Exploring Restorative Justice as a Remedy for Elder Abuse and Exploitation

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Presentation Roadmap

• What is restorative justice?
• Potential use in addressing elder abuse
• Interviews with service providers
• Themes and implications for practice
• Elder Abuse Institute of Maine
• Restorative interventions in practice
• Questions for small group discussion

What is restorative justice?

Mary Helen McNeal

“An approach to achieving justice that involves, to the extent possible, those who have a stake in a specific offense or harm to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible.”

Howard Zehr
What is restorative justice? cont’d.

Based on Three Principles

• A wrongdoing violates people and interpersonal relationships

• Violations create obligations

• Central obligation is to repair the harm

What is restorative justice? cont’d.

“An invitation for dialogue and exploration”

RJ involves:

Person who was harmed

Person who committed the harm

The community

Selected Models of Restorative Justice

• Circles (also called peacemaking)
• Family group conferences (FGC)
• Victim Offender Mediation
• Mediation?

May exist on a “continuum of restorativeness”
Why use Restorative Models to Address Elder Abuse?

Limitations of existing models, civil and criminal

Benefits of RJ to address elder abuse:
- Repair relationships
- Empower older person
- Offer Flexibility
- Responsive to cultural differences

Recommendations: When useful?

May depend on person who is committing the harm
Shelly Jackson- categories of people committing harm against seniors:
- Least culpable - well-intentioned - ***
- Reluctantly exploits opportunities - ***
- Consciously commits harm
- Deliberate and premeditated harm

Recommendations: For what types of harm?

Yes:
- Financial exploitation
- Neglect
- Psych and Emotional Abuse - it depends

No:
- Physical Abuse
- Sexual Abuse
**Recommendations: What Models of RJ?**

- Circles
- Family group conference - pros and cons
- Mediation - pros and cons

**Other recommendations:**

- Careful screening process
- Well trained restorative practitioners
- Practitioners trained in working with older adults
- Practitioners trained to assess capacity
- Adequate resources

**Challenges of Using RJ to Address Elder Abuse**

- Determining appropriate situations to use
- Capacity issues and variability over time
- Getting person who harmed to participate
- Measuring success
Interviews with Service Providers

Maria Brown

Purposive sampling:
Service providers experienced in working with older adults who have been abused or exploited
Identified by members of restorative practice collaborative

Sample composition (N=13):
Practice settings - low income housing, medical, financial, adult protective, violence prevention, law enforcement
Disciplines - social workers, lawyers, case workers, risk managers, police officers

In-depth interviews, digitally recorded
Thematic analysis of verbatim transcripts

Selected Themes from Provider Interviews

Challenges with Current Approaches

- Criteria for APS to open a case
  "Adult Protective has been involved in it several times. They opened a case and then closed it. Then opened it, and closed it. This has gone on for years..." (M.B.)
  "Another frustrating issue with the process that’s current now is sometimes the cases are not opened... Then what do you do? Where do you send the person when you know what’s going on? Especially when the individual client is not cooperative..." (M.P.)

- Reporting financial crimes:
  FinCEN database has no way to tag grand larceny as a case of elder abuse and exploitation

- Communication between organizations - no feedback loop
Challenges, continued

- Stigma inhibits reporting or admitting abuse
- Isolation of older adults being harmed
  
  "... it’s frustrating that the family doesn’t see that they need to be a little more invested in this. They are angry that their mother is losing her savings, but they’re not willing to come and get her in a more secure spot with a physical visit..." (M.K.)
- Cognitive impairment
  
  "... are the person’s cognitive issues such that they can’t give a consistent story..." (J.H.)

Client’s Right to Self-Determination

Refusing to Accept Intervention

“... then back down the, back to self-determination. Just those victims that are unwilling or unable to appreciate that they've been victim" (O.M.)

"I would think [clients decline services] out of fear. Fear of being elderly and not having any other caretaker in their life" (M.B.)

"I went out and met with him, he drained his bank account, I went out and I met with him, he said I'm okay with this, this is what I wanted -- yeah, this could leave him in a bad position, but he's saying that this is what he wanted. So, you know, it's about people's right to also self-determine" (J.H.)

Defining Success in the Context of Current Practice

"... for me number one it's the safety of the resident. First and foremost. So, making sure that that person is, that it's stopped and that it doesn't continue" (L.J.)

"A safe environment, services in place, a good support system. I would say keeping people in their home with community-based services is successful and they’re accepting of them. And it needs to be services that stem from meals to hands-on care to transportation to different thing, like, medical alert, preventive things" (C.A.)

"... we want the outcome to be a certain way, you know, if somebody's in an abusive relationship, we want the person to leave their abuser. But I think sometimes just leaving that person with something, some information, you know, helping them gain some insight in to the issue that maybe they didn't have prior to that. I think I look at that as being a success" (J.H.)
Perceived Usefulness of Restorative Practice

“... that’s definitely something that would be useful, you know. Restoring family dynamics, you know, trying to do that. We see so many cases where families are just, you know, ripped apart by this stuff, you know. It’s, and that’s, I find that to be so, so sad.” (L.J.)

“Yes, in other words if something like this is done prior to involving the criminal justice system, this gives, think about it, the victim and the perpetrator the opportunity to resolve, restitution, rebuild that relationship without ... because see, here we go with that stigma again getting the criminal justice system involved. Don’t want them in my business. But this might have to be a mandate of some kind, you know?” (M.P.)

“I don’t want to say no, I don’t want to give a flat out no. But um. I don’t really think it would. I don’t think it would work. To be honest... you know, I mean how does that work, the money is gone, that was their life savings now they have nothing, how would restorative justice make that person whole again?” (J.H.)

Perceived Advantages of Restorative Practice

“... there’s a lot of advantages, ... if this is a formalized process that, and you had formal stake, formal platform of stakeholders and it involved the legal community, the justice community, you know, victims’ families, any, anybody you had that education would most certainly be a part of it” (V.S.)

“Well, I think it would bring closure. If you could get people on the same page so that the caregiver felt that they were providing the services that the family needed and they were affordable and the patient felt supported, I think you would have a good closure as things fade” (M.K.)

Implementation Concerns / Disadvantages of Restorative Practice

“When you have a cognitive impairment, I don’t know how you -- and someone has wronged you, I don’t know that people with that impairment, how easily they would be able to express -- I mean, certainly they can” (M.K.)

“I think just my under, just the knowledge is that, uh, it just takes one to be, not want to voluntarily take part in it, to take the whole process and, uh, make it not work” (O.M.)
Implementation Concerns / Disadvantages continued

“Um, I guess I'm just wondering what the... reinforcement is for people who are abusing their parents or anybody that's abusing somebody, you know, to stick to the plan” (G.E.)

“They've, they've understood and they've played a certain game, so they're only gonna be playing a game for restorative justice. They're gonna look at it, it's just another step in another game to get what they want” (V.S.)

“How would you track long term results? You could go through all of this and it all go good, and you've reestablished the healthy relationship. ... This could last three months and then they're back again because there were no criminal consequences. You know what I'm saying?” (M.P.)

Implications

1. Provider education
2. Tailor models to reflect the older adult’s objectives
3. Use culturally appropriate processes and solutions
4. Utilize well-trained restorative justice facilitators
5. Incorporate supported decision making for older adults with diminishing capacity
6. Attain adequate resources to provide additional services to both parties as part of the resolution

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Agency

Services/Programs
- Transitional Housing
  - Martha's Cottage
- Community Based Services
- Outreach/Education
- Research
  - APS Partnership - Elder Service Connections
  - Mandatory Reporting - Robert Wood Johnson Fellowship

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Client Centered Approach

- Teaming
- Motivational Interviewing
- Supportive Decision Making
- Restorative Practices
- Client Choice

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Our Version of Restorative Options

- Restorative Approach
  - Include both persons who were harmed and persons who harmed
  - Restorative approach allows a closer, different approach and conversations

- Restorative Activities
  - Include both persons who were harmed and persons who did harm
  - Purpose: acknowledge harm, healing
  - Example: write letter

- Restorative Conversation
  - Between person who was harmed and person who did harm
  - Family conversations
  - May involve a trained facilitator

- Restorative Circle
  - Full intervention
  - Neutral and trained facilitator
  - Involves multiple parties
  - Longer term process
  - Could run parallel to CJ intervention

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Examples of Approaches: Threading the Needle

- There's something I need to tell you.
Discussion Questions:

1. Would restorative practices overcome some of these identified challenges?
2. What concerns would you have if restorative practice were used to address elder abuse in your community?
3. How would you recommend we overcome these concerns?
4. Would you consider using restorative practices with older adults dealing with abuse in your community? What kinds of situations? Any specific models?
5. If not, why not?

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