

**Restorative Justice as a Pathway for Forgiveness:  
How and should forgiveness operate within the  
Criminal Justice System?**

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**Abstract**

Restorative justice represents a new model of conflict resolution operating both within the criminal justice process and independently, outside it. Numerous restorative practices exist, the most prominent being victim-offender-mediation, which involves discussing the offence, its consequences and resolution with victims and perpetrators, facilitated in a safe environment by a trained mediator. Forgiveness, whilst not the primary objective of Restorative Justice, often occurs during the process.

Whilst restorative justice presents opportunities for forgiveness, such outcomes only arise where victims are satisfied with the restorative process. Any restorative practice must be implemented successfully in order to facilitate such victim forgiveness. To maximise the potential for victim forgiveness within restorative programmes victim needs must be fulfilled as far as possible. Newly generated empirical data indicates that the existence of restorative practice within the formal structure of the criminal justice system is of crucial importance to victim participants. Therefore, through pursuing the integration of restorative practice within the criminal justice system, one is not only providing a pathway for forgiveness within the judicial process but additionally facilitating the highest probability of victim forgiveness through its existence as a formal criminal justice disposal.

This paper examines the opportunities for forgiveness provided through the integration of restorative justice within the Western criminal justice system. Additionally, the effects such integration would have on increasing forgiveness as a probable outcome are also discussed. It critiques existing debates regarding its implementation, supplementing these interpretations with empirical data collected from victims participating in an extensive restorative justice [programme currently operating within the United Kingdom. This empirical data provides a commentary regarding restorative practice, its implementation and victim forgiveness as an outcome of the process.

**Key Words: Forgiveness, Reconciliation, Victims, Offenders, Restorative Justice, Criminal Justice System.**

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**Introduction**

Restorative justice represents a new model of conflict resolution. It is a victim centred response to crime directly involving those most affected by the criminal act through dialogue and direct accountability.<sup>1</sup> Numerous restorative practices exist, the most prominent being victim-offender mediation.<sup>2</sup> Forgiveness, whilst not the primary objective of restorative justice, often occurs during the process<sup>3</sup>.

Thus, restorative practices offer an opportunity for integrating victim forgiveness within the Criminal Justice System. This paper draws upon newly generated empirical data which suggests that the collaboration of restorative practices

and formal structures of the criminal justice system offers the greatest potential for incorporating forgiveness within the Criminal Justice Process.

This paper moves from an explanation of restorative justice to its potential in delivering reconciliation and forgiveness. The extent to which the Criminal Justice System can incorporate restorative justice is then discussed with reference to newly generated empirical data, specifically an analysis of qualitative interviews conducted with victims participating in restorative justice practice within England.

### **What is Restorative Justice?**

Restorative justice has been described as:

“...a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”<sup>4</sup>.

Common across all theories of restorative justice is the promotion of stakeholder (victims and offenders) involvement and empowerment, notwithstanding the existence of numerous and varied practices.<sup>5</sup> This diversity of implementation has, arguably, resulted in the development of a *continuum* of restorative practices<sup>6</sup> that recognises each process according to the degree of restorative nature. Within this continuum, direct victim-offender interaction such as ‘Victim-Offender Mediation’ is described as being ‘most restorative’<sup>7</sup>, thus holding the greatest potential for expressions of forgiveness. It is this practice upon which the paper focuses.

‘Victim-Offender Mediation’ (VOM) involves interaction and communication between victims and offenders in a safe environment controlled by a trained facilitator. Many such programmes are premised upon providing opportunities for victims to describe exactly how the offence affected them. It is claimed that this helps the victim to obtain benefits including reduction of stress<sup>8</sup>, the removal of feelings of anger and trepidation, the alleviation of their (often exaggerated) fears about the offender<sup>9</sup> and, importantly in this context, the promotion of healing and forgiveness<sup>10</sup>.

### **Restorative Justice and the role of Forgiveness.**

Whilst not described as an aim or objective of restorative justice it is accepted that forgiveness often occurs during restorative processes.<sup>11</sup> Victims regularly appear moved to forgiveness when they fully understand the ‘offenders’ position and dispel the stereotypical notions and fears victims often possess regarding their offender<sup>12</sup>. Restorative justice and forgiveness can be perceived as complimentary approaches that can be pursued independently. Restorative practices provide opportunities for expressions of genuine remorse and reconciliation, expressions which contribute to victim forgiveness. Furthermore, restorative justice is described as contributing to the reduction of victims’ unforgiving motivations such as anger and a desire for punitive retribution whilst possibly increasing their positive responses to the offender<sup>13</sup>. An expression of genuine remorse is again one factor which is absent within the traditional Criminal Justice Process, as any such statements of remorse or contrition are directed, through legal professionals to the Court and Judge, in contrast to the expression of remorse made by the offender themselves directly to the victim.<sup>14</sup> Therefore, although neither an expectation nor goal in restorative justice, forgiveness is explicitly recognised as being beneficial for victim healing<sup>15</sup>

Furthermore, it is suggested that the act of forgiveness is demonstrative of those benefits victims derive from participation<sup>16</sup>. Indeed, numerous studies clearly indicate the potential for victim forgiveness.<sup>17</sup> Such forgiveness often results from genuine expressions of remorse by offenders together with the removal of those stereotypical misconceptions held by victims regarding their offenders<sup>18</sup>.

The existence and potential role for forgiveness within restorative justice practices is significant given the context of its continued exclusion within the traditional Criminal Justice System<sup>19</sup>. Indeed, the existence of victim forgiveness is repeatedly described as irrelevant during sentencing.<sup>20</sup> Furthermore, whilst contemporary Sentencing Guidelines, contained within the Criminal Justice Act (2003), reference numerous and varied sentencing considerations, victim forgiveness remains conspicuous by its absence.<sup>21</sup>

Studies repeatedly demonstrated that victims felt aggrieved with the traditional Western models of justice, with research indicating that their experiences of the processes involved perceptions of ‘disempowerment’ and ‘exclusion’. A perception potentially exacerbated by the System’s continued rejection of victim expressions of forgiveness. This rejection may, in turn have contributed to the regularly recorded high levels of dissatisfaction among victims.

### **The incorporation of Restorative Justice and potential opportunities for forgiveness, within contemporary Criminal Justice**

Restorative justice and its operation within the Criminal Justice System is the subject of continued debate<sup>22</sup>. As an integrated sentencing option, within the Criminal Justice Process it can exist formally, with the support and subsequent authority of the Justice System. This would enable widespread use and accessibility (whereas restorative processes are available currently, in limited geographical areas). However, the integration of restorative practices within the formal Criminal Justice System is not without criticism.

One criticism of this approach is that a willingness to encompass formal judicial coercion<sup>23</sup> within restorative practice may result in reinforcing, rather than reforming the Justice Systems existing norms, including the exclusion of victims and irrelevance of forgiveness.<sup>24</sup>

Additionally, the explicit coercion of stakeholders into restorative practices directly precludes those theories of empowerment which are central to restorative theory<sup>25</sup>. Furthermore, it is argued that the integration of restorative justice as a formal aspect of the Justice Process may seriously undermine the core themes of Restorative Justice<sup>26</sup> through the imposition of the existing systems retributive paradigm<sup>27</sup>. These concerns question both the extent to which such practices would remain ‘restorative’ in nature and the extent to which acts of forgiveness would continue to occur in a process which is no longer ‘truly restorative’.

Alternatively, restorative justice has been advocated as existing independently from the Criminal Justice Process, relying upon participant consent. It is argued that this approach best captures restorative justice as being a deliberative process involving all relevant stakeholders<sup>28</sup>. A separate existence would avoid the criticism that judicial coercion precludes stakeholder empowerment as the state continues to control the process. However, theorists have argued that, through existing separately, any implementation will remain sidelined by the traditional Criminal Justice Process.

It will suffer from limited funding, limited use and a latent inability to address those well cited criticisms of the Justice Process it strives to resolve, thus condemning restorative practices and their opportunities for forgiveness to the peripheral of the Criminal Justice System.

The restorative practice within which the empirical data was gathered represents a third model of implementation. The process exists under the control of an independent coordinator and is available to cases described as ‘minor’ (although involves both adult and juvenile offenders),. Whilst working closely with police authorities, it exists separately from formal Justice Agencies. It is suggested that this ‘third-way’ or hybrid approach, operating between formal integration and independence, provides both the support and authority of the Justice System, whilst being able to adhere to the central principles of restorative justice. This is possible through the avoidance of the existing system’s prevailing retributive paradigms and those problems associated with judicial coercion of participants.<sup>29</sup> This continuity of restorative principles, it is suggested, allows for the maximum opportunities for forgiveness whilst avoiding the potential pitfalls of complete independence previously described.

### **Creating Contexts (for Forgiveness): Victim Experiences of Restorative Justice and its Impact**

The data discussed forms part of an ongoing case study<sup>30</sup> conducted within the South of England. It aims to illustrate that ‘third way practices’ possess the greatest potential for promoting ‘forgiveness’ within the Criminal Justice System, through relying upon primary qualitative empirical data<sup>31</sup> provided by victims.

The empirical data gathered provides an insight into the attitudes of victims participating in restorative justice practices and the extent to which they desire restorative justices’ integration within the Criminal Justice System

Considerable disagreement exists within extant literature regarding the position which the state should assume regarding restorative justice interventions<sup>32</sup>. Whilst some<sup>33</sup> claim that the benefits offered through state involvement outweigh the proposed disadvantages others,<sup>34</sup> assert that state bodies such as the police should have no role in the process<sup>35</sup>. It has been claimed that the presence of criminal justice agencies, such as the police, signifies state reluctance in relinquishing its power to those central stakeholders. This failure, it is argued, results in the legal framing of the incident in question, as opposed to a moral framing which facilitates the restorative process<sup>36</sup>.

Claims that “it is a fact that many programmes wish to exclude or restrict the role played by state agencies because they consider the state will ruin restorative justice”<sup>37</sup> may suffer from an erroneous presupposition that those victims who participate in restorative justice practices actually desire ‘informal justice’. From the data gathered throughout this research it would appear that such an assertion is far from accurate. Indeed, many victims who were interviewed indicated a desire for the agents of formal justice, specifically stating:

*“... it’s important that the policeman was there... it gives the whole process more authority, I’m not sure I would have participated in the panel if I had known that there would not be a PC present ...”*

**Interview C005**

*“I think it’s really important having a police officer there, otherwise it’s just like sitting with a civil servant...”*

**Interview C010**

From the data collected, victims repeatedly indicated a desire for a police presence. This suggests that the extent to which restorative justice practices occur within or alongside the Criminal Justice Process is an important factor for victim participation, obviously a crucial prerequisite in facilitating victim forgiveness. The existence of restorative practices as separate from but related to formal criminal justice agencies would appear to allow pursuit of restorative principles, free from retributive constraints; yet retaining the support and ‘authority’ of the formal Justice System. This appears to provide a pathway for restorative justice to operate within the Criminal Justice System, enabling the delivery of those advantages discussed above and the relevance of victim forgiveness, whilst avoiding those detriments arising from full integration or complete separation. The position occupied by the hybrid, partner approach ensures restorative principles and practice – thus maximising the delivery of those benefits (including forgiveness) whilst additionally retaining the authority of the formal Justice System – a requirement indicated by the victims as being of importance when deciding whether to participate.

Victim statements indicate that they saw a police presence during the restorative intervention as being important. It contributed authority to the situation and directly influenced their decision to participate. Securing victim participation in restorative processes is repeatedly seen as important,<sup>38</sup> especially when addressing the role of forgiveness, as non-participation precludes any such expression.

*“... With the P.C.S.O. there it’s an authority figure in a discussion group and I think that had more effect....”*

**InterviewC007**

*“I think it was good that there was a clear police presence ...someone like that in authority .... I don’t think that I would have taken part without the police there”*

**Interview C014**

*“I’m happy to see the PCSO there because it did give some level of authority about the whole process”*

**Interview C007**

**And**

*“....it [police presence] gave that extra seriousness which I think is important...in deciding to come”*

**Interview C008**

It is clear that numerous victims felt that a police presence was important. This belief was shared by 80% of those interviewed. This appears to contradict the assertions that victims who participate in restorative justice interventions desire

‘informal justice’.<sup>39</sup> Conversely, the data collected during this research indicates that within restorative practice, victims desire a police presence for the purposes of reminding offenders of its authority and that this was an important consideration in victim decisions to engage with the process.

### **Potential Opposition to Restorative Justice and Forgiveness within the Criminal Justice System.**

It is evident that normative arguments against the inclusion of restorative justice and victim perspectives within criminal justice processes will persist. The prevalence of existing paradigms of justice may appear difficult to dismiss. Retributive theorists<sup>40</sup> rely upon the assertion that justice requires punishment in proportion to their moral wrongdoing, with no account of factors such as victim forgiveness<sup>41</sup>. Deterrent theorists<sup>42</sup> rely upon the arguments that sanctions operate to deter future offenders, again excluding considerations such as restorative theory and victim desire. However, criticisms over the traditional justice processes are well documented and the continued exclusion of victims and forgiveness within the Criminal Justice Process difficult to ignore.

However, despite normative objections, it must be recognised that research consistently identifies restorative justice practices as being of benefit to both victims and offenders. Research suggests that it delivers promises of reducing post-traumatic stress<sup>43</sup>, removing feelings of anger and fears about the offender<sup>44</sup> and promoting healing and forgiveness<sup>45</sup>. Additionally previous empirical studies indicate a clear reduction in offender recidivism<sup>46</sup> when engaging in restorative justice practices.

### **Concluding Comments and Future Potential**

In conclusion therefore, it would appear that, as a process, restorative justice holds significant potential for both victim and offender healing, facilitated through the emotional significance of sincere remorse and subsequent opportunities for expressions of forgiveness.

From the above discussion, it is suggested that the model best able to deliver restorative justice and therefore the integration of forgiveness within the criminal justice system is that of the ‘third way’ or hybrid approach. Again, this method enables the process to draw upon the authority and support of the Criminal Justice System whilst remaining independent from it and thus free from influence from its prevailing retributive, exclusionary paradigms. Additionally, the ‘third way’ or hybrid approach allows for the presence and input of other Criminal Justice Agencies, such as the police during the restorative process, a factor explicitly identified as being of importance when securing victim participation, without which no opportunities for forgiveness would exist. In conclusion therefore, through avoidance of the existing paradigms of retribution and victim exclusion, whilst securing victim participation, aided by motivating factors such as police involvement, it would appear that restorative justice can offer a pathway to forgiveness within the Criminal Justice System.

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