

## Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful?

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### ABSTRACT

The article draws on the results of two empirical studies to develop new theoretical views on apology and forgiveness in relation to crime: research on mitigation and sentencing in the criminal courts; and an evaluation of three English restorative justice schemes undertaking conferencing and mediation primarily in relation to serious offences and adult offenders. Though forgiveness does not require apology (nor even knowing who the offender is), the important interactive and communicative aspects of restorative justice link it firmly to apology. Yet apology is complicated, being in the case of crime to both the victim and the state. When considering forgiveness, the immediate pairing is the possibility of forgiveness by victims to offenders, but it is also conceivable to consider forgiveness by offenders to themselves and forgiveness of the offender by supporters/families and the local community (though not, it seems, the state). The article moves beyond current depictions of apology to consider the interaction between apology and acceptance, and victims' (and supporters') reactions. Empirically, these victim reactions include achieving closure (for both offenders and victims), supporting offenders' efforts to change their lives, and appreciating offenders' apologies and courage in answering questions and communicating. Healing and reconciliation are less mentioned (or relevant). The word 'forgive' is only rarely mentioned. The questions then are whether these reactions can be considered to amount to or link to forgiveness, and whether 'forgiveness' is directed to the offender or the act.

Forgiveness may be appropriate as a social action in many different contexts: when someone has knocked into us in a crowded street, after an accident, if a precious mug has been broken. The 'I'm sorry—Don't worry, not a problem' routine springs naturally into place in these situations and often it is a momentary response and a highly forgettable incident. Where forgiveness begins to be called into question is when the injury is more serious, the consequences more long lasting, and/or the injurious action more clearly against normal and expected behaviour in society. These are also the points at which other elements society has put into place to deal with such acts spring into action and responsible others are also involved: police, prosecution, courts, legal action, and means for compensation. In an increasingly crowded scenario of official actions, the place of forgiveness becomes more uncertain and the offering of forgiveness may be unexpected—and certainly not

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choreographed into official action. More recently, though, other forms of official action after crime have been developed, including restorative justice. Restorative justice, which involves the offender and victim themselves in communication, is now suggested to be offered at all stages of the criminal process.<sup>1</sup> Perhaps surprisingly, though, there has been little discussion of the place of forgiveness and the role of forgiveness in such restorative justice processes.

Forgiveness, as a relational entity, is necessarily highly dependent on the context of the injury and the social context of any remedies. The context of restorative justice I shall be discussing in this article is that of restorative justice conferencing in England, for mostly serious criminal offences, committed mostly by adult offenders. We undertook the evaluation of restorative justice offered to victims and offenders by three schemes in England in the early years of the millennium.<sup>2</sup> The biggest scheme, Justice Research Consortium, which operated in London, Thames Valley, and Northumbria, utilized conferencing as its restorative justice procedure. Conferencing is a direct meeting between the victim and offender, where each normally has a supporter or supporters also present (usually family, friends, work colleagues, but on occasions case workers, probation officers, etc.). Restorative justice conferences took place as a diversionary measure from prosecution with young offenders in Northumbria (final warnings), pre-sentence at the magistrates' court (Northumbria) and Crown Court (London) for adult offenders, and during a community sentence or before release from prison for adult offenders (Thames Valley). The conferences, many of which the research team observed, therefore, took place at very different stages of the criminal justice process, and might be weeks or months after the offence occurred. The criminal justice process continued in parallel with any restorative justice. As part of the evaluation, we interviewed both victims and offenders a few months after the conference.

In this article, I want first to consider the process of conferencing and what it entails in terms of communication between victims and offenders, both of whom have voluntarily agreed to participate in the meeting. I shall then consider whether forgiveness needs to be linked or is linked to apology and what this says about the structure of communication. Conferencing occurred in the shadow of the formal criminal justice process, of which all the participants were acutely aware, so it is also important to consider forgiveness in that context, drawing on a study of mitigation and sentencing in the criminal courts,<sup>3</sup> and legal rulings on forgiveness. Finally, this has all led me to consider the ways in which both different academic disciplines and members of the general public (victims and offenders) see forgiveness in England, and to question some of our academic assumptions about the nature of forgiveness.

- 1 The EU Dir 2012/29/EU states in art 12(2): 'Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.'
- 2 Joanna Shapland, Gwen Robinson, and Angela Sorsby, *Restorative Justice in Practice* (Routledge 2011). The schemes and the evaluation were funded by the Home Office of England and Wales, which later became the Ministry of Justice.
- 3 Joanna Shapland, *Between Conviction and Sentence: The Process of Mitigation* (Routledge 1981); Shapland, Robinson, and Sorsby, *ibid*.

# 1. VICTIM–OFFENDER COMMUNICATION, APOLOGY, AND FORGIVENESS

In relation to criminal offences, when we speak of forgiveness we mean generally forgiveness by victims towards their offenders. In relation to conferencing (and to everyday life), there is also the possibility of forgiveness towards the offender by those close to the victim, generally those who have been also affected by the offence. Normally we would be considering forgiveness just towards the offender himself or herself; it is rare, in England, for adult offenders to be seen as so closely connected to their family, social group, criminal gang, ethnic group, or caste that the group itself would also be seen as responsible for the offence, and so potentially needing forgiveness as well. Hence, the main direction and communication of forgiveness will be victim (and those close to the victim) towards offender.

However, in thinking about towards whom forgiveness is directed, we also need to bear in mind that often both victims and offenders blame themselves for the offence or its particular occurrence or results. A common reaction for victims to crime is self-blame—‘it wouldn’t have happened if only I’d not walked through that park’, etc.<sup>4</sup> This self-blame is accompanied by guilt and sometimes feelings that the victim himself or herself is not sufficiently aware, or competent, as a member of society. Much of the task of those supporting victims is to reassure victims that they were not to blame (the offence was committed by the offender), but also that these guilt reactions are normal and common. Simply because crime, thankfully, is rare in Western countries, the shock of crime can initially cause victims to distrust those around them and themselves. The process of ‘recovery’ from crime needs to involve a process of coming to terms with the occurrence of crime and reducing self-blame. These feelings of self-blame—and indeed the impact of crime generally<sup>5</sup>—tend to be more devastating and long lasting for more serious offences.

Indeed, for very serious crime, many would prefer the term ‘survivor’, rather than ‘victim’ used, arguing that the word ‘victim’ implies passivity, suffering, and self-blame. This has been particularly so in relation to sexual assault, domestic violence, and homicide. They would say that the agency of the victim—the active input by the victim to mould the response to the offence by the state and themselves (sometimes called victim resilience)—is key and healthy. Van Dijk (2009) has argued that state agencies and the media in the case of particularly high-profile homicides and kidnappings, in fact actively seek to discourage action by the victim and try to render him or her passive, even suggesting that victims who are active are colluding with offenders.<sup>6</sup> Yet, a ‘healthy’ response by a victim does require that agency and ability to feel in control. Field and others (2013) title their article, ‘Forgiveness is a present to yourself as well.’ From interviews with victims of serious violent offences, the results of which are described further below, they show how the process of

4 Joanna Shapland and Matthew Hall, ‘What Do We Know About the Effects of Crime on Victims?’ (2007) 13 *International Review of Victimology* 175.

5 *ibid.*

6 See Jan van Van Dijk, ‘Free the Victim: A Critique of the Western Concept of Victimhood’ (2009) 16(1) *International Review of Victimology* 1.

forgiveness involves changes in the views of victims towards themselves, as well as towards their offenders.<sup>7</sup>

Similarly, a key element which the criminal justice system (and onlookers, including victims) wishes to foster in offenders is self-awareness, including remorse and guilt in relation to the offence. The English criminal justice system is essentially backwards-facing—constantly aimed at bringing home to the offender the gravity of what he or she has done and its effects. Offenders are categorized by the nature of the offence they committed, often their future risk judged in terms of their past deeds. Though much of the literature on restorative justice has been regarding the extent to which it does bring about shame or guilt on the part of the offender (or instil empathy towards the victim),<sup>8</sup> a constant backwards focus, as the criminal justice system tends to have, does not actually aid in encouraging the offender to desist from crime or help persistent offenders learn to lead a non-offending life in the community.<sup>9</sup> Braithwaite made exactly the same point many years ago when proposing restorative justice as a means of remedying the deficiencies of criminal justice: criminal justice may be ‘shaming’, but justice (ie restorative justice) needs to be reintegrative shaming.<sup>10</sup> It needs offenders not only to regard the past seriously, but to then lift their gaze from the past and direct it towards constructive action in the future (and communities to welcome them back). Part of that process of redirecting the gaze from the past to the future may involve offenders being able to forgive themselves for their past actions, and to ‘move on’, so that they can conceive of themselves as being law-abiding and a worthwhile member of society.

Forgiveness as a process, then, is complicated: forgiveness by the victim towards the offender but also forgiveness by victims directed towards themselves and forgiveness by offenders also towards themselves. These will, however, occur at different times after the offence and at different stages of justice processes. Self-forgiveness is likely to take a lot longer than forgiveness of the other (forgiveness of the other can be conceived of, for some people, as immediate)—or are they all possibly iterative parts of the same process? Are there links between forgiveness of the other and self-forgiveness? For this, we need to dissect the idea of forgiveness in more detail. However, first it is necessary to examine how forgiveness might link to communication and the possibilities for communication, within and outside restorative justice.

## 2. COMMUNICATION IN CRIMINAL AND RESTORATIVE JUSTICE

In terms of speaking about the harm caused by an offence, both victim and offender may be talking about themselves, but also about each other. However, because an

7 See Courtney Field, Jaimie Zander and Guy Hall, “‘Forgiveness is a Present to Yourself as Well’: An Intrapersonal Model of Forgiveness in Victims of Violent Crime” (2013) 19(3) *International Review of Victimology* 235.

8 Nathan Harris, Lode Walgrave and John Braithwaite, ‘Emotional Dynamics in Restorative Conferences’ (2004) 8 *Theoretical Criminology* 191–210.

9 Antony E Bottoms and Joanna Shapland, ‘Learning to Desist in Early Adulthood: The Sheffield Desistance Study’ in Joanna Shapland, Stephen Farrall, and Anthony E Bottoms (eds), *Global Perspectives on Desistance: Reviewing What We Know, Looking to the Future* (Routledge 2016).

10 John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989).

offence is an act proscribed by the criminal law, as enacted by the state, each may also be referring to harm caused to society in general, or to the local community. Crime has been referred to as creating a ripple, where the effects and the news spread outwards from the initial victim to their neighbours, friends, and local community (which is why a robbery of a local post office or shop, eg creates much more alarm than a similar offence to a private householder) and may, via the media, reach further to the nation and even globally.

Communication about the offence, particularly in any public forum, such as a court, hence is often not solely about harm to the victim but also harm to others and society. The opportunities provided within criminal justice and restorative justice for such communication, though, are not symmetrical to all these potential audiences and communicators.

In criminal justice, offenders communicating about the offence speak to the judge as a representative of society. Victims, though, are rarely present in court<sup>11</sup> and all those speaking are told not to speak past the judge to another party, but directly to the judge. Hence, in criminal justice court proceedings (and similar youth justice proceedings), communication is to society, not to the victim. In restorative justice, communication is designed to be between the parties (between victim and offender), where necessary mediated by a facilitator. However, proceedings are normally in private (as set out in the EU Victims Directive: 2012/29/EU) and only a few forms of restorative justice involve a formal presence of the state<sup>12</sup>, to whom communication can be directed. In restorative justice, therefore, communication is largely 'horizontal', between victim, offender and supporters, whereas in criminal justice, communication is largely 'vertical' towards the state. Both forms of justice will, therefore, not encourage the triadic communication—between victim, offender, and state/local community—which could be seen as important in relation to an offence. This triadic communication can be seen as key not only in relation to the offence itself and the effects of the offence, but also in terms of any reintegration of the offender. Reintegration, as Braithwaite long ago pointed out in developing the idea of reintegrative shaming, which he saw as the potential of restorative justice, needs

11 Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Clarendon Press 2002); Joanna Shapland, Jon Willmore, and Peter Duff, *Victims in the Criminal Justice System* (Gower 1985).

12 Some that do include youth conferencing in Northern Ireland, where a police officer is present (Campbell and others), as well as in South Australia and New Zealand (Daly; Morris and Maxwell), and also any form of restorative justice facilitated by operational criminal justice personnel (eg circle sentencing in Canada—Stuart, or 'street restorative justice' by police officers in England—Parker). See Catriona Campbell and others, *Evaluation of the Northern Ireland Youth Conference Service*, NIO Research and Statistical Service Report 12 (Northern Ireland Office 2005); Kathleen Daly, 'Mind the Gap: Restorative Justice in Theory and Practice' in Andrew von Hirsch and others (eds), *Restorative Justice and Criminal Justice: Competing Or Reconcilable Paradigms?* (Hart Publishing 2003) 219–36; Allison Morris and Gabrielle Maxwell, 'Restorative Justice in New Zealand: Family Group Conferences As a Case Study' (1998) *Western Criminology Review* <<http://www.westerncriminology.org/documents/WCR/v01n1/Morris/Morris.html>> (accessed 20 January 2016); B Stuart, 'Circle Sentencing: Turning Swords into Ploughshares' in B Galaway and J Hudson (eds), *Restorative Justice: International Perspectives* (Criminal Justice Press 1996); Laura Parker, 'The Use of Restorative Justice in England and Wales: Preliminary Findings' in Paul Ponsaers and others (eds), *Crime, Violence, Justice and Social Order: Monitoring Contemporary Security Issues* (GERN Research Paper Series 1, Maklu 2013).

communication between not just victim and offender, but also offender and community (even offender and state).<sup>13</sup>

### 3. IN THE SHADOW OF CRIMINAL JUSTICE: MITIGATION AND FORGIVENESS

In criminal justice, the place where forgiveness could be expressed within the criminal justice process is primarily between conviction and sentence. Conviction marks the official judgment that an offence has been committed (and that, therefore, there is an offender who has harmed and who is responsible for the harm suffered by the victim, now officially designated as a person who has been harmed). Sentence, as the official pronouncement of the state's reaction to that offence, effectively ends any dialogue about what kind of reaction that should be.

For centuries, the state in England and Wales has allowed the offender to say something in mitigation during this process between conviction and sentence. Today it is a speech in mitigation, either by the defendant or by his or her legal representative. The content and dynamics of that speech seem to have changed little in the last 30–40 years.<sup>14</sup> In an empirical study in the magistrates' court and Crown Court in London in the late 1970s, Shapland (1981) found that unrepresented defendants tended to say very little indeed—an average of two lines of text, as transcribed, in the magistrates' court.<sup>15</sup> This compared to an average of 13 lines of text for legal representatives in the magistrates' court and an average of 41 lines of text for legal representatives in the Crown Court. Unrepresented defendants would say sorry and apologize to the court, saying that they intended to try to do better in the future. For a serious offence, unrepresented defendants tended to repeat their apology many times—but this could come across as insincere, and indeed it is very difficult in the context of a continuous speech to convey oneself as both the same person who is sorry, and a changed person who would not do it again.

Legal representatives, since they were speaking in the third person, found these shifting identities easier to manage on behalf of the defendant. They could, and did, talk about who the defendant was, and what had happened up to that moment, and who he or she intended to become. They apologized on behalf of the defendant and said that he or she was a different person now. More, they could say in what ways they had seen the defendant changing.

But all these communications and apologies were directed to the judge, and to the state. There was, at that time, no victim in court to receive any such communication or apology. Indeed, even by the late 1990s, Strang (2002) found

13 See Braithwaite (n 10).

14 Though today, legal representatives are much more likely to concentrate the content on aspects of the sentencing guidelines issued to courts by the Sentencing Council. These tend to be deficient in relation to personal mitigation (mitigation about the personal circumstances of the defendant), concentrating largely on the seriousness of the offence, the culpability of the defendant and possible reactions of the defendant to sentences of the court. Joanna Shapland, 'Personal Mitigation and Assumptions about Offending and Desistance' in Julian V Roberts (ed), *Mitigation and Aggravation at Sentencing* (Cambridge University Press 2011) 60–80. See also Jessica Jacobson and Mike Hough, *Mitigation: The Role of Personal Factors in Sentencing* (Prison Reform Trust 2007).

15 Joanna Shapland, *Between Conviction and Sentence: The Process of Mitigation* (Routledge 1981).

that only a small minority of victims, when interviewed, said that they had received a court apology.<sup>16</sup> What was the response of the state to these apologies? Sometimes, the homily of the judge (the speech given when sentencing) acknowledged the apology and any remorse expressed as a potential mitigating factor for sentence, but homilies have never contained any element of forgiveness. The state, receiving an apology, clearly does not do forgiveness.

If forgiveness or at least tolerance of the defendant as an individual is an important element in reintegration of offenders, it could be questioned whether the state is into reintegration either. This is of course the point made by Braithwaite (1989) in stressing that criminal justice sentencing shames, but does not include reintegrative shaming.<sup>17</sup> In an era of increased emphasis on rehabilitation (HM Inspectorate of Probation 2014), however, it is worth underlining the lack of tie-up between rehabilitation and reintegration. Rehabilitation is clearly seen as something an offender works for and may accomplish himself or herself during the sentence, but not something a judge needs to foreshadow or invite in terms of indicating reacceptance into the community at the time of sentence.

Since the 1970s, the possibility of communication from victims during the process between conviction and sentence has come more to the fore. Victims may make a victim personal statement, which may be given to the judge at the time of sentence and, for some offences (primarily homicide) may be read to the court by the prosecution or by the victim himself or herself. In England and Wales, the victim personal statement has firmly been assigned a limited place by the Practice Direction (2001, amended 2013), that it must only refer to the effects of the offence and not seek to suggest a sentence. In other countries, there are no such restrictions, but no judge is bound by the statement and though judges have said they are informative, few acknowledge the sentence being affected by the statement.<sup>18</sup> In terms of communication though, all countries are similar—the victim's personal statement (or victim impact statement) is from victim to judge, not (officially at least) directed towards the offender. This is not a means of facilitating victim–offender communication and allowing dyadic apology and reaction to apology (with the possibility of forgiveness). It is instead again 'vertical' communication from party to judge.

On the rare occasions where victims have broken through the practical barriers and written directly to judges saying they do forgive the offender, the court has found itself rather perplexed as to what to do. In a series of cases discussed by Edwards (2001),<sup>19</sup> the position appears to be that forgiveness by the victim (or its lack or indeed feelings of vengeance) should be irrelevant to sentence, unless the effects of the offence on the victim would be exacerbated by ignoring the views of

16 Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Clarendon Press 2002).

17 Braithwaite (n 10).

18 R Morgan and A Sanders, *The Use of Victim Statements* (Occasional paper, Home Office 1999); Edna Erez and Leigh Rogers, 'The Effects of Victim Impact Statements on Criminal Justice Outcomes and Processes: The Perspectives of Legal Professionals' (1999) 39 *British Journal of Criminology* 216.

19 Ian Edwards, 'The Place of Victims' Preferences in the Sentencing of "Their" Offenders' (2001) *Criminal Law Review*; see also Joanna Shapland, 'Personal Mitigation and Assumptions about Offending and Desistance' in Julian V Roberts (ed), *Mitigation and Aggravation at Sentencing* (Cambridge University Press 2011) 60–80.

forgiveness. Clearly, the state is saying that whatever may be happening in the victim–offender communication dyad, its own communications with the offender and victim are not affected. Again, we see that the state does not do or take on board forgiveness (though of course the monarch does retain the prerogative of mercy). The state seems bounded by the offence, with its future relations with the offender as a person being almost unconsidered.

#### 4. FORGIVENESS IN THE CONTEXT OF RESTORATIVE JUSTICE CONFERENCING

Restorative justice conferencing, in relation to an offence against the criminal law which has led to criminal justice proceedings—the context of this article—thus exists alongside these partial sets of communication within criminal justice, in which apology or communication of the effects of the offence is not necessarily followed by any communication back. In conferencing, what communication is there between victim and offender (and supporters) and to what extent does forgiveness figure in this communication?

I shall primarily be referring to the results of the evaluation we undertook of three restorative justice schemes in England and Wales, which were evaluated between 2002 and 2004.<sup>20</sup> One of these schemes, Justice Research Consortium (JRC) used only conferencing, as was described in the introduction. Both violent and property offences were included, but not sexual assault or domestic violence between partners or ex-partners. The offences were primarily serious offences, with some of them, particularly in London and Thames Valley, including very serious offences such as robbery, assault occasioning grievous bodily harm, and burglary. All the offences involved individual victims, rather than companies. JRC used random assignment to test the effects of restorative justice. Randomization took place after victims and offenders had given consent to take part in restorative justice conferencing and the research. Hence, those who consented and whose cases were randomized into restorative justice (the restorative justice group) experienced the normal criminal justice response to the offence as well as restorative justice. The control group experienced the preparation for restorative justice (so that they could properly give consent) and the normal criminal justice response. Both restorative justice group and control group victims and offenders were interviewed after the case (and restorative justice) had finished, and a small number of victims and offenders who took part in the pilot phase were interviewed before the restorative justice conference as to their experiences of the preparation and their reasons for wishing to take part.

When considering victims' and offenders' reactions to the restorative justice, it is important to be aware of their expectations and reasons for taking part. As we have already seen, forgiveness or any other reaction of the victim or supporters to the offender's communications or actions are likely to depend upon whether the offender has done what is expected or has surprised people (positively or negatively).

20 Shapland, Robinson, and Sorsby (n 2).

It was clear from the interviews before conferencing and from people's reactions afterwards that both offenders and victims often had several reasons to participate. Many JRC victims said that being able to have a say in how the problem was resolved was important to them, but they also referred to wishing to help the other person, wanting the opportunity to express their feelings and speak directly to the other person, and feeling they had a duty to attend (though they did not feel in any way coerced to do so). JRC offenders' reasons for taking part were most commonly that they wished to express their feelings and speak directly to the other person, but also that they wanted to have a say in how the problem was resolved, to repay the harm, and to help the other person. Though offenders often wanted to apologize *and* to repay the harm done, only a few victims wanted such repayment (meaning compensation). Victims were much keener on aiding offenders to turn their lives around, to reduce the possibility of reoffending and thereby to ensure that others did not suffer victimization in the future. We have called this symbolic reparation.

When interviewed after the conference had taken place, both victims and offenders indicated considerable satisfaction with the process. Some 43% of JRC victims said they had found the process very useful and 30% said they had found it somewhat useful. Similarly, 36% said they were very satisfied with the outcome and 40% said they were fairly satisfied. Victims were also satisfied with what had happened in the criminal justice process as well—but their ratings for the criminal justice process were lower than for restorative justice. Interestingly, victims who experienced conferencing were significantly more satisfied with criminal justice than those who did not. Restorative justice was clearly adding something for them.

That something strongly revolved around communication: the opportunity to ask questions of the offender directly and to hear the response; the opportunity to say what the effects of the offence had been on them and again to hear what the offender had to say. It was also about understanding more about the offender's life and being able to help the offender to change towards a lifestyle which would reduce reoffending in the future. It was clearly, though, not about reparation or compensation. Very few conferences (or sentences) ended with the offender offering to pay compensation or undertake direct work for the victim. This was not what JRC victims wanted. We know that victims in other countries have wanted reparation—so the low priority and indeed definite disinclination of victims in JRC may have been because these were serious offences and adult offenders (and so compensation was impossible or inappropriate), or because reparation was less important to victims in England.

JRC offenders were also very satisfied overall with conferencing (and slightly more so than victims). Therefore, 53% said they found the process very useful and 24% somewhat useful, whereas 45% were very satisfied with the outcome and 34% were fairly satisfied.<sup>21</sup> Again, communication was a really important element in this—offenders felt they were able to 'clear the air' and 'be able to work it out with the victim'. Explaining what happened, answering questions from the victim and apologizing were all important. Neither victims nor offenders found the process easy, with offenders being significantly more nervous than victims. Some of this may have

21 *ibid.*

been due to the finding that, though 18% of JRC offenders thought there were no particular problems behind their offending, 61% thought the conference had made them address problems they now realized were related to their offending. There is clearly a link here between each party wishing to help the other person, victims wishing to help the offender address offending-related issues and turn their lives around, and offenders being able to take steps towards this.

Did apologies figure in conferences and, perhaps more importantly, in outcome agreements signed by all parties at the end of conferences? Apologies were in fact the most likely element to figure in outcome agreements. Overall, for JRC, 62% of all conference outcome agreements included an apology from offender to victim (sometimes others as well), with 53% of these being verbal apologies and 10% written apologies (both might occur for the same conference). Just 11% included paying compensation and 7% the offender doing work for the victim or community.

Did conferences prompt apologies from offenders by inducing shame or guilt, as, for example, Harris and others (2004),<sup>22</sup> looking at conferences in Australia very similar to the JRC conferences, have suggested? Prompting apology has been linked by these authors to the engendering of emotion through the communicative process in conferences. Certainly, the JRC conferences were often found emotional by all parties—but not always. Hence, 68% of victims found the conference very emotional or emotional, but 31% not really emotional or not at all emotional. Similarly, 66% of offenders found the conference very emotional or emotional, but 33% not really emotional or not at all emotional.<sup>23</sup> However, apology (and any response to apology) did not seem necessarily to be linked to emotionally laden communication. We found from our observations of JRC conferences that many offenders arrived at conferences already wishing to apologize and feeling unhappy about the offence they had committed (as our findings on offenders' expectations and reasons for participating also suggest). The conference itself provided the opportunity for a direct apology to the victim, which criminal justice had not. But it did not need to induce the wish to apologize—that was often already there. On some occasions, the victim's description of the effects of the offence and the supporters' description showing how the effects had been widespread and severe, clearly shocked the offender and led to more profuse apology.<sup>24</sup> Yet on other occasions, admittedly rare, the offender felt that the offence was so serious it was not possible to apologize—it would have been to trivialize the offence.

If apology was common, was then forgiveness often offered in response? This comes to the crux of this article. In the conferences we observed, the word 'forgive' was only very rarely uttered by the victim, the victim's supporters or any other participant. Victims did respond to apologies from the offender. They rarely stayed stern faced or immobile. But they did not use the word 'forgive'. Instead, they might smile and nod, or shake the offender's hand, or say they appreciated the offender

22 Harris, Walgrave, and Braithwaite (n 13).

23 We were not always able to interview both victim and offender for the same conference, hence these percentages do not cover the same events.

24 A very good example of this is provided by Woolf (2009), who was the offender in a JRC conference, and who subsequently wrote about the conference in conjunction with the victim. See Peter Woolf, *The Damage Done* (Bantam 2009).

apologizing, or say they appreciated the courage the offender had in meeting them and saying that. Occasionally, there might even be a hug. Sometimes there were good wishes for the future uttered. But not the word ‘forgive’.

We must not put this too strongly. ‘Forgive’ was occasionally used, but this seemed to be where victims or victim supporters belonged to a religious group (eg they were Christian) which uses the concept and the word ‘forgiveness’. In interviews, such victims talked about their religious beliefs in forgiveness and how these had been put to the test by the offence, but they had found it possible (and sometimes surprised themselves that it was not too difficult) to feel, to mean, and to say that they forgave the offender.

This leaves us in somewhat of a dilemma. Victims in general were clearly responding to apologies from the offender and were also wishing the offender well and were keen on helping the offender. But they were not often using the word ‘forgive’. There are several possibilities:

- One is that the word ‘forgive’ is not common in contemporary English in the UK, particularly in everyday parlance: victims and others may have felt forgiveness but not thought of or conceived using the word.
- Another is that victims and others may have been endowing the word ‘forgiveness’ with a particular meaning which they felt did not apply to them (eg that it is only appropriate in religious discourse and they are not religious).
- A third is that what victims and others at the conference thought ‘forgiveness’ meant is far from the meaning ascribed to it in scholarly discourse, whether theological or psychological, so to them, their ‘forgiveness’ would not be appropriate for their offence or experience.

We actually did not expect these empirical research findings on ‘forgiveness’—ie that apology and response would be common but that victims would not be very specific about what they were feeling or trying to do through that response. Unfortunately, therefore, we did not press victims in detail about their response and the words they used—though in fact, it would definitely not have been appropriate to cross-examine victims on why they had or had not used the word ‘forgive’ and the reasons for this, particularly since many victims were still suffering effects from the offence many months later. What we can do, though, is to examine the effects that victims (and offenders) said the offence had had on them and their feelings about the other party, and see whether these would lead us to favour one or other of the three possibilities set out above.

## 5. THE EFFECTS OF CONFERENCING AND OF FORGIVING

The restorative justice conferences we evaluated very rarely involved minor offences. Many of the offences were serious offences, which had considerable and long-lasting effects on victims. Most of the offences were committed by adult offenders, who could not be described as ‘likely to grow out of it’ or ‘it being a passing phase’. Conferences were, therefore, being held at times when victims were often still suffering effects from the offence and the criminal justice response was still active

(the conference might be pre-sentence, or pre-release, or during a community sentence). Even at the time of our interviews with victims, some months later, because of the seriousness of the offences, victims were likely to be still suffering effects. Angel (2005) interviewed some of the victims (robbery and violence victims from the London areas) who took part in the conferences we evaluated to see whether they were suffering Post-Traumatic Stress Disorder (PTSD) symptoms.<sup>25</sup> Though she found that most victims were not suffering such symptoms, several were.

It is very difficult to measure to what extent any process may help to alleviate the effects of offences on victims. Partly this is because victims react individually to offences and, though there is a correlation between the seriousness of the offence and the likelihood of more severe or more long-lasting effects, this is far from a perfect correlation.<sup>26</sup> Victims' personal circumstances and any previous victimization also affect the ways that victims react to offending, as do inadequacies in the criminal justice response (eg in causing secondary victimization or in a lack of procedural justice, including a lack of information to the victim). Though effects of offences do change over time and their impact reduces, the time scale for this is also hard to predict. Measuring the effect of restorative justice is, therefore, attempting to measure a variable effect on the impact of crime over time which is itself variable and different between people. One possibility is to use the randomized experimental nature of the conferencing we evaluated, comparing the experimental and control groups over time as to what effects they have. Even then, there is no reliable, population tested, measure for crime victimization over time similar to those used for health states and medical interventions by bodies such as the National Institute for Clinical Excellence (NICE) in the UK. Hence, the only way to try to measure the effect of restorative justice is to ask victims what they have experienced.<sup>27</sup>

In terms of comparisons between restorative justice and control groups, Strang and others (2006) report that victims in the London conference group were significantly less worried about why they had been victimized than those in the control group.<sup>28</sup> Sherman and others (2005), who combined the London data with data from similar conferencing undertaken in Canberra under the RISE project, found that victim desire for violent revenge was significantly lower in the conference group.<sup>29</sup> Angel (2005) has reported that victims in the conference group showed significantly less PTSD symptoms than those in the control group.<sup>30</sup> Our own analysis of the data collected by Angel (2005) during the follow-up interviews a few weeks after the offence suggests that although victims in the conference group were indeed significantly less likely at that point to wish to retaliate against the offender, there were few other significant differences between the conference and control

25 Caroline M Angel, *Crime Victims Meet Their Offenders: Testing the Impact of Restorative Justice Conferences on Victims' Post-traumatic Stress Symptoms* (PhD Dissertation, University of Pennsylvania 2005).

26 Shapland and Hall (n 4).

27 Shapland, Robinson, and Sorsby (n 2).

28 Heather Strang and others, 'Victim Evaluations of Face-to-face Restorative Justice Conferences: A Quasi-experimental Analysis' (2006) 62 *Journal of Social Issues* 281.

29 Lawrence W Sherman and others, 'Effects of Face-to-face Restorative Justice on Victims of Crime in Four Randomised, Controlled Trials' (2005) 1(3) *Journal of Experimental Criminology* 367.

30 Angel (n 25).

groups.<sup>31</sup> The only areas where there were differences related to thinking about the offence when they did not wish to do so, or being able to refrain from talking about the offence (rather than depression, anxiety, etc).

These measures of the effects of restorative justice, though not showing overall psychological or social impact, do however potentially relate to how the victim is thinking about the offender and possibly to forgiveness. Forgiveness is clearly incompatible with active or strong feelings that one would like to retaliate. One of the consistent results on the effects of restorative justice is that conferencing seems to lead to victims feeling less revengeful or wishing to retaliate.

What do victims themselves say about how restorative justice has affected them? In our evaluation, nearly two-thirds said it had made them feel better in some way (while 30% said it had had no effect and 2% said they felt worse). Over a third said it had made them feel more secure (9% less secure, 46% no effect). Comparing the group of JRC victims who experienced a conference with the control group who did not, significantly more victims in the restorative justice group said they felt more secure (lessening fears of revictimization). Indirect mediation (the mediator shuttling between victim and offender) did not seem to create more feelings of security, but here victims again predominately said they felt better. We have seen that victimization affects victims in different ways. For the majority of victims restorative justice is seen by them as being positive. Both lessening negative effects of the offence (reducing feelings of revenge or experiencing flashbacks) and feeling more secure are aspects of closure—that victims feel they can put the offence behind them.

How about offenders? We know very little about the effects of offending (and being caught and going through the court proceedings) on offenders. We saw above, though, that typical court proceedings do not provide offenders with much opportunity to communicate themselves, either to the court or, particularly, to the victim. Offenders' own views, in relation to JRC conferences, strongly emphasized the benefit of being able to communicate with the victim. They spoke about 'being able to work it out with the victim'. It was as though the criminal justice process, which the vast majority saw as fair in terms of both process and sentence, still did not provide the sense of ending or being able to move on. Over half the JRC offenders said the conference had provided a sense of closure for them (though 7% said 'not really' and 10% said 'no'). Criminal justice had left unfinished business in relation to the victim, which the conference helped to alleviate. They could now move on. It is difficult to class this as 'forgiveness being a present to oneself' for offenders, as they were not implying that they were minimizing or regretting less their commission of the offence or forgiving themselves for doing the offence, but they were more able to live with themselves and try to change for the future, rather than dragging themselves back into the past.

Moreover, several also said that the conference had brought them closer to their supporters, and in a sense helped to reintegrate them into their micro-community of people on whom they relied and who would support them. Though supporters had in any event generally continued to be supportive of offenders since the offence, 39%

31 *ibid.*

of offenders felt that their supporters had appreciated their initiative to go to the conference and that the conference had made their supporters prepared to reinforce outcomes from the conference—it was relatively common for offender supporters to agree to monitor outcomes. We can see that restorative justice seems to bring closure for offenders, as well as for victims.

## 6. HOW FORGIVENESS HAS BEEN CONSTRUED IN ACADEMIC DISCOURSE

Having set out some results from evaluations of restorative justice, we can conclude that for both victims and offenders, ideas of closure and being able to move on were effects, for many, of restorative justice. For many victims, there was also increased security, less fear of revictimization, and less intense or fewer feelings of revenge against the offender. For some offenders, there was a greater sense of reintegration with those close to them and stronger attachments. There was much greater opportunity for offenders to apologize to the victim and for that apology to be acknowledged, and sometimes accepted. But does any of this add up to forgiveness, whether that be forgiveness from the victim to the offender, or for either, forgiveness of oneself?

To start to try to answer this, we need to deconstruct how forgiveness has been conceived of and operationalized in different disciplines. There is not space here to provide anything approaching a full review of what is a very disparate and prolific set of writings in some disciplines. Forgiveness has been a key topic for theology and for philosophy, with some work in psychology, though little in criminology or victimology. All I can do is to point out some aspects of this literature.

Starting with victimology, Fohring (2015) has shown that how victims regard the incident has implications for whether and how they respond.<sup>32</sup> Hence, if they perceive the incident as a crime and themselves as victims, they are, perhaps not surprisingly, more likely to report to the police, but also to use victim support services. She links this to a number of theories, including Taylor and others' (1983) selective evaluation theory, whereby if an incident has occurred, the person experiencing it may either enter a state of crisis or actively seek to avoid it.<sup>33</sup> Becoming a victim (to oneself) equates to changing one's identity to some extent and being in that crisis. Depending upon one's assessment of one's coping resources, one can then realize one may be unable to cope and so become a 'victim' and accept victim services that are offered, or use one's coping mechanisms successfully and not see oneself as a victim. Hence, downplaying the significance of the incident can be coping—and can occur even for more serious violence (labelling something as a 'fair fight' or 'these things happen' is a similar reaction).

The kinds of offences which led to restorative justice in our evaluation were generally what would be regarded by the public as serious, and were being dealt with by the criminal justice system as such. Hence, victims (and offenders) were faced

32 Stephanie Fohring, 'An Integrated Model of Victimization as an Explanation of Non-involvement with the Criminal Justice System' (2015) 21(1) *International Review of Victimology* 45.

33 Shelley E Taylor, Joanne V Wood, and Rosemary R Liechtmann, 'It Could Be Worse. Selective Evaluation as a Response to Victimization' (1983) 39(2) *Journal of Social Issues* 19.

with a societal definition as well as their own. We did see, though, both that feelings of closure and greater safety were more relevant for those who did define themselves as victims, and also that restorative justice was found more helpful by those who were victims of (society's definition of) more serious offences. If then, forgiveness is related to closure and moving on, then forgiveness may be found more relevant to those suffering more serious offences who saw themselves as victims. Yet also, if victims were minimizing the impact of the offence and its nature, they may also have found it easier to 'forgive' the offender for the offence. Forgiveness then may be more relevant for victims at the more serious end and also at the more minor end (to them) of the seriousness spectrum—for different reasons.

We also need to deal with self-labelling as a victim and forgiveness as always signs of weakness. Van Dijk (2009), looking at the reactions of very high-profile victims (where they have been kidnapped and imprisoned or had family members abducted), stresses that these victims reacted against the label of 'victim', with its connotations of passivity.<sup>34</sup> They needed to react actively and deal with media labelling, using their own agency to define themselves, rather than be defined. This is very similar to the rejection of the victim label by those victimized by domestic abuse and homicide, who prefer to be called 'survivors'. Van Dijk links victimhood with forgiveness as being passive (and also explicitly links both to Christian theology in Christ's death). It is true that the word 'victim' clearly has some connotations of weakness or impaired ability. However, it is not clear to me that forgiveness is necessarily a passive act, imprinted on the victim with the definition of being a 'victim', or that rejecting forgiveness is necessarily an agentic act. It may well be true that past cultures (and maybe some present ones) expected forgiveness of those labelled as victims, as some kind of opposite of revenge, where revenge was seen as an aggressive self-motivated response (as it can be). However, other past cultures (and even our current English criminal justice system) have expected revenge from victims and an angry, not a passive response. That is why politicians may see more severe punishment of offenders as in the victim's interests, and why the police do not inform victims of offenders' whereabouts, lest the victim go round and retaliate. To the victims to whom we talked, forgiveness would be an active agentic act by the victim, one which is in the victim's own gift and can be withheld. Refusing forgiveness might then be less agentic than forgiving.

Is forgiveness related to closure and greater feelings of safety? Field and others (2013) comment that most psychological studies have tended to look at only minor infractions or incidents, rather than serious crime—not surprising, given the ethical difficulties manifest in doing experimental studies on serious incidents.<sup>35</sup> They discuss three main models of forgiveness. The first is the motivational model,<sup>36</sup> in which victims wish to improve the health of their impaired relationship with the offender, so once feelings of avoidance and revenge/retribution subside over time, they are motivated to forgive and improve the relationship. In relation to restorative

34 Van Dijk (n 6).

35 Field, Zander, and Hall (n 7).

36 Michael E McCullough, 'Forgiveness as Human Strength: Theory, Measurement, and Links to Well-being' (2000) 73(2) *Journal of Social and Clinical Psychology* 321.

justice, this has some similarities with Zehr's (1990) view that restorative justice is about repairing relationships broken by crime: reconciliation.<sup>37</sup> However, both seem to apply primarily to instances where there is a previous valued relationship, which is actually uncommon in the case of serious crime (other than intra-familial crime).

The second theory, the REACH model,<sup>38</sup> also presumes the cessation of feelings of hurt, resentment and hostility, but then posits that victims actively provide forgiveness as an 'altruistic gift' to the offender, to replace the unpleasant negative emotions with positive ones. Forgiveness is then a coping strategy for the victim.

The third theory, the process model, sees forgiveness as a voluntary and unconditional act in which negative feelings are replaced by compassion and love towards the offender.<sup>39</sup>

All of these theories refer to the cessation of feelings of revenge and lack of safety, so it might be presumed that procedures which have these effects, such as restorative justice (as we saw above), might promote forgiveness. They are however, as Field and others (2013) point out, interpersonal theories about victim views about the offender and actions towards the offender.<sup>40</sup> This would potentially draw in the apology/forgiveness dyad. Yet, we have seen that apology did not necessarily provoke forgiveness, but acknowledgement. Forgiveness seemed to be a rare element for victims of serious crime.

Field and others (2013) themselves did semi-structured interviews with victims of serious violent crime (including homicide and sexual assault), with a sample who responded to a newspaper appeal.<sup>41</sup> They found victims described their feelings and state initially, before 'forgiveness', as including strongly negative feelings towards the offender which were disempowering and did not allow them to move on. They call this 'unforgiveness'. Victims then described beginning to become more self-aware and realizing the impact the offence was having on them, then beginning to be able to let go of the negative feelings. After that, they were able to put what the offender did in a wider context of the offender's circumstances and then could begin a process of being able to move on. For Field and others, therefore, forgiveness has far more self-regarding and intra-personal aspects of coping for the victim, rather than being primarily about a dyadic relationship with the offender. Lessening of feelings of revenge, greater safety and closure (moving on) all are seen as part of the victim's own coping.

This study and previous psychological work clearly sees reduction of revenge feelings, closure and greater feelings of safety as strongly associated with, or even making up forgiveness. If we were to take this position, then restorative justice, because it can encourage these aspects, also produces forgiveness. Yet, victims in our

37 Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press 1990).

38 Everett L Worthington Jr and Michael Scherer, 'Forgiveness is an Emotion-focused Coping Strategy that Can Reduce Health Risks and Promote Health Resilience: Theory, Review and Hypotheses' (2004) 19(3) *Psychology and Health* 385.

39 See Robert D Enright and Catherine T Coyle, 'Researching the Process Model of Forgiveness within Psychological Interventions' in Everett L Worthington (ed), *Dimensions of Forgiveness: Psychological Research and Theological Perspectives* (Templeton Foundation Press 1998).

40 Field, Zander, and Hall (n 7).

41 *ibid.*

evaluation only very rarely used the word ‘forgive’ and sometimes specifically rebutted ‘forgive’ though they would accept ‘closure’, ‘moving on’, and ‘helped me’. Either victims of serious crime in England just do not use ‘forgive’, or there is another aspect we are so far missing.

That aspect seems to me to be the dyadic and triadic nature of the interaction which serious crime involves. If the victim accepts they are the victim, then they are the victim of an offence committed by an offender, which is seen as serious and criminal by the state. It is possible for victims to get over their negative feelings towards the offender and to offer forgiveness proactively and at a stage where there has been no interaction with the offender (even before the identity of the offender is known), and before any major intervention by the state. This is Bennett’s (2003) ‘primary forgiveness’, which has no interactional quality, and for a few, it may have a religious dimension, embodying the preferred moral quality of one’s relationship with offenders.<sup>42</sup>

But the essence of restorative justice is that it is communication between the victim and offender. In the case of the serious offences we studied, that communication was in the shadow of the definition by the state that this was serious offending and that the criminal justice system was proceeding to deal with it, so cases were referred within the umbrella of the criminal justice system and often preceded decisions by a sentencer or prosecutor or release authority—it was triadic communication.

Restorative justice, as we described above, promoted closure, etc. for victims, in the context of this communication. The closure was not brought about by the victim sitting cogitating by himself or herself. The communication clearly had victim-benefiting aspects, and the result of ‘more forgiveness’ (or less ‘unforgiveness’) was clearly felt by victims as helping them, even a present to themselves. Yet, it was not all victim related. A very similar process was happening for offenders. Moreover, one key reason victims said they agreed to restorative justice and part of their expectations of it was that it would help the other party (‘pro-social motives’, in Van Camp and Wemmers’ (2013) terminology).<sup>43</sup> This was not to repair the relationship between victim and offender—there was rarely any existing relationship and few victims wished to encounter the offender again. It was primarily a wish to see the other party move on: to be able to change their lives.

The apology–reaction communicative dyad was one of the key parts of this process. Bennett (2003) has contrasted the spontaneous granting of personal forgiveness with ‘redemptive forgiveness’, which ‘wipes the slate clean and sets the offender’s relationship with his moral community back to rights again’.<sup>44</sup> An apology/forgiveness communication dyad could be an example of this. An apology to both victim and state (triadic) would be even more so, because it would recognize the seriousness of the harm against the victim.

42 Christopher Bennett, ‘Personal and Redemptive Forgiveness’ (2003) 11(2) *European Journal of Philosophy* 127.

43 Tinneke Van Camp and Jo-Anne Wemmers, ‘Victim Satisfaction with Restorative Justice: More than Simply Procedural Justice’ (2013) 19(2) *International Review of Victimology* 117.

44 Bennett (n 42) 133.

## 7. NOT A VERY ENGLISH THING? FORGIVENESS AND ACKNOWLEDGEMENT: SEPARATING THE OFFENCE AND THE OFFENDER

Yet we come back to the kernel of the puzzle, that English victims of serious crime rarely spoke about forgiveness. They did not seem to be granting redemptive forgiveness. By now, the reader would be forgiven in assuming that there is no way out of this Gordian knot, save the 'trick' that the word 'forgive' is only used in England in relation to aspects of some religions, and that is why victims were not using it in relation to their own experience. Some at least of the victims in our evaluation, however, were well aware of the word 'forgiveness' but did not think it pertinent to where they were at.

There is another possibility. So far, no distinction has been made (and much of the literature does not make a distinction) between forgiving the offender and forgiving the offence. Minimizing the offence or declaring oneself not to be a victim (as some of Fohring's (2015) victims did) effectively neutralizes the offence. It is no longer something which needs any act of forgiveness towards the offender.<sup>45</sup>

The often long-drawn out process for many victims of coming to some form of closure in relation to the offence, though, was very definitely not minimizing the offence. What was important in the restorative justice and criminal justice processes was that the offender acknowledge the offence occurred, which caused negative effects to the victim (and often to the offender's supporters as well), and took responsibility for the offence. Better, that taking of responsibility included the acknowledgement of harm that is part of making an apology and, even better, should the offender say they would take concrete steps to change their life, then that was some proof to the victim that they really meant it: it was symbolic reparation.

Bennett (2003) suggests that the victim blaming the offender for the offence is actually a kind of back-handed compliment in that it assumes that the offender is part of the same moral community.<sup>46</sup> I agree, but would argue further that acceptance or acknowledgement of an apology does the same job more strongly—both apology and acknowledgement are signifiers that both parties see each other as part of that community. (As an aside, the failure of a sentencer to acknowledge apology as an important contribution to the proceedings is dismissive that the offender can return to mainstream society.)

Acknowledgement of the offender through participation in this communication of restorative justice, particularly to its end point of coming to an outcome agreement as to what the offender (and others) might now do, is then in some sense a reintegration of the offender into the moral community. That process, together with understanding more about how the offence happened and expressing what effects the offence has had, brings about more closure, less feelings of revenge and greater feelings of safety. These have been seen in some of the literature as representing forgiveness or as signs of forgiveness. Yet, for victims and for myself, I do not think they equate to the victims' own sense of forgiveness.

45 Fohring (n 32).

46 Bennett (n 42).

The nub is in these being serious offences. The word 'forgiveness', in terms of how English victims regarded it, meant for those victims, I think, forgiveness of the offence as well as of the offender. Acknowledgement of apology, of the work the offender had and was about to do, on the contrary, spoke to re-inclusion of the offender in society and good wishes for the future. But it was not, and for most victims could not be, forgiveness of the offence, or forgiveness of the decision to commit the offence at the moment it occurred. A minor slight could be absolutely forgiven—both the offence and the offender. A serious crime could not be so minimized. Partly this was because it was not possible for victims to deny the effects on themselves and their supporters, without denying their own identity. Partly it was because this was triadic interaction, and both offender and victim were being acknowledged as members of a society which condemns such conduct. Hence, victims could not normally use the word 'forgiveness', because they could not forgive the offence. They could, and clearly many did, 'forgive' the offender and wish him or her well in the future, to become again a member of the same moral community.