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Can Restorative Practices Address Intimate Partner Violence?

Issues to Explore

by Erika Sasson

This publication was supported by a grant from the Kalliopeia Foundation to support the development of restorative practices at the Center for Court Innovation. Points of view or opinions in this document are those of the author and do not necessarily represent those of the funder.

Author

Erika Sasson
Director of Restorative Practices
Center for Court Innovation

Acknowledgments

I would like to thank Hillary Packer for her tremendous support in the research, drafting, and planning stages of this project. I am also indebted to Liberty Aldrich from the Center for Court Innovation and Maureen Sheeran from the National Council of Juvenile and Family Court Judges for their leadership and thoughtfulness on such a sensitive and complex topic. Finally, I am grateful to the Kalliopeia Foundation for its unique approach to grant-making, which prioritizes people, movements, and ideas.

2016

Preface

This paper was designed to support discussions regarding whether and how restorative practices might be both safe and effective in cases of intimate partner violence. It highlights some of the various reasons for which individuals and communities might explore alternative approaches to addressing intimate partner violence, and provides practitioners with a series of questions to assist in developing key policies and principles for these interventions.

I. Introduction

The prevalence of intimate partner violence continues to be an epidemic across the United States.¹ The reported statistics across the country are nothing short of horrifying, with 20,000 daily calls to domestic violence hotlines per day and with an average of 20 people facing physical abuse by an intimate partner per minute.² Given its nature, intimate partner violence can impact whole families, and is said to be the third leading cause of homelessness.³ Its victims are from diverse communities, and across the gender spectrum. That being said, African-American women face this issue 35% more often than white women.⁴ And for Native

Americans, violence against women is catastrophic, where one in three Native women are raped and three in five are facing assault. They are murdered at ten times the national average.⁵ These statistics do not begin to tell the stories of all those impacted by such violence, whether in families, communities, or across Nations.

In 1994, with the passage of the Violence Against Women Act (VAWA), states and tribal jurisdictions began to receive federal funds to combat intimate partner violence, contingent upon the pursuit of aggressive law enforcement tactics.⁶ VAWA supported mandatory arrest policies, which removed police discretion to arrest so long as there was probable cause that an incident had occurred (although this was changed in 2005 from “mandatory arrest” to “pro-arrest” policies).⁷ In addition, “no-drop” policies implemented in many jurisdictions meant that prosecutors would pursue a case regardless of a victim’s objections. In some states, medical providers were required to call on law enforcement regardless of a patient’s wishes.⁸

Before the 2013 Re-Authorization of VAWA, Native jurisdictions could neither arrest nor prosecute a non-Indian who committed this type of violence on a reservation. As a result, many survivors were left with no recourse and were ultimately unprotected. To remedy this longstanding problem, the 2013 Re-Authorization included a provision that conferred jurisdiction on Indian Nations to prosecute non-Indians who commit certain types of violence against Native people in Indian Country. This was considered a monumental victory for Indian Nations, both as an expression of Native sovereignty and due to the fact that “the vast majority of people who harm native women are non-Natives.”⁹

Before the advent of the movement to recognize intimate partner violence as a crime, responding police officers were known to ask a man accused of violence against a spouse to “take a walk around the block and cool off.”¹⁰ VAWA has been instrumental in sending a

strong message across the country that violence against women is a public crime that can no longer be excused away or suppressed in the home, nor can non-Natives escape prosecution when assaulting Native women.¹¹ Indeed, the law enforcement paradigm has provided meaningful opportunities of escape and renewal for survivors.¹² Certainly, as noted by Sarah Deer recently, “For victims (and as a survivor myself), understanding that your experience is validated through law can be a very powerful healing tool.”¹³

II. Historical Trauma and Structural Violence

Despite the advances of the past twenty years, there are still gaps in responsiveness that have left many victims—and, at times, whole communities—without refuge. For a myriad of personal reasons, individual survivors may not want—and may not benefit from—an enforced separation from an abuser, and dual arrest policies may trigger further victimization of the survivor. Arrest and incarceration can impact economic stability and housing, and, as noted by Donna Coker, “a significant number of women in prison are there as a result of their attempts to escape, survive, or ameliorate their violent victimization.”¹⁴ Arrest and incarceration may affect immigration status, or trigger consequences, such as revocation of probation or parole. For queer communities, stereotypes around what a domestic violence victim “looks like” may preclude LGBTQ survivors from being recognized.¹⁵ Finally, for communities suffering from historical trauma and with longstanding mistrust of the criminal justice system, seeking assistance from law enforcement may simply be a non-starter.

Across the country, criminal justice policymakers have begun to focus on the problem of over-incarceration, and all of its collateral consequences. The conversation about mass incarceration is necessarily connected to structural questions about race.¹⁶ In African-American communities, for example, the national conversation about racism in policing has peaked, in light of widely publicized police shootings of unarmed African-Americans. Any conversation about combatting gender violence must take into account race, mass incarceration and the mistrust of police in many communities.

For many indigenous peoples, the conversation about violence starts with a conversation about the

impact of colonization. As noted by Kalei Kanuha, “our understanding of gender violence and violence in all forms is situated first in the loss of power and self-determination of our people due to colonization by the United States.”¹⁷ She continues with a fundamentally different vision for ending gender violence: “We dream that those who cause harm and violence should not think they are responsible or accountable to the state, but that they are accountable to their families, ancestors, and elders.”¹⁸ For Kanuha and others, a restorative approach to intimate partner violence has the potential to move one away from an ethic of control, punishment, and colonization, and towards an ethic of care.

III. Peacemaking and Restorative Justice: Choices for Survivors

Many individuals, families, and communities are looking for choices for how they address the violence in their homes. A recent survey conducted by the National Domestic Violence Hotline found that slightly more than 50% of survivors who contacted the hotline had not contacted police.¹⁹ Moreover, of those who contacted law enforcement, one in two survivors felt there was no difference in their safety, while one in three said they felt less safe, and only one in five said they felt safer. These findings—taken from respondents from white, African-American, and Hispanic backgrounds—suggest that the need to discuss diversity of choice for survivors resonates across a wide variety of communities.

Some native communities in particular have started looking towards traditional ways to respond to intimate partner violence, such as peacemaking. Others are exploring what restorative justice can offer as a response. What does a restorative approach to intimate partner violence look like? Is it possible to employ these approaches in a way that is safe and effective? This essay will serve as the briefing paper for a roundtable discussion that will bring together practitioners, elders, advocates, and community members for a robust discussion on restorative approaches to intimate partner violence, their possibilities and their limitations.

Peacemaking in Indigenous Communities

With over 567 tribes, restorative principles and peacemaking are incorporated and practiced differently across diverse tribes and bands, depending on their communities, their core values, and their current systems of administering justice. Although it varies across tribes, peacemaking is a traditional form of justice that promotes healing and restoration, and generally brings together defendants and victims, as

well as others affected by the defendant's behavior. Traditional peacemakers tend to be respected elders from a community. Peacemakers lead the peacemaking sessions and allow each person to speak about how they have been personally affected by the dispute. The purpose is to reach a consensus to resolve the dispute and, more generally, "to talk it out in a good way."²⁰ The Navajo Nation, which operates a long-established peacemaking model, describes the process as the "reparation or mending of controversies through harmony."²¹

Some Native communities have practiced peacemaking for cases of intimate partner violence, such as in the Organized Village of Kake, Alaska, and on the Navajo Nation. Research suggests that peacemaking has contributed to reparations for the survivor, enhanced the survivor's autonomy, and disrupted the familial relationships that support continued abuse.²² Some anecdotal evidence hints at a decrease in recidivism as a result of peacemaking in cases of intimate partner violence.

Restorative Justice in the State Court System

Since the 1970s, restorative justice models have emerged across the United States, in an effort to respond to problems that do not fit easily into the American legal system.²³ Its roots lie in Native traditions of New Zealand and North America. In contemporary usage, restorative justice may be defined as "a process to involve, to the extent possible, those who had a stake in a specific offense to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible."²⁴

Howard Zehr, a leading thinker on the topic of restorative justice, recommends thinking of it as a flexible process that seeks to answer a series of questions, including who has been harmed, what the harmed party needs, and whose obligation it is

to remedy that harm.²⁵ Kay Pranis, another leading thinker on the topic, explains how restorative justice shifts the conversation: “From coercion to healing; from solely individual to individual and collective healing; from primary dependence on the state to greater self-reliance within the community; and from justice as ‘getting even’ to justice as ‘getting well’.”²⁶ In general, restorative justice models are only applied to those who have assumed responsibility.²⁷ A restorative process is based on the assumption that maintaining connection with law-abiding citizens is key to preventing wrongdoers from reoffending.²⁸

Restorative justice seeks to meet the needs of victims, who may want an opportunity to understand what happened to them or to tell their story.²⁹ In addition, it seeks to hold the offender accountable. Accountability is defined as facing the harm one has caused, recognizing its impact, and taking positive steps to repair the harm.³⁰ Restorative models focus less on what each party “deserves” and more on what each one “needs.” Within this paradigm, community members are viewed as stakeholders with responsibilities to both victims and offenders.³¹ It should be noted that a restorative intervention is not necessarily a replacement for the legal system and may be integrated or exist alongside of it.³²

Preliminary Concerns

Alongside the interest in applying these approaches to intimate partner violence come concerns. For example, some tribal practitioners remain hesitant about applying traditional peacemaking or other restorative practices to current cases of intimate partner violence. Some advocates are worried about minimizing the abuse, reducing serious crimes to “disputes” or “conflicts”—between otherwise “equal parties”—belying inherent dynamics of power and control. In addition, some advocates are concerned that in close-knit

Native communities, survivors might be pressured to participate in peacemaking instead of seeking needed protection and separation. Policies are needed to mitigate against these risks and others, including the potential for batterers with large supportive families to overwhelm a peacemaking session, shutting out both the voice and agency of the victim.

Howard Zehr notes that without careful safeguards, restorative justice could be dangerous in cases of intimate partner violence.³³ For example, in communities with a pro-marriage, sexist, or gendered bias, certain norms would have to be in place in order to address harm in a way that both honors and protects the survivor's experience.

IV. Concrete Examples

Some restorative programs have already begun to respond to intimate partner violence. The following examples are by no means exhaustive.

A. Family Group Conferencing

Family Group Conferencing is inspired by New Zealand Maori tradition. The aim is to “bring(s) together the family members with their relatives and other close supports to form the ‘family group’, and make a plan for addressing the areas of concern.”³⁴ The model’s focus is on ‘joint planning,’ family leadership and decision-making. First executed in Canada by Dr. Joan Pennell and Dr. Gale Burford, it is considered one of the only programs that uses a restorative intervention for intimate partner violence and is accompanied by research and evaluation.³⁵ Pennell instituted the model in three distinct Canadian areas, including Inuit, rural and urban communities. After success in Canada, the program was implemented in thirteen counties in North Carolina.

A family group conference begins with a referral from child welfare, probation, or youth corrections.³⁶ It is designed to address the maltreatment or delinquency of a child, but frequently addresses intimate partner violence co-occurring in that child’s family. Social agencies are responsible for offering and administering the conference. Included in the conference is the coordinator and any service provider (child welfare, probation officer etc.) involved with the family. The conference opens with a ceremony selected by the family, such as a prayer or the passing of family photos. Service providers then share the relevant family history and available resources that may be included in the plan, to which the family can comment or ask questions. The service providers and coordinator subsequently leave the room. The family shares a meal

alone together, which triggers the decision-making or planning stage of the conference, also known as the family’s “private time.” This stage of the conference can take hours, days or weeks. Once the family has finalized a plan, they call the coordinator and service providers back into the room. The latter review the plan for approval. If they do not approve it, a follow-up conference is scheduled. The conference is designed to respect the strength of family members.

Family group conferencing has been shown to be effective in widening the circle of supports for survivors, and reducing future indicators of domestic violence and child maltreatment.³⁷ After a one year follow-up, the North Carolina study demonstrated that when left “alone”, families did not suffer any violence by the abuser.³⁸ In addition, there was a significant decrease in instances of the abuser dominating the conversation, name-calling the victim, minimizing the violence, and transferring responsibility to the victim.

B. Circles of Support for Women of Color: HarborCov

HarborCov is a 15-year-old community-based organization located in Chelsea, Massachusetts. Led by women of color, the organization is committed to addressing the intersectionality of oppression for survivors of intimate partner violence. HarborCov uses circles to provide support for survivors, as well as with staff as a method of self-governance. Circle-keeping is a traditional tool in native communities wherein participants sit in a circle to discuss an array of issues, to commemorate important events, and to work towards reconciliation. Despite its use of circles to address trauma, HarborCov nonetheless rejects “restorative justice” as a paradigm, arguing that it has failed to address both historical and current systems of oppression. HarborCov leaders imagine a long process of circles for survivors before including an offender.

Sayra Pinto, of HarborCov, stated that a strong fabric of community must be built first before engaging offenders, so that “we know what people are being held accountable to and for an existing community.”³⁹

C. Victim Impact Panels

Victim impact panels bring survivors of intimate partner violence to speak to a group of abusers who are participants in a batterers’ intervention program. Panelists are given an opportunity to share their stories, and to discuss the impact of abuse on their lives. Generally, questions are not permitted and there is no dialogue. This ensures that abusers face the harm without an opportunity for victim-blaming or re-victimization. Qualitatively, the survivors have reported gratitude and happiness for the opportunity to present, and some have stated that the experience was empowering and helpful in their own healing. Offenders reported that they understood the impact of the crime and felt remorseful.⁴⁰

D. Circles of Peace

Circles of Peace is a program based in Nogales, Arizona. Nogales is a border town of 20,000 people, in which many of its inhabitants face cultural isolation, language barriers, and poverty.⁴¹ Offenders in the program—who agree to plead guilty and to receive treatment instead of jail time—are randomly assigned to either Circles of Peace or to a batterers’ intervention program.⁴² Circles of Peace requires a weekly circle with a trained restorative justice facilitator over the course of 26 weeks. In varying weeks, a family member, support person, or community member can also attend. The goal of the circle is to develop a “sustainable plan for change” that includes restoring the victim, family, and community.⁴³ The program requires the offender to take part in determining how to restore the harm that was caused and how to move forward, all of which is

decided by consensus. Participants use a talking piece to improve communication and to inhibit interruption, yelling, and other impulsive outbursts. The facilitator raises issues during each circle including: anger management, power and control, conflict resolution, family history, cultural and religious influences, and community pressure. The program designates “safety monitors”—members of the community who have access to the offender—to communicate to the facilitator whether or not the offender is abiding by the plan. The community’s safety monitors ensure that the abuse is no longer taking place in secret, which is meant to bolster accountability and compliance.

Circles of Peace was the first U.S. based randomized study on a restorative justice program specifically designed to address intimate partner violence.⁴⁴ The study found no statistically significant difference in outcomes between a traditional, Duluth-model Batterers Intervention Program and the restorative justice program, but did dispel the notion that a restorative intervention would be worse than a traditional batterers’ intervention model.⁴⁵ The results hinted at a possible, modest positive effect, even if they did not reach statistical significance.

V. Questions for Discussion and Developing Key Principles:

In developing key principles at play when addressing intimate partner violence using a restorative lens, the following questions should be discussed:

- What is the goal of an intervention for intimate partner violence?
- How does an intervention take into account a survivor’s agency?
- What is the measure of accountability?
- What is the role of community?
- How does an intervention take into account intersections with historical trauma and/or systemic oppression?
- How does an intervention intersect with questions of child welfare?
- How do we ensure safety?
- What is the relationship between a restorative intervention and the criminal justice system?
- How do we measure success with a restorative intervention?

In deconstructing key themes and principles, practitioners may consider the following sub-questions:

1. Goals for an Intervention for IPV

- What are the primary goals of an intervention in cases of intimate partner violence?
- What inferences can be drawn from amount of violent crime that goes unreported?
- Will offering an alternative outside of the criminal/penal system run the risk of delegitimizing the issue?

2. Survivor Agency

- How much do we prioritize the choice of the survivor? How do we prioritize voice?
- How much do our current interventions support or deny choice?

- What does a well-informed consent conversation look like?
- To ensure voluntariness, when is the ideal time to offer a restorative option to survivors? To offenders?
- Do we have an independent responsibility to offenders regarding the type of intervention?

3. Accountability

- What does accountability look like from a survivor's point of view?
- Is the system accountable to survivors? To offenders?

4. The Role of Community

- How do we define communit(ies)?
- Does the community have a role to play in protecting survivors? What happens when the community is not included in the response to violence?
- What norms need to be in place to engage communities in working to protect survivors?
- What happens when communities have a pro-marriage bias, or other norms that may interfere with a survivor's safety?

5. The Intersection with Child Welfare

- How can an intervention take into account the role of the family?
- Can an intervention give family members—especially children—a voice?
- How does the presence of children impact the survivor and their agency? What about the impact on the offender?

6. Intersections with Trauma and Oppression

- What happens to survivors when communities do not trust the criminal justice system? How can we account for historical trauma and current systems of oppression?

- How can we integrate an anti-racist component to this work?
- What do LGBTQ survivors need to feel safe and/or to access services?
- What is the role of intergenerational violence, and its intersection with colonialism?

7. Safety/Risk Assessment

- What do survivors need to keep them safe? If a survivor claims they are safe enough to participate, is that enough?
- What screening tool can be used to assist with assessing safety and/or lethality?
- Can a restorative intervention, with its ability to take place over time, allow for an ongoing—and thus more accurate—lethality assessment?
- Is this appropriate for perpetrators of very serious crimes of violence?

8. Relationship with the Criminal Justice System

- Does the use of restorative practices require total divestment from legal system or other government systems?
- Can a restorative process report to the court? Is it co-monitoring or in lieu of?
- What happens when further abuse is observed or disclosed in a non-legal setting?
- What are the benefits and drawbacks of allowing service providers to tell the “story” of the family and to have a final say in the plan?
- Can a restorative intervention improve outcomes by allowing for a contextual understanding of assault, in contrast with the legal barriers to introducing evidence of previous abuse into a criminal trial?

9. Measuring Restorative Interventions

- What are the benefits of using surrogate victims? What are the drawbacks?

- What is the benefit of survivor participation in a process? What are the drawbacks?
- How do we ensure that a process is victim-oriented?
- Will victims be coerced into participating?
- What metrics should be used to measure the outcome of the intervention? Is a recidivism-centered metric relevant to this type of work?
- How can evidence of improved survivor autonomy be reflected in measures for success?

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Center for Court Innovation

520 Eighth Avenue, 18th Floor

New York, New York 10018

P. 646.386.3100

F. 212.397.0985

courtinnovation.org