

Taking Victims Seriously? The Role of Victims' Rights Movements in the Emergence of Restorative Justice†

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Abstract

It is widely accepted in the literature on restorative justice that restorative practices emerged at least partly as a result of the recent shift towards recognising the rights of victims of crime, and increasing the involvement of victims in the criminal justice system. This article seeks to destabilise this claim. Although it accepts that there is a relationship between the emergence of a strong victims' rights movement and the emergence of restorative justice, it argues that this relationship is more nuanced, complex and contingent than advocates of restorative justice allow.

Introduction

One common explanation for the emergence of restorative justice that we are offered in the advocacy literature is that restorative justice has emerged due to a newfound concern with victims' rights issues. Pranis (as cited in O'Connell nd:21), for example, argues that restorative justice has developed partly due to the 'dramatic growth in concern about meeting victims' needs and interests', and Zehr (2002:15) states that 'the theory and practice of restorative justice have emerged from and been profoundly shaped by an effort to take...[the]...needs of victims seriously'.

This notion is rarely critically discussed in the restorative justice literature, however, and appears to have been granted the status of a 'truth' about the emergence of restorative practices. Although Johnstone (2002:81-83) and Doolan (2005:2) raise some doubts about the centrality of victims to the restorative justice campaign, it is widely accepted that restorative justice is firmly grounded within the recent victims' rights movement. Only Garkawe (1999) offers a detailed critique of this assumption from a historical perspective. Drawing on a documentary analysis that traced the emergence of restorative justice in Western criminal justice systems, this article seeks to problematise this claim, and to demonstrate that the relationship between restorative justice and victims' rights is far more complex and contingent than is often implied by restorative justice proponents. This article therefore aims to add to Garkawe's (1999) critique of the frequently recited claim that restorative justice emerged in response to the needs of victims.

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I will make a number of arguments in this regard. Firstly, I will argue that the emergence of restorative justice is more closely connected to the needs, or perceived needs, of victims of serious and/or violent crimes, rather than victims of minor offences, at whom restorative practices are usually targeted. Secondly, I will outline the offender-centredness of a range of restorative justice measures. Thirdly, I will argue that victims' rights movements are heterogeneous, and that any one approach – such as restorative justice – could never adequately address the concerns of all victims of crime. Fourthly, this article argues that the limited political authority of victims and victims' groups restrict their capacity to alter criminal justice paradigms in dramatic ways. Finally, I will argue that the emergence of victims' rights movements was itself a result of a number of contingent historical events.

Victims and Involvement in the Criminal Justice System

The push for increased rights for victims of crime, the development of victims' groups and the raising of awareness regarding the neglect of victims by criminal justice processes have largely occurred due to the actions of – or on behalf of – victims of *serious and/or violent* crimes. As Weed (as cited in Fattah 1998:6) points out, victim advocacy has tended to focus mainly on offences such as homicide, sexual assault, domestic violence, child abduction and child sexual abuse. Well known victims' groups such as Homicide Victims Support Group, Ebony House, Enough Is Enough and various branches of Victims Of Crime Assistance League have, for example, been activated by high-profile crime victims, including the parents of murder victims Anita Cobby, Ebony Simpson, Michael Marslew and Grant Cameron. This is undoubtedly the case in many jurisdictions – victims' groups such as the United States of America's Parents of Murdered Children and New Zealand's Sensible Sentencing Trust have similar origins, for example. It is therefore from victims (or surviving family members of victims) of *serious* crimes such as murder, manslaughter, driving offences occasioning death, armed robbery, sexual offences and serious assaults that we most often learn about the plight of victims of crime. In recent decades, the publication of a number of books by friends and family members of crime victims (see, e.g., Balding 1995; Sheppard 1991), as well as a number of edited collections containing the stories of crime victims (see, e.g., Giuliano 1998; Hammett 2000; Neiderbach 1986; Zehr 2001) have, in addition to media coverage, allowed the public a degree of insight into the suffering of victims. Often, it is from these victims of violent crimes that we hear of the neglect and mistreatment of victims by the criminal justice system, and their "re-victimisation" by the courts. Likewise, it is often from victims of serious crimes that the call for greater involvement in criminal justice procedures has come. An often-cited example comes from a victim of kidnapping who, before the Presidential Committee created to research the status of victims of the US, cried 'why didn't anyone consult me? I was the one who was kidnapped, not the state of Virginia' (as cited in Erez 1991:2; and Strang 2002:9). Expressing this same sentiment, crime victim Dolman (2001:144) says of 'his' offender's court case:

The charges were pressed in the name of the Queen, her Crown and dignity, and I was just a witness. I didn't like that bullshit – this happened to me. It didn't happen to the fucking Queen! I was always a bit pissed off about that.

Both Giuliano's (1998) and Hammett's (2000) collections of crime victims' stories, furthermore, contain numerous examples of victims of serious offences who have been outraged at the lack of opportunity for victims to participate in the criminal justice system (see also Miles 1995:193; Strang 2001:79). This lack of opportunities for victims to take

part in criminal justice proceedings is even reflected in the names of a range of victims' groups such as VOIC (Victims and Offenders In Conciliation) and VOCAL (Victims Of Crime Assistance League), which allude to victims' experiences of feeling silenced. Again, however, these groups primarily consist of victims of serious, personal crimes.

Significantly, this demand for greater participation has *not* come primarily from victims of minor or property offences. It is not common to hear a victim of car theft, for example, demanding to be involved more fully in the criminal justice process, or to come across a book of the same nature by a member of the public whose letterbox has been knocked over by a gang of bored youths. Furthermore, a body of research has indicated that victims of less serious offending often do not wish to become involved in the criminal justice system. Research conducted by Gardner (1990:49) on crime victims in South Australia, for example, found that most wanted no involvement with the criminal justice system, or wished only to be kept informed of developments. Gardner (1990:50) found that the reasons victims gave for not wanting to become involved included: being 'too busy'; feeling that there was 'no point'; or that the offence was too minor, and; that it is the police/authorities' job to be involved, rather than the victim's.

Other Australian research conducted by Cook et al. (1999:5) similarly found that with the exception of sexual assault, the most frequently cited reason for victims not reporting crime to the police was that the offences were 'too trivial/unimportant'. Research in Britain by Hoyle et al. (1999:3) into the views of victims invited to make victim statements similarly found that victims' reasons for choosing not to do so included wanting to forget about the offence or feeling that 'the offence was not sufficiently serious'. More pointedly, a survey conducted by O'Brien (as cited in Reeves 1989:50) to ascertain victims' interest in meeting with 'their' offenders found that 'those who thought the offence was a minor affair could see little point in pursuing the matter' (Reeves 1989:50). Similarly, Coates and Gehm (1989:252) report that victim offender reconciliation programs in the US often had victims choosing not to take part because 'the loss did not merit the perceived hassle of involvement' (see also Galaway 1989:104; Marshall & Merry 1990:108).

Bearing in mind that individuals' responses to an offence are idiosyncratic (Cook et al. 1999:18; Fattah 1998:6; Zedner 2002:429-431), and that a 'petty' crime to one person may be experienced as a major ordeal by another, this research seems to indicate that generally speaking, victims of less serious offences may have little interest in becoming involved in the criminal justice system. The notion that *all* victims of crime want increased involvement in criminal justice processes is therefore contestable, particularly in regards to victims of petty and/or property crimes.

It must be noted, furthermore, that for juveniles – who restorative justice is most often applied to – the majority of crimes fall into this category. There are far fewer personal crimes such as murders and sexual assaults committed by juveniles than property crimes, such as theft and graffiti (Cunneen & White 2002:67; Newburn 2002:542; Richards 2009a; Wundersitz 1996:128).

Victims and Restorative Justice

Restorative justice – which supporters claim has emerged in response to victims' calls for increased participation in the criminal justice system – deals primarily with crimes at the *minor* end of the spectrum. Although this is certainly not always the case, restorative justice programs are most often used at the 'shallow end' (Garland 2001:169) of the system – that

is, in cases of juvenile or minor crimes as a diversionary measure (Bottoms 2003:102, footnote 35; Daly 2003:238; Griffiths & Bazemore 1999:262; Home Office 2003:30; Pavlich 2005:1; Volpe & Strobl 2005:528). As Daly (2003:238) states, restorative conferencing is often thought to be more appropriate for juvenile offenders *precisely because* youths generally commit less serious offences than adults. Historically, some restorative justice programs were developed to deal exclusively with property offences such as theft, burglary and vandalism, as Gehm's (1986) *National VORP* [Victim Offender Reconciliation Program] *Directory* demonstrates. The Northern Territory's original pilot conferencing program, which had been initiated to divert petty juveniles from the court system, even involved one conference for three juveniles who had been charged with vandalising a letterbox (Fry 1997:58).

Furthermore, although restorative justice measures have been applied to a vast range of offences including sexual assault, domestic violence and even murder, there is certainly not universal support for their application in crimes of violence. Clarke and Davies (1994:169), for instance, argue that restorative processes are 'suited to less serious or non-violent types of crime. It is not considered an appropriate process for serious or violent crime ... it is an implausible process where murder, rape or serious assaults are involved'. Pranis (2004:152) also acknowledges that early practitioners of restorative practices assumed that processes such as victim offender mediation 'would never be used in cases of serious violent crime' (see also Goodyer 2003:197-198; New Zealand Ministry of Justice 2003:36). While this is certainly not always the case, with a number of restorative justice proponents declaring their support for the use of restorative justice in crimes of violence (Arzdorf-Schubbe 2000:11; Immarigeon 1993, 1996; McLaughlin et al. 2003:12; Umbreit 1989; Umbreit et al. 1999; Umbreit et al. 2001; Umbreit & Vos 2000), this does indicate that the 'victims' of the victims' rights movement, and the 'victims' asked to participate in restorative practices may be entirely separate groups of individuals.

The assertion that restorative practices emerged in response to a growing concern for victims of crime can therefore be challenged on these grounds. If restorative justice was in fact a response to victims' calls for increased involvement in the criminal justice system, surely restorative measures would be targeted towards victims of violent crimes, who most frequently campaign for increased involvement in criminal justice processes. Instead, restorative justice is most often applied in cases of less serious offending, whose victims, as the research outlined above shows, often do not wish to participate in criminal justice matters.

Consider the following remark by highly-regarded restorative justice advocate Jim Consedine (1995:103) in this regard:

The surprising thing is that victims, who so often call for more blood in traditional Western justice systems, in New Zealand [under the family group conferencing scheme] frequently plead with the police to waive punishment and 'give the kid another chance'.

It appears that here, Consedine is overlooking the fact that the victims who 'call for more blood' and the victims who wish to 'waive punishment' are probably two separate cohorts of victims. As described above, victims of minor crimes are unlikely to cry out for vengeance in the manner described by Consedine (1995:103). Rather, it is more likely that some victims who have experienced violence or other serious crime might respond in this way. By the same token, it is more likely that victims of less serious crimes would consider waiving the punishment of an offender than victims of serious, violent offences. Certainly, this is likely to be the case where protection of the public is an issue. It is not surprising that those victims who participate in New Zealand's family group conferences are not vengeful,

as many would be victims of less serious, juvenile crime. Significantly, Maxwell and Morris' (1993:79) early research on family group conferencing in New Zealand found that in addition to not being invited to attend conferences, and conferences being held at inconvenient locations and times, some victims did not wish to become involved because they were too busy or uninterested. This challenges the view that all victims want to participate in the criminal justice process, and also further demonstrates the minor nature of offences for which family group conferences are often convened.

Immarigeon (1993:5) similarly argues that 'victim groups have increasingly embraced victim-offender meetings as a vital aspect of meeting victim needs', suggesting the victim impact panels instigated by the American group Mothers Against Drunk Driving as an example. Certainly, it appears that in a small number of instances, restorative justice programs have been initiated by victims' groups (Immarigeon 1993:5; 1996:467). Additionally, a number of crime victims have detailed their mission to meet with an offender, despite being wholly unaware of the existence of this type of procedure (see, e.g., Jaeger 1983; Pranis 2004:152; Swift 1994; Vogt 2001). It is important to recognise, however, that these are victims of very serious crimes – or family members of deceased victims – and that such support for restorative justice cannot be taken as evidence that *all* crime victims are supportive of restorative justice. Here, both Consedine (1995) and Immarigeon (1993, 1996) erroneously assume that crime victims are a unified group. Strang's (2002) work provides another example of this. In a section titled 'What Do Victims Want?', Strang (2002:8) lists, among other items, that victims 'want a less formal process where their views count'. The bulk of evidence used by Strang (2002:8-10) in support of her claim, however, comes from victims of serious offences, such as sexual assault.

Importantly, even Zehr's (1990) restorative justice 'bible' (O'Connell nd:18; see also Pranis 2004:152), *Changing Lenses*, is predicated on much the same notion. Zehr (1990:24) consistently portrays victims as a homogenous and essential category, by declaring, for example:

What is often overlooked is that victims of offenses which we consider less serious may experience similar reactions [to victims of serious offenses]. In describing their experiences, victims of burglary often sound much like victims of rape. Victims of vandalism and car theft report many of the same reactions as victims of violent assault, though perhaps in less intense form (see also Zehr 2003:69).

Indeed, much of Zehr's (2003, 2002, 1990) support for restorative justice appears to be based on what he sees as the needs of the 'essential' crime victim. Claims that 'victims need opportunities to express and validate their emotions' (Zehr 1990:27), and that victims 'want to be informed and ... consulted and involved' (Zehr 1990:29), for example, contradict the research findings outlined above, which indicate that victims of less serious offences – those who are most often asked to participate in restorative fora – often have little desire to become involved in the criminal justice process. Contrary to Zehr's (1990:29) claims, therefore, one might consider that crime victims do not experience 'nearly universal' reactions to victimisation, irrespective of the seriousness of the offence.

It must also be pointed out that the cost of juvenile crime is much less than that of adult offending. Losses suffered as a result of theft offences, for example, are typically less when these offences are committed by juveniles (Cunneen & White 2002:67). At the same time, juvenile offenders are also much less likely to be in a position to offer restitution to their victims (Marshall 1996:24). Additionally, in a number of American jurisdictions, victims can even be required to pay a fee for victim offender mediation (Umbreit et al. 2001:11).

This further calls into question the notion that restorative practices emerged in order to assist victims of crime.

Victims' Willingness to Participate in Restorative Justice

Proponents of restorative justice might cite research on victims who have participated in restorative programs to counter my argument here. Indeed, a common claim in the advocacy literature is that victims are usually very willing to take part in restorative fora. Pranis (2004:148), for example, claims that 'a qualitative study of a community circle program in a suburban community found that victims in the circle process ... welcomed the opportunity to participate in the justice process'. The typical case in this program, Pranis (2004:148) tells us, was a pre-charge juvenile misdemeanour. This research would seem to indicate victims' willingness to take part in criminal justice procedures, even in cases of very minor offending. Claims such as these, however, are based on studies of victims who have *already* participated in such procedures, not the total cohort of victims; they are therefore not indicative of crime victims more generally (see also Roberts 1995:iii-v). Of course victims who have taken part in restorative procedures report that they were happy to become involved – it would make little sense to suggest otherwise. Assessing whether victims who have already agreed to participate in a restorative process were willing to participate is tautological.

Wemmers and Cyr's (2004) study of a mediation program for juvenile offenders in Montreal sought to avoid this bias by interviewing a sample of victims who had been asked to participate in the program, irrespective of whether they had ultimately agreed to participate. Although victims who had declined to participate were under-represented in the study – presumably, those who don't wish to become involved in restorative procedures do not wish to be involved in their evaluation either – the results are relevant in regards to this discussion. Wemmers and Cyr (2004:267) discovered that a range of reasons were given to account for victims' refusal to take part, including 'because they did not have the time or interest to invest time in a mediation session'. Hill's (2002) similar study of non-participating victims in Thames Valley restorative meetings produced similar results. Hill (2002:277-278) found that victims often declined to participate in restorative cautions because they thought the police should deal with the problem rather than themselves. Both these studies appear to support Gardner's (1990) finding that victims of minor offending – those most often called upon to take part in restorative measures – often do not wish to become involved in criminal justice processes.

The Offender-Centredness of Some Restorative Justice Measures

There are a range of indications that, historically speaking, restorative practices were designed to reform offenders rather than assist victims. In their early evaluation of family group conferencing in New Zealand, for example, Maxwell and Morris (1993:75) found that victims attended less than half of the conferences conducted (see also Renouf, Robb & Wells 1990:32). One third of victims who did not attend even claimed that they were not invited to attend 'their' conference (Maxwell & Morris 1993:79). For many of these victims, participation in a family group conference was impossible due to the conference being held at an unsuitable time and/or location (Maxwell & Morris 1993:79; Renouf et al. 1990:32). More recent research has indicated that low levels of victim participation have also occurred

in Britain. Newburn et al. (2001:vii) found that following the introduction of youth offender panels into Britain's juvenile justice system, victims attended less than 7% of panels, and Hoyle (as cited in Daly 2004:504) reports that only 14% of victims attended Thames Valley's restorative sessions. Similarly, the South Australian restorative justice scheme for juveniles was reported to have had less than 50% victim attendance (Blazejowska 1996:19). While this apparent lack of concern for victims could quite possibly be the result of fiscal and/or temporal pressures on conference organisers, it also indicates that victims were not considered to be an integral component of a family group conference. Rather, it appears that the attendance of the offender, and the offender's family and supporters, was held in much higher regard. Although in many localities, the role of victims is being given greater consideration – as evidenced by amendments to New Zealand's restorative justice legislation, for example – this shows that historically, restorative justice initiatives did not always attempt to address victims' concerns with traditional criminal justice procedures.

The celebrated Wagga Wagga juvenile conferencing program is another potent example of the way in which victims' concerns – despite being advanced as the impetus for restorative justice, even by the program's instigator Terry O'Connell himself (as cited in O'Brien nd:13; O'Connell nd:21) – are barely addressed. Consider, for instance, O'Connell's (as cited in Morton 1999:12) description of the first conference he facilitated, which involved four youths who had stolen a motorbike and caused \$1000 damage:

I got the four offenders and their families into a room with a whiteboard and asked them some simple questions: what had they thought about when they stole the bike, what had they thought about since, who had been affected by the crime and why? Then I brought the owner of the bike into the room. That was the last thing they were expecting.

Elsewhere, it is revealed that although this process was quite a 'success', with the young offenders and the victim discussing their mutual passion for motorbikes as they left the police station (Moore & Forsythe 1995:18; O'Connell 1998, nd:35), the victim originally 'took some persuading' (Moore & Forsythe 1995:18), and participated only 'reluctantly' (O'Connell nd:35). It appears from this description of the conference that the purpose of the victim's participation was to shock or scare the youths into leading law-abiding lives in the future, rather than to personally benefit the victim as such.

Subsequent to this first conference, many of the early conferences conducted as part of the Wagga Wagga scheme were facilitated in cases of 'victimless crimes' such as adolescent marijuana use (Moore & O'Connell 1994; O'Connell 1992). The use of restorative procedures to address 'victimless crimes' is, furthermore, by no means limited to the Wagga Wagga scheme. Maxwell and Morris (1993:118), for example, found that during the period researched by them, 13% of conferences convened in New Zealand had no identifiable victim. There is also evidence to suggest that the scheme that ultimately replaced the Wagga Wagga program in New South Wales utilises conferences in instances of 'victimless crimes' (Youth Justice Coalition of New South Wales 2002:vii). Further, Arzdorf-Schubbe (2000:5) cites an evaluation of community conferences in Minneapolis, which focused largely on 'victimless crimes' 'such as drug possession and dealing, graffiti, and soliciting prostitution', and claims that restorative community conferences are typically held in cases such as these (see also Delgado 2000:111). Indeed, Roche (2003:638) recounts that a restorative justice program he visited in the US was devoted almost entirely to the issue of public urination. Additionally, a substantial number of early programs, including the celebrated Victim Offender Reconciliation Program, focused on 'corporate victims' rather than individual, personal victims (Dignan 1992:458; Dittenhoffer & Ericson 1983:328; Marshall & Merry 1990:93). This, in addition to the above examples, demonstrates that –

although some programs are victim-centred, and were even initiated by victims' groups (Immarigeon 1993:5, 1996:467) – restorative justice procedures do not routinely seek to overcome the lack of victim participation in criminal justice that advocates frequently identify as an inadequacy of the system that restorative justice emerged in response to.

In fact, it appears that usually, offenders are taken as the 'starting point' for restorative processes. By this, I mean that criteria used to determine a particular case's suitability for a restorative process, rather than a traditional criminal justice process, focus on the offender and/or the offence. Restorative justice programs might operate to divert from the formal system certain categories of offenders, such as first-time offenders or those belonging to a particular age group, for example (see Dignan 1992:454). In the Northern Territory, for example, under the *Youth Justice Act*, conferencing is one of several programs used to divert young offenders from the criminal justice system. Similarly, Wemmers and Cyr's (2004:264) study of a mediation program in Montreal indicates that in this program, cases are selected on the basis of the seriousness of the offence, and the offender's record (see also New Zealand Department for Courts nd:4). Victims are therefore not the 'starting point' or focus of these initiatives. Rather, victims will be contacted only where 'their' offender fulfils certain criteria unrelated to the victim. This is made very clear by Booby's (1997) proposal of a restorative justice scheme to be operated by the New South Wales Department of Corrective Services. In this proposal, we are told that in determining the suitability of an offence for a conference, the following steps would be necessary: '(a) interview and assess the offender; (b) obtain the offender's written agreement to participate in the conference; (c) interview and assess the victim; (d) obtain the victim's agreement to participate in the conference' (Booby 1997:28). If restorative justice procedures were designed primarily to assist victims, however, one would assume that assessment criteria for participation would focus on the victim rather than the offender (see Reeves 1989:48).

Furthermore, in many restorative programs, victims may be represented by a friend, relative or member of a victim lobby rather than taking part themselves. This is the case, for example, under New Zealand's *Children, Young Persons and their Families Act 1989*. Offenders, however, cannot send a representative to participate in a restorative process on their behalf. Indeed, it would seem absurd to even suggest this. In this sense also, therefore, restorative justice appears primarily concerned with offenders rather than victims.

There are a range of other indications that, historically speaking, restorative practices were designed to reform offenders rather than assist victims. Titles of various *Acts* that have introduced restorative measures, such as New South Wales' *Young Offenders Act 1997*, Queensland's *Juvenile Justice Act 1992* and New Zealand's *Children, Young People and their Families Act 1989* demonstrate that these procedures were implemented in the context of developing ways of dealing with young offenders rather than helping victims. Furthermore, despite the claims of some advocates (see, e.g., Cunha 1999:286; Karstedt 2002:302; Moore & Forsythe 1995:15), Braithwaite's (1989) celebrated theoretical text *Crime, Shame and Reintegration* is heavily offender-oriented; the process of 'reintegrative shaming' he promotes has little to do with crime victims. As Garkawe (personal communication, 31/10/03) notes, the index of Braithwaite's (1989) book includes very few references to victims of crime. A number of highly-regarded figures in the restorative justice field similarly display disregard for victims in their early work (see, e.g., Barnett 1977; Eglash 1975; Galaway & Hudson 1972).

This is not to suggest that victims do not or cannot become involved in, and benefit as a result of, restorative practices. Nor is it to suggest that policy-makers always overlooked victims in the development of restorative justice processes. The role of victims' rights

movements in the emergence of restorative justice, and the complex and contingent nature of the relationship between these phenomena, will be discussed in more detail below. Nonetheless, it appears that despite the arguments of many restorative justice supporters – that restorative practices emerged in response to a failure to involve victims in criminal justice processes – the introduction of a range of restorative measures did not always actively seek to overcome this identified shortcoming.

Diversity of Measures for Victims of Crime

It is important to recognise that restorative justice exists among an extensive range of initiatives that are designed to be ‘victim friendly’. Like measures for dealing with offenders, initiatives introduced in order to help crime victims are diverse. Schemes ranging from victim compensation to support groups, counselling, victim impact statements and the right of allocution, and Britain’s ‘one stop shop’ (Zedner 2002:437) have been introduced across a range of jurisdictions in the name of assisting victims of crime. Karmen (as cited in Mawby & Walklate 1994:86) additionally lists the right of victims to be notified when a prisoner will be appearing before a parole board, to be notified of a negotiated plea, to be protected from the accused during pre-trial proceedings, and to have any money paid to criminals used to fund victim support services. A number of initiatives specific to certain groups of victims, such as children (Richards 2009b), those called as witnesses (Laster & O’Malley 1996:26), and victims of sexual assault (Zedner 2002:437) have also been introduced.

In many ways, therefore, to suggest that the recent growth in concern for crime victims has resulted in the development of restorative justice programs posits victims as an essential category, and assumes that all victims want or need the same things. Clearly this is not the case. Although crime victims may all experience losses – financial, psychological and/or other – as a result of their victimisation, they do so in diverse ways.

Additionally, what we often refer to as the ‘victims’ rights movement’ or ‘victims’ movement’ is by no means a homogenous, unified entity either. Garland’s (2001:215) work indicates that the push for victims’ rights has varied significantly across different localities; the US, for example, has witnessed a closer association between ‘law and order’ campaigns and victims’ rights than the UK. Strang (2001:73-76) also highlights the disparity of the victims’ rights movement, and suggests that it has two main branches: a ‘rights-focused’ branch, prominent in the US, and a ‘support-focused’ branch, prominent in Europe (see also Elias 1990; Mawby & Walklate 1994:86-87; Strang 2002:8). Zedner (2002:435) points out that even recently formed victims’ rights groups have varied foci, and are ‘far from enjoying coherence of outlook’.

This suggests that there is nothing inherent in the plight of victims of crime that necessitates the emergence of *any* particular initiative, including restorative justice. Indeed, the very suggestion that any one initiative or approach – restorative or otherwise – can somehow universally appease crime victims seems ill-conceived when considered in this light. It therefore seems somewhat misguided to champion any one initiative as having emerged out of a concern for crime victims, given the heterogeneous nature of this group.

The growth of victims’ rights movements and an increased concern for victims therefore appears to have opened up a space for a wide range of initiatives – including, but by no means limited to – restorative justice. In this sense, the relationship between the ‘re-

emergence of the victim' and the birth of restorative justice is far more nuanced than is often portrayed by scholars in this field.

Limited Political Power of Victims

It is also important to consider in this regard that as a group, crime victims have limited political purchase. Although traditionally, victims' rights groups have been associated with the conservative end of politics (Cayley 1998:218) – to the extent that some argue that victims' activism has been 'exploited or mistranslated into support for the conservative ideology' (Erez 1991:3) – victims' views on sentencing are 'as varied as that of any other cross-section of the general public' (Reeves & Mulley 2000:142). As argued above, victims' responses to a particular crime can vary considerably. Any suggestion made by victims' groups in regard to sentencing or any other element of the criminal justice process must therefore fall within a particular framework in order to be deemed plausible or legitimate. Victims have made calls for everything from the return of capital punishment and compulsory military service (Balding 1995) to mercy and forgiveness (Murder Victims' Families For Reconciliation 2003). Few of these suggestions, however, are translated directly into government policy. Although as Karmen (2001:26) points out, victims deemed 'legitimate' can wield some influence in relation to criminal justice reforms, that an idea has been suggested or supported by crime victims does not guarantee its acceptance in legislation or policy. Victims' views alone are not enough; if victims called for the reintroduction of the public torture of offenders, for instance, it is doubtful that this would be adopted in practice. Rather, in order to be deemed valid, 'victim friendly' initiatives must fall within acceptable socio-political rationalities.

Thus, even if restorative justice had been initially championed by victims of crime (and this in itself is not as straightforward as some restorative justice advocates suggest, as I have aimed to demonstrate), this alone would not have been enough to have guaranteed its ascendancy. It is therefore problematic to claim that a newfound concern for the plight of crime victims has enabled the emergence of restorative justice *per se*. Indeed, as Mawby and Walklate (1994) demonstrate, this 'newfound' concern for victims began to emerge many decades prior to the array of pragmatic techniques designed to assist victims, including restorative justice. As such, it is not the emergence of a concern for crime victims, but the emergence of victims as a politically relevant category that is significant here.

As O'Malley (1996:29) contends, crime victims have only more recently come to be viewed in such a way. That is, governments and policy-makers have recently come under pressure to be seen to be doing something to help victims of crime (McLaughlin et al. 2003:9). Indeed, as Miers (as cited in Ashworth 1993:279) points out, 'concern for the interests of victims of crime constitutes an almost unassailable moral position'. In this light, it is plausible that restorative practices have been introduced into some jurisdictions due partly to this newfound need to be seen to be addressing victims' needs. As Doolan (2005:2) claims in relation to the introduction of family group conferencing in New Zealand, 'why were victims included in this process? Simply, to enable the process to attain public credibility'. In this sense, the political legitimacy of victims' rights operates to make restorative justice palatable to legislators and policy-makers, politicians and the public. In part, the legitimacy of victims' rights groups make restorative justice – which (c)aims to address victims' concerns – an acceptable method of responding to crime.

It should be stressed here that I am not seeking to minimise the impact that some victims' groups have had, and continue to have, on criminal justice policy and practice. Movements on behalf of rape and domestic violence victims, for example, wielded considerable political authority during the 1970s, and had a significant impact on government policy. Rather, I am suggesting that the cohort of victims at whom restorative justice initiatives are overwhelmingly targeted are largely distinct from those groups of victims whose approval of criminal justice policy is deemed relevant. Thus while in one sense, the support of victims' groups is fundamental to the restorative justice enterprise (see, e.g., Strang 2001:80), members of these groups tend not to make up the 'clients' of restorative programs.

Victims' Rights Movements as Contingent Phenomena

It is also important to recognise that victims' rights movements are themselves contingent phenomena. This section argues that the construction of crime victims as a knowable, reachable, researchable, politically pertinent, unified and organised population – and as active citizens – was not in itself an inevitability, as advocates' narratives often suggest. Rather, the emergence of victims' rights movements – upon which restorative practices are partially explained and justified – is itself historically contingent.

Rock's (1990) history of victim support initiatives in England and Wales is striking in that – in contrast to many accounts of the 're-discovery of the victim' – it highlights the difficulties involved in locating victims for whom such initiatives might be enacted. Prior to the collection of crime victimisation data, victims appear in Rock's (1990) work as an incoherent, unorganised, silent and unknowable constituency. Rock (1990:52-53) claims, for example, that 'there was no public role for the victim ... Nobody had actually heard victims declare what they needed and nobody thought it useful to ask them'. Victims are further described as an 'unacknowledged group, a group that was not a self-conscious community and that lacked a collective presence' (Rock 1990:59). Although a number of penal reformers were attempting to introduce a system of compensation for crime victims, this initiative was not being propelled by victims themselves, who were 'mute, invisible, and unorganized ... a figment of the reforming imagination' (Rock 1990:88).

Primarily, the lack of input from victims was a result of reformers' inability to locate and/or contact members of this cohort. According to Williams (as cited in Rock 1990:65), victims 'had no constituency, no lobby, I don't suppose any way of being reached'. As Rock (1990:100) summarises, therefore, 'it was no easy thing to find victims. They were so obscure that there seemed to be no obvious places in which they could be found'.

This, of course, provides a stark contrast to the traditional depiction of the 'birth of the victims' rights movement' or the 're-emergence of the victim' that is more commonly accepted, particularly by restorative justice proponents. In this version of events, victims of crime were overlooked by policy-makers and communities out of ignorance or callous disregard, until they banded together to form a force for change. As Geis (as cited in Strang 2001:71) claims, '[victims'] condition for centuries aroused little comment or interest. Suddenly, they were "discovered", and afterwards it was unclear how their obvious neglect could have so long gone without attention and remedy'. It is perhaps Priestley's (1970:2) comments, however, that stand in most striking contrast to Rock's (1990) account of the development of victim support initiatives:

A collusion of silence, deliberate ignorance and indifference has prevailed in relation to victims for many centuries now ... Social workers who have sought out all manner of suffering in our society have passed the victim by ... A rich and potentially fruitful area of investigation has until now lain practically fallow.

Accounts such as these appear somewhat romanticised when compared with Rock's (1990). Indeed, what stands out in Rock's (1990) version of events is the very unromantic, mundane fashion in which knowledge about crime victims came into being and became a premise from which to create policies for victims. Accordingly, it was not a dramatic and romantic uprising by, and/or on behalf of, neglected and indignant victims, but the mundane and almost accidental gathering of data on victims that, to some extent, enabled the development of policies for victims. In this sense, therefore, victims of crime appear to have been *silent*, rather than *silenced*.

As a number of authors have noted, crime victim surveys – which provided the first detailed information on victims – were not intended to produce this type of data as such. Rather, they were aimed at unveiling the 'dark figure' of crime that police statistics were unable to accurately portray: 'it would offer a more comprehensive picture of the crime problem, and would thus be a useful contribution to the processes of setting priorities and allocating resources' (Mayhew & Hough 1988:157). In this sense, therefore, 'victims were not needy supplicants but indices' (Rock 1990:319). This was the case not only in Britain, but in Canada (Rock 1990:319) and the US (Mayhew & Hough 1988:156) also.

Importantly, not only were crime victim surveys not intended to further victims' rights agendas, but they were aimed partly at identifying 'victim precipitation' or the 'crime-proneness' of certain groups of people (Rock 1990:320). In one sense, therefore, victimisation surveys incorporated what might be seen as an attempt at cultivating the sort of data that could result in the responsabilisation of disadvantaged and/or marginalised groups.

Nonetheless, as Rock's (1990:321) work shows, crime victim surveys revealed for the first time – albeit inadvertently – the extent of victimisation and the quantity of those who might form a constituency of victims: 'there were four times as many crimes known to victims as there were recorded by the police'. Knowledge about victims of crime that might be utilised to assist this group was thus something of a by-product of victimisation surveys. In one sense, therefore, the development and implementation of policies for victims of crime was enabled by the accidental production of the knowable victim. The routine collection of victimisation data thus unintentionally resulted in the growth of initiatives aimed at assisting victims that reformers such as Margery Fry (1951) had long been championing. Among these initiatives were the first sustained attempts at formalising restorative justice-style meetings between victims and offenders.

At one level, this may seem an obvious point to make: measures aimed at assisting victims rely on the possibility that victims constitute a knowable population, and can be located, contacted and consulted without difficulty. That crime victims might be seen as something of a historical accident is, however, important to consider in relation to the birth of restorative practices, as it challenges discourses of inevitability favoured by some restorative justice exponents. As argued above, historical accounts of restorative justice often suggest that various restorative practices emerged in response to concerns for victims of crime. The historical inevitability of restorative justice is, however, brought into question when one considers that the very notion of crime victims as a policy-relevant category is itself historically contingent.

Of course, encounters between victims and offenders – later deemed to be restorative justice encounters – took place prior to the creation of victims as a distinct constituency (see, e.g., Jaeger 1983; Rock 1990:122-124; Swift 1994). It is necessary to recognise, however, that these encounters were usually instigated by individual victims, and were not by any means intended to act as policy responses to aid an acknowledged cohort of victims. Rock's (1990) description of a victim offender conciliation facilitated by the UK's then National Victims Association is a good example. This encounter, between Peter Dallas – the victim of an attempted murder – his assailant, Kevin McDermott, and a third man who McDermott had maliciously wounded as he tried to intervene, was staged and televised in 1975, three years after Dallas had approached the National Victims Association (Rock 1990:122-124). Although the Association had hoped to facilitate conciliations between victims and offenders in this very manner (Rock 1990:123), it seems that this was only attainable once a victim came forward. In this sense, the encounter was something of a fluke despite the aspirations of the Association. Similarly, even Canada's celebrated 'Kitchener Experiment' (Peachey 1989) in no way represented an attempt by reformers to assist victims. In this instance, the victims were not consulted prior to having the young offenders approach them at home to offer reparation; this 'experiment' was clearly designed to reform the offenders in question, rather than assist victims as a group.

As such, the ascendancy of restorative justice relied not only upon the production of crime victims as a recognisable cohort, but on the possibility that some victims might be called upon to play an active role in criminal justice proceedings. In contrast to measures such as victim compensation, for example, restorative practices that emphasise the role of victims are enabled by the construction of victims as potentially active citizens who might be encouraged and/or obliged to participate in the disposition of 'their' offender. Specifically, they are predicated upon the notion of crime victims as active citizens who might be asked to meet face-to-face with 'their' offender in order to help bring about an acceptable resolution after the commission of an offence against them.

Conclusion

The nexus between the 're-emergence of the victim' and the origins of restorative justice is thus far more complex and contingent than proponents usually allow. The aim of this article was to argue that in place of a one-dimensional cause-and-effect relationship between these two phenomena, we might consider the recognition of crime victims as rendering restorative justice one possible avenue among others. This article sought to advance this perspective by arguing that restorative justice is most often targeted towards those victims least likely to desire involvement in the criminal justice process, and that the history of restorative justice reveals the offender-centredness of many restorative justice measures. It argued further that the multiplicity of victims and victims' groups challenges the notion that any one approach could form a universally satisfactory response. Despite the unique political status of victims, it was argued that victims' views are translated into tangible policy measures only when they occur within accepted sociopolitical rationalities. Finally, this article aimed to demonstrate that the very existence of a crime victims' movement is itself a historical contingency.

As such, this article has sought to problematise the established view that the emergence of restorative justice was powerfully influenced by victims' rights movements. Although the rhetoric of assisting victims is in one sense critical to the restorative justice domain, historically speaking, restorative justice measures were not as intimately tied to the victims'

rights movement as some proponents suggest. By situating the birth of restorative justice within the search for a more enlightened approach to crime victims, this historical account acts to legitimate restorative practices and to normalise and naturalise their acceptance into the contemporary criminal justice landscape. This article has sought to destabilise this revered historical 'truth' – not in order to deny any nexus between restorative justice and the victims' rights movement, but to challenge its status as an accepted and unproblematic historical account.

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