

RESTORATIVE JUSTICE

Edited by
Carolyn Hoyle

CRITICAL CONCEPTS IN
CRIMINOLOGY

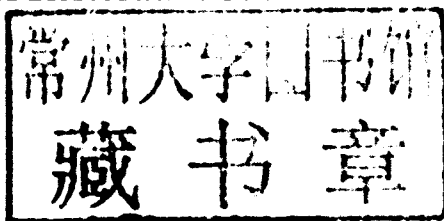


RESTORATIVE JUSTICE

Critical Concepts in Criminology

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Volume III
The Promise of Restorative Justice



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Part 10

RESTORING VICTIMS

EVALUATING RESTORATIVE JUSTICE FROM A VICTIM PERSPECTIVE

Empirical evidence

James Dignan

Source: J. Dignan, *Understanding Victims and Restorative Justice*, Maidenhead, Berkshire: Open University, 2005, pp. 132–61.

The evaluation of restorative justice initiatives is still in its infancy and any assessment of their efficacy consequently presents a number of major challenges. One challenge relates to the sheer variety of restorative justice initiatives, as we saw in Chapter 4, which makes it difficult to draw blanket conclusions about the extent to which ‘restorative justice in general’ may or may not be beneficial for victims. Some approaches, as we shall see, may be intrinsically more victim oriented and sensitive to the needs and wishes of victims than others. A second challenge relates to the wide diversity of contexts in which restorative justice approaches have been implemented in different jurisdictions, whether in terms of their relationship to the regular criminal justice system, or the types of offences, offenders and victims for which they are intended to cater. It is just as important to be mindful of the significance of *context* in relation to apparently successful restorative justice evaluation findings as it is with other kinds of criminological research.¹ Conversely, when confronted with apparently negative findings it is equally important to be sensitive to possibility that these might be the result of ‘implementation failure’ as opposed to inherent defects in the approach itself.

A third challenge relates to the criteria by which restorative justice initiatives should be evaluated, even when (as in this book) the focus is mainly restricted to a ‘victim’s perspective’. Even the most enthusiastic restorative justice advocates (see, for example, Braithwaite, 1999: 20) have acknowledged the problems involved: whether to ‘stipulate’ criteria on the basis of known or presumed effects of criminal victimization (see Chapter 1); whether to ask victims specifically what kind of restoration they sought at the outset and then to report on the extent to

which their ‘wish list’ was fulfilled; or whether to use more general ‘proxy’ measures such as overall retrospective satisfaction with either process or outcome. As we shall see, the latter approach is the commonest, even though it glosses over the complexities involved in assessing what restoration might mean for victims and how successful different approaches might be in achieving it. A fourth challenge relates to the methodology by which restorative justice initiatives might most appropriately be evaluated. Should restorative justice processes be assessed purely on the basis of their own aims and objectives and the extent to which they are realized? Or should their performance be assessed in relative terms, for example, in comparison with the performance of regular criminal justice processes? If the latter, what techniques are used to ensure comparability between the two sets of processes? Finally, a fifth challenge relates to the interpretation of the findings and, in particular, in setting the ‘benchmark’ for determining whether a particular restorative justice initiative has been ‘successful’ or not in relation to a given set of criteria (see also Morris, 2002: 601). Also on the subject of where the benchmark should be set, Kathleen Daly (2003a: 234) has drawn an important distinction between what it may be *possible* for restorative justice to achieve² – which she refers to as the ‘nirvana story of restorative justice’ – and what attainments are routinely practicable and achievable on a regular basis.

It is clearly important to bear these challenges in mind when attempting to assess the actual and potential benefits of restorative justice from a victim’s perspective in the light of the empirical evidence that is currently available. This chapter will attempt to provide an overview³ of the victim-oriented findings relating to each of the main restorative justice approaches as outlined in Chapter 4. With respect to court-based restitutive and reparative measures, the main emphasis is on some of the implementational problems that have been encountered. Thereafter, the overview will comment, where applicable, on the following sets of issues: the extent to which each approach specifically aims to provide restorative outcomes for victims, the type of research that has been undertaken, findings relating to its performance in meeting its victim-oriented aims, and also any contextual factors (including implementational context) that may affect its potential scope in benefiting victims more generally. The overview will also comment more thematically, where appropriate, on our current state of knowledge (or lack of it) concerning victims and restorative justice, including the extent to which victims appear to want to participate in restorative justice processes.

Restorative justice and victims: overview of research findings

Court-based restitutive and reparative measures

Such measures are hybrid in nature, incorporating some features that are associated with restorative justice processes and some that are more closely associated with conventional criminal justice processes and outcomes (see Introduction). It is for

this reason that compensation orders were examined more extensively in the context of the criminal justice model in Chapter 3. The community service order has been extensively evaluated (see, for example, Pease et al., 1977; Pease, 1985; McIvor, 1992; Howard League, 1997) and is, in any event, of relatively limited relevance for individual victims, so only a brief overview will be provided here. Of greatest interest in this context are the reparative measures that were introduced in England and Wales in 1998, as part of a wide-ranging programme of youth justice reforms, which will thus merit slightly fuller consideration.

One serious problem with the compensation order is that courts continue to be reluctant⁴ to give effect to the clear statutory requirement that they should take account of victims' interests when passing sentence.⁵ Indeed, the use of compensation orders has declined in both sets of criminal courts between 1990 and 2001 even though living standards were rising and unemployment levels falling during this period (Cavadino and Dignan, 2002: 133). Another shortcoming is that compensation is unlikely to be forthcoming (in England and Wales at any rate) where an offender is diverted from prosecution, for example by being cautioned;⁶ nor is it likely to be awarded where an offender is sentenced to imprisonment. Moreover, even where compensation is awarded and paid in full, it is only capable of providing for material needs. As we have seen, however, victims may also experience psychological or emotional difficulties as a result of an offence, quite apart from the damage that is likely to have been caused to any relationship between them, at least where the parties are known to one another (see Watson et al., 1989: 214; Dignan and Cavadino, 1996: 158). Furthermore, neither victim nor offender are likely to have been empowered by any award of compensation since they are not involved in the decision-making process.

As far as community service is concerned it is, of course, true – as suggested above, and as Walgrave (1999, 2000b) has argued – that this can be implemented in a manner that is broadly consistent with restorative justice principles even though it may not emanate from a restorative justice process. However, it is equally true that it can be made to serve other objectives, whether rehabilitative or straightforwardly retributive. For example, offenders may be required to undertake unpleasant, degrading or pointless tasks that are unrelated either to the offence they have committed, the wishes of the victim, the needs of the community or their own interests and aptitudes. It is a matter of regret that the tendency in England and Wales in recent years has been to strengthen the explicitly punitive aspect of the community service order, for example by requiring those who are subjected to an order of more than 60 hours to perform at least 21 of those hours working in a group placement on work of a manual nature.⁷ This tendency is also reflected in the decision in 2001 to officially change the name of the community service order to the '*community punishment order*', which symbolically distances the measure still further from a restorative justice approach. The English experience highlights one of the main problems associated with restorative justice initiatives that are introduced as part of the regular criminal justice system, which is that they are all too likely to be made to serve other sentencing

objectives, however incompatible these may be with restorative justice ideals and principles.

With regard to the reparative initiatives introduced by the Crime and Disorder Act, these formed part of a wider ranging programme of youth justice reforms that were evaluated by Holdaway et al. (2001; see also Dignan, 2002b). They too were beset by implementational difficulties, despite concerted attempts to promote the practice of reparation and to ensure that victims were more involved in consultation about the form that this should take. One problem was that the goal of victim consultation was in tension with another objective of the youth justice reforms, which was to speed up the processing of young offenders through the courts. Because magistrates were keen to meet the targets they had been set to reduce the average time it took to bring young recidivist offenders to court, they were often reluctant to adjourn cases to enable victims to be consulted before sentencing the offender. Those responsible for evaluating the pilot schemes felt that this could explain why the great majority of reparation orders involved community reparation, since the Act required victims to have consented *before* an offender could be ordered to make reparation to a direct victim (Holdaway et al., 2001: 88; Dignan, 2002b: 79).⁸

A second problem was that the communication of victim contact details by the police to reparation workers was believed to infringe the requirements of the Data Protection Act 1998 (which was also the year of the Crime and Disorder Act). This meant that in order to comply with a strict interpretation of the Act, consultation could only be undertaken after the police (as 'authorized data holders') had elicited consent from the victims to disclosure of their contact details, thereby increasing the time required to complete the consultation process. It also meant that the issue of reparation was first raised with victims by police officers, who are not trained as reparation workers and for whom it may not be the highest priority, rather than reparation workers, which could conceivably make a difference to take-up rates.

A third implementational problem related to the framework adopted for the delivery of reparative interventions. One of the most distinctive and radical features of the Crime and Disorder Act was that it created a new multi-agency structure of local youth offending teams (commonly known as YOTs) comprising probation officers, social workers, police, health and education workers. Youth offending teams were given primary operational responsibility for delivering the government's youth justice reform programme, though they had considerable discretion with regard to the way this was done. Some YOTs undertook all assessment and intervention work themselves (referred to as the 'in-house model'), whereas others contracted with specialist external providers, including those from the voluntary or not-for-profit sector (referred to as the 'outsourced' model; Holdaway et al., 2001: 82).⁹ A problem experienced by some of the pilot YOTs that had adopted an in-house structure was that some staff who were recruited from 'traditional' criminal justice agencies such as probation were reluctant to undertake victim contact and consultation work because they did not consider it to form part of their

responsibilities (Holdaway et al., 2001: 87). Even before they were introduced, the restorative potential of these reparative initiatives had been assessed in very modest terms, as we have seen. But as a result of the implementational problems we have discussed, it is clear that even this limited potential was not fully realized.

Victim–offender mediation programmes

Victim-oriented aims

The general aims of victim–offender mediation programmes were set out in Chapter 4. From a victim's perspective, such programmes ostensibly¹⁰ offer a number of benefits (see also Dignan and Cavadino, 1996). First, they claim to provide an opportunity to participate in the decision-making process, which could potentially have an empowering effect. Second, they offer a range of reparative outcomes that is potentially far wider and more flexible than those associated with court-based sanctions, including not only financial compensation and restitution but various other forms of direct and indirect reparation and also symbolic forms of reparation such as an apology. A third potential benefit related to both of the above is that the process may have a 'healing effect', at an emotional or psychological level, particularly if the victim feels less anxious or fearful as a result of meeting and speaking with the offender. Indeed, where the victim receives a genuine apology and feels able to reciprocate by expressing a willingness to forgive the offender, it is frequently claimed that this may bring about a sense of 'closure', enabling the victim to put the offence behind them and get on with their life. Of all the different restorative justice approaches, victim–offender mediation is sometimes portrayed as according the highest priority to meeting the specific needs of victims (see, for example, Bazemore and Umbreit, 2001).

Evaluating victim–offender mediation: an overview

As the oldest form of restorative justice it is not surprising that victim–offender mediation is also the most intensively evaluated, though the quality of the research has been somewhat variable, and has frequently lacked the methodological rigour associated with some of the more recent forms of conferencing in particular. Much of the early research was largely descriptive and exploratory in nature, and even the more elaborate studies have tended to focus on a relatively limited range of evaluative criteria that have included some restorative outcome measures but with a particular emphasis on participant satisfaction ratings. Consequently, the validity of the findings is often adversely affected by the methodological shortcomings to which most studies have been subject.

General evaluation findings

In general, evaluation studies show that a majority of victims are satisfied with the mediation process in terms of its fairness, the way they have been treated and

also in terms of its outcomes. A number of studies have used quasi-experimental methods in which the experiences and perceptions of those who have taken part in mediation (either direct or indirect) are compared with those of a sample group. The latter usually consists of cases that are considered eligible for mediation but not actually assigned to a meeting. Some studies also incorporate a cross-national perspective since common data collection instruments and analytical techniques have been used in evaluating victim-offender mediation schemes in the United States (Umbreit and Coates, 1993), Canada (Umbreit, 1996) and England (Umbreit and Roberts, 1996). Most of these evaluations reported positive findings. In the US schemes, the most important issues for victims were the opportunity to tell offenders about the effects of the crime, to question them about it, and to reach agreement on restitution. In the Canadian schemes, victims who met their offenders were more likely than those in the comparison group to have received answers to their questions (87 per cent and 51 per cent respectively), more likely to value apologies by offenders (74 per cent and 40 per cent respectively), and less likely to remain upset about the crime and the offender (53 per cent and 66 per cent respectively). In the English schemes, victims and offenders were more likely to express satisfaction in the justice system's response to their case, and to feel that the response had been fair than those who were referred to mediation projects but did not participate in them. However, the latter evaluation (in common with many others) found that the proportion of victims who participated in direct as opposed to indirect mediation was much lower in England than elsewhere. It also found that victims who had engaged in direct mediation expressed higher levels of satisfaction for programme outcomes than those who had taken part in indirect mediation. All three sets of evaluations reported a reduction in the victim's fear of being revictimized by the same offender following mediation.¹¹

As for their impact on recidivism levels,¹² the findings have been somewhat variable and inconclusive to date.¹³ In general the majority of findings do not show statistically significant reductions in reoffending levels, though there are exceptions. For example, in a recent evaluation of seven English restorative justice schemes, four were found to have had no effect on future offending whereas one victim-offender mediation scheme which dealt with more serious adult offenders did show a significantly lower rate of reconvictions than a control group (Miers et al., 2001).¹⁴ One possible explanation for the disappointing reconviction findings relates to the relatively small size of the samples dealt with, which means that the effect has to be greater to reach levels of statistical significance. Indeed, when 'aggregate' data are examined – either by combining the original data from individual studies (as in Nugent et al., 2001) or by using the technique of statistical meta analysis (as in Latimer et al., 2001) – significant reductions in reoffending levels have been reported.

Despite the generally positive findings, virtually all victim-offender mediation evaluations are subject to methodological shortcomings that raise questions regarding their validity. The main weakness relates to the absence of adequate control groups, the most reliable of which involves the use of random allocation to either