

Restorative Practices and Family Empowerment: both/and or either/or?

by
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Today in the mail I received a notice about a 2003 conference in The Netherlands called “Building a global alliance for restorative practices and family empowerment”. The title set me thinking about the relationship between these two concepts.

Readers will know that the family group conference was introduced into law in New Zealand in 1989 as a decision-making method for determining appropriate responses to offending by young people (and for care or protection concerns as well). The law gives the victims of offences by young people the entitlement to attend family group conferences, and as an entitled person, a victim becomes one of a number of persons who must agree to a plan for it to be accepted as an alternative to prosecution of the young person who has offended. This measure was later hailed as an example of restorative practice, and while I think it is capable of delivering on restorative aims and objectives, this was not the reason it was introduced. Those of us who were involved in the policy development process leading up to the new law had never heard of restorative justice (indicating some deficits in our research approach, as there was a body of literature available on the subject even then) and the law was not crafted to embody restorative aims. The law was about restoring to family networks control over the decision-making about their young people who, for some reason or another, had come under the notice of the statutory child welfare agency. The history of such contacts, for Maori and Pacific Peoples in particular, had seen the customs, values and beliefs of these communities as having little relevance alongside the customs, values and beliefs of the dominant white culture. Massive alienation of Maori and Pacific Peoples children from their families as a result of child rescue ideology imposed by the dominant culture, and the heavy concentration of Maori children in welfare institutions and correctional facilities, all pointed to a system that was institutionally racist.

Significant political and social change in NZ in the 1980's led to a determination to rectify unjust and culturally abusive professional practices. Changing the way decisions were made about children in the notice of the authorities was seen to be the key to this. The family group conference puts the child, the child's parents and the child's extended family, at the centre of the decision-making process. The way that decisions are made will reflect the decision-making practices of the family's culture. This is where the notion of empowerment arises, and unlike restorative principles, empowerment principles were explicit in the policy on which the new law is based. Up to this point in time, all the power about what happened to children under the notice of the statutory agency rested with the agency's professionals. I do not believe that professionals can give power to families – that is not the basis of the approach. Rather, families will take power and become “power-full” when professionals create the right conditions for this to occur, and this is far more

likely when people are culturally safe than when they are struggling within an alien cultural context.

So the family group conference in the New Zealand youth justice system was established with a family empowerment aim. Families could regain control of situations over which they had lost control and plan for the future of their young people with professionals assisting them in this process. Why were victims included in this process? Simply, to enable the process to attain public credibility. This was a radical departure from previous child welfare decision-making practices. Politicians, police and members of the general public were understandably nervous about it. As policy makers, we had had the benefit of talking with Maori, Pacific Peoples and other cultural groups about the proposals, which had emerged through public debate within these communities about how they might regain the power that was rightfully theirs, and we had little doubt that this process would work. It seemed important, though, that the public had some way of assessing this for itself, and thus the notion of involving victims arose. It was felt that if victims received justice for themselves in this process, if victims saw that the process was rigorous and not a soft option, and that if victims were satisfied with the outcomes, then these attitudes would begin to permeate New Zealand society.

Over time, Youth Justice practitioners in New Zealand became exposed to the restorative justice literature, and there was an embracing of the principles of restorative practice. I recall being asked on a number of occasions to declare the New Zealand practice in relation to young people who offend, a restorative justice approach. I declined to do so, in the early stages because I did not know enough about restorative justice to make an informed judgement and as my understanding grew, because I had doubts about whether the family empowerment principles of the law and restorative justice principles were compatible.

By definition, restorative justice is victim-centred, as distinct from offender-centred, work. A central tenet of restorative justice is to shift the focus from the management of offenders to the harm that has been experienced by victims. If justice is to be harm focussed, then victims have a central role in defining the harm issues and how these may be ameliorated, either with or without direct contact with the offender. The focus of offender management will then be on ensuring that offenders, through their activity, enable victims to have restored to them, in fact or in kind, that which was taken from them when the offence was committed. Restorative work over time has shown that victims, if they are to experience a restoration, must be able to tell their own story about what happened to them, be able to ask questions relating to what happened and why, achieve vindication through restitution of their property and sense of well-being, and be assured of safety in the present and in the future. All these can be achieved without face-to-face contact with the offender but are likely to be more wholly achieved where contact does occur. It seems likely also that face to face contact will have a more powerful effect on offenders in leading them to an understanding of the impacts of their behaviour, than reparative activity without such contact.

However, I believe that some caution needs to be applied in considering the full restorative model as a response to offending by young people, particularly where the young persons lack capacities of personal insight, guilt and remorse that makes the restorative approach such a powerful influence on offenders generally. A youth justice system focussed primarily on victim harm will fail to impact sufficiently on this hard to manage group and could result in a loss of public confidence in the entire system, given that these young people, although relatively small in number, contribute significantly and out of all proportion to offence statistics. A youth justice system exists at all only because it is recognised that childhood is the period of life when life-course persistent offending potential is created or emerges, and that it is the time of life where it is possible, through service provision, to turn things around. If we did not believe this, we would have a common justice system for children and adults. While we might be prepared to abandon the disordered adult to sanction and custody as the sole response to their offending, we are less inclined to do so with young people.

The New Zealand approach to managing the young person who offends centres around the family group conference, where it is possible to develop plans that address the offending and put matters right, as well as institute plans that address the chaos in young people's lives. The purpose of the family group conference in youth justice is primarily related to offender management, with the aim of shutting down the development of offending careers by energising family systems as the change agent. It is a whole child, whole family approach. A victim may achieve restorative justice in this process, and this should always be sought, but this is not the purpose of the family group conference process. This is recognised increasingly now by advocates of the full restorative model who have renamed their approaches Restorative Conferences, Mediation Conferences or Victim/Offender Conferences, and who no longer seek the involvement of extended family as a priority.

While I can see that a family empowerment approach can have a restorative effect for victims, I am less sure that a restorative approach will have an empowering effect for families. I suspect that in primarily restorative approaches, "family" will mean Mum, and Mum will experience the blame – just like she has always done in traditional child welfare systems.

Perhaps we could have some debate about this.

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