

## Restorative justice: Offering access to justice for victims of gender-based violence\*

*Tim Chapman*

TABLE OF CONTENTS: 1. The critique of restorative justice engaging with gender-based violence. – 2. What restorative justice shares with those who criticise it. – 2.1. A focus on the harm that gender-based violence causes. – 2.2. A trauma informed approach. – 2.3. Aiming to increase victims' access to justice. – 3. How restorative justice has contributed to the critique. – 3.1. The association with mediation. – 3.2. An idealistic view of restorative justice. – 4. Radical engagement with the reality of gender-based violence. – 5. Restorative justice practice based upon radical engagement. – 5.1. Radical engagement is built on evidence. – 5.2. Radical engagement involves recognising the diversity of gender-based violence and of the harm that it causes. – 5.3. Radical engagement involves recognising the diversity of victims and perpetrators of gender-based violence. – 5.4. Radical engagement involves recognising that there is no one restorative process that fits all cases. – 5.5. Radical engagement involves changing the context in which the harm of gender-based violence is addressed. – 5.6. Radical engagement requires a practice that is trauma informed. – 5.7. Radical engagement strives to offer a safe process. – 6. Conclusion.

### *1. The critique of restorative justice engaging with gender-based violence*

In September 2022 a group of 28 individual women and women representing 30 organisations sent a letter to the Scottish Government opposing the Government's proposals to implement Restorative Justice processes in domestic abuse and sexual violence crimes<sup>1</sup>. They described themselves as «a group of violence against women (VAW) organisations and professional individuals working in Scotland who are recognised experts in this field. We work in a range of settings including advocacy and front-line services, the criminal justice system, teaching, research, knowledge exchange and policy. Some of us are survivors of domestic abuse, sexual violence and other forms of Violence Against Women».

Their arguments against the application of restorative justice were based on the nature of the harm that domestic abuse/coercive control/intimate partner violence may cause victims. These crimes are «not one-off events but courses of conduct, whose frequency and severity can escalate over time and reach across private and public space». There are real risks of re-victimisation or serious violence. The letter includes concern over the lack of risk management tools for restorative processes in Scotland.

---

\* The article has been subjected to double blind peer review, as outlined in the journal's guidelines.

<sup>1</sup> <https://www.womensgrid.org.uk/?p=20193> accessed 12 March 2023.

The signatories of the letter are concerned that restorative processes will have a negative impact on women's recovery from trauma and may re-traumatise them. The control and manipulation, which is integral to domestic abuse, «significantly challenges the appropriateness of restorative justice». The women believe with Acorn<sup>2</sup> that apology and forgiveness are the primary method of restorative repair and can be used to inflict further harm and to sustain oppression and control<sup>3</sup>.

The letter concludes that restorative justice fails to see the complexity of women's lives and «may in fact limit women's agency and opportunities for independence and work to the benefit of her abuser» and is «not suitable for the vast majority of sexual violence cases, if at all. It cannot be removed from the overall landscape for women in a patriarchal society».

This letter exemplifies the contentious nature of the discourse concerning the application of restorative justice to cases of domestic violence. Arguments generally focus on the risks that restorative processes may generate: diminishing and privatising what is both a serious crime and a public issue, re-traumatising vulnerable victims and threatening their future safety<sup>4</sup>. Cameron<sup>5</sup>, like the Scottish women who wrote the letter, considers these risks as reckless of women's lives and calls for a moratorium on new restorative initiatives addressing domestic abuse.

These risks are perceived as emanating from a lack of understanding of the nature of domestic abuse among restorative practitioners. They do not know how to engage effectively and safely with oppressive power imbalances, with the subtleties of coercive control, and the complexity of trauma. The critics do not believe that restorative processes engage with what really matters to victims of domestic abuse such as safety, justice, validation and vindication<sup>6</sup>.

There is no other area of practice in which restorative justice is subject to such a severe and uncompromising critique. Restorative justice is not adversarial. Restorative practitioners seek to understand the other and to discover common ground on which to build solidarity. This article seeks to respond to these criticisms respectfully and in a spirit of responsibility.

---

<sup>2</sup> A. Acorn, *Compulsory Compassion: a Critique of Restorative Justice*, Vancouver, 2004, p. 17.

<sup>3</sup> C. Humphreys – K. Diemer – A. Bornemisza – A. Spiteri-Staines – R. Kaspiew – B. Horsfall, *More present than absent: Men who use domestic violence and their fathering*, in *Child & Family Social Work*, 2018.

<sup>4</sup> A. Acorn, *Compulsory Compassion*, cit.

<sup>5</sup> A. Cameron, *Stopping the Violence: Canadian Feminist Debates on Restorative Justice and Intimate Violence*, in *Theoretical Criminology*, 2006, p. 49-66.

<sup>6</sup> J. Stubbs, *Beyond Apology? Domestic Violence and Critical Questions for Restorative Justice*, in *Journal of Criminology and Criminal Justice*, 2007, p.169-187.

Tim Chapman

*Restorative justice: Offering access to justice for victims of gender-based violence*

*2. What restorative justice shares with those who criticise it. A focus on the harm that gender-based violence causes*

Restorative justice does not define gender-based violence as an assortment of offences against the criminal law. Rather it focuses on the harmful impact of these crimes, their injustice and the suffering that they cause. Distinguishing the harm from person responsible for the harm enables practitioners to be rigorous in their condemnation of all forms of gender-based violence. Restorative justice practitioners stand in solidarity with those who campaign against gender-based violence, strive to hold perpetrators accountable and seek to protect victims.

*2.1. A recognition of the systemic nature of gender-based violence*

Restorative justice, unlike the formal criminal justice process, allows not only the harmful behaviour to be addressed but also the context in which it took place. Because of the relational nature of restorative justice, practitioners and participants can become more aware of the presence and risks of imbalances of power in very concrete and specific ways through participation in restorative processes. The time spent with the victim listening and understanding what happened and what matters to her, reviewing with her the risks and benefits of participating in a restorative meeting and ensuring that the meeting is both safe and effective, enables the lived experience of patriarchal structures, institutional sexism, misogyny and rape culture to be rigorously examined and challenged. Addressing the specifics of the harm with the people most affected by it also exposes how the intersectionality of oppressive power structures impact on the experience of the victim and the perpetrator of the harm.

*2.2. A trauma informed approach*

Practitioners in restorative justice are becoming much more aware of trauma and recovery as training in trauma informed practice becomes more available. There is clearly an overlap between restorative practices and trauma informed practice informed by research into this area. Herman<sup>7</sup> outlines a recovery process of safety, the integration of narratives, community and justice which complements the restorative process of designing and facilitating a safe space to tell one's story and to reconnect with others.

---

<sup>7</sup> J. Herman, *Trauma and Recovery: The Aftermath of Violence. From Domestic Abuse to Political Terror*, New York, 2015, *Truth and Repair: How Trauma Survivors Envision Justice*, London, 2023.

### *2.3. Aiming to increase victims' access to justice*

Critically, restorative justice increases access to a lived experience of justice for victims. Given the ineffectiveness of the criminal justice system in relation to gender-based violence, this is an important contribution that restorative justice can make.

In relation to domestic abuse in England and Wales<sup>8</sup> (2021 – 2022), the Crime Survey for England and Wales estimated that 5.0% of adults (6.9% women and 3.0% men) aged 16 years and over experienced domestic abuse in the year ending March 2022. This represents an estimated 2.4 million adults (1.7 million women and 699,000 men). Approximately 25% of women and 10% men have experienced partner abuse since the age of 16 years. Of all crimes recorded by the police in the year ending March 2022, 17.1% were related to domestic abuse.

The number of police recorded domestic abuse-related crimes in England and Wales increased by 7.7% compared with the previous year, to 910,980 in the year ending March 2022. Among the 41 police forces that supplied data in both years, the police made 31.3 arrests per 100 domestic abuse-related crimes in the year ending March 2022, a decrease from 32.6 in the previous year. 6.7% of domestic abuse crimes resulted in charges. The number of suspects of domestic abuse-related crimes referred by the police to the Crown Prosecution Service (CPS) for a charging decision decreased from 77,812 in the year ending March 2021 to 67,063 in the year ending March 2022. 51% were not charged because the victim did not support the action. This compares to a rate of 26% of victims not supporting prosecution for non-domestic abuse crimes. 76.4% of domestic abuse-related prosecutions were successful in securing a conviction in the year ending March 2022. This is approximately 2.7% of women who experienced domestic abuse.

In the year 2020 - 2021, there were 114 domestic murders. 67 victims were killed by a partner or ex-partner (down from 74), 27 were killed by a parent, son or daughter (down from 32) and 20 were killed by another family member (up from 15). Almost half of adult female murder victims were killed in a domestic homicide. Of the 75 female victims, 72 were killed by a male suspect. Only 10% (39) of male homicides were domestic related.

In relation to sexual crime, we will look at the statistics in relation to rape<sup>9</sup>. It is difficult to estimate the number of rapes that occurred, yet were not reported to the police. We can safely assume it by far exceeds the official statistics. The recorded number of rape offences has nearly doubled in the past six years, from 36,320 in 2015-2016 to 70,330 in the year to March. Yet in the past four years, rape prosecutions in

---

<sup>8</sup> Office for National Statistics Overview of Domestic Abuse November 2022. accessed 29 December 2022  
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2022#main-points>.

<sup>9</sup> <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2021-to-2022/crime-outcomes-in-england-and-wales-2021-to-2022>.

Tim Chapman

*Restorative justice: Offering access to justice for victims of gender-based violence*

England and Wales have fallen by 70%. In five years, the percentage of victims withdrawing support for prosecutions has increased from 42% in 2016 to 57% in 2020. In the year to September 2021, just 1.3% of rape cases recorded by police resulted in a suspect being charged (or receiving a summons). This compares to a 7.1% charge rate for all other recorded crimes in the same period.

These statistics demonstrate that the criminal justice system neither assures the safety of women nor offers them effective access to justice. Most women are choosing not to report crimes and, when they do report them, most women choose not to support the prosecution of the case. Victims of gender-based violence need access to forms of justice which enable them to exercise more choice and control over the process.

In conclusion, restorative justice practitioners should be seen as allies of women and partners of those that represent their needs and interests.

### *3. How restorative justice has contributed to the critique*

The proponents of restorative justice must take some responsibility for proving some of the evidence which informs the critique. Two aspects of how restorative justice presents itself to the public provokes legitimate concerns among those committed to protecting women from gender-based violence; associating restorative justice with mediation and an idealistic view of restorative justice.

#### *3.1. The association with mediation*

Mediation is a private and confidential process in which an impartial and neutral third party assists people to resolve conflict. It has proved to be very effective in a variety of contexts including family, workplace, commercial, and neighbourhoods. Victim offender mediation has been the predominant method used in restorative justice in most parts of the world.

From the point of view of the critics, the words «private», «impartial», «neutral» and «resolve conflict» are not compatible with their understanding of gender-based violence. For them gender-based violence is a public issue that is sustained by privacy. They would assert that it is not appropriate in such cases to be impartial in relation to the victim and the perpetrator of such serious harm and certainly not to be neutral in one's position on gender-based violence. Most of all, serious crimes such as rape and domestic violence cannot be conceived as conflicts requiring resolution and/or reconciliation.

### *3.2. An idealistic view of restorative justice*

Restorative justice tends to be promoted as a means of addressing the impact of harmful behaviour on relationships. Much attention is given to building, strengthening and repairing relationships<sup>10</sup>. Practitioners are more comfortable extolling the «power of relationships» than engaging with relations of power.

This generates a real anxiety that restorative justice processes will recreate the dynamics of abuse – harmful and oppressive actions leading to expressions of remorse and apology, forgiveness and reconciliation. In practice, most restorative processes addressing serious gender-based violence are designed to resolve outstanding issues and questions involved in restoring power, control and ending relationships.

In conclusion, the restorative justice movement has not yet fully understood and engaged with the risks inherent in gender-based violence. This article argues that an engagement with the reality of sexual violence and domestic abuse will not only benefit many women but also enable restorative justice develop its understanding of and its responses to a wider range of harmful and unjust behaviours.

### *4. Radical engagement with the reality of gender-based violence*

Giddens<sup>11</sup> describes four «adaptive reactions» to the risks experienced in complex modern societies. The four adaptive reactions are sustained optimism, cynical pessimism, pragmatic acceptance, and radical engagement. One of the reasons that restorative justice attracts criticism is the sustained optimism that springs from its advocates. This positivity is useful when striving to gain the attention of those whose support a movement requires. However, it tends to evade serious inquiry into the social complexities of imbalances and abuses of power.

As a result, sustained optimism is often met with «cynical pessimism». According to Giddens<sup>12</sup> «this presumes a direct involvement with the anxieties provoked by high consequent anxieties». Cynicism both causes and is sustained by inaction. «Pragmatic acceptance» is a strategy for survival «which maintains a focus on day-to-day problems and tasks», based on «the belief that much that goes on in the modern world is outside anyone's control, so that temporary gains are all that can be planned or hoped for»<sup>13</sup>. In practice, practitioners adopt a pragmatic approach to sustain their employment and find themselves engaging in many practices that may be described as restorative but have drifted away from the fundamental values and principles of restorative justice.

---

<sup>10</sup> M. Finnis, *Restorative Practice*, Carmarthen, 2021.

<sup>11</sup> A. Giddens, *The Consequences of Modernity*, Stanford, 1990, p. 134 and p. 137.

<sup>12</sup> *Ibidem*, p. 136.

<sup>13</sup> *Ibidem*, p. 135.

For Giddens<sup>14</sup>, «radical engagement» is «an attitude of practical contestation towards perceived sources of danger. Those taking a stance of radical engagement hold that, although we are beset by major problems, we can and should mobilize either to reduce their impact or to transcend them». It represents an engagement with reality on the understanding that «the production of reality has never been finished, its outcome has never been made decisive. Something is always in the balance. Reality is always in need»<sup>15</sup>. Both the power and control of victims and the responsibility and accountability of perpetrators can be restored. But such a reality is, at least in part, in need of collaborative action between the movement against violence against women and girls and the restorative justice movement.

As Westmarland et al<sup>16</sup> urge, there needs to be a constructive dialogue between feminist academics, activists and practitioners and the restorative justice movement. Restorative justice is currently being applied in many countries. People, who are committed to both protecting victims and enabling them to reclaim and exercise their power, are needed to ensure that restorative processes are safe, trauma informed and effective.

## *5. Restorative justice practice based upon radical engagement*

### *5.1. Radical engagement is built on evidence*

Restorative justice is often criticised for having little evidence for its effectiveness in the area of gender-based violence. Of course, when there is so much opposition, it is difficult to generate enough cases to evaluate. Nevertheless, some brief literature reviews<sup>17</sup> have managed to discover some studies.

Coker's research<sup>18</sup> identified benefits for victims including challenging the perpetrator's abuse and maintaining family relationships. Coker also found some evidence of coercion of women and of the rehabilitation of the perpetrator taking priority over what mattered to victims. McGlynn et al<sup>19</sup> concluded that for victim-survivors who wish to participate, restorative justice may offer the opportunity to have one's voice heard and to experience justice. Kingi et al<sup>20</sup> reported that victims

---

<sup>14</sup> *Ibidem*, p. 137.

<sup>15</sup> J. Berger, *Sense of Sight*, New York, 1993, p. 275.

<sup>16</sup> N. Westmarland – C. McGlynn – C. Humphreys, *Using restorative justice approaches to police domestic violence and abuse*, in *Journal of Gender-Based Violence*, 2018, p. 339-358.

<sup>17</sup> *Ibidem*.

<sup>18</sup> D. Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, in *UCLA Law Review*, 1999, p. 1-111.

<sup>19</sup> C. McGlynn – N. Westmarland – N. Godden, *'I Just Wanted Him to Hear Me': Sexual Violence and the Possibilities of Restorative Justice*, in *Journal of Law and Society*, 2012, 213-240.

<sup>20</sup> V. Kingi – J. Paulin – L. Porima, *Delivery of Restorative Justice in Family Violence Cases by Providers funded by the Ministry of Justice*, Ministry of Justice, New Zealand, 2008.

appreciated being accorded respect and being heard. Based upon her research into the use of mediation in cases of domestic abuse, Pelikan<sup>21</sup> concluded that mediation supported and reinforced processes of regaining power or liberation that were already under way in women's lives, and that the reformation of the perpetrator is rare. She summarised her findings as «Men don't get better, but women get stronger».

These studies offer a glimpse of what restorative justice can offer and what it should avoid. It is important that there is a commitment to expand research-based evidence on the quality and effectiveness of restorative justice in relation to gender-based violence. Keenan and Zinsstag<sup>22</sup> have recently provided a comprehensive research-based study of the value of restorative justice in cases of sexual violence.

### *5.2. Radical engagement involves recognising the diversity of gender-based violence and of the harm that it causes*

Restorative justice is based upon focusing on the harm, suffering and injustice that gender-based violence causes. When considering the application of restorative justice to such offences, practitioners should understand the wide range of types and severity of harms caused by domestic abuse and sexual violence and that such crimes can lead to more serious harm in the future.

There is a wide range sexual offences such as sexual harassment, inappropriate physical contact, indecent exposure, sexual assault, child sexual abuse, incest, and rape. While each involves abuse of power, in other respects they may need different responses. Domestic abuse, according to Johnson's typology<sup>23</sup>, also takes distinctly different forms, situational violence, violent resistance, and intimate terrorism. Furthermore, the harm that these forms of abuse and violence cause may vary. In addition to physical and sexual violence, a victim often suffers psychological oppression through humiliation, «gaslighting», and economic control leading to dependence upon the abuser. In some cases, the abuser may use a form of spiritual abuse in which religious or cultural values and beliefs can be used to control or silence the victim. Physical and/or technological surveillance is a common form of coercive control. In conclusion, there are many variations of how domestic abuse is experienced.

---

<sup>21</sup> C. Pelikan, *Victim-Offender Mediation in Domestic Violence Cases — A Research Report*, United Nations Crime Congress, Ancillary Meeting, Vienna, 2000, [http://www.restorativejustice.org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/RJ\\_UN\\_CPelikan.htm](http://www.restorativejustice.org/rj3/UNBasicPrinciples/AncillaryMeetings/Papers/RJ_UN_CPelikan.htm).

<sup>22</sup> M. Keenan – E. Zinsstag, *Sexual Violence and Restorative Justice: Addressing the Justice Gap*, Oxford, 2022.

<sup>23</sup> M. P. Johnson, *A Typology of Domestic Violence: Intimate terrorism, violent resistance, and situational couple violence*, Boston Hanover, New Hampshire, 2008.



Tim Chapman

*Restorative justice: Offering access to justice for victims of gender-based violence*

Practitioners should understand that these crimes are facilitated by structural power and misogynist beliefs and values and be aware of the impact of imbalances of power and that «bystanders» (strangers and family and friends) may passively or actively support and/or protect the perpetrator or blame the victim.

Practitioners should recognise «secondary victimisation» through how the criminal justice system responds to victims and understand why many victims are reluctant to report offences to the police. The intersectionality of these harms may create conflicts for victims as they may believe that to report a crime may be disloyal and reinforce stereotypes, thus exacerbating their social isolation and invisibility.

Practitioners need to understand the traumatising of victims and the wider harmful impact on those associated with the victims, such as their children. Gender-based violence also has a wider social impact on women causing fear and restricting their freedom and autonomy.

*5.3. Radical engagement involves recognising the diversity of victims and perpetrators of gender-based violence*

Restorative justice practice focuses on the problem of harm and how to restore the damage, loss and violations caused the harmful action. Restorative processes examine each person's relation to the harm and explores how this relation can be transformed. Each person's relation to harm is identified and defined by their lived experience as described by their chosen narrative. Victims may have experienced the same harm, yet they will have different narratives of the experience and what is important to them. Perpetrators may be responsible for the same harm, yet the story which accounts for their actions will be different.

Restorative justice, as its name suggests, is a process of restoring justice. From this point of view the problem of gender-based violence is not «a woman's problem» but a «man's problem». The harm is the man's responsibility and the process places great emphasis on the man's accountability for the harm, for responding to the victim's questions and requests and for taking steps to avoid further harmful actions.

This diversity means that cases of gender-based violence are complex and that a restorative response to such cases must be sensitive to these complexities.

*5.4. Radical engagement involves recognising that there is no one restorative process that fits all cases*

The European Forum for Restorative Justice defines restorative justice as an inclusive approach of addressing harm or the risk of harm through engaging all those

affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved<sup>24</sup>.

The method of mediation is not the only restorative justice process. For instance, the restorative justice paradigm does not see gender-based violence as a conflict to be resolved. Domestic and sexual violence are injustices and oppressive violations of human rights. Restorative practitioners are not neutral about such harmful behaviour. The restorative justice process is not impartial. It focuses on the harm and suffering experienced by the victim so as to recognise and understand the violation and to repair the damage and to alleviate the suffering caused by the harm. In doing so it seeks to develop the accountability of perpetrators and to support their desistance from further harmful behaviour. The restorative process does not aim to achieve forgiveness or apology.

This places a responsibility on the restorative practitioner to design a safe and effective restorative process specific to each case rather than have a standard «fits all» restorative process into which only appropriate parties should fit. While some European countries have restricted the use of restorative justice, many other countries are offering restorative justice routinely in cases of gender-based violence.

For any restorative process to be initiated and completed, there must be evidence of certain conditions being met.

1. All participants must give their permission free from any pressure or coercion and based on understanding accurate information of the process and the risks of participation.
2. The perpetrator must freely and honestly admit responsibility for harming the victim.
3. The facilitator, and, where appropriate the organisation providing the restorative justice service, must have been diligent in assuring that all steps have been taken to ensure the process is safe, just and free from any domination by any participant.

In the spirit of restoring power and control, the practitioner should involve the participants in actively co-designing the process so that they are satisfied that it will be safe, respectful and fair. There are many variables that can influence the design.

The restorative justice process builds the scaffolding which supports strong, safe platforms on which the participants do the difficult and sometimes fearful work to repair the harm. This «scaffolding» structure of practice is grounded in the context and lived experience of harm, is built upon and bound by strong values and is supported by evidence-based principles of practice that generate a positive experience of justice for all parties.

These values and principles apply to every restorative process. However, in engaging with domestic abuse and sexual violence cases, the practitioner must take special care to move at the participants' pace and enable them to have as much control

---

<sup>24</sup> <https://www.euforumrj.org/en/restorative-justice-nutshell>.

Tim Chapman

*Restorative justice: Offering access to justice for victims of gender-based violence*

and choice throughout the process as possible. This helps them to self-regulate their emotions and develop trust in the practitioner.

The values supporting restorative justice enable the practitioner to build trust and to develop relationships based upon respect with participants in a restorative justice process. They also provide indicators of what has been damaged, lost or violated by gender-based violence and of what needs to be restored for each person.

The value of respect for human dignity is clearly violated in a deeply damaging way by any gender-based violence as it often includes the deliberate degradation and humiliation of the victim. The restorative process can offer the victim the opportunity to discharge any shame that they may feel and to place it consciously where it belongs, within the perpetrator's responsibility for the harm. Such crimes are often perceived as a serious breach of the solidarity that women have a right to expect from society, from men, from the criminal justice system and, sometimes, even from their families. The process can restore people's social obligations to each other. Crucially, restorative justice is designed to undo the injustice that the victim has experienced by holding the perpetrator of the wrong personally and directly accountable to the person whom they have harmed. This is achieved by a safe process of dialogue which should be free from any coercive control to facilitate each person to say what they wish. This dialogue is a means to inquire into the truth of what has happened and to reach an agreement on what needs to be done to restore what matters to the victim arising from the experience of being harmed.

Through this practice, values are transformed from abstract concepts to tangible actions and outcomes which restore social relations to how they should be, just, safe, respectful and honest. Restorative justice aspires to make this ideal a reality if only with a small group in one place at a specific time.

#### *5.5. Radical engagement involves changing the context in which the harm of gender-based violence is addressed*

The experience of domestic abuse and sexual violence represents a violation of human dignity and a disrespect of the victim's rights and wishes. This loss of control can be prolonged by continued coercive control, trauma, and shame. The restorative process should be designed to restore power and control to the victim. This requires the practitioner to respect the authority of the victim over her life, narrative and choices.

The principle of inclusion is almost always seen from the vantage point of the authority which wishes to invite a person or social group to participate in a process of decision making or to benefit from a service or resource. The organisation or person who issues the invitation retains the power and control over the activity or resource. The restorative approach transfers the authority as much as possible to the people who choose to participate. Partly this is because being in control of one's choices and

actions is of critical importance to people who have experienced the trauma of a crime in which perpetrators have imposed their power and control of them. It is also based upon a deep respect for their human dignity and for the importance of their lived experience. Above all, restorative practitioners should avoid the attitude that bell hooks<sup>25</sup> warns against: «no need to hear your voice when I can talk about you better than you can speak about yourself. No need to hear your voice. Only tell me about your pain. I want to know your story. And then I will tell it back to you in a new way. Tell it back to you in such a way that it has become mine, my own. Rewriting you I write myself anew. I am still author, authority. I am still the coloniser, the speaking subject and you are now at the centre of my talk».

It follows that the restorative practitioner is in reality seeking the permission of a person to be admitted into their life and for the restorative process to be included in their narrative of overcoming harm. If this approach is adopted, practitioners must strive to be aware of their unconscious bias of being the authority and the expert. This generates a very different orientation to practice, communication and relationship.

The practice of inclusion will be influenced by who has requested the restorative justice process. Referrals may come from the criminal justice system, usually made by a judge, prosecutor or the police. In some cases, a perpetrator of harm may seek to initiate the process. Ideally the process should be initiated by the victim or someone close to the person who has been harmed. However, this source of referral is usually the least common as there are rarely effective systems established to inform and support victims so that they can take the initiative.

Restorative justice initiated by the criminal justice system runs the risk of being offender-centric and less sensitive to victims. There may also be pressure on the practitioner to comply with bureaucratic procedures and professional interests rather than the needs and interests of the participants.

Restorative justice processes initiated by perpetrators need to be approached with particular care in sensitive and complex cases of harm. Perpetrators may wish to sustain a narrative of victim blaming or *gaslighting*<sup>26</sup> to avoid authentic accountability. They may wish to sustain power and control over the victim in subtle or blatant ways. Restorative justice can only take place if the perpetrator takes responsibility for committing an act that caused harm. This does not necessarily mean that guilt of a crime has been proved in court. There are levels of responsibility. So, for example a

---

<sup>25</sup> B. Hooks, *Choosing the Margin as a Space of Radical Openness*, in *Framework: The Journal of Cinema and Media*, 1989, p. 22.

<sup>26</sup> Gaslighting is a form of manipulation that often occurs in abusive relationships. It is a covert type of emotional abuse where the bully or abuser misleads the target, creating a false narrative and making them question their judgments and reality. Ultimately, the victim of gaslighting starts to feel unsure about their perceptions of the world and even wonder if they are losing their sanity, see <https://www.verywellmind.com/identify-and-cope-with-emotional-abuse-4156673>.

process can proceed even when the perpetrator shows little or no remorse if the victim is aware of this and wishes to proceed.

Participants will consider it more respectful (and effective) if the practitioner listens to their account of what happened and understand what matters to them before they seek their permission to facilitate a restorative process with them. The task for the practitioner is to enable the individual to articulate their own authentic narrative of the harm. This is achieved through allowing each person to tell their story in their own words, starting and ending it where they choose.

This requires the practitioner to invite her or him to tell their story. «What happened?» is a more open question than «What happened to you» which places people as victims of events and leaves little space for them to describe their choices and actions. Listening without assumptions and judgements exemplifies the value of respecting human dignity. It sends a message that what happened is more than an *incident*; it is an important *event* because you are important. At this stage the focus is on the facts and understanding the concrete nature of the harm that has taken place. This can begin the process of gaining the trust of the person.

A value-led approach to restorative justice strives to enable participants to discover and act upon their power to participate in a process which leads to the restoration of what matters to them. It supports people to move towards what causes them anger, fear, shame or anxiety with the guidance and support of the practitioner and to work through the distressing experience of harm and to restore themselves by addressing what matters to them.

There are distinctions between harm, the suffering it causes and the injustice that is experienced. While objectively two people can experience the same harm, their suffering and sense of being wronged are unique to each person. It is the narrative of their life before the harm and their values that cause this distinctive uniqueness. This is why premature expressions of empathy can seem superficial to people and lead them to withdraw rather than engage. The story does not always start with the harm or when restorative justice arrived on the scene.

The conversation proceeds to explore the subjective *experience* of the harm to understand its impact on the person's emotions, behaviours and moral thinking. The practitioner is moving at the person's pace towards enabling her or him to formulate the problem to be addressed. This involves assisting the person to articulate in their own words *what matters* arising from the harm.

Rather than fit people into a prescribed process, they are more likely to engage if the process is designed to fit them. The invitation to participate in a restorative process should be compatible and attuned with the narratives of harm of both the victim and the perpetrator. Once you know what matters to the person and what they want, ask yourself, «how can the process be designed to address what matters and what this person wants».

For some, what matters is an experience of justice. For others it is safety. Many want to get their lives back under their control and a significant number wish to relieve

Tim Chapman

*Restorative justice: Offering access to justice for victims of gender-based violence*

themselves of shame. Each of these can be experienced by both the victim and the perpetrator. Often what really matters takes the form of a question. For many victims unanswered questions are very important and only the person who has caused them so much suffering can answer them.

At a restorative meeting, victims are invited to present their narrative of harm and the questions and requests that arise from it. Perpetrators are invited to present their narrative of accountability and the questions and requests that arise from it. Through this process of narrative and dialogue participants have an opportunity to restore their personal integrity and autonomy and to restore just relations with each other (though rarely a resumption of a close personal relationship).

#### *5.6. Radical engagement requires a practice that is trauma informed*

To be a victim of a serious harm such as domestic abuse is often to experience trauma. A traumatic event can be a recent, single event (e.g., violent assault), a single event that occurred in the past (e.g., a sexual assault) or a long-term, chronic series of events (e.g., sexual or domestic abuse). A person who has experienced a traumatic event might develop either simple or complex post-traumatic stress disorder (PTSD). Experiencing a single traumatic event is most likely to lead to simple PTSD. Complex PTSD tends to result from long-term, chronic trauma.

Trauma can be conceived of as a disconnection from or rupture of the elements of life that sustain a person's security and well-being. Trauma can disrupt and disconnect people from the narratives of their lives, their sense of control, their emotions, their values and beliefs and their relationships with others. Being the victim of a harm due to an imbalance of power and the consequent impact of trauma can cause severe psychological pain and overwhelming and distressing emotions such as shame, fear, anger and anxiety. In such circumstances people often seek a variety of methods to reduce the pain and to numb the feelings. These may include self-medication through alcohol and/or drugs, compulsive eating or sexual activity, high risk activities, self-harm, self-blame, violence, avoidance of people and withdrawal from social interaction, and even moving to another country. People who have been traumatised may also experience hyper arousal or hypervigilance for any perceived threat and these responses may result in sleeping difficulties. They may lose belief in a safe and just world, distrust other people and become pessimistic or fatalistic about their future. They often feel different and do not believe that others will understand them. Dissociation, a cognitive process that disconnects a person from their thoughts, feelings, and actions, may leave the victim feeling that they have lost a sense of who they are. Dissociation helps distance the distress of the trauma from the individual and seems to support survival. There is also considerable evidence that many people who engage in patterns of coercive control and violence have themselves experienced

trauma in their lives. If trauma causes disconnection, the response is to restore connection.

According to Herman<sup>27</sup>, the stages of recovery are establishing safety, reconstructing the trauma narrative, and restoring connection to the community. These stages can be integrated into the restorative process.

Post-traumatic growth is defined as «positive psychological change experienced as a result of the struggle with highly challenging life circumstances»<sup>28</sup>. Research suggests that between 30-70% of people who have experienced traumatic harm report positive changes coming out of the experience<sup>29</sup>. Post-traumatic growth is experienced as a greater appreciation of life, as improved social relationships, as greater confidence in one's strengths, and as being motivated by strong spiritual and/or moral values. These combine to generate within the individual's imagination new possibilities in life. This does not mean that the person no longer has distressing feelings such as sadness, anger, or anxiety when they think of what happened. They have a stronger sense of being able to cope with these feelings through a greater understanding of what matters. There are key factors associated with post traumatic growth: a strong support system and a sense of community, openness to expressing emotions, to considering new beliefs and to taking new actions and the ability to integrate the traumatic experience into the individual's life.

The impact of traumatic harm is different for each individual. It is important to be realistic rather than naively optimistic. Growth will not be experienced by every victim and a restorative process is no substitute for therapy. Timing is also important. Some evidence suggests that victims of serious trauma may require two years to be ready for growth.

Ten principles for trauma-informed services for women<sup>30</sup>:

1. Trauma-informed services recognise the impact of violence and victimisation on development and coping strategies.
2. Trauma-informed services identify recovery from trauma as a primary goal.
3. Trauma-informed services employ an empowerment model.
4. Trauma-informed services strive to maximize a woman's choices and control over her recovery.
5. Trauma-informed services are based in a relational collaboration.
6. Trauma-informed services create an atmosphere that is respectful of survivors' need for safety, respect, and acceptance.

---

<sup>27</sup> J. Herman, *op. cit.*

<sup>28</sup> R.G. Tedeschi – C.G. Calhoun, *Posttraumatic growth: Conceptual foundations and empirical evidence*, in *Psychological Inquiry*, 2004, p. 1-18.

<sup>29</sup> S. Joseph – L.D. Butler, *Positive changes following adversity*, in *PTSD Research Quarterly*, 2010, p. 17.

<sup>30</sup> D.E. Elliot – P. Bjelajac – R.D. Fallot – L.S. Markoff – B.G. Reed, *Trauma-Informed or Trauma-Denied: Principles and Implementation of Trauma-Informed Services for Women*, in *Journal of Community Psychology*, 2005, p.461-477.

7. Trauma-informed services emphasise women's strengths, highlighting adaptations over symptoms and resilience over pathology.
8. The goal of trauma-informed services is to minimise the possibilities of re-traumatisation.
9. Trauma-informed services strive to be culturally competent and to understand each woman in the context of her life experiences and cultural background.
10. Trauma-informed agencies solicit consumer input and involve consumers in designing and evaluating services.

It is important that the restorative process enables participants to experience safety, justice, respect and a sense of control over their choices and their environment. The restorative process should generate a space in which people can talk about their suffering on their own terms and be in control of how their experience is presented to others. Through this, victims become visible and their lived experiences are heard, and their questions are answered. The perpetrator observes and listens and is asked to understand the consequences of his choices and actions. This experience may stimulate accountability, remorse and a commitment to avoid harming women again.

Participation in a safe, controlled restorative process can contribute to the individual experiencing their own self-efficacy, and to finding a purpose and meaning to life that leads them to a positive adaptation to their trauma. Sherman and Strang<sup>31</sup> found that restorative processes were especially beneficial to victims of serious harm. Angel et al.<sup>32</sup> measured the effect of participation in restorative processes on post-traumatic stress symptoms in cases of aggravated burglary.

Based upon an understanding of the impact of trauma on an individual, practitioners should consider the following guidance on how they should engage. Let the person take their own time. Avoid hurrying them or the temptation to take short-cuts. Let them lead the conversation. Avoid an over-structured or scripted approach which might seem more like an interview or interrogation than a dialogue. Avoid trying to reassure, to rescue or to solve the problem so that they lose control of what happens next. Listen with curiosity, compassion and courage paying attention to emotions and details that point towards what really matters to the person. Respect and nurture the individual's capabilities, strengths and virtues. Avoid judgement even of the perpetrator or the person's family. Avoid any suggestion that the person should be ashamed whatever they say. Remember – it is not your story. Do not get caught up in the drama.

---

<sup>31</sup> L. W. Sherman – H. Strang, *Restorative justice as evidence-based sentencing*, in J. Petersilia – K. Reitz (eds.), *The Oxford Handbook of Sentencing and Corrections*, Oxford, 2012, p. 215-243.

<sup>32</sup> C.M. Angel – L. W. Sherman – H. Strang – B. Ariel – S. Bennett – N. Inkpen – A. Keane – T. S. Richmond, *Short-term effects of Restorative Justice conferences on post-traumatic stress symptoms among robbery and burglary victims: a randomized controlled trial* in *Journal of Experimental Criminology*, 2014, p. 291–307.



*5.7. Radical engagement strives to offer a safe process*

Restorative justice in cases of gender-based violence can and does result in very satisfactory outcomes for victims, perpetrators and society. Restorative processes can enable victims to reclaim and restore the power and control over their lives that serious harm has violated. The support, through a restorative process, to have their suffering heard and understood, to ask questions and to make requests for reparation may counter the humiliation, disempowerment, lack of information, and loss of control that the harm has caused, and which tends to be reinforced in formal criminal justice processes. Restorative justice can also be effective in challenging perpetrators' attitudes and behaviours which have resulted in serious crimes<sup>33</sup>. Participation in restorative processes may enable perpetrators to take responsibility for their harmful actions and to engage in actions to prevent further harm.

For these benefits to occur the process must be safe and facilitated skilfully. Engaging participants in considering questions of risk and safety enhances and develops the participants' experience of power and control over the process.

The approach to risk adopted in this course is not mechanistic assuming that certain factors are mechanisms for increasing risk of further harm. It is not actuarial, scoring factors to assess the level of risk. The approach is designed to complement restorative values, principles and practices. It is contextual, placing areas of possible concern in the context of the lived reality of the participants and it is systemic, examining how different factors interact to raise or lower risk. It is inclusive and participative, engaging the participants in a co-design process through which they are creating a process that is highly likely to be effective and safe for them. In doing this the practitioner invites the participant to examine potential areas of concern and, where appropriate asks «What if?» looking at various scenarios. The practitioner is stimulating realistic and critical thinking and is acting as a sounding board.

There are two risks that the practitioner must address with the participants: the risk of further harm during or after the restorative process and the risk of what could happen if the restorative process does not go ahead. In other words, there is no risk-free choice.

It is important when considering the merits of restorative justice in relation to serious crime, not to assume that the process will be an alternative to the due process of the law or an alternative to punishment. It can be in addition to prosecution and sentencing. Victim involvement in a restorative justice process following a serious crime can occur at various stages of the criminal justice system including while the perpetrator is serving a custodial sentence.

It is also important not to assume that a restorative justice process always involves a face-to-face meeting. The restorative process can use a range of methods of communication between the victim and the perpetrator. This may include written

---

<sup>33</sup> L. W. Sherman – H. Strang, *op. cit.*

exchanges, video or audio recordings, representatives passing on messages, video conferences, and communication through one-way screens.

The practitioner should engage participants into an inquiry into what needs to be present in a process through which participants can safely address what matters to them. It is useful to consider this stage of the restorative process in terms of co-designing safety rather than risk management. This involves adopting a *design thinking* approach. This methodology involves focusing on complex problems from the participants' point of view and designing a practical process which is technically feasible, economically viable and importantly engages with what is important to the participants.

By now the practitioner should have a shared understanding with the participants of what happened, what matters to them and whether they would like to consider some sort of restorative process. Furthermore, there should now be the foundations of a collaborative way of working. The answers to questions of risk will depend to a large extent upon what matters to each individual. If safety is the overall priority to one person, they will have different views to another person for whom justice is what matters. For many victims, restoring control is very important. So, they must feel in control at each stage of the process and have their choices respected.

Areas of potential risk that should be examined with the victim include the perpetrator's history of violence and abuse and level of responsibility for the harm and restoration, the motivation of both parties to participate in a restorative process, the nature and quality of any current relationship between the victim and the perpetrator and each person's capacity to participate fully in a restorative process. Areas that increase safety should also be identified such as the availability of support, the individual's resilience and courage, protocols designed to protect safety, respect and fairness and authoritative facilitation.

The purpose of co-designing a safe and effective restorative meeting is to change the context in which the harm took place into a context in which there can be respectful and honest dialogue free from coercive control. This involves a plan for the meeting which excludes power imbalances, domination, misogynist and sexist language and behaviours, and anything that could trigger re-traumatisation.

If this is achieved, there is the possibility of a unique meeting between specific people in a specific place for a specific period of time with the purpose of addressing what matters to them through active participation in a fair process of dialogue facilitated by a trained practitioner following agreed protocols which keep participants safe, respectful and honest.

Each of the words beginning with P are the elements that are present at a restorative meeting organised to address and restore social obligations which have been breached. Within each element there are many variations and choices to be made to assure a safe and effective meeting for the victim and the perpetrator of a specific unjust harm or pattern of harmful behaviour over time:

1. people – who should be present to address what matters arising from the harm and to ensure it is safe to do so?
2. purpose – are the participants fully willing to participate and clear about what they want within the restorative process?
3. place – should the participants be in one place? If so, where would be safe? If not, where will they be? How will the space be arranged?
4. period – at what stage of the criminal justice process will the meeting take place, when will all the participants be ready to participate, what time suits everyone to meet and what date?
5. process – will the process be face to face, online, shuttle, etc? What structure will serve the purpose best? Who will speak first etc? Are there things that one person is not willing to talk about? Have the others been informed and are they willing to proceed on that understanding?
6. protocols – what commitments need to be made by all participants to avoid domination, manipulation or intimidation of any person by any participant so that the process will be safe, respectful, and fair and so that all participants can speak freely and honestly? What will be excluded from dialogue (e.g., description of the harm, expression of remorse) and has that been agreed by all parties? What will happen if someone does not comply with these commitments?
7. participation – are the participants prepared fully to say what they want, to ask their questions, to make their requests, to listen and to respond to others' statements, questions and requests. Will their participation be hindered by the impact of trauma? If any obstacles to communication have been identified, have they been attended to satisfactorily?
8. practitioner – do the participants trust the practitioner's ability to keep them safe and support them to say what they wish?

### *6. Conclusion*

This means that each meeting is tailored to address what matters to the victim and to ensure that the victim is safe to participate. This article has argued that there is no one gender-based violence, no one victim, no one perpetrator, and no one restorative justice. It has outlined a series of practices led by the authority, the choices and the permission of victims at every step. As each meeting will be unique, it is a challenge to state that restorative justice is never appropriate for the full range of types of gender-based violence.

This article is also an invitation to those who care about women being safe and becoming stronger to see the restorative justice movement as allies and partners. We are ready to engage radically to restore what has been damaged, lost and violated by gender-based violence and to enable men to become more responsible and more just.

Tim Chapman

*Restorative justice: Offering access to justice for victims of gender-based violence*

\* \* \*

**ABSTRACT:** There is a compelling critique of the application of restorative justice in cases of gender-based violence. This article addresses this critique, arguing that the restorative justice movement should be considered allies and partners of those who campaign against violence against women and girls. Using Giddens adaptive reactions to risk, the adoption of a «radical engagement» approach to restorative justice practice demonstrates that there is no one gender-based violence, no one victim, no one perpetrator and, consequently, no one restorative justice. Practices based upon the authority, permission and choices of victims enable the design and implementation of safe and effective restorative processes tailored to their wishes.

**ABSTRACT:** Vi è una critica incalzante rispetto all'applicazione della giustizia riparativa nei casi di violenza di genere. Questo articolo affronta questa critica, sostenendo che il movimento per la giustizia riparativa dovrebbe essere considerato alleato e partner di coloro che si battono contro la violenza contro le donne e le ragazze. Utilizzando le reazioni adattative al rischio di Giddens, l'adozione di un approccio di «impegno radicale» alla pratica della giustizia riparativa dimostra che non esiste un concetto unico di violenza di genere, di vittima, di carnefice e, di conseguenza, di giustizia riparativa. Le pratiche basate sull'autorità, sul permesso e sulle scelte delle vittime consentono la progettazione e l'implementazione di processi riparativi sicuri ed efficaci, commisurati alle loro aspirazioni.

**KEYWORDS:** violence against women – restorative justice – radical engagement – trauma informed strategies.

**Tim Chapman** – President of the European Forum for Restorative Justice, Affiliated Professor, University of Sassari, [info@timchapman.eu](mailto:info@timchapman.eu)