

**GENDERED VIOLENCE AND RESTORATIVE JUSTICE:
THE VIEWS OF NEW ZEALAND OPINION LEADERS**

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Abstract

Although New Zealand has been a pioneer in the development and expansion of restorative justice in the adult and youth criminal justice systems, it has taken a more cautious approach to using restorative justice in adult cases of gendered violence. We present interviews of 19 New Zealand Opinion Leaders on the appropriateness of restorative justice for partner, family, and sexual violence, and child sexual abuse. We found that three groups, rather than two, better describe the range of positions: these are the Supporters, Skeptics, and Contingent Thinkers. All viewed child sexual assault as least suitable for restorative justice, with relatively more support in cases of partner, family, and sexual violence. The Opinion Leaders' positions were shaped by their experiences with restorative justice, professional position, racial and ethnic identities, and views of the criminal justice system. The participants' views were complex and varied, and not easily contained in a simple "for" or "against" dichotomy.

Introduction

Is restorative justice appropriate in cases of gendered violence? Specifically, is it appropriate for partner violence, family violence, adult sexual violence, and child sexual abuse (CSA)?¹ There is substantial discussion on this question, but relative to the degree of debate and argument, we lack empirical evidence on actual practices. In general, feminists and victim advocacy groups are skeptical of, or strongly opposed to, using restorative justice for gendered violence cases. Concerns are raised for victim safety and the potential of re-victimization in an informal process. Because of these concerns, coupled with offense seriousness, gendered violence has been ruled ineligible for restorative justice practices in most world jurisdictions for both youth and adult cases. Thus, with some exceptions, it is not possible to conduct research on actual practices and their impact on victims.

Restorative justice has been part of the social fiber of New Zealand (Aotearoa)² longer than in any other country. In 1989, family group conferences for youth were legislatively established by the *Children, Young People, and Their Families Act*. Conferences emerged, in part, as a state response to Māori activists, who challenged the widespread institutional racism in the welfare and justice systems (Jackson, 1987; Ministerial Advisory Committee, 1988). As many readers will know, conferences are meetings with an admitted offender, a victim, their family members (or supporters), any other relevant people, facilitated by a professional, and with a police officer present. They involve people talking to each other, in lay, not legal language about why an offense came about and its impact, and deciding an appropriate penalty or outcome. They are a formalized informal process. In the early to mid 1990s, conferences were rebranded as a type of “restorative justice,” an idea that was then taking off globally and that included a range of justice practices.

In 2002 and 2004, the passage of four New Zealand Acts gave legitimacy and support for restorative justice language and processes in adult cases: the *Sentencing Act 2002*, *Parole*

Act 2002, *Victims' Rights Act* 2002, and *Corrections Act* 2004 (see Boyack, Bowen, & Marshall, 2004; Proietti-Scifoni, 2008). For example, in the *Sentencing Act*, courts must take into account negotiated outcomes between an offender and victim, such as actions to make amends. Restitution, compensation, reparation, and restorative justice processes and agreements, are commonly used words in the *Act*. In the *Victims' Rights Act*, if there is agreement by both victim and offender, and if appropriate resources are in place (e.g., a trained facilitator), any legal or court actor (e.g., lawyer, judicial officer, prosecutor) can encourage a meeting to "resolve issues relating to the offence" (s. 9(1)).

New Zealand's restorative justice practices occur in a range of statutory-based legal contexts, and this paper focuses on adult cases only. For these cases, referrals are made by community-based organizations, the police, and courts; the process typically occurs post-plea and pre-sentence. There are two types of practices: court-referred conferences and community-managed programs, the latter also termed community panel pre-trial diversion (Morris, Kingi, Poppelwell, & Triggs, 2005).³ Varied approaches are taken, depending on legal and practice contexts, in securing victim consent for a conference to go forward. During the adult pilot of conferencing, 2001-2005 in selected cities, gendered violence offenses were not eligible for pre-sentence conferences. Although not expressly ineligible, family violence cases were rarely heard in community-managed programs up to 2005, except in two areas (see Paulin, Kingi, & Lash, 2005a, 2005b). Beginning in 2005, increasing numbers of family violence cases were referred to conference. A national body of restorative justice providers, Restorative Justice Aotearoa (RJA), was formed in 2005. By 2006, most RJA members were receiving court-referred family violence cases (Kingi, Paulin, & Porima, 2008, pp. 31-39); and a survey revealed that 13% of cases were family violence matters (Restorative Justice Aotearoa, 2007). From 1 July 2008 to 30 June 2009, of about 1400 conferences, 350 (18%) dealt with family violence; by contrast, just three sexual violence

cases were dealt with by a conference in that year (Ministry of Justice official, personal communication, 11 June 2010).

In 2009, the Ministry of Justice announced its intention to review restorative justice in family violence cases, but the review was put on hold, pending a report from Project Restore-NZ. This group, which takes a victim-centered approach to conferencing, was created in 2004. It was inspired by the work of Mary Koss and colleagues (Koss, Bachar, & Hopkins, 2003), who, in 2001, established the first pilot project in the United States to use restorative justice conferences in adult cases of acquaintance rape and misdemeanor sexual offences (see Koss, 2010 for RESTORE; Jülich, 2010 for Project Restore-NZ). The Project Restore-NZ report was released in 2010 (Jülich, Buttle, Cummins, & Freeborn, 2010); it discusses a range of practice matters in responding to 29 referrals of sexual violence cases.⁴

Compared to all other world jurisdictions, New Zealand is unique in its general legislative support for restorative justice and its application of restorative justice to cases of family violence (and to a lesser extent, sexual violence). In this jurisdiction, debates on appropriateness are informed by a high degree of exposure to and familiarity with actual practices.

Debates on restorative justice and gendered violence

There is a poor fit between the nature of “the debate” and “the evidence” on restorative justice in gendered violence cases, particularly with respect to victims’ experiences.⁵ The evidence is largely limited to youth justice cases of sexual or family violence in South Australia (e.g., Daly, 2010; Daly & Curtis-Fawley, 2006; Daly & Nancarrow, 2010). For adult cases, research exists on child welfare and family violence cases in Canada and the United States, partner violence in England, and family and partner violence cases in New Zealand (reviewed below). Some projects have yet to report findings (e.g., RESTORE; see Koss, 2010). Jülich et al.’s (2010) report on Project Restore-NZ is exemplary in considering

a range of ethical matters when implementing best practice principles in sexual violence cases. It raises questions about what constitutes “success,” how funding agencies may unduly focus on some outcomes but not others, and the varied meanings of “justice” for victims/survivors of sexual violence (reviewed below). From Canada, there is interview and focus group material on First Nations women’s experiences with sentencing circles in the 1990s and early 2000s (see Stubbs, 2010, pp. 106-8; Rubin, 2003, 2010).

Ptacek’s (2010) edited collection includes a range of ideas, critiques, and descriptions of projects. The contributors are typically oriented to the question of appropriateness with partner violence in mind; far less is said about sexual violence. Like an earlier collection by Strang and Braithwaite (2002), few authors are able to produce research on actual practices or outcomes, victims’ experiences of informal processes, or comparisons of informal and formal processes and outcomes. We would emphasize that conducting such research is difficult: it is hard to gain access to victims and to contact them; once contacted, they may not wish to participate in research. However, the overarching problem is that because so few jurisdictions use restorative justice (or other informal justice) practices routinely in adult cases of gendered violence, there are few sites where it is possible to conduct research on what is happening in practice.

The debate

The character of the debate will be familiar to many readers. As reviewed by Daly and Stubbs (2006), critiques by Acorn (2004), Busch (2002), Cavanagh, Dobash, Dobash, and Lewis (2001), Coker (1999, 2002, 2006), Frederick and Lizdas (2003), Goel (2000), Herman (2005), McGillivray and Comaskey (1999), and Stubbs (1997, 2002) identify these problems:

- Potential for women’s safety to be compromised.
- Potential for power imbalances to go unchecked, which can reinforce violent behavior.

- Potential for offenders and bystanders to manipulate the process.
- Relevance or meaning of “genuine apologies” in relationships characterized by violence.
- Limited impact of one meeting to change entrenched patterns of abuse and violence.
- A need for effective programs and further use of legal interventions, if an offender does not change.
- Potential for victims to be pressured into participating or coerced into agreements and not be able to advocate effectively on their own behalf.
- Uncertain role and function of “the community,” when communities are under-resourced or may reinforce, rather than challenge, violent behavior.
- Mixed loyalties of friends and family, who may partly support victims, but also support offenders, and collude with the violence.
- Symbolic implications: informal processes reflect a re-privatization of violence, and outcomes may appear too lenient and send the wrong message to offenders and potential offenders.

Critics focus on the potentially damaging and negative effects for victims in informal, face-to-face encounters, particularly in intimate relationships characterized by violence. They fear that protections and penalties that are part of conventional criminal justice will be lost.

Others see benefits and potentially positive effects for victims. Boyack, Bowen, and Marshall (2004), Braithwaite and Daly (1994), Daly and Curtis-Fawley (2006), Hopkins, Koss, and Bachar (2004), Hudson (1998, 2002), Jülich (2010), Koss (2010), Morris and Gelsthorpe (2000), Morris (2002), and Pennell and Burford (2002) identify these benefits:

- Potential for greater victim participation and “voice” in the process and outcome.
- Potential for victim validation and empowerment.
- A greater degree of offender accountability and explicit censuring of violent behavior.

- A more flexible and less formal environment, which is less intimidating and more responsive to victims.
- Greater potential for dialogue and interaction, telling one's story, and checking and challenging an offender's denials or minimizations of harm.
- Potential to address violence for those who wish to continue or repair a relationship.

Advocates also emphasize the failures of extant criminal justice. These include a re-victimization of victims by the legal process, significant attrition of cases, and an inability to effectively address gendered violence (Carbonatto, 1995; Daly, 2006; Daly & Bouhours, 2010; Garner & Maxwell, 2009; Koss, 2006; McElrea, 2004). Advocates see positive potential for victims in an informal process, in particular, greater participation, voice, validation, and a more flexible discursive environment.

The evidence

Three bodies of research are relevant to our study: *people's views* on restorative justice in adult gendered violence, *victims' views* toward the idea of restorative justice; and *victims' experiences* with restorative justice, typically with conferences.

For people's views, Curtis-Fawley and Daly (2005) found that victim advocates and service providers in two Australian states had different views on the appropriateness of restorative justice for gendered violence, depending on their degree of exposure or familiarity with actual practices. Those with greater familiarity were more likely to support or see the value of restorative justice than those with less exposure or experience. Nancarrow (2006, 2010) found a "racialized split" in the views held by Australian Indigenous and non-Indigenous women. The former were more likely to endorse restorative justice, compared to conventional criminal justice, in domestic and family violence cases. Reviewed in detail by Stubbs (2010, pp. 107-8), Canadian professionals and practitioners said they were not opposed in principle to restorative justice; however, they raised many concerns about how

well existing protocols could address partner and family violence, along with the adequacy of facilitator training and resources. During 2006-7, Kingi et al. (2008) surveyed 24 professionals in five New Zealand sites, where adult family violence cases were being referred to conferences. The professionals were program providers, judges, victim advisers, prosecutors, and lawyers. One-third expressed unconditional support for using restorative justice in family violence cases, 38% expressed conditional support, and 29% were against it. The conditional supporters noted needs for better facilitation, and those opposed cited coercion and re-victimization of victims, and manipulation of the process by offenders.

For victims' views, the evidence shows positive, negative, ambivalent, and uncertain views. McGillivray and Comaskey (1999) found that most of the Canadian First Nations women they interviewed (19 of 26), all of whom had been in violent relationships for some time, expressed interest in diversionary responses. However, a similar number (20 of 26) also favored using the conventional justice system for reasons of safety and the symbolic implications of imprisonment. Stewart, Huntley, and Blaney (2001) also found that Canadian First Nations women saw the potential of restorative justice, but they were concerned that it would compromise the safety of women and children, could not address power relations in communities, would be poorly resourced, and its outcomes would not be enforced effectively. Herman (2005) and Jülich (2006) sought the views of victim-survivors of sexual and domestic violence, and historical CSA, respectively, on conventional and restorative justice practices. Both found that victim-survivors were traumatized by and not satisfied with conventional criminal justice, but at the same time, they were ambivalent and uncertain about the potential benefits of restorative justice. One paradox, noted by Jülich (2006), is that the people attending meetings comprise the "very community that was apparently powerless to prevent or intervene in the sexual victimisation" (p. 134).

Research on adult victims is scant. Pennell and Burford (2002) showed that their feminist praxis model, which used family group conferencing, was effective in stopping partner violence and child maltreatment. Elements of family privacy, women's leadership, and state control articulated to build "links, interruptions" in stopping the violence (p. 126). Pennell's (2006) more recent work deals with child welfare (which often includes partner violence), using family-centered meetings. She continues to identify benefits of using these meetings to stop family violence (Pennell & Kim, 2010). The DOVE project in England reported on a small number of victims of partner violence, whose cases were referred to a conference, and who agreed to participate in the research. Of six women interviewed, four rated the conference process positively (Social Services Research and Information Unit, 2003).

Three New Zealand studies report on restorative justice in family (Kingi et al., 2008), partner (Tisdall, Farmer, Robinson, Wells, & McMaster, 2007), and sexual violence cases (Jülich et al., 2010). In Kingi et al. (2008), 19 victims who attended meetings were interviewed; they were about half of those for whom contact was attempted (most could not be located); and they were a minority of those who had attended about 70 meetings during the research time frame.⁶ The offenses were typically in "the less serious to medium seriousness range," i.e., assaults not requiring a victim's hospital admission (p. ix). Referrals to restorative justice providers came from a variety of sources; the providers took a cautious, case-by-case assessment of suitability, based on safety; and each site had somewhat different practices. Highlighting the findings, most victims said the meeting was positive, citing "open dialogue, ... the healing process, and being able to meet the offender in a safe, supportive environment" (p. iv). However, a minority (26%) reported that the offender made up for what they did, and 32% believed that the offender understood how the victim felt (p. 64). Despite this, most (89%) were pleased they had taken part, 79% said they would do it again if

they needed to (p. 66), and 74% were satisfied with the process (p. 63). Two of 19 victims said they felt unsafe at the meeting, but for the others, safety did not emerge as a concern. After the meeting, 32% said the violence had stopped; 37% said it had “partly stopped,” in that it was “no longer physical” but psychological; 26% did not know because they were not in contact with the offender; and one ended the relationship because the violence had continued (p. 67).

In Tisdall et al. (2007), eight partner violence victims were interviewed; they were a highly select sample, having been identified from a list of 26 pre-sentence conferences held in Rotorua during 2005-6, which were judged by the service providers to have been successful. Not surprisingly, in light of the sample selection bias, all victims said they felt safe during the conference (although one reported having been assaulted some months later); the authors concluded that the meetings were “valuable and positive for most victims” (p. 70).

Julich et al. (2010) focused on ethical and practice matters when preparing for and conducting conferences (or at times, panels)⁷ in sexual violence cases. Of the 29 referrals, three did not proceed past initial inquiries and two were pending at the time of the report; nine proceeded to a conference (p. 25) (it is unclear how many panels there were). Although most referrals did not eventuate in conferences, the authors found that a victim’s “sense of justice” could be realized during pre-conferences processes. Four conferences were selected for interview purposes, and four people (three victims and one offender) were interviewed. All four had a “high regard for the process” and “appear, at least in part, to have achieved some kind of healing” (Julich et al., 2010, p. 48), although the authors are quick to point out that selection bias and a small number of cases militate against generalization. The key contribution of this report is two-fold: identifying ways to address key principles of best practice in sexual violence cases, and showing how the standard restorative justice model

requires modification and re-thinking if it is to truly include victims' perspectives and interests.

Our review of the sparse literature suggests that the sharp-edged nature of “the debate” is not recapitulated in “the evidence,” which may show a more fuzzy and incomplete picture. Professional workers and victim advocates may hold differing views, depending on their experience with restorative justice and racial-ethnic identities. Victims/survivors may see the value of the idea in the abstract, but are unsure how it will work in practice. Those who have participated in New Zealand conferences are generally positive toward the process and say they felt safe, although the research is based on a small number of cases and some negative concerns were raised. Our study seeks to extend the quality and depth of the debate by focusing on New Zealand Opinion Leaders' views toward restorative justice and conferencing with specific types of gendered violence in mind.

Study context, sample, and methods

The interviews were carried out in March 2004, at a time when practices in New Zealand were beginning to change. In 2003, the Ministry of Justice carried out a national consultation on “best practices” of restorative justice, issuing its report in May 2004 (Ministry of Justice, 2004). It recommended a cautious approach to using restorative justice in partner, family, and sexual violence cases. At the time, a handful of community-based sites had been using restorative justice in some family violence matters, but by 2009, an estimated 18% of conferences were of family violence cases. In mid-2009, the Ministry of Justice outlined a practice direction to service providers, which recommended not accepting referrals for family and sexual violence cases, until it had “finalized a comprehensive policy.”⁸ Despite a cautious government stance toward restorative justice in gendered violence cases, it is evident that such practices continue.

The aim of our research was not to poll those who are “for” or “against” restorative justice in gendered violence cases. Rather, it was to understand the different ways that New Zealand Opinion Leaders (hereafter OLs), who worked in government, headed major victim service organizations, or provided victim support or restorative justice facilitation, reflected on the question of appropriateness. We were also interested to include the views of Pākehā and non-Pākehā OLs.⁹ Some readers may be concerned that the interview material is dated and the character of the debate has moved on. Based on New Zealand professional workers’ views sought during 2006-07 and published in 2008 (Kingi et al. 2008), we see no basis for this concern. New Zealand OLs’ views were mixed 2004 (based on our interviews) and in 2006-7 (based on Kingi et al.’s interviews), and there has been no subsequent research on the matter. What our study contributes to the literature, which no other study has thus far, is careful attention to how people reflect on the question of appropriateness, and whether their views vary by the type of gendered violence.

The first step in the research process was to generate a sampling frame of potential interviewees. Several knowledgeable researchers, academics, and policy people were contacted in January and February, 2004, and asked to nominate people with well-formed views, who reflected a range of positions. This process produced 58 names, with 22 emerging repeatedly as exemplary OLs. The final sample was chosen to reflect professional diversity, geographical representation, and well-formed views. Particular attention was paid to representing both positive and negative positions towards restorative justice. Constraints of time and money meant that interviewing 20 people, who worked mainly in New Zealand’s major cities (Wellington and Auckland), was a realistic task for a researcher based in Australia.¹⁰ All those based in New Zealand, who were approached to be interviewed, agreed to do so. A total of 19 interviews was carried out, all but one face-to-face. We wanted to increase the number to 20, but were unable to reach one potential interviewee; and a second,

who had since moved away from New Zealand, initially agreed to be interviewed, but then declined. In addition to formal interviews, more informal discussions took place with New Zealand researchers, service providers, and lawyers. The 19 Opinion Leaders reflect a range of views, but the purposive sampling approach means that the compositional percentage of views cannot be generalized.

Ten of the OLs were women, and nine were men; their cultural backgrounds included 15 Pākehā (eight women and seven men), three Māori (two men and one woman), and one Tongan woman. They were government officials (five), managers or directors of victim service organizations (seven), ministers (two), judicial or legal officials (two), and restorative justice facilitators (three). The sample had a high level of familiarity and understanding of restorative justice practices. Seven had considerable and direct experience facilitating conferences, and six had more indirect experiences as observers or supporters in conferences, or in managing programs.

The interview schedule contained these areas: the OLs' demographics, including work history and roles; their views on the appropriateness of restorative justice for different types of gendered violence; how they conceptualized an ideal justice system (e.g., changes needed or ideal ways to use restorative justice for gendered violence); and their views on the symbolic implications of using restorative justice, including why family and sexual violence had been excluded from the adult conferencing pilot. This article focuses on the appropriateness of restorative justice, and how and why the OLs came to hold their views.¹¹

The OLs were asked to place their views on a continuum for each type of gendered violence. The continuum ranged from under no circumstances (0%); rarely, in only a few cases (5 to 10%); in some, but a minority of cases (more than 10%, but less than 25%); and in many cases, so long as they fit the right criteria (25% or more). (In summarizing their responses below, the four categories are termed *none*, *few*, *some*, and *many* cases.) The four

types of violence were defined, as outlined in endnote 1, with a focus on adult offending only. By restorative justice, the referent was to current practices for adults in New Zealand, that is, court-referred pre-sentence conferences and community-managed programs. The continuum was a good visual tool for the OLs to orient themselves, and it helped to re-focus the responses of some who would go off on a tangent or speak in general terms. The interviews varied in length from 30 to 125 minutes, averaging 75 minutes; all were professionally transcribed.

The transcripts were analyzed through content analysis. The interviews were first read with an open-coding approach, followed by more targeted coding with attention to theoretical and empirical triggers. During all phases of the coding, manifest and latent content was identified. Themes emerged and evolved as the analysis continued; both inductive and deductive techniques were used. The distillation and analysis of interview material was carried out manually by using excel spreadsheets. When reading and analyzing the transcripts, attention was focused on how support or opposition to restorative justice materialized and whether this varied by different types of gendered violence. Our aim was to ensure that the depiction of the OLs' views reflected the complexity, subtlety, depth, and variation in their thinking.

What are the Opinion Leaders' views?

As shown in Table 1, three groups emerged from the analysis: the Supporters, Skeptics, and Contingent Thinkers. There was some variation by offense type, although not all OLs registered a view for all four types of gendered violence, as indicated in Table 1, note b.

Table 1. Views of restorative justice for gendered violence

Opinion Leaders	Partner Violence	Family Violence	Sexual Violence	CSA ^a
Supporters				
#5	- ^b	-	Some	-
#7	Few	Some	Many	-
#11	Many	-	-	Some
#12	Many	Many	Many	Some
#13	Many	-	Some	Few
#14	-	Many	Many	Few
#15	Some	Some	Some	Few
#17	Many	-	Many	None
#19	Many	Many	Many	None
Skeptics				
# 1	None	-	-	None
# 3	Few	-	Few	-
# 4	None	-	-	None
# 6	None	None	None	None
# 9	Few	Few	-	None
# 10	None	Few	Few	None
Contingent Thinkers				
#2 ^c	Few/Many	Few/Many	Few/Many	Few
#8 ^d	Few/Some/Many	Few/Some/Many	Few/Some/Many	None
#16	-	Many	Many	Few
#18	Few	Some	-	None

Notes:

- Views on CSA assumed that a child victim was present at the meeting.
- Where there are blanks, the OLs could not offer a view or focused their comments on one or two types of gendered violence. For Supporters, 27 of 36 potential views were registered; for Skeptics, 17 of 24; and for Contingent Thinkers, 14 of 16, with additional multiple responses given by OLs #2 and #8.
- OL#2's views are for state-run and culturally-controlled restorative justice, respectively.
- OL#8's views are for state-run, community-run, and culturally-controlled restorative justice, respectively.

Supporters

Nine OLs were Supporters. They broadly supported restorative justice for gendered violence, although not for CSA. All discussed the need for additional provisions if restorative justice were to be used.

Of the 27 viewpoints registered, about half (13) said that restorative justice was appropriate for *many* gendered violence cases, and eight, in *some* cases. The remainder (six) said only in a *few* or no cases. Each individual had a generally similar rating for partner, family, and sexual violence (i.e., as appropriate in many or some cases), but their views shifted downwards for CSA, to some, few, or no cases.

After about a third of the interviews were completed, it became clear why the Supporters held more negative views of restorative justice in CSA cases. They had assumed that child victims would be present in the conference room, and they had strong reservations about using an informal process, in light of the vulnerability and relative powerlessness of children. As OL#13 said,

The younger the child, the less capable they are to look after themselves in that sort of exchange and potential confrontation. It's hard to imagine a child having the strength to confront an adult.

An even stronger position was taken by OLs #17 and #19, who believed that in no cases should restorative justice be used in CSA, OL#19 saying,

The impact of anything that is done to a 3-year old ... will come out 10, 15, 20, or even more years after that. ... RJ¹² has to be in some different form to be able to appropriately and effectively address young victims.

However, three of four OLs (#13, #15, and #17) said that if the child was *not present* in the meeting room, they would be more supportive, shifting their view to a more positive position. OL#13 said that "it might well be appropriate in half the cases. ... I think you'd really have to try it and see." He also reflected on adult survivor contexts, saying "if the child is now an

adult, then I don't see any reason why they shouldn't be dealt with like any other RJ case." OL#15 believed that "there could be a role for [restorative justice] ... with someone representing the child." Likewise, OL#17 was more supportive if family members were present instead of child victims. Whether a child was present or not in a CSA meeting was not systematically explored in all the interviews. Rather, it emerged in less than half the interviews, at times spontaneously, and at times, as part of an interviewer probe.

By contrast to CSA, the Supporters were more confident of the benefits of restorative justice in cases with adult victims; they cited healing, active participation, and the ability for victims to voice their experiences. Four drew upon their experiences as facilitators to underscore benefits. OL#12 said her view was influenced by "seeing cases, facilitating cases ... People can go into a conference with the world on their shoulders and go out feeling much lighter." OL#11 said, "it's always valuable to bring people who have hurt each other together to talk about what's happened." For sexual violence cases, OL#12 said an offender has to face "a person instead of a vagina ... a person with feelings, opinions, status, a role in society. And it must impact them in terms of what they've done." OL#7 said, "I've never understood why you would want to exclude sexual assault ... given the way the system deals with victims. ... Restorative justice seems to be tailor-made for sexual assault."

Supporters recognized that using restorative justice in cases of on-going offending was more problematic than those with a discrete offense and less complex interpersonal dynamics. Their support for restorative justice was conditional on the following elements being in place: victim voluntariness, informed decision-making, safety, and support (both during and after a meeting); adequate preparation of both victims and offenders; and seasoned and well-trained facilitators, who understood on-going power dynamics. With respect to power, OL#15 said that family violence relationships create a "different context," where safety and abuses of power are marked. OL#14 believed that just one meeting would

not be sufficient in partner and family violence cases: “[it] isn’t going to change the power dynamic of an abusive, violent perpetrator.” In discussing victim-offender relations, OLs #15 and #5 believed there were fewer problems when victims and offenders did not know each other well, as is the case in some sexual violence cases. In these circumstances, OL#15 felt it would be easier to ensure safety, given “the violence and the power wasn’t directed at that person.” OL#5 thought that restorative justice was relatively less suitable with on-going relations, due to “compounded issues around fear and power and control.” However, she also believed that victims should be offered a choice, and these choices should be honored.

Skeptics

Six OLs were Skeptics. Most were generally opposed to using restorative justice in gendered violence cases. All viewed it as unsuitable for CSA and were minimally supportive of its potential for adult victim-survivor cases. When reflecting on the question of appropriateness, they conceptualized the question through the lens of partner violence, and to some degree, CSA, citing problems of on-going power dynamics to justify their opposition. Like Supporters, they stressed that additional provisions would be needed if restorative justice were to be used. Despite their concerns, all saw the value of restorative justice principles; the question was how well the principles could be put into practice.

In 11 of 17 viewpoints registered, the OLs said that restorative justice should not be used in any cases. Six believed it was appropriate in a *few* cases, evenly dispersed across partner, family, and sexual violence. None thought it appropriate for CSA, and the most frequently mentioned concern was on-going patterns of violence and power imbalances. For example, OL#9 pointed to the abuse of child/parent trust and the difficulty of “regaining that balance.” Another considered the dynamics of face-to-face encounters: “it’s not appropriate for you to be trying to create an equitable environment when you have such a major power imbalance” (#6). Others cited a lack of offender accountability, vulnerability of a child

victim, insufficient safety protocols, and adequate skills of a facilitator. OL#1 thought that facilitators would have difficulties in managing power imbalances, and they could be “manipulated into feeling sympathy for the offenders.”

Compared to CSA, there was slightly more support for using restorative justice in other types of gendered violence. Most Skeptics concentrated their attention on partner violence, focusing on problems of on-going patterns of violence and power dynamics. Two of six said it was appropriate in a *few* cases. They had less to say about sexual or family violence: two of three said it was appropriate in a *few* cases. Like the Supporters, they cited elements that needed to be in place: victim safety, voluntariness, and support; availability of programs for offenders; and excellent facilitator skills and knowledge of power dynamics.

Victim safety and power dynamics in partner violence cases were the focal points of concern. As OL#6 said,

There is significant potential to breach safety, or to compromise that safety. Particularly because of the power imbalances that exist. ... The safety aspects are not just during the conference, that's the scary part about it.

However, he later thought restorative justice could be used in stranger cases of sexual violence: “there is less potential to be unsafe, because there's no coercion, no later harassment, no reprisals.” OL#3, who managed a victim services organization, said that restorative justice “fits really nicely with our philosophical view of the world,” but he wondered if offenders would use the process to their advantage, asking “is he coming from a place of being compliant and charming because he wants something to happen?” OLs #1 and #10 believed that only one meeting was potentially “risky” and could not effectively address complex power dynamics.

Despite these concerns, two said that restorative justice was more acceptable in relationships without patterns of abuse or when violence was not chronic, “where there is a ... greater chance for change and recovery” (#9), or when both parties desired on-going

relations (#10). OL#6 saw potential benefits of restorative justice, but only when victims were free to choose it as an option:

For some women, going through a restorative justice process may be very freeing and empowering, and I would hate to deny that. ... The problem is trying to balance it with those people who are being coerced into making that choice.

The only Māori Skeptic (OL#4) supported restorative justice in principle for all types of gendered violence, but he believed that state-run practices were ineffective compared to “how we use RJ in our own families,” where offenders are “made to be accountable.” He gave this example:

My sister was abused by her husband. ... He had to apologise, [and] he had to bring his people down to have a meeting with my dad and mum before she would be allowed to go back.

The Sceptics were generally opposed to restorative justice in gendered violence cases, not because they were against its principles, but because they doubted that these could be put into practice. OL#6 said, for example, “I have a strong belief that restorative justice is a positive initiative. ... It has potential to be really responsive to victim’s needs.” For this potential to be achieved, significant change was required in current practices.

Contingent thinkers

Four OLs were Contingent Thinkers, and their views were multi-faceted and complex. They resembled the Supporters by broadly endorsing restorative justice, but they brought forward more conditions, and in particular, those related to community or cultural control. Like other groups, the Contingent Thinkers viewed CSA as relatively least suitable.

All the Contingent Thinkers considered state responses, but two (OLs #2 and #8) gave additional views based on whether restorative justice was subject to community control or Māori and Pacific Islander control (see Table 1). We first discuss the group’s views of state-run approaches, before turning to the complex views of OLs #2 and #8.

The Contingent Thinkers were somewhat more likely to see the merits of restorative justice for family and sexual violence cases than for partner violence or CSA. Like the other groups, they noted the need for conditions, including victims being fully informed and voluntarily participating, being safe and having support, and facilitators having solid skills in addressing power imbalances. For instance, OL#18 recognized that “no process promises safety,” but she believed it should be victim-centered: “unless the process is managed very carefully, it can focus ... on the outcomes for the offender.” For power imbalances, OL#2 was critical of current practices:

Most of the social workers and family court mediators running conferences haven't got a clue about power dynamics. ... There are horrendous anecdotes ... where guys have been sent to anger management and been taught not to leave bruises, but to take the distributor cap out of the engine instead.¹³ But the power dynamics remain unchanged.

It is important to recall that this critique was made in March 2004, several months before the Ministry of Justice issued its best practice guidelines, which included a need to ensure an appropriate level of facilitator skill and experience in gendered violence cases. Whereas OL#2 believed that appropriateness should be determined on a case-by-case basis, e.g., “whether it's a one-off [act of violence], ... what the power dynamics are, ... whether they've got a prior history,” OL#18 gave greater attention to the degree of inequality in relationships. She viewed restorative justice more positively when relations were “more or less equal, [such as] brother against brother or father/son or mother/daughter or even in-laws.” OL#16 believed that before a conference took place, time needed to be spent on building a victim “scaffold:”

When you rebuild, you re-empower, and in order to do that, you need a strong scaffold ...

If you don't have a strong scaffold, then the scaffold will tumble, the building will

tumble, and you've got a heap of rubble back on the floor again.

Like other groups, the Contingent Thinkers were concerned with the power dynamics in CSA cases. OL#2 believed that the suitability of restorative justice in CSA was “highly dependent,” and the “younger the victim gets, then the more need for a victim advocate to work with the victim.” OL#16 was concerned that children could be easily intimidated in the process:

We’re asking a child to come into a forum that is adult dominated. ... In some ways it appears child versus adult. ... Children are automatically handicapped in my opinion because they’re children in an adult world.

OLs #8 and #18 did not support restorative justice in CSA cases, even in those cases when child victims were not present. OL#18 added that “until [the offenders] have done really extensive therapeutic recovery, I find it really difficult to believe that a restorative justice process would shift their world-view.”

OL #2 (Pākehā) and #8 (Māori) registered varied views, depending on whether restorative justice was state-run or subject to community or cultural control. These latter terms were not explicitly defined, but when referring to “community control,” the women had in mind cohesive and well-functioning communities, either Māori or Pākehā, which had “a fairly strong identity” (OL#8). When referring to “cultural” control, they had in mind Māori or Pacific Islander control over the process and its management.

Both believed that cultural control was preferable to state-run approaches. This is evident in a significant shift in their views on appropriateness: from a *few* (state-run) to *many* (cultural control) cases, excepting CSA. OL#8 thought that state-run responses were better able to respond to early, rather than established, patterns of violence. She believed that community-based initiatives were better than state-run approaches, but was unsure if they could address violence characterized by power imbalances. The most appropriate form of restorative justice, in her view, would be “completely controlled by Māori.”

Colonial methods of intervening don't work, haven't worked, and that's why our numbers keep escalating, and we're the ones most likely to die. But there's a lot of traditional wisdom and experience and knowledge, [which] create ... a range of alternative responses to the violations that would occur against women and children.

Similarly, OL#2 distinguished between mainstream and culturally-controlled restorative justice responses. She believed that Māori or Pacific Islander communities with strong levels of social control were more capable of providing effective forms of restorative justice:

It takes a village to raise a child; it takes a village to do RJ. Which is why it's actually working, where it is working, ... in Māori communities, in rural areas where people still know each other and where the bush telegraph works real quick.

This OL said that for Māori-infused responses to work, important cultural values, such as identity, *whakapapa*,¹⁴ and *Te Whare Tāngata*¹⁵ must be called upon: “[By] invoking these ancient connections, they provide the base for coming back into the models of *whānau* and *aiga*.”¹⁶ However, she recognized that well-functioning *whānau* or *aiga* are better able to address the violence “right on the spot.” Unlike all the others, these OLs sharply distinguished their support of restorative justice in gendered violence cases, depending on levels of community and cultural control.

Explaining Opinion Leaders' views

The OLs' views were shaped by their experiences with restorative justice, professional roles, racial and ethnic identities, and perceptions of the strengths and weaknesses of the criminal justice system. Their views were not ordered by gender: of the ten women, five were Supporters; two, Skeptics; and three, Contingent Thinkers; and of the nine men, four were Supporters; four, Skeptics; and one, a Contingent Thinker.

Experiences

Like Curtis-Fawley and Daly (2005), we found that OLs with direct experience of restorative justice were more likely to support the idea. Of the seven with facilitation experience, six were Supporters. Of the six with indirect experience, three were Skeptics, and three, Contingent Thinkers. We might expect that those who have facilitated meetings would be Supporters, and during the interview, they often brought forward examples of positive encounters. The Contingent Thinkers also discussed their experiences positively, and linked cultural principles with those of restorative justice.

Professional roles

Associated with experience is professional role. Those working as restorative justice facilitators, legal officials, ministers, and those with direct victim service provision were more likely to support restorative justice for gendered violence. Legal officials (Supporters #13 and #17) were critical of conventional justice practices, citing a need for more meaningful justice responses. Ministers (Supporters #17 and #19) worked with victim-survivors and families experiencing violence, and they had facilitated meetings for them. By comparison, those in government and with only managerial experiences in victim services were less likely to support the idea. Three Skeptics were government officials, who managed or coordinated national-level programs for restorative justice, and three others managed national offices for victim services. Although the Skeptics' opposition to restorative justice was not as static and fixed as the literature often presents, we find that such individuals are more likely to be in managerial roles and have relatively less experience with restorative justice or service provision.

Racial-ethnic identities

The interviews show a different racial patterning than that reported by Nancarrow (2006, 2010) for Australia. Rather than a "racialized split" with support for restorative justice

falling along racial lines, our research finds that members of majority and minority groups were dispersed across the typology. Among the Pākehā OLs, there were eight Supporters, five Skeptics, and two Contingent Thinkers; and among the minority group OLs, there was one Supporter, one Skeptic, and two Contingent Thinkers. However, the Māori and Pacific Islander respondents were united in a concern with the negative impact of a state appropriation of restorative justice, without attention to cultural values.

Perceptions of criminal justice

The OLs' views were linked to their opinions on how well the conventional criminal justice system handled cases of gendered violence. The Supporters concentrated on the weaknesses of conventional criminal justice, citing its ineffectiveness and re-victimizing effects, and they saw a greater need for alternatives. Even when acknowledging the strengths of the conventional system, they couched their views in negative terms. OL#13 noted, for example, that taking an "offender out of circulation ... is the only thing the criminal justice system achieves," although it comes "at a huge cost." The Contingent Thinkers also viewed the criminal justice system negatively, but in a more politically charged way. For instance, OL#2 viewed state responses as tools of control:

They're there for the state and control of the state. They're not about victims and offenders. They're about complex societies that have given up their village rights to a state and put strangers in there at arm's length. The justice system is divorced from the reality of all those around.

The Skeptics acknowledged weaknesses of conventional criminal justice, including its ineffectiveness and re-victimizing impact, but they also saw strengths. Unlike the other two groups, they believed that the criminal justice system provided a clear message of social censure: "it's an authority saying very clearly, that activity, that violence, while you might have minimized it, it's not okay" (OL#1). Another Skeptic believed that by using formal authority, victims are less likely subject to further violence: "it removes it from their hands

... it takes away the responsibility for what happens in the end ... so therefore the risk of reprisals is less” (OL#6).

In sum, the Supporters and Contingent Thinkers focused on the weaknesses of the criminal justice system, and the Skeptics noted weaknesses and strengths in equal measure. All OLs noted potential problems in using restorative justice for gendered violence, particularly in cases with on-going power dynamics. However, the Supporters and Contingent Thinkers were more optimistic that these could be addressed.

Discussion and implications

To the question, is restorative justice appropriate for gendered violence, five findings emerge, which extend upon the literature and offer new ways of thinking about the question.

First, we identified three groups, not two: the Supporters, Skeptics, and Contingent Thinkers. Although we characterized their views as supporting, opposing, or qualifying the idea, we also saw points of agreement and overlap. All the OLs were concerned with victim-survivor safety and voluntariness in participating, and all noted potential problems of power dynamics in on-going relationships. Their views reflect a greater degree of sophistication and complexity than is often seen in the literature. They reflected on the question of appropriateness pragmatically, contextually, and experientially, rather than taking a principled stance “for” or “against” based on abstractions.

Second, all believed that CSA was the least suitable. (Recall that the OLs were not asked about historic cases of CSA, and their views may have been different for these cases.) There are few studies that have explored CSA and restorative justice, and the findings are mixed. Curtis-Fawley and Daly (2005) found that “several advocates felt that intra-familial sexual violence and child sexual abuse ... may be better suited to restorative justice interventions than established criminal justice” (p. 28). By contrast, the Indigenous women interviewed by Nancarrow (2006), who generally viewed restorative justice positively,

thought that CSA was unsuitable. Jülich's (2006) analysis of views of historic CSA survivors found that although they desired a process with greater participation and validation, and viewed restorative justice as potentially positive for healing and recovery, they did not fully endorse the idea. The OLs in our study and the survivors in Jülich's had similar concerns about CSA: they cited the need for strong facilitator skills in managing power dynamics, and the potential manipulation of the process by offenders and bystanders; they were skeptical that the process would be victim-centered. The OLs saw few advantages of using restorative justice in CSA cases, but their views assumed that a child would be present in the meeting. Although not explored systematically in our study, there was somewhat greater support for the idea, if the child was not present.

Third, although the OLs tended to place themselves in the same category across partner, family, and sexual violence (i.e., as being appropriate in *none, few, some, or many* cases), this placement did not fully capture more subtle frames of reference they used and how they reflected on the question. The Supporters and Contingent Thinkers spoke of problems associated with restorative justice in a general way, and they said that sexual violence posed potentially fewer problems, assuming the offense was a discrete event and did not take place within an on-going abusive relationship. Thus, they recognized that some relationship and offense contexts could be unsuitable or pose challenges to standard restorative justice practices. By contrast, the Skeptics focused on the on-going power dynamics in partner violence and CSA, overlooking other contexts of violence. OLs from across the three groups noted that some contexts were more favorable to restorative justice: in relationships of roughly equal status (e.g., sibling violence), when offenders had little or no previous offending, and when couples wished to maintain a relationship.

Fourth, across the three groups, the OLs spoke of the need for additional protections and conditions if restorative justice were to be used. Consistent with feminist views (Stubbs

1997, 2002; Busch, 2002), their concerns centered on the need to ensure victim safety, a facilitator's awareness of power dynamics, and an ability to manage these and other behaviors effectively.¹⁷ Thus, similar grounds of concern were evident across the groups. However, some types of conditions were mentioned more than others. The Skeptics said that restorative justice needed to be more victim-centered by reducing the chances of re-victimizing victims and increasing the likelihood of holding offenders accountable. The Supporters and Contingent Thinkers spoke more often of the need for non-coercive, voluntary victim participation, and several meetings, not just one. The Contingent Thinkers emphasized the need for greater community and cultural control.

We pause to consider claims about “the community.” Frederick and Lizdas (2003) say that the role of the community is central to restorative justice because community members can condemn violence more meaningfully than criminal justice officials. Countering this view, many are critical of “the community” when it condones or ignores gendered violence (see Coker, 1999; Goel, 2000; Herman, 2005; Jülich, 2006; McGillivray & Comaskey, 1999; Rubin, 2010; Stewart et al., 2001). The idea of “community” is therefore double-edged. For some, it offers a measure of autonomy from white justice practices (which was explicitly discussed by several OLS); but for others, it may recapitulate male or family group dominance. Both autonomy and recapitulation of power are likely to occur in informal justice practices. From a victim's perspective, a key set of activities that must occur is the ability to check and challenge male (or family group) dominance, or what Pennell and Burford (2002) term “interruptions.” It is important to recall, as well, that court practices are not immune to institutionalized forms of racial and male dominance.

Fifth, the OLS' views were shaped by their degree of experience with restorative justice and their current professional role. They were also related to their views on the strengths and weaknesses of conventional criminal justice, and for the Māori and Pacific

Islanders, to concerns with state-run practices. Confirming Curtis-Fawley and Daly (2005), we found that more direct experience of restorative justice was related to greater support for its use in gendered violence cases. Overlaying experience was the OLs' professional role: Skeptics more likely worked as government officials and managers of victim services; and Supporters and Contingent Thinkers, as facilitators, law officers, ministers, or direct victim service workers.

With respect to the conventional criminal justice system, the Skeptics viewed it as having both strengths and weaknesses, and they wanted to find ways to improve it rather than to develop alternatives. Supporters and Contingent Thinkers saw few strengths and mostly weaknesses, and thus wished to extend and improve restorative justice. These findings affirm Nancarrow's (2006, 2010) insight that non-Indigenous women, who saw the criminal justice system in positive terms, were less likely to support restorative justice, whereas Indigenous women, who saw the conventional system as oppressive, were more open to alternatives. Although our research did not find a "racialized split" in views toward restorative justice, as Nancarrow's did, there were shared concerns among the four Māori and Pacific Islander participants, who wanted to see greater "cultural control" of justice practices, rather than just state control.

This study of 19 New Zealand OLs was intended to depict a diversity of views on the appropriateness of restorative justice for different types of gendered violence. The sample was small and purposively selected, and the interviews were carried in 2004 when restorative justice practices were beginning to change in adult cases. Although rarely used in 2004, government-provided data for 2009 suggest that family violence cases have become an increasing share of providers' caseloads, despite government caution and a desire to restrict such practices. Its use in sexual violence cases was (and is still) rare. For family violence cases, interviews with professional workers and victims in 2006-7 (Kingi et al. 2008) suggest

patterns little different from our interviews in 2004. On balance, there is support by professional workers and positive experiences by victims, although it is qualified by the need for improved facilitation.

New Zealand is unique in having a statutory basis for restorative justice and using it longer than any other country. The idea is part of the country's social fiber and identity,¹⁸ and this may be why there is general support for the idea, perhaps more so than elsewhere. One implication from our study is that when questions of appropriateness are asked of those with experience and exposure to restorative justice practices, the answers are nuanced and complex. Although we could identify three groups with varying degrees of support, there was not uniform support or opposition. Supporters identified limitations, Skeptics saw benefits, and Contingent Thinkers focused on contexts of practice and cultural relevance. A second implication is that with common ground across the groups, particularly with respect to concerns for victim safety and addressing power imbalances, the debate on appropriateness can move forward in more constructive ways. Key to the debate is gathering evidence on how well meetings are facilitated and what victim-survivors' experiences are. For New Zealand, larger, more in-depth projects, which build and extend upon the work of Kingi et al. (2008), Tisdall et al. (2007), and Jülich et al. (2010), would be an important next step.

Endnotes

¹ Partner violence (including ex-partners) involves a couple only; family violence includes partner violence, violence among siblings, other kin, and family members. By sexual violence, we refer to adult offenders and adult victims. Sexual violence can be part of on-going partner and family violence, but the Opinion Leaders more often reflected on a discrete event. CSA here refers to adult offenders and child/youth victims; we considered current, not historic, cases of CSA. The umbrella term “gendered violence” recognizes that most offenders are male and most victims, female.

² Aotearoa is a Māori term, commonly used by North Island Māori, meaning “Land of the Long White Cloud.” Aotearoa is the term respectful of Māori, but we use New Zealand because it may be more familiar to an international readership.

³ One recent exception, discussed below, is Project Restore-NZ, which received court-based referrals and community (or self-based) referrals of cases that had not been reported to the police.

⁴ The authors emphasize that during the period of time covered by the report, Project Restore-NZ did not have a contract for service provision or a dedicated income stream. The report recommends that an income stream be established (see p. 65).

⁵ Authors use different terms in characterizing victims or victim-survivors of gendered violence, and thus we use both terms in this paper.

⁶ Offenders were also interviewed, but we do not report the findings. Page numbers are not shown on the web-based report; our page citations are inferred from the table of contents.

⁷ The panel refers to a restorative process without a victim-survivor present. Some victim-survivors wanted to confront an offender, but preferred doing so via a victim specialist rather than in a face-to-face meeting (Jülich et al., 2010, pp. 40, 51).

⁸ In response to a FAQ about whether a provider can accept referrals for family and sexual violence cases, the Ministry of Justice reply was that “...providers should not undertake these types of cases until we have finalized a comprehensive Ministry policy for them. ... We do not want more providers dealing with these types of cases until the policy work is completed” (text provided by Ministry of

Justice official, personal communication, 11 June 2010). The Ministry is principally concerned that best practices are adopted in these cases.

⁹ Pākehā is a Māori term, one which is generically used in New Zealand to refer to a person who is European or non-Māori. Like other colonized or racial-ethnic minority groups, Māori are over-represented as both victims and offenders of family violence (Koloto & Sharma, 2005; Lievore & Mayhew, 2007; Mayhew & Reilly, 2006). Although Māori are 12.5% of the general population 15 years and older, they are 50% of all those in prison (Department of Corrections, 2007).

¹⁰ The interviews were carried out by the second author, and the first author analyzed the transcripts and identified the major themes and findings.

¹¹ Other areas of the interview, specifically the OLs' views of an ideal justice system and symbolic politics of restorative justice, are the subject of future papers.

¹² This OL used RJ to refer to restorative justice. When OLs used this abbreviation, we preserve their usage.

¹³ Removing a distributor cap is one of several ways of disabling a vehicle to prevent a person from driving it. It is a form of power-control that may be exercised in a relationship.

¹⁴ Whakapapa is the Māori term for genealogy, genealogical table, lineage, or descent.

¹⁵ Te Whare Tāngata means "House of the People." From this principle, Māori women are acknowledged, protected, nurtured, and respected as givers of future generations.

¹⁶ Whānau is the Māori term for extended family or family group. Aiga is the Samoan term for extended families or clans, who are descendents from a known ancestor.

¹⁷ All of these concerns are identical to what Project Restore-NZ had in mind when it began to take referrals for conferences sometime after 2004. Jülich et al. (2010) show that these concerns can be addressed when there is a "collective team consciousness" (p. 48) in structuring the process and making decisions in particular cases.

¹⁸ Despite an apparent progressive character to New Zealand penal policies, there are contrary tendencies such as a higher imprisonment rate than that in the United Kingdom, Canada, or Australia.

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