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Review of research on victims' experiences in restorative justice: Implications for youth justice ☆,☆☆

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ABSTRACT

Despite claims that restorative justice is "victim centered," and deliberately focused on healing harms to victims, some studies report that particular applications of restorative justice may not be fully consistent with its fundamental principles and values. Under such circumstances these programs may focus on outcomes (e.g., rehabilitation of youthful offenders) rather than process, and in doing so, may fail to identify and respond effectively to victims' needs. To take a closer look at this phenomenon, this article examines a sample of published restorative justice studies that highlight 'negative' experiences of victims. Given a number of studies that indicate victims typically have satisfying experiences in restorative justice practices such reports of negative experiences and practices should be viewed as 'outliers.' However, such outliers may provide substantively meaningful insights that inform best practice standard for restorative justice. Implications are drawn for the use of restorative justice practices for youth justice.

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1. Introduction

Restorative justice (RJ) emerged in the late 1970s primarily as a response to calls from victim advocates for alternative approaches that expand victims' rights in justice processes and promote outcomes that address needs of victims, offenders, and communities (Bennett, 2007; Bottoms, 2003; United Nations Office for Drugs and Crime, 2006; Van Ness & Strong, 2010; Zehr, 2005). In the past three decades, the theory and practice of RJ have been widely expanded and recognized within the field of justice studies as a sound approach to meeting the needs of crime victims (Braithwaite, 2002; Umbreit & Armour, 2011; United Nations Office for Drugs and Crime, 2006; Van Ness & Strong, 2010; Zehr, 2002).

1.1. The research: evidence-based practice

In general, research indicates that RJ can be effective in redressing the harms experienced by crime victims (Bazemore & Schiff, 2005; Strang, 2002; Strang et al., 2006; Umbreit, Vos, & Coates, 2005). Specifically, studies indicate that RJ programs provide more opportunities for crime victims to have their voices heard, receive answers to their questions about the offense and the offender, and increase the likelihood of restitution payment (Bazemore & Schiff, 2005; Bradshaw & Umbreit, 1998; Umbreit et al., 2005; Umbreit, Coates, & Roberts, 2001; Umbreit, Coates, & Vos, 2002). Victims also often report that the RJ process provided a sense of fairness and satisfaction (Daly, 2006; Strang et al., 2006; Umbreit et al., 2005). In their recent study Strang et al. (2006) report a positive association between participation in RJ processes and an increase in victims' feelings of empathy toward offenders. In addition, some scholars and practitioners have even expressed a normative expectation that RJ often may empower victims (Pranis, 2001; Van Wormer, 2004). Consistent with this assertion, research findings often reveal that victims participating in restorative processes report feeling less fearful of re-victimization and may view the restorative process as a journey of healing (Bazemore & Schiff, 2005; Umbreit & Vos, 2000). Presser and Hamilton (2006) report that victims found restorative processes to be persuasive rather than coercive because victims appeared to feel, or reported feeling, free to express their feelings fully and were influential within sessions. As a result of such findings, RJ is increasingly viewed as a viable approach that may meet the needs of victims more effectively than traditional criminal justice processes (United Nations Office for Drugs and Crime, 2006).

1.2. The research: emerging concerns

Despite this commitment to RJ, some advocates also have raised important concerns that RJ programs may fall short of fully meeting victim needs (Achilles & Zehr, 2001; Daly, 2002, 2003, 2006; Herman, 2004). Several studies report that some victims have anxieties and fears

about participating in a process where they interact with the offender and that they may feel pressured to participate (Bazemore & Schiff, 2005; Choi & Gilbert, 2010; Daly, 2002, 2006; Morris & Maxwell, 1997; Strang, 2002; Umbreit et al., 1994, Umbreit, 1999; Wemmers, 2002). In particular, some victims express feelings of re-victimized during the processes (Bazemore & Schiff, 2005). Such findings suggest a possibility that victims and their needs can easily be marginalized, and in some cases, even re-victimized by restorative processes. When this occurs, victims may not experience restorative outcomes. Daly (2002, 2003, 2006) has observed this phenomenon as a 'gap' between the theoretical ideal and actual practice in RJ. However, she also notes that adverse effects are found much less frequently than positive impacts. Yet, such concerns call for careful examination of victims and their experiences within RJ processes.

1.3. Learning from "outliers"

In *Outliers: The story of success* Malcolm Gladwell (2008) attempts to examine highly complex layers of a few very successful people or exceptional situations. From a statistical point of view, these people or situations are outliers as their success is "markedly different in value from the others of the sample" (Gladwell, 2008, p. 3). In his inquiry, Gladwell asks the question "what makes them (the outliers) so successful?" Inspired by Gladwell's work, to take a closer look at the concerns described above, this article examines a sample of published restorative justice studies that highlight 'negative' experiences of victims as part of their overall findings. Despite the abundance of reported success stories in RJ, a few studies have reported some negative findings related to the failure of restorative practices to meet victims' needs. Given consistent evidence of the effectiveness of RJ, reports of negative experiences by victims are viewed as "outliers." However, such outliers are rarely subjected to critical analysis.

This article examines these outliers in a non-quantitative manner. The purpose of this paper is to reveal commonalities in "outlier" findings which may inform best practice standards for restorative justice. These findings may also provide lessons for applications of restorative justice with youthful offenders. The literature search was augmented with online resources such as the 'Center for RJ and Peacemaking' (http://rjp.umn.edu/) and 'RJ Online' (http://www.restorativejustice.org). In both cases, searches used "restorative justice," "restorative dialog," "victim offender mediation," "family group conferencing," "circle sentencing" and "peacemaking circles" as key words.

A review of the sources cited in this article would reveal that most of the theorists and researchers identified recognize that RJ practices may not be for everyone and that there are circumstances where such approaches may be inappropriate. Furthermore, Daly (2006) notes that actual practice may never fully realize the idealized vision of restorative justice, but more importantly, such negative experiences are often preventable when those practices closely approximate theory.

2. Promise, rise, and conflicts of restorative justice

2.1. The promise of restorative justice

In making the case for RJ, advocates often point out problems associated with the traditional criminal justice system. For example, Herman (2004) noted that in the traditional criminal justice system, victims often feel ignored, excluded, and disrespected by the system. In addition, victims are rarely provided with assistance to interact in meaningful ways with the offender (Zehr, 2002, 2005). As a result, victims report that their needs were not fully addressed and express dissatisfaction with the legal processes used. Achilles and Zehr (2001) argued that what justice processes should provide is a safe place where victims can express emotions, regain a sense of safety and security, obtain restitution and answers to their questions, express their truth, vent feelings, regain a sense of vindication, and

personal empowerment. According to Strang (2002, 2004), what victims want from the criminal justice system is a less formal process, participation in their case, more information about case processing and outcomes, respectful and fair treatment by justice agencies, and restoration (material and emotional). Unfortunately, these rather basic needs are seldom provided in the traditional justice processes.

Restorative justice advocates argue that applications of restorative principles and values can be beneficial to victims in a number of ways. For example, Herman (2004) and Strang (2004) noted that even in the absence of the offender, RJ practices consistent with the underlying values that guide the theory offer a healing forum where victims are: 1) provided an opportunity to tell their story and to be heard; 2) viewed as stakeholders; 3) able to obtain answers for their questions (from community members and other victims); and, 4) able to reconnect to their communities. Additionally, when victims have an opportunity for meaningful interaction on their own terms with offenders, such interaction can be transformative — from suffering in silence to shared healing, from isolation to community support, from powerlessness to empowerment, from depression to reengagement (Herman, 2004; Strang, 2004; Van Ness & Strong, 2010; Zehr, 2002, 2005). In order to meet the needs of victims and to achieve restorative outcomes through the encounter with offenders, advocates argue that such RJ programs must ensure consistent and continuous focus on core principles (Bazemore & Schiff, 2005; United Nations Office for Drugs and Crime, 2006). The Restorative Justice Consortium (2003, p. 482) identifies several key principles for victim treatment in restorative processes: 1) respect for their personal experiences, needs and feelings; 2) acknowledgement of their harm or loss; 3) recognition of their claim for amends; 4) opportunity to communicate with the person who caused the harm or loss, if that person is willing; and 5) recognition as the primary beneficiary of reparation.

2.2. The rise of restorative justice

Interestingly, critics of RJ such as Miller, Gibson, and Byrd (2008) argued that the rise of the modern RJ process may be associated with the shortcomings of United States criminal and juvenile justice systems, which are driven by retributive justice and often reported as being ineffective and at times counterproductive. Retributive justice, based on deterrence and/or just deserts theories, has dominated the practice of justice in most criminal justice systems (Zehr, 2005). While the punitive "tough on crime" trend began in the 1980s, by the mid-1990s punitive mandatory sentences by criminal courts became a common phenomenon (Feld, 1993, 1999). However, research, especially on youth offenders, has indicated that solely punitive sanctions (e.g., boot camps and incarceration only) are unlikely to reduce reoffending (Butts & Mears, 2001; Cullen & Gendreau, 2000; Jacobson, 2005; MacKenzie, 2000; Rogers, 1989; Tonry & Petersilia, 1999).

Restorative justice, on the other hand, recognizes the importance of the interpersonal dimension of crime and the role of relationships between people (Zehr, 2002, 2005). In this view, crime is a violation of people and relationships as victims are regarded as human beings, rather than witnesses or evidence (Van Ness & Strong, 2010). This difference provides a rationale for justice to be concerned with repairing damaged relationships between those involved in crimes — victim, offender, and community (Llewellyn, 2007; Zehr, 2002, 2005). Offenders, of course, must carry the primary responsibility for 'making things right' for those harmed through sincere efforts to make amends, repair harms and relationships (United Nations Office for Drugs and Crime, 2006; Zehr, 2005). In RJ, accountability for offenders requires that they work collaboratively using dialog-driven processes that involve direct, respectful, interpersonal and problem-solving communication with other stakeholders such as victims and communities (Van Ness & Strong, 2010; Zehr, 2005). Such dialog may promote accountability, healing, and opportunities to make amends (Umbreit & Armour, 2011; Zehr, 2005).

2.3. The conflicts of restorative justice

In an attempt to explain the rise of RJ in recent years, Bottoms (2003) provided an insightful observation. The argument here is that the rise of RJ is 'anomalous.' At one level, the unpredicted growth in popularity of RJ can be viewed as a new dimension of the victims' movement that advocates increased use of victim compensation and victim statements. At another level, Bottoms argues that RJ can be very appealing to contemporary penal policymakers because it offers a possibility for pro-social and moral education for young offenders within a neighborhood or community-based system and networks of social relationships in this morally changing contemporary society. Bottoms' argument, made in British contexts, provides a possible explanation for why many, perhaps most, RJ programs in the United States deal with youthful offenders. Bottoms' observation also suggests a possible explanation for the *offender-centered* focus that is often noticeable in the RJ approaches adopted in many juvenile justice RJ programs. In these programs, the emphasis is often *not victim-centered*, which is directly inconsistent with RJ theory and well recognized best practices.

Currently, some pressure also exists for the RJ community to emphasize prevention of reoffending, especially among youthful offenders. Critiques of RJ often argue that RJ should focus more on its capability to reduce recidivism, and argue that advocates must make this a priority goal (Miller et al., 2008). Such a view, however, is not limited to critics. Indeed, even within the RJ community, the same kinds of cautionary arguments can be heard. While RJ advocates rightly focus on the value of these processes for victims, most of these advocates also recognize that preventing reoffending behaviors is a legitimate priority (Robinson & Shapland, 2008). Moreover, there appears to be a growing consensus in the research literature that although RJ is not a rehabilitation program, the outcome of RJ participation by offenders is often rehabilitative (Bazemore & Bell, 2004).

Recently the number of studies reporting impacts of RJ on recidivism has increased sharply. Studies tend to support the hypothesis that RJ interventions were statistically, or plausibly associated with significant reductions in recidivism, particularly with low-risk offenders (Bergseth & Bouffard, 2007; Bonta, Jesseman, Rugge, & Cormier, 2006; de Beus & Rodriguez, 2007; McGarrell & Hipple, 2007; Nugent, Williams, & Umbreit, 2003; Rodriguez, 2007). Although some argue that reducing recidivism is a side effect of RJ, we agree with Robinson and Shapland (2008) that preventing reoffending is an important goal for RJ — *as long as practitioners do not place primary emphasis on this outcome*, or become primarily offender-focused. In other words, the secondary goal of reduced recidivism should not interfere with or take precedence over meeting the needs and wishes of other stakeholders, particularly victims.

3. Reviewing victims' experiences in restorative justice

In what ways then, and/or to what extent, does RJ fail to meet victims' needs? In this section, we review a sample of published articles and books during the last two decades, from 1989 to 2010, that report findings of negative victim experiences, as a part of their study findings, with a focus on unpacking common themes, problems and issues.

3.1. Umbreit and colleagues

Umbreit and colleagues have documented successful RJ experiences in many articles and books over the last two decades. However, some of their works also include evidence of negative findings about victims' experiences. First, in their 1994 book, entitled *Victim meets offender: The impact of RJ and mediation* Umbreit et al., 1994 reported negative themes mentioned by victims after participation in victim-offender

mediation (VOM) programs. The most commonly mentioned problems were related to the lack of authority in the program to assure the completion of restitution, and a perception of inadequate punishment for the offenders. Second, some victims mentioned dissatisfaction with mediators: the mediator's style was inadequate, unprofessional or their competence was questioned. Another concern expressed by some victims was insufficient preparation by the mediator. For example, consider this statement: "She could have told us more about the process" (Umbreit et al., 1994, p. 99). A few victims felt that they were coerced into mediation. For example, some felt that they had been led to believe that they had to go through the program to get money back. Lastly, some victims reported that they felt re-victimized by the experience. Of all of these findings, the last one is the most unfortunate because it is directly contrary to the underlying theory, values, principles, and outcomes believed to be paramount in RJ. Umbreit and colleagues have continually reported similar issues and concerns in their subsequent work (Coates, Umbreit, & Vos, 2003; Umbreit et al., 2001; Umbreit et al., 2002; Umbreit et al., 2005; Umbreit & Armour, 2011; Umbreit, Coates, & Roberts, 1998).

3.2. Morris and Maxwell

Morris and Maxwell (1997), in observing family group conferences in New Zealand, noted that a third of victims reported that they were not satisfied with their experiences, primarily because the promised arrangement or reparation agreements fell through afterward. This is similar to what Umbreit and colleagues reported earlier. Additionally, due to the lack of follow-up, some victims in New Zealand complained that they were not informed of the eventual outcome of the conference. A quarter of victims said that they felt worse as a result of their participation, mostly because they did not feel that the offenders and their families were truly sorry. In addition, 85% of the victims who did not attend the conference mentioned that the reason was not being invited or being inadequately notified. In short, poor practice and inadequate planning were most strongly associated with victims' decisions to not participate.

3.3. Strang

In her study on victims' experiences in RJ, Strang (2002) reported additional shortcomings for victims. First, some victims expressed being more, rather than less, afraid or feeling worse as a result of their RJ experience. This was most often because of the poor quality of the conference rather than a result of their objection to the principles of RJ. Second, victims may experience power imbalances as a result of RJ; the clearest examples were cases of domestic violence in which victims were often not able to express and assert themselves in the presence of their offenders. In addition, some cases revealed an unbalanced mix of victim and offender supporters. Finally, victims may feel used in RJ processes that are overtly offender focused. Given these observations, Strang (2002) argued that these issues are primarily due to a lack of understanding about what RJ requires among service providers.

3.4. Wemmers and colleagues

Wemmers (2002) reviewed 25 evaluation studies of victims' points of view on their experiences, expectations, and perceptions of RJ. The findings of this study indicated that sometimes victims' needs were inadequately met (e.g., information, compensation, opportunities to express emotion, participation, and protection). While only a small number of victims actually received reparation or compensation, some victims reported additional victimization, or re-victimization, which is often manifested by expressions of enhanced fear, depression, distress and unresolved anger. More recently, Wemmers and Cyr (2005) reported a similar finding when a small proportion of victims

spoke of feeling worse after their participation in VOM when offenders refused to take responsibility for their actions. Wemmers (2002) also documented that some victims reported feeling pressured to participate in RJ processes and some were even upset by the invitation to participate in an RJ process, saying that it caused them fear, anger and feelings of marginalization. The invitation was viewed as an insult because these victims thought that their cases were not taken seriously by the justice system.

3.5. Daly and colleagues

In a series of studies (Daly, 2002, 2003, 2006; Daly & Immarigeon, 1998; Hayes & Daly, 2003), Daly and colleagues have attempted to describe a `gap' that often exists between RJ theory and practice based on their observations on RJ approaches, often with youth justice conferencing, in Australia. Despite various claims by advocates about the possibilities of RJ, Daly (2002) often observed less restorative outcomes than expected in RJ conferencing. In explaining the gap between theoretical postulates of RJ and the 'real' story, Daly noted that one of the most important gaps appears rooted in an assumption by advocates that victims and offenders have the skills necessary to meaningfully participate in RJ. She has observed that participants often neither fully understand the meaning and focus of RJ process nor have reasonable expectations about what would happen and how to adequately express themselves during the processes, especially in RJ conferencing. In other words, a *lack of preparation for the participants* – especially for victims – was frequently reported. For example, about 40% of victims reported that they were provided with 'no' or 'not much' information on what would happen in the process prior to the conference (Daly, 2003).

According to Daly (2002), another reason for victims having occasional restorative conferencing experiences that are less than fully positive with youthful offenders may be the lack of moral maturity and lower capability for empathy among youthful offenders. This was often exemplified by their difficulty in recognizing victims' troubles during conferencing sessions. Instead, it was often observed that young offenders seemed to participate in restorative conferencing for instrumental, personal reasons to straighten out their reputation or to be viewed more positively by others rather than to repair harms to their victims (Daly, 2002). Consequently, some victims viewed their offenders as incapable of changing. Hayes and Daly (2003) reported that two thirds of victims surveyed believed that their young offenders would be in trouble again.

In regard to apology, some victims viewed young offenders' as having insincere motives – to escape accountability – when they apologized (Daly, 2002). In a follow-up study, Daly (2003) reported that half of the victims indicated that the apology did not help them to feel vindicated or restored after the conference. As with Daly (2002, 2003, 2006), when studying RJ conferencing in England, Shapland et al. (2006) also observed that victims were often skeptical about the sincerity of apologies by youthful offenders, and felt that the apology should be repeated or amended by being more direct or specific.

3.6. Hayes

In an attempt to understand the factors that may contribute to less than restorative outcomes in Australian studies (Hayes & Daly, 2003), Hayes (2006) reexamined the findings from two key Australian studies (e.g., Reintegrative Shaming Experiments and the South Australian Juvenile Justice project) through a new framework drawn from Tavuchis (1991) theory of apology. The assumption was that a restorative outcome emerges from offenders' sincere apologies, acceptance of the apology, forgiveness from victims, and feelings of mutual good-will at the end of conferences. As with Daly (2002), Hayes (2006) also noted that while participants in the two Australian projects often reported that they were treated fairly in the process, restorative outcomes were

achieved in fewer than half of the cases. Hayes (2006, p. 378) offers an explanation in which he argued that some offenders during RJ conference may be motivated to deny harm and injury, withhold apologies, and offer self-serving accounts because of "competing demands." For example, in highly structured RJ processes, offenders may be asked to explain the offense first and then describe the circumstances. After these steps, they may be expected to accept responsibility for the harms they have caused. This highly formalized artificial structure may adversely impact the manner of expression by offenders who drift from "apologetic discourse" to "mitigating accounts" (Hayes, 2006, pp. 378–379). This pattern of dialog by offenders, guided by the conference structure, may lead victims to view the apology as just an attempt to deflect shame rather than a sincere gesture, which may lead victims to withhold forgiveness or indicate dissatisfaction with outcomes (Hayes, 2006).

3.7. Kenney and Clairmont

Several studies offer inside accounts of interactions between victims and offenders that are at times less than desirable for victims. For example, Kenney and Clairmont (2009, p. 279) examined "strategic interpersonal dynamics" among victims and offenders in RJ processes in Canada. These researchers were concerned about adoption of the "victim role" by other participants in the RJ process, particularly by offenders seeking to achieve self-serving goals by deflecting or defending against criticism. Sometimes victims in RJ conferences expressed harsh views that put youth offenders and their supporters in a very defensive position (e.g., "You got lucky [this time], it could have been much worse for you, so you better give me what I want…") (Kenney & Clairmont, 2009, p. 285). Such comments and attitudes tend to elicit defensive behaviors as offenders try to mitigate the blame and possible punishment by expressing how much they have suffered, making self-serving statements that mitigate or denying their role in the incident (Kenney & Clairmont, 2009). The researchers found that this pattern of dialog often resulted in victims becoming defensive, critical, and at times angry.

3.8. Gerkin

In his recent study Gerkin (2009) examined the complex interactions between victims and offenders in VOM in the United States. He examined how victims' roles are related to offenders' participation and empowerment. Gerkin (2009) noted that RJ programs should in theory be inclusive; yet, he found that unexpected impediments to offenders' participation were often related to victims' dissatisfaction with restorative experiences. Among a total of 16 victims who participated in 14 victim offender mediations, eight were viewed as having high levels of offender participation, while the other eight were seen as having medium or low levels of offender participation. Interestingly, among the eight victims involved with VOM processes characterized by high levels of offender participation, seven had a pre-existing relationship with the offenders. It would seem reasonable to assume that pre-existing relationships between victim and offender might provide a basis for rich dialog. However, Gerkin (2009, p. 235) noticed something unexpected: a prior relationship seemed to be associated with victims who would "lecture" offenders by talking down to them, issuing verbal reprimands and expressing disapproval of the behaviors particularly when offenders were passive or did not actively engage in the dialog. Not surprisingly, most of the cases wherein victims lectured the offender, the offender's participation was low, which exemplifies the power differentials in between the victim and the offender in the particular RJ process (Gerkin, 2009). Then, similar to what Hayes (2006) reported, Gerkin (2009) also observed highly scripted or structured process where particular stages of the mediation were dominated by particular participants. For example, while victims dominated the agreement-writing stage

with more opportunities to participate, offenders showed high levels of participation only early stages of the conference by explaining their involvement in the harm and answering to the questions posed by the victims.

3.9. Choi and Gilbert

Choi and Gilbert (2010) reported mixed findings based on a qualitative study that employed observation and in-depth interviews with VOM participants in the United States. The researchers noted that in some cases and situations, RJ principles were ignored or compromised. The most commonly overlooked principle was the necessity to remain sensitive to victim needs when implementing restorative processes. For example, in-person preparation for most victim participants was typically conducted a few minutes before the conference or mediation. While some victims felt that they received a lot of information-in some cases too much-their brief in-person encounter did not adequately allow them to emotionally prepare for the meeting or to understand their rights and roles in meeting with their offenders. This was in contrast to the relatively extensive preparation for the youthful offenders and their parents, in which practitioners typically met with them well in advance of their encounter with their victims. Choi and Gilbert (2010, p. 221) also noted a situation where a mediator encouraged some victims to "keep things…as positive as you [victims] can" rather than sharing the depth of personal and family impacts of the crime with youthful offenders. As a result of such practices, some victims complained that they were discouraged from expressing their real emotions and disappointments over the young offenders' behaviors. In addition, some victims said that they felt threatened by the reactions of some offenders and their parents, which was exacerbated by the 'hands-off' approaches used by practitioners even after they sensed increasing distress by victims. Another example was that some victims felt pressured to accept the apology when they were not ready to do so. These researchers argued that such practices marginalize victims and violate principles of RJ which rest on assumptions of victim inclusion as a central part of the process.

4. Discussion

Given the descriptive methodology, findings in this study are selective discussions of studies which highlight weaknesses in RJ practices from the perspective of victim participation. However, our focus on "outlier" findings of the studies affords a critical new perspective on a largely unrecognized but important issue — unsatisfactory experiences by victims in RJ processes. The insights from this exploration of "outlier" findings may help to sensitize service providers, researchers, and policy makers about best practices in restorative justice and the risks presented by erosion of restorative principles.

4.1. Inconsistencies between actual practice and principles: offender-centered RJ

While RJ researchers now report a fair amount of success in recidivism reduction (Sherman & Strang, 2007), studies also suggest that RJ programs, whether intended or not, have become more or less offender-centered (Achilles & Zehr, 2001; Evans, 2006; Gilbert & Settles, 2007; Maxwell & Morris, 1993 cited in Daly, 2002; Stahlkopf, 2009; Strang, 2002). Indeed, there are many examples that illustrate a greater focus on youthful offenders with the ultimate goal of rehabilitation — unfortunately this is often at the expense of victims. A common thread that runs through most "outlier" findings of the studies suggests that some practitioners may practice RJ in ways that overlook victims' needs and create circumstances that have lead to negative impacts on victims. These impacts may include increased anxiety and fear and in

some cases feelings of re-victimization. Such findings imply that regardless of context or type of restorative practice used the absence or lack of genuine remorse by offenders, whether intended or not, can be hurtful to victims (Morris & Maxwell, 1997; Presser, 2003; Umbreit, 1989). In other words, victims may experience further emotional injuries (Hayes, 2006). Furthermore, such an outcome is certainly not beneficial to offenders. Indeed, expressing remorse in RJ is a mutual activity between offenders and victims (Harris, Walgrave, & Braithwaite, 2004).

Another emerging "outlier" finding in the RJ literature is the marginalization of victims during restorative processes because of a lack of experience, lack of training, fundamental misunderstanding of RJ theory among practitioners, or case processing pressures for quick disposition. Consequently, for victims, adverse outcomes appear to stem from being inadequately prepared, feeling pressured in some way by practitioners or other participants, or feeling intimidated in some way by offenders and/or their families, which set the stage for disappointment among participants, especially for victims.

While these findings confirm that inconsistencies between actual practice and RJ principles often exist, this does not appear to be a fundamental problem with RJ processes. Instead, it appears to be driven by misunderstanding or careless application of RJ principles by some practitioners or organizations (Achilles & Zehr, 2001; Bazemore & Schiff, 2005; Choi & Gilbert, 2010; Umbreit & Greenwood, 2000). In other words, although many RJ researchers warned of idealistic attitudes among RJ advocates the documented gaps appear to be the result of implementation problems. In the following section, we discuss how these issues might be addressed so that the practice of RJ may be more reliably victim-sensitive.

4.2. Implications for RJ practice

Restorative justice is dialog driven, not outcome driven, practices. When practitioners lose focus on the process (for whatever reason) and move toward offender centered practices that are outcome driven it sets the stage for less restorative and less transformative experiences for everyone involved. In short, they would be less effective. Worse yet, it also increases the potential to re-victimize victims through insensitivity to their needs. The evidence is becoming increasingly clear, best practices in RJ require: practitioner training, thorough preparation of victims, offenders and their supporters; victim-centered and victim sensitive practices; dialog-driven processes (not outcome-driven); open, honest and respectful interactions where offenders feel safe enough to accept responsibility for their actions rather than guided by strictly scripted processes; and, opportunity for expression of genuine feelings that may lead to meaningful apology for victims and forgiveness for offenders.

4.2.1. Training that emphasizes RJ principles and values into practice

Restorative justice advocates argue that what makes a response restorative is not a specific model but rather *adherence to the principles and values* of RJ (Achilles & Zehr, 2001; Bazemore & Schiff, 2005; Van Ness & Strong, 2010; Zehr, 2005). Most importantly, RJ practitioners need to be sensitive to victim needs during the whole processes — beginning to end (Achilles & Zehr, 2001). As Schiff (2003, p. 330) asserted, if "restorative justice is…concerned with much more than simply what is done to, or with offenders," victim participation should *not* be used as the means to reach youth offenders. Similar views have been expressed by Achilles and Zehr (2001), Herman (2004), Llewellyn (2007) and Strang (2002).. The primary means of preventing harms to victims is to ensure that RJ processes are, at all times, sensitive to the needs of victims. If not, the practices used become ethically questionable and at odds with the fundamental principles of RJ (Achilles & Zehr, 2001; Schiff, 2003; Zehr, 2001). In order to help RJ practitioners maintain victim sensitive approaches, it is important that all practitioners including professional facilitators and volunteers be adequately trained in

restorative justice theory, values, principles and practices before they conduct RJ processes and provided periodic (at least annual) refresher or advanced training (Achilles & Zehr, 2001; Umbreit & Greenwood, 2000). Practitioner training (pre-service and in-service) should include measures to enhance understanding of the principles of RJ. Maximizing the sensitivity of practitioners toward victims could result in adequately prepared participants, thoughtfully planned sessions, and competently conducted dialog processes that are consistent with RJ theory, values and principles. This could substantially increase the odds that the promises of restorative justice will be realized (Presser, 2004).

4.2.2. The importance of thorough preparation

One of the most often compromised principles is the importance of victim-sensitive participant preparation for RJ conferencing. This is a critical issue because adequate preparation is the primary means by which victims are provided the detailed information they need; assisted in understanding their roles; helped to set realistic expectations for the processes use and outcomes; informed of potential risks and benefits; and, helped to define appropriate behavior and attitudes in RJ dialogs (Achilles & Zehr, 2001; Daly, 2006; Umbreit & Greenwood, 2000). During preparation, victims should be able to identify and articulate their needs and afforded maximum opportunity to be involved in the process (Achilles & Zehr, 2001). Thorough preparation would enhance the relationship both between victim and practitioner and between offender and practitioner which, in turn, increases the likelihood of meaningful interaction between the victim and offender in RJ during their encounter (Daly, 2006).

4.2.3. Creating mutual empathy through apology

For victims, whether seeking emotional or symbolic reparation, a sincere apology from offenders is critically important if restorative outcomes are to be achieved (Achilles & Zehr, 2001; Daly, 2002, 2006; Shapland et al., 2006; Strang, 2002). Hayes (2006) argued that the success or failure of an RJ conference may depend on a successful exchange of apology and forgiveness. Although some researchers have argued that financial restitution may not be a primary concern of victims if responsibility is accepted and a sincere apology is given (Umbreit & Coates, 2000; Zehr, 2005), many victims also may expect restitution as symbolic of the offender's awareness that he/she has indeed harmed another person(s) and recognizes their obligation to 'make things right' (Bazemore & Walgrave, 1999; Zehr, 2002). Simply obtaining an apology for victims or offering forgiveness to offenders is not explicit goals of RJ. However, these are common and desirable outcomes of well-developed victim-centered processes that set the stage for mutual empathy (Harris et al., 2004). However, through the review mutual lack of empathy among victims and offenders was indicated as a serious problem in achieving restorative outcomes. Given that mutual capacity for empathy is a central assumption of RJ this is potentially serious problem (Daly, 2002, 2006; Shapland et al., 2006). Indeed, this was an important reason for Daly (2002, 2006) to argue that it is not easy for victims and offenders to find common ground; and, difficult to listen to and absorb each other's stories during RJ conferencing.

A sincere apology may be difficult to achieve in RJ process (Daly, 2002, 2006; Hayes, 2006) because of communication barriers (gaps) between victims and offenders when apologies are extended. Daly (2002, 2006) observed that often there are subtle but mixed signals between victims and offenders (i.e., due to the lack of preparation, beliefs about offenders and their motives, or offenders' inability to be emphatic) that may create communication gaps that allow the sincerity of the apology by offenders to be misperceived as insincerity by victims. Researchers such as Hayes (2006) and Gerkin (2009) added another layer of complexity to this phenomenon by suggesting some structural issues (e.g., highly formalized or scripted processes that may inhibit genuine or natural flow of communications between

victims and offenders). Some RJ processes used within the context of the formal justice system may also create conflicting concerns for offenders when they are not fully informed about RJ principles (e.g., acceptance of responsibility may be viewed as a legal admission of guilt and make the offender more vulnerable to legal sanctions if their case is transferred back to the justice system for disposition). In addition, delivering an apology, especially for young offenders, is a complex undertaking that requires attention to many factors, including recognition of the influences of the context within which the apology is delivered, as well as the actual form and presentation of the apology (i.e., non-verbal cues such as looking the victim in the eye, appearing to look remorseful in facial expressions, speaking with a tone of respect and humility and so forth, etc.) (Choi & Severson, 2009). All of this requires a thorough preparation for young offenders before they encounter their victims in a dialog session.

4.3. Implications for future research

While far more research is needed, it is important for RJ researchers to describe how RJ programs really operate; how victim-centered processes are maintained and how victims are treated. Increased precisions in RJ research can only help add clarity by explaining how and why the "black box" of restorative justice operates as it does (Daly, 2006; Harris et al., 2004; Presser & Hamilton, 2006; Umbreit et al., 2002). This knowledge will help to improve the current practices, provide stronger foundations for research based practices, monitor the experience and perspectives of victims, and reduce the odds of adverse outcomes for victims (Daly, 2006; Moore & Mitchell, 2009; Umbreit et al., 2002).

4.3.1. Research on restorative outcomes

Hayes (2006) suggested that new analytical frameworks may be needed to explore what makes an RJ outcome "restorative." Some researchers have responded with new research protocols to measure the "restorativeness" of RJ programs (Bazemore, Elis, & Green, 2007; Moore, 2008). For example, Moore (2008) provided a free evaluation toolkit for researchers and practitioners entitled *Rights-based Restorative Practice*. In addition to "A Restorative Justice Yardstick" by Zehr (2005, pp. 230–231), Bazemore et al. (2007) also provided theory-based standards for evaluating the impact and integrity of victim sensitive process in RJ. These tools should assist researchers and practitioners in efforts to measure to what extent RJ processes are used effectively in a particular encounter or program. These and other advances in RJ research will help to move research on the mechanics of RJ processes forward (Bazemore & Green, 2007; Daly, 2006; Harris et al., 2004; Umbreit et al., 2002).

4.3.2. Research on the quality of interaction

The quality of interaction among participants appears to be the primary factor that produces restorative outcomes for both victims and young offenders (Harris et al., 2004). With regard to youthful offenders, it is argued that constructive RJ outcomes may be associated with their recognition of the impacts of their behaviors on others, increased empathy for those who have been harmed and the active steps they take to repair harms by genuine efforts to make amends, right the wrongs, and change their lives (Bazemore & Bell, 2004; Harris et al., 2004; Maxwell & Morris, 2002; Robinson & Shapland, 2008; Zehr, 2005). For many victims a sincere apology is critically important to achieving meaningful restoration. Consequently, it is important to research the complex nature of apology in RJ practice. Given the complex emotional or psychological dynamics in RJ conferences, researchers also should pay more attention to the interpersonal interactions among participants (Harris et al., 2004; Kenney & Clairmont, 2009; Presser & Hamilton, 2006). When RJ works well, it is the process – not the desire to attain an outcome – that makes it work (Bazemore & Bell, 2004; Harris et al., 2004; Maxwell & Morris, 2002; Robinson & Shapland, 2008; Zehr, 2005).

5. Conclusion

The weight of mounting research evidence on RJ processes indicates that they can be effective in healing harms and finding meaningful forms of justice for those involved. However, although the review of the literature was by no means exhaustive, it also seems to be clear that RJ processes can produce adverse outcomes for some victims when they become offender focused or insensitive to the needs and concerns of victims. For the most part, research findings suggest that the gaps between the ideal and real result from poor practice — inadequate preparation for victim participants, lack of training for practitioners, and structural obstacles (Bazemore & Schiff, 2005; Choi & Gilbert, 2010; Daly, 2002, 2003, 2006; Hayes, 2006). It is clear that there is ample room for improved RJ practice. This examination of "outlier" finding in the research suggests inadequacies in practice and points to the need for additional research on victim experiences. The outcomes of this research could lead to refined practices with fewer "outlier" findings of insensitivity to victim needs and concerns.

Practitioners should strive to identify and remove insensitivity towards victims in all phases of RJ processes (Choi & Gilbert, 2010). The persistence of "outlier" findings in RJ research suggests that systematic approaches may be needed to: monitor quality; ensure RJ practitioners are trained; and, reduce structural pressures that tend to make RJ practices less victim sensitive, less process oriented, more offender-centered and outcome driven (Achilles & Zehr, 2001; Bazemore & Green, 2007; Choi & Gilbert, 2010; United Nations Office for Drugs and Crime, 2006).

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