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Road(s) To Recovery: Restorative Justice And Discourses of Reconciliation in Domestic Violence Cases

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The Road(s) to Recovery: Restorative Justice and Discourses of Reconciliation

Within the last thirty years, restorative justice principles and practices have been gaining popularity in justice systems around the globe. As an alternative to the traditional retributive justice system, restorative justice is regarded as a movement that prioritizes reconciliation and emphasizes rehabilitation. Restorative justice policies claim to both emphasize the victim's role in the justice process and to hold offenders accountable for their actions. Despite its supposed benefits, feminist scholars struggle with the role of forgiveness in restorative justice practices and its impacts on the victim and often question the overall effectiveness of restorative justice policies as a whole. Though recent restorative justice literature has engaged more critically with the complex ways of understanding emotion in victim-offender mediations, much of the key scholarship on restorative justice fails to interrogate how a burden of responsibility is implicated as a result of the increased emphasis on forgiveness.

In this essay, I offer a critique of the restorative justice practices from a feminist perspective. I intend to examine the guidelines and goals of restorative justice practices, with a specific focus on its application to domestic violence cases. I argue that restorative justice practices fail to emphasize and fully account for the victim's safety and interests. Furthermore, I argue that the emphasis on reconciliation and forgiveness that characterizes the restorative justice model exploits women's emotions in the maintenance of their own goal of community reconciliation and risks recidivism by suggesting the violence is somewhat fixable. By referencing both the main goals of the restorative justice approach, as outlined in restorative justice literature, and its practical applications, I critique the construction of restorative justice as a victim-centred and feminist alternative to retributive justice practices.

I begin by offering a definition of the restorative justice model and its intended goals within domestic violence cases. I trace the origins of the restorative justice system through the Indigenous practice of healing circles, which emphasize the role of the community in the healing and recovery process. I reference Jacques Derrida's *On Forgiveness: Part II* to elucidate the relationship between restorative justice practices and the insidious reinforcement of forgiveness. I reference Derrida's understanding of forgiveness to show how forgiveness functions to trivialize the severity of domestic violence in restorative justice practices. In order to provide a more nuanced understanding of the victim's role in restorative justice practices, I explore the potential benefits of restorative justice application to domestic violence cases. I applaud the system's attempts to create a safe space for women to express their feelings toward the abuse and the attempt to adhere to a specific script of forgiveness that suggests the offender's remorse should be expressed prior to the victim's forgiveness. By referencing women's experiences with restorative justice, I argue that the disconnect between restorative justice's theoretical guidelines and its practical application in domestic violence cases functions to weaken the practice overall. I acknowledge that many victims of domestic violence report great satisfaction with the restorative justice model. I do not intend to frame restorative justice as an inherently anti-feminist practice that only further perpetrates the gendered imbalance of power. Rather, I hope that my critique offers an alternative way of understanding restorative justice and acknowledges the gap that can occur between theory and practice.

Restorative justice originated as a community-based movement in the 1970s (Tomporowski 816). Barbara Tomporowski, a professor in the Department of justice studies at the University of Regina, identifies four main streams that fostered the development of

restorative justice (Tomporowski 816). These four streams include approaches taken from Indigenous healing practices globally and in Canada, the work of religious groups and communities through social justice activism and prison ministry, work in corrections facilities and community groups working towards the rehabilitation of criminal offenders, and the increasing research being done in the field of victimology and victim-advocacy (Tomporowski 816-7). The practice of “circles”, “peacemaking circles”, and “community circles”, originate from the Indigenous practice of healing circles. Both the restorative justice practice of community circles or peacemaking circles and the Indigenous tradition of “healing circles” generally include a wider range of individuals than victim-offender mediations or conferences, with participation from families, community members, justice professionals, and others.

Due to its widespread use and its applicability to a number of different sectors, there is no singular definition of restorative justice. For the purposes of this essay and its focus on restorative justice and domestic violence cases, I use Marilyn Fernandez’s definition of restorative justice. In her work, *Restorative Justice for Domestic Violence Victims*, Fernandez defines restorative justice as “a holistic and systematic response to wrongdoing that emphasizes repairing the harms and healing the wounds of stakeholders (victims, offenders, and their communities) that were caused by the criminal behaviour, and ultimately reintegrating the stakeholders involved” (Fernandez 9). Imperative to the understanding of the principles of restorative justice is Howard Zehr’s conceptualization of the three pillars of restorative justice. According to Zehr, the three main elements of restorative justice are harm and needs, primarily of the victim but also of the community and the perpetrator, obligations, which refers to the obligations of both the perpetrator and the community, and engagement, with those who have a

“stake” in the crime or a legitimate interest in the offence, including victims, perpetrators, and community members (Fernandez 9).

By emphasizing reconciliation and encouraging apology in domestic violence cases that use the restorative justice method, I contend that forgiveness is used in gendered ways that make the victim vulnerable to recidivism. For some scholars, the giving and accepting of an apology is considered a hallmark of restorative justice (Stubbs 175). Restorative justice is often paired with the idea of forgiveness and reconciliation, largely due to restorative justice’s roots in Indigenous healing practices. According to Peterson-Armour and Umbreit, Indigenous traditions emphasize principles of healing as a means of restoration and as a way to mend damaged relationships, both on the individual and communal level (Peterson-Armour and Umbreit 124). In *Compulsory Compassion: a Critique of Restorative Justice*, Annalise Acorn argues that restorative justice invokes a “rhetoric of healing” as a way to entice victims to participate in restorative justice practices (Acorn 70). Acorn argues that healing is “prohibitively mysterious”, and it is a dangerous and difficult process to track, measure and assess (Acorn 70). According to Acorn, the “promise of healing” entices the victim to reconnect with the perpetrator in an emotionally responsive way. As a result, the victim is softly coerced to give the gift of forgiveness and mend the broken relationship. While I agree with Acorn’s ideas, my contentions with the healing process in the restorative justice narrative is that forgiveness becomes implicit in the restoration process. Since there are a number of lay definitions of victim forgiveness, advocates of restorative justice found it easier to define what victim forgiveness is not. Peterson-Armour and Umbreit note that victim forgiveness does not imply “condoning, forgetting, excusing offences, reconciliation, or legal pardon” (Peterson-Armour and Umbreit 124). However, the healing

narrative present in restorative justice practices often reframes apology and forgiveness as signalling reconciliation and repair.

In *Crime, Punishment and Restorative justice: from the margins to the mainstream*, Ross London argues that forgiveness has different functions in restorative justice processes. London uses the “core sequence theory” to explain how forgiveness operates as a means of emotional restoration (London 122). According to this theory, the emotional “losses” of crime are relinquished through the act of forgiveness (London 122). The “core sequence of emotions” — regret, remorse, and forgiveness—, is considered the ideal outcome in restorative justice practices. This narrative of forgiveness and restoration succeeds in positioning the victim’s apology as a critical precondition to the victim’s offering of forgiveness, which helps promote an “earned forgiveness”(London 125). Only until the perpetrator expresses shame and remorse, can the victim be “released of the burden of anger and bitterness resulting from a sense that the emotional hurt is unacknowledged” (London 122).

The forgiveness narrative that London outlines can be read as beneficial to the victim because it places the responsibility on the perpetrator and requires them to take on the initial act of contrition. London outlines the features of “earned forgiveness” to show that forgiveness does not necessarily function to rob the victim of their agency nor does it ignore the victim’s emotional needs (London 125). London suggests that the victim’s forgiveness is voluntary and can occur at any time, with or without justice (London 125). London’s idea of “earned forgiveness” frames forgiveness as a process that can generally be attained “only after we have worked through a process of addressing the wrong” (London 125). This type of forgiveness, on the victim’s end, is not framed as obligatory or necessary, which alleviates the victim of the

emotional responsibility of adding the “final touches” to the reconciliation process. When “earned forgiveness” is implemented in restorative justice practices, it creates a more realistic possibility of emotional closure for the victim and does not suggest forgiveness must occur on a specific time line. “Earned forgiveness”, then, can be seen as a practice that more fully acknowledges the pressures placed on the victim in victim-offender mediation and ultimately grants the victim the right to give or deny the offender the gift of forgiveness.

Despite the potential benefits of victim forgiveness, the “core sequence theory” is often not achieved in practice. In their observations of restorative justice conferences, Suzanne Retzinger and Thomas Scheff studied how the forgiveness narrative unfolded and how material and emotional bonds were restored in community conferences. According to the authors, community conferences paralleled that of victim-offender mediations, as the conferences involved a facilitator, the victim, the offender, and both of their supporters (Retzinger and Scheff 23). Retzinger and Scheff found that the core sequence of emotions only occurred once in the formal parts of the nine community conferences they observed (Retzinger and Scheff 23). Retzinger and Scheff’s work shows that the ideal “core sequence” from shame and remorse to forgiveness can not be used to characterize the narrative of forgiveness in the majority of the community conferences. While restorative justice advocates promote this narrative and often emphasize the desirability of this sequence, Retzinger and Scheff’s work shows that there is a disconnect between restorative justice theory and practice. Retzinger and Scheff’s suggests that restorative justice is more than a set of organized programmes and guidelines. Rather, the core sequence theory needs to occur concurrently with what Braithwaite describes as a

“transformation of attitudes and feeling” towards crime, criminals and reconciliation (Johnstone 109).

The practices of apology and forgiveness play a particularly dangerous role in domestic violence cases. Apology and forgiveness are skillfully implemented into domestic violence disputes and often function to perpetuate the cycle of abuse. The skill of repentance and remorseful apology is often practiced by abusers in order to strengthen the “temporarily” broken bond between the abuser and the victim. Identified as the “honeymoon phase”, the abuser offers what appears to be a heartfelt apology and promises the victim the abuse will never occur again (Roberts 3). After what can often be characterized as a passionate and desperate apology, the reconciliation is soon followed by a new wave of tension in the relationship, another violent episode, another “remorseful” apology, and so on. Forgiveness is often practiced on the victim’s end as well. Acorn says that female victims of domestic violence are often well versed with their apologies, as they use them as a tactic to appease their husbands, quiet his insecurities, and to assume responsibility for the violent act (Acorn 73). If practitioners fail to recognize that male abuser’s often used apologies as strategies for perpetuating the cycle of abuse, they put the victim at risk for future incidents of abuse. The ultimate goal of restoration through rapprochement could ultimately hinder the mediator’s ability to account for the victim’s safety following the reconciliation process. By emphasizing apology and forgiveness, practitioners of restorative justice prioritize the goal of reconciliation and restoration over the safety of the victim.

Practitioners and mediators in victim-offender mediation should avoid framing forgiveness and apology as a passage to restoration and reconciliation. Not only does this

encourage recidivism and put the victim at risk for future abuse, but it reframes women's emotions as tools in a greater process within the justice system. By framing the female victim's emotionality and expression of forgiveness as an integral part of the restorative justice practice, I argue that restorative justice facilitates the exploitation of women's emotions. Women's forgiveness and voluntary benevolence is positioned as necessary in order for both herself, the victim, and the community to access peace and for the reconciliation process to be successful. I want to return to Acorn's idea that reconciliation is used as bait to lure victims into thinking that they are exercising their agency by forgiving their abuser (Acorn 70). Acorn's ideas can be used to think through Derrida's idea of the impossibility of forgiveness, and to demonstrate how restorative justice capitalizes off women's emotions. In *On Forgiveness Part II*, Derrida suggests that impossibility lies at the heart of the concept of forgiveness (Derrida 32). According to Derrida,

If one is only prepared to forgive what appears forgivable ... then the very idea of forgiveness would disappear ... From which comes the aporia, which can be described in its dry and implacable formality, without mercy: forgiveness forgives only the unforgivable. One cannot, or should not, forgive; there is only forgiveness, if there is any, where there is the unforgivable. That is to say that forgiveness must announce itself as impossibility itself" (Derrida 32-33).

Derrida argues that "monstrous crimes" do not open themselves to the possibility of forgiveness because their inherent "wrongness" makes it incapable of being forgiven. Nevertheless, Derrida frames forgiveness as a "worthy existential challenge", and the very impossibility of forgiveness tempts us to try it (Acorn 10). In the victim-offender dynamic, restorative justice practitioners

often facilitate this temptation to award the offender forgiveness by framing the victim as the ultimate stimulator of reconciliation and as the community's key to restoration. In this narrative, the gendered power dynamics are flipped and the female victim is seen as potentially offering the most prized contribution to the community. I critique restorative justice practitioner's ability to temporarily modify the gendered power dynamic. I understand this action as one that uses women's emotions as a means to to achieve their own goals and to successfully complete the restoration process. Through this exploitation of women's vulnerability, it appears that this application of forgiveness in restorative justice practices ultimately functions to trivialize the victim's emotional needs.

Despite restorative justice's potential to use women's emotions as a means to their own political end, many female victims are re-empowered through victim-offender mediations. Fernandez's interviews with survivors of domestic violences, for example, revealed that a common theme among victims was their search for healing, desire for closure, and the need to express material and immaterial losses to their offenders (Fernandez 141). In an interview with a Hispanic woman who was married for three years to her abusive husband, Fernandez notes that the women expressed a desire for restitution and empowerment, which she believed she could find through a conversation with her husband, "I had no idea I had the right to change my mind. I had not right not to want sex with my husband if I didn't want it. I didn't know. I thought that I was supposed to do that. I thought that's what, what married people are supposed to do ... I would like to tell him that" (Fernandez 143). If victim-offender mediations can address this common need for victim's to express their new outlook on the abuse and the physical and psychological harm associated with it, restorative justice can be pivotal in the victim's healing

process. By giving survivors the space to express their emotions in a safe and controlled environment, restorative justice practices successfully prioritize the victim's emotional needs and maintain a victim-centred discourse around justice.

In this essay, I have attempted to illuminate the relationship between domestic violence, restorative justice literature, and the forgiveness culture that infiltrates and permeates our society. I have examined the discourses of forgiveness that are implicit in restorative justice literature, and how these discourses disregard survivors who emphasize the need for public condemnation, emotional validation and safety over reparation. While I have critiqued many aspects of the restorative justice process, I do not suggest that retributive justice systems are entirely more productive in domestic violence disputes or that restorative justice practices always fail to accommodate the victim. Rather, I call for a more nuanced and integrated approach to justice that prioritizes the needs of the victim over the ultimate goal of reparation. Through my analysis of restorative justice literature and its emphasis on reconciliation, I hoped to have illustrated the negative impacts of this rhetoric of forgiveness. I hope my insights here change the way we understand the implications of restorative justice and offer an alternative way of understanding victim's role in the criminal justice system.

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