

RESPONSE

Engaging victims as active citizens in restorative justice

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1 Introduction

In his insightful article, 'Framing the relationship: victim support and restorative justice', Anthony Pemberton (this issue) explores the complex dynamics between victim support organisations and restorative justice in European contexts. He discusses various frames and strategies ranging from suspicion and competition to cooperation and synergy. He also emphasises that fostering cooperation and synergy between the two is crucial not only for the best interests of victims but also for all those involved in restorative justice. In this response, we examine the potential for such cooperation and synergy to be achieved through the active participation of victims as engaged citizens (Dzur, 2015). This involves moving beyond addressing immediate needs to empowering victims as critical architects of restorative practices. By exploring historical contexts, the contemporary state of restorative justice and the role of citizenship, we will consider different ways of creating a flexible and adaptable system that enhances victim participation and promotes synergy within restorative justice frameworks.

2 A lesson from history: common roots between restorative justice and the criminal justice system around stakeholders' involvement

The foundations of restorative justice intersected with the early principles of criminal law in both continental and common law countries (Cardenas, 1986; Humbert & Ludwiczak, 2015; Pollock & Maitland, 1898). This intersection occurred at a time when state involvement in the criminal process was limited and justice was administered by individuals and their communities. During this period, trials were contests between equal citizens (Braun, 2019; Sebba, 1982), with both victims and offenders participating in 'lawyer-free contest' (Langbein, 2003). However, with the transformation of tribal and rural law into a framework governed by a powerful state with stable institutions, the ownership of the conflict by lay participants, and especially victims, was removed (Christie, 1977). As a result, the state and the accused emerged as the only active participants in the criminal justice process, marginalising victims within contemporary criminal justice systems. The

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foundations of restorative justice share similarities with historical forms of criminal justice, in particular reflecting early methods of conflict resolution (Alberstein, 2016). For Howard Zehr, restorative justice is a process that involves those who have a stake in a particular offense to identify and address harm, needs and obligations in order to heal and put things right (Zehr, 2015). It draws on traditions from different cultures and time periods, including the Celts, Maori and Samoans (Consedine, 1995). Restorative justice emphasises the mutual responsibility of all parties involved – victims, offenders and the community – and increases the influence of citizens over institutions that currently prioritise their own interests, while discouraging public awareness and involvement (Braithwaite, 2002; Dzur, 2015; Zehr, 1990). It is not surprising that restorative justice programmes have begun to flourish in Anglo-Saxon countries, where large numbers of Aboriginal people, often marginalised and sensitive to social inequalities, have used these practices (Cario, 2005). However, in the context of participatory democracy (Dzur, 2015), these elements of participation and shared accountability seem to have deviated from the original purpose of restorative justice. The emphasis has shifted from stakeholder involvement to other aspects, such as addressing the immediate needs of victims and offenders.

3 Challenges in realising the potential of restorative justice as a platform for civic engagement of victims

The primary aim of restorative justice, to emphasise the mutual responsibility of all parties involved, as mentioned above, is not always achieved. Three main perspectives are highlighted: prioritising the needs of the victim (Mika, 2004), focusing on the rehabilitation of offenders (Richard, 2009) and acting as an alternative to a criminal justice system that has not involved victims equally and effectively (Daly, 2004).

3.1 A vulnerable victim lacking a pathway to accountability

Despite good intentions, victims' voices are often silenced by the layers of protection that surround them (Holder, 2022). The focus appears to be on addressing the therapeutic needs of victims rather than recognising their role as valuable contributors to justice and decision-making (Mika, 2004). This overprotection runs the risk of transforming the victims from being subjects to being objects (Holder, 2022). By focusing primarily on the individual and interpersonal aspects of crime, restorative justice may fail to address the systemic issues that affect victims' participation and their potential as agents of social change (Mika, 2004).

3.2 Emphasis on rehabilitating offenders rather than empowering victims

Richards (2009) points out that many restorative approaches initially prioritised the needs of offenders over those of victims. Although it aims to reform the criminal justice system through accountability and relationship repair, the implementation of restorative justice often mirrors traditional punitive methods

(Dzur, 2015). Victims may feel coerced into participating in restorative practices and may experience secondary victimisation due to the focus on the offender (Richards, 2009).

3.3 From a criminal justice perspective

From a criminal justice perspective, restorative justice is often seen as a substitute system that offers support to both victims and offenders in cases where the traditional criminal justice system has fallen short (Daly, 2004). In addition, victims often lack the power to choose the course of action, as the decision to pursue a restorative justice process or a court case is usually based on the offender's admission of guilt and the discretion of law enforcement or judicial authorities, which can lead to re-victimisation in a face-to-face setting. Finally, as Elmar Weitekamp has noted, strong victim support systems tend to be associated with a weaker presence of restorative justice practices (Weitekamp, 2002). In France, restorative justice measures are uncommonly employed due to the predominant focus on victim support within the criminal justice system (Griveaud, 2024; Salas, 2001). By prioritising immediate needs, some of these procedures appear to have neglected a crucial aspect of restorative justice: community engagement that not only meets the needs of the victim but also considers their civic participation.

4 Integrating a citizen-victim framework as a means of cooperation and synergy between victims and restorative justice

The traditional approach to victims' participation in restorative justice practices is often restricted to their direct involvement during the proceedings. This limited participation often excludes victims from the broader decision-making process. In this case, it is not a question of victim's civic participation; rather, it is about a strict interpretation of the term participation aimed at satisfying victims' needs. The ideal form of citizen participation is, above all, participation in decision-making. This approach not only addresses their needs for healing and closure but also redefines their role from passive recipients to dynamic contributors in the justice system. Before applying this concept to restorative justice, let us revisit this question: what does citizenship entail in relation to the victim?

The citizen-victim framework refers to a model analysing the role of citizens when they are facing victimisation. Traditional discourses, which often portray victims in a one-dimensional and oversimplified image of weakness, passivity and self-absorption, have been strongly criticised (Simon, 2004). An alternative perspective has emerged which views victims as multifaceted individuals with diverse interests, rights and responsibilities (Holder, 2018; Wemmers, 2017). This perspective is grounded in legal pragmatism, which enhances the sense of accountability of victims and their capacity for active participation in decision-making (Simon, 2004). As active participants, victims engage in the exchange of information, observation and direct and indirect engagement in a discursive and deliberative process (Habermas, 2015). Their participation fosters a mutual understanding in which individuals are treated as genuine persons, rather

than objects of manipulation. Even when victimised, their societal roles should not be diminished. As public actors (Kennedy, 2019), victims articulate a blend of private interests and public values. It is therefore crucial to listen to their voices, not only in terms of their therapeutic needs but also in terms of the valuable contributions they can offer. Citizen-victim participation implies a shift from passive expectations of what should be done for them to active engagement with their responsibilities and duties (Marshall, 2014). As responsible citizens, victims can distance themselves from their own prejudices (Kennedy, 2019) and extend their participation as agents of accountability (Manikis, 2017). Finally, they can help identify miscarriages of justice and failures in the practice of restorative justice, while acting as citizens and aligning public policy with public interests (Bibas, 2006).

When applied to restorative justice, the citizen-victim framework allows for the return to the original meaning of restorative justice, as outlined by Zehr (1990) and Braithwaite (2002). The citizen-victim framework involves a restorative justice approach that emphasises participation and inclusivity, focusing on the process rather than the outcome. This involves maintaining the integrity of the process and ensuring control over the process itself, rather than controlling the final decision (Van Camp & Wemmers, 2013). Inclusive and participatory justice requires the empowerment of victims, enabling them to express their needs and play a role in the process. Empowerment is shown through community involvement and active participation (Aertsen, Bolívar & Lauwers, 2011). Its implementation involves a common self-interest that leads to respect, solidarity and active responsibility for others (Walgrave, 2013). The citizen-victim framework can be seen in restorative justice practices outside of the criminal justice system and within the criminal justice system. An example of this use within the criminal justice system can be found in the Italian Penal Code, amended in 2022, which positions restorative justice as an essential part of the criminal process. This very detailed law allows victims to intervene at all stages of the process and to receive adequate information to be able to decide and actively participate in the process. This participation is crucial to the search for truth and the realisation of democratic principles. Emphasising restorative justice within the citizen-victim framework can enhance the inclusiveness, responsiveness and effectiveness of the justice system. Active responsibility is a virtue of civic participation (Braithwaite, 2004). Furthermore, by being involved before and after the process, victims, along with other justice stakeholders, can act as guardians of restorative justice, ensuring its public benefit and preventing it from being a temporary fix for a broken criminal justice system, all while maintaining transparency. More generally, victim input encourages lay participation and wider civic engagement with the criminal justice system (Dzur, 2015). For restorative justice to fulfil its potential, it must incorporate a more balanced approach that genuinely considers and integrates the needs and voices of victims into its framework. This requires a significant rethinking of policy and practice to ensure that restorative justice not only addresses the symptoms of crime but also empowers victims as central actors in the process.

5 Conclusion

By examining historical contexts, the current state of restorative justice and the role of citizenship, our response aims to emphasise the importance of integrating victims as citizen-victim into restorative justice practice. This integration becomes possible when we consider restorative justice as one of several options for victims rather than as the exclusive choice. The concept of flexible and adaptable justice developed by Kingdon (1984), in which multiple solutions can address the same social problem, is today expressed by a multi-door courthouse. This phenomenon, first proposed by Frank Sander (1976) and later applied to criminal justice, exemplifies this idea in a contemporary era of justice. This multi-door justice system involves different processes and mechanisms representing different goals, values and interests and can be found in both continental and common law jurisdictions. It advocates the integration of restorative justice as a valuable avenue for victim participation alongside other alternatives (Coscas-Williams, Dancig-Rosenberg & Alberstein, 2023). The flexibility of today's multi-door courthouse can enhance victim participation through a range of procedural choices and opportunities for involvement. This empowerment enables victims to act as active participants, choosing the best process for their case. Although the flexibility and adaptability of the system are currently directed towards efficiency and speed of proceedings (Coscas-Williams & Alberstein, 2019), it has the potential to enhance victim participation and promote synergies within the restorative justice framework.

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