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Restorative Justice: A Look at Victim Offender Mediation Programs

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This article conceptualizes the effectiveness and benefits of utilizing the restorative justice model of Victim Offender Mediation (VOM) within the criminal and juvenile justice systems to serve the rights of victims, offenders, and society more justly. Victim Offender Mediation is discussed as a possible alternative justice model which reframes the victim-offender relationship to foster and respect the dignity and integrity of each participant. This restorative justice model combats victims' feelings of helplessness by giving them back their voice, while having the potential to specifically offer relief to those secondarily victimized by the legal system in cases of simple rape. Offenders may be offered more just sentencing after participation in VOM, which could provide them with the personal and social resources to overcome the stigma of their criminalized identity. The cost-effectiveness of the federal implementation of VOM in cases of drug offenses could greatly benefit society. Voluntary participation in Victim Offender Mediation, as an alternative justice model, is an integral part of maintaining the model's integrity to better address human rights and social justice within the United States of America and on a global scale.

Keywords: victim, offender, criminal justice system, restorative justice, victim offender mediation, victim's rights movement, crime victims rights act, rule 32 of the federal rules of criminal procedure, recovery, trauma, simple rape, rape, second injury, youth offender, juvenile justice system, criminalization, restorative justice, victim rights, offender rights, human rights culture

When taking victims' rights into careful consideration, the four criminal justice models of deterrence, incapacitation, rehabilitation, and retribution do not emphasize the importance of community and can often keep the victim trapped in feelings of helplessness. The restorative justice model, however, can serve to satisfy the victim's rights by giving them a voice and promoting their own autonomy through Victim Offender Mediation (VOM). Abrams, Umbreit & Gordon (2006) write: "researchers and policy-makers typically laud Victim Offender Mediation and restorative justice programs for their high satisfaction levels and positive effects on both victims and offenders" (p. 255), as well as, recognizing VOM's high effectiveness in reducing recidivism within the juvenile justice system. Restorative justice is not a new model, but a restructured and recycled model seen repeatedly throughout the history of the world's law practices. Marshall (2013) explains, "modern restorative justice originated from the aboriginal people in Canada and the Native Americans in the United States," where those affected by crime "participate in a facilitated negotiation to address crimes in the community" (p. 582). This article

delves into the restorative justice model of Victim Offender Mediation and its impact on victims and offenders within the criminal and juvenile justice systems, as well as its potential for both federal sentencing implementation and its potential on a global scale.

Before the 1970s, the criminal justice system had concentrated its efforts on preserving the rights of defendants. After the Victim's Rights Movement of the 1970's, "the CVRA (Crime Victims Rights Act) was passed to ensure that victims are considered as a critical element of the judicial process" (Marshall, 2013, p. 595). The Victim's Rights Movement of the 1970s focused on preserving the rights of the unrecognized party in the court: the victim. Victim Offender Mediation programs are essential to the victim's recovery from feelings of helplessness, because the victim's participation offers a medium where the victim can reclaim their autonomy by restoring their voice after it has been silenced by the crime. Currently, the CVRA requires the victim to make a victim impact statement. As Marshall (2013) mentions, the law specifies the victim's right to make a *public* statement; this may

complicate the argument for the victim's right to Victim Offender Mediation under the CVRA, because mediation is considered a private platform. However, Marshall (2013) explains that under Rule 32 of the Federal Rules of Criminal Procedure, the court is afforded the opportunity to hear statements considered to be privately recorded by the parties in-camera. This may create an avenue for Victim Offender Mediation to become a viable action or right at the federal level in the future. Because the creation of the CVRA initially intended to afford more rights to the victim, the right to VOM under the CVRA and the influence of Rule 32 of the Federal Rules of Criminal Procedure, further consideration may induce implementation of Victim Offender Mediation at the federal level.

Victim Offender Mediation can help the victim recover from feelings of helplessness as "victim-offender mediation programs allow a victim to regain peace of mind by providing a victim with an opportunity to express feelings and to gain understanding of the crime and the offender" (Goolsby, 1990, p. 1202). Effectiveness and satisfaction levels are high for victims and offenders participating in VOM, as Poulson (2007) explains, "participants in restorative justice were more likely than participants in court proceedings to tell their own stories, to feel that their opinion was adequately considered, to end up with better perception of the other's behavior, and to believe that the offender has been held accountable" (p. 166). Victim Offender Mediation restores a sense of hope and dignity to victims recovering from crime. Poulson (2007) observed that in VOM programs "offenders were more likely to apologize for their crime and victims were more likely to offer forgiveness" (p. 166). Forgiveness does not only change the relationship between victim and offender, but it enables the victim to overcome fear and helplessness by offering the victim peace of mind in a more effective way than the courts system alone could have offered. In addition, Poulson (2007) reveals that "victims were likely to feel less anger about the crime and have less fear about revictimization or retaliation" (p. 166) as a result of their participation in VOM. Overcoming fear is crucial for the victim to make a healthy recovery.

Victim Offender Mediation can significantly improve victim's recovery in cases of simple rape. Goolsby (1990) explains the legal term, "simple rape," as non-aggravated sexual assault classified as "date rape" and "acquaintance rape," often happening between a victim and defendant who knew each other prior to the assault. Victim Offender Mediation can create a healthy example of communication for these two parties to bring into their future interactions, if they

need to maintain a relationship. Because Goolsby (1990) determines that a "failed communication between the victim and the offender precipitates the rape" (p. 1183), the potential of Victim Offender Mediation becomes considerably more important. The mediation can give the victim and offender a chance to learn from the underlying factors of the rape, which may include miscommunication. Victim Offender Mediation can interrupt the patterns of domination the victim endures. The legal system, itself, often becomes an overpowering force as it questions and limits the autonomy and credibility of the victim. Symonds (2010) identifies the victim's second injury as, "the victim's perceived rejection by—and lack of expected support from—the community, agencies, and society in general as well as family or friends," while "the person's idealized image of himself or herself as a self-sufficient, autonomous individual is damaged" (p. 37). In addition to Symonds (2010), Goolsby (1990) acknowledges the "unnecessary pain and humiliation" (p. 1193), which the victim is subjected to within the legal system. As an alternative, "mediation can provide a quick, responsive, and humanistic solution for many simple rape cases," resulting in, "greater healing and more effective resolution of the event for those involved" (Goolsby, 1990, p. 1185). Because of the harshness of the court system, many simple rape cases go unreported. Goolsby (1990) hypothesizes that "a victim may choose to report the rape if she knows that a remedy which is sympathetic and fair is available" (p. 1205).

After studying the Rwandan genocide, Mamdani (2001) identified two forms of justice: (1) victor justice and (2) survivor justice. According to Mamdani (2001), victor justice relied on the legal victors, in this case the Tutsi, to overpower the guilty part, the Hutus. Mamdani (2001) suggests that this cyclical domination of power, or revenge, would inconsequently lead to more conflict and violence, just as Herman (1992) describes how unresolved trauma leads to trauma reenactment. Mamdani (2001) defined survivor justice as a form of political justice, which allows for reconciliation where individual trauma has the power to transcend its cyclical nature when it is addressed and institutions are reformed. The promotion of, what Wronka (2008) calls, "human rights culture" could powerfully impact institutional reform. For instance, recognizing the legal term "simple" rape, as mentioned earlier, as linguistically reoffending a class of individuals who have already been victimized by an initial offense of sexual assault, is a realization that has the power to transform victims into survivors through the practice of compassionate understanding and the elimination of the cultural minimization of trauma.

Crimes against victims suggest the offender's subconscious psychological capacity for community ties as a relationship is established between the victim and offender. The interaction establishes a relationship and emotional tie between the two, which is void of empathy and compassion. The offender does not recognize the humanity of the victim, and the victim's perception of the offender as a criminal can retraumatize, terrorize, and evoke fear in the mind of the victim. Victim Offender Mediation "bring offenders face-to-face with their victims, the end product being written restitution agreements" (Wright, 1998, p. 25). Because "many offenders find emotional release in being understood... [and in] the opportunity to 'make things right'" (Wright, 1998, p. 25), Victim Offender Mediation programs have been a success in encouraging empathetic relationships between offender and victims. The past success in VOM "demonstrates that emotions are in play in offender psychology," and that this knowledge "can be used to restructure thinking and reduce criminal propensities" (Wright, 1998, p. 26). In effect, Wright (1998) proposes that VOM programs are so successful because "empathy is learned and self-control is reinforced" (p. 26).

The role of Victim Offender Mediation aims to serve the victim's rights, but its implementation can further serve remorseful offenders by offering more just sentencing. Marshall (2013) suggests "restorative justice would not completely replace the Sentencing Guidelines methodology," in federal sentencing, but "it would merely offer a way for a judge to gain valuable insight into particular defendants and be better equipped to offer a fair and just sentence" (p. 595). Next, Marshall (2013) identifies "sentencing law [as] an ever-evolving part of the American criminal justice system" (p. 595). Because of this evolution of sentencing law, the incorporation of the restorative justice model can afford the federal sentencing law an opportunity for judges to sentence offenders more fairly. Moving forward, Marshall (2013) explains that: "the rationale behind the structure of sentencing is to allow an opportunity for the defendant to accept responsibility for his crime and for the victim to address its impact" (p. 574). Victim Offender Mediation epitomizes this rationale as it allows the opportunity for the defendant to accept responsibility for their crime and allows the opportunity for the victim to address its impact. It moves beyond mere defendant accountability and the impact upon the victim by giving the victim a medium to actively participate in the justice process.

Goolsby (2010) shows that "apology is important because it allows an offender to deal with any guilt he feels and restores him in his own mind to a position of

good standing in the community" (p. 1204). This becomes a necessary resource for the offender to overcome the stigmatization of their criminalized identity, which poses an ethnocentric and racialized disparity when considering the overcriminalization of African American and Latino populations (Nellis, 2016). According to Nellis (2016): "African Americans are incarcerated in state prisons at a rate that is 5.1 times the imprisonment of whites. In five states (Iowa, Minnesota, New Jersey, Vermont, and Wisconsin), the disparity is more than 10 to 1," while "Latinos are imprisoned at a rate that is 1.4 times the rate of whites" (p. 3).

Restorative justice may have a financial benefit at the federal implementation level. Marshall (2013) predicts that "focusing on drug offenders would be an ideal emphasis for a federal restorative justice program," because "the cost for substance abuse in America, including crime-related costs, exceeds \$600 billion annually" (p. 590). This means that the implementation of restorative justice programs on the federal level could help those criminalized for drug offenses, while simultaneously cutting costs in the federal system. Marshall (2013) warns readers "while the initial costs of implementation would be high, theoretically the long-term effect of programs would reduce costs" (p. 594). The topic of costs for implementation demands further research as the theory questions the potential long-term rewards and whether they outweigh the initial financial setback.

Restorative justice's model of Victim Offender Mediation programs is "rooted in the juvenile justice systems of North America with a focus on non-violent property crimes" (Umbreit & Armour, 2011, p. 65). Poulson (2007) examines "that crimes result in relationships, however onerous and unwanted, [and] it then becomes critical to explore how the juvenile justice system acknowledges that relationship and addresses the damage done" (p. 164). The success of Victim Offender Mediation within the juvenile justice system relies on "the possibility of reframing or recreating the relationship [between victim and offender] in such a way that the needs of both parties are met more adequately than they currently are" or would have been by the courts (Poulson, 2007, p. 161). Within the juvenile justice system, "these exchanges typically go beyond the formalities of court-based proceedings and end up with deep emotional expressions from both parties" (Poulson, 2007, p. 167). Florsheim and Fowles (2008) consider VOM as the interpersonal-developmental perspective to juvenile justice, and describe how the process goes beyond their tasks of: "(a) protection the public from youth offenders; (b)

supporting the development of these same youth; and (c) holding youth accountable for their delinquent behavior” (p. 147).

In their qualitative study, Abrams, Umbreit, and Gordon (2003) identify some of the underlying motivations for the offenders’ participation in the program. This brings up an issue of VOM within the juvenile justice system. Some of the offenders studied were not told they had a choice in participation, but that it was mandatory. In Minnesota, where the study took place, the offender has a legal right to choose not to participate. Voluntary participation is an important part of mediation. The nature of mediation relies on victim and offender engagement to foster empathy between the individuals, and the choice of participation enables both the victim and the offender to take responsibility for their actions and for their voices to be heard. The susceptibility of juveniles poses a potential threat of coercion into participation by the legal system. Likewise, the susceptibility of juveniles puts them “at perhaps the most important stage of his or her life for the formation of personal and social identities to create an identity as cooperator and problem solver” (Poulson, 2007, p. 169-70). This increases the potential impact on the offenders for long-standing behavioral change.

The global research suggests “the restorative justice paradigm can make a substantial contribution to increasing victim involvement and healing, offender responsibility for behavioral change and learning from experience, and community participation in shaping a just response to violations of law and to destructive behavior” (Umbreit & Armour, 2011, p. 79). Abrams, Umbreit, and Gordon (2003) write about the global spread of restorative justice: “the theory and practice of restorative justice is clearly becoming more visible and influential in communities, and even entire justice systems, throughout North America, Europe, and the South Pacific” (p. 1). Similar restorative justice programs are being developed all over the world in places like: “Australia, Canada, most European countries, Japan, China, Liberia, New Zealand, South Africa, several South American countries, South Korea, Russia and Ukraine” (Umbreit & Armour, 2011, p. 69). Canada has played a significant role in restorative justice program development, as Umbreit and Armour (2011) mention: “Canada pioneered the early development of restorative justice in the mid-1970s and continues to pioneer new restorative justice practices involving reentry into society” (Umbreit & Armour, 2011, p. 72). This shows how society and community are necessary to the restorative justice model.

The unique role of community within the restorative justice model offers encouragement of victim-offender

reconciliation, which helps to transform the criminal justice system with a sense of empathy and compassion. Poulson (2007) points out, “for people to be psychologically healthy, they must be embedded in a matrix of emotionally meaningful and supportive social relationships” (p. 162). Restorative justice works to transform victims’ and offenders’ relationships into stronger, emotionally meaningful and supportive relationships. Because a critical aspect of restorative justice relies on the voluntary participation of all parties, Marshall (2013) acknowledges that “not all defendants, not all victims and not all crimes would be appropriate for this type of sentencing procedure because not every defendant and not every victim would be willing to participate in such a program” (p. 589). This is why the restorative justice model would serve as an alternative justice model within the system. Goolsby (1990) points out that: “justice requires producing a result acceptable to society and to the parties involved quickly, inexpensively, and with minimal stress on those involved” (p. 1195). The restorative justice model provides Goolsby’s definition of justice through Victim Offender Mediation. Marshall (2013) hypothesizes that “folding a restorative justice model into the already existing structure would only seek to provide an alternative to the rigidity of the model and offer significant potential benefits for defendants, victims, and the community” (p. 596).

Currently, restorative justice research focuses on: “participation rates and reasons, the overall satisfaction of participants, and participant perception of fairness as indicators of the health of the process, while also considering restitution, and repair of harm, diversion, recidivism, and cost” (Umbreit & Armour, 2011, p. 79). With reported high levels of participant satisfaction and positive reports of participant perception of fairness, the health of the restorative justice process seems to be doing well. The research of Umbreit and Armour (2011) shows that offenders are more likely to follow through with their restitution agreements after participating in VOM, and VOM participation shows a reduction in recidivism and reoffending by offenders. There are gaps in the restorative justice research; restorative justice research on VOM does not explain how the programs are procedurally and substantially effective with such high levels of participant satisfaction. The potential for federal implementation of Victim Offender Mediation programs hold promise for the criminal and juvenile justice systems. Umbreit and Armour (2011) urge us, as a nation, to realize that “we have the opportunity to build a far more accountable, intelligible, and healing system of justice and law, which can lead to a greater sense of

community through active victim and citizen involvement in restorative initiatives” (p. 89).

The platform offered by VOM programs allow for victims’ voices to be heard and for their humanity and worth to be recognized and realized by the offender and within the legal system and community, which serves to heal the trauma of the initial victimization. The cycle of victimization, which the victim endures, becomes mediated by participation in VOM when the victim redefines their experience by identifying as a survivor, refuses to be revictimized by the offender and refuses to dehumanize the person who committed the offense against them. Reframing the victim-offender relationship, the victim’s voice is appreciated and the offender is decriminalized, as both the identities of the victim and offender are humanized and justice is realized.

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