

Opening the black box of victim-offender mediation

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SUMMARY

The background of the page is a solid dark teal color. Overlaid on this background are several thin, white, curved lines that sweep across the right side of the image, creating a sense of movement and depth. These lines are of varying lengths and curves, some starting from the top right and curving downwards, while others start lower and curve more horizontally.

The application of restorative justice within the criminal justice system has increased over the last years (D'Souza & L'Hoiry, 2019). At this moment it seems almost impossible to picture a society without any form of restorative justice. More often the crime is handed back to the originate parties: the victim, the offender and the community (Christie, 2017). Instead of directly punishing the offender, restorative justice aims to restore the damage done, taking into account the needs of the victim, while holding the offender directly accountable. In restorative justice evil is not responded to in an evil way by intentionally inflicting harm, but instead it aims to restore relations by actively involving the victim, the offender and the community (Claessen, 2023). Victim-offender mediation (VOM) is one prevalent example of a restorative justice program around the world (McCold & Wachtel, 2003). In VOM victim and offender together try to come to an agreement, by means of a conversation. This process is led by a trained mediator (Hansen & Umbreit, 2018). In this process parties have the opportunity to ask and answer questions, explain the impact of the crime, show their emotions, and make amends.

Previous research has already shown that offenders' participation in VOM can be predictive of a lower risk of reoffending, compared to offenders whose case was dealt within the contemporary justice system (Claessen et al., 2015a). However, often research suffers from a self-selection bias. That is, in most empirical studies on this topic a comparison is made between offenders who participated in VOM and offenders who did not. Due to the voluntary nature of VOM, pre-existing differences might exist between these groups, that could account for the effect. As a consequence, it was still unclear what brings about the relationship between participation in VOM and lower reoffending: is it a (self-)selection bias and/or is it the process of establishing and having mediated contact itself in VOM? The central research question that lies at the root of this dissertation was therefore: *Does participation in VOM reduce offenders' risk of reoffending and, if so, how?* The focus in this dissertation was on two different VOM programs in the Netherlands.

By means of five different studies I aimed to answer the research question. First it was examined if participation in a mediation program in the south of the Netherlands was related to a lower risk of reoffending and to what extent this was explained by the VOM process or to a self-selection bias (Ch. 2). Following up on the data gathered in research from Claessen et al. (2015), three different groups of offenders were compared: offenders who participated in VOM, offenders who were willing to participate, but whose counterpart declined, and offenders unwilling to participate (total $N = 1275$). Results showed that offenders who participated in VOM indeed had a lower risk of reoffending compared to offenders who were unwilling to participate. Offenders who were willing, but unable to participate did not significantly differ from the other two

groups. Their risk of reoffending fell in between the risks of the other two groups. It was therefore cautiously concluded that the lowered risk of reoffending is explained by both the VOM process and a self-selection bias.

After it was established that participation in a VOM process in the Netherlands was related to a lower risk of reoffending, the follow up question that arose was how and which elements of the VOM process could explain this lower risk of reoffending. What is the psychological impact of VOM and which elements of VOM explain this impact? In chapter 3 a realist synthesis review offered a deeper introduction into the VOM literature, explained what is currently known about how VOM works, but also showed where important gaps lie and what thus still needs to be examined (*N* articles = 53). The synthesis review indicated that, although a possible self-selection bias could (partly) account for the effect on recidivism, there are multiple key working elements in the VOM process itself that can help explain a psychological change within the offender. These elements can be subdivided into fundamental conditions which should always be present in VOM (voluntary participation, proper preparation, neutral and non-judgmental mediator) and working mechanisms, which may vary in every encounter (e.g., balance of power, humanizing impact, offering a learning opportunity, mutual understanding, finding common ground).

With the studies in Chapter 4 and 5 I tried to open the black box of VOM, by examining the Dutch mediation practice 'Mediation in Strafbzaken' (Mediation in Criminal Cases, MiS). These studies aimed to unravel what psychological outcomes VOM bring about and which elements of VOM are related to these psychological outcomes. For both studies one data-collection procedure was used. Offenders whose case was referred to mediation, were informed about and asked to participate in the study. To participate they had to fill out two questionnaires. One at the start of the VOM-process, before the encounter, and one 6-8 weeks after the VOM-encounter took place. Offenders who eventually did not participate in VOM were also asked to fill out a second questionnaire, 6-8 weeks after I was informed that the encounter would not take place.

Chapter 4 examined the psychological impact of VOM on offenders. To this end, the psychological outcomes of offenders who participated in VOM were compared to the outcomes of offenders who did not participate in VOM (total *N* = 86). The findings suggest that offenders who participated in VOM take more responsibility, have more victim empathy, feel more guilt and shame, and experience higher moral failure than offenders who did not participate in VOM do. Offenders also reported feeling significantly less awkward about meeting the victim again after VOM. Interestingly, psychological factors such as empathy, guilt and shame have been related to more prosocial behavior and less offending behavior (Gausel et al., 2016; Hosser et al., 2008; Tangney et al., 2014). Guilt

and shame are shown to be able to motivate people to obey social moral rules (Hosser et al., 2008). Tangney et al. (2014) indicate that people with higher empathic concern are prone to feel more guilty and subsequently commit fewer crimes. This means that this dissertation unraveled psychological outcomes in offenders as a consequence of their participation in VOM which might explain a lower risk of reoffending. To my knowledge this indirect explanation of a lower risk of reoffending has not been empirically shown in previous research.

Building on Chapter 4, Chapter 5 aimed to examine which elements of the VOM process were related to the psychological outcomes. Based on the synthesis review a distinction was made between fundamental (pre)-conditions of VOM (perceived voluntary participation, preparation, and professional competencies of mediators) and three working mechanisms of the VOM process itself (learning opportunity, humanizing impact, Positive atmosphere and interaction with a cooperative victim). It was hypothesized that adhering to these fundamental conditions and working mechanisms was related to the psychological outcomes. For this study only those offenders who participated in VOM were examined ($N = 55$). In addition to the questionnaire filled out by the offenders, observation forms filled out by the mediators were used. Therefore, this chapter builds on both quantitative and qualitative data. The results showed that the proposed working mechanism are related to multiple psychological outcomes. In addition, the study suggests that adherence to the fundamental conditions of the VOM process is associated with the occurrence of the working mechanisms of the VOM encounter itself. That is, offenders who reported that they felt well-prepared, experienced the mediator to be neutral and to take them seriously, also reported a higher occurrence of multiple working mechanisms: e.g., increases in satisfaction with the VOM process, experiencing even possibilities to speak, perceiving the apology to be sincerely accepted, and the degree of reintegrative shame felt. The fundamental condition voluntary participation seemed to work as a moderator, since it altered the relation between working mechanisms and psychological outcome variables.

Altogether, based on Chapter 3 and Chapter 5, this dissertation showed that three working mechanisms of VOM could be related empirically to offenders' psychological outcomes afterwards: 1) a by the offender perceived open and constructive attitude of the victim, 2) a humanizing experience during the process, and 3) experiencing VOM as a learning process, in a way that helps offenders realize the true impact of their crime. This dissertation also suggests the importance of adhering to three fundamental conditions for these working mechanisms to occur: 1) the offenders experiencing the mediators to be neutral and to take them seriously, 2) the offenders feeling to be properly prepared, and 3) offenders experiencing to (not be) voluntarily participating.

For MiS it was not yet examined if participation was related to a lower risk of reoffending. In addition, in previous research on VOM and reoffending the impact of sanctioning on this relationship has not been examined. Since the outcome of mediation can impact further sanctioning (Claessen et al., 2015a) and sanctioning could also impact reoffending (Braithwaite et al., 2018), sanctioning might offer an alternative explanation for a lower risk of reoffending. Therefore, in Chapter 6 it was examined if participation in MiS was related to a lower risk of reoffending and what the role of sanctioning was. Four offender groups were compared: offenders who participated in VOM, offenders unwilling to participate in VOM, offenders unable to participate because the victim declined the option, and offenders who were not referred to VOM. This last group was formed using propensity score matching, to mimic a true experiment. It was expected that the relation between participation in VOM and a lower risk of reoffending is explained by the VOM process as well as a (self-)selection bias and that additional sanctioning weakened this relation. Results replicated the finding that participation in mediation predicts a lower risk of reoffending, and suggested that the role of the self-selection bias was smaller than initially thought. In addition, I found that the chance of receiving a sanction is lower after VOM. However, this in itself seems unrelated to the reduced risk of reoffending.

All in all the studies in this dissertation have opened multiple cracks in the door of the black box of VOM. It gave more insight into what the psychological impact is of VOM and identified mechanisms that could be related to the psychological impact. Furthermore, the studies offered more robust outcomes on the relation between participation in mediation and a lower risk in reoffending, while taking into account the role of sanctioning. From an academic point of view the outcomes of this dissertation offer starting points for new research as well as suggestions for research designs that can be adopted to further open the black box of VOM. From a practical perspective this dissertation offers concrete implications that can be taken into account in VOM processes, to further optimize the (psychological) outcomes for offenders.