A Whole of Community Approach

Often when a programme is as successful as the Wellington experience, people will put the success down as a one-off that can't be repeated in other communities by other people. To address this, I piloted putting another team in a totally different community. It was in a suburb of a city that had the highest use of court, made more use of the top-end Youth Court orders and, per capita, was the highest contributor to the under-21 prison population in New Zealand. At the end of the first year the pilot achieved incredible results. It had become part of the local community and was able to make a real difference for young people and their families in the area. Not only did it achieve good restorative justice results, it created a focus on youth and the services they needed.

Referral Type

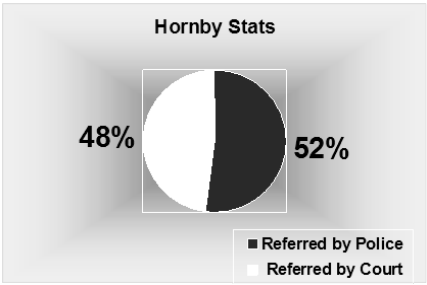
National Statistics

The national average was 49% of cases which came directly from the police without having involved the court.



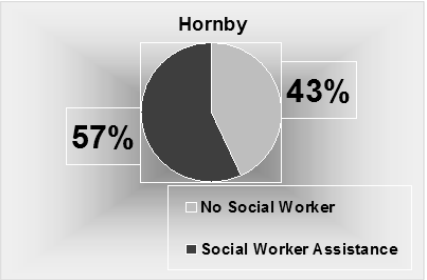
Hornby Statistics

Remember Christchurch had the highest use of court in the country. The Hornby pilot was able to turn this around to the point that the referrals coming from the police were above the national average, clearly indicating that the police had a growing confidence in this way of working.



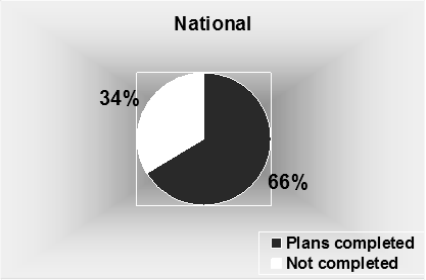
Social Worker Involvement

There was a risk that having a social worker so available could cause a capture of more cases for the social worker to lead. Here you see the youth justice social worker had no involvement in 43% of the cases. That means the family and their community support were able to take charge of the rest. A Youth Justice Social Worker in New Zealand fills the role undertaken by a probation officer in other countries. In regard to the cases the social worker was involved in, they were more the back-up when assistance was required. This was significantly different from the past where a larger amount of responsibility fell on the social worker.



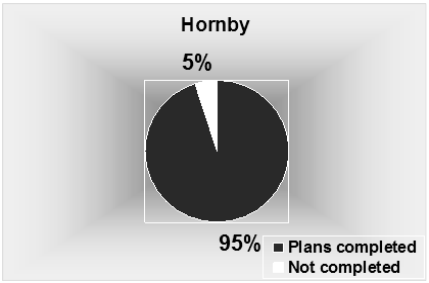
Discharge

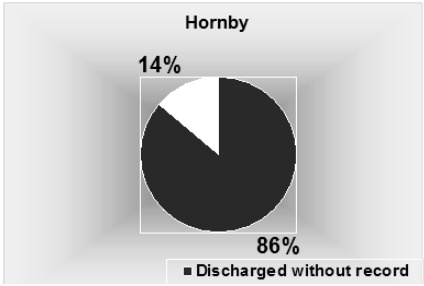
National Statistics on plans completed. The National Statistics showed 66% of Family Group Conference plans were being successfully completed.



Hornby Statistics on plans completed and plans completed without a Court Order

Within 12 months, Hornby was achieving a 95% success rate in getting plans completed and 86% were able to be completed without any formal court orders, demonstrating a far greater success in holding young people accountable for their offending, and young people making significant positive changes in their lives. This was clear evidence that restorative justice programmes, well-bedded in the community, were the most successful way of working.





Marc Cousins (Constable of New Zealand Police) stated in an interview:

> "I don't think it is a soft option. It can be tailor made and is therefore different for every young person and every family. Conferencing empowers me as a policeman, empowers me personally. Without conferencing, if I was to want outcomes for the community and accountability, which is part of my job, I think I would reach families."

Youth Justice

A new way of thinking. The success of what I have taken you through has been so compelling in New Zealand that it is now to be the way Youth Justice is to be managed through the whole of New Zealand.

CYF Youth Justice Team

Youth Justice Manager. Staff need intimate knowledge not only of the factors behind offending but also of the community resources, networks and opportunities that can create an alternative offending-free future. Youth Justice teams that are the core of our new structure will establish multi-disciplinary, community-focused delivery teams to work solely within a specific community in their court service area. Their work must be a seamless endeavour with other government and non-government agencies. This means being organised around local communities, but also encompassing people like Police Youth Aid and Police Youth Development Officers, council-employed youth workers and education staff along with other NGO providers and community organisations.

Quoted from the "Way Forward" decision document

> Rather than create large teams that try to do everything for everyone, we want to have smaller sub-teams that within the community are alongside our community partners. Each Youth Justice Manager will have sub-teams that are focused on particular communities, possibly located in the community, or with the community or other government agencies.

Seven Steps to Success

1. Convene: Gather and collate information so it highlights trends and patterns occurring within each community.

2. Information Sharing: Invite people and organizations who may have an interest in the information to meet.

3. Private deliberation: Allow them to deliberate with colleagues over a week or more.

4. Develop and seek agreement to a plan: Reconvene the meeting to gather their ideas and development them into a plan/proposal.

5. Advocate for resources

6. Implement the plan

7. Monitor the plan to success

Twelve months ago, New Zealand invested an extra $10,000,000 to employ twenty-five Youth Justice Managers, eighteen more Family Group Conference Co-ordinators, and approximately thirty-five more social workers to drive youth justice to even greater levels of success, in each and every community within New Zealand.

What I hope I have demonstrated to you is that Restorative Justice, embedded in the community, captures the resources of the extended family and the community at large to address the issues. It can produce very comprehensive plans. It is more effective and cost efficient. It is a more rewarding way to work. It is very effective in reducing crime.

Contributors

Ricarda Lummer studied Criminology at Canterbury Christ Church University, UK, and at K.U. Leuven in Belgium (M.A.). She is currently working as a research assistant at Kiel University of Applied Sciences on the project "Improving Knowledge and Practice of Restorative Justice", as well as working as a mediator in criminal matters.

Jana Bewersdorff works as a prosecutor in Schleswig-Holstein, Germany.

Jim Hilborn is a Canadian living and working in Tallinn, Estonia. He has worked in restorative justice, penal reform, offender re-integration and crime prevention since the early 1970s. His MES degree (York University, 1973) was in community design and social/organizational intervention. As a clinical sociologist he tries to think and work at both the micro and macro level. He is working on a model of "salutogenic justice" and the development of neurocriminology.

Prof. Dr. Otmar Hagemann is Professor at the Faculty of Social Work and Health at Kiel University of Applied Sciences. Previously he was occupied with two international comparative research studies at the University of Greifswald. In 1985 at the University of Hamburg he became involved in victimology as a research assistant of Klaus Sessar. He got his Ph.D. there with a dissertation on coping processes of victims in 1992. In 1997 he developed a victim awareness program for prisoners. Discovering Restorative Justice relieved the personal tension in practical work with prisoners, theoretical reception of abolitionist thinking and the self-concept as a victimologist. In 2006 he initiated the first German conferencing project in criminal matters ("Gemeinschaftskonferenzen") in Elmshorn. He is a member of the World Society of Victimology, the European Society of Criminology, the European Forum for Restorative Justice, the GiWK (Society for Interdisciplinary Scientific Criminology) and the Local Council for Crime Prevention in Elmshorn, Schleswig-Holstein, Germany. His most recent book on Victimology, Victim Assistance and Criminal Justice, was published in 2009 with co-editors Schäfer and Schmidt.

Elmar Weitekamp is a restorative justice pioneer in Germany. He currently serves as Professor of Criminology, Victimology and Restorative Justice at the University of Tübingen, Germany. Weitekamp began his career as a Social Worker in the Department of Juvenile Welfare for the City of Möchengladbach, Germany. After earning an M.S.W. in Social Work in 1980 at FachhochschuleNiederrhein, Mönchengladbach, Germany, and an M.A. in Criminology (1982) at the University of Pennsylvania, Philadelphia, PA, USA, he entered the field of criminological research at the University of Hamburg, Germany. Weitekamp then taught in various positions at the University of Pennsylvania and The Wharton School, and earned a Ph.D. in Criminology for the Graduate Group of Managerial Sciences and Applied Economics (The Wharton School, 1989).

Isabel Thoß. After graduating from high school she studied law in Munich for one semester and then transferred to the Eberhard-Karls-University in Tuebingen. In Tuebingen, she had the opportunity to specialize in Criminology, attended a course called "International Political Crime and Violation of Human Rights" and worked at the Institute of Criminology. When she was studying abroad in Oslo, Norway, she was trained in the Restorative Justice method of Peacemaking Circles by Harold and Phillip Gatensby. Since September 2011, she has been a part of the European Union project that implements Peace Circles in Germany, Hungary and Belgium. At a Victimology conference in Dubrovnic, Croatia, two professors from the St.Cloud State University, Dick Andzenge and Lee Gilbertson, offered her an internship in the judicial system of Stearns County, Minnesota, in August and September, 2012. During this time in Minnesota, she went to the Fond du Lac Indian Reservation to observe Peace Circles and joined a Restorative Justice group in Mooselake prison for two days. In the next two years she is going to be interning in the German judicial system to be trained into practice law, but her focus will still be on Restorative Justice Methods, especially Peacemaking Circles.

Mario Nahrwold is Professor at the Faculty of Social Work and Health at Kiel University of Applied Sciences. He holds lectures in civil law especially for family relationships and public law, including juvenile law. Previously he

studied science of administration and law. For a few years he worked as an attorney and from 2007 to 2008 at the city of Bremen in the department for foreigners, where he represented the city in court proceedings.

Zsófia Tóth studied law at the ELTE University in Budapest, Hungary. She spent her university internship at the National Institute of Criminology of Hungary. She wrote her thesis about victim-offender mediation focusing on the role of mediators. After graduating in 2009, she started working for the Hungarian Victim Support Service at the Office of Justice. Currently she is working at the Victim Support Department at the Justice Service of Ministry of Public Administration and Justice of Hungary, which is the successor organization of the former Office of Justice. Besides her work, she started studying psychology at the University of Pécs, Hungary, where she has just finished the first three years and received a Bachelor of Arts (BA) degree in psychology in 2012. She intends to keep on studying psychology and dealing with victim support and restorative justice.

Crispin Blunt[1] was born in 1960 and was educated at Wellington College and The Royal Military Academy at Sandhurst. In 1991 he gained an MBA at Cranfield University School of Management. In June 2001, Crispin was re-elected as Member of Parliament for Reigate with an increased majority of 8025. Iain Duncan Smith appointed him to the Opposition front bench as Shadow Minister for Northern Ireland in September 2001. In July 2002 he was appointed as deputy to Tim Yeo, Shadow Secretary of State for Trade and Industry, where he had shadow ministerial responsibility for trade, energy and science. Crispin resigned from this position in May 2003 and served again on the Defence Select Committee from December 2003 to October 2004, when Crispin returned to the Conservative front bench as an Opposition Whip under Michael Howard. In January 2009, Crispin was appointed to the Opposition Front Bench as a Shadow Home Affairs Minister with particular responsibility for Security and Counter-Terrorism by David Cameron. In May 2010, Crispin was re-elected with a majority of 13,591 and was appointed Parliamentary Under-Secretary of State at the Ministry of Justice upon the formation of the Coalition Government. Since then, Crispin has served alongside Rt Hon Ken Clarke MP QC as the minister responsible

1 Information taken from the official website of Crispin Blunt http://www.blunt4reigate.com

for Prisons, Probation and Youth Justice.

Sari Stacey was born in Oxford just as war broke out in 1939, and was sent to Canada with her Canadian mother and father in the RAF, returning to England in 1945. After school she went to Reading University and gained a BSc in Zoology. She went straight into teaching at secondary level before having a break in her career of nine years, during which time she married, and had three daughters. She later returned to teaching and was active in the NUT and in local politics, serving as a Parish Councillor. In 1986 she was made a Magistrate in Reading and served for twenty-three years. During this time she was a school governor and chair of the local primary school. She spent three years as a volunteer with the Independent Monitoring Board in a local prison for youths aged 14-18. She retired from teaching in 2001, and from the Bench in 2009. She is lucky to have six grandchildren, the eldest of whom is now 15 and the youngest 2 – three girls and three boys – who keep her busy when she is not travelling.

Lawrence Kershen works as a mediator and trainer and also acts as a consultant in conflict resolution and alternative dispute resolution. He was accredited as a mediator by CEDR in 1994, and as a restorative facilitator by IIRP in 2011, and is consistently ranked as a leading mediator in Chambers UK Directory. He was called to the Bar in 1967, appointed Queen's Counsel in 1992, and also sat as a Recorder (part-time judge) for 12 years. His experience in the justice system led to an interest in more effective approaches to conflict resolution, and in 1999 he left legal practice to focus on mediation and Restorative Justice. He designs and runs training courses in mediation and negotiation in the UK and abroad, from Iceland to South Asia. He has been a lead trainer on training faculties e.g. with CEDR and the Danish Bar and Law Society, for a number of years. His interest in skills-based training includes experience in Neuro-Linguistic Programming and Nonviolent Communication.

Jo Tein has studied social work and theology and is currently the executive director of the Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim and Offender Treatment. His main occupation and

responsibility is to direct a network of 48 member organizations in the field of victim and offender treatment. Furthermore, he is organizing conferences and workshops, editing a magazine, and mediating conceptual processes and discussions between juridical administration, politics and NGOs. Another main focus of his is the supervision of international projects, with special interest in Restorative Justice projects.

Leo Tigges. After finishing his Masters Studies in political science, sociology and criminology at the Free University of Amsterdam in 1973, Leo Tigges has worked at various management positions at the Dutch Ministry of Justice throughout his career. He joined the Dutch Probation Service in 2001 as Regional Director and later became Operational Director. In this period he also carried out special assignments for the Dutch Ministry of Justice, e.g. the preparation for the establishment of an accreditation panel for structured programs with the probation service aimed at targeting criminogenic factors in the behavior of offenders. From 2007–2012 he was Consultant International and Academic Relations & Research to the Dutch Probation Service. In the same period he was the Ministry of Justice's Project Manager on highly complex projects aimed at the preparation of the justice fields on new laws, for instance, the transfer of sentences across Europe. In 2004 he was elected Secretary General of CEP, the European professional organization for the probation sector, and was re-elected for a second term three years later. The outgoing Board of CEP advised the incoming Board at the General Assembly in Spain to appoint Leo Tigges for another period as Secretary General of CEP, a position which he held until May 2012. Currently he is Liaison Officer for the Dutch Ministry of Justice in the Caribbean Netherlands.

Geoff Emerson has worked for the Probation Service in Thames Valley for over thirty years as a manager and practitioner, both in prison and community settings. He managed the multi-agency Restorative Justice Team for Thames Valley Probation between 2001 and 2005, in conjunction with the Justice Research Consortium. This team delivered Restorative Justice conferences as part of prison and community sentences, imposed for violent offences. Since 2008 Geoff has led a small team delivering RJ as a Specified Activity Requirement as part of Community and Suspended Sentence Orders. The

team also undertakes RJ work commissioned by other agencies. As well as his work with Restorative Justice, Geoff manages the Thames Valley Probation Victim Liaison Unit [I am fairly certain that Geoff no longer does this!] and leads a project with a local voluntary organization providing volunteer mentors to support short-term prisoners after release from prison.

Allan MacRae is Manager of Coordinators for the Southern Region of New Zealand, overseeing Family Group Conferences for both Youth Justice, and Care and Protection. Prior to taking this position, he was Youth Justice Coordinator for the capital city of Wellington. After receiving the National Supreme Award for Innovation, Allan developed a program in Wellington which emerged as a leading model of Youth Justice. Subsequently, he was a lead trainer in the "Best Practice Road Show", designed to bring these practices to other areas of New Zealand. He has also conducted numerous trainings in Belgium, Germany, Thailand, and the United States. Allan received his diploma in Social Work from Victoria University and has more than 30 years of experience working with young offenders and at-risk youth.

Pete Wallis has been working as a restorative justice practitioner with Oxfordshire YOS for 12 years, during which time he has developed good practice, including local policies and procedures, and engaged with hundreds of victims of youth crime. Currently Oxfordshire YOS manages to contact and consult with 85% of the victims of the young people referred to the YOS, 50% of whom engage in some form of restorative justice process. Pete is joint author of The Pocket Guide to Restorative Justice with Barbara Tudor, who is a highly regarded restorative justice practitioner with West Midlands Probation. Pete is the author of Are You Okay?, which is a guide to supporting young victims of crime, and joint author of Why Me?, a course for young victims of crime based upon restorative justice and protective behaviour approaches. With two artists, Marian Liebmann and Clair Aldington, Pete has also developed a victim empathy course for young offenders which has been published, called What Have I Done? Pete, who is also a teacher and probation officer, lives in Oxford with his wife and two girls.

Belinda Hopkins has been pioneering restorative approaches in youth settings across the UK and beyond for over 18 years. In the early 1990s, after a career in secondary education, she founded Transforming Conflict, one of the UK's leading providers of training and consultancy on restorative approaches in youth settings. She still regularly runs training courses herself, writes books and articles, develops all the training materials and resources, and speaks at many conferences, both nationally and internationally. Her book, Just Schools (JKP 2004), was the first book ever to be written about restorative approaches in schools, and Just Care (JKP 2009) has made a similar pioneering contribution in the field of residential child care. Belinda gained her doctorate in 2006 with research into the implementation of a whole school restorative approach. She is passionate about sharing how the ethos, principles and practices of Restorative Approaches can transform communities and institutions.

This book is published as part of the European project "Improving Knowledge and Practice of Restorative Justice". The project aims to improve knowledge in the field of Restorative Justice, gain information on the implementation and application of Restorative Justice methods, raise awareness amongst relevant actors and the general public, as well as identify effective measures and best practices in the partner countries: Germany, the UK, Estonia, Belgium, Hungary, Russia and the Netherlands. A further goal is to expand the quality and quantity of applied Restorative Justice measures through action research. In order to reach this, the cooperation between the judicial sector and social work agencies must be strengthened. Three conferences are carried out as part of the project in Kiel in Germany, Tallinn in Estonia and Oxford, UK. This book is the second project-publication, reflecting the issues discussed and presented at the second and third conferences in Tallinn, Estonia and Oxford, UK.

The book contains articles from the following authors: Jana Bewersdorff, Jim Hilborn, Otmar Hagemann, Mario Nahrwold, Zsófia Tóth, Elmar Weitekamp and Isabel Thoß, Crispin Blunt, Sari Stacey, Lawrence Kershen QC, Jo Tein, Leo Tigges, Geoff Emerson, Allan MacRae, Pete Wallis and Belinda Hopkins.

ISBN 978-3-00-039727-1