

In Elder Abuse Cases, Restorative Justice Holds the Promise of Honoring Relationships

By Lisa Nerenberg

A widely acknowledged conundrum in elder abuse prevention is that many victims want the abuse to stop – but are unwilling to take steps professionals deem necessary to make that happen. Frustrated protective service workers have labeled these victims “reluctant” or “resistant” and addressed the problem as a clinical matter. They have hosted forums and written articles on how to persuade victims to accept help or determine when coercive or involuntary measures are merited. They have debated the legal and ethical implications of acting – or not acting. Far less attention, unfortunately, has been paid to understanding what victims *do* want, which, for many, is to heal fractured relationships, recover losses, and restore trust. f

A two-day symposium titled “Interdisciplinary Approaches to Elder Justice: Unlocking the Potential for Restorative Justice” was a notable first step in filling this void. Convened by the Syracuse University College of Law in October 2020, the event brought together thought leaders, researchers, and practitioners from many countries and disciplines to explore restorative approaches to preventing elder abuse.¹ The event was especially timely, coming during the COVID pandemic, which has placed enormous strains on families, pitted people against each other for resources, and fueled distrust in public institutions, and the racial reckoning that has underscored glaring disparities in health care access and the criminal and civil justice systems. With feelings raw and distrust high, the need for restorative approaches that address the human emotions and needs associated with elder abuse are particularly great. So, too, is the need to appreciate the experiences of all parties affected by abuse and the diversity and interdependencies that shape their relationships.

What is restorative justice?

Restorative justice has been called a practice, a social movement, a framework of principles and values, and an ethos. Its aim is to right injustices, achieve reconciliation, repair relationships, and prevent further harm. Although it primarily seeks to help those who have been harmed, it humanizes those who have done the harm and challenges narratives about harm’s causes. Truth-telling and respect are key. For some, it has spiritual dimensions linked to ancestral customs and values.

Specific practices associated with restorative justice vary but have some common features. They all generally assume that when victims, their families, offenders, social networks, and members of the wider community are provided with opportunities to engage in dialogue and

given adequate information, these individuals can right wrongs and repair harm. The people involved know each other's strengths, weaknesses, resources, and they know who can be counted on – knowledge that is crucial to ensuring accountability, safety, and support. Restorative practice also requires reducing the boundaries between professionals and non-professionals. Common practices include:

- **Restorative or peacemaking circles** have been described as spaces for truth-telling. In this case, peace refers not just to the absence of violence but to equity, inclusion, and the balancing of power, which is highlighted by the absence of traditional symbols of authority (such as desks or podiums) and the use of “talking objects,” which are passed from person to person to ensure that all participants have the opportunity to speak uninterrupted. Circles may begin with guided meditations, which some describe as periods for transitioning from mind to heart and others view as an opportunity for circle members to reflect on their power, acknowledge what they and others bring to the conversation, and express appreciation for the work and investment that has gone into advance preparations. Some see circles as opportunities to teach participants about social justice. Circles can offer the experience of ceremony through prayer, benedictions, song, or invoking the names of ancestors.
- **Family conferencing**, like circles, brings together the parties involved in abuse or harm. They provide opportunities for those directly and indirectly affected to express support, agree on offenders' responsibilities, and negotiate outcomes. Conferences might include victims' and offenders' families, friends, supporters, health and social service providers, spiritual advisors, and key community members. Following facilitated discussions, families meet alone to decide on courses of action and are subsequently offered help to carry out their plans.
- **Victim-offender reconciliation or mediation** is a process in which victims meet offenders in safe, structured settings to engage in discussions with the help of trained mediators. In this process, victims might tell offenders about the crime's physical, emotional, and financial impact on them and ask offenders questions, especially the one that haunts many victims: “Why me?” Victims are also directly involved in developing restitution plans.

The contours of restorative justice are fluid, and some practitioners are hesitant to label different practices. Jacqueline Gray, director of the National Indigenous Elder Justice Initiative (NIEJI), explains that restorative justice concepts are central to the worldview of many indigenous tribes, with many using elements of various approaches. Although restorative justice requires that victims' participation be voluntary, some programs use inducements to engage those responsible for harm, and interventions might be carried out as alternatives to court involvement or under court supervision. For example, restorative interventions may be offered as a pretrial diversion, an alternative to prosecution that “diverts” offenders from traditional

criminal justice processes into programs that provide supervision and/or services. Interventions might be offered as a condition of probation or even while offenders are incarcerated, in which case the focus is on offenders' reentry into the community. Some programs go beyond addressing harm by and against individuals to hold institutions such as schools, prisons, and social services accountable for injustices.

Restorative justice and elder abuse

The application of restorative justice to elder abuse prevention has not garnered significant attention in the United States, where the prevailing response to abuse has been state-run mandatory reporting systems operated in concert with adult protective service (APS) programs.² APS programs, which were patterned after systems designed for child abuse, enlist third parties to report suspected abuse to public entities for investigation and follow-up. But unlike children, adults can stop investigations and refuse services, which many do, for reasons that can include shame, fear of retaliation, or concern about disruption of family life and caregiving systems. Many victims want to have the abuse stop, but they also want to see the abusive family members helped.

Criminal and civil interventions in cases of suspected elder abuse are also widely accepted in the United States, but as with the reporting/APS response, many older adults reject taking legal action against family members, fearing that it will lead to further polarization, enmity, and isolation. Some also lack confidence in formal institutions or see them as unjust or ineffective.

Although many who work in this area acknowledge the tensions and distress that these traditional approaches can cause, they have tended to rationalize or excuse them – an allegiance that is particularly puzzling considering the lack of evidence demonstrating the impact of such systems. As Marie-Therese Connolly, the founding coordinator of the Department of Justice's (DOJ) Elder Justice Initiative and former head of the DOJ's civil prosecution unit, has noted, studies on APS and criminal justice interventions have failed to demonstrate, measure, or even define success in terms of their lasting impact on victims' safety or quality of life. The field has also failed to acknowledge the distrust that many older adults, particularly Black, indigenous, and people of color (BIPOC), have toward the criminal and civil justice systems and other formal institutions. Many states have simply continued to name new groups as mandated reporters, extended the types of conduct covered under abuse statutes, and enhanced penalties.

Before last October's symposium, to explore how receptive professionals are to restorative justice, M.T. Brown and M.H. McNeal gave representatives from APS, law enforcement, and legal services a basic introduction to restorative justice practices and asked for reactions. The responses were mixed. Some expressed optimism that restorative justice offers a

viable alternative, conceding that traditional approaches often end up separating victims from their families and leaving them socially isolated. But even receptive respondents found the prospect of changing course to adopt restorative approaches overwhelming. Many were doubtful that perpetrators could be induced to take responsibility for their actions and feared they would agree to interventions only to avoid consequences and would not honor any commitments.

Research on types of financial abusers seems to speak to this concern. Shelly Jackson, a consultant with the Elder Justice Initiative at the US Department of Justice, has identified four types of abusers.³ On one end of the spectrum are predatory individuals who deliberately seek out victims with intent to do harm; on the other are offenders who believe they are acting with victims' consent or do not understand that their actions constitute abuse or neglect. Opportunists, those who find themselves in circumstances in which they can abuse and are unlikely to be caught, come in two varieties: some readily seize the opportunity while others feel compelled to do so, often in reaction to financial pressures or addiction. Clearly, research is needed to predict the impact of perpetrators' attitudes or motives on outcomes.

Some question whether the social leveraging that restorative justice requires can be achieved in mainstream America. Gray, the director of the National Indigenous Elder Justice Initiative, describes how indigenous tribes hold offenders accountable by appealing to their desire to be welcomed and accepted by their communities. Offenders might be required to meet with tribal leaders to learn about community and cultural expectations and offered opportunities to meet those expectations. Communities play a role in ensuring that commitments are met by providing support and supervision: those who disregard expectations and continue to willfully inflict harm might be relieved of responsibilities or banished. Whether restorative approaches can work in the absence of these cultural and ancestral traditions is unclear.

The symposium discussion

The October symposium showcased some of the few programs that have applied restorative justice approaches to elder abuse, many of which are outside the United States. One of the oldest is the Waterloo Region Senior Support Team (formerly the Community Care Access Centre's Restorative Justice Approach to Elder Abuse) in Ontario, which was launched in 2000 as a pilot project to explore the use of circles. From its inception, professionals from the field of aging worked closely with law enforcement to conduct circles as a diversion.⁴ The program expanded over time to offer a broader range of services, including community education, training, investigations, and conflict resolution. Today a police investigator partners with a nurse consultant from a local health network to respond to calls involving physical, emotional, or financial abuse and neglect of older adults by people in positions of trust. They also provide education and help the community develop new resources.

Korero Tahi, a pilot project developed at the Victoria University of Wellington in New Zealand, is exploring the impact of circles on older victims' sense of wellbeing, safety, and connectedness to others. Funded by the Ministry of Social Development, the project is carried out in collaboration with the New Zealand Police, a health department, an advocacy organization, an elder abuse response program, and providers of legal and victim services.

Another university-driven project is Dewis Choice, which was developed by the Department of Law and Criminology at Aberystwyth University in Wales in response to shortcomings in the criminal justice response observed in earlier projects, in which older victims had, for example, described having things “done *to* them as opposed to *for* them.” Criminal justice responses also focused on recent incidents, ignoring past histories or patterns of abuse that could lead to more holistic solutions. In the current program, support workers help victims who are referred by police or social service agencies explore their options and address immediate safety concerns. Practitioners then assist them access help, which may include civil remedies, formal or informal supports, or even programs that provide socialization or foster artistic expression. Some victims, whose goals aren't met, receive help dealing with disappointment. Nova Scotia's GovLab takes a community approach to restorative justice with a focus on prevention. The province's Department of Seniors partners with a provider of restorative justice services and a senior safety and security program to identify older adults who are at risk for abuse or other forms of harm. According to Jocelyn Yerxa, who co-leads the lab, “When it looks like things are going wrong in people's lives, we create a ‘circle of care’ around them.” The program employs “senior safety coordinators” to assist high-risk clients.

In the United States, the Center for Court Innovation, a nonprofit organization devoted to testing innovations in justice reform, has several projects in progress. Center personnel are collaborating with Syracuse University and Vera House, a provider of services for survivors of domestic violence and sexual assault, to bring peacemaking circles, advocacy, and education about elder abuse and restorative justice to three housing facilities in low-income neighborhoods in New York. The center also operates the Red Hook Peacemaking Program, which assigns families to peacekeepers as an alternative to legal action in cases ranging from domestic violence to disputes with small businesses. The peacekeepers come from the communities they serve, ensuring that they understand the social and cultural expectations and norms in their communities. Emerging projects in the United States also include the Community and Adult Protective Services Trial of Novel Enhanced Services (CAPSTONE), a collaboration between the Elder Abuse Institute of Maine and the state's adult protective services program. The institute, a nonprofit that began as an elder abuse multidisciplinary team, provides advocates who work in partnership with APS workers. Unrestricted by APS mandates, the advocates offer a broad range of services, including transitional housing, counseling, and support services, to both clients and their families.

While groundbreaking, the October symposium did not offer a clear path forward, and no one knows yet whether the programs that were described can be replicated or brought to scale in other countries and areas. This lack of prototypes does not preclude progress; rather, it provides a clean slate for introducing restorative concepts to the field, fostering further deliberation, establishing expectations, considering when the approach is most likely to be effective, and anticipating challenges.

Costs are a big concern. Programs highlighted during the symposium were, for the most part, well-resourced through universities, foundations, and publicly funded research and demonstration grants – sources that might be out of reach for communities that stand to benefit most. In addition to the costs of administering and evaluating the programs themselves, services that complement restorative justice, including counseling, substance abuse treatment, and anger management also must be considered. Analyses are also needed to compare the costs of new programs to those of traditional criminal justice approaches or of failing to prevent injuries and losses.

Restorative justice’s potential for addressing structural and institutional injustices and racism must also be highlighted. In describing her work with New York’s Red Hook Peacemaking Program, Coleta Walker, associate director of the program, stressed the importance of acknowledging that the distrust of law enforcement and social service agencies by many elders of color is deeply rooted in widespread and pervasive systemic racism that has significantly affected their lives. *Colorizing Restorative Justice*, a collection of writings by practitioners of color, goes further, making the case that restorative justice lacks legitimacy if it fails to acknowledge practices, laws, beliefs, and systems that privilege some groups and demean and subjugate others physically, mentally, materially, or otherwise. The book focuses largely on schools, where restorative practices are used to address student misconduct and truancy. Within this setting, the authors argue, practitioners have a duty to acknowledge the racial disproportionality that exists in school discipline and its role in fueling what Anita Wadhwa, founder of the Restorative Justice Collaborative of Houston has called the “school-to-prison pipeline.”

Practitioners, researchers, and policymakers in the field of elder abuse prevention will draw their own parallels and conclusions in applying these lessons. Specific questions for these professionals might include:

- Where can restorative approaches be applied? Potential settings include housing facilities, multidisciplinary teams, APS programs, reentry programs, legal aid programs, specialty courts, and long-term care.

- Can restorative justice programs coexist with the elder abuse response system, which mandates responses, offers little flexibility, and places workers in positions of authority?
- Do certain forms of abuse lend themselves more to restorative justice than others? Are there situations in which it cannot be applied safely or effectively?
- What can be done to address institutional racism and discriminatory practices in the elder justice network?
- How can promising restorative justice programs be brought to scale to benefit communities in greatest need?

The COVID-19 pandemic and the disparities it has revealed have strained the fabric of society in ways that will take years to fully appreciate, and a full recovery will require monumental efforts to address divisions within and between communities and restore trust in the institutions that serve them. The principles of restorative justice might well serve as guideposts.

Elder justice advocates, mediators, attorneys, and social service providers can play critical roles in the recovery by adopting restorative principles and practices at the direct service and systemic levels – but only if they understand how important relationships are in their clients’ lives. Any just recovery will require a cultural shift that highlights the value of relationships among individuals, communities, and institutions that are built on truth, dignity, trust, and respect.

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¹ An edited recording of the October 15-16, 2020, symposium is available at <http://law.syr.edu/interdisciplinary-approaches-to-elder-justice-event>.

² For more information, see LISA NERENBERG, *ELDER ABUSE PREVENTION: EMERGING TRENDS AND PROMISING STRATEGIES* (2008).

³ Shelly L. Jackson, *All Elder Abuse Perpetrators Are Not Alike: The Heterogeneity of Elder Abuse Perpetrators and Implications for Intervention*, INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY, (2014).

⁴ Arlene Groh, *A Community Responds to Elder Abuse*, in *THE PROMISE OF RESTORATIVE JUSTICE: NEW APPROACHES FOR CRIMINAL JUSTICE AND BEYOND*.