



Restorative justice: An agenda for Europe

**Papers from the fourth conference
of the European Forum for
Restorative Justice, Barcelona,
15-17 June 2006**



Table of contents

Introduction	5
Plenary session: Restorative justice and society – going beyond the law	6
<i>Peace-making efforts in Northern Ireland</i> , Brendan McAllister (Northern Ireland)	6
Workshop session 1: Peace-making and peace-building efforts in Europe and community mediation	13
<i>Restorative justice training in Serbia and Montenegro: Reflections on issues and potential in a transitional state</i> , Marian Liebman (UK)	13
<i>Community mediation and community development in Scotland</i> , Ian McDonough (Scotland)	16
<i>The promise of restorative justice in the search for truth after a violent conflict. Experiences from South Africa and Bosnia-Herzegovina</i> , Kris Vanspauwen (Belgium) and Marta Valiñas (Portugal)	18
<i>To redress the wrongs of the past – the case of the “war children” of World War II</i> , Kjersti Ericsson (Norway)	21
<i>Community justice initiatives of Waterloo Region (CJI). A 32 year retrospective look at a restorative justice based agency</i> , Mark Yantzi (Canada)	23
<i>Mediation and restorative justice for victims of racism</i> , Anne Salberg (Switzerland)	27
<i>Restorative justice: can we do it before things go wrong? (Restorative justice and the public health model)</i> , Beth Rodman (USA)	31
<i>Restorative justice into the 21st century: arguments for restoration of humanity and community on a multi level scale</i> , Gert Jan Slump (Netherlands) and Anneke van Hoek (Netherlands)	35
<i>Creation and functioning of a community service of mediation in the municipality of Sant Pere de Ribes, Barcelona</i> , Javier Wilhelm (Spanje)	38
<i>How can the mediation centres/services and local mediators play an active role in preventing potential conflicts and escalation of conflicts? (Examples from Albania and Norway)</i> , Rasim Gjoka (Albania) and Karen Paus (Norway)	39
<i>Family group conference can stop family violence</i> , Rob van Pagée (Netherlands)	42
Plenary session: Restorative justice and the law – going beyond diversion, Marko Bosnjak (Slovenia)	46
<i>Restorative justice and more serious offences: beyond the diversion-inclusion debate (abstract)</i> , Ivo Aertsen (Belgium) and Leo Van Garsse (Belgium)	46
Workshop session 2: Victim-offender mediation and conferencing with more serious offences	47
<i>Victim and offender reintegration in a serious crime case. Learning from mediation during the sentence</i> , Ansel Guillamat, Belen de la Camara and Clara Casado (Spain)	47
<i>VOM with adults and recidivism</i> , Miguel Angel Soria and Ansel Guillamat (Spain)	53
<i>Victim policy and restorative justice policy regarding serious cases in Belgium</i> , Anne Lemonne (Belgium)	55
<i>Mediation in homicide cases: opportunities and risks</i> , Kristel Buntinx (Belgium)	56
<i>Restorative justice and adolescent sexual offending</i> , Vince Mercer and Julie Henniker (UK)	59
<i>No soft solution, the effectiveness of youth conferencing in Northern Ireland – How victims and offenders of serious crime prefer it to the traditional system</i> , Alice Chapman and Mary Jo McAllister (Northern Ireland)	60
<i>Thorny theses concerning victim-offender mediation in a judicial context</i> , Pieter Verbeeck (Belgium)	62
<i>Guiding the change process in Belgian prisons towards a restorative prison policy</i> , Ann Daelemans (Belgium)	64
<i>Victim offender encounters in cases of long-term sentences in the Restorative Justice Center Program at Montréal</i> , Thérèse de Villette (Canada)	65
<i>Circles of support and accountability for released sex offenders</i> , Jean-Jacques Goulet (Canada)	67
<i>Future mediation with serious offences in Hungary</i> , Ilona Görgenyi (Hungary)	69



<i>Developing restorative skills for delinquent youth (herstelopvoeding), Annemieke Wolthuis and Marieke Meijnen (Netherlands)</i>	71
<i>Trusting the community to get it right – resolving serious offences outside the traditional justice system. Youth justice conferencing in New South Wales, Australia, Michaela Wengert (Australia)</i>	79
Plenary session: School mediation and the inner dynamics of restorative justice – going beyond offender orientation, Martin Wright (UK)	80
<i>The DNA of restorative justice in schools and other organisations, Belinda Hopkins (UK)</i>	80
Workshop session 3: School mediation and the micro-dynamics of restorative processes	89
<i>Dilemmas and possibilities in mediation programmes for 12-15 year old youngsters, Lotte Christy (Denmark)</i>	89
<i>Narrative co-mediation: the ‘M’ Team approach in New Zealand, Kerry Jenner (New Zealand)</i>	95
<i>Reforming the criminal justice system through social healing, Jane Hill and Graham Wright (UK)</i>	96
<i>Shame, guilt and trust: developing a basis for peace making and peace building, Roger Matthews (UK)</i>	98
<i>Re-conceptualising restorative justice for school settings, Paul McCold (USA)</i>	99
<i>Restorative justice: a study of a dispute resolution program, Sarah Smith (USA)</i>	102
<i>ODR and Restorative Justice (Emotions in the areas of negotiations mediation and conflict resolution), Marta Poblet (Spain)</i>	103
<i>Restorative practices in schools, Betty Robinson</i>	104
<i>The implementation of restorative practices in schools, Peta Blood (Australia)</i>	106
<i>Restorative schools: How to make the implicit explicit, Nicola Preston (UK) and Les Davey (UK)</i>	107
<i>School mediation in Catalonia, Estel Solé (Spain) and Pere Led (Spain)</i>	108
<i>School mediation in the province of Bari, Illaria de Vanna (Italy)</i>	109
<i>The 4-way-interaction of morality, neutralisation, shame and bonds, Borbala Fellegi (Hungary)</i>	110
<i>The psychology of victims in restorative justice, Antony Pemberton</i>	113
Plenary session: Establishing the basis, Debra Clothier (UK)	114
<i>The pros and cons of having European standards for practice and training, Niall Kearney (Scotland) and Frauke Petzold (Germany)</i>	114
Workshop session 4: Training of mediators and legal professionals and standards of good practice	115
<i>Restorative justice and traditional legal culture in the context of contemporary Chinese criminal justice reform, Jianhong Liu (USA)</i>	115
<i>Restorative justice programs in Thailand, Wanchai Roujanavong (Thailand)</i>	118
<i>Legislating mediation procedure in Finland, Outi Mustajoki (Finland)</i>	119
<i>Implementing restorative justice in the Netherlands, John Blad (Netherlands) and Antony Pemberton (Netherlands)</i>	122
<i>Learning to be restorative, Tim Chapman (Northern Ireland)</i>	124
<i>Nightmare on Restoration Street, Vince Mercer (UK)</i>	126
<i>VOM-training in Norway, Merete Granrud (Norway) and Grete Stabekk (Norway)</i>	127
<i>On the summer school in Pilsen, An Marchal (Belgium)</i>	129
<i>Promoting good practices of victim offender mediation in Serbia: a journey to improving quality standards of practices, Jasna Hrcic, Dusica Vujacic-Richer, Gorana Ilic and Tijana Marinovic (Serbia)</i>	130
<i>Best practice for restorative justice within restorative justice providers and the Scottish Children’s Hearing System, Billy Nicol (UK)</i>	137
<i>Working under the aegis of the criminal justice system: implications for restorative justice practice, Margarita Zernova (UK)</i>	139
<i>Interagency Cooperation – The way forward, Rose Sweeney and Barry Moore (Ireland)</i>	140
<i>Becoming a restorative school – What training and support do educationalists need?, Belinda Hopkins (UK)</i>	141
<i>Support and supervision, Liz Duffy (UK)</i>	142



<i>Doing nothing: a comparison of the effects of early restorative intervention and non-intervention on the criminal careers of three cohorts of 'early-stage' young offenders in England and Wales</i> , John Pitts (UK)	143
Plenary session: Restorative justice and beyond – An agenda for Europe , Niall Kearney	144
<i>Restorative justice and beyond – An agenda for Europe</i> , Lode Walgrave (Belgium)	144



Introduction

The fourth conference of the European Forum for Restorative Justice: 'Restorative justice and beyond – An agenda for Europe', that has taken place 15-17 June 2005 in Barcelona has attracted a lot of interest. As the title chosen indicates, we had intended to take a look beyond the boundaries of the established realm of restorative justice. We have attempted to address those exciting efforts of peacemaking and peace-building in societies torn by ethnic or religious conflicts, a peace that adheres to the principles of restorative justice. We have been looking at experiences with community mediation programmes that are operating independently of the criminal justice system and we have been looking at the restorative elements in school mediation. Where restorative justice programmes find their place in close connection to this system, we have paid special attention to its dealing with more serious crimes. But we have also tried to give time and space to the dynamics of restorative processes, to the training of mediators and legal professionals and to standards of good practice, core topics within the work of the European Forum.

As with the earlier conferences of the European Forum, we have again strived to implement a design that allows for maximum feasible participation of all those attending the conference. It seems that we have indeed come a decisive step closer to achieving this ambitious goal – thanks also to the facilitators entrusted with the task of inciting participation.

The plenary presentations of Brendan McAllister, of Ivo Aertsen together with Leo Van Garsse, and of Belinda Hopkins had set the stage for the workshops combined with café conferences that followed. Except for the Powerpoint-based presentation of Aertsen/Van Garsse where there is only an abstract available, you will find the presentations in full length included in this report. And the same holds – almost – for the final plenary speech given by Lode Walgrave (in fact, Lode's actual speech was considerably longer than what he could deliver in written format).

The summaries of the workshop presentations provided by the presenters are different in length and detail; most of them are complemented by a short comment (or report) provided by the observers that were present at the workshops.

This report is to bring back to the memory of the participants what they have heard and what they have talked about. Even more important, it will give you an opportunity to receive some basic information on those presentations that you have missed but would have liked to attend. (Indeed, the most common point of critique in relation to the conference was that workshops dealing with one theme were taking place simultaneously. We hope that in this way we can make up a bit for this defect). Finally, this report is to give those that have not been present, information on what was going on during the conference. For all of the potential readers we hope this report will succeed in conveying a bit of the flavour of those two and a half days of working in the pleasant building on Carrer d'Ausias Marc in Barcelona.

This is also to thank once more our great host, Jaume Martin, and his team at the 'Secretaria de Serveis Penitenciaris, Rehabilitació i Justícia Juvenil'.

Christa Pelikan



Plenary session: *Restorative justice and society – going beyond the law*

Chair: Gro Jørgensen (Norway)

Brendan McAllister (Northern Ireland): *PEACE-MAKING EFFORTS IN NORTHERN IRELAND*

1. Peace and Justice

I wish to reflect on the nature of peace and of justice. In doing so, my perspective is more personal than professional and, as such, comes from someone who is a Christian and Catholic.

Years ago I read a paper by the Irish Catholic priest and moral theologian, Enda McDonagh, in which he analysed the evolution of the concepts of '*peace*' and '*justice*'.

The peace of Shalom means to live in a rich reality of wholeness between yourself, the Creator and all of his Creation; to have a sense of wellbeing; a condition in which the human spirit flourishes and releases creativity into the world. Peace in Shalom means wholeness and wellbeing.

The justice of Shalom is expressed in the Hebrew word *sedaqah*, meaning 'righteousness' – to live in right relationship with all of Creation.

However, according to Enda McDonagh, down through the ages successive translations of the Christian scriptures have narrowed and distorted the original meaning of peace and justice.

He points out that in Greek translations of Scripture there are more than twenty terms used to try to describe the concept of shalom. The nearest Greek word is *eirene*, meaning harmony and order. *Eirene* therefore, lacks the sense of right relationship with all created things that is intended by Shalom.

When the Christian scriptures were translated from Greek into Latin, the nearest word to *eirene* was *pax*, meaning 'legal order'.

The term *Pax Romana* refers to the golden era of the Roman Empire. It means 'Roman Peace' and in this Roman version of peace – or *pax* – peace meant an order that suited Rome.

Again, this is a long way from Shalom with its wholeness, well-being and flourishing of the human spirit. Yet, the word 'peace' is a translation of the Latin term, 'pax'.

Similarly, translations of the word, *sedaqah* – the Hebrew for 'righteousness' (and a dimension of Shalom) – result in the Latin version, *justitia*. The word *justice* flows from this, but in this concept of justice which has evolved in the West the rights of the individual are stressed with much less awareness of the importance of right relationships; of how the individual must live in a balanced relationship with other human beings.

We can see, then, how in modern western culture peace gets caricatured as the restoration of order and the absence of violence. Justice gets reduced to the rights or entitlements of the individual.

In my view, a civil or human right that is concerned solely with an entitlement is not a 'right' so much as a privilege because a human right is like a coin with two sides; on the one side, there is entitlement but, on the other side, there is a responsibility. All human rights confer entitlements, which bring with them responsibilities. Human Rights are the foundation of justice and, certainly in the depths of the Christian tradition, justice is about living in right relationships. Against this background it seems to me that Restorative Justice is a concept which returns more faithfully to the original meaning of peace and justice because in the restorative paradigm the victim and offender are not viewed merely as two individuals but, rather, as members of community or society: one to be given support by the community, the

other to be held to account by the community and both to be empowered by the community in the task of restoration. And when justice is restorative the impact of crime is measured against its affect on relationships rather than simply as a contravention of the law.

Restorative Justice is concerned with something deeper: with the offender's behaviour understood as an abuse of relationship. The concept of repairing harm refers to the need to restore balance to all the relationships affected by the offender's behaviour.

The Czech writer and former president of the Czech Republic, Vaclav Havel, has written that there is much to be gained from re-discovering the true meaning of words. So, when we examine the true meaning of peace and justice we find a concept that sits more naturally within the heart of Restorative Justice.

2. The Peace Process in Northern Ireland.

Since I should not assume that everyone here is informed about the nature of the conflict in Northern Ireland, I will give you a quick history lesson. Centuries ago Ireland came under the control of England. As part of that process, large numbers of English and Scottish people were encouraged to settle in the north of Ireland. While most of the native Irish were Catholic, most of the settlers were Protestant.

At the start of the twentieth century there was a sustained campaign to break the link with Britain.

However, in the north there was a campaign to maintain the link or union with Great Britain. On both sides of this argument, significant numbers were prepared to use violence in support of their cause.

In 1920 the British settled the matter by dividing Ireland granting independence to most of it and keeping the northern part within the United Kingdom.

However, around 40% of northerners were Irish nationalists – people who wanted independence from Britain.

Therefore, from its creation in 1920, Northern Ireland was a state whose citizens differed over their national allegiance.

Consequently, for several decades, the leaders of the Protestant, unionist majority, discriminated against the Catholic, nationalist minority.

The laws and institutions of the State reflected this discrimination.

By 1960, frustrations within the Catholic, nationalist community found expression in a campaign of violence to end British rule and end the partition of Ireland. These people are known as republicans.

Within the Protestant community, there were people who took up the gun to defend the link with Britain. These people are known as loyalists.

While the majority of Catholics (nationalists) and Protestants (unionists) did not support the use of violence, the terrorist campaign fought by republicans and loyalists and the State's campaign of counter-terrorism by the use of the British army and the police, meant that the Northern Ireland conflict became defined by widespread violence.

3,500 were killed. Thousands more were injured. Thousands were traumatised by violence. Thousands were sent to prison. However by the 1990s there was recognition that violence would not deliver a solution to the conflict and that any effort to find a political answer would only succeed if republican and loyalist paramilitaries were given a voice at the negotiating table.

In Ireland, over the last 15 years or so, we have been living through a period known as 'the Peace Process'. This period has seen the establishment of political negotiations, ceasefires by the main republican and loyalist paramilitary organisations and fundamental reform of aspects of our system of governance in order to command the respect and allegiance of all our citizens.

One outcome of the political negotiations was a review of our Criminal Justice system. The Criminal Justice Review affirmed the potential of Restorative Justice, though many were

disappointed that the Review introduced restorative measures in a limited way, restricting new practices to young offenders rather than placing Restorative Justice at the heart of the whole Criminal Justice system. Nevertheless, the Criminal Justice Review led to the creation of a new Youth Justice Agency and a Youth Conference Service, which is developing restorative practices in association with police and the courts.

In many other respects, progress has been so profound that it is possible now to speak of the end of 'the Troubles' – a 30-year period when our conflict was expressed in violence and a generation grew up in the shadow of the gun and the bomb.

Yet, despite such progress, there is a danger that our Peace Process will fail to deliver a truly peaceful society and will, instead, settle for a state of *pax* – a new legal order – that will amount to no more than a veneer of peace across the surface of our society (and change is superficial) rather than a new era of shalom (where change is deeper and transformative), in which the spirit of our people, in all its diversity, flourishes.

A number of unresolved issues will determine whether our peace matures towards shalom or mutates into *pax*. In the context of this conference, I should like to highlight four such issues:

- The first relates to the inability of our peace process to secure sufficient political agreement to form a government within Northern Ireland. We are in a strange kind of limbo, lost somewhere between the end of the troubles and the start of agreed governance. This political stalemate is afflicting Northern Ireland and inhibiting the development of a shared society. While our people are enjoying the absence of violence and their quality of life has greatly improved, most people do not appreciate that the failure of politics is having a social cost. Acrimony between politicians and their political discord percolates down through our society and finds ugly expression on the ground. A younger generation with no real memory of the bad days of the troubles is now coming of age and there is a danger that our political vacuum will stimulate indifference among many of the young and a new kind of militancy among the socially deprived or alienated
- Secondly, despite wholesale reforms to the police service, there is still insufficient consensus across our divided society about our system of policing. Most significantly, republicans refuse to endorse the new police service and, therefore, sections of society remain estranged from the police. This issue has huge implications for the development of Restorative Justice because republicans who are involved with the development of Restorative Justice do not yet accept police involvement in their schemes.
- A third issue concerns the continuing existence of paramilitary organisations. While some would argue that paramilitaries exercise a positive influence within their respective communities, especially in volatile urban working class districts, others criticise paramilitaries for their involvement in organised crime and allege that they use violence and intimidation to maintain illicit power and a negative influence over vulnerable communities.
- A fourth issue concerns the direction of Community Relations policy and practice. While official British Government policy now promotes a belief in the necessity of Protestants and Catholics building a shared future and integrating our divided society, in reality there are sections of society who are less convinced about the terms and conditions for integration. They fear that integration would undermine their traditions and identity and even create conditions that would be favourable to 'the other side'. Such people would prefer to settle for something less: for peaceful co-existence, with Protestants and Catholics remaining apart in many ways, rather than forging some kind of pluralism.

Against this backdrop, we can reflect on the process of conflict transformation, which has been going on in Northern Ireland since the late 1980s.



3. Conflict Transformation

When years of political negotiations resulted in an historic peace deal – the so-called Good Friday Agreement – in 1998, across Northern Ireland there was considerable optimism that conflict would simply give way to peace. However, while political violence has almost totally ceased, there has been continuing political acrimony and instability. At community level, this has resulted in recurring public disorder. Many citizens and communities have suffered sectarian tension and hatred. Divisions on the ground at times have seemed to be worse than before the Peace Process.

A more sober analysis of the change process going on in Northern Ireland would suggest that the public had unrealistic expectations about how peace takes root in a divided society. Indeed, some sections still seem unable to comprehend that peaceful change is an incremental, gradual process and that in our case it will probably take at least another generation.

In this respect I find it useful to think of the seasons as a metaphor for the evolution of peace. Each season must come in its own time and in the natural sequence. Spring comes before summer which, in turn, gives way to autumn and then to winter.

A farmer knows not to do the work of autumn in the spring; there is a time for sowing, a time for growing and a time for the harvest.

In my view, deep societal conflict moves through its own seasons. The first of these is the period of Conflict Management when conflict is stabilised; when violence is brought under control.

The second season is the time of Conflict Transformation, when people and groups previously at odds begin to find ways to collaborate and from such experiences their relationships begin to strengthen.

The third season is the period of Conflict Resolution – when, on the foundation of strengthened relationships, opposing sides address the root causes of their differences. A new Social Contract is formed and erstwhile enemies become social partners.

The fourth season is the period of Commonality, when root causes have been definitively addressed but there is a need to maintain stability and consensus about the out-working of the new Social Contract.

In my view, this kind of evolutionary process has been going on in Northern Ireland and we are gradually moving between ‘spring’ and ‘summer’, in a transition from a time of Conflict Management to a time of Transformation.

As part of this process, people who, in an earlier time of violence, were paramilitaries and, in many cases, went to prison, have taken on new roles, which fit our changed circumstances.

During the 1990s, in both republican and loyalist communities, a number of individuals, including people with links to paramilitary organisations, helped devise mechanisms to deal with anti-social behaviour, particularly in inner city areas where sections of the community had grown used to paramilitaries dealing with offenders and using methods such as beatings, deportation, maiming and, even, shooting. Paramilitaries themselves had become more open to alternatives to violence.

A number of schemes got off the ground. They involved individuals with a known background in paramilitarism, including time spent in prison. On the one hand, such people had the kind of credentials that paramilitary organisations would respect. On the other hand, if they had a paramilitary background or a good working relationship with paramilitaries they were highly suspect in the eyes of other sections of the community.

In time, ideas of Restorative Justice came into circulation in Northern Ireland, with influential visits from people such as the American Mennonite, Howard Zehr.

From the point of view of those involved in community-based schemes, Restorative Justice provided a conceptual basis for their practice and informed their development. The community-based schemes have evolved from their origins as pragmatic alternatives to

traditional paramilitary justice to being strategic projects with a vision of citizen involvement in the delivery of justice.

Independent research and a number of academics have applauded the community-based Restorative Justice schemes and acknowledged the large number of cases coming through their doors. The community-based schemes have been held up as world leaders in the field.

However, from the perspective of their critics, Restorative Justice has simply been a flag of convenience to provide a respectable cover for the continued existence of paramilitary control. In the words of one former Prime Minister of the Irish Republic, Garret Fitzgerald,

“community-based Restorative Justice schemes _ _ _ as at present constituted represent a potential long-term threat to democracy in Ireland – North and South.” (Irish Times, 4 Feb. 2006)

At the core of Fitzgerald’s displeasure is the fact that, with rare exception, schemes operated by the republicans and their associates will not co-operate with police and, he claims, will not allow themselves to be held independently accountable to standards approved by the State.

For its part, the British Government does not fund community-based Restorative Justice schemes in Northern Ireland. It has produced proposals aimed at overcoming points of difference, including the question of police involvement. However, the publication of these proposals has stirred the political controversy about the efficacy of the community schemes. Some commentators have condemned the British Government for its preparedness to do business with them.

Meanwhile, the Government and the community-based schemes have so far failed to reach an operational agreement.

4. Restorative Justice and Civic Renewal.

Restorative Justice has become an important litmus test for the outworking of the Peace Process in Northern Ireland in a number of ways.

- At the European Mediation Conference in Helsinki last month, the Norwegian criminologist, Nils Christie, issued stark warnings about some of the dangers facing Restorative Justice. He repeated his view, first aired in a seminal paper in 1977, that conflict is property which belongs to the people but which professionals (especially lawyers) have stolen for reasons of self-interest.

According to Christie, crime is a form of conflict and conflict is a natural source of energy and a stimulation of creativity in the life of communities. However, through professionalism and regulation, handling conflict has too often become a rarefied thing, removed from the life of community.

With so many people now educated to degree standard, society is crowded with aspiring professionals looking for places and issues to take unto themselves. Christie believes that vigilance is needed with regard to the development of Restorative Justice lest it, too, be removed from the community. In his view, neighbourhoods are being killed by too much expertise taking natural friction away from the people. In addition, he is concerned about the decline of community in modern western society and the growing isolation of citizens. “We are creating lonely societies”, he says. And for him there is a clear imperative: “We need to draw ordinary people into the circles of civic life”.

I am much taken with Christie’s view. Perhaps one of the good things to come out of the Troubles in Northern Ireland is the emergence of self-confident communities who are assertive about retaining a degree of control over their lives. In a sense, community-based schemes are an example of citizens getting organised to protect their property (conflict) as if, by instinct, they understand the importance of doing things for themselves.

Going back to my observations about *peace* as Shalom, meaning wholeness and flourishing of the human spirit and *justice* as right relationships, community-based Restorative Justice schemes are potentially an important instrument in the task of ensuring that our Peace

Process results in an arrival at a more holistic peace rather than mere restoration of order of *pax*.

The American sociologist, John Paul Lederach, speaks of the importance of peace as an “organic phenomenon”, going on at all levels of society and in many spheres.

In this respect, I like to use the image of a four-wheeled wagon to describe the movement of society towards peace. Each wheel is dimension of peace.

The first wheel revolves around the effort towards political consensus.

The second wheel consists of economic development because a society with a stagnant economy is in a state of negativity. Economic development gives people hope.

The third wheel is about social progress regarding such issues as housing, health, education, youth provision and the cohesion of communities.

The fourth wheel refers to the justice system and the effort towards agreed law and order.

Restorative Justice is an important spoke in this wheel and the involvement of community in the justice system is more in keeping with *shalom* (wholeness and flourishing) than *pax* (imposed order).

One important outcome of the Peace Process has been the establishment of a new police service, with the adoption of Community Policing as its central aim. In this respect, the reform of policing stands as a signal achievement. However, if sections of the community, including community-based restorative justice projects, stay outside of the new order of policing, then a fundamental dimension of peace will be totally inhibited.

Ironically, there is a very real possibility that if substantial numbers of community activists persist with their refusal to work with police officers they will actually contribute to the re-creation of an aloof professionalism in policing. I also believe that the very integrity of Restorative Justice as a concept requires that police officers take their rightful place in the heart of community life rather than remaining estranged from citizens on the ground.

The philosophy of community policing involves police being visible on the ground; maintaining a meaningful presence in the community, engaging in problem solving activities and, more importantly, working in partnership with the community. In other words, citizens are viewed as partners in the service of justice. In Northern Ireland this philosophy has been officially adopted by the new police service.

However, one must recognize that the police and community-relationship in Northern Ireland is affected by the legacy of history. There are sections of our society (republican and loyalist) that have experienced the harsh end of policing over many years and it is within these very sections that Restorative Justice schemes have emerged. It is argued that the police have little credibility within these communities.

In a very real sense Restorative Justice is beset by a crisis of credibility. The state will not endorse community-based schemes that will not work with police.

And opponents of the republican and loyalist paramilitary traditions point out that the involvement in Restorative Justice of individuals associated with paramilitaries is destroying the credibility of Restorative Justice.

And while state-funded bodies such as the Youth Conference Service are developing restorative practice, such practice will only truly mature when it engages the support of the community.

In certain areas of the inner city and town, community support requires the commitment of republicans and loyalists.

Like so many aspects of life in our divided society, Restorative Justice is being inhibited by the state of limbo in our peace process.

It is difficult to see the situation improving without a political deal. When the deal is eventually made, all the ingredients are there for Restorative Justice:

- Awakened communities;

- A policing policy, which commits to partnership with citizens;
- A justice system that is opening incrementally to restorative approaches.

One strength of the statutory justice system is its range of skilled professionals, working towards standards geared to the protection of human rights. But one should not idealise the professional because they can become distant from the community.

One strength of community-based projects is their relationship to grassroots citizens and their intuitive grasp of life on the ground. But one should not idealise the community since they can lack critical distance from emotive issues on the ground and in critical ways fall short of professional standards.

The work of peace will require a blending of the statutory justice system with community activism in a true spirit of partnership.

Assisting the blending process is a task for mediators and Mediation Northern Ireland will continue to offer its services in that regard. In doing so, we will pay heed to the urging of Nils Christie to draw ordinary people into the circles of civic life.

And, of course this is what will make the difference between *pax* and peace.

At this stage in the Peace Process, the general public in Northern Ireland are waiting to see whether politicians can reach agreement and form a government by the end of the year. However, there is widespread pessimism about that prospect. In the face of such despondency, some commentators are now speaking of the priorities for peace activists in a time of political stalemate. One suggestion is that renewed attention be given to the task of finding values which all sides can share; that the articulation and promotion of common civic values could help build consensus among the people. In this regard, Restorative Justice has the potential to be great and timely help.

Brendan McAllister has been Director of Mediation Northern Ireland since 1992. Mediation Northern Ireland is an independent charitable organisation for the development of mediation (and associated disciplines) as a contribution to Conflict Resolution and the promotion of Good Relations in Northern Ireland.



Workshop session 1: Peace-making and peace-building efforts in Europe and community mediation

RESTORATIVE JUSTICE TRAINING IN SERBIA AND MONTENEGRO: REFLECTIONS ON ISSUES AND POTENTIAL IN A TRANSITIONAL STATE

by Marian Liebmann (UK)

Over the past three years, I have been involved in training victim-offender mediators in Serbia and Montenegro. I have now trained 180 people, mostly professionals in the criminal justice system. This workshop reflects on some of the issues and potential involved.

Serbia & Montenegro – Background

There are many issues in Serbia and Montenegro that have their roots in the recent wars and their aftermath, such as corruption and the Mafia, politics, poverty, refugees, the rise in crime, the breakdown of institutions, isolation, anger and resentment. But there is the hope of joining the EU, if the matter of war criminals can be sorted out.

Origin of Project

These were the stages in the development of the project:

- UNICEF move to include crime in remit
- Public perception 'nothing done about rising youth crime'
- Working party in Nis
- Choice of RJ as way forward
- Pilot week-long course March 2003
- Grant from Swedish government from Autumn 2003

Serbia and Montenegro: Six Pilot Projects

These grew from the original one in Nis.

- Nis (south-eastern Serbia, population 400,000)
- Juvenile Correctional Institution Krusevac (14-18s, mostly male, a few female)
- Podgorica, Montenegro (capital of Montenegro)
- Bijelo Polje, Montenegro (northern Montenegro, pop 80,000)
- Mobile Teams (15 municipalities all over Serbia)
- Belgrade University (1 year PG Certificate in Mediation)

Training Courses in RJ

Each group has received (or will have by Dec 2006) the following training:

- Basic Victim-Offender Mediation skills (5 days)
- Refresher course (2 days)
- Mediation & Cultural Diversity training (3 days)
- Training for Trainers (5 days)

Role plays

Local cases were used to ensure realism, as a basis for learning skills

- Real cases known to participants
- Small groups role playing case
- Compare outcomes, processes and issues
- Draw out learning points



Consultancy and discussions

In addition to the training courses, discussions were needed about the following important aspects:

- How to set up a victim-offender mediation scheme
- Differences between community and institutional victim-offender mediation schemes
- Legal situation of mediation in juvenile justice system
- Evaluation and monitoring
- Quality assurance
- Accreditation of training course, scheme and mediators

Issues

Many issues came up, needing discussion, such as:

- Cultural differences
- Minorities, especially Roma
- Fitting in with Youth Justice System reforms
- Training for Trainers – selection criteria
- Payment for mediators?
- Quality Assurance and Accreditation
- Future funding (current funding finishes end 2006)

Successes and potential

Much of the success of the project has been due to local factors, such as:

- Intelligent, hard-working colleagues in Serbia and Montenegro
- Enthusiasm of participants in training courses
- Ability to adapt to own situation
- Change in Juvenile Justice law
- EU Forum – AGIS Project for Central and Eastern Europe

Questions for discussion

Some questions to think about:

- Can RJ help (and if so, how) with issues such as:
 - poverty?
 - isolation?
 - anger and resentment?
- Can RJ help (and if so, how) with issues such as:
 - institutional breakdown?
 - rise in crime?
 - refugees?
 - other issues?
- Are there any particular attributes of RJ that make it particularly suitable for such situations?
- Are special conditions needed to introduce RJ in such a situation?
- How can RJ empower people to achieve a stable peaceful future?
- How can RJ become sustainable in such situations?

Case Studies

These are cases where the recent wars have a direct or indirect bearing on the situations. What are the issues for mediators/ RJ practitioners?

1. Assault at youth camp for children bereaved during the recent wars
2. Theft from Albanian bakery
3. Broken window of pensioner in poverty
4. Burglary of large sum of money

Marian Liebmann has worked with offenders and victims. She was director of Mediation UK for 4 years and projects adviser for 3 years, working on restorative justice issues. Since 1998 she has worked as an independent consultant and trainer, in the UK and several African and East European countries. She has been involved with several RJ initiatives in British prisons, and has trained 180 victim-offender mediators in Serbia and Montenegro over the last 3 years. She is also an art therapist and runs 'Art and Conflict' workshops. She has written/edited 9 books, including 'RJ: How It Works' (forthcoming).

COMMUNITY MEDIATION AND COMMUNITY DEVELOPMENT IN SCOTLAND

by Ian McDonough (Scotland)

Origins And Growth

Community mediation in the UK began to develop in the 1980s as a response to a startling rise in the incidence of reported neighbourhood disputes. In Scotland the first community mediation service was launched in Edinburgh in 1995, and the next ten years saw a period of rapid and sustained growth which was well beyond that experienced in the rest of the UK. There are now 31 services in Scotland, covering almost the whole of the country from large cities to small islands, and assisting with the resolution of over 3000 community conflicts every year.

Community mediation in Scotland is a voluntary and confidential process of conflict resolution. It has no formal links to legal processes, civil or criminal, and people in situations of conflict either elect to undertake mediation themselves, or have mediation suggested to them by a wide range of agencies including housing workers, health workers and police. They share the following characteristics:

- Their main areas of work are conflicts between neighbours, conflict between young people and their families, conflict in schools, conflict in the workplace, and conflict between groups in the community.
- Individual neighbour disputes usually comprise around 80-90% of their work.
- Services are managed either by independent voluntary organisations (NGOs) or by Local Government.
- They operate in civic society and are completely distinct from restorative justice services which take referrals from the criminal justice system.
- Many services use both paid and unpaid (volunteer) mediators.
- Services are mainly funded from local and national government finance.

Reasons For Growth.

This rapid growth in Community Mediation has come about because of a number of factors that are distinct from the experience in the rest of the UK.

Of particular importance is the history in Scotland of successful voluntary sector/government partnerships, and a relatively strong climate of voluntary civic participation in issues of social concern. Crucial factors included the following:

- A commitment from the Scottish Parliament to work towards all citizens of Scotland having free access to Community Mediation services
- The willingness of the Scottish Executive and Local Government to think creatively about neighbourhood conflict.
- The aspiration of Scottish NGOs such as Sacro to promote constructive conflict resolution across Scottish society,
- Funding being made available from local and national government at levels which are sufficient to assist in developing and sustaining quality services.
- The establishment, through government funding, of a national Community Mediation Consultancy + Training Service, managed by Sacro.

Possible Future Developments

Community Mediation in Scotland is now an established process for dealing with conflict and reducing anti-social behaviour. Until recently most activity has focussed on neighbours in conflict, with some activity in schools and workplaces, but In recent years the Community Mediation services have increasingly been focussing on working with broader communities, such as undertaking mediations between large groups and mediating between local organisations where there are difficulties.

This is in part a reflection of an acknowledgement that work between individuals is only part of the answer to conflict in our communities, sometimes treating only the symptoms rather than the causes. For people with little power or status, living in poverty and in poor housing conditions, problems with neighbours may be something they can afford to expend only limited energy on: the dispute may exacerbate their other problems considerably, but its resolution is unlikely to remove them.

Increasingly Community Mediators in Scotland are looking at increasing their work with disadvantaged communities, and believe that it is possible to do this without losing impartiality in their work with individuals. The challenge may be whether it is possible to work at the same time towards two distinct but connected goals:

- To advocate for the development of more harmonious and equitable communities.
- To assist in the resolution of individual disputes while strictly avoiding advocating for the position of either side.

Ian McDonough is Mediation Adviser for Sacro, the Scottish Community Justice charity. He manages their Community Mediation Consultancy and Training Service, working with Scottish Community Mediation services to ensure good practice and common standards. He is Chair of the Scottish Mediation Network and Mediation UK's Quality and Practice Committee.

Workshop report by Rebeca Utrero

The first community mediation service in Scotland was founded in Edinburgh, 1995. Community mediators help in solving over 3000 conflicts each year. The main users of this mediation service are neighbours' conflicts and conflicts between young people and their families. The Scottish Parliament wants all citizens to have free access to community mediation. The mediation is encouraged in order to provide a neutral process for the people.

THE PROMISE OF RESTORATIVE JUSTICE IN THE SEARCH FOR TRUTH AFTER A VIOLENT CONFLICT. EXPERIENCES FROM SOUTH AFRICA AND BOSNIA-HERZEGOVINA

by *Kris Vanspauwen (Belgium) and Marta Valiñas (Portugal)*

Truth-telling and truth-seeking efforts have gained an increasingly central place in the process of dealing with a legacy of mass abuse in the aftermath of a violent conflict. Building a 'common memory' of the past has been the explicit aim of several truth-seeking mechanisms or processes such as truth commissions and trials.

The very notion of 'truth' is a very complex and highly controversial one. The South African Truth and Reconciliation Commission¹, for example, has suggested in its final report that there are four different levels of 'truth':

- Factual or forensic truth: refers to the factual circumstances of a given violation (or a pattern of violations), which are corroborated by evidence and established according to an impartial and objective procedure.
- Personal and narrative truth: according to Parlevliet² this is 'when people give meaning to their reality by the telling of stories (...) It brings out the personal perceptions, myths and emotions connected to people's experiences'
- Social truth: it is a more diffuse and abstract type of truth, one that is concerned not only with facts but also with values, that carries a normative weight of how the state and society should be organised in order to avoid future abuses. This truth implies a certain process through which it will be reached: a process of open and inclusive dialogue. It is, therefore, a socially constructed truth.
- Healing and restorative truth - in the eyes of the TRC truth-telling should 'contribute to the reparation of the damage inflicted in the past' and to the 'prevention of the recurrence of serious abuses in the future'.

While many authors and practitioners insist on 'finding the truth' as one absolute and objective truth, others point to the necessity of recognising the inherent subjectivity that to a certain extent is part of any concept of 'truth' and instead emphasise the process that is used to 'reach' the truth.

Assuming that there are different ways of finding and establishing the truth, in our paper we attempted to find the conditions for a 'restorative' truth-seeking process. In other words, we tried to explore how can truth-seeking mechanisms in post-conflict situations be informed by restorative justice theory? And this question can be subdivided into two questions. Firstly, what are the components of a truth-seeking mechanism to constitute a restorative process? And secondly, what are the conditions for a truth-seeking mechanism to achieve restorative outcomes?

Although the ample attention given to the notion of truth in post-conflict situations is not present in the classic restorative justice debate, several aspects of truth are underlying the core principles of restorative justice. In our paper we show that restorative justice and truth-seeking are much more interconnected than it seems at first from the literature, and that it makes sense in exploring the promise of truth-seeking mechanisms and processes that follow a restorative ideal. In fact, our argument is that truth-seeking mechanisms in post-conflict situations should happen in a restorative manner as this approach bears the potential of achieving in a more accurate and comprehensive manner accountability, justice, and redress after mass violence.

An analysis of the UN Declaration on Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters³ reveals that restorative justice can contribute to the different

¹ Truth and Reconciliation Commission. (1998). *Truth and Reconciliation Commission of South Africa Report. Volume 1*. Cape Town: Juta & Co, 110-114.

² Parlevliet, M. (1998) Considering truth. Dealing with a legacy of gross human rights violations, *Netherlands Quarterly of Human Rights*, 16(2), 141-174.

³ United Nations Economic and Social Council, Commission on Crime Prevention and Criminal Justice. (2002). *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*. E/CN.15/2002/L.2.



levels of truth as elaborated by the South African Truth and Reconciliation Commission. It acknowledges in particular the importance of different personal stories (narrative truth), of engaging the different stakeholders in a dialogue that possibly leads to a better understanding of the causes and the patterns of the conflict (social truth), and that truth seeking should not be regarded as an end in itself since it is about restoring relationships, and creating a basis for a personal healing process (restorative truth).

On the basis of these considerations, our exercise consisted in exploring whether and how a restorative justice framework could be used as a guiding model to establish a truth-seeking mechanism in post-conflict situations. For that purpose, we looked into the restorative justice literature to identify the guiding principles that could constitute our proposed framework. Based on Van Ness' values and principles⁴, which are in line with the aforementioned UN Declaration, we distilled three process-oriented principles: (1) inclusion, (2) encounter, and (3) active participation; and three outcome-oriented principles: (4) reparation, (5) accountability, and (6) reintegration. In this paper, we analysed these principles in the light of post-conflict situations, explored the different nuances and adjustments that they might have in such situations and also highlighted the potential contribution of these principles to the goals of post-conflict justice through examples from South Africa and Bosnia-Herzegovina.

Marta Valiñas has graduated in Law from the Faculty of Law, University of Porto (2002) and has completed the European Master's Degree in Human Rights and Democratisation (2004) during which she wrote her thesis on "The position of the victim in truth and reconciliation commissions: the case of Peru". She is currently a researcher in a four-year research project funded by and carried out at the K.U.Leuven, entitled "Mass victimisation and restorative justice. In search of the position of restorative justice in an integrated approach to mass victimisation in post-conflict situations. Case studies in Bosnia-Herzegovina and Serbia and Montenegro". She is also a PhD candidate at the Law and Society Institute, Faculty of Law, K.U.Leuven.

Kris Vanspauwen holds a Candidate and Licenciante in Criminology (1999, 2001) from the Faculty of Law, Katholieke Universiteit Leuven. He is completing an Advanced Master's Degree in Conflict and Sustainable Peace Studies (2003-), and is currently a PhD Candidate at the Law and Society Institute, Faculty of Law, K.U.Leuven. He is also the principal researcher in a four-year project on mass victimisation and restorative justice in South Africa, funded by the Fund for Scientific Research, Flanders. His doctoral research is on the criminology of state violence.

Workshop report by Borbala Fellegi

The presentation discussed the main challenges concerning defining the concept of 'truth' and truth-seeking as well as the different aspects of social inclusion, encounter, active participation, reparation, responsibility and reintegration that are considered as the six guiding principle of the restorative way of truth-seeking.

Since many Bosnian and South African case-studies and examples illustrated the presentation, questions were made about the funding situation of these small local projects. It was explained that they are usually funded by foreign, mostly Scandinavian Embassies. The main challenge is that it takes a long time to achieve visible changes in the communities and funders have to be aware of it. The importance of grass-root, local initiatives was emphasised, since they are more likely to maintain the original principles. Contrary to these bottom-up processes, top-down initiatives (like the Truth and Reconciliation Commissions in South Africa) might sometime lose their original direction and can even revictimise victims of previous regimes.

Discussions were also made about whether the threat of punishment can be considered as 'enemy' of truth in reconciling processes. Some participants expressed that if truth is the highest value, we should forego punishment.

⁴ Van Ness, D. (2002). The shape of things to come: a framework for thinking about a restorative justice system. E. G. M. Weitekamp, & H.-J. Kerner, *Restorative Justice. Theoretical foundations*, 1-20. Devon: Willan Publishing.

Furthermore, if voluntary participation does not work, other ways of coercive measures, such as taking benefits away from the party that are taken accountable is also possible. If restorative justice is considered as a broader philosophy, it can include coercive measures and outcomes as well, as long as it focuses on restoring harm and healing victims.

Some participants expressed that in serious violent cases they cannot imagine to eliminate the traditional justice process and punishment by dealing with the case entirely by community measures. However, it was discussed how important it is to combine the traditional justice procedure with restorative interventions. Therefore, these two approaches are far from being mutually exclusive.

TO REDRESS THE WRONGS OF THE PAST – THE CASE OF THE ‘WAR CHILDREN’ OF WORLD WAR II

by Kjersti Ericsson (Norway)

During World War II or shortly afterwards, an unknown number of children of German soldiers and native women from the occupied countries were born all over Europe. These births were considered a national shame. Women who had sexual relationships to German soldiers were frequently subjected to humiliating punishments at liberation.

For many decades after the war, silence reigned concerning the fate of these children, who are now in their sixties. Together with Eva Simonsen I have carried out life story interviews with 100 Norwegians with German occupant soldiers as fathers. The interviews demonstrate that many suffered harassment and social exclusion in their childhood. The effects of the way they were treated as children have frequently lasted until this day.

Is it possible to redress the wrongs of the past – 60 years after the end of the war? In Norway, there has been a public debate on this. In 2005 the Parliament passed a resolution to the effect that war children could apply for financial compensation from the state.

May money serve as a language of national reconciliation? What kind of logic ought to govern a process of compensation to make it a real contribution to such reconciliation? The authorities usually approach the question of paying compensation from a legal and administrative point of view. This usually implies that what should be counted as hurt and injury must be defined according to unambiguous criteria. The responsible party must unequivocally be pointed out. Abuse and harassment, injury and neglect must be documented.

The victims' perspective is, however, neither legal nor administrative. To the victim it is all about life as lived and pain as experienced. When this life and this pain are confronted with legal definitions and requirements, the result may be a clash: Is it at all possible to tailor the pain felt by the victim to fit the administrative requirements? Is the pain to be considered legally relevant, and is it possible to document exactly those events that gave rise to the pain and to point to the responsible party?

We have some knowledge, from various disciplines, on how we should meet and treat victims of painful and traumatic events. This knowledge indicates that a legal/administrative perspective on redressing the wrongs of the past is at best insufficient, at worst may inflict added hurt and pain. Consideration for the victim should be the main concern in a process of redressing the wrongs of the past. This has a number of consequences, regarding documentation; the context of telling one's story; what should be seen as constituting abuse and traumatic events; and life as regarded from the outside and life as experienced.

By deciding to compensate the war children, the Norwegian Parliament wanted to redress the wrongs of the past and seek conciliation with a group of people who had formerly been treated as enemies. The motion that was passed implies that 20 000 Norwegian crowns (about 2500 Euro) may be granted to people that tell a credible story about being victims of harassment or mobbing, without further documentation. Compensation up to 250 000 Norwegian crowns (about 30 000 Euro) may be granted to people who have experienced serious harassment or abuse, but in such cases, documentation is required (Innst.S.nr.152 (2004 – 2005))

May money serve as a language of national reconciliation? It depends, I would say. It depends upon the money, and upon the process.

It is difficult, if not impossible, to compensate a ruined life with money. So what should be the logic governing the payment of compensation? The Norwegian Parliament chose to employ the logic of compensation for reasons of equity, with the result that the sums of money offered are rather small. When the proposition was first put forward, the organizations of the war children reacted very negatively to the proposed size of the compensations, which they regarded as insulting. The proposed sums could not help but carry a symbolic value, indicating to the war children that they were still, after 60 years, estimated as of little worth.



The Norwegian Parliament chose to place the payment of compensation in a legal/administrative context, with some little indulgence to the victim's perspective, represented by the 2500 Euro offered to those who had only a credible story, but no documentation to put forward. If we wish for a positive and healing process, we ought to open up for other perspectives than the legal/administrative one. Norway cherishes an image as a peacemaker on the international scene. If we make use of the existing knowledge on how victims of painful events should be met, it might perhaps be possible for Norway to act as a peacemaker, at least at home.

Kjersti Ericsson is Professor at the Institute of Criminology and Sociology of Law at the University of Oslo, Norway. He was born in 1944 and published a book on restorative justice in 1982 (Alternativ konfliktløsning. Oslo: Universitetsforlaget), and has emphasised the perspective of conflict resolution also in other works, for example on disciplinary problems in schools.

COMMUNITY JUSTICE INITIATIVES OF WATERLOO REGION (CJI). A 32 YEAR RETROSPECTIVE LOOK AT A RESTORATIVE JUSTICE BASED AGENCY

by Mark Yantzi (Canada)

About Us

Community Justice Initiatives (CJI) is a non-profit organization known widely as having started the first restorative justice program in North America.

CJI presently has 12 staff and 200+ volunteers

Our Philosophy

- As a Restorative Justice based agency we seek to find ways to apply RJ to the many aspects of crime and conflict
- We believe that our approach offers significant promise, and want to apply it in all possible settings.

This Presentation will...

- Review the history of our agency
- Describe CJI's services in applying restorative justice in diverse settings

Intervention Points for RJ

- Non criminal matters
- No charge laid
- Referral by police
- Court referral
- Probation/parole referrals
- Post incarceration
- Post release from incarceration

Source of Referrals

- Criminal Justice System officials
- Offender/family &/or supporters of offender
- Victim/family &/or supporters of victim

CJS officials referral

- Tendency to refer unwanted or "trash" cases
- Many court officials are supportive but— competitors?
- Referrals usually seems greater than what happens
- Why not reduce spending on courts by 1% yr and invest in alternatives.

Offender/family &/or supporters of offender

- Have an interest in a more constructive solution
- Often shame or lack of knowledge means don't question the standard process
- Family can advocate with defense counsel to take creative approach.

Victim/family &/or supporters of victim

- Significant impact possible on actions of prosecutor—have come to expect them as source for harsher punishment but it can backfire—
- e.g. Dan Heatley case.

CJI'S Beginnings: The Elmira Case

- After drinking heavily 2 teenagers went on vandalism spree—22 Charges of Willful Damage

- Judge was asked to consider having them meet their victims.
- He agreed
- Responses from victims was surprising
- Led to further experimentation

Our Programs: With Russell Kelly & Judge McConnell

Stride

- Stride assists women in making the difficult transition from prison back into society by engaging and involving the community. It uses a weekly activity focused relational building format to provide GVI women to interact with persons from the community.
- Begun by woman serving life sentence
- Weekly relationship building recreation builds trust
- Circle for women with mental health difficulties
- Transition to community difficult.

Resolve

RESOLVE provides mediation and conflict resolution services for individuals and groups in our community and for the justice system.

- VORP began in 1974 in adult court
- Neighbourhood Mediation in 1978
- Programs utilizing mediation are the largest part of CJI's work
- Neighbourhood disputes—bylaw enforcement
- Court referrals.
- Youth Criminal Justice Act—extrajudicial measures
- Sports Mediation
- workplace conflicts
- Elder Abuse Healing Circles
- Victim Offender dialogue for youth in violent crimes.

Restorative Justice Applied to past sexual abuse

Revive

- The program provides a cluster of support groups for persons affected by past sexual abuse.
- Program began in 1978, survivor group, 1980 p.w.o.s group
- All support groups are co-facilitated by volunteers who have received orientation and training in their roles.
- Some volunteer facilitators are former group members.
- Referrals from therapists, crisis clinic, family, police.

Revive --Groups

- Groups for woman survivors of past abuse (2)
- Groups for male survivors of past abuse
- Groups for person who offended sexually (6)
- Groups for spouses of survivors/p.w.o.s.
- Healthy Sexuality Groups for developmentally delayed adults(2)
- Circle Accountability Groups (as arranged)
- Neighbourhood/family information groups

Revive

Facilitated Dialogue—First Steps

- Telephone inquiry first, often initiated by victim/survivor
- Outlining of options, pros and cons
- Visualize scenarios of responding party
- Either party can suspend/end process at any point
- Later, sometimes much later, face to face meeting

Revive

Facilitated Dialogue—Waiver

- At both individual meetings waiver introduced & signed
- Parties are advised that waiver does not restrict them from taking court action in the future if they so choose.
- Signatories agree not to use dialogue in any subsequent legal proceedings
- Parties agree not to involve mediators or their records in court

Revive

Facilitated Dialogue—Meeting and follow up:

- Atmosphere sometimes awkward, tense,
- Co-facilitators set tone, support dialogue
- Presence of support persons encouraged
- Typically person initiating meeting opens
- Follow up several days later, and 6 mos. later

Revive

CJI helps community groups and faith groups:

- develop policies and procedures to prevent abuse or to reintegrate someone who has sexually offended
- Advise clergy and congregations how to support victims of abuse and offenders within their congregations.
- Assist in addressing issues presented by the presence of survivors of past abuse, and persons who have offended in the same congregation

A Resource to the Community

- Through volunteer placements, CJI provides an excellent opportunity for university students in social work or related programs to hone their skills
- In the past year the agency provided services to over 5,000 people

CJI Services

- Since its inception in 1974, CJI has operated out of cramped quarters in a series of houses in residential areas.
- CJI now occupies 5700 sq. feet on the third floor of St. Peter's Lutheran Church in downtown Kitchener.
- This provides comfortable, convenient accommodation at an affordable cost.

CJI New Location

- CJI has relocated to a downtown Church where it occupies the new location enhances the agency's exposure and accessibility
- it will help CJI cope with accelerated demand, expand existing programs, and implement new initiatives



- CJI's first capital appeal since the organization began over thirty years ago, raised over \$400,000.

- In exchange for rent-free occupancy, CJI is responsible for its share of ongoing utility bills, and the full renovation costs at the new location in St. Peter's Lutheran Church.

Mark Yantzi is the Executive Director of the Community Justice Initiatives, (website: www.cjiwr.com) Previously he was a Probation & Parole Officer (10 years), a Voluntary Service Worker; Mennonite Central Committee (2 years) and a Councillor for the City of Kitchener from 1982 to 2000. He has extensive experience in interpersonal conflict resolution and group facilitation and has held numerous workshops in Canada and internationally. He is the author of 'Sexual Offending and Restoration' (Herald Press, Scottdale, Pa. & Waterloo, ON 1998, 240 pg.) and recipient of the Ron Wiebe Restorative Justice Award, 2003. He also received the Alumnus of the Year Award from Conrad Grebel University College, 2004.

Workshop report by Clara Casado

The 32 year experience of this community-based service provides mediation by volunteers in different fields (community, court, civil and criminal matters, school, sports). It has given signs of constancy and efforts for its continuity.

It is said that in some countries it is easy to start a programme but what it is really challenging is to provide it with continuance. It is very important to maintain the spaces where the agency has made itself visible as well as to find new ones. Even though the years go by and the results demonstrate by themselves the high standards achieved in providing mediation services and conflict prevention, it is always necessary to build and feed the actual relationships with the different actors and referral sources. Maintaining visibility is essential to sustain the services.

The programme called "Stride" is to help women that had been in prison in their transition process to the community. It provides circles of support groups where volunteers participate for these women to build up capacity themselves and other activities.

Another important focus of their work is "Revive", a programme aimed at helping people affected by sexual trauma. There are support groups for survivors and others for people who have offended sexually. This programme stems from a specific way of conceiving community and sexual offence. This type of offence is often not recognised by the different institutions or the population. Hence, it can create suffering and pain in a deeper level for individuals and for the whole community. The objective of the programme is to accept this reality and provide a more constructive response moving beyond the stigmatisation and secrecy that frequently surrounds the sexual trauma. It also aims at allowing the community with their own resources to work towards preventing further damages by creating positive relationships with the persons who have sexually offended with the direct involvement of the community

During the presentation the importance of the language used was highlighted as a way of helping to build more proper concepts around RJ. The transformation of the reality around the criminal justice system in a more positive way is often excluding and stigmatizing, it is an action that begins on the language used by the RJ schemes themselves. Concerning the terms we use in our common daily work it is important to be open to other suggestions, such as: victim-offender facilitated dialogue (instead of mediation), persons who have sexually offended (instead of sexual offenders), affected by sexual trauma or survivors (instead of victim), etc. The language does not have to make up the difficulty and seriousness of the reality but needs to shift the focus to the relationships, the balanced communication and behaviours which are dynamic and changeable and the terms used, by reflecting it, help to the better transformation towards RJ values.

MEDIATION AND RESTORATIVE JUSTICE FOR VICTIMS OF RACISM

by Anne Salberg (Switzerland)

Racist violence: introducing a typology

In order to learn more about unconventional forms of racist deeds, the victim's viewpoint can allow clarifying and developing a much broader definition of racist violence in everyday life.

This consideration leads a Swiss team of researchers and practitioners¹ to present a **typology** of forms of racist violence from a victim point of view, as it appears in the first call announcing the incident. The observation of 300 cases has led us to distinguish two important dimensions in the relationship between the authors and the victims: namely, *power* and *organization*.

In fact, the question of *power* is always present in racist violence. But the power that is exerted on victims can be of two types: some perpetrators have a position of *formal power* towards the victims: they can directly influence their life conditions, either because they enforce the laws (which are discriminatory) or because they control access to social or economic goods and unfairly exclude the victims from access to them; other offenders possess only *informal power*, and have just the will to strain violence, but no formal means of coercion against the victims.

The other dimension is the *level of organization* of perpetrators: racist violence can be expressed by people belonging to a *structured institution* or group with a more or less elaborated racist ideology; in this case, the offender represents an organization that perceives racist violence (or at least some forms of it) as a normal behavior. Racist violence can also be exerted by *non organized individuals* who commit violence in their own name, because of personal prejudices connected to wider social prejudices, but not in a structured way. The combination of these two dimensions lead to building a typology whereby it is possible to distinguish four forms of racist violence:

Level of organization	Formal power	Informal power
Structured institution	Institutional violence	Doctrinaire organized violence
Non organized individuals	Power abuse	Interpersonal violence

The first form of racist deed is ***institutional violence***: it is exerted by an organization, most of the time the State. Here violence exerted by the State does not appear to victims as legitimate (for instance identity controls in the street, expulsions). Moreover, a certain number of legal norms but discriminatory are applied by State clerks who therefore do not ensure equality of treatment for all. This type of discrimination is not necessarily linked to individual acting though.

The second form of racist violence is ***power abuse***. Some individuals use their official function to unfairly exclude other individuals from access to social goods (such as employment, social security, public transportation, restaurants, shops, etc.) or they use their position to exert violence against individuals whom they define as inferior. Here, the perpetrators feel legitimated and protected by their function. Considering themselves covered by their hierarchical situation they act in a racist way with impunity.

The third form of racist violence is ***doctrinaire organized violence***. In this situation, violence is sustained by individuals or groups which do not have a formal power but act on the base of a strong racist ideology based on right-wing extremist parties or group discourses. Here violence is often strategically directed against specific groups of victims in order to create a climate of prejudice and discrimination. It is more conscious and strategic violence than in the other cases. Strongly indoctrinated individuals exert it. It is usually a form of violence considered as illegitimate by the majority and condemned by law.

¹ Monique Eckmann, Anne Catherine Salberg, Claudio Bolzman, Karl Grünberg *De la parole des victimes à l'action contre le racisme..* Ed. IES, Genève, 2001



The fourth form of violence is **interpersonal violence**. Racism is exerted by individuals or informal groups who do not have any structured power over the victims nor a strong racist ideology serving as the support of their aggressive behavior. Usually, they know the victims and have interactions with them in private or half-private spaces. It is a kind of "ordinary" racism where the main perpetrators are neighbors, colleagues, acquaintances, etc. They transform an interpersonal conflict into racist deed, attributing "racial" characteristics or other ethnic, religious or cultural stereotypes to the victim thus making peaceful cohabitation impossible and legitimizing violence and discrimination against him or her.

How to deal with racist violence?

Distinguishing between different types of racist violence can be useful when choosing adequate forms of response.

	Retributive responses	Restorative responses
Doctrinaire organized violence	Penal sanction	"empowerment" Ethical debate on the shared idea of a Common Good
Institutional violence	Changes of rules/practice Equality legislation	"empowerment" Ombudsman; political and ethical debate
Power abuse	Administrative/ sanction	penal "empowerment" Ombudsman, VOM, referred mediation
Interpersonal violence	Penal sanction	"empowerment" VOM, community mediation

The type of intervention used will depend on the level of violence, the capacities and resources of the involved persons, and on the role played by other participants (hierarchical superiors, lawyers, etc.).

Examples of restorative responses to racist violence

Doctrinaire organized violence

A young Swiss black boy is insulted by a responsible of a mobile disco and thrown out of the disco. The young boy realized for the first time that he is black and prejudiced just for being himself. He filed a penal complaint and discovered that the man was the head of all the disco mobile of the county. Its website is racist oriented and linked to extreme right wing.

To build a restorative answer besides the criminal case, a long term action has been elaborated:

1. The young guy with others victims of racism organized a public concert with all kind of music in the region, in cooperation with youth organizations and support of the mayor of the city.
2. Common work with a film maker and elaboration of didactical material with the participation of the boy. http://www.fifdh.ch/f/jeunes/documents/CONTRELAN_5.pdf
3. Organization of public debate in schools, community centers, etc.

Institutional violence

Political and ethical debate to change the immigration laws that exclude "legally" third World migrants

Ethical debate with the police to change procedures of "face control" of colored people

Political and ethical debate to promote anti-discrimination legislation in contracts (labor, private insurance)

Power abuse

In case of power abuse within public institutions, it is important to promote besides the traditional retributive answers dialogue and mediation, allowing each party to understand the point of view of the other and to find a solution that suits everybody:



- Organization of an informal mediation with a person who felt a great injustice and racism during a control and the bus controller in the office of the head controller. It led to excuses of the controller and the comprehension of the victim for the difficulty of his task.
- Organization of a meeting between a person who felt a great injustice and racism during a police control and a police officer, responsible for communication in the police: the victim could understand that it was not personal and it has strongly reduce her feeling of anguish and despair and helped her to rebuild her confidence into the police. The police officer could understand the distress of this woman and change his perception of the incident.

Interpersonal violence

Family mediation with an African Swiss couple in a divorce process: importance to take into account the hurt feelings of the African spouse when the mother of their common child doubts about his capacity to raise properly the boy because of his origin, without judgment but letting the parties find a mutual agreement about their shared educational values.

To conclude, the intervention should focus on:

- Defending the respect of human dignity
- Promoting dialogue and mediation
- Searching for concrete solutions
- If there is no institutionalized restorative justice, spreading its philosophy within the institutions.

Anne C. Salberg is Coordinator for research and training in a Swiss NGO ACOR SOS-Racisme. She holds a Master degree in Mediation (Institut Universitaire Kurt Boesch, 2000). She is a mediation trainer (www.mediations.ch) and an active mediator (family, penal, workplace, intercultural). She represents Switzerland in the European Forum, Research and Training in Family Mediation.

Workshop report by Zuzana Slezakova

During this very interactive workshop a typology of racist violence was presented. This consists of cases of:

- formal violence coming from structured institutions (so-called “institutional violence”; e.g. legal however discriminatory behaviour of schools and police)
- informal violence from structured institutions (so-called “doctrinaire organised violence”; e.g. acts of political parties)
- formal violence coming from non-organised individuals (so-called “power abuse”; e.g. policeman doing something discriminatory on his own)
- informal violence coming from non-organised individuals (so-called “interpersonal violence”; e.g. attacks from colleagues).

Following the power point presentation, the presenter explained the meaning of institutional violence and power abuse.

The group was asked to think about examples of racist behaviour, which were later on classified based on the provided typology.

Examples during the workshop were:

- when of a stolen car punished for catch the thief
- local people speaking in a disrespectful way
- racist affirmative action leads to scold listening
- drunk man in a pub talk to a black person in a racist way.

In the second part of the workshop responses to the racist behaviour were presented and possible solutions were discussed. These can mainly be the empowerment of the victim, political and ethical debates, but also restorative justice techniques. The follow up discussion clarified the special concerns of the mediator in cases involving racist behaviour.

After the discussions, the presenter asked for types of violence and responses.

It was highlighted that retributive responses can be as penal sanctions, while restorative responses are based on empowerment. Ethical debate was on the concept of 'common good'.

Workshop report by Kader Habbouche

Following the power point presentation, Anne Catherine explained the meaning of institutional violence and power abuse.

Examples during the workshop:

- when of a stolen car punished for catch the thief
- local people speaking in a disrespectful way
- racist affirmative action leads to scold listening.
- drunk man in a pub talk to a black person in a racist way.

After discussions, Anne Catherine asked for types of violence and responses.

Retributive responses can be as penal sanctions, while restorative responses are based on empowerment: Ethical debate was on the concept of 'common good'.

RESTORATIVE JUSTICE: CAN WE DO IT BEFORE THINGS GO WRONG? (RESTORATIVE JUSTICE AND THE PUBLIC HEALTH MODEL)

by **Beth Rodman (USA)**

The Public Health Model (PHM) was originally developed for understanding the epidemiology of disease and generally for controlling, if not eradicating, public health threats. It has been adapted to assist professionals in other fields to address different kinds of harms. The original model was used to examine the interaction of a host or person, an environment or culture, and an agent. The goal was to decrease morbidity and mortality. Health educators and public health practitioners are familiar with the public health model uses for early epidemiological advances, such as the prevention of infectious diseases through government sanitation, food additives and vaccination efforts.

There are three levels of the model, primary, secondary and tertiary prevention. *Primary prevention* involves actions that keep healthy people healthy: inoculations, iodized salt, and clean air. The entire population is the host. *Secondary prevention* involves actions to restore a person with symptoms or risk factors to a full state of health: antibiotics, separation from allergens, appendectomy, or setting a broken bone. It is possible to end all symptoms preventing any morbidity. *Tertiary prevention* is applied to persons who cannot be made completely healthy again. For persons with chronic or terminal disease we can take actions to restore as much health and function as possible while full restoration is not possible. Good drug regime for HIV/AIDS patients would be a good example of this level.

Restorative Justice (RJ) is a process whereby those most directly affected by wrongdoing come together to determine what needs to be done to repair the harm and prevent a reoccurrence.

By applying the PHM to restorative justice, we find that the host is "those affected by wrongdoing", the agent is "wrongdoing and crime" and the environment could be our culture, country, village, school, family, or workplace. Wrongdoing is causing harm and sometimes death. Using RJ processes of restorative conferences, family group conferences, circles and mediation, we can restore to the degree possible those affected. Some wrongdoings cause irreparable harms and cannot be fully restored. I suggest that Restorative Justice operates on the secondary and tertiary level of the public health model, but not the primary level.

Can we do better? Can we apply the philosophy of restorative justice to the primary level of the public health model? Can we take actions for an entire population to prevent morbidity and mortality of wrongdoing and crime and the creation of victims and offenders and the needs caused by harm? Must we wait?

In his book, Crime Shame and Reintegration, John Braithwaite writes extensively about cultures (environments), individuals who do wrong and shaming ceremonies that either reintegrate or stigmatize those members of the group.

Conscience, Braithwaite states, is developed through such shaming in the community (family, school, village), promoting feelings of remorse and shame in the individual. The process of shaming and the development of the conscience are interdependent. The first causes the second, which makes the individual more likely to develop the first, quite a cyclical process. Shaming differs from culture to culture and may be open or subtle.

A person will be more susceptible to a formal shaming process when in a relationship of interdependency. Factors affecting the interdependency are permanence, intensity and how wide-ranging are shared issues. Families are usually in the best position to effect shame and guilt. Respect and obligation as part of relationships affect this as well. A young person who has lost respect for parents may be more influenced by peers.

Connections enhance influence to shame: commitment to education, employment, marriage and neighborhood involvement. Lack of connections weaken influence: unemployed, unmarried, weak or no commitment to school apathy to neighborhood.

The literature of resiliency and protector factors consistently name similar factors in good and bad life outcomes for youth. Those who are bonded/connected to family, school, church,

community are less likely to be delinquent, drop-outs, self-damaging and drug abusers than youth who lack such connections.

Reintegrative shaming processes are necessary to socialize young members of societies who will uphold the social norms. Separating the deed ("We don't do that here.") from the doer ("You are still a valued member.") affirms membership and clarifies norms. These inclusive processes lead to normative behavior. Disintegrative shaming creates a stigma. The youth is the crime and he cannot remove it. Stigmatizing is more likely to cause more wrongdoing. Social control is more likely to secure compliance than repressive control.

Restorative practices are processes that support Braithwaite's theory. Teaching members of a school, workplace, family, or any interdependent group that members are more likely to follow norms and act well when they are treated respectfully, and are invited into interactions with other youth and the adults in charge.

From the research we find that the three primary factors in keeping healthy children healthy are caring relationships, high expectations, and opportunities to participate and contribute. These factors are effective in any setting. The more we find these factors in a child's life the better but one may be enough for developing a positive life outcome.

I conclude that restorative practices can be used at the primary level of prevention of keeping healthy people healthy by targeting all members of an environment. To implement proactive restorative practices leaders need to establish group norms (high moral expectations publicly expressed) based upon what is good for the citizens, keeping them safe and well, enforced by morals and social controls. They need to focus on building trust and paying attention to when members do right behavior (follow norms). Wrongdoing will decrease when everyone in the environment is treated respectfully even when they are in error, has full social membership (inclusive), a sense of belonging and connectedness. Restorative Justice as a philosophy can guide our policy and program development and the way we act in all our dealings with colleagues and those we serve. I call this restorative practices.

"A culture impregnated with high moral expectations of its citizens, publicly expressed, will deliver superior crime control." (John Braithwaite, p.10)

Secondary and tertiary treatment will remain necessary and important but promoting restorative practices in human environments (primary prevention) is according to Braithwaite, a route to freely chosen compliance by its members.

References

- Benard, B. (2004). *Resiliency: What we have learned*. San Francisco: WestEd.
- Braithwaite, J. (1989), *Crime, shame and reintegration*. Cambridge: Cambridge University Press.
- Braithwaite, J. & Braithwaite, V. (2001). Revising the theory of reintegrative shaming. In E. Ahmed, N. Harris, J. Braithwaite & V. Braithwaite (eds.), *Shame Management through Reintegration*. Cambridge: Cambridge University Press.
- Prothrow-Stith, D., (June 2002), Youth violence prevention: The intersection between public health and justice. *Contemporary Justice Review*, 5(2), 121-131.
- Rutter, M., Maughan, B., Mortimore, P., Ouston, J., & Smith, A. (1979). *Fifteen thousand hours: Secondary schools and their effects on children*. Cambridge, MA: Harvard University Press.
- Schweinhart, L., Montie, J., Xiang, Z., Barnett, W., Belfield, C., & Nores, M. (2005). *Lifetime Effects: The High/Scope Perry Preschool Study Through Age 40*. Ypsilanti, MI: High/Scope Press. <http://www.highscope.org/Research/PerryProject/perrymain.htm>
- Sprott, J., Jenkins, J. & Doob, A. (January 2005). The importance of school: Protecting at-risk youth from early offending. *Youth Violence and Juvenile Justice*. 3(1), 59-77.
- Stinchcomb, J., Bazemore, G., & Riestenberg, N. (2006). Beyond zero tolerance: Restoring justice in secondary schools. *Youth Violence and Juvenile Justice*. 4(2), 123-147.

Welsh, B., J (January 2005). Public health and the prevention of juvenile violence, *Youth Violence and Juvenile Justice*. 3(1), 23-40.

Beth Rodman MS is Executive Director of the International Institute for Restorative Practices. Since the early 1990's Beth has promoted the concepts of restorative justice in schools and communities. She introduced restorative conferences to the Netherlands, Sweden, Hungary and Thailand. A recent focus of hers is the development of restorative practices as an academic field of study.

Workshop report by Livia Hadházi

Overview:

- Beth Rodman's thesis
- The public health model
- Proactive restorative practices
- What the literature tells us
- What does the primary prevention look like

Definition: Health Educators define health as an intellectual, physical, spiritual, emotional and social wellbeing.

Health Model:

- Host - person
- Agent - wrongdoing crime
- Environment community culture - family, school, neighbourhood

Prevention levels:

- Primary: Keep people healthy
- Secondary: Identify persons at risk and restore them
- Tertiary: For those that cannot be fully restored, restore them as fully as possible

Social Discipline Window:

- Low control, low support – neglectful
- High control, low support – punitive
- Low control, high support – permissive
- High control, high support – restorative

Reintegrative Shaming:

- Relationships
- Connectedness
- Bonds
- Interdependency
- Communitarianism

Protective Factors:

- Caring relationships
- High expectations
- Opportunities to contribute

The challenge:

Working with students to build a safe, caring community takes time, patience and skill. Discipline programs fall back on what's easy punishment, consequences and rewards. Threats and bribes result in short-term change in behaviour, not commitment to positive values.

Proactive restorative practices:

- Low concern for the community, low concern for the individual – disconnected
- High concern for the community, low concern for the individual – dependent
- Low concern for the community, high concern for the individual – independent



- High concern for the community, high concern for the individual – interdependent - restorative environment

Summary:

- Primary prevention keeps healthy people healthy
- Primary prevention can employ restorative practices to keep healthy people healthy
- High concern for the community and the individuals in it will result in: happier people, higher productivity, higher compliance with norms.

Questions:

Q: What is new/stimulating about the presentation?

A: The Social Discipline Window

Q: Where would you want to contradict or would like to know more?

A: What is restorative, what isn't restorative? How we can use restorative practices before wrongdoing? The community needs norms. What do you need, to be in safe?

Q: What is the difference between mediation and restorative justice?

A: Mediation is a restorative method.

Q: What is strange/doubtful and what can you "take home" for your own work?

A: The start has to be done with young people.

RESTORATIVE JUSTICE INTO THE 21ST CENTURY: ARGUMENTS FOR RESTORATION OF HUMANITY AND COMMUNITY ON A MULTI LEVEL SCALE

by **Gert Jan Slump (Netherlands) and Anneke van Hoek (Netherlands)**

Restorative justice according to Zehr (2002) is a process to *involve to the extent possible* those who have a *stake* in a specific offence and to *collectively identify and address harms, needs and obligations* in order to *heal and put things right as possible*. RJ not primarily aims at retaliation and punishment of the offender but aims at restoration from a multi-perspective and interrelational viewpoint. Restoration concerns the different relations that are damaged or injured as a result of a criminal offence:

- 1 restoration of the relation between offender and victim (e.g. mediation)
- 2 restoration of the relation between offender and community (e.g. community sanction)
- 3 restoration of the relation of victim and community (e.g. reparation).

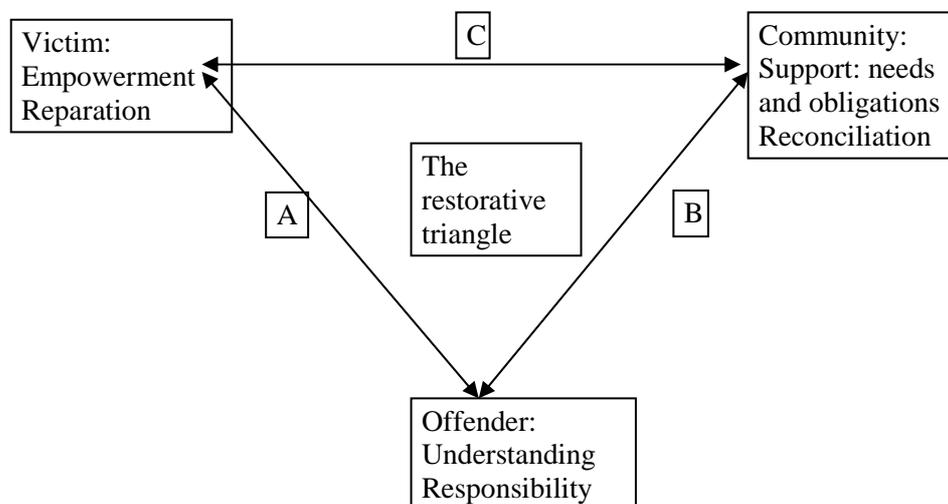
Justice in the western world almost faded away these concerns. 'Features' are

- The public prosecutor defends the 'public interest'
- There is no or little involvement of the victim
- Individual responsibility of the offender (western individualism)
- (Individual) guilt
- Formal conflict settlement in the context of penal law
- Symbolism: the hierarchy in the courtroom design

Justice in (some) indigenous traditions may have very opposite 'features':

- Active participation of both the offender and the victim
- Involvement of members of the related families / tribes/ communities (non-western collectivism)
- (Collective) shame
- Informal civil conflict settlement
- Symbolism: a group of people in a circle

Symbol of Restorative Justice: the restorative triangle



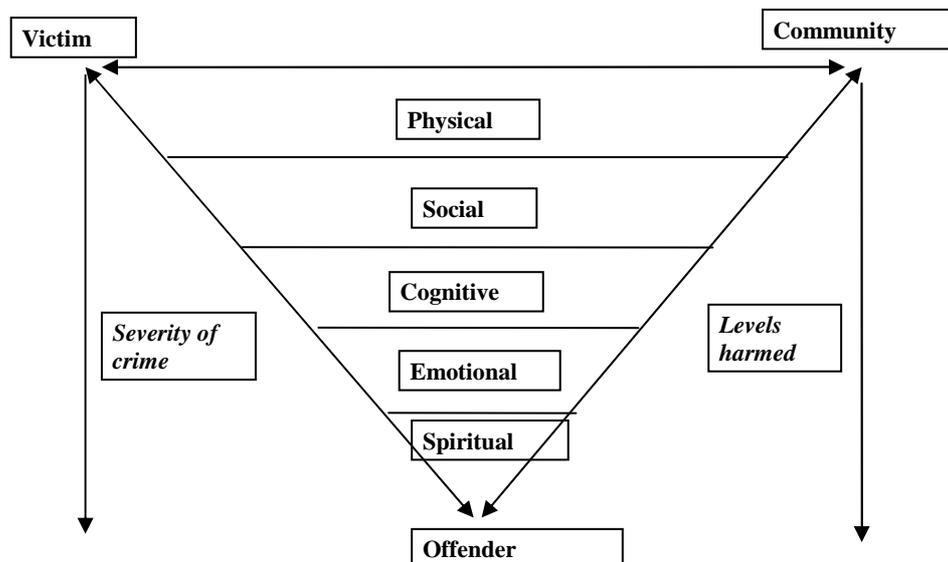
Ideal forms of RJ have a positive effect on all damaged or injured relations.

In our presentation we analysed these relations and have tried to 'map' the different levels of damage or injury by a criminal offence and thereby the different levels of restoration at stake.

Levels in (need of) restoration and skills addressed

Physical Level –	physical skills
	BE
Social level –	social skills
	INTERACT
Cognitive level –	cognitive skills
	THINK
Emotional level –	emotional skills
	FEEL
Spiritual level –	spiritual skills
	CONNECT

Our point of reference is a holistic concept of man. We distinguish five levels.



On the basis of those levels different forms of restorative justice can be 'classified' and will explore a new typology that can be used for both concept development (theory) and practical application (practice).

These remarks lead us to the following challenges for RJ in the 21st century:

1. New practices often stem from indigenous and spiritual traditions: how to import (fit) and transform them? What are the levels included?
2. How to stimulate the shift to restorative practice with actors like police, public prosecutor?
3. How to deal with conflicting needs, harms and skills of involved parties?
4. Is the spiritual level a useful addition in the light of needs, harms and skills within (restorative) justice?
5. How to keep working on practice based evidence combined with evidence based practice?

This new typology of restorative justice we propose is built on (1) experience with and research on victim offender projects in the Netherlands as well as (2) experience with and development of programs dealing with reconciliation and the prevention of ethnocentric



violence in Rwanda and (3) possible solutions with regards to peace making and reconciliation as presented in international literature.

Gert Jan Slump is a criminologist. From 1988 tot 1993 he worked as researcher at the University of Amsterdam on topics related to victims of crime, settlement of damages, conflict settlement and support of complaints in the youth care system. From 1993 to 1996 he worked for the national victim support organisation and coordinated a local victim support scheme. Since 1996 he works as (senior) researcher and advisor on criminality and safety issues for an independent (profit) research group in Amsterdam (DSP-groep). Since 2006 he works as senior advisor and manager with the independent bureau Van Montfoort Advisory in Woerden (www.vanmontfoort.nl). His expertise comprises local youth policy and participation, development, innovation and implementation issues within criminal justice organizations, victims of crime and restorative justice.

Anneke van Hoek is a criminologist. From 1988 to 2005 she worked as a senior researcher and advisor on criminality and safety issues for an independent (profit) research group in Amsterdam (DSP-groep, www.dsp-groep.nl). She also worked for the national victim support organisation. Since 1995 she has her own media production and consultancy firm and she is co-founder of Radio La Benevolencija (www.labenevolencija.org). She specialised in Media for Social Change and started in 2003 as projectcoordinator for Rwandan Reconciliation Radio, a project she co-developed for La Benevolencija. This academic based behavior change project is aimed at reconciliation, trauma healing and the prevention of ethnocentric violence in Rwanda and is now extended into the whole Great Lakes Region (Rwanda, Burundi, DRC). Similar projects are currently in development for Bosnia and the (post Van Gogh) Netherlands.

Workshop report by Nerea Marteache

During the café conference several topics were discussed. The main discussion was about how the traditional punitive system can be more restorative and whether the restorative justice system can work without the threat of the penal one. Another important topic was the role of the different parties involved in restorative justice (victims, offenders and the community), and a debate was about whether the victim and the offender can own the process in the traditional penal system. There were different opinions about whether it is possible to change the traditional system to make it more victim-orientated, or whether (following the abolitionist thesis) we need a completely new system.



CREATION AND FUNCTIONING OF A COMMUNITY SERVICE OF MEDIATION IN THE MUNICIPALITY OF SANT PERE DE RIBES, BARCELONA

by Javier Wilhelm (Spain)

The complexity of the social life produces difficult situations, many of them do not find positive outcomes, others do not have spaces of resolution, and some others are of a confidential nature, e.g. conflicts between neighbours. In many of these situations the persons involved do not know in which way to deal with the difficulties. The social mediation constitutes an alternative - valid for this kind of problems.

Some controversies are solved in the judiciary in processes which could last for one or two years, a period during which the parties have to continue living together without the certainty which decision the judge will make and therefore the risk of increasing levels of stress this situation entails. It is important to remark that mediation does not compensate for the deficiencies of the judicial system, nor does it constitute an alternative to the legal procedure but proposes different ways using knowledge about the conflicts.

The mediation is a process of conflicts resolution, in which a third impartial person, the mediator helps the parties in their search for a mutually satisfactory agreement, without taking decisions concerning the outcome of the process.

The Centre of Mediation of the City Council of Sant Pere de Ribes started in October, 2002, in order to give an answer to a right of the inhabitants of Sant Pere de Ribes not given before: the possibility to solve its differences in a protected area, with the support of independent professionals who help the persons to manage their conflicts in a positive way and to find satisfactory forms of communal life for members

Javier Wilhelm Waisztein is Director of the Social Mediation Centre of Sant Pere de Ribes, and Supervisor of the Mediation Centre of the Municipality of Gandia, Valencia. He is Professor for mediation in the University of Barcelona and several other institutions in Catalonia. He is also VP of the Scientific Community of the Association Equilibrio & RC pf Bologna; Italy.

Workshop report by Lara Baena Garcia

Javier Wilhelm presented the community mediation service he directs in Sant Pere de Ribes, a municipality located 40 km away from Barcelona, in Spain. He explained the main characteristics of the municipality, its population and the service offered: the model on which it was inspired, the staff, how they work, how it is connected to other local services and some statistics on the cases and the results after a 4-year work.

After his presentation, the debate focused on details about the service creation and delivery: how it started, how the people got to know about it, how the service is financed, the political role in the birth and maintaining of the service, details on the process of community mediation as well as examples of cases they've mediated throughout the years.

HOW CAN THE MEDIATION CENTRES/SERVICES AND LOCAL MEDIATORS PLAY AN ACTIVE ROLE IN PREVENTING POTENTIAL CONFLICTS AND ESCALATION OF CONFLICTS? (EXAMPLES FROM ALBANIA AND NORWAY)

by Rasim Gjoka (Albania) and Karen Paus (Norway)

How can the Mediation Centres/Services and local mediators play an active role in preventing potential conflicts and escalation of conflicts? How can we address conflicts at an early stage or even before they take place? And how can this apply for different countries? Through presentation of concrete examples from Albania and Norway we wish to encourage a debate on this issue.

Background: The Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR) and The Mediation Services in Norway has since 1999 had a project cooperation. This is a solidarity project to contribute to further implementation of mediation, especially VOM, in Albania. It is a college-to-college project, and one of our main activities is to exchange knowledge and experiences of mediation in order to develop the services in both countries. Our project has over the years proved to be of mutual interest and inspiration for practitioners in both countries. Our collaboration provides a useful perspective that helps us see strengths and weaknesses in our own practices and helps us to learn from each other. Albania and Norway are societies with rather different challenges and we can of course not immediately adopt methods or traditions from each other, but we can be inspired and to a certain degree attempt to adjust useful ideas to fit within our communities. Our workshop here is a reflection of some perspectives that have developed through our project collaboration.

Workshop program: An overview of the mediators' role in Albania, and AFCR's selection and training of their volunteer mediators; Presentation of the mediators' proactive role in Albania through examples from mediation in a blood feud, and through AFCR's involvement in an anti-trafficking project; A brief insight into the model for The Norwegian Mediation Services before presentation of a rather untypical project in Norwegian context; a project with close connections between local mediators' and their local community.

Topics for discussion:

- What are our responsibilities as mediators in a broader perspective in society (regarding intervention in ongoing conflicts, and participation in public debates)?
- What are the challenges/implications of such a proactive mediator's role? E.g. challenges of ethical, political kinds and regarding our impartiality.
- How can mediator's /-services play an active peace keeping role in your country, in the local communities?

PRESENTATION OF EXAMPLES

Mediation in a blood feud - Albania: One concrete case was presented, a case concerning revenge of a murder committed in November 1992. Two families were involved. The men of the offender's family isolated themselves in their houses to avoid being killed. The offender himself had escaped the country. A blood feud affects many people, all family members – also the children's ability to attend school, the whole community is in fact affected. The mother of the victim was the first person to initiate a reconciliation process. And after many years by assistance of local mediators the blood feud was finally reconciled in December 1998. Through this case the detailed work, step by step, of the mediators were described.

Case analysis: There are several typical elements present in the Albanian mediation process, although these elements change from case to case. First of all, in cases of blood feud, the mediators' profiles are very specific. They are men of high reputation, and greatly respected by all the persons in the community. They are exclusively men and are in general older than 50 years of age. The way they initiate reconciliation is also very context dependent, because they start it at no specific request. They hear about the conflict in the community, because these are cases that concern everyone due to their painful and heavy form and content, and start the contact with the families based on their own initiative. They contact the 'victim's' family as representatives of the 'offender's' by accepting to hold and shoulder the guilt of the responsible ones. In order to be successful in reconciliation they use a special

language, full of words of praise and honour, but we should be careful that these are not used as a strategy but are part of their everyday ethical conduct and existence. The mediators are in general accompanied by religious leaders or other important people that might have influence in the decision of the family. They use very important religious days for the meetings with the families, because tolerance is greater in those days and the predisposition to forgive higher. Another very important element to be mentioned is the will and the insistence of the mediators in the reconciliation. Although they are many times rejected by the families, they never give up their intentions and their attempts. Another specific point common to all mediation cases is that in Albania mediation does not work strictly on an individual basis. Mediators have to approach other family members, cousins, friends, or other influential people of the sides(parties) in order to set the trust and be helped through advice and suggestions. The family members or friends can be contacted during all stages, and if one of them is not influential enough, another one is approached. These people push forward and help the mediation process.

Mediators involved in anti-trafficking project - Albania: The trafficking of women and children is as much an economical as a psychosocial and family structure problem in the Albanian society. Many victims are morally approached and have immense problems to be integrated back to the family and society because of stigma and stereotypes. This conflict between victim and family, or victim and other parties is one of the major handicaps in the process of reintegration of trafficked victims to the society. In 2005, AFCR initiated a project of mediation in anti-trafficking conflicts. With this project AFCR aimed to increase capacities on conflict resolution, reconciliation and mediation for civil society organizations and local government institutions involved in anti-trafficking networks in Albania. Moreover, in the project AFCR mediators dealt concretely with mediation of existing conflict cases, especially with a focus on mediation of victim and family. This project served two major aims, firstly it increased the capacity of the above mentioned structures to deal better with conflict cases between family and victims of trafficking, and secondly it offered reconciliation and mediation for concrete conflict cases between victim and family or other parties. The most important step towards reintegration in the society is the reconciliation with the family and being accepted and not stigmatized. This process will in the long run decrease the stigma towards the victims and will make the society more open to acceptance of such human suffering.

“The Conflict-café” – an example from Oslo, Norway: This is a small scale project in Oslo the capital of Norway and still in the very beginning. The project is a cooperation between one of the municipal administrative units of Oslo and the local Mediation Service. The area where the project takes place can be characterized as a relatively poor area, with many social problems and with a multitude of ethnic backgrounds. Here are the highest numbers of rental apartments administered by the municipality for people with low income. Unemployment, drug/alcohol related problems and various other social/psychological problems and tight living conditions makes conflicts arise very easily between people, and the municipality also receives numerous complaints from the inhabitants here. “The Conflict-Café is an attempt to bring the Mediation Service closer to its potential users. People are informed that they can come to a local café at certain hours every week for an informal chat with local mediators, for advice in conflict situations or for mediation. Cases can also be referred to the café-mediators from a third party like the local municipal office that administers these rental apartments or various other local bodies, and The Mediation Services will in cases referred from the police involving parties in this area, use the local mediators at the Conflict-café. The mediators in the café seeks in general to work in an un-bureaucratic way, by being available to the community at the local café, by using phone calls and visits instead of sending letters. A case can be mediated quite quickly “on the spot” when possible, or the mediators can work on a case over some time, paying several visits to the parties to build up trust, and plan for a more extensive mediation process e.g. with a final conference mediation for all the inhabitants in an apartment building. So far the results are positive but quite limited regarding the number of mediated cases. Types of cases mediated through the project so far, have mostly been neighbourhood conflicts. An important effect of mediation in this project is that parties after participating in a mediation process seem to build up their own capacity in their handling of new conflicts.



From the discussions: The “Conflict café” model is an exception to the rule regarding the activities of the Mediation Services in Norway. In general we are more bureaucratic and distanced from people. More than 80 % of our cases are referred to us from a third party, mostly by the Police- and Prosecution Authority. We are not visibly present in the local communities, we seldom approach parties in conflicts that are not already reported to us and we take little part in public debates. Is it possible in our modern western society to change our profile towards becoming a more un-bureaucratic and proactive partner in the local communities? In Albania we find such a proactive mediator’s role, as illustrated in the examples of how mediators’ approach parties in blood feuds and also by their engagement in anti-trafficking work. In the anti-trafficking project the local mediators play an important role in promoting knowledge of this issue to the local communities, and thereby work against prejudice attitudes towards the victims. This is a kind of “pre-mediation” at a (macro) community level that can help individuals later, by easier reintegration of victims of trafficking in their families and local communities, preventing isolation and exclusion or even violent actions towards this vulnerable group. We also discussed various other conflict situations in our communities where a proactive mediator’s role would have been important.

Conclusion: The model of the voluntary and active intervention of the mediators’ without the consent of the sides (parties) is very specific to the Albanian society, and here also specific to certain regions, and applicable in certain cases. This does not imply that this model cannot be used and adopted by other societies. What is important is to find the elements that hold communities together and approach people in their natural settings according to their life styles. We strongly argue for a more pro-active role of mediators in approaching sides, and insisting on the mediation process. If this is done carefully and contextually, there are many benefits in the process.

Rasim Gjoka is the Executive Director of “The Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR)”.

Karen Kristin Paus is a criminologist. Her work is presently divided between being an adviser at “The Mediation Service in Oslo and Akershus” and a project manager at the Secretariat of the National Mediation Services, for a solidarity project with the Albanian colleagues. This project is funded by the Norwegian Authorities.

Workshop report by Mari-Cruz

The Albanian Foundation for Conflict Resolution is recruiting and train mediators among “trusted men” in their communities. This experience is revealing very suitable for some particularities of their culture where terms as honour and family are as important as legality. One of the questions during the discussion was if this practice could be considered as a pre-modern or post-modern procedure.

The Mediation Service in Oslo presented its experience on the “conflicts café”, as an urban way to deal with conflicts. Another question raised was if it was possible to extend this experience to wealthy areas. Also, it was discussed if it is possible to prevent conflicts by approaching people in their communities. One of the final conclusions was that each conflict needs an individual solution.

FAMILY GROUP CONFERENCE CAN STOP FAMILY VIOLENCE

by Rob van Pagée (Netherlands)

Family Group Conference (FGC)

- What is FGC
- How does it work
- Results
- Empowering of civic society
- Your role in this ...

Citizens wants:

- Information about what is possible ... available ...
- Coherence in services
- Autonomy, be in control of one's own life

FGC = widening the circle

FGC model

- Referral
- Preparation phase
- Actual conference
- ° How can the violence stop?
- ° Who is doing what, when and where?
- ° What will happen if something does not work?
- 1. Sharing information
- 2. Private Family time
- 3. Acceptance
- Executing the plan

Role of the neutral community facilitator

- Involve as much as possible people
- Assure that it is their conference: their time, place, people, language, food, rituals, traditions
- Safety for all
- The right professionals with the needed information
- Facilitator has no interest in the plan
- And nothing more

Role of the referrer

- Can offer EKC to client
- Helps formulate conference question
- If necessary defines the bottom lines
- 1st phase: the question + info about help
- 2nd phase: allow family private time
- 3rd phase: accept safe plan
- After conference: deliver requested services
- In case of problems ... back to family
- EKC not as a "one night stand"

FGC ... a different approach

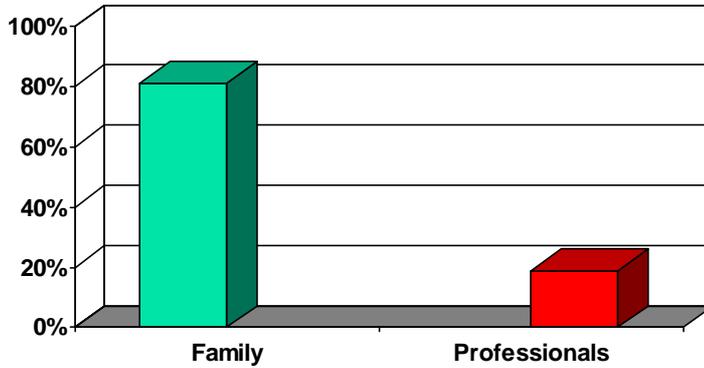
- Involve citizens
- Keep citizens responsible
- Empower family systems
- Evoke natural resources
- Give citizens a right to make their own decisions
- Give people a voice

Does it work?

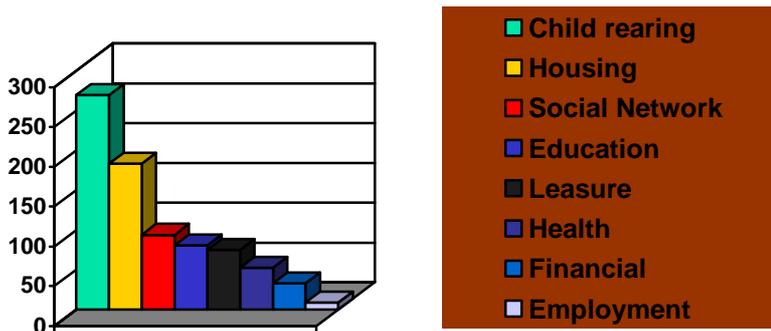
- Family participation (15.8)

- Children participate
- Sharing concerns and information
- Taking responsibility
- Make safe and creative plans
- 17.8 agreements per plan
- Bring in resources

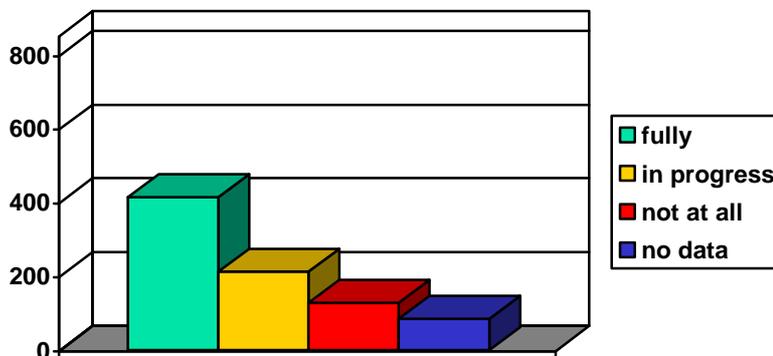
Agreements for whom?



Agreements per domain (total 853)

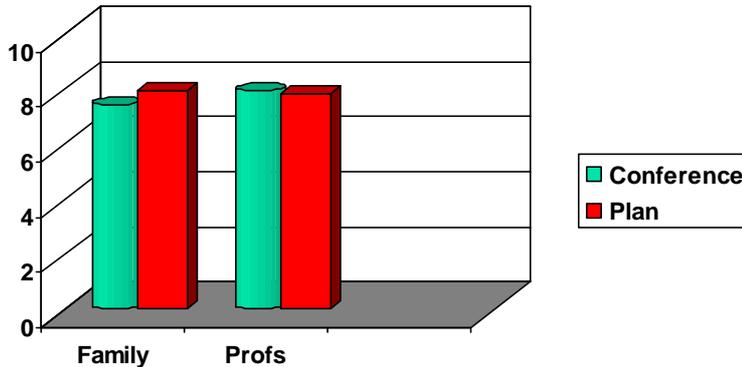


Agreements after 3 months





Satisfaction 1-10



Long term results: (Lipton & Nixon)

- Professionals about FGC and the tradition: 67% family plans better, 33% as good as, No plan less evaluated
- Re-abuse after FGC: 6% (16-25% normally)
- 78% plans successful after 1.5 years

Where and when?

- Everywhere a plan has to be made
- Always when action is needed
- Every time when a decision is necessary

Strengthening society

Democracy is becoming more shallow in its meaning for human lives. The lived experience of modern democracy is alienation. The feeling is that elites run things, that we do not have a say in any meaningful sense ...

Conferences offer:

... a crucial vehicle of empowerment where spaces are created for active responsibility in civil society to displace predominantly passive statist responsibility' (John Braithwaite, 2002)/

Rob van Pagée works with the Centre for Restorative Action in the Netherlands. The centre is active in implementing the principles of family group conferencing by developing and supporting local projects around family group decision making and youth justice conferencing in different arenas, such as welfare, health, education and justice. The centre is active in other European countries outside the Netherlands as well.

Workshop report by Vera van der Does

The chair opened the session with a small introduction, stressing the importance of a good and constructive discussion on this very sensitive topic - a topic that have already caused many heated discussions.

Rob van Pagée took the floor and started with an introduction of the situation of the past and current project on conferencing in The Netherlands: Eigen Kracht Conference. Following this, Rob van Pagée explained more in to depth the model of Family Group Conferencing (FGC). The importance of empowerment of civil society was discussed, and the process of problem solving within families and their wider networks.

The FGC model was discussed, explaining the referral, preparation, actual conference, the executing plan and evaluation. In this light the role of the neutral facilitator was discussed. It

was stressed that these facilitators (lay persons in this Dutch project) should, amongst other things, make sure it is “their” conference; in their time and place and with their people, food, language etc. There is however no protocol and no guarantees, which raised some questions with the participants.

Main comment in this respect was that there is a cultural factor that should be taken into account. Some areas in Turkey do differ greatly from most Western European countries, and involving family is often not the solution but part of the problem in those cases.

Many questions were also raised regarding the issue of safety: can it be guaranteed, how, and by whom (just the one facilitator with a group of 15 people)?

A critical remark was raised that the model is presented in a too easy manner. We are dealing with very specific and violent cases (domestic violence and child abuse) which do need a very professional and specific approach.

In practice the cases on domestic violence and child abuse are still scarce: starting in the Netherlands from 2001 there have been around 700 FGC of which 25 involved serious family violence or child abuse.



Plenary session: *Restorative justice and the law – going beyond diversion*

Chair: Marko Bosnjak (Slovenia)

Ivo Aertsen and Leo Van Garsse (Belgium): *RESTORATIVE JUSTICE AND MORE SERIOUS OFFENCES: BEYOND THE DIVERSION-INCLUSION DEBATE (ABSTRACT)*

It is quite appealing to defend the idea of restorative justice as applicable to more serious crimes and to see it not just as a diversionary measure. The enthusiasm which embraces this idea, and the few experiments we witness, veil the fact that in a quantitative way the impact of victim-offender mediation and conferencing remains very limited in most countries, and that in reality most restorative justice practices deal mainly with minor offences committed by juvenile offenders. How realistic is it to overcome the gap between theoretical ambitions and reality?

First, we will have a look at mainstream restorative justice practices in Europe, and in particular at the different motives which inspire the movement. The rationale for developing restorative justice models for more serious crimes, both with juvenile and adult offenders, will be discussed. Special attention will go to the criteria used to determine the 'seriousness' of an offence. The analysis will reveal the existence of several tensions and obscurities. One of these concerns the adoption of criteria for restorative justice referrals. It will be argued that diverting a case away from an institutional context does not necessarily imply that the alternative process is freed from the institutional logic. Another issue relates to the tension between theory and practice, which clearly comes to the forefront in this debate but which has to be clarified in its various aspects: theory not only deals with paradigm shifts, and practice is not only on pragmatism.

The discussion of these and other tensions can help us to understand the relationship between restorative justice practices on the one hand, and criminal justice procedures on the other hand. The final question will be whether and how we can transcend the dualism of this approach for more serious crimes: are we able to conceive and to apply restorative justice practices not as part of a given context but as a bridge between two worlds?

Ivo Aertsen is professor of criminology at the Catholic University of Leuven. His field of interest is victimology, penology and restorative justice. Before he started research and teaching, he worked in the prison system and in victim support. Ivo Aertsen is vice-chair of the European Forum for Restorative Justice and leads COST Action A21 - a European research network on restorative justice.

Leo Van Garsse used to work as a social worker in prison after-care and in the rehabilitation of young offenders. Since 1987 he is actively involved in the practice and the implementation of several applications of victim-offender mediation in Flanders. Amongst them mediation with young offenders, mediation at the police-level, mediation in serious crime, pre-trial as well as post-trial. Since 1998 he is employed by "Suggnomè, Forum for Mediation and Restorative Justice", an umbrella-organisation for the promotion of Restorative Justice in Flanders. During the past years, Suggnomè established a mediation-offer for adults throughout Flanders. Suggnomè has supported the process of implementing mediation in the Belgian legal system. Suggnomè has a lot of contacts and established good cooperation with the magistrates and with the Belgian Ministry of Justice. Since the start, there is a constant and very lively interaction with researchers from several universities.



Workshop session 2: Victim-offender mediation and conferencing with more serious offences

VICTIM AND OFFENDER REINTEGRATION IN A SERIOUS CRIME CASE. LEARNING FROM MEDIATION DURING THE SENTENCE

by Ansel Guillamat, Belen de la Camara and Clara Casado (Spain)

This workshop aims to share the reflections and lessons from a restorative mediation done in a sexual offence case in which the victim was the sister of an offender's friend and where the victim's husband and the father also participated.

The mediation process was managed by two mediators within the Mediation-Restoration Programme operating in the criminal justice system in Catalonia since 1998. The referral came from the Figueres Penitentiary Centre, more precisely from the professionals in charge of the inmate's rehabilitation needs and it lasted for approximately a year, finishing in april 2005.

This particular serious offence case is considered of interest because of the personal impact of the crime, the prison situation of the offender, the coordination relations between prison professionals and mediators, the entrance of the victims into the prison for the joint session and the restorative value that stem from the communication amongst the victims and the offender.

Participants met each other as human beings which allowed them to share hard feelings but at the same time positive warm emotions too. Afterwards, als their personal response gave sign of the restorative effect: the peacefulness achieved by the father, the victim's husband tranquility and the gratitude expressed by the direct victim. On the other hand, the challenge it took for the offender to repair the damage and despite the shame, to reintegrate himself too in order to progress towards his own rehabilitation.

Beyond the study of a particular case or a crime typology, by sharing a casework experience, we seek to foster the discussion about what could be identified as core aspects of a severe crime restorative process (including any process type) such as the reasons for the offender and the victim to take part, the lengt and the rhythm of the processn, the spaces used or the follow-up needs.

Promoting this debate and analysis can be the starting point to help in designing the made to measure process, the adequate skills, or to develop a more specific methodology.

We feel this opportunity as a contribution to strengthen the restorative justice practice capacity so that it could serve more situations and more persons could have access to it.

A)Introduction

This workshop aims to share reflections and lessons from a restorative mediation done in a serious offence case.

The mediation process was managed by two mediators within the Mediation-Restoration Program operating in the criminal justice system in Catalonia since 1998.

The process lasted for approximately one year. From June 2004 to April 2005.

This particular case is considered of interest because of :

- the personal impact of the crime
- the prison situation of the offender,
- the coordination relations between prison professionals and mediators,
- the entrance of the victims into the prison for the joint session,
- and the restorative value raised from the communication among the victims and the offender.

Beyond the study of a particular case, we seek to foster the discussion about what could be identified as the core aspects of a restorative process in a severe crime case, such as the

reasons for the offender and the victim to participate, the length and the rhythm of the process, the spaces used or the follow-up needs.

B) Notes about the case

In order to contextualize, it is important to explain that the mediation service received the referral 5 years after the crime acts had occurred. Therefore it is a situation where the judge had already passed sentence and the offender was serving it in prison. At that moment he had proved worthy to be granted the first temporary absences¹.

Victim and offender came from a very close social circle, briefly described as follows:

- the offender belonged to the same group of friends of the victim's brother;
- the victim's father had been one of the offender's teachers in primary school;
- victim and offender had met in different situations of their lives through their childhood and adolescence;
- victim and offender lived within a small geographical space, but they belonged to different social classes.

Notice: the names used from now on for each participant are fictive.

- Direct victim: Olga
- Offender: Victor
- Victim's husband: Marcos
- Victim's father: Raimon
- Victim's brother: Jordi

C) Conflict dynamics at the moment of the mediation intervention

Obviously, when we began to work on the case, the personal situation of the affected people (victim, offender and the rest of their families) had changed.

The victim had rebuilt her life, she got married and was pregnant then. She had been able to come to term with her grieving process about the aggression because she had received professional help.

Her parents, her siblings and her husband on the other hand, had had no opportunity to process the pain and anger caused by the crime.

The offender was involved in a rehabilitation process inside the prison guided by the psychologist of the prison's Treatment Team.

The offender's family supported this personal rehabilitation and did not question the morality of his actions since he was their son.

D) The mediation Process

First step: REFERRAL INTAKE

The referral to mediation came from the psychologist of the prison's Treatment Team.

She considered it was appropriate for the offender's rehabilitation process to participate in the program. She said Victor felt dirty, ashamed and needed to be heard by the victim to move on.

A meeting in the prison was organized to coordinate the different professionals: the psychologist, the criminologist and the mediators assigned to the case and to share and understand the interests and technical needs of each of them.

Second step: ANALIZING THE CONFLICT

The mediators had the following information available in order to analyze the conflict:

¹ Within the Spanish penitentiary legislation, the temporary absences or "permisos de salida" are granted to the inmates to prepare them for their return to society and for resocialization purposes. The length of the temporary absences can be from one day to a maximum of seven. The inmate must have served one fourth of her/his sentence and needs to show good behaviour according to the penitentiary Treatment Team's report. Without these conditions a temporary absence can also be authorized for exceptional reasons related to their closest relatives.



- the Treatment Team's perception of the inmate's evolution;
- data about Victor and about his penitentiary file;
- information about the act of the crime;
- information concerning the judicial proceedings and the trial.

Third step: FIRST INDIVIDUAL SESSION WITH THE OFFENDER

The mediators arranged a meeting with the inmate which was held in the prison. This mediation session focused on:

- the information about the process, clarifying what Victor already knew;
- how he felt about the act, the damage caused in a wide sense, his thoughts towards the victims (his capacity to put himself in the victim's place), his perception of the conflict and of himself.

Fourth step: FIRST CONTACT WITH THE VICTIM

Indirect approach to the victim

The mediators were aware that this was a very delicate step but they could collaborate with two psychologists of the *Specialist Advisory Team*², who at the time of the judicial process made a report about the impact of the crime on the victim.

They shared their opinion about the approach to the victim and her participation in a mediation process with the offender.

The call to Olga

The telephone call to Olga aimed to:

- introduce the mediators;
- arrange a meeting with the only purpose of informing about the program;
- determine her situation after a long time since the trial.

Fifth step: FIRST INDIVIDUAL SESSION WITH THE VICTIM

The meeting with the victim took place in a special office within the court's building of the city nearest to the victim's home. Olga came with her husband, Marcos.

The session with Olga consisted of two stages:

- the mediators explained who they were and what the mediation process was about;
- focus on the facts and how they were experienced nowadays by the victim.

Olga appeared self-confident. However, the memory of the crime would always be present in her life.

She remembered the trial as a very hard experience. During the hearings, Victor not only denied to have committed the act, but did also make up a totally different story, putting the blame on her.

Nonetheless, after having psychological help, she had been able to recover, but she could not entirely move on from her suffering because her father, her husband and her brother had promised to take revenge when Victor would get out of prison.

Olga expressed she was willing to participate in the mediation. It entailed an opportunity for her to get to know that Victor admitted the acts and regretted his behavior. This was very significant to her because it confirmed she had not just "invented a story".

² The Specialized Advisory Team is an independent group of psychologists and social workers who, when commissioned by a judge or tribunal, will make expert reports regarding the alleged victims or accused persons involved in a trial. Their mission is to give psychological, specialized advice with regards to parties' psychological state of mind during the act, personality, the veracity of their statements or the personal impact of the crime. They belong to the Justice Department of the Autonomous Government of Catalonia and their impartiality is the solid basis of their reports which can be considered as evidence by the judge or the tribunal.



However, the main reason for her to take part was to get closure on the conflict through the “restoration” of her family’s sorrow so that it wouldn’t be projected on her present or future anymore. She wanted to rebuild her life without hate or revenge.

Although Marcos had not met Olga yet when the crime occurred, he had followed the trial and he was still suffering the consequences of the crime. He had had no professional help. He explained how he knew about the acts but could not talk with anybody about them, about his feelings, about the impact of it all on him, etc...

Sixth step: MEDIATION SESSION WITH THE VICTIM’S RELATIVES (SIGNIFICANTLY AFFECTED)

Once finished the individual session with Olga and her husband, the mediators offered her father and brother the chance to participate too. Her brother Jordi, refused to participate but the father, Raimon, agreed.

A private session with Raimon, was held and it followed the same stages as in the one with Olga and Marcos.

Seventh step: MEDIATION DEVELOPMENT

Victor maintained his interest in participating. Olga, wanted to take part but indirectly, avoiding to meet Victor. Raimon and Marcos decided to get involved as well and they would also attend an actual meeting with Victor.

New private sessions took place with all the participants. There was also a shared session with Olga, Marcos and Raimon. Although Jordi didn’t take part personally, he was kept informed all the time by his relatives.

The work through the new sessions focused on identifying the issues and concerns for the participants which would influence their wellbeing and personal balance positively. Most of them were issues which needed the recognition and answers from the other side.

To Olga, the healing process didn’t consist of an encounter with Victor but of an exchange of the specific experiences of the acts. She was also looking for Victor to admit the crime.

On the other hand she supported that his father and brother meet Victor in a joint session.

The meeting would be held inside the prison mainly due to security reasons.

It is important to mention that the direct involvement of the director of the prison was very helpful in order to meet all the bureaucracy proceedings and to obtain the required authorization to hold the meeting with two people from outside.

The mediators helped the participants to decide the issues, concerns and questions they wanted to deal with in the joint session and also to clarify details that had come up during the mediation process. In that sense, every person had designed his/her own “support guide” for the encounter. Marcos’ agenda included the questions and issues explained by Olga.

Eight step: THE MEDIATION MEETING

Prior to the meeting, the mediators ran two short preparatory sessions, one separately with Victor and his psychologist and another with Marcos and Raimon.

During the meeting, the participants communicate with each other and had an exchange around the concerns they had identified in their agendas. The mediators facilitated the communication during their dialogue.

The participants interacted in a meaningful way. For example, one comment made by Raimon was:

“... to me Victor, it is important that you become aware that I will never be able to forgive what you have done to my daughter. Prior to the beginning of the mediation I felt such anger towards you that I promised that when you got out of jail, I would make you pay for what you had done. But now... I want you to know that despite the fact I’ll never forgive you, I hope that neither your wife, if you have one in the future, nor your mother, have to go through what my daughter went through...”

As the meeting moved on, the participants built a consensus about their perceptions of the acts, its impact, what they have learned from it and they also reached some common conclusions.

An agreement document was signed in March 2005. Each person kept an original and a part from the one kept in the mediation file. The document was also sent to the prison Treatment Team.

Ninth step: FOLLOW-UP

Two months after the joint session, a telephone contact was made with the victims and a conversation was held with Raimon on behalf of Olga, Marcos and himself. He explained they felt satisfied with having had the opportunity to participate so that now they had gained a peaceful feeling, a sense of relief and calm.

Olga could gain closure with the offence because her family's ideas of anger and revenge had disappeared. Now she was able to move forward with her life.

The psychologist was also contacted and she explained that Victor felt fine and had progressed in his therapeutic process.

Victor went on his first temporary absence March 2006 and he is currently waiting to obtain the conditional release under electronic tagging.

E) Issues to reflect on

- What criteria need to be taken into account by professionals who might refer a case of that kind of mediation?
- The impact of bringing the victims into the prison or holding the meeting outside.
- The development of a specific follow-up process once finished the mediation intervention.
- The collaboration and shared responsibility amongst the different professionals participating in the restorative process.

MORE INFORMATION

- They had gone through the aftermath of the crime and the judicial process but never had been able to overcome all what that entailed.
- We were entirely aware of the delicacy of the victim's situation. She had not made any request regarding any communication with her aggressor. Nowadays in our context it is unusual that Victim Services know about the possibility of asking for a restorative process for their clients.
- The trial had been 4 years ago. Through Victor, the mediators knew that during the trial there had been a big confrontation.
- The trial itself was a traumatic memory which upset Victor, who said that during the hearings he was entirely detached and just followed his lawyer directions. Nevertheless, he felt that all that happened during the trial must have been much harder for Olga than for himself.
- Although Marcos had not met Olga yet when the crime occurred, he said he needed to put a face to Victor because in his nightmares the offender always appeared without a face.
- The father firstly was informed about the mediator's role and the mediation process. He also expressed his sorrow and pain, his memories and thoughts about the facts. He talked about his feelings towards the offender and his daughter and his perception of the conflict and of himself.
- Victor was already in the mediation room, a comfortable space with an oval table and a capacity for 10 people. Then the mediator entered the room followed by Raimon and Marcos. The positions where the participants were seated had been previously defined by the mediators.
- In case of being granted conditional release, Victor will work for his sisters' company and would live in his parents' house.

Ansel Guillamat Rubio is a psychologist working for the Justice Department of the Catalan autonomous government. She is the coordinator of the Mediation-Restoration Programme for Adults. She is a founder and Board member of the Alternative Conflict Resolution Committee

belonging to the Psychologists' Professional Association of Catalonia. She is also a trainer on mediation including family and criminal fields, and coordinator of the family mediation module of the Mediation Postgraduate Diploma, Les Heures, Universitat de Barcelona.

Belén de la Càmara Delàs was a mediator in the Victim Offender Mediation Programme for Youth of the Justice Department, Generalitat de Catalunya, for the period 2001-2002. In 2003-2005 she was a mediator in the Mediation-Restoration Programme for Adults, Justice Department, Generalitat de Catalunya. Now she is the coordinator of the Community Mediation Project, Hospitalet City Council.

Workshop report by Clara Casado

Lessons learnt from a case study in a serious sexual offence helped to identify some cores aspects of RJ in serious crimes.

It was highly important to collaborate with other professionals related to the offender and the victim. The prison psychologist and the court psychologist had relevant roles in the assessment of the case as well as in mapping the possible benefits for the persons involved.

The time passed by since the offence was in itself a value that explained the needs and interests of the parties involved. The personal situation would have not been the same three years before the restorative intervention. It showed that in these types of cases parties involved need longer time to become prepared for such service.

It is crucial to take into consideration the interests of both the victims and the offenders. Thinking merely about the offender's motivation and its beneficial impact might result in forgetting the victim again. The victim needs to have the same opportunity as the offender to decide whether or not to participate. It is important to clarify what expectations the victim has with regards to the expressed motivation of the offender.

The flexibility of the RJ process is necessary to accommodate the specific needs of the people affected. In this case there was a need to include the father and the husband of the victim and allow an indirect communication space for her whereas an actual meeting was hold for the former parties.

As results of the meeting, the recognition of the facts led to the anger de-escalation in the parties and further harm was prevented.

Parties agreed about the places they would attend, on attitudes and personal commitments. They prepared for the release of the offender from the prison and his integration into the community. Not just for the victim itself but for the support relatives of both protagonists.

Although there had been concerns about the possible revictimisation, bringing indirect victims into the prison helped in answering victims' questions and concerns related to the offender's situation after the trial.

VOM WITH ADULTS AND RECIDIVISM

by Miguel Angel Soria and Ansel Guillamat (Spain)

During the last 25 years, United Nations, the Council of Europe and the European Parliament have been incorporating proposals of Restorative Justice and especially on mediation between victim and offender. The Council of the Europe Union, in its Frame Decision 2001/220 AI, of 15th March 2001, in its Article 10-1, defines the use of the mediation as a complementary tool to the penal ordering of adults. Article 10-2 says that member States should try "... that all agreement between victim and offender obtained through mediation in penal causes must be taken in account."

The Council of Europe, in its R(99)19 Recommendation, Art. 3, gathers that "penal mediation must be a service generally available". The Spanish Penal Code of 1995 gives a special recognition to the reparation of the damage that takes place between the offender and the victim. In November 1998, by initiative of the Department of Justice of the Generalitat de Catalunya, a Program of Mediation and Reparation in adults penal jurisdiction was set up.

The objective of our investigation is to analyze if the effects of the mediation process affect significantly the parts implied in it and, in second term, its later consequences to eliminate or to reduce the criminal and/or violent acts. To such aim, the judicial files of mediation made between year 2000 and the 2005, as well as its effects on the recidivism of the offenders and its characteristics, were analyzed.

To achieve this objective, we have studied the effects that the process of penal mediation have on the offenders and the victims, we have established the criteria of satisfaction for both, we have studied the main characteristics of the profile of the violator and we have analyzed the level of satisfaction of the mediation process using a random sample of users of the program by means of interviews when it has come to an agreement. Finally scale has been established to consider different variables related to the recidivism and the degree of satisfaction.

The conclusions reveal the most significant aspects of the changes that take place in the offender and the victim when they participate in the process of mediation and its effects on the recidivism and personal satisfaction.

Ansel Guillamat Rubio is a psychologist working for the Justice Department of the Catalan autonomic government. She is the coordinator of the Mediation-Restoration Programme for Adults. She is a founder and Board member of the Alternative Conflict Resolution Committee belonging to the Psychologists' Professional Association of Catalonia. She is also a trainer on mediation including family and criminal fields, and coordinator of the family mediation module of the Mediation Postgraduate Diploma, Les Heures, Universitat de Barcelona.

Workshop report by Clara Casado

Lessons learnt from a case study in a serious sexual offence helped to identify some cores aspects of RJ in serious crimes.

It was highly important to collaborate with other professionals related to the offender and the victim. The prison psychologist and the court psychologist had relevant roles in the assessment of the case as well as in mapping the possible benefits for the persons involved.

The time passed by since the offence was in itself a value that explained the needs and interests of the parties involved. The personal situation would have not been the same three years before the restorative intervention. It showed that in these types of cases parties involved need longer time to become prepared for such service.

It is crucial to take into consideration the interests of both the victims and the offenders. Thinking merely about the offender's motivation and its beneficial impact might result in forgetting the victim again. The victim needs to have the same opportunity as the offender to decide whether or not to participate. It is important to clarify what expectations the victim has with regards to the expressed motivation of the offender.

The flexibility of the RJ process is necessary to accommodate the specific needs of the people affected. In this case there was a need to include the father and the husband of the

victim and allow an indirect communication space for her whereas an actual meeting was held for the former parties.

As results of the meeting, the recognition of the facts led to the anger de-escalation in the parties and further harm was prevented.

Parties agreed about the places they would attend, on attitudes and personal commitments. They prepared for the release of the offender from the prison and his integration into the community. Not just for the victim itself but for the support relatives of both protagonists.

Although there had been concerns about the possible revictimisation, bringing indirect victims into the prison helped in answering victims' questions and concerns related to the offender's situation after the trial.



VICTIM POLICY AND RESTORATIVE JUSTICE POLICY REGARDING SERIOUS CASES IN BELGIUM

by Anne Lemonne (Belgium)

The presentation aims to analyse the evolution of restorative justice practices in Belgium in the light of the policy in favour of victims and hence to explore the potential paradoxes between restorative justice developments and victim policy. It focuses on the way the Belgian criminal justice system currently deals with victims in cases of serious violence. In a first part of the presentation, the contrast between existing programs (victim oriented programs such as victim impact statements at the level of conditional release and restorative justice programs such as mediation for redress) will be explored at a discursive level. In a second part of the presentation, results from interviews with victims and observations in victim services realised in the framework of an evaluative research on victim policy developed by the National Institute of Criminalistics and Criminology will be discussed. Case studies and victim perceptions of the current measures implemented both in the field of victim programs and restorative justice programs will be presented. The purpose of the contribution is to highlight to which extent victim oriented and restorative justice programmes have the potential to answer to victims' need and to explore potential paradoxes of restorative justice.

Since 1999, Anne Lemonne has developed her research interest in the field of restorative justice, first at the University of Copenhagen (Denmark) and, secondly, at the Université Libre de Bruxelles. She is currently working on the evaluation of victim policy – including restorative justice measures – in Belgium, in collaboration with her colleague, Tinneke Van Camp, at the Institute for Criminalistics and Criminology, Department of Criminology.

Workshop report by Lara Baena Garcia

Anne Lemonne started her presentation explaining some of the latest legislative changes in Belgium regarding mediation. Then she explained the evaluative research she has been conducting on victim policy and restorative justice policy assessment. According to her, these two policies have had parallel developments and were not always interconnected. She is currently interviewing the victims, and commented on some of the preliminary results. She finally concluded that despite some existing policies, more indirect than direct mediation is taking place in Belgium.

After the presentation, different issues arose during the debate: what's the best time for proposing VOM to a victim and whether some damage can be caused if it is proposed too early; the challenge for the mediator in transferring the offender's demand of VOM to the victim; the need for a broader RJ system service; the experience of VOM after prosecution and before judgement and the opinion of judges about it; who's responsible for VOM during punishment execution in Belgium (NGOs) and how the responsible organisations finance themselves.

MEDIATION IN HOMICIDE CASES: OPPORTUNITIES AND RISKS

by Kristel Buntinx (Belgium)

During the past decade, several initiatives were taken in the Belgian penitentiary landscape that can be placed in the broad framework of Restorative Justice. It is not the purpose of this short text to give an entire overview of Mediation and Restorative Justice in the Belgian judicial system, nor to explain the theoretical insights of the most prominent researchers at Belgian universities who are studying on this matter.

However, among the experts in the field it is commonly accepted that mediation is actually considered as one of the most innovative approaches to the problem of criminality. By putting the emphasis on the communication between victims and offenders, solutions can be reached that are acceptable for all parties involved, and which can be meaningful in regard to the future. Ideally, a mediation programme can lead to a better understanding of what happened for both victim and offender, to a better mutual understanding of one another and in best case, to some kind of pacification or reconciliation.

For the time being, we have mediation programmes on several levels within the Belgian judicial system.

A first pilot project was set up in the late 1980's for juvenile delinquents in the judicial district of Leuven. After several years of working with young offenders, a non-profit organisation with a lot of experience and know-how in this matter, raised in 1991 a Settlement Fund. Initially it was raised by gifts and it was meant, right from the start, as an offer, an opportunity for youngsters who committed a penal offence. In exchange for voluntary work in a humanitarian organisation, young offenders could earn some money to pay at their victims. Since 1998 this project, in a refined form, is subsidised by the Flemish Community and is implemented in other judicial districts.

Another pilot project of "penal mediation" was set up by the prosecutor-general of the Court of Appeal in Ghent in October 1991. The purpose was to introduce a simpler and faster reaction to crime, to take into account the interest of the victim(s) and to restore the confidence of the public in the criminal justice system.

The experiment was rather successful and was positively assessed by victims and offenders, the bar and the media. It resulted in the Law of February 10, 1994, concerning the regulation of a procedure for mediation in penal matters, which allows the public prosecutor not to prosecute a case under certain conditions. This law gives the prosecutor the possibility to propose one or a combination of next measures:

- Reparation or restitution of the damage caused. Victim and offender can be convoked for a mediation.
- Treatment programme or therapy
- Training programme
- Community service

Penal mediation is actually applied in rather minor property and violent crimes.

Another pilot project started in 1993, and from the beginning it was the intent to deal exclusively with adult offenders who committed rather serious crimes for which the prosecutor had already decided to prosecute. The mediation itself takes place independently from the judicial system, but the result of it can influence the further judicial procedure since the judge can take the outcome into account by assigning the sentence. One objective was to investigate the effect of mediation on the judicial decision making and to find out to what extent the criminal justice system could accept restoration as one of its main goals.

Initially the programme started as a private initiative, but since 1996 it is financed by the Ministry of Justice. Actually the programme is nationally implemented in Belgium, restorative mediation for adult offenders and their victims is offered in Flanders in 7 of the 14 judicial districts. The programme operates in a close relationship with the public prosecutor's service. The functioning of the local programmes is directed by a steering committee, consisting of representatives of the partner-agencies.



Only those files are considered that comply with the following criteria: the condition to summon, the presence of a victim who suffered personal damage and the admission of the facts by the offender.

Victim Offender Mediation in the penitentiary context

In the reference memo "Punishment Policy and Prison Policy" of the Minister of Justice in 1996, the basic tasks of the prison system were described as guaranteeing a safe and humane execution of punishment on the one hand, and preparing the reintegration of the offender on the other hand.

The present Minister of Justice has put even more emphasis on the notice 'Restorative Justice' in prison policy.

Since November 2000 restorative counsellors are working in almost every Belgian prison and according to the circular letter of October 4th 2000 in this regard, they have, in addition to other tasks, to facilitate indirect and/or direct communication processes between victims and offenders, by which concrete expectations of both parties must be taken into account.

It is of course very laudable that several initiatives in this regard are promoted in the penitentiary context, but at present we have a certain kind of inconsistent situation in Belgian prisons. Inmates are stimulated and instigated to take their responsibility and to undertake some action towards their victims in order to try to make it up with them, but they can not make use of a mediation programme. At least, there is no real legal basis for it so far.

As an experiment, and very temporarily indeed, inmates of the Prisons of Leuven, Mechelen, Hasselt and the Penitentiary School Centre of Hoogstraten, are offered the possibility to join such a mediation programme.

The programme itself follows more or less the same methodological principles of the Restoration Mediation for Adult Offenders and is based upon three major foundations: voluntariness of the participation, confidentiality of the meetings, and the strict neutrality of the mediator's position.

The mediator contacts each of the parties and starts separate talks with the victim and the offender. He/she tries to establish a good, trustful relationship with both parties and a sympathetic climate. Recognition and respect for both persons is shown. When the parties have the feeling that someone is really listening to them, they become often less defensive and more willing to listen to the experiences of the other party. At first, the mediator acts as a go-between and mutual meanings, questions and expectations are communicated and reformulated. This process of indirect mediation can eventually lead to some kind of agreement. Face-to-face meeting between victim and offender is of course also possible, if both parties choose this as an option. In such case, it is evident that this demands thorough and careful preparation.

Through the mediation process the mediator writes reports about the preceding talks and meetings and he/she finally writes an agreement that is acceptable for both parties. This agreement refers to the meaning of the facts and specifies a multitude of consequences of the act on both the personal and social level. Excuses can be formulated and may be accepted. Commitments can be agreed upon.

But besides this written agreement, the process of mediation and the communication between the parties have a substantial meaning on their own, and experience shows that this is very much appreciated. It gives the people involved the opportunity to reflect on what is socially acceptable and what not, taking the conflict as a starting point.

It is obvious that in such a communication process, the role and the skills of the mediator are of rather great importance. He/she must not only try to create an open and respectful climate, but also stimulate in an active way the mediation process. A safe environment for an eventual meeting is a necessity, and it must be avoided that potential imbalances in power should disturb the process.

Kristel Buntinx is a criminologist who works for more than five years for the Mediation Service Suggnomè in Belgium as a mediator between victims and offenders in the stage of the execution of punishment. She works in almost all prisons in the Flemish part of Belgium.

Workshop report by Nerea Marteache

The speaker explained in detail how mediation in homicide cases is carried out, and highlighted as very important points: 1.) the preparation of the parties, who are taking part in mediation and 2.) the effort of the mediator to find a “balance” between the parties at the moment of a face to face meeting. Some of the questions of the audience were very practical and focused on aspects of the daily routine of the mediator, such as: how is the room set up where the meetings are held, who pays for the mediator’s work, how overcrowding of prisons affects mediation, what kind of emotional support and supervision do mediators have and need. The participants showed a great interest in the face to face meetings, although some other questions about indirect mediation were also set.

RESTORATIVE JUSTICE AND ADOLESCENT SEXUAL OFFENDING

by Vince Mercer and Julie Henniker (UK)

Sexual offending and gendered harm presents particular challenges to a restorative approach. Understandably very often RJ has been tentative and hesitant about practice in such a sensitive and complex area.

This workshop will outline the approach taken in Greater Manchester UK by the AIM Project working in conjunction with the Greater Manchester Youth Justice Trust Family Group Meetings Project.

This joint approach combines a comprehensive assessment based approach to restorative work in the field of adolescent sexual offending. The workshop will cover the challenges and opportunities this work presents, how the model has progressed over the past three years, the importance of partnership working across the fields of RJ and specialists in Sexually Harmful Behaviour.

Finally the workshop will consider the issues relating to victims of adolescent sexual offending their position in relation to the 'offender treatment paradigm' and the practical issues relating to facilitating meetings in this area.

The workshop will be a mixture of presentation, discussion and reflection, using case studies drawn from our work.

Vince Mercer has a long experience of working with serious and persistent young offenders in the UK. Since 1999 his main interest has been the establishment and development of restorative approaches to the work. In 2000 he established the Greater Manchester Youth Justice Trust Family Group Meetings Project. In the course of this work a number of cases of adolescent sexually offending arose and Vince worked with colleagues in the Sexually Harmful Behaviour (SHB) field to develop appropriate restorative approaches. He is an experienced RJ Practitioner and Project Manager, with widespread experience of delivering training in the field of RJ in the UK and in the Russian Federation.

Julie Henniker has a background in child protection social work. She has extensive experience in working with children and young people who display sexually harmful behaviour and their families. She has developed and implemented the AIM (Assessment Intervention Moving On) Project in Greater Manchester, which co-ordinates common and consistent responses across the key agencies that respond to children and young people who display sexually harmful behaviour.

Workshop report by Mari-Cruz

A comprehensive assessment was presented that is used to identify the potential application of restorative interventions with adolescent sex offenders, victims and their family members.

Some questions during the discussion were about the impact of this assessment among the institutions involved, such as the court, police, welfare agencies. In case of the court only the final decision is informed to them as the assessment is considered within a process that is basically outside of the judicial process. It was proposed to the participants to speak about the type of language that should be used with adolescents and children. The proposals were to try to individualise the conversation; not to use technical vocabulary; re-establish their identity; and provide the possibility to talk for them as well.

NO SOFT SOLUTION, THE EFFECTIVENESS OF YOUTH CONFERENCING IN NORTHERN IRELAND – HOW VICTIMS AND OFFENDERS OF SERIOUS CRIME PREFER IT TO THE TRADITIONAL SYSTEM

by Alice Chapman and Mary Jo McAllister (Northern Ireland)

The Belfast Agreement 1998 set out new directions for government in Northern Ireland including criminal justice. It formed the Criminal Justice Review to review the whole criminal justice system and to produce a range of recommendations. Amongst many other matters it recommended that restorative justice should be at the core of the Northern Irish youth justice system. Subsequently the Justice [NI] Act 2002 provided legislation for the establishment of the Youth Justice Agency and the Youth Conference Service to facilitate youth conferences according to restorative justice principles. A restorative youth conference is available for any offence except an offence for which if the young person was an adult would require a period of life imprisonment.

The Youth Conference Service aims to balance the interests and needs of victims and young people who offend. A restorative youth conference is a meeting between the young person who has offended, the victim and others who have been affected by the crime to resolve together how the offender can make amends for the crime and take steps to avoid future offending.

Uniquely in British and Irish criminal justice, the youth conference is mandatory if the prerequisites of consent and admission of guilt are present. Referrals may come from the Public Prosecution Service as a diversion from prosecution or from the Youth Court. The offender's lawyer is entitled to attend and legal aid is available. The victim and supporters are also entitled to attend, though a conference may proceed in their absence. The victim may participate in a conference by attending in person, by means of a video link, by making an audio tape or written statement, through a telephone conference, or through a one way screen. Other attendees at the conference are the responsible adult for the young person, a police officer, others identified as relevant to the young person e.g. family, social worker, probation officer.

A restorative youth conference will conclude with an action plan which is then presented to the Public Prosecution or the Youth Court who have the statutory authority to accept the Plan or amend the plan with consultation with the Youth Conference Co-ordinator. The majority of action plans include an apology and reparation for the victim as well as action steps which the young person must take to reduce the risk of re-offending. A Youth Conference Plan can be combined with custody.

Recent research by Queens University Belfast [January 2005] demonstrates that the Youth Conference Service achieves high rates (against international benchmarks) of victim participation. Satisfaction rates show that victims are more satisfied with a restorative model than the retributive model and say they would recommend participation in a restorative conference to other victims. Over 25% of cases are categorised as more serious offences, which could attract custody in the retributive model, with less than 25 % as less serious offence. Young offenders state they would recommend participation. Both victims and young people saw the restorative process as fair and proportionate.

The Northern Ireland Youth Conference restorative model has demonstrated that it is more inclusive of young people who offend, their families and the victims in participating in decisions which directly affect their safety, their need for justice and their future well being. As such we believe that we have established restorative justice as an integral part of the mainstream rather than an alternative.

Alice Chapman has worked in the field of criminal justice for 30 years in Northern Ireland. Her experience has covered probation work, and developing community safety models across Northern Ireland. She has provided advice to government in criminal justice policy relating to community safety and restorative justice. She is currently the Director of the Youth Conference Service N. Ireland. Her role was to set up this new challenging initiative for N.Ireland which is available to all offenders aged 10-18, pleading guilty and their victims. The Youth Conference Service has existed for 2 years and delivers the main disposal for juveniles across criminal justice here.

Mary Jo McAllister has education and social work qualifications, and has worked in Probation Services in the UK for many years, both as a practitioner and a manager. She has also experience in the trade union movement. Her interests include development and implementation of equal opportunities and anti-discrimination practice and policy.

THORNY THESES CONCERNING VICTIM-OFFENDER MEDIATION IN A JUDICIAL CONTEXT

by Pieter Verbeeck (Belgium)

Starting from the experience of 10 years of victim-offender mediation with more serious crimes in Flanders and the policymaking that came along throughout this development, I would like to tease the public with a few thorny theses, that occurred during our mediation practice.

In Flanders, up until now, the offer of victim-offender mediation pre-trial is done within a judicial context. The prosecutor informs parties concerning the existence and possibilities of victim-offender mediation. The result of the mediation process may influence the further decisions of the Prosecutor or the judge.

The aim of my workshop is not to give an overview of the situation in Flanders. But I would like to take out a few of the themes that through the years often reoccurred in discussions within the steering committees. These committees are responsible for the local policy in restorative justice and consist of different judicial and welfare policymakers (a Prosecutor, a University professor, welfare workers, a police representative, a judge, the mediators ...).

These themes are: How can the confidentiality of the mediation process be guaranteed?, How to select files for mediation?, Voluntariness of a mediation offer done by a Prosecutor?, What with a non-confessing offender?, Is the legal security guaranteed?

'As in all our activities, we want to stress the importance of participation and interaction', is what is mentioned on the website of the European Forum as one of the goals of the Forum. Therefore, I would like to make my workshop as interactive as possible. The method, I would like to use, is role plays. Together with a Belgian colleague, I would like to present a few of these theses in a role play. That way, I would try to make clear the problem that may arise. After the role play the public is free to react. Pro's, contra's, questions, meanings ... can all be discussed.

Pieter Verbeeck studied criminology at the Catholic University of Leuven. Since 2001 he is working as a victim-offender mediator. For a year he has worked with minor offenders and their victims in a mediation project in Malines. The last three years, he has been working as an employee for Suggnomè asbl as a mediator pre-trial. Together with 7 colleagues, he works at the mediation service of Leuven.

Workshop report by Vera van der Does

After a small introduction and explanation of the Belgian mediation for redress model, Pieter Verbeeck divided the participants in groups for an active role-play session. Participants were able to "represent" the prosecutor, offender (and his/her lawyer), victim (and his/her lawyer) and the mediator. Following this three situations were presented in the form of a role play, and after each role play an active discussion arose.

The first thorny these presented dealt with confidentiality: Is a mediator entitled to give the prosecutor information about the content of the mediation process?

Immediately discussions started, but raising more questions than providing answers. What is confidentiality? Is there a need for confidentiality (to speak freely), and by whom, and with what purpose? There is confidentiality on the content of the mediation and on the procedural aspects, and then there are various situations. Why isn't the process open? Doesn't a confidential mediation result in another formalised form of addressing the problem?

The second role-play presented the issue of "voluntariness". Is a letter from the prosecution office standing in the way of a voluntary decision to participate in the process of mediation? Comments were made on the distinction between a letter that provides information as opposed to a letter offering mediation. On the one hand, a letter from the prosecution service can contribute to the credibility of the service; on the other hand, it might be considered as a too closely linked and involved institution to inform on independent mediation. In conclusion, there are various practices considered as best in this situation (letter, phone call or visit) depending on the given scheme and culture. One of the key issues concerning voluntariness

is that all parties are well informed. There always will be pressure and need to make choices as part of life. Opportunities are also necessary to stop mediation at any given moment.

The last situation was about a “partly confessing offender in a rape case”. Participants discussed the need for a confession, and the meaning of taking responsibility for one’s actions. Main comments were addressing the need of the victim to be informed about this “partial confession” and the philosophy of mediation as a process of taking up one’s responsibilities.

In conclusion, in the process of mediation it is highly important to inform the parties. It also means that it is necessary to informing the parties about how to stop the process anytime it is required.

GUIDING THE CHANGE PROCESS IN BELGIAN PRISONS TOWARDS A RESTORATIVE PRISON POLICY

by Ann Daelemans (Belgium)

The presentation will deal with the implementation of restorative justice in the Belgian prison system. In 2000, the position of the restorative justice consultant was created in order to realise a 'restorative detention'. RJ-consultants are working within the prison walls and are employees of the Federal Department of Justice. In their mission of guiding the change process towards a restorative prison policy, they have an advisory role towards the prison governor.

Informing the different target groups (inmates, victims, society, prison staff and external services), organising activities for inmates aimed at inducing awareness or training skills and creating opportunities for redress are some examples of the initiatives taken by the RJ-consultants. The workshop aims to present a brief overview of these and other activities and to give more information about the general mission, the concrete tasks and the different roles of the RJ-consultant.

The workshop will also consider the critical success factors and the major difficulties encountered in this challenge of working towards restorative prisons in Belgium. Finally, it will reflect on the role of the close environment of the inmate and on the possible relationship between the prison and the community.

Ann Daelemans studied social work and criminology. For three years she has worked within a victim service. Since 2000, she is working as a restorative justice consultant in the prison of Mechelen (Belgium).

Workshop report by Kader Habbouche

The general assignment of the RJ-consultant is to manage the changing process of the prison policy to a restorative one.

The target-groups are the following:

- inmates
- victims
- society at large
- penitentiary staff.

VICTIM OFFENDER ENCOUNTERS IN CASES OF LONG-TERM SENTENCES IN THE RESTORATIVE JUSTICE CENTER PROGRAM AT MONTREAL

by Thérèse de Villette (Canada)

The major part of our presentation was the viewing of the DVD, *Victims Offenders Encounters, a step towards freedom*, that explained the program we offer. The following information recaps a lot of the information in the DVD.

These are some of the principles that guide our work:

- Each of us needs to be responsible for our own actions & needs to be held accountable for those actions
- By our presence we are all members of the community & therefore connected to one another
- Healing is an individual process where people walk at their own pace
- Reconciliation is defined by those affected. Forgiveness can be an outcome but is not stated as a goal
- The community is strengthened as it seeks to prevent recidivism

So what are the Victims Offenders Encounters?

- The **Victims Offenders Encounters** are six to seven weekly meetings between substitute offenders & victims.
- The groups consist of an equal number of offenders & victims, two representatives of the community to support both parties in their healing & two facilitators. For groups that are all incest victims & offenders, the facilitators are male & female. This recreates in a substitute manner a healthy family where the secrets & pain will be expressed.
- These meetings last three hours & are most often held in a federal penitentiary.

Pre-requisites

The following are some of the prerequisites for participation in the program:

- The program is voluntary & is not reported in the inmate's file, thus not directly affecting early release.
- There are initial individual preparatory interviews with at least one of the facilitators for both victims & offenders.
- There must be an awareness by the offender of the harm committed.
- All participants must agree to the confidentiality that is necessary for the group to work.
- We seek as much as possible to bring together people who have been affected by similar crimes.

Conditions

- We seek to create a safe environment where participants can share & hear each other's respective stories.

Symbols are used to facilitate the healing process

- At the first meeting a feather is passed from one person to the next & indicates who can speak. This empowers the individuals to speak & adds basic understandings that will guide the process for the following weeks.
- The following week, as an object lesson a sponge is introduced to speak about the effects of crime & the need to work together to recover. At first a small piece is used to try to soak up some spilt water, with little effect. The larger sponge is then used to clean it up, referring to how the larger community can more easily absorb the wounds
- The following week, two mirrors, one intact, the other broken, are passed from one individual to another. They are invited to share «how I see myself, how others see me».
- To give people an opportunity to share about the impact on their inner being, a rubber heart that is torn is passed around. When it is crushed & released, it can regain its original shape. They are invited to share as they hold it, «What does it say to you?»
- At the closing ceremony, candles are used, explaining how the extinguished candle is like a crime that brings darkness. As a lit candle brings light, participants are invited to light

the candle of the other (offender-victim), just as this process has given them the opportunities to bring light back into their lives.

End result: Restoration

- Victims have:
 - Shared the impact of the crime, their suffering & pain
 - Listened to the offenders stories
 - Demystified their idea of an offender
 - Moved on
- Offenders have:
 - Shared the part they played in the crime
 - Articulated their suffering & pain
 - Listened to the victims stories
 - Seen & heard the impact of their crimes
 - Felt respected

Thérèse Syette de Villele (Msc. Criminology) is a mediator in the post-sentence restorative justice project entitled “Victim-Offender Meetings”, in the prisons of Québec since 1999, and co-founder of the ‘Centre de service de justice réparatrice’ in Montréal. She has had 19 years of experience with working in prisons in Africa and in Québec.

Workshop report by Anne Salberg

The following questions were discussed:

- What strikes you in victims’ and offenders’ stories?
- What does reflect to your own experience?

Offenders are often dominant and life-time manipulating people. How do you assess them?

It is a group process; there is a mutual check. They are accountable for what they say. Offenders are also victimised and being heard in their victimization let them open themselves.

How would you do mediation with different cultural backgrounds where admitting shame and guilt can lead to lose face, like in the Chinese culture?

The process is not based on expressing guilt or shame but into taking responsibility.

CIRCLES OF SUPPORT AND ACCOUNTABILITY FOR RELEASED SEX OFFENDERS

by Jean-Jacques Goulet (Canada)

The Circles of support & accountability (CoSA) is a program that was developed 12 years ago in response to the fear communities experienced at the prospect of a released sex offender being released into their communities. The following are some of the major points that underline its functioning.

Mission statement

The Mission of CoSA is to substantially reduce the risk of future sexual victimization of community members by assisting and supporting released men in their task of integrating into the community. This is done by helping them lead responsible, productive, and accountable lives.

For who?

The program has been developed primarily for sex-offenders released after having completed their entire sentence, judged to be at high risk to re-offend & having no or little pro-social support in the community.

How does it work?

A group of 3 to 6 volunteers commit themselves to walk alongside a released man for a minimum period of one year. They meet the offender while he is still incarcerated & develop with him a covenant of understanding that will spell out their mutual commitments. Once released, the CoSA will help the ex-offender, now called *core member*, to find housing if necessary & work out with him all his other practical needs.

Weekly group circle meetings are supplemented by meetings or phone calls between the *core member* & individual volunteers. By giving the *core member* the opportunity to talk about what might be stressing him, it has been shown that this creating of a community for the core member contributes to a dramatic drop in the rate of recidivism..

Volunteer recruitment & training

In recruiting volunteers, we seek individuals who are know & show a certain stability in their community. Other important characteristics are maturity, availability, a person with clear & healthy boundaries, one who shows a balance in their lifestyle & viewpoints.

The training that is offered covers a total of 4 to 5 days. The following topics are covered: an overview of the criminal justice system & restorative justice principles, the needs of survivors, the effects of institutionalization on an individual, human sexuality and sexual deviance, risk assessment, boundaries and borders, conflict resolution & group dynamics.

Core members' experiences

After being in a Circle, core members stated that they were less nervous, afraid, and angry. They were more realistic in their perspectives & felt more confident & accepted. They also experienced pride for not re-offending.

Asked how they might have been without a circle, they stated that they might have had difficulty adjusting. They may have had difficulty in relationships with others, becoming more isolated and lonely, possibly turning to drugs or alcohol. They may have re-offended.

The studies - Outcome recidivism data

	Circles	Control
Recidivism		
Sexual	8 %	16 %
Violent	18 %	35 %
General	31 %	43 %

How widespread are CoSA?

In Quebec, Canada, there are 9 CoSA, four in English & five in French. Of the nine core members, five are under long term supervision and two have life sentences & are being released gradually into society. There are 113 Circles of Support & Accountability in the rest of Canada.

Jean-Jacques Goulet is coordinator Circles of Support & Accountability, Québec, Canada.

Workshop report by Anne Salberg

The following questions were discussed:

- How does your community work with released offenders of severe sexual crime?
- What ideas from the Canadian experience could you adopt and how would you adapt them?

Accountability: there is an educational proposal; the circle tries to let offenders take responsibility themselves. At the beginning there is a daily contact especially if they are not in a half way house.

Adaptation to other countries: how to find volunteers in churches, if they have been sexual scandals within the Church? How to deal with the values of the Spanish community?

The programme trains volunteers to be able to answer to the media; to the questions of small communities. Survey has showed that the Circle of Support helps to build the trust in the Community.

FUTURE MEDIATION WITH SERIOUS OFFENCES IN HUNGARY

by Ilona Görgenyi (Hungary)

From the point of view of criminal offences, the possibility of mediation basically depends on whether we are concerned with mediation accompanied by diversion or with it as a supplementary procedure parallel to prosecution or following sentencing. Limitations with regard to the seriousness of criminal offences are mostly typical of the first range of cases.

Earlier practice basically reflected the philosophy of linking mediation and diversion in criminal cases, e.g. in the XIIIth Conference of the International Association of Penal Law in 1984 (where the topic of the third section was diversion and mediation) as well as in the earlier recommendations of the Council of Europe. In Recommendation on social reactions to juvenile delinquency No. R(87) 20., one of the topics elaborated was entitled 'Diversion and mediation' (section II/2). In its Recommendation on consistency in sentencing No. R(92) 17., the Council of Europe urged using measures of diversion such as mediation (section A/6). At the same time, for the sake of a wider applicability Recommendation on mediation in penal matters No. R(99) 19. declares that "Mediation in penal matters should be a generally available service". Recommendation No. R(2003) 20. concerning new ways of dealing with juvenile delinquency and the role of juvenile justice emphasizes with regard to new responses to juvenile delinquency that "to address serious, violent and persistent juvenile offending member states should – where possible and appropriate – deliver mediation, restoration and reparation to the victim". A similar tendency to apply mediation independently from diversion can be observed in the documents drawn up under the aegis of the UN and EU.

On the one hand, the model of mediation accompanied with diversion in criminal cases is particularly widespread in Europe. On the other hand, mediation as a procedure running parallel with the formal criminal procedure or as one supplementing the sanctions of criminal law makes it possible to involve a wider range of more serious criminal offences. According to the current international standards, restorative justice such as mediation procedure can be applied at any level of the criminal procedure and are available to a certain extent in the case of criminal offences of any weight.

Victim-Offender Mediation with certain types of offences will exist in Hungary from 1 January, 2007. (Act LI. 2006) Restorative criminal justice is promoted by the taking into account of the victims' interests during the criminal procedure and the compensation of damages caused by criminal offences by the state. For the sake of this, an act was passed on the assistance of the victims of criminal offences and on the compensation of damages by the state (Act CXXXV, 2005). Furthermore, the offender is urged to restore the state prior to the damage caused by the criminal offence by the widening range of regulations making more favourable judgement possible in the Penal Code, which create a reason for the elimination of punishability or make it possible to mitigate punishment without limits, or e.g. the legal institution of the postponement of accusation in the Code of Criminal Procedure.

According to Act LI 2006 the objective of the mediation process is to promote giving restitution for the consequences of the criminal offence and the future law-accepting behaviour of the suspect. During the process of mediation shall seek to achieve an agreement between suspect and victim giving rise to the suspect's active repentance. The mediation process is officially started at the prosecutor stage prior to accusation and exceptionally after accusation by the judge. In accordance with the European practice, the prosecutor will play a central role.

In accordance with Act LI 2006 mediation may be applied both in criminal cases involving adult and juvenile offenders. It can be applied in crimes against life, bodily integrity, health, freedom and human dignity, and in crimes against property and traffic crimes if the given criminal offence is not to be punished more seriously than with five years' imprisonment and there are no disqualifying reasons (e.g. the offender is a qualified or habitual recidivist, he committed the offence in the circle of criminal organisation, the offence caused death, etc.).

In juvenile criminal cases successful mediation with actual compensation or restitution to the victim during mediation process unexceptionally results in termination of punishability (namely active repentance) and the juvenile delinquent shall not be punished:

- the assault causes permanent physical disability or a grave injury to health, or, if the aggravated battery is committed with express malice; - driving under the influence of alcohol

or other psychoactive substances, if the crime causes durable handicap, serious health injury of mass catastrophe; - simple theft, if committed in respect of a considerable value (appr. 200 000 euro); - theft with violence against a thing (appr. 8000 euro); - use of vehicle without authority; - damaging (appr. 200 000 euro); - taking away an alien thing through inebriation or intimidation (but not robbery), etc.

In adult criminal cases successful mediation results in termination of punishability, if criminal offence not to be punished more gravely than with three years' imprisonment, and otherwise the punishment may be mitigated without limitation.

The offences mentioned as examples are serious in the interpretation of the Penal Code (i.e. in an objective approach). At the same time, the graveness of the criminal offence does not only constitute a criminal law category but attention must be paid to the weight of any negative effects on the victim or other people concerned (in a subjective approach).

Furthermore, mention must be made of the Hungarian experiment in the reformatory institution for juvenile delinquency to set up a special restorative programme, in the framework of which the juvenile convict is allowed to write a letter to the victim.

Finally, it should be emphasized that with regard to future mediation in criminal cases, in Hungary relevant regulations can partly be found in the new amendments to the Penal Code and the Code of Criminal Procedure and partly in a new, separate act.

Dr. Ilona Görgényi is the Head of Department of Criminal Law and Criminology at the University of Miskolc, Hungary and also a Board member of Section of Victimology of the Hungarian Society of Criminology. She was granted fellowship to Oxford, Freiburg, Paris and Helsinki and took part in international survey carried out in four countries and six cities. Dr. Görgényi's has main scientific activities relate to the fields of victimology, restorative justice, environmental criminal law and corruption.

Workshop report by Borbala Fellegi

The presentation highlighted the future system of mediation in criminal matters that will start from 1 January 2007. According to the current legislation, cases that are referred to mediation should not be punishable with more than 5 years otherwise. This limitation though will allow more serious crimes as well (eg. more serious intentional assault cases) to be referred to mediation. Mediation will be carried out exclusively by previous probation officers who have been participated in special trainings in mediation.

Questions by participants were raised about the rationale behind excluding civil organisations from providing mediation services. It was explained that that at the time of establishing the institutional background of mediation, there was no any, nationally available, uniform network of civil organisations that could have provided equal services throughout the country. Therefore, an already existing and well-functioning national body (such as the National Probation System) needed to become responsible for providing mediation in order to ensure the same quality standards throughout the country. However, there is explicit request expressed by the Probation Service towards the NGO sector to establish mutual cooperation in the fields of training, supervision and quality assurance of mediation.

Discussions were also made about the methodological, organisational and legal background of the mediation system in Finland and the conferencing scheme in Iceland. The rationales behind applying different methods (mediation vs. conferencing) and the issue of who should provide mediation and/or conferencing (police, probation officers, trained volunteer mediators, etc.) were also discussed.

DEVELOPING RESTORATIVE SKILLS FOR DELINQUENT YOUTH (HERSTELOPVOEDING)

by **Annemieke Wolthuis and Marieke Meijnen (Netherlands)**

Sitting behind closed doors and working on your own development, taking responsibility for the consequences of your own actions and where possible restoring the damage that has been done. That's what's happening in the closed youth facility "De Heuvelrug, location Eikenstein", located in Zeist, The Netherlands. The experiment is called: 'Herstelopvoeding', in translation: Developing restorative skills for juvenile delinquents. The first results are promising, and the method is being further developed. What are the contents of this program? What are the results of the first evaluation and what has the future in hold for this method?

Introduction¹

Studies in the Netherlands show that recidivism after a stay in a correctional institution is terrifyingly high². These findings resulted in a discussion on what programs and interventions should be used in a these kinds of institutions to decrease recidivism. One of the opinions was that correctional institutions are mostly aimed at the future: learning skills, treating disorders and getting an education. But during the stay there is relatively little attention for the reason youngsters were placed in such facility in the first place: the offence. This way the connection is lost between the committed crime and the imposed sentence. Micha de Winter, professor Child- and Youth Studies at Utrecht University, came with this conclusion after he let himself be locked up in several closed youth facilities³. This experience made him want to change the climate inside the facilities. In his opinion juvenile delinquents should be more confronted with the consequences of their actions. Restorative interventions could be a good way to do this. In cooperation with the office of the Public Prosecutor in Utrecht and custodial institution 'De Heuvelrug' this idea has been made into the intervention 'Herstelopvoeding' which can be translated by 'Developing restorative skills in a Youth Custodial Institution'. This article describes the development of this new intervention for correctional institutions. But the article starts with a description of different forms of restorative interventions in the Netherlands and the pedagogical tasks of the juvenile justice system to place 'Developing restorative skills in a Youth Custodial Institution' in a broader framework.

Restorative Justice for juveniles

The developments in the Youth Custodial Institution in Zeist fit in a broader context of looking for ways to involve youngsters in restoring the harm that they have caused. That happens also with other forms of restorative justice.

Since the eighties there is worldwide an increasing interest in restorative justice, mainly in the form of victim/offender-mediation (VOM) en family group conferences (FGCs).⁴ Many of these practices are inspired by ancient methods used by indigenous peoples.⁵ In Restorative Justice the harm done towards a victim by a criminal offence is the central focus. On the opposite criminal law is focused on the offence. In restorative justice methods the offender is invited to take responsibility for the harm that he has created.

¹ M.de Winter, M. Meijnen & H.I.M. Goldschmidt, *Eindrapportage 'Herstelopvoeding'. Een onderzoeksverslag van de pilot 'Herstelopvoeding' in JJI De Heuvelrug, locatie Eikenstein, september 2004- mei 2005*. Utrecht: Universiteit Utrecht, Opleiding Pedagogiek, 2005.

² See: B.S.J.Wartna, S. El Harbuchi & A.M. van der Laan, *Jong vast. Een cijfermatig overzicht van de strafrechtelijke recidive van ex-pupillen van justitiële jeugdinrichtingen*. Den Haag: WODC, 2005, p.8. This study shows that recidivism under juveniles is very high: 49% is being prosecuted again within four years.

³ M. de Winter, *Verslagen participerende observatie in justitiële jeugdinrichtingen*. Serie van drie artikelen in: *Perspectief. Tijdschrift voor de jeugdbescherming*, 2000, nummer 1, 2 en 3. [Reports from participating observations in custodial institutions]

⁴ See: I. Weijers (red.), *Het herstelgesprek bij jeugdige delinquenten. Sleutelteksten uit het internationale debat*, Amsterdam: SWP 2005.

⁵ For example by the Maori's in New Zealand, and the Indians in Canada. In their communities conflicts are still dealt with in a conference setting with the ones involved and family/community members steeds. Often this happens by an 'elder' or another important person in the community.

One searches for a form of restoration that is the most suitable for both parties.⁶ Participation of the ones involved is crucial in this regard.

Many of these practices focus on young offenders. Also in the Netherlands there is an increase in working with forms of VOM and FGG's, especially since the nineties.⁷ In group conferences a young offender, the victim and people from both social networks come together to discuss how they can come to restore the harm that has been done. The session is coordinated by a mediator. This happens most of the time through a well prepared conference in a circle, following a protocol. Such a conversation is aimed at coming to an agreement in the form of a contract. If the agreements are not met, another (criminal) reaction will follow. In many Dutch cities experiments and projects have been set up with forms of Victim Offender Mediation (VOM) and Family Group Conferences (FGC's), often based on Real Justice methods. These methods are currently still taking place in the form of experiments. Different initiatives occur by different organisations in different municipalities on different funding sources. No structural implementation and laws have passed.

They all work with the offender, victim, family members and/or others out of their social networks.⁸ Currently referrals mainly come from the police, HALT-bureaus⁹ and the Youth Protection Board. The office of the Public Prosecutor Utrecht ran a project for a while, but that has ended already.¹⁰ However the 'Board of Attorneys General' launched a position paper concerning referrals to try out restorative justice, under prequisition that this is always in line with the wishes of the victim and his or her willingness to participate actively in it.¹¹ It concerns practices that can be used before, during or after a criminal process. In these methods all concerned people can only take part voluntarily. In addition the offender needs to confess his or her act and state that he/she wants to take responsibility for it.

Referrals by the juvenile judge are not happening in the Netherlands yet. This means that it is mainly used by the less serious offences, whereas there are also opportunities to reach in relation to more serious offences. In Flanders, Belgium this is a well used option of the juvenile judge since 2000, in the project called hergo, based on the *Family Group Conferences* in New Zealand.¹² Referrals take place for more severe cases, such as 'bag snatching with violence, aggravated theft, street fighting.

⁶ A commonly used definition of restorative justice is made by Bazemore en Walgrave: "every action that is primarily oriented towards doing justice by repairing the harm that has been caused by a crime" (G. Bazemore & L. Walgrave (ed.), *Restorative juvenile justice. Repairing the harm of youth crime*, Monsey, New York: Criminal Justice Press 1999).

⁷ A Frame work decision of the European Union (2001) forces the Netherlands even to arrange mediation in penal cases. This means that as from March 22, 2006 this should be realised. 2001/220/JBZ: Kaderbesluit van de Raad van 15 maart 2001 inzake de status van het slachtoffer in de strafprocedure, Publicatieblad Nr. L082 van 22/03/2001 blz. 0001-0004. See A.Wolthuis, Europa verplicht zich tot bemiddeling in strafzaken, *Nieuwe internationale instrumenten, Tijdschrift voor Herstelrecht*, december 2002, p. 6-16.

⁸ Y. Hokwerda, *Herstelrecht in jeugdzaken, een evaluatieonderzoek van zeven experimenten in Nederland*, Den Haag: Boom Juridische uitgevers 2004, p. 47-50. [Evaluation research on seven experiments in The Netherlands]

⁹ HALT, short for 'the alternative', is a special alternative sanction where the police can propose the young offender to participate in a project. The youngster will be referred to a HALT bureau where work or damage compensation is offered for a maximum of 20 hours. This can happen in cases consisting of vandalism, damage to property or petty theft. Since 1995, the possibility of calling on the services of HALT bureaus, which were set up in 1981, is embodied in the criminal code.

¹⁰ The district office of the public prosecutor in Utrecht has used for some time the method of referring to restorative meetings, the so called Utrecht Restorative Justice. The referrals took place according to a prosecutor's model. The cases where the prosecutor could decide to make use of a transation (with 40 hours as maximum punishment, see, art 771f Sr) could be taken into consideration.

¹¹ B. Berghuis, *Strafrecht en Herstelrecht, OM-beleid in het licht van bemiddeling*, *Tijdschrift voor Herstelrecht* 2002, nr. 2, p. 29-40. [The policy of the Public Prosecution in terms of counselling. Journal of Restorative Justice]

¹² New Zealand knows a juvenile justice system whereby the first step is always to refer to a *Family Group Conference*.



In the context of the Justice Programme 'Jeugd terecht'¹³ [Youth at the correct place] the Ministry of Justice is supporting several initiatives to come to a decision on restorative justice as possible addition to juvenile justice. It concerns six pilots such as restorative mediation form through out the country and the pilot 'Developing restorative skills in a Youth Custodial Institution', which is the central focus in this article. By the end of 2006 the Minister of Justice takes a position on whether or not nationally to incorporate restorative interventions.¹⁴ Also with adults there are experiments with new restorative projects, such as the project restorative detention, developed in a detention centre in Nieuwegein.¹⁵

'Herstelopvoeding' differs from other forms of restorative justice since it has this pedagogical component and a developmental component; step by step learning how to take responsibility. Further explanation of the project will follow.

Pedagogical dimension of juvenile justice

The UN Convention on the Rights of the Child (CRC) offers in articles 37 and 40 protection for the rights of juvenile delinquents and provides obligations for the state to carry a good administration of juvenile justice by a separate and pedagogical system. Article 37 CRC gives rules about punishment and rights for children and young people in detention. Article 40 CRC deals with the administration of juvenile justice and gives young offenders protection. In addition there is a set of three documents that provide a more complete set of rules for juvenile justice. The *Beijing Rules* (1985) on the administration of Juvenile Justice, the *Havana Rules* from 1990 giving protection to youngsters in detention, and the *Riyadh Guidelines* (1990), focuses on prevention in a broad sense.¹⁶ The Committee on the Rights of the Child considers these resolutions together with the CRC as the normative set for Juvenile Justice. The rules ask for a child friendly system.¹⁷

In light of the CRC we are obliged to set up a system in which the following principles should prevail:

- the best interests of the child should be the paramount consideration;
- the system should be focused on integration and socialisation;
- detention should be a measure of last resort;
- diversion should be stimulated;
- extra protection such as specialised professionals working with children (youth judges and public officers, but also within the police and the closed facilities).

At the same time it is important to invest in prevention. Detaining young people should really be a measure of last resort. In the correctional institutions a pedagogical climate is important, focused on learning from mistakes and towards reintegration in society.¹⁸ Restorative interventions such as the described pilot fit in this framework.

¹³ Jeugd terecht. Actieprogramma jeugdcriminaliteit 2003-2006. [Plan of Action Juvenile Criminality] Den Haag: Ministerie van Justitie. www.justitie.nl/jeugdterecht

¹⁴ Interne notitie van het Ministerie van Justitie, Directie Justiteel Jeugdbeleid. Den Haag, november 2005. [Internal note by the Ministry of Justice

¹⁵ www.herstelgerichte-detentie.nl, zie ook: V. Vleesenbeek, Herstelgerichte detentie, "Veel daders willen niets liever dan het slachtoffer in de ogen kijken." *Balans*, december 2005, p. 11-12. ['Many offenders would do anything to look their victim in the eyes'. Journal 'Balans'].

¹⁶ Beijing Rules (1985): United Nations Standard Minimum Rules for the Administration of Juvenile Justice, United Nations, General Assembly, UN Doc. /A/RES/40/33.

Havana Rules (1990): United Nations Rules for the Protection of Juveniles Deprived of their Liberty, United Nations, General Assembly, UN Doc./A/RES/45/113.

Riyadh Guidelines (1990): United Nations Guidelines on the Prevention of Juvenile Delinquency, United Nations, General Assembly, UN Doc./A/RES/45/112.

¹⁷ Mijnaerends, E.M. (1999). *Richtlijnen voor een verdragsconforme jeugdstrafrechtspleging. 'Gelijkwaardig, maar minderjarig'* (diss. Leiden). Den Haag: Kluwer Rechtswetenschappelijke Publicaties 1999, p. 5. [Guidelines for juvenile sentencing in conformity with the CRC]

¹⁸ Wolhuis, A. (2005). Van fouten kun je leren. IVRK geeft pedagogische invulling jeugdstrafrecht; lessen voor Nederland, *NJCM-Bulletin*, p. 717-734. [One can learn from one's own mistakes. The CRC gives a pedagogical completion for juvenile criminal law]



Developing restorative skills by juvenile delinquents¹⁹

Characteristic for 'Developing restorative skills in a Youth Custodial Institution' is that it is specifically meant for the population in custodial institutions: youngsters who in general have no idea what the consequences are of their (criminal) behavior and therefore, don't feel responsible for these consequences at all²⁰. Becoming aware of the consequences of criminal behavior and being confronted with the consequences of one's own delinquent behavior should contribute to decreasing the chance of recidivism. After all, knowing how far these consequences can go and seeing this with one's own eyes, should lead to not wanting to make more victims. The intervention is an educational approach to teach juveniles more about the consequences of delinquent behavior and to help them – step by step – to take responsibility for their own actions. The restorative intervention consists of two parts, which are being explained below.

Part 1: Training

Part 1 is aimed at increasing the ability for empathy of the youngsters. De youngsters get 8 times of 2,5 hours training in increasing their abilities in this area.

Guest speakers from the police and Victim Support tell about their experiences with victims and the help they offer. But also an actor is being used, to practice the contact with a victim in a role play. Also social skills and techniques of self-control are being trained. The main goal of the training is increasing the knowledge about the different consequences of delinquent behavior, knowing more about and being able to place yourself in the position of the victim, and (more or less) taking responsibility for one's own behaviour.

If they complete the training in a good/sufficient way, they can continue with part 2: an individual restorative course in which their own delinquent behavior is the central focus.

Part 2: Individual restorative course

The main goal of this part is to offer some kind of satisfaction to your own victim(s) or society. Because, as written above, the population in correctional institutions in general lacks the abilities to do so, part 2 tries to develop the needed abilities/ skills to take responsibility or to restore the damage that has been done. Guided by a restorative coach the youngster draws up a plan, which states step by step how he is going to restore caused (im)material damage. The youngsters can come up with different kinds of actions to undertake, such as writing an apology letter, organizing a FGC or buying a gift for the victim. Eventually, every youngster has to go through several steps, in which he increasingly takes responsibility for the consequences of his own delinquent behavior and makes clear progress in the way he expresses this.

'Herstelopvoeding' in practice²¹

With support of the Ministry of Justice a small experiment has been carried out in the closed facility Eikenstein (one of the locations of De Heuvelrug). In this first experiment the emphasis was on developing 'Herstelopvoeding' ('Developing restorative skills in a Youth Custodial Institution') and examining the feasibility. The effects on the participants was examined on a small scale. The report gives the results of a study with 17 participants.

The ambition of the intervention is to develop an intervention that can be part of the daily program in the institution. Because of that, there are as little as possible criteria to exclude youngsters from participation in advance. In this experiment only juveniles from the Utrecht district were participating, because of the cooperation with the Public Prosecutor in this district. But also juveniles who have already been sentenced have participated. Another

¹⁹ M.de Winter, M. Meijnen & H.I.M. Goldschmidt, *Eindrapportage 'Herstelopvoeding'. Een onderzoeksverslag van de pilot 'Herstelopvoeding' in JJI De Heuvelrug, locatie Eikenstein, september 2004- mei 2005*. Utrecht: Universiteit Utrecht, Opleiding Pedagogiek, 2005.

²⁰ See for example: I. Weijers, *De pedagogische uitdaging van het jeugdstrafrecht*. Amsterdam: Uitgeverij SWP, oratie Universiteit Utrecht.

²¹ M.de Winter, M. Meijnen & H.I.M. Goldschmidt, *Eindrapportage 'Herstelopvoeding'. Een onderzoeksverslag van de pilot 'Herstelopvoeding' in JJI De Heuvelrug, locatie Eikenstein, september 2004- mei 2005*. Utrecht: Universiteit Utrecht, Opleiding Pedagogiek, 2005. [Final report "Restorative upbringing". Research report from a pilot at Juvenile Facility De Heuvelrug, location Eikenstein]

criterion was that the boys stayed in the facility for the duration of part 1, being a maximum of two weeks. Youngsters with a severe psychiatric disorder were excluded in advance, as were boys who didn't speak Dutch or couldn't function within a group. Finally, a psychologist could object to participation in the unique situation of a participant. The experiment itself had to lead to determine other contra-indications.

The selected group took part in the intervention. They were being told this was part of their stay in the institution. This obligatory character is the result of the aim to turn the denying attitude of young delinquents around. In general juveniles deny any involvement in the committed crime for a long time and processes of hardening take place. The new intervention wants to fight this by confronting all imprisoned juveniles with the consequences of delinquent behavior and make them think about the situation they're in. One of the participants, for instance, didn't see the problem in stealing a series of computers: *"The insurance covers everything, right? The company got his money, so what's the problem?"* The actor showed him in a role play – as the company's director – that his company was enormously harmed by the loss of confidential information. At the end of the role play the boy realized that he indeed made victims, something he hadn't realized before.

11 Boys²² completed the training of 17 boys in total. The dropouts left the facility before the last meeting or missed too many meetings to end the training. 6 Boys chose to continue with part 2. Guided by the restorative coach they took (several) steps to take responsibility for their own actions. In most cases the boys wrote an apology letter, in which putting your own name on the bottom could be a huge step. In these courses creativity and flexibility are important factors for successful endings. The coach has to account for the abilities and needs of the offender, as well of the victim. Besides apology letters, there was also a FGC between a boy and his family, and another boy put his story on a tape. Other forms of taking responsibility are also possible, for example cooperating in an article in a news paper, giving a presentation in schools/ community centres or buying a gift for the victim. As long as the youngster is actively taking steps in taking responsibility for the consequences of his own behavior. A striking example of a boy who took responsibility is Fadeq²³. His goal was a meeting with his two victims, something he dreaded also. His preparation consisted of a interview with two persons who had the same cultural background as his victims (a culture fully unknown to him), followed by practicing the meeting on camera. Eventually the victims didn't want to meet him face tot face, and the videotape was made into a message on video. This was shown to the victims. Fadeq took responsibility step by step and experienced this as a very instructive course.

Evaluation

The study shows that there has been a development in the wanted direction with the participants, although these are carefully worded conclusions because of the small numbers.

The boys are more aware of the consequences of delinquent behaviour. The ones that chose part 2, saw an opportunity to restore caused harm and to finish with their past.

The study also shows that 'Developing restorative skills in a Youth Custodial Institution' is a method that is feasible for closed facilities as Eikenstein. The majority of the population should be able to participate in this programme. There are positive experiences in working with heterogeneous groups: the boys differ in age, intelligence, criminal legal status, duration of the stay and backgrounds. But in spite of these differences, there are no experiences that lead to excluding boys beforehand.

More research should be done at different categories of offenders, for example: sexual offenders and very young offenders (in the age of 12 -13). There were no experiences with this kind of offenders. Sexual offenders in general have a low social status on the group, because of the committed crime, which raises questions because in the training they have to talk about their offence. When it comes to really young offenders the question arises whether the program matches with the stage of development of the child is in.

²² Girls were excluded, because most of the girls are placed in the closed facility with a child protection measure.

²³ This name is changed in protecting the privacy of the boy.

Although all the boys were able to participate, the trainers had to be creative and flexible sometimes to enable the youngsters to work on the goals of the training. Participants, who hadn't been in the institution that long, were more receptive. Youngsters, who have been staying behind closed doors for a longer time, were less willing to open up in the training.

But starting with the intervention in a further stage of the stay has also benefits: this can be useful in preparing boys for their re-integration in society.

On November 15th 2005 the results were presented to the director of the Youth Department of the Ministry of Justice. During the meeting the central items were the responsibility and education for the youngsters.

It became clear that the Ministry of Justice thinks these kinds of projects are important and that they fit within their long term programme 'Jeugd Terecht'.²⁴ The results of the pilot are considered so promising that a larger experiment is going to take place in more Youth Custodial Institutions. Within these pilots the methodology can be further developed and at larger scale one can look at the effects. The aim was to let about a hundred youngsters in four Youth Custodial Institutions start in 2006 with the project.

Conclusion

Initiatives such as the pilot 'Developing restorative skills in a Youth Custodial Institution' are positive developments, in line with a separate juvenile justice system, whereby youngsters can learn from their mistakes. That pedagogical character is still the main principle in the Dutch Juvenile Justice system. It fits also in the international pedagogical framework laid down by the CRC and related documents concerning the administration of juvenile justice and the protection of young delinquents.

It is remarkable that during all these years in the Youth Custodial Institutions there has almost been no attention for the act that caused the harm and to an eventual restoration of that harm. By doing so and teaching the youngsters to take responsibility, it is possible to get the connection between the offence and the imposed sanction clear again.

With the pilot youngsters are first confronted with the possible effects on victims in a series of classes. They learn to work with self reflection. Sayings such as "Did I do that to other people?!" or "Is that the harm I caused?" are often heard reactions from the boys. In stage two a possibility is offered to do something real towards the victim and/or the society. This can vary between an apology letter or a real meeting with the victim in a VOM or a conference. The first results of the small scale pilot with restorative ways to educate youngsters in a closed institution in Zeist are positive. It is good news that the Dutch Ministry of Justice is going to fund more experiments in the same line this year. These experiments of course need to be carried out with good accompanying research, so that the (eventual) effects of the interventions can be scientifically proven.

This is our own translation of: Meijnen, M. & Wolthuis, A. (2006). *"Oh, heb ik dat aangericht? 'Herstelopvoeding' in een justitiële jeugdinstelling"*. Tijdschrift voor Familie- en Jeugdrecht, 28, 4.

M. Meijnen, MaS – Marieke Meijnen is the project coordinator of 'Herstelopvoeding' . She became involved in the project as a student, and is now working in the closed youth facility 'De Heuvelrug', location Eikenstein. Eikenstein has a 112 places (boys: 66, girls: 48 girls) for children in the age of 12-18 years.

A. Wolthuis, law degree – Annemieke Wolthuis is project coordinator of the section Dutch youth Law at Defence for Children International in The Netherlands. She is also a member of the editorial board of the Dutch journal on Restorative justice and undertaking research in the field of Restorative Justice for juveniles.

²⁴ See note 12.

Workshop report by Livia Hadházi

“Would the person who stole my bike would like to take my newspaper round as well?”

Pedagogical dimension, main principles:

- The best interests of the child – paramount consideration
- System should focus on integration and socialisation
- Detention should be a measure of last resort
- Diversion should be stimulated, including restorative justice
- Extra protection
- Central place of prevention

Special juvenile criminal law:

- Started 100 years ago
- Important changes in 1995
- With special emphasis on alternative sanctioning, significance of diversion
- More severe sanctions
- More youth in detention
- More use of adult criminal law

At the same time:

- More space for alternatives, such as restorative justice

Halt:

- 2-20 hours community service
- no prosecution, if the programme is successfully completed, no criminal record
- trained worker counsels the juvenile

Developing restorative justice skills for delinquent youth.

A program in a Youth Custodial Institution: De Heuvelrug Zeist

- Started by the ideas of Prof. Micha de Winter
- Talking about the offence
- Talking about responsibility
- High recidivism
- Mostly aimed at the future
- Relatively little attention to the offence
- Juveniles: lack of restorative skills:
 1. Increasing the capacity for empathy
 2. Taking responsibility
 3. Deterrence

Stage1: Training

“Lost your bag? Just buy a new one...”

Stage2: Restorative path

“ I just want them to know I’m a normal boy who made a huge mistake...”

Stage1:

- Obligatory
- 8 meetings of 2,5 hours
- Videos, press cuttings, guest speakers, role-plays
- Knowing the consequences, capacity for empathy, acting differently in the future

Stage2:

- Individual
- Voluntary
- Taking responsibility in one’s own criminal offence
- Taking responsibility: step by step (Case Mohamed)
- Different options: excuse letter, VOM, Real Justice, buying a gift, making video

Small project in the Heuvelrug (17 boys)

Evaluation is promising

- Practical possibilities
- Effects

Future:

- Ministry of Justice is supporting another project
- About 100 youngsters in 2006 in 4 institutions

Need to:

- Invest in research
- Structural measure
- International implementation

Questions:

- What does Real Justice mean? – Victims, offenders and their supporters from the community also attend the conference
- How empathy can be taught? – You have to feel, what feels the victim.
- How many people will recommit crime after this programme? – This is too early to make prognostication on it.
- Taking responsibility is quite easy, but it is too hard to do it.
- What is obligatory what is voluntary?
- How to work with non-motivated youngsters who denies the acts and refuse to participate?
- How to work with youngsters in the pre-trial stage?
- What can be done in sexual offences?

TRUSTING THE COMMUNITY TO GET IT RIGHT – RESOLVING SERIOUS OFFENCES OUTSIDE THE TRADITIONAL JUSTICE SYSTEM. YOUTH JUSTICE CONFERENCING IN NEW SOUTH WALES, AUSTRALIA

by Michaela Wengert (Australia)

Youth Justice Conferencing (YJC) has been a legislated intervention for juvenile offenders in New South Wales (Australia) since April 1998. In that time, almost 14,000 referrals have been made to YJC.

The *Young Offenders Act 1997* established the legal framework for an alternate justice process responding to juvenile offending, administered by the government but wholly facilitated within the community with decision-making power vested with the offender and victim. Apart from strictly indictable (most serious) offences, almost all offences may be resolved through conference. The Act states that a young person is entitled to be dealt with by youth conference if their matter meets specified criteria, and this entitlement must be assessed before formal criminal justice proceedings are commenced. Around 50% of referrals are received from the police prior to a matter proceeding to Court. Once a matter is proceeded at Court, a magistrate or judge may refer the matter back to Youth Justice Conference under the Young Offenders Act or may sentence a young person to participate in a YJC under the Children (Criminal Proceedings) Act as a legal order.

While ‘seriousness’, ‘degree of violence’ and ‘harm to the victim’ are criteria for assessing whether a matter is appropriate for YJC, the Act requires that less serious matters be finalised by formal caution. Conferences are intended for serious and repeat offenders, and appropriate matters may include assaults occasioning injury, property offences where the monetary value of damage is tens, or hundreds, or thousands of dollars, or other offences where the victim has suffered significant physical or material harm.

YJC embraces principles akin to restorative justice, and is strongly committed to a ‘community-based negotiated response’ to offending. While public officers administer the process, they have no direct contact with conference participants. Trained individuals within the community, engaged on a fee-for-service basis, facilitate the actual conferences. The offender and the victim take equal principal roles in the process, while judicial officers such as police play a secondary role.

The workshop will draw on real case studies and independent evaluations to expand on the principles and practices of the scheme, including:

- supporting victims and offenders to actively participate in conferences for serious offences
- developing collaborative partnerships between police, courts and other justice services
- empowering the community to respond to juvenile offending while maintaining public accountability, in a restorative justice environment

Michaela Wengert has been a regional manager of Youth Justice Conferencing since inception of the Young Offenders Act in April 1998. She is currently on a three month temporary contract as NSW Director, with responsibility for administration of the Act in 18 regions across NSW. Michaela has worked closely with NSW Police, developing training courses for police officers with specific responsibilities under the Act. She has presented at Victims of Crime and Juvenile Justice conferences, and delivered workshops to magistrates, police and legal practitioners.



Plenary session: School mediation and the inner dynamics of restorative justice – going beyond offender orientation

Chair: Martin Wright (UK)

Belinda Hopkins (UK): THE DNA OF RESTORATIVE JUSTICE IN SCHOOLS AND OTHER ORGANISATIONS

(This paper was originally presented as a powerpoint presentation at a conference in Barcelona organised by the European Forum for Restorative Justice Conference in June 2006. The ideas came first – the paper followed, and since June some of the ideas have been further developed.)

Introduction - The 'jadeness' of jade

There was once a man who wanted to know more about jade. Through a friend he heard there was an expert on the subject living in the next village. The young man went to visit this person, an old man with a quiet, restrained manner. It was agreed that the older man would give ten lessons on the subject and a fee was agreed.

On the day of the first lesson the young man was shown into a room which was light and airy. He was invited to sit down and the older man gave him a piece of jade and left the room. The young man held the piece of jade in his hand, turning it around and wondering when the lesson would begin. After half an hour the older man returned and said that the lesson was over and showed him to the door.

The next week the young man returned for the second lesson and exactly the same thing happened. Indeed the same thing happened for several weeks and the young man was feeling increasingly frustrated and beginning to suspect he was being cheated.

Then one day he met the friend who had recommended the teacher. The friend asked how the lessons were going and the young man explained what had been happening week after week.

"And do you know" he burst out angrily "last week he had the cheek to give me a fake piece of jade instead."

The young man in the story had gradually come to understand, experientially, the 'jadeness' of jade. I am fascinated by the question of how we come to understand and appreciate what acting 'restoratively' actually means, or what is meant by describing a process or indeed an institution as 'restorative' What does it mean to be, for example, a restorative school or a restorative prison? Using an analogy from science – what would the DNA (Deoxyribonucleic acid) of 'restorative justice' look like?

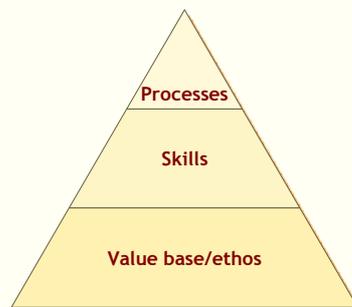
This paper takes the educational setting as an example, drawing on my professional and academic work in this field, but at the end it raises wider questions about what it means to be restorative at a personal, an organisational and a district level.

Values, skills and processes

I have chosen to distinguish what I mean by restorative justice by differentiating between its values and principles, the skills that are underpinned by these values and principles, and the various restorative processes that incorporate these skills. As previous keynote speakers in past conferences have reminded us, restorative practitioners must always ensure their actions are grounded in restorative values and principles or else risk diluting their practice.

In order to engage people in exploring what they believe to be the essential values and principles of restorative justice it is useful to remind ourselves what drives a restorative practitioner. I would argue that it is a commitment to building, nurturing and, when necessary, repairing relationships in the community – whether this is the community of the workplace, the local school, the residential home, the neighbourhood, the borough or district, or even on a more national and international plain. If one accepts this underlying commitment as the inspiration behind restorative work then certain essential values and principles come to mind:

mutual respect; empowerment; collaboration; valuing others; integrity; honesty; openness; trust and tolerance. The skills include: emotional articulacy (my own variant on 'emotional literacy' which doesn't strike me as active enough); empathy; open-mindedness; active non-judgemental listening and conflict-management skills. The processes will include any interaction that has as its intention to build, nurture or repair relationships.



Purists would state that the word 'restorative' should only be applied to processes that happen when harm has occurred and when there is something to repair or restore. However there is a flawed logic in arguing that restorative values, principles, skills and processes should only be used in an organisation or an institution once harm has happened, and that they are not relevant at other times. It is clear that much damage and conflict can be avoided in the first place if the adjective 'restorative' can be usefully applied to a set of proactive values and skills as well, those that create the fundamental ethos of the organisation/institution. After all – what opportunity is created by a restorative meeting if not a chance for people to become fully accountable, develop compassion and empathy for others, and share a responsibility for finding ways forward? How much better would our communities be if these skills were being developed and used long before anything went wrong? This is certainly the argument in school contexts – that preventative strategies would help young people avoid more serious conflict if they grew up in a 'restorative milieu'(McCold 2002).

A restorative individual

This argument leads to a discussion then of what an organisation might look like if restorative values, principles, skills and processes were used systematically by everyone in that community on a regular basis. Clearly this situation can only be achieved if people are committed to this on an individual basis, so it is useful to think about what a 'restorative mindset' might be like – and I would add, 'a heart set', since a restorative mindset draws on heart-felt beliefs.

Taking the example of a school teacher –what would be her priorities once she has adopted a restorative mind and heart set? Given her commitment to working WITH people rather than imposing her own will (doing things TO people) or spoon feeding (doing things FOR people) (Wachtel and McCold 2001), a major priority would be how she can empower her students to take responsibility for their own behaviour and for their learning. Being responsible for one's own behaviour requires an ability to be accountable and to feel empathy and compassion for the impact of one's actions on others. In order to develop these values and aptitudes in young people the restorative teacher must model a certain sort of behaviour in her day to day dealings with them. She finds that genuine curiosity, rather than preconceptions, judgements or bias, informs the way she interacts with her students – encouraging them to think for themselves using Socratic questioning techniques.

Thus in the event of a conflict or problem in the classroom, or observing one in a corridor or playground (school yard), the restorative teacher would ensure that she ASKS rather than TELLS. She enquires of those involved what they believe to have happened, what their thoughts were during the incident (and not their opinions – an inflammatory question which can exacerbate conflict), the feelings arising from those thoughts, who they think has been affected and what they believe needs to happen to put things right. Faced with any given

situation in a school the restorative teacher does not rush to take sides or make assumptions. Her curiosity encourages those involved to become accountable for what has happened but also to feel empathy for others, and it also empowers them to take responsibility for putting things right. She knows that punitive, disapproving responses alienate people, breed resentment and sour relationships, both between herself and those concerned, and between those in conflict. She also knows that if all sides feel fairly heard and given a chance to put things right for themselves they usually feel better about themselves afterwards, something that rarely happens when people are punished.

Depending on the nature of the situation the restoratively trained teacher has a number of options with regards using her skills. She can simply have a one-to-one conversation with a young person and find that this is enough to move a situation on without further repercussions. If the incident has caused distress or harm to another person then she has the option, following one-to-one conversations with both parties, to invite both to engage in a restorative meeting. (Face to face meetings are often described as mediation sessions) If the incident is more serious then she has the option of involving supporters for the young people – often this would be the parents or key adults who may well have their own story to tell and are grateful for the opportunity to be involved.

A restorative teacher also used her skills in the day to day management of her class and in the way she develops a sense of community within each class. Working WITH her students she invites them to identify what they need to work at their best and this becomes the class agreement. If people are unable to stick to their agreement the restorative teacher may well either use one of the restorative meetings described above or else invite the whole class to sit in a circle and review the problem together. In this way young people learn that their actions impact on others and become accustomed to taking the initiative if amends need to be made. The restorative teacher's students understand that class rules are not abstract constructions created to make their lives difficult but have grown out of a genuine dialogue about human needs which they themselves share. They come to recognise that failing to meet others' needs can cause distress or harm and that this wrongdoing is first and foremost a violation of people rather than of rules. This important lesson for life is the lesson that Zehr (1990) pointed out was a key restorative idea, contrasting it with conventional criminal justice thinking, which focuses on crime as rule-breaking.

In fact Circles become the restorative teacher's stock in trade not only as a reactive strategy but also as a proactive tool for building community, a sense of belonging and connectedness, empathy, self-confidence and the ability to both find common ground and value diversity of viewpoints and opinions. She knows that a sense of belonging and connectedness is crucial for well being and can protect young people from the feelings of rejection and alienation which so often lead to anti-social behaviour and delinquency (McNeely et al. 2002). In the UK many schools now use Circle Time regularly with their classes in order to do this. Circle Time has a structure and often includes games, pair work and group discussion, but always within the frame of a circle and with clear, mutually agreed, ground rules of engagement.

These various options can be remembered easily by thinking of them in terms of dots on a die – although the design of these varies from conventional dice as each meeting always takes place sitting in a circle.

	the restorative mindset - remaining curious and open to other points of view, seeking to repair harm rather than apportion blame and punish,
	one-to-one conversations using restorative enquiry/questions
	a mediation/mini-conference with one mediator and two people in conflict
	a metaphor for a small conference involving more than two participants



a larger conference involving parents/carers/school personnel



a circle for problem solving/community conferencing/celebration etc

The restorative teacher is mindful that her own example speaks loudly to her students and knows that she must be open to ways in which the restorative mindset can inform her own interpersonal relationships at home, socially and at work. The conflict management skills she uses with her students and teaches them to use for themselves must inform the way she deals with discipline issues and conflicts not just in her classroom but with colleagues, friends and family, so that they become second nature.

Restorative Pedagogy

The restorative mindset inevitably impacts on pedagogy. A restorative teacher who works WITH her students ensures that how she teaches simultaneously models her own restorative values but also develops restorative values, aptitudes and skills in her students. Such an approach need not, and indeed must not, be confined to citizenship, civic studies or PHSE (personal, social and health education) lessons. It is an approach to teaching and learning that needs to be consistently applied across the curriculum if students are to benefit and to appreciate the difference.

How might a restorative pedagogy differ from traditional approaches to teaching and learning? In fact current research about what constitutes best practice confirms what a restorative teacher would be inclined to do anyway. Students respond best to lessons where they are involved in making decisions for themselves about what they learn and how they learn. They appreciate their own preferred learning style being taken into consideration whilst acknowledging they may also benefit from other approaches. The key is good communication – an ongoing dialogue between teacher and student so that both give each other feedback on what is and isn't working.

The Circle framework provides an example of how a lesson might be structured. Once gathered and sat in a circle, students are encouraged to reflect on the previous lesson, their thoughts and feelings, what they learnt, what questions they still have unanswered and what they need to move on and progress their learning this time. Pair and group discussion could start these ideas flowing and then a structured circle 'go-round' could allow for sharing on this. The main part of the lesson could involve students taking responsibility for finding answers to their questions, either through private study with appropriate resources, talking with other students or small group work with the teacher herself or an assistant. The final part of the lesson could be conducted back in the circle with every student sharing what they had found out and what they intended to do as their homework task to deepen their understanding. In this way students learn from each other and the teacher gets ideas from the students about how she can tailor her teaching to meet their learning needs.

Such a structure might not be appropriate for every lesson but it is clear that the familiar 'restorative framework' with the key questions about perspectives, thoughts, feelings, needs and ideas for ways forward can be woven into most lesson formats. Teachers can inject a spirit of curiosity, awe and wonder into their lessons by bringing these qualities to the lessons themselves and being prepared to be amazed as they will undoubtedly continue to learn themselves.

The lesson format itself builds in opportunities for developing restorative skills – pair and group work encourage discussion and the sharing of ideas, perspectives and opinions. It takes skill to remain in open dialogue with one person, let alone a group, and so young people need training in how to be curious, open minded and inquisitive – without falling into the trap of trying to 'win' a debate or put others views down by derision or simply by ignoring them. Preliminary activities early in the school year may need to focus on the 'process' of pair and group discussion before students can be given the task and be trusted to have a constructive inclusive debate left on their own. The more used to circle process (with a talking piece being a visual reminder not only of whose turn it is to talk but also that no-one

speaks out of turn and everyone has a turn) a group is the better they will be able to conduct these discussions in their own small groups.

The tasks themselves can have an affective focus – all sorts of subjects can come alive when the thoughts and feelings of real people can be injected into what might otherwise become 'dry facts'. Imaginative teachers have always done this – and invited students to put themselves in the shoes of key historical figures or literary characters – or indeed those of the 'person on the street' during key events. Maths, science and geography can also be enlivened in this way, engaging students hearts as well as their minds, their imagination as well as their rationality.

Working in a restorative team

The restorative teacher's work is going to be made much easier if she is working within a restorative department, and a restorative year group, which itself is working within a restorative school. (In the UK most teachers in secondary schools are at once part of a specialist department lead by a head of subject or faculty and also part of a year group by virtue of their second role as pastoral form tutor for a particular class) Her Head of Department/Faculty and her Year Head will themselves be informed by restorative principles in the way they run their department/faculty or year group. They regularly meet with their team in a circle so that everyone can share their experiences, their thoughts and feelings about how things are going and what is needed to improve things. The department/faculty leader and Year Head know that their role is to create a strong sense of team amongst their colleagues, with commitment to mutual respect and support, whilst also empowering them to take initiatives for themselves. They cultivate a climate of positivity, where everyone openly values their colleagues' contributions whilst being able to address minor conflicts honestly and restoratively before they escalate and sour relations. Their role as leader means that they model this behaviour themselves in their informal dealings with colleagues, students and their parents, but they may also offer more formal restorative processes if informal interactions are not enough. Trained in the full range of restorative processes they may be the one more likely to offer a restorative process if one of their colleagues is having particular problems with an individual student. This might be simply a face to face meeting or it may involve parents.

Probably the most important role of the Team Leader (department/faculty or year group) is their role as a model of restorative skills and an enabler, so that their team are encouraged and supported in their own use of restorative approaches to teaching and managing behaviour. Without this consistency there will be confusion and bewilderment on the part of students, staff and parents.

Restorative Leadership

If this is true of middle managers how much more true must it be for the senior management team and the Head herself? Their leadership style needs to be informed by the restorative mindset and heart set such that every policy or decision taken can be measured against restorative values and principles and any action taken has restorative language and process at its heart. That is not to say that painful decisions and actions need sometimes be taken but a restorative leader would be working at all times WITH people as much as possible to minimise resentment and breakdown of relationships and communication. Restorative processes can be adapted for all sorts of meetings, from internal discipline procedures to multi-agency review meetings to discuss a young person's future¹.

Certain key policies will be written with restorative principles in mind – the traditional 'behaviour management policy', conventionally based on behaviourist notions of rewards and sanctions, will be re-written as a 'relationship management policy' (a phrase coined by Marg Thorsborne, a restorative trainer from Queensland, Australia). This sets out guidelines that apply to everyone in the school and as such is likely to have been developed in consultation

¹ Even the most deep-seated problems, one that inevitably spills out into the community and involving long-standing issues in a young person's family can be addressed using a process called Family Group Conferencing. This is a model where after careful preparation the extended family and friends of a young person identified as having chronic challenges is empowered to find ways forward for themselves.

with all members of the school community. Policies regarding how to address bullying will also be informed by restorative principles and will apply equally to student-student bullying, staff-student (and vice-versa) bullying, staff-staff and parent-staff (and vice-versa) bullying. Restorative processes can be very effective in all these situations and indeed provide ways forward where traditional approaches do not, and indeed also sadly ignore many of the feelings and needs of those close to the key parties.

The restorative leadership team will be actively empowering students, teaching staff, administrative, catering and domestic staff and parents to become more involved in the well-running of the school. Amongst students there will be opportunities for involvement using restorative and relational skills including being peer mentors or mediators (the former act as a non-judgemental listening ear, the latter facilitate mediation sessions in the event of conflict); school councillors; peer supporters for those needing extra support with learning; social and sports secretaries organising events and fixtures; charity representatives the list is endless once students are recognised as leaders in their own right and given the opportunity to take responsibility for the well running of their school.

Amongst the adult groups mentioned again the role of the senior management team is to empower and support a structure of distributed leadership, encouraging initiatives, making time for relationship building amongst key groups and ensuring that restorative and relational training is readily available. Whereas initially a school may rely on external training to build its capacity it will ultimately be looking to develop its own in-house training team and a restorative steering group who will manage to gradual implementation and sustainability of the whole school approach. It is generally agreed that the journey to a fully restorative school could take up to five years and various restorative educationalists offer excellent advice on how to manage this journey (Blood 2005; Blood and Thorsborne 2005; Hopkins 2004; Morrison 2005).

Restorative Districts²

Restorative schools are able to function more successfully if they are working in partnership with the other schools in their authority and if the authority has taken a decision to integrate restorative principles and practices throughout its services and management structure. This would mean that the multi-agency support a school draws on – including behaviour support, education welfare, social services, the local mental health team, the youth offending team and the police – would all be informed by restorative principles and practices. Furthermore the conflicts and problems that spill over from the community into school such as neighbourhood conflicts and family feuds could be dealt with in partnership with teams from restorative housing associations, environmental health and the local police.

This kind of 'joined-up thinking is enshrined in the recent 'Every Child Matters' agenda in the UK, designed to create a consistency of approach and partnership between agencies who might otherwise be working from different perspectives and philosophies. Restorative justice can serve as an overarching umbrella within which all can function. In this way a young person, wherever he or she may be referred, will be dealt with restoratively. Furthermore should they young person find themselves in residential care or in a Pupil referral Unit these two would be running along restorative lines.

A pragmatic reason for a whole authority taking on this approach is so that the community at large gradually understand and benefit from a restorative approach. The International Institute of Restorative Practices refers to Restorative Practices as a Family Empowerment Model since families have a voice in issues that concern them in a way that is unique. One of the main fears for schools embarking on a restorative initiative is addressing what they perceive as the parents' need for justice to be done in the event of wrongdoing. In fact research suggests that every parent wants their own child do be dealt with fairly – it is 'other' children they want severely punished!

² In the UK every school works within a specific Local Authority, an administrative unit that comprises the local government and the services required by the local community. Elsewhere the word 'Authority' might best be described as the local 'District'.



Involvement in restorative processes does in fact bring parents round – they feel heard and acknowledged often for the first time and they can see the effects of restoring relationships in terms of a safer and happier school. In the short term however it will help pioneering schools if their new initiative is part of a district-wide one, rather than experiencing the very understandable fear that they may lose their vital student numbers if rumours get out that they are trying something wacky whereby students ‘get away ‘ with wrongdoing. Furthermore district-wide initiatives are likely to be able to access the resources required to put in place effective evaluation and monitoring tools so that evidence can be gathered over time to assess the value of the initiative in terms of performance indicators such as reductions in exclusions, neighbourhood conflicts, re-offending etc

If the aspiration for a restorative authority or district sounds far –fetched and over idealistic then one need look no further than certain authorities where this aspiration is already within reach. The borough of Sefton, in Merseyside, in the north west of England, has established the Sefton Centre for Restorative Practices and, by dint of training and support across the borough over the past few years, is gradually creating a restorative authority. Other authorities are taking note and considering their own position.

Restorative organisations and institutions

This paper has considered what a restorative individual might be thinking and how they might be acting, and then looked at how a restorative line manager, and a restorative senior management team might be acting. It has suggested that a single institution, such as a school, will find it easier to be restorative if it is working within an authority or district-wide initiative, not simply in the education field but across the authority in all its services. This would be a pragmatic suggestion from the school’s point of view, although there is clearly a case to be made for the potential of restorative principles and processes in each of these services in their own right.

Indeed many individual services and agencies ARE exploring and using restorative approaches, certainly in the UK. Local government housing and environmental health officers have long had recourse to neighbourhood mediation schemes. Youth offending teams, probation officers and police officers in many areas are using restorative practices. Increasingly the multi-agency support teams working directly with young people in schools are expressing interest in restorative methods and in some authorities residential care staff are being trained in such approaches.

However the particular focus of this paper has been more than simply enquiring into the potential of restorative approaches with client groups. Its starting point was asking what it means to act ‘restoratively’ and indeed BE ‘restorative’, as a person and as an organisation or institution. It has suggested that acting restoratively starts at the individual level and that not only do individuals benefit from working within a restorative organisation but that the organisation is a better place for being staffed by restorative individuals.

This paper has concentrated on what a restorative teacher, manager and school might look like there are obvious links to other organisations and institutions and this paper would also like to encourage others to consider what their own environment might be like were everyone in that environment to adopt a restorative mind and hear set.

A typology of restorativeness

I have developed a typology which could be applied an individual level, a workplace/team level and an organisational/district level to stimulate debate. It would be for each individual in specific working environments to fill out the detail on what this typology might look like – inspired perhaps on the thoughts about teachers, school managers and schools.

A scale from -1 to 4 has been chosen to describe an essentially similar situation. Level -1 describes an individual, workplace or organisation that has heard of restorative justice and restorative approaches and has rejected them, for whatever reason. (This need not be taken as a definitive position – it could simply be initial hostility or suspicion based on fear of change or loss of power) Level 0 is simply that – the individual, workplace or organisation has had zero exposure to restorative ideas and so is ignorant of them. Level 1 would be an individual, workplace or organisation with an interest in learning more about restorative approaches. Level 2 would be an individual, workplace or organisation that knows about restorative justice

and approaches and supports others to use the skills and processes, but does not take the time to learn about them or use them personally or internally. Level 3 would be an individual, workplace or organisation using restorative skills and processes regularly as and when the need arises – reactively. Level 4 would be an individual, workplace or organisation infused with restorative values, like a traditional British seaside stick of rock, which has the name of its place of origin miraculously written right through the middle of it, wherever it is snapped open. Restorative Justice has become a philosophy, a way to BE, and not just something to DO.

Level

4	BEING	Personal and professional life informed by restorative principles (proactive)
3	DOING	Using restorative approaches only when an incident occurs (reactive)
2	ENCOURAGING OTHERS	Aware of restorative approaches – makes referrals to others but not personally involved
1	INTERESTED	Aware of restorative justice/approaches and open to their potential
0	IGNORANT	Unaware of restorative justice/approaches
-1	RESISTANT	Rejects restorative justice/approaches – for ideological or practical reasons

Conclusion

This paper has explored what it means to act restoratively and being restorative, using the example of a school as a starting point. The ‘restorative typology’ poses an implicit invitation to any individual, workplace or organisation to review their own restorativeness. Many restorative justice practitioners are very skilled at running restorative procedures for clients but how good are we at turning the mirror onto ourselves, and walking the walk as well as the talk? What does being restorative mean for us as individuals at whatever level we work within an organisation?

As a trainer, consultant and researcher in the field of restorative justice I am interested in what support people need once they have been introduced to restorative justice. Training in the basic restorative skills and processes is not enough – that is only the beginning. If the training is good quality, and not rushed or superficial, something extraordinary will have happened to a person who has now become a fledgling restorative practitioner. They may well see the world through what Zehr (1990) has described as a different lens. They may well find that they become more acutely aware of how they interact with others at home, socially and at work. Indeed if those around them are not similarly enthused life can actually be quite challenging. That is why as a trainer I am acutely aware of the responsibility of supporting people post –training and helping them begin the task of transforming not only their own practice but the environment in which they work and live. Hence the inspiration for this paper – what do we mean by a restorative workplace, a restorative community – a restorative world? One thought continues to inform my thinking, something that Ghandi once said:

‘To believe in something and not live it is dishonest’.

So those of us convinced by restorative ideals have no choice – let us continue the debate and learn together.

Blood, P. (2005). *The Australian Context – Restorative Practices as a Platform for Cultural Change in Schools.*, XIV World Congress of Criminology

"Preventing Crime & Promoting Justice: Voices for Change. Philadelphia, Pennsylvania, USA.

Blood, P., & Thorsborne, M. (2005). The Challenge of Culture Change - Embedding Restorative Practices in Schools, *6th International Conference on Conferencing, Circles, and other practices*. Sydney, Australia.

Hopkins, B. (2004). *Just Schools*. London: Jessica Kingsley Publishers.

McCold, P. (2002). Evaluation of a Restorative Milieu: CSF Buxmont Academy /Day Treatment Programs 1999-2001, *American Society of Criminology Annual Meeting*. Chicago, Illinois: International Institute of Restorative Practices website.

McNeely, C. A., M. Nonnemaker, J., & W. Blum, R. (2002). Promoting School Connectedness: Evidence from the National Longitudinal Study of Adolescent Health. *Journal of School Health*, 72, 138-146.

Morrison, B. (2005). Building Safe and Healthy School Communities: Restorative Justice and Responsive Regulation, *Building a Global Alliance for Restorative Practices and Family Empowerment, Part 3', the IIRP's Sixth International Conference on Conferencing, Circles and other Restorative Practices*, (pp. 97-111). Penrith, New South Wales, Australia.

Wachtel, T., & McCold, P. (2001). Restorative Justice in Everyday Life. In H. Strang & J. Braithwaite (Eds.), *Restorative Justice and Civil Society* (pp. 114-129). Cambridge: Cambridge University Press.

Zehr, H. (1990). *Changing Lenses*. Scottsdale, PA: Herald Press.

Belinda is Director of Transforming Conflict, the National Centre for Restorative Justice in Education. She and her team of 14 trainers offer training, consultancy and ongoing support to educationalists integrating restorative approaches into their day to day interactions with young people. Belinda's book 'Just Schools', and her recently completed doctoral thesis, focus on the implementation of a school-wide restorative approach to building, nurturing and repairing relationships.



Workshop session 3: School mediation and the micro-dynamics of restorative processes

DILLEMMAS AND POSSIBILITIES IN MEDIATION PROGRAMMES FOR 12-15 YEAR OLD YOUNGSTERS

by **Lotte Christy (Denmark)**

Summary.

The 12-15 year olds have conflicts with each other – in class, at school, in the club, in the street. Some have conflicts with their parents or other adults. Most of them solve their conflicts themselves. But not all conflicts can be solved without help. And conflicts that are not solved can do great harm. In the worst cases they escalate and develop into violence and crime. On the other hand conflicts that are solved can give the parties new options in life. The idea of this project is to give the young people a helping hand.

The project 'Mediation for 12-15 year olds' has been carried out in co-operation between the Ministry of Social Affairs, the Danish Crime Prevention Council and 8 municipalities. It was carried out from 2003 to 2005.

The basic idea was to give an offer of mediation to the young people in the municipalities in the project. The mediators were educationalists, teachers, social workers, street workers, police officers, and others who in their daily work are in touch with the young people in the municipality. As part of the project the mediators took a seven-day course in mediation and schools, institutions and authorities were informed what mediators could be used for. 52 mediators were trained. They carried out more than 300 very different cases of mediation during the time of the project. Of these 110 have been registered and mentioned in the assessment report of the project.

In mediation an impartial adult helps the young people to talk about their conflict and to find a tenable solution to it themselves. The method is known from victim/offender mediation in penal cases and experiments with mediation at school. In this project the method of mediation is challenged further in that the mediators also have other roles towards the young people. And the young people's parents are naturally in the picture and are affected by the young people's conflicts. The report describes the practical and ethical challenges that the mediators came across during the project:

How voluntary is the young people's participation, in fact?

What part should the parents play in mediation?

Is it possible to mediate in cases that are also reported to the police?

How do the mediators cope with having several roles towards the young people?

How much must the mediator know about the cases in advance?

Which part do friends in the fringe of the dispute play?

Confidentiality as opposed to duty of making a report?

Is it possible to mediate in cases of bullying?

How do you draw the line between handling conflicts and mediation?

Furthermore the report describes the way the project is organised, built up, and managed. It has been difficult to make the offer of mediation in the local area known. It makes a difference how the management supports the project. It is most effective when management and referral are clear so that the cases get to a mediator quickly. This report describes the background of the project and goes through the practical theories and methods. The conclusion is that solid training and consciousness of ethical standard are prerequisite to the mediators being able to

tackle the many dilemmas and target the mediation method with regard to specific conflict situations. A good network and supervision by colleagues in the group of mediators are a good help. The report makes a good basis for debating new initiatives and development of mediation for young people.

The results of the reported cases of mediation are remarkable. The young people who have taken part in mediation seem to refrain from further destructive behaviour in the case. Those who did not actually become friends learnt to get on with and respect each other. The cases are described in the assessment report, which also describes advantages and disadvantages in the different ways the eight municipalities have organised the project. See <http://www.hvahardugangi.dk/> (language: Danish)

What are you up to?

Evaluation report from the development project: Mediation for 12-15 years old

Danish Crime Prevention Council: Charlotte Vincent

Abstract of the results

In the project of handling conflicts among 12 to 15 year olds, the target has been young people who to a greater or lesser degree have been known in the local area in connection with inappropriate behaviour or have been involved in incidents of violence, disputes and criminal activities. In general the young people in question are involved in activities that are inappropriate to their development and to their surroundings. Activities that they have had difficulties in stopping and dealing with.

During the time the project has been ongoing, there have been 110 recorded cases of mediation. Furthermore, especially one municipality has used the mediation tools in a large number of 'urgent mediations', approximately in 300 cases. The result has been recorded in 36 cases through interviews with the mediators.

Many of the conflicts have concerned violence, threats of violence and disputes among different parties. Often the conflicts have been serious and to the detriment and discomfort of the involved parties, especially if they remained unsolved or escalated further. The conflicts have reflected the young people's lives at school, in the street and at home.

The 8 municipalities have organised the project in each their way and taking their starting point in their own specific project structures and organisational cultures. This has given the mediators a large number of various options within which to carry out mediation. In some places there have been really good results, in other places not quite as good results. The number of mediations that have been carried out in the individual municipalities has varied a lot, from 2 in one municipality to 35 in another municipality. Several municipalities have had approx. 10 cases of mediation.

Mediation has had a beneficial effect on behavior

Experience from the municipalities who have used the mediation tool with the target group – the 12 to 15 year olds – has generally been that the method is a useful tool in crime preventive work with this target group.

Mediation is seen as a tool that contributes to keeping the young people away from destructive behaviour and at the same time it strengthens the young people's feeling of having influence on their own lives.

Some of the municipalities who have experience of using mediation as a tool and who have dealt with conflicts at school have found this very useful. However, there are different opinions as to the types of conflicts in which it is relevant to use mediation. The question that is asked in this connection is how serious the conflict has to be in order to use mediation. Some people think that with slight modifications, the tool is fine in daily life, others think that there must be more serious conflicts.

It is true in all municipalities that most of the cases in which the final results have been recorded, have turned out to have had a positive effect on the behaviour of the parties involved and that the conflict has not started again.

Out of the 36 cases in which the result has been recorded, 15 of the cases have been from the target group of young people who have been known in the local area for a long time and who have previously been involved in incidents involving violence, disputes and criminal activities.

The cases are characteristic in that the young people have shown inappropriate behaviour for some time and are more or less well known by the social system.

One of the problems that emerges in this group is that it can be difficult to determine the causes of the conflicts and to assess whether there are also massive social and other problems that play a part. The assessment of the 15 cases in the mediators' records and the registration surveys is as follows:

- In 12 out of the 15 cases, the young people's behaviour has changed for the better, so that they have not been involved in conflicts since.
- In 7 out of the 15 cases, the mediator has noted that the relationship in which the conflict took place has become positive.
- One case has had a negative outcome.

The other target group in the project is young people who have not previously been known in the local area and have not previously shown inappropriate behaviour, prior to the conflict in question in this project.

The results have been recorded in 19 out of the 36 cases.

This group of young people is not previously known by the system and the cases have concerned conflicts among girls (girl conflicts) and other comparatively ordinary conflicts among young people such as various disputes and harassment. A special category of conflicts is those on the internet and on mobile phones.

Many conflicts among young people take place on the mobile phones and on the internet and this often enhances and simplifies the conflicts. Moreover, the conflicts often escalate in seriousness and come to involve many parties. The assessments of the 19 cases seen from the mediators' reports and the registration forms are as follows:

- In 17 out of the 19 cases, the young people's behaviour has changed for the better and they have not been involved in conflicts since.
- In 14 out of the 19 cases the mediator has recorded that the relationship in which the conflict took place has become positive.
- In 2 cases there has been no change.

The third target group was young people who were in conflict with an adult – in many cases their parents, sometimes a professional. It has been difficult to get numbers of how many cases there have been in this target group. Nearly all municipalities have had experiences with these cases but only 2 have been recorded.

- In the 2 cases the conflict between the parents and the young person was solved in a positive way so that the young person changed his/her behaviour and the relationship between the parents and the young person was improved.

It is difficult to say anything about how the young people themselves have experienced mediation and the process. It has not been possible to interview or question many of the young people who have taken part in mediation. There have only been 2 interviews with young people who took part in mediation. However, they were both very positive towards the process.

The result of mediation may in general be said to be as follows:

The majority of the assessed cases have had a positive effect on the target group as the cases have not arisen again and as conflicts between the involved parties have not been seen or heard of again.

The conclusion is that the project has contributed towards keeping the young people from destructive behaviour and towards strengthening them in the feeling of being able to take part in controlling their own lives.

Free will is important

Mediation is characterised by being a voluntary method of solving conflicts. Both parties must say yes to taking part. The mediators in all 8 municipalities think that the principle of free will is one of the most decisive and fundamental principles for mediation being possible. The mediators who have particularly used the method at schools in 'urgent mediations' have been obliged to admit that they have 'bent' the principle and have not always observed it. The dilemma has been described in the report of the project.

Introductory meetings are of decisive importance

The parties are always contacted by the mediator prior to mediation. This may be done by phone or at an introductory meeting. The mediator tells the parties about the process and answers their questions. The purpose of this is that the parties gain confidence in the mediator.

The decisive importance of introductory meetings for the success of mediation is largely agreed on. This is not true of the importance of following up on the mediation meeting. Some think that this must always take place and others think that it need only take place in some cases. Some think that there need be no follow up at all. What is right or wrong in this connection must be one of the subjects that must be discussed further with regard to the implementation of mediation in the municipalities. The introductory work has been described in the report of the project.

Knowing the mediator is important

The mediator is neutral and impartial, but not necessarily unknown to the young people. In general it seems that it is important for young people, particularly in this age group, to know the adults who are mediators.

Organisation is important for success

The project has been organised in different ways in different municipalities and some of these ways seem to have been more expedient than others. In those places where referral has taken place at 'Monday meetings', which are interdisciplinary meetings at which the police also take part with the daily occurrence report, referral of cases has largely worked well. Referral has worked well in those cases in which there has been a central and known staff member who has gone to see the young person and their family.

Referral has not worked at its best in places where the principals have been contact persons for the young people or others who wanted mediation and have also been the contact to the mediators.

Referral has not worked at its best either in places where the parties could contact the mediators themselves, especially not in the large municipalities in which the mediators are not known by the young people.

There have been various ways of referring cases to the mediators. Experience shows that an active person who can communicate and refer cases to the mediators is necessary. In those places where this link has been missing or has not worked properly, the mediators have not been able to work, as they have not had any cases.

Moreover, it seems that municipalities that have established a corps of interdisciplinary mediators with a certain amount of independence, have been most successful. This has been a good model and has given a good flow of cases.

Most of the municipalities had a referral procedure that limited the target group more specifically to groups in which they thought mediation would be relevant. Some municipalities did not think that it was relevant to offer mediation to young people who already had many problems and who were known in the social system. Other municipalities did not have this limitation and one municipality thought that mediation was harmless and therefore could be

offered to all young people who the mediator in question thought could benefit from mediation in one form or another.

Likewise there were different opinions of how 'light' cases could be with regard to using the mediation tool. Some municipalities did not think it should be used in 'light' cases. Other municipalities have used the mediation tool or parts of the tool in 'here and now' cases, also called 'urgent mediation', and have found it very useful in daily life conflicts.

Another circumstance in organising the projects in the municipalities has been the superior steering committees in the project. All municipalities have had a steering committee consisting of leaders at different levels. In some municipalities the steering committees have not been very active and the municipalities have at the same time had difficulties in getting cases. It seems that lacking activity on the part of the steering committee has had a decidedly demotivating and negative effect on the project in the municipalities in question.

With regard to the part of the mediator, most of the mediators have been closely connected to SSP (School, Social services, the Police) in various ways. Several have been SSP-consultants, SSP-teachers or outreaching staff. This seems to have been a relevant starting point for the part of the mediator. Experience shows that mediation goes very well hand in hand with the mediators' other daily work tools.

In this connection several municipalities have found that it is expedient to establish a corps of mediators as such with representatives from different groups and that these groups establish a network for exchanging experience and supervision.

It is a common experience in the municipalities that mediation takes time. Time for introductory work and mediation itself and maybe time for follow up. This does not necessarily mean extra time. The time may well be part of the mediators' ordinary workday, as long as this has been planned. Time beyond the ordinary workday may also be paid for but again it is the experience that the resources a mediator has at his disposal must be specified in advance.

The method

Mediation is a method of solving serious conflicts between parties. It is a method which the parties take part in of their own free will.

The method of mediation is by most mediators seen as a suitable tool for use with young people. Moreover, the mediators think that the various parts of the mediation method are very useful in their daily work as such.

Furthermore, several of them think that the method is particularly useful with young people because of its respectful attitude towards the young people. This aspect is stressed by mediators from one municipality as being particularly important with young people of other ethnic origin. Moreover, voluntary participation in mediation is pointed out as essential to bringing about the intended result.

According to the mediators it was rare that it was the young people who did not want to take part in mediation. More often it was their parents who for various reasons did not want to involve their child in mediation.

According to the mediators, it seems that mediation in general is effective with young people in areas such as:

- Developing and strengthening the young people's social and emotional skills.
- Strengthening the young people's sense of being able to have an influence on their own lives.
- To a certain extent to train their skills in dealing with situations.
- Contributing to preventing the young people's destructive behaviour.

Lotte Christy MMCR (Master in Mediation and Conflict Resolution) is Project manager at the Danish Crime Prevention Council. She is a trainer and mediator at the Danish Centre for Conflict Resolution (DCCR) and a trained teacher. She was co-organiser of and workshop facilitator at international conferences on how to teach peace and conflict resolution to young

people. She has written teaching material and articles about conflict resolution and the role of the school and the teachers.

Workshop report by Mari-Cruz

A question was raised to the participants before the presentation started about the age of criminal responsibility in the countries presented. The range was from 7 to 16 years old. After the presentation took place, a debate started about the challenges and dilemmas in mediation for 12-15 years old young people. Among the topics discussed it was pointed out that in this kind of mediation it is more important for young people that the mediator be a trusted person than being absolutely impartial. Other topic was how much the mediator should know about the case. It was pointed out that it is necessary to do preparation when the case is not well known. It is important that the mediator knows if it is possible to be neutral or how the case could affect the mediator's personally. Another topic was the mediation with immigrants. It was said that conflicts are similar in general, but the expression and solution of such conflicts are quite different.

NARRATIVE CO-MEDIATION: THE 'M' TEAM APPROACH IN NEW ZEALAND

by Kerry Jenner (New Zealand)

Used in several high schools in New Zealand and California, this new model of student-student mediation is based on post modernist and social constructionist theory. Narrative Co-Mediation covers

- the methods of introduction into the school culture
- the selection of the mediation team ('M' Team)
- the marketing of the availability of the service to staff and students
- the micro-psychology of actually what creates change within the mediation room
- the networking of schools also using this approach

Narrative Co-Mediation appreciates the idea that there is beauty in diversity. It models this in all structures and processes. Schools working in any one geographic area are encouraged to collaborate in terms of training and mediation issues to constantly improve practices and confidence of mediators. Collaboration includes support for adults in the supervision and management of the 'M' Teams. It also covers the structures in school to facilitate mediation. Student mediators themselves are in contact between schools nationally and internationally.

This approach works well with issues faced by many young people in schools, such as racism, homophobia, social exclusion and is well used by special needs students in schools where it operates.

Mediators are expected to actively demonstrate respect for all parties at all times. The method involves two mediators co-working, where overt power-sharing is an active part of the process.

Kerry Jenner developed this approach, when working as a counsellor in high schools in New Zealand. Since then, she has travelled to the USA, funded by the State Department, to further her work with a cluster of schools in California. She currently works to support restorative practices in 18 high schools in the Auckland region of New Zealand for the Ministry of Education. Kerry has completed her Masters thesis on the topic and is currently enrolling in a PhD that will see this work published.

Workshop report by Julie Henniker

The workshop discussed a model of mediation applied in school, where the students were trained for mediation. Issues around trust, respect, power, equality and neutrality were addressed. It was discussed how to demonstrate these concepts via the language and the narrative. The main stages of mediation were presented:

1. opening the session – introduction, safety issues
2. hearing the individuals' stories
3. finding a new story – new understanding of the stories
4. closing - agreements

REFORMING THE CRIMINAL JUSTICE SYSTEM THROUGH SOCIAL HEALING

by Jane Hill and Graham Wright (UK)

Widening the path to transformation: Restorative Justice and the Case for Social Healing

The recent and belated emergence in England and Wales of restorative justice can be seen as a positive development that has the potential both to challenge the hegemony of the largely retributive nature of the traditional criminal justice system and to be a catalyst for transformative justice (Dignan, 2003). However, Goodey (2005), Dignan (2003) and Johnstone (2004a) have recently expressed their concerns about the form in which restorative justice is currently being implemented and they are wary about whether, in the future, restorative justice will have a significant part to play in the criminal justice system. Sharing these concerns, this paper points to the need to resist pessimism and avoid the problem of restorative justice being transmuted by a system to which, in some respects, it is ideologically opposed. It is argued that the way to inhibit the co-option or corruption of restorative justice principles (Immarigeon, 2004) is to consider the values upon which restorative justice strategies have been formed, in order to expose those values that are often neglected in the process of implementation.

The article identifies social healing as the key value that should underpin restorative justice. This builds on the work of Bazemore (2001: 209) who states healing is '[T]he first and most important big idea of the restorative perspective...' It is a value that has even been obscured by intra-restorative debates, particularly those that have dichotomised process and outcome. Through the focus on healing, it is argued that it is possible to gain a more convincing commitment to restorative principles through which a challenge to the taken-for-granted assumptions of traditional criminal justice can take place. It is our contention that healing has the potential to take place on three levels –the individual level, between victims and offenders; at the criminal justice policy level where those implementing restorative justice strategies can bring about institutional changes through their practice; at the societal level where greater community and inter-agency involvement in restorative processes become the filter through which, to use Zehr's analogy, the lens is changed.

In order to pave the way for any transformation of justice, the seeds of such transformation need to be recognised in existing practices whilst, simultaneously, the factors that are most likely to hinder the transformative potential need to be challenged.

The significance of restorative justice is that it has the potential to provide a formidable challenge to the traditional punitive retributive justice system. On a global scale it has been generally well-received and it is now firmly established as a justice principle in many countries. However, there remains a need to avoid the dilution, co-option or indeed distortion of restorative justice principles. The ways in which some advocates of restorative justice have 'sold' their ideas, especially by promoting the measurement of victim satisfaction and crime reduction as the main outcomes of restorative justice, as Johnstone (2004a:2) warns, has undermined the movement's ability to challenge taken-for-granted assumptions about crime and justice. In particular it has a capacity to challenge the assumption that punishment is the inevitable and only solution to crime.

The worldwide expansion of restorative justice programmes (Van Ness, 2000; Miers, 2001), and the generally favourable assessments of them (for instance see Latimer, Dowden, and Muise, 2005) might suggest that there is reason to be confident about the next stage of developments in restorative justice. The evidence in England and Wales to date indicates that restorative justice does work in a variety of settings. The Home Office (2004), for example, declares there is a need to build high quality restorative justice into all stages of the criminal justice system, although implementation is partly justified on the managerialist grounds of greater efficiency and the freeing up of court time. To some extent, then, it would seem that the political battle for 'hearts and minds' has been won. However, unlike, for instance, in New Zealand (and potentially Northern Ireland) where restorative principles have brought about a significant change to the justice system, there has not yet been, and importantly, there is no significant indication of, a paradigm shift in the justice system in England and Wales. As Goodey (2005:209) states, '[A]t best, in light of current practical realities, restorative justice

might more accurately be described as an adjunct to traditional forms of justice in England and Wales.’

If restorative justice in England and Wales really is to provide a challenge to traditional justice systems at this time, the mode of implementation is particularly crucial. It is our belief that there is a need for a declared unifying value that links process and outcome and provides the opportunity to balance the benefits of restorative justice between all stakeholders. That value is social healing.

Social healing is facilitated by a discursive approach that allows all ‘stories’ to be told. It is through the telling of different stories that the opportunity for social injustices to be revealed is provided. Thus restorative justice is more likely to provide the transformative potential that is lacking in the formal, case-based and individualised criminal justice system. Whether advocates of restorative justice are positioned within or outside of the formal system is not the important issue, rather it is the values that underpin their work that should be made clear and prioritised. Then, as Immarigeon p149 citing Zehr (1985:15) has imagined, ‘[R]estoration, making things right, would replace the imposition of pain as the expected outcome in new paradigm justice. Restitution would become common, not exceptional. Instead of committing one social injury in response to another, a restorative paradigm would focus on healing.’

There is opportunity for considerable further academic discussion in this area as there is yet to be a sustained debate amongst restorative justice advocates which would provide a real challenge to the traditional criminal justice paradigm. We argue that a front-ended restorative justice model would ensure compatibility to social healing as a fundamental value underpinning the principles of justice and it would indicate a genuine state commitment to a new criminal justice system.

Jane Hill and Graham Wright are both senior lecturers in the Faculty of Law Humanities Development and Society at the University of Central England in Birmingham. They are both members of the Centre for Criminal Justice Policy and Research currently researching in the areas of community safety and restorative justice.

Workshop report by Anne Salberg

The presenters exposed their concept of “social healing”, that is making all parties feel better socially and materially in a positive way.

They asked the following questions for the café conference:

1. 3 levels of healing (individual, institutional, structural and social level) were identified: how realistic is it to operate at three levels?
2. Can empowerment come before healing?

In the discussion, questions and concerns were raised:

- RJ has to be integrated in the criminal justice system, like in Ireland where the offender can opt either for RJ or for the traditional criminal justice process taking an informed decision. The judge controls if the offender has complied.
- The guilt question has not been addressed in the RJ but is formalised in the criminal justice system.

The presenters emphasised that it is important to promote alternative models; not all crimes are known in the criminal justice system because often victim and offender know each other and there is no official report taken; not everybody wants punishment; some people want to be heard.

SHAME, GUILT AND TRUST: DEVELOPING A BASIS FOR PEACE MAKING AND PEACE BUILDING

by Roger Matthews (UK)

In recent years there has been an ongoing debate about the theoretical and practical basis on which to build forms of Restorative Justice. A number of leading contributors to this debate such as John Braithwaite have advocated a shame-based model. While others have argued that most Western countries are guilt-based societies and that developing forms of shaming may not only be inappropriate but counterproductive. IN this paper it is argued that it is 'trust' which is the key concept in play in restorative and peace making practices and that if we wish to develop more effective interventions that we need to further explore the processes by which trust is lost and investigate ways in which it can be re-established.

Roger Matthews is Professor of Criminology at London South Bank University. He is the editor of 'Informal Justice?' (Sage 1988) and 'Privatizing Criminal Justice' (Sage 1989). He is also author of 'Doing Time: An Introduction to the Sociology of Imprisonment' (Macmillan/Palgrave 1999). He has also written articles on Restorative Justice and the development of alternatives to custody.

Workshop report by Lara Baena Garcia

Roger Matthews argued during his talk that the failures in criminology in the last 20 years are due to being engaged to shamed-based strategies. He went through the beginnings of informal justice during the early 80s and the critics appeared by the end of that decade, as well as the publishing of John Braithwaite's book *Crime, Shame and Reintegration* which linked shaming to reintegrating structures and its evolution and involvement in RJ as a strategy. He argued that RJ is not about shaming people but rebuilding relationships and trust, therefore he claimed that shame-based RJ processes should be replaced by trust-based ones. After the presentation, the debate focussed on whether practitioners in the audience agreed on his thesis and what the role of shame and trust were in their daily practices.

RE-CONCEPTUALIZING RESTORATIVE JUSTICE FOR SCHOOL SETTINGS

by Paul McCold (USA)

Restorative justice began as an idea about a constructive and respectful response to crime, as a theory of criminal justice distinct from approaches based upon the application of punishment. The implications of restorative justice to school settings was obvious from nearly the beginning of the movement. The International Institute for Restorative Practices has coined the term restorative practices to refer to the broader application of restorative justice beyond the crime and justice settings (Wachtel & McCold, 2004).

This paper reviews the meaning of the most commonly accepted definition of restorative justice and applies this definition to a typology of formal restorative practices. Restorative practices will then be considered in the social context of schools and examples of informal restorative practices will be presented. These practices will be placed in the public health violence preventative model and integrated with the Braithwaite's ideas of responsive regulation in a school setting. Finally, the paper considers the implication of the broader field of restorative practices for European schools and toward the eventual improvement of whole societies.

Restorative justice has come to mean different things to different people. Definitions range from those based upon intended outcomes, the values embodied, and the processes used. Perhaps the most accepted definition combines all three as adopted by the United Nations, which defines a restorative justice programme as "any programme that uses restorative processes and seeks to achieve restorative outcomes." They go on to define—

Restorative process means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. (United Nations Economic and Social Council, 2002)

A restorative outcome is defined as "an agreement reached as a result of a restorative process includes responses and programmes... aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender."

It is important the developments in Europe are in accord with these basic principles. While some may think that distinctions raised over the fine points of definitions appear to be "a weird inter-faith squabble in an obscure religious sect" (Bazemore & Scheff, 2004), the meanings of terms are critical to the establishment and development of a new paradigm. I first raised the concerns in 1999 when some European leaders in restorative justice were claiming that court ordered community service work are the "cornerstone" of restorative justice (McCold, 1999; 2000). More recently, I challenged the inclusion of community service work imposed by a panel of community volunteers as a primary restorative justice model (McCold, 2004). Neither of these practices involve the stakeholders coming together to determine for themselves what harms were done and reaching an agreement about how to repair those harms—as required in the U.N. definition. Stakeholder empowerment is not just an obscure semantic squabble, but is the central principle of restorative justice (Zehr, 1989; Barton, 2003; McCold & Wachtel, 2003; McCold, 2004).

I developed the restorative practices typology to demonstrate how the requirement for the active participation of the victim, offender, and others affected by the offense can provide a useful conceptual framework and hierarchy of formal restorative justice practices. While all program types are necessary, practices which involve the three sets of primary stakeholders are more restorative than programs involving only two, and these are more restorative than programs involving only one stakeholder. These assumptions have been supported with empirical results from a large number of restorative justice programs (McCold & Wachtel, 2002).

From this logic, Wachtel and McCold (2004) developed their definition of restorative practices as "processes where those directly affected and/or those in positions of responsibility respond to misbehavior with both limit-setting and social support by encouraging responsible cooperation." For school settings, the culture of the institution can itself become a restorative milieu, that is, a social environment which places a premium on encouraging responsible behavior by continuously holding individuals respectfully accountable to each other and the group through restorative practices (McCold, 2002).



Applying these concepts to the preventative case where no wrongdoing has yet occurred, the three-fold typology of victim-offender-community of care gives way to one with two actors, the individual and their community of care. Of course, every individual needs support from a multitude of communities, including family, interest groups, faith communities, friends and their families, peer groups, perhaps the village community, and most certainly, the school community. The individual student learns important life lessons from these communities if they are constructively engaged, including that the individual matters, that he/she is valuable, is capable, is helpful, is trustworthy, can learn to trust and is capable of growing. From these, the individual learns that everyone matters, others are capable, that others can be helpful, and the world can be trustworthy. Normal social learning occurs in interaction with these communities of care depending upon their salience to different students (Glenn & Brock, 1998).

When properly activated and engaged, these communities teach individuals to be respectful, responsible, and resourceful, or they teach disrespect, self-interest, and dependency. The task for society is to ensure communities of care are mobilized to support the former set of life lessons. Schools can contribute to this using a variety of restorative practices ranging from formal to informal, including structured restorative milieus, circles of support and accountability, restorative conferences, family group decision-making, youth development circles, problem-solving groups, small impromptu conferences, one-to-one mediation, restorative questions, and affective statements. These each can contribute to primary prevention targeting the whole school population, for secondary prevention by targeting kids in crisis and students with high risk factors, or in a purely tertiary prevention as a response to delinquents, drop-outs, and throw-aways

All of these formal and informal restorative practices need to be the primary responses to resolving problems or concerns as they arise to remain responsive to the specific individuals and circumstances according to the regulatory pyramid proposed by Braithwaite (2002). The adoption of informal and preventative restorative practices would address many of the concerns facing European school systems, including the need for flexible classroom management approaches, the prevention of conflict and violence, support for disadvantaged groups, countering under-achievement, integration of ethnic minority groups, and preventing exclusion from school (European Commission, 2006). Restorative practices are the way to a cooperative and vibrant school culture for all children, whose inevitable outcome can only contribute to more peaceful and healthy societies.

- Barton, C. (2003). *Restorative justice: The empowerment model*. Sydney: Hawkins Press.
- Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.
- European Commission Education and Culture (2006). The Objectives of COMENIUS Socrates/Comenius - European Cooperation on School Education. <http://ec.europa.eu/education/programmes/socrates/comenius/moreabout_en.html>
- Glenn, H. S., & Brock, M. L. (1998). *Seven strategies for developing capable students: Responsible, respectful, and resourceful*. Roseville, CA: Prima Lifestyles.
- McCold, P. (2000). Toward a mid-range theory of restorative criminal justice: A reply to the Maximalist model. *Contemporary Justice Review*, 3(4), 357-414.
- McCold, P. (2002, November). Evaluation of a restorative milieu: CSF Buxmont School/Day Treatment programs 1999-2001 evaluation outcome technical report. Paper presented at the American Society of Criminology Annual Meeting, Chicago, Illinois <<http://www.iirp.org/Pages/erm.html>>
- McCold, P. (2004). The role of community in restorative justice practice and theory. In H. Zehr & B. Toews (Eds.), *Critical issues in restorative justice* (pp. 155-171). Monsey, NY: Criminal Justice Press.
- McCold, P., & Wachtel, T. (2002). Restorative justice theory validation. In E. Weitekamp and H-J. Kerner (Eds.), *Restorative justice: Theoretical foundations* (pp. 110-142). Devon, UK: Willan Publishing.
- McCold, P., & Wachtel, T. (2003, August). In pursuit of paradigm: A theory of restorative justice. Paper presented at the XIII World Congress of Criminology, Rio de Janeiro, Brazil. <<http://fp.enter.net/restorativepractices/paradigm.pdf>>
- United Nations Economic and Social Council, E/2002/INF/2/Add.2 <<http://www.pficyr.org/programs/un/ecosocresolution>>



Wachtel, T., & McCold, P. (2004, August). From restorative justice to restorative practices: Expanding the paradigm. Paper presented to the 5th International Conference on Conferencing, Circles and other Restorative Practices, Vancouver, British Columbia. <http://fp.enter.net/restorativepractices/bc04_wachtel.pdf>

Zehr, H. (1990). Changing lenses: A new focus for crime and justice. Scottsdale, PA: Herald Press.

Dr. Paul McCold is currently conducting research on a variety of restorative practices as the Director of Research for the International Institute for Restorative Practices, Bethlehem, PA. He received a Ph.D. in Criminal Justice from the University at Albany in 1993 and was a research scientist for New York State for 10 years. Paul is currently Chair of the Alliance of NGOs on Crime Prevention and Criminal Justice (NY) where he represents the Friends World Committee on Consultation of the Religious Society of Friends. He has been a member of the Alliance's Working Party on Restorative Justice since 1995.

Workshop report by Livia Hadházi

Defining Restorative Criminal Justice:

United Nations Economic Social Council

1. "Restorative Justice programme" means any programme that uses restorative processes and seeks to achieve restorative outcomes.
2. "Restorative process" means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.
3. "Restorative outcome" means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

Continuum of restorative practices:

Informal to formal:

- Affective statements
- Restorative question
- One to one mediation
- Small impromptu conferences
- Problem- solving groups or circles
- Youth development circles
- Family group decisionmaking
- Restorative conferences
- Circles of support and accountability
- Structured restorative milieu

Restorative Practices in School Setting

RESTORATIVE JUSTICE: A STUDY OF A DISPUTE RESOLUTION PROGRAM

by Sarah Smith (USA)

The following presentation reflects the results of a qualitative study of a Dispute Resolution Program, Prince William County's Restorative Justice Program, conducted by Sarah M. Smith through The George Washington University. The program is administered in conjunction with the 31st Judicial District Circuit Court and handles first-time juvenile offenders aged 9 to 17 charged with felonies or misdemeanours. Participants in the program are selected by judges, probation officers, or law enforcement officers as either a diversion from court or in addition to court adjudication: approximately 90% are diverted and 10% are selected by a judge. The purpose of the program is to repair the harm caused by crime through the participation of involved parties in an open, safe environment where the crime and its effects can be discussed. The program curriculum consists of an Orientation, Victim Impact Program sessions, and an Accountability Conference, if the victim agrees to participate. This study does not examine recidivism or satisfaction ratings but, rather, attempts to understand the process of restorative justice in the context of its supporting theory, linking theory to practice. The study examines *how* program staff encourage open and honest communication, empathic and sympathetic orientations in victims and offenders, and non-criminal, prosocial attitudes and behaviours by offenders, the purported benefits of restorative justice. In addition, empirical evidence generated by this study is used to analyze the utility of post-modern theoretical perspectives, principally ideas advanced by Foucault and Lyotard, to inform a model of restorative justice.

Sarah M. Smith, born in Arlington, Virginia, received a Bachelor of Arts degree in Sociology from the College of William and Mary in 2001. Ms. Smith received a Master of Arts degree in Sociology from The George Washington University in 2005 and plans to earn a PhD in 2009.

ODR AND RESTORATIVE JUSTICE (EMOTIONS IN THE AREAS OF NEGOTIATIONS MEDIATION AND CONFLICT RESOLUTION)

by Marta Poblet (Spain)

For years, emotions have been widely considered in the areas of negotiation, mediation and conflict resolution in general. In this sense, restorative justice has not been an exception. Standard methods of mediation have therefore dealt with the individuals' arousal and expression of a vast array of emotional states. More recently, cognitive and social psychology have developed an extended research focusing on psychological phenomena that are likely to impact both the content and the outcome of conflict resolution processes.

If we consider IT enhanced ADR (also known as ODR) as a communicative process involving a group of individuals engaged in a problem-solving task, we will need to admit that emotions are an essential component of the individuals' attitude towards the disputing process. However, ODR techniques have raised concern as whether they are able or not to deal with emotional states of participants. This presentation proposes a review of recent literature on emotions and ODR to identify which emotional components and patterns of behavior may be most relevant in this specific context. We will suggest as a preliminary conclusion that ODR techniques may prove helpful for specific contexts of restorative justice.

Marta Poblet is a researcher at the UAB Institute of Law and Technology. She is a doctor in law (Stanford University, 2002) and she is a graduate in both Political Sciences and Sociology and Law. Her fields of research are legal institutions and organizations, judicial systems, and alternative methods of conflict resolution.

Workshop report by Zuzana Slezakova

ODR, also called on-line dispute resolution or cyber mediation, is a way to settle a conflict by using any possible IT techniques – like emails, on-line programmes, chats, or audio and video conferences. The ODR techniques have raised concern whether they are able or not to deal with emotional states of participants. An in-depth review of literature on emotions and ODR was presented, and the issue was discussed.

The conclusion was that it seems that IT techniques cannot replace face-to-face RJ techniques; however, they may be a very helpful way for dealing with some cases (e.g. participants do not want to meet in person or it is not possible for other reasons).

RESTORATIVE PRACTICES IN SCHOOLS

by Betty Robinson

Restorative Approaches in Schools in Scotland is a new and very exciting development. Three areas in Scotland, including my area Fife, were part of the Scottish Executive's pilot to reduce exclusions and help restore discipline in High Schools.

The first part of my workshop looked at - Has Discipline gone from our Schools?

Numbers (%) of exclusions had risen

Verbal abuse, disobedience, offensive behaviour and temporary exclusions had all risen.

Temporary exclusions can be from one to five consecutive days.

Discussed the purpose of exclusions -

Is it to allow time for reflection?

Does it maintain safety and good order within school?

Does it offer a learning opportunity for those involved?

Does it offer respite for those affected?

Does it actively seek the views and opinions of all parties?

A readmittance meeting is held prior to a decision regarding allowing the child back into school. This meeting is usually conducted by the Rector or Deputy Rector and attended by school social worker, school nurse, guidance teacher, behavioural support teacher, integrated community school worker, school liaison police officer, child's head of year teacher, representative of other agencies involved with the child or family, parent/guardian and child.

The person or persons who have been affected by the behaviour are not invited to the meeting, and if the child is allowed to return to school, the person affected is unaware of why the child is in school.

The questions relating to the purpose of exclusion are not being answered. While it may offer some respite that is a very short term solution.

Does this work for teachers, pupils, parents, school or the wider community? It would appear not to as the person responsible is not asked to take responsibility for their actions, understand the harm caused or try to change their behaviour. Support for those involved is not offered in a positive way and no resolution to the situation has been achieved.

This does not fit in with the Social Discipline Window showing punitive, neglectful or permissive approaches do not achieve the restorative outcome of 'high on control and high on support'.

The punitive approach - whether to punish or not and how severe the punishment should be appears to be the only way to deal with these behaviours as an overall societal trend schools have become increasingly punitive. This is a no win situation for all involved as punitive measures alone do not change or moderate the behaviours.

This approach can also undo the bonds between educators and pupils. Punishment has not proven to be effective in stopping rude or challenging behaviour and is a passive experience demanding little or no participation for the person responsible.

The restorative approach offers an opportunity for people to take responsibility and be accountable for their own behaviour, gain an understanding of hurt caused and take steps to make amends, move on and make positive changes.

This is NOT an easy option, as many believe it is, as it is much more difficult to face up to what they have done and make amends.

The second part of the workshop is 'How to Achieve a Safe and Harmonious Learning Environment?

To allow this to happen the aims of a restorative approach should take into account:

Reducing disruption caused by inappropriate behaviour
Improving the classroom environment for everyone
Increase time for learning and teaching
Divert pupils from exclusion by challenging the behaviour that leads to exclusion

How will we know if this is successful:

Staff, pupil and parent satisfaction by reduction in referral rates, exclusions, repeat exclusions and an improvement in behaviour and ethos.

So, how do you restore discipline:



By using the skills applied in restorative approaches - communication, conflict management, supporting those responsible and those harmed.

Active listening, assertiveness not aggression, awareness of wrong doing, separating the person from the behaviour

Apply the values of restorative approaches - participation, respect, honesty, humility, interconnectedness, accountability, empowerment and hope.

R.P. requires people to speak openly and honestly about feelings, harmful behaviour disempowers those harmed. The healing process for those harmed and the hope for change for the person responsible. In the past teachers and staff have taken a very directive approach without taking full cognisance of everyones views, particularly the childs.

Follow the processes of a restorative approach - facts, consequences and future Support from senior management can help staff through the processes by allowing time and a safe place to explain and discuss why the behaviour is unacceptable.

If young people are permanently excluded what are the effects on school young people and society.

School - may gain a reputation for not being able to deal with situations and exclusions are being used to move the problem elsewhere.

Young person - no education can result in lack of appropriate social skills, future employment and hopes for a better family life.

Society - lack of skills, low standards of output, devaluing the role of education and weakening of societal structures.

Dealing with the day to day low level situations that occur in schools, using a restorative approach, will reduce exclusions and readmittance meetings. This will allow time for staff to teach and develop positive relationships with pupils and their colleagues.

This would also allow time for more complex and difficult situations to be resolved.

A safe and harmonious environment allows everyone within the school to have a happier and more positive outlook for the future.

Betty Robinson is Team Leader of a Restorative Justice Service in Fife Scotland working with 11-16 year olds, and has been involved in youth justice services since 1996. She has been involved in the development and training of restorative practices in schools in the Fife area of Scotland.

Workshop report by Mike Bell

Amongst the participants there was strong interest in restorative practices in schools. The discussions looked at the present system and its inability to cope with disruptive issues in school settings. During the discussion most of the questions were about the ways in which restorative practices could be embedded in the school culture so that restorative practices do not remain only as one of the applied tools but become an underlying approach of the school's atmosphere in general. It is highly important to recognise the successful pioneering work in applying restorative practices in schools, such as some Australian projects showed.

THE IMPLEMENTATION OF RESTORATIVE PRACTICES IN SCHOOLS

by Peta Blood (Australia)

The implementation of restorative practices in schools is much more than just another behaviour management tool, it provides an ideal platform for cultural change. Effective implementation of restorative practices requires realignment in thinking and behaviour within the school community. Repairing harm and taking responsibility for behaviour requires that we understand the environment to which relationships are being restored, and an understanding of the core business of that environment. Schools are a place for learning at a social and academic level. Restorative practices assists schools to develop a highly functioning social environment, which in turn sets the platform for academic success.

Practitioners working with schools need to understand the implications of working in a relational context, the layers of implementation and how this contributes to key educational outcomes. There are a number of factors that contribute to successful implementation. This workshop will explore the elements of effective practice in the implementation of restorative practices in an educational context.

Peta Blood is an Australian practitioner working with schools on the implementation of restorative practices. She is among the leading practitioners working internationally to enhance practice implementation. Peta is on the advisory board of Emotional Literacy Australia and is currently working with others to establish an international restorative practices association.

Workshop report by Mike Bell

Amongst the participants there was strong interest in restorative practices in schools. The discussions looked at the present system and its inability to cope with disruptive issues in school settings. During the discussion most of the questions were about the ways in which restorative practices could be embedded in the school culture so that restorative practices do not remain only as one of the applied tools but become an underlying approach of the school's atmosphere in general. It is highly important to recognise the successful pioneering work in applying restorative practices in schools, such as some Australian projects showed.

RESTORATIVE SCHOOLS: HOW TO MAKE THE IMPLICIT EXPLICIT

by Nicola Preston (UK) and Les Davey (UK)

This presentation will look at the use of restorative practices in the school community to build relationships, deal with conflict and repair harm. This approach engages the whole school community including all staff, students, parents and others associated with the school. Much of what happens in schools when it is done well could be considered to be restorative and most of us will be able to identify the restorative teachers within a school. However, much of what makes this approach restorative is implicit and therefore sometimes difficult to replicate and model. This presentation will look at how those implicit restorative practices can be made explicit and how this explicit framework can help to build a restorative school community. An explicit framework allows staff, students, parents and all those involved with the school to identify what is restorative, challenge behaviour when it is not restorative and engage in restorative practice on purpose more of the time.

Nicola Preston is Business and Accreditation Manager for the International Institute for Restorative Practices in the UK. She is involved in facilitating conferences and training practitioners in restorative practices in the fields of education, criminal justice and workplace conflict. Nicola has been involved in the UK with the development of Best Practice Guidance for Restorative Practitioners and is involved in the Development of an Association for Restorative Practitioners.

Les Davey is the UK Director, of the International Institute for Restorative Practices. Les has developed programmes that bring restorative practices to schools, communities, workplaces and the care sector. He has worked on "Good Practice Guidelines" and National Occupational Standards for Restorative Practices' in the UK and developed accreditation opportunities across further and higher education."

Workshop report by Vera van der Does

The title of the workshop was very promising, pointing out that the principles and mechanisms are already there, continuously present. The importance is however to make them more explicit, in order to use restorative practices more often and on purpose and have the possibility to reflect on one's practices.

During a very thorough presentation, touching upon the contrasting adversarial and restorative system and explaining the aim of RJ practices in school communities, the four key elements were discussed. In a very stimulating and interactive way, the importance of the social discipline window, a fair process, restorative (or relational) questions and free expression of emotions were discussed.

As a general conclusion, for RJ to be explicit, it must actively integrate the following aspects:

- working in the 'with' box, where there is a high level of both control and support
- fair process, which can only be achieved through engagement
- use of restorative (or relational) language and questions
- the Tomkins blueprint, the possibility to freely express all emotions.

If this is taken into account and made explicit, it makes reflection on practices and individual situations and cases more easy and a more natural behaviour and response. It is all about building relationships and repairing the harm, by moving from the past to the present and towards the future.

In this very open and stimulating setting, the participants in the workshop were invited to close the session by expressing 'what they had learned' and 'what they had realised' as a result of the workshop and discussion. They expressed that by learning how to make the 'implicit' 'explicit', they would take a valuable experience home.

SCHOOL MEDIATION IN CATALONIA

by Estel Solé (Spain) and Pere Led (Spain)

This workshop will give information on an innovative programme in the educational field, involving more the 3.000 teachers, 1700 pupils and 400 parents and mothers in 173 public Schools of Secondary Education.

This mediation system is quite different and exceptional from other school mediation systems because we work between students; there is not any adult present during the mediation process. Our mediation system called *Mediation Between Students*, was the first system trying to solve school problems without punishments in all schools in Catalonia.

The school, IES Lluís de Requesens started with Mediation in 1997 influenced by the mediation system developed in some schools in France. IES Lluís de Requesens was the pioneer school in Catalonia and, slowly, most of schools started to solve students' problems with mediation, but not with the same system as in Lluís de Requesens: the mediation in the rest of schools is not between students but always there is the presence of some adult (normally a teacher) during the Mediation process.

It is important to know that the presence of an adult is not necessary to solve any fight or any argument. Between the students in IES Lluís de Requesens the Mediation System is well known, so when any student has a problem he/she chooses two mediators and during the breakfast break they start mediation. Pere Led and Estel Solé will describe in detail the mediation process in this school.

Pere Led is at present responsible for the Program of Communal Life and School Mediation of the Department of Education of the Government of the Generalitat de Catalunya. He was Deputy Director General of Permanent Training of the non-university Teaching Staff for 7 years and Director General of Juvenile Justice from the Department of Justice for 5 years. He is graduate in Philosophy (University of Barcelona), Psychology (Universitat Complutense of Madrid) and Theology (Faculty of the Jesuits of Sant Cugat del Vallès).

Estel Solé is studying Humanities in the Universitat Oberta de Catalunya (UOC) and is working as a producer in 25TV; in her free time she is working as an actress.

Workshop report by Nerea Marteache

After the presentation of each school mediation-experiences some questions were asked to the speakers. The participants were curious about the details of mediators' training, so they asked if the students, teachers and parents were trained separately or all together. It was also asked how long the training lasted in each case. The funding of the training was one of the main topics in the discussion, as well as how the fact of having institutional support made the development of such a project much easier.

SCHOOL MEDIATION IN THE PROVINCE OF BARI

by Ilaria de Vanna (Italy)

Numerous scientific studies have shown the quality of learning is tightly correlated to the communicative and relational quality of the scholar-familiar context. Investigations conducted by regional Institutes, in cooperation with C.R.I.S.I. and other associations in the province of Bari, have underlined school is also one of the places in which different forms of violence develop and where divergent and antagonistic interests often provoke, in particular among boys, misunderstandings and tensions, resulting in different forms of uneasiness and conflict. Insofar the project aims to prevent violence inside the school borders.

The presentation is about a C.R.I.S.I project in a middle school in Bari.

Ilaria de Vanna is a psychologist and family therapist. She has been a mediator (Family, penal, social, civil sector) at C.R.I.S.I. centre and in the Office of Civil and Penal Mediation in Bari since 1997. She has been a mediation trainer since 1997.

Workshop report by Nerea Marteache

After the presentation of each school mediation-experiences some questions were asked to the speakers. The participants were curious about the details of mediators' training, so they asked if the students, teachers and parents were trained separately or all together. It was also asked how long the training lasted in each case. The funding of the training was one of the main topics in the discussion, as well as how the fact of having institutional support made the development of such a project much easier.

In the the workshop there were also questions referring to the daily work of the mediators and how the community sees their work. Through examples of their real experience they explained how they do their job and where do they find the biggest difficulties.



THE 4-WAY-INTERACTION OF MORALITY, NEUTRALISATION, SHAME AND BONDS

by **Borbala Fellegi (Hungary)**

While numerous studies have explored the procedural elements of restorative justice, the policy-related issues raised by this approach as well as its influences on communities both on micro and macro level, there has been little emphasis on the social-psychological mechanisms of restorative practices, i.e. on the issues of *why* this way of responding to crime might be more effective in reintegrating offenders and *how* it can achieve this goal more successfully than other sanctioning approaches.

This presentation intends to discuss whether the concepts of moral development, neutralisation, shame and social bonds and their possible interconnections can help us to understand the impact of restorative justice, and if so, how.

The main argument of the presentation is based on two presumptions: firstly, mapping the possible interrelations among offenders' moral development, their use of neutralisation techniques, their shame feelings and shaming mechanisms from their social environments, and finally their social bonds can be highly beneficial in developing effective responses to wrong-doing on both individual and systemic levels. Secondly, restorative justice with its personalised way of dealing with conflicts has the potential to beneficially influence offenders' as well as their community's attitudes towards the effective reintegration of rule-breakers.

In the first part, some *main theories* will be presented in the field of the four selected dimensions. In order to be able to model their interconnections, their effects on offending and the influence of restorative processes on them, each dimension will be operationalised by using some of the main theoretical concepts of each field. For illustration, extracts from interviews conducted with serious offenders in English prisons will also be shown.

This will be followed by *describing a model* that might shed a light on the ways in which these dimensions relate to each other and contribute to offending behaviour.

In the third part, a *restorative process* will be presented in more detail, with an emphasis on those procedural elements that can be beneficial in realising changes towards the successful reintegration of offenders within the above-mentioned dimensions. In short, the presentation will intend to demonstrate the ways in which the process of restorative justice might affect the aspects of morality, neutralisation, shame and social bonds in the reintegration process.

Finally, the main *policy implications* of this approach will be discussed with some remarks on how restorative practices could and should consider the four detailed dimensions while designing their concrete models. In other words, the importance of the thorough consideration of each dimension will be highlighted. The presumption behind it is that if we would like to improve our social responses given to criminality and focus on implementing such interventions that have the real potential to reduce the harm that has been resulted by the conflict, we cannot avoid taking into account the dimensions of morality, neutralisations, shame feelings and social bonds.

The presentation intends to draw the following conclusions:

Firstly, moral levels of offenders are different and their relative development might have more significant role in reintegration than expecting a universal and absolute moral level from them. Secondly, the use of neutralisation techniques primarily indicates some commitment to conventional values, even though responsibility-taking and the reduction of justifications are essential in further reintegration. Thirdly, shame and shaming processes might also have significant role in integration, but only if they are properly acknowledged and counter-balanced by reintegrative attitude from the shamers. And finally, the characteristics of offenders' social bonds might largely determine the outcome of any influences on morality, responsibility and shame. 'Excluding' bonds have to be recognised before taking any other reintegrative initiatives, and they have to be strengthened to become more 'integrative' prior to using other interventions. If it is not done, even well-functioning programmes might cause failures in reintegration, while if integrative bonds are assured, due to their catalyst role, any positive influences on morality, neutralisation and shame might be significantly more effective, and might also result the further strengthening of social ties, even if the integrative bonds are temporarily 'threatened' or damaged.



The common needs of these factors to help the reintegration process are the direct communication and acknowledgement of the interests and emotions, the personal and active involvement in the processes, and the opportunity to tailor the actual procedure to the specific needs of the affected participants. Restorative justice might fulfil these requirements, and can help the reintegration process by influencing offenders' moral development, neutralisation, shame and social bonds. However, thorough preparation of any intervention is essential in order to ensure the proper initial moral attitudes, some responsibility-taking from the offender and reintegrative intentions from the community. The investigation of the characteristics of offenders' existing social bonds might be useful to choose the most appropriate form for the future reconciliation (e.g. victim-offender mediation or conferencing, direct or indirect meeting, the question of who should be invited as participant, etc.). In the case of 'excluding' bonds, other initiatives have to be used as complementary services to restorative justice, in order to help the community to gain more 'integrative' ties. This point also shows that restorative justice in certain cases cannot solely account for the successful reintegration; it has to be embedded within a wider social context where this approach is supported by other institutions as well.

A basic condition and potential of the general appropriateness of restorative justice is its ability to be individually tailored to the specific needs of the cases. It means that due to its flexibility, this way of responding to crime might be very personalised, and effective, but if the individual factors of each case are not considered before using any specific model, the restorative 'machinery' might result not only in failures, but also in damages to the participants.

Not surprisingly, it all leads us to two basic questions: firstly, how could we ensure the appropriate consideration of the factors mentioned above in order to realise good practice? Secondly, have we ever been thinking about the ways in which our current mainstream (primarily retributive) criminal justice systems influence offenders' moral thinking, neutralisation techniques, shame-feelings and social bonds towards social reintegration?

The consideration of these issues might have significant implications on the future's criminal justice policies. Hopefully, they will be discussed in later studies so that we could gain a more thorough picture about the applicability of the restorative philosophy in striving for justice and reintegration.

Borbala Fellegi is a PhD researcher at the Eötvös Loránd University (Hungary), working on the implementation of restorative justice in Hungary. She obtained a Master degree in social policy (ELTE University) and in criminology (University of Cambridge). In 2004 – 2005 as a junior researcher of the European Forum for Restorative Justice she was working on an AGIS project focusing on the possibilities for implementing restorative justice in Central and Eastern Europe. Amongst other activities she is currently chairing the Research Committee of the European Forum.

Workshop report by Borbala Fellegi

Participants of the workshop, who are active in the practice of mediation and/or conferencing expressed that the presented theories about moral reasoning, neutralisation, shaming and social bonds do well reflect to their practical experiences. The importance of thorough preparation was emphasised in order to prevent that restorative intervention cause further harm for the parties involved. Representatives of closed institutions added that in case of internal conflicts shame-feelings that can be perceived in offenders can often be experienced also in victims' behaviour. The importance of acknowledging shame was highlighted, also from the victims' side.

There was further discussion about the difference between the traditional criminal justice intervention and the restorative justice approach concerning the four dimensions detailed in the presentation.

Namely, retributive justice tends to

1. prevent further harm by considering offenders being at the pre-conditional moral stage and not on higher moral stages where they could recognise the



underlying principles behind the rules (the concept of deterrence that is highly significant in the retributive approach is based on the fear from punishment);

2. strengthen the use of neutralisation techniques in offenders, since excuses can often be used as mitigating factors in the judicial process;
3. apply measures (conviction and punishment) that can often have a strong stigmatising/labelling effect on the offender, resulting in rather stigmatising than reintegrative shaming; and finally
4. make it highly difficult to maintain and strengthen social bonds due to the exclusion of offenders from the society and the disallowment of keeping regular contacts with the significant others (especially when offenders are in prisons).

THE PSYCHOLOGY OF VICTIMS IN RESTORATIVE JUSTICE

by Antony Pemberton

The two most prominent developments in criminal justice in the last twenty to thirty years are the rise of restorative justice and the recognition and improvement of the position of the victim. Because of this coincidence and evidence that participating in restorative justice procedures may be beneficial for victims, restorative justice advocates mostly assume that restorative justice procedures to be a victim-oriented improvement on criminal justice. However the intellectual foundations of restorative justice are in fact quite ambivalent about the position of the victim, being mostly focused on the offender and the community and there is a lack of theory and evaluative research concerning victims within restorative justice.

The aim of this paper is to develop a theoretical model for victims within restorative justice which incorporates perspectives from social and personality psychology that are predominantly used outside of the criminal justice context. Keywords are anxiety, post-traumatic stress disorder and attributions of blame on the one hand and anger, rumination and forgiveness on the other.

Adapting these perspectives to the context of restorative justice will provide insight into benefits and risks for victims participating in restorative justice procedures as well as enhancing the possibilities of combining restorative justice procedures with other measures designed to help victims cope in the aftermath of crime.

Antony Pemberton MA is senior staff member for Dutch Victim Support. He is program manager for Victim Support's restorative justice activities, editor of the Dutch Flemish Journal for restorative justice and is completing a PhD-project on victims within restorative justice at the International Victimology Institute at Tilburg University.

Workshop report by Borbala Fellegi

During the discussion it was emphasised by one of the practitioners providing mediation in serious offences that victims need to have a complex picture about the possible risks of the mediation. However, if they still choose to participate in mediation regardless of the potential dangers, they should have access to this service and their decision should be respected above all.

The concept of sincerity of offenders, more precisely the *perception* of victims about offenders' sincerity needs to be further elaborated. In order to provide complex pictures for victims about offenders' attitudes, practitioners need to know more about the general psychological process of remorse, and the background factors of the given offenders, especially concerning their psychological, sociological and cultural circumstances.

Participants also expressed that more research would be needed concerning the concept of forgiveness as well as about the specific needs that victims have while participating in a mediation. In other words, more knowledge is necessary concerning what victims want to gain from mediation.



Plenary session: *Establishing the basis*

Chair: Debra Clothier (UK)

Niall Kearney (Scotland) and Frauke Petzold (Germany): *THE PROS AND CONS OF HAVING EUROPEAN STANDARDS FOR PRACTICE AND TRAINING.*

There has been phenomenal growth and development throughout the world in practices and processes which draw on restorative justice principles. Service provision has expanded beyond the criminal justice sector to the extent that restorative justice principles are applied to work in schools, disputes in the workplace, inter communal peace making, etc. This range of application is proof of the vitality and dynamism inherent in the concept of restorative justice.

This welcome expansion, however, raises questions about regulation and consolidation. Issues arise concerning standards: how can we preserve fundamental values about restorative justice in a time of rapid change; how can we promote safe practice and maintain the confidence and credibility of other professionals in our application of restorative justice principles; how can we build a foundation for future development in this valuable area of work?

Some countries have taken significant steps to address these questions by, for example, establishing guidelines for restorative justice trainers and national occupational standards for practitioners. With the support of AGIS funding, the European Forum hosted two seminars in Leuven in 2004 which resulted in the composition of 8 recommendations on training. These recommendations are based on a range of approaches to training across Europe. Key questions arise: are these recommendations sufficient? What more can the European Forum do to promote sound restorative justice training and practice? Given the variety of complexity of training across Europe, is it possible or necessary to develop more specific standards at Forum level? What are the implications of not moving forward in this important area?

Frauke and Niall will address these key questions above and debate the advantages and disadvantages of developing standards for restorative justice training and practice. The purpose of the debate is stimulate discussion about the issues involved in developing standards and to give direction to the Forum with regard to the support and guidance it needs to provide to its members.

Niall Kearney works for SACRO (Safeguarding Communities Reducing Offending), a Scottish NGO, in the role of service leader in a diversion from prosecution service and also as RJ development officer. Among other things, Niall is a trained mediator and qualified mediation assessor to Scottish Vocational Qualification standards.

Frauke Petzold is a mediator in a non profit organisation for victim offender mediation for adult offenders and their victims. Waage Hannover e.V. is working in cases of personal injury, community conflicts and in the last few years we are working more and more with cases of domestic violence. This work includes conflict consulting, mediation and shuttle diplomacy. She is also a trainer, conflict consultant and supervisor in different social and economical areas. Together with her colleague Dr. Lutz Netzig, she founded the Waage-Institut GbR – Institut for Conflict consulting, mediation, training and research. They are doing training in conflict consulting and mediation for different areas like: Ministry of Justice, Lower Saxony; Schools Mediation for teachers and pupils; health organisations; companies; adult high schools and privat organisations. They are also providing trainings for volunteer mediators in victim offender mediation.



Workshop session 4: Training of mediators and legal professionals and standards of good practice

RESTORATIVE JUSTICE AND TRADITIONAL LEGAL CULTURE IN THE CONTEXT OF CONTEMPORARY CHINESE CRIMINAL JUSTICE REFORM

by **Jianhong Liu (USA)**

It has been estimated that there are about 1000 restorative justice programs in the world, and at least eighty countries have adopted some form of restorative justice program in response to crime problems. As an important initiative for criminal justice reform, restorative justice has predominantly taken place in countries with Western legal systems, particularly those with common law and civil law traditions as a response to the limitations of the conventional Western criminal justice system. The motivation or impetus for restorative justice may be different in Eastern countries. To fully understand the complexity and prospects of the development of restorative justice in different contexts, examination of the influence of tradition and contemporary political and socio-legal forces is necessary. What distinctive principles of their philosophical and legal cultural traditions impact the development of restorative justice in different countries? How do different contemporary political and legal contexts interact with the growth and practice of restorative justice? Are there different patterns or pathways of development for restorative justice in different legal and political contexts? These are some of the theoretical questions to be answered.

John Braithwaite once wrote “Confucius is the most important philosopher of restorative justice.”¹ Scholars generally believe that there must be a strong consistency between the principles of modern restorative justice and ancient Confucian Philosophical ideas. However, few studies have analyzed Confucius’s work and identified the specific ideas which encourage restorative justice values and practices. John Braithwaite also pointed out that it is “a pity that so few Western intellectuals are engaged with the possibilities for recovering, understanding and preserving the virtues of Chinese restorative justice while studying how to check its abuses with a liberalizing rule of law.”² It is unfortunate that the Western restorative justice movement has not yet borrowed much theoretical insights from studying the valuable heritage of Confucius’s ideas, which is truly a profound source of wisdom for modern Western restorative justice reformers.

The first part of my presentation examines Confucian philosophy and legal cultural values that are compatible with the philosophy and principles of restorative justice. The presentation first explains the core concept of Confucian thought: *Ren* and *Li*. Confucius explained, “*Ren* means loving others”³. The concept reflects the fundamental idea of humanity and secularity in Confucianism. *Li* is a moral code. *Li* embodies Confucius’s ideas of social order and social relations in a harmonious and just society. Confucius stressed that *li* is taught to people through moral education. *Ren* and *Li* are the foundation other principles of Confucian thought are built on. I examine three Confucian principles that exhibit strong restorative characters.

One. *Li* and *Fa*: The Principles of Administration of Law. Confucius said: “Regulated by *fa* or law, the people will know only how to avoid punishment, but will have no sense of shame. Guided by virtues and *li*, the moral code, they will not only have a sense of shame but also learn to correct their wrong doings of their own accord”⁴ From Confucius’s point of view, *fa*, or formal law, focuses on punishment, while *li*, or moral code, emphasizes prevention. In administrating the law, the principle is that the punishment should supplement moral education. Moral teachings are given priority and higher status compared to law and punishment. Punishment is only a tool, while moral teachings and internalization of ethics are the fundamental purpose of justice. The use of punishment must be to enhance the

¹ Braithwaite, John. 2002. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

² Braithwaite, John. 2002. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

³ The Analects of Confucius, passage translated by me.

⁴ Analects of Confucius, book two, article three.

effectiveness of justice and to realize the goal of moral teachings. The essential purpose of Confucian moral philosophy is to maintain and to restore social order and human relationships in a long-lasting and effective way.

Two. Harmony and *wu song* (no law suit) as the Highest Ideal and Mediation as the Main Method. Confucius said: "The way I try a lawsuit is not different from others. But it would be better still if there were no lawsuits."⁵ In contrast to the Western tradition, the upholding of the law was not the objective of the legal process. The ultimate objective of law was to achieve harmony and restore peace.

Three. The Concept of Justice: *tian li ren qing* (fair and respect for human feelings). Fairness was based on finding the truth. The methods or procedures used to find the truth do not matter. The rights of the suspect were rarely a concern, as long as the truth was found. The idea of due process was unknown in Traditional China. The concept of rights was moral rather than legal, and was of paramount importance. The moral concept of rights safeguards the moral "gentleman" against infringement by inferior and immoral people taking advantage of litigation. Morality was of paramount concern. Although many of Confucius's ideas are subjected to criticism, they contain many valuable insights for restorative justice.

The second part of my presentation explains how four major Chinese contemporary Criminal justice programs exhibit characteristics of restorative justice. One, Mediation Program. In contemporary China, the most popular forms of mediation include mediation by a People's mediation committee, by the town's legal service, by law firms, and in rural areas by respected family clan leaders, by relatives and friends, or by neighbors. Among these forms, the most important is mediation by a People's mediation committee. This is a mediation organization legitimized by the government and by law.

Two, Criminal legislation with Restorative character. Although the mainstream features of the Chinese criminal justice system are now based on state primacy in the punishment of criminal offenses; since the legal reform, there have been a number of laws reflecting restorative features that retain the influence of the Chinese legal tradition. I provided several examples in the presentation.

Three, Restorative justice in Juvenile justice and law. Consistent with restorative justice, the Chinese juvenile justice system emphasizes the principle that "education is the priority, punishment is only a supplement" (*De Zhu Xin Fu*). It stresses the use of "reintegrative shaming" and "thought education" to help the offender feel shame for their behavior and to be willing to accept their mistake and make a change.

Four, Community based correction. Community based correction is a new initiative since 2003 in criminal justice reform. Community correction emphasizes the participation of the community in the process in order to educate offenders' thinking, to provide legal and moral education, to correct their unhealthy psychology and behavior, to help them to recognize their mistakes and repent for them, and to be willing to give up past patterns of antisocial behavior and reintegrate themselves into the community. These methods may not strictly copy the popular methods established in Western restorative justice programs, but they are very consistent with them, particularly with their emphasis on community participation, persuading offenders to regret their mistakes, and re-integration. The emphasis on community participation in the correction process reflects similar values of restorative justice.

Jianhong Liu is a Professor at Rhode Island College. He is a Senior Fellow at the Institute for Crime Control and Prevention, Nanjing University, a Specially Invited Professor at Southwest University of Political Science and Law, and an Associate Fellow at the Center for Criminology, Hong Kong University. Professor Jianhong Liu earned his Ph.D. from State University of New York at Albany, USA. He has published numerous articles including in Justice Quarterly, Criminology, and British Journal of Criminology. He is the Senior Advisory Editor of Asian Journal of Criminology and Associate Editor of International Journal of Offender Therapy and Comparative Criminology. He is a co-principle investigator (PI: Steve Messner) of a large multi-level victimization survey study in China. As an internationally known specialist on Chinese crime and Criminal justice, Professor Liu has been interviewed by Newsweek and Voice of America

⁵ Analects of Confucius book Twelve, article thirteen.

Workshop report by Mari-Cruz

The presentation emphasised the differences between the formal law and the traditional Chinese culture. In the Confucian theory and ethics the principle of moral cause has a priority over the legal cause, as people could learn to avoid punishment but not shame. In general, traditional Chinese people prefer mediation conducted by neighbourhood committee members than going to court. This committee is elected amongst the neighbours and appointed by the government. There were some questions about whether this committee acted as a mediator or as an arbitrator. As the presenter answered, this committee was more close to arbitration than mediation.

RESTORATIVE JUSTICE PROGRAMS IN THAILAND

by Wanchai Roujanavong (Thailand)

The Thai criminal justice system has implemented restorative justice programs since 2003. Presently, about 9,700 conferences were conducted for juvenile cases and 75% of them resulted in non-prosecution order. For adult cases, about 1,500 direct mediation meetings were conducted and 86% of them resulted in agreements made.

The presentation will introduce the restorative justice programs implemented in Thailand and discuss about the future plan as well as some critical issues relating to Thai legislation and policy. The outline of the presentation is as follows:

- Background of the implementation of restorative justice in Thailand
- Family and community group conferencing
- Victim-Offender Mediation
- Restorative justice programs for juvenile
- Implementation
- Policy and legal issues
- Restorative justice programs for adult
- Implementation
- Policy and legal issues
- Case study discussion
- Future Plan

Wanchai Roujanavong is director general of the Department of Probation in the Ministry of Justice in Thailand. He has been at Cornell University, has a certificate in Crime Prevention and Treatment of Offenders from UNAFEI, Japan, and one in International Cooperation on Criminal Matters from Oxford. He has been in several high administrative offices, e.g.; Director general of the Department of Juvenile Observation and Protection in the Ministry of Justice, director of the Criminal Law Institute. Provincial Public Prosecutor in several provinces of Thailand. He has been involved or has headed several projects and commissions, e.g. as president of the 'Fight Against Child Exploitation Foundation, of 'End Child Prostitution, Pornography and Trafficking Foundation, he has been an UNODOC Expert, concerning laws relating to narcotics, organized crime, trafficking of women and children,; of extradition, and of international cooperation in criminal matters. He has also done research on organized crime and has written a book; 'Organised Crime in Thailand'

Workshop report by Mari-Cruz

In Thailand family committees represent traditional values. Thanks to them disputants do not go to court in case of offences. Disputes are moderated by a group of old people who resolve the conflict in a "natural" way. Parties need to go the legal authorities in case of crime or extreme violence. During the discussion it was noted that it is common for both countries, China and Thailand, to consider a bad practice to accuse somebody using official channels. Harmony is very important even in conflict situations.

LEGISLATING MEDIATION PROCEDURE IN FINLAND

by Outi Mustajoki (Finland)

New legislation on mediation procedure has recently been adopted in Finland. Act on Mediation in Criminal and Certain Civil Cases has come into force on 1st January 2006 (further on referred to as the Act). The Act contains provisions on the administrative organization of mediation services, government compensation for operation expenses and the procedure for carrying out mediation.

The primary scope of application of the Act is victim offender mediation. The civil cases that may be handled on the basis of the Act are restricted to minor cases only. There is a separate act which regulates judicial mediation, i.e. a procedure in which a general court judge may act as a mediator in a civil case or a petition. Claims for damages based on a crime may, however, always be dealt with in the same mediation procedure as the crime itself, regardless of, for example, the amount of the damages. This presentation is focused solely on victim offender mediation and application of the law to criminal cases.

Mediation in criminal cases has already been quite well established in Finland, even before the enactment of the new law. Mediation has not, however, been available for every citizen. Up till now, mediation services have been offered voluntarily by certain municipalities. According to the Act, mediation services have to be arranged nationwide as of 1st June 2006. The State Provincial Offices (five in total) are responsible for arranging the services in their respective areas. Expenses incurred in the provision of mediation services are compensated from government funds. For the parties of a criminal case mediation services are provided free of charge.

The operating units which provide the mediation services are called mediation offices. These offices may be operated by municipalities or some other public or private service providers according to separate agreements or other arrangements with the State Provincial Office. In every mediation office there is a co-ordinator, a person who is in charge of the operations. There may also be mediation advisors, whose duty is to supervise and monitor the work of mediators, and other necessary permanent staff. The actual mediation is generally carried out by voluntary lay mediators, who have received appropriate training for the task. Voluntary mediators are not paid for their work but they are compensated for their expenses.

The general conditions for mediation in criminal cases include personal and voluntary consent of all parties and their capability of understanding the meaning of mediation and the solutions arrived at in the process. The consent may be withdrawn at any time, in which case the mediation has to be stopped. As to the crimes which may be dealt with in mediation, the Act, in a very general level, refers only to eligibility of the crime for mediation, taking into account the nature and method of the offence, the relationship between the suspect and the victim and other issues related to the crime as a whole. The Act does not, for example, contain any specific limitations relating to the seriousness of the crime as such. Only referring certain types of crimes involving underage victims to mediation has been expressly restricted. In practice, however, mediation has rarely, or perhaps never, been used in cases of serious crimes, for example manslaughter or rape. I doubt that these practices will change even after the enactment of the new law. Nor does it seem to be the intention or the goal of the legislators, according to the travaux préparatoires.

The Act does not contain any predetermined limitations to the age of the parties. There are, however, special provisions concerning for example legal presentation of minors as well as other legally incompetent persons.

According to the Act, mediation is possible at any stage of the criminal procedure and even after trial. In practice, mediation has rarely been used after pressing charges. Most cases have, so far, been referred to mediation by the police during the pretrial investigation or by the prosecutor during the consideration of charges. This will most likely be the case also in the future.

Besides the police and the prosecutor, also other authorities as well as the parties themselves may refer cases to mediation. If the crime involves violence directed at near relation, the proposal for mediation must come from the police or the prosecutor. If the police or the

prosecutor assesses that any case, which they are dealing with, is eligible for mediation, and if the general conditions are filled, they are, according to the Act, obliged to inform the parties of the possibility of mediation and also refer the case to mediation.

It is always the person in charge of the mediation services in the mediation office who decides whether to accept the case for mediation or not. It seems unlikely that a mediation office would normally refuse to accept a case for mediation, if the proposal comes from the authorities. In some situations this is possible, however. The mediation office might, for example, after meeting with the parties, detect that the consent of one of the parties is not voluntary.

The parties must participate in the mediation meetings in person. The mediation is carried out without audience. A custodian or other legal representative, as well as an assistant or a support person, may, however, normally be present at the mediation meeting. The discussions during the mediation meetings are, as a rule, confidential. In the later phase of handling the case, a party may not, without the consent of the other party, refer to what the latter has presented during mediation in order to reach agreement. The Act also forbids the mediator to testify about the contents of the discussions in the mediation proceedings, unless weighty reasons require otherwise.

After a successful mediation, the mediator draws up a document on the agreement of the parties. This document may be used freely in the later stages of dealing with the case. The agreement reached by the parties, and sometimes just participating, or mere willingness to participate, in the mediation process, may have various effects to the criminal procedure. In cases of lesser crimes mediation may result in discontinuance of the criminal proceedings. Mediation may also lead to non-prosecution, waiving of sentence or to a more lenient punishment.

Although the new legislation will undoubtedly increase awareness of the possibility of mediation, the challenge of making the practices uniform still remains. Uniform practices are, at least in my opinion, the only way to guarantee real equality to the citizens who are parties in a criminal case. As mentioned earlier, the police and the prosecutor are obliged to refer a case to mediation, if they assess it eligible for it. However, the broad definition of eligibility, provided by the law, allows the authorities to use so much discretion, that similar cases may very well be treated quite differently depending on, for example, the opinions and values of an individual policeman or a prosecutor. Some guidance can be obtained from the Government Proposal for the Act and the related Legal Affairs Committee report. Another question is how thoroughly will the individual officials go through them, if at all.

Steps have already been taken to increase and to ensure the uniformity of practices in mediation procedure. In the autumn of 2005, the Prosecutor General appointed a working group consisting of representatives of various authorities to handle issues relating to mediation from the point of view of the prosecution service. In the final report of the working group, which was given in January 2006, different aspects of mediation procedure have been discussed in a practical level and several views on recommended practices have been expressed. The report has been sent to all prosecution units. However, no binding directions or guidelines have been given to the prosecutors. Quite recently, in June this year, the Ministry of Internal Affairs has given the police general guidelines regarding mediation with an attached memorandum drafted together with the Office of the Prosecutor General. These general guidelines are binding, but quite brief in scope. The memorandum is more specific, but only of informative nature.

So far, no specific guidance has been given to the mediation offices or the State Provincial Offices. The general management, supervision and monitoring of mediation services fall within the jurisdiction of the Ministry of Social Affairs and Health. Under its auspices acts the Advisory Board on Mediation in Criminal Cases. Some measures to ensure uniformity of practices will most likely be discussed and taken by the Board in the near future.

The need for education and co-operation between different authorities regarding mediation procedure, as well as monitoring the implementation of the Act, have been widely emphasized. A lot has already been done in this respect, but every authority, who is involved in mediation procedure, has to make sure that this work will be continued.

Outi Mustajoki is a 37-year old Finnish lawyer, working currently as a legal adviser in the Office of the Prosecutor General in Helsinki. His professional experience includes, among other things, working as a district prosecutor. He has been a deputy member of the Finnish Advisory Board on Mediation in Criminal Cases and a member and secretary of a working group considering mediation procedure appointed by the Prosecutor General.

Workshop report by Vera van der Does

During this presentation, Outi Mustajoki, gave a very thorough overview on the developments in the field of legislation on the mediation procedure in Finland.

Mediation is conducted by lay persons, that passed a selection and were given a training on mediation skills.

All elements of the legislation were touched upon: the general conditions to be met, who can refer a case, and the effects of mediation in the criminal procedure. In the Act, eligibility for mediation is very broadly defined. This means that there are hardly any limitations in theory. There are no age limitations or limitations regarding the offence (with the exception of cases involving an underage victim) or the stage of the criminal proceedings. In practice however, it is to be seen whether the law will be used also for more serious offences and after charges have been pressed.

In conclusion, some challenges were presented regarding mediation in Finland, stressing the importance of uniformity of practices throughout the country and the importance of making mediation truly restorative.

After the presentation many questions arose and comments were made. Many possible flaws were discussed (the issue of mediation agreements and procedures forming evidence in a criminal procedure and the issue of confession). In general, comparisons were made between practices and situations in the countries of the participants. A remarkable difference that was brought to the attention was the situation in which, in Finland, the experience is that victims mainly involve in mediation for financial matters. This experience was not shared by the participants working in the field in other countries. They, on the other hand experienced that financial aspects were not the main concern for victims.

IMPLEMENTING RESTORATIVE JUSTICE IN THE NETHERLANDS

by John Blad (Netherlands) and Antony Pemberton (Netherlands)

In comparison with other neighboring countries like Belgium, Germany, the United Kingdom the development of restorative justice practices in the Netherlands lags behind. All though mediation in the field of civil law is widely practiced and experiments with mediation in criminal cases have been undertaken since the 1980's the Netherlands still lacks a nationwide program for restorative justice.

To facilitate the development of restorative justice in the Netherlands a group of academics, mediators and representatives of various organizations in the criminal justice system have founded the Platform for Mediation in Criminal Justice. One of the primary goals of the platform is to develop a set of standards and principals that can serve as guide for the implementation of restorative justice in the Netherlands and also lays the foundation for possible further legislation in this area. The Platform's draft 'Central document' is the result of the deliberations and debate in the platform.

The Central document is the proposed topic of the workshop. Representatives will present the key issues and participants will be asked to reflect on and discuss the choices the platform made on these topics. In particular attention will focus on the relationship with the criminal justice system, the standards for mediators and the position of victims. The input received from the participants will be used for the further development of the document which will be published at the end of 2006.

Antony Pemberton MA is senior staff member for Dutch Victim Support. He is program manager for Victim Support's restorative justice activities, editor of the Dutch-Flemish Journal for restorative justice and is completing a PhD-project on victims within restorative justice at the International Victimology Institute at Tilburg University.

Dr. John R. Blad (1950) is Associate Professor in Criminal and Criminal Procedural Law at the Law School of Erasmus University Rotterdam. He is editor of the Dutch-Flemish Journal of Restorative Justice (Tijdschrift voor Herstelrecht) and his main academic interests are in penal theory and criminal justice philosophy. His dissertation of 1996 was a critique of criminal justice abolitionism ('Abolitionisme als Strafrechtstheorie, Gouda Quint, Deventer). In criticizing abolitionism he discovered the possibilities of restorative justice. Other topics on which he contributed substantially were decriminalisation of euthanasia and physician (and citizen) assisted suicide in the Netherlands and community dispute resolution. His most recent Dutch publications have been on the possibilities of 'restorative social policy' and on restorative detention.

Workshop report by Vera van der Does

The key question of the presentation was which the best ways were to implement restorative practices in a legislative manner, incorporated in the criminal procedure.

As an introduction, developments during the last decades were sketched, that have resulted in a very punitive way of thinking the currently dominating Dutch society. This punitive atmosphere partly explained why there was hardly any interest from the politicians and legislators and why they considered mediation as a 'soft' option. It was considered not suited to fit within the criminal procedure. It was only a service for victims outside of the criminal justice system.

However, things needed to change due to the European Framework Decision of 2001 which holds an article obliging Member States to promote the use of penal mediation and arrange the possibility for agreements reached in this process to be taken into account. For the moment, the suggested Bill only mentions that the possibility to use penal mediation can be introduced via an administrative regulation (however, there is no sign the legislator will be introducing such administrative regulation in the near future).

With this in mind, John Blad presented his opinion and designed his preferred way to capture mediation in legislation as an option incorporated in the criminal system (referring to three

international documents of great importance containing declarations of principles that have to be taken into account).

John Blad made a distinction between mediation in criminal matters *without* intended legal consequences and mediation *with* intended consequences. He stated the need for the state to take responsibility for both. Regarding the first, there is a need for the state to provide financial support to make the mediation service freely available. For the latter, there is a need for the legislator to step in. The legislator must provide clarity on the consequences of mediation. This to provide insight in two crucial issues: the presumption of innocence and the predictability (legal certainty) of legal consequences. Because mediation implicitly asks the defendant to give up his procedural rights, the defendant needs to have clarity regarding the consequences.

After answering all the questions, John Blad closed the session by calling upon all participants to send their best practices as regards legislation.

LEARNING TO BE RESTORATIVE

by Tim Chapman (Northern Ireland)

Introduction

The development of restorative justice in Northern Ireland is set in the context of a history of violent civil conflict and the contested nature of the relationship between the state and local communities. The peace process has included a fundamental review of criminal justice. One of its conclusions was to develop restorative justice for young people who commit criminal offences.

In Northern Ireland there is a thriving community restorative justice sector. However, its relationship with the state sector is problematic due political issues over policing. The Police Service for Northern Ireland use restorative processes for the cautioning of young people.

More recently the Youth Conference Service, part of the Youth Justice Agency, has been established to provide youth conferences for young people who have persisted in their offending. Youth conferences include the young person responsible for the harm, his or her family and supporters, the person who has been harmed, his or her supporters, a police officer and a youth conference co-ordinator. Only the most serious criminal offences (e.g. murder) are excluded from conferences. As long as the young person consents, a conference is held in almost every case in Northern Ireland.

Staff Development – objectives and achievements

The University of Ulster was contracted to provide the staff development programme for the Youth Conference service. In preparing this programme the University team conducted a major review of the literature. Key conclusions included that conferences were most effective if the victim actively participates, if the young person expresses genuine remorse and if a strong action plan is agreed and fully completed. The team concluded that these success factors are likely to a product of highly skilful practice. The staff recruited were highly experienced in working with young people and all had professional qualifications.

After two years of operation, the independent evaluation found that

- Victim participation was 69%
- 92% were observed to express remorse
- 71% of young people and 79% of people harmed were satisfied or very satisfied with the plan
- 91% of young people and 81% of people harmed preferred the conference to court proceedings
- 94% of the agreed plans were successfully completed.

Staff development – process

The University produced a practice manual which included the legal regulations, the philosophy of the 'Balanced Model' of restorative justice, the knowledge and skill base for restorative justice and practice guidelines for each step on the youth conference process. A 10 day foundation skills course was designed, recorded in a training manual and delivered. Foundation training was followed up with quarterly practice development days and supported by one to one coaching support. The Youth Conference Service recognised as they encountered increasingly challenging cases that a more advanced programme was required to maintain excellent standards. This has evolved into a Diploma and Masters programme in Restorative Practices.

Staff development – some issues and approaches

Experienced staff bring with them a great deal of confidence and a good grounding in interpersonal skills. They also carry knowledge and practice skills which not compatible with restorative processes. This meant that the training had to offer opportunities for participants to feel 'consciously incompetent'. This called for participation in five days of challenging role play. To 'be' restorative is to adjust one's sense of purpose, one's identity as a professional

and one's belief system, not just intellectually, but in how you act in relation to others. This can only be learnt experientially.

The University did not adopt the 'script' approach preferring to enable practitioners to be creative and have 'conversations with the materials of the situation' (Schon). We wanted them to see uncertainty as source of learning. The most difficult thing to let go of proved to be the professional need to control and 'know best' what the solution was.

The training used a coaching model. Perceiving the restorative justice process as inclusion, participation and transformation, coaching enables all parties to understand what possibilities are presented by a conference, to choose to participate, to develop the capability required to participate effectively, to 'do themselves justice' at the conference, and to make and keep to agreements.

Other areas of skill developed in this model included facilitating storytelling, the expression of powerful emotions and the use of dialogue.

The Masters programme

This will be delivered by the University of Ulster. It consists of six modules: Foundation skills, Reflective practice, Restorative responses to harm, loss and grief, Restorative responses to people who harm, History, theory and research of restorative practices, Developing skills, and a dissertation. The programme will be practice focused and flexible in its application (justice, education, family, community) and its delivery. It will be delivered at the University campus in Belfast. But it can be delivered outside Northern Ireland if sufficient people from one area enrol.

Tim Chapman has 25 years of experience of work with the Probation Service. He is now an independent consultant specialising in restorative justice. He worked with the University of Ulster to develop the practice manual and training programme for the Youth Conference Service in Northern Ireland. He has published widely.

Workshop report by Anne Salberg

In this workshop, no café conference was held but the time has been dedicated to a large presentation followed by questions from the audience.

The presenter exposed the 10 days foundation training he has conceived for Youth Conference Process.

Some questions challenged the chosen model, like:

- Is a 10 days long process of learning enough to integrate the "paradigm shift"?

Tim Chapman thinks it is not, this is why a subsequent programme has also been offered.

- Should the language be more balanced to describe the participants: "young person" (neutral for the offender) and victim (defines a role)?

The audience proposed to use "the person harmed" and "the person who has harmed" as a more neutral language. It was accepted by the presenter.

NIGHTMARE ON RESTORATION STREET

by Vince Mercer (UK)

As practitioners we rightly pay regard to best practice. However we can equally learn from our experience of RJ 'nightmares'. We have all had moments when things have not gone to plan and sometimes seem to take a pathway escalating towards potential disaster!

As reflective practitioners we need to feel comfortable in taking the learning out of such situations, be honest enough to admit our errors and mistakes and resolve not to do the same again. Equally we may have been in situations which may have been beyond our control and events occur which we could not have possibly anticipated. Such is the unpredictable joy of restorative practice!

This workshop will begin with some anecdotal sharing of RJ nightmares to set the scene but will encourage participants to share their own experience and learning from it.

So if you have a good story to tell....then come along and bring your sense of humour and the absurd....

Vince Mercer has a long experience of working with serious and persistent young offenders in the UK. Since 1999 his main interest has been the establishment and development of restorative approaches to the work. In 2000 he established the Greater Manchester Youth Justice Trust Family Group Meetings Project. He is an experienced RJ Practitioner and Project Manager, with widespread experience of delivering training in the field of RJ in the UK and in the Russian Federation.

Workshop report by Nerea Marteache

The aim of this workshop was to create a space where the participants could share their experiences (their nightmares) in a context where nobody would judge them, just listen to them. After a short presentation about the use of bad experiences that can be useful for learning, both the speaker and the participants shared some examples of mediation processes where something went wrong and analysing what the mistakes (if any) might have been and how the situation could have gone differently. An interesting conclusion was to see that when a situation goes wrong there is not always something that the mediator could have done to "solve" the problem (although they keep thinking what they could have done better): people sometimes do unexpected things and that can also happen in a mediation context.

VOM-TRAINING IN NORWAY

by Merete Granrud (Norway) and Grete Stabekk (Norway)

The Norwegians Mediation Service is regulated by an act called The National Mediation Service Act from 1991. The regulations relating to mediation by the National Mediation Service describes the task and purpose of the National Mediation Service Office. Section 1 states that:

The task of the Service is to mediate in conflicts arising because one or more persons have inflicted damage or loss or otherwise offended another person Mediation by the National Mediation Service Office is intended as an alternative to ordinary criminal proceedings and to the resolution of other conflicts the parties themselves shall actively contribute.

Mediators in the National Mediation Service in Norway are laypeople; they are non-professionals who do their work as mediators voluntary and in their spare time. No special education is required, but we do look for some personal skills such as the ability to stay neutral, to be a good listener, to be able to lead a process and so on when we choose our mediators.

The mediators are appointed by a committee consisting of a representative from municipality, the prosecuting authorities and the leader of the district National Mediation Service. Mediators are appointed for a period of four years.

The mediators must have reached the age of 18. They must be trustworthy and eligible for election in municipal elections. Any person who in five years immediately preceding his or her appointment has been sentenced to a suspended custodial sentence, or has been sentenced to immediate imprisonment and was not released, on probation or finally, more than ten years prior to his or her appointment is precluded from being appointed as mediator.

The training endures for 2x2 days with a period of approximately eight weeks in between so that the new mediators have a chance to observe mediations in real life. Together with an experienced mediator they also have the chance to try their new skills as a co-mediator.

Overview of the content of the training

The first day of the course:	The second day of the course:	The third day of the course:	The fourth day of the course:
<ul style="list-style-type: none"> -What is the National Mediation Service? -What is mediation -The role of the mediator -Conflicts and feelings -Communication and communication skills -Role-play that focus on the role as a mediator 	<ul style="list-style-type: none"> -Strategies in conflict situations -Roles in a conflict -Different phases in the reaction process -Roleplay with focus on feelings 	<ul style="list-style-type: none"> -Experiences from the practise period -Roleplay -More about the role of the mediator and communication skills -Perception -Own feelings and reactions -Prejudices 	<ul style="list-style-type: none"> -Legislation -The Act relating to mediation by the National Mediation Service (The National Mediation Service Act) -Other relevant laws -The mediators manual -Case procedure and case procedure rules -The agreement

We use the work-shop model in our training (except for the fourth day of the course). We talk about the role of the mediator and about good communication skills. Through different exercises the new mediators develop new skills. They learn about the different phases in the reaction process and to be aware of what kind of predisposed expectations and prejudices they have themselves, and to be aware of the fact that different people understand the same situation in different ways. Our exercises are based on everyday-life, the examples are situations that are well known for all of us, and the new mediators are encouraged to use their

own experiences in the exercises and share this with the other participants on the course and tell for example how do they themselves react in a conflict and what kind of feelings and needs are to be found beneath anger?

The last day of the course we lecture about legislation, case procedure rules, and the agreement. We also present a manual that provides answers to the most common questions that turn up in mediation.

The new mediators are ready to start after the fourth day of the course, but very often they start together with an experienced mediator. The head of the mediation service office or an adviser will supervise them. Supervision is available for all mediators through the whole term of office, but an extra eye will be kept on the new ones. There are also gatherings several times a year for all mediators where there is a chance to share experiences, to discuss difficult problems and to develop new skills.

The training in Norway is short compared to the training offered in many other countries, but never the less - it does work. Of course there is always room for improvements, but our mediators are not supposed to be experts of any kind, they shall have their focus on leading the process – and let the parties themselves take care of the subject of the conflict, of the proof, of the law and so on. That leaves the mediator with only the mediation process itself – and the process is, after all, best developed in real life.

Facts about the National Mediation Service

- The National Mediation Service is run by the Government
- The Ministry of Justice has the superior responsibility
- The National Mediation Service administration runs 22 district offices with altogether 600 mediators

Facts about the mediation process

The mediation process has 5 steps

1. Introduction
2. What happened?
3. How do you experience the conflict, the damage or the loss?
4. Do you have a solution?
5. Agreement

Grete Stabekk is Head of Office of The Mediation Service in Oppland County. She has been in the job for about 12 years. She is a trainer for new mediators. She has also taken part in the work of making a Manual for the Mediators. Earlier she has been working in the social security office. She has studied law.

Merete Granrud is Head of Office of The Mediation Service in Østfold County. She has been working with mediation for about 13 years, as a mediator and as an adviser in the National Mediation Service. She has also taken part in the work of making a Manual for the Mediators. She has a Master of Management.

Workshop report by Lara Baena Garcia

Merete Granrud and Grete Stabekk presented their experience in developing a training program for voluntary mediators in Norway. They explained the legal and institutional framework in which they work and how the national mediation service functions. Afterwards, they described the training program they first designed and how it evolved as they gained more experience and feedback from new mediators. There was little time for debate and, before closing the session there was only some time for a few questions about the decision of having only voluntary mediators (not professionals), the criteria applied for selecting them, and how often they gather once they finish their initial training.

ON THE SUMMER SCHOOL IN PILSEN

By An Marchal (Belgium)

It is clear that training of mediators (volunteers and professionals) is of high importance. Much know how and experience has been developed at local, national level. But a strong need was felt to cross national borders and to learn from others who develop training programs and standards, for example by bringing up a pool of supportive practitioners.

For the first time, in June/July 2005 a European Summerschool for trainers and practitioners of victim offender mediation took place in Pilsen (Czech Republic). 24 participants of different countries participated, and worked together on different themes.

The European Recommendations on the training of mediators in criminal matters (AGIS 1) were explained and evaluated. A Scottish training programme (SACRO) was used to inspire trainers getting more material and methods. And the educational system of the probation and mediations staff of the Czech Probation and mediation service was presented.

The Barcelona conference will give us the opportunity to meet the Summerschool participants, and each other interested in training mediators or facilitators. In this workshop, we will evaluate the past Summerschool and will discuss the further steps to take for a next one (target group of participants, themes, purposes). We will also prospect other possibilities of international exchange between trainers and/or practitioners of VOM.

An Marchal is working at the secretariat of Suggnomè, a private NGO that employs 15 victim offender mediators in Belgium (Flanders). As a 'forumworker', she is responsible for creating and maintaining a forum for restorative justice, a meeting point and discussion room for each one interested in restorative justice and victim offender mediation (by means of a newsletter, a website, seminars ...). Besides, it is also her task to support mediators, for instance by stimulating international exchange and by organising formation and training. As a member of the Practice and Training Committee of the European Forum, Suggnomè she has participated to the organisation of the Summerschool in Pilsen (June 2005).

Workshop report by Lara Baena Garcia

This presentation was about the summer school in Pilsen that was organised a year ago. It was the first experience of a summer-school for trainers of mediations. An Marchal, who works at Suggnomè, in Belgium, is already organising next summer's school. During the workshop she tried to gather opinions of people attending it on different issues related to that event: what are the interests for the next summer-school (2007), whether it should be addressed to trainers or also to mediators, or if it should focus only on mediation or also on conferencing.

PROMOTING GOOD PRACTICES OF VICTIM OFFENDER MEDIATION IN SERBIA: A JOURNEY TO IMPROVING QUALITY STANDARDS OF PRACTICES

by Jasna Hrnčić, Dusica Vujacic-Richer, Gorana Ilic and Tijana Marinović (Serbia)

Code for Criminal Proceedings

In May 2006 a New Code for Criminal Proceedings was adopted by the Serbian Parliament which would be enacted on the first of January 2007. It would make provisions for a “settlement with the injured party” for adult offenders. Also, for the first time in Serbia, this would provide a legal basis for implementation of victim offender mediation for adult offenders.

Laws

- 2004-2006: series of laws in Serbia with provisions for mediation
- February 2005: Serbian Law on Mediation
- May 2005: Two sub-laws of the Law on Mediation:
 - On training of mediators
 - On an official list of licensed mediators

CHILDRENS’ CHANCE FOR CHANGE PROJECT

Juvenile Justice Code

On the first of January 2006 a new Serbian Juvenile Justice Code was adopted. This would accomplish two things:

- make provisions for a “settlement with the injured party” for juvenile offenders
- for the first time in Serbia, it would provide a legal basis for the implementation of the restorative justice approach and victim-offender mediation in criminal matters

Sub-laws will be expected to be adopted on the first of July 2006.

On the first of September 2004 a juvenile justice reform project in Serbian and Montenegro started which was called “Childrens’ chance for change” (CCC). It was the result of an agreement between the Government of Serbia and Montenegro, UNICEF and the Swedish International Development Agency (Sida).

The objective and components of the CCC project

The overall project objective was to promote the comprehensive and multi-disciplinary reform of the juvenile justice systems in Serbia and Montenegro for better protection and promotion of the rights of children at risk and in conflict with the law.

There were 4 components of the project:

- Advocacy
- Policy development and related legislative and administrative reforms
- Capacity building
- Development of alternative community-based care and prevention programmes

Mediation at the Juvenile Correctional Institution in Krusevac (JCIK)

JCIK is a reform school for children, age 14 and above, in conflict with the law. This is the most severe sentence for an offence that is made by children who were, at the moment of the offence, between the age of 14 and 16.

At this school Victim-Offender mediation (VOM) is a suitable approach for the resolution of conflicts between juveniles. These conflicts are frequent, sometimes with serious consequences and often with characteristics of a criminal act. The more severe conflicts result in disciplinary measures.

Restorative approach in Serbia through CCC project

It was the first restorative approach for juvenile offences that was introduced and established in Serbia and which had consequences on policy as well as on local community level:

- Mediation Programme at the Juvenile Correctional Institution in Krusevac
- The Diversion Scheme Project in Nis
- Mediation Network of Teams for Child Protection in 14 municipalities
- Faculty of Political Sciences in Belgrade; post-graduate studies in mediation
- Legal provisions for the victim-offender mediation for juvenile offenders

MEDIATION PROGRAMME AT THE JUVENILE CORRECTIONAL INSTITUTION IN KRUSEVAC

The Mediation Service at JCIK

- October 2003: the Mediation Service was established at JCIK. It was the first victim-offender service in Serbia and Montenegro which was developed in a partnership between JCIK, the Ministry of Justice of the Republic of Serbia and UNICEF.
- February 2004: a successful mediation and completed agreement was recognized by JCIK authorities as an alternative to disciplinary measures.
- October 2005: a VOM mandatory was offered to all juveniles in peer conflicts in the institution.
- June 2006: a settlement with the injured party was recognized in the new draft "JCIK House Rules" as a service that JCIK provides for juveniles in the institution.

Objective of JCIK Mediation Service

"To facilitate and encourage positive resolution of conflicts between juveniles at JCIK in which another persons' rights were violated through systematic implementation of mediation processes, in order to:

- Support rehabilitation and reintegration of victims and offenders
- Improve quality of life juveniles
- Improve pro-social capacities of juveniles
- Decrease anti-social behaviour of juveniles

The role of the JCIK Mediation Service in the wider community

The JCIK Mediation Service is a model for similar services in institutions and local communities in the country. It gives a basis for:

- Good practices
- Ground Rules, administrative procedures and record keeping
- Promotional materials

The service also led to an initiative for multi-sectoral, community-based Mediation Centre in Krusevac where the first referrals by a local court were dealt with. It also gave premises for VOM services provided within a prosecutors' office.

Challenges JCIK Mediation Service

- Coordinating mediation duties with other work tasks
- Incorporating mediation within the disciplinary system
- New behavioural management system at JCIK
- Gang conflicts
- Power imbalance
- Cultural diversities

JCIK Mediation Service at present

The Service is currently composed of 20 volunteers, staff members of JCIK and the Centre for Social Work in Krusevac (CSWK).

95 cases have been referred to the Mediation Service:

- 57 cases: mediation with agreement, all agreements fulfilled while parties were at JCIK
- 15 cases: in process of making agreement
- 11 cases: mediation without agreement
- 12 cases: parties in conflict who refused mediation

Future plans

- To develop peer mediation
- To develop mediation for conflicts between juveniles and staff
- To strengthen the mediation network with other similar services
- To acquire licences for mediation
- To continue with education (training of trainers (T.o.T.), peer mediation)
- To influence the policy development of VOM practices in the correctional system in Serbia
- To address cultural diversities

THE DIVERSION SCHEME PROJECT IN NIS

Objectives of DSP Nis

1. To provide children and juveniles, in conflict with the law and at risk, with access to diversion schemes in order to divert them from entering into legal procedures.
2. To advocate for and support the adoption of restorative justice principles in juvenile justice practice.
3. To promote rehabilitation and reintegration of all that are harmed by juvenile offences or serious conflicts of children/juveniles through providing victim-offender mediation services and other forms of restorative justice practices.

Development of DSP Nis

Since 2002 UNICEF has been supporting a Diversion Scheme Pilot Project in Nis (DSP Nis)

- 2002: Initiation: partnership with key stakeholders
- 2003: Training of 40 professionals and students in Nis
- 2004: Facilities – Nis Mediation Centre – provided by the City of Nis and equipped by UNICEF
- 2005: Financial support of the Ministry of Labour, Employment and Social Policy (MoLESP)
- 2006: Project expansion

DSP Nis at present

It has been recognized by MoLESP as a model project for the development of similar services in the country and is currently composed of 38 project members (professionals and students) and 7 volunteers.

The main activities include VOM, follow-up of the mediation agreement, activities of the four work groups and peer supervision meetings.

Victim-Offender Mediation and follow-up

18 cases have been referred to DSP Nis:

- 8 cases: agreement reached
- 4 cases: in process of making an agreement
- 5 cases: parties in conflict have refused mediation

7 cases have a follow-up agreement:

- 3 cases: follow up completed, agreement reached
- 4 cases: in process of follow up

Future plans of the DSP Nis

- To fully mainstream VOM as a regular service in Nis
- To serve as a model of good practice for similar initiatives in the country
- To continue with further education (T.o.T., peer mediation)
- To develop other restorative justice forms such as youth courts
- To develop peer mediation in schools
- To strengthen a network with similar national and international services
- To influence policy development of VOM practices with juvenile offenders in Serbia

- To acquire licences for mediation

Activities of work groups

Community Participation Work Group (10 members):

- Circular letters for schools and institutions
- Project presentations

Restorative Justice Work Group (8 members):

- Media presentation
- Round tables
- Design and distribution of promotion material
- Follow-up of relevant legislations

Work Group for Youth (12 members):

- Four series of 16 workshops on restorative justice and mediation with 50 school children

Monitoring and Evaluation Work Group (8 members):

- Developing forms for Monitoring and Evaluation
- Monitoring of mediations

MEDIATION NETWORK OF TEAMS FOR CHILD PROTECTION: Project “Outreach Mobile Teams for Child Protection”

Challenges DSP Nis

External:

- Overcoming professionals' fear of compromised competence by referring cases to DSPN
- Impacting the inflexibility of the local justice system for new approaches
- Providing systematic supervision of mediations
- Facilitating official regulations for proceedings of a settlement with injured party

Internal:

- Resolving disagreements regarding ensuring project sustainability
- Reducing disproportion between expectations and achievements in VOM

Mediation network within OMTCP project

- July 2001: The project OMTCP piloted in 4 municipalities in Serbia and was later expanded to 14 municipalities
- September 2004: Project OMTCP became an integral part of the “Childrens' Chance for Change” project
- December 2005: New OMTCP project cycle in Serbia; focus on VOM services
- December 2005: Mediation Network of Teams for Comprehensive Child Protection established within OMTCP (municipalities: Obrenovac, Pozarevac, Bujanovac, Presevo, Lebane, Jagodina, Leskovac, Smederovo, Valjevo, Bor, Krusevac, Bajina Basta, Zemun)

Basic principles of OMTCP

- Partnership between nongovernmental (NGO) and governmental (GO) sector
- Multi-systemic approach
- Outreach to the children and families in need
- Individualized child-centred approach
- Participatory approach
- Prompt reaction
- Full availability
- Flexibility
- Social mobilization of local community
- Networking

The network at present

It is currently composed of 54 mediators, professionals in local Mobile Teams (NGO) or Centers for Social Work (GO)

Main activities:

- Victim-offender mediation: over 70 cases
- Follow-up of mediation agreement
- Peer supervision: regional meetings (four regions)
- Awareness raising regarding the advantages of preventing children from entering legal producers
- Lobbying for opening mediation centres in home municipalities

Objectives of the network of teams for comprehensive child protections

- To advocate for and support adoption of restorative justice principles in juvenile justice practice
- To provide, organize and promote mediation as a method of overcoming serious conflicts in which at least one party is under the age of 18 and where rights were violated or harm was inflicted to the person or organization

The network' strengths

- Development of VOM services as part of a continuum of care for children in conflict with the law and at risk
- Social mobilization of the local community
- Reaching populations who are usually not included into mainstream services
- Networking between mediation teams

The network' challenges

Challenges in local communities

- Reducing professional exclusivity in institutions
- Overcoming professionals' fears of compromised competence

Challenges inside the network:

- Consistent application of methodology
- Networking between geographically distant mediation teams
- Harmonising the quality of mediation services throughout the network
- Providing continuous education and supervision

Faculty of Political Sciences

In 2005 a partnership was established between the Centre for Social Work in Belgrade, City Hall Belgrade, Faculty of Political Sciences in Belgrade (FPSB), Ministry of Labour, Employment and Social Policy and UNICEF

Post graduate studies in Mediation in the Department for Social Policy and Work, FPSB (training):

- Theories of conflict
- Theory and practice of mediation
- Cultural diversity
- Family mediation
- VOM
- Peer mediation

Mediation Centre in the Centre for Social Work in Belgrade (practice):

- Family mediation
- VOM
- Peer mediation

The network' future plans

- To establish VOM as a regular service in local communities
- To provide a model of mediation networking between diverse local communities
- To continue with further education (T.o.T., peer mediation)
- To develop peer mediation in schools
- To strengthen the mediation network with similar national and international services
- To influence policy development of VOM practices with juvenile offenders in Serbia
- To acquire licences for mediation

Associations of mediators

- 2006: establishment of the **Association "Mediator"**, primarily composed of legal professionals
- 2006: establishment of the **Association of Mediators "UM"**, supported by the CSW Belgrade, primarily composed of social service professionals. The main objectives were:
 - Providing mediation services
 - Improving mediation practices
 - Organizing trainings
 - Cooperating with other similar organizations
 - Developing standards of practice and trainings in cooperation with other stakeholders in the country
 - Advocating for mediation

These two associations collaborate closely on the development of quality standards of mediation practice.

IMPROVING QUALITY STANDARDS OF MEDIATION PRACTICE AND MAINSTREAMING MEDIATION

The centre for mediation for the Republic of Serbia

This centre is established in July of 2006 and founded by the Government of Serbia, Belgrade Bar Association, National Bank of Serbia and Child Right Centre

It focuses on mediation in commercial, property, civic, family and criminal matters.

The activities are:

- Training of mediators
- Issuing licences for mediators
- Keeping official lists of licensed mediators
- Adoption of a code of conduct for mediators
- Public awareness campaign
- Providing mediation services

Challenges of further development of VOM in Serbia

- Development of standards of VOM practices in the best interest of the child
- Incorporation of the best VOM practices in the system
- Positioning of VOM and restorative justice in on-going justice reform in Serbia
- Harmonization of different initiatives for mediation in Serbia

Future plans

To network with key stakeholders in order to:

- Develop clear standards of VOM practice for juvenile offenders
- Promote VOM-services for juvenile offenders in all communities in Serbia
- Develop a professional code of conduct for VOM
- Develop a system of licensing for VOM
- Develop a system of education, accreditation and supervision for VOM

Dr. Jasna Hrcic, clinical psychologist and psychotherapist, Ph.D. dissertation in the juvenile justice area at the University of Belgrade, scholar with the Belgrade Institute for Studies in



Criminology and Sociology, UNICEF consultant for juvenile and restorative justice; worked as a researcher in last twelve years; author of 25 scientific publications.

Dusica Vujacic-Richer, clinical psychologist and psychotherapist, UNICEF Juvenile Justice Project Officer, leader of the “Children’s Chance for Change” project aiming at reforming the juvenile justice system in Serbia and Montenegro; twenty years of professional experience in international organizations and within UN dedicated to raising standards of protection of human/child rights.

Gorana Ilic, Coordinator of the Diversion Schemes Project in Nis, with seven years work experience in NGO sector focusing on implementation and coordination of social protection projects; was engaged as UNICEF consultant to support establishment of the Mediation Centre as a part of the Diversion Schemes Project in Nis.

Tijana Marinovic, Juvenile Justice Project Assistant, UNICEF Belgrade Office, with more than ten years of work experience in child protection and educational programmes, within domestic NGO’s and international organizations, including the Save the Children UK Belgrade Office, OSCE Mission to Serbia and Montenegro, and UNICEF Belgrade Office.



BEST PRACTICE FOR RESTORATIVE JUSTICE WITHIN RESTORATIVE JUSTICE PROVIDERS AND THE SCOTTISH CHILDREN'S HEARING SYSTEM

by Billy Nicol (UK)

Measuring good practice

Baselines

- Where do we start?
- Values, skills or processes.

What is good practice, who decides?

- Common values in RJ and YJ?
- Common skills?
- Shared processes?
- Draft 'best practice' in Scotland (www.restorativejusticescotland.org.uk)
- Processes agreed across Scotland (Restorative Justice in the Children's Hearing System)

Measurement

- What are we measuring?
- Re-offending is not that appropriate
- Criminogenic risk/need changes made would affect re-offending
- What about persons harmed?
- What do these tell you about practice?.....

In practice -

- Consulting teams around Scotland to see how they see things
- Introducing ideas round teams (personal visits)
- Collect subjective 'Organisational self-assessment' (see handout) and compare with 'performance'
- Look cross-site and across services

Practice

- Introducing observation and assessment?
- People find this threatening
- Again round the teams to ask them what they think of the ideas etc....
- Consultative processes are going well

Experience

- Introduced observer – practitioner shadowing, with checklists available from wnicol@aberdeen.sacro.org.uk
- Draft guide to reduce fear and misuse
- If gaps then support offered, not a top down management tool

Accreditation

- Of services?
- Of staff?

Scottish Restorative Justice consultancy is looking at ways of accrediting services so that services who are not delivering can be supported to change

Billy Nicol is Youth Justice Adviser for Sacro, Scotland's largest provider of Restorative Justice services. He has worked in Restorative Justice services with young people and with adults in Aberdeen since 1998.

Workshop report by Borbala Fellegi

The discussion was mainly about the standards, training and accreditation of mediation. It was agreed that already existing quality standards (e.g. standards by the Mediation UK, other

best practice guidance) can be well used to establish the basis of the different schemes. However, in order to provide high level quality services, it is also important to provide possibilities for co-mediation, peer-supervision and constant consultation for professionals. It is more advisable to organise shorter classroom trainings at the beginning and later on focus more on the previously listed in-service trainings elements. For other actors of the criminal justice system, more general awareness training about mediation can be offered in order to stimulate more effective cooperation between the mediation services and the other relevant agencies.

WORKING UNDER THE AEGIS OF THE CRIMINAL JUSTICE SYSTEM: IMPLICATIONS FOR RESTORATIVE JUSTICE PRACTICE

by Margarita Zernova (UK)

On the basis of findings resulting from an empirical study of one family group conferencing project in England this paper critically examines the implications of restorative justice operating under the auspices of the criminal justice system. It discusses four ways of dependence of restorative practice on the criminal justice system: funding, referrals, legal framework and the system-oriented practitioners.

The paper argues that the reliance of restorative justice on the criminal justice system for funding is problematic because it puts pressures on the project workers to demonstrate that progress towards the goals prescribed by the criminal justice system is made. This leads to restorative justice being made to serve the agenda of the system and the restorative ideal being diverted from the original vision.

The dependence of restorative justice on the criminal justice system for referrals has at least two negative implications. First, an earlier intervention by the criminal justice system can obstruct the achievement of restorative justice goals. Second, a particular framework has been established by the criminal justice system, which influences the restorative justice process and outcomes. Empirical examples have been provided to illustrate these undesirable consequences.

Empirical evidence also demonstrates that when restorative justice adopts the legal framework, it operates in the name of reparation of harms presumably caused by crimes, while avoiding ethical discussions of whether, for example, harm may exist outside crime, or whether some definitions of crime may be questionable, or whether reparation of crime's harm is necessarily desirable and morally right in a particular circumstance. Accepting the criminal justice system's labels 'victim' and 'offender' produces a situation where what in reality could well have been a conflict with social-structural is reduced to an interpersonal conflict.

When restorative interventions are facilitated by practitioners within the framework pre-established by the criminal justice system this prevents a possibility of ethical discussions outside that framework. Empirical findings have been put forward hinting that the reliance of restorative justice on the system-oriented practitioners may enable the state justice system to promote its objectives in an invisible way and thus allow the state to govern troublesome individuals in a hidden form.

The paper concludes by suggesting that the dangers caused by the reliance of restorative justice on the state justice system could be avoided, but this is unlikely to happen, unless restorative justice is radically separated from the state-sanctioned justice.

Dr. Margarita Zernova is a postdoctoral research fellow in the Institute of Applied Ethics of the University of Hull. Her doctoral research involved an examination of aspirations of proponents of restorative justice and experiences of participants in family group conferences. She is currently researching ethics of restorative justice.

INTERAGENCY COOPERATION – THE WAY FORWARD

by Rose Sweeney and Barry Moore (Ireland)

The SRSB is an independent statutory body set up under the Children Act 2001. Its functions include liaising with the various agencies and advising the Courts in relation to appropriate accommodation and services for children who offend. This function is carried out in keeping with the ethos of the Children Act: Detention as a last resort.

Description of proposed content of Presentation:

- Sergeant Moore will give a brief overview of the RJ practise of Juvenile Liaison Officers, An Garda Síochana
- Rose Sweeney will give a brief overview of the role of the Special Residential Services Board
- Sergeant Moore and Rose will then give an overview how interagency co-operation has both prevented and diverted children, brought before the court, from re-offending.

Rose Sweeney is a qualified Primary School Teacher. Since qualifying in 1990 she has taught 8 to 12 year olds in a social disadvantaged area of Dublin, 14 to 18 year old in a Special School which catered for children with social and behavioural difficulties, set up and was principal of a school within a residential home for children, under High Court Orders, who were at risk to themselves and others. In 2000 Rose completed her Masters in Educational Leadership, her thesis was titled 'Leaders Perspectives on Early School Leavers'. Since 2003 she has worked as both a Development Officer and is currently a Court to the Special Residential Services Board.

Barry Moore is a member of An Garda Síochana since 1980. His career includes both uniform policing and detective work. He has a cross section of experience between mainstream and Community Policing. In 1997 Barry was appointed Sergeant of the Juvenile Liaison Officers within an area of high social deprivation in Dublin City. His work involves dealing with juveniles, initially within the community through a restorative practice and in some cases through the juvenile Court

Workshop report by Zuzana Slezakova

During the workshop an overview was given of:

- The Irish practice of Juvenile Liaison officers;
- The Role of their Special Residential Services Board (an independent body which liaisons with the various agencies and advise Courts in relation to appropriate accommodation and services for children who offended);
- How agency co-operation has both presented and diverted children, brought before the court, from re-offending.

Examples from practice and afterwards discussion helped to better understand the presented overview.

BECOMING A RESTORATIVE SCHOOL – WHAT TRAINING AND SUPPORT DO EDUCATIONALISTS NEED?

by Belinda Hopkins (UK)

An exploration of initial training needs and ongoing support, with reference to several existing DVD's of current work in the UK and the gaps in emphasis that still exist. An experiential workshop in which participants are invited to be constructively critical and to design their own training DVD.

Belinda is Director of Transforming Conflict, the National Centre for Restorative Justice in Education. She and her team of 14 trainers offer training, consultancy and ongoing support to educationalists integrating restorative approaches into their day to day interactions with young people. Belinda's book 'Just Schools', and her recently completed doctoral thesis, focus on the implementation of a school-wide restorative approach to building, nurturing and repairing relationships.

Workshop report by Belinda Hopkins

During the workshop the following elements were discussed as important elements for an introductory film for educators:

- an overall introduction
- role plays
- how is the change introduced at the beginning – broaden the context
- children, parents + teachers speaking
- showing how, rather than talking about
- pictures, children's drawings
- head etc. talking with conviction

SUPPORT AND SUPERVISION

by Liz Duffy (UK)

This workshop will outline Sacro's support and supervision policy and procedures. It will help participants to understand the purpose and functions of supervision. It will also give an understanding of roles and responsibilities within supervision. It will enable participants to plan and participate fully within supervision.

The workshop will also consider structured Annual Performance Review. It will identify where individual support and supervision fits into the overall aims of the organisation.

Liz Duffy has worked with Sacro for twelve years, initially as a volunteer mediator. She then took up the position of youth justice project worker in 1996. Liz is now team leader for the adult mediation and reparation service and youth justice service within North and South Lanarkshire.

Workshop report by Clara Casado

Liz Duffy, as line manager, reported about some positive experiences concerning the support and supervision-policy of SACRO.

Support and supervision are different fields than case-supervision. The concerns related to the cases with which the SACRO workers deal on a daily basis, are shared in the "team meeting" and it is considered as a separate subject from the work supervision which focuses on the work conditions, quality and satisfaction.

Support and supervision are necessary services in order to create a clearly designed structure and make service providers entirely familiarised with the system.

The supervision consists of different aspects:

- Communication: it is primarily important to create a good and safe environment to open communication. The line manager will attend any need or concern of its employees at any time without forcing to wait to the supervision meeting, although the issues will also be raised in the meeting to share with the rest of the co-workers.
- Learning and development: encourage long-term workers to try different things or fields in their work as a way to ensure quality and good standards.
- Support: listening and providing healthy conflict solving problem approaches in the daily work.
- Managing performance: help to find solutions to make things better.

DOING NOTHING: A COMPARISON OF THE EFFECTS OF EARLY RESTORATIVE INTERVENTION AND NON-INTERVENTION ON THE CRIMINAL CAREERS OF THREE COHORTS OF 'EARLY-STAGE' YOUNG OFFENDERS IN ENGLAND AND WALES

by John Pitts (UK)

This paper reports the findings of a study of young offenders referred to three Youth Offending Teams (YOTs) in the UK. In two of these YOTS, young people are subject to restorative interventions following their first or second offence, whereas in the third, Northamptonshire, they are dealt with informally for a first offence and by a simple warning for the second. Earlier research undertaken in Northamptonshire compared differences in outcome, measured in terms of re-conviction, before and after the implementation of the Crime and Disorder Act (1998), which formalised interventions with young offenders and required that they become involved in restorative interventions at an early stage in the 'criminal career'. The findings indicated that one effect of the changes ushered in by the 1998 Act was to increase prosecutions by 22% and formal pre-court referrals by 13%. Overall, it appeared that the 1998 reforms had increased the annual throughput of Northamptonshire YOT by 35%. The researchers expressed concern that this posed a potential threat to the good practice, which had generated low pre-1998 Act re-conviction rates. These findings led Northamptonshire YOT to institute an, essentially illegal, element of informality into their system. The research reported here compares outcomes in the the Northants YOT, in the two years to January 2006, with those in two other YOTs, where the legislation has been fully implemented and first- and second-time offenders are subject to restorative interventions.

*John Pitts is Vauxhall Professor of Socio-Legal Studies at the University of Luton. Recent research includes a five-nation study of the impact of social intervention with socially excluded young people, an Anglo-Finnish comparison of child and youth incarceration and a study of the effects of non-intervention on the criminal careers of juveniles. His publications include *The New Politics of Youth Crime: Discipline or Solidarity* Macmillan (2001), *Reaching Socially Excluded Young People*, (National Youth Agency, (2004) and *The Russell House Companion to Youth Justice 2005*. He is a on the editorial boards of *The Community Safety Journal* (editor), *Youth Justice*, *Youth and Policy* (assoc. editor), *Juvenile Justice Worldwide* (UNESCO), *Safer Society* (Nacro)*



Plenary session: *Restorative justice and beyond – An agenda for Europe*

Chair: Niall Kearney

Lode Walgrave (Belgium): *RESTORATIVE JUSTICE AND BEYOND – AN AGENDA FOR EUROPE*

Restorative justice is obviously an attractive concept. So called restorative justice practices are being implemented far beyond the field of criminalizable matters, such as in schooldiscipline, neighbourhood conflicts, or in peacemaking and peacebuilding. However, it needs deeply different actions and even different expertise, for example, to bring a victim and an offender of a burglary together to find a constructive solution which is satisfying for both protagonists, to set up meetings with representatives of population groups as a pathway towards reconciliation after a period of systematic mutual violence and gross violations of human rights, or to try and find a peaceful way of living together in a conflictuous neighbourhood. And still, these practices all are called 'restorative justice'. What is common to them?

It is the set of values and beliefs which is driving them. Restorative justice is more than a series of techniques. It is a philosophy which may penetrate different actions in different degrees. "Restorative justice is a compass, not a map"¹. Without the philosophy, only techniques remain. Mediation, for example, without the restorative justice philosophy is a simple technique, and an easy prey for cooptation. It can be used and misused in many different contexts, for many different purposes.

A set of values and beliefs

Let me try to summarize the essentials of the set of values and beliefs driving restorative justice.

- Restorative justice advocates are focussed on the quality of social life as the central value of social behaviour. This quality is considered independent from – not necessarily contradictory to – legal order and the existing societal organisation.
- It is believed that the quality of social life depends most of all on the motivation and the commitment of all those taking part in social life. It is, in Putnam's words, the social capital which is the lubricant to make democracies work².
- It is believed also that, if adequate conditions are met, the great majority of people are willing and capable to find constructive solutions to all kinds of conflicts between them through deliberation.
- An offence, a conflict or an injustice are seen first of all as threats or infringements to the quality of social life, and not simply as law transgressions.
- The answer to such threat or infringement is focussed directly at the preservation or restoration of the quality of social life at the level of the individual victim, of the interhuman relations, of the community and of the social order (insofar it frames the quality of social life).
- The response to offences, conflicts or injustices is sought by priority through deliberative processes including all those with a stake in the aftermath of the offences, conflicts or injustices just mentioned.

Not all issues of this list are the monopoly of restorative justice. The first three statements are shared by many other movements and practices. They are inspired, enlightened and guided

¹ H. Zehr, (2002), *The Little Book of Restorative Justice*, Intercourse (PA): Good Books, p. 10.

² R. Putnam (1993), *Making Democracy Work. Civic Traditions in Modern Italy*, Princeton (NJ): Princeton University Press.

by several social philosophies and theories like communitarianism or the republican theory. The broader dissemination expresses a social ethical movement driven by what I have called a kind of communitarian social ethics, based on respect, solidarity and taking active responsibility³.

Confusion about restorative justice

The obvious attractiveness of the restorative justice rhetorics has given raise to thoughtless expansion and misuses of the notion. "The literature of restorativism needs not yet greater enthousiasm but more reflection"⁴. Governments isolate some practices from the restorative philosophy, but keep calling them restorative justice because it is fashioned. Treatment promoters use restorative justice as a buzz word to get their programmes funded. Restorative justice is sometimes used to indicate proactive pedagogical practices, prevention initiatives, even 'states of mind'. It is an unfortunate development.

Paradoxically, filling up a notion with too many different things is emptying it from meaning. The strength and renovating appeal of a concept is best preserved by clarity and delimitation. Some admirable, constructive practices deserve intensive support, because they help to create a social climate which is favourable to the quality of social life. It is very worthwhile that, for example, schools learn children to resolve their conflicts through respectful deliberation. But they are not necessarily restorative justice. Based on the broader philosophy I just mentioned, a good stricter definition must try and make clear what restorative is and also what it is not.

REstorative justice is by definition REactive. It is a response to an event⁵. It is meant to REstore justice (in the broad sense of the word) after the commitment of an injustice. The blurring of the restorative justice notion is due to the way it is defined. Mainstream literature in restorative justice characterizes it basically through its deliberative process: "The essence of restorative justice is not the end, but the means by which resolution is achieved"⁶. Restorative justice advocates promote informal voluntary settlements as crucial for achieving restoration maximally. The communicative potentials of mediation and family group conferences, for example, indeed favour the authentic assessment of the harm suffered and may more easily lead to a genuine agreement on how it can be reasonably repaired or compensated.

Restorative justice is an outcome based concept

Nevertheless, restorative justice cannot be reduced to such process, for two reasons. First, a process cannot be defined and valued without referring to the purpose it is undertaken for. The process is valued not because of the deliberation on its own, but because of the outcomes it helps to achieve. A deliberative process is more 'restorative' because the expressions of remorse, compassion, apology and forgiveness which it facilitates, may readily yield feelings of being respected, of peace and satisfaction. These feelings are outcomes, even if they are not explicitly written down in the resulting agreement.

Secondly, restricting restorative justice to voluntary deliberations would limit its scope drastically⁷, and doom it to stay at the margins of the system, as a way of diversion. The mainstream response to crime would remain being coercive and punitive. The gate keeping criminal justice system would probably refer a selection of the less serious cases only to deliberative restorative processes. Victims of serious crimes who need restoration the most would be excluded from it. Moreover, giving up the principled priority for restoration would hand over a category of citizens to the punitive apriorism, including its problems.

³ L. Walgrave (2003), *Imposing Restoration instead of Inflicting Pain: Reflections on the Judicial Reaction to Crime*. In A. von Hirsch, J. Roberts, A. Bottoms, K. Roach and M. Schiff (eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*, Oxford: Hart, 61-78.

⁴ A. von Hirsch (1998), *Penal Theories*. In M. Tonry (ed.) *The Handbook of Crime and Punishment*, New York/Oxford: Oxford University Press: 659-82, p. 676.

⁵ G. Johnstone (2002), *Restorative Justice. Ideas, Values, Debates*, Cullompton (UK): Willan Publishing.

⁶ P. McCold (2004), *Paradigm muddle: the threat to restorative justice posed by its merger with community justice*. *Contemporary Justice Review* 7 (1): 13-35, p. 15.

⁷ J. Dignan (2002), *Restorative justice and the law: the case for an integrated, systemic approach*. In L. Walgrave (ed.), *Restorative Justice and the Law*, Cullompton (UK): Willan Publishing, 168-190.

It is this too exclusivist focus on the deliberative process which has provoked the confusing extension of the restorative justice notion towards other forms of deliberation which do not lead to reparation.

That is why restorative justice must be understood first of all through its reparative goal. I have defined it as “an option on doing justice after the occurrence of an offence which is primarily oriented towards repairing the individual, relational and social harm that is caused by that offence”⁸. The processes are tools only to achieve reparation, though very important ones. Deliberative processes hold the highest potentials, but if voluntary agreements cannot be accomplished, coercive obligations in pursuit of (partial) reparation must be encompassed in the restorative justice model. Possible examples of such obligations are formal restitution or compensation, a fine or doing work for the benefit of a victims’ Fund, community service. Such sanctions, of course, do not achieve completely the potential of the restorative paradigm, but restorative justice is not a simple black and white option. It can be achieved in different degrees⁹.

The option to pursue reparation or even more comprehensive restoration after the occurrence of a crime, is based on a social ethical vision. I believe in restorative justice, first of all, because I simply think it is more just and more socially constructive to respond by priority to the harm and suffering of the victims and to the social problems caused by a crime, rather than to be obsessed by the wish to punish the offender.

Feasibility questions

But is this actually feasible?

We need more than peptalk. Nice ideas may appear to be beautiful naïve dreams only, or may generate awful practices. Do the practices based on the restorative justice options actually achieve what they seem to promise? Reliable answers to this question can only be found by cautious and systematic scrutiny of the practices, based on adequate scientific methodology. The social ethical option for restorative justice must be completed by systematic self critical assessment of what is achieved in reality.

“Empirical research on restorative practices is a mile wide, but only an inch deep”, Paul McCold wrote¹⁰. There is a lot of research available, but it does generally not fulfill sufficiently scientific standards, so that the credibility of the outcomes is doubtful. Currently, we can document vaguely that restorative justice does mostly work well in practice for the great majority of the participants. We do not know enough, however, about the nuances and conditions. When does restorative practice work and when not, for whom, for what exact purposes, dependent on what variables?

Which practice?

A first question is what exact practice we investigate empirically. Many evaluation projects are focussed in one peculiar practice in a specific context carried out with a certain type of problem, but do not limit their conclusions. If you investigate police led conferencing only, you cannot draw conclusions for restorative justice in general, not even for conferencing in general. Conferencing according to the New Zealand version in family group conferencing is quite different a practice from conferencing in the Real Justice model¹¹. The Real Justice version is almost exclusively explored for rather benign offences committed by first time offenders, and its applicability for serious recidivists has not been demonstrated, as has been done with family group conference New Zealand style. Like in other practices, you find also among mediators and conference facilitators brilliant performers, and bunglers. This variation

⁸ L. Walgrave (2004), Restoration in youth justice. In M. Tonry and A. Doob (eds.), *Youth Crime and Youth Justice. Comparative and Cross-national Perspectives*, Chicago: University of Chicago Press, Crime and Justice Vol. 31, 543-597, p. 552.

⁹ D. Van Ness (2002), The shape of things to come: a framework for thinking about a restorative justice system. In E. Weitekamp and H.J. Kerner (eds.), *Restorative Justice: Theoretical Foundations*, Cullompton (UK): Willan Publishing, 1-20.

¹⁰ P. McCold (2003), A Survey of Assessment Research on Mediation and Conferencing. In L. Walgrave (ed.), *Repositioning Restorative Justice*, Cullompton (UK): Willan Publishing: 67-117, p. 106.

¹¹ I. Vanfraechem (2006), *Herstelgericht Groepoverleg. Op zoek naar een constructief antwoord op ernstige jeugddelinquentie*, Ph.D. Criminology, K.U.Leuven.

in talent and in technical adequacy can influence more the results than the intrinsic value of the conference or mediation does. Restorative practices in a context with very cooperative police and justice officials may yield results which are considerably different from those achieved in practices working in a sceptical, resistant context.

This is why all empirical projects must describe extensively the type of restorative practice evaluated, the referral system, the preparation of the meeting, the way how the meeting was monitored etcetera, because this description does contain lots of indications for possible successes or failures. Its clear limitation to what has actually been done will enhance the credibility of the conclusion.

What outcomes?

The second series of questions concern the outcomes. But they can only be defined if the objectives are defined clearly. What are the goals of the restorative practice? How do we measure them? The answers range from material restitution or compensation till complete peace, reconciliation and reintegration. Many variations and graduations exist between both extremes. One of the most researched outcomes is 'satisfaction' in participants. The satisfaction measured is probably relative. Participants after a restorative meeting are presumably not entirely happy. But they may feel that, after all, it was less bad than they feared. Moreover, satisfaction in fact is a container concept which may hide a great variety of good feelings about the way the facilitator acted, the respect experienced, the apologies felt to be honest, the procedural justice, the comprehensiveness of the agreement and many other aspects. And still, what shall we conclude if the victim is very satisfied, but the offender totally disillusioned, or vice versa?

And what is the status of reoffending research? Restorative justice is about repairing the harm, and if that is taken seriously, the offender's reoffending can only be a secondary objective. One might even consider reoffending rates as irrelevant for restorative practices, as long as the victims do feel restored. From that standpoint, reoffending might be a secondary concern only, because we are aware that more reoffending after restorative practices would be detrimental for their public acceptability. Measuring reoffending would then be a check only to be sure that it is not worse than after a traditional punishment.

Another major problem here is comparability. It is not enough to conclude that participants are in general satisfied after a restorative processing, the question is whether their satisfaction is higher than after a traditional procedure. How can you assess that? Are victims more satisfied because they could voluntarily choose for restorative practice, while the others could not? Or is it really the intrinsic quality of the restorative process itself?

The outcome measurement is still more complicated according to time and to stakeholders. Immediately after the meeting, participants may feel differently from what they experience later, when the agreement has been carried out or not. On the longer term, victims may recover totally from their victimisation or continue to suffer negative consequences. Offenders may be very positively motivated after the meeting, but slide back into their earlier life style later, or reintegrate completely. What would the impact be on public security, and on community life in general if restorative responses were used predominantly and systematically?

Conclusion

Evaluating the impact of any intervention is one of the most difficult undertakings in empirical social sciences, and so it is for evaluating restorative practices. But it is crucial to continue trying it in the best possible way. It is crucial, for three reasons:

- It is necessary to avoid restorative justice becoming only a system of beliefs and convictions. Social ethical convictions are very important drives for renovative actions and systems, but they risk turning into a kind a religious sect if they are not completed by self critical assessment about the practical feasibility.
- It helps to find out the (provisional) limits and to improve practice. Systematic empirical evaluation, if well done, in fact holds a mirror for the practitioners, so that they can see what goes well and what not, under what circumstances, why and when. Based on these findings, corrections can be made (and evaluated again).



- It is a crucial argument to gain credibility in judicial and political authorities and in the public. Accurate and systematic evaluations show the seriousness of the restorative work undertaken, and deliver knowledge about why and when to implement restorative justice.