



RESTORATIVE JUSTICE UNIT

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NEWSLETTER

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New Ways Forward; Pathways to Change

National Victims of Crime Conference September 2008

The National Victims of Crime Conference was hosted by Victim Support Services South Australia in Adelaide. The focus for two days of interesting presentations, discussion and workshops included reform, response and also participation and accountability.

Historically victims once had an active participatory role in the criminal justice process, initiating action against and privately prosecuting offenders. Until at least the late tenth century, those convicted of crime were not ordinarily hanged, incarcerated, or otherwise punished, but instead owed the victim compensation (bot) or, in homicide cases, owed the victim's family the deceased's wergild, a monetary payment that varied with the deceased's social status. In subsequent eras the State progressively assumed the role of public prosecutor and positioned itself as the recipient of monetary compensation.

Dr Jo-Anne Wemmers¹, keynote speech. Where do they belong? Giving victims a place in the criminal justice system.

Dr Wemmers discussed this gradual sidelining of victims in common law countries. By the end of the twentieth century, their role was reduced to that of witness to a crime against the State. Dr Wemmers attributed this shift, not to better representation of the interests of the defendants by their advocates but to the interests of the King in accumulating fines and penalties in the State coffers.

¹ Jo-Anne Wemmers is a Professor of Criminology at the Universite de Montreal and an expert on victims and the criminal justice system. A key theme in her research is the notion of justice and in particular victims' perceptions of fairness. Among her ongoing research projects are an international, comparative study of the therapeutic or anti-therapeutic effects of victims' participation in conventional criminal justice proceedings, a study on victims' rights in the newly established International Criminal Court and a study on the meaning of restorative justice for victims and offenders.

The introduction of Victims Impact Statements was the first step in re-instating victims in the criminal justice process. But Victim Impact Statements generally give victims a very marginal role and only bring them into the process after a determination of guilt by the court.

Dr Wemmers discussed what people want when they have been a victim of crime; recognition, validation, information, inclusion, consideration, participation, support and, of course, protection. She concluded that restorative justice values such as participation and respect strongly resemble the victimological literature on victims' needs. In this presentation, consideration was given to three alternative approaches for the future of restorative justice.

The first possibility fits with the abolitionists view, replacing criminal justice with restorative justice. This requires a complete shift from the retributive to the restorative paradigm. Many examples of this exist in relation to the diversionary conferencing of the less serious offences committed by youths. Dr Wemmers commented that these programs often owe their existence to 'efficiency' rather than 'restoration'. Whilst they report a high level of victim satisfaction, is this process in the best interest of victims? Abolitionists give all the interest to the victim, totally ignoring the needs of the State. This can only be fully justified in minor cases. Dr Wemmers asserts that sometimes it can be inappropriate to fully expose a victim to an offender. She says that her research indicates that victims do not want sole responsibility for sentencing in serious matters.

The second option discussed was restorative justice as an adjunct to the criminal justice system; recognising that responses to crime also need to include rehabilitation and retribution. The primary example discussed was the Belgium system where indirect victim offender mediation can take place at any stage of the process. Mediation outcomes are independent of the outcomes of the traditional system. The victim-offender conferencing model facilitated through our Restorative Justice Unit is also a clear example of this. Dr Wemmers observed that these approaches limit the recognition of the victim throughout the criminal justice system, leaving that system unchanged through the lack of cross pollination. At least however victims are recognised and given a legitimate place. This approach sits more comfortably with victims' perceptions, recognising that both the victim and the State have a stake in crimes. Dr Wemmers argued strongly that screening is essential to ensure victim safety and that the offender must acknowledge responsibility – both aspects firmly embedded in our conferencing practice.

The third approach is to integrate the restorative values of participation and respect in the criminal justice system. An example of this is the newly established International Criminal Court in The Hague, which recognises victims' rights to participate and obtain reparation. Victims have a recognised status and legal representation, as well as the State and the offender. Dr Wemmers who is conducting research into this model has observed many matters; she observed that the presence of the victims' legal representative significantly impacted on proceedings, with the victims' concerns integral. Consultation and consideration is important to victims. Given the breadth and of the nature of matters dealt with in The Hague, such as genocide, Dr Wemmers perceives that victims do not want full decision making power and control. She believes this approach to be empowering, addressing the origin of the exclusion issue.

Dr Wemmers offered the following conclusions: "Over thirty years after the birth of the victims' movement and the discovery of the plight of the victim, victims are still

essentially witnesses to a crime against the state with few rights. During this time, restorative justice has emerged as an approach that advocates victim participation and recognition of the harm committed against the victim. Despite the strong role that it gives victims, the restorative justice movement has not changed victims' role in the conventional criminal justice system. In part, this is because many advocates of restorative justice see it as an alternative to the conventional criminal justice system. While restorative justice has been successfully introduced as an alternative approach for minor offences in many jurisdictions, it is unrealistic to think that restorative justice could ever completely replace the conventional criminal justice system. More importantly, as we have seen, victims see themselves as part of the criminal justice system and wish to remain in the criminal justice framework."

"If we truly want to address the plight of victims then we must stop excluding victims and start including them in the criminal justice system. The introduction of victim impact statements in common law systems was an important first step in that regard. But it is not enough. How victims participate in the criminal justice process is also important. The emergence of restorative justice, and in particular restorative justice values, provides an opportunity for criminal justice authorities to treat victims as well as offenders with dignity and respect. After all, it was not recognising the rights of the accused that pushed victims out of the criminal justice system. The State moved criminal justice away from the victim to the security of society. Restorative justice values correspond with what victims want: recognition and validation from the criminal justice system as well as protection from the offender without burdening victims with too much responsibility. Decision-making power would remain in the hands of authorities. We need to begin to recognise that crime affects victims as well as society and that victims have a legitimate interest in the criminal justice process. We need to open up the criminal justice process to include victims."