FORUM
Volume 55, Number 2, 2013
www.wwwords.co.uk/FORUM

Restorative Justice Practice: cooperative problem-solving in New Zealand's schools

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ABSTRACT This article links capability for cooperative problem-solving with socially just global development. From the perspective of the United Nations Development Programme, the work of global development, founded on a concept of global justice, is capability-building. Following Kurasawa, the article proposes that this form of global justice is enacted where capability for respectful interaction is built at the level of face-to-face relationships among people in communities; and further, that restorative justice practice has the characteristics required to develop this capability. Using the historical development of restorative practices in New Zealand as an example, it is suggested that restorative practice is a form of cooperative problem-solving which can create citizens for a more just society.

Capacity for Cooperative Problem-Solving

Capacity building to enable communities to deal with the problems they face is now a well-recognised objective in development circles, such as the United Nations (UN), particularly the United Nations Development Programme (UNDP). The approach was pioneered by the UNDP initially in the Human Development Report 1990, and is underpinned by a philosophy that puts people, rather than economics, at the centre of development, 'going beyond income to assess the level of people's long-term well-being' (UNDP, 1990). The approach is promoted by the economist Amartya Sen, who has argued that development of this kind *is* justice (Sen, 1999, 2009), and by Martha Nussbaum (2011), who argued for a program of creating capabilities. Since that time, there has been a growing understanding in the UNDP that the participation of the people in producing the conditions of their own lives is an essential aspect of global development. Indeed, I would be so bold as to suggest that there is a

growing appreciation that 'development' is not just for 'less-developed' countries, but rather, for the whole global community. This implies a sort of imperative that all of us, whether we consider ourselves 'developed' or not, need to move away from understanding development as a continuum, towards a conception that we are all in this together: development is not just a matter of bringing the poor, or poorly developed, up to 'our' standard.

This is indeed a far-reaching shift, which acknowledges that 'bringing about development of the people, by the people, and for the people, and emphasizing that the goals of development are choices and freedoms' (UNDP, 2013) demands participation, and opportunities for participation, at every level in society. It demands a shift of mind in the 'north', whilst the 'north' and 'south' converge at an increasing rate. It therefore brings a whole new dimension to the practices around development, moving the focus of action away from the big players such as the World Bank, and putting the spotlight onto the economic practices of people at every level in every society in the world.

Henry Tam has drawn on extensive research to demonstrate not only that human behaviour is motivated by more than self interest, but also that human living is better when people engage in cooperative problem-solving.[1] Examples of cooperation leading to survival in both human and animal worlds have frequently been observed and documented. Psychologists have shown that children and infants demonstrate pro-social behaviour without necessarily wishing to gain from their actions, and that altruistic children tend to grow into altruistic adults. Many of these researchers explain this behaviour as having an evolutionary payoff, that is, many psychologists view pro-active pro-sociality in children and adults as part of the human evolutionary advantage (see for example Hepach et al, 2013; Tomasello & Vaish, 2013; Warneken, 2013).

But cooperative problem-solving is not just about survival, or even socio-economic advantages. Centrally, it is about acknowledgement of the power of people everywhere, and of their rights to well-being and to meaningful participation. This is a huge ask and a complex one. Democracy and how to achieve it may go down as *the* question of the twenty-first century. We have the examples of the UN itself, as well as the Eurozone, which demonstrate for all to see how difficult it is to bring together states with very different histories and value systems to produce any kind of meaningful decisions, let alone put them into practice. Diplomacy may be the practice that prevails – or should prevail – in these august institutions; but at the level of the street, the housing complex, or the school, diplomacy may have little to say. When relationships break down at the level of the street, we are more likely to call for the police, and reach for a 'lock 'em up' solution, than call for a peacemaker, and look for reconciliation.

In his book, *The Work of Global Justice*, Fuyuki Kurasawa (2007) argues that the belief that all human beings are entitled to a full spectrum of socio-economic and civil and political rights, can and must be turned into practices – what he calls ethico-political labour. Without these practices, amongst which he includes forgiveness, bearing witness, foresight, aid, and solidarity, global

justice remains a concept without bones or action. The work of global justice is messy, difficult, and long-term and not often immediately rewarding, even at the policy level; nevertheless, it is at the level of face to face contact that the practice of global justice is actually done.

Restorative Justice Practice

Restorative justice practice (RJP) has many of the characteristics argued for by Kurasawa. A restorative interaction works for forgiveness, which comes about by those present bearing witness to what has occurred and its effects; it aims to create solidarity amongst those present, in order to develop a plan or to enable the development of a plan where all will pull forward together to ensure that the harm does not happen again. The most effective restorative interactions also develop a sense of empathy amongst the 'protagonists', and it is this which paves the way for forgiveness and healing of relationships. Ultimately, a restorative interaction restores the *mana* of those present, both those who have offended, and those who have been offended against. Mana is a Māori term which refers to a person's moral integrity or strength. In Māoridom, everyone has mana and it is good manners that people do not trample on the mana of others. When someone fails to act in morally appropriate ways, they damage their own mana, as well as the mana of those they offend (in fact it could probably be said that damaging the mana of the other *is* the offence).

In an attempt to define restorative practice, the International Institute of Restorative Practice claims that:

> Restorative practices is a new field of study that has the potential to positively influence human behaviour and strengthen civil society around the world.
>
> The fundamental premise of restorative practices is that people are happier, more cooperative and productive, and more likely to make positive changes when those in authority do things with them, rather than to them or for them. (Wachtel, 2013)

This definition demonstrates well the fundamental shift in relationships that is the basis of RJP: it is a collaborative and respectful approach, rather than one underpinned by competitiveness and instrumentality (Peters, 2011). The moral value of human action permeates restorative justice practice.

Restorative practices were first brought into New Zealand schools in the early 2000s to reduce suspensions, stand-downs and exclusions, to increase engagement (keep students at school), and to improve behaviour management in classrooms, and thus increase opportunities for learning. The initiative was promoted by judges of the Youth Court, who noted that 80% of young offenders before them had dropped out of school at a young age. Restorative justice had already been proposed in the United States of America by Howard Zehr (1990) as an alternative to retributive justice, and it had also been introduced in the Thames Valley Police in the United Kingdom (Liebmann,

2007). The innovative shift in Aotearoa New Zealand was the extension of the restorative justice principles, of respect, participation of those harmed, and a focus on restoration rather than retribution, to the Welfare and Education sectors of government. In 2013, it 'lies at the heart' of the youth justice system (Ministry of Justice, 2013).

As part of an attempt to deal with increasing numbers of Māori children being taken into social welfare, the New Zealand Department of Welfare, as it was in 1989, instituted a process of *whānau* conferencing (Family Group Conferences or FGCs) for young persons who were in trouble with the law. The intention was to ensure that families had the opportunity to have their say about what should happen to their young ones (Maxwell & Morris, 2006). This process was enacted into law, creating a globally recognised, ground-breaking precedent. *Hui*, the practices and process of meetings of sometimes large groups of people who come together with the overt purpose of working out what to do about a shared problem, are well understood in Māoridom, so it was promoted as an indigenous answer to an indigenous problem.

FGCs were not initially introduced as an explicitly 'restorative' practice. However, it was a short step from there to suggest that the burgeoning suspensions and exclusions from schools, a majority of which involved young Māori, could also be dealt with using a similar, hui-like process. I was part of a research team whose brief from the Ministry of Education was to develop a conferencing process that included elements of restorative justice based on the model used for FGCs, but this time it was for use in schools. We developed and trialled our process, and by the end, our report stated that the conference was the last step in what should be a chain of restorative approaches that should and could occur with very little extra expenditure of energy or resource, earlier in the life of the miscreant student. Having experienced during our trialling situations where a successful conference was followed by a bawling out of a student in a spirit that was completely contrary to that generated in the conference, we recommended that the whole school structure needed to be already involved if conferencing was to be successfully used. In fact, we said, we should do fewer conferences, and pay more attention to the ways we speak to and about students in our schools (The Restorative Practices Development Team, 2003). Most commentators now advocate the same philosophy (e.g. Morrison et al, 2005).

For those who attend a well-run, successful restorative conference, the experience can be life-changing. This life-changing effect is not just for the offenders and victims, but for teachers, coaches, and deans, who often turn up to support one or the other of the young people involved. And so it was not surprising that the reputation of restorative conferencing in schools grew quickly. Appreciating this, a school counsellor from Queensland, Margaret Thorsborne, developed and has run many very successful workshops for school managers and classroom teachers in New Zealand schools and around the world, teaching a form of scripted conversation with prescribed steps, now familiar as the 'restorative chat', as well as a scaled-down version of a

conference. A recent summary of the outcomes of studies of restorative practices in New Zealand schools (Corrigan, 2012) shows that restorative practice in schools can reduce suspensions, de-escalate behaviour difficulties, and improve achievement outcomes for students. It has also been shown to improve teachers' satisfaction in their work (Kecskemeti, 2011).

Culture Change in Schools

An important finding is that schools that introduced restorative values across the whole school culture were more successful than those who tried to use the practices more selectively. These schools become calmer, and there is a shift of focus from discipline and punishment to quality of relationships, across the whole school and its community. Schools using the practices in this way might develop a broad range of skills and practices, including how they welcome visitors, what and how they write their aspirational documents, and how teachers and students speak to one another. In Zehr's (1990) words, the basis of restorative justice is respect. To my mind, restorative practice is the exact tool required to enable practice at the ground level of the kind of justice outlined at the outset of this article: it is a tool which can help to put justice, in the sense of universal human rights to well-being, into practice.

In this mode, restorative justice practice is both an attitude of welcome which permeates the school culture, and a process, whereby children and teachers are well aware that they are trying to be and stay 'in relationship', and where they are taught strategies for doing so. Many practitioners have now developed their own approaches, from chats, to circles, to peer mediation, to classroom conferencing, using these ideas. What is less clearly understood is the dependence of the approach on certain forms of language: language that deliberately avoids colonising ways of speaking, and which calls respected subjects, people with mana, into position (for further discussion see Drewery, 2005; The Restorative Practices Development Team, 2003; Winslade & Williams, 2012). There is further work to be done on non-colonising language.

One of the things these last authors have in common is a background in counselling, which alerts us to both the importance of what we say, and exactly how and in what order we say it. Ways of speaking, and different processes, can produce very different forms of relationship. A simple example here will have to suffice:

> Teacher: Hey, you, what are you doing here?
> Young Person: I was just looking for my shoes that I left behind after rugby practice.

What is said next can make a big difference, for example:

> Teacher: Well you shouldn't be here at this time, it's getting dark and you could be mistaken for someone who is up to no good.

> An alternative: Did you find them? Where did you leave them?

Wider Societal Implications

New Zealand has been a somewhat slow developer when it comes to multiculturalism, but still, in some classrooms in this country, we can now find a mix of 30 or more ethnicities, and as many languages, many from South East Asia, and some refugees. We have become multi-national in a relatively short space of time. Since the 1990s, changes to immigration laws have allowed in persons who met certain criteria, as opposed to those who answered an advertisement for work in New Zealand in their home country, and this opened the doors for persons from a broader range of countries.

Prior to these developments, it would be fair to say that from about 1975 to around the beginning of the 2000s, some white folks in the country went through a period of serious soul-searching about the effects of, and our complicity with, colonisation. The term 'biculturalism' became very important to us, as we considered the ongoing impact of the arrival of the British in the early 1800s on the indigenous Māori. Whilst multiculturalism may be considered by some to be a higher and more advanced form of anti-racism, for many, including many Māori, the prior task was redress, apology, forgiveness, and reinstatement of the mana, or pride in their cultural strength, of the Māori. For the *Pākehā* involved, it was a matter of first coming to terms with the story the way the Māori experienced it – of surfacing previously hidden histories. This is an ongoing process of redress that is a long way from finished – unravelling the errors of history takes a lot of time.

One of the ways we see still the effects of colonisation is in the so-called 'under-achievement' of Māori children in mainstream schools. Many people characterise the problem as about the deficit of Māori and their lack of attention to their children's education, and well-meaning policy-makers and educators try to redress the situation by making up the deficit. I personally believe the problem lies as described, in the historical and complex ongoing effects of colonising practices, such as the early political requirement that children not speak Māori at school – and were punished for doing so.

Schools are central to the developmental project in Aotearoa New Zealand, as elsewhere, because they can teach students how to interact respectfully with folks who are very different from one another. The New Zealand Curriculum implies that our children should be taught a common standard of citizenship, including relating to others, participating and contributing (Ministry of Education, 2007). But there is still a long way to go. Until as little as one decade ago, in our teachers' colleges we were teaching child development from textbooks that advocated an approach in which all children, of whatever race and creed, grow and develop in the same way. This might be justifiable in terms of the human genome, but development is a value-laden term. As part of our engagement with Māori we are now learning among other things that the ideal subject or purpose of a western education is not the ideal subject or purpose of a Māori education (Rameka, 2011). Māori are very good at appropriating new knowledge, however, and their struggle to be heard as agents of their own voice is ongoing. It is not too much to claim that many

New Zealanders have learned something of respectful cooperative problem-solving from Māori practices. It is also true that the conversation between new comers and indigenous people is ongoing, and sometimes painful.

In this short article I have tried to portray something of how cooperative problem-solving can and should be an ongoing commitment – through historical time. Human issues are seldom resolved permanently. I have offered restorative justice practice as an important example of knowledge and processes which can support the development of respectful understanding among diverse citizens with complex needs and aspirations.

Notes

[1] The notion of 'cooperative problem-solving' used here is based on discussions at a conference held at Cambridge University in 2012, and the joint position statement subsequently issued by the participants (see: http://henry-tam.blogspot.co.uk/2012/10/cooperative-problem-solving-key-to.html). A more detailed exposition is given in: Henry Tam (2013) Cooperative Problem-Solving & Education, *FORUM*, 55(2), 185-201.

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