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The Other Voice in the Room: Restorative Justice Facilitators' Constructions of Justice

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Abstract

Restorative justice represents an approach to managing conflict initiated by a wrongdoing that focuses on restoring the participants materially, psychologically, and relationally. Restorative interventions usually involve facilitators who act as “experts” in helping the parties to manage their conflict restoratively. They also help participants to understand how restorative justice differs from traditional justice and what restorative justice looks like. However, we lack an understanding of how facilitators conceptualize justice in the first place. Drawing on interviews with facilitators, this study identifies facilitators’ justice constructions during victim-offender conferences. Together, these constructions constitute a multi-dimensional, multi-layered model of justice in victim-offender conferences.

Offenses have a number of negative consequences for victims, offenders, and the community at large, including anger (Barclay, Skarlicki, & Pugh, 2005; Worthington, 2003; Worthington & Wade, 1999), avoidance (McCullough, Root, & Cohen, 2006; Worthington & Wade, 1999), and relational damage (Okimoto, Wenzel, & Feather, 2009; Zechmeister & Romero, 2002). Although the dominant approach in the United States is to manage these consequences legalistically (i.e., through the traditional justice system), a growing movement that emphasizes a restorative approach is occurring. At the heart of this approach is an assumption that crime begets inherently personal conflict among stakeholder groups (Armour & Umbreit, 2005; Wenzel, Okimoto, Feather, & Platow, 2008). It also assumes that the most constructive way to manage conflict is to bring interested stakeholders together to dialogue about the implications of the conflict (Borton, 2009). Thus, viewing wrongdoing from a restorative perspective involves privileging the dialogic management of social, emotional, and material dimensions of conflict initiated by a harmful act committed by one party against another.

Although this approach ostensibly stands in contrast to the traditional justice paradigm (Armour & Umbreit, 2006; Braithwaite, 2002, 1999; Johnstone, 2002; Zehr, 2002), there are areas of commonality (Daly, 2002; Pavlich, 2005; Zernova, 2007). For example, both systems emphasize the importance of procedural justice through consistent application of rules as a way to heighten the parties' sense of fairness (Bies & Shapiro, 1988; Tyler, 2006; Tyler & Lind, 1992; Wenzel, Okimoto, Feather, & Platow, 2008). This emphasis on procedures is evident in victim-offender conferences (VOCs) that bring parties together to manage the conflict.

Helping to guide the parties' interaction are facilitators, who act ostensibly as restorative justice "experts." The little research that explores how facilitators enact justice in the context of VOCs typically positions them as "masters of ceremonies," "hosts," and "directors." However,

although their actions sometimes go unnoticed (Dignan et al., 2007; Umbreit et al., 2007), their influence on the interaction as the other voice in the room should not be understated, particularly given their role as “custodians of restorative justice values” (Dignan et al., 2007, 13).

At the heart of the restorative approach is the core value of *justice* (Braithwaite & Strang, 2001). Although Western conceptualizations of justice tend to frame it as universalistic and rationalistic (Warnke, 1992), few people seem to be able to agree on what it means and looks like (Boulding, 1988; Vaandering, 2011). This lack of agreement likely stems from its contextual grounding as a social construct that influences and is influenced by individuals’ communication with one another. That is, justice seems better conceptualized as a situated social construct whose definition changes not only by person but also by situation (Frey, Pearce, Pollock, Artz, & Murphy, 1996; Warnke, 1992; Winslade 2005). Thus, VOCs represent sites where all participants (including facilitators) negotiate and enact their sense of distributive (i.e., outcome), procedural, and interpersonal justice as they communicate with one another. Facilitators can exert a particularly strong influence on this negotiation and enactment simply by virtue of their position. As such, their justice constructions can influence how participants enact and evaluate the outcomes, process, and interaction constituting VOCs.

Thus, the focus of this paper is to explore restorative justice facilitators’ constructions of justice that influence dialogue patterns within VOCs. Specifically, we highlight how constructions of justice differ in terms of definitions of crime, approaches to accomplishing justice, and idealized outcomes of justice interventions. We argue that the framing of traditional and restorative systems as opposing systems is overly reductionist, and that both systems can be mapped onto a multi-dimensional, multi-layered construction of justice. In doing so, we aim to contribute to the extant literature on restorative justice in a few ways. First, we attempt to

enhance scholars' understanding of facilitators' justice attitudes and constructs which shape the overall trajectory of VOCs. Second, identifying justice constructions provides a starting point for beginning to look at how parties socially construct fair processes and outcomes with one another. That is, we privilege the *social* nature of justice. Finally, we aim to problematize the assumption that facilitators are homogenous process managers by illustrating differences in justice constructions. The remainder of this manuscript provides an overview of traditional and restorative justice along with the place of facilitators in VOCs. After summarizing the methods used to gather data, this study describes and discusses the facilitators' justice constructions.

Managing Injustice

A legalistic approach to managing harmdoing is generally characterized by a system of state-created and state-enforced rules and procedures, which are designed to promote rational analysis of case facts and due process to alleged offenders (Pavlich, 2005; Sitkin & Bies, 1994; Zehr, 2002; Warnke, 1992). If found guilty, offenders usually are punished to varying degrees by the state based on the premise that enacting justice involves repaying harm (from crime) with harm (from punishment) (Wenzel & Okimoto, 2010). At the heart of this approach is a desire to minimize the societal impact of harmdoing and to strengthen communities by dissuading others – including the offender – from engaging in the same unlawful activity (Zernova, 2007).

Critics of this legalistic approach, however, argue that it fails to produce just processes and outcomes because it is inherently retributive (Braithwaite, 2002; Pavlich, 2005; Tyler, 2006; Wenzel & Okimoto, 2010; Wenzel et al., 2008; Zehr, 2002; Zernova, 2007). They argue that, whereas the restorative approach reduces recidivism and addresses the emotional consequences of harmdoing (de Beus & Rodriguez, 2007; Kuo, Longmire, & Cuvelier, 2010; Latimer, Dowden, & Muise, 2005; Rodriguez, 2007), the legalistic approach is associated with persistent

anger among the parties (Braithwaite, 1989), failure to change attitudes of offenders (Wenzel & Okimoto, 2010), and lack of attention to the emotional dimension of crime (Wenzel et al., 2008). Pavlich (2005) summarizes the view of the traditional system from the vantage point of some restorative justice advocates as being “essentially retributive, punitive, violent, adversarial, rule-bound, formal (thus rigid and unresponsive), coercive, and guilt-centered” (27).

Advocates of restorative justice have cast restoration as an alternative way for managing the consequences of crime that addresses these deficiencies and promotes “transformation,” “healing,” and “empowerment” (Braithwaite, 2002; Umbreit et al., 2007). At the heart of the restorative approach is the belief that involved parties should manage the conflicts themselves, thereby holding one another accountable. In this way, participants work together to define the harms and co-create ways to heal the wounds caused by those harms (Armour & Umbreit, 2005; Pavlich, 2005; Wenzel et al., 2008). This collaboration and co-creation, facilitated by third parties in practices such as VOCs, ideally enables the accomplishment of individual, relational, and societal healing (Braithwaite, 2002; Johnstone, 2002; Zehr, 2002).

Facilitator Roles in Victim Offender Conferences

Facilitators’ actions and approaches can vary depending on the goals of the intervention (Alexander, 2008; Donohue, 1991; Folger, Poole, & Stutman, 2007; Umbreit, 2001). The extant literature offers a number of recommendations for facilitating a “good” or “humanistic” VOC, beginning with pre-conference participant preparation and extending into the conference (Umbreit, 2001; Umbreit et al., 2007). During pre-conference meetings, facilitators should attempt to develop rapport with the parties, solicit and listen empathically to their stories, and inform them about what a VOC would look like. During the conference, they are expected to manage the tone of the meeting by trying to achieve conversational balance, respectful

conversation, safe interaction, and conformity to the facilitator's rules (Dignan et al., 2007; Johnstone, 2002; Presser & Hamilton, 2006; Rossner, 2011). They also should be willing to empower the participants to share their stories, influence one another, express their emotions, and work toward their ideal outcome (Johnstone, 2002; Morris, 2002; Pavlich, 2005; Umbreit et al., 2007). These recommendations are rooted in assumptions about conflict and justice that are at the heart of restorative justice and VOCs.

In restorative justice, all individuals enter with justice orientations that shape their evaluation of and performance in VOCs (Alexander, 2008). For example, parties entering with a legalistic orientation and an assumption that conflicts are problems needing rational solutions may emphasize the importance of due process and equitable treatment. Thus, they may believe that conferences should imitate the very system from which they supposedly differ (Pavlich, 2005). Along with other associated values (i.e., religious values), justice orientations influence how parties interpret crime as well as how they define and enact justice (Stubbs, 2007). From this vantage point, justice is a socially-constructed, situational construct enacted by participants and influenced by contextual features such as interaction norms and crime characteristics.

Thus, VOCs can be seen as sites where all parties, including facilitators, negotiate the meaning of justice through interaction (Winslade, 2005). As suggested by structuration theory (Giddens, 1984), parties may draw on multiple rules (i.e., "offenders should be punished") and resources (i.e., assumptions about conflict and wrongdoing) as they interact in VOCs.

Facilitators in particular may draw on both restorative and traditional orientations to guide the trajectory of VOCs, thereby problematizing what "justice" looks like and means across VOCs. Thus, it is important to understand how facilitators define what constitutes "justice," leading us to pose the following research question: How do restorative justice facilitators define justice?

Methods

To investigate facilitators' definitions of justice, we interviewed members of a local restorative justice organization in south-central Pennsylvania. The organization aims to encourage peacemaking by applying and teaching the values and tenets of restorative justice. When managing VOCs, the organization receives cases from the traditional court system in which individuals under the age of 18 have pled guilty to a "non-violent" crime such as vandalism, theft, and simple assault. The court either suggests or requires that person at least to meet with a facilitator from the organization as a condition of probation. The organization then assigns the case to a facilitator, who is responsible for preparing the parties for a VOC if it seems feasible and appropriate to all parties involved. Although the facilitator is given a general outline for how meetings should proceed by the organization, that person has the freedom to interact with the parties and structure VOCs in whatever ways he or she feels will best accomplish justice. The facilitator then reports the results of the case back to the organization, which forwards the results to the court system.

Sample

We engaged in purposive sampling to generate a sample that was representative of the organization's demographics and experience. Working from a list sent to us by the organization, we laid out three clusters of potential participants. Each cluster reflected the organization's gender make-up, average case experience, and year of initial training. To obtain our sample, we emailed individuals in the first cluster to ask for their participation. Seventeen out of 23 (73%) agreed to participate. After emails to other participants in the two remaining clusters to achieve a fairly close organizational representativeness, we achieved our sample of 20 participants. The sample consisted of 12 men and 8 women who had worked an average of 21.41 cases (ranging

from 1 to 61) and had been involved with the organization as facilitators for an average of six years (ranging from 1997 to 2011). Eighteen participants were Caucasian whereas two were African-American. The majority of the participants (17) were currently employed full-time.

Data Collection

The first author, who had been involved with the organization as a volunteer facilitator and outside trainer for a little over one year prior to conducting data collection, conducted individual, semi-structured interviews with all of the participants. Because a handful of participants had known the interviewer previously as a trainer, he indicated that his goal was to learn about participants' experiences and beliefs about justice. To try to minimize a demand effect, he made sure at the outset of each interview to indicate that, even though he was a volunteer trainer for the organization, the research was being done separate from the organization and that all responses would be confidential. Thus, we tried to address the potential complication of the interviewer's organizational affiliation by approaching the interviews from a posture of interested learner mining the experiences of knowledgeable participants.

The interviews focused on two main areas: participants' backgrounds as facilitators and their experiences with facilitating VOCs. The first section explored participants' background and experience with restorative justice in general. The second section focused on specific cases they facilitated, enabling participants to discuss their roles as facilitators, their ideal case outcomes, their beliefs regarding both restorative and traditional justice, and their perceptions of their influence on their cases. All interviews were audio-recorded and transcribed, generating 319 pages of single-spaced, typed transcripts from the 24.73 hours of discussion.

Along with these interviews, we analyzed the organization's training manual that is distributed to all volunteer facilitators. The manual describes restorative justice and gives

guidelines for facilitators to follow when handling cases. Volunteers undergo 26 hours of training in which they read through the manual, engage in role play, and learn from guest speakers on various topics, such as adolescent brain development and the probation process.

Data Analysis

Analyzing qualitative data involves trying to make sense of and interpret participants' responses, in part by searching for themes in the data (Lindlof & Taylor, 2011). Our goal in particular was to make sense out of the way facilitators defined and enacted justice during VOCs. Adding another dimension to our discovery were our own unique histories as crime victims. These experiences initially led to desires for the harmdoers to be punished, a tension between confronting and / or avoiding them, and eventually a desire to understand *why* they had committed their crimes. These experiences helped us to reflect on participants' experiences in managing VOCs.

Our analysis process began with each of us individually reading the transcripts, making initial notes of ideas that stood out to us or seemed important. During this time, we discussed themes and patterns apparent to us in the data and compared our ideas together. This initial step helped to sensitize us to the texts and also to reflect on our own observations and experiences pertaining to justice and crime. Also, during the course of our data analysis, the first author worked as a facilitator for a case and was able to hold a VOC. Our personal experiences provided deeper insights and richness to our readings of the transcripts.

As we read the transcripts and identified initial themes, our next step was to code the data in terms of the categories of a) beliefs about crime, b) participant roles, c) desired justice process, and d) desired justice outcomes. These categories were borrowed from extant restorative justice literature, providing an etic approach to coding and categorization (Lindlof & Taylor, 2011). We

focused specifically on facilitators' description of the outcomes of their cases as well as their evaluation of those outcomes. During this more intensive time of coding, we looked for differences within the four categories described above by being sensitive to key terms such as "healing" and "humanity." We created several visual maps of categories' relationships with one another. Through this visual mapping, we proceeded to explore the relationships among and within the categories. In the end, a dynamic picture of justice emerged, as discussed below.

Results

Participants often contrasted traditional and restorative justice as distinct and opposite approaches (i.e., traditional *versus* restorative justice). Yet, what emerged from our readings of their descriptions of ideal justice outcomes and their experiences was more akin to a justice model with three layers – justice as offender punishment, justice as personal repair, and justice as relational rebalancing. Another dimension – justice as human growth – cut across these three layers. Facilitators indicated that, whereas the traditional approach through the court system facilitated the accomplishment of the most basic level of justice (offender punishment), VOCs enabled participants to satisfy individual and relational needs while possibly achieving human growth. Interwoven through these justice levels were different descriptions of crime, justice process, and justice results (see Table 1).

Justice as Offender Punishment

For participants, the punishment of offenders for their crimes represents the least satisfactory form of justice. At this level, justice is accomplished by levying a punishment on the offender for actions committed contrary to the laws of the state. Such punishment is intended to exact pain on the offender, thereby holding the offender accountable for the crime.

Table 1

Differences Among Justice Levels

Justice As...	Crime As...	Accomplished Through...	Results In...
Offender Punishment	Violation of state law	* Offender punishment	*Increased safety *Story completion * Accountability
Personal Repair	Violation of people	* Communicating directly * Story-telling * Taking responsibility * Apologizing	* Personal healing * Sense of closure
Relational Rebalance	Violation of relationship	* Communicating honestly * Collaborating	* Relational peace * Changed perspective * Increased trust
Human Growth	Individual and Relationship Growth Inhibitor	* Understanding long-term consequences * Appreciating possibilities	* Personal transformation * Reduced recidivism

Crime from this standpoint was a violation of state law committed by an individual. Angela (a pseudonym, as with all other names used here) articulated this viewpoint, indicating that Americans are “so individualistic-thinking that it’s hard for us to think in terms of system and community, and to value all of that. ‘Yes, you did this crime. You need to pay. It’s not *my* responsibility. *You* need to pay.’” Ashley suggested that this individualist approach was evident in the court system “doling out punishment for an action and not worrying about what happens to the person.” At its roots, this justice was grounded in an individualist orientation toward crime.

Because it was an individual violation of state law, crimes needed to be dealt with using an individual-oriented mechanism such as the traditional justice system. They most often described the traditional justice system as feeding a traditional view of crime as a problem in need of a solution. Viewing crime as an individual violation of state law was associated with viewing justice as an individualist, rational, and impersonal approach to solving the problem of crime. From this vantage point, justice was best handled through experts and state authorities, meaning that victims or others played little to no role in the justice process.

Facilitators generally held that punishing offenders was designed to make communities safer and hold offenders accountable. Several participants observed that traditional and restorative justice shared these goals even though they went about it differently. Ashley argued that the traditional justice system “wants to calm everybody’s fears and put someone in prison and say, ‘We’ve got the person. Everything’s taken care of.’” Imprisonment removed the instigator of the unsafe feelings in the community. Additionally, participants indicated that the systems dovetailed in their emphasis on accountability, though they drew sharp distinctions between the forms of accountability (as “punishment” or “restitution”). Whereas the traditional approach enacted accountability through punishment, the restorative justice approach did so through restitution from the victim. Robert, for example, stated, “I do think there’s a real difference between using words like accountability and punishment...We [Restorative justice facilitators] are gonna try to support you while we hold you accountable for what you did...rather than giving X amount of months on parole or probation.” Ashley acknowledged that the distinction, however, was in the eye of the beholder, stating that offenders “probably think it [restitution] is punishment. But it’s accountability.” Regardless, justice involved making sure that offenders were accountable for their actions.

Facilitators routinely criticized the traditional justice approach as ignoring victims, levying punishments unassociated with the crimes, and lacking in compassion and contextualization. Of particular concern was that victims had little role in the traditional justice system, even if offenders wanted to apologize to them. Walt indicated that he “had a number of kids say, ‘I really wanted to tell the other person I’m sorry for what I did, but I couldn’t. The lawyer said no talking.’” Colin indicated that the traditional approach differed from the restorative approach in that “the state is looking out for the interests of the justice system, for the interests of the state as a whole, whereas, with restorative justice, we’re really concerned with the victim, for the person who has been harmed through whatever it is that occurred. That’s a very fundamental difference.” In essence, victims at this level of justice were of tangential concern, with the primary focus being on the state and its management of the offender.

Additionally, facilitators critiqued the traditional system as lacking compassion and contextualization. One participant related with disgust a story of an older man who was sentenced to prison assisting in the suicide of his wife. The participant indicated that, as the man told the judge that he was helping her, “[the judge] says, ‘There is no compassion in the law.’ He said it! In words! There’s something wrong with that.” Other participants noted the “political” and “inflexible” nature of the system that focused on punishing the offender without considering the histories of the offenders and the individual circumstances of the crimes.

Facilitators also critiqued the traditional system as levying punishments that were unassociated with the crimes committed and that were more harmful than helpful. This harmfulness and disconnection were what separated “punishment” from “restitution.” Kristy noted that, whereas “punishment comes through the legal system,... restitution is paying back for what you’ve done.” Punishment was associated with “fear” and “being tagged,” which was

“hurtful” and “not redeemable.” Additionally, this punishment “really isn’t related in any kind of way to what the offender really did... Ya know, serving six months on probation, getting’ dragged in for a urine analysis on a random basis by your juvenile PO [probation officer] – that doesn’t necessarily have a lot of connection.” Punishment, then, was designed to hurt offenders to “pay them back” for their crime.

Essentially, justice as offender punishment involved punishing offenders for their crimes against the state. Facilitators argued that this level of justice was the focus of the traditional approach, which they believed to be insufficient. For them, whereas “the goal of the legal system is to find somebody innocent or guilty. ... With restorative justice, it’s about the two parties coming together and hopefully coming up with a resolution to address the harm.” The focus on harm set justice as offender punishment from justice as personal repair.

Justice as Personal Repair

The organization’s training documents capture the transition from offender punishment to personal repair by reframing the core question of justice from “what *crime* was committed” to “what *harm* was done.” This reframing attempts to focus attention on repairing personal harms suffered as a result of the crime. Personal repair refers to the healing of *individual* harms suffered primarily by the victim via restitution given by the offender, who is held accountable for his / her actions. This level of justice was characterized by a relatively mechanical approach by the parties to VOCs which attempted to address individual (rather than relational) problems.

Underlying this justice level was an assumption that crime was less a violation of a law (as with justice as offender punishment) than a violation of a person. One participant related a story of his own experience as a victim of a burglary, saying that “the impact was amazing, ‘cause [my] kids wouldn’t go outside and play anymore, and we live in the woods, with leaves

on the trees and stuff. They felt the bad men were hiding in the woods watching them.” Thus, for justice to be restored, it needed to address the personal harm created through the violation.

Three processes for addressing personal harm were apparent: communicating directly with each other, taking responsibility for one’s role, and offering emotional and material restitution. Walt described a VOC, saying, “You are facing the person you hurt, and you’re talking it through with them and telling them, ‘You know, I made a mistake, I’m sorry.’” Liz contrasted this experience with the traditional justice experience of victims, whom she described as likely being more skeptical of the offender because there was no direct communication between the two of them. Facilitators felt that direct communication, encouraged by their focus on following process guidelines, helped the parties to “put a face” to the harm, resulting in “some kind of empathy for each other” and “an opportunity to feel and understand how this impacted the victim and their families and their friends.”

Additionally, facilitators spoke frequently about the need for the offenders to take responsibility for their behavior. Phil told the story of an offender’s mother suggesting that her son bake a cake for the victim by himself because he was too young to be able to offer monetary restitution. Other facilitators spoke of cases in which offenders accepted responsibility for their behavior in the presence of their victims. Facilitators encouraged offenders to take responsibility by asking probing questions that helped offenders to put themselves in their victims’ shoes. This taking of responsibility was associated, in turn, with apologies on the part of offenders.

All facilitators discussed their desire to see offenders apologize and offer restitution for their actions. James indicated that “the best case would be the kid who’s harmed somebody looking the adult in the eye and saying ‘I screwed up and I’m really remorseful for that’ ... without the prompting of the facilitator.” The importance of apologizing was equaled by the

importance of offering restitution. Lillian indicated that “it’s good for the offender sort of to have the opportunity to make things right and to talk about what they’ve done wrong.” In short, when monetary restitution was needed, participants hoped that offenders would facilitate personal repair by offering both apologies and restitution. A few facilitators indicated that they would facilitate the negotiation of restitution if they felt the parties were having difficulty.

There were three desired results associated with justice as personal repair: healing, story completion, and closure. The ideal result of restitution was the accomplishment of “healing” and “wholeness” for victims and offenders. Gary, for example, indicated that he was excited to “see the release that happened through that sharing and just see those seeds of healing start to get planted.” This healing was also for offenders. Lillian noted that “restorative justice is just really about how can we make both parties whole again from that experience?” Although the majority of facilitators talked about healing in terms of victims, some also talked about offenders’ need for healing, even though, as Chris noted, such healing looked different than it did for victims.

Along with healing through apologies and restitution, the ability of victims to be able to share their stories was also a valued product of the restorative justice process. Ashley noted that “it’s very complicated the way people remember something happening. It’s like two different stories.” Colin talked about the importance of victims being able “to impart to the person or the persons who offended me the impact of their actions or maybe lack of actions.” As the parties shared their stories, they began to see the “total picture,” which in turn resulted in “a healing quality” of VOCs. Facilitators frequently spoke about the importance of encouraging the sharing of stories and listening to those stories empathically, so as to build relationships with the parties.

As a result of the apologies, restitution, and experience-sharing, offenders and victims tended to experience “closure” and “softening.” Such softening did not suggest relational

reconciliation, but rather a belief that they would not be harmed by one another in the future. Peter talked about the tendency for the parties to “walk away feeling good, about the situation, but not necessarily re-establishing a relationship.” These good feelings were precipitated by the belief that the other party would not harm them. Instead, the parties came to believe that “the victim’s a human being and the offender is a human being. And they’re not vicious – they shouldn’t be afraid of them anymore... It’s closure.” Only a few facilitators talked about forgiveness by the victim, though the practice of forgiveness was linked strongly to self-healing.

In all, justice as personal repair referred to individual parties moving beyond the personal harm of the crime and experiencing “healing” and “closure.” Associated with these outcomes were direct communication, taking responsibility, and offering apologies and restitution. However, some facilitators indicated that VOCs that accomplished this level of justice tended to be somewhat mechanical and impersonal. Lillian described it as simply “going through the motions,” and Liz indicated that “there’s [*sic*] definitely those cases that are more restorative than others.” Facilitators spoke about cases that left them “digging through sand” while “panning for gold.” The responses suggested the existence of different degrees of restorative justice. The accomplishment of relational rebalancing was one way in which some cases became “more restorative than others.”

Justice as Relational Rebalance

For some facilitators, individual repair was but *part* of the goal of restorative justice. As the organization’s handbook indicated, after the parties discuss the harm that was done and the restitution needed, they are to talk about “what’s next,” i.e., building up trust for the future. Angela asserted that “restorative justice is about the people... Yeah, there’s money, there’s [*sic*] those kinds of things that need to be dealt with. But restorative justice moves it beyond that...It

embraces the relationships.” In this vein, relational rebalance refers to the belief that justice involves the (re)creation of *relationship* peace among victims, offenders, and involved communities. Rebalancing meant that the relationship among the parties was at a satisfactory, even if not final, place at the conclusion of a VOC.

At the heart of this justice level was a view of crime as a relational barrier between the offender and his / her victim and community. James argued that “violence fragments, it separates, it isolates, it alienates that which has been cohesive.” A few participants likened community to a body, with all members of the body being interconnected and interdependent. Sam indicated that “human beings need to live in harmony with each other, need to care for each other, need to help each other when help is needed.” Coming from this assumption, justice involved not simply repairing an individual body part but also rebalancing the relationships by breaking down interpersonal barriers already softened by apologies and restitution.

Recalling one of her cases, Liz talked about how meeting helped a victim and offender “truly break down some of those barriers and walls.” Karen also related a story in which the victim, offenders, and the victim’s grandmother were hugging at the end, commenting that she was excited that “they were developing a relationship. You felt like a friendship was starting.” Even beyond the victim-offender relationship, facilitators commented that the community-offender relationship was rebalanced. Robert advanced this idea, saying that offenders “been sorta [*sic*] tearing themselves out of the fabric of the community for a long time before they ever got incarcerated.” Justice as relational rebalancing, then, referred to breaking down barriers separating offenders from both the victim and the larger community.

There were several results associated with this barrier removal. Most prominent for facilitators was the parties’ experience of relational peace and harmony. This was most apparent

in displays of friendship, such as shaking hands, talking in a friendly manner with one another, and hugging. Ashley talked about “hoping for a final meeting where everyone sits down, tells their story. I would like handshakes and forgiveness at the end.” Chris said he was touched by the “real good experience” of victims and offenders saying goodnight to each other after a tense start to their meeting. Phil talked about “people standing up and shaking hands and wishing each other well.” Stacey said she was motivated by the peace restored through restorative justice that “it makes me want to excel [*sic*] the lighter side over the darker side [of traditional justice].”

A handful of facilitators, though, cautioned that facilitators’ primary responsibilities were not about making people friends or ensuring that they maintained a relationship after the conference. Angela, for example, said that “it doesn’t mean they have to be friends. They may not have known each other, and they may not know each other beyond that.” Sam likewise expressed hope that facilitators would not “tell me, ‘Okay, now we’re coming together and one of the agendas is we want to make sure you guys learn to trust each other again.’ No, that’s not my job to tell anybody that.” Ashley indicated that relationship rebalancing depended on the parties’ relationship prior to the crime. Hence, although some facilitators expressed a desire to see reconciliation occur, others believed that such reconciliation may be inappropriate (thereby critiquing the organization’s identity as a “victim offender *reconciliation* program”).

Associated with relational peace and harmony was a changed perception of one another. Liz indicated that, for victims of crime, “all the fears and anger and everything kind of balloons into this monster image of the other person.” However, “when you have an opportunity to sit down and talk to someone,” according to Kristy, “you really get to the depth of that person, their past, the situation, and it’s like ‘Wow, there is a lot more to this than what the newspaper

reported.” Meeting helped the parties to re-envision one another, particularly changing the victim’s view of the offender.

Re-envisioning and rebalancing were associated with increased trust. Gary stated that “the seeds of building trust for the future are planted in whatever that looks like, and that can take any shape.” Ashley talked about the existence of “a lot of trust and gentleman’s agreement” behind parties’ conference agreement. The organization, likewise, called the final phase of the VOC “building trust for the future,” in which the parties promise not to retaliate against one another. Such trust was associated with honest communication, or what Chris labeled as “coming into the light with respect and honesty and effective communication.” This honesty entailed sharing tangible and emotional memories of the event. Liz recalled wanting to bring food to a VOC to celebrate the “authentic emotion expressed and tears” by the parties. Colin contrasted this with the “very sterile state” of the traditional system. Feeding this honesty was a sense of collaboration between the parties. Robert described “this sort of alliance” that occurred between an adult victim and a youth offender as “sort of helping the kid along.” Joy talked about her desire to “get them to connect with each other and to resolve this one problem.” Sam and Angela likewise discussed their desire for victims to work with offenders by holding them accountable for their restitution.

Each of these characteristics was associated with several facilitator practices, many of which were identified in the section above. These practices include listening, (re)framing the offense, relinquishing control, asking probing questions, and empathizing. By asking leading questions (especially of the offenders), facilitators encouraged the parties to empathize with one another. Such empathy facilitated the offering of forgiveness, which in turn facilitated relationship rebalancing (McCullough et al., 1998). Facilitators also reported that they needed to

relinquish control of the meetings (at the same time as they managed the process) so that participants were able to work through any relationship harms occurring from the crime.

Justice as relational rebalance, then, involved a constellation of consequences that included trust, re-visioning of the other, peace, and the breaking down of barriers. These consequences were facilitated by honest communication and a sense of collaboration between the parties. Importantly, however, justice as relational rebalancing did *not* mandate the continuation of a future relationship between the parties (i.e., “reconciliation”). Instead, the characteristics of “rebalancing” were crafted by the parties jointly through their dialogue. Indeed, facilitators indicated that relational peace took time to instill. This temporal development of peace also pointed to the final level of justice that occurred over time: human growth.

Justice as Human Growth

Speaking of a case in which an offender was almost too fearful to go through with meeting his victim, Liz commented that the offender, after having followed through with the VOC, “found that by doing what he was afraid of, he could end up in a positive note. And I think it gave him some confidence in there that he wouldn’t have had otherwise.” Such growth, although not as frequently mentioned as outcomes of “peace” and “healing,” was apparent in a handful of interviews. Justice as human growth refers to the belief that justice is an inherently humanistic accomplishment that helps people mature to become the best of who they are both emotionally and morally. However, unlike the other three justice levels which built on top of each other, human growth was a justice dimension that cut across all three levels. That is, participants – victims, offenders, and facilitators – could experience varying levels of growth in all three levels. Whereas facilitators perceived the least amount of growth through offender

punishment, they felt that restorative justice offered the highest potential for human growth by facilitating the maturation process and seeing the full scope of harm.

As opposed to seeing crime as a violation of law or of people and their relationships, justice as human growth framed crime as an impediment to people's life progress. That is, the other justice levels were associated with a "deficit" view of crime (i.e., something that produced negative returns) whereas the human growth dimension was associated with a more neutralist view of crime (i.e., something that inhibited positive returns). In this way, crime was a decision, whether informed or uninformed, made by a person that interrupted her / his journey through adolescence. As such, youth who were processed through the traditional justice system faced a future that was sent "off track" as the result of that decision and action.

At the heart of this justice belief were two assumptions. First was the belief that growth was a human characteristic. Sam talked about his desire to "use that [offense] as an opportunity to grow" and "transform the mistake into a positive." All participants, but particularly offenders, had the potential to grow through dialoguing with one another. Second was the belief that people were not defined by their crime. People, instead, were "fragile vessels" who "want to do what's right." Facilitators argued that people who had committed a crime could change and should not be forever defined by the act. From this perspective, offenders were not defined by the harm they had caused nor were they always to be seen as harmdoers.

Instead, facilitators hoped that the parties were able to experience transformation and maturation. Sam talked about transformation as helping offenders think through "'what I have really learned a lot from this and I can be a better person going forward than I was before.' *That* would be a true transformation if parties are able to say that at the end." This thought process was tied in with maturation and growth, particularly for the offender. Gary, for example, said

that offenders “are gonna grow through this experience. They are moving on to adulthood and that means taking responsibilities for their own lives and their own actions.” Peter related a story in which a victim asked that his restitution be that the offender go with him to a flower shop “and we’ll buy a lot of flowers and we will then deliver them to all the widows that I know. *Because I want him to see what it means to make somebody happy.* I think this will really help him to see that kind of happiness of something that he has done.” Facilitators, then, were concerned about the emotional and moral growth of the parties.

In line with this focus on maturation was also a focus on deterring the offender from committing future crimes. From this view, offenders will have matured enough to abstain from future criminal acts. George, for example, highlighted an example of a youth offender who stated that he was planning on pursuing a career in police work. James likewise said that VOCs “get a young person to really reflect on their life and say, ‘Wow, okay, I made a mistake. I took responsibility for it.’ And it begins a new pattern of operating.” Similarly, Angela said her “hope for the offenders would be...that they really have a sense that they have a second chance.”

This second chance also separated restorative justice from traditional justice in the eyes of some facilitators. Namely, whereas traditional justice left a type of “scarlet letter” on the offender, restorative justice facilitated human growth through socialization and reintegration. Ashley commented that “once a prisoner, once a convict, whatever, that reintegration into society is ridiculously hard. I don’t know what we expect people to do. Just go away and never come back? That’s not fair.” Robert also talked about the goal of restorative justice to “fix the offender, get ‘em up to speed, hook him up with work..., trying to make it okay with the community having the other guy coming back in.” This reintegration, according to Stacey, enabled them to “create a better experience with the next person,” thus helping the community.

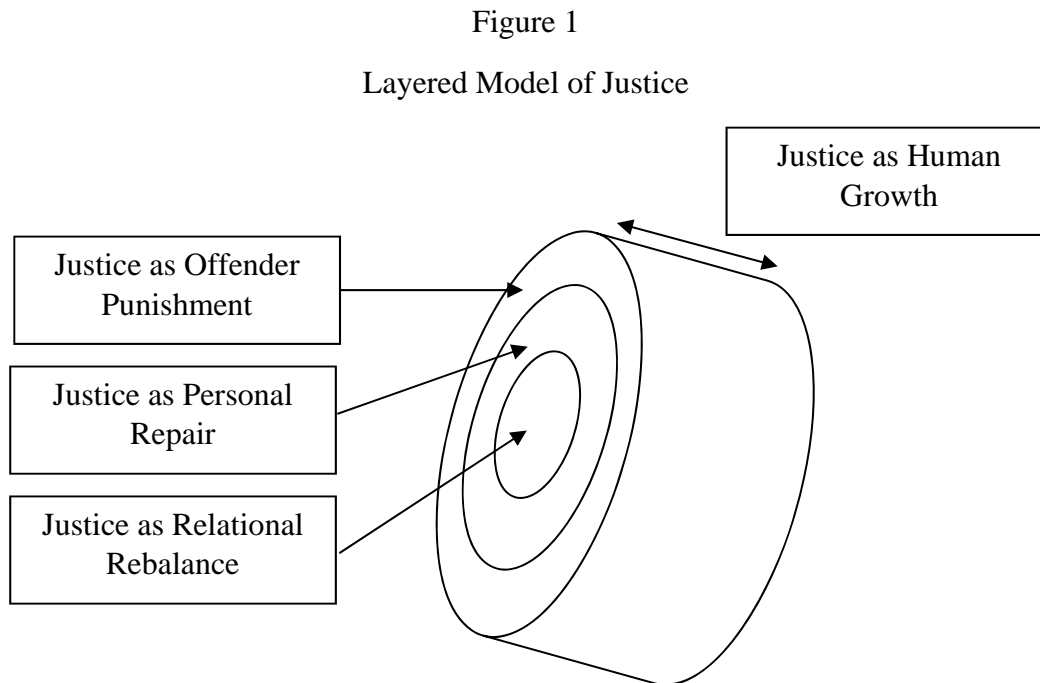
Facilitating this moral and emotional growth were two processes: empowering the offender to accept responsibility and helping the parties to understand the consequences of their actions. Empowerment typically came through empathic and active listening by all parties (including facilitators). The organization's training manual encouraged facilitators to "suspend judgment of the speaker, their emotions and their experiences" and to avoid "interrupting, offering advice, giving advice, [or] bringing up similar feelings or problems from their own experiences." Facilitators helped the parties understand action consequences by asking probing questions and encouraging the parties to interact with one another. For example, the organization's manual encouraged facilitators to paraphrase and validate participants' experiences. Essentially, facilitators emphasized the importance of both process management and relationship development so that the parties could grow from their experiences.

Thus, justice as human growth was focused on helping the parties, though primarily the offender, to experience moral and emotional growth through the sharing of experiences and the reframing of the harmful event. This growth facilitated their reintegration into their communities and helped them to make the most of their second chance. Justice as human growth, while at once an intensely personal experience, was also an inherently communal event.

Discussion

Justice is a complex construct that is situated in a variety of personal, social, and cultural contexts (Winslade, 2005). VOCs are unique sites where people bring different justice definitions and work toward what they view as a just outcome and process (Shapland et al., 2006). Yet, not all VOCs are similar in their processes and outcomes (Umbreit, 2001). From the standpoint of VOC facilitators, justice interventions – from courtroom trials to VOCs – vary depending on a) the level of justice achieved and b) the experience of human growth (see Figure

1). The outermost layer – offender punishment – was the most superficial enactment of justice. Rebalancing of relationships, coupled with human growth, represented the core ideal of justice.



The idea of a layered justice model draws on principles of social penetration theory (Altman & Taylor, 1973) to explain how parties socially accomplish justice in VOCs. Social penetration theory states that relationship depth increases along with self-disclosure and depends on the costs and benefits associated with maintaining the relationship (Altman & Taylor, 1973; Chen & Nakazawa, 2009). Applying social penetration theory concepts to the layered justice model presented here suggests a number of factors that could influence the depth of justice achieved. Prior to entering into a VOC, offenders pass through the initial layer of punishment through the court system. However, they may not necessarily progress to a deeper layer from there. Additionally, even if they do participate in a VOC, interventions vary in terms of the outcomes accomplished, ranging from an agreement for restitution to reconciliation. Finally, across each intervention, there is the potential for human growth and maturation.

There are a number of factors and practices that influence how deeply interventions go through the justice layers and the level of growth participants' experience. Self-disclosure is a key facet of VOCs as the parties share their stories with one another. At the outer level of justice, the parties disclose little, if any, information to one another because their interactions are regulated by a system that promotes competition over collaboration and individualism over connection (Morris, 2002). As such, they experience little relational and individual growth, which supports assertions that punishment (the outermost layer) is associated more with control than support (Wachtel & McCold, 2001). However, as parties share their experiences with each other, they may experience personal healing, the (re)establishment of relationship, and a renewed sense of possibility. For example, reintegrative shaming of offenders may enable them to understand the magnitude of the harms they have caused and thus be less likely to recidivate (Ahmed & Braithwaite, 2006; Morrison, 2006; Tyler, 2006; Wachtel & McCold, 2001).

Along with self-disclosure, breadth of revelation – sharing about topics not related to the crime – within VOCs could impact justice depth. For example, in the courtroom setting, participants share little if any information, and what little they may talk about generally is limited to a narrow range of topics. However, in VOCs where participants can bring up more issues, they are able to share not only their experience with the crime, but also how it impacted their family, their work, and their neighbors. They could also draw connections to their past, particularly if they have been victimized by crime before. Discussing a wider range of issues may facilitate deeper experiences of justice and more human growth. However, the model attempts to account for the possibility that growth can occur at differing levels regardless of the level of justice reached. Thus, rather than saying that significant growth occurs more at one level

rather than another, it leaves open the possibility that situational and personal factors – such as punishment received, offense severity, and pre-offense closeness – could influence growth.

Shaping the breadth and depth of self-disclosure are two factors that span the justice layers: accountability and concern for relationships. Both the traditional and restorative paradigms are concerned about promoting accountability. Yet, they differ on how they define accountability. Whereas justice as offender punishment relies on a *negative* definition of accountability (as punishment), personal repair and relational rebalance reflect principles of *positive* accountability by emphasizing understanding through restitution. Moving from offender punishment to other justice layers, then, requires a redefinition of accountability. Additionally, the emphasis on relationship repair grows as participants move closer to the inner layer of justice. Traditional interventions, accomplishing justice as offender punishment, tend to de-emphasize the importance of repairing the victim-offender relationship (Zehr, 2002). Restorative interventions, in turn, are designed to accomplish relationship repair, facilitated in part by characteristics of forgiveness, apology, restitution, empathic listening, and probing questions that signal interest in the other (Armour & Umbreit, 2006; Morris, 2002; Presser & Hamilton, 2006; Wenzel et al., 2008; Zehr, 2002). The degree of repair changes depending on the extent to which such practices communicate concern for the other person. As such, when facilitators encourage victims and offenders to apologize, request or grant forgiveness, “share their story,” ask follow-up questions, and listen empathically, they are implicitly communicating their ideal justice accomplishment of relational rebalance characterized by extensive human growth.

Inherent in this justice model are several tensions that occur within and across the layers. These tensions exist between such interests as mercy and punishment, autonomy and connection, and openness and closedness (Waldron & Kelley, 2008). For facilitators, the traditional

accomplishment of offender punishment is characterized by punishment, autonomy, and closedness whereas mercy, connection, and openness are more likely with the restorative accomplishment of relational rebalance. Justice interventions, whether traditional or restorative, can vary along each of these dimensions. For example, offenders may initially embrace autonomy and closedness in court trials by disclosing little and offering a perfunctory apology. They may then choose to be more open in VOCs by disclosing their story in greater detail and offering a more heartfelt apology, particularly if facilitators encourage them during pre-conference meetings to apologize and engage greater self-disclosure to victims. If victims reciprocate openness and connection, the participants may reach a deeper justice layer together.

Overall, this model depicts the relationship between the traditional and restorative paradigms as being interdependent, with the accomplishment of one layer possibly facilitating the accomplishment of a deeper layer (Pavlich, 2005; Zernova, 2007). Punishment by the traditional court system may facilitate personal repair in the form of apologies and restitution during a VOC, given that questions about the guilt or innocence of the person accused of the crime would have been answered by a court system that has institutional legitimacy. Personal repair, in turn, can help people engage in relationship rebalance if they so choose. If parties begin to feel “burned” in a VOC, they may pull back to a different justice level (i.e., from relational rebalance to personal repair or out of a VOC altogether), suggesting that justice is a dynamic accomplishment negotiated by the parties (Warnke, 1992; Wunsttin, 2001). As such, justice as offender punishment achieved through a traditional intervention may facilitate reaching deeper justice layers through a restorative VOC by accomplishing an initial baseline of justice through punishment of the offender; establishing the importance of following process in justice

interventions; and (in the eyes of facilitators) acting as a foil for restorative initiatives in terms of processes, interactions, and outcomes.

Implications

This study has several implications for theory, research, and practice. On a theoretical level, this study calls attention to the inherently social and contextual nature of justice. The value of justice exists within a larger constellation of values (Rokeach, 1973; Schwartz, & Bilsky, 1987). As individuals interact, their values are socially (re)constructed, leading to a sense of justice as a negotiated morality (Waldron & Kelley, 2008). Given this contextual nature of justice, we should re-examine the relationship between traditional and restorative justice. We reject the idea that they are polar opposites, instead embracing the idea that they provide different structures for people to work out their ideas of justice. A more nuanced approach that identifies more than one continuum (i.e., justice – mercy) could tease out their relationship.

The results of this study suggest that researchers take care to explore participants' desired outcomes when assessing the effectiveness of restorative justice initiatives (Rossner, 2011). For example, recidivism rate may be but *one* dimension of justice effectiveness, which not all participants may feel is important. This is particularly important when investigating victim, offender, and facilitator experiences during VOCs. Additionally, this research suggests the need to explore further the language used by facilitators during their training sessions and VOCs. Researchers also can explore the offense characteristics that influence accomplishment of a particular justice level. For example, higher offense severity may diminish likelihood of forgiveness and reconciliation because of high levels of interpersonal stress and low levels of self-disclosure and empathy (Kelley & Waldron, 2005; McCullough et al., 1998).

This study also has implications for practice, particularly relating to the training of facilitators and the portrayal of restorative justice to local communities. Facilitators must be keenly aware of their own justice expectations and how their pasts have shaped their expectations. Facilitators also must be cognizant of how their practices during preparatory meetings and conferences implicitly suggest their desired outcomes. Along with this, facilitators and staff persons who manage restorative justice programs must be sensitive to the language they use to sell their programs. Acknowledging the different tiers of justice can help as they describe the similarities and differences with regard to their programs and the traditional justice system.

Limitations and Future Directions

Of course, these results must be taken in context. The findings from this study emerge from interviews with participants from one organization that seems at least modestly influenced by the strong Mennonite presence in its area. The surrounding cultural norms and beliefs may make the responses unique to this area. Additionally, the standing of the interviewer, despite attempts to control for its influence, may have impacted participants' responses. Finally, this study looked only at facilitators' constructions of justice. For a fuller picture, future research can investigate not only victim and offender constructions as well, but also how they are enacted in VOC settings. Additionally, research can continue to investigate the relationships among the justice layers, exploring what factors motivate the enactment of the various justice types. Finally, research can explore how these justice ideals are associated with particular practices.

Conclusion

Facilitators play a key role in shaping how justice is enacted and accomplished as victims and offenders talk through their experiences. This study suggests the existence of three justice layers along with varying potential for human growth. Given this, rather than holding restorative

justice up as a type of justice panacea, we should approach it as one system through which parties can negotiate the look of justice. In doing so, we give credit not to restorative justice, but rather to the people who are strong and brave enough to go through what can be difficult and sensitive program to seek restitution, experience healing, rebalance relationships, and / or experience growth and maturity.

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