

Addressing the Tension between the Battered Women's and Restorative Justice Movements

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There has been much robust conversation of late regarding the compatibility of restorative justice practices with cases involving domestic violence. At times this conversation places well-intentioned and peace-oriented advocates at odds with one another. This article attempts to explain why this tension exists, and provide an impetus for productive future dialogue.

While much popular sentiment in the U.S. continues to favor more aggressive law enforcement and ever-harsher penalties for criminal offenders generally¹ pockets of retribution-worn community members have introduced alternative social responses to criminal behavior. These responses are directed at treating criminal acts as fissures in a community, calling for the community members themselves to play a role in healing these fissures, rather than as individual acts of deviance subject to castigation. These emerging practices fall under the rubric of "restorative justice." Restorative justice encompasses a broad spectrum of activities and programs designed as responses to crime that are alternatives to the approaches of the criminal justice system.² "Restorative justice is a problem-solving approach to crime, which involves the parties themselves, and the community generally, in an active relationship with statutory agencies."³

Beginning in the decade prior to the emergence of the restorative justice movement, battered women and their advocates coalesced to form what proved to be a growing campaign to stop domestic violence. Advocates had identified a specific form of violence that occurs in the intimate partner setting. Most intimate relationship violence by men against women is committed in the context of the offender's use of power and control tactics including intimidation and threats.⁴ While most of the new "battered women's movement" activities involved the provision of support, advocacy and safe housing to battered women, a predominant theme of the movement was and is the need to shift community norms away from tolerance and support of this violence. One of the most sustained foci of that effort was the reform of what many would argue is the penultimate norms-defining force: the criminal justice system. In fact, for the past several decades, the battered women's movement has pushed the criminal justice system to treat domestic violence as a crime against the state and as a matter of public concern, rather than a private, family matter. In order to accomplish this transformation, battered women's advocates worked to create partnerships with criminal justice system professionals.

These collaborations, however, were approached with ambivalence by some advocate activists; others objected outright to joint work with law enforcement and prosecution. This tension has several points of origin. Firstly, the results of such collaborations (such as mandatory arrest for domestic assault) sometimes clash with other fundamental tenets of the battered women's movement, such as the need to promote women's autonomy and to resist the gender based oppression of women. Secondly, activists saw that different groups of battered women experienced criminal justice system involvement in their lives

differently. Often these differences reflected their class, race, immigration status or sexual orientation. Thirdly, civil legal remedies (and other non-legal remedies) were sometimes seen as far more useful to women than those available through the criminal justice system.

Despite these concerns, however, many activists were encouraged by the growing evidence that a well-designed criminal justice system response to domestic violence could actually deter batterers and might, in the long term, contribute to a shifting of community norms through the criminalization of domestic violence. Advocates viewed reform of the criminal justice system as best accomplished through training and other advocacy activities designed to change police, prosecution, probation, and court practices. The resulting collaborations became some of the most important work of many domestic violence programs. To this day, the battered women's movement's attempts to reform the criminal justice system in partnership with its professionals continue to flourish.

Restorative justice proponents are, for several reasons, looking to the area of domestic violence as a potential arena for the application of restorative justice practices. At its outset, restorative justice took root in cases involving juveniles, and within indigenous communities. Its practitioners felt that the restorative justice principles were especially compatible in these contexts. Aware that domestic violence cases have begun to be and might continue to be subjected to these new practices, advocates within the battered women's movement have been watching the evolution of the restorative justice movement with both interest and apprehension.

Multiple scholars and activists have highlighted the more obvious incompatibilities between restorative justice practices and the experiences of victims of domestic violence. For example, restorative justice practices assume family and community members share a sophisticated analysis of a particularly complicated form of violence. Restorative justice practices do not account for the level of fear and experience of entrapment suffered by victims of domestic violence, or the ongoing access perpetrators have to their victims. Restorative justice practices assume perpetrators do not understand the ramifications of their criminal behavior or its full impact on victims of domestic violence. The list goes on.

However, there has been less acknowledgement by the battered women's movement of those real areas of overlap between the two movements. Significantly, an analysis of the principles underlying the restorative justice and battered women's movements reveals that there are at least four strong points of commonality. These are the movements' interests in (1) restoring victims of crime; (2) preventing individual offenders from re-offending; (3) promoting the role of the community in responding to crime; and (4) addressing the social context in which crime is committed. But it is how each movement implements these principles that vary vastly. Each movement endorses very different approaches and quite disparate practices. As outlined below, these differences are the result of each movement having arisen from a unique political standpoint and in response to different social problems.

Future directions for both movements, both individually and possibly collectively, should be driven by four goals which the authors submit should drive all interventions in domestic violence cases: (1) the restoration of battered women's safety, autonomy and agency; (2) the prevention of further violence by batterers against their intimate partners; (3) the restoration/establishment of egalitarianism and peace as a community standard for conduct in intimate relationships; and (4) the attaining solutions to the social context of crime.

The ability of the battered women's or the restorative justice movements to effectively stop future violence and restore of battered women's safety, autonomy and agency will depend on whether both movements account for the fact that a primary facet of battering is the abuser's restriction of his partner's liberty—controlling how she spends her time, whom she sees, where she goes. Consequently, success depends on doing more than stopping the offender from committing other violent and intimidating acts. Because the circumstances in a woman's life over which she has little or no control (such as economics, education/training, discrimination, language, gender, immigration status, housing, physical health, mental health, social status, and socio-cultural practices) may be manipulated by the abuser to victimize her, the social, legal and moral climate in the community must address that risk, as well.

The battered women's movement, which has long focused on victim safety and autonomy, must do more to assist and partner with women's own communities and to help organize around the issues *chosen by the women in the community*. Battered women's advocates must continue to insist on effective criminal justice system responses to domestic violence while avoiding heavy reliance on that system. And they must redouble their efforts to ensure that women have access to competent legal advocates and attorneys. But most of all, advocates must engage with women to look beyond the civil and criminal justice systems to their (or their abusers') families, friends, employers, faith communities, and neighbors to build support for the women, to increase their safety, and to encourage the batterers to cease their violence.

The restorative justice movement, too, has evolved practices which are designed to advance the safety and autonomy of crime victims. Victim-offender mediation, for example, has placed the emphasis upon victim healing, offender accountability, and restoration of losses. But any process that places the battered woman in a negotiating relationship with her source of fear offers her a false promise of hope and might, therefore, place her in danger. It is critical that all currently utilized restorative justice practices should include screening for and exclusion of cases involving domestic violence. Restorative justice practices which might have the most potential for restoring battered women's safety, autonomy and agency would include those which *involve her and her abuser's community* in a real and productive fashion which accounts for the prevalence of norms that tolerate and support violence against women. New practices must be designed which (realistically) enhance victim safety, prevent violence, establish community wide norms which reject such violence, and address the social context of this kind of crime. If the engagement of community members, which is the hallmark of restorative justice theory, were done for the purpose of creating a

world (or at least a neighborhood) in which men and women were equally safe and free of coercive controls in their relationships, and if that work were done in concert with the movement already engaged in sending that message, serious progress in meeting these four goal would be possible.

The mandate for both movements is both clear and challenging. The only hope of meeting the challenges lies in each movement's responsiveness to the other and most importantly to the battered women whose lives can best inform the direction they take. The battered women's movement needs to engage with and listen to the restorative justice movement and to rethink what remedies upon which to focus. The battered women's movement needs to engage with other progressive movements who are already advocating for the needs of battered women from other vantage points and addressing other life-generated problems. The restorative justice movement needs to engage with and learn from the battered women's movement about the central nature of domestic violence and the true needs of battered women.

¹ See generally, Constance Johnson, *Law and Disorder*, 116 U.S. NEWS 35 (1994); *Crime and Punishment*, THE

ECONOMIST, June 8, 1996; *The Craze for Imprisonment*, THE ECONOMIST, May 16, 1998.

² Restorative Justice activities include, but are not limited to: victim offender mediation; family group conferencing; victim impact panels; sentencing or peace circles; negotiated protocols; victim compensation; and Truth and Reconciliation Commissions.

³ MARSHALL, TONY F., RESTORATIVE JUSTICE: AN OVERVIEW 1 (1998).

⁴ R. Emerson Dobash & Russell P. Dobash, *RETHINKING VIOLENCE AGAINST WOMEN* 161, Sage Publications, 1998; Michael Paymar & Ellen Pence, *EDUCATION GROUPS FOR MEN WHO BATTER: THE DULUTH MODEL*, Springer Publishing Company (1993).