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Restorative justice and violence against women: an effort to decrease the victim-offender overlap and increase healing

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Abstract

Opposition to using restorative justice to address violence against women mainly concerns the fear that women will be re-victimized if they engage with men who endangered them. While law enforcement and criminal justice approaches are necessary to address violence against women, women's choices about when and how to use law enforcement and prosecution to address violence against them, should be respected. Exclusive criminalization of violence against women has not protected many and has further harmed marginalized and Black people. To address intimate partner violence, victims' needs for healing must be met including when the victim-offender overlap applies and an offender is also a victim. Ignoring healing perpetuates violence. Applying restorative justice and its foundational questions, during direct meetings between victims and offenders, or when they meet separately, can address the victim-offender overlap, reduce reliance on punishment, and increase healing.

Keywords: Prison Nation, Reentry Circle, Public Health Approaches to Violence, Criminal Justice System, Victim-Offender Mediation, Family Group Conferencing, Gender Justice, Informal Social Control, Florynce Kennedy, Beth Richie, Dorothy Roberts, Howard Zehr

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While violence traditionally has been the domain of the criminal justice system . . . all sectors of society [should be involved] in prevention efforts. ~ Nelson Mandela (Krug, Dahlberg, Mercy, Zwi & Loranzo, 2002, p. 12)

Introduction

It is March 2016. Reiko, of Hawaiian, Japanese and Caucasian ancestry, is 46 years old. Her biological mother was 16 and biological father was 21 when she born and gave her up for adoption through Hawai'i's state child protective services. This is Reiko's story of victimization,

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to offending, to desistance and community service, in her own words, which she has reviewed and granted permission to publish:

When I was seven, my adoptive mom's boyfriend started standing outside my room at night and looking at me. Eventually he came in and sat on my bed. He touched me. I would pack on extra clothes, like wear five shirts and shorts, but he would find my private parts. He made me do things to him. I told my mother innocently *Oh, Uncle was in my room last night*. She didn't believe me. She said I was a liar. I think she was afraid of being alone and wanted him more than me.

I think she was abused herself and was angry I wasn't her real daughter. She beat me with anything she could grab. Once she beat me for being sick. I was coughing in bed with a fever. She came in and hit me in the head with her fists.

A lot of times she locked me in a closet. My imagination saved me from that. I would go in my mind and imagine a life where I was loved. She yelled all the time I was *stupid and not worth nothin.* I believed her and felt unworthy for years.

When I was eleven, I started sniffing paint and doin' drugs. I ran away. I met horrible people on the street. Guns were held at my head. The first time when I was raped; the second time when I was raped after I ripped off a drug dealer; and the third time when my boyfriend played Russian roulette with me.

I was put into foster care and lived in every group home on O'ahu. I ran away from all of 'em. I went mute when I was twelve and was put into the Hawai'i state mental hospital. I was locked up alone in a room. I did whatever I could to make 'em think I was crazy. I said I heard voices. Got so depressed I started believin' I really was crazy. Somehow I snapped out of it.

After I got out of the mental hospital, I assaulted someone. I was 13 and put into Ko'olau [Hawai'i's youth prison]. I was there until I turned 18 because I escaped twice and got more time.

I had my first baby when I was 18 and three more after that. The last one was born when I was in prison. I was shackled to the bed when I gave birth. He was taken from me and put into foster care. I haven't seen him since he was adopted around five months old in 2000. I held him in the judge's chambers and said goodbye. He is 16 years old today.

I abused my other three kids I had. Not as bad as my mom, but I was not good. I did a lot of crystal methamphetamine. I would fall asleep after being up for days. We lived in a house by the beach. I'd wake up and the kids would be playing by the ocean. They were little, like 12 months to 4 years old. I'd snap, and go off screaming and hitting 'em.

When I was 29, I got sentenced to prison—mostly for theft charges, but I also got into a lot of fights and assaulted dozens of women I had relationships with. I was a very angry person. It was my escaping from O triple C [Oahu Community Correctional Center] that got me a sentence of 40 years. I got out of prison when I was 44 years old, two years ago.

I always had a hard time learning in school. I was in special ed since elementary. I got motivated in prison to get my GED [General Educational Development] because my

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friends all were. The prison also paid us about 34 cents a hour to go to school for it. I passed the test after my third try.

Prison was a place of healing for me. I got treatment. It helped me see my worth. I wasn't just a broken unworthy child. Today I value integrity, and being responsible for myself. I work for a non-profit, helping women in prison come out and succeed. I want them to see if I could do it, they can too.

My biggest goal in life right now is to have a relationship with my kids. In 2012 when I was in prison, I had a restorative reentry circle. The circle helped me plan for how I could work on repairing things with my kids. Their paternal grandmother who raised them since I went to prison didn't come to the circle, but she gave information that was read. She asked me not to contact the kids until they were 18. I respected that. After they turned 18, I found 'em through Facebook. We stay in touch now with that. I'm careful respecting their boundaries. I don't push myself on them. They still have anger and resentment to me. I understand their disappointment. I made a lot of promises I broke. I do what I say I am gonna do now. My hope is that someday they see I can be trusted and know how much I love them.

Since being released from prison in 2014, Reiko has remained law abiding and works helping women transition from prison. She maintains her relationship with her children through social media, hoping for more involvement in the future.

Background

Unfortunately, Reiko's life story is not an aberration. Her experience of child abuse and violence is similar to the life paths of many thousands of people that the authors have worked with throughout their careers as lawyer, social worker and public health educator. Most of these people, both victims and offenders,¹ were involved in the child welfare, criminal justice, and corrections systems. Numerous times the authors acted as guardians ad litem for children and incapacitated adults in family court; assisted families accused of abuse and neglect; represented youth charged with crimes and status offenses; worked with imprisoned adults and juveniles—both male and female—along with their loved ones; and represented state agencies charged with negligence in the custody and care of foster youth and imprisoned people.

¹ The terms "victim" and "offender" are used here only for simplicity. The authors believe that people are always more than what has happened to them or what they have done in life.

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Reiko's experiences highlight the shortcomings of the criminal justice system in response to violence against women. In the United States, the criminal justice approach has utilized resources that would be better spent on prevention, and healing for people harmed and traumatized by violence. Failing to address the harms that victims like Reiko suffer, can lead to criminal and violent behavior.

To improve the criminal justice approach, the World Health Organization (WHO) suggests using public health to empower women and prevent domestic violence. Restorative justice practices apply public health learning principles (Walker & Greening, 2011). Restorative practices can be applied with or without the offender's participation, which can give women victimized by violence an opportunity to address harm and trauma, and to help them find healing (Walker, 2004).

Failure of Criminal Justice Approaches to Violence Against Women in the United States

Violence against women² is a problem that persists throughout the world today. In 2013 the WHO reported that “violence against women is not a small problem that only occurs in some pockets of society, but rather is a global public health problem of epidemic proportions, requiring urgent action” (2013, p. 36).

Despite the popularity of mandatory criminal justice interventions for intimate partner violence, it has not protected many women (Iyengar, 2007; Richie, 2012; Maguigan, 2003). Over a thirty-year period (between 1973 and 2003) “intimate partner homicide *increased* in states with mandatory arrest laws” (Iyengar, 2007, p. 17, emphasis added). Applying

² For this paper *violence against women* means men versus woman only, and includes intimate partner violence, domestic violence, and non-partner sexual violence, and uses these terms interchangeably. The authors agree with Goldscheid (2014) that gender-neutral terms are more helpful for achieving the goal of equality rather than the sex classification term *violence against women* used here and throughout the literature. The authors also acknowledge that intimate violence is not confined only to men against women, but here they only address those relationships, and not other types including women against men, lesbian, transgender, etc.

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criminalization instead of prevention has caused further harm for marginalized people, especially women of color.

The federal Violence Against Women Act (VAWA) was originally enacted as part of the expansive Violent Crime Control Law Enforcement Act of 1994, which was “one of the most comprehensive, far-reaching crime bills in the history of the United States” (Richie, 2013, p. 85). The 1994 law funded state law enforcement positions, prisons, and prevention programs (United States Congress, 1994). VAWA has been reauthorized several times, most recently in 2013. The law originally provided funding for states that enacted “mandatory arrests” in domestic violence cases. Later the law dropped the “mandatory” provision to “pro arrest” (United States Congress, 2013). As of 2010, however, no states with mandatory arrest provisions had eliminated them (SAVE, 2016).

Jeremy Travis, president of New York’s John Jay College of Criminal Justice, originally supported the law, but twenty years after its enactment he believed that using mandatory imprisonment for crime control was a “terrible mistake” (National Public Radio, 2014, p. 1). Travis led a National Research Council panel that published a massive report on American incarceration policies and its consequences, which found only a modest relationship between imprisonment and lower crime rates (National Research Council, 2014). The report also found that the prison industry has had major negative impacts on American society.

The influence of economic interests that profit from high rates of incarceration grew at all levels of government, due in part to a “revolving door” that emerged between the corrections industry and the public sector. Another factor was the establishment of powerful, effective, and well-funded lobbying groups to represent the interests of the growing corrections sector. The private prison industry and other companies that benefit from large prison populations have expended substantial effort and resources in lobbying for more punitive laws and for fewer restrictions on the use of prison labor and private prisons (National Research Council, 2014, p. 126, references omitted).

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Despite the damage that prison causes individuals and communities, the US prison industry grew from about \$7 billion dollars in 1980 to nearly \$80 billion in 2010 (Stevenson, 2014).

Prisons are harmful for incarcerated people and for the people who work in them (Zimbardo, 2007). The United States is the *prison nation* (Richie, 2012), imprisoning 2.3 million people or 707 out of every 100,000 people in the country. The United States surpasses all other countries by imprisoning 67% more people than Russia, the second largest incarcerator in the world, with about 474 per 100,000. The US also incarcerates a higher number of people who are not dangerous (Cabral & Saussier, 2012). In contrast, Finland incarcerates the least number of people, 58 per 100,000 (International Centre for Prison Studies, 2013). Yet, the US has “23 times more” crime than Finland, including 80% more rapes (NationMaster, 2016, p. 1).

American prisons are known for housing inordinate numbers of people who seriously abuse substances, yet go untreated while incarcerated. An alarming irony of the American *war on drugs* is that drug users condemned to prison often receive no treatment for their addictions (Hari, 2015).

Those suffering from mental illness too have been criminalized in the US where they are more often imprisoned than provided treatment.

In 2012, there were estimated to be 356,268 inmates with severe mental illness in prisons and jails. There were also approximately 35,000 patients with severe mental illness in state psychiatric hospitals. Thus, the number of mentally ill persons in prisons and jails was 10 times the number remaining in state hospitals (Torrey, et al, 2014, p. 6).

U.S. prisons also harm communities by shifting resources away from areas that have positive results including education, which prevents crime (Lochner & Moretti, 2003). Education is negatively correlated with incarceration and correlates to the wide gap between the number of

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white and Black³ American men who are incarcerated (Lochner & Moretti, 2001). Finland illustrates the importance of education by having the world's lowest prison population and the top fifth public school system. Finland schools rank below only four Asian countries, also with far less imprisonment rates than the US (Pearson, 2016).

Beth Richie, professor of African American studies and criminology, examines “the ways that race/ethnicity and social position affect women's experience of violence and incarceration, focusing on the experiences of African American battered women and sexual assault survivors” (University of Illinois, 2016, p.1). According to Richie, “Black women challenged the strategies and decision-making structures of white-dominated institutions and protested imbalances in power in feminist anti-violence organizations, drawing attention to the ways that anti-violence work was reflective of general trends associated with the buildup of America’s prison nation” (2012, p. 149).

Similarly, Florynce Kennedy, civil rights activist and lawyer, tried to persuade early feminists to include racism in the women’s rights movement to ensure equality, but her arguments were rejected (Randolph, 2015). Kennedy also argued for material resources to help people in the Black community achieve equality. Richie continues Kennedy’s call for recognition that “race is as central to the analysis of what is happening to women as class” and further emphasizes that Black women “being criminalized because they are poor is tantamount to institutionalized racism” (Richie, 2012, p. 114).

Being poor and involved in domestic violence are related. The University of California’s Center for Poverty reports that “Poverty increases the risk for family violence” including

³ The authors agree with Ruttenberg (1994) and Visconti (2009) on why Black is capitalized while white is not. Black people in the US represent a specific cultural group while most white people identify with other cultures, e.g. Jewish, Irish, Basque, etc.

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intimate partner violence and child abuse (Maurer, 2015, p. 2). Intimate partner violence and homelessness are significantly correlated. Because a disproportionate number of public housing residents are Black women, threats to public housing are another example of how poverty is criminalized and racism is institutionalized (Richie, p.115).

According to Dorothy Roberts, scholar and racism expert, “As a result of the political choice to fund punitive instead of supportive programs, criminal justice and child welfare supervision is pervasive in poor Black communities (2002, p. 206). Rather than investing in education and violence prevention, investments in the criminal justice system have segregated poor Black communities further (Richie, 2012). The support for a criminal justice approach to address gender violence has resulted in a lack of antiviolence programming to assist victims and rehabilitate offenders (Heise, 2011).

Dorothy Roberts has also documented how prison support has harmed the community:

The monumental investment in prisons comes at the cost of disinvestment in other social institutions that serve the communities that produce the inmate population. The tens of billions of dollars spent each year on building the prison industrial complex were taken from other social systems that educate, house, and heal poor children (Roberts, 2002, p. 206).

To the extent that marginalized people experience disparate treatment by the criminal justice system, these populations are overrepresented in child welfare, foster care, and prisons. In Reiko’s home state Hawai‘i, criminal justice instead of educational and social investments have resulted in Native Hawaiians representing half of the foster placements, being imprisoned more, and suffering greater poverty compared to other populations (Perez, 2015; Office of Hawaiian Affairs, 2010). Additionally, the average educational level for an imprisoned person in Hawai‘i is the sixth grade. Yet, the state continues to invest in prisons with plans to build a new prison estimated to cost 1.5 to 2 billion dollars (Hawai‘i Twenty-Eighth Legislature, 2016) for its

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population of about 1.4 million (State of Hawai‘i (2015).

Hawai‘i contracts with Corrections Corporation of America (CCA), a for-profit private prison company, to incarcerate almost 2000 people in Arizona. CCA’s Hawai‘i lobbyists were paid over \$200,000 during a two-year period (Jacobs, 2015). If Hawai‘i invested more in education instead of prisons, Reiko might have had better opportunities for a crime free life with specialized education to address her learning disabilities. Her learning problems left unresolved likely contributed to her eventually abusing substances, which is common for minors involved with the justice system (Keilitz & Dunivant, 1986).

Public Health Responses to Violence Prevention

While laws against intimate partner violence are necessary, the criminal justice system alone is inadequate to resolve and prevent the problem (Peterson, 2008). While law enforcement is necessary, a wider approach is needed to effectively deal with domestic violence. An approach is needed that addresses the social structural factors that law enforcement cannot address (Erez, 2002). “Currently, on the whole, sufficient evidence of the deterrent effect of criminal justice system responses on intimate partner and sexual violence is still lacking” (Dahlberg & Butchart, 2005; cited in WHO, 2010, p. 36).

Richard Peterson, research director for the New York City Criminal Justice Agency, advises:

It is time to correct the imbalance between the criminal justice response and other responses to IPV. We need more time, effort, and resources for programmes that empower battered women, promote informal social control, and, most importantly, prevent individuals from committing acts of IPV. To reduce IPV, we need to move beyond responding to victims toward investing more in the prevention of IPV from happening in the first place (Heise, 2011, p. 72).

Public health works to prevent violence, while law enforcement and the criminal justice

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system react to crime primarily by identifying and punishing the people who caused it. Public health approaches “focus on changing the social, behavioral and environmental factors that cause violence” (Mercy, Rosenberg, Powell, Broome & Roper, 1993, p. 8).

Economic and social problems such as poverty, joblessness, and racism are inextricably linked to violence in our society. In the final analysis, if violence is to be prevented, these fundamental societal issues must be addressed at the same time that we take whatever immediate actions possible to prevent violence (Mercy, et al, 1993, p. 24).

The WHO advocates: “The public health approach to prevention is intended to complement criminal justice-based approaches” (2010, p. 2). The WHO recognizes:

At present, the bulk of the limited human and financial resources expended in the area of intimate partner and sexual violence are devoted to the treatment, management and support of victims (who often do not seek out services until they are older) and the arrest and incarceration of perpetrators. Drawing lessons from a public health perspective means however that a similarly strong emphasis should now be placed upon the primary prevention of intimate partner and sexual violence (WHO, 2010, p. 8).

Public health addresses violence prevention by healing the wounds it causes, and repairing damaged relationships:

Unlike the criminal justice model, the public health model focuses on healing the wounds of violence because of its perception that violence is a disease that is difficult to contain. In turn, the public health approach emphasizes the importance of healing the individual victim's physical and emotional wounds and reestablishing the victim's and offender's connection to one another and to the community. This approach is designed to prevent the spread of more violence (Monterastelli, 2002, p. 244).

The WHO recommends the following prevention interventions for violence against women:

[C]hallenging social norms that support male authority and control over women and that condone violence against women; reducing levels of childhood exposure to violence; reforming discriminatory family law; strengthening women's economic rights; eliminating gender inequities in access to formal wage employment and secondary education; and, at an individual level, addressing harmful use of alcohol (2013 p. 36, references omitted).

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A public health approach to violence prevention consists of three levels: primary, secondary, and tertiary. The primary level seeks to prevent violence from ever occurring; the secondary level of prevention provides immediate responses to violence including medical care; and the tertiary prevention level helps people deal with the aftermath of violence including victim trauma and offender rehabilitation (Center for Disease Control, 2016). These last two levels represent “the bulk of the limited human and financial resources expended in the area of intimate partner and sexual violence” (WHO, 2010, p. 8).

Prevention efforts require valuing women in all social, economic, political and family arenas by empowering them with education, adequate employment, and child support, as well as changing the values, beliefs and behaviors of men that condone and commit violence against women. This necessary shift is unlikely if resources continue to support punitive approaches over prevention needs.

The WHO reviewed intimate partner violence prevention programs including Hawai‘i’s *Healthy Start* intervention. This home visitation program for at-risk families showed that mothers were less likely to be violent toward their children, and less likely to be victimized themselves by intimate partner violence (Bair-Merrit, et al., 2009). Unfortunately, the Healthy Start program, once a statewide program, it is now only available in two limited areas on O‘ahu island (Hawai‘i Department of Health, 2016).

Restorative Justice to Address Violence Against Women

According to Howard Zehr, one of the world’s most renowned restorative justice scholars:

Restorative justice emerged in the 1970s as an effort to correct some of the weaknesses of the western legal system while building on its strengths. An area of

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special concern has been the neglect of victims and their needs; legal justice is largely about what to do with offenders. It has also been driven by a desire to hold offenders truly accountable. Recognizing that punishment is often ineffective, restorative justice aims at helping offenders to recognize the harm they have caused and encouraging them to repair the harm, to the extent it is possible. Rather than obsessing about whether offenders get what they deserve, restorative justice focuses on repairing the harm of crime and engaging individuals and community members in the process (Zehr, 2013, p. 7).

While there is no universal definition of restorative justice (Gavrielides, 2007), it is a concept in human history as old as “acephalous societies” (Gavrielides, 2011, p. 1).

RJ practices provide opportunities for finding harmony and healing after wrongdoing. While RJ does not help everyone, it has been shown to help those most troubled and difficult to treat. People diagnosed as psychotic who participated in RJ practices developed empathy while they previously lacked it (Reisel, 2015).

Restorative justice views crime as harm to relationships between people and communities. RJ is concerned with repairing harm by meeting victims’, offenders’ and communities’ needs, including being accountable and responsible (Zehr, 1990; Zehr, 1997). RJ practices apply public health learning principles to wrongdoing that can help people recover from trauma, heal, and move forward with their lives (Walker & Greening, 2009; Walker, et al, 2015). Restorative justice is a “health equity practice” (Witt, 2014, p.1).

Because Europe has the lowest prevalence of violence against women, examining how it approaches the problem is instructive. Since 1999 European governing bodies have recommended guidelines for member states to develop legislation for using victim offender-mediation in penal matters, a common restorative practice (Council of Europe, 1999). In 2012, the European Parliament issued a directive superseding prior guidelines dealing with victim rights. “Directive 2012/29/EU” established “minimum standards on the rights, support and

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protection of victims of crimes” (Journal of the European Union, 2012). The European Union’s (EU) 2012 mandate included a restorative justice provision.

- (46) Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process. Restorative justice processes should, in principle, be confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest (Journal of the European Union, 2012, p.6).

In August 2016, the United Kingdom’s House of Commons issued a report on restorative justice acknowledging it could be used for domestic violence despite arguments against it:

Our attention was drawn to doubts around the use of restorative justice in cases of sexual offences, domestic abuse and hate crime. In particular we received submissions concerned with the appropriateness of restorative justice in cases of domestic abuse. While acknowledging the real and substantial risks, our view is that, while restorative justice will not be appropriate in every case, it should not be excluded simply by reason of the type of offence committed (House of Commons, 2016, p. 3).

To strengthen crime prevention against women the UN suggests that countries develop guidelines for applying RJ in violence against women cases that protect safety, confidentiality, and personal agency (2014).

The restorative justice process must offer the same or greater measures of protection of the victim’s safety as does the criminal justice process; The referral to the restorative justice process is made after the perpetrator has been charged with a crime and with approval of prosecutor or investigative judge; Determination by trained and qualified personnel that the case is not high-risk; and The victim is fully informed and has consented (UN, 2014, p. 74).

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Restorative justice practices can empower people who have been harmed by wrongdoing (Braithwaite, 2002). RJ practices are a way for communities to create and increase cohesion and efficacy (Block, 2008). Challenged neighborhoods can benefit from informal social control to prevent violence (Sampson, et al, 1997). RJ helps generate social capital and informal control by providing small group dialogues for people to build understanding and relationships.

The criminal justice system was used early in Reiko's life unsuccessfully. While she benefitted from RJ while imprisoned as an adult by participating in a restorative reentry circle, Reiko could have been helped in her youth if RJ had been available. Extensive research on experimental studies of juvenile diversion recommends, "restorative justice interventions like family group conferencing and victim-offender mediation" as effective interventions (Schwalbe, Gearing, MacKenzie, Brewer & Ibrahim, 2012, p. 32).

Family group conferencing (FGC) is a restorative practice that began in New Zealand and spread to the United States in the 1990s (Immarigeon, 1996). It is used in many countries for family violence in child welfare cases. '*Ohana conferencing* is Hawai'i's FGC model. Since 1996, it has served thousands of families similar to Reiko's with positive results including fewer child foster placements, fewer parental right terminations, and less court interventions (Walker, 2005).

Restorative Justice for Addressing the Victim-Offender Overlap

The *victim-offender overlap* is one of the most consistent findings in criminology (Lauritsen & Laub 2007). Victims and offenders have been described as "often the same individuals" (Wolfgang 1957; Singer 1981; Jensen & Brownfield 1986; Lauritsen et al. 1991; Sampson & Lauritsen 1994; all cited in Shaffer, 2004, p. 1).

A comprehensive literature review of 37 studies researching the relationship between

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victimization and offending, over a 50-year period (1958 to 2011), illustrates that “victims and offenders share histories of violent behavior, property arrests, lifestyle characteristics, and neighborhood characteristics” (Jennings, Piquero & Reingle, 2012, p. 20). Moreover, the victim-offender overlap is consistent “in the United States as well as other countries, over time, across various contexts, and within various demographic subgroups.” Additionally, “the greatest overlap appears to be among the most severe crimes, particularly homicide” (Jennings, Piquero & Reingle 2012; Lauritsen & Laub 2007; cited in Tillyer & Wright, 2014, p. 34).

Reiko is an example of the victim-offender overlap. She was victimized for much of her life and later behaved in offensive and assaultive ways. “Often, after continuous acts of victimization, one abandons the role of the victim to take on the role of the offender in order to survive” (Gaffney, 2012, p. 1).

While the victim-offender overlap is widely recognized, little research has been conducted on its relationship to violence against women (Tillyer & Wright, 2014). Instead, the main emphasis in violence against women research has distinguished offenders from victims, and focused on their differences.

The most prevalent treatment theories for domestic violence assume clear differences and a monolithic group of males exercising dominion and control over women, e.g., the *Duluth Model* of “power and control” (Gondolf, 2007). While male domination of females certainly exists, addressing the problem solely as *offenders vs. victims*, is a limited way to understand violence against women.

Researchers suggest that victim-offender overlap be considered in studying violence against women:

[I]f we consider that at least some instances of IPV might be better understood as

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conflicts that are not necessarily used for domination and control purposes, but which nonetheless occur within intimate settings, an investigation of the victim-offender overlap with respect to IPV becomes more tenable (Tillyer & Wright, 2014, p. 31).

The most common type of intimate partner violence for instance is perpetuated by both men and women resulting from escalating arguments into minor forms of violence, such as pushing or shoving and verbal attacks, which is unlikely to escalate and usually stops after separation (Kelly & Johnson, 2008).

Reiko's history demonstrates the implausibility of simply categorizing her as an offender, even though she harmed others. She was abused by her adoptive mother; sexually abused and not believed when she reported it to her mother; used illegal substances and ran away at age eleven; and was involved in the juvenile justice system as a young teen. Her early trauma resulted in her becoming mute for some time, and eventually confined in a state mental health facility. She spent many of her adolescent years in a youth correctional facility and almost 20 years of her adult life in a women's correctional facility, mainly because she escaped. Reiko was victimized in many ways. She was not safe while under the responsibility of foster care and child welfare. She was punished instead of treated by the juvenile justice system. The educational system did not address her learning problems effectively. She was left without the skills or resources to adequately survive when she emancipated at age 18. Unsurprisingly, her life situation required her to survive as a young adult and the overlap became prominent. As an adult she used drugs, committed crimes, and engaged in the maltreatment of her own children. Her harmful behaviors and the failure of the social systems she was involved in, led her to imprisonment. While incarcerated Reiko earned her GED, which was key to being able to function when she was released. She has been employed since her release being of service to others. Her desistance, despite being caught in the victim-offender overlap, is a testament to her resiliency and hard

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work.

Restorative Practices Applications Without Victim and Offender Encounters

Restorative practices apply restorative justice philosophy (Strang & Braithwaite, 2000). RJ practices give individuals affected by specific incidents of crime the opportunity to meet and discuss their needs, and how to repair the harm. Healing⁴ harm is the foundation of restorative justice (Zehr, 1997).

The quintessential RJ practice is an encounter between a victim, offender, each party's respective supporters, and any other affected members of the community. Together individuals affected by a specific incidence of wrongdoing meet to discuss questions, which Howard Zehr (1997, p. 55) believes are the essence of restorative justice:

1. *Who has been hurt?*
2. *What are their needs?*
3. *Whose obligations are these?*
4. *Who has a stake in this situation?*
5. *What is the appropriate process to involve stakeholders in an effort to put things right?*

RJ can be applied at many levels (McCold & Wachtel, 2002; Koss, 2014) and does not require direct victim and offender encounters to help people heal. People can consider Zehr's fundamental RJ questions for healing without face-to-face meetings.

Often victims and offenders cannot meet for a variety of reasons. First, RJ is voluntary and not all parties want to meet. Second, many people do not know who hurt them. Most reported crime goes without anyone arrested. In 2014, only 47.4 percent of all reported violent

⁴ Healing was quantified in a study of children who participated in reentry circles for their imprisoned parents (Walker, Tarutani & McKibbin, 2015) is discussed supra.

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crimes and only 20.2 percent of property crimes in the US resulted in an arrest (Federal Bureau of Investigation, 2014). Oftentimes people also commit crimes against strangers and do not know who they harmed. Third, people in prison are not always allowed to meet with victims even if the parties want to meet.

Victims have met with facilitators, with or without supporters, to discuss how they were harmed and what could be done to help repair the harm (Walker, 2004). These processes have helped victims engage in less rumination about the crime and helped them address any shame and guilt they might feel.

One woman, who participated in a restorative process without the offender, resolved suffering she experienced for a decade after being harmed (Walker, 2004). She was working as a store clerk and robbed at gunpoint. When the robber asked for the safe's combination she told him she did not know it when in truth she did. After he left her tied up on the floor, she was terrified he would come back and kill her. She worried her children would lose their mother because she lied to the robber. Later in court, when she was cross-examined, and her credibility was challenged, she felt additional guilt and shame.

Her restorative meeting was held ten years after the robbery that she was "still haunted by" (Walker, 2004, p. 1). Six months after participating in a restorative meeting with two facilitators addressing Zehr's essential RJ questions, she said it "helped me a lot. I used to think about the robbery all the time." She found the RJ process helped her "not worry about it anymore" (Walker, 2004, p.1).

Additionally, offenders can engage in restorative processes to deal with their behavior in positive ways (Walker & Hayashi, 2007; Walker & Sakai, 2006). Imprisoned people can meet with loved ones in restorative reentry circles and discuss how they harmed others, and what they

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can do to make things right (Walker & Greening, 2013).

Hawai'i's experiments with a restorative reentry circle process have been evaluated for its healing benefits for children of imprisoned parents. Children who participated in a restorative reentry circle for a parent reported increased ability in dealing with the trauma of losing a parent, decreased rumination of painful memories, and increased optimism about the future (Walker, Tarutani & McKibbon, 2015).

The reentry circles have also been evaluated for recidivism outcomes (Davidson, 2016). Arrest rates three years after release from prison for imprisoned people who had circles, were compared with imprisoned people who applied for a circle, but did not participate in one. They did not receive a circle most often because they left prison before one could be provided. Those who had circles were significantly more likely to remain arrest free than those who did not have circles. Additionally, the imprisoned people's average rate of re-arrest after having a circle was significantly less than the state's average recidivism rate for anyone released from prison three years earlier.

Restorative Justice for Victim Autonomy

Mandatory prosecution for violence against women has been the prevalent approach for over 25 years, but the problem continues (Pickert, 2013), even for white middle class women who are its primary beneficiaries in the United States (Richie, 2012; Ruttenberg, 1994).

Mandatory criminalization of gender violence is problematic for many reasons. Besides creating further marginalization of Black people by criminalizing more Black men, it is highly paternalistic. Marian Ruttenberg, a law student in 1994, correctly predicted that mandatory arrest would further harm Black people. She also pointed out that "increased state controls over family relations, however abusive or oppressive, strengthen the patriarchy from which feminists

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struggle to free themselves (1994, p. 184). Similar arguments have been made by Mills (2006), Goodmark (2015) and Coker & Macquoid, (2015). Further, “[u]niform policies of mandatory arrest rob women of choice and are oversimplified, given the varied domestic situations women face and the strategies they choose to deal with abuse” (Koss, 2000, p. 1).

Lawyers Johnsen and Robertson (2016, p. 1585), argue that “victim autonomy” is important for allowing therapeutic and restorative interventions in domestic violence protective order cases. Robertson is a prosecutor in Philadelphia.

Restorative Justice as an Alternative to the Criminal Justice System

Restorative practices, compared to criminal justice interventions, have been shown to be more effective at preventing repeat criminal behavior, especially for serious offenses (Sherman & Strang, 2007). Just as important, victims and others affected by crime prefer RJ practices compared to other interventions. Restorative practices have also been shown to reduce post-traumatic stress and the “desire for violent revenge” (Sherman & Strang, 2007 p. 7).

Linda Mills, New York University professor and dean, describes the advantages of using a restorative approach for domestic violence. Mills personal experience of intimate partner violence gives her a unique understanding of the criminal justice system’s failure to address this serious problem (Mills, 2003). Mills and her colleagues conducted a “randomized controlled trial with 152 domestic violence cases randomly assigned to either” a commonly court mandated “Batterer Intervention Program” or a restorative justice process (Mills, Barocas & Ariel, 2013 p. 65). Results showed no difference in recidivism between offenders in either group, but did establish that RJ processes resulted in outcomes no worse for participants compared to the regularly court ordered interventions. This research “joins a growing body of evidence that

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suggests that restorative justice should be viewed as a viable treatment alternative to addressing criminal behavior” (Mills, Barocas & Ariel, 2013, p. 86).

Despite fears that a power imbalance between men and women outweigh the benefits from any meetings between intimate partner violence offenders and women, public health and family therapy professionals advocate for couples treatment interventions based on positive research results (Stuart, et al, 2007; Stith, et al, 2004). Additionally, treating family and intimate partner violence with RJ is not a new concept. The successful family group conference model commonly used for child welfare has been addressing domestic violence for many years (Nixon, Burford, Quinn & Edelbaum, 2005).

The foundational elements of applying restorative justice include the fundamental questions, which can be asked of women who have been harmed by violence. Feminist critics and others often ignore these foundational elements concerning the use of restorative justice for violence against women. Daly (2005) cites victim safety, power imbalances, pressure on victims, mixed loyalties of supporters, little behavior change in offender, and negative symbolic implications. Stubbs (2002) did a control-based analysis of the role of RJ’s use in DV cases, noting that offenders’ coercive tactics are meaningful, strategic, subtle and often embedded in deeply held beliefs or cultural dimensions. Neither critic considers how processing RJ’s fundamental questions could benefit women who have been harmed in intimate partner abuse cases.

Considering the fundamental elements of a restorative practice is important because it is through the individual reflection of the questions asked by Zehr (1997) that a harmed person can find what they uniquely need to cope with their situation. The individuals who harmed others, and the community too, can benefit from considering these questions.

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Most people who research and report on restorative practices confine their study to face-to-face meetings between victims and offenders. Women who have suffered from domestic violence, however, can use RJ processes without meeting with the men who harmed them (Walker & Hayashi, 2009).

Restorative Justice is Empowering

Rather than paternalistic, autocratic and adversarial, restorative justice is strength based and respects individuals as the agents of their own lives. RJ practices assume individuals can be accountable, know how they have been affected by wrongdoing, and know what they need to repair harm they have suffered or that they have caused.

The strengths perspective for empowerment assumes that: “Despite life’s struggles, all persons possess strengths that can be marshaled to improve the quality of their lives” (De Jong & Berg, 2013, p. 9). Each individual is the best expert of her own life. Each person knows what they have tried, what was successful, and what was not in dealing with their problems. No professional, nor anyone else, is more qualified than the person harmed by crime to know what is needed to make things right.

Women should be given the choice to call the police whenever violence is committed against them, and it should be up to them to decide whether or not they want to press charges and have offenders prosecuted. Additionally, women should be given the choice to participate in RJ instead of prosecutions. Arguments that promote an *intersectional* analysis of Black women’s experiences underscore the importance of this. Intersectionality is a term developed by women of color activists and popularized by Black legal scholar Kimberle’ Crenshaw in 1989. This concept describes: “the way multiple oppressions are experienced” by Black women. Racism and sexism are “multiple oppressions [that] are not each suffered separately but rather as a single,

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synthesized experience” (Smith, 2014, p. 1).

Giving Black women the opportunity to engage in RJ instead of, or in addition to, the criminal justice system, makes it more likely they can consider and determine how they might deal with the complex and harsh discrimination they face. Moreover, that marginalized women suffer from the criminalization of gender violence alone warrants this approach. “Support for mandatory arrest statutes excludes Black women because these statutes conflict with the goals of eradicating racism and violence against women” (Ruttenberg, 1994, p. 180).

American society, and its criminal justice system suffer from racism (Nesbit, 2015). The disproportionate numbers of people of color, especially Black people, subjected to the criminal justice system, has been clearly established (Stevenson, 2014). And “while the state has always been a protector of some rights, it has also been an agent of control over people who are more socially marginalized” (Richie, 2012, p.107).

Hawai‘i practitioners subscribe to a culturally competent approach, one that moves away from a predetermined assessment framework to focus on the unique aspects of culture that reflect the worldview, values and traditions of the client (Hurdle, 2002). Problems, including domestic violence and intimate partner violence are not new concepts, they existed prior to colonization (Kanuha, 2004). Incorporating culturally relevant interventions empowers women of color to use their own means for resolving their own problems (Mokuau, Garlock-Tuiali‘i & Lee, 2008). A common family conflict resolution practice utilized in Hawaiian culture is *ho‘oponopono*, which principles can be adapted to other cultural groups to develop approaches unique to them (Hurdle, 2002).

Many have advocated that ethnic groups, especially Black people and other people of color, be respected to decide for themselves how best to address violence (Richie, 2012;

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Ruttenberg, 1994).

Hawai'i's experience shows that RJ practices resonate with Native Hawaiians because of familiarity with similar *ho'oponopono* processes. This has helped those who have harmed others, and it has helped those who have been harmed. Empowerment gives individuals the power to heal in a manner consistent with their own beliefs and values. The government and professionals do not empower women when they hold the power, and dictate what women must do to address violence.

Conclusion

It is past time for policymakers to listen to what Florynce Kennedy, and others including Ruttenberg, 1997; Coker, 2001; Mills, 2008; and Richie, 2012 have advised. Instead of mandatory law enforcement to stop domestic violence, resources must go into prevention to empower women to help themselves stay safe.

Girls and women who have been harmed can find healing and empowerment from restorative processes. Girls that have been harmed need opportunities, including education, to ensure employment and independence, which are empowering and can prevent dependence on dominate men. Girls and women, such as Reiko, need opportunities to heal as well, and the opportunity to be accountable and to repair any harm they caused, which restorative processes achieve. Equally important, all incarcerated girls and women can benefit from reentry planning that includes educational goals and support from friends and family through healed relationships (Walker & Greening, 2011).

Violence against women should be a crime. Women should always have the right to call the police and have anyone arrested who is violent toward them. Women should also have the right to drop charges for any reason they choose. While the criminal justice system is necessary

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to address violence against women, it should be complimented by public health prevention, including restorative strategies. Giving women the opportunity to engage in RJ practices, with or without the offender, addresses the victim-offender overlap, and promotes healing.

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