

Safety issues associated with using restorative justice for intimate partner violence

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Abstract

Intimate partner violence (IPV) is renowned for its potential to harm and its under-reporting. A study in New Zealand explored non-reporting of IPV, and the extent to which using restorative justice (RJ) could increase reporting of this type of crime. Although the use of RJ for IPV is heavily debated, 79% of participants in my (2010) research considered that increased availability of RJ would increase reporting of IPV. It demonstrated the importance placed upon their relationship by victims and perpetrators, the complexity of power in IPV, and a range of ways IPV is reported. Like most literature on the subject, safety was identified as a priority. In this article I examine the implications of gender and RJ, safety in terms of ways RJ would increase, decrease safety for victims, and ways the process could be made safer in IPV situations.

Key words: intimate partner violence, gender, safety, restorative justice, victim, perpetrator

Introduction

Current political realities cast doubt on the practice of RJ becoming widespread for IPV cases. While on the one hand New Zealand's government guidelines (Ministry of Justice, 2004) acknowledge that family and sexual violence cases 'may not always be appropriate', in practice, family violence and sexual violence is only occasionally dealt with by using RJ. However, before addressing this issue it is necessary to examine RJ.

Restorative justice is a way people can experience justice, often allowing them to define justice for themselves, albeit sometimes within the framework of the conventional criminal justice system. Jülich (2001) canvassed the concept of justice in depth with adult survivors of child sexual abuse. She found that a sense of justice comprised the provision of survivors with a safe forum in which they had a voice. The processes they described which could provide them with a sense of justice were what Jülich identified as those used by RJ. At present, the conventional criminal justice system does not provide fairness to all, nor is it perceived as fair by many who have experienced it. RJ, on the other hand, may offer more to victims and perpetrators, particularly a sense of being treated fairly, where both parties' needs can be met (Zehr, 1990) more equitably. Zehr (1990) explained what RJ could offer, illustrating the ability of the community to define justice. He stated '[c]rime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the perpetrator, and the community in search of solutions which promote repair, reconciliation, and reassurance' (p. 181).

Generally the process has involved meetings facilitated by one or more trained facilitators in a safe place. Unlike conventional criminal justice systems, RJ has not dealt with issues of guilt or innocence, nor has it removed prisons as a possible sanction; instead it has presented a new way of thinking when responding to crime (Young & Morris, 1998). Restorative justice allows those directly involved and their community representatives to respond. Despite the growing acceptance of RJ for dealing with offending and its aftermath, its use for IPV remains a subject for debate and scepticism, particularly by those coming from a victim advocacy per-

spective. In general their concerns are focused on safety.

The purpose of this article is to explore the use of RJ for IPV, in particular its safety implications. I use the literature and, in contrast with the more commonly available views of their advocates (Hayden, 2010), the voices of victims and perpetrators. As IPV is, or has been the experience of approximately one third of New Zealand women, this article discusses another possible remedy besides reporting the abuse to the criminal justice system or living with the status quo. Accordingly, its contents have the potential to empower. Given the *Women's Studies Journal's* inclusion of a wide range of feminist positions, objectives of addressing of women's experiences (in this case one far too prevalent), and encouragement of feminist theory and debate, this article represents one feminist position, many women's experiences, and hope.

Gender and restorative justice

For many years research globally has shown that violence against women is extremely common, and manifested by profound consequences. Ptacek (2010) noted that physical and sexual abuse contribute to poor physical and reproductive health, suicide, drug and alcohol abuse, depression, post traumatic stress, poverty, hunger and mortality in women, and as a consequence, impact negatively on their children. Not surprisingly this has also influenced women's economic and political livelihoods (Ptacek, 2010, p. 183). Equally as clear in international research is the fact that most women victimised by rape and IPV do not report the violence (Tjaden & Thoennes, 2000). While the women's movement has transformed the state response to these crimes, there has been a tendency for state co-option (Dasgupta, 2003) of feminist activism, which has assimilated the feminist political role. In other words, the state has decided what is best for women in these situations, often with negative effects, especially on women of different groups. This is one reason why women do not report IPV.

Consequently, feminists have reflected on whether feminism is relying too much on the criminal legal system to stop violence, and about how, in the process, the state is blurring feminist visions of justice, as well as what forms of social action must be developed (Ptacek, 2010, p. 6). Feminists have become proactive about improving the state response to IPV and sexual abuse to suit women's needs. The Duluth model created by the Domestic Violence Abuse Intervention Project (DAIP), is one of the more widely known feminist antiviolence approaches in the US, which served as the inspiration of the Hamilton Abuse Intervention Pilot Project (HAIPP) in New Zealand. These models used a multi-agency community response which worked on the premise that the state perpetuated intimate violence through policies and practices that failed to protect women and to hold abusive men accountable (Ptacek, 2010, p. 12).

Contemporary RJ is also a recent development, described by Ptacek as 'a consequence of social movements for civil rights and women's rights' (Ptacek, 2010). While DAIP is critical of RJ for IPV, the Battered Women's Justice Project, a coalition which includes DAIP, reported that RJ and the battered women's movement held similar principles, namely, to restore victims of crime, to promote the involvement of the community and to place crime within a broader context (Ptacek, 2010). Similarly, both the women's movement and the RJ movement have sought to improve the response by the state to violence. Thus, their objectives were parallel but not their means of achieving them.

One of the key criticisms of using RJ for IPV is the potential for the abusive partner to coercively control the victim during the process. A woman could be coerced into attending an RJ conference (with the possibility he might receive a lighter sentence) or to accept a conference outcome she does not want. Coercion can be through subtle signs that only the woman can identify; it can be discreet or overt. Coercive control has formed the basis of objections to us-

ing restorative justice for IPV cases. Stark (2007) commented that it was usually to avoid coercive control, rather than the violence, which drove women to report abuse to the authorities.

Sally Engle Merry (2009, p. 182), described gendered coercion as the control of 'women's sexuality and reproduction through violence or threats of violence in the family [which] supports family structures based on the power of the male head. ... Those who resist experience coercion'. Accordingly, male dominance was maintained through culturally or environmentally learned controlling behaviours. More simply, Stark (2007, p. 6) described it as the 'age-old prerogative of men to physically subjugate their female partners'. Merry saw it as more complex. She stated,

Violence against women is a complicated form of behaviour that is situated in particular economic and cultural contexts [which is] never separate from larger systems of power and inequality. ... gender violence is inherently difficult to measure [because] victimisation surveys of gender violence ... only count what people think is gender violence ... [B]ecause gender violence includes both harm and an interpretation of the meaning of the harm, measuring gender violence is a subjective and culturally shaped process. (Merry, 2009, p. 183)

What, then, are the concerns about using RJ in the IPV context?

The debate about risks

Like other countries where RJ has been practised, there has been considerable debate in New Zealand about the use of RJ for intimate partner violence. This discussion has been explained by Frederick and Lizdas (2010) as a result of the crossing of paths of two reform movements, the battered women's movement and the RJ movement each of which were challenging the Western criminal justice system. These 'both ... [held] the promise of being truly effective responses to domestic violence' (Frederick & Lizdas, 2010, p. 39). In this section I consider the implications of using RJ for IPV.

Participating in an RJ conference, while giving couples an opportunity for a facilitated discussion, may pose risks. People dealing with IPV have often found it necessary to balance safety with considerations of their future together. Most battered women do not want their partners prosecuted (Frederick & Lizdas, 2010; Morris & Gelsthorpe, 2000). One possible reason is that separation has presented substantial risks for victims before, during or within a few months of separation (Busch, 2002; Stubbs, 2002). Hooper and Busch (1996) stated that a characteristic of men who are violent towards their partners is that their violence often escalates at the time of separation, or within 12 months of that date. IPV has been considered too serious for mediation (Carbonatto, 1995; Curtis-Fawley & Daly, 2005), because it could provide the offender with another opportunity to abuse the victim emotionally or physically (Cameron, 2006; Hooper & Busch, 1996).

When contemporary RJ practice was relatively new in New Zealand, Busch and Robertson (1993), Hooper and Busch (1996), and Carbonatto (1995) demonstrated the contentious nature of this issue from the standpoints of victim advocates and supporters of RJ. Both views advocated protection of the victim and prevention of further IPV, and were located in the context of earlier days in New Zealand when couple mediation and RJ were conceptually linked. Proponents of HAIPP, Busch and Robertson (1993) initially critiqued the Family Courts' use of a therapeutic approach in the form of mediation as a means of dealing with conflict. Hooper and Busch (1996, p. 10) later criticised RJ because they believed it labelled crime as conflict, minimising the seriousness of the violence, especially IPV. Busch and Robertson's (1993) reservations centred on the safety of victims, their ability to speak freely, and the fact that that mediation implied no fault on either side, potentially reducing offenders' accountability. Hooper and Busch (1996) stated that victim-offender mediation's emphasis on consensus, neutrality and power-balancing made it unsuitable for domestic violence. They considered victims' responses

could be compliant, placatory and modified to reduce retaliation; mediation was unlikely to resolve spouse abuse; and the abuser's power would exceed the victim's. Their concerns about Carbonatto's conferencing approach included the possibility that domestic violence cases could be referred without going through the criminal justice system; confidentiality implied no external accountability; and there was no monitoring of agreed plans. Hooper and Busch (1996) had concerns that the lack of formal legal safeguards due to the privatised nature of RJ, and the risk of the family of the perpetrator further intimidating the victim (Busch, 2002; Hooper & Busch, 1996). Consequently, RJ was considered a risky process for IPV.

Critique further afield has included the fact that apology was frequently used by perpetrators to reinstate their power over the victim (Stubbs, 2007); the risk of re-privatising IPV after the years that have been spent bringing this type of offending out into the open (Curtis-Fawley & Daly, 2005; Edwards & Haslett, 2003; Stubbs, 2002); and the inability of RJ to prevent imbalance of power between the victim and perpetrator (Curtis-Fawley & Daly, 2005).

Carbonatto had a different view. Carbonatto (1998) noted that the increased response to domestic violence by the criminal justice system had failed to provide solutions for couples continuing to live together. Referring to the 32% reoffending rate by offenders within three months of being arrested, prosecuted and attending the HAIPP programme (1995), Carbonatto suggested that insufficient attention could have been given to the experiences, thoughts and feelings of victims. Carbonatto noted how women wanted the violence to stop, and protection, safety, support and assistance. There was little evidence to suggest that all women wanted were arrest and punishment. Treating IPV as a crime had also led to the offence of assault being prioritized over the relationship (Morris, 1993, cited in Carbonatto, 1995).

Much of the literature refers to significantly unequal power held by the parties (Carbonatto, 1995; Curtis-Fawley & Daly, 2005; Frederick & Lizdas, 2010). However, in addition to well-informed facilitators, procedures can be adopted to address unequal power. Morris and Gelsthorpe (2000) suggested using procedural fairness, supporting the less powerful and challenging the most powerful. They also suggested that the presence of friends and families could prevent recurrence of violence and help monitor a safety plan. Frederick and Lizdas (2010) had similar views, adding that the engagement of the community was one aspect of RJ practice which could have the most potential for restoring battered women's safety, autonomy and agency.

Frederick and Lizdas (2010) commented that although the battered women's movement has worked to reform the criminal justice system's response to victims, they had not done enough to 'address those other needs that women repeatedly identify ... [including] safe and affordable housing, childcare, true autonomy, and community support for staying in a relationship while staying safe' (p. 48). However, they warned that the presence at a RJ conference of community norms that it was appropriate to excuse violence against women would increase the risk for battered women. Therefore it was vital that the community present at a RJ conference had a deep understanding of the dynamics of IPV, the past and potential harm to the victim, the perpetrator's likely response, and other personal and political dynamics which could affect the process or the result.

While citing Braithwaite and Strang's (2002) observation that conference victims fared better than those whose cases went to court, Curtis-Fawley and Daly (2005) cautioned that any legal response to gendered violence needed to consider different victim-offender relationships and victims' needs, factors relevant for the use of RJ. Similarly, cultural factors needed to be taken into account, a possible strength of RJ. Furthermore, it is necessary to acknowledge the transition of feminist understandings of gender violence due to the subjective and interpretive nature of its measurement and theory. According to Merry, (2009, p. 181),

(N)ew theoretical developments challenged [the women's] movement ideas that gender violence is simply an expression of patriarchy. Studies of non-heterosexual battering revealed that interpersonal violence occurs between same sex couples and that there are forms of gender violence that target non-heteronormative expressions of gender. Clearly gender violence is not just a way of expressing male power over women (p181). ... The anthropological approach, which sees gender violence as socially produced, performed, contextually defined, and existing in many different situations and contexts, provides a valuable way to understand what gender violence is, how its definition is changing, and how modes of approaching it are changing. (Merry, 2009, p. 185)

This point is especially significant when considering the use of RJ for IPV. Restorative justice can provide a suitable vehicle for consideration of emotional and contextual factors implicit to IPV. While many writers concede that not all violence is perpetrated by men, that by implication, a much smaller portion is perpetrated by women, gender violence is still commonly regarded as a patriarchal activity. However, seeing men as the violent party in such cases is simplistic. IPV is more complex than this view would suggest, and its contextual and emotional aspects require a broader perception of safety to be taken into account. This brings me to victim precipitation.

In contrast to an innocent victim (Hollander, 2009) who lacked an ability to resist violence perpetrated against them and who were weak and defenceless, some victims have had something to do with the incident. When victims' actions were a contributing factor, Muftic, Bouffard, and Bouffard (2007), attributed this to victim precipitation, or 'the victim ... act[ing] as a direct, positive precipitator in the crime' (citing Wolfgang, 1967, Muftic, et al., 2007, p. 328). Victim precipitation was referred to as 'unplanned or spontaneous' by Koons-Witt and Schram (2006). Their research on the relationship between co-offending groups, victims, and the conditioning of these by the offender's race, found that aggravated assaults committed by women were usually retaliatory and involved a personal relationship with the victim.

Citing research by in Philadelphia, Wolfgang (1967), Muftic, et al. (2007) discussed a sample of homicides involving 588 victims and offenders who were in interpersonal relationships. In 26% of the homicides, victims were first to use physical force. Wolfgang referred to these as victim precipitated, or examples of victims who used their agency, possibly to defend themselves. Another researcher, Amir (1967), applied this concept to rape, referring to cases where consent was given initially, then withdrawn 'before the actual act' (Muftic, et al., 2007, p. 328). Not surprisingly, feminist scholars strongly protested that this was victim-blaming. Notwithstanding these objections, Muftic, et al. (2007a) suggested that victim precipitation could provide new insights into the use of violence among intimates, especially the contextual differences between men's and women's use of violence.

Taking the needs of both parties into account, Pennell and Francis (2005) provided an RJ model for dealing with IPV in North Carolina, USA. They conducted research into victims' views of intimate partner violence, staff and supporters' views on what they called 'safety conferencing'. Pennell and Francis (2005) saw the model as having advantages for victims such as reducing their isolation, providing support for them and their families, and potentially creating safer environments for people experiencing IPV, through the creation of safety plans. They felt that safety conferencing:

- Was appropriate perhaps two months after separation in cases where couples had separated (p. 681);
- Involved the making and carrying out of a safety plan with the help of support people (p. 677);
- Required batterers to attend a batterers' programme (where a safety conference could be held at the beginning, middle and end of the programme, in the presence of the programme facilitator) (p. 685);
- Entailed the domestic violence service provider staff convening the conference to ensure that the women's safety and that of any children were safeguarded (p. 686). (Pennell & Francis, 2005)

Pennell and Francis (2005) concluded that the safety conference was a coordinated and inclusive response; a way to build individual and collective strength to 'reshape connections, to make sound choices, and promote the safety of women and children' (Pennell & Francis, 2005, p. 688). I turn now to safety.

Understanding safety

In the literature, safety is often confined to the physical and, to a lesser extent, the emotional (see Stubbs, 2004). I argue that safety needs also comprise social elements. The criminal justice system tends to centre on the physical, responding proactively to prosecute perpetrators when evidence of physical injury is present. Victim advocates often debate on the basis of the emotional needs of victims.

On the other hand, the focal point of spokespeople for perpetrators has often been the fairness of the criminal justice system, particularly in custody matters. It follows that where there is a sense of injustice, safety may be compromised. Significantly, neither the criminal justice system, nor victims' or perpetrators' advocates tend to consider the social (which implies community) or contextual aspect of IPV. This is where RJ, with the gathering of community support around a couple, is uniquely placed to meet the needs of both parties.

Morris and Gelsthorpe (2000) stated that friends and family during and following a RJ process would be better placed than professionals in the criminal justice system to prevent the recurrence of violence. Indeed, Cheon and Regehr (2006) observed that the greatest promise of RJ appeared to be a potential to build community and mobilise resources. In other words, it took into account the social needs of the couple and their families. Notwithstanding this promise, the impact of the safety question has limited opportunities for victims to gain empowerment. As suggested by Hudson (2002), if the claim of advocates of RJ that the process is empowering is true, then an RJ process would be appropriate for people who feel disempowered by court proceedings, as found by Curtis-Fawley and Daly (2005). Furthermore, Jülich (2006) found some victims became estranged from members of their families as a result of court action.

Mills (2008) made an important point when she commented that safety should be on the victims' terms. She described the Family Wellness Programme, which supported women to develop tools to manage their own lives. She stated:

A harm-reduction model encourages people to reflect on the danger they are being exposed to and then learn to reduce the risks, so that they are less likely to put themselves in harm's way.... Many feminist advocates resist the idea of supporting a woman who is living with her abuser because they see it as somehow, the equivalent of endorsing the abuse. But by refusing to extend support to those women who are not ready or able to leave their violent partners, these advocates isolate and alienate the victim even more. (Mills, 2008, p. 187)

Mills' comment is consistent with findings by Pennell and Francis (2005) who found women were often too ashamed to tell refuge staff that they were returning to their partners. Nevertheless, refuge staff believed that a family group conference provided a way to educate the family about IPV.

The research methodology

The research used mainly qualitative methods to examine the extent to which the use of RJ would increase reporting of IPV. Ethics approval was obtained from Auckland University of Technology's Ethics Committee on 30 March 2007.

Participants were recruited through personal networks and by writing to relevant agencies. I obtained their written consent and conducted 15 in-depth interviews with experts in the area, including victim advocates and advisers, stopping violence service providers and a men's group coordinator, members of the judiciary, cultural advisers (Māori and Samoan) and RJ service

providers (indigenous and non-indigenous). I observed two Auckland courts specialising in family violence. After obtaining their written consent I conducted in-depth unstructured interviews with eight victims and six perpetrators* to learn their views on non-reporting and whether the availability of RJ would increase reporting to the police. Safety was one of the issues addressed in each interview. I also kept a journal. Each interview was transcribed and coded.

For the purposes of the research and consistency, the term perpetrator was used for either gender and referred to the person responsible for the violence. Perpetrators were not necessarily respondents on a protection order application, or subject to a criminal conviction. Instead, the parameter used was that perpetrators had been either judged by another person or agency as having transgressed the Domestic Violence Act 1995 or had carried out any of the behaviours cited, whether or not these were reported. I discuss the findings of the research next.

Findings

Participants agreed that safety was vitally important; however, one asked if it was reasonable to expect RJ facilitators to have greater responsibility for safety than the criminal justice system. When considering safety, the data from the research was examined in three ways. These were: the capacity of RJ to make couples safer; its potential to make couples less safe; and precautions that could be taken to enhance the safety of the RJ process. Each of these will be addressed in turn. Participants felt that safety was a consideration before, during and after a restorative justice conference.

1 Qualities of RJ which could increase safety

Appropriate preparation before a conference was considered fundamental. Participants felt that screening couples' history of IPV, victims' and perpetrators' readiness to attend a RJ conference, and the perpetrators' remorse would assist safety needs. Support people, a distinctive aspect of an RJ process over the criminal justice process, needed to share the objective of a peaceful resolution rather than taking sides. As stated by one participant, they should be on the side of everyone, and their role was to continue through to beyond the meeting. Support people were considered an invaluable tool, in the sense that it was part of the collective responsibility of the whānau¹ to prevent further harm to children. Some felt that RJ would be particularly helpful for people who wanted to remain in the relationship, since the primary relationship and the wellbeing of their family could be taken into account. Another factor at this stage was the possible inclusion of children. One victim advocate who considered children had a place at an RJ process stated:

It would be really helpful for people who were staying together to make sure it doesn't happen again, but also for those who are not. This is especially for the children; adults make choices but children can't. Anything that makes kids safer and saner has to be good. (Key informant: Interview U)

This would be particularly appropriate in the case of teenagers, for whom having an input about their future is important. Again, as with the adults, careful screening and assessment of their suitability and/or readiness for participation in such a process would be essential.

Participants considered it important to examine the potential and the expectations of couples as far as addressing relationship issues was concerned. A number of participants in this research would have welcomed the opportunity to undergo RJ to improve their relationships. Both victims and perpetrators observed that had they known about RJ, they would have tried it at an

* Because one perpetrator was also a key informant as a men's group leader, I included both of his roles in the qualitative results, whereas in the quantitative data, his data as a perpetrator only was used. This avoided creating bias by giving him two voices in the quantitative aspects of the research.

earlier stage in their difficulties. Furthermore some felt that RJ held greater promise for the relationship because it was speedier than the criminal justice system. One participant stated, 'It would be a very positive thing if the emphasis is on dealing with all aspects of this relationship ... [Support people] can help this couple with the education, the relearning and monitoring of how to relate to each other.'²

A victim, Eileen, thought the RJ process would:

Give them both a chance where they're not all powerful [and in] control and dominant. That's been stripped away ... it would also then give the perpetrator an opportunity to look at themselves [to] see the consequences of their actions, and hopefully ... motivate them to change their behaviour. (Eileen: Interview E)

This way, both parties could take steps to correct unhelpful behaviours.

For the parents among the perpetrator group there was a concern about parental responsibility and custody issues. Some considered the criminal justice system was biased against them, as they had found themselves fighting the state to maintain their roles as parents. Many thought RJ offered them more in custody disputes, and to establish safe parenting practices by estranged parents. One key informant, a men's group leader stated:

[Restorative justice can] restore the relationship re the parental partnership for the children.... It's saying, you've ... severed your relationship, there's no more trust or respect left ... that is how you restore ... mutual need for each other ... so therefore you ... become a parenting team. (Key informant: Interview ZC)

Safety during an RJ process required appropriate language. One victim and one perpetrator expressed concern that couples being labelled could be detrimental to the process, and/or the safety of either party:

If the emphasis is on 'you're the perpetrator, and you're the victim,' then I think it is going to be destructive and get people's backs up. (Ian: Interview I)

In a RJ conference it's no longer a perpetrator and a victim, it's Jane and Rich. (Eileen: Interview E)

In court situations there is a tendency for the terms 'victim' and 'offender' to be used, with the result that the individuals are reduced to roles rather than having personal realities. Being reduced in this way would be more likely to increase resentment, estrangement and negativity, than effect a positive resolution. This, too, must be a disincentive to report IPV.

Further to the issue of language is work by Picard (2000) who researched the multiple understandings of mediation, which included facilitation. Because RJ conferences concerning IPV usually concern heterosexual partners, Picard's research supports co-gender facilitation. This is on account of Picard not only finding gender and experiential differences, but she also found different objectives associated with gender, experience and context. She stated:

In some instances, the word [facilitation] was used to depict activities that involved the exploration of needs and concerns, the acknowledging of emotions, and a heightening of understanding, empowerment, and self-determination. In the other influence, it had to do with the guiding of process, the exploration of options for settlement, and making possible joint problem solving. (Picard, 2000, p. 2).

Not surprisingly, the first understanding was more likely to be held by female mediators, whereas the second, more process-oriented understanding was usually used by male mediators. Accordingly, Picard's findings suggest that facilitation by a team of male and female facilitators would be more likely to relate to each party in a way that was gender appropriate and address emotional factors and resolutions.

However, focusing on language use at RJ conferences could also imply structured, indeed 'pre-scribed' dialogue as part of the process, such as the scripted model created by Wachtel in the 1990s. While these scripted models have had a place in RJ, facilitators using them lack the knowledge, skill, sensitivity, and elasticity required in such a sensitive area as IPV. Fur-

thermore, pre-scribed dialogue fails to take into account the basic requirement, one which was supported by almost all of the participants in this research, for facilitators to have a high and specialised skill base for dealing with these cases. I turn now to follow up.

Following up an RJ conference with another meeting to monitor completion of tasks is a practice used by some RJ service providers. However, less often considered is the safety of the agreements made at the conference. Dudley, whose business was affected by the IPV he and his partner were experiencing, articulated this clearly:

The mere fact of ... being asked to document things would be enough to reinforce the events of that RJ conference ... I would imagine that promises would have been made. And I'd like to, being a victim, see that those promises are being kept. And if they were not kept, it was documented. (Dudley: Interview D)

Accordingly, having a written agreement gave more power and assurance to this victim. However, this type of assurance would not suit people of all cultural and socio-economic status.

2 Qualities of RJ that may make participants less safe

Before holding an RJ process it is imperative to identify potential risks. Comments by participants revealed how wide the risk parameters were, and these were not confined to the victim and perpetrator. Facilitators could also prejudice safety, a factor recognised by all participants. Facilitator risk factors included: gender appropriateness; skills; having a balance between academic and practical experience; routine monitoring and debriefing; having friendly and sensitive personalities; common sense; culturally appropriate behaviour; and education/experience in the National Network of Stopping Violence and/or National Collective of Women's Refuge.

The background of facilitators could put them in positions where they could inadvertently influence the conference process or outcome. A patriarchal facilitator could be more prone to minimising the violence or its impact, thus revictimising the victim in the process. On the other hand, one perpetrator highlighted the significance of values, and the possibility that they might be imposed on the parties. 'The concept is rather easily open to abuse if the people running it have wacky values, for ... example accepting accusations of domestic violence without any proof that violence has actually occurred.'³ Furthermore, one key informant, an anger management programme leader asked why have it, if safety was an issue.

Other significant factors described as being contra-indications to undertaking a RJ process were: power imbalance; the involvement of drugs and alcohol; the perpetrator being unrepentant; serious mental health problems; lack of recognition of the victims' needs; and the risk of retribution by the perpetrator afterwards.

A frequently expressed concern of the process was that it could be manipulated. Eight participants raised this issue (three each from the key informant and perpetrator groups and two from the victim group). Hooper and Busch (1996), whose early critique was based on observations about mediation processes, also saw the potential for a mediator's own goals to 'predominate' during a mediation session. More often, however, manipulation at a RJ conference is regarded as the penchant of the perpetrator. Sexual abuse survivors in Jülich's (2006) study discussed the ability of perpetrators to manipulate others. One survivor in her study commented, 'What if he's one of those smart arses that goes along [to a RJ conference] and says all the right stuff?' (p. 254).

Other manipulations possible within the type of RJ process raised in the data were: getting a lighter sentence or avoiding conviction; insufficient focus on the needs of victims; and where one party had an agenda alien to the concept of RJ (e.g. a vengeful victim or a retributive perpetrator). In addition to the manipulation of the RJ process, or of conference participants, minimisation of IPV was considered likely to hinder safety. A victim advocate asked:

Is the focus of the process restoring her to her rightful position as someone with dignity, a right to autonomy and is it a process where it is absolutely crystal clear that nothing justifies violence? Or is it, and this is what I think is more likely to happen, 'Yeah, well, he did hit her on that occasion, but, yes, she had been less than attentive, and so we need to resolve the relationship problem and not a problem of [the violence itself], and maybe if there was a bit better communication ... they could sort the relationship out.'⁴ (Key informant: Interview S)

The key informant added that victims often become responsible for resolving relationship problems, which, in his view, should not be addressed until the victim is safe.

Furthermore, the order in which victim safety and a RJ process occur has created a problem conceptually and logically, as well as in RJ practice. It comes down to a 'which comes first, the chicken or the egg?' situation. Most victims and all perpetrators in this study considered their relationship important, whereas victim advocates considered safety was the priority before addressing the relationship. While RJ provided the potential for improvement in their relationship to reduce violence, a reduction in violence in the first instance could enable them to improve the relationship. Two victims (Gayle and Alice) thought couple counselling would also be helpful, thus indicating their relationship as a priority. This dilemma could be catered for to some extent by the presence of a victim advocate supporting the victim and a stopping violence programme leader supporting the perpetrator before, during and after the conference. One victim advocate observed:

I think there would need to be an assessment of where a woman was at before there was a RJ conference, just so the conference could be tailored to where she's at. That's all part of checking her safety along the way. I think it would be really important for the RJ process to be really well connected with a victim advocacy service, also with a stopping violence programme. So that's really about the opportunity to safely share information. Both before and after having the conference. (Key informant: Interview T)

In keeping with the observations of much of the literature (Busch, 2002; Coker, 2006; Hooper & Busch, 1996) one perpetrator in the current study acknowledged the ability of men to coercively control their partners. He observed, 'Men can be very intimidating. I can imagine some men in that environment could intimidate the partner [into] saying [she would] agree to things that she may not necessarily want to agree to.'⁵ Thus, there was a perception in the research that RJ processes could be vulnerable to abuse through revictimisation, coercion, minimising of the violence, and patriarchy by perpetrators, victims, and/or facilitators. In the next section I discuss special RJ practices that are applicable in these cases.

3 Making restorative justice safer

Many aspects of RJ practice which impact on the safety of all participants are part of the preparation stage. As indicated previously, this includes physical, emotional, and social/contextual safety. One key informant, a judge, stated:

Sometimes the victim will have unrealistic expectations about how this relationship is going to be repaired. Reality testing of all women in that situation, not to discourage them from trying to achieve a goal they want ... but to make sure they are not going into the process with unrealistic expectations, and end up with an unhappy outcome. (Key informant: Interview O)

A stopping violence programme leader commented that perpetrators needed to be fully informed, well supported and prepared about the possibility of feeling defensive during the RJ process. Being given the wrong expectations and inadequate information about the process could prejudice work already done by a perpetrator in a stopping violence programme. Because the emotional component of RJ is a significant way for victims to address or relieve the stress that has resulted from the offending (Fanslow & Robinson, 2004; Koziol-McLain, et al., 2004), it is vital for perpetrators to be prepared for some emotional outpouring by victims, an important

way perpetrators get to see the consequences of their actions. As Eileen put it, ‘From a victim’s perspective ... [it is necessary] to put forward, “This was my life before; this is my life now.”’

Restorative justice facilitators could guide perpetrators to attend their conference armed with ideas about how they might make good the harm done. This may show the victim that they want to make things right, and had thought about how. Should the situation create potential risks, however, one RJ practitioner pointed out that consent to participate in a RJ process ran from moment to moment. Thus, both parties and the facilitators (and possibly advocates for the perpetrator and victim) should have the power to stop an RJ conference, should the need arise. This is already the practice of many RJ service providers.

The timing of a conference is important, and in the view of Tony Marshall⁶ can occur at any time for any crime, depending on the readiness of the participants. In addition, it can have a major impact on outcomes. For example, one perpetrator pointed out that in his case, had he been given the opportunity of an RJ process soon after being arrested, it would have been too soon. Prior to the incident he had taken his homeless, alcoholic ex-partner on a temporary basis into his home when she was in desperate need. He explained:

I think it would have been too early [to hold a restorative justice conference] because right in the midst of ... trying to get the children back into my care ... it would have been dangerous, because my ex-partner would have ... [had little] incentive ... to be completely honest, because it would have resulted in her having to leave the home. (Neville: Interview N)

Blatant lying in most contexts is likely to provoke a reaction, and in the RJ situation it would almost certainly be problematic. Therefore conference participants need to be informed and prepared to be completely honest during the process.

Most literature refers to victims requiring the choice of attending a RJ process or attending voluntarily (Coker, 2006; Morris & Gelsthorpe, 2000; Zehr, 1990). This is primarily to ensure that neither the court nor the perpetrator coerces them into attending. For example, Coker (2006) explained that in Navajo peacemaking processes when people self-referred, care was necessary to ensure that abused women had not been compelled by their partners to attend. One victim advocate in the current study has, however, pointed out a serious difficulty with giving a victim the choice, when a refusal would mean there was to be no RJ conference. She explained:

[What] if she chooses not to participate or remains silent and ... doesn’t want to be involved in the conference? Even having that responsibility, having the conference go ahead or not ... there may be some sort of retaliation for that. (Key informant: Interview T)

This presents a dilemma when victims’ willingness is a prerequisite for holding a RJ conference, and would be exacerbated by a perpetrator thinking that a RJ conference might lead to a lighter sentence. It would, therefore, create an opportunity for the perpetrator to exercise coercive control.

Who should facilitate a RJ process is another important factor in maintaining victims’ safety. One victim advocate suggested it was not appropriate for a family member to facilitate a RJ conference as this could create further division within that community. Similarly, a cultural advisor pointed out that, in the Māori sector, the choice of facilitator was very important to prevent embarrassment and loss of mana⁷ by the parties involved.⁸ In her opinion, facilitators needed to be quite removed from the family/whānau. Almost all participants in this research advocated a high skill level in facilitation and a broad knowledge of domestic violence. Victim advocates believed training in this specialist area would be best obtained by attending a course of 20 weeks currently provided for victims of IPV or, either first-hand experience⁹ or work experience. Nonetheless, one key informant, a judge suggested that specialisation was less important than life experience and common sense.

Conclusion

This qualitative research supported the use of RJ for IPV cases, while endorsing the widely held view that safety considerations are a priority. It went beyond much of the literature in that it considered safety as having more than physical, and to a lesser extent, emotional components, but also as having a social or contextual element. Also, the criminal justice process usually approaches IPV on the basis of physical harm, with less emphasis on the emotional and psychological impact and implications of this type of offending. RJ, on the other hand, was found to have much more to offer, earlier, and with better results. Most participants expressed the wish that they could have experienced RJ with possibly different and improved outcomes. Analysis of the data showed that safety could be considered in a number of ways as an improvement on the criminal justice system; however it also has the potential of RJ to be less than safe. The ways identified to make RJ safer, however, are a valuable resource. Restorative justice, while imperfect, was seen by those directly affected by IPV, to offer more choice and a greater sense of justice and fairness than the criminal justice system.

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Notes

- 1 Whānau means family or extended family in Māori, the indigenous language of New Zealand.
- 2 Ian: Interview I.
- 3 Lawrence: Interview L.
- 4 This quote also illustrates the issue of victim blaming and its conceptual partner, victim precipitation.
- 5 Neville, Interview N.
- 6 Personal communication from Tony Marshall, researcher of the Home Office, London, in December 1995.
- 7 Mana means influence, prestige, honour in the Māori language.
- 8 Interview V, Cultural Advisor and Key informant.
- 9 Interviews S and T, Key informants.

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