

**RESTORATIVE JUSTICE IN THE  
CONTEXT OF DOMESTIC VIOLENCE:  
A LITERATURE REVIEW**

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# RESTORATIVE JUSTICE IN THE CONTEXT OF DOMESTIC VIOLENCE: A LITERATURE REVIEW

Alan Edwards and Susan Sharpe

## I. Introduction

Domestic violence<sup>1</sup> has become recognized over the past three decades as a major social, relationship, and justice problem. The activism of the feminist movement is considered a crucial factor in this recognition. Whereas previously, reactions to cases of intimate abuse tended to see the abuse as merely a relationship problem (if it was seen as a problem at all), current public discourse about the prevalence and realities of abuse has resulted in domestic violence being treated more seriously now than perhaps at any time before. There are new laws, studies, shelters, support programs for victims and their children, treatment programs for offenders, and innovations in professional approaches to victims and offenders.

Current strategies and laws are not yet achieving the success that reformers had hoped. As a result, new approaches are being introduced on an ongoing basis, all in the hope of making a contribution to an overall successful response to domestic violence.

One such approach has come from the field of restorative justice. For reasons outlined later in this paper, restorative justice initiatives in the area of domestic violence have been met with widespread opposition and small pockets of support, from domestic violence professionals, practitioners, and survivors.

### ***Defining Domestic Violence***

This review reflects the current focus of the majority of domestic violence literature, that is, the violence and abuse committed by males against their female intimate partners. There is important literature available on other dimensions of violence between domestic partners, including women's abuse of men, same-sex partners' abuse of each other, and domestic violence in the context of elder abuse. But in addressing the question of whether restorative justice interventions are appropriate for cases of domestic violence, discussions are framed in terms of the classic circumstance of men's violence against women.

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<sup>1</sup> There are many terms used, often interchangeably, to describe men's violence against intimate female partners: domestic violence, spousal violence, spousal abuse, woman abuse, wife abuse, and others. The term "domestic violence" seems to be the predominant phrase, and this is why the term is used here.

In this review, we will define abuse using Michael Paymar's definition, given his involvement with the Duluth Domestic Abuse Intervention Project, where so much has been done to shape contemporary understandings about domestic violence. For Paymar, domestic violence is defined as "the use of physical violence in an intimate relationship. The term also includes emotional, psychological, and sexual abuse, as well as any other behavior one person in a relationship uses to control the other" (Paymar, 2000: xi).

Examples of "any other behavior" are found in the Power and Control Wheel (Pence & Paymar, 1993: 3), which identifies the following behaviours as abusive: using coercion and threats, using intimidation, using emotional abuse, using isolation, minimizing/denying/blaming, using children, using male privilege, and using economic abuse.

### ***Defining Restorative Justice***

Restorative justice is somewhat more elusive to define than domestic abuse is. This is so in part because restorative justice is both a philosophy and a practice, and a definition needs to capture something of both. According to one definition:

Restorative justice is a set of values that guides decisions on policy, programs and practice (Pranis 2000). Restorative justice values are based on the notions that: all parties *involved in crime* should be included in the *response* to crime; offenders become accountable through *understanding* the harm caused by their offence(s), *accepting* the responsibility for that harm and *taking* actions to repair the harm they have caused; and crime is defined as harm to *individuals and community*. (italics in original) (Kelly, 2002: 213–214)

Van Ness and Strong offer an expansion and elaboration:

Restorative justice theory emphasizes that every crime involves specific victims and offenders, and that a goal of the criminal justice process should be to help them come to resolution. . . . Resolution requires that the rights of victims be vindicated by exoneration from responsibility for the injuries they have sustained as well as receiving reparation for those injuries. That is not all that is required. The offender must make recompense for there to be full resolution. . . . "Recompense". . . is something given or done to make up for an injury. This underscores that the offender who caused the injury should be the active party. . . . (Van Ness & Strong, 2002: 46–47)

The subject of this literature review is the intersection of restorative justice and domestic violence. We begin by identifying some predominant worldviews informing current understandings of the causes and effects of domestic violence. We next report on the few research studies that have measured the effectiveness of restorative practices in domestic violence cases; we present key concerns that victims, advocates, and scholars express; and we describe primary challenges to restorative justice practice that stem from the dynamics of domestic violence. Last, we summarize a range of perspectives on whether restorative justice has an appropriate role to play in the area of domestic violence.

## **II. Aspects of Predominant Worldviews in Current Domestic Violence Thought**

### ***Feminist or Socio-political Perspective***

A predominant worldview in contemporary domestic violence work is known as the feminist or socio-political perspective, most influentially articulated by the Duluth Domestic Abuse Intervention Project (DAIP). This worldview sees violence in intimate relationships as being overwhelmingly committed by men against women; women's violence against men is often placed in the context of self-defence. The feminist or socio-political worldview accounts for violence by males in intimate relationships by linking violence and abuse, power and control, in intimate relationships to the larger, societal constructs of male privilege (Pence & Paymar, 1993).

In the feminist worldview on domestic violence, men exist in a historical state of privilege with entitlements bestowed upon them by religion, law, and social custom. Historically, women have been treated as secondary humans who have value only through their linkage to men. Women's struggles toward or assertions of equality threaten men's dominant status. Therefore, violence against women has been not only tolerated but even encouraged in both social and religious traditions, as a way of maintaining male entitlement.

Early 20<sup>th</sup> century feminism solidified the movement toward recognition of women as equals, a recognition that gained considerable strength in the 1970s. At this time, domestic abuse became identified as one of the elements of patriarchy to which feminism must help bring change. In this way, domestic violence is seen as linked inextricably to male domination. As Bograd argues, "The reality of domination at the social level is the most crucial factor contributing to and maintaining wife abuse at the personal level" (Bograd, 1988: 14).

In the feminist analysis, men gain power and control in an intimate relationship by committing acts of violence and abuse. Abusive actions are seen as part of a pattern of behaviours, rather than as isolated incidents. The existence of a pattern suggests intention and deliberateness on the abuser's part. Men's desire for dominance in intimate relationships is related to men's desire for continued dominance over women in society. One consequence of this is that domestic abuse is seen as requiring treatment for abusive men which focuses on challenging men's patriarchal beliefs (Pence & Paymar, 1993).

### ***Narrative Therapy Approach***

The narrative therapy approach is aligned with the feminist perspective in holding men singularly accountable for their choice to be abusive (Jenkins, 1990; Augusta-Scott, 2001; Augusta-Scott and Dankwort, 2002). Yet, several salient differences exist between the two worldviews.

Alan Jenkins (1990) articulates a theory of restraint in the narrative worldview of domestic violence intervention. This theory orients to men's strengths and capabilities rather than weaknesses and deficiencies. Jenkins' experience is that most men who use violence want intimate relationships characterized by love, respect, kindness, and equality; men are 'restrained' from co-creating these relationships by their embrace of beliefs that prevent

them from accepting responsibility for their behaviour. Defining restraints as “traditions, habits, and beliefs which influence the ways that abusive males make sense of and participate in the world” (p. 32), Jenkins invites abusive men to examine what beliefs or attitudes they possess that get in the way of their having the kind of relationship they want. This examination focuses, in part, on four contexts or spheres of influence, namely the socio-cultural, developmental, interactional, and individual (pp. 33–56).

Tod Augusta-Scott and Juergen Dankwort compare and contrast how abuse is handled in the narrative worldview and the mainstream feminist perspective. While many similarities emerge, several critical distinctions arise. Augusta-Scott and Dankwort see mainstream feminist treatment programs, or education groups, for abusive men as presuming a level of dishonesty on the abusive men’s part, such that any disclosures that are at odds with the grand narrative of power and control are dismissed or challenged. In the narrative approach, there is recognition that the power and control story does not capture the complexity of beliefs and attitudes that abusive men (like the rest of humanity) possess. Similarly, Augusta-Scott and Dankwort note that, while narrative groups see shame as “remorse that should be fully explored whenever it arises because it can be a positive motivation for men to change” (Augusta-Scott and Dankwort, 2002: 798), the DAIP-style education approach “does not define minimizing or denying as defenses against shame and humiliation but rather as tactics of power and control” (p. 798). Moreover, the way education group facilitators approach challenging is seen as being at odds with narrative priorities. Quoting Murphy and Baxter (1997), Augusta-Scott and Dankwort write that “highly confrontational interventions often preclude empathic and respectful listening and may reinforce the client’s view that relationships are inevitably grounded in coercion and control, rather than in understanding, trust, and support” (p. 800), and that the education group approach of “breaking down denial” would be viewed through a narrative lens as “coercive and in itself abusive” (p. 791).

Some writers explore the healing power of self-disclosure for domestic violence victims, either in formal therapy (Herman, 1997) or in less-formal contexts (Lawless, 2001). This self-disclosure forms a narrative of the abuse, a story which can be explored and validated, resulting in an empowering re-authoring of the victim’s abuse story and its meaning in her life. Herman warns, however, that a victim cannot speak freely in front of her offender “until the violence has been brought under real control and the pattern of dominance and coercion has been broken” (Herman, 1997: 168).

### ***Other Perspectives***

Some writers make connections between women’s experience of domestic violence and the experience of torture victims (Herman, 1997; Selden, 2001), and this analysis leads to the view that domestic violence is, ultimately, an issue of human rights abuse (Battered Mothers’ Testimony Project, 2002). This view is consistent with some analyses of violence (Cobb, 1997) and torture (Scarry, 1985), which observe the complex psychology informing the experience of torture: namely, the objectification of pain, the loss of “voice” concomitant with the loss of self, and the attempts to re-assert agency in the elimination of pain and fear.

Donald Dutton (2003) expands and clarifies links between abusive tendencies and borderline personality organization (BPO), and makes recommendations about treatment

program adaptations necessary to working with BPO clients. Linked with this, many writers link abusive behaviours as arising out of men who are particularly vulnerable to strong feelings of shame (Dutton, 2003; Gilligan, 1997 and 2001; Eisikovits and Enosh, 1997), and whose shame is unacknowledged or unresolved (Scheff & Retzinger, 1991; Hydén, 1995).

Others reject the linking of abusive behaviours with personality disorders or mental illnesses (Paymar, 2000; Miller, 1995; Pence, 1999; Bograd, 1988) as this is seen as ultimately resulting in the offender being held (and/or holding himself) as less than fully responsible for his abusive actions and behaviours.

One strain of thought stresses the importance of distinguishing between conflict and violence (Jenkins, 1990; Hydén, 1995; Cobb, 1997). Cobb describes this distinction as crucial, and she argues that mediators' failure to understand this distinction puts abused women at heightened risk and denies them legitimate rights. Hydén asserts that the use of violence, rather than being an expression of conflict, is rather a "*conflict removing activity*" (Hydén's emphasis) (Hydén, 1995: 69).

Cautions exist from both within and outside the mainstream feminist worldview, regarding the holding of practitioner ideology as more 'true' than victim and offender experience. Linda Mills cautions that adherence to an ideological framework should not replace listening to the truths told by domestic violence victims. Mills observes that rigid ideological devotion to the mainstream feminist worldview fosters untruths about the realities of abuse, which hinders the advancement of effective legal and support strategies (Mills, 2003). Similarly, Ellen Pence writes of the early work of DAIP:

By determining that the need or desire for power was the motivating force behind battering, we created a conceptual framework that, in fact, did not fit the lived experience of many of the men and women we were working with. Like those we were criticizing, we reduced our analysis to a psychological universal truism. The DAIP staff . . . remained undaunted by the difference in our theory and the actual experiences of those we were working with. We all engaged in ideological practices and claimed them to be neutral observations. (Pence, 1999: 29)

### **III. Empirical Evidence Related to Restorative Justice in Cases of Domestic Violence**

To date, there has been little empirical research (either quantitative or qualitative) looking at whether or how victim-offender dialogue within a restorative justice framework might affect violence between intimate partners. This section summarizes what evidence the authors could locate in regard to the use of common restorative (or partially restorative) practices: victim-offender mediation, family group conferencing, circles, and victim impact panels. It is important to note that the results of these studies are not generalizable, even in combination, as they have used different methodologies and looked at different restorative practices, which were being used in different contexts, for different purposes, with different levels of resource support.

### **Victim-Offender Mediation**

Wemmers and Canuto summarize two early studies of victim-offender mediation in cases of domestic violence. In interviews with victims two months after mediation (in 1982), Bethel and Singer found an 80% rate of satisfaction with the mediation process and its outcomes, concluding that mediation can be suitable for less serious forms of domestic assault (Wemmers and Canuto, 2002: 31). Smith (in 1983 and 1988) looked at non-stranger assault (including domestic violence) within three months after the cases were disposed. She compared the perceptions of victims whose cases were handled in court with those whose cases were handled through mediation, and found no significant difference between the mediation and the court sample in terms of satisfaction with the outcome (i.e., guilty plea, guilty verdict, or dismissal): victims tended to be satisfied with the outcome if the violence stopped and dissatisfied if it did not (Wemmers and Canuto, 2002: 31–32).

In an Austrian study using qualitative methodology, Christa Pelikan studied a mediation process that typically occurs immediately after the parties are told about the option and decide to participate (rather than after a period of preparation), and in which the mediators actively speak for the parties, modelling for them a dialogue about the issues each one presented in an initial, private, caucus. In the cases she studied, Pelikan found that the victim-offender mediations had a positive effect in reducing violence in those situations where change was already under way (that is, where the victim, the offender, or both were committed to ensuring an end to the violence). She concluded that victim-offender mediation (VOM) is effective only when the victim has resolved to have a life without physical violence, and has the resources (money, job qualifications, etc.) to live independently if necessary. Pelikan also notes the importance of making support services available in the wake of violence, noting that empowerment begins outside of a victim-offender mediation (2000).

Amanda Dissel (2003) reports the results of interviews with 21 female domestic violence victims in South Africa who, 6 to 18 months earlier, had completed a mediation process with their abusers. Participants indicated that the mediations had positive effects in regard to the victims' sense of safety, the opportunity to speak on an equal basis with their partners, and the option to resolve matters privately or with supporters present. All respondents reported that abuse had stopped since the mediation, and that the violent partner's conduct toward them had improved generally. Where couples had stayed together, the women reported improved communication and a reduction in verbal abuse. For the most part, offenders followed through on the agreements they made during mediation. The author notes that these results were consistent even in cases where men felt culturally entitled to behave abusively.

### **Family Group Conferencing**

A three-year Canadian study by Joan Pennell and Gale Burford, published in 1997, examined the effect of family group conferencing on 32 Inuit, rural, or urban families in Newfoundland and Labrador. Those families took part in a total of 37 conferences over the first year of the study, and the families were followed for a one-to-two-year period after the conferencing; at the point of follow-up measurement, these families' Child Welfare files were compared with those of 31 comparison families (Pennell and Burford,

2002: 109–110). The 32 families involved in this study were referred for family group conferencing because of serious levels of child abuse/neglect or unmanageable youth, but adult partner abuse of an adult also came to light in 21 of the 32 families; one of the project's major findings was a reduction in indicators of domestic violence along with those of child maltreatment (p. 110). A benefit the authors highlight is that conference preparations and information sharing broke families' silence about abuse, allowing the emergence of women's leadership to stop family violence (p. 121).

### **Circles**

The Community Holistic Circle Healing Process (CHCH) in Hollow Water, Manitoba, is widely known<sup>2</sup> for its use of restorative practices in response to family violence. This project has been working since 1984 to heal the effects of family violence in the community. A research study published online in 2001 focused on the project's cost-effectiveness, which included gathering qualitative data on the benefits of the project as identified by community members.

The researchers acknowledge that people from inside and outside the community have criticized CHCH, saying that it is focused too much on offenders, that victims may be coerced into participating in the healing process, and that the process reflects traditional values not necessarily shared across the community (Couture et al., 2001: 1). However, the study reports that CHCH has resulted in lower rates of domestic violence, lower rates of youth incarceration, lower than usual recidivism, children staying in school longer, and a general improvement in the community's quality of life (pp. 74–76). These results come from a comprehensive approach that includes treatment and traditional criminal justice as well as restorative circles, but the circles are credited with having an important role in the community's healing (pp. 17–18).

In contrast to the longstanding Hollow Water program, Curt Taylor Griffiths and Ron Hamilton (1996) report that the South Vancouver Island Justice Education Project, designed as a collaboration between the First Nations justice system and the outside justice system, was closed two years after it began. A comprehensive review indicated that primary problems included insufficient consultation with community members, lack of credibility of key participants, political unrest, feuding, and differences in cultural values. More specifically, victims often felt pressured not to pursue criminal charges, and community members perceived that family connections made it possible for offenders of serious offences to go through diversion instead of through court (pp. 185–186).

Donna Coker reports on an examination of the use of Navajo Peacemaking circles in cases of domestic violence. After reviewing case files, observing a Peacemaking session, and conducting extensive interviews with peacemakers, judges and Navajo justices, policy officials, and women's advocates, she concludes that Peacemaking may: increase a woman's material resources through reparations and referrals to social services; increase her familial, emotional, and spiritual resources through redefined relationships, counselling, and other kinds of support; help disrupt familial supports for battering, by confronting denial and minimizing from the abuser and the abuser's family; allow for

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<sup>2</sup> Rupert Ross's book *Returning to the Teachings* (1996) describes the Hollow Water project and its cultural context.

recognizing the effect of oppressive systems in the lives of men who batter, without excusing their battering; provide women with tools to change the balance of power within their relationships (1999: 102). Coker also identifies dangers she found in the Peacemaking circles she investigated, including coerced participation, poorly informed decisions about participating, and peacemaker bias against separation (p. 103). She reports that “Peacemaking is not perfect—no domestic violence intervention is perfect—but Peacemaking offers possibilities for women that are largely unavailable in other intervention strategies” (1999: 106–107).

### ***Victim Impact Panels***

Criminal justice practices lie on a continuum from actions that are not at all restorative (such as procedures that sideline victims and hold punishment as a priority), to those that are partially restorative (such as community involvement in sentencing, ordering restitution payments, or inviting victim impact statements), to fully restorative practices. Fully restorative practices create opportunities for a victim and offender to meet for dialogue over a harmful incident (or pattern of incidents) so that the offender can be fully accountable to the person harmed, the person harmed can express all of the ways they have been affected, and together (with other concerned parties) they can decide what is needed in order for the offender to make meaningful amends.

One partially restorative practice examined for its effectiveness in cases of domestic violence was the Victim Impact Panel (VIP)—that is, a small group of victims who have volunteered to speak to a larger group of offenders (not including the offenders who victimized any of the panel members); the victims explain, in a non-confrontational way, how domestic violence has affected them and their families. Judge Andrew Fulkerson (2001) studied the use of VIPs in misdemeanour level domestic violence cases in five Arkansas (US) District Courts. (In these VIPs, the offender participants did not respond to the victims or otherwise address them [p. 358]; other victim impact panels sometimes do involve discussion between the victims and the offenders.) Of the 26 victims who participated in these VIPs, 80% said they found the experience worth while and 85% said they would recommend the use of such panels as part of the disposition for domestic violence cases; the remainder either did not answer the question or said they were undecided; none said they would not recommend VIPs in cases like theirs (pp. 364–365). Of the 40 offenders, 57% said they found the experience worth while and 53% would recommend that VIPs be used in domestic violence cases; 2.5% said they would not recommend such panels; 45% did not answer the question or said they were undecided. Fulkerson quotes several of the offender participants, who said the experience gave them more empathy for their victims and prompted them to reflect on what they could have done instead of using violence (pp. 365–366).

## **IV. Concerns About Using Restorative Justice in Response to Domestic Violence**

The question of whether restorative justice has an appropriate role in response to domestic violence has been met primarily with strong reservations or opposition, both

from the domestic violence community and from the restorative justice community. Even those who support the idea express considerable caution about when and how such work should be done. This section explores several key bases for concern about using restorative practices in cases of domestic violence: the history of victims' experiences in divorce mediation has led to a lack of trust in alternatives that divert domestic violence out of the courts; the degree of cultural tolerance for violence in intimate relationships leads to a lack of confidence in communities' ability or willingness to take domestic violence seriously enough; and the systemic injustice that many victims endure has significant consequences for the effectiveness, and therefore the appropriateness, of restorative justice in response to domestic violence.

### ***Victims' Experiences in Divorce Mediation***

In the past decade, mediation has become more common for resolving civil issues outside the courts, including divorce settlements and custody arrangements. In North America and elsewhere, mediation has become a standard feature in family court systems, and many jurisdictions have established policies mandating mediation for divorcing couples; most of those jurisdictions provide exemptions for couples whose history includes partner violence (Loomis, 1999: 360–361; Dalton, 1999: 274–275). Despite those exemption policies, the reality is that—for a variety of reasons, including inadequate domestic violence training for mediators and family court officials—many cases involving violence nonetheless proceed through mediation instead of through court. In those cases, victims of domestic violence are put in the position of sitting with the partners who have been abusing them, trying to reach fair financial settlements and custody arrangements that protect their children's best interests. Many women's advocates argue that this effort is futile in cases where a partner has been abusive, and that the practice almost certainly continues or worsens the victimization already suffered. Unfortunately, that argument is borne out by victims' experiences.

For example, the Transition House Association of Nova Scotia (THANS) conducted province-wide research and consultation on the use of mediation and conciliation in family law matters. Researchers conducted individual interviews with 34 women who had gone through private mediation, court-connected mediation, or conciliation with abusive ex-partners. The majority reported that they had felt intimidated by their ex-partners, had perceived the outcomes as unfair, or found the experience a waste of time and resources; some found their rights compromised or felt coerced into participating. The authors state, "Far from providing a less adversarial forum in which women had a better chance of making their voices heard, mediation with an abuser instead became revictimization. Frequently, women reported it as the single most painful aspect of their search for resolution of family issues with an abuser, and reported the subsequent experience in court as a relief" (THANS, 2000: Part III).

Two of the 34 women in the THANS study said they would recommend mediation to other abuse victims (2000: 12), but the other participants' experiences led the researchers to conclude that women could not achieve truly voluntary, equal bargaining through the mediation services available at the time. One obstacle was the limitation in mediators' training and power-balancing techniques. Other obstacles included systemic problems with legal aid, protection orders, and judicial understandings of abuse. Given the

combination, THANS recommended a moratorium on referrals to mediation for abusers and their former partners (2000: Part III).

In Massachusetts two years later, the Battered Mothers' Testimony Project reached a similar conclusion. This study involved in-depth testimony from 40 battered mothers, along with written surveys and focus groups with advocates for battered women and interviews with family court personnel. The Project identified a wide range of problems, classifying them into six ways in which the Massachusetts family court system was violating battered mothers' human rights. The violation of these women's rights included pressure to engage in unsafe mediation or dispute intervention:

This practice of coerced mediation with the batterer violates women's due process rights. The dynamics of power and control in an abusive relationship make it inherently difficult for a level playing field to exist—as is required for successful mediation. Further, mediation cannot work where there is no real opportunity to voice one's concerns and have one's needs represented. Thus, mediation in cases of partner abuse can serve only to pressure the victim to give into the batterer's demands, which in turn can result in custody or visitation arrangements that endanger both the victim and the children. (Battered Mothers' Testimony Project, 2002: 52)

These kinds of experiences make women's advocates leery of endorsing restorative justice for use with domestic violence. In part, this reluctance suggests that restorative justice (which focuses on the harm caused by someone's behaviour, seeking meaningful accountability and repair to the extent possible) is being confused with settlement driven mediation (which focuses on reaching an agreement that satisfies the parties). As Donna Coker explains, "In family court mediation, the ideal mediator is supposed to be neutral, with the sole purpose of effectuating the desires of the parties . . . [through] a mediation methodology that eschews fact finding and blame" (1999: 88–89). She says, "Restorative justice programs do not prescribe a neutral mediator ideal, but . . . there is no guarantee that the facilitator or others will challenge explanations for battering that are victim blaming or gender biased" (1999: 89–90).

### ***Cultural Tolerance of Domestic Violence***

Criminal law is generally understood to be an expression and affirmation of a community's norms (Van Ness and Strong, 2002: 244; Duff, 2002: 91–92; Daly, 2002: 62). A justice process, then, is expected to uphold those norms, denouncing behaviour that has been codified as wrong. That outcome, however, is not necessarily a given.

Despite laws that have criminalized domestic violence and other abusive behaviour within families, it is not safe to assume that a community shares a belief that battering is wrong (Busch, 2002: 241; Edwards and Haslett, 2003: 7). In fact, Frederick and Lizdas (2003) point to "the well documented prevalence of community acceptance of (if not overt support for) some level of violence in intimate relationships, especially if it is by a man against his female partner" (pp. 37–38).

Donna Coker cites research finding that friends and family often play an important role in supporting a batterer's view of himself as a victim rather than a victimizer. Given that, she says, involving family members, supporters, or other community members in a restorative justice process might undermine rather than affirm a sense that the community

is morally opposed to domestic violence. “The relevant question becomes not what do *most* people believe, but rather what do significant people *in the batterer’s (and the victim’s)* life believe?” (Coker’s italics) (2002: 139). As Goel points out, “Some community members may feel she provoked the abuse; others will feel she should have tolerated it longer” (2000: in Part III).

Donna Coker finds that restorative justice theory “offers no clear principles for dealing with crimes, such as domestic violence, where majoritarian opposition to the crime is weak or compromised” (2002: 129). And this is more than a gap in theory: if a restorative justice process fails to explicitly denounce violence against a partner as being unacceptable, Coker says, that failure may “reinforce the batterer’s belief in the rightness of his behavior, minimize the harm of his violence and control, and undermine the victim’s belief in her right not to be beaten” (Coker 1999: 89). As Goel argues, “This promotes a culture where violence is accepted and the victim is more deserving of shame than the offender” (2000: 326).

In other words, as Frederick and Lizdas conclude, “The involvement of the community in intervening [in domestic violence] might be dangerous or ineffective because of a lack of community consensus that domestic violence is wrong” (2003: 25).

### ***The Effect of Systemic Injustice***

For many victims of domestic violence, the difficulty of escaping or ending abuse is seriously complicated by systemic injustice (Busch, 2002; Goel, 2000; Coker, 1999, 2002). In Aboriginal communities, for example, colonialism has left a legacy of violence that blankets the community and crosses generations (Kelly, 2002; Behrendt, 2002; Blagg, 2002). Harry Blagg says it is important to understand that for someone living in that context, domestic violence is not an aberration in one relationship; it is one facet of a much broader system of family violence: “Simply assimilating the family violence phenomenon into the domestic violence paradigm risks perpetuating traditional assimilation practices by eurocentrizing Aboriginal family structure, and risks essentializing the phenomenon as simply a variation on Western power dynamics” (2002: 194).

Yet our responses to domestic violence, Blagg says, have been shaped “on the premise that a ‘crisis’ is a distinct event to be set against a background of relative stability and normality. Once the reasons for the crisis have been removed and temporary support provided then normality can be resumed” (2002: 203). For victims in any community, this premise does not hold in cases of ongoing violence. Repeated violence can contribute to marginalizing its victims “economically, politically, and socially both through the effects of battering on women’s physical and emotional health and through the effects on women’s ability to pursue career and educational opportunities” (Coker, 1999: 9–10). This effect is serious enough for victims who are culturally privileged; it can be devastating for victims whose opportunities already are limited by virtue of race or class.

One of the effects of domestic violence in the context of systemic injustice is that the power imbalance between victim and offender (see ‘Unencumbered Participation,’ below) is amplified when they are members of a marginalized group. As Rashmi Goel

explains in relation to Aboriginal women's experiences, this imbalance can carry forward even into restorative justice practices that theoretically are egalitarian:

Sentencing circles as they are currently practiced do nothing to overcome the effect of colonial policies which diminished and dishonored Aboriginal women. As victims of colonial policies and as victims of domestic violence, these Aboriginal women come to the circle dually disadvantaged and dually discriminated against. Consequently, it is impossible for them to assume their rightful place in the circle as equals. . . . Although the female victim sits on the same level, and in the same circle as the offender, her position is much weaker. Even if a support group accompanies her to the circle, the singular focus on the offender and his needs robs her of support, simply because no one is paying attention to her victimization. (Goel, 2000: 328)

A marginalized victim has few options to choose from. Aboriginal women, like members of other groups disproportionately caught up in the criminal justice system, may be suspicious of turning to justice and welfare agencies for help. Blagg says, "They see prisons and police lock-ups as part of the violence cycle, de-socializing, brutalizing, de-skilling and sometimes killing their men and damaging community structures" (2002: 195). Moreover, he notes that a victim who involves the police or other non-Aboriginal agencies may be further victimized by other family members who see that action as a betrayal (p. 197).

In a culture that prizes family, a victim's sense of choice can be constrained not only by pressure from others, but also by what she values and needs. As Blagg explains,

For many Indigenous women, choosing to leave 'family'—with all its complexly embedded ties of responsibility and obligation, connection with country and culture—is not an option. The capacity to exit family relationships (indeed, the very concept of 'choice' in such matters)—to repackage and reconstitute one's identity as an autonomous individual in some new location—is a profoundly eurocentric construction. (2002: 198)

## **V. Challenges to Restorative Justice Practice in Cases of Domestic Violence**

There is a wide range of perspectives to be found in the literature bearing on the use of restorative justice in the context of domestic violence. A unifying theme, however, from those who support the idea as well as those who oppose it, is the fact that the dynamics of domestic violence create particular challenges for the practice of restorative justice. The difficulty of achieving safety and unencumbered participation, and the significance of screening and facilitator skill, are issues repeatedly raised as obstacles to sound restorative justice practice in domestic violence cases.

### **Safety**

Physical and emotional safety must be protected in any restorative justice process, but this requirement has additional gravity in domestic violence cases (Stubbs, 2002;

PAAFV, 2000; Busch, 2002; Rubin, 2003). Frederick and Lizdas (2003) say that in regard to domestic violence cases, restorative justice practices “have not accounted for one of the chief characteristics of most domestic violence cases: the existence of ongoing danger occasioned by the victim’s resistance to the batterer’s authority and control” (p. 29). Safety is a concern not only for the victim, but also for anyone else involved in a restorative process that addresses violence: the victim’s family, community participants, and the facilitator (Busch, 2002: 237), and others potentially affected by the intervention, including the parties’ children and possible future partners of the offender (Edwards and Haslett, 2003: 5).

The victim’s emotional safety may be at risk before, during, and after a discussion with the offender. Even the idea of meeting with him can be stressful or even retraumatizing. Chronic trauma, which is a feature of domestic violence, amplifies the symptoms of post-traumatic stress disorder, leaving the person continually hypervigilant, anxious, and agitated (Herman, 1997: 86). Rubin, for example, quotes women who report dramatic physical reactions being triggered simply by her abuser’s presence or by a look or mannerism she has learned to associate with imminent violence (2003: 53–54).

Julie Stubbs (2004) says that, in the restorative justice literature generally, there seems to be a common focus on safety during a restorative justice process. However, “Safety assessments that are not informed by an adequate understanding of domestic violence or family violence may be of little value or even dangerous. Moreover, there seems to be . . . little recognition of ongoing safety concerns subsequent to the restorative justice conference, sentencing circle or mediation” (2004: 15).

Stubbs is referring to the fact that a victim’s physical safety also remains at risk after the parties leave the dialogue—especially if comments made during that conversation have triggered the offender’s anger or defensiveness, and especially if the offender has masked that reaction during the session. This risk is magnified if the victim has recently left her abuser because the rate of violence, including homicide, increases dramatically at the point of separation (Kruk, 1994: para. 10; Bancroft & Silverman, 2002: 167–168; Busch, 2002: 229, 243–244).

### ***Unencumbered Participation***

Closely related to safety is the question of how to ensure voluntary participation, which is a core principle of restorative justice. As noted earlier, the Transition House of Nova Scotia (THANS) (2000) and the Battered Mothers Testimony Project (2002) quote victims who felt pressured to participate in divorce mediations; Coker (1999), Couture et al. (2000), Rubin (2003), and Stewart et al. (2001) all speak of victims who felt pressured to take part in restorative processes. Frederick and Lizdas make the same point, and further point out how complex a choice it can be for a victim of violence to consider a restorative process; even if she chooses it freely, there is a risk of offering her false hope that could place her in danger (2003: 39).

Even when a victim can make an informed and fully voluntary choice to take part in a victim-offender dialogue, restorative justice principles also require that her participation be free and voluntary throughout, unencumbered by others’ expectations or demands. Many scholars stress the danger of assuming that domestic violence victims have this

freedom (Crnkovich, 1995; Stubbs, 2002; Busch, 2002; PAAFV, 2000; Frederick and Lizdas, 2003). When one partner has been controlling the other partner through violence, then the violent partner has established greater, if not complete, power to control decisions they ostensibly share. The victim may feel unsafe presenting any kind of challenge to the abuser, fearing that he will retaliate afterward by hurting her and/or her children (Koss, 2000; Wolf, 2003).

This power imbalance may not be evident to the person(s) facilitating the victim-offender dialogue. The violent partner may not need to assert this power at all because the victim knows that her safety depends on anticipating and yielding to his wishes. Or he may reassert his power in the midst of a facilitated dialogue, through covert signals not apparent to anyone but the victim (PAAFV, 2000; Busch, 2002; Kruk, 1994; Chandler, 1990; Girdner, 1990; Rubin, 2003).

Even if an abuser is not attempting to influence her participation, a victim may feel constrained or pressured by the community she is part of. Many survivors of domestic violence have been shocked to discover their communities' attitudes and lack of understanding about the nature of domestic violence (Rubin, 2003: 62). In the interviews and focus groups Rubin reports on, women described the kinds of things they had experienced, including "simple ignorance of and indifference to abuse; victim-blaming; partiality toward the abuser; stereotyping based on race, disability, sexual orientation or other personal characteristics; and reflexive condemnation of women in conflict with the law" (p. 63).

Circle processes are a major form of restorative practice, embraced because they provide for broad community participation, offering equal access and opportunity for all voices to be heard. However, Mary Crnkovich notes that a victim within that context can lose individual identity, becoming simply part of the collective. She notes that sentencing circles are valued because they allow for examining a crime in its larger social context. Her concern, though, is that proponents "do not reflect on the possible impacts this larger community context has in silencing certain participants within the circle and promoting the interests of others" (1995: 'The Community').

Goel explains that Aboriginal women feel the weight of the larger mainstream perception about Aboriginal men and violence. When a woman comes forward about abuse—thus confirming the stereotype—she may attempt to reduce the damage by holding back information. She may feel obligated to mask her anger toward the abuser and exhibit forgiveness and understanding. Goel says, "The sentencing circle thus encourages the Aboriginal woman, once again, to place her community's interests ahead of her own. Even if, as a woman, she desires protection, as an Aboriginal person, she is expected to reconcile with the offender. Her acquiescence is driven by a hope for long term gain and her own values, which include sacrifice for the good of the group and an understanding of collective rights" (2000: 327).

### **Screening**

Because of these complex risks, proper screening is crucial in deciding whether or when it might be safe to facilitate a dialogue between a victim and offender in the case of domestic violence (Frederick and Lizdas, 2003; Busch, 2002; PAAFV, 2000; Crnkovich,

1995; Yellott, 1990; Girdner, 1990). And proper screening in such complex cases can be very difficult.

For example, offenders often acknowledge their violence (“Yes, I hit her”) without taking meaningful responsibility for it (Barnett et al., 1997: 237). Practitioners may not realize the offender is minimizing what happened or how damaging it was, or that he is blaming the victim for causing or triggering the abuse (Edwards and Haslett, 2003: 6).

Another challenge lies in the fact that practitioners are also likely to hear victims report confidence in the offender’s readiness to change, potentially creating a false sense of security about the safety of bringing them together. Offender remorse is part of the classic cycle of violence (Barnett et al., 1997: 237) and often convinces an abused woman to think the violence will not recur.

Judith Herman explains that a domestic violence victim is won back by expressions of love and appeals to loyalty and compassion. “Since most women derive pride and self-esteem from their capacity to sustain relationships, the batterer is often able to entrap his victim by appealing to her most cherished values. It is not surprising, therefore, that battered women are often persuaded to return after trying to flee from their abusers” (Herman, 1997: 83).

Griffing et al. found that the number one reason domestic violence victims gave for going back to an abusive relationship was the batterer’s expression of remorse. (The second reason was continued emotional attachment to the relationship; third was economic need). Participants in this study were 90 female residents in a facility for victims of domestic violence, 67% of whom had left and returned to their batterers at least once before; of those, 88% had gone back at least twice before and 34% up to five or more times (2002: 310). (Barnett et al. cite several additional studies showing that women in violent relationships leave and return an average of six times before leaving permanently [1997: 220].) Thus, a batterer’s promise that “things will be different” can encourage a woman to reinvest in the relationship even when that promise has been broken before.

Another important aspect of the Griffing et al. research is that 74% of the women in the study described themselves as “not at all likely” to consider reuniting with the men who had assaulted them, despite the fact that 80% of these same women predicted that “most battered women” were at least somewhat likely to return to abusive relationships, and despite their own history of having gone back to the same abuser before. The authors conclude that battered women underestimate their likelihood of returning (2002: 313), and that “women leaving the relationship for the first time appear to be at the greatest risk of underestimating the role that feelings of attachment may play in a decision to return to the relationship” (p. 315). The converse of this finding is that she overestimates the strength of her ability to remain independent of the abuser. If so, she may also overestimate her ability to hold her own and remain independent of the abuser during a dialogue with him about the abuse. Responsible screening for victim-offender dialogue would require awareness of this risk and appropriate consideration of its potential effect on a victim’s participation.

Attachment can also create another challenge for proper screening. Even if the abuser is not apologizing and promising to change, the victim may herself minimize the abuse or its seriousness, blame herself for the fact that it occurs, or both. This can result from a

phenomenon called traumatic bonding, which strengthens the victim's ties to the abuser. Through his kindness or tenderness after an abusive episode, she comes to see him as her rescuer, a source of solace (Herman, 1997). And his assurances of love, especially soon after the abuse, can lead the victim to believe that love and abuse are tightly linked (Bancroft and Silverman 2002: 40). Herman points out that an isolated victim is even more likely to be dependent on her abuser. "The more frightened she is, the more she is tempted to cling to the one relationship that is permitted: the relationship with the perpetrator" (Herman, 1997: 81).

### **Facilitator Skill Level**

Given these risks, and the significance of what is at stake, it becomes even more important that restorative processes are facilitated by people who have specialized training (PAAFV, 2000). A province-wide project in Prince Edward Island recommends that "Before facilitating such face-to-face meetings, considerable skill and training are needed in areas such as the dynamics of abuse, issues of power, truly informed consent, and offender denial and manipulation" (Lund and Devon Dodd, 2002: 5). For Ruth Busch, "Facilitators must be highly skilled in the dynamics of domestic violence, lethality risk assessment, and domestic violence screening techniques in order to recognize the warning signs for further violence and address the high levels of emotion and duress which might be involved" (2002: 229).

A related issue is the support necessary to maintain skilled facilitators. Crnkovich argues that any alternative to court processes must have a strong enough infrastructure to sustain itself, "including trained and skilled community service providers who are paid for their services. If an alternative is reliant upon a significant volunteer component, it will be unreliable and will vary considerably in the level of services" (1995: *The Alternative versus . . .*). Julie Stubbs agrees that "Poorly funded initiatives based on volunteer work by community members are unlikely to be effective or sustainable over time" (2002: 50).

Rubin's report identifies additional concerns about the idea of using volunteer facilitators (and about the idea of using volunteer support workers). Survivors of violence and experienced women's advocates both rejected the idea, expressing concerns about insufficient training in domestic violence issues, the potential for partiality based on relationships with abusers in the community; the potential that volunteers' safety could be threatened along with the victims', and volunteers' lack of professional credibility (2003: 68–69).

## **VI. Weighing the Risks and Benefits**

Relevant literature is consistent in saying that there are serious risks in bringing together domestic partners when one has been violent to the other. The history of their relationship and the current balance of power between them can make a safe and honest dialogue difficult if not impossible. Yet restorative justice advocates argue that dialogue about the violence and its effects can help a victim insist on safety from her partner and help an offender take responsibility for choices he has been denying. The question is whether those benefits outweigh the risks, and people answer that question differently. Is it

appropriate to consider using restorative justice in response to domestic violence? Responses range from “In a narrow range of cases” to “Not without significant changes.”

### ***In a Narrow Range of Cases***

Most of the concerns about using restorative justice in cases of domestic violence seem to assume the classic profile of domestic violence: a longstanding pattern of violence, by which the abuser dominates and controls the victim, who has been emotionally as well as physically traumatized, and who therefore cannot negotiate effectively on her own behalf. Some scholars and practitioners challenge the assumption that all domestic violence cases fit this extreme degree of control and submission.

Chandler says that in a study of divorcing couples’ characteristics, 49 women had experienced abuse during their marriages; of those, only nine fit the classic profile of being afraid and unable to communicate freely (1990: 344). Kruk suggests that partner assault lies on a continuum, with severely traumatized and isolated victims in quite a different place from victims who have the support of family, friends, and advocates (1994: para. 14). Ann Yellot makes the same point (1990: 44), and Loretta Kelly quotes Helene Carbonatto as stressing that spousal abuse is a diverse phenomenon with complex dynamics, and calling for greater flexibility in how we deal with different types of offenders and different kinds of relationships (Kelly, 2002: 218). Referring to victim advocates and restorative justice advocates, Daly emphasizes (italicizing her statement in the original), “*It is crucial that both groups come to terms with the fact that gendered harms range from less to more serious, and that some harms will be less and more amenable to restorative processes*” (2002: 77).

### ***As One Option Available***

Ann Yellott argues that the range of victims’ circumstances create a need for alternative responses, such that mediation should be one of the intervention strategies in a community’s system of responses to domestic violence. She says that since women often return to abusive relationships, they may need a controlled setting where the couple can discuss significant issues; the structure and support of a facilitated dialogue can give victims an opportunity to gain power (1990: 43).

Linda Mills also advocates making restorative justice an option for cases involving domestic violence. She says, “Intimate abuse is a deeply personal issue that calls for the people involved to make choices about how they want to address it” (2003: 136).

Mary Koss says, “No crime victim should be forced to confront her perpetrator, but neither should she be denied the opportunity if she desires it. . . . [C]ommunitarian approaches avoid cultural and legal focus on separation and can be adapted to accommodate either women who wish [to] use the conference to safely end the relationship or women who want to work toward a less violent existence with the abusive partner” (2000: 9).

Larissa Behrendt believes that restorative justice principles offer a way for Indigenous communities to come to terms with the very personal, and continuing, cost of colonization (2002: 188).

Despite her criticism of sentencing circles (see ‘The Effect of Systemic Injustice’ and ‘Achieving Unencumbered Participation,’ above), Rashmi Goel sees it as a mistake to bar their use in domestic violence cases. She sees circles as a way to raise community awareness of domestic violence and elicit community participation in dealing with it, and as an avenue for accessing needed services. Further, she says,

Denying the sentencing circle option in domestic violence cases further isolates women from their communities and the justice system. Without viable alternatives, the Aboriginal victim is left in a terrible position. . . . [I]n the wake of reduced and non-custodial sentences for other offenses via sentencing circles, she may face even greater ostracism if her abuser is incarcerated. Community members may expect her to forego any prosecution that returns an Aboriginal male to the victimization of mainstream sentencing procedures (which generally result in disproportionately high rates of incarceration). (Goel, 2000: 330)

### ***Only in Conjunction with Court***

Citing similar concerns, the Provincial Association Against Family Violence (PAAFV), Newfoundland and Labrador has recommended the use of restorative justice practices only as an adjunct to the criminal justice system. Their “Making It Safe” report suggests, for example, that a facilitated dialogue might help a victim and offender with reintegration after the offender has served jail time and is ready to return to the community (2000: 22).

Patricia Kachuk raises the issue of risk where police have the discretion to refer cases for diversion instead of making arrests. She reports that even where policy prohibits pre-charge diversion of partner abuse, such cases may be diverted anyway (for example, because that route is perceived as more likely to get the batterer into treatment). Court records are not kept on pre-charge diversion cases, so that future incidents cannot be recognized as part of a pre-existing pattern of behaviour. Kachuk says, “the consequences of not having this tracking mechanism can be deadly” (1998: Sec. V), and recommends that police forces have—and follow—a policy directive “not to divert any cases involving violence against women in relationship” (Sec. V).

Record-keeping is also an issue when cases are diverted post-charge. Julie Stubbs says, “As I have argued elsewhere, what victims of domestic violence commonly want includes some record of their attempts to seek assistance and some public validation of their right to live without violence” (2004: 14).

Donna Coker says, “Feminist critics are correct to worry that restorative justice processes may privatize domestic violence, creating a second rate justice that offers little protection for battered women. Indeed, current restorative justice processes seem largely inadequate to the task of addressing domestic violence” (2002: 149). At the same time, Coker acknowledges that the current use of crime control strategies to combat domestic violence also can endanger women, especially those who are most vulnerable to state intrusion and control. She concludes by pointing out that battered women need transformation in their families, communities, and the state, suggesting that transformative (or restorative) justice processes can link with legal justice processes, creating programs to foster this transformation (p. 150).

In Prince Edward Island, victims, community groups, and criminal justice staff have taken part in a project called “Justice Options for Women Who Are Victims of Violence.” Phase I, in late 1999, used collaborative dialogue to identify the concerns and issues arising out of women victims’ experiences with the criminal justice system and to explore options to ensure that victims are not revictimized by policy and program decisions. Phase II, in early 2000, brought together the same range of participants to explore the use of restorative justice as an option for dealing with violence against women. They concluded that a face-to-face meeting with the offender would not be advisable unless initiated by the victim and with a highly skilled facilitator. Even in that case, “Restorative processes are not appropriate as a diversion from the justice system. Crimes of violence against women must continue to be addressed by the criminal justice system” (Lund and Devon Dodd, 2002: 5).

In Koss’s view, communitarian justice<sup>3</sup> models are designed to operate alongside retributive justice, not to replace it. She says they “represent an additional avenue requiring no rollback of existing legal gains or safety instruments that advocates have fought to establish” (2000: 8).

### ***Depending on the Process Used***

David Chandler points out that mediation practices vary widely. Some are brief and agreement oriented, assuming high levels of equality between the parties, independent preparation, and capacity to negotiate—a style of mediation that Chandler says is inappropriate for abuse cases. Other styles of mediation work more slowly, at greater depth, and involve extensive preparation. He believes that this kind of mediation can be safe and effective for at least some abuse cases, especially if it is carried out by gender-balanced co-mediators who are trained in domestic abuse, and in tandem with other professionals the parties might be working with (1990: 335).

Mary Koss, however, has serious concerns about using mediation in battering (or rape) cases (2000: 8). Pranis also sees victim-offender mediation (the earliest restorative justice practice and for many years the most common) as especially vulnerable to the kinds of challenges identified above (2002: 38). (And, as reflected in this review of the literature, mediation has been the practice used in much of the work criticized for coerced participation, power imbalances, and inadequate provisions for victim safety.) While key supporters may be included, it remains true that mediation focuses on dialogue between the victim and offender and often involves only those two; as a result, the dynamic of their discussion is likely to echo the dynamic of their relationship. The involvement of additional parties changes that dynamic, potentially making it easier to distribute power in a more balanced way. Koss points out that including people who can (and will) explicitly support the victim and then, afterward, help monitor the situation can reduce the victim’s vulnerability and sense of helplessness (2000: 9). Including professionals with relevant expertise can ensure that the parties have access to professional guidance and to additional resources they may need.

Mediation is further criticized as being culturally inappropriate for cases involving aboriginal peoples. Larissa Behrendt sees the mediation model as fundamentally at odds

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<sup>3</sup> Koss includes communitarian justice as one model of restorative justice (2000:8).

with Indigenous values because it uses a neutral third party, relies on mediators' training rather than life experience, does not balance economic and legal power between the parties, focuses on the individual, and is culturally biased (2002: 187). In Behrendt's view, these problems are not solved by using Indigenous mediators. Instead she recommends "a ground-up approach, one that starts with the community developing the process, not the process being adapted to the community" (2002: 188).

Julie Stubbs, who expresses serious reservations about the use of restorative justice in cases of domestic violence, suggests that "One model of restorative justice that may answer these criticisms is Joan Pennell's . . . which uses conferencing explicitly to mobilize resources. This model has a strong commitment to investing resources at the outset, careful planning, consultation and selection of conference participants. . . . The fact that Pennell's model is exceptional reinforces the need for careful scrutiny of the various practices that appear under the umbrella of restorative justice" (Stubbs, 2002: 55).

Maloney and Reddoch also see promise in family group conferencing. They held (separate) focus groups with five domestic violence victims and five domestic violence offenders (as well as with practitioners and academics). Each group saw a video of family group conferencing (featuring the work done in Pennell and Burford's 1997 study, discussed above) and then answered a series of questions about whether they thought the process could have been helpful in their own situations. Four of the five victims said they would consider taking part in such a process; the women did express reservations about how well conferencing would work in their circumstances or how family relationships might be affected, but none felt her physical safety would be at risk (2003: Women's Group). Of the five offenders, two said they would participate in such a process, and two said they would do so under certain circumstances; they acknowledged that it could be embarrassing, and would require courage, to be in the position of the offender in such a dialogue, but they felt they could do so if they had the kind of family support demonstrated in the video (2003: Men's Group).

However, it is worth noting that 'family group conferencing' refers to a general type of restorative practice, such that the specific process used by one facilitator or program might differ in significant ways from the process used elsewhere. Like others, Ruth Busch finds promise in the results that Pennell and Burford report, but she also points out that there are many examples of harmful consequences resulting from the use of family group conferencing in the context of family violence (2002: 244–245). The key difference, in her view, is that the process studied by Pennell and Burford included a great deal of preparation to ensure that the right participants were invited, that they were adequately prepared for their roles in the conference, and that measures were put in place to protect participants. Further, she notes, the conferencing was one stage of a larger process focused on providing for women's and children's safety, and with the collaboration of government agencies and community groups.

'Circle processes' is another term that refers (as does 'mediation') to a type of restorative practice that may be carried out in quite different ways, with quite different results. While many critics have pointed to circle processes that silence, endanger, or revictimize participants who are victims of domestic violence, other scholars and practitioners see

value in circle processes so long as they maximize safety.<sup>4</sup> For example, after an extensive discussion of domestic violence theory and of research on the effectiveness of domestic violence interventions, Linda Mills recommends using a process she calls Intimate Abuse Circles (IAC). This process would begin by assigning a case to an Intimate Abuse Assessment Team, made up of mental health professionals, who would evaluate the appropriateness of dialogue based on the voluntariness of the parties' desire to participate and on the potential for lethality if an abuser were not incarcerated. In appropriate cases, the Team would then convene an Intimate Abuse Circle that included the primary parties, their family and other supporters, and relevant professionals. Within such a circle, Mills says, the parties "can participate in dialogue, taking responsibility for aggression and abuse, making plans for the future, and healing. [The Circle] also provides a forum for identifying the larger and deeper dynamic issues" underlying the violence (2003: 104).

Daly says, "I assume that *any* crime may be amenable to a restorative process (whether as diversion from court, pre-court sentencing advice, or post-probation or post-prison meeting)" (2002: 77), while noting that restorative justice does not require that victims and offenders meet face-to-face (p. 77).

### ***Not Without Significant Changes***

After reviewing concerns related to sentencing circles, Crnkovich says, "I strongly feel that cases involving violence against women, young girls and boys and children should not be dealt with in community sentencing circles, until such time [as] the community has accepted and is able to take full responsibility for addressing the issues of violence against specific members and segments of their community" (1995: Concluding Remarks).

The Provincial Association of Transition Houses of Saskatchewan (PATHS) held a conference in April 2000 to explore whether the provincial government should allow the use of restorative justice strategies for family violence cases. Participants included victims, offenders, victims' advocates, justice system personnel, and restorative justice practitioners. Their views ranged from highly supportive to strongly opposed, but across that spectrum there was strong consistency of concern about consultation with women's advocates, safety, informed choice, power imbalances, and program standards and evaluation. The conference report says, "Clearly, the concerns listed above must be addressed before current or future restorative justice programs should be considered appropriate, effective, or safe for cases of domestic and sexual violence against women" (2000: Executive Summary).

In an extensive review of restorative justice literature and of restorative justice programs for domestic or family violence, Stubbs finds strong indication "that adequate and just

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<sup>4</sup> Circle proponents and trainers Kay Pranis, Mark Wedge, and Barry Stuart stress that thorough preparation—which includes identifying essential participants, developing support groups, developing guidelines, and personal and interpersonal preparation—is crucial to the success of the circle process, regardless of the nature of the harm being addressed (Pranis, Stuart, and Wedge, 2003).

responses to those offences cannot be achieved within the existing *generic models* of restorative justice and may look quite different from what restorative justice advocates typically describe” (Stubbs’s emphasis) (2004: 18).

Rubin summarizes the results of a provincial Policy Forum involving women survivors of male violence, women offenders who had gone through court diversion or other alternative measures, service providers, and representatives from leading equality-seeking women’s organizations across Nova Scotia. The group reached three key recommendations to present to the provincial Minister of Justice:

- First, that the organizations that are here today, do not reject Restorative Justice principles. . . .
- Second, that the women who have participated in this conference are committed to a further process of consideration of these complex issues. . . [and] are committed to the development of a different model for achieving Justice goals for women that incorporates Restorative Justice principles. . . .
- As that goes forward, we recommend that the moratorium on the referral of sex offenses and spousal and partner violence continue. . . . (2003: 85)

## VII. Conclusion

Based on the literature available at this point, it appears that restorative justice holds theoretic promise as an intervention in domestic violence, offering victims and offenders something they typically have been unable to get through other approaches: a choice of avenues for how to meet particular needs, including the potential for a focused dialogue about the violence that one partner has perpetrated on the other. The assistance of facilitators can help the parties maintain that focus and communicate in productive ways, explaining and understanding things they have not been able to explore together before.

Yet the complex dynamics of violence between intimate partners makes the dynamics of restorative justice in that context more complex as well. Screening becomes both more important and more difficult; informed consent and unencumbered participation are more difficult to assess and ensure; preparation becomes more crucial and more challenging; unseen dangers can be laced through the parties’ dialogue. Violence puts a relationship on unstable ground, and a dialogue about that violence and its effects may then also rest on unstable ground. It is more important in this context, and more difficult, for restorative justice practitioners to read the layers of the parties’ communication and to recognize when dangerous fissures might be opening.

Evidence demonstrates that the risks are real: domestic violence victims (and their families) have been further harmed through inappropriate discussion that was intended to help them. Many victim advocates, criminal justice policy makers, and restorative justice scholars and practitioners therefore have opposed or resisted the use of restorative justice in cases of domestic violence. For some, restorative justice is, in both theory and practice, ill equipped to work effectively with the harsh and complex realities of domestic violence victims and offenders. Others, seeing potential in what restorative justice could accomplish if the risks are well managed, remain cautiously open to further investigation.

The evidence also demonstrates that some domestic violence victims and offenders have found value in participating in restorative justice processes, and their experience must be acknowledged. What are the factors that contribute to the success of those encounters? Do they hold promise for future encounters? Or are the successes so small a sample in a sea of failed efforts that they constitute the exception that proves the rule, such that dialogue-focused processes have no real place in the domestic violence arena? How might the profound concerns of cultural minorities be addressed within both the restorative justice and domestic violence worlds? On what grounds, if any, might dialogues between domestic violence stakeholders and restorative justice programmers and practitioners be most productive, where not only the many risks but also the rewards can be most fully acknowledged and explored? How can we help each other in the effort to end domestic violence? These questions, and others, can only be answered through more research, more consultation and dialogue, and an unwavering commitment to listening and responding to the needs of those impacted by domestic violence.

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