

Restorative justice: how responsive to the victim is it?

Jo-Anne Wemmers*

John Braithwaite's classical work, *Crime, shame and reintegration* (1989), has played a central role in the rapid expansion of restorative justice programmes internationally. Braithwaite highlights the importance of multiple stakeholders in responding to crime. This article focuses on one particular stakeholder, namely victims of crime, and addresses the role of victims in Braithwaite's work on restorative justice.

1 What about the victim?

Responsive regulation, according to Braithwaite (2002: 29), means that governments should be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist response is needed. In the context of criminal justice, it is generally the conduct of the offender that the state seeks to regulate. According to Braithwaite, confronting offenders with the consequences of their behaviour not only shames the offender, but also offers an opportunity to make good or repair the harm that they have caused. This process, which Braithwaite refers to as *reintegrative shaming*, offers a theoretical framework in order to understand and explain how restorative justice works. The object of the intervention is the offender and his or her transformation process. While reintegrative shaming includes victim participation, victims' role is defined with respect to the offender, and the focus is not on victims' healing process but rather on the offender's rehabilitation.

A major criticism of Braithwaite's model has been its failure to consider victims in and of themselves. While Braithwaite (2002) follows a human rights approach, emphasising the rights of all those involved, including victims, reintegrative shaming nevertheless 'uses' the victim in order to achieve a specific goal with respect to the offender. Several early studies revealed a clear lack of attention for the victim. For example, Morris and Maxwell (1998) found that in practice half of Family Group Conferences did not include the victim, and often a surrogate from the community was used instead. The substitution of victims with a surrogate from the community reflects the purely instrumental role given to victims in these programmes. Similar observations were made in evaluation studies about police-led conferencing programmes (Hill, 2002). In their evaluation of

* Jo-Anne Wemmers is Professor in the School of Criminology, University of Montreal, Canada. Contact author: jo-anne.m.wemmers@umontreal.ca.

restorative justice programmes in 36 European countries, Dünkel, Grzywa-Holten and Horsfield (2015) found that many programmes evolved from probation services and that while programmes included victims, they were not victim oriented.

Even if it is not victim centred, restorative justice may nonetheless offer benefits to victims. The shaming process not only holds offenders to account for their actions, it also recognises and validates victims while acknowledging their suffering. Research has repeatedly found that when victims participate in restorative justice programmes, they tend to be satisfied (Van Camp, 2014; Van Camp & Wemmers, 2013; Vanfraechem & Bolivar, 2015). Victims who participate in restorative justice programmes are more likely to receive reparation, either compensation for material damages or symbolic reparation, than victims in the conventional justice system, and are more likely to report that they believe that the offender was held to account (Poulson, 2003; Wemmers & Canuto, 2002). Participation in restorative justice has also been found to promote healing and closure for victims (Rugge & Scott, 2009; Sherman & Strang, 2007; Strang, 2002). The positive effects of restorative justice on victims' well-being have been found both in the short and in the long term. Strang (2012) interviewed victims ten years after their participation in either a restorative justice programme or a court case and found that victims who had participated in restorative justice felt significantly less anxious than the court victims.

Despite victim satisfaction with restorative justice, the instrumentalisation of the victim in restorative justice generated resistance among some victim advocates towards restorative justice. Pointing to its focus on the offender, those working with victims have been slow to embrace restorative justice (Reeves & Mulley, 2000; Wemmers, 2017). In particular, sexual violence and intimate partner violence continue to be considered inappropriate for restorative justice by some feminists (Nelund, 2015). Over time, victims' services have gradually become more open to restorative justice, acknowledging its potential benefits for victims (Vanfraechem & Bolivar, 2015). For example, in 2012, Victim Support Europe issued a *Statement on the position of the victim within the process of mediation*, in an effort to promote victim-friendly practices, which protect the interests of victims and reduce the risk of secondary victimisation. However, the potential for instrumentalisation remains a risk as long as the main objective of restorative justice is to regulate the offender's behaviour. This raises the question of whether restorative justice can ever truly be victim centred.

2 Reparative justice: victim-centred restorative justice

Despite reluctance among some victim advocates to embrace restorative justice, victims often express a need for reparation, and some authors have emphasised the importance of adapting restorative justice to better meet the needs of victims (Koss, 2014). Green (2006) argues in favour of a distinct, victim-centred approach, claiming that restorative justice lacks the necessary language to conceptualise the victim in a way that distinguishes him or her from other 'interested

parties'. In order to be truly victim centred, the needs of victims must be disentangled from those of the criminal justice system and the offender.

Reparative justice is presented by Wemmers (2017) as a victimological notion with its own terminology, which is intended to distinguish it from restorative justice. Unlike restorative justice, which is a criminological notion and targets the offender's behaviour, reparative justice offers a victim-centred approach to reparation. Reparative justice focuses on the needs and rights of victims rather than the rehabilitation of the offender. Inspired by work with victims of gross violations of human rights, reparative justice is based on three pillars: reparation, procedural rights and procedural justice (Goetz, 2014).

The first component of reparative justice is reparation. The word *reparation* refers to repairing or making amends for a wrong that one has done (Oxford Dictionary, 1989). Reparation encompasses a variety of forms, including restitution, compensation and apologies, which are often found in restorative justice programmes (ECOSOC, 2002; Wemmers & Canuto, 2002). Reparative justice, however, embraces many more forms of reparation than these, including satisfaction, guarantees of non-repetition and rehabilitation (Letschert & Van Boven, 2011; Rombouts & Parmentier, 2009). These different forms of reparation are identified in the *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*, which were adopted by the United Nations General Assembly in 2005. Satisfaction includes a variety of measures, which recognise the victimisation, promote the truth and denounce the crime. This may include public prosecution, as well as an apology from the offender. Guarantees of non-repetition refer to crime prevention and deterrence and include specific measures aimed at reducing the offender's risk of re-offending, as well as more general measures such as legislative changes. The victims' movement is full of examples of victims fighting to change laws in order to prevent what happened to them from happening to others (Garland, 2001). Activism often allows individuals to give meaning to what is otherwise a pointless crime, and regain a sense of control, both of which are important to their healing process (Cyr & Wemmers, 2011; Hill, 2009). Rehabilitation, which includes medical, psychological, social as well as legal services for victims, is also a form of reparation. Victims' recovery relies on recognition of harm and a process of integrating fragmented experiences at a number of levels. Even if acknowledgement is not possible in the criminal justice system, it is possible in other ways, such as through victim support. These many different forms of reparation offer flexibility in order to develop a solution tailored to fit victims' needs and the situation.

The second component of reparative justice concerns procedural rights that facilitate and enable victims to effectively seek and obtain justice. These include practical rights, such as victims' right to information and participation, protection, support and legal assistance (Goetz, 2014). For victims, the criminal justice system can be disempowering (Cyr & Wemmers, 2011). Procedural rights go beyond criminal prosecution and embrace all forms of reparation, including rehabilitation. Victim services offering support and victim compensation programmes must also provide procedural rights to victims. While victims need protection and

support, one has to be careful not to patronise them. Victims have a right to information and want information about available programmes and services so that they can be in control and make their own decisions (Cyr & Wemmers, 2011; Herman, 2003).

The third component of reparative justice relates to procedural justice and includes victims' perceptions of fairness and trust as well as empowerment and healing (Goetz, 2014). Procedural justice emphasises that justice for victims is not just about sentencing; it is also about how an outcome was reached (Bradford, 2011; Lind & Tyler, 1988; Orth, 2002; Wemmers, 1996, 2010). Victims' experiences in the criminal justice system and their perceptions of fairness are important with respect to secondary victimisation. Procedural justice explains a large part of victims' satisfaction with restorative processes (Van Camp & Wemmers, 2013).

Reparative justice focuses on the reparation of the victim and, as a result, it is not limited to the criminal justice system. While certain forms of reparation occur within the context of the conventional criminal justice system, other forms, such as victims' healing or rehabilitation, exist independently of it. This gives it flexibility and allows it to do more to meet victims' needs than what is possible in either restorative justice or criminal prosecution.

Reparative justice shares many similarities with Braithwaite's notion of restorative justice and responsive regulation. For example, both recognise the importance of procedural justice as well as reparation of the victim (Braithwaite, 2002). However, contrary to Braithwaite's responsive regulation, which focuses on changing the offender's behaviour, reparative justice focuses on victims and their needs. In reparative justice, offenders are included only to the extent that they are helpful for the victim's healing process.

3 Not only victims need to heal

Since the eruption of restorative justice programmes in the 1990s, important parallels between restorative justice and transitional justice and peacemaking have emerged. Truth Commissions, such as those established in South Africa, Guatemala and, more recently, in Canada are considered by some to be a restorative justice response to collective victimisation (Parmentier & Weitekamp, 2007). At the same time, Braithwaite's work has also evolved to address peacemaking following mass violence (2002, 2006). In the context of organised violence by the state, shaming is done by the international community as well as local grass-roots social movements (Braithwaite, 2002). When civil society shames state actors for organised violence, it recognises victimisation and validates victims' suffering.

Significantly, in the context of transitional justice and reconciliation much of the research focuses on victims: what is required for victims to heal, such as the prosecution of offenders, truth telling and reparation (Lambourne, 2009; Parmentier & Weitekamp, 2007). Relatively little attention has been paid to the offending or advantaged group and their rehabilitation process as they come to terms with the historic wrongdoing by their social group. Especially in the context of colonisation, where criminalisation of members of the advantaged group is not

an option, all eyes are on members of the historically victimised group. As Regan (2010) argues, members of the advantaged group often expect victims to ‘get over it’ and move on, but the power of a disadvantaged minority to compel social change by itself is limited. Braithwaite’s theory of reintegrative shaming reminds us that reconciliation requires more than truth telling by victims. Healing also requires the active participation of the perpetrating or advantaged group.

However, members of the advantaged group may be reluctant to recognise wrongdoing by their group. The negative emotions associated with acknowledging inequality may motivate members of the advantaged group to deny or legitimise inequality (Ferguson & Branscombe, 2014; Furnham, 2003). While we like to think that human suffering evokes compassion, it cannot be assumed that victimisation will be recognised and acknowledged (Deutsch, 2011; Hafer & Sutton, 2016; Lerner & Miller, 1978; Starzyk & Ross, 2008). Unwilling to accept that the morality of their social group is compromised, members of the advantaged group may be reluctant to recognise wrongdoing (Simantov-Nachlieli, Shnabel & Nadler, 2013). Without acknowledgement, reconciliation is impossible, and perceptions between groups will not change.

A positive group identity is about more than being strong and powerful and includes morality (Simantov-Nachlieli, Shnabel & Nadler, 2013). Acknowledging their collective wrongdoing, members of the advantaged group may feel guilt, shame or remorse as they suffer from a sense of moral inferiority for the wrongdoing committed by their social group (Denis & Bailey, 2016; Shnabel & Nadler, 2010; Wohl & Branscombe, 2005). Reintegrative shaming provides us with a mechanism that assists perpetrators to manage negative feelings, like shame, constructively and in a way that addresses their need for positive relations with others (Braithwaite, 2002, 2006).

Restorative justice emphasises the interconnectedness between people, which is fundamental in the context of reconciliation and healing of inter-group relationships (Llewellyn, 2008). Braithwaite’s notion of reintegrative shaming is important for victims and healing in general because it illustrates how we might overcome inherent resistance to acknowledging wrongdoing and hence recognise victims and their suffering. Without recognition or acknowledgement of victimisation, their healing cannot begin. This is perhaps Braithwaite’s most important contribution with respect to victims.

References

- Bradford, B. (2011). Voice, neutrality and respect: use of victim support services, procedural fairness and confidence in the criminal justice system. *Criminology and Criminal Justice*, 11(4), 345-366. doi: 10.1177/1748895811408832.
- Braithwaite, J. (1989). *Crime, shame and reintegration*. Cambridge: Cambridge University Press.
- Braithwaite, J. (2002). *Restorative justice and responsive regulation*. Oxford: Oxford University Press.
- Braithwaite, J. (2006). Doing justice intelligently in civil society. *Journal of Social Issues*, 62(2), 393-409. doi: 10.1111/j.1540-4560.2006.00456.x.

- Cyr, K. & Wemmers, J. (2011). Empowerment des victimes d'actes criminels. *Criminologie*, 44(2), 125-156. doi: 10.7202/1005794ar.
- Denis, J.S. & Bailey, K.A. (2016). 'You can't have reconciliation without justice': how non-indigenous participants in Canada's truth and reconciliation process understand their roles and goals. In S. Maddison, T. Clark & R. De Costa (eds.), *The limits of settler colonial reconciliation* (pp. 137-158). Singapore: Springer.
- Deutsch, M. (2011). Justice and conflict. In P. Coleman (ed.), *Conflict, interdependence and justice: the intellectual legacy of Morton Deutsch* (pp. 95-118). Berlin: Springer.
- Düinkel, F., Grzywa-Holtén, J. & Horsfield, P. (2015). *Restorative justice and mediation in penal matters. A stocktaking of legal issues, implementation strategies and outcomes in 36 European countries*. Mönchengladbach: Forum Verlag Godesberg.
- ECOSOC (2002). United Nations Economic and Social Council (ECOSOC), *Basic principles on the use of restorative justice programmes in criminal matters*, Resolution 2002/12.
- Ferguson, M.A. & Branscombe, N.R. (2014). The social psychology of collective guilt. In C. Von Scheve & M. Salmela (eds.), *Collective emotions* (pp. 251-265). Oxford: Oxford University Press.
- Furnham, A. (2003). Belief in a just world: research progress over the past decade. *Personality and Individual Differences*, 34, 795-817. doi: 10.1016/S0191-8869(02)00072-7.
- Garland, D. (2001). *The culture of crime: crime and social order in contemporary society*. Chicago: University of Chicago Press.
- Goetz, M. (2014). Reparative justice at the International Criminal Court: best practice or tokenism? In J.-A. Wemmers (ed.), *Reparation for victims of crimes against humanity: the healing role of reparation* (pp. 53-70). London: Routledge.
- Green, S. (2006). The victims' movement and restorative justice. In: G. Johnstone & D.W. Van Ness (eds.), *Handbook of Restorative Justice* (pp 171-191). Cullompton: Willan Publishing.
- Hafer, C. & Sutton, R. (2016). Belief in a just world. In C. Sabbagh & M. Schmitt (eds.), *Handbook of social justice theory and research* (pp. 145-160). New York: Springer.
- Herman, J.L. (2003). The mental health of crime victims: impact of legal intervention. *Journal of Traumatic Stress*, 16, 159-166. doi: 10.1023/A:1022847223135.
- Hill, J. (2009). *Working with victims of crime: a manual applying research to clinical practice* (2nd ed.). Ottawa: Department of Justice Canada.
- Hill, R. (2002). Restorative justice and the absent victim: new data from the Thames Valley. *International Review of Victimology*, 9, 273-288. doi: 10.1177/026975800200900303.
- Koss, M.P. (2014). The RESTORE program of restorative justice for sex crimes: vision, process and outcomes. *Journal of Interpersonal Violence*, 29(9), 1623-1660. doi: 10.1177/0886260513511537.
- Lambourne, W. (2009). Transitional justice and peacebuilding after mass violence. *The International Journal of Transitional Justice*, 3, 28-48. doi: 10.1093/ijtj/ijn037.
- Lerner, M.J. & Miller, D.T. (1978). Just world research and the attribution process: looking back and ahead. *Psychological Bulletin*, 85, 1030-1051. doi: 10.1037/0033-2909.85.5.1030.
- Letschert, R. & Van Boven, T. (2011). Providing reparation in situations of mass victimization. In R. Letschert, R. Haveman, A.-M. De Brouwer & A. Pemberton (eds.), *Victimological approaches to international crimes: Africa* (pp. 153-184). Antwerpen: Intersentia.
- Lind, E.A. & Tyler, T. (1988). *The social psychology of procedural justice*. New York: Plenum Press.
- Llewellyn, J. (2008). Bridging the gap between truth and reconciliation: restorative justice and the Indian Residential School Truth and Reconciliation Commission. In M. Brant-

- Castellano, L. Archibald & M. DeGagné (eds.), *From truth to reconciliation: transforming the legacy of residential schools* (pp. 185-200). Ottawa: Aboriginal Healing Foundation.
- Morris, A. & Maxwell, G. (1998). Restorative justice in New Zealand: family group conferences as a case study. *Western Criminology Review*, 1(1). Retrieved from www.westerncriminology.org/documents/WCR/v01n1/Morris/Morris.html (last accessed 26 January 2020).
- Nelund, A. (2015). Policy conflict: women's groups and institutionalized restorative justice. *Criminal Justice Policy Review*, 26(1), 65-84. doi: 10.1177/0887403413509814.
- Orth, U. (2002). Secondary victimization of crime victims by criminal proceedings. *Social Justice Research*, 15(4), 313-325. doi: 10.1023/A:1021210323461.
- Oxford Dictionary (1989). *The concise Oxford dictionary*. Oxford: Oxford University Press.
- Parmentier, S. & Weitekamp, E. (2007). *Crime and human right (vol. 9), Sociology of Crime, Law and Deviance*. Amsterdam: Elsevier.
- Poulson, B. (2003). A third voice: A review of empirical research on the psychological outcomes of restorative justice. *Utah Law Review*, 15(91) 167-203.
- Regan, P. (2010). *Unsettling the Settler Within*. Vancouver BC: UBC Press.
- Reeves, H. & Mulley, K. (2000). The new status of victims in the UK: opportunities and threats. In A. Crawford & J. Goodey (eds.), *Integrating a victim perspective within criminal justice* (pp. 125-146). Aldershot: Dartmouth Publishing.
- Rombouts, H. & Parmentier, S. (2009). The International Criminal Court and its Trust Fund are coming of age: towards a process approach for reparation of victims. *International Review of Victimology*, 16(2), 149-182. doi: 10.1177/026975800901600203.
- Rugge, T.A. & Scott, T.L. (2009). Restorative justice's impact on participants' psychological and physical health. Ottawa: Public Safety Canada.
- Sherman, L. & Strang, H. (2007). *Restorative justice: the evidence*. London: Smith Institute.
- Shnabel, N. & Nadler, A. (2010). A needs-based model of reconciliation: perpetrators need acceptance and victims need empowerment to reconcile. In M. Mikulincer & P.R. Shaver (eds.), *Prosocial motives, emotions and behaviour: the better angels of our nature* (pp. 409-429). Washington: American Psychological Association.
- SimanTov-Nachlieli, I., Shnabel, N. & Nadler, A. (2013). Individuals' and groups' motivation to restore their impaired identity dimensions following conflicts: Evidence and implications. *Social Psychology*, 44 (2) 129-137.
- Starzyk, K. & Ross, M. (2008). A tarnished silver lining: victim suffering and support reparations. *Personality and Social Psychological Bulletin*, 34, 366-380. doi: 10.1177/0146167207311280.
- Strang, H. (2002). *Repair or revenge: victims and restorative justice*. Oxford: Oxford University Press.
- Strang, H. (2012). Conferencing and victims. In E. Zinsstag & I. Vanfraechem (eds.), *Conferencing and restorative justice: International practices and perspectives* (pp. 83-98). Oxford: Oxford University Press.
- United Nations (2005). *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*. Adopted by the General Assembly on 16 December 2005, A/RES/60/147.
- Van Camp, T. (2014). *Victims of violence and restorative practices: finding a voice*. London: Routledge.
- Van Camp, T. & Wemmers, J. (2013). Victim satisfaction with restorative justice: more than simply procedural justice. *International Review of Victimology*, 19(2), 117-143. doi: 10.1177/0269758012472764.

- Vanfraechem, I. & Bolivar, D. (2015). Restorative justice and victims of crime. In I. Vanfraechem, D. Bolivar & I. Aertsen (eds.), *Victims and restorative justice* (pp. 48-76). London: Routledge.
- Wemmers, J. (1996). *Victims in the criminal justice system*. Amsterdam: Kugler.
- Wemmers, J. (2010). The meaning of fairness for victims. In P. Knepper & S. Shoham (eds.), *International handbook of victimology* (pp. 27-43). Boca Raton: CRC Press.
- Wemmers, J. (2017). *Victimology: a Canadian perspective*. Toronto: University of Toronto Press.
- Wemmers, J.M. & Canuto, M. (2002). *Victims' experiences, expectations, and perceptions of restorative justice: a critical review of the literature*. Ottawa: Department of Justice Canada.
- Wohl, M. & Branscombe, N.R. (2005). Forgiveness and collective guilt assignment to historical perpetrator groups depend on level of social category inclusiveness. *Journal of Personality and Social Psychology*, 88(2), 288-303. doi: 10.1037/0022-3514.88.2.288.