

GENDERED VIOLENCE AND RESTORATIVE JUSTICE:
THE VIEWS OF VICTIM ADVOCATES

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ABSTRACT

The use of restorative justice for gendered violence has been debated in the feminist literature for some time. Critics warn that it is inappropriate because the process and outcomes are not sufficiently formal or stringent, and victims may be re-victimized. Proponents assert that a restorative justice process may be better for victims than court because it holds offenders accountable and gives victims greater “voice.” This paper presents what victim advocates in two Australian states think about using restorative justice for gendered violence. We find that while victim advocates have concerns and reservations about restorative justice, most saw positive elements.

INTRODUCTION

Victims of gendered violence¹ have been able and encouraged to seek justice in a limited number of ways, either through civil mechanisms such as restraining orders or through the criminal justice system (see e.g., Estrich, 1986; Mills, 1999). Although these routes of redress may not sufficiently protect individual women or decrease violence against women and children, criminal law reform has been the top priority of feminists for three decades, propelled by what Martin (1998, p. 168) deems an “irresistible pressure...to make prosecutions easier and punishments more severe.” Feminist efforts to reform law and legal process have resulted in significant transformation at all levels of the justice system’s response to gendered violence, from police practice to the cross-examination of victim-witnesses (see e.g., Estel, 1998). Still, the mood amongst feminists remains somber because the evidence suggests that from a victim’s perspective, little has changed (e.g., Hengehold, 2000; Presser & Gaarder, 2000; Spohn & Horney, 1992). As Heath and Naffine (1994, p. 32) observe, “perhaps we had been lulled into believing that legislative reform meant progress.” Despite decades of legal reform, the vast majority of victims of sexual, domestic, and family violence still do not report offences to the police, and prosecution rates for gendered violence are still amongst the lowest for all offences (see e.g., Cook, David, & Grant, 2001; Douglas & Godden, 2002; Holder, 2001); victims have negative experiences in police interviews (Centre Against Sexual Assault, 1997); and when cases do go to trial, victims face long and distressing court processes (New South Wales Department for Women, 1996). Feminists are now “questioning anew the ability of law by itself” to deliver justice to victims (Frohmann & Mertz, 1995, p. 829) and are looking outside the established criminal justice system for ways forward.

¹ We use the term “gendered violence” as an umbrella concept that captures Liz Kelly’s (1988) idea of a continuum of violence: child sexual abuse, incest, sexual assault, rape, domestic violence, and family violence. While acknowledging that gendered violence does occur in the context of same-sex relationships, and that women can victimize men, our focus is on male violence against adult women and male and female children.

In the past decade, restorative justice has been proposed as a promising means of responding to gendered violence (Braithwaite & Daly, 1994; Daly, 2002a; Hudson, 1998, 2002; Morris, 2002a; Morris & Gelsthorpe, 2000). Academic feminists have responded to these calls with skepticism, concern, and cautious interest, and a burgeoning critical literature has grown (see e.g., Strang & Braithwaite, 2002). Compared with the energetic debate occurring in academic circles, we know little about how victim advocates and service providers view the idea of restorative justice. Specifically, what do the people who work with victims every day think about the potential and perils of restorative justice?

This article explores the views of Australian victim advocates on restorative justice. We find that in contrast to what many think – that advocates are against alternatives to criminal justice – advocates hold more pragmatic views on how to best deliver justice to victims. The advocates interviewed for this study were in fact more receptive to restorative justice than policy makers and academic commentators may think, and even we had initially imagined. Our article begins with a review of the literature on restorative justice and its potential applications for gendered violence. Next, we present the study context and methods. We then turn to these major themes arising from the interviews: advocates' recognition of the limits of the current justice system, yet a desire to rely upon it; their knowledge about and understandings of restorative justice; their perceptions of the benefits and pitfalls of restorative justice for gendered violence; and their views on optimal restorative justice practices for victims. Restorative justice triggers both hope and fear among victim advocates, and these different reactions can be traced, in part, to their varied experiences with and understandings of it.

RESTORATIVE JUSTICE AND GENDERED VIOLENCE

A significant problem in researching and writing about restorative justice (RJ) is that people have disparate understandings and definitions of it (Crawford & Newburn, 2003, chaps 1 & 2; Daly, 2002b). Moreover, people get stuck in having a too literal interpretation of the words *restorative* or *restoration*. Although a major RJ proponent argues that “restorative justice [is] about restoring victims, restoring offenders, and restoring communities” (Braithwaite, 1999, p. 1), we argue that RJ is better seen as a *nominal* concept that stands for a set of activities (see below), rather than as literally and narrowly being about “restoring.” This conceptual shift is important in debating the appropriateness of RJ in gendered violence for as Coker (2002, p. 143) argues “the concept of *restoration* suggests that a prior state existed in which [a domestic violence] victim experienced significant liberty and the offender was integrated into the community” when “neither [may be] true.”

Flying under the RJ banner are practices in juvenile justice, criminal justice, family welfare and child protection. They include diversion from the formal court process, actions taken in parallel with court decisions, meetings between offenders and victims at any stage of the criminal process (from arrest, pre-sentencing, and prison release), or meetings held for child protection cases. For criminal matters, in general, RJ typically contains these elements and set of activities:

- Offenders have admitted to the offence (or have chosen not to deny).
- Offenders and their supporters have a face-to-face meeting with a victim (or a victim representative) and a victim’s supporters, although having a face-to-face meeting is not essential. There may be other relevant people present, such as police officers or victim advocates.
- The process is informal, although the person organizing and running a meeting establishes the ground rules for participants (such as people must listen to each other and everyone has a chance to speak).

- Discussion and decisions taken rely on the knowledge and decision-making capacities of lay actors rather than legal actors (although diversionary conferences generally have a police officer present).
- The aims are to reduce victim fear and anger toward the offender, for the victim to “tell the story” of how the crime affected him or her, for the offender to acknowledge the harm and the negative consequences the crime caused a victim, for the offender to apologize, and for the offender to make up for what s/he did (“repair the harm”) by penalties agreed to.

The major kinds of RJ practices include conferences, circles and sentencing circles, and a variety of victim-offender mediation processes (see Kurki, 2000).

The history of RJ is contested. Some suggest that it was the “dominant model of criminal justice throughout most of human history for all the world’s peoples” (Braithwaite, 1999, p. 2), a claim that is “quickly refuted by any serious look at the literature of legal anthropology” (Bottoms, 2003, p. 88) (see further in Johnstone, 2002). What is not contested is the phenomenal growth and worldwide popularity of the idea in a short span of time. As discussed in Daly and Immarigeon (1998, pp. 23-29), three streams of activism and thought propelled the rise of informal justice in the 1970s and 80s, and RJ in the 1990s: major social movements of the 1960s (e.g., Civil Rights, Women’s Movement, Victim’s Movement, Prisoners’ Rights), particular practices and programs (e.g., victim-offender mediation, conferencing, circles), and academic theories and research (e.g., informal justice, reintegrative shaming, feminist theories of justice). The term *restorative justice* came into widespread use in the mid-1990s, having been applied after the fact to existing programs or legislation. For example, when New Zealand passed its historic legislation in the late 1980s (*Children, Young Persons and Their Families Act 1989*), which created family group conferences for adolescent offenders, there was no reference to restorative justice in the legislation. Likewise, the first Australian state to legislate diversionary conferences for juvenile cases, South Australia, made no reference to restorative justice in the statute (*Young Offenders Act 1993*). Legislation establishing conferencing for juvenile offenders

has since been passed in all but one Australian jurisdiction (Daly & Hayes, 2001). One noteworthy feature is that with the exception of New Zealand and the Australian states of South Australia and Queensland, conferencing is prohibited in cases of sexual assault, and typically also for domestic or family violence. Conferencing is now being piloted or under consideration for adult offenders in parts of Australia and New Zealand, and here too we find that cases of domestic violence and sexual assault have been placed beyond the reach of conferencing.

One reason that gendered violence is off the RJ agenda is that academic feminists and victim advocates have made compelling arguments against it. An early Australian document, which continues to exert significance, is a position paper by the National Committee on Violence Against Women (Astor, 1991; see also Astor, 1994). Astor argued against mediation in cases of domestic violence, and her concerns are enshrined today in the advocacy and academic literature. A critical focus by some feminists on RJ as just another type of mediation (which may mean mediating “facts” between a victim and victimizer) as compared to what occurs in RJ conferences (where “facts” are already admitted to by an offender and a larger group of people is present) has created much confusion in the debates on RJ and gendered violence. However, even with RJ conferencing in mind, feminists have raised many concerns (Busch, 2002; Coker, 2002; Goel, 2000; Hooper & Busch, 1996; Lewis et al., 2001; Stubbs, 1995, 2002), these being the most prominent:

- Informal processes risk re-victimizing victims (vis a vis power imbalances between victim and offender) or jeopardizing their safety.
- RJ will appear to be a “soft option” or what Coker (1999, p. 85) terms “cheap justice” to offenders and society. Serious offences like gendered violence ought to be treated seriously (that is, adjudicated in criminal court), not diverted from court to an alternative process.
- RJ may re-privatize gendered violence in ways that are harmful to women.

- RJ has theoretical weaknesses, including its assumptions of a distant state and sufficient community opposition to domestic violence, and an under-theorization of the nature of domestic violence. RJ may also require additional state resources to adequately support both victim and offenders.

Most of the critical feminist literature has focused on the problems of using RJ to respond to domestic violence. Of all crimes, domestic violence is unusual in that offences are not discrete events, but are typically characterized by an entrenched pattern that cycles from periods of calm to an escalation of violence to reconciliation (see e.g., Laing, 2002). While sexual assault can also occur in the context of domestic violence and as a pattern of abuse, many sexual assaults are discrete events. We consider both domestic violence and sexual assault, as well as other forms of violence such as child sexual abuse, in this article to examine RJ's appropriateness for the range of cases falling under the umbrella of gendered violence, but it is important to recognize the distinctive problems each poses for victims in the legal process. The major hurdles for victims of sexual assault is the state's ability to prove their case (see Frohmann [1998] on how prosecutors "manage" adult sexual assault victims in cases with little evidence) and the impact of the trial process (see Eastwood [2003] on child sexual abuse victims), whereas the pressing concern for victims of domestic violence is to find methods of stopping the violence and securing a victim's ongoing safety (Holder, 2001). While some victims of gendered violence wish to continue a relationship with an offender, others intend to sever it, and still others never had a relationship with the offender. These differing victim-offender relationships and victim needs must be considered in any legal response to gendered violence; as yet, this diversity of victim contexts and desires has posed major challenges to both feminist legal reformers and the established criminal justice system.

Countering the critical literature, a growing number of academic feminists suggest that RJ practices may be more effective for diverse groups of victims compared to established criminal justice and formal legality (Blagg, 2002; Braithwaite & Daly, 1994; Daly, 2002a; Hudson, 1998, 2002, 2003;

Koss, 2000; Martin, 1998; Mills 2003; Morris, 2002a, 2002b; Morris & Gelsthorpe, 2000; Pennell & Burford, 2002; Presser & Gaarder, 2000; Snider, 1998). The major arguments for the merits of RJ are these:

- RJ offers a dialogic encounter between victims, offenders, and supporters. This increases the chances of condemning the violence in ways that are meaningful and consequential for offenders and victims, and it permits victims to tell their stories of the violence.
- RJ encourages admissions of offending, rather than denial (this is especially relevant in sexual assault cases where prosecution is especially difficult).
- The process and outcomes of RJ can validate victims' experience, provide assurances that they are not to blame for the violence, and give them greater priority in a legal process.
- RJ may offer more options to diverse groups of victims, some of whom do not want to formally prosecute the offender.
- RJ gives greater attention to lay, rather than legal views of crime, encouraging a more holistic understanding of the offence, rather than one confined to legal relevancies.

A major irony in assessing the merits of RJ for gendered violence is a paucity of evidence to confirm or discount the critics' or proponents' claims. Feminists and victim advocacy groups have been successful in blocking the application of RJ for cases of gendered violence in most world jurisdictions. Therefore, there is a dearth of evidence on how RJ might work in practice rather than in theoretically best or worst case scenarios. Hudson (2002, p. 618) pointed to this problem when she wrote:

Critics of the extension of restorative justice conferencing to offences such as domestic violence seldom address the question of whether there are standards and safeguards that could make it satisfactory for victims, whilst its proponents often fail to address questions of procedural safeguards or just outcomes for offenders.

We agree with the critics that caution should be exercised, and that there is much we need to consider before RJ is introduced as one of several responses to gendered violence. At the same time, the

required learning cannot take place so long as principled positions are permitted to prevail in the absence of empirical evidence. Morris (2002b, p. 600) captures the qualities of infinite regress into speculation:

There are occasions in this paper when I refer to a criticism which has been made without an empirical basis to support it but when, equally, I am not able to cite rebuttal evidence. All I can do then is to rebut speculation with speculation ...

There is some evidence amidst the speculation. Critics of RJ cite studies of mediation of divorce cases, where couples have a history of violence, to show the effects of power imbalances (Astor, 1994; Cobb, 1997). They also cite an early study (Maxwell & Morris, 1993, p. 119), which showed that one-quarter of victims “felt worse” after a conference, although Strang (2002) later observed that conference victims fared better than those whose cases went to court. From research on Canadian families, Pennell and Burford (2002, p. 108) believe that “family group conferencing can stop family violence.” Coker (1999, p. 103) finds that Navajo peacemaking offers many benefits to battered women, but at the same time it can create “real dangers for some women.” McGillivray and Comaskey’s (1999, p. 129) study of Canadian Indigenous women, who endured many years of partner violence, found that women wanted “stiffer sentences and effective treatment programs.” They viewed “community-based dispute resolution as partisan and subject to political manipulation” (pp. 143-4). These findings depart from Blagg’s (2002, p. 198) work with Australian Indigenous women, whose “family violence paradigm” emphasizes interventions “that stop abuse, cool out situations, open pathways to healing, with minimum intervention by the criminal justice system.”² Our research on nearly 400 sexual offence youth justice cases that were finalized in court and by conference in South Australia (Daly, Curtis-Fawley, & Bouhours, 2003) finds that conferences outperform court in measures that matter to victims. Conference offenders admitted to their offending, whereas half the

² Their differing conclusions arise, in part, from the study contexts. Blagg is analyzing family violence (partner violence, child abuse, and other kin violence) in remote Indigenous communities, and McGillivray and Comaskey have partner violence in mind.

court cases were dismissed; and for penalties, we find that conference offenders did more for victims (apology and acknowledgment), more for the community (through community service), and more for themselves (involvement in a therapeutic intervention) than offenders whose cases went to court.

In reviewing the evidence on RJ and gendered violence, we would emphasize the varied phenomena being considered: is it partner violence by an adult male or a sexual assault by an adolescent male toward a sibling? Is it family violence in remote Indigenous communities or partner violence in urban areas? Is the RJ process specifically tailored to gendered violence, as in Pennell and Burford's 2002 work, *Intimate Abuse Circles* (described in Mills 2003), and the program being undertaken by Hopkins, Koss, and Bachar (this volume), or not? These elements are crucial in understanding the nature and contexts of violence, and in making judgments on the appropriateness of an RJ process. We would also emphasise that RJ may warrant a justice response that is more vigorous than simply diversion from court (see Daly 2002), a point that Hudson (2002) has developed and elaborated upon. She argues that RJ "could carry out the traditional function of criminal justice--retribution, rehabilitation/reintegration, individual and public protection" (p. 626) in ways that current criminal justice practices have failed to do.

THE STUDY: CONTEXT AND METHODS

The study presented here is one component of a program of research on RJ and gendered violence, which has these sub-studies: (1) interviews with representatives of victim advocacy groups in South Australia and Queensland to elicit their views on RJ for cases of gendered violence (the study reported here); (2) interviews with Australian Indigenous and non-Indigenous women, working in policy and government in Queensland, to elicit their views on RJ for cases of gendered violence; (3) an archival analysis of nearly 400 sexual offence cases disposed of by court and conference over 6.5 years in South Australia (Daly, Curtis-Fawley, & Bouhours, 2003); and (4) an in-depth analysis of 15 conferences of sexual assault and domestic violence in South Australia, with a focus on what happened

at the conference and how victims were affected. The aim of these studies is to examine empirically and sympathetically the many claims and concerns that feminist scholars and victim advocates have lodged toward restorative justice.

Unlike almost every other jurisdiction in the world, South Australia has been quietly pioneering the use of restorative justice, in the form of diversionary youth conferencing, for gendered violence (Daly, 2002a). Since the introduction of the *Young Offenders Act 1993*, over 150 sexual offence cases, with charges ranging from indecent exposure to rape, have been disposed of by family conference.³ In the latter part of 2001, we traveled to South Australia to undertake the first systematic empirical study of restorative justice and gendered violence. We were based in the Adelaide Youth Court for three months, gathering materials for the archival and in-depth analyses.

This study reported here arose from Curtis-Fawley's experience as an advocate in sexual assault and domestic violence service agencies in the United States. She wondered, what do victim advocates think of RJ as a response to gendered violence? With their significant experience, knowledge, and political influence, victim advocates have views that should be listened to and considered (see Strang, 2001 on the crime victim's movement). At the same time, we recognize that advocates' claims about victims' needs may not be consistent with what crime victims say their needs and desires are (Fraser, 1989). The "victim perspective" has been used (and, some would say, abused) to provide ammunition for the competing claims that victims want increased punitive sanctions (thus supporting more vigorous criminal law interventions), or that they ultimately want acknowledgement and apology rather than punishment (thereby providing support for alternatives such as RJ) (see Laster & Erez, 2000). While acknowledging that victims have wide ranging interests, experiences, and visions of justice, we believe

³ Conferencing began in South Australia in February 1994, and over time, the annual number of completed conferences for sexual offences has ranged from 12 to 25, with an average of 18 each year. It is difficult to estimate the number of domestic violence cases in the youth justice system because they are part of a larger category of common assault cases. From our in-depth analysis of "domestic violence" cases (we put the term in quotes because the typical offence is a male or female adolescent assaulting his or her mother), we would estimate that 10 to 15 such cases are disposed each year by conference. Together, these two categories of offenses are a very small share (about 2%) of the annual number of cases disposed of by conference (ranges from 1600 to 1800 per year).

that victim advocates' years of experience in the field make them well positioned to speak authoritatively and reflectively about issues affecting victims, including alternative justice practices like RJ.

During 2001-02, Curtis-Fawley conducted semi-structured interviews with representatives of 15 victim advocacy organizations in South Australia and Queensland (see Appendix 1). Victim advocacy was defined broadly to include organizations and government departments that advocate for or work on behalf of victims of gendered violence, at the level of policy or direct service. They included state-funded and non-government organizations, with a varied degree of feminist orientation. The organizations worked with or for victims of sexual assault, child sexual abuse, and domestic violence in a range of ways, including providing counseling, legal support, therapeutic interventions, policy work, lobbying, and community education. All but three study participants were female; nine were coordinators or directors of the organization, and the remainder were service providers. Most had considerable years of experience working in the field, on average ten years, although this ranged from one year to 26 years. The sample includes a wide range of organizations and perspectives, but because of its sample size, we cannot make strong generalizations from it. We see it as an exploratory study that can contribute to the literature and expand the range of viewpoints and voices on RJ and gendered violence.

The interviews, which lasted, on average, 90 minutes, canvassed these areas:

- Advocates' views on the benefits and shortcomings of the criminal justice system's handling of gendered violence.
- Advocates' understandings of what RJ is, and what they see as the benefits and concerns of using RJ for gendered violence.
- Advocates' views on the kinds of gendered violence that may be more or less appropriate for RJ or established criminal justice processes.

- Advocates' views on optimal RJ practices, the risks of RJ for victims and offenders, and whether they would recommend that RJ be used for gendered violence.

South Australia has been routinely using conferences in youth justice cases of gendered violence since the mid-1990s. By contrast, while Queensland has not proscribed gendered violence from conferencing, it has rarely been used in these cases. Until it was amended in 2003, Queensland's juvenile justice legislation permitted victims the right to veto their case being referred to conference, which meant that police officers were wary of proposing a conference for serious offences.⁴ The consequence of these jurisdictional differences is that the South Australian advocates generally had more exposure to RJ than their Queensland counterparts, a difference that affected their views toward RJ.

“WE DON'T CALL IT A JUSTICE SYSTEM ANYMORE:”

ADVOCATES' VIEWS ON CRIMINAL JUSTICE

To understand the advocates' orientation towards restorative justice, the interview began with a set of questions about how the criminal justice system is and is not working for victims of gendered violence. All of the advocates had had some contact with the criminal justice system through their work, usually by providing information and support to victims. It was not surprising, then, that they spoke about the criminal justice system with a sense of urgency and frustration. The experience of one sexual assault and domestic violence advocate who has been working in the field for more than five years was typical: “[the criminal justice system] is very tough on them, it is such a painful process. I

⁴ The Queensland *Juvenile Justice Act 1992* was amended in 2002, and proclaimed in July 2003. Among other changes, the amendment abolished the right of victims to veto a referral to a community conference, although police must consider the harm suffered by the victim when deciding how to refer or dispose a case. In South Australia, police officers take the victim's needs into account when making a decision to refer to court or conference, but victims do not have the right to over-ride the decision nor to direct how the case should be handled. Of course, if victims choose not to attend the conference, they can opt to send a representative or submit written or video statements.

have to say I only know of one woman who got a conviction” (QLD4).⁵ Advocates acknowledged that the standard practices in the criminal justice system put victims in the untenable position of risking further degradation and disappointment with very little chance of a “successful” outcome, for example, a conviction.

When the advocates were asked how the criminal justice system has been successful in responding to the needs of victims, they most commonly pointed to an increased awareness of gendered violence at all levels of the criminal justice system, including that of police and judicial officers. Legal reforms were also thought to make witnesses less vulnerable in the courtroom; for example, advocates mentioned the increased availability of closed circuit television and screens for young victims. Yet despite the successes and statutory changes brought about by feminist legal reform, the advocates recognized that there remained significant deficiencies in the justice system, one saying, for example:

I think there is more awareness, but again I think it depends on what police station you call and who is on duty. It depends which magistrate you get. There’s a long way to go in terms of educating the police and the courts about the effects of violence. (SA4)

All spontaneously made a negative comment about the justice system’s ability to effectively address gendered violence. These advocates’ remarks are indicative:

Victims see court as a kind of public humiliation ... there is a view that justice doesn’t happen, and very few cases are actually prosecuted. (SA7)

Women are quite aware, usually, that the system will re-traumatize them, and they have to weigh that against whether they are going to go forward or not. (QLD5)

When they actually get into the system, they feel that they are on trial ... It is a very embarrassing and humiliating process. I have never been so angry in all my life as watching a defense lawyer effectively attacking and undermining a [victim] on the stand. (QLD4)

⁵ The participants in this study were assured that their comments would be kept anonymous; therefore we do not identify the speaker of the quoted material. However, in order to show some of the differences between the organizational views in South Australia and Queensland, each quote will be followed by an identification code including the state (SA or QLD) and a random number for each organization.

The advocates spoke with exasperation on the shortcomings of the criminal justice system, noting that after decades of legal reform, much work remained to be done. Their concerns mirrored what socio-legal and feminist scholars have been saying for some time:

- victims are systematically re-victimized by their experiences with the system, from reporting the offence to the police through to their experiences in court as witnesses;
- sexual assault and domestic violence are under-reported and face many hurdles when prosecuted;
- if cases do proceed to court, the focus shifts to the victim's credibility and behavior;
- because the system is adversarial, there is little scope for addressing violence between intimates or family members who wish to remain in a relationship, which is one reason that domestic violence victims may opt out of the system; and
- the system is incapable of dealing with child victims.

These comments illustrate advocates' views on the inadequacies of the criminal justice system:

I get called out and see these women who have been recently raped, and I think to myself, if I were in their position, knowing what I know, I wouldn't take it to court, I wouldn't pursue it. (SA3)
 The way the system is structured so women are not believed ... The onus is upon them to prove that an assault took place ... That's degrading and humiliating. So the act [of violence] is, and the court process further perpetuates that. (SA7)

If a victim is three years old, she's not going to be able to give evidence. She won't be able to answer the questions, she won't understand the concept of cross-examination, so it's a useless exercise. People don't understand that about half the children we see a year make quite clear allegations, but none of these cases make it to trial because it is a problem of evidence ... It puts incredible amounts of stress on the families, and creates a lot of problems for the child too. (SA2)

The advocates' comments point to three major failures in the current criminal justice system.

First, criminal proceedings rarely, if ever, validate a victim's understanding of her experiences and rarely acknowledge that she is not to blame for the violence (Estrich, 1986). Second, the criminal court is unlikely to be an effective forum for addressing violence between intimates who will be in continuing relationships (Morris & Young, 2000). Finally, legal reform has thus far been unable to

create processes that are tailored to child victims' needs and capacities (Eastwood, 2003). As will be explored further in this paper, it is in precisely these areas that RJ has potential.

The interviews bring to light a contradiction between continued efforts to reform the law and criminal justice system, and the recognition that such efforts will likely produce limited results. This contradiction reflects a paradox for feminist engagement with criminal law. Estrich (1986, pp. 1092-93) put it well when she wrote, "the law has reflected, legitimised, and enforced a view of sex and women which celebrates male aggressiveness," and yet the over riding goal of many feminists is to "write the perfect statute." Despite the widespread view that the criminal justice system routinely harms victims in significant ways, most advocates in our study believed the justice system remained the best site for dealing with gendered violence. Typical of this position are the views of one advocate, who after describing the justice system as "degrading and humiliating," went on to say, "we have not necessarily exhausted what is possible within the criminal justice system" (SA7). This persistent investment in legal reform puts advocates in the untenable position of continuing to defend and support a system they know fails most victims.

"IT'S ABOUT TRYING TO RESTORE SOME CONNECTION:"

UNDERSTANDINGS OF RJ

The lack of clarity about what does and does not constitute restorative justice has clouded the debate on its appropriateness for gendered violence. This confusion was evident in the interviews. Many victim advocates had difficulty answering the question, "What does restorative justice mean to you?" Generally, advocates' descriptions of RJ focused on a victim-centered process that emphasizes healing over punishment. They also perceived RJ as an *alternative* to the current criminal justice system, which may allow for more flexible or creative outcomes. Statements from two advocates show how RJ is understood:

Because it is in its infancy, restorative justice is better understood as a challenge to the way we do things. In other words, it is another way of thinking about the administration of justice. (SA1)
 To me it means some kind of model that looks to put the victim back in the position that they were in before an offence was committed against them ...to give them an outcome that is more victim-driven, that the victim wants. (SA5)

The advocates also focused on RJ's potential to repair the relationship between the victim and the offender, which was perceived as a benefit by some, but also seen as major drawback by others, as exemplified by this advocate:

Anything that gives the perpetrator access to a victim is doing the victim a disservice, is leaving her more vulnerable ... It is setting up the potential [for] reconciliation, and therefore more violence. (QLD6)

Nine of the 15 advocates referred specifically to conferences as a form of restorative justice, and in fact, some believed it to be the only form. Many Queensland advocates linked RJ to a much-criticized state practice of mandatory referral to "primary dispute resolution" (mediation) before the granting of Legal Aid, including cases that involve domestic violence. Of the 15 advocates, five believed that RJ is mediation dressed up in politically correct language. Some were concerned that governments' interest in RJ was driven by a need to reduce the costs of administering justice, not to provide better outcomes for crime victims. Several expressed positive understandings of RJ, but felt that its scope should be restricted to adolescent offending. One advocate warned that gendered violence was simply beyond RJ's reach, saying, "This isn't about kids who shoplift" (SA7). Another advocate who was strongly opposed to RJ for gendered violence said:

I guess I don't have a problem with restorative justice itself. My real concern is that any chance that the system gets to water down crimes against women and children, they'll take it, and restorative justice would be a prime example of that. (QLD5)

Those expressing the greatest opposition to RJ throughout the interview were also those who were the most unsure of what it is. One said, for example, "I am not sure I like it. I am not sure what it means" (QLD5). Very few said they had read the research literature on RJ; rather, they received information about it from television or radio reports, or through email networks. Several made statements like "I don't think my thinking [on RJ] is particularly sophisticated or advanced" (SA5), or

“it’s a bit hazy to me really” (QLD7). These comments suggest the need for greater public education about RJ, drawing on both the theoretical and empirical literatures.

“RESTORATIVE JUSTICE CREATES OPPORTUNITIES:”

PERCEIVED BENEFITS OF RJ

The critical literature warns of the many ways that victims may be hurt by RJ. For example, existing power imbalances may be exacerbated, victim-offender meetings could lead to re-victimization, and RJ processes may be too informal and outcomes too lenient for the serious offending that constitutes gendered violence (Busch, 2002; Stubbs, 2002). In light of these concerns, an important and somewhat surprising finding from our study is that most advocates believed that RJ has something positive to offer victims of gendered violence, especially when compared with established criminal justice processes and outcomes.

Of the 15 advocates, five were generally positive toward RJ; seven were cautiously positive, having many reservations, but also seeing potential benefits; and three were generally negative toward RJ, seeing the negative consequences to outweigh any benefits. All but two felt that RJ had something positive to offer victims of gendered violence. Those who had worked in the field the longest were more likely to hold positive views of RJ: they appeared more disillusioned with the established system, less optimistic that it could be sufficiently reformed, and were more receptive to expanding the range of options for victims.

The advocates’ orientations toward RJ were affected by their exposure to RJ practices. Most of the South Australian participants (five of eight) had had first-hand exposure to RJ, typically as a support person for a victim before or during a conference. This exposure seemed to reassure them that RJ had potential for victims. By comparison, just one of the Queensland participants had had direct exposure to RJ. During the interviews, the South Australian participants often drew on their experiences with RJ practices to talk about the real benefits and concerns for victims. One advocate

described a conference she had attended for a sexual assault case, saying, “if a conference is done properly, it is a way more powerful tool [than going to court]” (SA3). The Queensland advocates spoke from a position of principle rather than experience, as indicated by an advocate who said, “I think it would be an absolute nightmare, I can’t even begin to think of what it would look like for it to work” (QLD5).

RJ as an Alternative to Criminal Justice

Almost all the advocates cited some beneficial elements of RJ processes for gendered violence. One of the most frequently mentioned benefits was that RJ provided a clear alternative to the criminal justice system. As one advocate stated:

The main benefit I see is that it provides an alternative to the existing system ... The existing system, which is an adversarial system, isn’t working for victims of intimate violence. (SA5)

The advocates’ conceptualization of RJ as an activity distinct from the justice system is not surprising given their deeply felt frustrations with established justice responses to gendered violence. One advocate whose core work is to support victims going through the criminal process said this about RJ’s benefits:

Not having to go through the criminal justice system is a huge benefit. It’s so demoralizing and judging, and it sets up this win-lose situation ... With the criminal justice system, there isn’t anything around rehabilitation, any focus on repairing the situation. There is such loss in the criminal justice system. (SA8)

Not all of the advocates, however, felt that RJ should be viewed as an alternative to existing criminal justice. Several believed that RJ may be most effective as a parallel process to established criminal proceedings, thereby retaining the sanctioning clout of a court process and providing a forum for victims to express themselves and to be heard. One advocate said, “I would still be an advocate for conferencing to be used in the context of sentencing processes, I think, not necessarily as an alternative

to going to court” (SA5), and another stated, “In cases of intimate violence, [RJ] should exist not as an alternative, but as ... a service or a process available, either now or any time in the future, in the course of [the victim’s] own healing” (SA4).

The relative informality of RJ was also seen to be beneficial for victims, and in particular those who wished to maintain relationships with an offender or for young victims. One advocate reflected on this positive aspect of RJ:

One of the advantages of restorative justice [is that] it is a different way to think about things, and therefore an opportunity for more innovative responses ... That might appeal to victims who report or disclose their victimization for the purpose of trying to stop it, but they don’t want to see their partner or their family member being dragged into a court process. What they want is for that person to be dealt with in a fashion that stops the violence and allows the relationship to continue ... So therefore we stretch the range of alternatives that are offered to victims of crime. (SA1)

The Victim’s Voice

The importance of the victim’s voice and the opportunity to speak about her experience was a recurrent theme in the interviews. Advocates see the potential for RJ processes to give victims a chance to speak and to be heard in a way that the criminal court does not allow. RJ may also empower victims to participate in decision-making and to propose desired outcomes. The healing opportunity to “confront” the offender was seen as a benefit by this advocate:

We encourage people as a way of voicing it, having it said in public, a public acknowledgement that this happened, whether or not the perpetrator is found guilty or not guilty, that the perpetrator has been confronted with what they have done. And that can actually be quite therapeutic and healing for the victim. (SA3)

Several advocates spoke of how RJ may be able to address power imbalances between victims and offenders, in clear opposition to the widely held feminist critique that RJ processes will exacerbate power imbalance. Two advocates said this about how RJ could contend with power:

It could give women a voice in the process. It could give them a forum where the power imbalance is addressed so they can actually participate. (QLD7)

Restorative justice models rely on the notion of power and the recognition that there is some way of trying to rebalance power relationships between two parties. (SA1)

That advocates perceive RJ as being capable of addressing power differentials constructively was a surprising finding of this study. One of the most commonly cited concerns about RJ is that power imbalances will prevent victims from being effective participants in the process (Busch, 2002). But by creating forums that privilege the victim's voice and account of her experiences, the distribution of power between victim and offender can be rebalanced. As noted by Presser and Gaarder (2000, p. 178), "victims who have a say in the legal proceedings may feel more empowered to get help, if not to terminate the abusive relationship." While imbalances of power between victim and offender, and men and women, are not small matters, they need not be viewed as inherent impediments to RJ.

RJ Allows Offenders to Acknowledge Responsibility

In addition to the benefits that may accrue to victims, the advocates also believed that RJ could better serve offenders by lowering the stakes for acknowledging their violent behavior. Admitting guilt for an offence is a keystone of most RJ programs, and this insistence that offenders take responsibility for their behavior is an attractive feature for advocates. Victims of gendered violence often bear a deep sense of guilt and self-blame, and criminal processes can reinforce this by questioning their behavior and relationship choices (Frohmann, 1998). Furthermore, the established criminal justice system offers perpetrators little incentive for full admissions of guilt, and in fact "defendants (or their lawyers) are making an accurate assessment of the (good) chances of acquittal" by maintaining a stance of denial (Heath & Naffine, 1994). Because RJ processes are set in motion only after an offender admits to an offence, advocates perceived greater opportunity for the healing of victims and therapeutic interventions for offenders. The following comments reflect this potential benefit of RJ:

Anything that establishes the guilt of somebody in a formal, relatively public sense probably has a significant effect on how the family of the victim can manage that. (SA2)

Any healing of any relationship comes from a process of restorative justice, whatever it's called, that is, the process of someone who has been hurt being heard. That is where healing comes from, they need to be heard and they need the other person to take responsibility for what they did. (SA4)

Advocates know that victims of gendered violence must contend with systematic disbelief throughout the justice system. Restorative justice has the potential to recognize victims' desire for "clear and public acknowledgement" (Martin, 1998, p. 184) by lowering the penalty stakes for offenders to take responsibility for their actions. We must be cognizant, however, that many violent men may be incapable of "hearing and taking seriously victims' account of the impact of their offending" (Stubbs, 1997, p. 121).

"WE WOULD BE MOVING SO FAR BACKWARDS:"

CONCERNS ABOUT RJ

Although most advocates saw positive elements in RJ, they also expressed concerns and reservations, at times quite vigorously. For example, when one advocate was contacted to arrange an interview time, she said, "I don't know why you are bothering, I can tell you right now that I am completely opposed to restorative justice." Recapitulating what we see in the academic literature, their major concerns were that RJ processes may cause victims to be re-victimized, power imbalances will be exacerbated, victims will feel pressure to choose RJ over other criminal proceedings, RJ may appear to be a "soft option" or "cheap justice" for victims, and RJ can re-privatize gendered violence.

Re-Victimization and Imbalances of Power

Eight of the 15 advocates believed that victims could be re-victimized by RJ practices, particularly if it involved a face-to-face meeting with the offender. A related concern was that power imbalances between the victim and offender would be difficult to address and manage in an informal process, as captured in this statement:

It is potentially forcing a woman to be in less formal conversations with an alleged perpetrator, which I think could be more abusive than the formality of a court situation with the barriers and stuff that we've got there. (SA7)

Busch (2002), drawing from Astor (1994), provides a lucid discussion of how power imbalances may impede RJ conferences for cases of domestic violence. Facilitators may be unable or lack the skill and insight to challenge “an abuser’s belief systems” (p. 237), an abuser may threaten the victim or others at the conference, and balancing power or equality in the conference setting may be an impossible goal in light of a history of violence. It is often remarked, moreover, that abusers can intimidate and control victims through gestures or words that may be invisible to everyone in the room except for the victim. Hence, many feminists and victim advocates (both RJ proponents and critics) would say that the informality of restorative justice processes can risk exposing victims to further violence or intimidation, compromising the integrity of the conference. We would counter this concern by noting that court processes also create risks for victims and that abusers’ intimidation tactics can be carried out in both court rooms and conference settings. Further, there are ways around this problem for RJ processes; victim presence could be optional, a victim could opt to present a pre-recorded statement or to send a representative to the conference, or the victim and offender could be in separate rooms with a speaker phone system. Further, we agree with the advocates who insisted that conference coordinators be required to undergo training on the dynamics of gendered violence. If a coordinator suspected or observed signs of intimidation, threat, or abusive language, the conference could be immediately stopped or referred to court.

The Cheap Justice Problem

Stubbs (2002, p. 51) and other feminist scholars have suggested that “restorative justice may be seen to be offering a form of second class justice”, and six of the 15 advocates specifically used the term “soft option” to describe RJ. The perception of RJ as an easy option worried advocates, as reflected in these comments:

My concern about shifting into a restorative justice model, I hate to use this term, but it is a soft option. My concern is that there will at least be a perception, and that might be quite an influential

perception, that the criminal justice system is saying somehow that [gendered violence] is different and less serious. (SA5)

I think it's a pretty cruisy way out for an offender. He's not really paying too much of a price, he might suffer some shame and embarrassment, have to apologize in front of some people, but I think the offender is getting off reasonably lightly. (QLD3)

Even the advocates who themselves believed that RJ could be a powerful intervention for gendered violence expressed the fear that RJ will appear to the public to be a too lenient response. One advocate who has worked to promote the benefits of RJ in the victim advocacy community acknowledged this dilemma:

Because there is a perception, I think a widely held community perception that a family conference is a slap on the wrist ... If rape and sexual assault and domestic violence were to go to that, then maybe the community wouldn't see them as significant, important crimes that really need to be prosecuted, you know, high crimes. They might be devalued, or the experience of those crimes might be devalued. (SA3)

Kelly and Radford (1996, p. 31) have warned that diversion programs for abusive men send a powerful message that gendered violence "is less deserving of legal sanction than other offences" and that we must guard against practices which allow for the "privileging of men who abuse women and children." Martin (1998, p. 155), on the other hand, argues that feminists must look beyond punitive justice as the sole mechanism for taking gendered violence seriously because criminal justice "does little to serve the goals of equality and security". Hudson (1998, p. 245) accurately describes this impasse when she writes:

The dilemma ... is that of moving away from punitive reactions, which – even when enforced – further brutalize perpetrators, without, by leniency of reaction, giving the impression that sexualized ... violence is acceptable behavior.

Linked with the advocates' concern that RJ could subject victims of gendered violence to "cheap justice" is that RJ will re-privatize gendered violence after decades of work to raise social awareness and to make legal authorities and the broader community take violence against women and children seriously:

I think part of it is a backlash against feminism, and the increase in patriarchy in our society. The white picket fence, get back behind there with the kids, it is all part of those false family ideals. (QLD6)

The fear that RJ will undo decades of work to raise consciousness about gendered violence is shared by feminist critics. As P. Martin (1996, p. 59) warns, we must ensure that RJ processes “do not result in the decriminalisation of family violence and a return to the viewing of family violence as a private matter or ‘just a domestic.’” At the same time, we may need to balance the goal of social awareness with the desires of victims themselves. A 1993 Australian Bureau of Statistics survey found that one of the most common reasons for victims not reporting sexual assault was that they felt it was a private matter (see Doyle & Barbato, 1999, p. 51). For these victims, perhaps RJ could offer a mechanism for confronting offenders without exposing themselves and their victimization to the shame of public scrutiny.

RJ May Harm Offenders

Strikingly, some advocates also expressed concerns about how offenders might be negatively affected by RJ processes. Two who had worked with victims for many years suggested that some victims may use RJ processes to inflict harm on offenders, as one said:

Some victims are committed to remaining victims and derive a lot of their self-definition, meaning for life out of being victims, and using that as punishment. “I have been hurt and therefore I am entitled to hurt” ... The restorative justice process is also an opportunity for someone to become an offender themselves, a victim to become an offender, to become abusive and punishing. (SA4)

This statement reminds us that neither criminal justice nor RJ processes should assume “that victims are the virtuous ‘us’ and the offenders the culpable ‘other’” (Strang, 2001, p. 75; see also Mills, 2003). Hudson (2003, p. 187) takes this point further by suggesting that “the (liberal) requirement that rights and interests be kept in balance is glossed over in some RJ formulations.” She points out that:

[RJ] assumes a procedural model of equality between the parties in some respects—representatives of both parties, ensuring that no one dominates proceedings—but other rules deny this equality. ... [For example] ... in some schemes, offenders are not able to include as supporters people who might approve or excuse their behaviour.

Hudson is referring specifically to what should and should not be considered permissible in conferences dealing with gendered violence. Although she does not “want to promote racist, sexist or otherwise anti-social behaviour,” she argues that RJ “should abandon [its claim to] even-handedness” by “defin[ing] itself more clearly as victim-centred reparative justice” (p. 187).

“SOME SORT OF ACCOUNTABILITY:” WAYS FORWARD

Throughout the interviews, many of the advocates reflected on “what victims really want” when engaging a legal process. While about half said that some victims want to see the offender punished, a similar number said that victims are motivated by a more abstract sense of justice and the desire for accountability on behalf of the offender. The advocates had this to say about what victims most want:

Well, women are seeking justice. They are looking for some sort of accountability and particularly want the offenders to stop offending. They are fearful that they are offending against others, and I’d say that would be more a priority for them even than their own sense of justice. Often, though, they do want to be at least acknowledged and for there to be some consequences. (QLD 4)

I think there is a sense of justice that people have ... And because it is a violation, victims do have the desire that justice occurs and that the violation is to some small degree redressed. (SA7)

That sense of acknowledgement fails in our current criminal justice system, the acknowledgement that yes, this has occurred...and [the offender] needs to take responsibility. (SA8)

RJ holds significant promise in addressing the desires of victims to be heard, to have their suffering publicly acknowledged, and to hold perpetrators accountable for their behavior. We are mindful, however, of the limits to this potential. For example, Smart (1989, p. 164) warns that when feminists reform or make new law and policy, it is often administered by people “far removed from the values and politics of the women’s movement.” Many of the advocates expressed the concern that RJ practices may fail to live up to RJ’s promise of extending benefits to victims, communities, and offenders.

Victim Agency and RJ

Most victim advocates (nine of 15) said that victims should be given the power to decide if their case is disposed of by an RJ process, or referred to the criminal justice system. In addition, two-thirds felt that a feminist or victim advocacy organization should be involved in the process of screening cases for referral to a restorative or established justice process. The belief that RJ processes should give this particular set of victims decision-making authority poses a significant challenge to RJ. What degree of control should victims of gendered violence have, and for what kinds of decisions? A victim's power is considerable if she is permitted to veto a referral to an RJ process because the veto has significant consequences for offenders. On the other hand, victims of intra-familial or partner violence may be pressured (by their partners or other family members) to choose RJ over criminal proceedings in order to avoid punitive outcomes. One advocate said:

I suppose I would be concerned in some instances that women would feel too compassionate, you know, "I don't want to send him to jail." (QLD7)

Further, several advocates acknowledged that victims of gendered violence report their victimization precisely because they want the state to intervene on their behalf (see also Shapland's [2000] discussion of the responsibilities that justice processes should and should not place on victims). Giving victims decision-making authority over how and when their case should be disposed is a responsibility that many simply do not want, as this advocate said:

I don't know to what extent we should be empowering victims to make decisions. I think that's an incredible responsibility and one that not all victims want. (SA1)

Clearly, many of the advocates felt strongly that victims of gendered violence must be given the opportunity to provide input and direction if an RJ process is used. This is understandable in that victim advocates do not want to see victims used or harmed by a legal process, and more positively, they would like to see victims "empowered" by it. However, as Ashworth (2000, p. 196) argues, there must be a principled basis for balancing between "personal interests of victims and the broader public interest" in an RJ process. Simply invoking "the language of balance is a mere fudge," Ashworth says,

and ignores the identification of “reasonably clear and principled weighting of interests that come into play” (p. 196). Among many questions that arise in this complex area is the role of victims in sentencing. Ashworth argues, and we agree, that “it would be unfair if sentences on offenders varied according to whether a particular victim is forgiving or vengeful” (p. 199) (see also Ashworth, 2002, pp. 584-88), and the same could be said for a victim’s role in decisions to divert a case from court prosecution.

When is RJ Appropriate?

It is important to reiterate that debates concerning RJ and gendered violence are complex because “gendered violence” includes a wide range of violent acts and different mixes of ages and victim-offender relations, including child sexual abuse, incest, sexual assault, rape, domestic violence, and family violence (Kelly, 1988). Some of these offences and some of the victim-offender relations may be better suited to RJ processes than others. Advocates were more positive towards RJ for offences involving adolescent offenders and young victims. This is not surprising given RJ’s genesis for adolescent offending, coupled with the view that youthful offenders are more amenable and deserving of rehabilitation. Several advocates felt that intra-familial sexual violence and child sexual abuse, rather than sexual or physical violence occurring between adults, may be better suited to RJ interventions than established criminal justice. One advocate said, for example:

It seems like a lot of sexual perpetrators start young, so if they can be picked up at that stage and helped to understand the consequences of their actions and on the victim, to people, it will help them stop. (QLD4)

Advocates pointed out that cases with very young victims were unlikely to be prosecuted successfully, and that parents (or other family members) were often loath to report abuse because it would mean that their son (or other family member) would be charged with a criminal offence. For these types of cases, RJ was seen as a viable option that could help families respond to intra-familial sexual abuse in ways

that addressed traumas experienced by victims and families, as well as offenders' needs for intervention and rehabilitation.

Advocates viewed RJ processes for violence between adults, and especially domestic violence, with more trepidation. Overall, they expressed their gravest reservations toward RJ for domestic violence, as compared to other forms of gendered violence. Again and again, advocates pointed out that domestic violence is a deeply entrenched pattern, and RJ is unlikely to be sufficient to change such ingrained behavior. At the same time, some felt that RJ could be a way to confront emotional and verbal abuse, which is difficult to prove in a criminal context. In addition, it was frequently noted that victims of domestic violence may not want their case to go to court, either out of fear of reprisal or because they intend to remain in the relationship. For these cases, advocates felt that RJ could provide an important legal response without the attendant costs (in victims' minds) associated with established criminal processes.

Beyond Either/Or

The advocates interviewed for this study did not see RJ merely in theoretical terms. Throughout the interviews they offered a variety of ideas about how RJ could work in concrete, operational ways. The most recognized face of RJ in Australia and New Zealand is youth justice conferencing, but the advocates recognized that RJ is a flexible concept that can take other forms and occur at other sites within the justice system. For example, it was suggested that RJ could be integrated into the existing criminal justice system, by providing mechanisms for pre-sentencing advice to judicial officials, post-sentencing "victim impact" meetings, or pre-release conferences. These forums would give victims the benefits of RJ, including the opportunity for a victim to voice her story, to have the harm publicly acknowledged, and to hold the offender accountable for the offence, while also allowing for concurrent criminal justice processes. As pointed out by Daly (2002a), a clear view of restorative justice is impeded by the impulse of its critics – and some supporters – to hold it in opposition to

retributive justice. The advocates in this study understand Mills' (2003, p. 27) warning that "one glove does not fit all hands" when it comes to justice policy for gendered violence. Criminal and restorative justice need not be pitted against each other as mutually exclusive ways of doing justice. Perhaps one way forward is for feminists to identify the potential and limits of each form of justice to create policy and practice that is responsive to the needs identified by victims and advocates.

CONCLUSION

The victim advocates interviewed for this study recognized that the current criminal justice system "encourage[s] women to report rape and to participate in rape prosecutions that are in fact damaging to them personally" (Heath & Naffine, 1994, p. 51). Perhaps it was this disillusionment with the justice system that facilitated the advocates' openness to RJ. At the same time, the advocates clearly did not want to relinquish their reliance on criminal law, even while recognizing its patriarchal basis and systematic inadequacies. For example, early in the interview, one advocate said, "The criminal justice system is based on patriarchy ... It is a system that fails from the beginning... It is a system that doesn't believe women and children from the outset." Yet, this same advocate concluded the interview by saying, "First and foremost, sexual assault is a crime, and it needs to be dealt with in that way before any kind of restorative justice" (QLD5). As long as advocates and other feminist critics view RJ in opposition to established criminal justice, it will be perceived as a "soft option" that is incapable of dealing with serious crimes like gendered violence. The task ahead is to create a dialogue that moves beyond this dualistic debate and seeks to imagine how the future of RJ may be shaped by feminist engagement (see also Frederick and Lizdas, 2003).

In their analysis of different feminist orientations to law and violence and against women, Lewis et al. (2001, pp. 116-17) suggest the futility of taking an either/or approach. They propose that we should not choose between civil or criminal law, but rather find elements in both systems that may be useful. Nor must we choose between being a member of the feminist engagement with law camp

(reformists) or the critique of law's futility camp (abstentionists). Their call to avoid "dualistic thinking" (p. 117) comes to a halt, however, when they consider the appropriateness of RJ for domestic violence:

Community conferences are absolutely inappropriate for domestic violence offences [although they] may be a positive development for some offences, for example, juvenile offences ... (p. 118). Just as some of the advocates interviewed in this study viewed RJ as a practice distinct from criminal justice, Lewis et al. understand RJ conferences as "working outside the confines of the current legal system" (p. 118). This assessment is inaccurate for Australia and New Zealand, where conferences are an integrated component of the criminal justice system. By incorporating RJ processes into the criminal justice framework, we will increase opportunities for violent men to acknowledge responsibility for their behavior in a forum that is both legally and emotionally significant. This acknowledgement is the first step for offenders to change and for victims to recover from the offence and to rebuild their lives.

It is an exciting call to action for RJ critics and supporters that most victim advocates we interviewed in South Australia and Queensland did not engage in dualistic thinking. They saw the importance of engaging with established criminal justice, while at the same time, they were open to alternatives and parallel processes that may better serve diverse groups of victims. Few advocates were willing to rule out RJ as an option for gendered violence, although most were hesitant to support its application for adult partner violence. Our study challenges the impulse of some to caricature feminists and victim advocates as supportive of strictly punitive approaches to gendered violence. The debate must move beyond either/or analyses that unequivocally promote or denigrate RJ approaches to gendered violence. We require a more flexible, pragmatic approach, which permits consideration of when RJ may (or may not) be appropriate, for which kinds of offences and victim-offender relations, and when it should be used as diversion from court or as a parallel court process. We cannot afford to put anything off the agenda.

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APPENDIX 1

Victim Advocacy Organizations Interviewed

South Australia

Women's Legal Service, Inc.

Child Protective Services, Women & Children's Hospital

Victim Support Service

Witness Assistance, DPP

Yarrow Place Rape & Sexual Assault Service

South Australia Office for the Status of Women

Domestic Violence Crisis Service

Victims of Crime Coordinator, Office of the Attorney General

Queensland

Centre Against Sexual Violence

Queensland Police, Sexual Crimes Unit

Gold Coast Domestic Violence Service

Domestic Violence Resource Centre

Coordinated Community Response to Domestic Violence

Brisbane Rape and Incest Survivor's Support Centre

Women's Legal Aid

BIOGRAPHICAL STATEMENTS

Sarah Curtis-Fawley received her BA in Psychology and Women's Studies from the University of Virginia (1999), where she was deeply involved in anti- sexual assault and domestic violence advocacy work. After working on a MacArthur Foundation study on adolescent offenders' competence to stand trial (1999-01), Curtis-Fawley came to Australia as a Fulbright scholar to collaborate with Daly on the South Australia Juvenile Justice and Criminal Justice (SAJJ-CJ) project during 2001-02. Currently Curtis-Fawley works at a service for homeless youth in Adelaide.

Kathleen Daly is Associate Professor, School of Criminology and Criminal Justice, Griffith University, Brisbane. She has written extensively on race and gender in crime and justice, feminism and criminology, and restorative justice. She is currently directing the South Australia Juvenile Justice and Criminal Justice (SAJJ-CJ) project, which is analysing the race and gender politics of restorative justice and indigenous justice, with a series of studies in South Australia, Queensland, and New Zealand (2001-03). She directed a major project on conferencing for youthful offenders and victims in South Australia (1998-99).