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Restorative Justice and Victims of Crime: directions and developments

Meredith Rossner

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Introduction

In 2013 the UK Ministry of Justice announced that £29 Million will be made available to local Police and Crime Commissioners to deliver restorative justice.¹ A notable aspect of this announcement was that it was positioned as part of a government initiative to help victims of crime. Indeed, the money to fund this windfall is to be raised through the Victims Surcharge: money from offenders would be used to finance restorative justice for victims. 2013 also saw a new Code of Practice for Victims, stating that all victims of young offenders have a right to restorative justice, and victims of adult offenders have the right to learn about restorative justice and assess its appropriateness. Finally, the Crime and Courts Act 2013 gave statutory footing for restorative justice, allowing judges to defer sentence until restorative justice takes place, if both victim and offender want it. The most recent Restorative Justice Action Plan was published by the Ministry of Justice in 2014, covering the period to 2018. In it, they explain their vision for ‘good quality, victim-focused restorative justice to be available at all stages of the criminal justice system in England and Wales’ (p. 2). This includes ensuring all victims have equal access to restorative justice at all stages of the criminal justice system, the public has an awareness and understanding of restorative justice, and that good quality restorative justice is consistently delivered.

This flurry of activity suggests that restorative justice is indeed moving to the mainstream of criminal justice (London 2011) and that current policy directions situate restorative justice as a ‘victim-centred’ movement (Hoyle 2012). This has not always been the case: in 2001 the Home Office funded a large-scale research project testing whether restorative justice could reduce recidivism (Sherman *et al.* 2015), and most of the early work on restorative justice has been ‘profoundly ambivalent towards victims’ (Dignan 2007: 105).

Given this trend towards promoting what might be victim-friendly elements of restorative justice, it is worth revisiting some of the theoretical and empirical foundations that underpin restorative justice and some hurdles and challenges that need to be overcome to maximize benefits for victims. This chapter will attempt to do this in four parts. First I examine the debate around defining restorative justice. I will then discuss some of the main theoretical traditions that might explain what restorative justice can offer victims. Next, I review some of the empirical work on how victims around the world have experienced restorative justice. Finally, I discuss some of the challenges for victims and restorative justice, particularly in the current policy climate in England and Wales.

What do victims want?

Before defining restorative justice and the role that victims might play, it is useful to canvass some of the research on what victims want out of a justice process. Bottoms and Roberts (2010) have identified three different types of needs and interests that a victim of crime may have. The first is service needs, which can include information about the status and outcomes of their case, compensation, respectful treatment, and help with testifying (if they are invited to court as a witness). The second set of needs is expressive, which can include strategies to ‘give a voice’ to victims where they can express their experience, harm, and desires. The final set of needs relate to participation or decision-making, where victims can influence criminal justice decision-making in bail, sentencing, and parole.

Empirical research has suggested that victims do tend to have service needs, expressive needs, and participation needs. Strang (2002) has suggested the victims want: (1) a less formal process where their views are listened to, (2) more information about their case, (3) to be able to participate in their case, (4) to be treated fairly and with respect, (5) material restoration, and (6) emotional restoration and apology. Some victims want to participate in the process but others also want to be relieved of ‘the burden of decisions relating to the offender’ (Victim Support, 1995). Findings like this are consistent across much of the victimological literature (see Shapland *et al.* 1985, Shapland 1986, Walklate 2013).

What seems clear is that expressive and service needs are what victims most want met: being listened to, being respected, achieving restoration. In a study of victims who have been invited to give input in a criminal case, Van Dijk (2001) notes:

Victims exercising their right to speak up in court about their feelings and opinions do not typically demand harsh punishment. Most victims do not apparently use their new rights as a retributive tool. They want to be recognized as concerned parties and to be notified of judicial decisions (p 130).

The question, then, is whether restorative justice can meet these needs. In the sections that follow I will provide a definition of restorative justice, with a focus on the procedural elements, underlying values, and desired outcomes.

Defining Restorative Justice

One challenge of restorative justice is the assortment of different definitions available (Doolin 2007; Johnstone and Van Ness 2007). It can describe various innovations in criminal justice and incorporates a wide array of diverse aspirations. This is not limited to criminal justice- restorative justice programmes can be found in schools, workplaces, and transitional justice settings. This chapter, however, on domestic criminal justice.

Those looking for a straightforward definition of restorative justice quickly find themselves confronted with a range of different approaches, perspectives, and emphases. Dignan (2005) has suggested that definitions of restorative justice vary depending on the emphasis placed on the process, values, or outcomes. I will briefly consider each of these in turn.

One source of confusion is that restorative justice has been defined at times as a set of values and other times as a practice (Braithwaite 2002; Johnstone 2013; Marshall 1999; Wright 1991). A broader definition or a 'way of thinking' about justice is attractive because it can create a wide umbrella for restorative practices with 'a common core of values and ethics' (Shapland 2014: 124). However, it is also important to define it in concrete terms to avoid imprecision and overuse of the term (McCold 2000; Daly 2016).

This approach is taken in the widely-used definition by the Home Office researcher Tony Marshall:

Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. (Marshall 1999: 5).

While this definition has been subject to contestation and critique (Dignan 2005), it appears in countless texts on restorative justice. It emphasizes restorative justice as a process, but also hints at specific outcomes that are to be achieved, namely something that 'deals with the aftermath' and 'implications for the future'. These relatively vague outcomes point to a second source of contention around defining restorative justice, whether it should be seen as a process or an outcome (or both). A process-based definition stresses dialogue and cooperation. While most definitions include some description of a process, many also incorporate an emphasis on future outcomes. This can include a focus on 'repairing the harm' through apology, forgiveness, repayment or some other symbolic or material reparation (Retzinger and Scheff 1996).

A danger of including outcomes in a definition of restorative justice is that there are no clear reasons why certain outcomes will be reached in all cases, particularly when the process is dominated by the unique needs and desires of different people in specific contexts. There is a danger that a focus on outcomes will come to dominate (Shapland 2014), and lead to a one-size-fits-all model. For instance, offenders could be compelled to apologise, or victims to forgive, presenting a danger to the integrity of the practice.

Recently, Daly has suggested that restorative justice is best defined as a justice mechanism (2016):

Restorative justice is a contemporary justice mechanism to address crime, disputes, and bounded community conflict. The mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people. Meetings can take place at all phases of the criminal process, pre-arrest, diversion from court, pre-sentence, and post-sentence, as well as for offending or conflicts not reported to the police. Specific practices will vary,

depending on context, but are guided by rules and procedures that align with what is appropriate in the context of the crime, dispute, or bounded conflict (p. 14).²

This definition locates restorative justice as a specific set of practices. Certain values underpin the practice and desired outcomes might be encouraged, but they will be dependent on different contexts.

Elsewhere I have identified the core elements of the restorative justice mechanism: lay encounters, expressive narratives, and ritual dynamics (Rossner 2017). I will briefly revisit them here, as they become important both when developing a theory of restorative justice and making sense of the empirical research on victims.

Restorative justice is unique in that the process relies on the active participation of *lay people* - victims, offenders, families, friends and community members - in some kind of (usually face-to-face) dialogue. It is a process that runs counter to increasingly professionalized and bureaucratized criminal justice (Garland 2001).³ The predominant forms of restorative justice that involve victims are victim-offender mediation, conferencing, and circles.

In victim-offender mediation, the dominant model across most of continental Europe and parts of North America, the encounter takes the form of a dyadic exchange, mediated by a neutral third party. The parties meet to discuss the events leading up to the offence, the offence itself, and the impact that it has had on both the victim and offender. The parties might then come to some sort of resolution, usually involving reparation of some sort. Clearly, the integrity of this practice is compromised when victims do not take part.

Conferencing, also known as family group conferencing or restorative justice conferencing, developed first in New Zealand and then in Australia, and then spread across much of the common-law world (Johnston 2013). It involves meetings between victims, offenders, and direct stakeholders such as family, friends, and community members. Participants discuss the offence, how everyone was harmed, and then agree to ways to 'repair the harm.' Even if a victim is unwilling or unable to attend, a conference can still take place with friends, family, community members, and at times victim representatives.

Circles, or sentencing circles, are generally found in indigenous communities across North America. They involve an encounter between several different stakeholders, including victims, offenders, community members, judges and other criminal justice officials (Johnstone 2013). A key difference from other restorative justice processes is that circles can replace sentencing in a formal justice system. Respected community members play a large role here, working with offenders and to a lesser extent victims, to develop appropriate sentences.

A second key element of restorative justice mechanism is the development of a *narrative* that focuses on the *emotions* of lay participants (Sherman 2003). Here, victims (and in conferencing models, supporters and community members) are invited to articulate a narrative about how they have been harmed by an offence. Offenders are invited contribute to a narrative that acknowledges any harm, accepts

responsibility, and expresses remorse (Rossner *et al.* 2013). In these narratives, a range of emotions can be expressed, including anger, fear, anxiety, shame, guilt, remorse, and hope.

There are important differences between restorative justice encounters and other forms of victim narrative. The one most often discussed is the use of Victim Personal Statements at the sentencing stage of the criminal process. While victims are increasingly invited into court to speak (or to have a statement read out), this is rather different from a narrative that is co-produced in collaboration with offenders and other stakeholders. Ethnographic work on the emotional dynamics of victim impact statement suggest that they may prove to be unsatisfactory encounters (Rock 2010) where victims are incompletely ‘cooled out’ in a way that does little to diffuse their anger (Booth 2013).

A final feature of the restorative justice mechanism is that it takes on *ritual dynamics*. Justice processes have long been seen through a ritual lens, with a focus on the staging, symbolism, and meaning that is instilled through the practice (Durkheim 1995, Maruna 2011). Rituals are an important part of social life because they help one to make sense of a society’s collective values, morals, and symbols, and give structure, order and dignity to otherwise shapeless social events (Collins 2004). They can also produce ‘collective effervescence’ - fellow-feeling or group solidarity. Many has suggested that restorative justice is a unique form of ritual that runs counter to the stigmatising dynamics of other criminal justice interventions (Braithwaite and Mugford 1994; Dignan *et al.* 2007; Rossner, 2013; Zehr 1990). The preparation and the staging of restorative justice encounters is aimed at developing a ritual where participants’ express emotion, develop solidarity, and produce meaningful symbols (Rossner, 2013).

It is easy to see how the elements of the restorative justice mechanism are particularly suited to meeting many victims’ needs. It provides a space where they can be treated with respect and legitimacy, articulate their emotions, participate in decision making, and perhaps become attuned to the experience and emotions of the other.

Standards for restorative justice: values and desired outcomes

I have suggested above that restorative justice can be defined as a justice mechanism that contains elements of lay participation, expressive narratives, and ritual dynamics. However, best practice will seek to uphold certain values and achieve certain desirable outcomes (Johnstone 2013, Van Ness 2003). John Braithwaite has provided the most comprehensive set of standards for restorative justice that encompasses both values and outcomes (2002).

First, Braithwaite identifies *constraining* standards, including empowerment, non-domination, respectful listening, equal concern for all stakeholders, and accountability. These standards form the basis of any restorative practice and must be honoured and enforced as ‘fundamental procedural safeguards’ (Braithwaite 2003: 8). For instance, if a dialogue develops that included dominating behaviour or disrespectful language the encounter should not be allowed to continue. These standards allow participation in a way that promotes safety and empowerment.

The second category consists of *maximizing* standards, including restoration of: damaged relationships, human dignity, property loss, safety, freedom, compassion or caring, peace, a sense of duty as a citizen, emotional restoration, provision of support, and the prevention of future injustice, often interpreted as the reduction of offending. These outcomes are consistent with what victims say they want out of such a practice (Strang 2002). These standards are to be encouraged, but not required.

The final category consists of *emergent* standards, including remorse, apology, censure of the act, mercy, and forgiveness. These, too, are desired outcomes of restorative justice, but they differ from maximizing standards in that they can only arise organically. For instance, while a facilitator might encourage victim and offender to identify ways to restore their relationship or a victim's sense of safety, it would be wrong to encourage a victim to forgive or an offender to show remorse. Doing so would violate the constraining standards of non-domination and empowerment.

Restoring what?

While the above set of standards provides a useful way to think about values and outcomes, many of these concepts are still somewhat unclear. In particular, there is no agreed-upon definition of what 'restoration' means in restorative justice. It has been noted by Daly and Proietti-Scifoni (2011) that there is a plethora of 're' words in restorative justice that have been used inconsistently in the literature: restoration, reparation, reconciliation, reintegration, and so on. The etymologic root of these words suggests a backwards-looking quality. This is a conceptual challenge to restorative justice, as it often positions itself as a forward-looking process.

So, what might restoration mean in the context of a victim-offender encounter? Bottoms (2003) suggests that it can be understood as 'community restoration,' defined as 'a restoration of prior social relationships in a community, with an understood structural and normative framework' (p. 93). Bottoms (drawing on Tavuchis, 1991) suggests that the generative social mechanism through which relations are restored is through apology. This will be explored in the next section.

Community restoration assumes that victim and offender come from the same 'understood structural and normative framework.' This means that they come from the same moral community and have shared values. What's to be restored when we can't assume a shared normative framework, an increasingly likely scenario in modern urban environments? First, although victims and offenders are increasingly strangers to each other, it can't be assumed that they come from different moral communities. But sometimes they do. Here the concept of 'micro-community' (McCold 2004) may be helpful. While victim and offender may not belong to the same 'community,' they both have their own 'micro-communities' of supporters, family, and friends. Restorative justice might be able to restore the offender to their micro-community and the victim to their prior social relations. This is more likely to happen under the conferencing model.

Making sense of restorative justice: theoretical perspectives

Theoretical perspectives on restorative justice have been criticized for focusing primarily on reducing re-offending at the expense of victims' needs.⁴ While it is true that the dominant theoretical traditions in restorative justice often say more about offenders than victims, it is perhaps unfair to say that these traditions have neglected victims. They are, after all, criminological theories that aim to explain the causes of offending and how to address it.

A broader set of theories from sociology, psychology, and philosophy may be used to understand how restorative justice might be beneficial (or harmful) for victims of crime. This includes procedural justice theories and interaction ritual theories. More specifically, recent work on the nature of apology and forgiveness can help us to further understand victims and restorative justice.

Procedural Justice Theory

Procedural justice theory asserts that citizens will trust and find legitimacy in the legal system if they feel that they are treated fairly and with respect (Tyler 2006, Tyler and Huo 2002). Perceptions of fairness derive from how people feel about the process, but not the outcomes, of a legal intervention. For instance, citizens assess the legitimacy of the police based on how they are treated, irrespective of any outcomes that might arise from their interaction (Tyler and Huo 2002). Procedural justice maps on to victims' needs to be treated with respect and fairness, to feel that they can express themselves, and that they have some control over the process.

A particularly important facet of procedural justice is that standing, or an acknowledgement of one's status within a group, is key to one's sense that they have been treated fairly (Strang 2002). Standing indicated that one is to be treated with dignity and respect. The theory, then, is that restorative justice builds legitimacy because victims are given standing. The core elements of restorative justice - lay participation, expressive narrative and ritual dynamics - all contribute to a sense of fairness and democratic participation, especially compared to court which can be impersonal and hierarchical.

Interaction Ritual Theory

As explored above, the ritual dynamics of restorative justice encounters are a key element of the process. Collins (2004) has developed the theory of interaction ritual chains, which provides a powerful argument for the micro-level, ritual foundation of our moral order. In this context, an interaction ritual is a social encounter with the following distinct features: (1) people are physically together in a room and aware of each other's bodily presence; (2) there are delineated boundaries between who is participating in the interaction and who is an outsider; (3) participants have a shared focus of attention and a (4) shared mood. Each of these elements feed into each other to create a certain rhythmic coordination and synchronization in participants' conversation, bodily movements, and emotions. When people become 'caught up in the rhythm and mood of the talk' (Collins 2004: 48), a sense of collective effervescence emerges along with feelings of social solidarity and shared emotion. If this sense of shared emotion can be achieved, it can result in longer term impacts on

one's emotional energy, include feelings of confidence, elation, initiative, and a recommitment to the group's standards of morality.

Collins' theory lends itself well to understanding the process of restorative justice. Restorative justice encounters are likely to be successful interaction rituals because they are likely to feature high intensity of emotions, and are structured to include all the ingredients the theory posits (see Braithwaite and Mugford 1994; Rossner 2011). Victims and offenders come together, often sitting in a circle, to share their narratives. Facilitators guide the discussion from expressions of fear, anxiety, and anger to expressions of reconciliation and solidarity. When successful, this can be observed through the articulation of apology and forgiveness, and symbolic integration through handshakes, eye contact, and hugs (Rossner 2011, 2013). In theory, the micro-level production of solidarity and shared emotion provides restorative justice with the unique power to achieve its standards and goals. On the other hand, they can also fail to achieve these outcomes, leaving participants flat, deflated, or angry.

Apology and Forgiveness

Procedural justice and interaction ritual theories focus on the entirety of the restorative justice encounter. They are both concerned with emotional states, such as fairness,⁵ solidarity and emotional energy. A final set of theories focus on a particularly valued exchange in restorative justice: apology and forgiveness.

It has long been noted that the exchange of apology and forgiveness is a unique part of restorative justice. Retzinger and Scheff have referred to this as the 'core sequence' of symbolic reparation, and suggested that it is 'the vital element that differentiates conferences from all other forms of crime control.' (1996: 317). The core sequence involves an expression of genuine remorse by the offender followed by some sign or gesture of forgiveness by the victim.

In Tavuchis' classic work on the sociology of apology (1991), he astutely notes that apology is a 'delicate and precarious transaction' (p. vii) but it also seems to work a kind of magic (see also Goffman 1971). As Tavuchis explains, '[n]o matter how sincere or effective, [an apology] does not and cannot undo what has been done. And yet, in a mysterious way and according to its own logic, this is precisely what it manages to do' (p. 5). Can an apology actually provide restoration? Both Tavuchis and Bottoms (2003) suggest that it can, at least in situations where the victim and offender share the same 'understood structural and normative framework' (Bottoms 2003, p. 93). The so-called magic of apology is that it is a social mechanism that can help to transcend breaches of this shared normative order. According to Bottoms, 'The key to its success lies squarely in the normative and relational realms' (2003, p. 97).

The second half of the core sequence is forgiveness. There is a significant amount of research promoting the benefits of forgiveness.⁶ Lacey and Pickard (2015) draw on both clinical and evolutionary psychology to demonstrate that forgiveness is both normatively preferable and empirically superior to anger and blame for both offenders and victims.⁷ They argue that anger and blame are poor ways to engender responsibility because of their propensity to make people feel 'rejected, worthless,

ashamed, and uncared for...damaging any sense of hope for the future' (p. 671). Approaching an offense with an attitude of forgiveness and respect allows both offender and victim to look towards a better future. Nussbaum (2016) provides a similar critique of anger, demonstrating ways that it is both a morally wrong and psychologically maladaptive emotion for victims.

Lacey and Pickard also use evidence from evolutionary psychology to argue that that forgiveness serves a positive function for the forgiver. Both forgiveness and vengeance have been shown to be universal human strategies to respond to exploitation and prevent its reoccurrence. Vengeance, however, carries much heavier risks: creating a cycle of vengeance and further rupturing relationships to a point beyond repair. Forgiveness, on the other hand, motivates reparative behaviour and de-escalation. It thereby 'functions to protect against the risk for future exploitation by preserving the possibility of an ongoing mutually beneficial relations and re-establishing or indeed increasing the perceived value of that relationship to the exploiter' (p. 681). We can see this at work in restorative justice, with a consistent finding that victims who meet with their offenders are much less likely to feel vengeance or want to seek revenge This will be explored more in depth in the next section.

Braithwaite (2016) also argues that forgiveness is the key to a positive future. He makes two important points. The first is that forgiveness exists along a continuum, and will rarely take the form of a dramatic demonstration. More common in restorative justice is an encounter where people reach a practical agreement about on how to 'offer some repair for the harm and close the matter' (p. 79). Drawing on the work of Tim Chapman, a restorative justice scholar and practitioner in Northern Ireland, Braithwaite argues that while these encounters fall short of explicit forgiveness, they are a success in that victims can say 'that's good enough for me.' He notes, 'quite often victims hope never to see the offender again, but if they did meet them on the street at least it could be civil. Thin rather than thick civility.' (p. 80). The second point that Braithwaite makes is that such 'thin civility' is part of the civilising impact of restorative justice. It is a historically emergent property of a society and culture that promotes it. Even with its deep theological roots, forgiveness is not a valued component of contemporary western culture (Nussbaum 2016). However, promoting forgiveness through restorative justice is part of the long-term commitment to a more civilized justice system.⁸

Bringing together these ideas about apology and forgiveness, we can draw certain inferences about how they might function for victims in restorative justice. Let us first consider what it means for an apology to 'restore' victims. There seem to be two ingredients needed for this to happen. First, there needs to be a shared normative framework to restore (Bottoms 2003). Second, the apology must be an expression of genuine remorse (Retzinger and Scheff 1996). When these criteria are met, apology can act as a generative mechanism to restore victims to their prior social relations.

Forgiveness on the other hand seems to go one step beyond restoration. The work of Lacey and Pickard, Braithwaite, and Nussbaum all share a similar thread- that forgiveness is the mechanism by which we move forward beyond a conflict. As Lacey and Pickard note: 'Forgiveness is both genuinely forward-looking and genuinely conciliatory' (p. 681) In this sense, restoration, with its backward-looking

connotation, is a misleading word. While apologies might restore, forgiveness can transform. Furthermore, there is no need for a shared normative framework for forgiveness to bring positive benefits for victims. Forgiveness, both the thick and thin variety, can be a universal mechanism for transformation independent of any prior social relations.

The ‘magic’ of apology and the transformative nature of forgiveness both hinge on them being elements of successful interaction rituals. The ritual dynamic of a restorative conference can set the stage for genuine expressions of remorse to emerge. An apology is likely to come only after a build-up of shared focus and emotional intensity between victim and offender as they express their emotions and tell their stories. Indeed, the exchange of apology and forgiveness is often a ‘turning point’ in restorative justice whereby victim and offender can start to engage in cohesive and high-solidarity behaviour (Rossner 2013).

Empirical research on victims and restorative justice

Restorative justice processes have been subject to a large amount of empirical enquiry (Dignan 2005, Hoyle 2012). In this section I will review some of the most robust and well-replicated research on procedural aspects and restorative outcomes for victims, focusing on the role of apology and forgiveness. I mainly draw on two large and interconnected research projects that compare victims (and offenders) who were randomly assigned to participate in restorative justice to those whose cases were processed in the courts. The first of these projects is known as RISE and focuses on cases randomly assigned to either prosecution or a restorative justice conference for personal property and personal violence in Canberra, Australia.⁹ This project was carried out by the Justice Research Consortium (JRG) and led by Lawrence Sherman and Heather Strang. Most of the findings are summarizing in Strang (2002) and several other publications with colleagues (Barnes *et al.* 2015, Sherman *et al.* 2005, Sherman *et al.* 2015, Strang *et al.* 2006, Strang *et al.* 2013).

The second project consists of a further set of experiments of restorative justice conferencing, carried out by the JRG in the UK: London, Northumbria and Thames Valley. These experiments, along with two other non-experimental studies of victim-offender mediation in South Yorkshire and London, were funded by the Home Office and evaluated by a team led by Joanna Shapland (see Shapland *et al.* 2006, 2007, 2011). The JRG experiments compared cases randomly assigned to court with cases assigned to court plus restorative justice for violent and property offences with adult offenders at the pre-sentence stage in London, post-sentence in Thames Valley, and both pre-sentence and as a diversion from prosecution in Northumbria. Data from these experiments have also been analyzed by Sherman and Strang and colleagues (Angel *et al.* 2014, Sherman *et al.* 2005, Strang *et al.* 2006, Strang *et al.* 2013, Sherman *et al.* 2015) and in my own work on the ritual dynamics of restorative justice conferences (Rossner 2013). While I will focus on the results from these two projects, I will supplement this with other research from New Zealand, Australia, the UK, and the US.

Procedural justice for victims

A key element of procedural justice is for people to feel that they are given standing: their experiences and views should be listened to and respected. This maps on to the expressive needs of victims discussed earlier in the chapter (Bottoms and Roberts, 2010). A desire to meet these needs seems to be a key reason why victims agree to take part in restorative justice (Shapland *et al.* 2011). Most victims reported, both before and after their conference, that it was important or very important for them to be able to ‘express [their] feelings and speak directly to the other person’ (2011, p. 91). Other important reasons were the desire to help the other person, a desire to have a say in how the problem was resolved, and a desire to have questions answered about the offender. A desire for material reparation or compensation was only occasionally important to victims, though still present. This suggests that victims are looking primarily for a procedurally fair process where their expressive, service and decision making needs can be met.

When it comes to procedural justice, there is a consistent body of work suggesting that victims (and offenders) perceive restorative justice as fairer, more satisfying, more respectful, and more legitimate than what is offered in the courtroom (Barnes *et al.* 2015, Strang 2002, Shapland *et al.* 2007, Tyler *et al.* 2007. See also Daly 2004, Morris and Maxwell 1998 and Umbreit *et al.* 1994). Victims report that they are able to express themselves in restorative justice, and this is confirmed by observational research: Shapland *et al.* (2011) measured the amount of time victims spend speaking and found that victims and offenders contributed equally. Finally, victims who participate in restorative justice are also more likely to rate the entire criminal justice system as more fair compared to victims whose cases are processed at court alone (Shapland *et al.* 2011).

Symbolic reparation: Apology and forgiveness

Most victims indicated that they would like an apology (over 90 per cent in Australia, Strang 2002). 86 per cent of Australian victims and 96 per cent of British victims who participated in a restorative justice conference received one, compared to 19 per cent and 7 per cent respectively of victims who went to court (Strang *et al.* 2013). In a sense, this is not surprising, as the structure of the courtroom interaction makes apologies less likely, and when they happen, less convicting. As Shapland *et al.* (2011) note, ‘Having the victim present, particularly in a face-to-face meeting in which everyone speaks, seems definitely to be a major element in the offender working through embarrassment and nervousness...to remorse, expressed in apology’ (p. 130). This lends support to the interaction ritual thesis, that an apology is a symbol that comes after the development of emotional entrainment and mutual focus of attention.

The story is less clear, however, when it comes to forgiveness. Most offender in the British JRG study indicated that they accepted the apology that was offered to them (91 per cent, Shapland *et al.* 2007). However, when asked if they thought that the apologies that they received were genuine, 45 per cent said that the offender was sincere and 21 per cent said they were not. A similar result is found in the RISE data, 77 per cent of victims indicated the apology was sincere and 23 per cent did not (Strang 2002). Hayes (2006) reanalyzed the empirical data from RISE and Daly (2003) and found in both studies that the core sequence of apology and forgiveness was achieved in less than half of the time. Thus, while there is ample evidence that

conferences are perceived to be fairer than court and people are satisfied with the process, there is less evidence that conferences are actually restorative (Daly 2006). Clearly, more in-depth research is needed on this complex dynamic.

Shapland (2016) has noted that in the JRG sample very few offenders explicitly articulated forgiveness. Instead, they were more likely to use more implicit externalisations, such as acknowledging the offender's remorse, nodding at them, shaking their hand, or even at times offering a hug. This echoes Braithwaite's reminder that forgiveness exists along a continuum, and the 'good enough' type of thin civility is an important part of what restorative justice can achieve.

In my research on ritual and restorative justice, I examine in-depth the dynamics of a sample of conferences from the London experiments (Rossner 2013). Conferences that were a ritual success, in terms of expressions of solidarity, shared emotion, smiling, touching, and hugging were also conference where apologies were offered and were accepted, either explicitly or implicitly. The exchange of apology and forgiveness seem to act as a symbol of the (perhaps momentary) sense of shared emotion. I also reanalyzed the RISE data and found that the ritual ingredients and procedural justice elements, such as the development of a rhythm and balance to the interaction and respectful and non-dominating treatment were positively related to later expressions of remorse, apology, and forgiveness (Rossner 2013). The dynamics of the ritual, then, set the stage for the core sequence to emerge.

Revenge

There is strong evidence that victims who meet their offender are less likely to desire physical revenge (Sherman and Strang 2011). Strikingly, in the RISE data, 45 per cent of victims of violence crime whose cases were assigned to court said they would harm their offenders if they had the chance. Only 9 per cent of the victims assigned to the restorative justice conference reported this desire (Sherman *et al.* 2005).

In the UK experiments, there was also a marked difference in terms of the prevalence of desire for revenge: 14 per cent of court victims compared to 3 per cent of restorative justice victims (Sherman *et al.* 2005) These findings strongly suggest that RJC can succeed in assuaging the feelings of vengeance felt by many victims of violent crime towards their assailants.

The future of restorative justice practice and policy

To briefly summarise the preceding sections: restorative justice might usefully be defined as a practice that is marked by lay participation, the chance for an expressive narrative to develop, and certain ritual dynamics. Constraining standards underpin the practice, and maximising and emergent standards provide a set of desirable outcomes that can be used to evaluate its success. The most critical of these outcomes for victims is a sense of 'restoration.' Though this is an unclear concept, it is best understood in relational terms between people who share a moral community. It is also likely related to apology, and perhaps forgiveness. Theoretical perspectives consider the procedural justice of the encounter and frame restorative justice as a kind

of interaction ritual that can produce feelings of solidarity and shared emotion between group members. Most notably, the ritual dynamics of apology and forgiveness seem to be key to understanding how the process can help victims. There is a large and consistent body of work suggesting that victims see restorative justice as fairer and more respectful than traditional justice approaches. Most victims also receive an apology, and those who do are likely to accept or acknowledge that apology. A smaller number articulate forgiveness, though it is unknown how many victims respond to an apology with a subtler, 'thin' forgiveness.

The challenge for restorative justice is to create successful interaction rituals marked by this core sequence between victims and offenders who do not share the same moral community, a likely scenario in most contemporary urban environments. Restorative justice scholars and advocates have so far produced unsatisfactory accounts of how this will be achieved (Bottoms 2003, Daly 2002). I offer two possible solutions. The first is that we not worry about restoring the relationship between victims and offenders, but rather focus on how remorse, apology, and forgiveness can restore people to their already existing micro-communities (Rossner and Bruce 2016). Clearly, a conferencing model where the circle is widened to include family and friends is more likely to achieve this than a victim-offender mediation. This is consistent with most of the research reviewed above, which focuses on the conferencing model.

Second, we can take seriously the idea that 'thin civility' or the 'good enough for me' variety of forgiveness may be enough to allow the victim and offender to move on (Braithwaite 2016). These types of events should also be considered a victory for restorative justice, not only the dramatic (but rare) core sequence of apology and forgiveness. Seen this way, the forward-looking concept of transformation, or 'moving on,' might be more useful than restoration when it comes to victims and offenders who are not part of the same community. The next step for scholars is to rethink how we might measure such 'thin civility' and 'moving on' as an outcome of successful restorative justice.

Implicit in all this this, though not discussed much in this chapter, is that it is very hard to pull off such complex and nuanced rituals. Research on restorative justice facilitation suggests that it is labour-intensive work and the best practitioners have a significant amount of training and experience. It may seem like 'magic' but in fact it is very hard work to prepare, conduct, and manage such encounters.¹⁰ When victims are not well-prepared or the conference is organised in a way where they feel they are not listened to, they are likely to report that the conference makes them feel worse (Choi *et al.* 2013).

How can the above challenges be addressed by the 2014 Action Plan that envisions a 'victim-centred' restorative justice across England and Wales? In 2016 the House of Commons Justice Committee held an inquiry into restorative justice (House of Commons, 2016). In it, they sought to assess whether the government was meeting the vision set out in the Action Plan. They make several recommendations, the ones most relevant here include: (1) New procedures should be put in place to ensure that police do a better job of informing victims about restorative justice (as they are required to do under the Victims Code). The government should do away with the distinction made between victims of young offenders (who have a right to restorative

justice) and adult offenders (who have a right to learn about restorative justice). They also raise the possibility of a legislated right of victims to restorative justice, though believe that it is too soon to introduce such legislation. (2) Consistent standards should be adopted in order to ensure a high quality of delivery, similar to the recently developed Restorative Services Quality Mark.¹¹ (3) The development of clear guidance on what constitutes a successful restorative justice scheme, including measurement relating to offenders and victims such as victim satisfaction.¹²

In some ways, these recommendations are a positive step forward. Increasing information and access is a good thing for victims (though how different agencies can cope with increased demand is unclear, see Wright 2015). Most notably, points two and three acknowledge that a national strategy of restorative justice will only be successful if high quality restorative justice is delivered across the board. On the other hand, a clear and co-ordinated strategy for how to raise awareness of restorative justice, increase victim participation without being overly burdensome or coercive, bringing about genuine remorse and meaningful apology, and achieving either ‘thick’ or ‘thin’ forgiveness is lacking in the current vision.

Drawing on insights from theory and research discussed above, steps forward might include: (1) developing standards and measures of success that are informed by Braithwaite (2002), procedural justice theory, and interaction ritual theory; (2) Ensuring enough resources are allocated for the significant preparation needed to conduct high quality conferences that include the core-sequence; (3) including apology, varieties of forgiveness, or other forward-looking outcomes in addition to measures of victim satisfaction when evaluating success. This will contribute to a future where victims of crime can further benefit from restorative justice.

Further Reading

Bottoms, A., 2003. Some sociological reflections on restorative justice. *Restorative justice and criminal justice: Competing or reconcilable paradigms*, pp.79-113.

Daly, K., 2016. What is restorative justice? Fresh answers to a vexed question. *Victims & Offenders*, 11(1), pp.9-29.

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Notes

¹ <https://www.gov.uk/government/news/new-victims-funding-for-restorative-justice>

² This definition excludes practices that are sometimes included under the restorative justice umbrella, such as indigenous courts, problem solving courts, and truth commissions. It also presents a challenge to contemporary practices that might have been termed ‘partly restorative’ by McCold and Watchtel (2003), such as some forms of restorative cautioning and community justice panels. See Paterson and Clamp (2012) for more on this. Strang *et al.* (2013) similarly excludes these types of practices in their systematic review of restorative justice, as very few of them have undergone rigorous evaluations.

³ Although, it is important to note that professionals have, and will continue to have, an important role to play in restorative justice, both in terms of training facilitators, and supporting its integration into criminal justice systems. See Dzur (2008) and Rossner and Bruce (2016).

⁴ The dominant theoretical model of restorative justice focuses on how shame can work to reintegrate offenders (Braithwaite 1989). This theory and the larger family of shame theories have developed sophisticated set of ideas about emotions, social bonds, and reintegration. It is true that victims often experience shame and it is worth thinking about how shame might help or hurt victims in restorative justice. Space limits a longer discussion of this here.

⁵ Contrary to earlier thinking, fairness does seem to be rooted in the part of the brain that does emotional processing, See Hsu *et al.* 2008.

⁶ Not least the centuries of Judeo-Christian and Islamic writings on the topic. For more on the religious roots of forgiveness, see Nussbaum 2016, Fiddes 2016, and Braithwaite 2016.

⁷ Lacey and Pickard’s argument is for an ambitious criminal justice reform that centres on forgiveness instead of what they call ‘affective blame.’ However, their model can apply at the micro level when making sense of how forgiveness might work in restorative justice.

⁸ Martha Nussbaum (2016) disagrees with accounts that forgiveness is to be promoted. Like others, she points out the flaw with anger: It seems to be inseparable from desire for payback (or revenge), pointing out that it is a kind of ‘magical thinking’ to think that expression of anger will somehow rebalance the scales. She also critiques this kind of ‘transactional forgiveness’ that seems to make up the ‘core sequence’ of symbolic reparation in restorative justice: ‘In short, forgiveness of the transactional sort, far from being the antidote to anger, looks like a continuation of anger’s payback wish by another name’ (p11). Instead she argues for an alternative to transactional forgiveness, where ‘generosity, love, and even humor replace the grim drama of penance and exacted contrition’ (p22). Her critique of transactional forgiveness seems to hinge on the idea that apology in this type of situation can feel coerced. I would argue that she is too quick to dismiss institutionalized forgiveness and this type of ‘exacted contrition’ is quite different from the ‘core sequence’ described by Retzinger and Scheff, where remorse is genuinely felt after an in-depth discussion of harm and pain, articulated meaningfully, and resulting in forgiveness. To do otherwise would be to violate Braithwaite’s constraining standards. To be sure, this sequence is rare (as Retzinger and Scheff take pains to point out) but it is an ideal-type that we should be working towards, even if in practice it will rarely be achieved, partly because we find it hard to break out of this anger-payback-transactional paradigm. It rarely happens, but the ‘good enough’ variety of thin civility espoused by Braithwaite is already a step forward to a more just world.

⁹ RISE stands for Reintegrative Shaming Experiments, and was heavily influenced by Braithwaite’s (1989) theory. While a large part of the experiment focuses on how restorative justice can reduce reoffending, data was also collected on victims’ experiences. However, due to the focus on offending in the original design of the experiment, cases were randomly assigned by offender. Technically, then, from a victims’ perspective this is more accurately described as a ‘quasi-experimental comparison of victims whose offenders were randomly assigned to either court or conference’ (Strang 2002, p. 74). The RISE research also evaluated restorative justice for crimes not involving a direct victim, such as drink-driving and corporate shoplifting, but are not discussed here.

¹⁰ See Doak and O’Mahony (2004), Miller (2011), and Rossner (2013) for examples from Northern Ireland, the U.S, and England, respectively, detailing how much effort goes into

preparing victims and offenders, staging the actual conference, and the follow-up involved. In an evaluation of a pre-sentence restorative justice programme for adult offenders in New South Wales, Australia, we calculated that it took about eighteen hours to prepare for a conference plus nearly three hours to conduct one (Rossner *et al.* 2013). This includes identifying stakeholders and support people, meeting in person with all participants and potential participants to prepare them, finding a suitable venue and ensuring it is set up appropriately.

¹¹ The quality mark has been developed by the Restorative Justice Council, an independent membership body advocating for restorative practice across the UK. It required compliance with a comprehensive and rigorous set of standards. See

<http://www.restorativejustice.org.uk/restorative-service-quality-mark>.

¹² Other important recommendations concern data-sharing, restorative justice for intimate-partner violence, how funding is allocated to Police and Crime Commissioners, expanding the availability of restorative justice, and raising awareness among criminal justice professionals.

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