

Restorative Justice and Restorative Approaches to Conflict in Schools

Interview with Charlie Falconer 13th January 2010

I How are conflict and justice conceptualised within the criminal justice sector and in the youth justice sector in particular? How do you position yourself within those traditions?

CF The purpose of the criminal justice system, including the youth justice system, is to provide protection for the public, unlike the education system, which is much more, indeed exclusively, centred around the individual pupil. Though of course a balance has to be struck because each pupil is in relationship with other pupils. The education system provides a learning experience that is designed to improve and do something for pupils, thereby helping them to develop a sense of responsibility. The criminal justice system, including the youth justice system, is not for that purpose. Its purpose is to provide protection for the public from crime. It's purpose is also to ensure that the public accept that the State is there to provide punishment and retribution in relation to crime so that people do not take the law into their own hands.

Although the purposes of the education system and the criminal justice system are fundamentally different, the aims in a particular case may well be the same. So particularly in the youth justice sector, society is best served if a youth who has got involved in the youth justice system is persuaded by the system not to commit any further crimes. That might be achieved by a short punishment such as a fine or a short period in custody. More likely in the case of people who might otherwise become regular or persistent offenders, it will be achieved by an experience which involves the youth offender understanding and being prepared and willing to take responsibility for his or her actions in the context of wider society.

Restorative justice, in the way that I have come across it, involves the defendant confronting the consequences of what he or she has done and hopefully gain an understanding of his or her responsibility and the consequences to others. Research throughout the world, but particularly in New Zealand has revealed that restorative justice in the context of crime is one of the most effective ways of making people undertake that responsibility. Now because the criminal justice system is not a welfare service, or a service focused upon the individual defendant, the use of it must depend upon the particular circumstances of an individual case.

It is possible to take a tragic and horrific case like the Jamie Bulger case as an example. It has to be said that was this case was exceptionally rare, but one thing that is utterly apparent is that the killers could have had no developed understanding of the consequences of what they did, and no sense of responsibility. The case is of such a horrific nature that it would have been quite impossible to say that the right approach to that crime would have been a restorative approach alone, i.e. an approach that is designed to give the killers a sense of responsibility and understanding of what they had done. The reason why a restorative approach alone could not have been the answer is that the criminal justice system is focused on the needs of society. Society would have never have accepted that a restorative approach alone was sufficient. The criminal justice system, to be effective, has got to convince people that it extracts

sufficient punishment to mean that they do not have to take the law into their own hands. And that's not just about the parents of Jamie Bulger who, for quite legitimate and understandable reasons would have been, and indeed were, outraged by the sentence that was passed, but about society as a whole and a need to feel that an appropriate punishment has been meted out. Having said that, knowing nothing about the detail of what happened to the killers of Jamie Bulger, it seems inconceivable to me that part of the experience they went through after they had been sentenced would not have involved effectively seeking to do precisely what restorative justice does, which is to make them understand the consequences of what they've done and to try to make them responsible.

Now take us away from a horrific case like the Bulger case and take a serious case, but a case on a different scale - a lady who is burgled in her home. Burglary in a home is a very upsetting experience for people. It makes their sense of self and their sense of safety get very very substantially reduced. I spoke to a normally robust 35 year old mother of two the other day who had been burgled. She was still receiving counselling, asking questions like, 'why did it happen to me?' In a case in Liverpool a widowed lady in her seventies was burgled. Despite being strong and not having suffered any physical violence or substantial loss, she was traumatised by the burglary. She perpetually asks why it happened to her, she wonders whether or not the burglar has got something special against her. The person who did it is a 17 year-old chaotic drug user who has absolutely nothing whatsoever against this particular woman, but is trying to get money quickly for his drug habit. A restorative justice approach is adopted. She is very wary about meeting him, but agrees to do it. They meet. He is inarticulate, not particularly apologetic. She pretty quickly clocks that he is pretty pathetic, and her anxiety about what's happened to her fades away. He spots that she has been very nervous and upset about this, and so they both learn something rather surprising about the other. The boy, that she has been very upset by this; the victim, that he is rather pathetic. He, as part of the punishment, then spends regular afternoons thereafter helping in this widow's garden. All her fear goes. He establishes a relationship with her. He certainly says that he now has an understanding about what the impact of doing something like that is. It is a mutually beneficial experience. So far he has not committed any other further crimes.

Now part of your question is about the tension between conflict and justice, which is a difficult thing. When you say 'conflict', if by that you mean how do you try to reduce conflict within society, the more you can use restorative interventions the better, because they have this mutually beneficial effect on victim and defendant. But where I stand in relation to all of this is that the criminal justice system has got to remain credible with the general public. Restorative justice is an effective way of reducing crime, but reducing crime can't be your only target in the justice system because of the need for people to have confidence that it is clearly appropriate in each case.

- I What I spotted in what you've just been talking about is that there seem to be links between restorative justice and a more rehabilitative approach towards crime. Do you think this is something that has come to the fore within criminology and the criminal justice field in recent times, or do you think it has always been there?
- CF I don't think in reality there is a conflict between the two. I think the right approach for the criminal justice system is to say (in the context of our role of providing protection and confidence to the public) that there is a justice system that holds people to account for crimes. The criminal justice system has got to give people confidence that it is suitably punishing people and preventing crime. I think the public are very well aware that anything that stops an individual committing crime is

ultimately one of the major purposes of the criminal justice system. I don't think there is any conflict between rehabilitation and justice, or rehabilitation and punishment. I think the issue is to find the right course for each individual defendant, having regard to what he has done.

I think in political terms, i.e. the views of the public, while the public in one sense always want suitable punishment, they are completely switched on to the idea of effective interventions to stop crime. So they understand about drink and drugs. If drink or drugs causes crime I think they are perfectly happy with a solution which is effective in addressing a drink or a drugs problem. They can understand that a person who is not committing crimes in the future is much better than a person who is committing crimes, but they will still want something more than restorative justice if the case is serious.

The difficulty I think in the last two decades has been identifying what works in rehabilitative terms. If you adopt a rehabilitation strategy which utterly fails and involves no real intrusion into the life of the defendant, people will say that you've failed at both levels. You've not marked the seriousness of the crime and you've not succeeded in any sort of rehabilitation either. So I think that what you've really got to do is focus on interventions that work. I think you've got to be aware, in relation to say drink or drugs, that a first intervention may well not work. The process of rehabilitation is very rarely a straight line upwards. You can be disappointed if a defendant fails by committing a crime whilst on a drink or drugs the programme, but you don't need to lose heart at that particular point. It may be a longer process. Seeing a probation officer once a month to have a conversation that lasts 25 minutes may not be an adequate response, but participating in a well-run restorative justice service does have a good success rate, according to the statistics. Apply it in the right case, make sure it's properly done (because not anybody can do it) and make sure that the victims are happy about the process, and it can work. And ultimately, if it works, by which I mean reducing repeat offending, then broadly it is vindicating one of the purposes of the criminal justice system.

I What do you see as the benefits and limitations of restorative justice in the youth justice sector particularly?

CF The youth justice system generally has rightly been much more focused on trying to stop a person offending in the future. The younger you are, in many senses, the more an intervention can help. In a way, society's obligation to try and put you on the straight and narrow is stronger, because although the criminal justice system is not a welfare agency, society is likely to have failed you in some way or another if you are committing crimes at an under-adult age. But I emphasise that the youth justice system is not a welfare body. It is a body doing what the rest of the criminal justice system is doing, which is trying to protect the public from crime and to ensure that the public have confidence that the State properly punishes crime.

Restorative justice is used much more in the youth justice system than it is in the adult justice system because it's right to do so, because it's effective, and because the effect of people being confronted with the consequences of what they have done is likely to have more of an impact.

I And do you think that a restorative justice conference should ever be mandated as part of something which somebody would be expected to go through or do you think it should always be voluntary?

CF I think there are certain circumstances where it should be mandated on the defendant. It should never be mandated on the victims, but on the defendants, yes. And in a sense, in practice it is because you will very frequently find that a sentence is passed which is not compulsory restorative justice but it is, 'I will impose this sentence, which is not a custodial sentence, on condition that the defendant goes through a restorative justice course'. Now in theory the defendant could say, 'I'm not going to agree to that', but in practice that will mean he is forced into a restorative justice conference. And although you shouldn't do it in every case where restorative justice might be appropriate, I think it's probably appropriate to use a mandatory system in the right cases.

I Do you think that restorative justice should be tried first before things go into the criminal justice sector?

CF I would have thought that, subject to the seriousness of the case, before you get charged with a crime, if the defendant (or prospective defendant) agrees that he or she will go through a restorative justice conference then I can very well see a place for that as an alternative to the criminal justice system. But because you're not in the criminal justice system, it couldn't be anything other than voluntary, because there's no means by which the State can coerce in that way.

I No. And there's no way of checking whether the resolution would be perceived to be fair by a reasonable person.

CF But the nature of the restorative justice conference in those circumstances would be that you would have to admit to the crime. There's no restorative element in saying, 'I didn't do it', it's got to involve an admission, and you've got to participate to some extent. I think that once we agree that someone won't be prosecuted and carry out a restorative justice conference, it's quite difficult to say, 'right I'm going to prosecute you because I don't think you did very well at that'. That does lead to dangers of people promising to do something and not turning up or putting on an I-pod and not talking at all. But those are very rare cases.

I And who is the right person to make judgements about what is appropriate for restorative justice?

CF Well, there are a variety of people who could make these judgements. I think for example where a teacher at school discovers that a child has committed a crime, it might be appropriate in certain circumstances for the teacher to say, 'look, we can report this to the criminal justice system but, you know, you threw stones and broke this lady's greenhouse, the right course is not to report it to the police, the right course is for you to go and apologise and find out how she's feeling'. And that's restorative. Or the teacher can report it to the police and then the police can decide that a restorative justice conference was the right thing to do, or they can refer it to the CPS and they can make up their mind. But I think the teacher has got to make his or her decision in the context of good educational practice.

I think the police and the CPS have got to do it in a more methodical way because restorative justice conferences are difficult to handle properly. So if they are going to do it as an alternative to prosecution (which they've both got the power to do at the moment) it's got to be properly organised, rather than something that might for example end up upsetting the victim. I think the community justice centres that we've set up in some places like Liverpool and Salford would be very good places to make a decision about these things. But you need a gatekeeper to the criminal justice system. Who would it be? Could it be the judge? Not really, because by then you've

already started the process. Could it be the police? Yes, if they're aware of what the alternatives are.

- I Just focusing in on schools then, what could you see as the ways in which some of these ideas could be applied, some of the benefits of restorative justice and some of its limitations perhaps?
- CF Well, the principle underlying restorative justice is take responsibility. You need to understand the consequences, reach a consensus of understanding with the person that you've harmed. Now, knowing nothing about education I would suspect that those principles are the ones that have got to be displayed by pupils as they go through their lives in school. I would have thought at a much, much more day-to-day level the principles of restorative justice are the principles of taking responsibility, understanding others, thinking of others, which a school should be teaching.
- I I've been reading a piece by the American Psychological Association recently where they've analysed research into zero tolerance policies in schools. They identified something which they call the schools-prison pipeline. Their concern is that with schools increasingly referring things through to the police young people are being increasingly criminalized.
- CF Yes. Zero tolerance policy is the reverse in a way.
- I So what's the role then for police and others in the criminal justice sector in liaising with teachers and schools?
- CF Well I think there's got to be an agreed understanding of what conduct by children (or students) is so serious that it has got to be given to the criminal justice system. I don't think it would be very difficult to identify that. Over the age of 10 or 11, if you set a place on fire or you very seriously assault another pupil, there needs to be a clear understanding about that. There's a whole range of other things where it will be a grey area, and I think teachers have got to understand what might be best for the pupil. It might be that in a particular case the pupil is prevented from dealing in drugs again at the school by being given to the criminal justice system. But the impact on the child also needs to be taken into account. What are the consequences for any child you push through the criminal justice system? And that does involve judgement, to some extent.
- I Yes. And do you think those decisions can, and should, be made at local level or do you think that they should be made at national level?
- CF Well, I think you can have guidelines which ultimately have to rely on some element of judgement being exercised by the teacher and the police. So would it be sensible for a school and a police force to look together at various things. For example, in relation to, I don't know, drunkenness leading to minor assaults, are we happy for the school to try to deal with it if they think they can manage it? If however they feel that the drunkenness and the violence is having an effect on discipline in the school, then are we happy for the police to be called in? But I think it needs to be a joint approach. There needs to be a mutual understanding and awareness of how the community as a whole is looking at this.
- I Do you think that should involve a wider group of stakeholders around the school perhaps?

CF Well it should include the parents, and it also should include any parts of the community that might be affected by the conduct of schoolchildren. So if, for example, there are gangs of youths who aren't attending school who are intimidating parts of an estate, then I think the reaction of the school can't just be determined by the interests of the individual school or their parents. Restorative justice needs to be embedded within a community approach to reducing and dealing with crime.