Personal Construct Psychology and Restorative Justice

Finn Tschudi

What Is Restorative Justice, and What Is Its Background?

A major point in this chapter is that basic ideas in restorative justice (RJ) are congruent with Kelly’s theory, personal construct psychology (PCP). However, (as far as I know) no one in the RJ literature has referred to PCP or Kelly, neither has anyone in the PCP literature referred to RJ. This also refers to my own main writings on RJ (Neimeyer & Tschudi, 2003; Tschudi & Reichelt, 2004; Tschudi, 2007, 2008), and I am thus grateful for the present invitation to explore similarities and differences between PCP and RJ. I hope this presentation will lead to further exploration of possible relations between RJ and PCP and provide inspiration for both.

RJ is usually contrasted with retributive justice (the usual Western criminal system for dealing with offenses). One major background context for the current interest in RJ is the native Maori custom in New Zealand of treating problems with young persons in the extended family. This provided a model for the 1989 Children, Young Persons and Their Families Act. John McDonald (principal advisor on youth and juvenile justice to the New South Wales Police Commissioner) led a study group to New Zealand in 1990 to study the consequences of this policy, and with David Moore and others in 1995 formed the first institute for RJ in Australia (Moore & McDonald, 2000). I was fortunate to spend some time with them in Australia in 1998, and they have since then twice given seminars in Norway. Furthermore, they inspired the criminologist John Braithwaite (2002) to
take an interest in RJ, and he is today a leading scholar in this area, and has
traveled widely to promote RJ. Other perspectives on RJ may be found in,
for example, Zehr and Toews (2010).
Braithwaite (2003, p. 35) provides the following definition:

RESTORATIVE JUSTICE . . . is a process in which all the stakeholders
affected by an injustice have the opportunity to discuss the consequences of
the injustice and what might be done to put them right.

The key value is that because injustice hurts, justice should heal. Responding
to pain with “another spoonful of pain” is seen as a less satisfactory response
than responding with healing or repair.

Christie (2004, pp. 96–97) tells us that “Restore is an Old Norse term.
It means, literally to raise once more the wooden stocks, stauro, that have
fallen down . . . to rebuild the house.” This implies a clear contrast to the
usual “retributive justice” which is practiced in the West, where the cus-
tomary emphasis usually is on how and how much an offender should
suffer.

What Is “Restored” in Restorative Justice?

“Rebuilding,” however, leads to the further question: What is it that
especially needs “rebuilding”? Put otherwise: What is it that has been
(more or less) harmed? Occasionally the issue may simply be loss of prop-
erty (and the ensuing anger) after a theft. There may, however, be deeper
issues involved, especially violation of dignity, a central concept in the
Universal Declaration of Human Rights 1948 (para. 1), which states that
“all human beings are born free and equal in dignity and rights.” A
prominent antonym is humiliation, which Lindner (2006) defines as “the
enforced lowering of any person or group by a process of subjugation that
damages their dignity.”

It is worth mentioning that from his extensive European travels Kelly
(1962/1996, pp. 52–53) sketches a pronounced similarity of views in all
the Scandinavian countries regarding the U.S.A.:

A sickening image of the less privileged fourth of our population . . . where
there is little relation to the restoration of self-respect . . . the sick and the
helpless being stripped of their dignity the moment they are driven to seek
aid. (my italics)
The contrast:

A grand contemporary example of extremes of wealth... three fourths self-righteously successful against a one-fourth contemptibly derelict.

This expresses a concern for dignity in line with RJ values. Wilkinson and Pickett (2010) paint a distressing image of the U.S.A. similar to the Scandinavian view above. The U.S.A. tops the list of 20 economically prosperous countries on major problems such as ill health, criminality, and alcoholism. Here the underlying pathogenic factor is strongly argued as inequality (basically economic), and this leads to humiliation and lack of dignity. The subtitle is Why Equality Is Better for Everyone. Since the Scandinavian countries generally are very strong on equality it is not surprising that they were the most attuned to the ill effects of pronounced inequality! Wilkinson and Pickett (2010) give us a broader perspective on RJ since the dominant theme emerges as “restoring dignity,” and this should be a major theme in contemporary society.

**Conferencing: An Approach to Restoring Dignity**

**Background**

Christie’s (1977) epochal article “Conflict as Property” launched the major point that “conflict” is something which can be “stolen.” Quite often criminal offenses (e.g., theft, violence) lead to conflicts between transgressor and victim. Christie explores the possibility that instead of leaving further treatment of the conflict to state-licensed lawyers and other officials, the local community can themselves arrange a meeting to deal with what should be done about the conflict.

This is in accord with RJ, where such a meeting usually is referred to as conferencing, a major practice in RJ. A facilitator will be responsible for convening a meeting with the major involved parties: transgressors, victims, people supporting each of the major conflicting parties, and locally involved persons (e.g., teachers if some pupils have been involved in more or less serious conflicts). Providing the structure for such conferences may be a strenuous task, extensively discussed in Abramson and Moore (2001). Usually a variety of organizations and people are involved: schools, places of work, concerned citizens, etc. In Norway most communities have organized conflict councils, largely inspired by Christie’s work. A facilitator
need not have any specific academic background; usually a three-day intensive course is sufficient. What is of basic importance is that the person can maintain a stance of “empathic impartiality” during difficult and emotional processes (Abramson & Moore, p. 332). It should be emphasized that the facilitator in no way functions as a therapist; rather, his or her task is to arrange conditions so that the involved parties themselves have the responsibility for dealing with the conflict. Each participant is informed beforehand about exactly what is to happen in the conference and the aim, which is to understand what has happened and participate in what might be done to reduce the harm and (if possible) prevent further harm. This contrasts sharply with much group work done from a Kellyan perspective. Frances (2003) takes as a point of departure Kelly’s work on “disorders of transition,” and provides a large set of questions which appear highly useful in understanding and also transcending phenomena such as anxiety, threat, guilt, and hostility. Trygve Myhren (a Norwegian friend trained by Moore and McDonald) has extensive experience in training facilitators. He says that one of his major tasks is the need to prevent trainees from thinking of themselves as therapists, assigned the role of solving concrete therapeutic problems. Abramson and Moore (2001) write that such persons cannot function as facilitators.

In Christie’s terminology the conflict is “handed back” to the involved parties, and this touches on the major similarity between PCP and RJ. For Kelly there is no basic difference between a “scientist” and the ordinary person: the “personal scientist” (earlier “man the scientist”) has the same epistemological status as the conventional “scientist.” Similarly the participants in a conference have no less responsibility than lawyers in conventional legal proceedings.

Stages in a typical conference

It is convenient to think in terms of three major stages in a conference. The first stage is dominated by negative emotions. This stage (Tschudi & Reichelt, 2004) is characterized by I–it relations as described by Buber (1923/1958). In Kellyan terminology this is equivalent to non-social relations where a person treats others as “behaving mechanisms” or objects, and not as persons. Furthermore, everyone gets to describe—often in great detail—what has happened and what the emotional reactions have been. At the end of the first stage there is often a turning point. This marks the second stage; mutual recognition of the quandary of the group, “feelings of shame, experienced as individual deflation and expressed as collective
vulnerability” (Moore & McDonald, 2000, p. 50). I like to think about this as a feeling that “we are all in the same boat,” togetherness, there are no antagonistic differences between the parties.

In the third stage, positive emotions, interest and excitement flourish, and ideas for reducing harm and preventing further harm dominate.

I shall now give some examples, emphasizing the second stage, “collective vulnerability.” This is a pivotal phenomenon in conferencing, and also has great theoretical interest from a PCP point of view.

Example 1. Aussie-Leb fighting
From Neimeyer and Tschudi (2003, pp. 181–182); Tschudi was present as an observer

In a school in Sydney fighting occurred between “Lebs” (immigrants with a Lebanese background) and “Aussies” (people with an Australian background). When parents were summoned to a conference and asked to describe how they had been affected, an Aussie father expounded a remarkable theory: “The problem with you Lebanese,” he declared, “is that you fight like a whole pack on one boy.” In spite of angry interruptions he continued: “A necessary condition for improvement is for the Lebanese to fight the proper way.” An older sister of one of the Lebanese boys got especially upset and addressed the facilitator both verbally and nonverbally with the message: “You cannot let this go on.” The facilitator restrained himself, nodding back to signal to her: “It is up to you to say what you feel must be said.” Her basic message was: “Where are we now? We have come here to prevent further fighting. But now we are no better than the boys were when they were fighting. We must concentrate on what can be done to improve conditions at the school.” Many felt shame (cf. “collective vulnerability”), and lots of constructive suggestions followed; support for the teacher who was present when fighting started, using older boys to prevent younger ones from fighting, etc.

Example 2. Road fatality
From Neimeyer and Tschudi (2003, pp. 177–181)

Jack was the father of Pat, who lost her life in a car accident when Jill was driving in a drunken state. Jill was imprisoned but bent on saying “sorry” to Jack, while he was consumed by anger and hatred and wanted Jill to suffer even more. Jack placed a picture of Pat opposite to where Jill was sitting—as if this somehow magically could serve to punish Jill. Jill, however, turned to the picture and said she wished Pat could be there and wished that it had been she (Jill) who had died. This seemed to dissolve some of Jack’s anger. An even more salient episode, however, was when Jack passed around a
graphic picture of the scene. A reverential silence fell over the group, only punctuated by occasional sobs from the participants. This marked the emergence of collective vulnerability, a shared physical deflation, a poignant recognition of the frailty and brevity of life. John McDonald later told me that he was very curious to see the picture but deliberately refrained from looking at it. The picture was the property of the group, and he did not belong to the group (and could thus not claim any ownership of what was basically the group’s property). The cementing of the sense of coherence led to a remarkable agreement: Jack and Jill should together travel around to talk about the dangers of drunk driving.

Example 3. Teenager fighting explodes
From Abramson and Moore (2001, pp. 326–327)

In a representative example from several hundred conferences in the Baltimore area in the U.S.A., what started as two teenagers fighting escalated into incidents involving knives and guns while parents unsuccessfully tried to intervene. After extremely heated exchanges in the ensuing conference, one mother burst into tears and said: “You know my cousin was killed two months ago over something as stupid as what we are arguing about. If we don’t do something about this tonight somebody in this room is going to be killed.” There was a heavy and long silence in the room—the moment of “collective vulnerability.” What followed was remarkable. Within 15 minutes the families came up with eight points of agreement as to how they would treat each other in the future. In the 12 months following the conference there were no calls for police service to any of the residences.

Example 4. “How restorative justice turned my life around”
From The Sunday Times (Woolf, 2008)

Peter, at 45, was a long-time criminal who one day picked a random house, managed to get in, and started collecting items which he could sell. When Will, the owner, suddenly returned a fight started, where Will was hit by a griddle and a big flower pot. On the same day, Peter stole a laptop computer from a doctor in another break-in. In prison Peter was visited by Kim Smith, a policeman who worked with RJ. Kim had arranged for Will and the doctor to attend a conference with the offender. When Peter started to say to Will “When we met . . .” Will turned red with fury, and described the anger he felt, and his shame at his failure to protect his wife, who had also been present at the break-in. The doctor said that the laptop represented his life’s work. What had meant a lot to him had been treated as worthless. When Peter was asked to comment, tears filled his eyes, and he somehow managed to say “I’m sorry.”
Peter was asked to write the doctor and Will every six months to tell them how he was putting his life in order. Will commented that you do not leave anyone in the sad state Peter was in unless you are a shit, and he told Peter that if he went back to his old life he would be shitting on their goodwill. That they seemed to care about him made Peter really want them to be proud of him.

What is especially touching about this story is that the good relations created between “victim and offender” also turned into joint actions. Together with his wife Peter was invited to Kim’s retirement dinner, where Will was also present with his wife. Peter is now working with the Metropolitan Police, in work connected with RJ, and often together with Will, who is not a policeman but is sometimes interested in working with RJ!

As illustrated in the examples above, the last stage is dominated by positive emotions and constructive suggestions of what may be done to deal with the conflict effectively, and also what may be done to prevent future conflicts. Here sociality reigns! The facilitator then writes out the agreement, what should be done when, and who is responsible, and the main participants sign the agreement. While the facilitator is writing this, there is usually an informal gathering with light snacks. This is a great occasion for people to get better acquainted, and there may be “hugs and tears, which is always nice to see,” as John McDonald once put it.

Conferencing and Ubuntu: Illustrating the importance of extending the Sociality Corollary

Harry Procter has been involved for years in extending Kelly’s (1955) Sociality Corollary, which states “To the extent that one person construes the construction processes of another, he may play a role in a social process involving the other” (p. 95, my italics). Procter (2014) points to the major limitations of this corollary: it neither acknowledges the construction processes of several others (dyads, triads, or groups) nor gives room for the role of the construction processes of another. He thus proposes a Relationality Corollary: “To the extent that a person can construe the relationships between the members of a group he or she may take part in a group process with them” (p. 245, my italics). This captures “the further implication that this involves not only construing others’ positions but construing their constructions of the array of positions, and the interactions between these” (Procter, 2014, p. 258).
Confronted with a range of interactional phenomena one may then need special types of constructs. Procter has made major suggestions about how grid work can be extended by focusing on several qualitative levels of construing, for example elucidating differences between monadic, dyadic, and triadic construing, involving one, two, or three terms. Each “term” may denote any number of persons such that even the whole “group” may just be “one term.”

From the point of view of understanding conferencing, however, Procter’s view of the group as just another monadic term seems limited. He “retains from Kelly the importance of the person as a site of an individually selected and evolved construct system” (2014, p. 259), and goes into great detail about monadic and triadic construing. However, a whole group may sometimes transcend the constructions of any single person—in moments of collective vulnerability and a further collective solidarity—and then independently contribute to construction for each of the participants. The verbal descriptions in Example 1—“Where are we now?”—and Example 3—“If we don’t do something . . .”—highlight this, and the sobbing and ensuing silence in Example 2 illustrate a non-verbal analogue of “we.”

Inspired by Procter’s research, I would suggest having participants give constructions not only of typical monadic, dyadic, and triadic terms but also of special “group moments.” A reasonable suggestion is that moments of collective vulnerability would be far more salient than any, say, triadic construction, and also more salient than any other group moment.

In Western conceptual frameworks we do not have readily available concepts for such group processes. This has led me to seek inspiration from the African concept Ubuntu, which was a guiding image for Nelson Mandela and Bishop Tutu during the South African revolution. My favorite translation runs “I am because you are,” for Bishop Tutu; “our humanities are inextricably related” (Tschudi, 2008, p. 49). For Barack Obama, Ubuntu was a major theme in his November 2013 memorial speech honoring Nelson Mandela.

Restorative, Transformative, and Retributive Justice

A basic premise for conferencing is that participation should be voluntary. This implies that RJ can never replace conventional legal procedures. Christie (2004) agrees with this, but forcefully argues that punishment (the deliberate infliction of pain) should be kept to a minimum, even though it is necessary clearly to mark boundaries concerning acceptable behavior.
It is, however, important to emphasize that restorative vs. retributive justice is not an either/or question. Quite often retributive justice leaves questions concerning the victim’s situation unanswered. This is illustrated in Example 1 and Example 4 above.

Kelly’s (1955, pp. 506–507) view of punishment may, however, be taken to illustrate pronounced differences between conventional retributive justice and RJ. He points out that we may all have tendencies to commit crimes. When dealing with criminals there might be a “looming shadow” telling us that we may also have tendencies to commit similar crimes. This can then lead to emphasizing punishment as a way of distancing us from the criminal, and this may influence the conventional treatment of criminals. Conferencing, however, leads us to recognize the contrast to distancing, i.e., bringing offenders and victims closer to each other, and thus enabling an exploration of our joint humanity.

We have emphasized restoring dignity, and may add that this implies encouraging empowerment, everyone in the process coming to believe that their story is worth telling. A further important aspect is that new relationships may be forged. Example 4 illustrated this, and in Example 2 Jack felt that Jill might serve to restore the lost relationship with his daughter. More generally sociality and equal, non-hierarchical relationships are strengthened, and persons thus come to have more respect for each other. I have noticed that, in Norwegian cases where groups have been fighting, agreements emphasize the importance of people recognizing each other by greetings when they meet, thus increasing “social capital” (Putnam, 2000).

Systematic research on RJ vs. retributive justice seems promising. Latimer, Dowden, and Muise (2005) present a meta-analysis of 22 studies which indicates that both victim and offender satisfaction is greater and, furthermore, recidivism is less in RJ. Sherman, Strang, Angel, and Woods (2005) avoid a possible self-selection bias here by using four randomized controlled studies (in London and Canberra). They present data showing greater psychological benefits from RJ for victims, and emphasize the importance of achieving group solidarity. Future research, however, may benefit from combining quantitative and qualitative data (see the comments above on Proctor’s research, and Tschudi, 1989).

A suggested alternative to “restorative justice” is “transformative justice.” There is, however, no conflict here. “Restoration” in conferences refers to a primary concern with the immediate consequences of harm, while “transformative justice” implies a major emphasis on promoting values such as respect and humility and a gentle and peaceful way of life, leading to wider
societal transformations (cf. Tschudi, 2008). This was the case in Example 3, where further work led to a wider range of possibilities for young people. Dale (2006) has written about strategies for supplementing RJ with "conflict workshops."

Concluding Comments

While the aim of RJ, to restore dignity, is in line with PCP thinking, transitional constructs (such as threat, anxiety, anger, and guilt—cf. Frances, 2003) may have limited applicability in conferencing. As discussed in detail by Wilkinson and Pickett (2010, pp. 235–272), to the extent that we have symmetrical (non-hierarchical) relationships people are well equipped to solve ongoing problems themselves. A conference facilitator takes this for granted and does not offer any solutions. This, however, illustrates the power of the basic PCP stance: to see others as personal scientists, and thus to treat any conflict as a property belonging to the ones primarily involved, as Christie (1977) argued.

References


