Restorative justice in the time of #MeToo

In the wake of Dame Margaret Bazley’s report into sexual misconduct at law firm Russell McVeagh, Professor David Karp’s public lecture at Victoria University of Wellington couldn’t have been timelier, said the University’s Diana Unwin Chair in Restorative Justice, Professor Chris Marshall.
Introducing the lecture, Marshall described Karp as “one of the important voices in the restorative justice field at this time […] a sought-after commentator in the United States on how restorative justice can help redress harms caused by sexual misconduct not only on university campuses but in workplaces as well. And harms that are sometimes, if not often, compounded by the adversarial mechanism we often use to deal with it.”

Karp is Professor of Sociology and Director of the Project on Restorative Justice at Skidmore College in Saratoga Springs, New York, in the United States. His current scholarship focuses on restorative justice in community and educational settings and in 2010 he received the Donald D Gehring Award from the Association for Student Conduct Administration for his work on campus restorative justice. He is a co-founder of Promoting Restorative Initiatives for Sexual Misconduct on College Campuses (Campus PRISM).

Karp’s lecture – *Restorative Justice, Campus Sexual Assault, and the #MeToo Movement* – was based on his experience of the US tertiary education sector, but was more broadly applicable, both to other countries’ universities and to organisations beyond the education sector altogether.

The lecture was bookended by quotes that highlighted the appetite for accountability outside the criminal justice system.

The first was from author Deborah Copaken Kogan, writing in 2015 about having been raped on the eve of her 1988 graduation from Harvard University: “It’s hard not to wonder now, from my perch of more than a quarter-century later, staring at the pinched look on my face in the photos from that rainy graduation morning, why there hadn’t been a third option besides either pressing charges or doing nothing, neither of which felt like an appropriate reaction to what had happened to me in that bed.”

The second was from Sofie Karasek, a victim of sexual assault in 2012 while at the University of California, Berkeley, and the following year co-founder of the End Rape on Campus campaign. In the *New York Times* earlier this year, she wrote: “As the campus sexual assault movement, and now #MeToo, has
made clear, sexual injustices, from harassment to rape and assault, are deeply ingrained in American society, involving people from all walks of life. We cannot jail, fire or expel our way out of this crisis. We need institutional responses to sexual harm that prioritise both justice and healing, not one at the expense of the other.”

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The inadequacy of existing options – either through the courts or through university obligations under federal sexual discrimination legislation covering harassment and assault – is evident from the “very troubling” data, said Karp.

In 2017, 284 out of 834 female students surveyed at Midwestern University said they had been sexually assaulted, but only 16 had reported it to campus authorities and only five had filed formal complaints.

“What that says to me is that there is a gap between the experience of victimisation and the kinds of services we provide that are compelling enough for students to come forward and get support in response to,” said Karp.
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Campus PRISM is a network of academics, campus administrators, restorative justice practitioners and students “exploring this question: how do we create the conditions where it is possible for someone who has caused such harm to acknowledge and take responsibility for that harm? It’s almost in full opposition to the conditions that exist now, which really promote denial and minimisation of responsibility rather than taking responsibility.”

The process is not “limited to responding to individual incidents and accusations but also about building a culture of communication in which students and faculty and staff learn how to communicate in ways in which they fully understand what it means to engage in healthy sexual and romantic relationships and don’t get themselves into the hot water that has been created by all these tragic circumstances”.

When responding to incidents, the primary restorative model is the restorative justice conference, said Karp. It is an entirely voluntary alternative to existing criminal justice and other options, including doing nothing.

Motivations for offenders “are captured by these four statements: ‘I’m not a bad person’; ‘I want to explain what happened from my perspective’; ‘I feel bad;’ and ‘I want to take responsibility.’

A pre-conference determines whether it is safe to bring the victim and offender together in dialogue, and if it is it prepares them. The conference itself explores what happened; what the two parties thought at the time and what they have thought about since; what the harm was and how it can be addressed; and how trust can be restored. The conference will create an agreement between the victim and offender, and there is subsequent mentoring and monitoring to ensure it is followed through.

“People often ask me, ‘Why would they choose to do this?’” said Karp.

Answers for victims include having a voice; wanting to have a say in what happens going forward; explaining how they have been harmed; and wanting to know if the offender is sorry.
“Often they have questions: ‘What were you thinking?’ ‘When I said this, why didn’t you listen?’ ‘I thought you heard me.’ Questions that can only be answered by the offender.

“And then – I think this if often underplayed – they often want something good to come out of a bad situation. The two most common things we hear is the desire for acknowledgement, that this has happened – so they want to be believed, an acknowledgement by the person that caused the harm that what happened was real and they understand it – and they want to make sure the person doesn’t do the same thing to anyone else.”

Motivations for offenders “are captured by these four statements: ‘I’m not a bad person’; ‘I want to explain what happened from my perspective’; ‘I feel bad,’ and ‘I want to take responsibility.’ Often if you give people a pathway to accountability they will take it, because otherwise their existence has become a purgatory where they know what they’ve done is wrong, they want to avoid the punitive outcome of going to jail or being expelled, but they would like to make amends if possible.”

Although restorative justice traditionally emphasises the importance of face-to-face conferences, Karp sees value in different formats if a victim does not want to sit in a room with the offender: a Skype conversation; exchanging videos; exchanging impact statements; or having someone represent the victim in a face-to-face conference.

As an example of a positive restorative justice outcome, he recounted the case of two students at a university in the Pacific Northwest of the US.

“Anwen and Sameer [pseudonyms] were freshmen first-year students at the college when Sameer sexually assaulted Anwen. Anwen did what most students do: she said nothing to anybody and proceeded with her life.

“This is a small college. They saw each other often. They had overlapping friendship circles. They served in student leadership roles together. And years went by. She watched him closely but didn’t talk about it with him or
anybody else. Her final year, her final semester, she’s nearing graduation and decided she can’t sit on this any longer.”

Anwen told the university’s student conduct administrator she couldn’t graduate without seeing some degree of accountability. She wouldn’t give the administrator Sameer’s name unless he assured her he wouldn’t take it to the police or embark on a formal hearing process that led to suspension or expulsion. She wanted Sameer to be able to graduate, but she wanted him to know what he had done to her and to understand the full implications of the harm he had caused.

The administrator agreed to her terms, she told him Sameer’s name and he then met him.

“Sameer was devastated but he also knew what he did. He said that he himself had been sitting on what he had done with great remorse for those three years and had not known what to do in response. And that he would absolutely be willing to do whatever he could to make things right.”

Anwen wrote about the trauma she had experienced and asked that Sameer read it and provide a written response.

He did so “and because his response was heartfelt and genuine in her view she then wanted to meet with him face to face. When she was able to do that, they were able to have a conversation that was healing for her but also a direct confrontation of the behaviour.”

Out of that, they wrote together about the incident in a campus student publication and also met members of the fraternity where the incident occurred, confronting its attitudes and behaviour.

It was, said Karp, “a very successful restorative process for them”.

US universities, he said, are “just at the beginning stages” of restorative justice but “there has been so much curiosity and desire [for it] because after years of more formal approaches to this problem students are still miserable and not coming forward”.
