Written Evidence from Dr Mark Austin Walters, University of Sussex

Using Restorative Justice for Homicide?

This evidence is based on a small empirical study (conducted in England and Wales) that examined the potential therapeutic benefits of using restorative justice for the most serious of all crimes: homicide.

Executive summary

The tentative findings suggest that restorative dialogue can:

1. Help family members of homicide to better understand the meaning of loss; most significantly by allowing participants to ask previously unanswered questions.
2. Provide a safe environment to enable a thorough exploration of the acute emotional pains experienced by those closely connected to the victim.
3. Assist emotional wellbeing and support relational transformations.

It is concluded that:

4. The criminal justice system must do more to support family members of homicide victims by creating a ‘trauma-informed’ system of justice that operates in parallel to the conventional justice processes.
5. Such a system must take as its starting point the careful consideration of the protracted traumas caused, not only by homicide, but by a criminal process, which focuses almost exclusively on punishing those who kill.

Context for current debate

The Code of Practice for Victims states that victims ‘are entitled to receive information on Restorative Justice from the police, including how [to] take part’ (p 28). It also states that “Close relatives of the deceased are entitled to receive services under the Code as victims of the most serious crime” (p 4). Despite these commitments, it appears that very few restorative practices, run either by probation services, prisons or within the community sector, are being used for family members of victims who are killed (often referred to as co-victims or homicide survivors). This means that very little is known about whether the theory and practice of RJ is an effectual means of addressing crimes resulting in death.

In an attempt to partly fill this gap I recently conducted a small qualitative study using a case study on the use of RJ for homicide by one probation service in England and Wales. I summarise the full results below.

Using Restorative Justice for Murder? An important case study

The data presented below is taken from four in-depth qualitative interviews with the stakeholders of the murder of a young gay man; though many other
telephone calls and meetings were also conducted in preparation for these. Interviewees included the victim’s sister (supported by a victim liaison officer), the offender (who at the time of interview was still serving his term of imprisonment), the RJ facilitator (who had facilitated the parties’ preparation and direct dialogue) and the offender’s probation manager (who had worked with the offender for several years and had attended the restorative meeting as the offender’s supporter). All interviews took place six months after the restorative meeting. The facts of the case are taken directly from the information obtained from all interviewees. In order to protect participant anonymity all names have been changed.

The Facts

John was 30 years of age and worked as a bar manager in London. On the evening of his murder, he had been at a bar drinking and on his way home passed through a ‘cruising ground’ (an area where gay men often meet for sex). It was here that John came across the two offenders, Michael and Billy, both in their early 20s. John asked both Michael and Billy if they wanted to go back to his flat. The young men went to one side to discuss John’s invitation before returning to accept his offer. Their intention was to return to John’s flat where they would rob him. Whilst at John’s home, the victim was said to have touched Billy’s leg. This led to an altercation and a violent struggle ensued. Michael was not present during this altercation, as he had already gone to the bathroom to cut a cord from a blind with the intention of tying John up during the robbery. Upon hearing the altercation, Michael returned to the room with the cord where he found Michael and Billy on the floor fighting. Michael placed the cord around John’s neck and strangled his victim to death. Two days later, Michael handed himself into the Salvation Army, who then escorted him to the nearest police station where he was arrested for the murder of John.

The Harms Caused by Homicide

The harms caused by homicide can be far-reaching, impacting family and friends for the rest of their lives. Those who are indirectly, though significantly, affected by homicide are often referred to as ‘homicide survivors’ or ‘co-victims’. Their experiences of ‘trauma-grief’ and are typically characterized by the shock of loss, as well as a person’s need to block out external stimuli related to the victim’s death. However, it is not just the experience of loss that co-victims must contend with. The criminal process, which ensues after the vast majority of homicide cases, means that family members are frequently pulled through a tumultuous and prolonged criminal investigation, sometimes a lengthy trial and finally a sentencing hearing. Family members will come into contact with medical examiners, the police, as well as criminal lawyers. For many, their interaction with these professionals results in experiences of secondary victimization. This is where victims feel that they are provided with inadequate or inappropriate treatment, and where other professional’s attitudes and behaviour towards them compound their original trauma.
At interview, the victim’s sister Janet stated that from the moment she was told of John’s death, her life was ‘turned upside down’. In the immediate aftermath, Janet experienced ‘shock’ and constant ‘crying’. Once the crying stopped, she entered a stage of disbelief that John had gone. Then, because of the circumstances of the death, a post-mortem was carried out. This exacerbated the co-victims’ distress as the family were asked to identify John’s body. The post-mortem also prolonged the time it took before John could be buried, compounding matters further. A lengthy police investigation was then conducted in order to collate evidence for trial. It would take almost two years before the case could go to court in 1996. It should be mentioned that throughout this process Janet spoke very highly of the police, who she said had kept the family up-to-date on the case’s progress while also offering a great deal of support and aftercare. However, it was outside of the police’s power to ensure that justice was expedited. It was during this protracted period of time that small matters—often seen as minor for the administration of the criminal justice system—had considerable impacts on John’s family. This included moving the case from the Old Bailey in central London to Chelmsford in Essex. This meant that the family had to travel many miles each day at a significant financial cost, whereas the offenders were transported back and forth at the expense of the state. These administrative decisions led to additional frustration and inevitably to further feelings of resentment.

The Restorative Process

Fifteen years after the murder of John, the Witness Care Team in London contacted Barbara and asked her whether the family would like to meet directly with the offender via a RJ meeting. Two of the victim’s sisters, Barbara and Janet, decided they wanted to meet with Michael. Several months of preparatory meetings then ensued, during which he sisters were provided with information on the aims and objectives of RJ. The preparation stage of RJ is fundamental to its success. Expectations must be managed and facilitators must prepare participants for the types of questions they want to ask and might also be expected to answer. It was at this stage of the process that Janet and Barbara began to fully explore with the facilitator the impacts that John’s death had on the family. In mid-2010, the sisters travelled to the north of England to meet with John’s killer. The meeting took place in a secure location, with two separate rooms attached in case either of the parties became distressed. There was also a secondary RJ practitioner on hand in case of a breakdown in communication. Ground rules were set at the start of the meeting, prescribing the type of appropriate language that should be used.

Both sisters were troubled about the circumstances in which John was killed. Several questions remained at the forefront of their minds, most important of which was whether John had been murdered because he was gay. This question was never answered during the trial. Furthermore, neither Janet nor Barbara believed the account portrayed by the defendant’s defence counsel in court. In fact, they both felt that Michael was homophobic and that the second offender had somehow ‘gotten off’ by saying he had Asperger’s syndrome, leaving the family members feeling very angry. Janet explained:
...we knew the answers we wanted in our head... all I wanted was the truth, however hurtful... I wanted to look him the eye and see it in his face... I just wanted the truth!

In this case, Janet and Barbara were able to prepare a list of questions for Michael about the circumstances of John’s death. In response to these questions, Michael spoke at length about the events leading up to John’s murder. Janet explained that the encounter had provided a new comprehension of her loss; one that put a stop to 15 years of recurring questions. Of equal importance was that the meeting became a space where the sisters could explain directly to the offender the impact that his actions had on the family. Janet and Barbara were able to observe first-hand Michael’s recognition of the consequences of his actions by conveying their story of trauma directly to him. Janet reflected:

It was just as important years later, look we’re still upset you know? ... He even said 'I can, I can see', like he could recognise I think the impact it had had on us, even then, all those years later.

However, it was not just the acknowledgment of pain that the sisters sought. They also wanted the offender to appreciate what kind of man John was. Janet spoke in these terms:

My brother was such a nice guy... If he wasn’t my brother he could quite easily have been our friend, you know, I certainly would have liked him because he was a nice guy... He was the guy that went... with the Soup Kitchen helping the homeless... he was that guy...

It is by sharing other’s pain in these various ways that both offenders and (co)victims can begin to appreciate each other as human beings. Important to this case was that not only did Michael appreciate more fully the consequences of his actions (see further below) but both Janet and Barbara’s perception of him was altered. Janet illustrated the powerful change that occurred at this point of their dialogue by stating:

I thought, you know, ‘he’s a thug', ‘he’s a monster’... and it was quite shocking to see him, he was just... normal you know?... I could understand where he was coming from, what he was saying, and why it happened...

Reparation and Emotional Healing

During the meeting, Michael apologized to Janet and Barbara for what he had put them through. Many restorativists have emphasized the importance of such symbolic reparation to the successfullness of RJ. The offering of sincere contrition is an acknowledgment that others have been wronged and that the offender is genuinely sorry for this. However, where the primary victim has died, one might question whether it is appropriate for an offender to offer an apology to those left behind. Does the severity of the offender’s actions render any conveyance of contrition meaningless? I asked Janet what she felt when the offender apologized
and whether she believed the apology to be genuine. She responded by stating that Michael had been very genuine and that his sincerity had been ‘absolutely of benefit to her’. She explained that Michael could see that all these years on, his actions were still having consequences, and to see that he was sorry had a positive impact. In addition to his sorrow, the sisters were keen to see that Michael would not return to his old life of alcohol abuse. The meeting was therefore finalized with Michael making a promise not to return to the problems of his previous life with all parties shaking hands to seal this agreement.

I asked Janet whether the restorative process as a whole had been of any emotional benefit to her. She told me that meeting Michael had improved her emotional wellbeing and that crucial to both her and Barbara's mental health was that they received answers to their questions. Such a finding suggests that restorative dialogue can in some cases aid co-victim's recovery from homicide, potentially reducing individuals' experiences of trauma-grief. For Janet, it was clear that RJ finally allowed her and her sister to move on with their lives. She reiterated this aspect particularly with regard to her sister. Barbara had periodically gone through phases where she would call her sister every day to talk about John. These incessant calls stopped directly after the restorative meeting. Over six months after the meeting had taken place, and almost 16 years after the murder of John, Janet and Barbara were able to piece together their lives and move beyond some of the traumas caused by loss.

The Impacts of Restorative Dialogue on Those Who Kill

As noted above, the role of empathy was clearly pivotal in changing Michael’s understanding and attitudes towards his victim’s family. Restorativists often assert that empathy serves as a catalyst for other reforming emotions such as shame and guilt. These interconnected emotional responses can give rise to a negative evaluation of the self that is painful in nature. If managed carefully, however, experiences of shame-guilt can give rise to genuine feelings of remorse, and in turn to an offender who is more mindful of the consequences of his actions. Such a process was clearly evident in Michael’s case, he explained:

Being able to understand their pain which I was always aware of to a degree but not to the degree I had heard face-to-face, I think that is the biggest impact, the realisation that kinda hurt people, not in the short-term but in the long-term... I done a lot of offender programmes over the years but I don’t think anything has been so intense and I don’t think anything could be so intense as coming face-to-face with your victim’s family, how it’s affected them... it was profound.

As mentioned above, direct encounters between the stakeholders of an offence assist in the humanizing of individuals. It is difficult to escape the pain that has been caused, the changes that need to be made to rectify those harms and/or a recognition that the offender him or herself has also experienced trauma. Michael spoke of the transforming affects that the sisters’ story had on him:
... here was this lady victim herself being reminded of it constantly, how [younger] family members... had never known their uncle, my victim... were themselves victims. One sister had a really bad battle with alcohol [and] was at one stage consider[ing] suicide, that really hit me. But she was able to say that at the end of the meeting she was able to put that video away and not have to watch it again, which was nice after hearing the hurt that I had caused...

It was important to Michael that other offenders had the opportunity to connect with co-victims in the same way that he had. He believed that offenders who participate in such an emotionally charged process, combined with sufficient preparation, would experience similar transformative emotions:

I think everybody’s victim should be given the opportunity regardless... I’ve been in many tough prisons over the years, [and] actions towards victims are non-existent, they are totally forgotten, it’s easy porridge doing it that way, don’t think about it, don’t give them a second thought, but when you hear the impact it has to make you think. It has to have an impact because you are not human if it doesn’t… I think it has the potential to change the whole criminal justice system...

One reason that RJ has yet to be utilized for serious crime is the common concern that its use may be viewed by the public as trivializing the severity of such offences; leaving the offender to offer an apology in return for forgiveness. Michael emphatically refuted the validity of such a perception noting:

I think it’s one of the toughest things I’ve ever done. Prison’s not been easy but it has been easy com- pared to that, to see your victims sitting there in tears and explain the impact it has had on them, all those days you have been in prison, they have been in their own personal prison, it just continues, they can’t escape it, they can’t shut it off. So being in prison compared to that is easy, but being in prison is not easy no.

**Conclusion**

The emotional traumas caused by homicide often take a lifetime to heal, and for many family members, they never do. Despite developments that have been made in relation to understanding these indirect harms, there remains limited academic or policy discussions on how the criminal justice system might help to alleviate co-victims’ suffering. In fact, the typical ‘life should mean life’ debate has rarely considered the life sentence that families of homicide victims frequently endure. This case study has illustrated how such a sentence can play out for these individuals. It reminds us of the enduring impacts that homicide can have on families and how their needs are rarely met by a system almost entirely focused on punishing offenders.

The case study also highlights how restorative dialogue can help to alleviate some of the most destructive emotional traumas caused by murder. Most significantly, restorative dialogue provided all participants with a voice. This
enabled them to ask questions while additionally articulating their own life narratives. The emotionality behind such a dialogue further enabled them to develop a renewed understanding of each other. Collectively, the inter-personal connections that emerged allowed all stakeholders to move beyond their experience of homicide better equipped to deal with its painful aftermath.

How then can RJ be used more widely for homicide? Realistically, practices can only be offered as an addition to conventional justice processes. Without voluntary participation, the goals of RJ will become almost meaningless. A parallel system of justice is therefore required that operates in tandem with the conventional criminal process. Practices will require well-trained facilitators who understand the complex dynamics of homicide and the emotional pain it causes co-victims. The restorative process will be aided where practitioners engage in multi-agency partnerships whereby professional support services, including agencies such as Victim Support, counsellors and health workers, participate in the restorative process itself.

RJ is but one way in which justice practitioners can attempt to limit the long-term traumas caused by homicide. This is not to suggest that RJ will be a panacea for such offences. However, as restorative practices begin to proliferate throughout the criminal justice system, RJ may well yield significant therapeutic benefits to those most affected by homicide.

A full academic article examining this case study can be found at: Walters, Mark Austin (2015) “I thought ‘he’s a monster’... [but] he was just... normal” Examining the therapeutic benefits of restorative justice for homicide. *British Journal of Criminology*, 55 (6). pp. 1207-1225.

I am happy to discuss the details of this case further and/or other aspects of RJ theory and practice as required.

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