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Article in *The International Journal of Restorative Justice* · November 2018

DOI: 10.5553/IJRJ/258908912018001003003

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## ARTICLE

# Restorative justice as feminist practice

Leigh Goodmark\*

## Abstract

*Feminists have viewed the implementation of restorative practices warily, particularly in the context of gender-based harms. Concerns include the devaluing of gender-based harms, the reprivatisation of violence against women and the inability of restorative practitioners to guarantee safety for people subjected to abuse. But this article will argue that restorative justice can be a uniquely feminist practice, growing out of the same mistrust of state-based systems and engagement of the community that animated the early feminist movement. Although some caution is warranted, restorative justice serves the feminist goals of amplifying women's voices, fostering women's autonomy and empowerment, engaging community, avoiding gender essentialism and employing an intersectional analysis, transforming patriarchal structures and ending violence against women.*

**Keywords:** Restorative justice, gender-based violence, feminism.

To heal the trauma she experienced in a relationship rife with intimate partner violence, Attiya Khan chose to confront the man who had abused her. Khan hoped that their conversation would help her former partner understand her experience and accept responsibility for the harm that he had inflicted on her, ultimately making him less likely to abuse another partner. Khan describes the meeting: 'The feeling of being able to tell him "You hit me and you strangled me and you dragged me on the floor. You [are] the reason my knee has a scar" ... It was huge' (Chapin, 2017). Khan, a domestic violence counsellor, knows that not every woman would want this kind of dialogue with a former partner, but believes that every woman should have the option.

But the use of restorative justice, which fosters just these kinds of opportunities, has long been controversial in cases involving violence against women. As Howard Zehr noted, 'Domestic violence is probably the most problematic area of application and here great caution is advised' (Zehr, 2015: 7). Although restorative processes have been used in the context of rape, sexual assault, intimate partner violence and other types of violence against women, the use of restorative justice to address gender-based harms has been pointedly questioned. The sharpest

\* Leigh Goodmark is Professor of Law and Director of the Gender Violence Clinic at the University of Maryland Francis King Carey School of Law, Baltimore, USA. Contact author: lgoodmark@law.umaryland.edu.

critics of the practice have been feminists. Implicit in these critiques is the sense that restorative justice is inconsistent with a feminist vision of justice.

Whether restorative justice is consistent with feminism depends on the type of feminism one embraces, however. Restorative justice is certainly out of step with feminist theories that prioritise a state response to gender-based harms and see retributive punishment as an essential component of that response. But restorative justice is true to many of the central tenets of feminist thought. Restorative justice is, in fact, a feminist practice.

## 1. The feminist critique of restorative justice

The feminist critique of restorative justice comes largely from those who are concerned about its use in cases of gender-based violence, particularly intimate partner violence and rape and sexual assault (Busch, 2002; Stubbs, 2002; Zorza, 2011). Their concerns often involve safety, accountability and the relegation of violence against women to the private sphere (Ptacek, 2009).

Critics fear that from the initial decision to participate through the enforcement of agreements developed in restorative processes, women subjected to abuse will not be safe in restorative processes. Women who feel uncomfortable refusing requests from their partners or communities could be coerced into participating in restorative processes in lieu of formal adjudication and could find themselves in situations where they feel pressured to have contact with those who have harmed them. Unable to express themselves freely without fear of retribution, women might enter into unwanted agreements or make unwise concessions. The process itself might be unsafe, giving those who have done harm access to their victims to do further physical or emotional damage. The likelihood of an unsafe process is exacerbated if the restorative facilitator lacks training in and an understanding of the dynamics of gender-based violence. Without such knowledge and experience, the facilitator would be unlikely to intervene effectively to protect a woman when the person who has harmed her uses subtle coercion to frighten her or otherwise impedes her participation in the process. Without an understanding of gender-based harms, facilitators (and community members) are less likely to craft agreements that are sufficiently protective of those who have been harmed or to police them adequately (Stubbs, 2002).

Critics also contend that restorative processes cannot hold those who do harm meaningfully accountable for their actions. In part, this concern stems from the belief that only the condemnation of and punishment by the criminal legal system constitutes true accountability, particularly in a world in which state punishment is the default response to all forms of violence. The site of restorative processes is also an issue. Critics believe that communities that have condoned, ignored and, in some cases, facilitated gender-based violence are unlikely to hold offenders to account.

A third concern is with allowing private resolution of gender-based harms. From the beginning of the feminist movement of the 1970s, a central feminist concern has been ensuring that the state treats gender-based harm just as it does

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all other crimes. Feminists worked to disseminate the message that rape, sexual assault, intimate partner violence and other gender-based harms are, in fact, violations of the criminal law. Feminists partnered with legislators to change laws and policies that enabled law enforcement to ignore gender-based harms and provide funding for training and technical assistance for judges, police and prosecutors charged with implementing these laws and policies. Feminists have publicised what they see as the system's many failures to hold men responsible (most recently, the sentencing of Stanford student Brock Turner to 6 months' imprisonment for raping an unconscious woman behind a dumpster) and urged stronger sanctions for gender-based harms and judicial accountability when harsh punishments are not handed down. As a result of their efforts, particularly in the context of intimate partner violence, arrest and conviction rates for these crimes have risen over the last thirty years. Many feminists see the state's willingness to intervene as important progress in the effort to eradicate gender-based harms and are loathe to relinquish those gains (Gandy, 2012).

These concerns reflect a strand of feminism that has come to the fore in recent years (though restorative justice's critics might not describe themselves as adherents): carceral feminism. Victoria Law describes carceral feminism as 'an approach that sees increased policing, prosecution, and imprisonment as the primary solution to violence against women' (Law, 2014). Carceral feminism is grounded in the belief that because the state holds a monopoly on the ability to punish, the state should be the primary locus of control over those who do harm. In a carceral feminist world, only criminal punishment can guarantee safety for those who have been harmed and accountability for those who have done harm. Carceral feminism expects women to play the role of passive victims, ceding any ability to decide how the violence they experience should be addressed to the state. Some feminists charge that carceral feminism is an appropriation and distortion of feminist goals and techniques in the service of a repressive state (Martin, 1998); others argue, however, that feminism's central goal of ensuring gender equality requires punishing violence against women just as all other crimes are punished—something only the state can do.

## 2. Restorative justice as a feminist practice

Restorative justice is certainly at odds with carceral feminism. But it is entirely consistent with foundational feminist beliefs and tenets. Creating space for women's voices, fostering women's autonomy and empowerment, engaging community, avoiding gender essentialism and employing an intersectional analysis, transforming patriarchal structures and ending violence against women are all central to the feminist agenda and can be realised through restorative justice.

### 2.1 Voice

Feminism is grounded in women's lived experiences. Feminists coined the phrase 'the personal is political'; situating women's individual experiences in a wider political context through consciousness raising was a key strategy of the early

women's movement (Hanisch, 2006). Feminism brings the voices of women to the forefront, insisting that law and policy be shaped by the narratives of those who have been marginalised.

Restorative justice similarly centralises the lived experiences of those who have been harmed (Maglione, 2017). Each of the main questions of restorative justice—what is the harm? What was the impact of that harm? How can that harm be remedied?—requires a response from the person who has been harmed before the process can move forward. The person who suffers harm shapes the restorative conversation by defining the harm and the needs arising from that harm (baliga, 2008). That emphasis on voice corresponds to the needs of those who have been harmed to be able to tell their stories without mediation or systemic interruption of the kind imposed by the legal system's rules and structures (Koss, Wilgus & Williamsen, 2014). Restorative dialogues create space for the voices of those who have been harmed to be heard clearly and treated seriously (Hudson, 1998).

## 2.2 Empowerment

The amplification of voice in restorative justice has been linked to the idea of empowerment. As John Braithwaite writes in *Restorative justice and responsive regulation*, '[A]n underestimated way restorative justice might confer power upon the disenfranchised is simply by listening to their stories and taking them seriously' (Braithwaite, 2002: 157). Restorative justice can help people who have been harmed reclaim power that may have felt lost, particularly in the context of gender-based harms, rectifying the disempowerment created by being assaulted (Koss, 2014; Marsh & Wager, 2015). Describing her partner's abusive behaviour 'to his face' was 'the most powerful part' of the restorative process for Attiya Khan, for example (Chapin, 2017).

Moreover, 'restorative justice appreciates victims' agency' (Presser & Gaarder, 2000: 182). Law professor Kathryn Abrams describes agency as self-definition (determining the goals one wants to achieve and the type of person one wants to be) and self-direction (the ability to formulate goals and plans free from undue influence) (Abrams, 1998). Philosopher Beth Kiyoko Jamieson defines agency as the right to make decisions about how to live one's life and the right to have others believe that the individual can make ethical decisions about how to live (Jamieson, 2001). Both definitions recognise the importance of having the freedom to determine one's course of action in response to major life events, like the experience of harm, and to have others accept those decisions (even those with which they might disagree).

Restorative justice actively promotes the agency of people who have been harmed. In restorative processes, people who have been harmed choose to participate in the proceedings and play an active role in the process, deciding what their goals are for the process and how those goals should be actualised. People who have been harmed are able to choose who will be there to support them, share and guard information as they see fit and request the reparations that will best meet their justice goals. Restorative facilitators describe how women are empowered by these processes:

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When [she was] talking, she was so direct and forceful and powerful in what she said and she absolutely let him know that he committed a crime, how damaged she was, how hurt she was by his behavior and you know, she was remarkable ... she really did change, you could see the shift, you could see her becoming empowered as she spoke to this guy. She was scared; she went from being sexually assaulted and stabbed, to an empowered person who was just absolutely giving it to this guy, you know, and not giving him an inch (Miller & Hefner, 2015: 11).

By contrast, the legal system's response to gender-based harms relies on stereotypes of victimised women lacking in agency. Women subjected to intimate partner violence, for example, are required to be weak, passive and blameless in order to satisfy judges of their need for assistance (Goodmark, 2008). Rape victims must have been overpowered by their rapists to be credible to judges and juries (Corrigan, 2013). The legal system assumes that gender-based harms debilitate women to such an extent that they lack the capacity to define their justice goals for themselves or engage in any way with their offenders (*e.g.* by prohibiting mediation in cases involving intimate partner violence, regardless of the wishes of the person harmed). Particularly in the criminal system, women are disempowered by policies and practices (like mandatory arrest and no-drop prosecution) that substitute the state's judgment about how to address gender-based harms for the justice goals of those who are harmed (Goodmark, 2012). But, as bell hooks writes, empowerment is essential for women who experience gender-based harm:

Women who are exploited daily cannot afford to relinquish the belief that they exercise some measure of control, however, relative, over their lives. They cannot afford to see themselves solely as 'victims' because their survival depends on continued exercise of whatever personal powers they possess (hooks, 1984: 46).

Restorative justice provides women with an outlet for seeking justice on their own behalf, on their own terms. Restorative justice fosters agency rather than demanding a disempowered stereotype of victimisation from those who have been harmed.

### **2.3 Community**

Feminism is rooted in community. From consciousness raising groups to community women's schools to the early grassroots shelters for women subjected to abuse, feminism engaged women in community to challenge patriarchal norms. As Robin Morgan wrote in 1970,

The Women's Liberation Movement exists where three or four friends or neighbors decide to meet regularly over coffee and talk about their personal lives. It also exists in the cells of women's jails, on the welfare lines, in the

supermarket, the factory, the convent, the farm, the maternity ward, the streetcorner, the old ladies' home, the kitchen, the steno pool, the bed (p. xli).

Restorative justice is similarly rooted in community. Community plays a number of roles in restorative justice – as the site where restorative practices are provided, the source of supporters for those who have been harmed and those who have done harm, secondary victims of harm (through the disruption harm causes to the stability and coherence of the community itself), a place where those who do harm are held accountable, and, through community engagement, a bulwark against future harms. And restorative justice can transform communities by exposing them to new ways of thinking about gender-based harm. A restorative conference, for example,

creates a setting where peers and family of the perpetrator, who may share attitudes and model behavior that constitute a violence-supportive environment, are exposed to an antiviolence message, thereby creating a new avenue for primary prevention targeted at a high-risk group (Koss, 2000: 1339).

Feminist critics fear that using restorative justice to respond to gender-based harms will re-privatise those harms. But harms are much more likely to be shielded from community view when handled by the legal system. Notwithstanding the existence of a few highly publicised trials, like that of comedian Bill Cosby, most cases involving gender-based violence are invisible to the community because the community has no role to play in witnessing or adjudicating those harms. The vast majority of cases are settled by plea bargain or by a trial before a judge; juries hear only a small fraction of the criminal cases in the legal system. Community members have no role in other kinds of cases, like civil protection orders granted to those who have been raped, sexually abused or subjected to intimate partner violence. Trials and other legal matters are held in spaces that many in the community would far rather avoid than engage. Only if they happen to be in the vicinity will members of the community be aware of the outcomes of cases with which they are not directly involved.

Restorative justice, however, is physically rooted in communities. It invites community members to hear the stories of those who have been harmed and those who have done harm. It relies on community to witness the voices of those who have been harmed and validate their harms and invites the community to contemplate their role in and responsibility for gender-based harms. Restorative justice engages those who otherwise might not be aware of the harms done in their community. The restorative process implemented in response to the Dalhousie Dental School's discovery of a male student group posting sexist, misogynistic and homophobic material on Facebook, for example, included not only the male students who had posted the materials to Facebook and other students from the Dental School, some of whom had been targeted in the posts, but also professors from the Dental School faculty, dental staff, representatives of Dalhousie, members of the dental profession and representatives from the wider community (Llewellyn, MacIsaac & Mackay, 2015). Restorative justice invites the community



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to help determine what the responses to harm should be and to monitor those responses in tangible, concrete ways: by regularly checking in with those involved or providing material resources, for example (Goodmark, 2017). Restorative justice engages the community directly and tangibly, in ways that the legal system cannot.

#### ***2.4 Gender essentialism and intersectionality***

The early feminist movement was widely criticised for gender essentialism: the assumption that the experiences of all women could be distilled into that of an uber-woman (based on a white, middle-class, heterosexual norm). Women and men were essentialised in the context of anti-violence work. ‘True victims’ (always women) were cast as the blameless victims of violence; men who did harm were portrayed as irredeemable monsters. Most feminists now recognise that gender essentialism is deeply problematic because it masks the unique characteristics, needs and vulnerabilities of both individuals and groups.

By ‘insist[ing] that survivors and responsible parties be viewed as something other than predetermined caricatures of victim and offender,’ categories that ‘rel[y] upon polarized gender roles of maleness and femaleness,’ restorative justice helps to break down essentialist binaries (Hopkins, Koss & Bachar, 2004: 298). Moreover, restorative justice creates space for processes and remedies that undermine essentialist conceptions of how women should respond to harm. Rather than insisting on the demonisation of and separation from those who do harm, for example, restorative justice provides space for women who want, for whatever reason, to engage with those who have done harm or to establish the terms of a relationship going forward.

Gender essentialism has infused law and policy, particularly in the realm of gender-based harms. While many in the anti-violence movement campaigned for swifter and more serious intervention by the criminal legal system, for example, others (primarily women of colour) argued that such interventions would be particularly destructive to communities of colour. This realisation reflected the core intuitions of intersectional feminism, which recognises that various facets of women’s identities intersect to create and reinforce their oppression. Women of colour were deeply ambivalent about prioritising a criminal response to intimate partner violence because they understood that men of colour would be disproportionately targeted by the system. They saw that women of colour were likely to suffer from state intervention as well, in ways that white men and white women would not (Goodmark, 2012). Social science research has borne out these concerns. Men of colour are arrested for domestic violence at rates disproportionate to their percentage in the population. Women of colour are also arrested at higher rates in mandatory arrest jurisdictions, come under state control via the child welfare system, which intervenes when mothers ‘fail to protect’ their children from exposure to violence, and are subjected to harassment and abuse when they ask law enforcement to intercede (Goodmark, 2017). Women of colour and lesbian, gay, bisexual, transgender and gender non-conforming individuals are routinely harassed and sometimes physically and sexually abused by police when they ask law enforcement to respond to gender-based harms (Ritchie, 2017).



Most feminists now embrace intersectionality as a guiding principle, even as many continue to support the primacy of the criminal legal system in responding to gender-based violence. But in the realm of gender-based harms, intersectionality requires that we provide justice alternatives to a criminal legal system that disproportionately harms people of colour, low-income people and lesbian, gay, bisexual, transgender and gender non-conforming people. Restorative justice can meet that need, providing justice options in the community for those who are unwilling to engage the state.

### *2.5 Dismantling the patriarchy*

Feminism is committed to dismantling the patriarchy. Patriarchy is a system of beliefs that posits that men should be superior to women in all realms. The patriarchy is undergirded by social structures and institutions that are both grounded in and disseminate those beliefs, including law. Historically, law played an essential role in policing and enforcing women's subordination.

Efforts to undermine the patriarchy through feminist law reform have had mixed results at best. As feminist law professor Catharine MacKinnon wrote in praising the #MeToo campaign,

It is widely thought that when something is legally prohibited, it more or less stops. This may be true for exceptional acts, but it is not true for pervasive practices like sexual harassment, including rape, that are built into structural social hierarchies (MacKinnon, 2018).

Although women now make up a significant percentage of the legal profession, the legal system, and particularly the carceral system, is still staffed largely by male police, male prosecutors and male judges. Despite modest increases in prosecution and conviction rates for violence against women, feminist scholars argue that these legal institutions have generally failed to take violence against women seriously, enabling that violence to flourish (Hopkins, Koss & Bachar, 2004).

Although the potential for patriarchal abuse of restorative processes exists (Coker, 1999), the feminist project of dismantling the patriarchy may be better served by restorative justice than law. Change is a key component of undermining patriarchy's core belief in men's superiority: changes in individual men's conceptions of masculinity and their relationship to masculinity, in community norms about what it means to be a man and in structures that value hegemonic masculinity (hooks, 2004). By asking those who do harm to consider the impact of not just their actions, but also their conceptions of masculinity, on those they have harmed, restorative justice can encourage men to see their roles as men differently. On the societal level, engaging community members in a process that stresses alternate visions of masculinity could shift community norms. And rejecting the carceral state's response to gender-based harms could undermine its legitimacy and create momentum around shifting time, energy and funding into more egalitarian, less patriarchal sites for justice.

## 2.6 *Ending gender-based violence*

One of feminism's enduring goals is to end gender-based violence. Feminists contextualised rape, sexual assault, intimate partner violence and sexual harassment as gender-based harms and brought those harms to the attention of the wider community, spurring the development of the criminal legal regime designed to respond to those harms. Whatever one thinks of the carceral feminist bent of their solutions, it is undeniable that feminists have long sought to eradicate gender-based violence.

But ending gender-based violence will require more than a continued investment in the criminal legal system, a strategy that has, to date, not been as successful as many feminists had hoped (Goodmark, 2017). Instead, fundamental changes in societal understandings of masculinity and men's use of violence will be needed. bell hooks notes that some feminists have been reluctant to investigate this territory: '[i]t was simply easier for feminist women to talk about challenging and changing patriarchy than it was for us to talk about men – what we knew and did not know, about the ways we wanted men to change' (hooks, 2004).

Feminism must begin to talk about why and how men are likely to change if we hope to eradicate gender-based violence. Shame-based carceral punishment regimes are unlikely to spur the kind of change that leads to decreased violence. In fact, as psychologist James Gilligan has argued, shame drives violence (Gilligan, 2001). Restorative justice, by contrast, can help men to develop empathy for those they harm, an essential precondition to changing behaviour. Through restorative justice '[t]he perpetrator can see, perhaps for the first time, the victim as a real person with thoughts and feelings and a genuine emotional response. And [that] may be a more effective rehabilitative practice than simple incarceration' (Sottile, 2015). Through community engagement in accountability plans, restorative justice can offer men the day-to-day support they need from their families and communities to maintain that change.

Restorative conversations create space to unearth and discuss the toxic masculinity that drives gender-based violence and to provide those who do harm and the wider community with alternative conceptions of healthy masculinity. Engaging the community in supporting those who are harmed and monitoring those who do harm may help to shift problematic community norms around the acceptability of intimate partner violence and the need to shield such violence from public view and encourage others who are experiencing or using violence to come forward and seek assistance through community channels. Through restorative processes, conditions that are often associated with gender-based violence, including economic stress, community instability and individual histories of trauma, can be recognised and, through the infusion of community-based services, addressed, if not completely remedied. Restorative justice can disrupt the individual and societal conditions that drive gender-based violence.

### 3. Cautions

Restorative justice has the capacity to achieve a number of feminist goals. But there are potential dangers in restorative practices as well, particularly in the case of gender-based violence. Feminist cautions about safety are not a reason to abandon restorative practices, but they should be heeded. Restorative practices in the context of gender-based violence must be victim-centred, organised around the needs and timing of the person who has been harmed. Facilitators handling restorative conferences involving gender-based harms must have special training and sensitivity to the ways in which these interactions are more fraught than other types of restorative conversations. Restorative practitioners must be willing to allow those who have been harmed to define those harms as they experience them, even when they express themselves in ways that might feel at odds with restorative principles. Anti-violence advocate Mary Achilles asks,

Can we make room for victims in a restorative process when they are screaming out in pain or when they are vengeful, angry and full of rage? Can we make room for victims when they are not interested in what happens to the offender or, if they are interested in what happens, their interest does not fit with what some of us would refer to as a restorative response? (Achilles, 2004: 68).

The criminal legal system has little time or patience for women's anger or other emotions that run counter to stereotypes of the 'perfect victim' (Goodmark, 2012). Restorative processes must make that space.

Restorative processes rely on supportive and engaged communities. Feminist critics of restorative justice have noted that many who use violence come from communities where that violence is not only condoned, but expected or incentivised. Ensuring that the community engaged in the process embraces anti-violence norms is essential. Restorative justice is not a value-neutral practice; it is intended to counteract the injustice created through the infliction of harm. Restorative practitioners must find communities that will uphold non-violent norms, which may mean working with participants in restorative processes to help them accept and appreciate those norms. Restorative practitioners should also be creative in defining community, looking beyond geography to cultural, ethnic, religious and other communities, actual or virtual, willing to participate in restorative processes.

Communities must also guard against restorative practices becoming infused with the same sexism, racism, homophobia and transphobia that pervades the criminal legal system. As Donna Coker documented in her work on Navajo peacemaking, restorative processes can undermine women's autonomy if they incorporate the sexism of the community (Coker, 1999). Restorative practitioners and restorative justice advocates must police our own work to ensure that restorative justice does not re-create the damage we are fleeing in the criminal legal system.

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#### 4. Conclusion

Victims of gender-based harms want the option of addressing those harms through restorative processes, either in addition to or in lieu of using state-based systems (Koss, 2014; Marsh & Wager, 2015; Nancarrow, 2009). Although the research on the use of restorative justice to address gender-based harms is limited, the data that do exist suggest that engaging restorative justice can be a positive and powerful experience for those subjected to gender-based harms (Goodmark, 2018). Providing this option is consistent with a number of key feminist goals; in fact, as sujatha baliga has argued, restorative justice is ‘more aligned with feminist goals than other methods of resolving conflict, so long as it stays true to its central role of meeting victims’ self-identified needs’ (baliga, 2008). Restorative justice may be inconsistent with carceral feminism. But restorative justice should be part of what I have previously called an ‘anti-essentialist feminist’ approach to gender-based violence, one that recognises that women are active agents capable of making decisions about how to respond when they are harmed (even when they act in conditions of constraint) and that essentialised, state-based responses to harm will not meet the needs of all women (Goodmark, 2009). With a victim-centred process attentive to the particular challenges posed by cases involving gender-based harms, restorative practices can further feminist goals and provide those who have been harmed with justice.

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