

Restorative justice for crime victims: the promise, the challenge

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Introduction

Rarely does the western process of justice deliver good news for crime victims. A leading specialization on trauma, Judith Lewis Herman, has stated it plainly: "If one set out to design a system for provoking intrusive post-traumatic symptoms, one could not do better than a court of law" (Herman 72).

Over the past three decades, a variety of reform strategies have sought to improve the lot of victims within the criminal justice system; these have included increased victim services, self-help groups and legally-defined rights. Yet, for the majority of victims, justice remains an unsavory and unsatisfactory experience.

Perhaps the boldest initiative to address the roles of victims in justice within the modern era is the movement often called restorative justice. Arguing that the definition of justice underlying the western legal system is itself flawed, restorative justice seeks to refocus the conception of and approach to justice to one in which harm to victims is central to the definition of, and response to, crime. This centrality of harm implies that victims should have central roles in justice and that offender accountability should be defined in terms of these harms and the resulting obligations to victims. But can restorative justice deliver on this promise to victims? Is it likely to do so? What are the possibilities and challenges?

In the following chapter, we outline briefly some key needs of many crime victims, suggest ways that the emerging paradigm of restorative justice might address

these needs, examine some of the dangers for victims, and make suggestions about what might be needed if restorative justice is to live up to its promise to victims.

What do victims need from justice?

The sudden, random and often violent nature of crime affects not only victims but their families, friends and communities. It pushes victims out of their normal sense of order. The suddenness and the violence eludes normal coping mechanisms and may leave victims ill-equipped to process forthcoming events. Crime is often described in terms of three primary impacts: physical, financial and emotional. Although crime can contain some, all, or any combination of these impacts, the most devastating - and often least attended to - is the emotional impact.

Marlene Young of the National Organization for Victim Assistance describes the array of emotions that plague victims in the aftermath of crime as a cataclysm of emotions. These intense emotions can include anger and rage, fear and terror, frustration, confusion, guilt and self-blame, shame and humiliation, grief and sorrow. Not all victims experience all of these emotions but they are common themes in the natural human response to crime. These emotions often leave victims feeling isolated and lonely (Young 3-5).

In short, the crisis of victimization is comprehensive and focused on victims' sense of self and identity, including their sense of self in relation to the world. This larger crisis can be categorized as three interrelated sub-crises or traumas that force victims to confront three fundamental questions: the crisis of self-image (who am I?), a crisis of meaning (what do I believe?) and a crisis of relationship (who can I trust?). The crisis of victimization is fundamental because it undermines three underlying

assumptions upon which we build our sense of safety and wholeness: autonomy, order and relatedness (Johnson 128-130).

A common experience for crime victims is the loss of their sense of autonomy. Victims are rendered powerless during the commission of the crime and often for long periods afterward. They may feel that their continued re-experience of the emotions and memories of the event is out of control for years. Such a loss of control is deeply dehumanizing and demoralizing. All of us need to feel that we control our own lives, so one of the most important intervention strategies is to assist victims in regaining some power and control over their lives.

Victimization leaves crime victims seeking a new sense of order and looking for rational reasons for the crime events. How and why did this happen? Was I responsible for this? Since we all seek order in our world, the absence of rational answers to such questions often leads victims into self-blame and doubt about their own responsibility for the event. Answers these questions and the many others that surface can reduce the frustration and confusion that victims experience and can help to restore a new order in their lives.

Victimization leaves victims feeling isolated and alone. The uniqueness of their experience and the flood of emotions they experience separates them from those around them. Often those closest to them are not very helpful; they too are often affected and, as secondary victims, are trying to cope with their own needs. Thus the primary victim is alienated from those that they usually count on most. Crime victims often become suspicious of strangers or even neighbors or others that remind them of the crime. They begin to question who they can trust. We all need to be accepted by others and engage in healthy relationships. Our relationships provide us with a mirror to ourselves; it is

through interaction with others that we form and affirm our sense of identity. Crime victims are often forced to review and re-establish these primary relationships.

Crime is traumatic. The road of recovery/reconstruction may be long and circuitous, filled with pain and struggle; it is not a linear process. The journey requires victims to incorporate the event into the fabric of their being and to reconstruct a new order. It requires regaining a sense of identity, autonomy and order and a forging of new - and reestablishment of old - relationships (Herman 51).

Given these experiences, there are many things that victims need from a justice process. While the community and the justice system cannot address all of their needs, they can have a profound impact on victims' recovery. The justice system can and should provide an arena which contributes to victims' sense justice and healing.

Victims need and deserve from justice a safe place. This is especially true in the immediate aftermath of crime. Safety - both physical and emotional - is crucial to recovery. Victims need long-term assurances that this will not happen again or at least that the system and the community are taking appropriate steps to minimize the possibility of reoccurrence. They need a safe place to express the cataclysm of emotions without judgment or blame.

Victims need restitution. Restitution not only provides repayment by the offender for the damages incurred but it holds the offender accountable as the person responsible. Most importantly, it vindicates the victim. Vindication is important as it absolves the victim of responsibility and provides needed validation of the harm done.

Victims need answers to questions. They want to know what happened and why because answers restore the sense of order that is essential to health. They want answers that, to the extent possible, are real and not conjectured; they want answers that

are as multi-layered as real life, not the simplistic, binary answers that emerge from the legal process. Some of these answers are interpretive and have to be discovered by the victims themselves, e.g. "Why did I react as I did? Why have I acted as I have since that time?" Others, however, are factual and most come from others: "What happened? Why did it happen? What is being done about it?"

A fourth area of need is what some call voice, truth-telling or ventilation. Victims need to tell their story, a story will include not only the event but what has transpired in the immediate aftermath. Marlene Young describes it like this: "Victims need to tell their story over and over again. The repetitive process is a way of putting the pieces together and cognitively organizing the event so that it can be integrated into the survivors life" (Young 17). This includes being able to tell their story to those that matter, including judges and sometimes the offender.

Finally, victims need to feel empowered, recovering the sense of autonomy and control that was taken away from them in the offense. Consequently, the justice process needs to be designed to re-empower victims. This means that the process should include as many opportunities for participation, voice and choices for victims as possible.

Unfortunately, the criminal justice system does little to address the needs of victims. Despite landmark legislation and state constitutional amendments for victim rights, the role of the victim is still largely relegated to that of occasional participant or observer. They continue to have no legal standing, the absence of which relegates them to a lesser status; they are not viewed or treated as key stakeholders. Their experience in the criminal justice system often mirrors their status during the commission of the crime: that of involuntary participant. So the criminal justice system does little for the

victims' sense of justice. Their circumscribed roles are so confined that options and opportunities for healing are limited.

Crime represents a profound expression of disrespect for the victim as a person; it signifies a denial of the victim's personhood, a failure to value him or her as an individual. When the legal system ignores victims, the cycle of disrespect is again perpetuated.

What does restorative justice offer victims?

Restorative justice theory holds great promise for victims as it offers options that do not exist in the present system. The redefinition of crime as a violation which creates obligations provides much-needed recognition to crime victims by the community and by the justice system as the individual harmed and thus as a central stakeholder in a justice process. This stands in stark contrast to the present system which sees the state as the entity offended with the victim relegated to the sidelines.

Elevating victims to the status of a key stakeholder provides them with validation of their worth as a member of the community, something that is often taken from them during the commission of the crime and rarely is restored by the present process of justice. The concept that violations create obligations identifies the victim as the person to whom the offender is first and foremost accountable. It identifies the offender as the person accountable to their victim for the specific harm done.

Since it focuses on reparation of harm, restorative justice provides opportunities for greater and more meaningful participation by the victim in identification of harms and identification of needs, including what they believe that they need from the offender, the community and the system. By starting from the point of identification of

harms, restorative justice emphasizes the importance of providing immediate direct assistance to all victims in the aftermath of crime. This increases the likelihood of response to crime victims when there is no identified offender. Since the present system focuses primarily on the offender - what they did and what punishment they deserve - there is no opportunity for participation by victims when their assailant is not identified or apprehended.

A focus on identifying victim needs as the starting point of justice - and particularly what the victim needs from the community, the offender and the system - is a significant and valuable change from the present system in which the processing of the offender takes precedence over the needs of victim recovery/reconstruction. Assisting victims in the identification of their needs is an essential beginning step in their journey to recovery/reconstruction.

Standard approaches to crisis and trauma intervention for victims emphasize reparation and prediction, ventilation and validation, safety and security (Young 13-24). Restorative justice theory parallels these standard crisis and trauma intervention theories. Identification of harms and corresponding needs (preparation and prediction); story-telling (ventilation) and recognition of the victim harm as a starting point for the justice process (validation); safety and security - these fundamental elements of restorative justice reflect core elements of intervention services for all crime victims. Restorative justice has potential to address the five victim needs articulated above: a sense of safety, answers to questions, an opportunity to testify to their truth, an opportunity to feel empowered, the possibility of restitution and thus vindication.

Restorative justice holds great potential to address a multitude of needs of the victim. The central promise that restorative justice makes to victims - that they will be

stakeholders and that a key purpose of the process will be to address the harm done to them - is enticing to victims and victim advocates. There could be no greater elevation of victims than to start the justice process from the point of the harm caused and the question how to repair that harm. That victims would no longer be on the sidelines but more centrally located on the playing field is in itself a far reaching concept offering hope and comfort to victims.

Will restorative justice deliver on its promise?

In spite of the promise, however, many victims, victim advocates and victim service providers remain ambivalent and wary about restorative justice. While there is increasing dialogue between victim groups and restorative justice advocates, for the most part they remain in separate camps, with substantial misconceptions about one another (Achilles/Amstutz 6-7).

Some concerns of victim groups grow out of a well-founded fear of losing fragile and hard-won gains made by the victim movement in the last several decades. Beyond that, however, serious concerns result from the tendencies toward co-optation that inevitably occur when new approaches are incorporated into old. Since restorative justice approaches for the most part are operating within the traditional, offender-oriented justice system, many are concerned that restorative approaches will be distorted in such a way that victims will once again be sidelined or misused. These dangers are magnified by naiveté on the part of some restorative justice practitioners and by failures to fully implement restorative values within this movement.

The history of justice reform in general has not been encouraging. So-called reforms frequently - perhaps usually - have ended up being reshaped to meet the needs

of the “old” system and its practitioners (Feeley; Rothman). Efforts to empower stakeholders have often been taken over by professionals; witness the prominence of lawyers in parts of the mediation movement. Offender-oriented alternatives to incarceration at best have served as supplements to prison and at worst, as new ways to control and punish outside prisons. The same subversion of goals can be seen in many victim-oriented reforms. Victim assistance programs, for example, all-too-often have been used as tools to strengthen prosecution efforts rather than to fundamentally empower and aid victims.

The punitive focus of the criminal justice system, often critiqued by restorative justice advocates, masks a reality that has important implications for any effort to reshape the justice system: criminal justice is fundamentally designed to respond to offenders. Once a criminal event moves beyond investigation to arrest and prosecution, cases are defined and processed around offender identities and issues. The stated goal or rationale of the justice system has alternated between helping, rehabilitating and punishing offenders but the motivating question of justice has remained the same: what does the offender deserve? Add to this the offender-oriented backgrounds, job descriptions and orientations of most justice (including restorative justice) practitioners as well as the general lack of knowledge of victim perspectives among justice practitioners and the result is a powerful impetus to ignore or misuse victims when restorative justice programs operate alongside or within that milieu.

Consequently, a significant pressure for restorative justice programs is to become primarily a diversionary program for offenders, even while claiming to service both victims and offenders. The state of Vermont’s Reparative Probation Program may be a case in point. After a public opinion survey and an extensive rethinking of the concept

of probation, the Vermont Department of Corrections has developed a “reparative probation” track based on an explicitly restorative justice philosophy. In cases referred to this program, panels of community volunteers are to work with victims and offenders to determine appropriate sentences which hold offenders accountable while meeting victim and community needs. However, anecdotal and preliminary evidence suggests that so far victims have participated in a minority of cases, victim advocates do not play an intrinsic role in the process or the planning, and the guiding question often continues to revolve around what the offender deserves (Cf Karp; Russell 95ff). Efforts are being made to address these deficiencies based on the standards implicit in the stated mission and values of the program. In the meantime, however, the model is being adopted elsewhere without the extensive attention to values and philosophy on which the Vermont model was based, thus without the benchmarks of good practice implicit in a conscious restorative justice framework.

Another example of the way restorative justice practitioners have perpetuated this offender-orientation may be seen in how these programs are advertised. One widely-advertised restorative justice conference recently provided on its brochure an extensive list of potential audiences - but with no mention of victims or victim advocates. A restorative-justice website listed a series of suggested activities for those interested in applying restorative justice - again, with no mention of victim-related activities. Similarly, few restorative justice programs provide services to victims without an offender referral.

Not all of the dangers for victims can be attributed directly to the offender-oriented pressures of the justice system; restorative justice advocates and practitioners must accept responsibility for failing to take seriously the full implications of the

philosophy and values they espouse and, in some cases, for naively attempting to apply restorative approaches in highly problematic areas such as domestic violence without adequate attention to complexities and safeguards.

At least four factors may contribute to the failures of restorative justice to live up to its promise:

1. As restorative justice has become more popular, it has often been viewed as a program or methodology rather than a philosophy with a set of underlying values and principles. As a concept, restorative justice places great emphasis on the roles and needs of victims and addresses offender accountability first of all in terms of the harm done to victim. However, many programs have not adopted an explicit statement on values and philosophy. Without that framework and the benchmarks of good practice they imply, an offender-orientation will almost certainly be perpetuated.
2. The focus on restorative justice as a methodology has been compounded by a tendency to assume that “one size fits all” rather than to have program shapes emerge out of community dialogues about values, philosophy, needs and resources. Programs cannot be simply “plugged in” but need to reflect the community and community ownership, including that of the victim community.
3. Organizers of restorative justice programs have commonly failed to include victim voices early on in the design and implementation of programs. A variety of reasons may be suggested; sometimes it may be naïve oversight or a belief on the part of practitioners or the assumption that they know what victims need and want. However, often it also reflects an unwillingness to engage in the difficult dialogue which is not only likely but essential which victims and victim advocates are brought in. Without these voices at the table, it is unlikely that victim interests and concerns will be addressed. Moreover, once the program is underway, it is unrealistic to assume that victim and victim advocates will join in with a full sense of ownership and engagement.
4. Restorative justice programs have failed to build in - and sometimes have even been hostile to - evaluation, especially the kind that assesses practice and outputs against values, mission and philosophy. Often this neglect is a result of financial concerns; evaluation can seem like a luxury when struggling to fund basic operations. However, this reluctance may also reflect fear of and hostility toward critique and/or skepticism about an activity that is seen as “academic” or abstract. Without evaluation against benchmarks of principle and values, however, programs may easily get off track, failing in practice to implement the philosophy they claim to espouse, and this especially true for victim issues.

A newly-emerging area of concern in restorative justice has to do with the respective roles of victims and communities. In early conceptualizations of restorative justice, victims and offenders were seen as central “players,” with communities having somewhat secondary supporting roles. Increasingly, however, restorative approaches such as circle processes are incorporating community members and being advocated as new forms of community empowerment and participatory democracy. This is an important correction in restorative justice approaches but it raises the old concern: will community roles and concerns dominate over victims’? Will practitioners assume that communities’ and victim’ needs and roles are equivalent?

Restorative justice argues that crime as a public and a “private” dimension but that they have been out of balance in the modern legal system. The public or community dimension has been predominant but its place has been represented by the state; in practice the community has been left out. Restorative justice seeks to bring a better balance by recognizing the private or interpersonal dimensions of crime while giving the community a genuine role. In doing so, however, it will need to take care that it does not once again upset the balance in favor of the “public” dimension of crime.

What can be done?

An important safeguard against the subversion and co-optation of restorative justice is an ongoing emphasis on principles and values (Zehr 207-215). This will mean that as it moves from the visionary to the implementation stage, the movement as a whole will need to find ways to balance attention to practice with attention to principles. Education and training in the field must strike this balance as must patterns of staffing and oversight. What is needed, in short, is an ongoing emphasis on what

might be called value-based practice. Essential also are efforts to create a much fuller dialogue between victims and ex-offenders, victim advocates and service providers, offender advocates and service providers, and restorative justice advocates and practitioners.

To address the concern about victims specifically, we propose the following guidelines or signposts for restorative justice practice¹:

We are working toward appropriate victim involvement in restorative justice programs

when....

1...victims and victim advocates are represented on governing bodies and initial planning committees.

If victims are central to the process of justice in restorative justice theory, then they and their advocates need to be included in the early stages of program design. Their inclusion in the process of development highlights the programs' commitment to crime victims and the sensitivities that need to be addressed so as not to re-victimize. Subtleties of program design that ensure safe and welcoming messages to injured crime victims is an expertise that victims and their advocates can offer. This important view can assist in enhancing the quality of a program and a sense of ownership in the program from the victims' perspective. It also sends a strong message of inclusion to the victim services community.

2...efforts to involve victims grow out of a desire to assist them, not offenders. Victims are not responsible to rehabilitate or assist offender unless they choose to do so.

The present system of justice is fundamentally a business designed for processing offenders. The concern for offenders is important, and it is appropriate for them to benefit by participation, but we must be careful never to use victims primarily as a way to benefit or otherwise deal with offenders; that should not be the reason for victim involvement in justice. (Conversely offenders should also never be used for the sole benefit of victims.) Similarly, victims should not be pressured to feel that rehabilitation of offenders is their responsibility. In reality, victims are often concerned to know that someone is taking responsibility for the rehabilitation and even the welfare of offenders, and some may chose to take on that concern themselves. However, it should not be presumed to be their responsibility.

¹ Also available as a bookmark from the Mennonite Central Committee: 21 South 12th St., PO Box 500, Akron, PA 17501-0500.

3... victims' safety is a fundamental element of program design.

Whether working with crime victims in the immediate aftermath of an incident or years later, all interventions must first and foremost recognize victim's safety and security needs, both physical and emotional. The manner in which program services are delivered should reflect sensitivity to this and offer victims an opportunity to identify and articulate their personal safety needs. Victims must be free to express their natural human responses to the crime including anger, rage and need for vengeance without judgment and with understanding of their pain.

4. ...victims clearly understand their roles in the program including potential benefits and risks to themselves and offenders.

Victims must be prepared for program participation by providing them with as much information as possible on their role in the process, what to expect, and the known risks and benefits to themselves and to offenders. Victims should be informed of any benefits to the offender the program offers and particularly what and if any benefits the offender will receive from the victim's participation. It is appropriate for the offender to benefit from the victim's participation but efforts must be made to reduce if not eliminate any unwanted surprise outcomes for the victim.

5... confidentiality is provided within clear guidelines.

A victim's right to privacy must always be protected: their experiences, including the post-crime experiences, must be treated with sensitivity and respect because of the intense personal nature of the experience. Victims should choose when, what and how information is disclosed about them and their experience. They should also be informed as to any rules and regulations regarding confidentiality under which the program operates.

6. ...victims have as much information as possible about their case, the offense and the offender.

To meet basic needs for information and to personalize the experience of justice for both victim and offender, restorative justice seeks to maximize the exchange of information between victim and offender, whether directly or indirectly. Victims may or may not choose to engage in face-to-face dialogue with the offender - or there may be other reasons why it is inappropriate or impractical - but victims usually have a variety informational needs regarding the offender that can be addressed.

7. ...victims can identify and articulate their needs and are given choices.

The opportunity to identify their own needs and make choices about how they are addressed can help to re-empower victims. Thus opportunities for choices should be maximized; programs must be careful not to fall into a litany of rigid,

scripted options. Certainly victims must be the gatekeepers as to whether and when a direct encounter takes place.

8. ... victims' opportunities for involvement are maximized.

Since a core element of victim trauma is disempowerment, restorative justice programs should provide as many opportunities as possible for victims to be involved in their "case" as well as the program as a whole. There should be as few limits on participation as possible.

9... program design provides referrals for additional support and assistance.

Crime victims may have additional needs that cannot be met by the program. While they should not feel obligated to offer comprehensive services, programs ought to be familiar with additional community services for victims and routinely make those referrals. A strong working relationship with other victim services in the community will make the transition for additional assistance for the victims much smoother.

10. ... services are available to victims even when their offenders have not been arrested or are unwilling or unable to participate.

If victims are central to the process of justice and their needs are the starting point, then as a justice system we cannot simply offer services when offender are identified and or arrested; to the extent possible, we must provide services and options for victims when there offender is not known. To do otherwise perpetuates the offender-driven nature of the system.

Conclusion

We have argued that for restorative justice is to live up to its claims, it must remain grounded in principle and must not only listen to but incorporate victims' voices. Beyond that, those restorative justice advocates and practitioners who do not come from victim-oriented backgrounds will need to fine-tune our own sensitivities to victim issues so that we can share responsibility for monitoring the movement.

People of color should not have to carry the full burden of monitoring and calling attention to the operation of race and privilege in our society; those of us of European ancestry have a responsibility to become aware of the privilege that we have inherited and to speak out. Nor should women have to be the only voices to speak out

on gender issues. In the same way, victims and their spokespeople should not have to carry this burden alone. Indeed, some of us with credentials gained from long involvement with offender and restorative justice issues may need to use some of our “social capital” to ensure that victims’ perspectives and needs retain their important place.

Restorative justice offers a hopeful vision of justice for victims but good intentions and wonderful ideas are not enough. Substantial challenges must be met if this vision is to prove a reality rather than a mirage.

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