

In the Wake of Crime

Restorative Justice and Memory Reconsolidation

© 2019 Jane Bolitho and Robin Tivic

Introduction

“I often think about it, every day, several times a day it will just cross my mind and I’m still really sad. I’ve always got like a pain in my chest about it, like I can feel the specific pain and I just think maybe if I understand what happened on the night it might be able to help. It’s noisy in my head, you know, and I would like to have a bit of space in there to think of other things. I’m tired of thinking about it.” (“Sandra,” whose husband was murdered 16 years prior)

The impact of crime on perpetrators, victims, their loved ones, and their communities varies a great deal from very little...to short-term or discrete inconveniences...to very complex, long-lasting and debilitating effects that challenge and demand a shift in world views, ways of being, and identity. This paper focuses on the aftermath of cases in which a crime has been experienced as harmful to the point of trauma. The impact of crime has brought intense emotion such as anger, rage, deep fear, rumination, persistent intrusive thoughts, flashbacks, hypervigilance, inability to work, or complicated bereavement (where loss has not been processed because of anger being in the foreground, for example). In this paper we explore a process of addressing harm, called “restorative justice,” and we reflect on the role that the process of memory reconsolidation may have in bringing about emotional resolution and change as part of this process.

Introduction to restorative justice

Restorative justice (RJ) is a process for addressing harm. The people who are directly affected come together in a facilitated face-to-face encounter, usually in a circle. The discussion moves in a structured manner through what happened, the impact, and the way forward. Since the 1970s the uptake of restorative practices in the western world has been immense, with programs and practices proliferating within, alongside, and even outside of formal criminal justice systems (most notably in schools). Proliferation has brought diversity to the process; however a series of core values underscores this work. The aim is to use dialogue as a vehicle to address the harm that people have suffered. Trained facilitators use a variety of techniques (including some drawn from mediation) to encourage deep listening and active participation. Conversations may be as short as an hour, or may continue over hours or even days. Facilitators work with, not against, emotion; emotional processing is normalised. There is always preparation for an RJ process. In some programs this might be quite minimal (perhaps one or two meetings with each party), but in the case of serious crime the preparation is extremely lengthy (over months, even years) and external professionals (counsellors, victim advocates, prison staff) may work in a team to ensure the space will be safe for all participants.

There is a vast amount of research literature on what RJ is, and its process and effectiveness. Much of this literature has been concerned with the impact on offenders and their likelihood of reoffending. Beyond the metric of reducing reoffending, there is also curiosity about exactly what RJ may be bringing about within an offender to make a decision to desist from crime possible.

However, there is growing interest in how RJ affects victims, particularly after very serious crimes, when many years after the event people are still reporting significantly reduced quality of life due to poor sleeping, intrusive and repetitive thoughts, nightmares, fear, anxiety, hypervigilance, and intense anger, as well as the inability to work, parent, and live as they did before. Anecdotally, facilitators of RJ have long reported seeing quite radical shifts in the emotional wellbeing of victims, with participants describing the results as having a huge weight being lifted from their shoulders and an almost immediate resumption of pre-crime activities (friends, work, recreation, etc.). Scientifically, less is known about the process of change.

How RJ relates to Memory Reconsolidation

One new theory currently being explored is that the RJ process inherently facilitates the process of memory reconsolidation. For those participants for whom there is emotional trauma attached to the crime event, this may explain the radical shift in emotion and the immediate improvement in wellbeing (measured by the ability to resume pre-crime activities).

Many RJ processes are scripted or loosely scripted around some powerful questions. The first question put to each party requires a retelling of the event exactly as it happened. The participant is asked to go back to that day and to describe the day in its entirety. Prompts are used to draw out what the participant thought and felt. Every detail, no matter how minor, is encouraged. In many RJ practices there is no time limit, so silence may be used while this narrative emerges. The second core group of questions concerns the impact of the event on the participant. The third group of questions is about what might be done to address the harm that the participant suffered.

We posit here that—in addition to a reactivation of autobiographical memory of the crime event and its aftermath (media, court, sentencing, and so forth) at this point—there is a reactivation of *meanings, assumptions, and expectations that were formed during those experiences*. During the meeting, the participant is faced with the other person. That setting brings with it the opportunity to see, hear, and otherwise experience aspects of the event and of the other person from *that person's* subjective reality.

We posit, further, that in such settings, so-called “mismatch” experiences can occur between what a person consciously or unconsciously *expects* and what the person *actually experiences and learns* in this meeting. This mismatch experience opens up the possibility for the process of memory reconsolidation to take place. That means that the synapses encoding the person's expectations (based on his or her subjective “knowings” about reality) become labile, meaning that they can be re-encoded, based on new learnings and

experiences. A transformational process of this nature brings with it significant shifts in patterns of emotional response, somatic symptoms, behaviour, and thought.

The two portions of such a mismatch experience will always be idiosyncratic, because no two people experience a given event in precisely the same way. That being said, however, there are some emotional patterns that commonly emerge after traumatic crime, such as fear (based on assumptions like “he is a monster and I will be killed next”), shame (based on meanings like “I am a bad sister/mother/daughter because I wasn’t there for my loved person,” guilt (based on convictions like “I could have saved him/her”), or desire for revenge (based on knowings like “If I make that person feel how I feel now, I’ll feel better.”)

Emerging research in this area (Bolitho, 2017)—drawing from detailed case notes and interviews with facilitators, offenders and victims prior to and following restorative-justice meetings—finds support for the theory put forth above. Analysis of the interviews shows where and how specific mismatches occur. The cessation of negative thoughts, feelings, and behavioural patterns and the resumption of pre-crime life constitute compelling evidence that the transformational process of memory reconsolidation has, indeed, occurred.

Case example

This case was referred to the RJU by one of the victim’s family members following a domestic homicide that had occurred more than 10 years previously. While a number of victims participated in the Victim Offender Conferencing (VOC), just one victim’s words will be used here.

Presenting emotions: In the pre-VOC interview, the victim expressed fear centering on the offender’s release from prison and possible retaliation, a specific fear of unexpectedly seeing the offender back in the community, and the desire to plan for safe relations (in this case, the desire for no relationship). The impact of the crime had been immediate and longstanding; she described it affecting every aspect of her life, then and now, including housing, school, family and relationships. Emotionally she still experienced “rough patches” of overwhelming grief.

During the VOC: In the post-VOC interview, the facilitator recalled feeling immense frustration with the offender, when he did not “take responsibility” during the VOC in the way anticipated, despite months of careful preparation with the prison psychologist prior to the VOC. Aside from “responsibility” being a core RJ ingredient, the facilitator commented that “taking responsibility” had a specific meaning within Corrective Services culture:

It’s clinical and it’s brutal—it’s saying “I stabbed her and I stabbed her again and I stabbed her again and I stabbed her again.” For me, through articulating the actual behavior, you’re demonstrating the taking of responsibility for what you actually did when you committed the offense. For me, that’s the standard that I’m looking for. I was ready for him to give an account of the offense step by step, A, B, C, D, X, Y, Z. It never happened. The prompts never drew it out. The two psychologists were both giving me “the look.” (Do you need to call time? Do we need to take him outside?) I’m feeling so frustrated

that he's not taking responsibility for the offense, using the language that I was expecting.

At this point however, the facilitator recalls thinking about his training, so he took a moment to be "mindful," and then scanned the circle. What he saw was:

four people sitting on the edge of their chairs, hanging onto one another. They were so engaged and they were accepting. They were tuned in to him and I think it was that point—his obvious vulnerability and frailties—human frailty—that *they read that as being genuine*.

Indeed, according to the victim, this is exactly what happened.

Reactivation plus mismatch: In the victim's words:

It was quite confronting at first to be right there. I think I started crying when he started talking. You started to see that he was just as nervous as we were. He was sweating, he was all blotchy-skinned, so that made me feel better, that *we weren't scared little victims and he was a big scary person*. I thought I'd want to say all these hateful things, but then from seeing the way he was struggling I knew that I didn't have to, because he'd asked himself those things. So that was part of what was good, for us to know and to see that he'd really been through all those things with himself. All you see is that night and then *you just think of this monster*. I'm not saying that he's not and what he did wasn't, but *it was good to see him as a man with feelings*.

Reflecting on the outcome: The victim goes on to describe the impact of the VOC:

Immediately after, a real positive. Better, lighter, that big angry sense of this monster that we're always apprehensive of is gone. Not that you ever wish anyone dead, but, you know, you don't want them to get out of prison. *But all that's gone*. As clichéd as it sounds, it's just like this big weight has been lifted and like all the dark squirmy little things going on inside...it just feels better; free, I guess. I can move on now. It has affected my life totally. *I had no control over it, but now I do*. I know that he's not going to try anything, *and so now I have the control of whether I want him in my life or not*. It takes over your life, like as much as you try not to, but I'm in this stage now—"get on with it." *I'm so excited to just, you know, start my life now*.

In this case the emotional shift is one from fear and powerlessness and vulnerability where the crime dictated the victim's everyday existence (even more than a decade later) to a sense of strength, power and purpose, with the individual back in control of her life. For this victim, what was important was not so much the offender taking responsibility but the release from perpetual fear of retaliation and worry about seeing him, post-prison. She came to see the offender—a family member—as a human being, one who carried out a heinous and tragic crime, but in her words, "not a monster." Despite a non-traditional exposition of responsibility from the offender (according to the facilitator), the process provided this victim with the chance to see and deeply feel some contrary information.

The victim's account of the VOC process highlights a number of mismatch experiences, with the perpetrator presenting very differently to what she expected. Prediction errors will always relate to an individual's specific learnings, and so will be completely idiosyncratic. (Ecker et al. 2012 term this "mismatch relativity.")

In this case, major prediction errors occurred in relation to unquestioned assumptions—"knowings"—about the offender, i.e. that he was:

- physically frightening, someone to be genuinely feared upon his release from prison
- psychologically frightening
- a monster incapable of emotion—cold, totally unfeeling, not suffering

In actuality, the offender was experienced:

- as a physically weak, frail old man
- crying and suffering
- expressing regret, remorse and shame in a very genuine manner

Those experiences of the offender were contradictions to what the victim "knew" about him.

Based on the victim's statement "I thought I'd want to say all these hateful things, but then from seeing the way he was struggling I knew that I didn't have to, because he'd asked himself those things," we can surmise that she had an additional unquestioned assumption about the offender's suffering—or lack thereof—since committing the crime. Prior to the VOC process, she felt the need to confront him about what he did (presumably so that he would suffer, as she had for years). Seeing him in distress mismatched his presumed lack of suffering; it was apparent to her that he had been asking himself uncomfortable questions.

The victim's intense fear and sense of powerlessness and vulnerability fell away as a result of her new knowings about the offender as well as her new, directly related knowings about her safety following his release from prison. Additionally, she no longer felt the need to say "hateful things" to him.

A further shift was this: The victim's sense of the offender widened from his being the embodiment of his act of violence on the night of the crime to being a person with a history. She was able to view that night within a larger context. She realized that in reducing him to his violent act she was doing the same thing that people had done with her in reducing her to "the victim." She said, "It's like he's not that night; he's more than that—like there was a whole lot of other things going on leading up to it, and like I realise that what people have defined me as ["victim"], is what I've defined him as [offender]."

All these shifts in meanings and knowings, as well as the ensuing emotional shifts, persisted effortlessly, which is an indication that the process of memory reconsolidation took place. Note that the victim's autobiographical memory of the events remained intact.

The research article (Bolitho, 2017) states that this case "illustrates how appreciating the role of the MR [memory reconsolidation] process challenges some core RJ assumptions." Perhaps the most central tenet of RJ is a deep and personal sense of the offender being held

to account. This is gauged by the offender narrating the events in enough detail (then I did this, then I did this, then I thought this, etc.) that it goes beyond the simple police or court facts (which are mediated to an extent by what is needed by those bodies for the purpose of pursuing criminal justice). In this case, though the facilitator had prepared the offender to give his account as described above, it didn't happen. As it turned out, however, the offender's *non-verbal* presentation was fully sufficient to demonstrate genuine, personal responsibility. An assumption in RJ is that verbal communication is of critical importance. This case reminds us that what is, in fact, necessary for significant shifts to occur is a set of experiences that differ saliently from the victim's assumptions and expectations. We cannot know ahead of time what those contents will be.

Conclusion

While there is a wealth of research literature on the process and impact of restorative justice, there is little information explaining the mechanism behind the deep and enduring shifts often seen as a result of the process. In addition, much of the work on restorative justice has been done through a criminal justice lens, focusing on the links between interventions and re-offending.

Discussion about the therapeutic impact of RJ has been limited and cautious, as RJ is not therapy per se. Yet restorative work deals explicitly with emotions and, as we see here, *implicitly* with the unquestioned meanings and assumptions that give rise to those emotions. This work is increasingly being found to improve victim well-being.

The content of this paper begins to formulate an understanding of how and why the emotional space facilitated in RJ can open up possibilities for healing. This exploratory work paves the way for exciting new directions in targeted, empirical research.

References

Bolitho J (2017). Inside the restorative justice black box: *The role of memory reconsolidation in transforming the emotional impact of violent crime on victims*. International Review of Victimology, pp. 026975801771454-026975801771454
<http://dx.doi.org/10.1177/0269758017714549>

Ecker, B., Ticic, R., & Hulley, L. (2012). *Unlocking the emotional brain: eliminating symptoms at their roots using memory reconsolidation*. New York; London: Routledge.