



Family Violence, the Law and Restorative Justice

Summary of Conference Proceedings and
Practitioner Workshop, 7-8 May 2015

Chrissy Hamill and Chris Marshall

Occasional Papers in Restorative Justice Practice 2 (2015)

Summary of Proceedings

The use of restorative justice in situations of family violence has long been a controversial issue, with vigorous debate over its appropriateness and effectiveness. In New Zealand this debate is no longer hypothetical. The decision of the Ministry of Justice in 2013 to bring family violence within the orbit of restorative justice, together with changes to the Sentencing Act in 2014 which make a restorative justice assessment mandatory for the great majority of cases coming before the District Court, irrespective of the type of offending involved, mean that examination of the proper place of restorative interventions in this area is more relevant and urgent than ever.

To promote dialogue on the matter, the Diana Unwin Chair in Restorative Justice at Victoria University, with funding assistance from the New Zealand Law Foundation, organised a major conference on *Family Violence, the Law and Restorative Justice* at Parliament on Thursday May 7, followed by an all-day workshop for practitioners at St John's Conference Centre in the city on Friday May 8. The aim of these events was to consider critically the strengths and weaknesses of prevailing adversarial approaches to family violence and of restorative justice alternatives – and the potential for combining the benefits of both to achieve better outcomes for victims. Both days attracted huge interest and were oversubscribed well in advance. Some 200 attended the conference and 140 the workshop, and there were substantial waiting lists for both days.

The conference was opened by the Minister of Justice, Hon. Amy Adams, and featured Professor Leigh Goodmark from the University of Maryland's Law School as keynote speaker. A specialist on gendered violence, Professor Goodmark offered a critique of the direction government policy and legislation on domestic violence have taken over the past 40 years and explored the potential of alternative, community-based approaches, such as restorative justice, to address the problem. Her presentations were followed by panel responses from senior policymakers, judges, academics, social services providers, family violence experts and restorative justice practitioners.

Other speakers included Professor Chris Marshall, Victoria University's Chair in Restorative Justice; Rachel Smith, the Lead Coordinator of the Family Violence Death Review Committee; Dr. Shirley Julich of Massey University, a specialist on restorative responses to historical sexual offending; Kim Workman, a leading

“The reason for convening the conference is not hard to guess. Levels of violence in New Zealand have been called an international disgrace and despite the relentless production of official reports and investigations into the scale and complexity of the problem, little dent is being made in ameliorating it.”

justice reform advocate and research fellow of Victoria University's Stout Centre; and Ruth Herbert, a prominent independent researcher who has written on the need for a more integrated, systemic response to family violence in New Zealand.

A total of 35 presenters were involved at some point in the conference and workshop, bringing a wide array of skills, knowledge, experience and cultural insight. While family violence is a deeply-rooted problem in our society and there are no quick fixes, the discussion confirmed that restorative justice has a valuable role to play, especially when embedded in larger wrap-around interventions that combine multiple specialist services.

The two-day event also laid a strong foundation for greater co-operation in the future between domestic violence agencies and restorative justice providers. Such collaboration is essential if the damage caused by this uniquely destructive form of abuse is ever to be effectively remedied.

The following report is not a verbatim account of all that transpired at the conference and workshop. It aims instead to provide a summary of proceedings in a way that highlights key themes and challenges that emerged from the interchange of perspectives.

“It is precisely because of its commitment to the principles of safety and democratic participation that restorative justice is relevant to the task of overcoming the plague of family violence.”

Thursday 7 May

Opening Remarks: Hon. Amy Adams

In opening the conference, the Minister of Justice, Hon. Amy Adams, emphasized the severity of family violence in New Zealand and acknowledged that, despite Government pouring substantial funding into addressing the problem, levels of family violence remain “stubbornly high.” Restorative justice, she said, had much to recommend it as a new and alternative approach and it could be critical to improving our family violence statistics.

Acknowledging the contention surrounding the role of restorative justice in this area, Adams welcomed the theme of the conference and asked that attendees see it as their role to feed back to her *how* restorative justice could best work for family violence.

Opening Address: Professor Chris Marshall

In his opening comments, Professor Marshall emphasized that restorative justice is not a silver bullet, but “when much else seems to be failing, we have every reason to consider the full range of available options for countering violence in the home.” The central task of the conference was to consider critically both current criminal justice approaches to family violence and restorative justice alternatives, and to explore how the benefits of both might be combined to achieve better outcomes. Marshall called on conference participants to begin the day by acknowledging their common project of reducing the carnage of family violence.

Drawing on a recent editorial in the *New York Times*, Professor Marshall pointed to the direct link that exists between violence in the home and levels of violence in wider society. He quoted the words of Tillet and Shifman: “Safe and democratic families are the key to ensuring safe and democratic communities. Until women are safe in the home, none of us will be safe outside the home.”

Marshall suggested that these two concepts – safety and democracy – highlight common ground between restorative justice and feminist thinking on family violence, for ensuring safety and promoting democratic participation are fundamental principles of any truly restorative process. Wisdom, innovation and adaption will certainly be necessary, but restorative processes offer something of profound value – a way of subverting the logic of violence itself by giving voice and validation to those violence seeks to silence.

The New Zealand Scene: Rachel Smith

Rachel Smith provided an excellent overview of family violence responses in New Zealand from her perspective as Lead Co-ordinator for the Family Violence Death Review Committee. She highlighted the need for a collective, integrated approach to the problem. Referring to the “traumagrams” used by the Death Review Committee, she underscored the transgenerational and cumulative nature of family violence patterns, insisting we must pay closer attention to the historical and structural nature of the violence. Intimate partner violence and child abuse and neglect are “entangled” forms of abuse that cannot be addressed in isolation.

“We need to move away from focusing on individuals and start looking at it as a cumulative pattern of harm.”

“To increase safety, dignity and justice, we have to change the way we work, re-aligning the interfaces with different services. Victims will not experience safety, dignity or justice without a move toward developing an integrated system response.”

Smith also emphasized the importance of the language used to describe family violence and institutional responses to it. The terminology employed often distorts the actual experience of victims and clouds understanding of the problem. She was especially critical of talking about “incidents” as opposed to “episodes” of family violence, as though each act were an isolated event rather than part of an ongoing story of accumulating harm.

Smith proposed that while family violence is widely understood to be a “wicked problem”, systemic responses don’t adequately reflect its complex and entangled nature and tend to be “simplistic and unintentionally unsafe.” A key problem is the fragmented and siloed nature of the current system which sees women having to navigate multiple agencies and to disclose their abuse repeatedly. It is therefore essential to work towards a more integrated, whole-of-workforce response. Upholding the safety and dignity of victims is a collective endeavour and the entire system, including restorative justice providers, needs to be well versed in the issues.

First Keynote Address: Professor Leigh Goodmark

Professor Goodmark’s morning address explored the history of legal responses to domestic violence, using the United States as a case study. She highlighted significant problems with the current retributive approach and argued that we need both to re-think legal responses and to go beyond them in new ways.

Goodmark argued that while feminists had fought hard to have domestic violence recognized as a crime and to formulate criminal justice responses to it, the decision to rely so heavily on the criminal justice system has not really worked. It has not reduced rates of domestic violence and has had unintended damaging consequences for many victims. Goodmark identified four ways in which the current criminal justice response is failing:

1. It uses overly *restrictive definitions* of domestic violence, focusing on physical abuse to the exclusion of the often more pervasive emotional forms of harm.
2. It *essentializes* people subjected to abuse by privileging an “ideal” victim, and in the process side-lines the experiences of other victims, particularly poor, black, migrant and queer women.

“We cannot incarcerate ourselves out of this problem. We need to be willing to try something new to do this, to face our fears and think creatively.”

“We need to give women options, and give them the information that enables them to make informed decisions about what they can do.”

3. It inappropriately relies on *separation* as the main legal remedy, although separation may not be the desired outcome for everyone and in many cases separation strategies are neither effective nor safe.
4. It takes away the *autonomy* of people subjected to abuse through mandatory and inflexible policies.

The appropriate response to these shortcomings is not to dismiss the criminal justice response entirely – there will always be victims who want or need the involvement of the public justice system. However for many victims safety and justice are not well served by the current approach and we need to broaden the options available beyond those that currently exist.

Law and Policy Panel:

Saskia Patton (Ministry of Justice), Shane Cotter (NZ Police), Paul Nixon (Chief Social Worker CYFS), Judge Jill Moss (Family Court), Darius Fagan (Chief Probation Officer), Ruth Herbert (Independent Researcher)

Each panellist offered a brief reflection on the morning's addresses drawing on the work and experience of their respective agencies. A number of common themes emerged:

- **Describing the problem:** Rachel Smith's emphasis on the importance of the language used to frame the problem of family violence resonated widely with panellists. Shane Cotter suggested the notion of episodic rather incident-based violence could serve as a "lightbulb moment" and "mindset shift" for many at the conference.
- **Complexity of the issues:** Many speakers reinforced the complex, entangled nature of family violence and the failure of the system to fully reflect that. Ruth Herbert stressed the need to build a shared understanding across the board. "In New Zealand, we don't know what we don't know about family violence". We lack a shared understanding of the nature of the problem and this leads to unsafe and harmful practice. Paul Nixon spoke to the interwoven nature of domestic violence and child abuse. "We need to think about these problems as interconnected and cumulative."
- **Disconnection between services and the need for an integrated approach:** Reinforcing Rachel Smith's analysis,

"The system is a complex maze of disconnected services... In short our response to family violence in New Zealand is in disarray, it's broken."

"The criminal justice system is not the answer, but it is a part of the answer."

Ruth Herbert emphasised the need for a joined-up infrastructure in this area, referring to the findings of the recent report *The Way Forward*.

There are many practical challenges to achieving a more cohesive system, such as dealing with confidentiality issues in information sharing and knowing how to map and connect up services. Consequently an integrated approach is “often talked about but frequently forgotten”. Mention was made of a cross-government grouping of 13 Ministers working on the issue, but some panellists expressed disenchantment with government strategies and emphasized the importance of communities taking the lead in addressing the need. “It’s not going to happen from the top down, in the proverbial sausage machine...We need to work together, to develop it from the bottom up.” Restorative justice may be one mechanism for bringing people together to do this

- **Expanding available options for victims:** Many speakers supported Leigh Goodmark’s proposal of expanding the range of extra-legal options available to victims. The legal system may sometimes provide a useful shield for victims and haven other advantages, but it is not a panacea and not enough is done for those whom the system fails. Many agreed with Goodmark that people are “experts in their own lives” and we should find ways to support the choices they make to achieve their own objectives. The justice system should seek to partner with victims to “manifest safety in a way that works for her”. Judge Moss observed that in most cases victims and offenders had children together and thus did not have the option of eschewing their relationship entirely. Darius Fagan, whilst expressing concerns about delays in conferencing and over-administration, affirmed that Corrections is supportive of restorative justice where it could help to reduce recidivism.

“I urge you all to do one thing – give survivors a voice, learn about the lived experience and make sure that at all times you put their need for safety and support (and that of their children) at the centre of the plans you make, the services you provide or the policies you write.”

–Ruth Herbert

A Personal Story of Family Violence:

The afternoon session of the conference began with a moving account by Ruth Herbert of her personal experience of domestic violence. Many speakers later in the conference expressed their profound appreciation for this contribution, commenting on how it had “anchored the day”. Detailing her struggles to navigate the system, Ruth impressed on the conference the serious flaws that exist in our collective response to family violence. Little improvement had been made in the last 30 years, she observed, and things will not improve until we place the needs and voices of survivors at the centre of our responses.

Second Keynote Address: Professor Leigh Goodmark

Professor Goodmark's afternoon lecture explored the potential of restorative justice for dealing with domestic violence. In the face of a criminal justice system that is not reducing rates of domestic violence, is not holding perpetrators accountable in a meaningful way, and is often re-traumatizing for survivors, restorative justice could provide a more productive way forward. Goodmark acknowledged the common feminist critique of using restorative justice processes in cases of intimate partner violence, explaining that she herself had once been strongly against any departure from the standard approach. But frustration with the system had shifted her thinking.

"Justice looks different for different people", Goodmark explained. While the criminal justice system works well for some people, and incarceration is sometimes necessary for perpetrators, it is often unable to provide the things that victims most need – voice, validation and vindication. A restorative justice response that employs community conferencing and pays particular attention to the needs of survivors, abusers and their communities is better placed to provide these, as well as to engage those most affected by intimate partner abuse.

Restorative justice could also achieve a more meaningful form of accountability for perpetrators by requiring them to face up to those they have harmed and by demanding a change in their behaviour. It could also help to shift community norms and expand the affected community's understanding of the dynamics of violence. In response to the feminist concern that community approaches may function to trivialize and re-privatize violence against women, Goodmark argued that "community is just another form of public" and it is often a more meaningful form of public than the "public" of the public justice system.

Goodmark also suggested that restorative justice could "better honour the humanity of both victim and partner". It models a caring form of behaviour that stands in contrast to the violence of the carceral system. It recognizes that many victims still love their partners and want the relationship to continue, but without the abuse. It also enables us to probe the motivations of abusers and to avoid demonizing them. This is vital, given the evidence that suggests abusers are more likely to curb their behavior when they feel they are treated fairly and with dignity.

"I have changed my mind. In my work over the last 20 years, I have seen that the criminal justice system cannot address everything... for many people it will not meet their goals."

"The bottom line for me is that we're not achieving true accountability in the current system."

Of course, there are limitations to every type of response and restorative justice will not work for everybody. But the challenge for those who worry about how it could potentially go wrong is to be “active participants” in designing safe and effective practices. “If we accept that what we are doing now is not working particularly well, we have to try new things.” The bar for success is actually pretty low, since what we are currently doing is having no appreciable affect. All restorative justice needs to show its critics is that it is better than doing nothing.

Restorative Justice Panel:

Maxine Rennie, Judge Chris McGuire, Dr. Anne Hayden, Julia Hennessy, Kerry Dougall, Jon Everest, Helen Ridley.

The second panel was comprised of people who are well acquainted with restorative justice theory and practice. Key points to emerge from their contributions included the following:

- **Restorative justice has a valuable role to play in responding to family violence** when used at the right time and in the right way. The question is not *whether* restorative justice is appropriate but *when* is it appropriate and *how* can it best be tailored to the unique challenges of family violence? Some, like Helen Ridley, explained how they had once been strongly opposed to its use in any domestic violence context but was now open to the possibility that with the right structures and support systems it might be effective in some cases. As Julia Hennessy put it, “Restorative justice is just a process; it is just the beginning of addressing the problem.”
- **There is an urgent need for appropriate infrastructure, resourcing and training** for work in this area. Jon Everest described the use of restorative justice in family violence as a “no brainer”, but expressed deep concern that it wasn’t properly supported and resourced at present and could go badly wrong, especially in view of the pressure created by recent changes to legislation. Likewise Helen Ridley cautioned against moving “ad hoc” into using restorative justice without proper preparation. Proper screening of perpetrators and specialist training of facilitators are essential, and conventional restorative justice processes need to be adapted to deal with the unique dynamics of family violence.
- **Partnership between community agencies is essential.** Judge McGuire stressed the importance of local ownership and

“Restorative justice is a process that lends itself to collective cultural practices of old, so it is a very appropriate way to look at whānau violence.”

control – “this work must have roots in the community.” Both he and Maxine Rennie spoke of how the courts and iwi agencies in Rotorua had achieved a “critical mass” around restorative justice, providing an example that others could learn from and a “seed” for nurturing similar work elsewhere. Another example of partnership is Presbyterian Support’s model of co-facilitation between restorative justice practitioners and family violence experts.

- **Restorative justice approaches has a particular relevance for Māori.**

In Te Ao Māori, domestic violence is not just an assault on a single victim, it is more fundamentally an attack upon whakapapa and whānau. As a form of whānau violence, it needs a holistic whānau focused response. Restorative justice interventions make sense in a Māori context because they seek to deal with the relational damage done by the offending and to involve the wider whānau in finding solutions.

Maxine Rennie and Kerry Dougall both emphasized the importance of thinking about family violence in a broader historical and social context, paying attention to the legacy of colonization, poverty and damage to cultural identity. A whānau-focused approach could better address these underlying issues and enable whānau to become more resilient.

Concluding Commentary:

Dr. Shirley Julich and Kim Workman

The day ended with a brief commentary from Dr. Shirley Julich of Massey University and Kim Workman of Victoria University. Julich explained that similar challenges exist for using restorative justice in family violence work as in historical sexual offending, yet in both situations it can offer better justice for victims. She agreed that it is crucial to develop a range of responses for such offending. “We don’t even need to ask if we can afford it, we need to say we can’t afford not to.” Kim Workman reflected on the importance of holding “dignity, justice and truth” at the core of any form of response. If these three goals remain central, rather than being overwhelmed by the difficulties of correct processes real change can be achieved. He also acknowledged the contribution of the Chair in Restorative Justice in providing a vital space for dialogue on such critical issues of practice and in broadening the scope of the restorative justice agenda in New Zealand beyond the pre-sentence arena.

Friday 8 May

Workshop Proceedings

The Friday workshop was facilitated by the Chief Social Worker, Paul Nixon, and included panel presentations, break out groups, Q&A sessions and ample opportunity for networking and conversation. After some initial input from Jo Anne Vivian of the Ministry of Justice on the Ministry's Best Practice Standards for Family and Sexual violence, and from Professor Goodmark on the work done by the Gender Violence Clinic at the University of Maryland, the first half of the day was devoted to a series of case studies of programmes and initiatives in New Zealand that employ restorative approaches to family violence. The organizations represented were Community Law Wellington & Hutt Valley (Emma White and Jennifer Parker), Presbyterian Support Central (Julia Hennessy), Family Works Whanganui (Cheryl Edwards), Mana Social Services Trust (Theresa Heyward), Iosis (Bronwyn Impson) and Project Restore (Fiona Landon and Jennifer Annan).

The second half of the day explored the distinctive needs of particular "identity groups" with respect to family violence, including Māori and Pasifika (Marama Fox MP, Mike Hinton, Kerry Dougall, Huhana Hickey), ethnic and refugee communities (Rachel Kidd), disabled people (Huhana Hickey), men (Mike Cagney) and the LGBTIQI community (Sandra Dickson).

It was a richly informative day and impossible to summarize all the issues discussed. But among the recurring themes, discussion points and challenges to emerge were the following items:

- Many participants affirmed the value of the previous day's conference and referred to ideas that had resonated with them personally or seemed particularly significant.
- Whatever the misgivings of some scholars and sector specialists, the fact is that many victims and perpetrators of domestic violence express a desire to participate in restorative processes. The programmes around the country already using restorative approaches report on generally positive outcomes for participants.
- One of the significant benefits restorative processes can offer is opening up dialogue about, and giving a greater understanding of, the complexities involved in family violence. Many practitioners reinforced the previous day's emphasis on the "cumulative and enduring" nature of family violence, and

maintained the relational emphasis of restorative justice allowed them to work holistically with families to address the deeper issues involved.

- When it focuses on the needs of the whole whānau, restorative justice fits well with Te Ao Māori and, importantly, has scope to address the historical and structural violence that have afflicted Māori.
- Restorative justice can achieve better outcomes when incorporated into a multi-disciplinary package of support and accountability offered in partnership with other agencies. Many speakers stressed the importance of building good partnerships across specialist agencies, although it was also acknowledged that many community agencies are currently having to cut back services because of funding problems.
- There are significant challenges in scaling up restorative justice services. Facilitators are currently under huge pressure from increased referrals and have limited capacity to take on additional work. Proper screening of participants and specialist training of facilitators are essential to effective work in this area, but the lack of adequate resourcing from Government is a major threat to achieving safe practice. Several people commented on how difficult it is in smaller towns to find specialist agencies that work with perpetrators.
- At a deeper level, several speakers, including Professor Goodmark, reflected on the challenges of “mainstreaming” restorative justice. There is a danger of compromising its core principles and reducing it to just another “tick box” exercise. Arguably it has more to offer by remaining outside the system as a radical alternative.
- Discussion from the floor emphasized the importance of flexibility in approach, of being survivor-driven, of tailoring processes to the needs of individual participants, and of being responsive to culture and context. One size will never fit all.
- While it may be desirable to have facilitators working within their own cultural communities, it is also possible to work cross-culturally and find common ground by recognizing the universal power of good relationship. “In our zeal to do this well, we need to remember that you don’t need a PhD, you need to have good

relational skills.” The building of relationships was acknowledged as essential to responsive, flexible services and to the success of restorative justice work in this area generally.