

Reconciliation: some lessons learned in the restorative justice context

Marc Forget

Resumen

La reconciliación es un proceso complejo que requiere la confluencia de una serie de factores críticos. El hecho de que la reconciliación sea, por definición, una experiencia personal hace que resulten un desafío los proyectos a gran escala de reconciliación pública. Desde comienzos de los años 70 del siglo XX, la posibilidad de la reconciliación entre víctima y agresor en el campo de la justicia restaurativa, incluso en el caso de los delitos más graves, ha sido estudiada, y se han desarrollado algunos criterios y directrices eficaces para aumentar las posibilidades de reconciliación. Este artículo identifica los elementos que han promovido la reconciliación en el campo de la justicia restaurativa, y sugiere que éstos también pueden ser aplicados de forma efectiva a gran escala en los esfuerzos de reconciliación pública.

Abstract

Reconciliation is a complex process requiring the confluence of a number of critical factors. The fact that reconciliation is by definition a personal experience makes large-scale public reconciliation projects highly challenging. Since the early 1970s in the field of restorative justice, the possibility of reconciliation between victim and offender, even in the case of the most serious crimes, has been studied, and some effective criteria and guidelines have been developed to increase the potential for reconciliation. Marc Forget's article "Reconciliation: Some Lessons Learned in the Restorative Justice Context" identifies the elements which have promoted reconciliation in restorative justice, and suggests that these may also be effectively applied to large-scale public reconciliation efforts.



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Reconciliation has been talked about, discussed and studied extensively in recent decades. Although we have learned much about reconciliation in a wide range of settings, from large-scale projects such as South Africa's Truth and Reconciliation Commission, to small, community-based initiatives such as Healing Circles in small, isolated Aboriginal settlements in Canada, a great deal remains to be understood.

While large-scale, whole-society reconciliation projects usually follow the end of a civil war, or the fall of a despotic regime or dictatorship, and are usually part of a peace building programme, the process of reconciliation remains a highly personal experience, and for a large-scale project to be effective, it must provide the opportunity for a personal experience of reconciliation to large numbers of people.

However, precisely because reconciliation is such a personal experience, it means different things to different people, and what is required to experience reconciliation varies widely from one individual to another. Nevertheless, reconciliation efforts, whether they involved ex-combatants in post-war Nicaragua, "blacks," "whites," and "coloureds" in post-Apartheid South Africa, or victims and perpetrators in criminal cases, have made it clear that while there is a wide range of conditions, feelings and needs in each specific reconciliation context, there are also some key elements that are common to most situations.

Reconciliation at a personal level is an ideal which, although not always fully achieved, has been

an important goal of the various alternative criminal justice processes which have come to be known as *restorative justice*.

What is known today as restorative justice began in the small town of Elmira, Canada, one night in 1974 when two young men got drunk and vandalized twenty-two different properties. They were caught and convicted, and probation officer Mark Yantzi was responsible for preparing a pre-sentence report. In searching for an innovative and meaningful sentencing suggestion, Yantzi expressed his belief that the best thing for the community would be to have the offenders meet their victims. Yantzi was encouraged by his colleague Dave Worth to present his idea to the judge. Judge McConnell eventually ordered the two young men to go along with Yantzi and Worth to meet their victims and negotiate compensation, and to come back with a report on the damage the victims suffered.¹ This was the first experiment with what came to be known as victim-offender reconciliation programs (VORP).

Many variants of VORP have developed, as well as parallel approaches such as Family Group Conferencing, and Community Circles, which are all founded on the same general principles, and all offer opportunities for reconciliation.

The importance of reconciliation in the healing process a victim goes through in the aftermath of a traumatic event cannot be overstated. After a brief correspondence with the man who had attacked and raped her eighteen years earlier, Diane M. was able to end her nightmare. She says it is as if a ceiling had been lifted; "the fear and anger are gone... There's

1 Cayley, David. (1998). *The Expanding Prison*. Toronto: House of Anansi Press Limited, p. 215-217; Sharpe, Susan. (1998). *Restorative Justice: A Vision for Healing and Change*. Edmonton: Edmonton Victim Offender Mediation Society, p. 24-25; The Church Council on Justice and Corrections. (1996). *Satisfying Justice*. Ottawa: The Church Council on Justice and Corrections, p. 39.

2 *Restorative Justice: Making Things Right*. (Videotape). Walker, Cheryl Zehr-(producer). (1994). Akron, PA: Mennonite Central Committee/MCC Communications.

not a bit of hate left.”² For offenders, facing the human suffering they have caused may be the most powerful way to experience accountability. Stan Rosenthal is serving a long sentence in prison. After years of incarceration he met his victim’s family in a mediated encounter. All along he had felt a strong desire to apologize, but the criminal justice system allowed him no contact with his victim’s family. For Stan, the encounter was the most valuable experience he’s had in prison. He says “no program had a greater impact on me.”³ These are only two of many compelling examples of the tremendous benefits that even simple attempts at reconciliation can offer victims, offenders, and the community at large.

Not only can reconciliation between individuals have a positive effect on whole communities, but the principles utilized in reconciliation between victim and offender provide a framework which can be effectively used as part of reconciliation efforts in the wake of wider social conflicts such as civil war and racial segregation.⁴

The modern approaches collectively known as restorative justice, offer a philosophy, theories, and practices that provide the most effective framework to explore the potential for reconciliation between victim and offender. The philosophical foundations of restorative justice can be summed up as follows:

Problem-solving for the future is seen as more important than establishing blame for past behavior. Instead of ignoring victims and placing offenders in a passive role, restorative justice principles place both the victim and the offender in active and inter-personal problem-solving roles...⁵

For restorative justice to offer true opportunities for reconciliation, it is absolutely essential that the process be fully participatory and democratic. The participants (those who have suffered harm as well as those responsible for that harm) must be, and feel, fully empowered to make their own decisions, to

make choices not only about the outcome, but also about the process itself. Any hint of coercion or outside control will result in failure to achieve reconciliation. In fact, the existence of any predetermined or specific goals is likely to jeopardize the whole process. The participants in a reconciliation process must be in control of the process to the extent that they must have the capacity and feel free to alter, suspend or even terminate the process at any time. In the context of a society-wide reconciliation project it is of utmost importance to ensure that there can be no political interference in the process.

Regardless of the particular model used, or the context in which it is used, the restorative approach endeavors to achieve the following five goals:⁶

1. Invite full participation and consensus.
2. Heal what has been broken.
3. Seek full and direct accountability.
4. Reunite what has been divided (reconciliation).
5. Strengthen the community to prevent further harm.

In restorative justice it is understood that both victim and offender need healing, and this healing requires opportunities for confession, repentance, forgiveness and reconciliation.⁷ What the parties require for their healing is different in every case, but it is crucial for opportunities to be apprehended by the victim and the offender. Forgiveness, confession, repentance, and reconciliation cannot be willed or forced by the victim or the offender; neither should they be suggested by a mediator, convener, or any participant other than the victim or the offender. In fact, through his research at the University of Minnesota’s Center for Restorative Justice and Mediation, Mark Umbreit has found that the more the concepts of forgiveness and reconciliation are mentioned to the parties prior to mediation, the less likely it is that the victims are going to participate in the process:⁸

3 Ibid

4 From the author’s personal experience of reconciliation projects conducted with ex-Sandinistas and ex-Contras in Nicaragua, and with “blacks, whites and coloureds” in post-Apartheid South Africa.

5 Umbreit, Mark, cited in The Church Council on Justice and Corrections. (1996). *Satisfying Justice*. Ottawa: The Church Council on Justice and Corrections.

6 Sharpe, Susan. (1998). *Restorative Justice: A Vision for Healing and Change*. Edmonton: Edmonton Victim Offender Mediation Society, p. 7.

7 Zehr, Howard. (1990). *Changing Lenses, A New Focus for Crime and Justice*. Scottsdale, PA, p. 51.

8 Umbreit, Mark S. (1995). *A Journey of the Heart*. Interaction Winter 1995, p. 10.

While forgiveness and reconciliation represent a powerful outcome of the process of mediator assisted dialogue and mutual aid between crime victims and offenders, they must emerge in a natural and genuine manner that has meaning to the involved parties.⁹

If reconciliation cannot be willed or forced, and it must emerge in a natural and genuine manner, then what aspects of the restorative justice process should be focused on in order to encourage the emergence of opportunities for reconciliation? It is in the study of mediation that some key answers are found to these dilemmas of reconciliation. In the introduction to their groundbreaking work *The Promise of Mediation*, Bush and Folger write:

...the mediation process contains within it a unique potential for transforming people—engendering moral growth—by helping them wrestle with difficult circumstances and bridge human differences, in the very midst of conflict. This transformative potential stems from mediation’s capacity to generate two important effects, empowerment and recognition. In simplest terms, *empowerment* means the restoration to individuals of a sense of their own value and strength and their own capacity to handle life’s problems. Recognition means the evocation in individuals of acknowledgment and empathy for the situation and problems of others. When both of these processes are held central in the practice of mediation, parties are helped to use conflicts as opportunities for moral growth, and the transformative potential of mediation is realized.¹⁰

Reconciliation can be viewed as one pole on a continuum that has hostility as its other pole. The

traumatic event (or series of events) itself puts the parties near the hostility pole, while empowerment moves them closer to reconciliation. Recognition can take them even closer to reconciliation, but it is only when the needs of both the victim and the offender are fully addressed that reconciliation becomes a possibility.¹¹ In “Beyond Retribution”, New Testament scholar Christopher D. Marshall proposes that reconciliation is the fulfillment of forgiveness:

Forgiveness is what happens when the victim of some hurtful action freely chooses to release the perpetrator of that action from the bondage of guilt, gives up his or her own feelings of ill will, and surrenders any attempt to hurt or damage the perpetrator in return, thus clearing the way for reconciliation and restoration of relationship.¹²

In her book *Fire in the Soul: A New Psychology of Spiritual Optimism*, psychologist and Harvard Medical School professor Joan Borysenko writes:

Forgiveness is not the misguided act of condoning irresponsible, hurtful behavior. Nor is it a superficial turning of the other cheek that leaves us feeling victimized and martyred. Rather, it is the finishing of old business that allows us to experience the present, free of contamination from the past.¹³

Reconciliation is often described as “an opening of the heart”, and rather than a one time all or nothing event, it is viewed as “a journey involving numerous elements and steps”.¹⁴ The process of reconciliation is often described as a spiritual awakening by those who have experienced it. It is certainly a profound transformation, whether or not it is understood as spiritual.

9 Ibid

10 Bush, Robert A. Baruch and Joseph P. Folger. (1994). *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. San Francisco: Jossey-Bass Inc., p. 2.

11 Classen, Ron and Howard Zehr. (1989). *VORP Organizing: A Foundation in the Church*. Elkhart, IN: Mennonite Central Committee U.S. Office of Criminal Justice, p. 5.

12 Marshall, Christopher D. (2001). *Beyond Retribution, A New Testament Vision for Justice, Crime and Punishment*. Auckland, New Zealand: Lime Grove House Publishing, p. 264.

13 Borysenko, Joan (1994). *Fire in the Soul: A New Psychology of Spiritual Optimism*. Warner Books.

14 Marshall, Christopher D. (2001).

Reconciliation is a difficult but tremendously powerful process that has the ability to transform individuals, communities and whole societies. Because retribution is the predetermined, “natural” response to an offense, reconciliation is the creative alternative. It is the highest form of creativity, and as such it offers possibilities that are often beyond our highest expectations. To some it even “possesses a capacity to reveal the original face of God.”¹⁵

In reconciliation efforts between victim and offender in the aftermath of a criminal offence, there are a few crucial criteria that must be met if there is to be any possibility of reconciliation. It has

become clear that the same criteria must also be met in attempts at reconciliation on a larger scale, in post-conflict contexts, if these projects are to be successful. These criteria are:

1. *The program must pursue the goal of reconciliation.* It must promote the reconciliation of all parties. Its social controls must interfere as little as possible with the reconciliation of the victim and the offender.¹⁶

2. *The program must meet the needs of victims, offenders, and the community.* It must help make right the harm caused to victims, and it must provide standing and dignity to victims. It must enable and encourage offenders to accept responsibility for their actions, and it must avoid dehumanizing offenders. It must make right the harm caused to the community, and it must address the community’s need for safety.¹⁷

3. *The process must be democratic.* The people most affected by the events (victims and perpetrators) must be the ones making the most important decisions. They must participate fully.

4. *The participants must be empowered.* The people affected must be given full control over the process, including the decision to withdraw from, or even terminate the process at any time.

5. *The process must be free of pressure or coercion.* There must not be any pressure to achieve agreement, forgiveness or reconciliation.

Ensuring that these criteria are met will by no means guarantee that reconciliation will be achieved. However, experience gained in the field of restorative justice, and applied in post-conflict situations has taught us that these criteria are crucial in achieving any measure of success in reconciliation projects. ■

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16 Van Ness, Daniel and Karen Heetderks Strong. (1997). *Restoring Justice*. Cincinnati, OH, p. 163-164, and Zehr, Howard (1990). *Changing Lenses*, p. 200.

17 Ibid.