‘When you're sitting in the room with two people one of whom... has bashed the hell out of the other’: Possibilities and challenges in the use of FGCs and restorative approaches following domestic violence

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A B S T R A C T

Domestic violence continues to be a primary reason for referrals to state child welfare services in advanced industrialised countries. There is growing concern in many state child welfare services to develop responses to it that are both more effective and more humane. The use of restorative approaches, in particular Family Group Conferences (FGCs), has been suggested as one such response. This article draws from data gathered from an evaluation of a UK Government funded “Innovation Project” part of which extended the use of FGCs in an urban local authority area which was already making extensive use of them. This paper presents and explores a typology of FGCs used in situations of domestic violence: pragmatic, resolution-focused and restorative FGCs, developed from the evaluation data and augmented by relevant literature. The study data revealed pragmatic FGCs to be the most used, restorative the least. It is suggested that each type of FGC brings potential benefits but only restorative FGCs offer the possibility of full restoration in the traditionally understood sense. It is argued that the present mother-centric, risk-adverse, child protection systems which currently operate in many countries provide a powerful resistor to the greater implementation of this restorative way of working.

1. Introduction

Domestic violence continues to be one of the primary reasons for referrals to state child welfare services in post-industrial countries. State social work practice in Anglophone countries has moved from a dominant perspective of minimising domestic violence to encourage family preservation in the early post-war period (Gordon, 1989) to a current separation perspective where a mother’s separation from a male perpetrator is often seen as the only option, to be enforced by the state regardless of a mother’s own preferences and circumstances, and often with limited support to a mother (Goodmark, 2015). There is growing concern in many state child welfare services to develop responses that are both more effective and more humane (Mason, Ferguson, Morris, Munton, & Sen, 2017; Stanley & Humphreys, 2017). The use of restorative approaches, in particular Family Group Conferences (FGCs), has been suggested as one such response.

In the UK, the use of FGCs, a form of Family Group Decision Making (FGDM), has gathered momentum with a number of UK Government funded projects implementing or extending their use (Spring Consortium, 2017). This article draws from data gathered from an evaluation of a UK Government funded “Innovation Project” (Mason et al., 2017) part of which extended the use of FGCs in an urban local authority area, “City”, which was already making extensive use of them. The use of FGCs formed a central part of a model of “Restorative Practice” implemented in Children’s Services in City, and formed part of the local authority’s stated goal to become a “Restorative City”. The scale of the use of FGCs in City allows the data to make a unique contribution in taking forward conceptual and applied understandings of FGDM.

In this paper we discuss the use of FGCs in situations of domestic violence, one of the primary foci of the Innovation funding in City. The paper firstly provides an overview of the complicated relationship between FGCs and Restorative Justice (RJ) before secondly identifying the ways in which the current operation of policy and practice around domestic violence are providing a driver for the development of alternative responses. Thirdly, we introduce and explore a three part typology of FGCs in situations of domestic violence developed from the study data (pragmatic, resolution-focused and restorative FGCs). We

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conclude by arguing that while the sensitive use of any of the three types of FGC can serve as a bulwark against the undue responsibilisation of mothers for preventing domestic violence, only restorative FGCs, where perpetrators overtly take responsibility for the harm they have caused, offer restoration in the traditionally understood RJ sense. We suggest that the present mother-centric, risk-adverse, child protection welfare than criminal justice contexts. This may explain why FGCs were Family Plan where it is safe and legal (Morris & Connolly, 2012).

Discussion of the Family Plan between the family members and relevant a family network coming together to discuss issues of concern relating to children in their network. The meetings are facilitated by an independent FGC co-ordinator and consist of three parts: An introduction to the meeting and information giving session where relevant professionals outline their concerns about the issues related to children in the family; Private family time where the family are left alone to discuss the concerns and devise a Family Plan to address the concerns; and Discussion of the Family Plan between the family members and relevant professionals and, usually, agreement of professional support for the Family Plan where it is safe and legal (Morris & Connolly, 2012).

A number of different approaches fall within the RJ label including FGCs themselves, but also victim-offender mediation, community reparation panels and peace making circles. The most obvious thread that binds them is attempts to establish dialogue between victims, perpetrators and communities affected by a crime in a way that balances the, often conflicting, aims of safety, accountability, empowerment and reparation (Ptacek, 2010). As this description may suggest, the relationship between FGCs in child welfare and RJ is not straight forward: the acknowledgement of an offending harm and the attempt to restore personhood to victim and offender are less obviously applicable to child welfare than criminal justice contexts. This may explain why FGCs were not initially identified as an RJ practice. However, their use in New Zealand with young offenders became rapidly embraced as an example of RJ in action and spread rapidly to other jurisdictions outside of New Zealand under this label. The use of FGCs in matters of child welfare, including in situations of domestic violence, also spread internationally but was notably less associated with the concept of “Restorative Justice”.

The importation of FGCs into different policy, legal and cultural contexts has further resulted in conflation, and arguably confusion, about the relationship between FGCs and RJ. In the UK, the use of FGCs was imported from New Zealand in the early 1990s. While closely following the FGC process developed in New Zealand, their use in the UK is discretionary rather than mandatory, resulting in marked geographical variation in the extent to which FGCs are used between different local regions. Additionally, though the importation of FGCs to the UK reflected some of the social justice and rights based principles which accompanied their introduction in New Zealand, their use has also sometimes been more pragmatically framed as a mechanism for reducing the use of state care for children and, even, as a mechanism by which to ration services to families (Morris & Connolly, 2012).

Ironically, though the use of FGCs in situations of domestic violence is one area of child welfare which lends itself more obviously to the formulation of harm and restoration common to RJ approaches, the desirability of restorative approaches in this area has been heavily contested for other reasons. RJ practices were initially developed to respond to stranger crime rather than intimate partner violence, and in some jurisdictions their use in situations of domestic violence is specifically outlawed (Ptacek, 2010). It has been argued that RJ approaches do not take sufficient account of the particular nature of intimate partner violence as a repeat offence, often involving overt and subtle forms of coercion and control that are embedded in a relationship, and which are targeted on a specific individual who has had a long-term connection to the perpetrator (Stubb, 2002). It has been questioned whether restorative approaches can ensure sufficient safeguards for women and children; whether perpetrators can be held properly accountable during, and after, a restorative meeting; and whether the dynamics of wider community relationships necessarily provide a proper foundation for addressing family violence through restorative fora (Stubb, 2010).

Rogers and Parkinson (2018) make the case for using FGCs following domestic violence, recognising both the reality that many fathers will continue to have contact with their children after separation following domestic violence, and that there are rights based arguments that children should, in most cases, be allowed safe contact with their fathers if they want it and that fathers can still play a positive role in their children’s lives after perpetrating domestic violence. In making this case they argue for a distinction between FGCs that are “restorative” in order to mediate between “victim” and “perpetrator” (p. 108) and those FGCs that are focused on safety planning for women and children. Their focus is on safety-oriented FGCs which, they argue, can also be reparative and therefore partly restorative, by confronting a perpetrator with the impact his actions have had on a family. We suggest a different emphasis – that the focus of restorative FGCs should be, rather than mediation, the recognition of the harm done by the domestic violence and the attempt to address this harm and restore relationships. We would also highlight that there is empirical evidence that the sensitive use of restorative FGCs in cases of domestic violence can also foreground safety issues, including those related to power and gender power dynamics (Burford & Pennell, 1998; Pennell & Burford, 2000, 2002). Restorative approaches are currently being used to address complex harms, not only in situations of intimate partner violence, but also child to parent violence, sexual violence and child sexual abuse (Ptacek, 2010). They offer the potential for victims’ voices and experiences to be heard in a way that formalised court processes do not; for appropriate redress for the harm done to be given to victims; and, for perpetrators to take responsibility for their violence in a way that facilitates their reintegration into the community and reduces the likelihood of recidivism (Braithwaite & Strang, 2002).

2. FGCs, restorative approaches and domestic violence

2.1 Conflation, confusion or useful hybridization?

FGCs developed in the late 1980s in New Zealand in discussions with the Maori community around ways of responding to the over-representation of Maori children in the New Zealand care system. The New Zealand Children, Young Persons, and Their Families Act 1989 legislated for their use both in situations of care and protection and youth justice. The statute notably mandated the use of FGCs where there is consideration of placing a child in state care. An FGC consists of a family network coming together to discuss issues of concern relating to children in their network. The meetings are facilitated by an independent FGC co-ordinator and consist of three parts: An introduction to the meeting and information giving session where relevant professionals outline their concerns about the issues related to children in the family; Private family time where the family are left alone to discuss the concerns and devise a Family Plan to address the concerns; and Discussion of the Family Plan between the family members and relevant professionals and, usually, agreement of professional support for the Family Plan where it is safe and legal (Morris & Connolly, 2012).

2.2 Domestic violence and child protection: Practice developments, contemporary questions

The most powerful international driver for change in domestic violence policy and practice is the impact of current policy and practice on women. State acknowledgement of the impact of the harm domestic violence causes can be viewed as a positive result of feminist-led activism, primarily located in non-state agencies, which campaigned for recognition of domestic violence as a public harm. The criminalisation of perpetrators can also provide the redress and protection some survivors of domestic violence seek. However, the state co-option of feminist concerns about domestic violence has also considerably contributed to increased state surveillance and regulation of many marginalised women who have been victimised through domestic violence (Goodmark, 2009). State mandated responses insisting that women separate from violent partners are insensitive to the range of circumstances, contexts, experiences and wishes of women who are subject to domestic violence, including some women for whom there are strong cultural, relational, economic and personal reasons which militate against separation (ibid.). The lack of recognition of these varied circumstances can encourage the “illusion of separation” whereby a
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