ARTICLE

Restorative responses to campus sexual harm: promising practices and challenges

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Abstract

The purpose of this article is to examine restorative approaches to campus sexual harm. A restorative response may provide support and validation for survivors, a pathway for personal change for those who cause sexual harm, and assist in changing campus culture. The article addresses three significant challenges to developing a restorative response. The first challenge is the influence of a pervasive ideology that I refer to as crime logic. A second challenge is the need for an intersectional response that addresses the potential for bias in decisions by campus administrators and restorative justice practitioners. The third challenge is to develop restorative approaches for circumstances in which a victim/perpetrator dyad is not appropriate.

Keywords: Sexual assault, feminist, restorative justice in colleges and universities.

1. Introduction

In Section 2, I describe two examples of restorative responses to campus sexual harm. In Section 3, I describe the benefits of restorative practice for changing campus climate and changing social determinants of sexual harm. I examine three important challenges to the use of restorative responses in Section 4. The pervasive influence of what I refer to as crime logic reasoning is a significant impediment not only to establishing restorative justice programmes, but also to the operation of such programmes, once established. A second challenge is the need for an intersectional response that recognises and addresses differential risks for sexual harm and risks that bias, including race, gender identity, sexual orientation, sex and class bias, will shape administrator decisions and restorative practices. In addition, the social construction of sexual harm is deeply gendered in ways that create a significant risk for sex bias, particularly when facts regarding consent are ambiguous. The third challenge is posed by circumstances where a student experiences sexual harm, but there is no morally culpable party responsible.

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for creating that harm. Restorative processes that require a respondent to acknowledge a moral wrong are not appropriate in these cases, yet these are the circumstances in which students may be particularly benefitted by a dialogue process. I conclude with suggestions for meeting these challenges.

2. Restorative justice and campus sexual assault

A restorative response refers to a framework for preventing and addressing acts of sexual harm, rather than to particular methods. It is based in a ‘relational conception … of justice’ that is ‘concerned … with the harm and effects of wrongs on relationships at all levels: individual, group, community, national, and international’ (Llewellyn & Philpott, 2014: 16). Restorative approaches vary, but are frequently embodied in a set of processes (e.g. circles, victim-offender dialogue, conferencing). I describe two examples of restorative responses to campus sexual harm: prevention and education circles and dialogue practices.

2.1 Circles

Circle practices ‘can be used for community building, personal and group reflection, facilitated discussions about sexual harm, rewriting cultural narratives about rape and hegemonic masculinity, and developing commitment to pro-social behavior’ (Karp, Shackford-Bradley, Wilson & Williamsen, 2016: 15). In prevention/education circles, a skilled facilitator invites students to share individual stories and personal perspectives in response to a set of open-ended questions. The questions are intended to help circle members ‘think through a given issue with the thoroughness needed to develop collective agreements or remedies …’ (Karp et al., 2016: 19). In this way, students are able to identify problems, challenge peers’ sexist beliefs and set goals and specific actions to address problems and change campus culture. Circles can also provide an opportunity for students to challenge school administration actions and policies that they believe impede the goal of preventing and responding to sexual harm (Sumner, Silverman & Frampton, 2010).

2.2 Dialogue

Restorative justice dialogue has been used successfully to address specific cases of sexual harm (Koss, 2014; Llewellyn et al., 2015; Mercer, Madsen, Keenan & Zinsstag, 2015; see generally Zinsstag & Keenan, 2017). Restorative processes provide victims with voice, validation and vindication (Daly, 2017; Goodmark, 2015: 727-730), allowing victims to define harm in their own terms. Baliga (2015) begins restorative practice by asking a victim:

1 In contrast, Daly (2016) argues that restorative justice should be understood as a ‘justice mechanism,’ one of several innovative justice efforts.
2 Circles are also useful when there is a claim of pervasive institutional discrimination (Llewellyn, MacIsaac & Mackay, 2015).
3 Daly (2017) has usefully operationalised these concepts to facilitate research analysis.
How do you define the harm? What do you think you need moving forward? What are your safety concerns? What are your material needs? How are you harmed – [in] all the different ways you could be harmed – financially, emotionally, physically, spiritually? (372).

Restorative processes allow victims to challenge the perception that their lives are ruined and to re-narrate their life stories as ‘survivors’ rather than ‘victims’ (Mercer et al., 2015).

Restorative practices also give voice to the person who committed harm. As Karp (forthcoming 2019) argues, campus adjudication that results in suspension or expulsion is likely to harden responsible students’ perceptions of themselves as victims. In contrast, restorative practices encourage responsible persons to understand the harm they caused and to develop empathy for the person harmed (Strang, 2004: 99-101).

Several critical preconditions are nearly universally required before a dialogue takes place. The facilitator must assess whether a restorative process poses a risk to the survivor (Koss, Wilgus & Williamsen, 2014). All participants must make an informed decision to participate. This requires that conference facilitators explain the process in detail and explore probable outcomes. All participants should understand the extent to which statements made in the restorative process may be admissible against the speaker in a subsequent criminal, civil or administrative hearing (Coker, 2016). Both the claimant and the respondent should understand that they can stop the process at any time.

As a pre-condition for dialogue, programmes require that the respondent admit to the conduct alleged by the claimant (Koss et al., 2014). This ‘usually involve[s] acceptance of the central facts, including the harm experienced by the victim, although it would not necessarily be a formal admission to the legal elements of the offence’ (Naylor, 2010: 677). This requirement is an essential element of restorative dialogue, distinguishing restorative justice from ‘neutral’ or ‘community’ mediation (Hanan, 2016; Koss et al., 2014). Admission is particularly important in sexual harm cases where victims may feel significant shame and self-blame and may be blamed by others.

Community-based restorative justice programmes incorporate significant support services for victims of sexual harm both pre- and post-conferencing, thorough preparation with all participants pre-conferencing, and substantial post-conference monitoring of the person who caused harm to ensure compliance with a reparative plan. Koss et al. (2014) note that reparative plans in the campus context should include counselling for the responsible person that addresses any of his or her behaviours that are associated with ‘risks for perpetrating sexual misconduct such as substance abuse, anger, impulse control, hostility to women, deviant arousal patterns, and unwisely selected peer groups’ (252). Because campus sexual misconduct codes cover a range of sexual misbehaviour with varying levels of seriousness, it is likely that appropriate counselling will vary. The degree

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4 There is disagreement whether facilitators should refuse to conference where both parties desire it, but the facilitator believes it not to be appropriate (Woessner, 2017: 259).
of pre- and post-conference support and monitoring will also vary depending on the needs of the survivor and the risk posed by the respondent. But in any case, preparation and monitoring are likely to exceed what is necessary for other restorative campus cases. Furthermore, facilitators must have expertise in understanding sexual harm.

3. Restorative justice and campus climate

Restorative justice can play an important role in a comprehensive public health approach (Coker, 2016) focused on changing the social conditions that increase risks for sexual harm. Heavy drinking is strongly correlated with both sexual assault commission and victimisation. A college woman who attends a school with a high percentage of students who are 'heavy episodic drinkers' has 1.8-fold increased odds of experiencing sexual assault (Mohler-Kuo, Dowdall, Koss & Wechsler, 2004). Students who engage in frequent heavy drinking are at higher risk for experiencing sexual assault (Mellins et al., 2017; Ray, Tyler & Simons, 2018). School policies that decrease alcohol consumption are linked to lowered rates of sexual assault (Lippy & DeGue, 2014).

Peer networks play a particularly important role in young adult male sexual aggression against women. Sexual aggressors are more likely to believe that their peers support sexual aggression and that they hold hostile attitudes towards women (Adams-Curtis & Forbes, 2004). They are more likely to have friends who pressure them to be sexually active.

Masculine identity formation in adolescence often involves treating sex as a game or competition ... Young men with little sexual experience who are highly motivated to have sex with many women may have a particularly difficult time recognizing the line between seduction and coercion ... (Abbey, Wegner, Pierce & Jacques-Tiura, 2012: 11).

The interrelationship between individual endorsement of hostile masculinity, peer support for sexual aggression, hostile views of women and engagement in binge drinking may be critical to understanding higher rates of sexual aggression in 'high-risk' fraternities and male college sports teams (Humphrey & Kahn, 2000).

Circles provide opportunities for students to disrupt these key social determinants of sexual assault. Restorative circle practice provides the flexibility necess-

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5 Research by Humphrey and Kahn (2000) asked students to rank male fraternities and athletic teams as 'low' or 'high' risk for sexual assault. Subsequent surveys found that members of organisations rated by students as 'high-risk' had significantly higher rates of sexual assault; their members were more likely to endorse hostility towards women and to believe that their peers supported sexual aggression. This was not true for members of 'low-risk' male organisations.

6 Restorative justice practice in cases of intimate partner violence involving heterosexual men similarly seeks to interrupt peer and familial supports for violence and to reframe concepts of masculinity (Coker, forthcoming 2019; Goodmark, 2018).
Restorative responses to campus sexual harm: promising practices and challenges

Sary for addressing both specific institutional problems as well as broader issues of campus culture and a range of sexual misconduct. The Campus PRISM report provides the following example.

Based on a review of several data sources (climate survey, qualitative interviews, and fact patterns of conduct cases), a prevention circle was organized to address day parties, called ‘darties’, which were mostly held at off-campus houses. [...]

The first question for the circle was, ‘How would you describe the level of safety at darties?’ This question yielded very mixed opinions. Some students felt that it depended on which house hosted the event, whether they personally knew the hosts, the level of crowding, whether the event prioritized drinking over other forms of socializing, and even the weather (on warm days, the parties went longer and people drank more). At darties, students sometimes found themselves becoming much more intoxicated than they planned or expected to be. This led to situations where people lost track of friends or became much less aware of the actions of those around them, limiting their skills as bystanders even if they had good intentions to act as such. Other participants identified a problem of what they called ‘implied consent’: the shared concept that by attending darties, and by leaving the dartie with someone, that an individual was consenting to anything that happened thereafter. After a participant shared that example, other participants stressed that they didn’t themselves hold this belief but that it was a widely identifiable belief on campus.

After the circle shared its concerns, the facilitators asked, ‘What would need to change about darties to make them more safe?’ This question proceeded as an open space conversation rather than a structured circle [and resulted in a concrete plan of action] (Karp et al., 2016: 15-16).

Restorative practices in individual cases can also incorporate an awareness of gender socialisation and social determinants of sexual assault. Reparative plans may include efforts to change the campus climate in a manner relevant to harm caused by the respondent. For example, a respondent whose act(s) of sexual harm were perpetrated in the context of membership in a high-risk male organisation might agree to work with the university to develop new rules for fraternity and sorority life, work to change alcohol use, or assist with student training on gender subordination and sexual assault (see e.g. Llewellyn et al., 2015).

7 Campus PRISM, Promoting Restorative Initiatives for Sexual Misconduct on College Campuses, is an international team of researchers and practitioners who research and promote restorative approaches to campus sexual assault (http://www.skidmore.edu/campusrj/prism.php).
4. Challenges to the development of a restorative response

4.1 Crime logic
The discourse regarding campus sexual assault—feminist, popular and otherwise—is shaped by a pervasive ideology that I refer to as *crime logic*. More than punitiveness against which restorative approaches are frequently contrasted, *crime logic* is an aspect of what Simon (2007) refers to as ‘governing through crime’ and reflects neoliberalist notions of individualism that elevates presumed individual rationality and responsibility over community responsibility and social determinants of behaviour (Weissman, 2016). In summary, *crime logic* thinking consists of (1) a focus limited to individual culpability rather than addressing collective accountability; (2) a disdain for policy attention to social determinants of behaviour; (3) a preference for narratives that centre on bad actors and innocent victims; and (4) a preference for removing individuals who have harmed others as though excising an invasive cancer from the body politic (Coker, 2016).

*Crime logic* is reflected in a simplistic understanding of individual ‘choice’. For example, in the aftermath of a well-publicised sexual assault conviction, Stanford University adopted new rules to prevent the type of excessive drinking that both the responsible person and the victim engaged in on the night he assaulted her. Despite empirical evidence that heavy drinking is associated with sexual assault, some feminist activists responded negatively to Stanford’s new policy. As one activist explained, ‘banning hard liquor … sends the … message that alcohol causes rape … Rapists cause rape, and they use alcohol as a tool to escape culpability’ (Carmon, 2016).

As Corrigan (2013) notes, this framing of ‘choice’ echoes second-wave feminist rhetoric that sought to discredit views of rapists as psychological deviants by expressing a simplistic, liberal conception of the rapist who freely ‘chooses’ to rape. As Brenner (2013) describes, this simplistic narrative of rational actors who choose ‘fails to account for the ways sex and gender are performative’ and the ways that ‘gender identity and performance’ shape sexual behaviour (517-519). Youth sexual assault is sometimes a calculated attack, but sometimes ‘sexually inexperienced [young men] may be especially susceptible to relying on stereotypes about the sexual roles of men and women to interpret situations, and as a result, end up participating in acts of sexual violence’ (Carmon, 2016).

4.2 The ‘sexual predator’ narrative
Perhaps one of the most pernicious aspects of *crime logic* reasoning has been the widespread acceptance of the idea that most campus sexual assaults are committed by a small group of sexual ‘predators’ who will not respond to interventions. As I explain in greater detail elsewhere (Coker, 2016), the predator narrative is based on survey research with college men regarding their past conduct (Lisak & Miller, 2002). When the total rapes reported in the surveys were tallied, most of them were committed by men who admitted to committing two or more acts of rape (79), leading the researchers to conclude that they were serial ‘predator’ rapists. Proponents of the predator narrative assume that past conduct predicts future conduct; repeat rapists will continue to be repeaters. This is a risky
assumption, particularly for adolescents and young adult men. In contrast to one-time survey research, longitudinal research follows college men through their college career. The largest longitudinal study found that the majority (73%) of those who committed rape while attending college did so during a single academic year, not consistently across the years as the predator narrative would predict (Swartout et al., 2015).

The campus predator narrative resonates with the popular view reflected in sex offender registry laws of rapists as ‘distinctly evil’ men (Baker, 2015: 272) who are peculiarly likely to be repeat offenders. Neither is true (Lave, 2016). By creating the impression that rape is a problem of a small pathological group, it ‘may have made the problem seem more easily managed by simply identifying and prosecuting the guilty few’ (Tharp et al., 2015: 2).

The widespread acceptance of the predator narrative increases the focus on rape, diminishing attention on the less serious and more common forms of sexual harm. In contrast to searching for ‘predators’, public health measures that include a range of targeted methods are more likely to be successful (Hirsch et al., 2018).

4.3 The intersectionality challenge

Only when we have more complete information and a better understanding of the issue of sexual assault as experienced by members of groups across gender, race, ethnicity, nationality, and sexual identity will we be truly able to focus our efforts toward prevention and response in comprehensive and meaningful ways (Brubaker, Keegan, Guadalupe-Diaz & Beasley, 2017: 14).

The intersection of race, ethnicity, class, gender identity, sexual orientation and sex frames risks for sexual assault as well as the social construction of sexual experiences, the popular image of likely sexual assaulters, and the risks of biased treatment by campus administrators.

4.3.1 Campus climate

The general campus climate for students of colour, LGBTQ students, foreign nationals, immigrants, indigenous and low-income students shapes the campus climate with regard to sexual harm. A hostile climate may increase the risk for sexual assault. Research finds, for example, that white female students are less likely to intervene to prevent a sexual assault of a Black female victim than is the case when the victim is white (Katz, Merrilees, Hoxmeier & Motisi, 2017). Coulter and Rankin (2017) found that LGBT students who attend schools that rank lower on measures of LGBT student inclusion report higher rates of sexual assault than do students who attend schools that are more inclusive.

A hostile campus climate will have a profound impact on whether students report sexual harm or avail themselves of support services. Students of colour are...
unlikely to seek assistance from university administrators if they experience the administration as racially hostile: 'If I don’t trust my institution on issues of racism, why in the event of having been [sexually] assaulted would I trust my institution?' (Murphy, 2015). A study of student survivors of sexual assault found that LGBT survivors were more likely to feel that their school treated them unfairly than were heterosexual survivors (Smith, Cunningham & Freyd, 2016).

Class may have a relationship to students’ vulnerability to sexual assault. Recently published research from Columbia University found that both women and men who had difficulty paying for basic necessities reported higher rates of penetrative sexual assault, and women in this group had higher rates of experiencing any form of sexual harm (Mellins et al., 2017).

4.3.2 Bias
An intersectional approach requires incorporating protections against implicit bias. Bias may affect the fair treatment of students who report sexual assault as well as students accused of committing sexual assault. Bias is frequently implicit – unintentional and unconscious bias that is unrelated to, and may even be in opposition to, explicit attitudes (Richardson & Goff, 2014). Racialised gender bias may affect the treatment of African American men and women who have long endured stereotypes that render them hyper-sexual and violent (Murphy, 2015; Cooper, 2006). When presented with hypothetical rape scenarios, respondents are more likely to find a Black female victim untruthful or responsible for her victimisation than is true when the victim is a white female (Willis, 1992). Homophobic and heteronormative bias may affect the fair treatment of students, as well. Gay men are subjected to stereotypes that they are promiscuous and hyper-sexual (Brubaker et al., 2017).

The intersection of class with race and gender is important to assessing the risks for bias in the treatment of accused African American male college athletes (Halley, 2015; Harper, 2013). Those whose class history is substantially lower than that of other students may experience bias that is gendered, raced and classed. Racialised gender stereotypes of African American men as animalistic and hypersexual intersect with a deeply racialised and classed understanding of who is a ‘thug’ (Jones, 2014).

4.4 The social construction of sexual harm
The dominant sexual assault narrative is deeply gendered. In this narrative, as Brenner (2013) describes, sexual assault is fundamentally ‘a form of male (hetero)sexual coercion of females’, the perpetrator is ‘quintessentially masculine … a freely acting predator motivated by misogynist lust/hate’ (517). The female is passive.

This active male/passive female narrative is made more salient by a popular activist discourse that ‘blur[s] the line between forcible intercourse, which is uni-
versally distressing, and sex that is ambivalent, internally unwanted, or regretted’ (Gruber, 2016: 283). As Gruber describes, the latter kind of sex – ‘drunken, casual, messy, or ambivalent sex’ (284) is ‘conceive[d] of as psychologically devastating and socially stigmatizing, if not potentially life-ruining, for women’ (284, emphasis added; see also Lamb, 1999).

As Gersen and Suk (2016) describe, college administrators similarly confuse ‘unwanted’ sex – however much agreed to, with ‘nonconsensual’ sex. Indeed, some schools effectively codify the conflation of ‘unwanted’ and ‘nonconsensual’ by defining prohibited ‘sexual coercion’ to include a woman’s choice to have sex in order to stop a male’s nagging, begging or name-calling (Coker, 2016).

Campus decision makers may (unconsciously) allow gender to become evidence in those cases where the facts about consent are ambiguous. As Halley (2015: 113-114) describes, imagine a case in which a male and female student have sex while both are extremely intoxicated. Both file complaints under a campus code that prohibits sex with someone who is unable to consent due to intoxication. How should campus administrators respond? The risk, of course, is that based in the gendered construction of sex, they will see the male as an aggressor and the female as a victim. As Karp (forthcoming 2019) notes, this risk for bias is increased to the extent administrators are focused on identifying male ‘sexual predators’.

4.5 Harm without culpability
Gender shapes harm. In Halley’s example, it is more likely that the woman will feel bad about the sex that occurred than will the male student. If popular narrative defines her sexual experience as ‘psychologically devastating and socially stigmatizing’ (Gruber 2016: 284), she is more likely to feel shame and to be shamed.

The social construction of sexual harm means, too, that there may be circumstances in which young women experience genuine sexual harm and yet there is no culpable perpetrator. The following story related by a campus administrator provides an example.

A male and a female student were part of a group of friends that regularly engaged in significant drug and alcohol use. The two students had had sex with each other before. The sexual encounter started as consensual sexual intercourse. She had her back to him. At some point, she no longer wanted to have intercourse. She began crying and she said, ‘no’, but she was not sure if he heard her. She was uncomfortable calling this sexual assault because she was not sure if he knew it was nonconsensual. She was hurt by his behavior because he ‘wasn’t paying attention to her’ during the sex. She did not want an investigation or a hearing, but she wanted him to know that she had been harmed by his conduct and that he should ‘pay attention’ in future sexual encounters (Coker, 2016: 207).

There is no violation of campus policy here. Without proof that the male student knew that the female student had withdrawn her consent, not even an affirmative consent standard would render his conduct a violation. And more to the
point, the harm the female student felt was not because she felt that her sex partner had coerced sex, but rather that he was so emotionally absent he didn’t notice that she was crying and miserable. *He should ‘pay attention’.*

There is no basis for an administrative process. Indeed, if the school were to impose such a framework in order to facilitate restorative justice dialogue, it would be egregious net-widening and a violation of the male students’ rights to fair process. But what if the students desired a facilitated dialogue? In the actual circumstance, this was the case, and a campus administrator trained in restorative practices facilitated a dialogue.10 The male student agreed that he should have been ‘paying better attention’ during the sexual encounter and suggested that his drug use might be part of a general problem of inattention. The female student said that she felt ‘heard’ and understood by the male student.

And what about Halley’s example? Both students feel sexually harmed by the experience. A high level of intoxication likely means that one or both have significant gaps in their memory of what occurred. Though some campus administrators might find sufficient evidence of a violation to adjudicate such a case, doing so risks substantial unfairness to the respondent and, as described above, invites decision makers to rely on implicit gender bias to fill the evidentiary gaps. Here, too, the parties might well benefit from and seek a facilitated restorative dialogue.

Neither case readily fits a victim/perpetrator dyad. In neither case, should one of the parties acknowledge their responsibility for violating campus code. Proponents of restorative processes should consider whether and how to establish dialogue processes that are not tied to campus investigation or adjudication and that have no disciplinary consequences. Community-based therapeutic restorative justice programmes that are unaffiliated with the criminal system may provide an example (Mercer et al., 2015). There may be significant hurdles to developing such a process, however. As is the case with other restorative justice processes, statements should be immunised against later use. Yet, in the U.S. context, should a violation of the sexual misconduct code be disclosed in a restorative dialogue, facilitators who are also school employees may find themselves required to report.

5. Facing the challenges

Restorative programmes do not act in isolation. The effectiveness of a restorative response, and the nature of that response, will be shaped, in part, by a university’s larger social and administrative context.

The pervasiveness of *crime logic* is an impediment to establishing a restorative approach, but less obviously, it may pose problems for restorative processes, as well. Restorative dialogue facilitators may shape the process in ways that emphasise individual responsibility at the expense of examining larger issues of campus.

10 University counsel refused to allow the administrator to facilitate a face-to-face meeting for fear of violating the then U.S. Title IX prohibition against ‘mediation’, so the administrator did a ‘shuttle’ dialogue, relaying comments back and forth between the parties (Coker, 2016: 207).
culture. Thus, the conversation is narrowed in a way that discourages the respondent from examining and learning from factors that might have influenced his or her choice – factors that might include problematic drinking, ideas about sexuality and drinking, gender scripts, the origin(s) of hostility towards women, the influence of peer networks on sexual conduct and racialised gender bias.

Restorative justice proponents must be mindful of the overall campus climate for marginalised students. Proponents of a restorative approach must examine the campus investigatory and adjudicatory processes to protect against potential implicit bias. Schools have been reluctant to release reporting and adjudication data on race, gender and other identity categories. Restorative justice proponents should urge transparency where there is no risk to disclosing confidential information about a student. To the extent that school administrators play a role in determining criteria for eligibility for restorative dialogue there should be public reporting of cases to allow for checks on implicit bias in their choice of referrals. Further, referral criteria should avoid risks for implicit bias. For example, schools that refer only ‘non-violent’ cases must ward against the operation of implicit racial/gender bias that encourages administrators to more readily characterise the conduct of African American respondents as ‘violent’. Finally, school administrators and restorative dialogue facilitators should receive implicit bias training.

Restorative dialogue facilitators should be concerned about the potential for implicit gender bias to shape the social construction of the sexual encounter in restorative dialogue practices. Finally, there will be circumstances where a party has suffered genuine sexual harm and the other party is not culpable under campus misconduct code definitions. As described above, some of these cases may be particularly suitable for a restorative approach – but one that does not adhere to a victim/perpetrator model and that provides adequate safeguards for participants.

6. Conclusion

It is essential that we develop restorative responses to campus sexual harm. As illustrated in the well-known Dalhousie University example (Llewellyn et al., 2015), a restorative response to sexual harm offers the possibility of truly transformative change – for the person harmed, the person who perpetrated harm, and the larger campus community. To play that vital role, restorative justice proponents must develop a comprehensive understanding of campus climate and administrative regulations as well as an understanding of the needs of victims of sexual harm.

References


