

## Part One

# Treating and Managing Sexual Offender Risk in Context: *Legal and Ethical Concerns*

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# Sexual Offenses, Law and Morals

## *Can Behavior and Attitudes Be Changed by Legal and Moral Efforts?*

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### Introduction

There is a general belief that prison sentences are an effective way of reducing the number of sex offenses. This is the reason why sentences in sex offending cases have become stricter in many countries in recent years. In addition to prevention and safety strategies, the penal code is seen as an instrument for expressing the moral values and norms of society. As they become more aware of the problem of sex offenses, authorities and societies are looking for ways to show support and empathy to victims, while morally condemning offenders for their acts.

It is not only in sex offending cases that sentences have become stricter. Over the last 30 years there has been a general shift in criminal justice policy in most Western countries, with interest increasingly being focused on the protection of society, rather than the rehabilitation of the offender.<sup>1</sup> This does not mean that rehabilitation is now out of question; it is more the case that the safety of the public has become the number one priority. An observation from Norway, a traditionally liberal country, illustrates the point: until the 1970s judges had to present good arguments for handing out long prison sentences; they now have to present good arguments for *not* handing out long sentences in cases that the public views as serious (Hauge, 2004; Christie, 2000).<sup>2</sup>

The belief in so-called punitive strategies in criminal justice policy takes it for granted that the move towards stricter penalties is necessary as well as effective. The importance of the prison sentence is regarded as self-evident, sending the message that crime does not pay. This raises the question of the role and effectiveness of punitive strategies: should we assume that the attitudes of sex offenders can be changed and their behavior regulated by use of remedies that have their origins in

criminal law? And is the handing out of prison sentences the right way to handle the human and moral dilemmas involved in these cases?

This chapter looks at the relationship between offenders' behavior and attitudes on the one hand and punitive strategies on the other, asking whether stricter penalties really do change offenders' behavior and attitudes so that society can be better protected. To answer this question, the chapter draws on Norwegian statistical material, together with the results of a qualitative study of 13 convicted sex offenders. It also examines the effects of a law which makes the buying of sexual services a criminal offense in Sweden and Norway.

### **Punitive Strategies in Sex Offending Cases**

Defining the effectiveness of the law might be difficult but in what follows it can be seen as the ability to make people act, behave and think in accordance with the legislation.

From a psychological point of view, offending behavior can be understood as needs, urges and despair connected to the offenders' inherent problems. Though offenders might be afraid of disclosure and arrest, this usually does not stop them from offending. They are struggling with greater problems than fear of conviction. When comparing the number of sex offenses with the number of cases taken to court, we can see that the legal system plays a marginal role in sex offending cases.<sup>3</sup> The gap between the marginalized role of the legal system on the one hand, and the high numbers of sex offenses on the other, raises the question of whether punitive strategies represent serious attempts at solving the problem, or if they are just intended to meet the demands of politicians and public opinion.

However, the use of prison sentences is about more than regulating behavior. An important purpose of the law is to express messages about morality, solidarity, revenge and other more absolute ideological values. When the aim is to express these sorts of messages, there might be well-founded reasons for supporting a move towards stricter penalties, regardless of what effects the penalties may have on offenders' behavior. In this case the aim is not to regulate behavior but to make some moral statement, which, for instance, could be to tell people that the authorities are aware of the problem of sex offenses and that victims will be supported. On the other hand it is not obvious that morality and punishment are correlated, so that moral values can only be expressed by strict sentences. But in real life situations, people's general feeling of justice tends to be satisfied only when strict sentences are handed out in serious criminal cases such as sex offenses, assaults and so on.

Though it has not been widely discussed, police work is also connected to the communication of messages about morality. By giving priority and resources to an investigation, the police signal that the case is important. It might be the well-being and security of people which is at stake, or perhaps the moral values of society. Police use of resources, and the priority and the quality of the investigation, communicate a moral understanding.

When the aim is to send certain ideological signals, there must be some connection between the acts and the risk of disclosure. If offenders are not caught, no messages

will be sent. The question of how moral issues should be handled in criminal justice policy is therefore important. If deprivation of liberty is the only way of showing empathy to those who suffer the pain of sex offenses, the consequence might be that this empathy can only be expressed when there is an offender to prosecute. The moral value of *empathy* is then dependent on the outcome of the criminal case. The risk is that this support and empathy will not be provided for those who do not see their offender sentenced.

## **Sexual Offenses: Statistics and Legal Aspects**

In the period 1991–2009, the number of sex offenses and strategies to combat these rising numbers increased in Norway; new and more punitive strategies were established, and sex offender treatment programs were launched (Hermstad, 2006; Statistisk Sentralbyrå, 1980–2009). Statistics from this period show that the number of sex offenses of all sorts reported to the police increased from 2,348 in 1991 to 4,112 in 2009, which is a growth of 175% in 18 years. Most cases reported to the police were also investigated; the percentage of investigated cases increased from 76% of reported cases in 1991 to 89% in 2009.

With regard to rape, the statistics show that the number of incidents reported and investigated by the police increased from 376 in 1991 to 853 in 2009, a growth of 226%. On the other hand, sex offenses against children, including incest (involving victims aged under 16 years and 14 years) were relatively stable at a level of 500–700 each year in the period.

The growth in the number of cases reported and investigated by the police is slightly lower in the field of sex offending than it is for crime generally, though the differences are not dramatic. More important is that people's attitudes to sex offenses have undergone a considerable change. Thirty years ago sex offenses were denied and underestimated; now they are acknowledged as a problem that needs to be taken seriously by the whole of society.

How are sex offenses handled in the legal system? Ten to twenty percent of reported and investigated cases end in a conviction. Though we do not have sufficiently good figures for the years 1991–1999, it seems that the percentage of convictions is slightly higher at the start of the period than at the end, while the total number of convictions has increased slightly less than the number of reported and investigated offenses. This may show that victims' barriers to reporting incidents to the police have been lowered, and that the police are taking the cases more seriously. But even taking into consideration that the number of convictions nearly doubled during this period, it still remains a fact that most cases are neither reported to the police nor end in a conviction.

The outcome of a conviction is usually a prison sentence, typically ranging from a few months to one year, and more seldom up to 10 or 12 years. After 2003 legislation was changed so that the minimum and maximum penalties have been raised. The total number of convictions (all types of sex offenses included) has been around 400 to 700 each year in the period after 2003.

When comparing the number of sex offenses with developments in violent crime, we can see that reported and investigated incidents of violence of all sorts have increased by nearly 100% in the period, which is slightly more than for reported and investigated sex offenses of all sorts. Normally 20 to 25% of the cases of violence that are reported and investigated end in a conviction. The equivalent percentage in sex offending cases is 10 to 20%, though slightly increasing towards the 20% level at the end of the period. Most of the violence occurs between persons who either live together or know each other well; the majority of cases involve domestic violence, while there are just a few cases of assault. The same can be observed for sexual offenses; in most cases the sex offender and the victim know each other or have some sort of relationship. Public opinion tends to overestimate the general risk of sexual assault, while the risk connected to private homes is underestimated.

The growth in the number of sex offenses reported, investigated and concluded with a conviction could indicate that there has been an increase in the total number of incidents in the period, but this does not seem to be the case. A combination of better policing work and growing public awareness might be reasons for the increase. More offenders are caught. However, it is still the case that more than 90% are never sentenced. As far as we can understand, the numbers of offenses is probably at a stable level.

In Norway three major studies on the occurrence of sex offenses have been carried out, all before 2000 (Schei, Muus and Bendixen, 1994; Tambs, 1994; Sætre, Holter and Jebsen, 1986). Based on these studies and observations in the field, it is agreed that it would be reasonable to assume that at least 4 to 7% of the population have experienced sex offenses, of one kind or another, during their lifetime. Given that the total population of Norway is five million, this means that between 200,000 and 350,000 people have experienced sex offenses. Breaking down this number to provide annual figures, it is reasonable to believe that 12,000 to 24,000 persons experience sexual offenses every year. Approximately 3,500 sex offenses are reported and investigated by the police every year, while 600 to 700 offenders are convicted. Given that the real occurrence of sex offenses is between 12,000 and 24,000, this means that only 2 to 5% of the offenders are convicted. The number of offenders at any given point during the year could then be approximately 14,000.<sup>4</sup>

### **Thirteen Convicted Sex Offenders: Legal and Moral Understanding**

What do offenders who have served prison sentences think about this punitive strategy? Did they stop offending after having served their sentences? And what do they think about the moral aspect of their offenses?

In research carried out in Norway, 13 sex offenders sentenced to prison for one year or more were interviewed on these topics (Hermstad, 2006). These informants belong to the small and select group of convicted offenders.<sup>5</sup> As this was a qualitative study the informants were not recruited by use of randomized methods, but mainly because they fulfilled the inclusion criterion (of being sentenced to one year or more in prison). The study especially focused on the offenders' moral understanding, their view on women's liberation, children's right to be protected against sex offenses and

what they thought about sexual rights. They were also asked about their views on the use of prison sentences in sex offending cases.

All the informants agreed that offenders should be punished, but thought that the punishment need not necessarily be a prison sentence. Most of them thought that the offender should take responsibility for his acts, and that the victim should never be blamed or held responsible for what happened. An important aspect of punishment is the moral side of it: the punishment is necessary to re-establish relations between offender and victim; the offender therefore should tell the victim that he is sorry for what he has done.

The informants agreed that sexual relations between adults and children are unacceptable and must be dealt with harshly by society. During the years the offenses took place, the 11 child abusers in the study realized that they should have stopped themselves, but only two of them had managed to do so. The other nine stopped only when the police arrived on their doorstep.

Most informants felt it was a relief to be caught by the police. But the relief turned into a nightmare when they became aware of the realities of the trial and the prison time. However, when considering individual prevention, they confirm that the legal system plays an important role: if they had not been caught most of them would have continued to offend. All of them said that offenders should receive treatment during their time in prison. However, they did not see the treatment as a strategy for relapse prevention; rather, they thought that offenders need treatment because of the emotional and psychological distress they experience. Most of them seemed to think that the best relapse prevention strategy was the prison sentence in itself.<sup>6</sup>

Based on the informants' information it appears that sex offenders have the same moral and ethical standards as most other people in society. They applaud women's liberation, they think that children have the right not to be victims of crime and they support the same moral standards as do the majority of the population. They do not think that sex offenders need the criminal law to learn that sex offending is unacceptable; they already know this and they also knew it when they committed the offenses.

The findings of the study may be summarized in eight points:

1. Sex offenses are not a question of knowledge about right and wrong. It is a question of the ability to do what is right.
2. Sex offenders seem to be highly aware that they are committing illegal acts. Therefore they remove evidence and deny their guilt when they are caught.
3. Denying guilt is a rewarding strategy, but when addressing their own feelings and morality, most offenders have a bad conscience because of what they have done.
4. Sex offenders feel a sort of helplessness about their offending behavior. Often they want to stop but usually they are not able to do so.
5. The idea of prevention is that people are rational beings, and that they can adjust their behavior to rules and legal regulations. But offenders do not commit sex offenses because they think it is right to do so; they do it because they lack the ability to do what they already know is right.
6. We cannot assume that the number of sex offenses will be reduced by the use of more punitive strategies.
7. The large number of sex offenses shows that the legal system lacks the tools necessary to regulate this problem in an effective way. There is a need for better

legal instruments so that the problem-solving methods are fit for the problems they are supposed to solve.

8. Offenders who have been caught seem to have learnt their lesson; at least many of them think so themselves. They say they will never offend again. Though punished offenders are a minority among all offenders, this could be an argument for supporting traditional, punitive reactions in some of the offending cases.

## **Legislation, Moral Signals and Behavior**

There are no studies on the possible correlations between legislation and offending behavior. But in the field of sexology there is a general assumption that people's sexual behavior is not likely to be regulated by legislation. The most important factor in the regulation of people's sexual practices was the commercial release of the contraceptive pill in the middle of the 1960s. The pill contributed to the so-called "sexual revolution" so that most people after this time could choose their sexual practices regardless of legal authorities, churches and social institutions. This does not mean that regulations and norms from then on became irrelevant; it just means that a person's own autonomy started to play a more important role in matters of sexual behavior. Factors such as social control, religious beliefs and even economic considerations continue to influence sexual practice.

As it is different from sex offenses, general sexual behavior should not be compared when addressing the question of the possibility of legal regulation of behavior. It is legitimate to have consenting sex with an appropriate partner; it is illegal to have sex with a minor or with a partner who is not comfortable with the situation. However, while sexual behavior in general is hard to regulate, it seems to be even more difficult to influence an offender's behavior patterns.

The figures show that twice as many offenders are caught today as were caught 20 years ago. But compared with the total number of offenses, it is still a minority of offenders who end up in prison. As pointed out by researchers, police officers and clinicians in the field find no evidence to show that the number of sex offenses has either increased or decreased in the last 20 years.

If the legal system communicates messages about justice and moral values in this situation, where just a minority of offenders are caught, this might seem to send the message that sex offenses are not particularly serious. This has two consequences. First, it makes victims think that there is only a limited possibility of receiving justice, and that they must seek justice in arenas other than the courtroom. Second, it makes offenders think that denying guilt is a rewarding strategy. Punitive strategies provide offenders with reasons for hiding and denying, which they already have learnt to do successfully.

## **Attitude-Regulating Laws**

There is little evidence for assuming that offending behavior can be regulated by legal and moral efforts; but what about attitudes? Can these be regulated by the criminal law? If the answer is yes, is it then probable that changes in attitude brought about by the influence of the law will result in changed behavior patterns?



To answer these questions it is necessary to look at legislation in the field of prostitution in Norway and Sweden (Hermstad, 2009). It has been illegal to buy sexual services in Sweden since 1999 and in Norway since 2009. Although buying sex is forbidden, it is not illegal for a woman to sell sex. These laws are so-called “attitude-regulating laws” which means that the purpose of the law is to regulate people’s attitudes more than it is to regulate their actual behavior. The law states that prostitution is violence against women, regardless of how the partners involved understand the situation themselves. It is the customers’ power to buy sex which is defined as violence against women.

During the 10 years of criminalization there seems to have been a small decrease in the total amount of prostitution in Sweden, though we do not know exactly how much. The number of sex-buyers may also have decreased, but probably not that much. However, what really have changed are people’s attitudes towards prostitution. In 1999, 61% of the population in Sweden thought it was wrong to buy sex; this percentage increased to 81% in 2009. Given that the group of sex-buyers is stable and that the decrease in prostitution is moderate, one might assume that the change in people’s attitudes towards prostitution has not had that much effect on behavior. Those who have changed their minds are those who would not have bought sex in any case.

Since the law in Norway is only two years old, there is little research on its effects. However, reports indicate that there has been a small decrease in the total level of prostitution; at least in street prostitution. Reports also indicate that street prostitution only decreases during times when the police are active in catching customers. The market now seems to have moved from the streets to various indoor facilities. But there is reason to believe that people’s attitudes towards prostitution have changed. Since the group of sex-buyers is a very small one, the shift in attitudes will not have that much effect on the total amount of prostitution. As in Sweden, those who have changed their view of prostitution to a negative one are those who would not have bought sexual services anyway.

We can summarize the effects of legislation in the field of prostitution as follows:

1. The criminalization of the buying of sexual services has been a success insofar as it has had an influence on people’s attitudes, but the law has had only a limited effect on the way people behave.
2. Depending on conditions and circumstances, it is reasonable to assume that people’s attitudes can be changed by use of the penal code.
3. Changing attitudes is not the same as changing behavior. Changes of attitude towards prostitution have little impact on people’s behavior, since the majority of people do not buy sexual services in any case.

In the field of sex offending, do most people (including sex offenders) agree upon the legal situation? Sex with children is wrong, as is sex without a partner’s consent. Due to stricter legal regulations and a growing public awareness, are people now generally aware of the problem and also willing to do something about it? This might be the reason why more offenders are caught today than 20 years ago.

So far neither the legislation nor the punitive strategies have demonstrated effectiveness in reducing the total number of offenses. Although it is important to target people's attitudes and moral standards, this in itself is not sufficient. Though this does not mean that sex offenses should be legalized, it clearly indicates that the police and the legal system lack the necessary tools to establish effective prevention strategies.

### Why Do We Punish?

It is taken for granted that the threat of punishment is necessary to make people comply with law and order. But if sex offenders do not pay very much attention to the criminal law, it is not likely that their behavior would be influenced by the threat of a stricter sentence. So why do we still continue to punish them?

The most obvious reason is the simple one given by the authorities and the representatives of the legal system: to protect society from harm (Andenæs, 1994). But the impact of people's so-called "feeling of justice" should not be overlooked either: offenders must be punished because they deserve it. They have done something wrong. The retributive theory of "just deserts," which has been popular in the United States and other countries for years, claims that justice is a question of the nature of the criminal act and the harm being done (Von Hirsch, 1976). Offenders must be punished regardless of their life situation, motivation or personal reasons for their doings, and the punishment should be proportional to the felony.

Others see the punishment as a *moral obligation*. Punishment is not for the sake of the persons involved, but for the sake of law and order. This is the position of the philosopher Immanuel Kant (1982), whose writings have been highly influential in the criminological field in countries all over the world throughout the last two centuries. According to this view, punishment is a moral obligation whose main purpose is to make clear the moral responsibility of man. Changing offenders' behavior and attitudes may also be important, but not as important as the moral side of it.

A more practical and evidence-based way of arguing is provided by theories of how people's attitudes and behavior can be regulated by use of the penal code. *Crime prevention theories* are popular with the authorities as well as with ordinary people; these theories fall into two categories. The *theory of general prevention* holds that people avoid criminality because they fear punishment. The problem of increasing crime can be met by enforcing stricter penalties. The authorities have to prescribe the correct amount of punishment. The other category is that of *individual prevention strategies*, which hold that the experience of the pain of punishment will prevent perpetrators from carrying out new offenses (Andenæs, 1997).

If imprisonment serves as a practical and rational way of regulating people's behavior, the legal system could be seen as an evidence-based system with its main purpose being to secure law and order. Although there is no doubt that the legal system should secure law and order, the evidence-based aspect also raises moral and ideological questions. The use of prison sentences cannot be understood only as a remedy to be evaluated with regard to its effectiveness; it requires even more thorough evaluation with regard to its ability to communicate moral values. So far little effort has been made to investigate whether sex offenses have been reduced as a result of stricter penalties.

Perhaps the focus has not been on offenses as such but more on making moral statements to show that the authorities take action in these cases. There may be considerable doubt about the quality of the moral signals communicated by the legal system.

### The Need for Alternatives to Punitive Strategies

One important reason for stricter sentences in sex offending cases is to make clear the moral values of society and to express support for victims for sex offenses. But as long as cases are rarely taken to court, one might question the value of these messages. Because of the harms being done, it is obvious that the victims need all the support they can get, but declarations of solidarity are of limited value as long as the victims' stories are not believed or are deemed insufficient as evidence in the courtroom. Offenders normally avoid conviction by denying and minimizing guilt.

This raises questions about the role of the legal system in sex offending cases. Though this role is becoming marginalized, there does not seem to be any call to decriminalize sex offenses or to take the cases away from the legal system's responsibility. Nor would it be a good idea to lower the level of penalties in itself. It is obvious that we need new and better remedies in the field that can communicate the severity of sex offenses as well as helping and supporting the victims.

An alternative to punitive strategies is described by the professor of medical law at the University of Edinburgh, Alexander McCall Smith. In his popular books about the female private detective Precious Ramotswe from Botswana in southern Africa, he shows how the philosophy of restoration and mutual understanding between the partners involved in criminal acts might challenge punitive strategies (McCall Smith, 1998, 2001). Precious Ramotswe replaces black-and-white justice with a heart-and-soul justice so that the reader sometimes is confused as to who the good guys are and who the bad guys are. The mission of Precious Ramotswe is to make people talk together regardless of their position as victim, offender, judge, police officer or whoever they might be.

The books of McCall Smith could be seen as representing the criminological movement *restorative justice*, a movement which has become well-known all over the world after the work of the Truth and Reconciliation Committee (TRC) of South Africa in the last decade of the twentieth century. So far the legal system in most Western countries has been working along the two tracks of *punishment* and *treatment* in sex offending cases.<sup>7</sup> Its success in reducing the number of sex offenses is limited. Against this background one must ask whether the legal system needs more remedies than merely the option of sending perpetrators to prison. Could restorative justice be such a remedy, so that the two tracks in future will be *restoration* and *treatment* instead of punishment and treatment (see Chapter 7)?

### Restorative Justice as a Challenge to the Traditional Understanding of Justice

The problem in sex offending cases is not so much the punishment of offenders, but rather how victims can live with their painful experiences. In these cases, there are two major concerns about the role of the traditional legal system:

1. *Ownership of the case:* Victims as well as offenders may wish to have a confrontation and perhaps also the possibility of reconciliation. But criminal cases lie in the hands of the state, and not in the hands of victims and offenders. Psychological, emotional and existential needs are of limited interest in the legal part of the process.
2. *The court is not adapted to the problems involved.* The treatment of evidence in court implies that the question of truth primarily is a question of evidence, rather than what really happened between the offender and victim. The protection of the defendant's right to a fair trial is the main reason why most sex offending cases are dismissed by the court.

What, then, are the needs of the partners involved when an offending case is taken to the court? Four major needs may be identified:

1. The truth must be expressed.
2. Guilt and responsibility must be addressed.
3. Victimization must be avoided.
4. Atonement should be made.

The TRC in South Africa provides an interesting and important example of alternative ways of handling severe criminality. The principle of the TRC was: *the truth in return for giving away the demands of punishment of the perpetrators*. The TRC therefore offered "a space for victims to speak and the right for the perpetrator to be heard" (Verwoerd, 2000). Space precludes us from providing a detailed discussion of the TRC, but an important question is: do the legal systems of the Western world's democracies have something to learn from South Africa?

The answer is: yes, definitely. In the field of sex offending we are facing human and moral problems that are too severe to be solved in the courtroom alone. Guilt is about more than questions of evidence and punishment. Guilt is an existential phenomenon, influencing how victims and offenders live their lives when the trial is over. No punishment can undo the pain of the evil act, not even the death penalty.

In therapy we can often observe that victims do not place much emphasis on having the offender punished. Of course many of them want revenge and even more to see the offender suffering severely. But more than that, they struggle to understand how the offenses could happen. Some of them take the responsibility on their own shoulders, thinking that it must have been something wrong with their own behavior. How else could it be that a person they knew or even respected would do such evil and painful acts?

The interviewees from the 2006 Norwegian study, who are mostly child molesters, also struggle to understand how they could do what they did. This may be a surprise to many, but understanding reasons is not just a question of explaining how actions could take place; it is much more a question of exploring the relations between the actions and the person carrying them out: "How could it be that I just did what I have done?" Many of the offenders in the study wanted to tell their victims about their regrets.

From a human and psychological point of view, persons involved in sex offending cases often seem to lack a meeting place where they can talk together and be honest about shame, pain and anger. In an article from 1988 the Norwegian professor of criminology at the University of Oslo, Liv Finstad (1988), asks for a new system in sex offending cases, where telling the truth is not followed by any judicial sanctions. She wants an “*empathetic listening*” where the offender is given the opportunity to confess and to take responsibility for his doings. The crucial question is of course why sex offenders, in contrast to other offenders, should get away with just a confession and no punishment. Finstad’s position is that sex offenders are likely to evade punishment anyway. By motivating them to realize what they have done, they will probably experience a pain much more severe than a sentence of some years in prison. It is more valuable for victims to see offenders take responsibility and feel pain than it is to see them behind bars. This was also found to be the case during the process of the TRC of South Africa: telling the truth to the families and friends of the victims could be much harder than standing in front of a judge and getting a verdict.

However, the point is not primarily to make the perpetrator experience pain but to restore relations between the partners involved. Most victims are afraid of meeting their offender, which is likely to happen if the offender and the victim know each other. Date-rape and incest are the most frequent sex offenses and in these cases there are usually many and varied relations between offender and victim. These relations have to be regulated in one way or another. The concept of restorative justice may be helpful to some of the people affected by these issues (see Chapter 22).

## Future Directions

What we need in the future is probably a model for combining the concept of restorative justice with the traditional legal system. Perhaps there could be two tracks, so that it would be possible to examine each specific situation while asking: what is the best way of solving this case?

In different countries around the world, including New Zealand, Canada, Norway and others, there is on-going work in the field of restorative justice. The concepts are different from country to country, as are the legal traditions, but a common element is the wish to handle violence and sex offenses in a way that is adapted to the situation of the persons involved.

At the moment a project of restorative justice at the University Hospital of Trondheim, Norway, is in its final planning stages. The project focuses on the situation of young women who have experienced date-rape, primarily incidents where both victim and offender belong to the same college, university or social milieu. Many collaborators are taking part in the project, including the district attorney, the local police of Trondheim, the University Hospital of Trondheim and other partners. This project is mentioned here because the Western world has just a limited experience of the concept of restorative justice; ideas therefore need to be spread.

The majority of rape incidents are date-rapes, though despite being very numerous they are seldom reported or they are dropped by the police. Health professionals report that date-rapes cause severe problems to the partners involved, but in cases

where the offenders are not sentenced, neither the victims nor the offenders are offered professional help. Victims of date-rape usually have a social relationship with their offender, and they are likely to meet him again at some point. Many of them feel that next time they meet they are at risk of being raped again. This causes considerable fear. To address this fear, it could be helpful for victims to meet with their offenders in safe and controlled settings. It is likely that they will feel the need to tell the offender about their anger, fear and pain, and the offender will probably tell his victim how sorry he is.

Victims of date-rape share the fear of meeting their offender with most victims of sex offenses. A severe penalty cannot remove this fear. Even when the offender is sent to prison for a long time, the fear will remain. The penalty might correspond with people's feeling of justice, but it does not help the partners involved to solve their psychological problems.

The meeting between the partners in the Trondheim project will be facilitated by professionals in the field; the initiative to meet is to be taken by the victim. Participation by the offenders is voluntary, and the victims give no guarantee that they will not take the case to court. Both the victim and the offender will be supported by a health professional in the preparation process; and they both will be encouraged to be honest when meeting. After the preparation process, which lasts for three to five hours, the partners meet in a Guided Dialogue led by a mediator from the Regional Conflict Council of Trondheim.

The concept of restorative justice may have many weaknesses. One major problem is the asymmetric power in the relation between victim and offender. This has to be balanced by professionals making sure that the risk of a re-offense when the partners meet is minimized. Professionals should also ensure that all partners get the necessary support and help during the process.

The main problem in most sex offending cases is that an attempt is made to deal with the victims' fear using the legal system. As long as no meeting between offender and victim is organized in a safe way for those who want it, the asymmetry of power continues. Today more than 90% of the victims will never experience justice through the legal system. Instead of thinking of moral value as something that has to be expressed in terms of penalties, we should think of it in a relational way. It is more important to show victims that we are willing to help them than to make declarations about moral values. As long as offenders profit from denying and minimizing guilt, victims will not be helped that much by better policing methods or stricter penalties.

The idea of restorative justice is that the partners suffering the pain of an offense should be given the opportunity to experience ownership of the case, and to realize that it does not belong to the state or to others who do not experience their pain. Usually pain cannot be cured by inflicting new pain; but it helps a great deal if the person responsible for the pain takes the responsibility on his own shoulders, and says that he is willing to do something about the situation.

Restorative justice is not an abandonment of the values of the Western world's legal traditions; it is an adaption of the system to some severe problems which are yet to be solved. The asymmetric power between offender and victim continues to be a source of fear as long as the partners are not obliged to meet and talk together.

Maybe the fear will still remain after they have met. Nevertheless, facing the danger is usually a better strategy than running from it.

To advance further across this complex terrain we have to modify or even change the way we understand justice. Traditionally, justice has been understood as providing the right dose of punishment for the felony, taking into consideration the background and situation of the perpetrator. In restorative justice, the term justice is about the responsibility of the person who has done wrong. When taking on his responsibility the offender reveals the truth; the offender, and not the victim, is to be blamed (see Chapter 22). But then we must address the question: what should the price be for causing pain and harm to others?

The TRC of South Africa prescribed some symbolic means of compensation, which were not aimed at paying the real or full price for the damage caused by the felony. However, the amount of compensation is not the most important matter (though it has to be dealt with, of course). The point is to find alternatives that make it possible to help more victims, and offenders. In today's sex offending cases, one priority could be to develop methods that reduce the advantage to the offender of denying guilt and responsibility. Then it is important to handle the cases in public settings so that the principles of legal protection can be maintained. Finally, both the victim and the offender should be offered qualified, sufficient and necessary treatment. Restorative justice is an idea more than a fixed and developed method. This idea will not solve all the problems, but it is still an idea that is open to further development. Maybe the idea is even better – at least to some extent – than the system we have developed so far.

## Conclusion

Preventing sex offenses from taking place through the use of legal action has not turned out to be an effective strategy. Nor does it seem that legal action has been particularly successful in individual prevention, though some offenders might be less likely to commit new offenses after having served their prison term.

In this chapter we have seen that the legal system is marginalized in sex offending cases. Though legislation has an impact on people's attitudes and moral understandings, offending behavior is not much affected by legal regulations. It is nearly impossible to reduce the numbers of sex offenses by use of the penal code. On the other hand, this does not mean that the legislation and the legal system do not have a role. Victims must be supported by a society that expresses solidarity with their sufferings. And we need some absolute norms in the field of sexual behavior, so that the individual's right to free sexual choices is protected. Sex offenses are a violation of human freedom.

There is also a need to handle sex offending cases in public settings. Sex offending is everybody's business; everybody has an obligation to promote attitudes and norms that prevent offenses from taking place. The main principle of restorative justice is to involve all persons affected by a criminal case. The ownership of the case must lie with the partners, not with the state alone. The most important aspect of the problem-solving process is to encourage people talk to each other.



But is it reasonable to assume that restorative justice – as opposed to punitive strategies – will reduce the number of sex offenses? We cannot know that. What we know is that the partners receive better care, which gives reason to believe that their long-term suffering will probably be reduced. In the field of sex offending, we are facing severe human tragedies on both sides of the line. This should inspire us to try to find better ways of handling these cases, realizing that so far none of us has got the answers. In the meantime we have to look for the answers and seek possible solutions.

## Notes

- 1 This chapter particularly focuses on democratic nations in Western Europe and the United States. As democracies, these nations support the right of their people to influence the law, though not that the individual should stand above the law. The role of public opinion in criminal cases in recent years is characterized by a growing influence of people's "feeling of justice," which might be complicated in relation to the defendant's right to have a fair and just trial.
- 2 This is the author's observation from 25 years of clinical work and research in the field, and it is supported by other research.
- 3 The figures showing the reasons for this will be presented later in the chapter.
- 4 Some reservations must be expressed concerning these figures. The estimate is based on criminal statistics referred to earlier in this chapter, showing that approximately 700 persons were convicted in Norway in 2009 (Statistisk Sentralbyrå, 1980–2009). If this is 5% of all offenders, the total number of offenders would be 14,000. These figures should be compared with an evaluation presented by a committee appointed by the Ministry of Justice in 2008, concluding that rape incidents alone account for 8,000–16,000 victims each year (Sletner, 2008).
- 5 As already shown, convicted offenders are a small and select group when compared with the total number of offenders. Knowledge related to such a small group has some inbuilt weaknesses; on the other hand, the high quality of the information compensates for the low numbers.
- 6 This is not supported by international research showing that the most significant factor predicting behavior in sex offenders is recent convictions. This research indicates that convicted offenders are more likely than others to carry out sex offenses in the future. However, the research findings do not necessarily indicate that the reason for relapse is the former conviction in itself; it just indicates that those who have carried out an offense in the past are more likely to carry out new offenses.
- 7 This has been the main tendency in Norwegian criminal policy for more than 50 years, and is also the case in most European countries.

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