Integrating the restorative and rehabilitative models: lessons from one family group conferencing project

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The article will examine the relationship between restorative justice and offender rehabilitation on the basis of the evidence collected in the course of an empirical study. The study was conducted in a family group conferencing project which aspired to pursue the restorative and rehabilitative goals simultaneously. The article will highlight problems, tensions, and dangers which may arise in the process of integrating the two models and suggest possible explanations for some of the difficulties.

Keywords: restorative justice; offender rehabilitation; family group conferencing

Restorative justice and rehabilitation in theory

While the relationship between the restorative and retributive paradigms of criminal justice has been hotly debated (Zedner 1994; Barton 2000; Daly 2000, 2002; Walgrave, 2000, 2001, 2002, 2003, 2007; Dignan 2002; Duff 2002, 2003; Johnstone 2002; Wright 2003, 2006), the relationship between restorative justice and rehabilitation has received less attention and remains somewhat unclear. It appears from numerous empirical studies conducted in the area that offender rehabilitation is an integral part of restorative justice, given that the rate of re-offending is a very common criterion in evaluating the success of restorative programs. At the same time, it is far from obvious and rarely explained why and how this criterion relates to the purposes restorative justice proposes to achieve (Von Hirsch, Ashworth, & Shearing, 2003, p. 23).

Some proponents present restorative justice as an alternative to the rehabilitation or treatment paradigm (Walgrave, 1995; Bazemore, 1996; McCold, 2000). The rehabilitation model is criticized on the grounds that it takes a one-dimensional, offender-driven approach. It focuses on identifying and meeting needs of offenders, while ignoring needs of victims and denying them meaningful participation in the justice process. It views offenders as victims of an underlying psychiatric disorder who are not responsible for their criminal behavior and fails to hold them accountable. Offenders are assigned a passive role in the treatment process, where professionals play a dominant role, using their expertise to diagnose the disorder and prescribe suitable treatment. Being administered by professionals who 'do not see themselves as being in business of moral evaluation' (Johnstone, 2002, p. 94), the treatment model shields offenders from social condemnation of their offending behavior. According to restorative justice advocates, this prevents offenders from realizing the wrongfulness of their criminal activities and consequently changing their attitudes and conduct.

Restorative justice is presented as a 'new paradigm' which 'offers an alternative value base, new goals and objectives, and new priorities for policy and practice' (Bazemore, 1996, p. 37). It is argued that, unlike the treatment approach, restorative justice holds offenders accountable and requires them to take responsibility for their actions. It attaches fundamental importance to meeting needs of victims and enables them to actively participate in the justice process. The restorative model aspires to change the offending behavior not through therapeutic methods, but through other very distinctive means.

One essential element of the restorative approach to reforming offenders is making them experience of a genuine remorse for their criminal behavior. In this process, the role of victims is of vital importance: hearing from victims how crime has affected them is an effective way of making offenders realize the human costs of their actions and repent their wrongdoing (Zehr, 1990; Retzinger & Scheff, 1996, p. 39). This needs to be combined with subjecting offenders to moral condemnation by community members, which performs an educative and reintegrative function (Braithwaite, 1989, Braithwaite & Mugford, 1994). It is argued that disapproval by ordinary citizens is much more effective than that by authority figures (which occurs in the criminal trial), because offenders are much more likely to listen to people who are significant in their lives and whose opinions they value (Braithwaite, 1989).

The second vital element in reforming offenders in a restorative way involves reparation by them of the damage they have caused (Zehr,1990; Declaration of Leuven, 1997; Zehr & Mika, 1998; Bazemore & Walgrave, 1999; Walgrave, 2000; Van Ness & Strong, 2002). Reparation of harm obviously benefits victims, but, it is argued, it may benefit offenders as well in the sense that it may increase their chances of being reintegrated into the community. First, it can help offenders realize the full extent of the damage they have caused, and this understanding is a pre-condition for reintegration. And second, victims and community members are more likely to reaccept offenders who have earned their redemption, because reparation of harm may appease the anger which community members may feel toward offenders (Johnstone, 2002:102). The process of reparation may also allow offenders to gain valuable skills and practice 'being competent', which may help improve the offenders' self-esteem and promote their rehabilitation through 'competency development' (Bazemore, 1996).

Another distinctive feature of the restorative approach to offender rehabilitation relates to the role allocated to ordinary people in the process of offender reintegration that follows expressions of moral condemnation. Restorative advocates are critical of the highly professionalized, expert-driven treatment, which, they claim, undermines the informal social mechanisms of crime control (Bazemore, 1996). They argue that rehabilitation is highly unlikely to occur outside of the community or relational context and emphasize the need for a collective approach to offender reintegration. Successful reintegration requires ordinary people becoming actively involved in reaccepting offenders who have repented their wrongdoing and put things as right as they could (Braithwaite, 1989; Braithwaite & Mugford, 1994; Bazemore, 1996, 1999; Zehr & Mika, 1998; Bazemore & Dooley, 2001; Bazemore & O'Brien, 2002; Zehr, 2002; Bazemore & Bell, 2004).

In the light of the apparent differences between the restorative and rehabilitative models, certain restorative justice proponents emphasize the importance of maintaining a clear distinction and are critical of proposals to merge them:

> Incorporating rehabilitation as a goal of restorative justice legitimates as restorative the vast majority of existing juvenile justice programs where rehabilitation is an operational priority. Failure to distinguish the treatment paradigm from the restorative justice paradigm only adds to the confusion as to the parameters of restorative justice as a genuine alternative. (McCold 2000, p. 389)

It is argued that it is desirable to maintain the purity of the restorative ideal by 'includ[ing] only elements of the restorative paradigm and exclud[ing] the goals and methods of the obedience and treatment paradigms' (McCold, 2000, pp. 272–273).

Other restorative justice proponents take a different view on the relationship between restorative justice and offender rehabilitation and want to combine them (Bazemore, 1996; Wright, 1996, 1999; Braithwaite, 1998, 2002a; Bazemore & Walgrave, 1999; Bazemore & Dooley, 2001; Bazemore & O'Brien, 2002; Van Ness & Strong, 2002; Bazemore & Bell, 2004). The two models are seen as compatible, if not mutually supportive. One such advocate argues that restorative justice is often rehabilitative, although it does not have rehabilitation as its primary purpose. It is rehabilitative precisely because it does not directly set out to change people and thus avoids the risk of psychological reactance on the part of the offender (Braithwaite, 1998). Yet, when it directly pursues restorative objectives, rehabilitation is a likely spin-off. On this view, the key to the rehabilitative potential of restorative justice is the 'plurality of deliberation' found in restorative forums. Most crime problems have numerous sources, so, when a problem is discussed by a group with knowledge derived from being affected by the offense in different ways, this may lead to a nuanced understanding of the causes of crime. This wisdom may enable discovering best ways of prevent- ing its reoccurrence. When the solution is provided by the support group around the offender and is coupled with a professional advice on what has worked and what has failed in the past with this kind of problem, the chances of offender reintegration are increased (Braithwaite, 1998; 2002a, pp. 99–102). According to Braithwaite (2002a, p. 101),

> Restorative justice does not involve a rejection of the rehabilitative ideal…It does mean reframing it… My hypothesis is that the marriage of rehabilitation programs to restorative justice will increase their effectiveness…

Some critics of restorative justice have also expressed scepticism toward an approach drawing a sharp distinction between restorative justice and offender rehabilitation. It has been noted that the oppositional presentation of the two approaches by some proponents is not reflected in real life restorative experiments because elements of rehabilitative justice are clearly present in restorative practices (Daly, 2000, 2002). Also, presenting the two models as incompatible has been criticized on the grounds that it is based on a caricature image of rehabilitation (Johnstone, 2002, p. 111). That image is of a highly 'medicalized' model where offenders are passive recipients of psychiatric and other treatments administered by experts. In reality, many proponents of penal treatment reject that model and prefer socio-therapeutic interventions where offenders play active roles and are encouraged to develop personal responsibility for their actions (Johnstone, 1996a, 1996b). There is a considerable overlap between the goals and assumptions underlying such programs and restorative justice (Johnstone, 2002, p. 111). Restorative justice aspires to reintegrate offenders into the community of law-abiding citizens, and similar objectives have been pursued for a long time by advocates of 'reform' or rehabilitation (Johnstone, 2002, p. 96). It

has been proposed that the restorative goal of offender reintegration is more likely to be achieved if the methods of restorative and therapeutic interventions were combined (Johnstone, 2002).

Consistently with this suggestion, certain restorative proponents advocate a creation of 'a fully restorative model of rehabilitation', which is an approach 'based on the premise that rehabilitation is important, but not in isolation from a community or relational context' (Bazemore & Bell, 2004, p.120). The proposed model empha- sizes the role of citizens as 'natural helpers' and the need to build networks of informal social support (Bazemore & O'Brien, 2002, p.33; Bazemore & Bell, 2004, p.120), and at the same time recognizes the importance of professional treatment 'as needed' (Bazemore & Bell, 2004, p. 121). It is argued that the rehabilitative agenda influenced by restorative values and goals would be 'more empowering, effective and marketable' (Bazemore, 1996, p. 42).

While many advocates appear to see the conceptual compatibility of the restorative and the treatment approaches as a desirable phenomenon, at least one critic points to dangers hidden behind the apparent congruence of the two models (Pavlich 2005). Referring to its emphasis on healing the harms of crime, Pavlich (2005) notes the rhetorical appeal of restorative justice to the medical model and is critical of grafting the medical approach onto restorative justice contexts. The medical model implies a technical resolution to a given problem. This disables ethical discussions and masks ethical decisions as technical necessities:

> When the [medical] model is imported into the context of restorative justice, many thorny moral, social and political conundrums are conveniently silenced in favour of technicist blueprints that become standard fare for many restorative calculations of justice…so long as restorative justice embraces a medical model approach to justice, it embeds its governmentalities within managerial, administrative discourses at the expense of ethical discussions more appropriate to questions of justice. (Pavlich, 2005, pp. 41, 42)

Restorative justice and rehabilitation in practice

One family group conferencing project

What place is allocated to offender rehabilitation in real life restorative experiments? What happens when attempts are made to pursue restorative and rehabilitative goals simultaneously in practice? Evidence shedding some light on these questions has been collected in the course of an empirical study which was conducted in a family group conferencing project in England and involved observations and interviews with partic- ipants in conferences (17 victims, 13 offenders, 13 offender supporters and four victim supporters) and six professionals who participated in the conferencing process or its preparation (see Zernova, 2007b for more details).

It needs to be noted that the sample in this study is small, being limited to one restorative justice project, and no claim is made that this project was typical of other restorative justice experiments. However, the findings may provide some general lessons applicable to other restorative programs. In particular, they may highlight some tensions, problems and dangers that may emerge when attempts are made to pursue rehabilitative and restorative goals simultaneously. They may also add to the debate about the relationship between rehabilitation and restorative justice some insights of people who have had first-hand experiences of restorative justice.

The setting of this study was within a social services department. After its establishment, for its first two years, this project dealt exclusively with child care and protection cases where a conferencing approach was applied, but, following a successful application for funding to the Youth Justice Board, it started practicing conferences in cases involving criminal offenses committed by young people. It was clear from its official documents and conversations with practitioners that the project had both restorative and rehabilitative aspirations. Rather than attempting to implement a 'pure' restorative justice (McCold, 2000), it aimed at merging the two approaches.

Restoration and rehabilitation in pre-conference reports

The project received referrals from four youth offending teams (YOTs). Prior to a conference, a report was written by a YOT worker. These reports were reviewed as part of this study. The reports were divided into two parts. The first ('restorative') part was entitled 'The Offense and Righting the Wrong' and explained that the offender had recently committed an offense, detailed the court order and emphasized that the offender 'will need help and support to stay out of trouble in the future'. Under the rubric 'What the offender and his family need to do' a typical report specified that the offender would need to apologize to victims and maybe write a letter of apology. A possibility that victims might ask the offender to make amends was mentioned, and the family was told to think how it could support the offender, so that s/he could comply with the request.

The second ('rehabilitative') part of the report dealt with the offender's rehabilitation and welfare. This part focused on identifying reasons for offending behavior and needs of the offender. Typically, it would discuss at length problems within the offender's family and suggest ways of resolving them. It would deal with schooling matters, friendship groups, drugs-related issues, emotional well-being and self-image of the offender, as well as identifying other potential problems and deficits of the offender and possible solutions. Ultimately, it would instruct the family as to the plan developed in the conference, what they needed to include, and a list of professional help available.

It was obvious from the reports that not only the 'rehabilitative', but also the 'restorative' part had the offender, rather than the victim, as its focus. Both parts were written from the offender's perspective, with a clear emphasis on the 'help and support' the offender needed if s/he was to stop offending. The discussion of restorative matters typically was limited to specifying that the offender had to meet his/her victims and apologize. While the offender's needs and possible ways of meeting them were discussed at a great length, the needs of the victims were not even mentioned. On the basis of the pre-conference reports alone one could conclude that the project attempted to implement a correctional program which had some elements of restorative justice added to it.

These reports formed the basis for plans that had to be developed by families during conferences. Probably unsurprisingly, the resulting plans – at least the ones examined – focused almost exclusively on issues relating to rehabilitation. If restorative matters were raised, they were restricted to writing a letter of apology.

How can this over-emphasis on offender rehabilitation and neglect for restorative concerns in pre-conference reports and plans created during conferences be explained? One possible explanation may be offered by the context within which this

project operated (Zernova 2007b). It was based within the social services department, which was its second major funder. To enable its continued existence and support, the project needed to satisfy the department that certain goals had been promoted, and that those goals related to the welfare of young people in problematic situations, rather than restorative justice issues. As noted earlier, originally the project conducted family group conferences in child care and protection cases. When criminal cases were added to its practice, the original approach to a young person as a victim of his/her circumstances whose needs and welfare were of primary importance seems to have been to a large degree retained.

It is also important that this project functioned under the auspices of the criminal justice system as that system was the main source of funding. It also provided referrals and the legislative framework in particular, Crime and Disorder Act 1998, which defines prevention of offending by children and young persons as the principal aim of the youth justice system. This put pressures to identify priorities and pursue goals in a way consistent with the agenda of the criminal justice system, with the result that offender rehabilitation received disproportionately more attention than did restorative matters (Zernova, 2007a, 2007b).

Restoration and rehabilitation during the conferencing process

Conferences, like the pre-conference reports, consisted of two parts. The first, 'restorative', part focused on the offense that has been committed, and the second, 'rehabilitative', part on prevention of re-offending and offender welfare. Victims, offenders, their supporters and professionals were present during the 'restorative' part, where victims were invited to tell offenders how the offence affected them, ask questions, and express their feelings, and the offender had an opportunity to apologize. During the second, 'rehabilitative', part of the conference, professionals and the offender's family searched for ways of keeping the offender out of trouble.

The division of the conference into the 'restorative' and the 'rehabilitative' parts and the accompanying division of the issues relating to restoration and rehabilitation is remarkable. The assumption that the two issues can and should be separated seems to match the view of certain restorative proponents who wish to maintain a distinction between the two models (McCold, 2000). However, the reasons for separating the models seem to be different. Restorative justice proponents want to preserve the purity of the restorative ideal. However, within this family group conferencing project, the explanation for the separation of the two models was the desire to protect privacy of young offenders and their families. To achieve that end, victims were not allowed to participate in the second part of the conference where personal issues related to offenders and their families could be discussed.

One problem with the approach adopted in this project is establishing exactly what should be classified as private and thus excluded from the first part of the conference. It can be argued that almost anything relating to the offense may be seen as intensely personal. This argument may be strengthened by the fact that the project dealt with juvenile offenders whose privacy should get extra protection.

Another problem is that in practice, at least in some cases, it may be difficult to disconnect the issues concerning the offender's welfare and restorative matters. So, in the conference which was observed as part of this study, drugs and alcohol abuse by offenders (which were typically classified as matters relating to the offender welfare to be dealt with during the 'rehabilitative' part) were raised at the 'restorative' stage

of the conference. This disclosure occurred when victims asked offenders why they committed burglaries, and the offenders responded that they needed money to buy alcohol and drugs.

But even if it were possible to draw a dividing line between the issues concerning restoration and those relating to rehabilitation/welfare, it might be difficult to ensure that the latter do not get disclosed in the 'restorative' part of the conference accidentally. The risk of inadvertent disclosures is probably quite high, given the participatory, deliberative nature of the restorative process. Classifying issues into those relating to the offense and those concerning the offender's welfare and excluding the latter from restorative discussions seems to put artificial constraints on deliberations by stakeholders and thus to change the nature of the restorative process from that envisaged by restorative proponents.

Another problem with placing restrictions on the issues that can be discussed is that it may negatively affect victims in the sense that they may be denied answers to some of their questions. It was apparent during observations made as part of this study that victims had a lot of interest in possible causes of crime and ways of preventing its future occurrence. They repeatedly brought up that topic up in the course of the 'restorative' part of the conference. Unless victims know the relevant information, they may be unable to understand why and in what context the offense was committed and feel assured whether or not offenders intend to re-offend against them (and possibly others). The lack of such understanding and reassurance may prevent the achievement of the desirable restorative outcomes, such as reconciliation of victims and offenders and victims gaining a sense of closure.

Attempts to limit personal information about offenders and their background during the 'restorative' part of the conference may also disadvantage offenders by preventing them from explaining to victims and other community members the circumstances under which the offense took place and its possible causes. This may reduce offenders' chances of being forgiven by victims and reintegrated by the community.

To sum up, findings from this study indicate that attempts to separate issues into those relating to the offense and those relating to the offender's welfare/rehabilitation may be potentially problematic. The splitting of the conferencing process into the 'restorative' and 'rehabilitative' parts may lead to unintended negative consequences. These findings may offer some support to the view of proponents and critics of restorative justice who believe that a division between restorative and rehabilitative approaches is undesirable.

Rehabilitation within restorative justice: views of conference participants

How did participants in family group conferences see the place of rehabilitation within restorative conferences? A starting point for exploring this question may be the finding that the majority of victims within this study came to conferences hoping that their attendance would help keep offenders out of future trouble by making them understand the wrongfulness of their behavior and the consequences of their actions (Zernova, 2007b).

Two victims got into trouble themselves when they were young. They said they wanted to provide some encouragement for offenders to stop offending. Using the words of one of these victims, he came to the conference to 'put this lad…in the right direction':

> …when I was a lad, I also got into trouble…[yet] I ended up being a director of the company, so you can get over these problems if you can put them behind you, and take the lessons that you learn from these things and get on with it… if he could put it behind him, then he could go forward and make good of himself. (*From an interview with a victim*)

The fact that offenders in this project were young may be important in influencing victims' agreement to take part in conferences. It appears from interviews that when invited to meet offenders, victims often think that it could have been their own child or grandchild. This thought promotes the victims' desire to participate and help offenders (see Marshall & Merry, 1990, p. 148, for a similar finding). One such victim (an elderly lady who confided in the interview that she saw her own grandchildren in 'her' offender) said that she would not have come to a conference if the offender was an adult. When asked why, her response was: 'Because an adult is old enough to know right from wrong. But children need some leading.' This may be seen as an instance of citizens willing to assume 'moralizing social control' (Braithwaite, 1989, p. 9) over juvenile offenders and coming to conferences for that reason.

A similar example is provided by another victim – also an elderly lady – who said in the interview that she came to the conference to invoke feelings of guilt in offend- ers in the hope that it might keep them out of trouble. During the conference the victim revealed to the offenders that she was in the hospital, seriously ill, when they burgled her house. This victim recounted how upset she was when she was told about the burglary, how much she cried and how afraid she was to return to the house after she left the hospital. The victim asked offenders how they would have felt if she was their grandmother and mentioned the fact that she knew them since they were babies. No doubt it was painful for the offenders to hear this. So, when questioned by another victim what would stop them re-offending, one of them responded, 'A conference like this. To see that victims feel like that.' Given that the offender who said this had been sent to prison for eight months, his statement may be seen as a support for the claim of restorative advocates that disapproval by ordinary people may be a more powerful weapon to control misbehavior than official punishment (Braithwaite 1989).

The finding that the majority of victims came to conferences because they thought it would make offenders realize the consequences of their actions and keep them from further trouble may provide a useful insight for the debate about the relationship between restorative justice and offender rehabilitation. It does not support the view of those proponents who want to separate rehabilitation from restorative justice. Many lay participants in conferences want restorative justice to promote offender rehabilitation and come to conferences, hoping that their attendance will facilitate the achievement of that objective.

This conclusion was supported during an interview with a conference facilitator who claimed that in virtually all cases, one of the reasons why victims came to confer- ences was a desire to help offenders stay out of trouble. According to this facilitator, the presence or absence of that desire may determine whether or not a victim agrees to participate in a conference. The facilitator provided an illustration:

> A good example of that is recently with the young lad who damaged somebody's car. It was a company car that belonged to…an adult male…My conclusion from speaking to him was actually he didn't see himself as a victim of crime. He wasn't particularly agree- ing that it was a nuisance. It hasn't had a lasting impact on him…Effectively, that is how our meeting concluded. But then I went on to say, 'So, the only thing left for me to ask

of you is whether you would be prepared to come to a meeting purely in order that the young person might benefit from hearing some of those things'. And he said, 'Yeah, sure, I would.' So, he was going to get nothing from it other than that important ingredient which, I think, is the difference between what makes victims come or not come, that is wanting to do something to help the young person. That might mean all that is left for the victim, the only reason. They might not want 'sorry'. They might not want to understand…But they might want to come to do something (to help the young person) (*From an interview with a conference facilitator*).

A caution needs to be made in relation to the finding that many victims attended conferences in the hope that it may help prevent re-offending. This evidence should not be interpreted as an advice for proponents to promote restor- ative justice mainly, let alone solely, by reference to its crime-prevention potential. While there may be good theoretical reasons indicating that restorative practices can be effective in reducing crime (Braithwaite, 2002, pp. 73–135), there are also reasons to the contrary (Levrant, Cullen, Fulton, & Wozniak, 1999; Braithwaite, 2002, pp.141–148), and producing conclusive empirical evidence on the issue is very difficult for methodological reasons (Walgrave, 1992; Brookes, 1998; Wilcox, Hoyle & Young, 2005; Hayes, 2007). Yet, even if it were possible to establish that restorative justice does not reduce re-offending, it could benefit its participants and the society more generally in other ways. For example, it may promote victim heal- ing, individual empowerment, development of participatory skills, strengthening communities, moral growth of participants in restorative justice encounters, and participants in restorative justice encounters practicing self-government and learn- ing to handle their problems themselves, without resorting to the help of profes- sionals and experts (Christie, 1977, 1982; Bush & Folger, 1994; Johnstone, 2002, pp. 144–150).

The reasons offered by victims for their participation in conferences is not the only source of information on the role of rehabilitation within restorative justice, as perceived by those who have had experienced it first-hand. The views of conference participants on the subject are also reflected in their responses to the question about how they saw the purpose of the conferences. The vast majority of interviewees thought that the purpose was to make offenders understand the wrongfulness of their actions and their effect on victims. Hopefully, this understanding would help keep them out of trouble. This finding may indicate that restorative justice, as practiced within this project, came close to being a one-dimensional, offender-driven, correc- tional program, having reforming juvenile delinquents as its main objective.

Restorative accountability and the rehabilitative refusal to sanction

Some findings from this study point to tensions and conflicts which may surface when restorative and rehabilitative objectives are pursued simultaneously. One such tension is between the restorative aspiration to hold offenders accountable and the 'traditional' welfare/rehabilitation attitude toward sanctioning the offending behaviour as irrele- vant or even inappropriate. There is some evidence suggesting that professionals in this project were not very enthusiastic about sanctioning offenders. As a result, several victims complained that they felt uncomfortable during conferences because of what they saw as the conference facilitators' adoption of a non-blaming approach toward offenders. According to these victims, the conference and its preparation were conducted as if the offender had done nothing wrong (Zernova, 2007b).

Victim Support representatives who were interviewed as part of this study and who represented a victim in one of the conferences also criticized the sympathetic attitude of facilitators toward offenders, as well as the over-hospitable conference environment. To quote them,

> Victim Support representative 1: … what struck us was that the person coordinating [the conference] provided a great deal of food, and there appeared to be a party atmosphere at the conference.

> Victim Support representative 2: Yes. It was quite a young offender, so they tried to make it informal and relaxed.

> Victim Support representative 1: It was actually bizarre. I'm glad the victim wasn't there. I don't know how effective that was for the suspect and the family of the suspect, but I suspect they wouldn't have the same opinion that we had, because we're approaching it from a different perspective… For Victim Support, it was clearly a serious matter, and yet here we were sitting around this feast. (*From an interview with Victim Support representatives*)

According to Victim Support representatives, in that conference, the offender read out a poem he had written and was praised by those in the room. It was also pointed out that the offender felt very comfortable in the conferencing room:

> Victim Support representative 2: The other thing that didn't help was that the premises that the conference was in…were familiar to the young person, the perpetrator. So he felt comfortable there and was dashing in and out, saying: 'I'll go and get this!' and 'I know where that is!'…I don't think he should feel uncomfortable. He shouldn't feel frightened or intimidated. But to get the balance wrong – when he became so familiar, and it was so easy, and it was such a nice place to be – that the balance was out of kilter…I think, had the victim been there, it wouldn't have been funny. It would have been very seri- ously wrong. (*From an interview with a Victim Support representative*)

At the very beginning of the conference which was observed as part of this study, the YOT workers read out short reports where they generously praised the offenders for making a lot of progress in recent months and being of reformed character. That way of starting a conference seemed to imply that sanctioning offenders for their past conduct became less relevant and important, as they have already changed their atti- tudes and behavior. It seemed to set a particular mood for the conference which discouraged those present in the room from being harsh toward offenders.

An additional piece of evidence indicating the reluctance to sanction offenders in this project is provided by the fact that very little importance was attached to material reparation. It appears from interviews and documentary evidence that only in two out of sixteen case studies was a possibility of material reparation raised in conferences. Obviously, the absence of material reparation negatively affected at least some victims, but it could well be that offenders were disadvantaged too, because, as pointed out by restorative proponents and critics (Barnett, 1977; Bazemore, 1996; Johnstone, 2002), an opportunity to repair the damage offenders have caused can promote their reform and rehabilitation.

These findings demonstrate that combining the restorative approach, which requires sanctioning the offending behavior, with the 'traditional' offender welfare or rehabilitation approach, which views offenders as deserving sympathy, rather than condemnation, is not always easy. There is a tension between the philosophies

underlying the two approaches, and getting the balance wrong has a potential to disadvantage victims and possibly offenders.

Rehabilitating offenders or restoring victims?

When this project supplemented its existing child care and protection practice with criminal cases, it faced a challenge of incorporating new matters into the core of its services. In the past, the project's clients were children or young people and their families. Now a new recipient of the services was added – victims of crime. Their simple presence, let alone their unique needs and the centrality allocated to them by the restorative paradigm (Zehr, 1990), was something that practitioners had to come to grips with (Zernova, 2007b).

So, in one case study, a facilitator started a conference by asking a young offender if it was okay to start and did not ask a victim (also a child) a similar question. The victim and her mother said in the interview that such a beginning of a conference made them feel marginalized, because it seemed to imply that the offender was the most important person in the room and everybody else was there for her. It could send a message that the victim was used for the benefit of the offender.

In another case a young victim complained in the interview that he felt vulnerable during the conference because the offender brought five family members with him, while the victim only had his mother present. The victim thought that the offender received more support than he did. Those organizing the conference had probably unwittingly contributed to creating this uncomfortable situation for the victim: it was a common practice to encourage as many members of the offender family to attend as possible, so as to mobilize the family resources in meeting needs of the offender and promoting his or her welfare. In pursuit of that objective, the perspective of the victim who felt intimidated during the conference was overlooked.

It can be argued that the instances where the interests of victims were neglected, while those of offenders were advanced (possibly at the expense of victims), can be attributed to implementation mistakes on the part of the project and its practitioners. In a well-implemented restorative program, needs and interests of victims and offenders should not be in conflict. Victims and offenders have a common interest in putting things right (Johnstone, 2002, p. 19), and meeting certain needs of one stakeholder in crime often simultaneously meets some of the needs of the other.

However, this study has found some evidence indicating an apparent lack of harmony between the interests of a victim and an offender even in the absence of obvious implementation errors (Zernova 2007b). One case study involved a young victim who was seriously traumatized by the offense and an offender of a similar age who demonstrated no remorse and actually made abusive remarks directed at the victim during the preparation for the conference. The conference organizers felt that facing the victim and hearing his story could benefit the offender by hopefully penetrating his indifference and psychological techniques used by him to shield himself from realizing the human costs of his behavior. At the same time, there was a real danger that exposing the victim to the unremorseful offender could traumatize him even further. The conflict between the competing concerns in this case was resolved by prioritizing interests of the victim and excluding the unremorseful offender from participation in the conference.

Most restorative justice proponents will probably agree that in cases of conflicts between interests of victims and offenders, such as this one, interests of victims should

come first. Otherwise, victims would be effectively exploited for the benefit of offenders and victimized for a second time. However, there may be several difficulties with adopting the formula that the interests of the victims should always be given a priority.

One problem is that it may not always be easy to establish what exactly is in the interests of victims. In the case study involving the unremorseful offender, it seemed to be assumed that it was in the interests of the victim to be protected from an exposure to the offender. Yet, at least arguably, there was a possibility that when confronted with the victim, the unremorseful offender could change his attitudes, and seeing that change could be healing for the victim. Also, it can be argued that simply confronting the offender in a safe environment and telling him what he thought about him could be a therapeutic and empowering experience for the victim, and thus in his interests. A quotation from an interview with another young victim who was very afraid of the offender before the conference supports this argument:

> …[meeting the offender] helped me at the mental side, because I know that I sat in front of him and told him what I think of him, that he is a coward…everything under the sun I felt at that point. But in a sense, it's also helped me…I mean a few weeks after that I met him, and he looked at me, and I looked straight back at him, because he knew exactly what I was going to say. Yeah, it has helped me, on the mental side. (*From an interview with a victim*)

Another problem with adopting the principle that in cases of conflicts interests of victims should prevail is that it is not always obvious who is the victim – if there is one – in a particular case. Although cases came to this restorative justice project with clear definitions of who was the 'victim' and who was the 'offender' (cf. Shearing, 2001), some findings suggest that sometimes these definitions could be misleading and could conceal more than they reveal (Zernova, 2006). Prioritizing interests of 'victims' in such cases may lead to ethically questionable outcomes.

Professionalized or lay-oriented approach?

Another tension that may arise when restorative and rehabilitative models are combined is between a restorative commitment to giving ordinary citizens a greater role in the process of offender reintegration and allowing professionals to play key roles in the process consistently with the 'traditional' offender rehabilitation model.

One reason why a shift toward a more lay-oriented approach may be problematic is that victims may not be willing to assume greater power in the justice process, as some findings from this study demonstrate (Zernova, 2007b). Several victims were critical of the 'passive' attitude taken by professionals during the 'restorative' part of the conference, when the professionals refrained from expressing their personal views and delegated disapproval of the offending behavior to victims. These victims reported feeling uneasy, being the only ones in the conference to express dissatisfac- tion with the offenders' actions. They wished that those in a position of authority would join them in reprimanding their offenders. Some victims wanted to hear the expert opinions and were mystified why the professionals present during the 'restor- ative' part (social workers in particular) did not contribute to the discussions their knowledge and expertise. It seems that these victims failed to understand the dangers of the conventional authority-based, expert-driven approach to offending and did not appreciate the benefits that a shift to a lay-oriented justice could deliver them

and maybe others (cf. Christie, 1977, 1982; Bush & Folger, 1994; Johnstone, 2002, pp. 144–150).

The move toward a more lay-oriented approach may be problematic for a different reason. There is a danger that delegating decision-making powers to ordinary citizens may lead to dispositions of offenders that are unlikely to promote their reintegration, as in the well-publicized example of a conference where stakeholders decided that the offender should wear a t-shirt announcing 'I am a thief' (Braithwaite, 2002b, 2003; Roche, 2003).

Whether in order to avoid outcomes of this kind or for some different reason, it appears that the move toward a lay-oriented approach attempted during the conferencing process was rather limited. Professionals retained the power to define the structure of the process and the roles of conference participants, and carefully directed the process toward particular results. So, the role of victims was carefully restricted to asking questions, expressing emotions and disapproval of the offending behaviour, and, possibly, granting forgiveness during the 'restorative' part of the conference. Cases usually came to the project after the sentencing stage, that is, conferences were ordered by a judge or a judge recommended an assessment for a conference and the results of the assessment were positive, so victims had no real say over how offenders should be handled. As noted earlier, they could not even participate in the 'rehabilitative' part of the conference.

However, there is some evidence indicating that several victims were willing to take a greater part in the process of offender reintegration (Zernova, 2007b). When asked how the conferencing process could be improved, two victims reported that they would have liked to participate in the 'rehabilitative' part of the conference. Three other victims wanted to know how 'their' offenders were getting on after conferences. They wanted to be updated if relevant information was obtained. One victim went so far as to offer an offender an apprenticeship in his company. Another victim was willing to give driving lessons to the offender who had stolen and wrecked his car. To quote this victim:

> I would take him for a drive if he wanted to… I would have given up a Sunday and taken him out… until he's on track, you know… to get the experience of driving around fast in a safe environment…get some encouragement…don't know how all this psychologi- cal stuff works, but…that's for sure.

It seems that the potential benefits that could be derived from a greater involvement of victims in the offender reintegration process were not fully appreciated. No evidence was found indicating attempts that were made by project practitioners to mobilize victims as a useful resource following expressions of disapproval and possibly forgiveness during the 'restorative' part of a conference.

As far as offenders' families were concerned, they seemed to be given greater power during the 'rehabilitative' part of the conference when they were invited to help develop the rehabilitation plan and afterwards when they had to implement it. Yet, the degree of their empowerment is questionable, given that the professionals created pre-conferencing reports forming bases for rehabilitation plans, which pre-defined the nature and focus of the plan. During conferences, professionals subtly guided offenders' families in the development of those plans to ensure that they satisfied certain criteria and aimed to achieve certain goals (Zernova 2007a, 2007b). Additionally, after conferences, plans had to be approved by a YOT worker.

It appears that rather than relying on citizens as 'natural helpers' and using professional help 'as needed' (Bazemore & Bell, 2004), the approach to offender reintegration in this project relied primarily on professionals, using offenders' families and victims 'as needed'.

Disabling ethical discussions

As has been pointed out at the beginning of this article, importing the medical model into restorative justice has been criticized on the grounds that it avoids discussions of ethical dimensions of justice when responding to crime (Pavlich, 2005). It reduces complex social and political problems to individual traumas that can be resolved through healing and treatment.

Some evidence supporting this criticism might be found in case studies from this research. One such case involved an assault on a white girl by a black stranger. The second case dealt with bullying of a girl from a poor low-class background by a schoolmate from a middle-class wealthy family. The third case concerned burglaries by two young men who needed money to buy designer clothes in order to maintain a certain status in the eyes of their friends. All these cases were responded to on the assumption that they involved inter-personal disputes, resulting from deficiencies of individual wrongdoers, such as lack of empathy or discipline, and required peaceful resolutions between victims and offenders and reform of individual wrongdoers.

However, it may well be that in reality these cases were manifestations of wider social problems such as: racial hatred, classism, poverty, and/or materialism. By view- ing individuals, as opposed to society, as the source of the problem, both restorative and rehabilitative models effectively divert attention from what may be deeper social ills causing crime, thus allowing those ills to persist and become further entrenched. By prescribing responses grounded in values of healing and reconciliation, the models disable discussions of controversial issues, translating complicated ethical and political issues into technically resolvable problems (Pavlich, 2005, chapter 2).

Conclusion

This article has argued that there is a degree of disagreement in the restorative justice movement on the relationship between the restorative and rehabilitative models of criminal justice. Some proponents argue to keep these two models apart. Others observe a conceptual compatibility of the restorative and rehabilitative approaches and wish to combine them. Consistently with the proposals of the latter group, the family group conferencing project where this study was carried out aspired to inte- grate both restorative and rehabilitative models. The findings suggest that this resulted in an unequal partnership of the two approaches. Rehabilitative objectives were attached an overwhelming importance, while some restorative principles were watered down.

One source of this imbalance that has been suggested is implementation mistakes made by the project practitioners when their pre-existing child care and protection conferencing practice was supplemented with conferences in criminal cases. The second possible source relates to the context within which this project operated, in particular, its relationship with the criminal justice system and the social services department. Both of these agencies had their own agendas, in particular, reducing reoffending among young offenders and promoting their welfare. The dependence of

the restorative justice project on the social services department and the criminal justice system for funding, referrals, and legislative framework put pressures on the project practitioners to promote the goals of offender rehabilitation and welfare. In this process, some of the restorative concerns were overlooked.

Some evidence suggests that drawing a sharp distinction between restorative justice and offender rehabilitation may not be the best way of 'selling' restorative justice to the public. What many victims want is an intervention which reduces chances of re-offending by young people. Most victims came to conferences hoping that their participation would help rehabilitate young offenders. Additionally, findings suggest that separating restorative and rehabilitative issues may not be easy in practice. It has been also argued that attempts to separate them may produce negative consequences for both victims and offenders.

Findings demonstrate a number of tensions resulting from attempts to merge restorative justice and the rehabilitation approaches which can be traced back to the conflicting assumptions lying beneath the restorative and rehabilitative paradigms. One such tension is between the restorative desire to sanction offenders and the rehabilitative attitude toward sanctioning as inappropriate. Some empirical evidence indicates that restorative justice professionals were somewhat reluctant to hold offenders accountable and this made some victims feel uncomfortable. Another tension identified is between promoting interests of victims and offenders, which in some situations may be in conflict. Yet another tension is between creating a lay-oriented approach advocated by restorative justice advocates and perpetuating a professionalized approach consistent with the 'traditional' treatment model. Some victims were critical of attempts by professionals present at conferences to adopt a 'passive' role in the restorative process and wished for a greater professional involvement. This suggests that the restorative aspiration to create a lay-oriented form of justice may not be what all victims want. This study has also found that the move away from a profes- sionalized approach was limited and that little attempt was made to mobilize ordinary citizens in the process of offender reintegration.

Finally, merging the two models may serve to individualize problems with social-structural roots and disable search for ethical responses which are not centred on values of healing crime's harm and offender rehabilitation.

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