

RESTORATIVE JUSTICE AND THE CHURCHES

Options Paper

Robert Mackay

1. INTRODUCTION

This paper explores the suggestion that restorative justice may be useful in addressing the impact of abuse of vulnerable people by members of the clergy and others in positions of responsibility.

The paper is not a fully-fledged proposal, but rather seeks to offer some options within the framework of the Restorative Justice model.

The paper begins with an exploration of what Restorative Justice means and some of the issues that arise the restorative justice approach in this area. It is concluded that these issues can be managed, provided they are thoroughly addressed and handled sensitively. The paper also addresses some practical questions in implementing proposals. Finally, it is proposed that there are five areas in which a restorative approach may be relevant:

1. Developing the work to support victims and promote healing
2. Initiating work to support the reintegration of offenders within the community
3. Exploring the viability of approaches to bring victims and offenders together to facilitate healing (including when possible spiritual healing)
4. Exploring mechanisms for appropriate non-litigious means for victims to obtain material reparation.
5. Community building, reconciliation and peacemaking within the church community.

2. RESTORATIVE JUSTICE - BACKGROUND

Restorative Justice is an approach to doing justice that focuses on dealing directly with the harm done and its consequences for all those involved, particularly the victim and the offender, but also including the wider community. It is a peacemaking model of justice. Its aims are to repair the harm insofar as this is possible, and to put in place measures that will reduce the likelihood of reoffending and assist the victim to recover as much as possible from the experience. The approach typically depends on the offender taking responsibility for the offence and for the harm that they have done. This entails a statement by the offender to the victim. RJ may involve the offender making some form of amends to the victim, which may be material or social (e.g. in the form of apology). In this way, the restorative process allows the civil (non-criminal) law aspects of a case to be settled within the criminal process.

In conventional restorative justice programs, harm is defined primarily as material and psychological (including psycho-social and psycho-sexual issues).

The spiritual dimension of harm may be explored in certain contexts, particularly in indigenous restorative processes that are recognised by government.

RJ takes on one aspect of the traditional criminal justice principle of retribution, in holding the offender to account. It also takes on some aspects of rehabilitation, through the idea of promoting the reform of the offender and the healing for the victim. It thus embraces two important principles of our criminal justice system, but transcends them by focusing on the people and their reintegration into the community.

Restorative approaches have been adopted at all levels of seriousness in the criminal justice – penal systems worldwide, from pre-prosecution victim-offender mediation through to reconciliation work between relatives of murder victims and offenders awaiting execution. Restorative approaches have also been adopted in the school setting and workplaces.

The RJ model sits very well alongside Christian and other religious traditions concerning the repairing of harm. What one contributor at the Marquette University conference on RJ and the Clerical Abuse Scandal as the scriptural cycle (or sequence) of Confession → Repentance → Forgiveness is compatible with the principles and processes of restorative practice.

3. RESTORATIVE JUSTICE (RJ) IN THE CONTEXT OF THE ISSUES OF CLERICAL ABUSE

The application of RJ in this field is possible, but there are some issues in attempting this which need to be addressed.

The situation is complex because:

1. We are dealing with three legal jurisdictions: Canon Law, State Criminal Law and State Civil Law;
2. There are at least three legal parties (offender, victim and the Church);
3. There are a larger number of people affected by the problem (families of victims, priests and religious who are wrongly accused, priests and religious who feel hurt, members of the laity who have been distressed by events).
4. Many of the cases are old.

This context gives rise to a number of questions and reflections.

Can the Church take a RJ initiative in criminal matters?

Government agencies have control of the management of the criminal justice process and the management of offenders. So, any initiative that the Church proposes that directly involves offenders needs to be negotiated with the State. In negotiation, it could be argued that the Church is making a contribution to the wider community in the task of managing offenders, and that it is seeking to address a broader concern for the restoration of its own community.

RJ programs are almost always funded directly by the State.

Who will provide RJ services?

If the State does concur, the service provider would need to be a non-State agency. It would not be appropriate for the Church to both fund and provide the service because it may be to some extent a party to the civil (non-criminal) aspect of the case. In other parts of the world it is not uncommon for NGOs to provide RJ services on behalf of the State, which funds them. They are accountable to the State for their practice. In this case the RJ provider could not be accountable to the Church for the criminal aspect of the case, even if the work was funded by the Church. It would need to have some protocol with the State around the issues of offender supervision such as risk assessment and management.

Can the Church provide RJ services in non-criminal matters such as breach of trust?

In the non-criminal cases, the Church could be considered as a party in a dispute resolution that has taken responsibility for commissioning the mediation service.

What types of harm can be addressed by RJ?

A further area of complexity relates to the three layers of harm and restoration. As indicated above, harm can be seen as material, psychological (including psycho-social and psycho-sexual) and spiritual. RJ programs usually focus on the first two of those levels, whilst the spiritual dimension is treated as outside the remit of RJ. However, some RJ models are inspired by the reparative practices of indigenous peoples and small-scale societies, and these practices almost invariably have a spiritual dimension. At least one early European model of reconciliation of the blood-feud (in Scotland) had a strong emphasis on forgiveness. In contemporary RJ practice, forgiveness is seen as a bonus rather than an objective of practice. This is because it is considered important not to pressurise the victim, or make them feel guilty if they are not able to forgive. Nevertheless, as one of the speakers at the Marquette University conference on Restorative Justice and Clergy Abuse (April 2011) indicated, forgiveness is about one's own healing, not being consumed by what has caused the hurt. That is an objective of restorative practice. So I would see that the spiritual dimension is not excluded from consideration, but the way it is addressed requires great sensitivity, especially when the conventional source of spiritual authority is enmeshed with disputes about the proper exercise of power.

Restorative programs deal with both material reparation and healing relationships. In this field, victims have sought material reparation from the Church, as a connected party, through the civil courts or through private dispute resolution (mediation). Some of the cases will already have been dealt with through the courts. This means that there are effectively parallel legal matters.

It is recognised that some cases are very old. This is not necessarily a bar to engaging restorative processes. The appropriate time for a restorative process to be enacted is when the victim- survivor is ready for it. It is of course possible that

an offender may either h
articipate. Even
in these cases, restorative processes can be crafted to address the need of the
victim.

How some of these issues can be handled

These issues can be handled restoratively, but there would need to be some significant negotiation with community stakeholders (e.g. Corrections Services and groups supporting victims of clerical abuse.) In addition, any initiative would need the active support of a reference or advisory group, which is able to offer sound professional advice and support to the service providers (e.g. expertise in psychology of victimisation / survival and offending, penology, and dispute resolution practices). It would also be extremely valuable for there to be an action-research component to the project with links to other ground-breaking initiatives, such as that of the Restorative Justice program at Marquette University in the USA. The role of the Church as both funder and as potential party to the issues, and the involvement of the Church more widely, would need to be carefully explored. Behind this is the question of how a service can be seen independent, neutral and impartial, which are principles of dispute resolution practice.

The key principle of RJ is that it should bring together all those who have been affected by a crime, and should seek ways to repair harm and prevent reoffending. There is nothing in the Church's motivation here that runs against that principle and intention.

What we are looking at is on the frontiers of conventional RJ practice, alternative dispute resolution and therapeutic practice. Once again, it is possible to find a reconciliation of these orientations, but there has been divergence rather than convergence in these areas in recent practice developments, at least in the criminal justice –penal field. In the rather different field of family dispute resolution greater convergence is developing, and this should inspire us to develop options here.

4. OPTIONS FOR CONSIDERATION

One model of RJ, proposed by Paul McCold¹, suggests that there are three types of practice in the criminal justice –penal system. First, there are those that are *non-restorative*. These include pure punishment. Second, there are those that address harm, but focus mostly on one or other party in the triangle of victim – offender – wider community. These might be crime prevention programs, victim support schemes, offender rehabilitation programs, state sponsored compensation schemes. These are viewed as *pro-restorative*. Third, there are

¹ McCold, P. 2010. *Overview of Mediation, Conferencing and Circles*. Paper presented to the Tenth United Nations Congress on Crime Prevention and the Treatment of Offenders, Vienna, April 10-17. International Institute for Restorative Practices. Bethlehem PA, USA.

those *restorative* programs that directly promote and offer the involvement of victims, offenders and the community in dialogue and resolution.

The options we can explore include elements of pro-restorative and restorative practice. If we look at the five areas identified at the beginning of this paper, it will be seen that the first two areas address pro-restorative agendas, and the last three address 'purer' restorative concerns. The five elements constitute a comprehensive restorative and indeed a peacemaking approach. The Church can make a further valid contribution to this agenda.

1. Developing the work of supporting victims and promoting healing

This type of work is *pro-restorative*.

It is important to remember that victimisation may take a number of forms. Some forms of abuse are criminal, such as sexual assaults on minors. Other forms constitute breaches of trust, such as sexual exploitation in pastoral relationships. Victims may need support for referral to specialist agencies that can support them in meeting a variety of needs, whether for independent legal advice or psychological support and counselling.

2. Initiating work to support the reintegration of offenders within the community

Circles of Support and Accountability

Integrating offenders presents real challenges to the Church and the wider community. Some members of the Church may feel so betrayed that they are unable to contemplate continuing presence of an abuser amongst them. However, an abuser who is without support may be more likely to offend. A model of support has been developed in Canada, and has been subsequently adopted in England and Wales². *Circles of Support and Accountability* were developed to address the need to support released sex offenders and hold them to account. Circles comprise the offender and volunteer members of the community. They meet regularly with the offender. The Circle is supported by an external professional group who provide specialist advice and guidance to the Circle. Volunteers have specialist training about the issues connected with this type of offending and the needs of the offender. Circles have had significant success in reducing re-offending, and providing early warning of recidivism.

This approach would be innovative. The additional dimension of a Church providing such a method of support would be an interesting and possibly unique development internationally. It would enable the Church to own the offender,

² Kirkwood, S. and Richley, T. 2008. Circles of Support and Accountability: the case for their use in Scotland to assist in the community reintegration and risk management of Sexual Offenders. *SCOLAG Journal* October 2008, 236-239.

and to be seen to take responsibility for responding to the offender and to the concerns of the Church community and the wider community.

For a Church to become involved with this type of work, there would need to be negotiations with State Corrections Services and specialist victim support agencies. These would entail the setting up of procedures for admission to the program, the running and management of the Circle, terms of disclosure of information and expectations of the Circle members (both the volunteers and the offender). In addition, it would be necessary to engage professional supporters for the Circle, and to establish their terms of reference.

There would probably be considerable interest on the part of government that such an initiative is evaluated.

This type of work is also *pro-restorative*.

3. Exploring the viability of approaches to bring victims and offenders together to facilitate healing (including when possible spiritual healing)

Three examples of restorative practice

Here are three examples of *restorative* practice.

Healing Circles

Healing Circles developed at Marquette University (Wisconsin, USA) provide an excellent model of practice. In this model a number of parties, not necessarily directly known to each other, come together and share their experience of being involved with the issue of the abuse of power by people with power and authority in the Church. Their experience may be that of a victim; or a church worker, priest, religious or bishop, who has been touched by the issue in their work; or an offender. Each is encouraged to share their experiences and to receive the experience of being heard and listened to. The Circle provides the participants with the further experience of being validated. This means that they can have the feeling that their statements of need, concern or remorse have been taken seriously by others within the community of the Church. This approach has a strong spiritual base. There would need to be some liaison with the supervisor of offenders involved in the process. It would also be necessary that victims were well supported before the meeting. In general, this approach needs considerable preparation of the participants, and careful assessment of whether they are able to benefit from the experience and of their potential vulnerability in the Circle. It is not necessary for an offender to be present at a *Healing Circle*.

Conferencing

Conferencing is a term that covers a number of approaches that bring together victims, perpetrators, their supporters and relevant community members, to address what happened (the incident or episode); how people have been affected, and what can be done to put things right in a way that is both fair and will reduce offending in the future. These approaches are mostly confined to the criminal justice system, workplaces or the education system. Most usually the participants include the victim and perpetrator involved in the same incident or

episode. Sometimes more than one victim may be involved. Sometimes there is no victim present. In that case, the victim perspective is represented by someone with expertise in victimology.

This approach has been used by Corrections services in serious criminal cases. It is possible that they might have an interest in this area of work. If there was thought to work with criminal cases outside a Corrections Services program, there would have to be negotiations with the criminal justice-penal agencies about whether it would be appropriate for a non-governmental organisation to deal with such cases, and if so, under what procedures and conditions.

Corrections services and public prosecution authorities would not be able to address non-serious and non-criminal matters, and it is possible that this approach may be suitable to develop for cases where there are no criminal proceedings, and which there had been, for instance, a breach of trust. For this, there would need to be some liaison with external agencies concerned with the needs of vulnerable groups.

The preparation of participants before a conference is a critical element of the work. Some conferencing models operate with a closely determined 'script'. This means that the contribution of the Facilitator is tightly controlled. There are some difficulties with this method, and it would be advisable to have a more flexible approach to the management of the conference process.

Privately facilitated meetings between victims and senior church officials

This type of meeting would follow a mediation format. Such meetings would occur after legal issues involving the Church, the victim and the offender had been settled.

In such a meeting, the victim, possibly accompanied by a supporter, would be empowered to speak directly with a senior member of the clergy, preferably of episcopal rank in churches with that structure or equivalent in other churches, about their experience and pain, and to seek personal acknowledgement of their hurt. The church would be facilitated to reaffirm its acknowledgement of responsibility for its handling of clergy sex abuse, to restate its concern for the victim, to reassure them of their innocence, and to recognise the integrity and authenticity of the victim's spiritual journey, even if it has led them outside the church.

General considerations

Taking responsibility

It is important that the perpetrator accepts responsibility for the offence or abusive act before they are admitted to a *Healing Circle* or a *Conference* process. One issue that is often faced in cases of sexual abuse is that the offender either does not accept responsibility, or that their acceptance of responsibility may be a tactic in an attempt to manipulate the outcome of their case. Those engaged in setting up *Healing Circles* and *Conferences* will need to be very careful in the assessment of an offender's motives for participation.

RJ proposes that all involved in a harmful episode or incident are involved in the process of repairing the harm. Unlike civil mediation, there is a strong expectation that anyone responsible for harm will acknowledge this up-front in the conference or the victim-offender mediation process. A complicating feature for both *Healing Circles* and *Conferences* is that the Church itself may be seen by the victim as having contributed to the abuse or having exacerbated it by the way in which their case has been handled. This introduces a complication to both processes. The resolution of the matter needs to take into account both individual and corporate responsibility ('vicarious liability', if recognised in this type of case).

The scope of Healing Circles and Conferences

Following the remarks above, a *Conference* may address, if not settle, the question of corporate liability. However, a *Healing Circle* is not the place for that type of negotiation. It would therefore be necessary that this approach is not seen as a substitute for other forms of negotiation of claims or for the setting up of agreements involving the perpetrator.

Multiple cases

If a perpetrator is involved in more than one case, one must be concerned about the quality of a meeting with victims. This holds good whether (1) all victims meet with the offender on one occasion, where the number of victims is large, or (2) the offender meets with victims on a one-to-one basis, or in small numbers. In the first case, victims may not feel heard because of the length of time it would take to hold a meeting. An offender may feel overwhelmed by the numbers, and not participate effectively in the session. In the second case, although victims may have more space to speak and be heard, the offender may feel that what he is saying becomes repetitive.

Wellbeing of participants

Throughout the process, the facilitator will need to have consideration for the wellbeing of participants. If the process becomes difficult, there should be the opportunity to take breaks. If the process becomes too threatening, the session should be terminated.

RJ practitioners have for a long time been concerned that victims of crime do not suffer 'secondary victimisation'. The conventional criminal justice process can serve to re-victimise, by treating the victim disrespectfully or by treating them as marginal to the criminal justice process. It has been suggested that victims of clerical abuse have experienced another level of victimisation whereby Church authorities have dealt with their cases in insensitive or inappropriate ways. It is therefore essential that restorative measures are designed in such a way that they do no further harm, but rather provide an opportunity for the victim to be heard in a respectful way, and the experience of a dialogue about their concerns.

Preparation for Healing Circles and Conferences

The skill of producing successful meetings lies in large part on the quality of preparation. It means spending significant time with victims, offenders and other

participants, exploring their needs and expectations of the meeting. It also entails explaining how the meeting will be conducted, and considering what the impact of meeting the others will be for them.

4. Exploring mechanisms for appropriate non-litigious means for victims to obtain material reparation

The Church has negotiated with victims of abuse. It is not clear whether mediation has been used in any of these cases. Mediation can be carried out in a variety of ways. It may be possible for mediation to deal both with the direct abuser and with the question of the Church's vicarious liability. One could deal with these matters separately, using a conference as an overarching structure. Thus it may not be appropriate for the offender to be part of a discussion about settling the claim of the victim against the Church.

If mediation of civil claims is considered an option, this can include the presence of lawyers acting in a collaborative way, following some practice developments in the field of Family Dispute Resolution. The lawyers in the room provide a resource to the parties to promote constructive negotiation.

Mediation can also include a specialist supporter for the victim and the offender.

Principles for running *Healing Circles, Conferences* and *Mediation*

These practices are governed by a number of principles. These include professional requirements of the third party (mediator or facilitator), and the expectations of the participants to act respectfully and in good faith.

Professional standing of facilitators and mediators

Those undertaking this work should hold a qualification as a mediator.

5. Community building, reconciliation and peacemaking within the church community

By engaging in restorative practices which involve members of the Church and members of the wider community in expert roles, the Church is rebuilding its own community and is restoring its relationships with the general public. By demonstrating leadership in addressing the issues squarely, the Church is making a powerful 'truth claim' about its values and intentions, and thereby encourages its members and others to have confidence in its practices and its integrity. This is the foundation of a communications strategy.

A plan to introduce restorative practices into the Church may require persuading members of their utility and intrinsic merit. Some thought will need to be given about how this message is communicated. This in itself can be a restorative process. It may be important to engage with different groups within the Church community to discover what their concerns are in order to be able to establish how some of the restorative practices outlined here can be shown to be relevant. This process may uncover other topics that can be addressed through restorative

or communicative methods. This may serve to promote bonds within the community and renewed confidence in its structures.

One way to make this process public would be to hold a local conference about the topic, following the example of the Archdiocese of Milwaukee in April 2011 at Marquette University, but on a smaller scale.

It is understood that some advocate Truth and Reconciliation Commissions.

There is scope for peacemaking within religious communities that have experienced trauma and conflict as a result of clergy abuse.

Other approaches include holding a community religious service of reconciliation along the lines held in Dublin under Archbishop Martin, and the commissioning of memorials, such as sculptures and paintings, or of musical tributes.

5. CONCLUSIONS AND RECOMMENDATIONS

It is useful to explore the range of RJ practices to see how they can apply to the totality of the issue that the Church faces. It is also important to acknowledge what has already been achieved and to maintain and develop that. However, it may not be possible at this point, or at all, to establish a full range of restorative programs. The important thing is to ensure that however one decides to act, the intervention will make a difference. An exploratory and possibly incremental approach may be useful.

The approaches that would require least negotiation with outside agencies would be *Healing Circles*, and *Conferences* in which there is no criminal liability. These may be good starting points. Success in either area would build confidence in the possibility of extending restorative interventions through negotiation with the criminal justice-penal agencies. By themselves, their impact could be of significant benefit.

If a Church wishes to pursue discussion about developing a project, I would be willing to undertake the development work. This would involve working up detailed proposals. These would include:

- Defining aims and objectives in collaboration with existing Church provided programs
- Identifying relevant stake holders and participating in negotiation with them
- Developing program models and protocols for practice
- Proposing time-lines
- Providing costings
- Collaborating in seeking funds.

A working project should sit outside the Church, because the mediators / facilitators require to be independent.

Edan Resolutions

