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Restorative Justice and Social Justice

Abstract

This paper explains the connections between restorative justice and social justice. Specifically it argues that restorative practices in schools fit with a social justice agenda. It defines both terms and then outlines how restorative practices work to address the pipeline to prison and against retributive justice and zero tolerance policies. It also outlines the use of narrative questions designed to enhance restorative practices.

Keywords

Restorative justice, restorative practices, social justice, pipeline to prison, narrative therapy

Author Statement

Dr. John Winslade is a professor of counseling in the College of Education. He gave a version of this paper at the Social Justice Summit at CSUSB on February 17, 2018.

Restorative Justice and Social Justice

John Winslade

I want to make a link between restorative justice and social justice. In order to do this, it is useful, I think, to be clear about what both restorative justice and social justice are. So what are they?

Social justice: As Brian Barry (2005) explains, “Until about a century and a half ago, justice was standardly understood as a virtue not of societies but of individuals” (p. 4). Individual justice, often called “liberal justice,” aims to ensure that individuals do not cheat or steal from each other and honor contracts. Social justice, in the words of John Rawls (1991), is about “fairness” from the point of view of the wider social good and applies more to institutions than individuals. It was first applied to relations between employers and employees, and has been extended to providing social services (beginning with education and health care) equally to all citizens.

When laws and social institutions actively prohibit groups of people from access to such rights, opportunities, and resources, social justice has often aimed at “emancipation” from unfair treatment or unjust restrictions. Social movements have, therefore, sought equality of legal rights (such as the right to vote) for a series of social groups.

Restorative justice here is given by a United Nations definition. “Restorative justice refers to a process of addressing crime by focusing on addressing the harm done to the victims, holding offenders accountable for their actions and, often, also engaging the community in the resolution of the conflict.” (Dandurand & Griffiths, 2006). Restorative justice is often contrasted with retributive justice, which is likely to be more punishment-

oriented. Howard Zehr (1990), who is often credited with being a founder of restorative justice thinking, suggests that restorative justice is usually based on the understanding that an offense is primarily an offense against relationships in a community, rather than an offense against the rules or against the authorities, who have often stood in for the victims of an offense.

From a restorative justice perspective, violations create obligations and liabilities among those who are affected by them, principally offenders and victims. Restorative justice processes are about identifying these relational responsibilities and holding people accountable to them. Notice that this does not mean holding people accountable to the rules they have broken, so much as to other people they have harmed. From there, restorative justice is about making things right. It is about restoring relationships and hence community.

Restorative justice offers all those who have a stake in a situation that involves harm or conflict an invitation to participate in dialogue that addresses the needs of everyone involved. Restorative justice practices view harm done to relationships and discipline as an opportunity for healing for everyone involved.

In schools, it has often been recognized that offenses against school rules run parallel to offenses against the law and hence restorative practices in schools have spread around the world. They have been contrasted with zero tolerance policies, which a major taskforce of the American Psychological Association found to have no effect when it came to reducing violence in schools.

“Zero tolerance has not been shown to improve school climate or school safety” (Skiba et al., 2006).

Zero tolerance is about identifying offenders and applying automatic punishments that are pre-determined. It sounds good for a school to say it has zero tolerance for violence, for example, but the important question is what that policy leads to. In many cases, it has meant imposing harsh punishments on those who brought illegal drugs or weapons to school but disproportionately targeting minority males. In other words, zero tolerance has been used as a pretext for the application of a harsher justice, which has brought about, in fact, social injustice.

In the United States, the popularization of zero tolerance policies in the late 1990s came about in response to the Columbine High School shootings. Schools and school districts received federal government funding as incentives for implementing harsh punitive practices, such that zero tolerance policies rapidly became widespread throughout the United States. According to Kang-Brown et al. (2013), “70 percent of schools had adopted zero tolerance policies for violence, going beyond federal mandates by 1996-97” (p. 2). As a result, school administrators are not encouraged to respond to offenses on a case-by-case basis, taking contextual factors into account, but to apply an automatic response indiscriminately.

For contextual factors, in this context, we can include social justice factors. This is an example of where treating everyone the same and calling that equal treatment falls down. Zero tolerance may even make sense in relation to major crimes such as school shootings, but it has also been applied to a range of more minor offenses as well.

Restorative practices emanate from asking a different set of questions about a

particular situation. Restorative practices avoid asking of a specific situation the usual punishment-oriented questions (Zehr, 1990):

What rule was broken?

Who did it?

What do they deserve?

Instead, a different set of questions replaces these. The focus is on the impact of the behavior on others, instead of on the rule violations. Hence restorative justice is more focused on relationships than on individuals. These are the questions that are asked:

Who was affected by the offense?

How were they affected?

What do these effects suggest needs addressing?

Whose responsibility is it to address these needs?

How might the offender be invited to address these needs?

Who else might be responsible for helping address the situation?

What is the school’s/community’s responsibility to those affected by the offense?

A retributive or punishment orientation assumes that the individual is the origin of all offenses. These offenses originate primarily in the essence or the primary core or the heart of persons. A faulty essence, therefore, needs to be corrected by being punished. An example is what are sometimes called “hate crimes”. The assumption is that the emotion of hatred is the origin and not a product of the assumption of superiority. That is an individualistic assumption and it fuels the impulse for harsher and harsher punishments.

By contrast, the social constructionist belief is that relationships are more foundational than individuals (Gergen, 2009). People’s thoughts and feelings are shaped by the relationships and communities in which they partake and the discourses that circulate in those

communities. In other words, it is always important to take into account the social contexts that give rise to offenses and, importantly, those persons who are shaped by such offenses. The thoughts and feelings that are produced in the social context outside individuals are commonly internalized and come to be understood as emanating from the heart of the person.

Notice here that what lies in the heart of a person is still important but it is secondary, rather than primary. This is the place where restorative justice differs from a simple approach to rehabilitation that says that offenders are really victims in disguise. They are considered victims because they come from a social group that has been victimized. They are, therefore, to be objects of pity, rather than vengeful anger.

In restorative justice, accountability is still important, rather than pity or vengeance. However, accountability does not have to be vengeful. It does not cede all the ground to harsh punishment discourse, once an offense has been committed. The gap that this discourse leaves wide open is the question of what kind of community is being shaped for the future. I would contend that an approach to social justice that obscures the need for offenders to learn from their actions, because they come from a social group that has been marginalized, does them a disservice, because it fails to treat them as able to make ethical choices.

The social justice agenda is in the end an effort to see a more, rather than less, complex ethical understanding of what has happened. Hence, a restorative justice approach involves an effort to constitute, or reconstitute, the social world in which the offense has been committed, in order to deal with it. By contrast a punishment orientation often seeks to isolate the offender and pin responsibility on him or her as an individual.

What social justice and restorative justice share in common is an interest in the contextual forces around the individual. They both invoke this context to help understand what is operating on a person that does not just emerge from within the nature or the essence of that person. Social justice does this by directing the focus on the identity group. Restorative justice does it by focusing on the group of people that is constituted by an event, specifically the event of an offense. This includes the victim and the offender and those who are connected to these people or to the event.

When we look at these contextual forces, there are some clear patterns. One of these is called the pipeline to prison. This is the well-established pattern in which “Students who experience failure in school either by dropping out, or getting suspended and expelled from school, consequently are more likely to act out with criminal behavior and (over time) become incarcerated or imprisoned” (Wilson, 2014, p. 51).

How big a problem is this? In California schools, there were more suspensions issued than diplomas in the year 2010-11 (Winslade et al., 2014). In the next year, in the San Bernardino County, there was one suspension or expulsion for every five students (Winslade et al., 2014). In the San Bernardino Unified School District in California, there were approximately 7,188 suspensions in a one-year period.

But suspensions are not evenly distributed. There are various kinds of disproportionality in these numbers. In the US, this especially refers to race. “African Americans are three times more likely and Latinos are one and a half times more likely to be suspended than Anglos” (Friedman et al., 2014, p. 2). Also a disproportionate number are from low socioeconomic backgrounds or are special education students.

The result is that the United States holds five percent of the entire world's population, yet has "twenty-five percent of the world's prisoners" (Wilson, 2014, p. 51). The prison population has "quadrupled since the 1980s" (Wilson, p. 52).

The common ethos of a punishment orientation is to isolate and exclude offenders. By contrast, restorative practices are intentionally inclusionary. This is one of the main reasons they are about social justice. Their aim is to knit offenders back into the school community. What we need to acknowledge is that changing structural social features like laws will only ever get rid of the grossest injustices. The forces that produce injustice have regrouped and now use different tactics (Winslade, 2018). Take housing as an example. The Civil Rights movement succeeded in outlawing outright discrimination in housing. But the forces of injustice regrouped and established ghettos and gated communities to reinstitute the same racial separation that had previously been produced by blatant discrimination. Therefore, those that would oppose injustice also need to adjust and get smart about how to do so.

One way to do so is to figure out who owns the process. Is it being done to a social group or being done by them? Take the family group conference, for example. It began in New Zealand when the Maori people, represented by the Maori Council, said to the government in the 1980s, "Give us the chance to deal with our own young people when they commit an offense" (MacRae & Zehr, 2004).

The government actually listened and not only gave them this opportunity, they made it the law for all young people of all cultural backgrounds. To this day, whenever someone under the age of eighteen is charged with an offense, the

first option, before a court hearing, is that a family group conference is called. After hearing what happened, the family, or *whanau*, meets on their own to come up with a plan to make things right. This is another way in which the Maori community own the process. They get to decide what happens. Later, this is vetted to see if it meets the approval of the victim and the police. But the essential thing is that the family is wrapped around the individual, rather than ripped asunder. It is, therefore, an inclusive process that aims to knit people back into their community, rather than to isolate them from it.

A study was done in the Wellington region (MacRae & Zehr, 2004) and the result was that over a four-year period in the 1990s youth crime was reduced by 70%. That was not convictions either, it was reported youth crime. However, reduction in crime is seldom big news. Only increases in crime and horrendous crimes are reported. You would think that something that reduced the rate of offending would be seized upon by communities around the world. But politicians are often more concerned to look "tough" on crime than to actually reduce it.

It is important to stress that nothing is the perfect solution to every problem. There is a danger here that is best avoided. It lies in people expecting a quick fix that might be tried once and rejected as worthless the first time it does not produce the desired result. To avoid over-claiming the value of restorative practices and to avoid misconception, it is useful to specify the current limits of these approaches and to encourage schools and communities to seek out other options as well. Here are some things that restorative practices are not (Winslade & Williams, 2012).

-Restorative practices do not offer a panacea for all disciplinary issues. Other approaches are still needed (including punishment).

-Restorative practices are not a soft option. They are not about letting offenders off the hook. This stance is usually more demanding of students to front up and take responsibility than punishment is. Facing a person(s) you have harmed is harder than facing authority figures.

-Restorative practices are not a quick fix. It takes time and effort to implement these ideas but the payoff comes when problems are effectively addressed and changes happen, which reduces time required later for addressing the same problems again and again.

-Restorative practices are not just a new set of techniques to control people better. They are about a different way of thinking that requires people to think through how to focus on relationships not just on individuals. Without the thinking, these approaches will quickly fail. With the thinking, practitioners will continue to invent new ways to address problems.

-Restorative practices are not a way of encouraging irresponsibility. This approach is more socially responsible than those that simply exclude offenders and effectively pass problems on to other institutions, expecting them to hold an offender accountable. Restorative practices focus on accountability and seek to address harm done in ways that will make ongoing differences.

The California Legislature recognized that the rate of suspensions was getting out of hand, so they passed the AB 1729 bill in September 2012. It became law in January 2013. AB 1729 was aimed at reducing the use of exclusionary practices in schools. It required schools to specify the actions they had taken to address a problem before proceeding to suspension or expulsion. Schools needed to then list

examples of such action. The legislators gave a lead by suggesting some examples of actions that could be used. One of these was “participation in a restorative justice program.” Thus the legislation gave official recognition to restorative justice in Californian schools.

Finally, let me speak to a narrative practice in restorative justice. It is based on Michael White’s (1989) aphorism: “The person is not the problem; the problem is the problem” (p. 6). Like restorative justice, narrative practice rejects a pathologizing logic about people. It does so for a robust theoretically consistent set of reasons, particularly its recognition of Foucault’s (1978) concept of normalizing judgment.

The main approach to restorative justice in schools and with young people is promoted by the IIRP (International Institute for Restorative Practices). It uses a formulaic approach and has set a system of things teachers should say to implement restorative practices. It relies on a relational shift taking place through a structured encounter between the offender and the victim.

However, the narrative approach is more like a set of principles, rather than a formulaic approach. One of these principles is a stronger, more explicit commitment to social justice than the IIRP model. Another principle is that relationships are built out of communities, particularly discourse communities.

Another feature is the development of an externalizing conversation in which the offense itself is personified as a grammatical representation of a non-pathologizing stance (Winslade, 2017). The event is spoken of as doing things to people rather than people doing things to constitute the event. Doing this avoids the totalizing of people as a type of person: especially a victim or an offender and then using this category of personhood as an explanation for why

something happened. For example, this offense happened because he is an aggressive person or because she is a borderline personality. Externalizing, by contrast, encourages the asking of questions like:

“What is the problem that we are here to discuss? What would you call it?”

Questions are then asked that map the effects of the event on all concerned: victim, offender, bystanders, community members. Questions like these:

“What effect did it have on each of you?”

These questions are then followed by an inquiry designed to open a counter story on the assumption that offenders are seldom totally committed to a problem story. For example, a question like this one might be asked:

“If we were only to pay attention to the problem what might we be blind to about this person?”

The answers to this question help participants in the process see the offender as a complex human being, rather than as just a villain. They also encourage the offender to respond from his/her best, most responsible self. Change is thus made possible.

The next step is to initiate the process of setting things right. The victim is first offered the chance to say what he or she might need in order for the effects of the offense to be diminished. And the offender is asked, “What might you now be willing to offer in order for the effects of the offense to be diminished?” Then all the people at the meeting are asked how they can support the expressions of responsibility that have been made. For example, they might help keep the offender up to his/her promises. They might agree to be a part of a review in a few weeks time. They might help the victim feel safer through acting protectively. These are primary ways in

which a community that is established by an offense is made visible.

Finally, let me summarize the links between social justice and restorative justice that I have outlined above.

1. Both aim to include rather than exclude people.
2. Both analyze the contextual forces that are affecting people.
3. Both view persons as not determined by events or social background.
4. Social justice understands individuals as constituted by the identity group to which they belong. Restorative justice understands individuals as constituted by events, including those that organize a person's life around an offense.
5. Restorative justice grew out of minority cultural groups' desire to respond to problems in a way that fitted better with their cultural traditions.
6. Both are concerned about addressing disproportionality found in the pipeline to prison.

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