

Teuri Brunila

Chairman

Finnish Forum for Mediation (SSF)

Former Chief Judge

39th EUCEN Conference, Lifelong Learning for the New Decade, University of Lapland

Restorative practices in Finland

The term restorative

Restorative: Refers to a person's return of strength, or health, by means of enhancing his/her renewing abilities, according to the Oxford English Dictionary (2003) (Geza Fischl 2006).

Restorative Theories

The Restoration Theory of Sleep: Suggests that the function of sleep is to repair and restore the brain and the body. If this did not happen, then the function of the brain and the body would gradually break down. Home (1988) suggests that sleep is divided into core sleep (REM and SWS) and optional sleep. He suggests that brain restoration and repair take place during core sleep. Bodily restoration occurs during optional sleep, but can also occur at other times (e.g. during periods of relaxed wakefulness).
(www.psychotron.org.uk)

Restorative environment: Pertains to the quality of the man made or natural environment which is capable of renewing the individual's attention resources by providing opportunities for non-threatening environmental characteristics and place for reflection (Fischl). The main goal of restorative environmental design is to achieve a harmonious relationship between people and nature in the built environment (Keller 2005). Thus, the question whether restoration supportive environmental details can be universally found and whether there are similarities between these details, rather than differences, could contribute to a common interest among design practitioners, namely to prove that everyday design has vital effects on health and well-being (Evans, 2003, Fischl).

Restorative community

Restorative architecture

Restorative design

Restorative schools

Restorative workplaces

Restorative courthouses

The restorative theory of sleep says that we shall have a good night sleep to be healthy and the restorative theory according to environment says that we shall build healthy communities. But we cannot be healthy in our bodies if there are constant blockage or grudge, hate, sadness, guilt and grief inside of us. (Tipping

2008) The trauma. Here steps in the theory of Restorative Justice. It is not too early to consider that the Theory of Restoration and all the parts is a question of human well-being.

Restorative Justice: Is a process which gives an opportunity to those who have a stake in the event of offense, to tell of the harm caused by the offense, to point out the needs and responsibilities as well as to heal and repair the damages as well as possible. (Zehr 2002)

The tree pillars of Restorative Justice

- Encounter
- Compensation
- Restoration

The restorative principles in RJ (Elonheimo 2003)

1. Empowerment: This is one of the most fundamental elements in RJ. The parties are in the centre, while the authorities and the mediators only provide them with a safe place for dialogue. The parties are given voice. They make the agreements; they are the experts. (see Christie 1977) Mediators only control that the agreements do not violate the human rights or exceed what would be imposed in court of law (Braithwaite 2003)
2. Restoration: In the restorative process, all material, emotional and social damages caused by the crime shall be addressed.
3. Responsibility: The offender is to take full responsibility for the crime.
4. Dialogue: The parties can tell their stories in their own words. They understand what is being said and agreed upon. Through genuine dialogue and storytelling, the parties come to understand each other better.
5. Emotional process: Rather than just a method to settle conflicts, RJ is an emotional process. Emotions constitute the core of the dialogue. Emotions need to be dealt with in order to get over the psychological crisis. (E.g. Umbreit 2001) Victims especially need to resolve their anger, fear and shame, and offenders their shame (E.g. Ahmed et al. 2001, Wachtel 1977).
6. Respect: Although the wrongful act is disapproved of, the offender is treated with respect.
7. Community: Community also plays a central part in the restorative process. The significant others need to be invited in the conference for they exert the most influence on the individual's behavior and can best monitor the fulfilling of the agreement. (e.g. Braithwaite 2002)
8. Rehabilitation: RJ is concerned about resolving underlying problems, not just the isolated conflict. Victim and offender both gain a sense of "closure" and both are reintegrated into the community. (Zehr 2002)
9. Creation: RJ enables creative, individual, win-win agreements

The Restorative Justice is a dialog and the tool for the dialogue is the Restorative Mediation with the Facilitative Counseling

Theories of restorative justice and victim/offender mediation stand in the background for the modern mediation movement in Finland. School /peer mediation, family mediation, mediation in work communities, environmental mediation etc. have all their origin in RJ.

Conflict can occur only in human opinion and in the end, there are no other conflicts. The motive within a person's mind is the determining factor. (Luk 1972) If we seek for a psychological theory that passes near mediation we will find the Sociodynamic Counseling (Peavy 2004). We may continue with Peavy's words: The truth is not born in and cannot be found in one person's head; it is born in the interaction and communication of people searching for it together. The solution is the product of an interactive dialogue-based process.

Restorative justice is considered to be justice because the law is always in the background. RJ is a tool for finding health and well-being for the people. However, if law and order, and the community welfare in all, require punishment, nowadays usually the law takes the center stage without consideration of mediation.

A dialogue: (Gerzon 2006)

Enables a wider range of feelings to be expressed than in debate.

Inspires more honesty and forthrightness than other methods.

Avoids superficial, forced compromises.

Generates learning, new options and innovations.

Increases the likelihood that everyone will be "heard".

Seeks the deeper truth in each perspective.

Restorative mediation enables its parties to let go of the fantasy on "winning". This is necessary in order for mediation even to begin. The starting point for mediation is that the right answer will be found in the different views of the parties. It is based on collaboration and on the parties trying to understand each other. The objective of mediation is to seek sustainable positive outcomes. Since the courtroom logic of debate and winning are absent, the atmosphere in mediation is a very safe one. The safeness is also due to the fact that the parties themselves are in control of the subject of the argument. In a courtroom, the subject is controlled by attorneys and judges. An important demand in mediation is that you listen to the other party. Listening is as important as talking.

In mediation, the parties have the courage to reveal both their uncertainties about some issues as well as their strong opinions about other issues. Mediation allows the parties to together come up with new solution models in which both parties' interests have been sufficiently taken into account. In mediation, everyone wins. (Domenici & Littlejohn)

Mediation is a learning process

In mediation people learn to deal with conflicts in a positive way. In the long run, people are empowered and learn to deal with all of their conflicts in a creative way. Mediation teaches: (Timo Pehrman)

- Creative problem solving skills
- Integral thinking
- Understanding of differences
- Leading the mediation process
- Group work

- Courage
- Objectivity
- Listening

The development of democracy and the empowerment of the civil society demand a change in our conflict culture. In order for human rights to become a reality, people must themselves be allowed to participate in the processing and resolution of their own affairs (Moore 2003). The 14th section of the Constitution of Finland states that “public authorities shall promote the opportunities for the individual to participate in societal activity and to influence the decisions that concern him or her” and its 22nd section states that “public authorities shall guarantee the observance of basic rights and liberties and human rights”. In mediation, a person can influence the decisions concerning him. For this reason, mediation should become the primary method of conflict resolution. Mediation brings full benefits to both its parties and the whole society. Mediation ends the conflict.

Arenas of mediation

Mediation in criminal cases (VOM)

If something gets broken, it needs to be fixed. It is very seldom that the best consequence for a crime would be, from the victim’s or the offender’s point of view, a conviction.

The law on mediating criminal cases and some disputes in Finland became effective in January 2006 and was taken into practice on the 1st of June 2006. Responsible for the organization and costs of mediation as a practice, is the Finnish state which acts according to mandates made with municipalities and other organizers.

By mediation in criminal cases is meant a free service, in which the suspect and the victim of the crime are given the opportunity, in the presence of an impartial mediator, to encounter each other confidentially. Such issues as the victim’s mental and material injuries can then be addressed and an agreement on how these injuries could be compensated for, can be reached independently.

Mediation in criminal cases saves the society’s resources. It has been seen to have humane importance to both the victim and the offender as well as educational importance to especially young offenders. At its best, mediation in criminal cases diminishes or even erases the harm caused by the crime and prevents crime renewal. It is a goal for SSF that mediation be used also in hard crime cases as well as family violence conflicts, as a means of lessening the psychological consequences of them.

School mediation (SSF)

School mediation is a conflict management tool especially suited for solving conflict amongst pupils. Its two methods are: Peer mediation, where pupil mediators help the parties of the conflict to find a solution to their conflict by themselves and thus change their behaviour, and Adult-led mediation, where trained mediation supportive adults guide the parties to find a common agreement to the conflict.

There are nowadays over 7000 peer mediators and over 1500 supportive adults working as experts of mediation in 400 Finnish primary, secondary, vocational and high schools. Adult-led mediation is used in more difficult cases, such as more serious violence. In all cases agreements are sought through a creative dialogue that concentrates on the parties’ own experiences and feeling. In mediation it is essential that the

parties are finding solution to their conflict themselves. The role of mediators is facilitating. The project is funded by the Finnish Slot Machine Association (RAY) and is run by three whole-day trainers.

School mediation is the key to all mediation, for the basis of behaviour culture is created in schools. Thus, mediation needs to be a part of the school culture. SSF's peer mediation project aims at this. School mediation needs to be continuously developed and the adults in schools need to be more trained in.

Mediation in work communities (SSF)

Harassment and bullying at work are prohibited by law, but there are very few ways to intervene in such cases. Mediation is one of these ways. The encouraging experiences we have had with peer mediation lead us to believe that also mediation in work communities could be led mainly within the workplace by training representatives for employees, managers and employees to become mediators. One of the challenges for good management will in the future be to meet employees in situations based on equivalency (Restorative management). Mediation in work communities is a way to intervene with bullying and harassment at work, to add to the employees' well-being and to promote the security in and the productivity of the work community.

The work place mediation project (Tyso) started in year 2007 and the report of the research of 14 pilot work place mediation cases was given 5.3.2010. The project has been funded by the Finnish Work Environment Fund and the State Treasury. The researcher Timo Pehrman will make a dissertation here in the University of Lapland. Professor Esa Poikela is the tutor. Our aim is to have it translated in English language.

Mediation in family conflicts (SSF)

According to the Finnish Marriage law of 1988, solutions to conflicts and legal questions within a family must primarily be sought in negotiations between those concerned. For the time being, modern facilitative mediation is not used in Finnish family mediation. Also municipalities have been reluctant to develop and improve mediation services. It is one of the goals of SSF to participate in the creation of a new mediation approach that focuses on children's interests. In practise, this means a voluntary, facilitative approach in which the parties themselves, led by a trained mediator, make the agreements on custody and visiting rights. Both the parents' and the children's needs are taken into consideration so that the parenthood of both parents may continue even after the separation.

Facilitative Family Mediation project (Fasper) started in September 2009. The 3,5 years project is funded by the Finnish Slot Machine Association (RAY) and it is run by three whole-day researcher / interventionists. Project produces grass-root knowledge about the mediation practices in socio-legal services available for families. It also studies the whole field of professional help – both social, psychological and legal – that is organized for divorced families. Ethnographic study includes interviews of clients and professionals, observations, case analysis and statistical data.

Five municipalities participate the project as research partners in order to develop family mediation practices in their area. Several actors are involved: mediators, social workers, family therapists, family counselors, psychologists, child welfare officer, district court judges, attorneys and legal aid counsels, among others. Local work groups and networks get training in family mediation and on that basis, elaborate the facilitative method suitable for family conflicts and tailor the practical applications that are locally implementable. As a result, the project produces a model and practices of facilitative family

mediation, as well as a model for cross-professional family mediation training. In doing so, the project also promotes and expands a mediative and restorative culture in society.

Environmental mediation (SSF)

This year SSF has in cooperation with the Aalto University started a research project in environmental mediation. The aim of the program is to find new tools for solving conflicts for example in urban planning. Though we have not yet received needed funding for the research project we have anyhow started it. The first pilot mediation case has begun in Turku. There meets each other the restorative urban environment and the restorative mediation. There are two old houses in the center of the city. The building company wants to take down these old houses and to build a new one. Local inhabitants want to conserve the old buildings.

Interim report

EERIKINKATU 33 MEDIATION

At 26.04.2010 mediation began with a briefing, which set out what is happening at the process of mediation and what this will create. The briefing had been held with all parties.

Mediators had set a target to find the lowest common denominator, which was started to be identified at the individual meetings, which were reviewed with all participants. Individual meetings were held with all participants, which was very important to the mediators who were trying to reach to the source of the problem. The discussions were very fruitful and positive across the board.

With these rear-view angles the mediators left to lead the mediation meeting 25.5.2010 where all participants (15) were present. When the debate started, all were allowed to raise their own opinion, in principle, everyone got the chance to bring up the same things they brought up at the individual meetings. The lowest common denominator was found and also those options which were the most object-provoking were surveyed. Mediation took about 4 hours. Spirit of the discussions and the whole occasion was peaceful and constructive.

At the discussion also came out the neighbours desire to develop the entire block together, which is particularly positive from the planner's view.

International or Peace Mediation (SSF)

The EU has, during the last decade, seen how a number of its former allies from Africa and certain Islamic countries are drifting away from the rigorous European mainstream in the UN and other global organisations. This is not a good trend. The question of whether the peacekeeping missions will be success stories or not, will, more than ever, be dependent on a large dose of cultural competence and deep cross-cultural understanding (Liesinen 2009).

SSF arranged with the Ministry of Foreign Affairs of Finland 15.10.2009 in Helsinki a seminar "Mediation, Conflict Resolution, and International Politics". Mr Pertti Salolainen, Member of Parliament, Chairman of the Foreign Affairs Committee made the Opening Address. As foreign lecturers were Mr Kelvin Ong, Chief of UN Mediation Unit, United Nations, Mr Murezi Michael, Federal Department of Foreign Affairs,

Switzerland, MR Vasu Gounden, Director, African Centre of Constructive Resolution of Disputes and Dr Joachim Rücker, Ambassador of Germany, Stockholm.

SSF has the idea that, when we are making a deep research in all mediation arenas and understand more also the consequences of our activities in another culture, Finland could be a new star in international crisis management.

Court mediation

The law on mediating disputes in the general Finnish courts became effective in January 2006. The mediator is a judge at the court that processes the case. The advantages of mediation compared with the traditional dispute proceedings are mediation's rapidity, low costs and the right that the parties themselves have to manage and control the conciliation agreement. To ensure the needed expertise, the mediator is free to bring in an assistant. The mediation is confidential. If the case is not settled and moves on to a court trial, the mediator may not judge the case.

Mediation by Finnish Bar Association

The Finnish Bar Association offers mediation especially in commercial affairs, work relations, and family affairs. In the procedure, an impartial lawyer acts as a mediator and assists the parties in affirming a settlement. This type of mediation is really negotiation aiming at settlement with the help of a third part.

The Finnish Bar Association has for several years now had a mediation training programme for lawyers. A list of these lawyers, as well as other information on the association can be found on the association's website at: www.asianajaliitto.fi. On the website there is also a model for the mediation agreement as well as the Bar Association's mediation rules.

Training in mediation

The only Nordic mediation professorship is at Faculty of Law, at the Copenhagen University. Systematic, academic research on mediation is still lacking in Finland. SSF has started negotiations with the Ministry of Education on organising good quality mediation training and research in our country. Our proposal is that there should be a two year long master program in Restorative mediation here in the University of Lapland.

Restorative Theories are a "Lifelong Learning for the New Decade".

References

Domenici, K & Littlejohn, S.W.. 2001. Mediation. Empowerment in Conflict Management. 2. edition. The United States of America. Waveland Press, Inc. P.O. Box 400. www.waveland.com

Fischl, Geza, (2006). Psychosocially Supportative Design in Indoor Environment. Division of Engineering Psychology, Department of Human Work Sciences, Luleå University of Technology, Sweden.

Elonheimo, Henrik. Restorative Justice Theory and the Finnish Mediation Practices; A Paper Presented at the Third Annual Conference of European Society of Criminology, Helsinki, 27-30 August 2003.

Gerzon, Mark. 2006. Leading Through Conflicts. How Successful Leaders Transform Differences into Opportunities. Boston Massachusetts: Harvard Business School Press.

Liesinen, Kalle. Cultural competence – smooth behavior or deep understanding; in the book Varying Cultures in Modern Crisis Management; FINCENT Publication series 1:2009.

Littlejohn, S. W. & Domenici, K. 2007. Communication, Conflict, and the Management of Difference. The United States States of America. Waveland Press, Inc. www.waveland.com

Luk, A.D.K. 1972. Law of life, book 1. Oklahoma City. A.D.K. Luk Publications.

Moore, Christopher W. 2003. The Mediation Process. Practical Strategies for Resolving Conflict. The United States of America: www.josseybass.com

Peavy, R. Vance. 2006. Sosiodynaamisen ohjauksen opas. From the original – SocioDynamic Counselling: A Practical Approach to Meaning Making – Finnish translation by Petri Auvinen. Psykologien Kustannus Oy. Helsinki: Helsingin Painotuote Oy.

Tipping, Collin C. 2008. Ehdoton anteeksiäntö. From the original – Radical Forgiveness – Finnish translation by Terhi Viljakainen. Helsinki: Basam Books Oy

Zehr, H. 2002. The little book of restorative justice. Intercourse, PA Good Books.