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Research informing practice – practice informing research

Christa Pelikan

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Introduction

This is an account of research experiences in the field of restorative justice and I consider this to be read as the draft of an agenda for further research and further cooperation in this field.

It is not the whole gamut of research though, I will and can attend to. The emphasis will be clearly on qualitative research or on combinations of qualitative and quantitative research.
This is not to imply that quantitative research is of less importance and could and should be neglected. I will briefly deal with its potential and its limitations. But I do want to emphasise what is indicated in the title of this conference's theme and this speech – and I want to give special emphasis to the topic of a 'reflective dialogue', a dialogue that takes place between practitioners and researchers.

One will rightly ask also about modes of cooperation between researchers and policymakers and about the ways research is presented to the wider public. I will touch on these issues only in passing. But since I regard practitioners also as involved as actors in the arena of policymaking, the potential impact of research on policymaking, or rather the use to be made of research will be dealt with.
I might say that much in advance – namely that I regard the dialogical approach as the most promising path, the 'Königsweg' also in that field of action.

This presentation consists of four parts: I will talk about:
- the research experience that constitutes the basis of my thinking.
- What has research to offer to the practitioners?
- What are the conditions for research to become useful?
- In which way could and should researchers and practitioners cooperate?

1. About my research experience
1.1. Accompanying research

This experience is derived mainly from the first accompanying research I did when the pilot project of out-of-court-offence compensation started in Austria. This happened as early as 1984 as the result of a joint initiative of the Ministry of Justice, the Association for Probation and Social Work, by prosecutors and judges working with juveniles, and not least by the then director of the Institute for the Sociology of Law and Criminology, Heinz Steinert. Already the way the steering group for this pilot project was constructed was conducive to a mode

of cooperation that installed research as one of the actors in this project. This steering group was comprised of the social workers at various pilot sites (probation workers entrusted with the new task of working as 'Konfliktregler'), and the researchers. I was also involved in explaining the project to the state prosecutors and the judges at the courts chosen for the pilot. A considerable part of the research consisted in a file analysis to explore the potential of cases suitable for being referred to Victim-Offender Mediation (VOM). The qualitative strand consisted of talks/interviews with the actors – social workers and prosecutors or judges dealing with the cases. Each case was thoroughly discussed based on a documentation provided by the new 'mediators' and complemented by the material contained in the respective court file. In addition there were several occasions for discussing the progress of the pilot project with all the professionals involved including the representatives from the Ministry of Justice and the Ministry of Family Affairs supporting and funding the pilot project.

One can say that I have been walking alongside the other actors in this pilot project and that I have stimulated and supported reflection by listening, by comparing, summarising, and analysing.

1.2. Participating as a researcher in a course dedicated to the development of methods of VOM.

This was a short but rather impressive experience. It has to be understood in the context of the Austrian way of developing VOM – with no previous mediation experience of the social workers who were assigned the task of 'Konfliktregler'. In a series of sessions, cases that had already been handled were discussed. I proposed a typology of cases based on the concept of relational distance (that had been developed at my institute in the course of empirical research that resulted in the book 'Everyday nuisances and life-time catastrophes' (Hanak et al. 1989) and was based on Donald Black's 'Elementary forms of conflict management') Its suitability was tested and a range of strategies for working with different types of cases was developed as a result of intensive discussion.

1.3. ATA[1] and partnership violence

This research although well designed and with quite surprising results did have little impact on the practice of VOM-workers and only recently I have been asked by Neustart (the former Association for Probation and Social Work) to start a new research project that is intended to further test the hypotheses, especially so the statement concerning the potential empowerment of women. This time we decided to use also a quantitative approach.

1   ATA is the German acronym for 'Außergerichtlicher Tatausgleich' which corresponds the English VOM (victim-offender mediation)

2. What has research to offer: or what is the surplus value of research?

Research, by producing scientifically based knowledge provides for cognition or **cognisance** (German: Erkenntnis), in the specific case of restorative justice-practices it offers a contribution to better understand what happens in RJ and what is the position of RJ in society.

The characteristics or qualities of such scientifically based knowledge/cognisance are:

2.1.   Scientific knowledge is generated through *second order observation*, guiding a specific type of perception. This means that practice is described and analysed from outside. (Luhmann 1993: 403 f.) The researcher takes *a meta-perspective* vis-à-vis the micro- and macro-processes of restorative justice, i.e. the inside of 'mediation' or conferencing on the one hand and at the dynamics of establishing and promoting restorative justice as part of the legal and criminal policy within a society, on the other.

2.2.   Scientifically guided observation and the knowledge generated is '*handlungsentlastet*' (a term created and used by Jürgen Habermas (1992)), meaning that it is cognisance relieved (freed) from the pressure of immediate action. It remains thus outside the 'whirl of action' and – more important – outside the constraints of 'reality' of everyday life, outside organisational constraints and outside the constraints of acting in the arena of politics. Both qualities (second order observation and 'Handlungsentlastung' allow for perceiving phenomena and developments through a different lens – in the last instance this results in a distancing effect. (a 'Verfremdungs'- or alienation-effect)

2.3.   Second order observations are then analysed and interpreted by using and applying *theoretical concepts, or more precisely: through the introduction of relevant differences* ('Differenzschemata') that is through 'differences that make a difference' (Bateson). The introduction of these concepts opens new paths to cognisance.

On theoretical concepts

Theoretical concepts in turn are generated within a theoretical framework deductively, or inductively from other empirical research.

Pompeu Casanovas and Marta Poblet have assembled and systematized the different fields of knowledge that might bear relevance on the study of the micro-foundations of restorative justice. They have stated that these fields relate to four different domains: society, culture, mind and language, each of them hosting a

number of concepts: empathy, cognition, emotion, aggression, forgiveness, guilt, remorse, and shame 'belonging' to the domain of the mind. Politeness, ethnicity, violence, conflict, dialogue, argumentation, and conciliation to the domain of culture; the latter could, of course, also be placed in the domain of 'language', where we find apologies, excuses, frames, scripts, schemes, prototypes, discourse and speech. It is easily recognisable that the domains overlap and that the concomitant fields of research under which they are dealt with do so as well. Casanovas and Poblet state that restorative justice is a highly trans-disciplinary domain over human behaviour, culture, conflicts and rights. "*Loosely speaking both the type and degree of scientific concretion and abstraction expand from neurosciences and brain studies to specific forms of human interaction and social organisation.*" (Casanovas/Poblet 2007, 241) or in other words: "*Knowledge can be ordered in a continuum from behavioural sciences to social, legal and philosophical studies*". (Casanovas/Poblet, 240/241) In their contribution to the book 'Images of Restorative Justice Theory' they bring forward the example of neurosciences and its contribution to the understanding of 'empathy', quoting the definition by Lawrence et al. (2006, 1173) that empathy is "*a higher order construct which can be broken down into: cognitive empathy – that is 'understanding and predicting someone else's mental state' and affective empathy – 'experiencing an appropriate emotion as the result of someone else's mental state.'*" They go on to say that empathy is a much discussed issue but that "*there is general consensus that human ability to understand others' feelings and thoughts, to place ourselves in the place of another person, constitutes the kernel of representational processes – imitation, identification, or projection – and emotional social processes such as sharing compassion, pity and forgiveness. Evidence of the neural bases of empathy and forgiveness has been recently collected.*" (Casanovas/Poblet, 242)

Excursus on neurosciences, or: don't be afraid!

I will deal shortly with, on the one hand, the surface and on the other hand, the deeper understanding of the contribution of neurosciences to an understanding of restorative justice-processes.
The surface understanding relates to the notion of an appalling reductionism, i.e. to reducing the complex orbit of social relationships to the notion of a bio-technical switchboard stripped of that human or even divine spark that seems to be the essence of human existence and of the functioning of society. But by going deeper into the matter it becomes increasingly visible that these new and startling research results can contribute to a deeper and enriched understanding of our position, of the position of human beings in the world. The more recent – and more sophisticated – research in the neurosciences brings to the fore the importance of 'the social' of communication / interaction regarding the constitution of the Mind: In the words of one of its protagonists: "*Overall the basic prob-*

lem with all exclusively biological approaches to human cognition especially when they address its uniquely human aspects, is that they attempt to skip from the first page of the story, genetics, to the last page of the story, current human cognition, without going through any of the intervening pages. In my opinion, any adequate theory of human cognition must provide some reasonable account of the processes of sociogenesis in historical and ontogenetic time that intervened between the human genotype and the human phenotype." (Tomasello 2006:215)

This well-founded critique of the simplistic view of the neurosciences does away with much of the awesome effect of those 'results', especially of the stunning pictures procured and presented to the marvelling surrounding world. They do NOT speak for themselves but need interpretation. (as do numbers and statistics …) They afford internal critique, i.e. regarding methodology and from the point of view of a philosophy of science and they afford – and this is my main point – interactive interpretation.
What emerges from such internal critique amounts to the notion that the very existence as human being is created through communication – interaction imprinting on the 'mind' or, in fact, constituting the Mind.

What does this teach us? Here is first of all the requirement for the researchers of internally scrutinising and checking the results produced – methodically and according to the standards set by a philosophy of science.
But it is the practitioners and also the policymakers that are called upon to ask for the relevance, the usefulness and the applicability of research result – and of concepts.

Let's go back to the issue of scientifically founded concepts and differences.
There is another contribution to 'Images of Restorative Justice Theory' that is relevant to the issue of theoretical concepts. It is the late Brian Williams' short essay on 'Empathy for victims'. Brian Williams has been concerned with the increasing role, feelings and emotions play in the study of criminal justice; and with the repercussions this might have for restorative justice and the study of restorative justice processes. He quotes empirical research on empathy and the three types of empathic reactions derived from it: cognitive, affective and communicative. He suggests that this might provide the basis for constructing a continuum of types of empathic reactions. This could in turn be a "*valid approach that might have a good deal to offer to those engaged in evaluating what is happening for the parties during restorative justice processes.*" (Williams 2007: 228)
For me and against the background of what I have said previously, Brian's account of research results on empathy constitute a good example of the importance of differences. The concept of empathy is differentiated along the dimension of the prime 'location' of empathy. This has at least 'heuristic' value, as a contribution

toward understanding – on the side of the researcher, which is a prerequisite for further exploring and researching the phenomenon at stake.

(Interestingly, Brian had arrived at the recommendation to researchers to use a combination of quantitative and qualitative studies and to practise methodological triangulation) He stresses the need to clarify conceptual issues and to develop research instruments. And he calls for collaboration between practitioners and researchers. His closing statement reads: "*Practitioners and restorative justice advocates are clearly convinced of the benefits of restorative justice for offenders and victims, and of the validity of trying to generate empathy on the part of offenders. Their collaboration in the design and execution of appropriate research will be important in establishing whether, and in what circumstances, such confidence is justified.*" (Williams 2007: 231)

Cooperation is indeed the theme to be addressed. The reason I have been dwelling at some lengths on what I regard as the achievements and qualities of scientific research is exactly the challenge (the source of uneasiness?) these qualities pose for practitioners and for a fruitful cooperation.

To emphasise *the main points* so far: We do have **the step of scientifically guided observation (second order observation) followed by analysis and interpretation based on scientifically generated (theoretical) concepts.**

As a brief remark on the side: These very steps, observation/perception, analysis and interpretation can also be found in quantitative research. Collecting data is just another type of observation, and quantitative data analysis is never an end in itself but involves interpretations and the application of concepts.

3. What are the conditions for research to become useful?

We are talking about the ways research results – scientifically generated knowledge or scientific cognisance – can contribute to enlightenment understood as elucidation, as clarification in a wider sense, as 'rationalisation'.[2] A reflective practice is called for; a rationally guided action – a better practice in the end!

My experience as a researcher has taught me the following: if this knowledge, if those interpretations are just handed down to the practitioners with the claim of representing scientific truth they will remain outside – a truth separate – maybe even regarded as a 'higher' truth, but at the same time standing aloof.

Let me at this point insert some more general thoughts concerning the general perception of science and scientific knowledge. Scientific knowledge/cognition is indeed of an ambivalent nature. Mostly, it has a high standing, a good status in the everyday world. But at the same time it is often looked at with considerable

2   interestingly, enlightenment in German has a more generalised meaning and does not pertain exclusively to the era of the Enlightenment. See for example the quotation of Habermas: "Commonsense who holds many illusions about the world has to accept and submit to becoming enlightened by the sciences without any reservation". (my translation) („Natürlich muss sich der Commonsense, der sich über die Welt viele Illusionen macht, von den Wissenschaften vorbehaltlos aufklären lassen.")

distrust, or even contempt: the image of the ivory tower conveys this ambivalence.

I do not know which attitude is more difficult to deal with on the side of the researcher – but the first one 'Wissenschaftsgläubigkeit' (unstinting faith / belief) might be more problematic, or even dangerous. It often goes together with a kind of passive submission to science and scientists. The label 'scientific' seems to convey a type of consecration that the ordinary citizen is not to desecrate. And this might prove quite ominous. (cf. the Milgram experiments)

But even when such fears appear unwarranted, passive acceptance is clearly not a favourable precondition for making sensible use of research results.

Personally, I have experienced quite often this strange mixture of distrust, even contempt and – not veneration – but faithful acceptance. On the one hand: why should those scientists/ researchers know better than we ourselves (the image of the ivory tower – knowledge that is created artificially and has lost contact with real life!), and on the other: but this is scientific evidence, it stands above our commonsensical understanding, but there, far away from 'our' reality it ought to remain!!

The solution is a simple one: Researchers cannot become relevant other than by becoming partners in a dialogue.

4. In which way could and should researchers and practitioners cooperate?

But let's go back again to my main argument that is related to the specific qualities of scientifically created cognition, and especially so the quality of scientific interpretations.

Because scientific interpretations of the world are interpretations that are distanced, not submerged into the whirl and muddle of action and exposed to the constraints of everyday life and its 'reality', and because they have been extracted and constructed by referring to the world of science and are therefore something different, something of its own; because of this, to become relevant to the practice, **they have to be brought home** and have to be confronted with **the everyday understanding** and the common sense interpretations of actions and of practices.

Niklas Luhmann from whom I have taken the concept of the second-order observation has stated: *The scientific observer as a second-order observer can contribute to enlightenment through his distanced knowledge; but this becomes effective only when and where the differences (the differentiating concepts) this kind of cognition uses can be acceded and adopted by the target persons of the 'enlightening endeavour', i.e. by those that are to become enlightened.* (my translation) („*Der (wissenschaftliche) Beobachter kann auf diese Weise aufklären, wobei die Aufklärung aber nur*

wirkt, wenn sie ein Differenzschema verwendet, das der Aufzuklärende übernehmen kann" (Luhmann 1984: 654))

What does this mean and imply? The researcher 'offers' the practitioner whom she has observed as a distanced second order observer her interpretation, using theoretically based (relined) concepts. And she enters a discourse whose aim it is to examine the plausibility and the 'practicability' of these concepts. The concepts she introduces have to make sense for the practitioners and they should in the most favourable circumstances produce a surplus value of cognition, and finally be capable of impacting on the practice. In another context I have formulated: that the acceptance and the adoption of scientific interpretations, of explanations, or of statements of causation cannot be imposed on the practitioners (nor on a general public); it needs their becoming convinced as a result of confrontation and discussion (German: 'Auseinandersetzung').

If this discourse succeeds, I – as a researcher – might get this kind of feedback: What you have told us about empowerment as it happens in VOM: well I can see it now. It might – at first instance – sound abstract and distant from any reality but I can see and feel it.

In other words, I contend that the introduction of scientifically derived concepts can prove a valuable tool for better understanding RJ-processes. And by better understanding them it can promote the quality of those processes to serve clients – people using these processes – maybe the communities of care, and finally, society at large.

To repeat and summarise: As a researcher you have to make this offer: "I have seen this and described it with these concepts. Can you see it and understand it this way as well? Could it help you in even understanding better – more adequately – what is happening? And finally: Could this understanding become systematised to serve as guidance for further actions to become systematically improved and thus more effective?

The examples: 'recognition and empowerment'

At that point I will return to my experience as a researcher and I will take from it two examples for the introduction and for the use of scientific concepts. I do this not least because I have so far failed to convey those concepts I am going to talk about; at least this is the case concerning the concept of recognition.

With regard to recognition and empowerment: I have not invented them. In the case of empowerment I have invented a German translation though; I have created the word 'Mächtigung' which does not exist. There is 'Ermächtigung' but this is a 'terminus technicus', especially in legal usage it is a formal authorisation

to act on behalf of somebody. Therefore it does not really catch the meaning of empowerment, which – as with community – is then left non-translated. The story is a different one regarding 'recognition' and its German equivalent 'Aner-kennung', – which in fact conveys more and has a more intricate meaning than recognition.

On recognition:

I have derived the use of the term recognition from two sources, or two branches of science: empirical research – observation of mediation processes – on the one hand and the psychoanalytic theory of Jessica Benjamin on the other.

How did I come across the concept of recognition and its application to the observation and analysis of VOM-processes? In the course of doing accompanying research of the first pilot projects on VOM I arrived at the concept of the 'power of understanding'. I had approached the qualitative material asking: What are you doing, when you are doing this well? What might account for failures? It became visible that there is more to this procedure than just applying a script to bring people together – although this might mean a lot already. But to produce more deep reaching effects you have to move people – to move them toward understanding and to take responsibility to perceive an event of wrong-doing in a way that enables both to move on. The term 'understanding' seemed to serve the practitioners very well in this phase.
When I was doing the project on partnership violence with more intensive observation and with clients' interviews as well, I could dig deeper into these processes. At that time the concepts of empowerment and recognition were already at the back of my head and I tried first to grasp empowerment by analysing my observation protocols: how could empowerment be brought about? Recognition then appeared as a pathway to empowerment.

Recognition pertains to interaction, to dialogue, one could say. Recognition means the act of recognising the other person, of perceiving and understanding her words and her actions. In the course of the restorative justice process this act of recognition is to be performed by the mediator or facilitator. She is to recognise, to 'take in' each of the parties involved; this example can set in motion the process of mutual recognition.
I have attempted to deepen this concept of recognition by taking recourse to the work of the philosopher and psychoanalyst Jessica Benjamin, as presented in her book 'The Bonds of Love'. (1988) Recognition according to this line of thought is the starting point as well as a prerequisite of any good 'successful' psychological development; it is a kind of reciprocal interaction that is apt to overcome the opposing forces, or rather: the societal dynamics of domination and submission;

or in other words: the dichotomy of master and servant. Expressed as a paradox: True recognition can only come from somebody who is recognised. Mutual recognition affords standing up to the tension of recognising the other as different and simultaneously holding on to one's own difference.

In the mediation process, the mediator applies recognition to both parties, she 'takes them in' and extends understanding. The effect is supposed to be twofold: I gain recognition – first by the mediator – und thus I become more prepared to recognise the other. I can hold my ground and stand up to the tension of the other having different interests, without taking recourse either to submitting to her or to overpowering her – by means of physical or psychological violence. And these processes are reciprocal.

The concept of respect and the concept of understanding are close to 'recognition' although they are not synonyms. A specific quality of recognition can be seen in the fact that it is truly about the process that is flowing between the ‚I and the other'. It is not one-sided – extending respect or understanding toward the other – as a kind of generous act. Although it affords being assured about oneself, this assuredness can only be gained by recognising one's being dependent on and being influenced by others – while remaining oneself.

Recognition thus provides the path for real remorse on the side of the perpetrator, and for forgiveness on the side of the victim – although we might be aware that these deep-reaching processes will not occur as a regular effect.

But I have indeed seen and heard – with my own eyes and ears – these processes happen in the course of the research project on mediation in domestic violence cases.
I saw also the failures in the interaction between mediator and perpetrator – and again, applying, or trying out the concept of recognition it made me perceive and understand the dynamics at work. Its lack on the one hand leaving the perpetrator angry and 'untouched' – fending off responsibility – on the other hand, slowly confronting himself with his own dark side.
These insights are something to communicate to practitioners – something that might become useful and influential for their further work and thus prove beneficial for the clients.

This is research that is NOT producing recipes but knowledge – enlightenment that can guide the practitioners' actions.

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