

RESPONSE

About the relationship between victim support and restorative justice: a response from Victim Support Europe

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When exploring a response to Professor Pemberton's well-considered main paper, it strikes me that the weakness in Weitekamp's thesis (that victim support and restorative justice are natural or frequent competitors) is that its origins lie in the singular focus on victims within justice and the focus on only two of many types of services that may be relevant to victims. In contrast to stated objectives of fostering cooperation between victim support and restorative justice services, I would suggest the focus should rather be on how we should organise ourselves – our nations, societies, services – in order to respond to the needs of victims, minimise the impact of crime and maximise the likelihood that, despite victimisation, such persons can go on to flourish and lead fulfilled lives. It is within that analysis that we may understand where restorative justice and victim support fit and how they should be organised.

Before exploring how such a system might be designed, it may be helpful to name some of the barriers to pursuing restorative justice in the EU, as well as the reasons for competition or pushback. Starting with the EU Victims Directive, I was fortunate enough to be seconded to the European Commission in 2009 to review the 2001 Framework Decision on the Standing of Victims in Criminal Proceedings.¹ As part of that process, I developed the Commission's Proposal for the Victims Directive and actively explored legislative options with respect to restorative justice. Whilst there was clearly evidence of the benefits of restorative justice for victims of crime, I recall a number of concerns that influenced the final proposal on restorative justice. These included:

- The diversity of approaches to restorative justice across the EU and insufficient agreement amongst restorative justice advocates as to what type of restorative justice services should be available in what circumstances. The lack of a clear European vision made it difficult to draft an appropriate obligation and also reduced the likelihood of successful negotiations.

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1 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

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- It was unclear what the cost implications of any obligation would be on Member States. The concern was these could be high and would need to be weighed against the many other proposals that had cost implications (as with other areas of victims' rights, immediate cost arguments tended to be given more weight than long-term benefits).
- It was unclear how many victims would benefit from the measure and whether the size of the beneficiary population was broad enough (that population being specifically victims in criminal proceedings, in which there is an identified offender and both parties are willing to meet). This was relevant in determining the priorities across the whole Directive since it had to be both ambitious and feasible.
- Contrary to victim support, there was pushback from various stakeholders. Some had concerns about its use in domestic violence cases whilst others were concerned about its management and the safety of victims more generally.

The combination of these factors made it challenging to develop a convincing proposal that would align with existing approaches adopted by some Member States, that would not pose too heavy a burden on sceptical States, and would ensure sufficient safeguards and cost limitations. Along with many other priorities, it was determined that the course most likely to succeed would need a focus on the safety of victims through safeguards.

Yet the explanations above don't really explain the distrust that some victim services have towards restorative justice. In the lead-up to the next EU proposal amending the Victims Directive, VSE sought to better understand these issues. Following interviews and surveys, several points were raised:

- *Insufficient standards could risk victims.* The fact that the service brings together victims and perpetrators creates an inherent risk. This heightened concerns about quality controls in the organisation of the restorative justice practice itself, for example, whether practitioners were sufficiently qualified and focused on the welfare of victims in the preparation of the service. Indeed, I would argue that this fact places a need for higher standards on restorative justice compared to victim support.

Another concern is the failure to link victims in restorative justice to victim support services. This is either a missed opportunity to provide wider benefits to victims or in fact a risk whereby the restorative justice practice may increase victims' needs for support but don't actually have the in-house or referral mechanisms to connect victims to that assistance.

- *Biases affect access and delivery of restorative justice.* Many restorative justice services are run or promoted by organisations whose objectives are offender-oriented, such as prison and probation services. This creates a natural bias in terms of how cases are first initiated and a potential bias in the organisation of the restorative justice practice. The driver for initiation will be whether the offender is interested and what advantages they perceive. Only then, for the most part, will a proposal for the service reach the victim. Whilst there are ways to design out biases, this will always be difficult when an organisation's focus will be on the offender. Moreover, by organising the

restorative justice offer in this way, many victims who may be interested in the service never hear about it or are not offered it in an appropriate manner.

- *Strong concerns remain that funding for restorative justice will replace or reduce funding for victim support.* When determining priorities within the victims' field, ministries and politicians have flawed methodologies. They tend to take a short-term approach, looking at immediate costs only and not long-term benefits and savings. They also tend to focus on certain groups of victims and certain sectors such as justice rather than taking a comprehensive approach.

At the same time, the benefits of restorative justice are seen from the perspective of not only gains for victims but also benefits for offenders and reduced costs for the justice systems. The net result is that restorative justice is arguably prioritised based on crime cost reduction (reduced recidivism) and efficiency of justice rather than the welfare of victims. This gives rise to the concern that victims will be pressurised to accept restorative justice, or the system will be organised to move cases out of formal justice into informal, and for some victims less satisfactory, proceedings. In other words, restorative justice will be used for the benefit of administrators, not victims. For those who say that restorative justice doesn't work like this, I can point to the last five decades of victims' policies taking second place to other priorities, not least of which are defence rights.

Overall, given the limited number of victims that restorative justice is likely to reach compared with victim support, and the limited objectives of restorative justice compared with victim support, it seems inevitable that there would be concerns if restorative justice were prioritised over victim support. Put another way, if one were to ask the question as to what is the maximum potential number of victims who would want to benefit from victim support compared with restorative justice (where both are organised effectively across a country) and what are the range of ways that a victim could benefit from those different services, it is difficult to see a circumstance in which restorative justice would serve more victims and provide more benefits. Interestingly, this contrasts with the view set out by McCold and Wachtel (2003) that the needs of victims can only be fully met through an emotional exchange with all relevant stakeholders.

If we agree on the greater potential of victim support compared to restorative justice, any prioritisation of restorative justice over victim support can only be explained as victims' policy being considered a lesser priority to other issues, such as offender rehabilitation and recidivism. This might explain why, for example, in Italy, there isn't a national victim support service for all victims of crime, yet the government seems to be focused on funnelling money towards restorative justice.

It might seem that the above assessment proves Weitekamp's point that victim support and restorative justice are competitors. However, I believe it is more accurate to say that the policy and decision-making mechanisms in the field create the competition. In other words, these two services are naturally complementary to each other, and it is only the design of the system, and the methodologies used to devise solutions, which puts them in competition.

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Over the last fifteen years of seeking to develop effective laws and policies for the benefit of all victims of crime, it has become apparent to me (as reflected in the most recent policies of Victim Support Europe) that the greatest barrier to truly achieving meaningful change for victims is the conceptualisation of victims' policy. Solutions have been developed incrementally, largely driven by passionate people often working on the frontline or who are victims themselves. Services and laws have been set up based on specific and personal agendas to address specific issues in specific contexts. Whether it is competition between restorative justice and victim support, competition between generic and specialist services, or competition between victims of domestic violence, human trafficking, child abuse or any other type of crime, actions for victims have not been developed through a broader societal lens, with a systems-based approach.

In contrast, we talk of justice as a system. We talk about healthcare as a system. We do this because we understand the complexity, diversity and interconnectedness of the issues. We also talk about systems because it reflects the importance we place on the issue, as well as an understanding that despite the many disparate and sometimes competing priorities that may exist, common goals bind our actions and enable us to make decisions which are considered in the best interests of all people using, benefitting from and subject to those systems. Importantly, those decisions should be based on science, research and evidence, not on fixed ideologies and presumptions about the homogeneity of victims and their needs.

In my view, this is the only approach that will result in comprehensive laws and policies and a genuine and full implementation of the many victims' rights, laws and policies that exist internationally. It is also an approach which would see victim support and restorative justice developed complementarily. As long as victims' policies are considered separately within the justice system, and separately in social policies and health systems, and as long as strategies for different groups of victims are developed independently, action for victims will never reach their full potential; they will continue to fail a vast swathe of victims who are not considered important enough to warrant their own policy or strategy or who do not fit within generalised concepts of who victims are. They are not a homogenous group; they are individuals with their own lives and needs who happen to have experienced crime.

It is this approach – the development of disparate solutions solely based on a specific victim group, type of service or type of system (justice/health/social welfare) – which fundamentally drives competition within the victims' field. Professor Pemberton thus rightly considers that 'the relationship between victim support and restorative justice across jurisdictions to be considerably more complex' than one of mere competition revolving around justice.

So how might we, as Professor Pemberton states, 'foster cooperation and synergy between victim support and restorative justice'? As VSE sets out in its discussion paper on Safe Justice (Victim Support Europe, 2023a), the starting point is to define the objectives of the victim system from the perspective of all victims. In our view, the core aim should be to address the needs of victims in order to minimise the harm victims suffer and maximise their resilience to the crime such that they can heal and thrive. To do this requires a clear understanding of:

- the needs of victims;

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- the impact of crime on victims;
- the challenges and barriers they face in addressing those needs; and
- the challenges that society faces in meeting those needs.

Starting with that foundation, solutions should first be developed to be victim-sensitive and to address those needs in the best possible manner. I won't go into lengthy detail on these points, but, in brief, victims' needs can be summarised as the need to be recognised and treated with respect and dignity, the need to be protected from further harm and secondary victimisation, the need to be supported and informed, the need to safely access justice and the need for compensation and restoration. Described in this way, these are needs common to all victims.

However, the design of policies must also take into account that needs, when considered in detail, may be common or different to specific groups. For example, victims of domestic violence will have some needs and solutions which are common to victims of burglary, whilst others will differ. In this way, restorative justice practices for victims of domestic violence may be appropriate but will need to be designed and operated in a different way compared with other victims to address, for example, control and coercion issues.

Equally, needs will change based on the individual characteristics, personal situation, history and experience (nature, type and extent) of crime. Thus, the needs of one victim of nonviolent burglary may be limited (reporting of the crime in order to make an insurance claim), whilst another victim may be traumatised, devastated and unable to live a normal life because they live in a gang area, or they no longer feel safe to leave their home because it is a first burglary or one of many, or maybe they lost a laptop with their life's work on it (a real case I was aware of when developing the Victims Rights Directive).

This understanding of victims' experiences of crime and their resulting needs – an individualised, group and common one – is essential in the design of solutions. It is the basis for developing individual needs assessments, establishing specialised services for different groups of victims as well as support services specialised in supporting all victims of crime (I deliberately avoid the term *generic* here, given its increasing yet incorrect association by some as being less qualified than specialist services). It should also form the basis for the design and adaptation of restorative justice services as well as cooperation with other service providers.

This becomes relevant when examining, for example, the appropriateness of restorative justice in the case of domestic violence. Clearly, there are strong reasons for exercising an abundance of caution when bringing together victims and perpetrators in cases where coercive control can be present. Yet, by recognising that each victim is different, that their experiences will be different and that the crime itself can range from the most serious – taking place over many years using psychological and physical violence – to cases involving a family in distress – and, of course, everything in between – we can begin to explore in which cases restorative justice may be appropriate and what safeguards might be necessary, rather than rigidly assuming restorative justice cannot be used for domestic violence.

It is worth noting that this approach runs contrary to Weitekamp's understanding of the purpose or benefit of victim support. It is not primarily or

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only to mitigate the effects of a bad justice system. In fact, designed correctly (victim support before proceedings, support accompaniment throughout, court-based support, victim expertise in police and prosecution services), victim support enables safe participation in justice – recognising that justice and participation are needs and goals for victims. Understanding these needs and the wide-ranging emotional, practical, financial, physical and many other impacts of crime, solutions should be developed with are victim-centric. As set out by UNHCR in the context of sexual abuse and adopted by VSE's Safe Justice paper, this means:

...a way of engaging with victim(s) that prioritises listening to the victim(s), avoids retraumatisation, and systematically focuses on their safety, rights, well-being, expressed needs and choices, thereby giving back as much control to victim(s) as feasible and ensuring the empathetic and sensitive delivery of services and accompaniment in a non-judgmental manner (UNHCR, 2020: 6).

Victim Support Europe goes one step further and recognises that it may not always be possible to be fully victim-centric because there may be other priorities or circumstances that limit victims' rights. Thus, as mentioned previously, a victim-sensitive approach follows the UNHCR definition, whilst recognising that this should be balanced with the other priorities and goals of individual justice and other systems. In particular, the rights and needs of victims should be equal to and properly balanced with the rights of the defence. Thus, a victim-sensitive approach ensures victim-centric priorities exist, are effective and are balanced with other rights, and guarantees respectful treatment, victim empowerment, well-being and safety.

Taking this approach as the foundation for victims' policy leads to the identification of core methods of implementing a national victims' system. This means establishing in particular:

- a strategic vision and long-term planning relevant to all victims and all aspects of victimisation – in particular a strategy and action plan which integrates specialised strategies for specific crimes, such as domestic violence or human trafficking, and brings together different service providers;
- coordinating infrastructure for planning, law and policy development and implementation at the national and local level – this includes the relevant responsible officials, a coordinating committee (and subgroups) of state and non-state actors that identify legislative priorities and commission actions to develop solutions, local and national coordinating committees of frontline entities that meet regularly to carry out community needs assessments, review implementation and design long-term solutions (coordination agreements, technical infrastructure, development of skilled, trauma-informed personnel in all sectors etc.);
- funding mechanisms: combination of ring-fenced victim funds for compensation and for funding of services (paid through multiple streams, including victim surcharges added on to low-level fines), frontline agencies' budget for victim-focused activities, and victim priorities included in other funding streams;

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- oversight and enforcement mechanisms including victims' commissioners, ombudsmen and the possibility for victims and organisations to appeal or have reviewed decisions relating to victims' rights and services both within an organisation and by the courts;
- evaluation and review by organisations responsible for victims' rights and services as well as at a national level reinforced by regular data collection and surveys.

The consequence of such an approach should be that victim support in all its forms and restorative justice are set up within a wider system of victims' rights and services. Regional- and national-level community needs assessments help identify existing resources, gaps and long-term objectives so that restorative justice and victim support can be developed in harmony. Use of coordination and cooperation mechanisms helps ensure that offers for restorative justice come not only from probation services but also from victim support organisations and other actors. In delivering restorative justice, support is part of the solution – through referral or other means – with the understanding that restorative justice can only offer some but not all solutions. Decisions on how restorative justice is organised, which victims may benefit in what circumstances and following what procedures, are all driven by an evidence-based, victim-sensitive approach.

This at least is theory. In reality, no State has a fully-fledged victims system. Different aspects exist in different countries. There is an increasing move towards victim strategies, coordination structures and more, but there is still a long way to go. To address this gap, VSE has developed a series of policy papers on the establishment of victim support (Victim Support Europe, 2023b) and safe justice systems. The relevance of restorative justice is recognised within those frameworks and provided the foundation for VSE's joint statement with the European Forum for Restorative Justice as well its drafting proposals on restorative justice in its Model Provisions Paper (Victim Support Europe, 2023c), which seeks a much greater and unified development of restorative justice across the EU than ever before.

Until this systems-based approach is embedded in States' activities, Professor Pemberton's position that the relationship between victim support and restorative justice can be understood as one of *competition, antagonism, irrelevance, cooperation* and/or *synergy* remains relevant. Our objectives, taking into account the impact of crime and victims' needs, are to move towards a cooperative frame for victim support and restorative justice. This means identifying the necessary conditions whilst maximising different methods of frame bridging. In other words, it means building our policies and advocacy to move decision-makers, delivery agents and the public in a direction of greatest benefit to the most victims.

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