

THE VENGEFUL VICTIM? ASSESSING THE ATTITUDES OF VICTIMS PARTICIPATING IN RESTORATIVE YOUTH CONFERENCING

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ABSTRACT

The task of delineating an appropriate role for the victim in the criminal justice system has been the subject of considerable debate in academia and policy circles for some time. While victim participation is considered something of a *sine qua non* of the restorative paradigm, many commentators remain sceptical of victim input in conventional sentencing on the grounds that it may lead to the imposition of overly harsh or onerous obligations. Drawing on evidence from a major evaluation of youth conferencing in Northern Ireland, this article challenges the assumption that victims are essentially punitive parties, and calls for a rethink of some of the fundamental values and assumptions that have traditionally resulted in their exclusion and even alienation in the criminal justice system.

Keywords: restorative justice, youth conferencing, Northern Ireland, victims, vengeance

INTRODUCTION

Rhetoric surrounding 'victim's rights' continues to feature prominently in contemporary criminal justice debates. By the end of the twentieth century, the problems facing victims had been widely documented (Shapland *et al.*, 1985; Rock, 1993; Victim Support, 1996), and it was largely accepted that victims had legitimate expectations to receive better support and protection in the course of their contact with the criminal justice system. Policymakers responded to these concerns with a series of reforms that went some way to addressing victim alienation and secondary victimisation. For the most part, these changes have received a warm reception (Brienen and Hoegen, 2000; Groenhuijsen, 2004; Williams, 2005; Goodey, 2005). However, a more radical body of scholarship

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has lately evolved, whereby discourse is moving beyond looking at the visible problems facing victims to the core structures, processes and values that underpin the criminal justice system. Some commentators have called for a re-examination (or even replacement) of existing paradigms in order to facilitate a more radical shift in the victim's role entailing procedural rights to participate in criminal justice decision making (Cavadino and Dignan, 1997; Erez, 1999; Doak, 2005). Others fear that ceding to such demands would be destructive, since participatory rights would distort the public nature of the criminal justice system or would interfere with the protection of the rights of accused persons and offenders (Abramovsky, 1992; Ashworth, 1993; 2000).

The evolving status of the victim, from witness-informant worthy of protection and support to proactive participant with procedural rights, raises a number of well-rehearsed arguments concerning the proper place of the victim's interests in a process that has been traditionally conceived of as a contest between the state and the accused. One issue that has been raised concerns the question as to whether a sentence should vary in accordance with the potentially unforeseeable results of an offender's conduct (i.e. how an individual victim may respond) (Hall, 1991; Ashworth, 1993; Buruma, 2004). There are also fears that victim participation may impose additional burdens on victims themselves (Hoyle *et al.*, 1998), and that they could end up feeling even more dissatisfied if they believed their expectations were not met (Miers *et al.*, 2001; Strang, 2002; Wemmers, 2002). However, foremost amongst such misgivings is the perceived risk that victim involvement could effect a 'reversion to the retributive, repressive and vengeful punishment of an earlier age' (Erez *et al.*, 1997: p. 40). This argument is supported by the widely portrayed view of victims as punitive parties, motivated by desire to maximise sentence severity and who are likely to give statements which are emotive in tone, hence resulting in harsher sentences. It is feared that victim participation, particularly within the sentencing process, could introduce a new and unpredictable variable into the penalty equation and would jeopardise core principles such as 'just deserts', certainty and objectivity. Yet, notwithstanding the growing interest in issues surrounding victim participation, many of the issues identified are theoretical in nature, and the sense of disquiet in these quarters has been subject to relatively little empirical testing.

This article draws on the findings of a major evaluation of the youth conferencing system in Northern Ireland (Campbell *et al.*, 2006) and questions the idea that victims should be denied a participatory role within criminal justice decision making on the basis of their perceived desire for vengeance. The article begins by presenting an overview of the tensions underlying much of the current debate concerning the role victims ought to play within the criminal justice system. It then proceeds to describe the empirical study which examined the nature of youth restorative conferencing in Northern Ireland. The research indicates that most victims who participated in conferencing did not prioritise vengeance or onerous disposals as part of their contributions to conference plans. The article concludes by identifying some of the key questions that need to be addressed,

and calls for a normative and structural reconsideration of the role traditionally afforded to victims in the criminal justice system.

ASCERTAINING A 'PROPER' ROLE FOR THE VICTIM

Nils Christie (1977) has famously highlighted a historical pattern, whereby the state has 'stolen' the conflict from the victim and thereby transformed a private dispute into an altercation between the state and the offender. In the orthodox criminal justice system, criminal offences have been constructed as transgressions against the state. Crime is said to constitute behaviour that is deemed to be so wrong that it ought to be deserving of public denunciation and censure. The state is thereby notionally conceived as the victim, with those who have suffered the primary consequences of the perpetrator's act being viewed as awkward outsiders to the process (Zehr, 1990). Yet, in order to operate effectively, the criminal law requires the co-operation of victims in order for crime to be successfully investigated, prosecuted and punished. Victims have been 'conscripted' into an operational role within the criminal justice system, and are frequently conceptualised as its 'servants' or 'agents' (Faulkner, 2001). Restitution or reconciliation have not featured as major facets of the conventional sentencing system, and there would appear to be an inherent assumption that victims' desires for vengeance are built into the central institutions of the system, alongside the public interest in denouncing and punishing unacceptable behaviour (Moore, 1994). While the public may well have a legitimate interest in the administration of criminal justice, it is the victim who will have experienced the effects of the crime in a very real and tangible way. This conception not only denigrates victims (Duff, 2003), but also serves to entrench the portrayal of offenders and victims in dichotomous terms with discrete and opposing interests (Dignan, 2005).

This punitive and exclusionary paradigm has come under pressure in recent years. There is a discernable trend on the international platform whereby criminal justice is viewed in perceptibly more holistic terms, with participation being increasingly recognised as a value that ought to be enshrined in criminal proceedings. It is worth noting that victims have been granted participatory rights at the International Criminal Court. Article 68 of the Rome Statute provides that where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented at appropriate stages of the proceedings. As regards the practices of domestic jurisdictions, the United Nations Declaration of Basic Principles of Justice for Victims of Crime states that judicial and administrative processes should allow 'the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected.'¹ In addition, the European Council Framework Decision 2001/220/HA (which binds all Member States) obliges them to 'safe-

guard the possibility for victims to be heard during proceedings and to supply evidence'.

In sum then, crime is increasingly viewed as not just an offence against the state, but against individual victims and local communities. It would thus seem to follow that normative perceptions of crime and the criminal justice system, as well as their accompanying structures and processes, ought to reflect the fact that crime impacts first and foremost upon its direct victims. This is not to deny the legitimate public interest in managing crime and reducing offending, but it is desirable that the structures of criminal justice, as well as their theoretical basis, should reflect the interests of individual victims as well as the broader interests of the state. The challenge that confronts domestic policymakers is to review existing criminal justice structures and procedures to ascertain whether these frameworks can be adjusted to facilitate victim participation, whilst at the same time preserving judicial oversight to protect core due process values. It has been argued in some quarters that such a task is fundamentally impossible within the parameters of the punitive paradigm framework of criminal justice, and that the entire system is in need of a radical overhaul in order to fully accommodate a participatory model of justice (Zehr, 1990; Walgrave, 2002; Braithwaite, 2003). One possible alternative to the punitive / adversarial framework is the restorative paradigm, which enables 'denunciation to be expressed in a currency other than that of retributive-style punishments' (Cavadino and Dignan, 1997: p. 241).

THE RESTORATIVE PARADIGM: YOUTH CONFERENCING IN NORTHERN IRELAND

The interface between the restorative paradigm and the conventional punitive paradigm has been the subject of considerable debate (Ashworth, 1993; Strang, 2002; Braithwaite, 2003; Dignan, 2003; Buruma, 2004). Restorative-based initiatives have become increasingly viewed as preferable solutions to managing crime, and may even contribute to the resolution of deeply rooted political problems in post-conflict societies (Lederach, 1998; Findlay and Henham, 2005). The restorative paradigm gained momentum over the past decade in an atmosphere of growing despondency with traditional criminal justice processes. Restorative justice has also begun to penetrate the international criminal justice arena (Popovski, 2000; Findlay and Henham, 2005). Although the means of applying restorative principles may vary widely, a common thread in all such processes is that victims, offenders and communities are all regarded as stakeholders (Zehr and Mika, 1998). Restorative justice thus aims to empower victims and can give them the opportunity to participate actively in the sentencing of the offender and generally help in the process of seeking to achieve forgiveness and healing. Victims will usually have an opportunity to put forward their views about the offence: to have their anxieties and fears addressed; to receive information and compensation; and to be consulted on decisions that affect their

interests (Wilcox *et al.*, 2004). Unlike participation in the conventional process – where a victim may be compelled to testify in court as a witness – victim participation in the restorative process is voluntary (Wemmers, 2002). Even if the victim does not wish to attend mediation or a conference in person, indirect communication can often be facilitated through the use of a surrogate victim or through the facilitator feeding the views of the victim into a conference (i.e. by reading out a letter or relaying details of a conversation with the victim).

These basic elements of the restorative system are evident within the Northern Ireland youth conferencing system, which emerged from the *Review of the Northern Ireland Criminal Justice System*, published in 2000 following the Good Friday Agreement of 1998. The Review recommended that a restorative-based youth conferencing model be established as a mainstreamed statutory approach to dealing with young offenders.² These proposals were implemented under Part 4 of the Justice (Northern Ireland) Act 2002, which provides for two distinct conference arrangements: diversionary youth conferences and court-ordered youth conferences. Both forms of conference take place with a view to a youth conference co-ordinator providing a recommendation to the prosecutor or court on how the young person should be dealt with for their offence.

A diversionary conference is convened following a referral by the Public Prosecution Service. The prosecutor will only make a youth conference referral where she/he would otherwise have instituted court proceedings. Unlike the referral order system in England and Wales, diversionary youth conferences are not intended for minor first time offenders, who, depending on the seriousness of the offence, will usually be dealt with by the police and given an informal warning with a 'restorative theme' or a restorative caution (O'Mahony and Doak, 2004). Instead, diversionary conferences will often be initiated as a 'follow-up' intervention to curb offending, particularly where there has been previous contact with the criminal justice system. Two preconditions must be in place for a diversionary conference to occur: first the young person must consent to the process, and secondly they must admit that they have committed the offence. Where these conditions are not met the case will be referred to the Public Prosecution Service for a decision on whether to continue and, if so, the case will be dealt with through the ordinary court process.

In addition to diversionary conferences, a young person may be referred to a conference by a court. Again, the admission or establishment of guilt and the consent of the young person are prerequisites for a court-ordered conference to take place. A distinctive feature of the Northern Ireland system is that a court *must* refer a young person to a youth conference. This is subject to certain restrictions: when a magistrate refers a case they must take into account the type of offence committed. Only offences with a penalty of life imprisonment are not eligible for youth conferencing. Offences which are triable (in the case of an adult) on indictment only, and scheduled offences which fall under the Terrorism Act (2000), *may* be referred for conferencing at the discretion of the court. In effect, the vast majority of young offenders are dealt with through conferencing.

The mandatory nature of court ordered referrals highlights the intended centrality of the conferencing process to the youth justice system. This is important because in jurisdictions where referrals are discretionary, the uptake has often been low leading to the marginalisation of restorative schemes to the periphery of the justice system (Shapland *et al.*, 2004; Miers *et al.*, 2001; Crawford and Newburn, 2003).

In terms of how conferencing works in practice, the process typically involves a meeting in which a young person is provided with the opportunity to reflect upon their actions, and offer some form of reparation to the victim. The victim, who is given the choice whether or not to attend, can explain to the offender how the offence has affected him or her as an individual. In relation to restorative justice theory, this means that a conference gives the offender the chance to understand their crime in terms of its impact, particularly on the victim, and it provides the victim with the opportunity to separate the offender from the offence. Following group dialogue on the harm caused by the young person's actions, a 'conference plan' will be devised. This conference plan will take the form of a negotiated 'contract' with implications if the young person does not follow through what is required of him or her. Agreement is a key factor in devising the 'contract', and the young person must consent to its terms. Ideally, the 'contract' will ultimately have some form of restorative outcome, addressing the needs of the victim, the offender and wider community.

THE RESEARCH

The research team evaluated the Youth Conferencing scheme, which was administered by a new statutory body, the Youth Conferencing Service (Campbell *et al.*, 2006). The Service began its work in December 2003 and initially dealt with offences committed by 10–16 year olds living in the Greater Belfast area. In mid-2004 the work of the scheme was expanded to cover young people living in more rural areas including the Fermanagh and Tyrone regions, and is currently being rolled out across the rest of Northern Ireland. The researchers conducted detailed observations of the proceedings for 185 youth conferences, and completed personal interviews with 171 young offenders, and 125 victims who attended conferences.

Referrals to the Youth Conference Service were made for a range of offences, including theft (26%), assault (21%), criminal damage (18%), and disorderly behaviour (11%). Offences were also assessed using an offence seriousness scale to examine their relative seriousness from 'minor property related and other minor offences' which, for example, included thefts and criminal damage under £50, to 'extremely serious offences' attracting a life sentence.³ Over half of all offences were found to be 'intermediate offences against the person and property' (53%), and 'serious offences against the person or property' accounted for about a further quarter (23%). Only 21% of referrals were made for 'minor

property related and other minor offences'. It is worth highlighting, therefore, that the types of victims involved in the process included individuals who had been exposed to some serious offences and only a minority of victims attended for minor offences.

Whilst the research was primarily aimed at evaluating how the Youth Conferencing arrangements were working in practice – seeking to identify strengths and weaknesses and the extent to which they were proving effective in meeting their stated aims and objectives – it also provided an opportunity to consider broader questions, such as what victims of crime seek to obtain from the criminal justice system and how they would like offenders to be dealt with. The research thereby enabled the team to question common assumptions concerning how victims view offenders, and why and how victims participate in conferencing.

Victim Participation

Victims participated in over two-thirds (69%) of the conferences that were observed as part of the research. However, it is important to underline that 60% of the victims who attended conferences were victim representatives and 40% were actual victims themselves. Victim representatives were usually individuals who were not directly affected by the specific offence, but instead gave the conference a general input of what it is like to be victimised. Victim representatives were often used in cases such as shoplifting or criminal damage to public property, or where there was some difficulty in getting a specific victim to attend the conference. As such, victim representatives were used to bring home the consequences of the act from a 'victim's perspective' when it was difficult to access the real victim. The victim representatives that were used were usually volunteers from local shopping management groups or from victim support organisations.

The fact that most victims who participated were victim representatives rather than actual victims is perhaps unsurprising; this broadly reflected the types of criminal behaviour for which the young offenders were prosecuted. The offences mostly involved property-related crime and criminal damage, rather than offences which involved direct victim contact, such as assault or robbery. Indeed, the type of victim, actual or representative, involved in conferences was clearly related to the type of offence that had occurred: most victim representatives attended conferences relating to offences of theft (39%) or criminal damage (30%), while the majority of personal victims (47%) were victims of assault.

Victim representatives were also commonly used in cases of so-called 'victimless' crimes, such as drug-related offences, disorderly behaviour or driving offences, which made up a further 13% of the cases where a victim representative attended a conference. In these cases the victim representative was used to explain the likely impact of such incidents from a victim's perspective.

As such they gave the conference a victim's input that could be used to feed into the restorative process.

In addition to the direct involvement of victim representatives or 'actual victims', the format of the conferences also allowed for the opportunity to provide for other forms of victim input, if victims could not or did not want to attend a conference in person. Such input included providing a letter or statement which could be read out at the conference, or providing a tape recording of the victim's feelings which could be played at the conference.

Most conferences thus included victim input of some description, which compares favourably with other restorative programmes internationally.⁴ For example, in research carried out in England and Wales, only 13% of victims took part in Youth Offender Panel meetings (Crawford and Newburn, 2003) and victims were present in only a minority of restorative police-led cautions in Northern Ireland (O'Mahony and Doak, 2004). However, for the purposes of this article, our analysis is only focused on those actual victims who experienced victimisation first-hand, who participated in a conference, and were interviewed following the conference (n = 60). Our discussion thus excludes victim representatives or victims using other forms of input.

Reasons for Participating

Understanding why victims chose to take part in a conference gives us an insight into their motivations and what they sought to get out of the process. Interestingly, for many of the victim participants, the reasons appeared to be quite altruistic. For instance, a significant majority of victims (87%) said they 'wanted to help the young person':

'I didn't have to attend ... I was told about other means, but I wanted to come ... I wanted to see something positive come out of it for the young person.'

'I didn't come for myself, but for the young person ... the offence didn't really affect me in a big way.'

It was also apparent that victims wanted answers. The conference provided the victim with the opportunity to understand 'why me', and 'why it happened to me'. Indeed 83% of victims stated they attended 'to hear what the young person had to say'. As such, the conference was seen as an opportunity to listen, as well as question the young offender, and to help the victim understand why the offender had committed the offence.

Other reasons for attending included the fact that some victims felt the young offender should be given a second chance: '... once I heard his parents were

behind him I wanted to go. I believed he should have a chance.' Other victims said they attended out of a sense of duty or responsibility.

'I was encouraged to attend. I did not want to go at first, and was sold on the idea. I was forced by guilt ... I had to take my own responsibility.'

Importantly though, only 59% of victims stated they attended the conference to hear the offender apologise, and only 60% said they attended to help themselves 'move on'. Therefore, while it was clear that many victims (85%) wanted the offender to know how the crime affected them, what victims wanted from the process was clearly not driven by motivations of retribution, or a desire to seek vengeance. Rather it was apparent that their reasons for participating were based around seeking an understanding of why the offence had happened; that they wanted to hear and understand the offender; to explain the impact of the offence to the offender – so that others would not be victimised and to help the young person.

The lengths to which some victims would go in trying to 'do good' and to help the offender were quite remarkable, as illustrated by the following excerpt from a conference. This conference was convened over the theft of a purse at a leisure centre and the victim had told the conference that the money stolen was for Christmas presents for her family. When talking about what the victim wanted from the conference, she explained:

'The most important thing is to hear that Sean⁵ stays out of trouble ... my main concern is not the money, but for Sean to stay out of trouble. I would like you to donate something to Action Cancer, my mum died of cancer ... I think this would be a positive step for Sean and the money will help someone else, someone less fortunate than us. It should also help (Sean) in the long run.'

The young offender agreed and also agreed to meet with a youth worker as part of his plan.

Aside from this study, relatively few empirical studies have tracked the precise role that victims exercise in restorative processes. However, like these findings, the data that are available appear to question the assumption that victims are primarily punitive or desire the imposition of heavy sentences. Newburn *et al.* (2002), in a study of referral orders in England and Wales, found that victims mainly participated in order to have an opportunity to express their feelings to the offender (85%); to have a say in resolving the problem (72%); out of a sense of curiosity (60%); or help the offender (54%). Only 35% reported that they participated out of a 'sense of duty', and the same proportion stated that they did so in order to ensure that the offender received an appropriate penalty. Similarly, Hoyle *et al.* (2002), looking at police-led restorative cautioning, found that most victims participated in order to 'put a face to the offender'; only a

minority of victims prioritised compensation or punitive deterrent-based punishments. Indeed, Strang (2002: p. 31) reported that 'it is not axiomatic that all victims want punishment or more of it, no matter how much they have been hurt;. Her research found that most victims attended conferences in order to 'have a say' in the process, and over a third of victims (36%) attended a conference in order to help the offender. In relation to international criminal justice, Findlay and Henham (2005: p. 329) also dispute the notion that 'harsh sentencing is equated with victims' justice' and note that 'the retributive spirit [of victims] is not so predictable and uniform'.

The Experience of Participating

The victims we observed generally appeared to be much less nervous and were better able to partake in the process than the offenders. More than half of the victims (64%) appeared relaxed at the beginning of the conference and 65% reported that they did not feel 'at all nervous'. However, for a small number of victims the experience was quite difficult. On seeing the young person, one victim noted how he felt '... awful. That is why I rushed to the toilet. I panicked, felt like saying I couldn't see her'.

It is important to realise, though, that while a minority of victims were nervous at the beginning of the conference, this usually faded as the conference wore on and nearly all reported that they were more relaxed once the conference was underway. Also, the overwhelming majority (95%) of victims displayed no signs of hostility towards the offender at the conference. In some cases this may have been due to the passage of time, as one victim related: 'OK it was nine months ago since it happened – the anger wears off you'.

Aside from the passing of time, it is worth noting Hoyle's observation that restorative processes in themselves may help to alleviate feelings of anger or a desire for vengeance (Hoyle, 2002). The organisation of the restorative setting and the opportunity for all parties to participate, perhaps constitutes another reason why the restorative paradigm is better adapted to accommodate victim participation. Attendance at a restorative conference can also help to challenge stereotypical views and help the parties to understand each other. Hoyle noted that many victims who attended restorative conferences were less afraid about the prospect of future victimisation. Indeed she cites a number of instances where 'anger turned to sympathy'. Those victims who attended were more likely to express satisfaction with reparation and the outcome of the case and many felt that 'the process was punishment enough'. Hough and Park (2002) also found that punitive attitudes decreased where respondents were better informed about the sentencing process. These authors also cite a study by Tufts and Roberts (2002) which found that 'victimisation experience did not prove to be a significant factor in respondents' preference for prison'.

It was apparent that the vast majority of victims we interviewed had not come to the conference to vent anger on the offender. Rather, many victims were more interested in 'moving on' or putting the incident behind them and 'seeing something positive come out of it'. Victims described their experiences at the conferences as generally positive and 83% were observed to be 'very engaged' in the process. They tended not to view the process as adversarial, with them pitted in a form of contest against the offender. This was underlined by the fact that none of the victims chose to have legal representation present at their conference and only one victim stated he had consulted a lawyer before attending the conference.

Victims were generally articulate when it came to describing how the offence had affected them and in expressing their frustration and anger about the incident. All of the victims expressed the view that they were given the opportunity to tell the offender how the crime impacted upon them and nine out of ten (91%) felt the offender had listened to them properly. For example, the following was related by a victim during one conference:

'I was working in a club to get extra money. It was my first car. Took me three years to save up for it (describes damage to the car). Off the road for five to six days. It took me two buses to get to work. Frustrating. Not the worst thing that could have happened, but I was pissed off. I am glad you are here, that you are owning up and facing me, face to face. You are due respect for that. It is difficult to put into words how pissed off I was that night and when I got the bill a few weeks later.'

The frustration and anger that was expressed was mostly clearly directed at the incident and the consequences of the crime, rather than at the offender as an individual. Victims were often angry at what had happened, but they also appeared to be able to see beyond the incident and wanted to see some good come out of the whole thing. Many victims (77%) even expressed a degree of empathy towards the offender as illustrated in the following case:

Victim: 'Would you do it again?'

Offender: 'No, I have been changing my ways and everything'

Victim: 'You remind me a lot of me when I was younger. We come from a similar background, but I made a decision to change. You've come to that point in your life now.'

The victims were generally willing to listen to the offender's account of the incident and, indeed, the vast majority of victims accepted the offender's version of events either 'a lot' (65%) or 'a bit' (23%). Only 12% of victims did not accept the offender's account of the incident at all.

Apology

Making amends, and apologising to the victim, are central elements in achieving the goals of restorative justice. The apology is particularly significant, not just for the victim, but for the offender, and many of the offenders reported that they felt much happier having had the opportunity to apologise to their victim. Our research underlines the fact that an apology is particularly important element of the healing process for victims. Often, the desire for an apology underpins their motivations to attend and was a key reason for many victims deciding to participate in the process.

In our study all but one of the victims who attended a conference received an apology from the offender (98%). From the victim's perspective, the majority believed that the apology had been the young person's idea and 84% of victims said they were either 'happy' or at least 'sort of happy' at having received the apology. It appeared that having gone through the process, victims were generally happier. This corresponds with research by Strang (2002: p. 201), who reported that significantly more victims felt angry with the offender before the conference (63%) than after it (29%); conversely more victims felt sympathetic to the offender after the conference (48%) than beforehand (19%).

Our research found that only 16% of victims stated that they were not happy with the apology. Just as the majority of victims accepted the offender's apology, the vast majority also expressed forgiveness towards the offender (80%). Indeed as the following case shows, the apology was often a very meaningful expression for both the offender and victim:

Offender: 'I'm sorry, it definitely won't happen again.'

Victim: 'That's good son.' Victim turns to parents: 'He seems to have been genuinely sorry from the start about it. From the start that's all I've wanted.' Victim then asked if he wants a written apology, he declines. Victim then leans across the circle towards the offender and extends his hand: 'No hard feelings there son.' Offender gets up and shakes Victim's hand and apologises again.

Victim: 'I accept your apology. I would like you to learn from this experience.'

Victim turns to parents: 'The money lost would be worth it, if he uses this as a chance to turn his life around.'

The apology and signs of remorse were clearly very important. Research has shown these are particularly significant in terms of the impact of the conference and even in reducing recidivism (Maxwell and Morris, 2002). In the vast majority (98%) of the conferences in our study the offender was also observed to display some form of remorse, and in 90% of conferences with a victim the offender displayed some degree of shame.

The Conference Plan

Victims were observed to be involved and engaged in the process of devising conference plans and they usually played an active role. The study indicated that victims generally felt that they were able to participate in the decision making and 83% of victims were observed as being 'very involved' in discussing the crime or incident that led to the conference. The vast majority (95%) of victims engaged in the process of devising the plan. Only rarely did a victim fail to participate in the decision making process, or, on the other hand, attempt to dominate the proceedings. From the observations it was evident that victims were generally more engaged in devising the plan than the offenders.

The active participation of victims helped secure agreement for the plans (95% of conferences resulted in an agreed plan). Moreover, it appeared that victims were often more concerned to see some good come out of the conference for the offender and to help them in some way, rather than seeking an outcome that would directly benefit themselves, or attempts to punish the offender. For instance, victims made the following comments when plans were being negotiated:

'You're lucky to have this opportunity ... the love and support of your family, people here to help you. You're not a bad kid, this is a simple wee mistake ... you can dig your way out of it.'

'I don't think punishment is important – it is about putting you back on the straight and narrow.'

All of the conference plans were rated by the researchers according to four key elements. These included: whether the plan had aspects of reparation to the victim; whether it offered some sort of help to the young offender; whether it had elements of re-education or rehabilitation; or whether it had elements designed to punish the offender. Over four-fifths (83%) of plans had elements that were specifically designed to help the offender, such as mentoring programmes, or help with drugs and alcohol. Over three quarters of plans (76%) also had elements to provide reparation to the victim, such as financial reparation to help with their loss. In addition over half (56%) of plans had elements to help with the re-education or rehabilitation of the offender, for example through victim awareness sessions, or anger management training. However, only 27% of plans had elements that were intended to punish the offender, such as impositions restricting or limiting their whereabouts, or community service.

The fact that 73% of conference plans had no specific punishment element was a clear manifestation of the restorative nature of the plans. But more importantly, this was also indicative of what victims sought to achieve through the process. Clearly, notions of punishment and retribution were not high on the

agenda for victims when it came to devising how the offence and offender should be dealt with through the conference plan.

These findings could be challenged on the grounds that victims were swept along by the restorative process, manipulated during the negotiations, or brought into line by other participants, so the outcome would be largely reparative and restorative. However, this did not appear to be the case. When victims were interviewed following their conference the majority (68%) believed the plan to be 'fair or very fair' and 92% of victims said they were either 'satisfied' or 'very satisfied' with the outcome. Only 8% of victims expressed some degree of dissatisfaction with the outcome of the plan.

Interestingly, while other research has suggested that victim satisfaction is related to the seriousness of the offence – with victims of serious offences generally expressing lower levels of satisfaction with outcomes (Morris *et al.*, 1993) – our findings do not support this correlation. Victim satisfaction with the conference outcome did not appear to be directly related to the seriousness of the offence. The small number of victims indicating 'some degree' of dissatisfaction (8%) with the plan, attended conferences for offences ranging in severity from 'less serious offences', to 'more serious offences against property or the person'. Moreover, of the victims who attended conferences for an offence involving 'very serious' personal harm, the majority were either 'satisfied' or 'very satisfied' with the outcome. Similarly, 98% of victims attending for 'serious offences against the person and/or property' were satisfied with the outcome.

When interviewed victims were asked if there was anything left out of the plan that they would have liked to have been included. The vast majority of victims (83%) stated there was nothing else they would have liked in the plan. For those victims who would have liked something else, they indicated such things for the offender as: help with drugs, alcohol or self-confidence; mentoring; help with schooling; voluntary work with an animal sanctuary; or restrictions on their movements or activities. Compensation and the return of stolen items were also mentioned. Notably, the majority of additional elements identified by victims related to helping the offender in some way, rather than any desire for punishment. Only three victims felt the offender should have received additional punishment and these included a ban on entering a certain area and one victim felt that the offender should have been placed in custody.

Another way of assessing the impact of the process on participants was when they were asked what they considered the best and worst aspects of their experience. Though this question elicited a wide range of differing responses, a number of common themes were evident. For victims, the best features appeared to be related to three issues: helping the offender in some way; helping prevent the offender from committing an offence again; and holding them to account for their actions. For example, victims reported:

'The best part was the honesty of the young person involved – answering the questions I put to him directly.'

'Being given the opportunity to talk to the wee lad and hope he won't do it again. Also, I think the best part was talking to his mum and understanding her position.'

The most positive aspect of the conferencing were clearly non-punitive in nature for victims: most seemed to appreciate that the conferences represented a means of moving forward for both parties, rather than gaining any sense of satisfaction that the offender would have to endure some form of harsh punishment in direct retribution for the original offence.

Conference or Court?

For the most part, victims (and offenders) expressed a preference for the conference process as opposed to going to court and only 13% of victims felt they would have preferred that the case had been dealt with by a court. On the whole victims considered that the conference offered a more meaningful environment for them. While a small number of victims would have preferred court, identifying conferencing as 'an easy option', this view was not held by the offenders. The offenders identified the most meaningful aspect of the conference as the opportunity to apologise to the victim, a feature virtually absent from the court process. Yet, they also identified the apology as one of the most difficult parts of the process:

'Rather court? No, because (offender) wouldn't have got help with his addiction, wouldn't have got the opportunity he has now. He has six months of help.'

Court more lenient? 'Not sure. Basically a sentence is over and done with. Now he has time to reflect on what he has done, to make amends as such. He has to engage in the help people are offering. It is his own fault if he doesn't take that chance.'

In terms of general levels of victim satisfaction with the conferencing process, victims were largely satisfied with both the conferencing process and the role they had in that process. For example, when victims were asked following their conference, 90% stated that the process was fair and 87% felt that their views were taken seriously.

A clear endorsement of victims' willingness to become involved in a process which directly deals with the individuals that have victimised them was evident in that 91% of victims said they would recommend conferencing to a person in a similar situation to themselves. Only one victim said they would not recommend conferencing to others. For the vast majority who would, they felt the process had given them the opportunity to express their views, to meet the young person face to face, to ask questions that mattered to them, to understand why

the incident happened to them, and ultimately, it appeared, to help them achieve closure.

DISCUSSION

Victims' experiences of conferences were, in general, very positive. Victims appeared to value the opportunity to use the forum of a conference to hold the offender accountable for their actions by conveying the impact of the offence directly to them. Many also appreciated the opportunity to participate in an initiative which could have a positive impact on the young offender's life. For the most part, victims engaged very well in the conference process and appeared happy with its overall outcome. The youth conference provided a distinct change from experiences of the traditional criminal justice system for many victims.⁶ In most conferences, for example, at the very least victims received an apology from the offender, which is something that would be very unlikely to occur at court.

Far from seeking vengeance, our findings suggest that most victims prioritise restitution or compensation over retribution and many display a desire to help the offender. The results of our research not only carry implications for the role victims ought to play within restorative processes, but also raise major questions about the exclusion victims have traditionally experienced in conventional criminal justice decision making. Indeed, other empirical studies, conducted within the parameters of the conventional sentencing system, have produced similar findings: victims would seem to be no more punitive than the general public in relation to their attitudes to sentencing by criminal courts (Erez and Tontodonato, 1992; Hough and Park, 2002; Mattinson and Mirrlees-Black, 2000; Mayhew and Van Kesteren, 2002).

A curious paradox is that victim input is considered appropriate for restorative justice but not within conventional sentencing frameworks (Sanders *et al.*, 2001). There would seem to be a distinct lack of cross-applicability to the arguments that have been used to support or oppose victim participation across the conventional/restorative divide. Whilst there are clear differences between the conventional and restorative paradigms, they also have a considerable degree in common. Both involve the assignment of responsibility and some degree of shaming; both place some value upon proportionality; both aspire to be accountable and legitimate in the eyes of the community; and both processes have been justified in terms of truth-finding. Although some commentators hold the view that restorative mechanisms should only be used in very particular circumstances (i.e. where petty crime or young offenders are involved) and, as such, should remain on the periphery of the criminal justice system (Ashworth, 1993; Hudson, 1998), the merits of victim participation suggest they should have a wider and more general application. Whether participating within a restorative or punitive sentencing arrangement, it is suggested that the theoretical argument for exclud-

ing victims on the basis that they may be overly punitive is fundamentally flawed.

As a matter of priority, a principled framework needs to be devised which enables victims to participate throughout the criminal justice system where they desire to do so. Once the normative framework is clarified, a need then arises to determine if the existing structures of the conventional paradigm can be enhanced to accommodate victim participation in a meaningful way through harmonisation with restorative principles, or whether the conventional paradigm ought to be entirely usurped by a new restorative-based framework. A process of harmonisation of the two paradigms may be able to take what is best from both and address the flaws in each system to create a strong, unitary model of criminal justice (Dignan, 2003; Shapland, 2003; Groenhuijsen, 2004). Other commentators have argued that such an approach would mean that restorative perspectives and practices would be submerged owing to the predominance of existing formal structures (Walgrave, 2002; Fattah, 2004); or that the retributive paradigm is fundamentally incapable of accommodating restorative principles (Zehr, 1990; Braithwaite, 2003).

If a restorative model is ever to replace the role of the conventional paradigm, the concept itself needs to be developed and refined (Dignan, 2003; Haines and O'Mahony, 2006). Difficult questions remain as to how a fully-fledged restorative system might cope with those cases where circumstances may render victim-offender reconciliation either extremely difficult or impossible. There is also a plethora of theoretical and practical conundrums relating to the application of restorative principles in those cases where victims or offenders are unwilling to participate; in cases involving so-called victimless crimes; in cases involving severe personal or sexual violence; in the realm of regulatory offences; or where domestic violence has occurred. Aside from a few bold attempts to discuss a specific role for restorative principles within such settings (Braithwaite and Daly, 1994; Morris and Gelsthorpe, 2000; Braithwaite, 2002), the question as to whether, and if so, how, restorative justice can be applied to these 'hard cases' is often fudged by its proponents.

CONCLUSIONS

Perhaps the appropriate way forward is to broaden our perspectives within existing paradigms and look for ways in which they may serve to complement and cross-fertilise each other. Emergent international norms dictate that criminal justice ought to be participatory and reparative, but should nonetheless be subject to state oversight, due process and proportionality. It is not straightforward to outline a specific means as to how two very different approaches to criminal justice can be merged in practice, but, as a starting point, it is suggested that policymakers continue to promote restorative schemes whilst simultaneously developing opportunities for victim participation in conventional criminal jus-

tice decision making. It is clearly vital, however, that any course of reform is not only principled and inclusive, but is also fully accountable in terms of human rights. As such, criminal justice must remain a public, rather than a private process; although private interests need not be omitted from the equation altogether. The opinions of the person most directly affected by the offence should have an appropriate degree of weight attached to them, and should be considered distinct from the general public interest in managing crime effectively. The experience and views of the victim need not be regarded as definitive factors, which would effectively amount to the victim exercising a form of veto in criminal justice decision making. Instead, the victim input could be considered as a factor alongside relevant public interest considerations.

The task of formulating a new participatory framework is no mean feat. Whilst innovative and creative reforms may go some way to providing practical solutions to traditional victim-related problems stemming from exclusion and secondary victimisation, charting a course for such far-reaching reform is also replete with risks. Victim-orientated reforms that are ill-conceived may only serve to muddy the waters and create fresh problems for other players. It may thus be timely to take a step backwards and reconsider the key aims and values that our criminal justice system seeks to promote, before undertaking a more radical overhaul of structures and processes around which these values revolve.

NOTES

- 1 (1985), para 5(b).
- 2 Young offenders were originally defined as 10–16 year olds, this was extended to include 17 year olds under the Justice (Northern Ireland) Act 2002.
- 3 An offence seriousness scale was devised by the researchers (see Campbell *et al.*, 2006, Appendix 6) which took into consideration: the degree, type and potential for harm; the degree of malice and intent to cause harm; the degree of violence; whether the offence was directed at property or at the person; whether the offence involved violence; the relative value of property involved; whether the offence was arrestable or not; and whether the offences were classified as triable summarily, either way or by indictment. The scale included: Type 1. Extremely serious offences – attracting life sentences; Type 2. Very serious violent offences and offences causing serious harm to the person; Type 3. Serious offences against the person and property related offences; Type 4. Intermediate offences against the person and property related offences; and Type 5. Minor property related and other minor offences.
- 4 A number of semi-structured telephone interviews were carried out with non-participating victims (eleven interviews). Some victims identified their reasons for not attending to practical difficulties including a lack of transport, illness, or difficulties getting time off work. Others said they did not want to meet the young person face to face; that they simply wanted to put the incident behind them; or they felt that the offence was simply not serious enough to warrant their involvement in a conference. Significantly, none of the victims said they did not attend either because they felt they wouldn't be given the opportunity to confront the young offender, or because they expected that the process would be too lenient or insufficiently punitive.
- 5 All of the subjects' names have been changed.

- 6 For an exploration of victims' experiences of the traditional criminal justice system in Northern Ireland see *Victims' and Witnesses' Views on Their Treatment in the Criminal Justice System* (Northern Ireland Office, 2004).

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