



Is Restorative Justice Possible Without A
Parallel System for Victims?*

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Many victims of crime feel ignored, excluded, and profoundly disrespected by the criminal justice system. The opportunities to participate are narrowly defined and few. Victims' emotional, physical, and financial needs are rarely fully addressed, if addressed at all. And, for those who seek it, the traditional criminal justice system provides no meaningful interaction with offenders. As a result, notwithstanding the many reforms and legal protections created on behalf of crime victims during the last 30 years, victims frequently still feel alienated by and unsatisfied with their experience of our justice system.

Proponents of restorative justice have argued that this alternative response to crime has the potential to address victims' needs. Restorative justice promotes healing and strengthens the social bonds which serve as the foundation of our communities. Empathy, mutual understanding, restitution and accountability are guideposts of restorative justice. A high priority is placed on maintaining or restoring individual dignity. Crime is not depersonalized, as it is in our criminal justice system. Rather, crime is viewed as an experience between individuals, in the midst of a community. All three parties—victims, offenders, and communities—have the opportunity to acknowledge how the crime has harmed each, and all three attempt to rebuild social ties and recreate healthy and productive relationships.

This essay examines whether restorative justice, so defined, provides a sufficient framework for addressing victims' needs. After reaching the conclusion that restorative justice, although quite valuable in many respects, still falls short in critical ways, the essay outlines a proposal that attempts to address these gaps. The discussion which follows is a proposal for parallel justice, a framework developed by the National Center for Victims of Crime for two separate responses to crime, one focused on the offender, the other focused on the victim.

A Critique Of Restorative Justice From The Victim's Perspective

From a victim's point of view, restorative justice offers a number of important improvements over the traditional criminal justice process. Victims are given an opportunity to tell their story and to be heard. Restorative justice views victims as stakeholders in the process, not just witnesses who provide evidence. Restorative justice provides opportunities for discussions about how to resolve the underlying problems that gave rise to the crime as well as problems created by the crime. Through a dialogue with the offender, victims are often able to answer many of their questions about the circumstances of, and motivation for the crime. For many victims, when an offender offers an apology or shows remorse, the experience can be very meaningful.

Victims often feel isolated in the aftermath of crime; restorative justice can help them reconnect with other members of their community. Yet, notwithstanding these positive attributes, restorative justice still fails to meet critical needs of crime victims in at least four respects.

Restorative justice can serve only a small number of victims.

Most victims do not participate in any formal process to resolve the issues surrounding their victimization. There are many reasons for this. The victim may not report the crime to the police, the police may not find the offender, the offender may not be arrested, the prosecutor may not pursue the case, or the case may never make it to trial. To the extent that restorative justice models depend upon an arrest, an official complaint, or a criminal justice disposition to trigger the restorative justice process, only a small percentage of victims will be able to take advantage of their benefits.

Even those restorative justice programs that do not operate within the criminal justice system typically still require the active participation of an offender, and that offender is required to admit some culpability. Consequently, the number of these cases eligible for restorative justice interventions is also limited. For those few victims with identified offenders who acknowledge some responsibility for the harms they have caused, restorative justice may present a far more appealing option than the traditional criminal justice system. Unfortunately, however, only a small percentage of crime victims have that option.

Restorative justice processes are offender-centered.

Even though they are often referred to as victim-centered, restorative justice programs are still very offender-oriented: the process is limited to those cases with an offender who admits culpability and wants to participate, and the remedies are limited to what the offender and, secondarily, the community can provide.

A more victim-oriented response to crime would ask, what do victims need to repair the harm caused by crime—in other words, to be “restored” as much as possible. If the process and the remedies were more victim-oriented, our justice response would begin whenever a crime occurs and would attend to the needs of all victims. Restorative justice processes currently can occur with or without the victim as long as the victim’s perspective is represented by someone. A more satisfying justice process would also take place with or without offenders and address the needs of all victims.

Restorative justice does not address many critical needs of victims.

While restorative justice programs can promote healing, repairing the harm experienced by victims is often far more complicated than apologies, restitution and relationship-building. Some victims move on with their lives fairly easily, but many suffer continuing trauma without the services and support they need. Victims often suffer lowered academic performance, decreased work productivity, and severe loss of confidence. Mental illness, drug and alcohol abuse, and suicide are far more common among crime victims than the general public. Addressing these

needs can require long-term sophisticated counseling, assistance with safety planning, or relocation. Any number of social services may be required to rebuild a life—emergency day care for the parent who needs to get a job to handle new crime-related expenses, substance abuse treatment for the traumatized victim who has turned to drugs, an escort service for the victim now too afraid to leave home or go to the store alone, employment counseling or training for the victim who no longer can perform their old job, or even something as simple as new locks or windows for their home.

Many, if not most, of these needs cannot be met by individual offenders or other stakeholders who participate in restorative justice because there is only so much they can do. And sometimes, the restoration victims seek has very little to do with an ongoing relationship with an offender or a community. The restoration of victims should not be limited to the resources that an offender and a community of stakeholders bring to the table.

Restorative justice provides no active role for the government in rebuilding victims' lives.

From a victim's perspective, one of the reasons the traditional criminal justice system is inadequate is that it does not have authority to call upon the full range of resources necessary to meet the many needs of victims. Many restorative justice practitioners, in a commendable effort to humanize the justice system and reinforce interpersonal relationships, have chosen to keep the state in the background, or not involve the government at all. Only the state, however, has the authority to marshal the full range of resources necessary to address victims' potentially long-term, complicated problems. The day care, the employment counseling, the substance abuse treatment, or the long range housing needs of victims, usually cannot be adequately addressed by offenders and communities alone. When a crime occurs, society as a whole should be asked to help victims rebuild their lives.

Furthermore, a governmental role in responding to all crime victims would convey an important message—one not heard in either the traditional criminal justice system or restorative justice programs. The government can speak on behalf of society at large when it acknowledges that what happened to a victim is wrong. This could be a powerful and enormously beneficial statement for victims because it would not only validate their experience, it would elevate it to a public concern. While restorative justice can provide important opportunities for offenders and communities to acknowledge the harm caused to a victim, this interaction is qualitatively different from a statement by the government on behalf of society at large. The traditional criminal justice system does not fulfill this societal obligation to victims. Neither does restorative justice.

Parallel Justice: A New Framework For Providing Justice

Parallel justice envisions a very different response to crime. It addresses many of the limitations of our traditional criminal justice and restorative justice paradigms and draws upon the strengths

of each. Parallel justice provides two separate paths to justice—one for victims and one for offenders.

For every reported crime, our society spends enormous resources responding to the incident and trying to apprehend and prosecute the offender. In the parallel justice framework, there would always be a second, *parallel*, set of victim-oriented responses—a focused effort to help ensure the victim’s safety, to help the victim recover from the trauma of crime, and to provide resources to help the victim rebuild his or her life.

When offenders are brought to the bar of justice they are held accountable by the state for harms they caused. There is a societal response to the offender that says, “You violated the law and we will hold you accountable, punish you if it is appropriate, isolate you if needed, and offer you services to help reintegrate you back into the community.” Society responds to offenders through our government. Less formal restorative processes often complement this response and reinforce individual and community-level relationships. The governmental response to offenders, however, from law enforcement and prosecutors to courts and corrections officials, serves as a foundation for providing justice to offenders and communities harmed by crime. This criminal justice system response reinforces the public nature of crime and the larger concerns and obligations of society at large.

The individuals who have been harmed—the victims of crime—have no comparable experience of a societal response to them. A parallel societal response to victims would be as multi-faceted as our societal response to offenders. It would require reorienting and expanding the goals of our criminal justice agencies, as well as developing new government and social service functions.

There are some guiding principles for implementing parallel justice:

First, when a crime is reported, the safety of the victim should be a high priority for police and other criminal justice agencies.

Perhaps our most fundamental imperative for all crime victims is to provide for their safety. Studies have shown that victims of almost any kind of crime are more likely to be victimized again. It is in everyone’s interest that reasonable steps be taken to prevent repeat victimization. Therefore, when law enforcement responds to a crime, a primary goal—in addition to collecting evidence and apprehending the offender—should be to reduce the chance that the victim will be victimized again. Every victim deserves a safety plan and victim advocates should be involved at every step along the way, supporting victims, bringing their expertise into the safety planning process.

The obligation to provide safety for victims, however, should extend beyond law enforcement. For example, when judges set bail conditions, one of their goals should be to keep victims safe. When prosecutors enter into plea agreements, one of their goals should be victim safety. When

corrections agencies release prisoners back into the community, and parole agencies supervise them, one of their goals should be victim safety.

Second, every victim of crime should be offered immediate support, compensation for losses, and practical assistance.

Victim compensation should be expanded to cover all victims of crime, both violent and non-violent crime, as well as more categories of losses. Last year, Congress appropriated nearly \$20 billion for law enforcement and corrections. By contrast, the federal government devotes roughly \$550 million each year for victim compensation and support services—money that comes solely from offender fines and penalties. Under parallel justice, compensating victims for their losses would be a responsibility shared by offenders and society at large. Restorative justice programs should continue to promote the payment of restitution by offenders, but we should also use tax revenue to meet victims' needs.

Third, all crime victims should have an opportunity to explain what happened to them, the impact the crime had on their lives, and what resources are needed to get back on track.

A key component of parallel justice is a public forum separate from the criminal justice system, which would offer victims an opportunity to explain what happened to them and what they need. Under a system of parallel justice, our society would say to all victims, regardless of whether their offender was ever identified or prosecuted in a criminal court, "What happened to you is wrong and we will help you." Honoring this separate social obligation to acknowledge the harm experienced by victims and actively help them rebuild their lives should be a critical part of providing a just response to crime. It's therapeutic in and of itself to know society at large (represented by our government) cares enough to take the time to listen. These forums would also provide an opportunity for our society to hear victims' accounts of crime. We need to understand victims' experiences to be able to address crime—to prevent it and to respond to it. We also need to hear victims explain the impact of crime to be able to help them with the most appropriate and effective services and resources.

At a more fundamental level, these forums would reinforce bonds between individual victims and society at large. Just as interpersonal relationships are harmed by crime, a victim's trust and confidence in our social compact are weakened. Parallel justice forums could be profoundly restorative.

Fourth, case managers should coordinate all available resources to meet victims' needs.

Parallel justice forums would provide a mechanism to coordinate the implementation of a comprehensive victim-oriented service plan. For instance, the woman who has been mugged, now too afraid to leave her home to buy food or go to work might be seeking counseling or transportation. The teller who was held up and can no longer face going to work in a bank might

want training to learn how to earn a living a new way. The elderly victim of a telemarketing scam who lost his entire life savings and can't earn it back might want emergency financial assistance or a no interest loan. The battered woman who wants desperately to leave her violent home may need a job, day care, and new housing. The young victim of sexual assault, incest, or child abuse, who has begun to use drugs to numb the pain, may seek drug treatment.

Case managers, should have the authority to ensure that, wherever possible, victims seeking resources and services provided by the government would have priority access to them. And the resources available to victims should not be limited to those provided by the government. While restorative justice involves those immediately affected by the crime, parallel justice would widen the circles of support beyond the neighborhood and other pre-existing interpersonal networks. Consider the roles of block associations, civic groups, faith-based institutions, schools, and businesses. Case managers could draw upon a wide range of resources to help victims of crime rebuild their lives.

The term parallel justice does two things. First, it underscores the need to create a separate path to justice for victims—apart from the criminal justice system, but relating to it. Second, it highlights the contemporaneous nature of these processes. Society must provide justice for both victims and offenders, and much of the work can take place at the same time, with options for connections or interactions between the two processes. Visualize a ladder—two paths to justice that are connected by rungs—opportunities to interact. In many respects restorative justice programs are rungs on this ladder. Parallel justice and restorative justice both have components which focus on accountability and the harm created by crime. Both provide roles for offenders and communities in repairing the harm experienced by victims.

But, parallel justice is distinctive in several ways. It can serve all victims of crime and it marshals a wider range of resources to address victims' safety, and their immediate and long-term needs. In addition, beyond the restorative justice roles for offenders and communities, in a system of parallel justice, there is also a role for society at large, represented by the state, in repairing the harm. Along with families, neighbors, and offenders, society as a whole would be asked to play a role in acknowledging the harm and helping victims of crime rebuild their lives. Although restorative justice offers many benefits to victims, our society owes victims much more. Every crime has a victim and every victim needs our help.