

# #METOO AND RESTORATIVE JUSTICE

By Lesley Wexler and Jennifer K. Robbennolt

**T**he #MeToo movement has hastened a modern-day reckoning with sexual assault and sex discrimination. Claims of sexual misconduct have surfaced in all walks of life and disrupted business as usual in settings as disparate as Hollywood boardrooms and Supreme Court confirmation hearing chambers. Amid the discussion of how to address #MeToo claims, there have been calls for the use of “restorative justice” to address the needs of both victims and harassers. But these calls have not been explicit about what sort of restoration is contemplated.

Restorative justice processes share a number of core commitments, including participation of offenders and victims in the process; narration of the wrongful behavior and its effects; acknowledgment of the offense and acceptance of responsibility for it by the offender; joint efforts to find appropriate ways to repair the harm done; and reintegration of the offender into the broader community. How might these components of restorative justice play out in the context of #MeToo?

**Acknowledgment.** Those who are injured by sexual harassment

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and other forms of sexual violence often want acknowledgment of their experiences, the specifics of the wrongful behavior, and how they were affected. Acknowledgment affirms the victim’s experience, can convey that the victim was not overreacting or to blame, and signals community support for the victim.

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Failure to acknowledge the wrongful behavior is not only insulting but can result in further offense. In similar ways, apologies that are conditional, that cast doubt on the consequences, or that refer only generally to “actions” or “behavior” do not acknowledge the specific harmful behavior in question or demonstrate an understanding of its wrongfulness or effects.

**Responsibility taking.** Many victims want offenders to go beyond acknowledgment, to accept responsibility for having caused harm. Responsibility taking

can be difficult even under the best of circumstances, with concerns for self-image, reputation, future employment, vulnerability, and potential legal consequences looming large.

But responsibility taking is a central feature of restorative justice. Indeed, most restorative justice programs are specifically designed to be available only in cases in which the offender has acknowledged having engaged in the wrongful acts at issue. Responsibility taking is also the central feature of apologies.

As we have seen many times, some offenders accused of sexual misconduct are very quick to deny any wrongdoing—and many are even more reluctant to acknowledge exactly what they did. If someone accused of sexual assault or sexual harassment cannot or will not acknowledge and take responsibility for his or her active, voluntary role in perpetrating abuse, restorative justice simply will not follow.

**Harm repair.** Restorative justice incorporates the notion that the offender should repair the harm caused by the wrongful behavior and contemplates dialogue and joint decision making about how best to accomplish that repair. The notion of joint decision making is complicated in the context of sexual assault and harassment. While some victims may be comfortable with direct communication with their assaulter, others will not. Thus, when victims and perpetrators are willing to discuss repair,

representatives and neutrals may be particularly valuable in facilitating mutual understanding.

One aspect of this repair is often financial compensation. Communities should be cognizant of the social pressures on victims. Demanding that their interests extend only to protecting each other and not to seeking financial redress for their harm is part of the stereotyping and denial of their interests that fosters harassment and assault in the first place.

Other forms of repair are also appropriate. Apologies, for instance, can serve to repair some aspects of the harm. And community service, particularly if it relates to the underlying harm, can be a valuable effort toward repair.

**Non-repetition.** Victims are often motivated to take action against offenders to seek restorative or other forms of “justice” in the hope of preventing others from experiencing similar harm. Important, too, are efforts by those who *enabled* the wrongful conduct to take responsibility for their part in supporting or failing to prevent or stop the wrongful behavior and to forge systemic change.

Many of the responses to #MeToo allegations have failed to outline how the offender will change his or her behavior in the future. Even those who acknowledge their past misdeeds seem to have little concrete to offer on this front. Moreover, vows to stop engaging in wrongful behavior must be more than promises. One risk is that offenders will be, in the words of Donna Coker, a professor at the University of Miami’s School of Law who specializes in domestic violence policy and law, “quick to apologize, slow to change.” While an apology may

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happen at a particular moment in time, the larger project of amends making in which it is embedded is often an ongoing endeavor. Such an endeavor must include both non-repetition of the offender’s own behavior and evidence of how the offender will make helpful contributions to changing the structures and culture that enabled the bad behavior.

**Redemption and reintegration.** Another tenet of restorative justice is the reintegration of the offender back into the relevant community. The restorative justice notion of “earned redemption” anticipates both that offenders will be held accountable for their behavior and that they will be enabled to “earn their way back into the trust of the community.” Note, however, that reintegration has been somewhat controversial in the context of sexual violence and retaliation. Concerns for the reintegration of the victim who might have voluntarily or involuntarily excluded herself from the workplace or social community should be seen as particularly pressing. While a car thief who is truly remorseful and truly understands his crime might be able to

return to a job or be restored to a prior position, would we or should we say the same of those who have raped or assaulted, given the high personal toll they have exacted from their victims?

What is required for those called out by #MeToo to rebuild their moral and social identities may depend, in part, on the nature of their offense: its severity, intentionality, and pervasiveness. Attention to these nuances is important to avoid moral flattening, the temptation to conflate crimes and behaviors that are meaningfully different.

Finally, it is important to consider the role of forgiveness in reintegration. Neither reintegration nor forgiveness must mean reinstatement to a former role or position or that a victim must reconcile with an offender. Forgiveness does not imply forgetting. Indeed, remembering is essential so that offenders can learn and others can protect themselves as necessary. Finally, pressuring a victim to forgive can inflict additional harm, which for people who have been assaulted is particularly troublesome as it magnifies their original loss of agency. ■