Views of justice among survivors of historical child sexual abuse

Implications for restorative justice in New Zealand

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Abstract
Restorative justice for adults in New Zealand has made a cautious start, although crimes of gendered violence are typically excluded. The findings reported in this article draw on interviews of adult survivors of child sexual abuse (eighteen women and three men), asking them to describe their experiences with the abuse and its impact, and to suggest changes to the criminal justice system, which would provide them with a sense of justice. Although the survivors spoke of justice in ways that reflected the goals of restorative justice, they were reluctant to endorse restorative justice as a paradigm within which they would pursue justice.

Key Words
adult survivors • child sexual abuse • justice • restorative justice

Introduction
Restorative justice in New Zealand, though widely used with juvenile offenders, has made a cautious start in the adult arena. For some years the criminal courts have called on the services of restorative justice provider...
groups to convene restorative conferences and have considered their outcomes at sentencing. The first group to offer restorative conferences was Te Oritenga in 1995 (Department for Courts, 2002). This community-based group, composed of volunteers, has been followed by similar groups, so that by 2005 some 30 restorative justice provider groups have become established throughout New Zealand. A court-referred pilot programme, operating in four court centres throughout the country and funded by the Ministry for Justice, commenced in 2001 (Department for Courts, 2002). Although the programme addressed moderately serious offending, such as aggravated robbery, it deliberately excluded domestic violence. Sexual offences were not excluded in the same way; but because these offences attracted penalties outside of the pilot parameters, they were excluded.

According to Judge Fred McElrea (2004), the decision to exclude domestic violence from the pilot was based on the view that such cases were not suitable for restorative justice, given the power imbalance between victim and offender; this perception is well supported in the literature (Parker, 2004; Daly and Stubbs, this issue). Domestic violence is typically not a discrete incident between two people previously unknown to each other: it is power-based, relational, typically repetitive and frequently reflective of entrenched societal attitudes and beliefs (Stubbs, 2002). Child sexual assault commonly shares these features and, accordingly, it has been included by some commentators under the broader umbrella of gendered and sexualized violence (Hudson, 2002) or gendered harm (Daly, 2002). While similar debates are relevant to the context of child sexual assault, the literature tends to focus on domestic violence (Curtis-Fawley and Daly, 2005; McAlinden, 2005). Moreover, it is speculative (Curtis-Fawley and Daly, 2005): there is little information on operational programmes addressing gendered violence by adult offenders (Parker, 2004).

The RESTORE programme in the United States is using restorative justice to address date and acquaintance rape for first-time offenders in a joint programme between the Pima County Attorney’s Southern Arizona Centre against Sexual Assault and the College of Public Health, University of Arizona (Koss et al., 2003). In Copenhagen, counsellors at the Centre for Victims of Sexual Assault are using a form of mediation between victims and offenders to assist victims in experiencing a sense of justice (Sten Madsen, 2004). It is too early for either of these programmes to report on outcomes. Restorative justice provider groups in New Zealand have been providing restorative justice conferences for cases of family violence external to the pilot programme (Department for Courts, 2003). Although little is known about processes, safeguards and outcomes, this does suggest some support for these services—if only by those referring cases and those agreeing to participate. Counsellors at Auckland Sexual Abuse Help (ASAH) have supported victims of sexual assault, one of whom was a victim of historical child sexual abuse, as they pursued justice in other ways, including civil cases and face-to-face facilitated meetings, which have resulted in positive outcomes for victims.
These initiatives might surprise policy makers and commentators, as noted by Curtis-Fawley and Daly (2005), who specifically engaged with victim advocates to canvass their perceptions of using restorative justice in cases of gendered violence. They found that victim advocates were more supportive of restorative justice than they had initially anticipated. They also commented that learning cannot occur while speculation alone drives the debate.

In this article I aim to move the debate beyond speculation by reporting the findings of a study that engaged directly with adult survivors of child sexual abuse. As a researcher, restorative justice appealed to me, and I wondered if it had the same appeal for adult survivors of child sexual abuse. To investigate this, I worked with a group of adult survivors of child sexual abuse: eighteen women and three men, of whom four women and three men had reported sexual abuse to the police. In the interviews, the survivors described processes that could be identified as restorative justice, but when restorative justice was described to them, they did not think it would encourage them to report the victimization they had been subjected to as children. Although the number of interviews is too small to extrapolate confidently across a broader population of child sexual abuse victims, the results provide insights into the problems of seeking justice for adult survivors of child sexual abuse.

Research methods

Early on in the research it was apparent that the survivors had been reluctant to report sexual victimization to the police; and of those who did, it was difficult for them to make this decision. The Otago Women’s Health Survey (Anderson et al., 1993) found that only 7.5 per cent of the survivors in their sample had ever reported child sexual abuse to any investigative authority. Thus, I had actively to seek out survivors from various support organizations.

I gathered material in several ways, including participant observation in self-help groups and community groups, focus groups, unstructured interviews with adult survivors and key community informants, and a case study of counselling sessions between a survivor and a registered counsellor over a one-year period. The participating survivors learned about the study through my involvement with the self-help and focus groups, together with research information sheets distributed to various support organizations. To be eligible to participate, it was sufficient that survivors considered that they had been sexually abused as a child, by a person whom they perceived to be an adult. As it transpired, all participants had been sexually abused by a family member, close family friend or neighbour. All but one participant had been sexually abused over a period of time. Sexual abuse included genital touching, vaginal penetration and sodomy.
Most of the interviews took place between 1995 and 1997 when restorative justice was beginning to emerge for adult offenders in New Zealand. At the time of interview, participants ranged in age from 26 to 52 years. All survivors had disclosed sexual abuse to someone else prior to the interview, and all were receiving counselling. Interviews took between two and three hours and were tape-recorded with the permission of the participants; they were conducted at a time and place determined by the survivor.

For each interview, I had a set of question areas for the survivors to consider; however, I left it up to each person to decide how to tell their story. The areas were as follows: What was your experience of child sexual abuse? How has this impacted on your life? What have you done to recover from child sexual abuse? What has been most helpful? I then asked the survivors to suggest changes to the criminal justice system that might better provide a sense of justice. I finished the interview by describing restorative justice. The survivors asked questions about various aspects of restorative justice, and they gave me their opinions as I responded to their questions. All survivors attempted to identify elements of justice that they felt should be included in a model for justice. Four survivors sent me further information after the interview and two survivors requested additional interviews. This article focuses on the main themes raised in the interviews. Pseudonyms are used to protect anonymity.

Definitions and terminology

In this article, I use the term ‘victim’ to denote a victim of a child sexual abuse and ‘adult survivor’, ‘survivor’ or ‘participating survivors’ to denote those victims of child sexual abuse who were interviewed as part of this study. It is interesting to note that not all participating survivors considered themselves survivors, but neither did they see themselves as victims; they believed they had survived because they simply had no other choice. For my purposes here, a child is defined as a person, male or female, under the legal age of consent, which in New Zealand is 16 years of age. The term ‘offender’ was the term that participating survivors preferred to use to describe a perpetrator of child sexual assault. One offender was female.

I use the term ‘bystander’ as described by Judith Herman (1997). For child sexual abuse, bystanders are family members or close family friends who have been involved in the family dynamics. Herman argues that offenders avoid accountability by promoting forgetting and ensuring silence and secrecy, not only with the victim, but also among bystanders. She concludes that, historically, bystanders have tended to take the line of least resistance: they have done nothing; they have looked the other way. Bystanders may not have been sexually abused by the same offender, but they were present; and for a variety of reasons, they did not or could not
intervene. Most certainly they would be affected by any emerging revelations within their family and social circle (Graham, 1994).

In contrast to the term ‘bystander’, I use the term ‘outsider’ as described by Dee Graham (1994) to depict those who have not been subjected to the complex dynamics of child sexual abuse. Outsiders could be identified as society, in general, or, more specifically, as those people the victim meets as he or she negotiates various societal systems throughout his or her life. Many outsiders would not be expected to have knowledge and understanding of the complex dynamics involved in the sexual abuse of children.

A sense of justice

A common theme running through all interviews was the need of participating survivors to tell their story in a safe forum. Belinda said,

it would be wonderful to be allowed to stand up there and say, ‘this is what you did, this is how it felt, this is what happened to me because of this, and you’re not allowed your say at the moment, this is my turn’.

Those survivors who had reported to the police did so believing they would have an opportunity to tell their story. Due to legal technicalities, some cases did not proceed. When Anna was informed her case might not proceed to a trial, she said, ‘It was at that point that I realized I would not come to understand or experience justice in this system. I would not be able to tell my story.’ Participating survivors who were able to give evidence in a trial likewise did not get the opportunity to tell their story. Cindi spoke of how she was unable to complete sentences and was required to give only ‘yes’ or ‘no’ answers. She said at times these answers were taken completely out of context, and she was not allowed to give further explanations. Belinda spoke of the frustration her friends felt when the offender pleaded guilty, ‘They didn’t get to tell their story . . . the judge never got to hear their story, they actually never got the chance to go in the stand and say “this is what this man did” . . . they felt cheated’. Carol also wanted the opportunity to tell her story but said that ‘the emphasis should be on the two parties sitting down and discussing as equals, in a place of equality, what has happened’. Herman (1997) and Zehr (1995) both argued that victims of crime needed opportunities to tell their story, not only to other victims of similar crimes but within forums where they could express their feelings, their fears and their truth and have these validated by others.

Most survivors raised the concepts of accountability and validation in relation to their understanding of justice. Gwyneth commented that to her justice would mean that, ‘he should be made accountable. He should not be able to live this lie.’ Many survivors endorsed the need for bystanders to witness an offender assuming responsibility and accountability for his or her actions. For example, Sarah said, ‘justice is him being genuinely sorry and admitting what he’d done in front of other people, family and whoever
I chose. She added, ‘I would prefer if he were genuinely sorry, but I can’t make him be that’. Some survivors were sceptical about apologies. Celia said, ‘they are sorry that they have been caught rather than being sorry for their actions’. Rosalind said, ‘he’s not sorry . . . He said that he was sorry he ruined our relationship, but not that he’s sorry he did it.’ Sharon commented that his ‘apology didn’t really do much, it didn’t uplift me’.

John stressed the importance of validation:

When I added my voice to the charges, it was not for revenge or punishment, I was beyond that. I wanted acknowledgement that the system agreed that I had been abused. It was having my past validated by the system.

Others also wanted validation by bystanders. Sharon, who had been sexually abused by her older brother, has been unable to talk to her father about issues related to the sexual abuse. She commented, ‘I would like to see me and my parents in a room talking about it to start with’. Rosalind said,

I think I actually would like to sit them (her father’s parents) all down and actually tell them what it’s done to me—the effect that it’s had on me and the effect it’s had on the rest of my family.

Participating survivors referred to equality and fairness as they talked about justice. As Roger said, ‘justice is about being equal . . . irrespective of gender etc. . . . It is about being fair.’ However, he and others spoke of equality and fairness between themselves and the offender in the pursuit of justice, whereas legal constructions of justice emphasize procedural fairness (Fletcher, 1996).

Robert stated his understanding of justice very simply as ‘knowing the difference between right and wrong . . . How could he plead not guilty? He knew he did it, he knew the difference between right and wrong.’ Anna further elaborated:

My uncle pleaded not guilty in the criminal court . . . He told the police he was aware of the charges made against him, but due to the passage of time he had no memory of the events. In the civil action he admitted the charges, apologized and threw himself on the mercy of the court. How can he be not guilty in one court and guilty in another?

For most survivors this concept of right and wrong was central to any understanding of justice. This understanding is not always apparent, given the meaning of ‘not guilty’ pleas in the traditional criminal justice system: that is, to put evidence to the test so that guilt can be determined by a narrow technical definition (Zehr, 1995).

Gina said that she ‘strongly feel[s] that people abuse as a result of some underlying problem—this is not solved by imprisonment’. Such comments were common throughout the interviews, and survivors indicated that addressing the underlying causes of offending, that is, the motivations for offending, would contribute to providing them with a sense of justice.
Sharon discussed the importance of renegotiating the relationship between victim and offender. She said, ‘as much as what he’s done, I would still want to rebuild a proper relationship like every other brother and sister, an equal relationship’. For Sharon to experience a sense of justice, it would have to include the ability to negotiate a new relationship with her brother based on equality. The restoration of equality is a fundamental principle of some conceptions of justice. Aristotelian justice would restore the supposedly pre-existing state of equality between the violator and the violated (Fletcher, 1996). In the instance of abusive relationships, justice should effect a transformation of relationships to ensure that harm cannot recur (Zehr, 1995). Transformation could also mean that the relationship would be restored to the extent that it would not imply intimacy or trust, but that it would enable the offender, victim and bystanders to co-exist in any shared community.

All participating survivors wanted to be more involved in the process of justice. Rosalind said, ‘the victim should be able to go into the court and say to the judge what they think should happen to the abuser . . . it’s sort of contributing towards how the abuser’s sentence should be done’. Carol said, ‘you just want to be heard . . . The survivor gets to subpoena whoever he or she wants to.’ Celia also wanted more involvement but noted that ‘the victim doesn’t have a place within the justice system. They don’t have rights . . . they don’t have a part in what’s going on. They’re merely a witness.’ All survivors criticized the criminal justice system for denying them a voice, and this contributed to their lack of confidence in the current system.

To summarize, the participating survivors suggested that for them to experience a sense of justice, they needed to have their story heard by witnesses in a forum based on equality. They wanted an acknowledgement of the difference between right and wrong. They emphasized their need for the offender to take responsibility for his or her actions and to demonstrate accountability. Transforming relationships to an extent that they could co-exist with offenders and bystanders in their shared community was a high priority for many survivors. Survivors of child sexual abuse needed to have their experience of victimization validated not only by offenders but also by bystanders. Finally, they needed offenders, bystanders and outsiders to understand the complexity of child sexual abuse and the impacts it has had on their lives. To gain a greater understanding of how a sense of justice could be best achieved, I invited survivors to consider the changes they might make to the criminal justice system, if they had the power to do so.

An alternative paradigm

As survivors reflected on changes to the criminal justice system that might better enable them to experience a sense of justice, they stressed that their
circumstances differed markedly from that of victims of many other forms of crime. Sharon encapsulated this sense by saying ‘had he not been family, I think I probably would have pursued it’. Sarah pointed out that ‘he was my father. The only father I ever had.’ Participating survivors commented that the criminal justice system seemed to assume that victims and offenders were unknown to each other, but for child sexual abuse, offenders were often a family member or a close family friend. Anna explained that ‘since the court action we as a family have not been able to come back together, that is, my family and my uncle’s family’. Rosalind has had no contact with her paternal grandparents since she was 16, when her father was convicted of sexually abusing her as a child. She said,

They’re my grandparents . . . You don’t cut off your family like the way they have done to us. They don’t know what we’ve accomplished in our lives, they don’t know what our goals are, what our dreams are, they know nothing about us [grandchildren] at all.

Carol commented on the difficulty of pursuing historical charges against an offender who now could be elderly, frail or unwell, knowing that a conviction could mean a prison sentence. She explained that ‘a lot of times you don’t want to see your father, your uncle, your whatever, put in prison’. Celia said, ‘we need to come away from the idea of punishment and blame and come back to healing, for both sides . . . Abusers need to have consequences for their actions, that’s very clear.’ She explored other models for justice and wondered ‘if we should be looking at the Maori way of doing things . . . taking them back to the whanau’. Karen suggested a model ‘where the victim and the perpetrator of the crime come together, and [the offender] must admit and must understand the extent of the offence, must understand the kind of human price that has been paid for the offending’. Although survivors appeared to de-emphasize punishment as a consequence for offenders, they still wanted consequences. However, they tended to favour consequences that would address the underlying causes of offending. Without exception, all survivors advocated moving away from the traditional criminal justice model to another forum, which could be sufficiently flexible to accommodate the complexity of child sexual abuse.

Towards the end of each interview, after the survivors made suggestions for changes they would make to the criminal justice system, I briefly outlined the underlying philosophies and principles of restorative justice and the various processes utilized by restorative justice. I described restorative justice in New Zealand, based on my experience as a participant observer with the Te Oritenga Restorative Justice Group, and likened the process to the family group conference of the New Zealand Youth Justice system. It is important to note that I described restorative justice in New Zealand as a process typically initiated by the courts following a report to the police. Although survivors were surprised and excited to learn there was a model containing the elements they considered important, their
response to the possibility of engaging in such a process was that ‘it would most likely be helpful for others but would not work in my family’ or ‘my situation’. Participating survivors, particularly those who had not reported to the police, were reluctant to endorse restorative justice as a paradigm within which they could pursue justice. Those who had reported to the police were not convinced that restorative justice would provide them with a sense of justice.

**Concerns about restorative justice**

I was surprised at the survivors’ diffidence regarding restorative justice, especially in light of their lack of confidence in the current system and their desire to have a greater participation in justice processes. Furthermore, it was important for this group to experience a sense of justice. What explained their views?

As survivors talked about their reluctance to engage with restorative justice, issues related to power permeated their discussion. Rosalind said that abuse ‘is a control thing, he has the power, he has to be number one’. She believed her father would act the same in a restorative justice conference. Sarah said that as she thought about any confrontation with her father, she could feel herself reverting to ‘a child without voice or power’. Power imbalances are frequently noted in the literature, particularly by those commentators who have discussed restorative justice in relation to domestic violence (Hooper and Busch, 1996). Similar dynamics are evident for cases of sexual abuse of children. None the less, as others have argued, the traditional criminal justice system is just as inadequate in rectifying power imbalances (Carbonatto, 1995; McElrea, 2004).

Survivors also spoke of the ability of offenders to manipulate bystanders. Anna summarized the comments of others by saying ‘we shouldn’t underestimate how clever these abusers are’. Belinda said, ‘what if he’s one of those that goes along [to a restorative justice conference] and says all the right stuff?’ She also thought that the offender might be resistant to accepting accountability and responsibility. Gwyneth similarly commented, ‘that’s what counselling is based on; you can only counsel somebody who wants to be counselled. You can’t make somebody who is confronted with something to admit that in a room full of people.’ Karen thought, ‘it may take more than one session because of the nature of this . . . It may take more than one session to get this out, and I know this means a strain on the resources.’

Sarah said, when you are ‘talking about incest, . . . you do love the person that’s violated you. You do care for the person.’ Tracey said, ‘when you’ve been victimized, you can feel angry and pretty shattered; but if it’s somebody you love, it’s too hard’. All survivors repeatedly commented on the familial nature of the child sexual abuse they had experienced and the difficulties of reporting a close family member or family friend to the police.
when they have had an emotional relationship with that person. They asked, who would be involved in a restorative conference? Tracey said, ‘but these are the same people who didn’t do anything about it’. Other survivors similarly pointed out that the community in a restorative justice conference would include people from the very community that was apparently powerless to prevent or intervene in the sexual victimization they were subjected to as children. Adult victims of historical child sexual abuse have no grounds to trust the ‘community’ to do what would be right for all those involved. It would seem that restorative justice advocates are endowing a community with the ability to address complex issues that society has been unable to address in what could be a single meeting (Stubbs, 1997).

Belinda asked,

Who’s going to do it all, facilitate the process, protect children, make sure he does what he said he would? I’ll tell you who . . . women. It’s just more stuff for women to do . . . and it’ll be their fault if it goes wrong.

A transfer of power to the community could equate to the transfer of responsibility to women. Women might become responsible for not only ensuring the safety of children in the offender’s network, but also providing oversight to an offender who has returned to his or her community for support. Daly (2000), in her research based on youth justice conferences, found that women were not more involved than men in the supervision of conference agreements. However, Crawford (2000) cautioned that restorative justice tends to make promises regarding the ability of communities to provide redress to victims. He also noted that not all communities have the same capacity or willingness to respond.

Participating survivors found it difficult to believe that restorative justice was victim centred. Belinda said, ‘the offender can control the process by refusing to participate in restorative justice’. Many commented that restorative justice was merely replicating what they perceived as the offender-centred model of the traditional criminal justice system. Although this might be a reflection of their distrust of outsiders and the traditional criminal justice system, it is a valid concern and one that was raised by victim advocates at a series of hui3 convened to discuss critical issues facing the restorative justice movement in New Zealand (Jülich, 2003).

Many of the concerns participating survivors raised could be minimized with the development of best practice models embedded in programmes specifically targeting historical child sexual abuse. However, I am not convinced that any such developments in either restorative justice or the criminal justice system would overcome the resistance of those survivors who had not previously reported to the police. A lack of confidence in the traditional criminal justice system, based on both perception and personal experience, possibly influenced the responses of participating survivors. However, the ability of all participating survivors as adults to report to the police appeared to be influenced, or had been influenced, by a complex relationship shared with the offender; that is, they were, or had been,
emotionally bonded to the offender (Jülich, 2005). This was further complicated by familial relationships with the offender for all but one of the participating survivors. Furthermore, as Herman (1997) argued, victims of child sexual abuse reporting in the early stages of their recovery can be easily undermined and retraumatized. For those survivors who had not reported, it is possible that their personal journeys of recovery were not sufficiently progressed to contemplate reporting to the police a person with whom they have an emotional or familial relationship.

The way forward?

Despite the apparent reluctance to engage in restorative justice expressed by survivors in this study, initiatives in New Zealand are moving forward. Following a presentation by Mary Koss of the RESTORE programme (Koss et al., 2003) at a conference in April 2004, representatives of community groups have come together to create Project Restore New Zealand Incorporated (PRNZI). The founding members of this project will explore the possibility of developing a programme in New Zealand that aims to provide a sense of justice to victims of gendered violence. This initiative is being driven by community groups who represent both victim and offender perspectives: Auckland Sexual Abuse Help (ASAH), a counselling and support provider to victims of sexual assault and the Safe Programme, an Auckland-based programme for the treatment of child sexual abusers (Annan, 2004).

Members of PRNZI envisage a carefully designed programme that will be developed through cross-collaboration of groups, supporting both victims and offenders of sexual abuse, and which will draw on the expertise of restorative justice provider groups and other similar programmes addressing gendered violence. Initially, PRNZI members will focus their efforts on sexual assault, but will continue collaboration with groups supporting victims of domestic violence, who have also indicated their interest in the project. Much work is yet to be done: securing of funding, continued consultation with victim and offender groups and the development of a programme. None the less, this initiative holds some promise for not only victims of sexual abuse but also adult victims of child sexual abuse. A restorative justice programme, hosted by respected and established community groups working with victims and offenders of sexual abuse, might well encourage victims of gendered violence, including victims of historical child sexual abuse, to pursue justice using this programme.

The development of any programme using restorative justice with adult victims of child sexual abuse must moderate the influence of bystanders and outsiders. It must be embedded in a broader programme addressing historical child sexual abuse so that readiness to pursue justice can be
professionally assessed; that is, the readiness of all parties—victims, offenders and bystanders—to participate. All those involved in the programme not only need specialist skills and understanding of the complex dynamics of child sexual abuse, but also of restorative justice. Specialists could be included within the community of restorative justice conferences to assist in redressing power imbalances. Not least of all, rigorous evaluation of such a programme must be undertaken so that opportunities to provide a sense of justice to adult victims of child sexual abuse can be maximized.

Conclusion

There is a scarcity of information regarding the effectiveness of operational programmes addressing gendered violence and even less information regarding the use of restorative justice specifically with historical child sexual abuse. However, there appears to be some support, in New Zealand and elsewhere, to move the debate beyond speculation. The adult survivors participating in this study spoke about justice and how they could experience a sense of justice in a manner that could be described as reflective of restorative justice. Yet, they were not convinced restorative justice would work for them, that is, as a process initiated by formal reporting to the police. This could be a function of their recovery process combined with a complex emotional relationship with the offender. Restorative justice programmes addressing historical child sexual abuse need to accommodate the recovery process and the difficulties related to reporting close family members or friends. A study of a larger number of survivors could provide valuable information for those intending to establish programmes using restorative justice with adult victims of child sexual abuse. Further study is also needed to examine the nature of the apparent paradox revealed in this study: why participating survivors described the use of processes that are conceptually similar to restorative justice, while appearing reluctant to endorse it as a paradigm in which they could pursue justice.

Notes

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1. The term ‘domestic violence’, in the New Zealand context, is defined in the Domestic Violence Act 1995, which includes physical, sexual and psychological abuse between anyone in a domestic relationship.

3. For instance, two cases were deemed to be ‘abuse of process’ because the allegations were too old to allow the accused to mount a defence.

4. Maori term for family or extended family.

5. Maori term for meeting.

References


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