

Restorative Justice - Implications for Women Offenders



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Restorative justice is a proposed alternative framework to guide the criminal justice system. It is based on a set of assumptions which differ significantly from the assumptions of our current system. Consequently, a criminal justice system based on restorative justice would have some differences in process, structure, actions and decisions from our current system. I will present major differences between the two approaches and suggest ways that those differences might impact women offenders in particular.

As a very preliminary exploration of these issues, this article is intended to stimulate a discussion rather than provide definitive an-

swers. Restorative justice is a paradigm still in formation and the focus on female offenders is a relatively recent initiative in the field. In both cases we have an opportunity to share and learn from each other as we attempt to give shape to new understandings. While the assumptions which define a restorative system are fairly clear, the details of how those assumptions would be operationalized need to be worked out.

Before exploring the application of a restorative approach to women offenders, it is important to clarify the major differences between our present system and a restorative system. While the purpose of contrasting the key beliefs of the current system with those of a new paradigm is to call attention to the differences, it is understood that any system has subtleties, complexities and jurisdictional variations which do not precisely fit the major paradigm. Many professionals struggle against the current paradigm on a daily basis. However, I believe that these are the assumptions which drive the policy and public posturing of the current system and therefore are the major shaping forces.

Though not exhaustive, the following list identifies key beliefs

upon which our current criminal justice system is based:

- Crime is defined as an act against the state. A crime is a violation of a law, a violation of an abstract concept.
- The offender is accountable to the state for the crime. As a result, the state and the offender are in an adversarial relationship. The tremendous power of the state in this relationship makes it necessary to protect the offender through a system of rights.
- The efficacy of punishment serves the criminal justice system in two ways: a) the threat of punishment deters crime and b) the execution of punishment changes behavior.
- Accountability is equated to suffering. If offenders have been punished, i.e. made to suffer, they have been held accountable. The outcomes of the system are measured by how much punishment was inflicted.
- Victims are peripheral to the process of responding to and resolving the criminal incident.
- The offender is defined only by deficits (the crime) and the victim is defined only by material and psychological losses.
- Crime is entirely the result of individual choices with individual responsibility.

- The criminal justice system plays a major role in controlling the level of crime.

On each of these points the restorative justice model is premised on a different assumption. The following list identifies the corresponding assumptions of restorative justice:

- Crime is defined as an act against another person or the community. Crime is a violation of personal and community harmony. Only when a crime is actually directed at the state (treason, damage to state property, etc.) is crime viewed as an act against the state.
- The offender is accountable to the victim and the community. The state has the responsibility to ensure that the offender is held accountable to the victim and community and that the process of accountability is fair.
- The efficacy of the system is not based on punishment. Offenders may experience suffering in the process of taking responsibility and repairing harm, but not as the primary means to impact their behavior.
- Accountability is defined as taking responsibility for behaviors and taking action to repair harm resulting from those behaviors. The outcomes of the system are measured by how much reparation was achieved.
- Victims, whether individual or community, have a key role to play in the process of resolving the crime.
- Offenders are defined by their behavior **and** by the capacity to take responsibility for their actions and take action to make reparation.

Victims are defined by the losses **and** by the capacity to participate in the process of recovering losses and to begin healing.

- Crime has both individual and social dimensions. Offenders are accountable for their individual choices and communities are responsible for making it possible for offenders to make reparation and pursue a pro-social lifestyle. Communities cannot simply turn their backs to offenders assuming no responsibility. Communities are also accountable for the conditions which contribute to crime.
- The criminal justice system can respond to crime and help repair the harm done, but can have only marginal impact on the level of crime. Crime control is a shared responsibility in the individual, the community and the state and is most effectively achieved through prevention efforts.

In the restorative justice model the purpose of the criminal justice system is to ensure reparation of the harm done to the victim and community to the degree possible. The offender, the victim and the community are active participants in that process of restoring community harmony.

The central issue in this paradigm shift is the definition of accountability. Howard Zehr defines accountability in the restorative justice paradigm, "Genuine accountability means, first of all, that when you offend, you need to understand and take responsibility for what you did ... and offenders need to be encouraged to take responsibility for making things right, for righting the wrong. Understanding one's actions and taking responsibility for making things right - that

is the real meaning of accountability."

In contrast, the punishment focus of the current system emphasizes the consequences of behavior on oneself, not on others. Punishment does not encourage moral thinking, thinking outside oneself, empathy. Martin Wright observes, "Similarly punishment is the mirror-image of crime; a coercive act is met by a coercive response." He notes further, "Punishment makes people think of themselves rather than their victims." In the restorative justice model suffering or punishment is only appropriate if a counter balancing good accumulates to the victim or community. Suffering or punishment for its own sake diminishes community harmony.

The principles of restorative justice are consistent with significant shifts evident in several other fields. In law enforcement the community policing model embodies many of the same principles. In social work the deficit model has been identified as a systemic problem, and practitioners are now developing models which build on strengths instead of identifying weaknesses. In psychology punishment has been rejected as an effective tool for long term behavior change. This nation has made dramatic changes in the past twenty years in the attitude toward the use of punishment in child rearing. In education, medicine, human services and private industry there is a growing awareness that participation and ownership of the process improve outcomes.

Some of the most exciting and important parallels to restorative justice principles are found in feminist theory. According to M. Kay Harris, "Among the key tenants that lie at the core of feminist morality are that all people have equal value as human beings, that harmony and felicity are more important than power and possession and that the personal is political." All three principles are reflected in

the restorative justice model. Because offenders have value as human beings they cannot be simply thrown away. Restorative justice assumes that offenders are still a part of the community. By emphasizing the offender's capacity to make reparation, restorative justice affirms the value of the offender as a human being. Regarding harmony and felicity over power and possession, the restorative justice model makes restoring harmony in the community a higher priority than exercising power over the offender. Consistent with the idea that the personal is political, restorative justice suggests a way of thinking about crime which is similar to the way families and neighbors have often dealt informally with harmful behavior in their midst.

What are the implications of this paradigm for women offenders?

By emphasizing 'power over' the offender, the current system tends to exacerbate feelings of helplessness and lack of control which contribute to criminal behavior among women offenders. The restorative justice model, by emphasizing responsibility rather than power, would create an opportunity to break the pattern of helplessness behavior.

Most writing about women offenders stresses their status as victims as well as perpetrators. Both the victim and the perpetrator in the current model are passive. Things are done to victims by offenders and to offenders by the state. In the current system if a woman has previously been a victim she will often see herself as victimized again by the system, which allows her to avoid taking responsibility. Restorative justice requires that both victims and offenders take action - action which will move themselves and the com-

munity back toward a state of harmony.

Our view of women offenders in the current model is powerfully influenced by deficit model definitions of both victims and perpetrators. The contrast between the current model and restorative justice is expressed by Thorvaldson, "The emphasis ... is not on offenders' needs but their strengths; not on their lack of insight but their capacity for responsibility; not on their vulnerability to social and psychological factors but on their capacity to choose." The focus of traditional rehabilitation is on professional fixing which erodes the sense of personal responsibility and capacity. With women offenders in particular the current system tends to focus on needs and vulnerabilities rather than strengths and capacities. Restorative justice would bring balance to that view by emphasizing capacities as well. By defining victims by their material and psychological losses, the current paradigm tends to trap people in their victim status. Restorative justice acknowledges the experience of loss by victims but focuses on their capacity to recover from those losses.

In a restorative justice model we will raise our expectations of women offenders. We will assume that they have the capacity for some level of healing from past victimizations and for restoring harm done by their own criminal behavior.

One of the best concrete applications of restorative justice available in the present system is victim offender mediation. Mediation is not appropriate in situations of power imbalance or in cases with a history of partner abuse. However, many women offenders are involved in property crimes which are often suitable for mediation. Participation in mediation should always be voluntary. Because most women are socialized to the value of harmony, women offenders are likely to respond well to victim of-

fender mediation. Mediation allows an opportunity to take responsibility in a very personal way. Mediation models a form of communication between parties that is respectful and not based on power, an experience often needed as a first step toward restoration by women caught up in the complexities of victimization and offending. Mediation offers one way to move from the paralysis of guilt to the empowerment of taking responsibility.

In property crime cases the accountability for the offender might take the form of restitution. In the restorative justice model the community would also have a responsibility. The community would be accountable for creating the opportunity for a woman to make restitution. Because unresolved issues in the lives of women offenders may constitute a continuing threat to community harmony, accountability to the community may involve addressing issues such as chemical dependency, employment skills, etc. The use of incarceration for women would be dramatically reduced in a restorative justice model. Incarceration would be restricted to those cases where the only way community harmony and peace can be restored is through separation of the offender from the community for a time.

Because the restorative justice model has so many parallels with feminist theory, its processes and structure will be more intuitive to women offenders than the current structure. The principles of restorative justice are like the principles we use to resolve conflict in healthy families" taking responsibility and making things right. For women that makes sense - 'The personal is the political.'