When Is Restorative Justice? Exploring the Implications of Restorative Processes in Juvenile Offence Cases Based on Interviews and Observations in Northern Ireland, Norway, and Orlando, Florida

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Abstract In this article, I examine and discuss the implications of restorative processes in juvenile offence cases in Northern Ireland, Norway, and Orlando, Florida. The investigation focuses on the Northern Irish *Youth Conference* model, the Norwegian *Youth Sanction* and *Youth Follow-up* models, and the *Neighborhood Restorative Justice* and *Teen Court* diversion programs of Orlando, Florida. I use interviews with professionals and observations of restorative processes and meetings related to these as the empirical basis for the investigation. In my discussion of the three models, I focus on issues of neutrality/impartiality, voluntarism, punishment, roles of offended parties and communities, and equality before the law based on the theories of Christie, Zehr, Vindeløv and Braithwaite. While the models generally offer possibilities of addressing the individual circumstances of the young offender in a way that the traditional systems they locally compete with do not, the variation in content is so large that I consider if perhaps a community of practices labelled *restorative justice* exists only at the abstract and not at the practical level.

1 What Makes a Restorative Process?

1.1 Levelling the Field

The headline of this article is a reference to the famous research carried out by American anthropologist Michael Moerman among the Lue people in Northern Thailand. In his 1965 article *Ethnic Identification in a Complex Civilization: Who Are the Lue?* he stresses that in order to answer the questions *who* and *what* are the Lue one must look into *when* Lue-ness occurs—either as a result of self-invoking or an external labelling process (Moerman 1965). Does it take just one of these or both for a Lue to be a Lue? Hence, *when* are the Lue and, as a consequence, (and just as important) when are the Lue *not.* This approach has since been very influential in anthropological research, as it accommodates to the non-static nature of an ethnic group. But it has also turned out to be a fruitful attitude to apply to other research fields as well; research fields that—just like ethnic groups—can give the false allure of a limited entity, whose boundaries everyone can agree to. One such research field could be a (perhaps) quasi-juridical term as—say—*restorative justice*, which is the focus of this article.

The article *Words on Words* by the world famous Norwegian criminologist Nils Christie was published in the first edition of *Restorative justice: An International Journal* in 2013. In it the by then 85-year old Christie stresses the importance of choosing the names carefully when talking about 'the core activities for alternative handling of conflicts; the organisations created for that purpose, the role-players and their activities' (Christie 2013). To Christie, the term restorative justice 'sounds as a bad choice'. He particularly dislikes the *justice* part and its inevitable connotation to the institution of Law. Also, the *restorative* part of the term is criticised for inviting a

normative understanding of relations and trust (Christie 2013). Christie advocates shying away from various euphemisms—what he calls a 'heroic terminology'—to stay clear of the abovementioned dangers and states "why not simply say so: we work with conflicts and in organisations for handling conflicts" (Christie 2013).

Christie's article seemingly sparked a wave of reflections within the field of RJ-research/practice, as illustrated in this quote from the foreword to a paper also published in this first edition of *Restorative justice: An International Journal:*

> Like so much else that comes from the pen of Nils Christie, his "Words on Words" that have inspired this special issue, and with which it begins, have, as they so often do, inspired us to engage in a meditative reflection on his words and their implications for our thinking and practice. We have sought, through these reflections on the wisdom of Christie's words, to better understand the security governance practices we have been studying, developing and, sometimes, promoting. (Froestad and Shearing 2013)

One security governance practice field in which restorative justice approaches certainly seem increasingly popular to employ is the field of juvenile offences. However, in my experience as a researcher, the rationales behind and the implications of doing so might vary immensely.

As part of my on-going PhD project,[1] I have interviewed and observed professionals working with restorative approaches to youth crime in four countries—in all of which I have been welcomed with great hospitality and openness. I have observed and/or interviewed young people in these same four countries, as they took part in or reflected upon having participated in a restorative process as a reaction to having broken the law. From these interactions, if nothing else, one thing has become very clear: Both the nature of the usage of restorative processes as a reaction to youth crime and the reasons for doing so are so diverse that it seems almost inappropriate to use the same headline to describe them. So:

When is restorative justice?

- Are you practicing restorative justice if you say you are?
- If others (whom?) say so?
- Both?

These are questions that I will not claim to answer in this article. However, evoking the teachings of Moerman, I will try to explore the boundaries of *restorative justice* as used in juvenile cases through examples from the four countries I have included in my research.

I chose these destinations because they each represent years of experience running programs and/or projects where juvenile offences (of varying seriousness) can be diverted to a restorative process.

In the case of the United States, the practices might vary immensely from state-to-state, as well as between judicial districts within a state. I do not have any basis to claim nor suspect that the particular programs I observed are (or are not)

[1]The project title is *Ethnic bias in restorative processes? – An examination of access and outcome for ethnic minority young male offenders*.

representative of restorative diversion programs for juvenile offences in the United States. This is why I have chosen to refer to the destination of this research visit by city and state—Orlando, Florida—rather than by country as the other models.

So far I have conducted three research trips to Norway, one to Northern Ireland, and one to the United States during my PhD period. As a consequence, my reflections on the Norwegian use of restorative justice in juvenile cases will take up more space in this article than those concerning the programs in Northern Ireland and Orlando, Florida.

The article will finish with a discussion of how the different usages of restorative approaches to juvenile offences in the four countries can contribute to understanding and recognising the tokens of restorative justice. The models are discussed and compared focusing on a series of key-issues within this research field: *neutrality/ impartiality, voluntarism, punishment, roles of offended parties and communities,* and *equality before law*.

In Denmark, a restorative process cannot substitute a court process in juvenile cases or otherwise. At the discretion of the police sometimes minor cases estimated too small to press charges are referred to konfliktråd—the Danish Victim Offender Mediation Service, but there are no official legislation/guidelines to support this approach. Even so, in the final discussion I have included perspectives from interviews with Danish police officers affiliated with the mediation program on the usage of restorative approaches in juvenile cases.[2]

1.2 Methodological Overview

The basis for this article is not a classical comparative study, even if programs from the three countries are, to some extent, compared. I have employed an eclectic strategy of data collection and analysis. As described below, I present different kinds of data for each program. I do this in order to illuminate which elements of that particular program I find interesting in relation to a discussion of how differently juvenile offender programs operating under a restorative justice label are designed and executed.

The data collection for this article consists of the following:

- *Semi-structured interviews* primarily with professionals working with restorative justice approaches to juvenile cases and, secondarily, with civil parties who had been part of such a process. The interviews have been conducted one-on-one or in groups. Most of them have been recorded, but in some cases I have taken notes

[2]In Denmark, konfliktråd is organised under the police, and the all-dominant approach is victim offender mediation (VOM) with one offender and one offended party present. In accordance with this, the official English translation on the Danish konfliktråd webpage is victim offender mediation program. In comparison, the Norwegian konfliktråd is a separate entity under the ministry of justice and offers more inclusive types of mediation as a standard, which the translation Norwegian Mediation Service reflects.

during and after the interview instead. My informants have been anonymised.[3] The interview base for this article is the following: *Norway:* seven interviews, and *Orlando, Florida:* six interviews with a total of eight informants.[4]

- *Observations* of restorative processes with juvenile offenders and their network, as well as other interactions, related to these processes. During and after the observations I have taken notes. I have not recorded any of the observed meetings. In all cases the young people and their parents/network, as well as the present professionals, have accepted my presence after having been presented with my profession and reasons for observing. The observation base is the following: *Norway:* seven interactions, and *Orlando, Florida* seven interactions
- *Presentations* made by professionals/management working with the selected programs
- *Data from studies, reports, evaluations* focusing on usage of restorative justice approaches in juvenile cases (see references)
- *Articles* expressing opinions on various types of restorative justice approaches in juvenile cases (see references)

The samples in the study are limited, and this, of course, entails that the findings presented in this article should not be assumed to paint a full picture of how the three programs operate and to what effect. However, in all three cases the respective program leaders were my gatekeepers in terms of access to interviews and observations. Hence, I expect that I have been introduced to employees and cases which, from the perspective of the program managements, are representative of how the programs work (or how the managements think they should work).

1.3 Theoretical Framework

I will refer to the following works:

- The Little Book of Restorative justice by Howard Zehr[5]
- Conflict as Property, Words on Words, and Widening the Net by Nils Christie

[3]With the exception of the Norwegian national coordinator, who has been cited extensively and who has approved these citations.

[4]In addition to this, I have conducted 14 interviews with a total of 20 informants in Denmark in relation to the project. More interviews and observations are scheduled.

[5]In *The Little Book of Restorative justice* a.o. Zehr (2015) introduces a division between the paradigms of Criminal Justice, where offenders "get what they deserve" and restorative justice, where the focus is on "victims needs and offenders responsibility to repair harm". In his latest work, Zehr has moved away from this dichotomy, stating that restorative justice is not necessarily the opposite of retribution. Yet the dichotomy of restorative/retributive seems to remain a pillar of understanding within the field of restorative justice.

- Reflexive Mediation by Vibeke Vindeløv[6]
- Crime, Shame and Reintegration by John Braithwaite[7]

There are different views on the genealogy of the term restorative justice in relation to, for instance, restorative processes/practices and to mediation in terms of what is the subset of what?[8] I will not dive deep into that discussion in this article, but I prefer to reserve the term restorative justice for processes that relate to a criminal offense. And since only such processes are the focus of this paper, I have chosen restorative justice as the headline. I see the terms restorative practices/processes as a theoretical and methodological continuum, which can include various types of proactive and reactive restorative activities in, for instance, schools and communities, as well as restorative justice approaches to criminal offences at the 'pointy' end of the continuum. I suggest restorative processes/practices and mediation be seen as two entities that share an intersection.[9]

1.4 Reflections on the Researcher's Position

My point of entry into the field of mediation/restorative justice research was that I had worked first as a teacher at a boarding school for teenagers where many of the students were socially and psychologically challenged and later with vulnerable youth and crime prevention in a municipality—both jobs for several years. In 2012, I became a trained youth mediator and experienced how the curriculum—including its introduction to the concept of restorative justice—in so many ways seemed to match the approach I had taken to working with young people and the inevitable conflicts they run into. An approach, which was often challenged by colleagues and others promoting a more 'hard liner', '0-tolerance' attitude to the young people. I liked how this approach legitimised the importance of the parties' (including young peoples) voices, while also promoting their sense of responsibility.

Through my work in the municipality and later through a job in the Danish probation service I have come into contact with many young people who have

[6]The reflexive mediation model was developed in the late 1990s, early 2000s by the influential Danish Law professor, mediation researcher, and practitioner Vibeke Vindeløv. Here some of the key concepts are that the mediator must act impartial and respect the autonomy and dignity of the parties (Vindeløv 2012, 1st edition in 2008).

[7]In *Crime, Shame and Reintegration* (1989), Braithwaite focuses on the potential of shame in restorative processes to reintegrate the offender into the community and adjust his/her behaviour away from an anti-social path.

[8]I have participated in two international conferences with a restorative focus: one by the European Forum for Restorative justice, in Leuven, in 2015 and one by the International Institute for Restorative Practices, in Dublin 2017. At both conferences the genealogy of the various terms was a topic for vivid discussions amongst researchers and practitioners both during key notes and in smaller sessions. On this basis I conclude that there is no consensus within the field on this matter. My suggestion as to the genealogy is thus to be seen as one of many perceptions.

[9]More on this point in the discussion.

committed one or more offences and have been in—sometimes repetitive—contact with social services as well as the justice system. In my experience, it seems like there is a lot of room for improvement in the way these young people are met by such systems.

I suspect that restorative approaches have a potential to fix some of the serious potholes in the way we meet young offenders. But—as I hope this article reflects—I am not without concerns on the matter. Hereof the spectrum and quality of practices is a large one. My positive expectations, as well as my concerns, have been motivators for me to add research to my restorative practice.

2 Discovering the Balanced Model of Northern Ireland

2.1 Successful First Moving in Conflict Heart Land

In the spring of 2014—a year before officially commencing my PhD project but well into planning it—I went on a study trip to Belfast with a group of Danish crime prevention workers. Here, I got to meet various actors taking part in the restorative justice youth conferences: the facilitators responsible for the youth conferences and the processes before and after, the university personnel training the facilitators, the prosecution services, a judge, the police and a young, former offender and his father.[10]

The Northern Irish youth conferences are based on *The balanced model*, which "gives equal attention to the rights, needs and interests of the person, who has been harmed by the offence, the young person responsible for the harm and the community" (Zinsstag and Chapman 2012). The process of the youth conference is as follows:

- *Pre-conference preparatory work*. Focus is on the need of the parties, what they expect from/after the conference, and how/if they will contribute[11]
- *Youth conference.* The facilitator "facilitates the parties to meet. To tell their stories, to express their emotions, to enter a dialogue with each other, to arrive at a shared understanding and generate a plan [the Action Plan] to repair the harm and to prevent further offending" (Zinsstag and Chapman 2012)
- *Post-conference, completion of Action Plan*. The facilitator and other Youth Justice Agency staff work with the young offender to ensure and promote completion of the plan

[10]I also met with several civil institutions performing restorative services. This included an organisation under the Irish Republican Army whose positive experiences with restorative approaches during the final years of the violent Northern Ireland conflict helped spur the current usage of restorative justice youth conferences in juvenile cases. Our hosts were the Faculty of Law at the University of Ulster and Tim Chapman and Hugh Campbell—both internationally renowned for their knowledge and contribution within the research and practice fields of restorative justice.

[11]The participation of the victim in the process is voluntary. If the victim wishes to contribute without personal attendance there are several options, such as videoconference, recorded/written statements and participation behind a one-way mirror.

In terms of resources emphasis is on the pre- and post-conference work. After the conference, the action plan is ratified by a youth court judge to ensure proportionality between the offence committed and the contents of the plan.

No doubt, Northern Ireland has been first mover in Europe when it comes to restorative responses to juvenile offending. Youth conferences have been available by law nationwide in Northern Ireland since 2006 for all juvenile offenders who have admitted in materiality to their offence and wish to have their case handled within this system instead of the traditional judicial system. Evaluations of the 2008 cohort showed that young people are substantially less likely to reoffend (Lyness and Tate 2011).

Further to this, between 2006 and 2009 the offended party participation rate in conferences was 74% (Youth Justice Agency 2009–2010). In restorative justice theory, offended party participation is generally seen as implicit to the process. But as the examples in this article will show, in reality, restorative approaches to youth offending—for various reasons—often take place without the presence of an offended party. In this context, 74% is a very high offended party participation rate.

Offended party satisfaction rates were measured at 90% in 2006 (Campbell et al. 2006) and 84% in 2009 (Youth Justice Agency 2009–2010), which are high numbers compared to offended party satisfaction rates in traditional judicial processes at large. From a political perspective offended party satisfaction is arguably a key factor when substituting traditional responses to a criminal offence with a restorative approach. References to the fluffy concept of 'sense of justice' is often central in resistance towards embarking on restorative approaches to crime. In such a debate, arguments as 'rehabilitation', 'low recidivism', and 'cost-effectiveness' seem to diminish in the presence of 'offended party satisfaction'. It simply seems illogical that vague notions of a 'sense of justice' should triumph over the feelings of the actual offended parties involved.

All-in-all the numbers seemed to be in favour of the Northern Ireland restorative approach to juvenile offences to the extent that it made very much sense for us as Danish crime prevention workers to take a closer look at matters. This is how the study trip to Belfast came into play.

2.2 Empathic Disciplining

The trip to Belfast was my first meeting with restorative justice as an alternative reaction to juvenile criminal offences. We were too many to observe an actual youth conference, but a role-play was employed to show the typical course of a youth conference. From my mediation training in Denmark I was used to this approach, and I volunteered to participate in the role-play. I was the selected to play the young offender. After having red my instructions and received oral guidelines, the role-play began.

One of the most experienced and highly esteemed youth conference facilitators was leading the séance. She had already told us passionately about her work and came across as a very warm, empathetic facilitator.

Yet during the role-play conference I was somewhat surprised by the approach the facilitator took towards me as 'offender'. My mediation training in Denmark had perhaps foremost been based on Vindeløv's previously outlined reflexive mediation model, according to which the mediator must act impartial and respect the autonomy and dignity of the parties. But during this role-play youth conference, the facilitator—in my experience—took a very corrective approach to me as 'offender', asking me several times to sit up straight, look up, speak up . . . in ways that—to me—connoted a more authoritative, disciplinary approach. Even if it was just a role-play, this approach did not give me the feeling of being treated as an equal by an impartial mediator. And I was not the only one in the visiting group of practitioners to notice this deviation from what we would perceive as appropriate mediator practice. This experience became a central part of our group reflection after the role-play had ended.

On the other hand, during our trip we had also met a young former offender and his father (as previously mentioned) who had been part of one of the same facilitator's cases. The boy who had committed the offence came from a very vulnerable family background. His father had been in prison for political violence during the boy's adolescent years. He had lived with his mother in a very challenged area. He had had problems with alcohol, substance abuse, and criminal behaviour from a young age. The boy who had committed the offense described how he had experienced both compassion and to be taken seriously from the facilitator, and that the restorative process had sparked reflections to the extent that he had changed his life afterwards. It had been a year since the youth conference when we met him, and he was no longer drinking, using drugs, or committing criminal offences. The father, who was now out of prison, had been incarcerated when the youth conference had been held, but he was part of the conference via skype. This had had a very emotional effect on both father and son, who had both been in tears during the conference. Hearing them tell their stories was, indeed, very moving to us as visitors as well.

As such, my impressions of the Northern Irish youth conferences were dualistic and posed a dilemma, which gave food for thought. On the one hand, it was an eye-opening reminder that, of course, the mind-set behind practicing restorative approaches was not as dogmatic and universally agreed upon as the commonly used theoretical references in this field—with their restorative/retributive dichotomy—might lead us to believe. On the other hand, I was convinced that the Northern Irish youth conference approach—even if its practice had some contradictions with the behind-lying theoretical framework of restorative justice as I had interpreted it—had a lot more to offer than the approach of the traditional Danish justice system as I had experienced it working with young offenders.[12] And when describing the *raison d'être* of the youth conferences the attitude of the professionals involved towards the young offenders was, without exception, empathic and resource-based.

[12]Before my entry into the field of mediation/restorative justice research I have worked for 2.5 years as a teacher at a boarding school for teenagers where many of the students were socially and psychologically challenged and later 5 years with vulnerable youth and crime prevention in a municipality. Through my work in the municipality and later through a job in the probation service, I have worked with many young people who have committed one or more offences and have been in—sometimes repetitive—contact with the social as well as the justice system.

The visit to Northern Ireland certainly made me curious to experience other approaches to responding to juvenile offences within a restorative framework. The first country on my list was Norway due to its similarity to Denmark. Yet Norway has had a much more longstanding experience with restorative approaches to conflict.

3 The New Norwegian Youth Sanctions: The Balance Act Boundaries of Restoring and Volunteering

3.1 Professionalising the Restorative Field

In Norway, two new Norwegian restorative youth sanctions were adopted on 1 July 2014. In these the traditional restorative approach of including those who are directly affected by a harm[13] is extended to include a range of professionals, too. In the context of the elaborate Nordic welfare models, it can indeed seem tempting to include the actors of the social system as well when using restorative justice as an alternative or supplement to the traditional judicial system for juveniles. Especially so for someone like me, who—as a professional working with vulnerable youth—time and time again has witnessed the effects of the often confusing and eclectic myriad of social and legal systems and precautions that are set into motion once a minor has committed a criminal offence.

The new restorative sanctions were anchored in the well-known and acclaimed *konfliktråd* institution (Norwegian National Mediation Service). The service was founded by law in 1991 and has, since 2004, been administrated under the ministry of justice. It is a free and voluntary conflict handling/mediation service offered in all Norwegian municipalities. Both civil and penal cases can be treated (National Mediation Service Act (konfliktrådsloven section 1). Konfliktråd is a popular service. Currently, approximately 7500 cases are handled each year, distributed approximately equally between civil and penal cases.[14] The service's mediators are volunteer 'impartial' laymen who are trained and paid for their service. Often two mediators cooperate on each case. The mediator(s) have one or more conversations with all parties before the mediation. This includes guardians if any parties are minors (Konfliktrådet 2017d). According to the service's webpage, the course of the mediation is as follows: "During the meeting everyone gets the opportunity to tell about their experiences, reactions, and emotions regarding what has happened, and

[13]Generally the offending and offended party and their private networks and—if relevant and possible—representatives from the immediate affected community/neighbourhood as, for instance, in the Northern Irish model.

[14]In comparison, the Danish parallel Victim Offender Mediation Service (konfliktråd) handle approximately 650 cases a year (Konfliktrådet 2017a). The two countries have a similar population size.

what they would like to happen in the future. It is the parties and not the mediator, who suggest what should be part of a possible agreement" (Konfliktrådet 2017c). The contents of the meetings are confidential. In penal cases and civil cases referred by the police, a copy of the agreement is sent to the police after the mediation. If no agreement is reached, the police is informed about this (Konfliktrådet 2017b).

The two new forms of restorative youth sanctions are as follows:

- *Ungdomsstraff* (youth sanction), which is for more serious and/or repeated offences. It is an alternative, restorative sanction for criminal offences that would have otherwise meant spending time in jail. The court decides whether this sanction is suitable for the individual offender/offence.
- *Ungdomsoppfølging* (youth follow-up) is an alternative, restorative sanction for less serious offences than in the case of youth sanction. The prosecutor or the court can decide on this option if a professional team concludes that the life situation and behaviour of the young offender indicates that he or she will benefit from close professional/private follow-up.

The sanctions were a result of years of successful pilot studies and represent a merger between restorative justice conferencing and coordinated efforts of the social system. They both entail a restorative meeting and a youth plan (see below). But as the seriousness of the offences committed vary for the two forms of sanctions, they differ in terms of the length of the follow-up period and of the sanctions possibly imposed if the young offender does not stay committed to the contents of the plan.

- Both types of sanctions are coordinated by a *youth coordinator*. The youth coordinators are based at the Mediation Service, but are professionals as opposed to the mediators, who are laymen. The process of the sanctions is (ideally) as follows:
- *Coordination group meeting:* Youth coordinator (YC) coordinates an initial meeting with professional parties relevant for the case (school, police, social workers etc) to discuss whether a youth sanction/youth follow-up is profitable for the young person.
- *Information meeting*: YC contacts the young offender and his/her guardians to inform about the process, asks if they are interested in such process, and, if so, makes sure the process is voluntarily engaged in.
- *Preparation meeting:* YC and mediator/s meet seperately with the young person and their private network *to prepare for the restorative meeting*.
- *Restorative meeting* with offended party and relevant networks of both parties takes place, facilitated by one or two laymen mediators from the Mediation Service. YC participates.
- *Youth plan meeting* with the young offender and his/her relevant private and professional network, during which the youth plan is developed, agreed to, and signed by all parties. The Youth plan includes various initiatives targeted at ensuring that reoffending will not take place, for instance, curfews, full school attendance, tutoring, sports, anger replacement therapy, drug testing, community

service etc. The plan includes obligations for both the young offender and the private/public networks, and all parties can be held accountable for neglect. The meeting is coordinated by YC and held immediately after the restorative meeting.
- *Monthly follow-up meetings* coordinated by YC throughout the duration of the sanction with the young offender and his private and professional network. The youth plan is revisited; are all parties keeping to the agreements? If not, YC takes the lead in bringing the parties back on track or, if necessary (due to repetitive/serious neglects), sending the case back to the court/police for alternative sentencing/sanctioning.

The new sanctions were passed by a unanimous parliament, and it was decided to base them in the konfliktråd organisation, which had no previous experience with handling juvenile sanctions. This decision was made to emphasise the restorative element, as well as to ensure a different approach than that of the established sanction organisations.[15]

Yet in the article *Widening the Net*, published 2 years after the aforementioned Christie-article, Christie strongly opposes the affiliation between konfliktråd and the two new forms of juvenile sanctions (Christie 2015). Christie was a strong advocate for the necessity of laymen mediators in the Norwegian Mediation Service. With the new Norwegian juvenile sanctions, Christie (2015) argues the service would have penal powers, which will lead to the service losing its civilising strength. Christie warns against the new professional army of 'child savers' and their extensive power to influence the life of the young offenders. With the circle of professionals including social workers, teachers, police officers, and probation workers acting as both quasi legislators, quasi police, and quasi judges the separation of powers are *de facto* put out of play (Christie 2015). Furthermore, similar to concerns of my own after the trip to Belfast, Christie points out, that the volunteer participation of the young offender is very questionable in this construction and thus the very core foundation of the Mediation Service is at stake, Christie (2015) warns.[16]

In the three following sections I will discuss these three concerns of Christie: voluntariness (Sect. 3.2), mixing the punitive and the restorative (Sect. 3.3), and the professionalisation of at least part of the mediation service (Sect. 3.4).

3.2 A Voluntary Process?

The formal answer to Christie's latter critique could be that the consent of both the young person and the guardian must be given before applying to enter either youth sanction and youth follow up, and it can be withdrawn at any time during the

[15]For instance, kriminalomsorgen/friomsorgen (probation services).

[16]Christie used the more accurate English translation 'conflict boards' for konfliktråd in his texts. Yet according to the konfliktråd webpage, the official English translation is Norwegian Mediation Service, so this is the translation which is used in this article.

process.[17] So far I have conducted two study trips to Norway focusing on the konfliktråd organisation and its undertaking of these sanctions. During my first trip—in the fall of 2015—the sanctions were still quite new and my interactions were with the management, the responsible coordinators as well as other professional actors involved. In March 2017, further to interviewing several professional actors, I observed various stages of the sanctions involving the young offenders and their private network and interviewed some of these parties as well. Based on these interactions, it is my impression that the management as well as the coordinators of the sanctions are very focused on informing both the young offenders and their guardians of the voluntary nature of the sanctions—as well as the consequences of withdrawing their consent—throughout the process. This element is stressed as very important in both my interviews and in the written and oral information to the young person and his/her guardian(s).

An initial independent evaluation was carried out one year after the sanctions were initiated. In the evaluation report the issue of voluntariness was treated thoroughly, demonstrating that this was taken very seriously by both youth coordinators and mediators. The explanations of young offenders in the report showed that, in general, the young offenders and their guardians had been informed about the process of the sanctions before choosing participate. Yet the young offenders' experiences of this information varied from having been thoroughly informed to signing in panic to avoid jail or signing while under influence of drugs; hence, having no good recollection of the information. The guardians, too, have a mixed evaluation of the information they were given prior to giving their consent, ranging from feeling thoroughly informed to feeling very under-informed. The findings in this evaluation has led to new more elaborate procedures on consent (Eide et al. 2016). During my observations in March 2017 I saw the new consent documents in action. In the consent meetings I observed, they were thoroughly read and explained (and if necessary interpreted) to both the young offender and the present guardian. After explaining each point the offender and guardian were asked if there was anything unclear. Follow-up questions were asked by the YC to make sure the content was understood. It seemed to be a very thorough and highly emphasised process.

But even if the offender and guardian understand the contents, does this make the participation volunteer? What if the young offender does not *really* want to participate in mediation, but he or she *would* prefer it over going to jail, for instance? These seemed to be relevant concerns in relation to the Northern Irish and the Norwegian models alike. In the article *Angreb på mæglingens DNA—ansatser til en diskussion om tvungen mægling* (Attack on the DNA of Mediation—Approaching a Discussion on Forced Mediation), Adrian and Vindeløv make the following point on voluntariness and mediation (my translation):

[17]Besides consent from both the young offender and his/her guardian the prerequisites for being granted either of these alternative sanctions are as follows: the young person admits to the crime committed and that he/she is willing to accept responsibility for it—a.o. by agreeing to meet the victim in a Mediation Service meeting.

> The point is however not that voluntariness should be seen as a choice between two goods, but might as well be seen as a choice between two evils. The choice is nevertheless there. The difficulty of accepting this as a choice is probably rather the difficulty of accepting that you are in a tough situation where you have to take responsibility for choosing what should happen. Whether you like it or not, you have a problem that is not removed by disregarding responsibility for the choice (Adrian and Vindeløv 2014).

Thus, following the argument of Adrian and Vindeløv, for young offenders who have to choose whether or not to accept one of the new Norwegian sanctions, the possibly bad range of alternative choices does not change the fact that there *is* a choice—and hence voluntariness.

But if the alternative—in the case of youth sanction—is for the young offender to go to jail, wouldn't one be willing to accept almost any alternative? And maybe even play along with accepting guilt and meeting the offended party without *really* feeling remorse, thus wasting time and resources of all involved and risking re-traumatization of the offended party.

Certainly to some critics the notion that the offender might gain anything other than a clearer conscience from participation in a RJ-process is unacceptable, or even unethical—not so only in Norway but internationally. But if this further gain includes initiatives/actions that might make the offender substantially less likely to reoffend than the traditional sanction in question, where would this leave the ethics?

3.3 Conflict Re-theft vs the Noble Cause of Fighting Recidivism

So what is the inside assessment of the Mediation Service so far regarding mixing a restorative and punitive approach?

The two Norwegian youth sanctions of 2014 are based on four pilot projects running from 2006–2008. Each project included around 50 young offenders otherwise facing unconditional jail sentences. The results showed a staggeringly low recidivism rate at around 10%, compared to an approximate 80% reoffending rate for juveniles who had been incarcerated for an offence during the same period (Kvello and Wendelborg 2009). Even before these results there was political agreement in Norway that sending young offenders to jail was, in principle, not acceptable, and here was a seemingly very viable solution to what could otherwise be done in the case of serious youth offences.

Yet even as early as in the 1970s Christie argued against using the allure of a possible fall in recidivism as the reasoning behind facilitation meetings between offender and offended party, even if he suspects such a fall to be likely. Christie's notions on conflict are claimed to have laid ground for the Norwegian Konfliktråd, earning him the informal title as their father. Hence, the critique coming from him 40 years later regarding the Mediation Service's harbouring of the new youth sanctions hit hard.

It seems obvious, that there *is* a discrepancy between the layman principles and the striving towards a minimal relation of the Mediation Service and the judicial system, on the one hand, and the professionalism and the (arguably necessary) focus on legal equality of the juvenile sanctions of 2014, on the other. And so even if the service was already organised under the Department of Justice before the new sanctions came along.

The national coordinator for the Norwegian Mediation Service, Lasse Rolén, was also responsible for one of the successful pilot projects, which arguably brought about the new sanction.[18] He has the following reflections on the placement in Konfliktråd and on Christie's critique: In terms of the placement in the Mediation Service, according to Lasse Rolén, this decision was made because the legislators wanted something different from the existing juvenile sanctions, and they wanted restorative justice to be at the core of this new invention. Rolén was approached to design a front running pilot project. He describes the mandate this way:

> From the beginning, when the government gave us this mandate, the purpose was to create something new within the criminal procedure. And I remember, we were at a meeting in the government quarters – the bombed house over there[19] – and asked 'will we not be given any guidelines?' And they said 'no, because we want you to create something new based on the principles of restorative justice and processes, the consideration of the best interests of the child, and individual plans for the course of the sanction. And you must coordinate the existing resources.' That was the mandate. And that is what we did and what we have been doing since the beginning. So the model we developed and are working with is based on these principles. But we are nowhere near full success yet, because we are still in the start-up phase.

After the pilot projects had proven very successful, the legislators wanted a national arrangement. The arguments for placing this in the Mediation Service were (1) an emphasis on the restorative aspect was desired, (2) as part of the punitive system, the new sanctions would have to be based in a state-based structure, and (3) there was a desire for the new sanctions to be substantially different than the existing ones and thus there was no wish to place them in an existing punitive structure. Furthermore, one of the pilot projects had been anchored in the Stavanger konfliktråd seemingly without disadvantages to either the project or the local service. And so the decision was made.

Lasse Rolén, on the one hand, thinks that placing the sanctions in the Mediation Service can help ensure a more restorative focus in accordance with the original mandate. On the other hand, he does acknowledge Christies warnings, sharing concerns that a classical, sanctioning approach is sneaking up on the work with the young offenders:

K: "So your notion is that you might have been pulled a little too far towards that which already existed?"

[18]Lasse Rolén has now retired. He was acting national coordinator when the interview took place in March 2017.

[19]The government quarters were bombed in the Oslo terrorist attacks, 22 July 2011.

L: "That which existed, yes. And it is often like that when you are inventing something new, it is difficult to hold on to that era of pioneering. Then you can quickly relapse to the prehistoric times. [. . .] You are not successful in maintaining the pioneer era for a sufficiently long time."
[. . .]
K: "So could one at the end of the day worry that Christie was right and that this (the new juvenile sanctions) has been some kind of fifth column action, which could destroy the Mediation Services from within?"
L: "Yes. . . Well, Nils Christie told me just before he died – I was at the institute giving a lecture – and he said . . . he thanked me for a very exciting lecture. He thought it was interesting. But he said 'you know I am worried'. I said 'yes, and in some ways your worries are real. But it will be up to us to take care of those founding principles, so that your worries will not come through – to put it like that.' A development is taking place. I cannot tell the future. I am merely launching some thoughts as to how we should base ourselves on the founding principles. It has developed a little off track – I can't tell in which direction – but as of now we are not able to stick fully to the principles upon which this was supposed to be based."

Hence, in Rolén's opinion, it is too soon to say whether placing the new sanctions in the Mediation Service will turn out to be the right decision. But he also stresses that he is very focused on keeping the restorative approach at the very core of both the new sanctions and the Mediation Service as a whole.

3.4 The Conscientious Chain of Caring Professionals

And what are the experiences regarding re-professionalising a field that had been consciously and carefully de-professionalised with success only a few decades back? Youth coordinator '1' shared these reflections on whether or not the role of the professional youth coordinator is true to the restorative foundation of the Mediation Service:

K: "O.K. So traditionally Konfliktråd were built on a foundation of laymen principles and Christie's idea of giving back the conflicts to the people."
1: "Mm. To those who own them."
K: "[. . .] and the professionals should stay out of it. How do you feel that your role as youth coordinator fits into the Mediation Service in this perspective? Do you feel there might be a conflict between those two positions?"
1: "Yes. Very much so. I can sense that. Because the traditional Mediation Service is mainly about restoring and facilitating a meeting between people. But with us youth coordinators and the new sanctions the Mediation Service has become punishment executors and this can lead to conflicts of interest. Everything the Service deals with is based on consent. And this is also the case for youth sanction and youth follow-up. But it is a consent with some cracks in the rear-view mirror.

Which could be a prison sentence. And then the young person has to choose between prison or youth sanction. And if they choose youth sanction they will have signed to that it is based on consent. But I have to put in actions, which require a lot from the young person. So I am thinking, it might not be a full consent all the way. But it is in order to avoid something which is worse. So that can in a way lead to a conflict of interest in the Mediation Service.

"Also the restorative process might not take up a huge amount of space in a long course of a youth sanction. There is the restorative meeting between the young person and the offended in the beginning. And when that is done the youth plan takes over. And it is not necessarily so that something from that meeting makes its way into the youth plan (see footnote 21). And then – in a way – the restorative part is over.

"But then again you can interpret in a different way too. And if you think about the whole course of the sanction the young person is restoring something towards him/herself towards the community. Towards parents. Then you can interpret it that way. So if you are focused on the restorative angle throughout the sanction, it depends on how you interpret it. And how you define restoration."

Youth coordinator '2' had the following perspective on the double role of the Mediation Service and restorative theory meeting the reality of being a youth coordinator:

2: "I find it very rewarding (being a youth coordinator). Because I can see how it works for some young people. It has opened a possibility for the young person to be heard. I feel that if you are a good youth coordinator and you are doing a thorough preparatory job with those, who will be in the follow-up team,[20] and you are good at establishing positive relations with the young person, which leads to him or her really getting involved in the follow-up, the impacts can be great. That is how I feel based on what I see. [. . .]

"But [. . .] it is like this . . . in theory all of this sounds very good, but in practice there are challenges, which I in a way see every day. One is that I am very focused on the sanctions in the Mediation Service should be an alternative to the existing sanctions. Probation service etc. Now I am afraid we might become too similar to them."

K: "O.K."

2: "That we are somehow too controlling and sanctioning."

K: "Yes. And you fear that this will take up to much focus?"

2: "Yes. I am afraid of that. And it makes me want to be a voice, which blows the whistle if the Mediation Service in a way lose its grip and integrity. As an

[20]A follow-up team consists of the young offender, the youth coordinator, the young person's professional and private network. The team meets once a month throughout the sanction period with the youth coordinator as facilitator. The professional network includes e.g. children's services, a teacher (if in school), probation services, and a police officer, and more professional participants are mandatory in case of youth sanction compared to youth follow-up.

organisation that should focus on a restorative process and relations between the Mediation Service and the young person."

As the quotations above suggest, my visits to the Norwegian Mediation Service so far leave the clear impression that—while also stressing the importance of the future wellbeing of the offended party—the people working with the two forms of juvenile sanctions based here care deeply about the future wellbeing of the young offenders with whom they come into contact. And that this is their main reason for choosing this profession. In the following example, youth coordinator '1' tells about his reasons for applying for the job:

1: "[The job is] very versatile. And I like working with the vulnerable – those who have the harshest conditions. It ended up that way when I taught in high school – that I was asked to work with those young people, who many of my colleagues thought were difficult and challenging. But at the end of the day I thought that when you back track a little and see why they are like they are, then I had no problem saying 'I think they deserve another chance'. There is something there. But many of my colleagues would not take on that job, because it was hard work, they were externalising, it was heavy. But I liked being in it and understanding why it is like it is. Why they are like they are. Then it is much easier to change the path forward – to help them on this path."

Hence, the focus of the youth coordinators is—in my experience from interviews and observations—resource-based in both words and in action. I have not once experienced punishment of the offenders articulated as a rationale for their work. The common notion amongst them seems to be that a 'chain' of caring professional as well as private help is provided around the young offender with the youth plan as the guide.[21] A chain that can be removed at the young person's (or his/her guardian's) will. That a less friendly alternative will then take over is something that they are aware of and live with, but not something they necessarily condone or think they can be held responsible for.

[21]The youth plan is almost equivalent to the Northern Irish action plan. Just as in Northern Ireland, the young person must keep to the plan, and if this is not the case, the young person risks going back to court and complete the alternative, court-ordered sentence instead. Yet in Norway there is a big emphasis on the responsibility of the professional parties, too—not just on that of the young person. It is designed and agreed upon in a separate meeting in the follow-up team (including the young offender). The meeting normally takes place immediately after the restorative meeting, but without the offended party and his/her network. The plan contains various case dependent actions that the young person and the professional/private network are mutually obliged to carry out, e.g. drug testing, anger management, physical training/sports, community work, scheduled homework etc.

3.5 And (Restorative) Justice for All?

Another point to consider in terms of equality before the law is that in Norway—as opposed to in Northern Ireland—the access to youth Sanction and youth follow-up is a matter of estimate. As described above, the young offender cannot participate without his or her own consent as well as that of his/her guardian. Yet it is, depending on *inter alia* the seriousness of the charge and the life situation of the offender, up to a judge, the prosecution and/or a coordination group of professionals (including e.g. (case dependent) children's services, school, police and youth coordinator) to decide whether the young person could benefit from such a sanction *and* whether such sanction is an appropriate/proportionate response to the offense. The former would typically involve questioning whether, for instance, the quite heavy artillery of a youth follow-up might be over the top compared to a—disregarding the offence—relatively positive and stabile life situation of the offender. The latter can, for instance, mean that in very serious cases it can be seen as violating to the public sense of justice for the offender to receive youth sanction instead of a jail sentence. However, such conclusion is extremely rare, since the general tendency in Norway—as mentioned—is to avoid the incarceration of minors, but is has happened in a few cases.

In this way the elastic heart of the Norwegian sanctions of 2014 perhaps seems more in congruence with the—ideally—individual approach of restorative justice than with the principal of equality before the law. But where there is room for judgment calls social research has continuously showed us there is also room for (more or less both traceable and conscious) discrimination. Professional does not equal neutral, so how do we ensure that the decision made is in the best interests of the young offender, as well as the local community and perhaps society as a whole (whatever the latter might mean)?

The same elasticity also goes for estimating when a youth plan—the core of the two 2014 types of sanctions—has been diverted from to such a degree, that the young person has not lived up to it and the case needs to be sent back to the judge/prosecution in order to put something else in play. This could, for instance, in the case of youth sanction, mean jail time for the young offender. Within the legislation it is up for the youth coordinator to decide when enough is enough, but in reality the decision is made with other professional members of the young person's follow-up team and/or coordination group (for instance, police, children's services, probation services, prosecution, teacher etc.) as well as the local management of the Mediation Service where the case is based.

As illustrated in the quotations above, holding this (co-)power to decide when to stop trying to 'restore' is not something the professionals working with the sanctions at the Mediation Service seem to enjoy. Yet the rationale seems to be 'rather us than someone else' as the perception within the Service—as outside critique also has suggested—is that the people working here will stretch very wide to keep a (consenting) young person 'on-board'. This dilemma, of course, contains universal relevance wherever ideology meets practice.

Just as in Northern Ireland, the principal of equality before the law also suggests that an offended party not wanting to participate in a restorative meeting should not hinder an offender's access to the Norwegian sanctions of 2014. Hence, if necessary, restorative meetings are held without the presence of an offended party, leaving it up to the Mediation Service mediator to bring the offended party's perspective into the meeting in order to spark the young offender's reflections upon his/her actions.[22] Contrary to the intention, it has proven difficult for the Mediation Service to ensure a high rate of offended party participation for the restorative meetings. In my interviews several youth coordinators estimated offended party participation to be as low as around 50%. This estimate was confirmed by the management as a number that had also come up in a recent internal evaluation.

3.6 The Show Must Go On: When Offended Parties Decline the Invitations

This is obviously an undesired state of events that has given rise to self-reflection in the Mediation Service. How can this be and how can it be changed? As to the first, experience points to the amount of time passing between the offence and the meeting as the key problem: Before a restorative sanction is set in motion, typically a long period of investigation, casework and preparation will have passed, perhaps causing the offended party to have lost interest in the offence. Arguably especially so for less serious cases, which make up the majority of the juvenile cases handled by the Mediation Service—including *ungdomsoppfølging* cases. As to the second question—how to fix this—several suggestions are in the pipeline. For instance, it is being suggested that the Mediation Service—if possible—should have more lenient options to arrange the restorative meetings while the investigation, case work etc. is still going on.

Also, there are suggestions to 'upgrade' the process of the offended party as well so that he or she is not left with a (couple of) pre-meeting(s) and the restorative meeting itself, but can—at his or her own will—be entitled to some sort of follow-up period as well. This suggestion has been made in order to avoid a feeling of re-traumatisation by the offended party, based on the difference in attention he or she gets compared to that of the young offender in the present design of the new sanctions.

[22]In Norway, the restorative meeting is facilitated by a layman Mediation Service mediator. The youth coordinator is present. After the restorative meeting with/regarding the victim is over, the victim (and participants related to him/her), if present, and the Mediation Service mediator leave the room. The youth coordinator takes over the facilitation of the second part with the purpose of agreeing to a youth plan. The participants in the second part are the offender, his/her guardian and maybe other personal relations, and the professionals team including the youth coordinator—all of which are present for the first part of the meeting as well.

Even if this approach might be tempting, several of the Norwegian National Mediation Service personnel stressed the importance of not 'luring' the offended party into participating for the sake of the offender—in order to help him/her not to reoffend. The offended party should participate for his/her own sake; otherwise, the risk of re-traumatisation is big. Especially if the young offender does not behave the way the offended party expects him/her to in the meeting afterwards.

But judging from the current state—if offended party participation is as low as 50%—might this be the final reason to call out the Norwegian sanctions of 2014 as cases of *not restorative justice'ness*? This would certainly seem to satisfy Christie and other critics. I asked several employees at the Mediation Service about this perspective. The following quotation is from an interview with youth coordinator '2':

K: "So what did you know about restorative processes before you started?"
2: "Only theoretical knowledge. I had read about the history of konfliktråd [. . .] but I had never seen how it worked in practice."
K: "No"
2: "So, in practice, it is different from what you read about it. [. . .] I am thinking, if you say, you are working at the Mediation Service, people will assume I am working with restorative meetings. What I see as a challenge in [the sanctions] is that there is often no restorative meeting with an offended party. [. . .] And that is a big problem. For the offended party that he or she doesn't get to meet those persons who have caused them harm. But it is also a big problem that the young person does not get to meet those who has been put through whatever they have done. Because I feel it has such a positive effect on them to see that. What I really like about this job are the times when you hear the story of the offended – it has such a great effect." [. . .]
K: "But is what you are doing 'restorative processes' then?"
2: "Well, yes, because I don't think restorative processes is about what we know as the restorative meeting between the offender and the offended party. I think that restorative processes can also be seen in relations to school, teachers, parents etc. In a way, I think that all this relations work that we do and get into the plans is, in a way, based on the thoughts behind restorative processes. [. . .] So, yes, I feel like I am working restoratively. That is what is in the back of my mind when I am working with a youth plan [. . .] that is what I want to come forward. The purpose of the youth plan is that their trust in people and institutions they somehow have to relate to will increase."

The other employees I interviewed had similar perceptions on the matter of offended party participation. They all agreed that it was an important focus to bring up the number of offended party participants. But they also suggest that the restorative process in these juvenile cases can and should not be diminished to the meeting between offended party and offender. As previously demonstrated, in their view it is just as much a matter of restoring the young person's relations with family, society etc. as well as restoring his/her options of and believe in a future without crime/unconstructive behaviour. And this view is arguably compliable with

interpretations of restorative practice increasingly gaining terrain within pedagogical practice in, for instance, schools and youth work.

4 Orlando, Florida: An Alternative 'Community' Approach

4.1 Diverting Young Offenders Restoratively

While the Norwegian youth coordinators seem inclined to have a resource based, non-penal approach to the youth sanctions they coordinate, my impression from visiting two restorative justice juvenile programs in the Florida was somewhat different.

In November 2016 I made a research trip to the Ninth Judicial Circuit Court of Florida to study two diversion programs for first time juvenile offenders only.[23] The newest—and to me most relevant—of the two programs was the *neighborhood restorative justice (NRJ) program*. This was also the program that brought the Ninth Judicial Circuit Court of Florida to my attention with the following website description:

> The Ninth Judicial Circuit Court of Florida is broadening its reach into its localized communities in an attempt to aid neighbourhoods in repairing the harm that is caused by crime. The Neighborhood Restorative Justice Program will empower the victims and the communities in a process of restoration. Through the non-adversarial methods of negotiation, conferencing, mediation, and reparation, a restorative solution to the harm of crime will be discovered. Crime is a violation of the entire community. The damage that is caused by crime affects victims, offenders, their family and the community as a whole. Restorative justice attempts to solve the damage of crime by actively involving all concerned parties. (Ninth Judicial Circuit Court of Florida 2017a)

Note that this program uses the terminology 'victim', which is largely in accordance with Zehr's terminology. In Northern Ireland and Norway the primarily used terminology is 'offended party'.

The other program juvenile diversion program of the Ninth Judicial Circuit Court was the longer running *teen court* program. Even if this program did not have *restorative* as part of the title, the understanding of the professionals working with this program was that it was based on a restorative framework. The teen court program is described as follows on the Ninth Judicial Circuit Court of Florida website (Ninth Judicial Circuit Court of Florida 2017b:

> Teen Court is a voluntary diversion program from Juvenile Court or school suspension and provides the following:

[23] Offenders under the age of 18 years. There is no lower age limit. The youngest participant in the NRJ program so far was 8 years old. His was facing charges for battering/disobeying his mother and was omitted to the program at the mother's request

> A forum for defendants to explain their involvement in the offense
>
> A structured environment in which the words and actions of defendants who admit their wrongful acts are evaluated and judged by a jury of their peers
>
> The opportunity for defendants to accept responsibility for their actions by fulfilling the jury's sentence of community service hours and future jury duty assignments, both of which are designed to be constructive and rehabilitative.

The two programs have the same target group in the district regarding age of the offender and nature (seriousness) of the offence. Whether a young person is offered one or the other depends on the zip code in which they live. The teen court program has been running since 1994 and is the most widespread of the two, covering the whole district except the few zip code areas running the Neighborhood Restorative Justice Program. The NRJ program has been running since 2000 and is available as a diversion option only in the areas of *Apopka* and *Eatonville*.

4.2 A Very Alternative Restorative Experience

In the case of the NRJ Program, I had the opportunity to observe two juvenile accountability conferences and interview the professionals and neighbourhood board involved. Both conferences took place an evening—one after the other—at a very remote firefighter training facility in a rural community—one of the two that had been selected for the program.

The professionals present were:

- *a youth coordinator* from the court (one of two), who had the responsibility of bringing the case to the board, and
- *a school resource officer* (a police officer with part of his schedule assigned to be present at a local high school), who follows up on compliance to the agreed sanctions.

The neighborhood board were three volunteer women of Caucasian descent. I would estimate them all to be between 50 and 70 years and to have an upper middleclass background. All of the women had been involved in the program for a number of years and at least one of them had served on the board since the beginning in 2000. The women had no relations to the young offenders in either of the two cases, nor had they have any relation to/knowledge of the offences prior to coming to serve on the board on the evening of the two conferences.

The contents of the sanctions plan was very standardised, as a norm entailing:

- Letter apologizing to victim (i.e. arresting police officer and the school respectively)
- Letter apologizing to parent
- Letter saying good bye to marihuana (if applicable)

- Assignment explaining worst case scenario during the offence and what one would do to avoid a similar situation in the future, and
- A number of civil service hours decided by the board before the conference at an institution/organisation of own choice
- Curfews (details were agreed upon in the conference)
- Random drug testing

Other options were boot camps, drug treatment, anger management classes etc. The contents of the plan have to be carried out within a certain time frame, around 6 months depending on the offence. The young person meets with the board again approximately half way through the sentence and towards the end of it.

In both cases the offenders were of Hispanic descent and came from poor single parent families. In the first case it was a 15-year-old boy[24] and in the last case it was siblings, a 13-year-old girl and a 11-year-old boy.[25] After the young offenders had explained their version of the offences, the women on the board took over. As I experienced it, their attitude was very disciplinary. The main focus was on how the children should respect the police officer and other authorities no matter what.

The boy in the first case performed better in terms of dressing for the occasion, speaking clearly and behaving very respectfully during the conference, so towards the end of his session, both the women on the board, the police officer and the court coordinator took a more friendly approach to him, increasingly focusing on his possibilities in the future. A specific concern of mine during this conference was that the mother clearly did not understand English very well, yet the contents of the conference was only very sporadically interpreted to her by the coordinator. But, all in all, the experience did not seem to have been negative for neither the boy nor his mother.

As for the two siblings the charge was more serious. And it only added to the seriousness of the case that both siblings tested positive for marihuana at the mandatory—previously announced—drug test upon arrival at the conference location. Yet even if I do agree that this case was serious because of their age, considering that same aspect—their age—I found the approach of the boards, the police officer and the coordinator to be very overwhelming.

In an attempt to scare to kids from smoking marihuana again the women on the board and the police officer interchangeably warned how the goal of the two older co-offenders and the mother of the co-offenders was most likely to get the siblings addicted to marihuana, to have them sell drugs for them, and very possibly also to

[24]He was a high school student who had been charged with resisting arrest. His explanation, which was not contested by the coordinator from the court, nor the police officer, was the following: He had left the stadium during a break in a football match to meet a friend outside. Standing in a group of Hispanic youth they were approach by the police, who told them to leave the area. The boy objected, as he had a ticket and wanted to go back in for the next part of the game. He did not get to show the ticket, but was arrested instead and charged with disobeying an officer and resisting arrest.

[25]The two siblings had broken into a school with two older boys and played with a fire extinguisher. A ‘silent alarm’—recording what went on the building without letting the perpetrators know it—tipped off the police. All four of them were arrested at gunpoint by police/dog patrols.

smoke them both unconscious in order to be able to 'rape them again and again' before 'trafficking them off to another country'—stressing that 'this happens to boys too'.[26] Through most of the session both the mother and the two siblings were in tears. The siblings seemed very ashamed and were very much out of their comfort zone. When asked they only spoke in very short sentences. This was commented negatively on and perceived as provocative by the women on the board. When asked how she felt, the mother said that she was concerned, distressed, disappointed, and ashamed—all of which her appearance seemed to confirm.

In my experience, the focus of the conferences was one of 'telling off'—by the women on the board, by the coordinator from the court, and (partly) from the police officer. It did not seem like there was a lot of interest in or room for the perspective of the children in these conferences.

On a more positive remark, towards the end there was a lot of encouragement as to how the children could work towards a better future for themselves. Especially in the first case where the boy's dreams of becoming a firefighter really seemed to be positively boosted by the support of especially the board and the police officer.

Also there was a clear emphasis on empowering the parent. This empowerment did, however, seem to act as a double edged sword for the siblings in the last case. As mentioned, the mother was very concerned, disappointed and angry—with good reason. She asked for stricter sentences than intended by the board; for instance, promoting her son's participation in a boot camp for which he was too young.[27] And when the police officer asked for permission to 'go through their phones' she granted it with pleasure. This to me was concerning, as I felt that this approach clearly exceeded the limits of what would have been a likely outcome of a court case.[28]

4.3 Empathic Hard-Liners: We Scare Because We Care

After the conferences I spoke with the board about the two cases. They were all very optimistic about the first case. And in the second case they talked about how they felt compassion for the mother and her difficult situation. The conversation was very empathic and the mood was relaxed and very different from the quite a lot tougher atmosphere during the conferences. I was asked about my perception of the conferences and told them how the approach was quite different and a lot harsher compared to the restorative processes I had experienced elsewhere. But it did seem to me that

[26]From my field notes it is not clear who said what between the police officer and the women on the board. But both the officer and at least two of the women were part of the story telling, in which the parties seemed to continue to top each other in order to stress the seriousness.

[27]The solution was that the boot camp would be added to his action plan to be completed towards the end of his sentence time when he would have turned 12 years old and have sufficient age.

[28]Being no expert in American juvenile cases this is solely based on my perception, but I do not actually know what court precedence is regarding privacy laws in cases like this.

this approach was overall probably a positive alternative to what young offenders might otherwise experience from the justice system.

I also asked about the absence of the offended parties, and the answer was that they were not part of these processes and that the board was somehow representing the victim's perspective. This answer was surprising to me as—judging from the previously outlined webpage description of the program, which stresses that the program *'will empower the victims'*—I would have assumed that offended parties play a central role in the program. But they all agreed that it would be an interesting perspective to work at including offended parties in some cases. I raised the question as to how they felt about the processes' potential to include more serious offences, explaining how even murder may be included in Norway and rape in both Northern Ireland and Norway. They all seemed very surprised by this possibility and agreed that this wide approach was probably not a possibility in the United States. But they did think it could be a possibility to test including some cases that were somewhat more serious that the current ones, because they all agreed, that the offenders had a much better chance of succeeding after this program than after having been through the traditional justice system. As discussed later, this view was substantially backed up by internal reoffending statistics. The women on the board explained how this was the big motivator for them to volunteer for the program. They stressed how great it was to meet young offenders again towards the end of the sentence and see how they made great efforts to change their ways.

Later I spoke with the police officer alone for a while. He too was passionate about being part of the conferences, as he thought they allowed for a much more efficient way of dealing with juvenile offences. Throughout the sentence period he acts as a mentor for the young offenders. He explained how he would 'break them down until they cry and then build them up'. Again a very different approach to 'restoring' than what I had previously been exposed to. Yet without a doubt this approach was founded on a wish to help the young person get back on track rather than an urge to punish.

The following evening I observed five seperate cases in teen court divided in two different court room settings. Here, the setting was different. It simulated a real court case, where only the judge was an actual judge and all other parts, prosecutor, defender, court clerks etc. where played by teenagers who had volunteered for the program, which would give them credits for college, amongst other things. The jury was a mix of volunteers and young offenders who had previously had a case before the teen court, and whose service on the jury for a decided number of evenings was part of their 'sentence'. But the general attitude towards the offender and the contents of the sanctions were similar. And here too—in spite of the attempt to simulate a real court case—no offended parties were present.

One mother tried to object to her daughter having to apologise to her, since she did not feel the daughter had anything to apologise for. The judge explained to her that she was forced to listen to her daughter's apology if the daughter should stay in the program. The following apology from mother to daughter did—needless to say—not ring very genuine heartfelt, nor did the acceptance by the mother.

During my stay I interviewed the leader of the NRJ program, who was overall happy with its performance. And seemingly with very good reason: She shared internal reoffending statistics from the program, which had been consistent around 6% for all the years. An internal study from April 2016 based on the 2014 cases showed a combined recidivism rate of 7.65% after one year for the two programs. These results, she told, were substantially better than those of the traditional approaches to similar juvenile offences. This had led to more serious cases like burglary being tested in the program as well.[29] She stressed how the principle of both programs is early intervention, applying the least restrictive options through a more holistic approach than the normal—and more expensive—procedures of the court.

I also interviewed the two youth coordinators[30] in this program and the manager of the teen court program individually. All of them—including the NRJ program leader—definitely stressed the aim to help the young people and how they were rooting for them to make it to a crime-free future. But the two NRJ coordinators and the teen court manager also emphasised how these programs were an option to hit young offenders with harder sanctions than they would have received in a court. There was also a lot of emphasis on 'outsmarting' the young people, not falling for their tricks, etc. as if the base assumption seemed to be that young offenders were not to be trusted.

This line of argumentation was in strong contrast to my experiences interviewing RJ professionals in Norway and Northern Ireland. It is unclear to me how much of this emphasis on punishment was motivated by countering arguments that the staff seemingly often runs into on these programs being too soft on offenders, and how much was based on their personal sensations on this matter. Arguably one is likely to influence the other, and in the United States the rhetoric concerning—also juvenile—crime is without a question much harsher than in Northern Ireland or the Nordic countries. Yet the Florida Department of Juvenile Justice has a whole 'myths vs facts' section on their webpage dedicated to clarify common misperceptions on juvenile offending. This includes a series of referrals to research stating that establish the inefficiency of counter productivity of various hard liner tactics in preventing and handling youth offending (Florida Department of Juvenile Justice 2017). This list interestingly includes boot camps and 'scare them straight-tactics,' which makes it odd that these factors appeared so prevalent in restorative programs in the same state.

A final point regarding the Florida programs concerns the reason for joining them: For the offenders, the main attraction of the diversion programs is that nothing will go on your record. This is the key argument used to get juvenile offenders to submit to a process that possibly entails substantially more elements of punishment/disciplining than a sentence for the same first-time offence in the court system

[29]With the large rates of private gun ownership and 'stand your ground' laws in the United States, invading a private home by committing a burglary is not only considered a serious crime but also a very risky one. In terms of the reoffending rates for juvenile offences handled in the traditional system, I asked for a referral but I have not been able to locate the numbers.

[30]One of them was the coordinator from the conferences the night before.

would. Yet if the young person has been arrested in relation to the offense, the arrest remains on record even if the offence itself does not. And the currency of 'nothing-on-record' might be devaluating fast as colleges, employers and others are catching on to these new forms of state disciplining and are now starting to ask in application forms, whether the applicant has ever participated in a diversion program. And as the program workers stress, it is not recommended that you lie.[31] It will be interesting to see how this development affects future participant motivation for these types of programs.

5 Discussion: When Is Restorative Justice?

As a Danish researcher and practitioner I do envy those countries who have applied restorative processes as alternative sanctions. Yet I think the variety in the practices I observed in Northern Ireland, Norway and Orlando, Florida points to several themes of consideration when using restorative approaches in juvenile cases:

5.1 Neutrality/Impartiality

Based on my observations and of those of other researchers before me, it can be argued whether or not a term like 'neutral' or 'impartial' is applicable at all in the context of restorative processes.

Besides the easy, Foucaultian argument that impartiality and neutrality are, of course, impossible, positivist constructs, perhaps the idea of the neutral, impartial mediator simply has no place in a setting where a prerequisite for attending is that the parties are in overall agreement who is the offender and who is the offended? Zehr argues for this view. Yet, if I attempt to put myself in the shoes of a young offender, I must admit that I prefer the Norwegian take on the facilitators role—certainly to the very normative approach I experienced from the facilitator in Florida, but also to how I perceive the facilitators role in Northern Ireland, based on the conference role play. The Norwegian approach was—if not impartial—certainly less judgmental, which seemed to leave more room for the young offender to take responsibility for the situation him/herself.

[31] It is possible to pay for your records to be sealed. This can be done only once and at a cost of $75. If done the records will be invisible to most employers except central government, the military, and jobs requiring a security clearance.

5.2 Voluntarism

Are the parties in a restorative meeting really as voluntary as they ideally should be? Research has continuously demonstrated how social/structural pressure to attend exists with other types of mediation/restorative processes, too.[32] Yet it seems to be a very present point of concern for juvenile offenders for whom the alternative to participating is often very clear and most likely less agreeable. And should they choose to attend, the participants are indeed under social pressure to take on certain roles of, for example, showing remorse (offender) and accepting apologies if given (offended).

A choice is a choice—even if it is a bad one, as Vindeløv and Adrian argue. In this sense all of the programs discussed in this article *are* voluntary, but as demonstrated several of the professionals involved are concerned as to how it affects the restorative process if the young offender considers participation to be not a positive opportunity, but rather the least bad of a range of bad possible choices.

But this dilemma should hardly come as a surprise when even according to the founding theories of the 1970s and 1980s, i.e. Zehr, Braithwaite, and to a large extent also Christie, the re-integrative shame and moderate social control/pressure etc. are a core elements when addressing offenses in a restorative manner. And both my observations and those of so many other previous researchers have demonstrated how especially young offenders can respond to the questionable voluntarism of their participation simply by saying very little—an act of silent resistance to the exercise of power they experience. This was, for instance, the case for the two siblings in Florida.

Can this dilemma fully be avoided? Should it? I suggest that part of the answer to this question is to ask ourselves whether we offer young offenders other, better alternatives? If this is not the case at present—which I am inclined to think—based on my observations and those of others, there might be some consolation to be found in how the training and approach of the facilitator/coordinator/mediator can seemingly make a large difference as to how comfortable and participatory the young offenders appear during the restorative meeting. In this regard, again, the Norwegian model seems to come out on top.

5.3 Punishment as Rationale

Is punishment non-compliable with restorative processes? The older (wiser?) Zehr argues no. And the argumentation of the Florida professionals—that the restorative approach allows for juveniles committing minor offences to experience harder consequences than the traditional system—seems to suggest they support this view. This type of argumentation has not been visible in my data from Norway or

[32]For instance, mediation in custody cases.

Northern Ireland. But as mentioned in the introduction, the majority of the data for my project is collected in Denmark, and in some of my interviews with employees in the Danish police working with the Danish konfliktråd, I have come across similar arguments. Perhaps this coincidence is related to the political climate in both countries—United States and Denmark—currently focusing a lot on 'tough on crime' rhetoric. Though, of course, arguably much more so in the United States than in Denmark, but I have met with members of the Danish parliament justice counsel discussing RJ potential on several occasions, and here a suitable (hard) punishment has definitely been a frequent concern.

Furthermore, both Danish justice counsel politicians and the leadership of the national VOM program have argued for initially testing the use of restorative approaches as an alternative to traditional ones only in cases of minor offences—just as it is the case in the Florida models. Even if this approach contradicts the research in the field, which seems almost unanimously to confirm that the more serious the case, the more efficient the use of restorative processes (Strang et al. 2013). Perhaps in such a political climate the idea of restorative approaches seems too inconceivable if the offense is too serious and if the potential to include a tough sanction is not underlined by the advocators? Yet the ideals of practice of the Danish konfliktråd seem to lean towards those of the Norwegian ditto, having a much less judgmental and punitive outset than what I observed to be the case in Florida.

5.4 The Offended Party

When a restorative process becomes a right (as in Northern Ireland) or a potentially granted juridical sanction (as in Norway) for the offender it makes sense that it is no longer up to the other, offended party to decide whether the process can take place. Yet it is also obvious that it would go against restorative justice theories if the offended parties were forced to participate. This creates space for the dilemma of restorative meetings taking place without offended parties.

In both Norway and Northern Ireland the clear ideal is including the offended parties in the restorative meetings. Yet, especially in Norway, the Mediation Service is realising that with an offended party participation rate at approximately 50% in the restorative meetings connected to the new sanctions, something has to be done if the ideal is also to be the norm. Suggestions have been made to include offended parties much earlier in the process and to offer the offended parties more elaborate processes as well. Yet the Mediation Service personnel point to the importance of not over-nudging offended parties into participation, as this raises ethical questions as well as increases the risk of re-traumatisation. And they argue that restoration should be seen in a broader perspective than just a meeting between offender and offended party.

Of course in the Florida model, the absence of an offended party was part of the structure, with the NRJ community board taking on the perspective of both offender and community.

5.5 The Role of Community

As described, restorative justice theory often entails a triangular approach to an offence with the corners made up by *offender*, *offended party*, and *community*. In the practices I have observed, especially the involvement of the 'community' seems to pose a challenge. What is the community? How can/should it be involved? In my observations there are different takes on this matter: In Northern Irish conferences, the 'community' is involved if relevant. In the restorative meetings of the Norwegian sanctions it seems to be the public 'network' of the young offender—for instance, a teacher and/or a local police officer—who largely stand in for the role of 'community'. In the Florida conferences, the role of 'community' was played by a board of civil volunteers from the area who had no connection to either offender, offended party or offence.

To me the diverse interpretations of 'community' in the three models suggest that the triangular model of the restorative theories might be just that—theoretic—but often difficult to put into a meaningful large scale practice. And as I see it, with no offended party present, and with the estranged 'community' board—having no direct relations to the offender of offence—the restorative/conflict theories of Zehr, Braithwaite, Christie, and Vindeløv seem extra hard to recognise in the Florida programs.

5.6 Equality Before the Law vs Individual Concerns

Who decides who gets to access a restorative process? And on which basis? These are central concerns in my PhD study. In all of the observed models, the offender has to admit to the offence and wish to take part in the restorative process. Apart from this the approaches of the three observed countries are very different: The Florida model is only accessible to juvenile first-time offenders who have committed less serious offences, and it is up to the prosecutor to offer diversion of the case to the programs. Further to this, the zip-code of the offender decides which model might be available. In Northern Ireland it is the young person who gets to decide whether he or she wants a restorative process, and only a few case types—murder and particularly violent rapes—are excepted, because there are mandatory sentences for these offences in the law even for juvenile offenders. In Norway, in principle all case types are open to restorative processes, but it is up to a judge or a team of professionals (depending on the seriousness of the offence) to decide whether a restorative process is an appropriate choice for the specific offender having committed the specific offence(s).

The Norwegian model *is* more elaborate, invasive—and also more expensive—than the Northern Irish one (and, of course, also than the Florida program). This seems to place a perhaps self-imposed obligation on the responsible parties not to overuse the new restorative toolbox. As a consequence—and somewhat in line with

Christie's concern—there is seemingly a growing awareness of not 'over treating' young offenders by involving them in one of the new types of sanctions if they may not need the close follow up.[33] This could especially be seen as the case for less serious offences committed by young people in otherwise positive life circumstances. But at the other end of the spectrum in the more serious cases, individual concerns to the offender's life situation can be decisive in whether a youth sanction is found appropriate. So, in principle, two young offenders having committed similar offences—or even an offence together—can be found fit and unfit, respectively, for youth sanction or youth follow-up depending on their personal situations.

In this regard the Norwegian model has received some criticism for going against the principle of equality before law. But in this case it is actually an old argument by Nils Christie, which can come to the defence of the new sanctions: No actions are the same. The law is making actions equal/comparable by deducing them. This approach is a prerequisite for talking about legal certainty in the shape of equality before law and predictability. But at the core of restorative approaches stand individual considerations and concerns to individual offended parties, offenders, and offences (Christie 1977). In this view, restorative approaches to juvenile legal offences face an inherent paradox of trying to force two opposites to coexist.

5.7 Mediation and/or Restorative Justice: Laymen vs Professionals

Do professional restorative facilitators in juvenile cases indicate a favouritism of (unwanted) disciplining by the state over (wanted) civil social control? Are we re-stealing the conflict as Christie suggests? Again I think these questions call for a consideration of the present alternatives for young offenders.

In a revised 2015 edition of *The little book of restorative justice* Zehr includes a list of what he thinks restorative justice *is not*. *Mediation* is on this list. This is, of course interesting in the context of the book on mediation research that you are reading right now. According to Zehr, mediation and restorative justice are related, in that they will both normally aim to include an encounter. But they differ because mediation connotes that "parties are assumed to be on a level playing field", and this assumption can be inappropriate or offensive in the case of restorative justice. Also, according to Zehr, in the case of restorative, an important component is that "a wrongdoer must admit to some level of responsibility for the offence". This leads him to conclude that "the 'neutral' language of mediation may be misleading and even offensive in many cases".

So why is this article even in a book on mediation research?

[33]Opting out of offering a restorative sanction does not mean that the young offender cannot participate in a restorative meeting at the Mediation Service. This possibility will often be promoted and was already used widespread before the new sanctions of July 2014.

As I suggested in the introduction, restorative processes/practices and mediation can be seen as two entities that share an intersection. And as the examples from my field studies in this article have shown, in the Nordic countries—with Norway as the first-moving flagship—some of the core ideals of mediation seem to be intertwined with the principles for performing restorative justice, which again seems to cause dilemmas for both theorists and practitioners.

One of these principles is that of de-professionalising the conflict and giving it back to the people who own it. This is the core principle in the conflict theory of Christie, as first put forward in an inauguration speech at the Center for Criminological Studies, University of Sheffield and later published in the article *Conflict as Property* (Christie 1977). The Norwegian Mediation Service adhere to the principle of layman mediators in accordance with Christie's beliefs.

But today, in accordance with Zehr's revised opinion, within the Norwegian Mediation Service there are suggestions that the term 'mediation' is sometimes inappropriate. Disregarding whether the case is part of the new juvenile sanctions or handled classically in konfliktråd, Senior Advisor at the Norwegian Mediation Service Kjersti Lillioe-Olsen suggests that in criminal cases the term *meeting* is often more suitable. This perhaps supports Christie's euphemism free '*we work with conflicts'* introduced in the beginning of the article. But just as Christie dislikes 'restorative justice' because it connotes the institution of law, maybe the term 'conflict' can also seem simplistic and offensive to for instance a victim of sexual assault.

5.8 So, When Is It Restorative Justice?

And should that even be the name? Like Christie, I am not enthused by the term either. I agree that especially the 'justice' part is problematic. And not only for connoting the institution of law, but because it is a confusing word with both subjective and objective aspirations, which makes promises that neither the justice system, nor restorative alternatives can be guaranteed to fulfil. Furthermore, I think the examples from the three countries presented in this article show that the contents of models for addressing juvenile offences claiming to *be* restorative justice can vary to the extent that it hardly makes sense to file them under the same headline.

So, if we do allow, accept, or even promote self-labelling within the field of restorative justice it might result in a community of practices existing only at the abstract level, but whose common traits are hardly recognisable at the practical level. But perhaps this is a natural consequence when half of this semantic entity—namely 'justice'—seemingly has very differing individual, local, and national connotations throughout the globe. How could 'restorative justice' then be universal? And if we were to insist on more universally applicable standards for restorative justice, then who gets to be the RJ police?

Yet, when seemingly not only apples and pears, but all sorts of fruits and vegetables are currently mixed into the same bowl, I will argue it does call for

further strengthening the existing debate on the relevance, terminology and borders of restorative justice as a research field.

But the difference in contents and in the roles and reflections of the involved 'child-savers' set aside, they appear to have one thing in common: Overall they offer possibilities of addressing the individual circumstances of the young offender in a way that the traditional systems they locally compete with do not. In this sense they can all be seen as restorative compared to the locally availably alternative. And for all three programs this seems to have the effect of less juvenile reoffending, which ultimately ought to be a good thing.

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