Is time up on traditional solutions for sexual misconduct?

Advocates for criminal justice reform, which is supported by a majority of Americans (https://www.aclu.org/news/91-percent-americans-support-criminal-justice-reform-aclu-polling-finds), will often allude to the effectiveness of restorative justice over that which is purely punitive in nature. Restorative solutions focus on not only repairing harm done, but also on identifying ways in which victims and offenders can work together to achieve healing. A restorative approach seeks to make incarceration more productive, providing the victim an opportunity to share how he or she has been harmed while at the same time preparing inmates for life after prison by equipping them with the personal and professional skills necessary for reintegration into society. In fact, educational programs have been shown to reduce rates of recidivism (https://www.rand.org/pubs/research_reports/RR564.html) by as much as 43 percent.

Considering the record breaking numbers of prisoners in this country and the disproportionate number of minorities amongst them, I’d be the first to support any push by lawmakers to further incorporate the aforementioned techniques in our criminal justice system. The first, that is, until these techniques were brought to a college campus near me. While it isn’t much of a stretch for me to envision a criminal justice system that works to rehabilitate the criminally convicted, I find it much harder to stomach the execution of this approach on Duke’s campus, especially when it comes to sexual assault—one of the most egregious offenses the University has to manage.

My instinctive repulsion could have to do with the fact that this issue hits a lot closer to home. It’s much easier to talk about forgiveness in terms of inmates I’ll likely never encounter than in relation to those who have upended the lives of the men and women of report after report of sexual misbehavior. I believe we will reach a point at which calling offenders out—and even kicking them out—simply won’t be enough for the sorts of drastic cultural change many of us want to see. In order to move forward, we have no choice but to put all options on the table, including the ones that force us to engage directly with wrongdoers.

For years, victims’ advocates have prioritized the fight for offenders’ expulsion—and often, for good reason. Accountability and consequence for sexual misconduct on college campuses is long overdue, especially when a lack thereof means the threat of violence and retraumatization for all those who must share the offender’s space. But, if expulsion and other sanctions listed in Duke’s sexual misconduct policy were to be viewed through a restorative justice lens, I think they’d fail to meet the core tenets of reparation, reunion and transformation that the Centre for Justice and Reconciliation (http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.4UevyuDS.dpbs) outlines as crucial in the restoration process. While removing a responsible party from campus removes the immediate threat, it does not guarantee that the wrongdoer will have learned and grown from the experience, or deter them from committing the same acts elsewhere.

One would hope that expulsion would be enough of a wake up call for a young perpetrator to refrain from engaging in the same behavior, but of course there is no guarantee against repeat offenses—and possibly even less so without the opportunities to fully consider harm done. Sanctions that don’t carefully facilitate an offender’s reflection on their victim’s pain could very well lead to the offender feeling sorry for getting caught, rather than for causing harm. If I’ve taken anything from last week’s intense national dialogue about Aziz Ansari’s disappointing dating behavior, it’s that a healthy sexual encounter is not just the absence of force and coercion, but also the integration of sensitivity to another’s experience. When it comes to achieving the latter, a restorative justice approach seems much more useful in that it incorporates opportunities for the victim to share exactly how he or she has been harmed and, in turn, for the offender to engage in deep reflection.

I’m not naive enough to believe that any solution demanding additional work on the part of the victim might appear to be counterintuitive and downright cruel. But, in a recent phone call with Duke’s own Director of Title IX Compliance, Howard Kallem, I was pleased to learn that a restorative process works to puts the needs of the victim first and foremost, offering them a space to have their voices heard.
Some universities, like Skidmore College, have already been hard at work to make restorative solutions a viable option for victims who want it. Skidmore's PRISM Project (http://www.skidmore.edu/campusrj/prism.php) has taken on the task of addressing both individual cases of misconduct in addition to “broaden cultural contexts that support such behavior by offering non-adversarial options for prevention education, resolution, and pathways to safe and accountable reintegration.” And much of this push for alternative conciliatory efforts comes from victims themselves, like one young woman who told NPR (https://www.npr.org/2017/07/25/539334346/restorative-justice-an-alternative-to-the-process-campuses-use-for-sexual-assault) how she’d produced a video with her assailant in hopes of turning her traumatizing experience into a learning opportunity for others. Other solutions vary from private victim-offender dialogue to sentencing circles in which both parties gather with family and friends to discuss the incident and its broader implications.

While the idea of a creative collaboration between victim and offender might seem a bit extreme, Mr. Kallem, also a contributor to a report (http://www.skidmore.edu/campusrj/documents/Campus_PRISM__Report_2016.pdf) on the PRISM Project, told me that requests from complainants for alternatives to the formal disciplinary process are not at all rare on Duke's campus. During our phone call, he revealed that Duke administrators have begun their own investigations into responses to sexual misconduct that “allow complainants to tell their stories in a safe and supported environment.” He said that these responses might not only facilitate the perpetrator's personal growth, but also more importantly empower the victim to dictate the healing process he or she needs.

Mr. Kallem explained to me that many complainants don't come to him seeking retribution, but instead with the hope that the accused will feel truly sorry for what they've done. During my time at Duke, most of my fellow feminists rejected the notion of victim culpability for the consequences that a sexual misconduct report might have on the life of the accused. They'd dismiss feelings of guilt as further signs of the patriarchy's insidious grasp on us all. I agree that a victim should in no way feel responsible for an attacker's decisions. I do think, however, think that the trend of opposition to primarily punitive resolutions merits some serious consideration. We must pay attention to the requests of victims, who haven't ruled out restorative solutions despite—or perhaps because of—their trauma.

As hopeful as I am about the potential of restorative justice to get at the roots of culturally embedded sexual transgression, I know that its implementation isn't as straightforward as I've laid out. When I asked a friend and fellow Duke alumna if she would have considered using a restorative justice approach to address her own assailant’s behavior, she echoed my own conflicting sentiments about the framework's use for college-based sexual misconduct. While conceding that current procedures for addressing sexual misconduct haven't necessarily been successful in confronting the underlying causes of harmful sexual behavior on campus, she wisely reminded me to consider the potential risks that a restorative justice solution might entail—namely retraumatization and placing too much onus on the victim as an educator. While the restorative justice process has mechanisms in place to minimize these risks, her concerns about any process nonetheless well-founded, and I acknowledge the great deal of work that would need to be done in order to mitigate further pain.

Regrettably, the victim would indeed have to take some responsibility for the offenders' developmental process in a restorative approach, no matter how much work perpetrators are asked to do. To say that this is unfair would be a glaring understatement. Nonetheless, this is the unfortunate reality for just about every movement for systemic change that I can think of—the oppressed must first air their grievances and then work tirelessly to help others understand their experiences. But, for those willing and able to engage in the work of a restorative process, the slightest chance of forcing transgressors to move beyond merely expressing their remorse, instead channeling it to shift behavior, might be worth the risk.

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