

CONVERSATIONS ON RESTORATIVE JUSTICE

A talk with Judith Herman

*Albert Dzur**

Judith Herman, MD, is a professor of psychiatry at Harvard Medical School (USA) and cofounder of the Victims of Violence Program, which for 38 years provided trauma treatment, professional training and victim advocacy in a public hospital. Her books include *Father-daughter incest* (1981, 2000); *Trauma and recovery: the aftermath of violence – from domestic abuse to political terror* (1992, 1997, 2015, 2022); and *Truth and repair: how trauma survivors envision justice* (2023). She received the Lifetime Achievement Award from the International Society for Traumatic Stress Studies and is a distinguished life fellow of the American Psychiatric Association.

1 The radical act of listening to survivors

Dzur: You have devoted your career to issues of violence, trauma and recovery that many people do not like to think about. What brings you to these issues and keeps you going?

Herman: Well, I think those are two separate questions. What brought me to it has to do with the fact that I am a World War II baby. I am also a red diaper baby, as we were known then. I am second-generation American. My grandparents fled the Pale of Settlement in Eastern Europe. My parents were investigated by McCarthy. So, social justice has been part of my upbringing.

As for what got me specifically to the issues of gender violence, I had been active in both the Civil Rights and anti-war movements that emerged in the 1950s and 1960s. When the women's movement came along in the late 1960s, early 1970s, I joined a consciousness-raising group, just a few months before I started my psychiatric residency. My first two patients on the inpatient service where I began my training were women who had been hospitalised after serious suicide attempts. Both gave histories of father-daughter incest.

My consciousness-raising group was all white, highly educated, privileged women. But even in that demographic, it turned out that there was a lot of violence and harassment. We became aware of the extent of gender violence once women began talking about what was really going on in their lives. Meantime, the *Comprehensive Textbook of Psychiatry* estimated the prevalence of all cases of incest

* Albert Dzur is Distinguished Research Professor, Departments of Political Science and Philosophy, Bowling Green State University, USA.

Corresponding author: Albert Dzur at awdzur@bgsu.edu.

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Albert Dzur

as one per 1 million. Now, what were the odds that a rookie like me would get two cases in a month if that were true? And when I believed my patients and didn't dismiss them or blame them or scorn them or tell them they were just fantasising, they got better. That really set the course for me.

Dzur: What do you think has kept you with it over time?

Herman: Because I have wonderful colleagues. You can't do this work alone. You'll burn out. You'll just give in to despair. You think you've heard everything, and then there's somebody who is going to blow your mind with something you couldn't imagine that one human would do to another human being. You need to surround yourself with the best, and my colleagues have been wonderful friends and supports and companions. We laugh together, and we play together and we give each other hope.

Dzur: When you have a bad week, they can come forward because maybe they're not having a bad week.

Herman: Exactly, you have a shoulder to cry on. And you know, we get rowdy! We sing together. We do stuff like that.

Dzur: I was struck by a point you make in your new book about listening to people. This is a point about the law, but it also relates to psychology and research methodology. You say that listening is a radical act. I think that's true, but it's also a little odd to think that law and psychiatry haven't been listening to victims. I would like your thoughts on why you think that is so, why there was this kind of repellent attitude on the part of these professionals.

Herman: Well, because we have a patriarchy. When you have deeply ingrained customs of dominance and subordination built into the culture, they're always enforced by violence, but the violence becomes invisible and it's a matter of impunity. If the people who write the textbooks and judge the cases and argue the cases are from the dominant group, they don't want to hear about it.

Over 130 years ago, Freud wrote this paper, *The aetiology of hysteria*, saying early childhood sexual abuse was 'the source of the Nile', as he called it. He wanted to be celebrated as a great explorer. And instead, he was ostracised and shunned. Nobody wanted to believe him.

Dzur: He shelved that line of thinking.

Herman: He canned it. Instead, he theorised that his patients' reports of abuse were fantasies. Not based on evidence, but because he was an ambitious man who didn't want to be ostracised in his profession. That set the course of psychiatry for the next century, basically. Until the women's movement came along.

Dzur: I was listening to an interview with Carol Gilligan the other day, who has also published a new book. She was saying that early in her graduate studies she was interested in adolescent moral development and was digging around and found no studies of adolescent girls. They were just not even there.

Herman: Not even there. Exactly. Kathie Amatniek, who changed her name to Kathie Sarachild, was a classmate and friend of mine. She had been in Mississippi for Freedom Summer in 1964 as a civil rights worker, and she had organised what they called Freedom Schools, where people would get together and talk about their lives. When she became a feminist – she was one of the people who founded New York Redstockings – she wrote a paper that coined the term ‘consciousness-raising’. She saw it not only as a radical method of organising, but also as a method of empirical research. She explained that nobody knows the truth about women’s lives because oppressed people don’t dare talk about what really goes on. So you have to go to the source.

2 Major reform not abolition of the legal system

Dzur: These issues are also reflected in your ambivalence about the legal system. On the one hand, the legal system is an important backstop. Indeed, in your listening to victims, you report that some victims want punishment and want the imprimatur of a legal decision. And yet, on the other hand, the way people are treated in the system is pretty terrible.

Herman: Awful. Traumatizing.

Dzur: I never get the sense that you are tempted by abolitionism, however. Is that because of what you hear from survivors or your own interactions with the legal world?

Herman: No, I think it’s because there is really such a thing as a sociopath. As we are learning in our political system. You need a system of accountability that will set limits on people like that. I don’t think folks like that are ever going to participate in restorative justice. There’s an acronym called DARVO that was coined by Jennifer Freyd, who’s both a survivor and a psychology professor.¹ It stands for deny, attack, reverse victim and offender. And that’s what sociopaths do. Deny, deny, deny, deny, attack, attack, attack. We see this now with the former president’s 91 felony counts. Ultimately, you do need some kind of enforcement capability for justice.

Dzur: I have to say that’s a tricky line to walk along, because there is this kind of macho sensibility to the legal system that isn’t so helpful in other things but may be helpful in going after the sociopaths.

Herman: Yes, I think that’s right. And a lot of the adversarial aspects of the legal system, I think, are subject to modification to make them less toxic.

Dzur: Can you say more about the modifications you have in mind?

Herman: Well, for one thing, the system needs to be integrated. If you have members of the subordinate group equally represented, whether that’s based on race or class or gender or religion, that’s already going to remove some of the

1 See Freyd (1997).

Albert Dzur

toxicity, because the automatic biases will be reduced. One of the survivors I interviewed for my book is an attorney who represents victims of domestic violence. She says she's seen a lot of improvement in the justice system in her state over the past 20 years, because there are now many more women judges.

Also, I think there's a lot of potential for integrating restorative justice practices into a conventional justice system so that it can be the backstop. You can have diversion courts that will motivate more people. If punishment is the metric of success, then you have to give the benefit of the doubt to the perpetrator, because he's facing loss of liberty, so that unbalances the scales. But if you have a different consequence, then you don't need to weight the scales that way.

Dzur: But you want to be able to catch the baddies.

Herman: Absolutely. Even in a college campus situation, where they've been pioneering some restorative justice approaches, they screen out the repeat offenders, the very violent offenders and the ones who commit premeditated acts.

Dzur: Speaking of detoxifying the court environment, you write about an innovative judge, Fernando Camacho. How did you come across him?

Herman: I was introduced to him by Melissa Farley. She's a psychologist in California who runs a non-profit called 'Prostitution Research and Education'. She's an international expert on organised sexual exploitation. That's another thing worth noting: you're not going to do restorative justice with pimps.

Dzur: You could, but it would be quite a process, wouldn't it? How do you think that Judge Camacho came to decide not to sentence prostitutes to jail any longer, but instead to go after pimps, and to work alongside grassroots social services organisations that were helping women get out of that work?

Herman: What he told me was that he'd been on the court for quite a while and had been seeing the same kids coming back over and over, so clearly, whatever he was doing wasn't working. Then, all of a sudden, when his daughter became a teenager, the nickel dropped. He said, 'My god! These are kids! They're my daughter's age!' The pimps would tell the girls to lie and say that they were 18, but it became obvious to him that they were underage. Once he had a teenager in the house, he could recognise that these were teenagers. And he was critical of himself for taking so long to realise it. But there's nothing like actually knowing what a teenager is: understanding how immature and vulnerable they really are, how they're not capable of informed consent.

Dzur: Judge Camacho had a humanising experience. And he really took prostitution cases on as a project, creating the 'Human Trafficking Intervention Court' and telling other judges, 'If you don't want these cases, send them to me'.

Herman: He is an extraordinary guy. The people he met, once he reached out to these more social work-oriented groups, were also very enlightening for him. One of your questions asks about how to humanise the system going forward. I really do

think that it requires people who work in different silos getting together. Everybody's got a piece of the problem, but they don't have all of it. You need legal people, social work people, healthcare professionals, and probably schools all working together.

Dzur: It is tricky, though. A judge is meant to have authority and to know what to do in a certain case. By working with social workers and community groups and operating in the way he does, in a sense he's saying, 'don't know everything there is to know about this. You help me understand.' In my own research, I've found that it takes a certain kind of intelligence for people to be able to say 'I just don't know enough about this' and reach out to others.

Herman: Right, exactly. People get their egos involved. That's true with police too, the way the culture's very macho. But if you want to do trauma-informed policing, you have to think differently. Our programme for years did a lot of police education to help them in their interventions with sexual assault and domestic violence cases.

Dzur: Did you form a profile of the people who got the message? Are there certain people who have a eureka moment and realise, 'Oh, I get it now.'

Herman: I think some of it is generational. When we did the trainings, many of the younger cops were receptive, but they said the old bulls were never going to get it.

Dzur: Many judges have daughters, right? So that can't be the only reason why Judge Camacho turned a corner and began to disapprove of the way he had been ruling previously. When one encounters people like that, one wonders how we can get more people to think and act this way.

Herman: More people like that, yes, absolutely. I think you could start with legal education. You need to integrate more psychological thinking into legal education when you're dealing with interpersonal violence. That sort of thing.

Dzur: And it seems like you like the idea of specialised courts, too.

Herman: I do. When you're dealing with complex problems like substance abuse or commercial sexual exploitation or domestic violence, you can't expect all judges to be up to date on the latest research. And not just the latest research. It's also having the hands-on experience of what it's like to hear the testimony of these people. It's a kind of naturalistic experiment where you're trying new approaches and seeing what the outcomes are: if you divert people with substance abuse instead of locking them up, if you mandate them to treatment, is that going to work?

3 Restorative justice and social consensus

Dzur: Let's talk about restorative justice. You see it as a good thing but, as with the traditional legal system, you have some ambivalence about it. Where do you think restorative justice works well and where do you think it works poorly?

Albert Dzur

Herman: We have some good data on where it works well, mostly from places like Australia and New Zealand, where it's been implemented widely for nonviolent juvenile crime. And I think the reason that works well is twofold. First of all, you have public consensus that this is a serious problem and has to be taken seriously. It's not just, 'boys will be boys'. There must be consequences. But also, there's public consensus that these are young people. They're not mature yet. They deserve another chance to do better. So people don't want to punish them too harshly.

The outcome research that's been done shows pretty good endorsement, both by the harm-doers and the harmed people. They feel that it was a fair process and that they got what they wanted from it. Even there, though, you don't necessarily get apologies and forgiveness. You can get a restitution plan that's acceptable to everybody. But that doesn't necessarily mean a one-on-one encounter.

When you get into violent crime and especially where the crimes are as embedded in the culture as gender violence, racial violence and so on, you're not going to have consensus. In theory, sexual assault is a felony. In practice, unless it's a Black stranger raping a young blonde virgin, it's 'boys will be boys', and 'anyway, why was she wearing that dress'? I don't think you're going to get good accountability when you don't have social consensus that offenders really should face serious consequences, even if they're 'fine young men' or 'pillars of the community'. And the other problem with restorative justice is the lack of a fact-finding mechanism. It depends on the harm-doer's confession. And they have very little incentive to confess.

Dzur: The percentage of sexual violence cases where an offender does something like a plea in abeyance, takes some kind of guilty plea for the purposes of diversion into a restorative justice programme, is just not very high. Is that what you're thinking?

Herman: Right. There was a study done by Mary Koss, a psychology professor at the University of Arizona. She designed what she called the RESTORE programme, which was a diversion programme: she worked with the courts and the District Attorneys to divert a certain number of cases to a restorative justice process. I forget exactly what the percentage was, but it wasn't very large, and most were nonviolent misdemeanour cases like indecent exposure. The actual felony cases, sexual assault kind of cases, didn't make it.

Dzur: Where do you think restorative justice has a place in your trajectory of justice for survivors, which starts with prevention and ends with healing? Where do restorative justice programmes fit?

Herman: I think with young people. Both high school and college campuses are good places to start. The highest risk demographic for sexual assault is 12 to 24.

Dzur: The campus statistics are just terrible: around 25 per cent of college women report unwanted sexual contact.

Herman: At age 18, girls are away from home for the first time. They may not be experienced with alcohol. They don't have their girlfriends watching their back

because they're new in town. They get invited to a frat party. They're so excited. These are supposed to be the best parties, and many frats have a tradition: they spike the punch and they invite naive girls who are easy prey, and they set aside rooms. Some have a tradition of gang rape.

Dzur: The issue of campus geography arises: where can you hang out and drink with people your age? Well, you can't go anyplace public, because you're underage. That means you go to somebody's room, or you go to somebody's frat. You think that campus restorative justice programmes are useful?

Herman: It's a good research lab to see who's a good candidate for restorative justice and who isn't. In some situations, the lines of consent are blurry. Both parties are drinking, both parties are sexually naive, and it wasn't premeditated. I think that sort of situation is much more amenable to repair in an educational framework. In a lot of campuses that have pioneered this, when the harmed person doesn't want a face-to-face confrontation, they do a sort of shuttle diplomacy. What many survivors want is an admission, an acknowledgement, an apology, amends; they want the harm-doer to write a letter of apology and then have a restitution plan. And the restitution plan might involve public education, including taking a course on gender violence, or speaking in a course on gender violence and identifying oneself as an offender. We hope that young people learn from that.

The good news is that most boys don't commit sexual assault. But they're afraid of other boys. They don't want to speak up and say, 'No, this isn't okay.' Making it a much more of a community education project, I think, is more likely to work with young people. They are morally immature; they don't have their frontal lobes fully developed yet. They are still learning things like judgment, insight, empathy, seeing another person's point of view.

Such restorative justice programmes are also less likely to polarise the campus, with his buddies saying, 'she's a slut', her friends saying 'he's a pig', and the administrator saying, 'oh, you poor dear, why don't you take a mental health leave' (and make our headache go away). If he's expelled, which is unlikely but possible in conventional procedures, he's likely to do it somewhere else. He'll be hardened in his attitude, thinking 'it's so unfair'. For these reasons, college campuses seem like good places to develop more restorative justice practices.

Dzur: As a parent, I've been struck in ways that I wasn't growing up, how sex-segregated young people's experiences are. And college campuses are places where those worlds just collide.

Herman: Yes, suddenly intersect for the first time.

Dzur: I don't mean this in an excusing way, even remotely, but only to say that there are many boys who don't know how to behave.

Herman: Absolutely. And their sex education comes from pornography, which is extremely exploitative. As Catharine MacKinnon says, pornography is the theory and rape is the practice. A basic tenet of pornography is that women ask for it. And

Albert Dzur

that's where most guys get their sex education. So yes, there's a lot of educational work to be done.

Dzur: This topic raises the issue of forgiveness. I liked your scepticism about this, because I think that there is a lot of bright-sided thinking about the value of apology. Some survivors never wanted a relationship with the offender and just don't want to have anything to do with them.

Herman: Right! And also, I think it's always just so much easier to pressure the victim to forgive than it is to actually hold the perpetrator accountable. To me, forgiveness is earned by walking the walk, not just talking the talk. Apology is necessary, but not sufficient in my book. It's the beginning, the acknowledgement: apology, and then the amends. Then you see whether it's for real or whether it's just a manipulation.

Dzur: Let's talk about this idea of accountability. Is it the case that survivors want to prevent the harm from being done to others?

Herman: That's what I found in a lot of the interviews that I did. In fact, the 6 out of the 30 people I interviewed who went through the whole criminal justice process to conviction – which was quite an ordeal – said as much. One woman said, 'I just couldn't live with myself if he did this to somebody else'. Another was raped by a boy at a party; she knew him from high school, and he came from quite a wealthy, prominent family. Once she did report it to the police, the detective told her they'd had several previous complaints about this boy. But no one was willing to go forward. When she did choose to go forward, this boy's father called up her father and said, basically, 'how much money do you want'? She kept thinking, 'Well, if somebody else had gone forward before me, maybe this would never have happened to me.'

Dzur: It may be the case, then, that a survivor doesn't really want to have any more contact, because that contact might be hurtful. And yet she might feel a kind of civic obligation, in the spirit of trying to build a better world not just for herself, but for other women, and therefore push forward with a justice process.

4 Community, activism and social change regarding sexual violence

Dzur: Community is an important concept for you. You argue that the 'first duty of the moral community is to support and care for' survivors, beginning with publicly acknowledging harms (Herman, 2023: 131). Indeed, one can even say that a strong moral community is needed to prevent sexual assault from happening. Yet I have to say, as I read your recent book, I made lots of margin notes every time I saw the word 'community'.

Herman: Yes, it's a vague word.

Dzur: Sure, but it wasn't vagueness that motivated my red flag margin notes. It's that everywhere I look in my actual community I see the re-emergence of reactionary patriarchal attitudes that I thought had been flushed out of the system.

Herman: History is a dialectical process.

Dzur: I'm curious where you get your hope in an ideal community when you, just as I, witness this dysfunctional community.

Herman: I think when you work with activists, you see the best of what people are capable of. My mother used to say that activism is the antidote to despair. That's what gives you hope.

Dzur: Yes. In a recent essay by the civil rights lawyer Sherrilyn Ifill, she talks about how shocked she was at the 2016 election, particularly the kinds of attitudes it seemed to let loose. That was my sense too. There was a sudden liberation of reactionary beliefs and feelings: 'Oh, now it's okay to do these things in public, to say these things out loud'. Interestingly, her analysis was not one of despair. It was that this reactionary moment is evidence of just how far we've come.

Herman: Well, that's one good way to frame it. I think Trump's election had everything to do with the fact that for the first time there had been a Black man in the White House. How could we have that? We have half of our country that is basically fascist and has been so since the beginning and since the Civil War has nursed the fantasy that the South will rise again. It wasn't an accident that on 6 January 2021, there were Confederate flags and swastikas in the Congress.

Dzur: Earlier I mentioned negative statistics regarding college student victims of some form of sexual assault. But there are other statistics worth noting, too, such as the unprecedented numbers of women graduating from law school and from medical school.

Herman: Yes, we finally have pretty much parity at the student level, though not at the faculty level. That's progress; when I was in medical school, women were 10 per cent of the class. But the higher you go in the hierarchy of power, the fewer women. Back in the early days of women's liberation, there was a little pamphlet written by Juliet Mitchell, a British psychologist who later wrote a big book called *Psychoanalysis and Feminism*. Her pamphlet was called 'Women: the longest revolution' (Mitchell, 1966). She talked about how when it came to class oppression, the working class was oppressed only in the domain of production. But when it came to patriarchy, women were oppressed in four domains: production, reproduction, sex, and family and childcare. She argued that we needed progress in all four domains. And that was going to be the longest revolution. That was 50 years ago.

Dzur: Do you think that new strategies are needed? Feminism is about as polarising a word in contemporary American political discourse as socialism, it strikes me.

Albert Dzur

Herman: Well, it depends who you ask. It comes back in different guises. Now it's #MeToo, but in some ways #MeToo was a consciousness-raising organisation on a much larger scale than the consciousness-raising that we did 50 years ago.

Dzur: Where do you see feminist organising today? I just don't see much traditional consciousness-raising among college-age women.

Herman: Not in actual practice.

Dzur: Those traditional feminist spaces don't seem to be there.

Herman: That's why I think college campuses need so much more preventive education. For example, young women who have taken a self-defence class or who have taken any kind of preventive education class that actually has role-plays about how to get out of a dicey situation with a date, they do much better. Can you imagine if self-defence was just part of adolescent safety education, like learning to drive?

Dzur: They need to have those as part of the orientation week for first years.

Herman: Because of Title IX prohibitions on sex-based discrimination, colleges are now supposed to have some kind of education about gender violence. But for many of them it's just checking the box. Certain colleges like Northeastern really do it in depth. And they do it in a way that kids are in small group discussions. You can't just have a lecture about this or give a handout; you have to engage people. They have a student-performed, student-authored play called 'The student body' that's performed during Freshman Week. And then the audience breaks into small groups to discuss.

Dzur: I'm an old-school, participatory democrat, so I may be letting my ideology get the better of me here, but I think that student-run organisations have much more capacity for this kind of work than administrative, top-down forms. I'd like to see more student-led organising around restorative justice and sexual education.

Herman: At Northeastern they also train peer educators. And there are studies now with peer educators that do bystander education, and it's quite effective.

5 Voices of hope

Dzur: Last question: what voices that you've heard in your practice and research give you hope for change?

Herman: There's a woman named Rosie McMahan who recently published a book called *Fortunate daughter: a memoir of reconciliation* (2021). I'm allowed to talk about this because she waived her confidentiality privilege when she invited me, and my colleague Emily Schatzow, to present as part of her book launch. I first met Rosie when she was 12. Her mother came to this free storefront clinic where I was working, complaining that her husband was very violent to everybody in the

family, and he'd also sexually abused Rosie. There were three girls and a multiply handicapped boy. The father was severely alcoholic and violent to all of them. I worked with the mom and a little bit with the dad. Eventually she got a restraining order and got him out of the house. Emily worked with the three girls as a kind of support group, and then individually with Rosie for quite a few years through her adolescence to young adulthood. All three girls graduated from college – the first generation to do so in their working-class family.

The father was in and out of the house, but mostly out. When Rosie was in her 20s, he had a heart attack and almost died. Her mom and the three girls went to the hospital to keep vigil at his bedside. He survived, and he was so grateful that he actually got sober. That was hitting bottom for him. He got into treatment. And at a certain point Rosie confronted both parents in Emily's office: her father for abusing her, her mother for failing to protect her. And the parents apologised over and over. That's what I mean by walking the walk. They agreed to do right.

Rosie said that for the rest of their lives, they tried to make it up to her. In that case forgiveness was just spontaneous. She didn't have to work at it. She saw genuine remorse and genuine willingness to make amends.

When the girls all had kids, the grandparents could be involved with the kids. The kids were never left alone with him, but they could have loving grandparents. It's a rare case, but it shows that sort of healing is possible.

Dzur: It shows significant strength of character in Rosie not to just exit. She chose to use her voice rather than exit the family.

Herman: Well, she had to get out of the house for a while; she couldn't stand it there. But when it's your parents or your spouse, somebody you're really close with, it's different from somebody you dated briefly, or somebody you don't know well. He wasn't a sociopath; he was a good provider and, in many ways, a caring parent. He was also out of control and came from a background where child abuse was essentially normalised. She was able to see him as a complicated person, not just as a monster.

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