RESTORATIVE JUSTICE AND PSYCHOPATHIC TRAITS: THE PERSPECTIVE OF BELGIAN PRACTITIONERS

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Abstract

The literature on restorative justice practices and more specifically victim-offender mediation in psychopathic individuals is scarce. At first glance, restorative justice practices might not be possible or useful when dealing with psychopathic offenders due to the inherent characteristics they possess. The present study examined the possibility and usefulness of restorative justice practices in Flanders (i.e. victim-offender mediation) with psychopathic offenders. It focused on how practitioners think and feel about working with psychopathic offenders during victim-offender mediation. Understanding if and how this practice can be used with psychopathic individuals can contribute to the literature on restorative justice in general. Practitioners are mostly unaware of the presence of mental health problems at the start of the process. However, despite the presence of dysfunctional traits such as psychopathic traits, most facilitators argued that everyone should be able to get involved in victim-offender mediation. Victimoffender mediation is possible and may be useful for everyone involved. Despite the presence of psychopathic traits, it is the expectations of both the victim and offender about the mediation process that is of uttermost importance. Both expectations need to align with one another in order for the mediation to be successful.

Keywords: restorative justice, victim-offender mediation, psychopathy

Introduction

Inviting offenders and victims for dialogue and exploration is probably one of the core processes when thinking about restorative justice. However, restorative justice practices also aim at getting offenders to take responsibility and understand the consequences of their actions in order to meet the victims' needs (Zehr, 2002). Unfortunately, one of the main characteristics of individuals with psychopathy is to disregard the welfare of others (Hare, 1991). Thus, one might immediately but wrongly assume that restorative justice practices are not suitable when a psychopathic offender is involved. Recent research, however, suggested that psychopaths fail to automatically take the perspective of others, but they do have the ability to do so (Drayton et al., 2018). Empathy can be activated deliberately when a psychopath is asked to empathize with someone (Meffert et al., 2013). These findings cautiously indicate that restorative justice practices may also be beneficial when dealing with psychopathic offenders.

The present study examined the possibility and usefulness of restorative justice practices in Flanders (i.e. victim-offender mediation) with psychopathic offenders. It focused on practitioners' thoughts about this subject and their experiences with offenders showing these traits. The literature on restorative justice practices and more specifically victim-offender mediation in psychopathic individuals is scarce, or

in fact, even missing. Understanding if and how this practice can be used with psychopathic individuals can contribute to the literature of restorative justice in general. It may provide us with new insights into a better understanding of how restorative justice practices can be used when dealing with this difficult group of offenders.

Restorative Justice

Finding a well-agreed upon definition of restorative justice is not straightforward (Daly, 2006; Doolin, 2007). Restorative justice practices are different from traditional justice practices in that it emphasizes the value of relationships, dialogue, and process over the outcome (Bolitho, 2015). According to Daly (2006), restorative justice can be understood as a set of aspirations or core values on how to strive towards a sense of justice. Victims are lenient towards those that harmed them, offenders feel remorse about past behavior and can apologize, communities take an active role in supporting both parties and a facilitator aims at guiding the opposing parties through a rational discussion. Unfortunately, the restorative justice process may be weakened if one of the above is not present. For instance, if an offender exhibits psychopathic traits, this may hinder the ideals that restorative justice practices are striving towards, and thus, impede the restorative justice process in general.

Psychopathy

Psychopathy is a multidimensional clinical construct describing a pathological personality style that is characterized by manipulative, unemotional, reckless, and antisocial behavior (Coid& Ullrich, 2010; Hare & Neumann, 2008). Psychopathy can best be represented by the presence of three distinct facets: an arrogant and deceitful interpersonal style, deficient affective experience, and an irresponsible behavioral lifestyle (Andershed et al., 2002; Colins & Andershed, 2018; Colins et al., 2014; Cooke & Michie, 2001; Frick & Hare, 2001). The interpersonal facet is represented by grandiose-manipulative traits including glibness or superficial charm, a grandiose sense of self-worth, and a conning and manipulative style (Hare, 1991). The effective facet of psychopathy can be referred to as the presence of callousunemotional traits featuring a lack of remorse or guilt, lack of empathy, and a shallow or deficient effect (Frick, 2013). The behavioural or lifestyle facet consists of daringimpulsive traits (Colins et al., 2014; Lynam et al., 2005) such as the need for stimulation, parasitic lifestyle, impulsivity, and irresponsibility (Hare, 1991). According to some researchers, a fourth domain should be included. In adults, an antisocial facet assesses poor behavioral control, early behavioral problems, juvenile delinquency, revocation of conditional release, and criminal versatility (Hare, 1991). In youth, it is assessed solely by the presence of conduct disorder symptoms (Salekin & Hare, 2016; Salekin, 2017).

Research on psychopathic traits has long recognized deficient emotion processing (i.e. emotion recognition, affective arousal, expression of emotions) as a key feature of psychopathy (Kimonis et al., 2006; Levenston et al., 2000; Loney et al., 2003; Patrick et al., 1994). Studies have found that individuals with psychopathic tendencies present with impaired recognition and sensitivity towards other people's expressions of fear (Blair et al., 2001; Blair et al., 2004) and sadness (Blair et al., 2001; Dadds et al., 2018). Preliminary evidence even suggested that these emotion

recognition problems are present for facial and vocal external signals across all different emotions (Dawel et al., 2012; Hastings et al., 2008). On top, individuals with psychopathic traits seem to manifest significant abnormalities in their capacity to become effectively aroused by others' emotional states. More specifically, psychopaths are less responsive to distress cues (e.g., pictures of people crying; Blair, 1999; Blair et al., 1997). Finally, defective facial reactions have been linked to experiencing limited feelings of empathy towards victims (Fanti, 2018). When showing violent movies to individuals scoring high on callous-unemotional traits reduced facial activity of sadness and disgust was noticed. This is suggestive of reduced empathy towards victims' feelings (Fanti et al., 2017).

To some people's surprise, individuals with psychopathic traits do understand social norms and expectations (Gong et al., 2019), know right from wrong (Aharoni et al., 2012; Cima et al., 2010), and have the capacity to make inferences about other people's expectations (Gong et al., 2019). Recent research even suggested that psychopaths can take the perspective of others, but fail to automatically do so (Drayton et al., 2018). Unfortunately, they do not take it into account consciously when making decisions (Gong et al., 2019). However, when a psychopath is deliberately asked to empathize with someone, he/she can mirror the feelings of the other person (Meffert et al., 2013). These findings cautiously indicate that restorative justice practices may also be beneficial when dealing with psychopathic offenders.

Restorative Justice Practices and Individuals with Psychopathic Traits

However, based on the core characteristics of psychopathy and the existing emotional deficiencies, it is not unsurprising to understand why people may believe that restorative justice practices are not the best way to go when dealing with psychopathic individuals. Why would we want to let victims 'suffer' more by installing a dialogue with an individual that is, according to some, unable to empathize, take responsibility, and feel guilty? Why would we want to install a conference in which the psychopathic offender, again, can exercise control? What about the ethical and moral obligations of restorative justice to ensure victim safety? What about the training of facilitators to identify manipulative attempts to, for example, transfer responsibility towards the victim? These are issues that may arise when initiating a dialogue with a psychopathic individual, making it a rather difficult restorative justice process for both victim and facilitator.

The Present Study

This study examined the views of restorative justice practitioners in Flanders about the extent to which psychopathic traits in offenders impact the possibility and usefulness of restorative justice practices. To the best of our knowledge, no study has looked at this matter. The present study tries to fill this gap in the literature (Doumen et al., 2012).

Methods

Participants

Participation was solicited from 33 facilitators (75.8% female), of which 27 filled in the entire questionnaire. The facilitators' ages ranged from 23 to 53 ($M_{age} = 36.70$, $SD_{age} = 11.90$). Most of the facilitators worked with juvenile offenders (75.8%) and

had more than five years of experience (N = 21; 63.6%). 10 people had between one and five years of experience, and two people indicated that they had less than one year of experience.

Procedure

The present study used data from an online Qualtrics self-report questionnaire¹ specifically designed for this study. Restorative justice institutions were approached by e-mail and were asked to distribute the link of the questionnaires to their personnel. The target population included all facilitators employed by an official victim-offender mediation institution in Flanders, the Flemish-speaking part of Belgium. The participants were asked about their point of view regarding the possibility and usefulness of restorative justice practices for offenders exhibiting psychopathic traits. More specifically, the following questions were posed:

- 1) Restorative justice practices (victim-offender mediation) with offenders that exhibit psychopathic traits are possible. Why so or why not?
- 2) Restorative justice practices (victim-offender mediation) with offenders that exhibit psychopathic traits are useful or may be useful. Why so or why not?
- 3) Do you have experience with victim-offender mediation when an offender exhibits psychopathic traits? How have you experienced this as a facilitator (feelings, thoughts, outcome, ...)?

Data analyses

Data analyses included both quantitative and qualitative methods. First, the dichotomous questions were inspected using percentages. Next, thematic analysis was used to uncover implicit and explicit ideas that are found important by the reflective practitioners (Guest et al., 2012). The analysis consisted of three phases: (1) the discovery phase to divide the text into relevant fragments and code the different fragments; (2) the reduction phase consisting of thematizing and ordering; and (3) the reflection phase to define and structure the themes definitively (Verhoeven & Verhoeven, 2020).

Results

Apart from one individual, all facilitators agreed that victim-offender mediation is possible when dealing with psychopathic offenders. The participants indicated that they are often unaware of mental health problems such as psychopathy at the start of a mediation journey. However, despite the presence of psychopathic traits in the offender, people argued that everyone should have equal rights and should be at liberty to ask for victim-offender mediation, even people that are perhaps low on empathy. The respondents also indicated that expectations from the mediation can be very different. Expectations of the victims can go from demanding responsibility to

¹ The questions were posed in Dutch. 'Herstelbemiddeling' was used to refer to restorative justice practices used in Belgium, which is mainly victim-offender mediation.

acknowledgment from the offender to mere demands of financial compensation. When the demand of the offender and the expectations of the victim match, mediation can take place. If the offender exhibited psychopathic traits, the facilitator placed even more emphasis on the proper preparation of the victim, guarding boundaries during the meeting, and providing extra care to prevent secondary victimization. An interesting addition came from two independent participants. When mediation was not successful, it was usually the victim that decided to terminate the mediation prematurely and not continue the process. Reasons behind this were that, according to the victim, the offender did not feel sufficiently guilty or did not acknowledge them as victims, or there were safety concerns.

85.2% of participants indicated that victim-offender mediation is useful or can be useful when there is a psychopathic offender involved. Two major themes were discussed by the participants. First and foremost, everyone indicated that mediation is especially valuable for the victim. It could help victims with processing past events. Victims get the opportunity to bring their side of the story, can gain some insight into the problems of the offender and can search for some sort of closure. For example, one facilitator said: "I suspect that a victim can count on little recognition, but sometimes no recognition is better than being left with unanswered questions." Another person indicated that "for the victim, it can lead to some sort of closure, a feeling that they have tried everything, even though they did not get the answers they expected to get". The offender could contribute to repairing the damage done to the victim. However, one must be alert that secondary victimization does not occur. The second theme that was indicated by a minority of the respondents was that mediation could also be valuable for the offender. Entering into dialogue may be a way for the offender to be heard. More specifically, the offender is approached as a human being and is listened to. Mediation could also be a learning opportunity for psychopathic offenders. It may be useful for psychopathic offenders to be confronted with their actions: they can see that behavior has consequences, which in turn can affect thought patterns. However, according to one respondent, mediation with psychopathic offenders can also have an undesirable effect: "For the perpetrators themselves, the mediation will make little or no contribution to their sense of responsibility. Most of all, they will learn how to behave in a socially desirable manner, but that does not change guilt and insight."

A little more than half of the facilitators (55.6%) had previous experience with victim-offender mediation with the offender exhibiting psychopathic traits. Most of the time, facilitators are not informed about the possible mental health problems of the offender. But based on personal feelings during the process, facilitators did assume the presence of specific personality traits. The following traits were noticed that reminded them of psychopathic personality: limited empathy or guilt towards the victims, the usage of manipulative, charming, and socially desirable behavior, callous and unemotional, tendency to be in control and to negotiate. Furthermore, they are

capable of picturing a beautiful story, but unfortunately, this is not converted into action. One facilitator indicated the following:

In some cases, it was striking how they manage to turn the situation around so that it was the victim's fault that this had happened to them. Or enjoying retelling the facts. These are the kind of conversations that give you the creeps and where, as a facilitator, you quickly feel that something is not right.

Feelings of suspicion, alertness, and caution are all widely present when dealing with psychopathic individuals. Sometimes victims were also not interested in the voice of the offender because they already have a fixed view about people committing these crimes. To conclude, the presence of these traits is more likely to hinder the process because the victims mainly expect understanding from the offender. However, of importance, not only offenders show these traits. Victims too can exhibit psychopathic traits. One facilitator indicated that she recently terminated a mediation process because a victim took control over the young offenders.

Discussion

This is the first study to scrutinize how facilitators think about working with psychopathic offenders during victim-offender mediation. The most important findings are that most facilitators are unaware of the presence of mental health problems such as psychopathy at the start of the mediation process. Despite the presence of these dysfunctional traits, most facilitators argued that everyone should be able to get involved in victim-offender mediation. Victim-offender mediation is possible and may be useful for everyone involved. However, both the victim and offender's expectations about the mediation need to align with one another for the mediation to be successful.

Unfortunately, the facilitators placed more emphasis on desirable outcomes for the victims, even though all parties are equally important in the process (Zehr, 2002). Only a minority of the participants argued that restorative justice practices can also have beneficial effects on the offender. One participant even indicated that mediation will not contribute to the offender's sense of responsibility and that by best; offenders will learn how to behave in an even more socially desirable manner, not changing any feelings of guilt or gaining insight into their problems. Research already indicated that restorative justice practices can have potential beneficial effects on offenders. Some of the effects that are important at the societal level, are the reduction of future delinquent behavior in both juveniles (Wilson et al., 2017; (de Beg & Rodriguez, 2007) as well as adult offenders (Bonta et al., 2006; Latimer et al., 2005). Unfortunately, we are unaware of what role the presence of psychopathic traits plays in this relationship.

The restorative justice process may be weakened if an offender exhibits psychopathic traits. Should all parties be made consciously aware of the presence of these traits? To our surprise, one participant indicated that "research has shown that treatment has no effect on psychopaths or may even have opposite effects". Research has shown that effectively treating psychopaths can be quite difficult (Klein Haneveld et al., 2020; Ogloff et al., 1990; Olver et al., 2011; Olver & Wong, 2011; Rojas & Olver, 2021), but no true evidence exist for the notion that psychopathy is an untreatable syndrome (DeSorcy et al., 2020; Larsen, 2019; Larsen et al., 2020). In

fact, there are some indications that psychopathic offenders can be successfully treated (O'Brien & Daffern, 2016; Polaschek & Daly, 2013). If reflective practitioners working with offenders may already have such distorted views about psychopathic offenders, how can they then effectively facilitate the process? It should also come no surprise that these ideas may be (unconsciously) transferred to victims. Does this then not harm the mediation and weaken the restorative justice process because prejudice is present?

Limitations and Future Directions

As always, findings must be interpreted in light of several limitations. First, a limited number of questions were asked to the facilitators. For example, facilitators were not asked whether they had any knowledge of what the concept 'psychopathy' entails. Future research should focus on interviewing facilitators more in-depth about the subject matter and use an interview format instead of an online open-ended questionnaire. Furthermore, conscious awareness needs to be created in facilitators in practice. Facilitators are reflective practitioners and should be educated (more) about what psychopathy entails and how to (effectively) interact with such individuals.

Secondly, we solely relied on data from a small number of facilitators. Replication in larger samples is needed, including listening to victims' and offenders' voices. In order to assess the impact of victim-offender mediation with psychopathic individuals on victims, it may be useful to consider detailed experiences of victims that have participated in mediation of which the offender certainly scored high on psychopathy. On the other hand, experiences of offenders with these traits might also give insight into the restorative justice process and how it affects the offender in question. Offenders could be asked to fill out a self-report measure of psychopathy in the aftermath of the mediation. This is ensure that the result does not influence the actual mediation process, as, according to one facilitator, some individuals already have fixed views about 'that type of individual'. On the other hand, can we not argue that the (voluntary) sharing of these problems might also be beneficial for the restorative justice process? The offender enters the more vulnerable position by exposing his/her flaws to the victim and facilitator. Sharing the result could also be indicative of open and honest communication, something that is highly encouraged in restorative justice practices.

In Belgium, every (adult) offender also receives an invitation to participate in victim-offender mediation (K. Buntinx, personal communication). Investigations into the reasons as to why some individuals are reluctant to accept this invitation might be useful. Are psychopathic offenders in fact less willing to participate in victim-offender mediation compared to other offenders? What are their specific reasons to participate/refuse, and can these be linked to their pathological personality style?

Finally, the author was not able to discuss differences in interpretation with other researchers and therefore the influence of personal bias might be present. In order to verify the results, discussion with experienced qualitative researchers is preferable (Klar-Chalamish& Peleg-Koriat, 2021).

Conclusion

First and foremost, in this research facilitators indicated that restorative justice practices such as victim-offender mediation is are possible and useful when dealing with psychopathic offenders. Psychopathic traits may hinder the overall restorative justice process to some extent. Therefore, it is important that facilitators are educated properly about what psychopathy means and how to deal with individuals showing these traits. Despite the presence of a somewhat dysfunctional personality style, if the expectations of both victim and offender about the mediation process are on the same page, mediation can take place and can be successful.

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