

Restorative Justice and Forensic Mental Health Patients and Victims

15/11/2018 (draft)

Overview

This paper aims to examine the benefits of Restorative Justice (RJ) for victims of crime and forensic mental health patients. Currently, there are limited policies that encourage RJ practices within a forensic mental health context in Australia. Justice Action has been part of an NGO Roundtable and consultation on the Mental Health (Forensic Provisions) Amendment (Victims) legislation, and feel there has been a fundamental misunderstanding of the opportunity for the victim to get the benefits of the restorative justice process.

The current proposal for secrecy in the victim impact statement means that the victim doesn't engage with the forensic consumer and achieve an understanding of why the event had occurred and a possible reconciliation. Research states the benefits of RJ for victims to gain closure, especially with a continuing relationship, as is the case with families is not only beneficial but is also favorably considered by courts in their judgments. There is no equivalent secrecy provision in the criminal law, and no reason to exclude mental health consumers from the restorative justice process.

Proponents of RJ say that a victim's lack of engagement with an offender prevents them from gaining 'closure' from the damage they have suffered and perpetuates a cycle of ongoing emotional harm. By comparison, engagement with RJ practices offers a unique opportunity for community relationships to heal, reconciliation of affected parties, extends opportunities for offender reform and importantly, allows victims to feel empowered and heard.

What is Restorative Justice?

Restorative justice is a community approach to crime, which works to repair the harm through rebuilding relationships and emotional restoration. Those that are affected by the crime and members of the community come together to talk about what happened and how to make amends.¹ RJ focuses on healing and empowers those who have been most affected by crime to engage in the justice process².

RJ practice focuses on harm caused to victims and society as the central issue when crime has occurred; and propounds that justice occurs when this harm is repaired³. RJ

¹ Justice and Community Safety Directorate, Annual report 2006- 07, vol. 1, p. 28

² Gurnz, E. & Grant L. RJ: A Systematic Review of the Social Work Literature (2009) 119.

³ Gurnz, E. & Grant L. RJ: A Systematic Review of the Social Work Literature (2009) 120.

assumes that “all human beings are equal moral stakeholders and where individuals have a responsibility to sustain and repair relationships damaged by crime”⁴. RJ is founded on the premise that an affective response to crime is built on restoration of community relationships, which requires offenders to acknowledge the harm they have caused, demonstrate remorse and display a willingness to make reparation. Further, it seeks to heal the victim and restore the offender to full social standing.

RJ does not adhere to a singular definition, but is held together by a set of principles that can be operationalised according to the needs of participants. Practically, interventions can be face-to-face or facilitated by a more indirect process that allows for communication between victims, offender and community in negotiating, challenging and resolving damages caused through criminal activity. Types of RJ employed can vary from; face-to-face conferencing, counselling and victim-offender mediation.⁵

Benefits of Restorative Justice

Many studies have reported positive outcomes for victims involved in RJ programs in Australia and overseas (Hayes 2005; Latimer, Dowden & Muise 2005; Strang et al. 2006)⁶. For victims of crime, unresolved anger towards someone who has committed an offence can lead to ongoing and complex issues long after the justice system has served its purpose. The process of RJ is a powerful way to enable victims to communicate the true impact of the crime and express this to the offender in an open and constructive manner. Engagement with RJ practice has shown a decrease in long-term effects of victimisation including; reduced emotional burden for victims, reduced fear of further victimisation and an increased sense of fairness and closure.

1) Increased sense of fairness

Studies have shown that victims who are involved in RJ programs have experienced positive outcomes and felt they were treated fairly and with respect throughout the process.⁷ Victim’s participation is crucial to the process, as importantly they require ‘offenders to understand and take responsibility for the harm they have caused’ (Strang 2004: 77)⁸

<https://aic.gov.au/publications/rpp/rpp127/impact-restorative-justice>:

- ‘Shapland et al. (2007) found that a larger proportion of victims who participated in RJ processes across the seven RCTs in the JRC scheme in the United Kingdom reported being satisfied than did victims who were in the control groups (72% of 60%).
- Similar proportions of RJ victims and control group victims reported feeling the process was fair and significantly more RJ victims reported feeling more secure than did victims in the control groups (Shapland et al. 2007)

⁴ Ward, Tony, Theresa A. Gannon and Clare-Ann Fortune, 'Restorative Justice–Informed Moral Acquaintance: Resolving the Dual Role Problem in Correctional and Forensic Practice' (2015) 42 *Criminal Justice and Behavior* 45

⁵ Gurnz, E. & Grant L. RJ: A Systematic Review of the Social Work Literature (2009) 121

⁶ **<https://aic.gov.au/publications/rpp/rpp127/impact-restorative-justice>**

⁷ **<https://aic.gov.au/publications/rpp/rpp127/impact-restorative-justice>**

⁸ **<https://aic.gov.au/publications/rpp/rpp127/impact-restorative-justice>**

- Beven et al. (2011) found that victims who participated in conferences were more likely than those whose cases were dealt with in the traditional court process to have higher perceptions of safety and in fact, on average, these perceptions of safety were higher than pre-offence levels.

2) Reduced emotional burden on victims

Victims can successfully reduce their emotional burden, as the process of RJ allows them to properly understand and reflect on retained emotions. As the majority of victims have experienced a significant trauma and psychological harm when a crime was committed against them and in many cases the effect can be longstanding. Many victims experience ‘unforgiveness’ towards an offender, it is defined as delayed perpetuating negative emotions.⁹ It includes emotional instability and having persistent feelings of fear, anger, depression, and feeling of lack of safety and overall distrust and suspicion, loss of dignity and self-confidence, fear of being alone, and also physical symptoms, such as headaches.¹⁰

3) Reduced fear of further vulnerability

Participating in RJ can reduce fear of victimisation and increase the victim’s perception of their personal safety. It has been found by Beven et al. (2011) that ‘victims who participated in conferences were more likely than those whose cases were dealt with in the traditional court process to have higher perceptions of safety and in fact, on average, these perceptions of safety were higher than pre-offence levels.’

4) Repairing relationships

RJ can establish dialogue and understanding between victims and offenders. Repairing the relationship is essential, as in many cases victims and offenders are often families. According to Presser and Van Voorhis “crimes are seen as actions that harm people and relationships, creating needs and obligations”.¹¹ Repairing the harm inflicted on victims, particularly psychological distress is the central aim of justice and RJ process is far more effective in achieving this as opposed to common lack of communication between both parties.¹²

5) Offenders taking responsibility for harm

RJ provides greater opportunity for offenders to understand and feel responsibility for the harm they have caused to victims, leading to a higher likelihood for reconciliation and forgiveness, which are beneficial for both victim and offender. According to a Canberra conferencing experiment in 2001, offenders are more likely to understand what

⁹ Donaldson, C. ‘RJ: Linking the law with Public Health’ *Perspectives in Public Health*, London, Vol. 130, (2010) 254

¹⁰ Donaldson, C. ‘RJ: Linking the law with Public Health’ *Perspectives in Public Health*, London, Vol. 130, (2010) 254

¹¹ Donaldson, C. ‘RJ: Linking the law with Public Health’ *Perspectives in Public Health*, London, Vol. 130, (2010) 254

¹² ¹² Donaldson, C. ‘RJ: Linking the law with Public Health’ *Perspectives in Public Health*, London, Vol. 130, (2010) 254

is going on in conferences than in court cases. They felt empowered to express their views, have more time to do so, and most importantly they felt their rights were respected.¹³

- According to a Canberra conferencing experiment in 2001, offenders are more likely to understand what is going on in conferences than in court cases. They felt empowered to express their views, have more time to do so, and most importantly they felt their rights were respected.¹⁴

6) Recidivism

The rate of recidivism of offenders is significantly reduced when they are involved in the process of RJ, which can be beneficial

- In February 2010, the BOSCAR seminar showed that RJ is effective in relation to serious crime and with adult offenders. There has also been a 27% reduction in repeat convictions and 27% less crime among offenders who had been involved in the RJ process.¹⁵
- In regards to youth offending, a study conducted by the NSW Bureau of Crime Statistics reported that RJ schemes in the format of large-scale youth conferencing reduce re-offending rates by 15-20%.¹⁶
- RJ procedures have evidently had a positive impact in lowering recidivism rates in Winnipeg, Canada. The gap between RJ participants and probationers widens as the time-span for recidivism rates increases. The statistics from the Canadian study proves this trajectory trend: “In the first year, the RJ offenders had a recidivism rate of 15% compared to 38% for the probation group. In the second year the respective rates were 28% and 54% and by the third year the rates were 35% and 66%”.¹⁷
- Several studies conducted on an international scale focusing on RJ indicate that recidivism decreases by up to 7%, hence having a generally positive effect.¹⁸
- In the UK, it has been found that RJ, especially the Young Offenders’ programs, is a more cost-effective approach than the mainstream retributive justice system. This means that while reducing recidivism, RJ programs also bare significantly less financial burden, by up to 185 million pounds (\$AU 275 Million).¹⁹ Such studies also note the simple fact that a reduction in re-offending equates to a reduced fiscal demand from prison expenditure on taxpayers.
- Haverty also gives a strong indication of positive results of RJ practices via a recent study conducted by Lawrence Sherman. “Evaluations conducted by seven Cambridge led experiments in RJ showed that the experience of victim-mediation reduced reconviction and recidivism by 27%”.²⁰

7) Offenders living with mental illness and disability

¹³ M. Liebmann, What is RJ, *RJ: How it works*, (2007) 26.

¹⁴ M. Liebmann, What is RJ, *RJ: How it works*, (2007) 26.

¹⁵ Crime and Justice Bulletin, *RJ*, (2011) [20].

¹⁶ Australian Institute of Criminology, *RJ as a crime prevention measure*, Report No 20 (2004).

¹⁷ Public Safety Canada, *RJ and recidivism* <http://www.publicsafety.gc.ca/res/cor/sum/cprs200301_1-eng.aspx> at 3 March 2012.

¹⁸ D. Sullivan, L. Tiff, *Handbook Of RJ: A Global Perspective, RJ And Recidivism Promises Made, Promises Kept?* (New York 2006) 114.

¹⁹ RJ Council, *RJ Works* <http://www.restorativejustice.org.uk/restorative_justice_works/> at 31 January 2012.

²⁰ Martin Haverty, *RJ in Ireland: Present and Future Direction, Conclusion* (2009).

It has been established that people living with mental illness are more likely to come into contact with the criminal justice system²¹. While RJ initiatives have been successfully trialled and tested in different contexts of criminal justice, there has been less enthusiasm about adopting RJ approaches in forensic mental health settings. Within this context, it is often assumed that forensic mental health patients lack the capacity to take responsibility for their actions and so engaging in restorative programs would have negative outcomes for participants.

However, within the justice system, a relatively small number of forensic mental health patients are found not-guilty based on mental incapacity and the overwhelming majority that are charged are committed to engage in rehabilitation in which they should develop victim empathy and a relapse prevention plan²². These principles are in direct alignment with the principles of RJ. So, incorporating an RJ framework with contemporary psychological therapeutic approaches could offer greater engagement in self-reform and rehabilitation for offenders living with mental illness.

There is much common ground between RJ practices in criminal justice settings and therapeutic practices applied in forensic mental health settings²³. In both models, offenders are engaged in group negotiations and conflict resolution where they are held accountable by other group participants for their actions towards other individuals. While the focus of RJ is on facilitating a restorative process for victims, an alignment of RJ principles with psychological therapeutic models also offers the potential to lead to development of better psychological models of change and restitution for offenders²⁴.

Connection between Restorative Justice and mental health

Analysing Restorative Justice processes in the context of forensic mental health shows beneficial outcomes in mental health for both victims and offenders. One of the greatest strengths of a RJ model is that the victim is a tangible reality to the offender, rather than an abstract entity. This real presence of the victim also minimises chances of cognitive distortion that an offender may use to diminish the significance of the victim²⁵. This has the potential to develop empathy for the victim and also allows the victim to interact with the offender directly and process emotions of anger and grief.

²¹ http://www.buffalolawreview.org/past_issues/60_1/Hafemeister.pdf - p. 150

²² Gavrielides, Theo and Ebooks Corporation, *The Psychology of Restorative Justice: Managing the Power within* (Ashgate Publishing Limited, 2015)

²³ Gavrielides, Theo and Ebooks Corporation, *The Psychology of Restorative Justice: Managing the Power within* (Ashgate Publishing Limited, 2015)

²⁴ Gavrielides, Theo and Ebooks Corporation, *The Psychology of Restorative Justice: Managing the Power within* (Ashgate Publishing Limited, 2015)

²⁵ Gavrielides, Theo and Ebooks Corporation, *The Psychology of Restorative Justice: Managing the Power within* (Ashgate Publishing Limited, 2015)

Mental Health of Victims

- A victim described initially feeling 'helpless' and said that during the course of the intervention, they began to feel 'less of a victim'²⁶.
- By addressing and the psychological impacts faced by victims leads to a reduction of post-traumatic stress and can improve their overall mental health (Angel 2005; Angel et al. forthcoming)²⁷

Mental Health of Patients

International Case Studies

The United Kingdom²⁸

Fatal Collision - Joyride to Deathride (as narrated by Dennis)

In June 2005, the convict and his friend were riding in a borrowed car around 'Cow Hill', Grimsargh. The convict was driving while the deceased was in the passenger seat. The convict was driving at a speed in excess of 60 MPH. The car spiraled out of control and hit a stack of bricks and a wall, resulting in the convict getting injured and his friend being killed instantly.

In December 2006, over a year after the accident, the convict and the deceased's sister come face-to-face in the Thorncross Young Offender Institute.

Sister meets driver who killed her brother

They sat together, face-to-face in the Thorncross Young Offender Institute. The driver, in custody, and the sister of the young man he had killed. A Prison Officer was there for the offender, the Family Liaison Officer was there as support for the sister and the facilitator provided opportunities.

It was December 2006 when I asked, "What happened back in June 2005?" and in front of the deceased's sister the offender went silent. A long silence. After restorative prompting, including my allowing the silences to linger, he painfully described the fatal incident.

He was driving a borrowed car around 'Cow Hill', Grimsargh with his friend, the deceased, in the passenger seat. They both regularly drove cars even though disqualified. He explained how they came to be in that car, that night but it was hard to remember when everything was such a blur.

²⁶ Cook, Andy, Gerard Drennan and Margie M. Callanan, 'A Qualitative Exploration of the Experience of Restorative Approaches in a Forensic Mental Health Setting' (2015) 26 *The Journal of Forensic Psychiatry & Psychology* 510

²⁷ <https://aic.gov.au/publications/rpp/rpp127/impact-restorative-justice>

²⁸ <http://www.fairprocess.com/case-studies/63-fatal-collision-joyride-to-deathride>

He drove at speeds in excess of 60 MPH and fun turned to tragedy as the car, out of control, hit a stack of bricks and a wall. He was injured himself but his friend... her brother... was killed instantly.

He pleaded guilty at Preston Crown Court and was sentenced. There was even an unsuccessful attempt by the prosecution to increase the sentence. He'd had no insurance at the time and failed to provide a blood sample to test for alcohol or drugs. The court disqualified him from driving and gave him a 2½ years custodial sentence and he expected to be released in March 2007.

Affect

I asked, "Who he thought was affected by what happened?" The driver paused and then broke down into tears as he reeled off all those affected on both sides.

The sister talked about her brother and her family. She explained how her mother couldn't face the visit and that she had even kept it from her brothers, but she had questions and she wanted answers. She talked about how she felt the justice system had prevented her finding out what she needed but she listened intently to his answers now about what he did and what he was thinking.

Outcomes

The driver desperately stated how sorry he was and that he would happily swap places with her deceased brother. She had thought he was 'thick skinned' and did not care but now realised he had "genuine remorse."

I asked the sister what would help her family and, rather than punishment, she said through tears on both sides, "I want you to achieve something... in the name of my brother".

She didn't want him to hang around with criminals; he needs to keep out of trouble and only drive when legal. She also recognised that he needed help too and, despite having refused counselling in the past, he agreed to it now.

The driver stated that he wanted to visit the grave of his friend to say goodbye. This was a difficult point, as the rest of the family may not understand, but the sister wanted to help by arranging a visit later.

The outcome agreement may seem woolly to some but it is what the participants wanted:

1. Offender to undergo proper driver training when legitimate to do so;
2. Offender to undergo counselling prior to release. (1st session arranged for following day)
3. Sister to facilitate visit by offender to deceased's grave to say goodbye; and
4. if deceased's mother ever felt the need in future, he would agree to meet her for a restorative conference.

The Result

The sister stated at the conclusion that she found the process very helpful and therapeutic. She said she could rest easy now knowing that the offender was, “suffering as they were and not just glossing over it.” The offender also said that the meeting had done him good. The prison officer stated that in 12 months they had never been able to get beneath the offender's 'vener'. Never seen him affected like this - only seen anger and frustration.

On the route home the sister described how the restorative approach made the meeting a success. While she had not been sure what she was going to say, she had never expected to get under the offender's skin in the way that occurred in the meeting. The meeting certainly went better than I had ever envisaged.

Dennis Nicholson Police Sergeant 1023 Lancashire Constabulary (Facilitator) in collaboration with PC 932 Moore the Family Liaison Officer for the case. Reproduced by kind permission of Dennis and Lancashire Constabulary

The United States of America²⁹

A lesson in accountability (as narrated on the Restorative Justice Colorado webpage)

DARJ is the in-house restorative justice program of the Center for Prevention and Restorative Justice in the 20th Judicial District Attorney's Office. DARJ provides high-quality restorative services for juvenile and adult diversion participants including Community Group Conferencing, Victim Offender Dialogue, and Drug and Alcohol Accountability Support Circles (DAASC) for substance-related charges, and also partners with community-based RJ providers. Victims and harmed individuals, family members and supports, law enforcement, school personnel, and other community members are empowered to participate in a facilitated restorative justice process that supports the person who committed the crime to understand the impact of their actions, take meaningful responsibility, and repair the harm to the extent possible.

Meghan was referred to DARJ for restorative justice by her Diversion Coordinator. Her case involved drug charges as well as first degree criminal trespass. During our preconference with Meghan and her parents, she expressed deep regret for what had happened. She said she had entered the patio of her friend's apartment while they were away on vacation with the intention to smoke marijuana on the property. According to Meghan, she looked inside and saw the family's cat, but did not enter the apartment, and then she went around the corner in the courtyard to smoke. At this point, police officers entered the courtyard and asked her to get on the ground. Meghan shared that it was a terrifying situation for her. As we talked with her about what the circle with the victim, Carin, might be like, Meghan expressed that she wanted to meet her and apologize for the harm she caused. Carin is a neighbor of hers and the mother of her good friend, and Meghan wanted to do everything she could to make sure the relationship was restored.

²⁹[https://www.rjcolorado.org/literature 165186/Case Study - A Lesson In Accountability](https://www.rjcolorado.org/literature/165186/Case%20Study%20-%20A%20Lesson%20In%20Accountability)

We also let her know that the neighbor who called the police that night would be at the circle, and Meghan said she was interested in also apologizing to them.

During our preconference with Charles, the neighbor who had called the police, we learned that he lives directly across the courtyard from Carin and had been watching the home for her while she was out of town. Charles experienced something different than Meghan's account of the story; he said that he had walked through the courtyard to the apartment that night to feed the family's cat, and when he came around to the sliding glass door at the back of the apartment, he saw someone inside the house, looking around with a flashlight. Thinking that this person was robbing the house and may have been armed, Charles rushed back to his home, called the police, and then watched as they came to apprehend the intruder.

As facilitators, we had a dilemma: Meghan had denied being inside the apartment, but seeing someone in the home is what had had such a large impact on Charles. After much consideration, we decided to ask Meghan's permission to share with the neighbor that her account was different than theirs. Meghan knew from reading the police report that the neighbor thought she had been in the apartment, although in the preconference she had insisted that he must have seen a reflection. Despite this, Meghan had spoken with empathy and understanding about how scary it must have been for Charles to think there was someone in the apartment. After gaining Meghan's permission, we spoke with both Charles and Carin and asked how they would feel if, during the circle, Meghan did not admit to being in the apartment. They both said they were okay with that and still wanted to participate in the circle in order to let Meghan know how the incident affected them. Carin, Charles, Meghan, and her mom were present for the circle. After introductions, Meghan shared her version of the story, never saying that she was in the apartment. She spoke well of the impacts of her actions and apologized to both Carin and Charles. When Charles spoke about his experience, he declared that he was 99% positive that Meghan had been inside the apartment when he went into the courtyard. He told the rest of his story and explained how scared he had been that someone was robbing the house, and he spoke about the lasting impacts the incident had on him.

When we asked Meghan for her response to the impacts that had been shared, she looked at Charles and Carin, was silent for a few moments, and then said to Charles, "I was in the apartment. You're right. I was scared to say I was inside because I thought I'd get in more trouble. But I was in the apartment." She then apologized to Carin and Charles for not admitting this to them sooner. Charles stood up, walked across the circle, held out his hand to Meghan and said, "That's all I needed to hear. Thank you."

The agreement contained only good faith items including continuing Meghan's progress on Diversion and helping Carin the next time she needs someone to take care of her cat and plants. The circle was satisfied with how Meghan took responsibility during the conference and with her sincere and thoughtful expressions of remorse.

Our biggest learnings from this circle were to allow the victim and harmed parties to lead based on what they needed. We had initially been reluctant to proceed with a circle given that Meghan was not taking responsibility for being in the apartment. But by asking Charles and Carin what it would be like for them if she didn't admit it and giving them a choice and time to think it over, we were able to proceed with a process in which Meghan ultimately did take full responsibility. We feel she did this because we were able to tell her, based on our confidentiality practices and policy, that she could be honest

about what happened during the incident. Released from fear of further punishment, Meghan was able to admit her wrongdoing, take full and meaningful responsibility for its impact on her neighbors, and make amends with them during the circle.

RESEARCH NOTES ON RJ

RJ Supporting Sources:

- BOSCAR – Those processed through the Youth Justice conferences & those eligible for conference but processed through the Children’s Court found there was a ‘moderate reduction’ in reoffending among those who participated in conference.³⁰

RJ Legislation:

- Table 1 – RJ practices available in Australian criminal justice systems³¹

| | Youth conferencing | Adult conferencing | Victim–offender mediation | Circle sentencing |
|------------------------------|--------------------|--------------------|---------------------------|-------------------|
| New South Wales | ✓ | ✓ | ✓ | ✓ |
| Victoria | ✓ | | | |
| Queensland | ✓ | | ✓ | |
| South Australia | ✓ | ✓ | ✓ | |
| Western Australia | ✓ | | ✓ | ✓ |
| Northern Territory | ✓ | | ✓ | |
| Tasmania | ✓ | | ✓ | |
| Australian Capital Territory | ✓ | | | |

- NSW;
 - *Young Offenders Act (1997)* – used for youth conferencing, besides sexual assault, drug, traffic, offences causing death or breaches of AVOs
 - *Community Justice Centres Act (1983) NSW*
 - Section 28(4) - “evidence of anything said or of any admission made in the mediation session is not admissible in any proceedings, before any court, tribunal or body.”³²
 - *Criminal Procedure Regulation 2017* – *Circle sentencing*
- ACT;
 - *Crimes (RJ) Act (2004) ACT*³³
- VIC;
 - *Children, Youth and Families Act (2005) VIC*³⁴ – enables group conferences to be considered with deferral of sentence

³⁰ <https://www.bocsar.nsw.gov.au/Documents/CJB/cjb69.pdf>

³¹ <https://aic.gov.au/publications/rpp/rpp127/restorative-justice-australia>

³² [Community Justice Centres Act \(1983\) NSW](#)

³³ <file:///Users/ja12/Downloads/2004-65.pdf>

- QLD;
 - Youth Justice Act (1992) QLD³⁵
 - *Victims of Crime Assistance Act (2009) QLD*³⁶

Connection to Mental Health

Drennan, G., Cook, A., Kiernan, H. (2015). The psychology of restorative practice in forensic mental health recovery. In Gavrielides, T. (2015). *The psychology of RJ: Managing the power within*. Farnham, Surrey: Ashgate Publishing Limited.

- In the UK, there has been a rise in RJ in initiatives within criminal justice sector, but this is not equally correspond to it's practice in mental health settings.
- There is much common ground between RJ practices in criminal justice settings and therapeutic practices applied in forensic mental health settings. Which include a conflict and accountability and are negotiated within a group context.
- Alignment of psychological therapeutic models and RJ practices have the potential to lead to development of better psychological models of change and restitution.
- There is often an assumption that forensic mental health patients lack the capacity to take responsibility for their actions. However, within the justice system, a relatively small number of forensic mental health patients are found not-guilty based on mental incapacity and the overwhelming majority that are charged are committed to engage in rehabilitation in which they should develop victim empathy and a relapse prevention plan.
- A comprehensive model that incorporates elements of both RJ and psychological rehabilitation may need to consider dismantling binaries between offenders and victims, as often offenders have themselves been victims of crime.
- One of the greatest strengths of a RJ model is that the victim is a tangible reality rather than an abstract entity who can interact with the offender, holding moral integrity of having suffered wrong, but being able to acknowledge the humanity of the other. This real presence minimises chance of cognitive distortion on the part of the offender that they may use to diminish the significance of the victim.
- RJ should not be seen as an idealised moment of intervention but part of a skill-building therapeutic model of support for forensic mental health patients. Needs to be safe and sustainable.
- This is not to suggest that the recovery of the wrong-doer should be prioritised over the restorative needs of the victim.

Ward, T., Gannon, T. A., & Fortune, C. (2015). RJ–Informed moral acquaintance: Resolving the dual role problem in correctional and forensic practice. *Criminal Justice and Behavior*, 42(1), 45-57. doi:10.1177/0093854814550026

³⁴[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/15A4CD9FB84C7196CA2570D00022769A/\\$FILE/05-096a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/15A4CD9FB84C7196CA2570D00022769A/$FILE/05-096a.pdf)

³⁵<https://www.legislation.qld.gov.au/view/pdf/2017-03-30/act-1992-044>

³⁶<https://www.legislation.qld.gov.au/view/pdf/2017-07-01/act-2009-035>

RJ offers an overarching framework to resolve ethical dilemmas faced by practitioners in a forensic mental health setting.

In Forensic mental health settings, ethical dilemma exists for practitioners in seeking what is best for their clients and their wellbeing, while at the same time being under a strong mandate to reduce risk of re-offending and protecting the interests of the community. RJ offers a

Criminal Justice Practices need to find a way to balance protection and rehabilitation care goals. At its core, criminal justice practice should seek to repair damaged social relationships. This means the role of criminal justice is to go beyond risk management measures and aim for offender rehabilitation programs to fully encompass opportunities for offenders to engage in the process of self-reform.

Natural Allies

Victims' Support Organizations

Sources that may be useful:

http://www.buffalolawreview.org/past_issues/60_1/Hafemeister.pdf

<http://www.criminologyresearchcouncil.gov.au/reports/strang/report.pdf>

<https://www.bocsar.nsw.gov.au/Documents/CJB/cjb69.pdf>

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com.au/&httpsredir=1&article=1717&context=facpubs>

Benefits of RJ for victims

RJ provides significant benefits for both victims and offenders including assisting offenders in understanding and taking responsibility for harm to the victim, increased sense of fairness and improved mental health outcomes for victims including reduced symptoms of post-traumatic stress disorder and often experiencing less fear of revictimisation.

In regards to benefits for victims, studies has shown that victims who are involved in face-to-face RJ programs have experienced positive outcomes and felt they were treated fairly and with respect throughout the process.³⁷

https://associations.missouristate.edu/assets/moRJc/Benefits_of_RJ_Victims_Offender_Community.pdf

- Consistently high satisfaction rates for victims who participate in VOM/FGC; one multi-site study in 6 counties in Oregon found 89% satisfaction rate.: Marc Umbreit, Betty Voss, Robert Coates, and Elizabeth Lightfoot, 89 Marquette Law Review 251 (Winter 2005).
- Another in England found 84% satisfaction rate. Victims thought process was fairer than criminal prosecution (80% vs. 34% in control group going through traditional process): Marc Umbreit, Robert Coates, Betty Voss, Impact of RJ Conferencing: A Review of 63 Empirical Studies in 5 Countries , Center for RJ and Peacemaking, pg. 3 (2002)
- They were more likely to experience healing and emerging studies show less Post Traumatic Stress Symptoms: Lawrence W. Sherman and Heather Strang, RJ: The Evidence, Jerry Lee Institute Randomized Trials in RJ, pg. 64 The Smith Institute (2007)

³⁷ <https://aic.gov.au/publications/rpp/rpp127/impact-restorative-justice>

http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr01_9/rr01_9.pdf

- Umbreit noted that compared to the pre-mediation data, victims who participated in mediation were significantly less often upset about the crime after the mediation session. Similarly, victims were less often afraid of being revictimized by the offender (23% versus 10%). These findings suggest that mediation might have a positive impact on victims' emotions. Similarly, victims in the mediation group were more likely to state that they had experienced "fairness" in the processing of their case than victims in the comparison groups (83% for the mediation group, 53% for comparison group 1 and 62% for comparison group 2).
- Recently, the Research and Statistics Division of the Department of Justice published a meta-analysis on the effectiveness of RJ practices. They concluded that "participation in a RJ program resulted in higher victim satisfaction ratings when compared to a comparison group in all but one of the thirteen programs examined" (2001: 12). They found this difference to be significant.

file:///Users/justiceaction/Downloads/ubc_2014_spring_dwornik_ania.pdf

RJ: Linking the law with health

[Donaldson, Caitlyn. Perspectives in Public Health; London Vol. 130, Iss. 6, \(Nov 2010\): 254-5.](#)

- "victims state that one of their highest priorities is to experience psychological restoration and yet agree that this is rarely achieved through the courts."
- "Lots of research has shown that RJ can help improve the wellbeing of victims of crime. Reductions in anger and anxiety, increased self-confidence, feeling more emotionally settled and more forgiving were all demonstrated by Strang (2002). In addition, she found that most (54%) victims in her study said that RJ repaired the harm caused by the crime and apologies were significantly more likely to be given to victims participating in a conference than those assigned to court (72% compared to 19%)"
- Forgiveness is therefore seen by Worthington and Scherer (2004) as "the emotional juxtaposition of positive other-oriented emotions against negative unforgiveness, which eventually results in neutralization or replacement of all or part of those negative emotions with positive emotions". These positive emotions may include empathy, love or compassion. There is evidence that unforgiveness produces a stress reaction in the body, impacting the brain, endocrine system, sympathetic nervous system and blood chemistry. It has been shown that forgiving is linked to reduced unforgiveness (and therefore stress), as is receiving a sincere apology. Receiving an apology is often an important step towards forgiveness – and RJ is a useful tool for receiving an apology and for forgiving an offender. In addition, Sherman et al. (2005) suggest that RJ conferences help improve wellbeing by fulfilling the basic requirements of cognitive behavioural therapy (CBT), a very successful treatment for PTSD. The authors explain that cognitive behavioural therapy (which often involves forcing patients to relive situations that have caused anxiety) works by "normalizing" the context and players in the stressful event of the crime" and also by reducing "the common tendency to blame themselves for having somehow caused the crime". Hence, in CBT, individuals tend to become less fearful of events that have previously caused anxiety.

BELOW INFO IS FROM: Andy Cook, Gerard Drennan & Margie M. Callanan (2015) A qualitative exploration of the experience of restorative approaches in a forensic mental health setting, *The Journal of Forensic Psychiatry & Psychology*, 26:4, 510-531, DOI: 10.1080/14789949.2015.1034753 ³⁸

Mental Health of Victims

- A victim described initially feeling 'helpless' and said that during the course of the intervention, they began to feel 'less of a victim'³⁹.

Mental Health of Patients

- "A finding in this research was the sense that RJ complemented and contributed to the therapeutic goals of the service. References were made to the role of RJ in working with offence paralleling behaviour (Daffern, Jones, & Shine, 2010) on the ward, raising awareness of self and others, developing victim empathy, preparing for release/discharge, improving/mending family relationships and working towards offender and mental health recovery"
- "Results of this study indicate that treatment plans could usefully incorporate RJ practices as a supplemental approach that adds value to other aspects of rehabilitation and recovery"
- "Staff members found that the restorative process not only appealed to personal values, but also had a good fit with therapeutic goals. A facilitator said 'It asks people to take responsibility for their actions, to think about how things are going to be, how they're going to be different in future... Overall it has a much more sophisticated, mature feel to it than a more punitive [approach]'. Links were made with offence analysis work, victim empathy work, gaining insight, relapse prevention, reducing risk of recidivism, ability to reflect and working towards recovery."

One of the greatest strengths of a RJ model is that the victim is a tangible reality rather than an abstract entity who can interact with the offender, holding moral integrity of having suffered wrong, but being able to acknowledge the humanity of the other. This real presence minimises chance of cognitive distortion on the part of the offender that they may use to diminish the significance of the victim⁴⁰.

³⁸ Cook, Andy, Gerard Drennan and Margie M. Callanan, 'A Qualitative Exploration of the Experience of Restorative Approaches in a Forensic Mental Health Setting' (2015) 26 *The Journal of Forensic Psychiatry & Psychology* 510

³⁹ Cook, Andy, Gerard Drennan and Margie M. Callanan, 'A Qualitative Exploration of the Experience of Restorative Approaches in a Forensic Mental Health Setting' (2015) 26 *The Journal of Forensic Psychiatry & Psychology* 510

⁴⁰ Gavrielides, Theo and Ebooks Corporation, *The Psychology of Restorative Justice: Managing the Power within* (Ashgate Publishing Limited, 2015)

Ward, T., Gannon, T. A., & Fortune, C. (2015). RJ–Informed moral acquaintance: Resolving the dual role problem in correctional and forensic practice. *Criminal Justice and Behavior*, 42(1), 45-57. doi:10.1177/0093854814550026

RJ offers an overarching framework to resolve ethical dilemmas faced by practitioners in a forensic mental health setting.

In Forensic mental health settings, ethical dilemma exists for practitioners in seeking what is best for their clients and their wellbeing, while at the same time being under a strong mandate to reduce risk of re-offending and protecting the interests of the community.

Criminal Justice Practices need to find a way to balance protection and rehabilitation goals. At its core, criminal justice practice should seek to repair damaged social relationships. This means the role of criminal justice is to go beyond risk management measures and aim for offender rehabilitation programs to fully encompass opportunities for offenders to engage in the process of self-reform.

Importance of Facilitators

- Facilitators need to be highly skilled for RJ to bring positive outcomes
- under-skilled facilitators can be left reliant upon scripted narratives which do not lead to transformative outcomes and can lead to increased anger and resentment (Kenney & Clairmont, 2009). Umbreit, Bradshaw, and Coates (1999) investigated use of RJ approaches in cases of severe violence and similarly found that the work had a high level of emotional intensity, needed longer preparation and required advanced training for the facilitators. T

Gurnz, E. & Grant L. RJ: A Systematic Review of the Social Work Literature (2009) 119.
<https://pdfs.semanticscholar.org/8d6f/26fdad97408728abed376e026a2232493873.pdf>