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Restorative Approaches to Intimate Partner Violence and Sexual Harm

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Restorative Approaches to Intimate Partner Violence and Sexual Harm

DONNA COKER[†]

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I. INTRODUCTION

The last several years have seen a dramatic increased interest in the U.S. for the use of Restorative Justice (RJ) responses to intimate partner violence (IPV) and sexual harm.¹ This change is most apparent in sectors of the mainstream feminist anti-violence movement and is reflected (unevenly) in public policies. As I briefly sketch out below, changes in two other movements—the RJ movement and the anti-mass incarceration movement—have converged to create a moment of opportunity for significantly transforming responses to IPV and sexual harm.

For more than 20 years, mainstream U.S. feminist organizations and policy makers strongly opposed the development of RJ responses to IPV and sexual harm. Opposition focused on the lack of facilitator expertise, the inadequacy of RJ theory and practice to respond to ongoing controlling conduct as opposed to discrete incidents,² as well as concerns that a withdrawal from aspirations for criminal punishment diminished the seriousness with which gender-based violence is viewed.³

This began to change in the 2010s. The feminist anti-violence movement began a “shift . . . from what has been an unquestioned reliance on law enforcement . . . toward a reevaluation of and turn away from this pro-

¹ I use the term “sexual harm” rather than “sexual assault” or “sexual violence” so as to include a broader range of harm including sexual harassment. See Donna Coker, *Restorative Responses to Campus Sexual Harm: Promising Practices and Challenges*, 1 INT’L J. RESTORATIVE JUST. 385 (2018).

² Julie Stubbs, *Gendered Violence and Restorative Justice*, in A RESTORATIVE APPROACH TO FAMILY VIOLENCE: CHANGING TACK 199 (Anne Hayden et al. eds., 2014).

³ See James Ptacek, *Resisting Co-Optation: Three Feminist Challenges to Antiviolence Work*, in RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN 5, 20 (James Ptacek ed., 2010). Other concerns are that family and communities may not oppose gender subordination norms and that RJ facilitators over-value apologies while abusive partners are quick to apologize, but slow to change—what I refer to as the “cheap justice” problem. Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1, 85, 96–97 (1999) [hereinafter Coker, *Autonomy*]. In addition, survivors may feel pressured to participate. See SARAH DEER, *THE BEGINNING AND END OF RAPE* (2015); Rashmi Goel, *Aboriginal Women and Political Pursuit in Canadian Sentencing Circles: At Crossroads or Cross Purposes?*, in RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN 60 (James Ptacek ed., 2010).

criminalization stance”;⁴ “[r]ape reformers began to describe prison not as a solution but as the *site of* sexual violence”;⁵ and a movement to promote RJ use for campus sexual violence began changing the approach of campus administrators.⁶

⁴ Mimi E. Kim, *Anti-Carceral Feminism: The Contradictions of Progress in the Possibilities of Counter-Hegemonic Struggle*, J. OF WOMEN AND SOC. WORK 1, 5 (2019) [hereinafter Kim, *Anti-Carceral*]. This shift occurred in the midst of extreme political polarization and the demise of the prior bipartisan agreement on the “war on crime.” See JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 17 (2007) (the “war on crime” became one of the few areas of bipartisan agreement). The party split was apparent in the 2013 and 2019 legislative fights over VAWA (Violence Against Women Act) reauthorization. Prior to 2013, VAWA had passed with strong bipartisan support, but in 2013, conservatives balked at the inclusion of measures that would benefit Native American, immigrant, and LGBT survivors. Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*, 5 UNIV. MIAMI RACE & SOC. JUST. L. REV. 585, 596 (2015). The House passed a VAWA reauthorization bill in 2019, but it was never taken up by the Senate for a vote. See Press Release, Chairman Jerrold Nadler, H. Comm. on the Judiciary, *What They Are Saying About the Bipartisan Violence Against Women Reauthorization Act of 2021* (Mar. 16, 2021), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=4472> (last visited Aug. 31, 2021). The House again passed a VAWA reauthorization bill in 2021. See also Violence Against Women Act Reauthorization Act of 2021 H.R. 1620, 117th Cong. (2021) (as passed by House of Representatives, Mar. 17, 2021), <https://www.congress.gov/bill/117th-congress/house-bill/1620/all-actions>.

⁵ AYA GRUBER, THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN’S LIBERATION IN MASS INCARCERATION 8 (2020) (emphasis in the original). There remains a feminism characterized by what I refer to as “crime logic,” that equates harsh punishment with feminism. Donna Coker, *Crime Logic, Campus Sexual Assault, and Restorative Justice*, 49 TEX. TECH L. REV. 147, 150 (2016) [hereinafter Coker, *Crime Logic*]; see also, GRUBER, *supra* note 5, at 8 (“much of the #MeToo [feminist] discourse is punitive and carceral”).

⁶ Campus PRISM (Promoting Restorative Initiatives for Sexual Misconduct on College Campuses), founded in 2016 by David Karp and Kaaren Williamsen, has grown into a national organization with significant impact on the growth of restorative campus responses. See CAMPUS PRISM—SCHOOL OF LEADERSHIP AND EDUCATION SCIENCES—UNIVERSITY OF SAN DIEGO, <https://www.sandiego.edu/soles/restorative-justice/campus-prism.php> (last visited Apr. 17, 2021) [hereinafter CAMPUS PRISM]. See also, Madison Orcutt et al., *Restorative Justice Approaches to the Informal Resolution of Student Sexual Misconduct*, 45 J.C. & U.L. 204 (2020). In 2017, an A.B.A. Criminal Justice Section task force supported the use of RJ in response to campus sexual assault, provided “the offender does not pose an immediate or ongoing danger” and both parties agree. A.B.A. CRIM. JUST. SECTION TASK FORCE ON COLL. DUE PROCESS RTS. & VICTIM PROTECTIONS, RECOMMENDATIONS FOR COLLEGES AND UNIVERSITIES IN RESOLVING ALLEGATIONS OF CAMPUS SEXUAL MISCONDUCT (June 2017), https://www.americanbar.org/content/dam/aba/publications/criminaljustice/due_process_tf_recommendations.pdf.

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We are now in what might be termed a moment of feminist reckoning,⁷ as critiques of “carceral feminism”⁸ become ever more salient against the backdrop of police killings of unarmed Black men and women and the large-scale mobilization prompted by Black Lives Matter. Several state coalitions against domestic violence and/or sexual assault have adopted anti-carceral positions, refusing to support increased criminal penalties, and shifting support

⁷ See WISCONSIN COALITION AGAINST SEXUAL ASSAULT & END ABUSE, <https://www.endabusewi.org/moment-of-truth/> (last visited Apr. 17, 2021); Zoë Carpenter, *A Reckoning Inside the Domestic Violence Movement*, THE NATION (Oct. 7, 2020), <https://www.thenation.com/article/society/domestic-violence-police/>.

⁸ Elizabeth Bernstein coined the term “carceral feminism” in a now famous article, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 SIGNS: J. OF WOMEN IN CULTURE & SOC’Y 45 (2010). For discussions of the ways in which crime-centered policies to IPV and sexual harm have been harmful, particularly for minoritized women, see KRISTIN BUMILLER, IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE (2008); Donna Coker, *Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFFALO CRIM. L. REV. 801 (2001); Coker & Macquoid, *supra* note 4; Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418 (2012); LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM (2012) [hereinafter TROUBLED MARRIAGE]; LEIGH GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE: A BALANCED POLICY APPROACH TO INTIMATE PARTNER VIOLENCE (2018) [hereinafter GOODMARK, DECRIMINALIZING]; AYA GRUBER, *supra* note 5; Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. UNIV. J. L. & POL’Y 13 (2011); Mimi Kim, *The Coupling and Decoupling of Safety and Crime Control: An Anti-Violence Movement Timeline*, in THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES 15 (Jane K. Stoever ed., 2019); Mimi Kim et al., *Plenary 3—Harms of Criminalization and Promising Alternatives*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 369 (2015); Holly Maguigan, *Wading into Professor Schneider’s “Murky Middle Ground” Between Acceptance and Rejection of Criminal Justice Responses to Domestic Violence*, 11 AM. UNIV. J. GENDER SOC. POL’Y & L. 427 (2002); Beth E. Richie, *Keynote—Reimagining the Movement to End Gender Violence: Anti-racism, Prison Abolition, Women of Color Feminisms, and Other Radical Visions of Justice*, 5 UNIV. MIAMI RACE & SOC. JUST. L. REV. 257 (2015) [hereinafter *Keynote*]; BETH E. RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION (2012); ANDREA RITCHIE, INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR (2017); Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012); Deborah Weissman, *The Politicization of Domestic Violence*, in THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES 38 (Jane K. Stoever ed., 2019); Deborah Weissman, *Law, Social Movements, and the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL’Y 221 (2013). See generally Deborah Weissman, *Gender Violence, The Carceral State, and the Politics of Solidarity*, 54 U.C. DAVIS L. REV. (forthcoming 2021).

towards housing and economic needs. Forty-five state coalitions signed a letter titled, *A Moment of Reckoning*.⁹ The remarkable letter reads in part:

We must be responsible for the ways in which our movement work directly contradicts our values. We espouse nonviolence, self-determination, freedom for all people . . . as we simultaneously contribute to a pro-arrest and oppressive system that is designed to isolate, control, and punish. We promote the idea of equity and freedom as we ignore and minimize the real risk faced by BIPOC survivors who interact with the policing system that threatens the safety of their families and their very existence.¹⁰

The shift was apparent in the latter part of the Obama administration when the Department of Justice Office of Violence Against Women (OVW) sponsored programs focused on the problem of incarcerating African American women survivors and exploring the use of RJ responses to IPV and sexual assault.¹¹

More recently, in October 2020, the New York City's Office of the Mayor Domestic Violence Task Force issued a report on the use of RJ practices to respond to IPV.¹² In March, 2021, the House passed a Violence

⁹ See WISCONSIN COALITION AGAINST SEXUAL ASSAULT & END ABUSE, *supra* note 7.

¹⁰ *Id.*

¹¹ See, e.g., U.S. DEP'T JUST., OFF. VIOLENCE AGAINST WOMEN SUMMARY REPORT, THE IMPACT OF INCARCERATION AND MANDATORY MINIMUMS ON SURVIVORS: EXPLORING THE IMPACT OF CRIMINALIZING POLICIES ON AFRICAN AMERICAN WOMEN AND GIRLS (Jan. 2017) (report of national roundtable on the incarceration of African American women and girls who are survivors of violence); AMANDA CISSNER ET AL., CTR. FOR CT. INNOVATION, A NATIONAL PORTRAIT OF RESTORATIVE APPROACHES TO INTIMATE PARTNER VIOLENCE: PATHWAYS TO SAFETY, ACCOUNTABILITY, HEALING, AND WELL-BEING (Oct. 2019), <https://www.courtinnovation.org/publications-RJ-IPV> (OVW funded national survey of RJ programs that respond to IPV); ERIKA SASSON, CTR. FOR CT. INNOVATION, CAN RESTORATIVE PRACTICES ADDRESS INTIMATE PARTNER VIOLENCE?: SUMMARY OF A ROUNDTABLE DISCUSSION (2016), <https://www.courtinnovation.org/publications/can-restorative-practices-address-intimate-partner-violence-summary-roundtable> (national roundtable on RJ responses to IPV). OVW also funded a project to support state anti-violence coalitions in developing anti-racist and decarceral policies. The project entitled *Ending Mass Incarceration, Centralizing Racial Justice, and Developing Alternatives: The Role of Anti-Domestic Violence and Sexual Assault Organizations* was a project of the National Clearinghouse for the Defense of Battered Women in 2017-2018. See <https://www.ncdbw.org/webinars-end-mass-incar-series-list>.

¹² ERIKA SASSON & CHARLENE ALLEN, USING RESTORATIVE APPROACHES TO ADDRESS INTIMATE PARTNER VIOLENCE: A NEW YORK CITY BLUEPRINT (Oct. 2020),

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Against Women Act Reauthorization Bill that would authorize federal spending on RJ programs addressing IPV and campus sexual assault.¹³ In conjunction with the development of a National Action Plan to End Gender-Based Violence, in October 2021, the Biden administration held an online listening session on abusive partner intervention programs, including RJ initiatives.¹⁴ The ABA Section on Civil Rights and Social Justice and the ABA Commission on Domestic and Sexual Violence co-sponsored a webinar on RJ

https://www.courtinnovation.org/sites/default/files/media/document/2021/Guide_RJ_Blueprint_01282020.pdf. For a discussion of U.S. RJ programs that see IPV cases, see Joan Pennell et al., *Family and Community Approaches to Intimate Partner Violence: Restorative Programs in the United States*, VIOLENCE AGAINST WOMEN 1 (2020).

¹³ See Violence Against Women Reauthorization Act of 2019, H.R.1585, 116th Congress §104(C)(9) (2019-2020) (amending 34 U.S.C. 12464, Victims of Trafficking and Violence Prevention Act of 2000, to include grants to “develop and implement an alternative justice response”); see *id.* at § 303(b)(13) (amending 34 U.S.C. 20125, Violence Against Women and Dep’t of Justice Reauthorization Act of 2005 to include among Grants to Combat Violent Crimes on Campus grants “[t]o develop and implement an alternative justice response”). “Alternative Justice Response” is defined as “a process, whether court-ordered or community-based, that:

(A) involves, on a voluntary basis, ... those who have committed specific offense and those who have been harmed as a result of the offense;

(B) has the goal of collectively seeking accountability from the accused and developing a process whereby the accused will take responsibility for his or her actions, and a plan for providing relief to those harmed;

(C) is conducted in a framework that protects victim safety and supports victim autonomy;

and

(D) provides that information disclosed during such process may not be used for any other law enforcement purpose, including impeachment or prosecution, without the express permission of all participants.

Id. at § 2(3)(A)–(D) (Universal definitions and grant conditions).

¹⁴ Private correspondence on file with author (October 13, 2021). The Center for Court Innovation, in collaboration with Futures Without Violence and the University of North Carolina’s Project RESTART, facilitated an online listening session with Rosie Hidalgo, Senior Advisor on Gender-Based Violence and Special Assistant to the President, White House Gender Policy Council and Carrie Bettinger-López, Special Advisor to the White House Gender Policy Council regarding Abusive Partner Intervention Programs on October 19, 2021. *Id.*

responses to gender violence.¹⁵ And, the list of webinars and trainings on RJ and Transformative Justice has grown dramatically.¹⁶

While the pace of recent change has quickened, it follows many years of activism aimed at creating an anti-violence movement that, as Beth Richie describes, recognizes “the links between gender oppression, white supremacy . . . and other forms of oppression that women of color experience”¹⁷ As Mimi Kim writes, this shift within anti-violence organizations has been “largely fueled by the experiences, analyses, and actions of people of color who have been the force behind a strident new anti-carceral feminism”¹⁸ The Transformative Justice (TJ) movement, aligned with prison abolition and “developed in opposition to and outside of the carceral state,”¹⁹ has been particularly influential in challenging the criminal justice focus of the anti-violence movement.²⁰

I have described this shift as a “reimagined movement to end gender violence.”²¹ This reimagining project encompasses not only a less carceral response to harm, but a greater focus on changes in the social conditions that create and maintain violence. It is focused on economic and racial justice, on

¹⁵ See RESTORATIVE JUST. & GENDER BASED VIOLENCE (July 2020), (a program of the A.B.A. Section on Civil Rights and Social Justice and the Commission on Domestic & Sexual Violence), <https://www.youtube.com/watch?v=JVy-5u17M08> (presenters were Donna Coker, Mimi Kim, Mary Koss, and Aparna Polavarapu.)

¹⁶ See e.g., SOUTH CAROLINA RESTORATIVE JUSTICE INITIATIVE, <https://scrji.org/ncdbw-ending-mass-incarceration>; Webinar, Every Day Feminism, *Transformative Justice in the #MeToo Era: How to #SupportSurvivors & Respond to Sexual Violence Outside of Calling the Police*, <https://everydayfeminism.com/transformative-justice-webinar/>.

¹⁷ See Richie, *Keynote*, *supra* note 8, at 263.

¹⁸ Kim, *Anti-Carceral*, *supra* note 4, at 5 (emphasis omitted).

¹⁹ *Id.* at 10.

²⁰ The development of TJ grew from the work of INCITE! Women of Color Against Violence and other activist organizations led by women of color. *Id.* at 5. There has been tremendous growth in activism and scholarship regarding TJ, prison abolition, and feminism, as well as in responses to state violence against women and femme identified people of color. See, e.g., Ritchie, *supra* note 8; CREATIVE INTERVENTION TOOLKIT, creative-interventions.org (last visited Nov. 1, 2021) (providing a detailed workbook for TJ response to IPV); MARIAME KABA, *WE DO THIS ‘TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* (2021).

²¹ See Donna Coker, *CONVERGE! Reimagining the Movement to End Gender Violence*, 5 UNIV. MIAMI RACE & SOC. JUST. L. REV. (2015) (Symposium Issue includes articles and transcripts from the 2014 conference, *Converge! Reimagining the Movement to End Gender Violence*).

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better responses to trauma, and on violence interruption that relies less on the state and more on community.²²

While the changes in the anti-violence feminist movement are the most profound, changes in the RJ movement are also important to understanding the current moment of opportunity. James Ptacek, writing in 2010, described the emergence of Feminist/Hybrid RJ programs, including U.S. programs RESTORE and Family Group Decision Making.²³ He wrote that while other RJ models were significantly focused on rehabilitation of the person who caused harm,²⁴ these feminist RJ programs were focused on victim repair and safety, and served as a gateway to support and services.²⁵

Additional changes in the RJ movement are also important to understanding this moment of opportunity. From a movement with “no meaningful racial justice consciousness,”²⁶ significant segments of the RJ movement have now become “more aligned and intertwined with the struggle for racial justice.”²⁷ This move is from a “‘we are all human’ approach to equity” to one that addresses “the realities of historic and present oppressions.”²⁸ Sectors in the restorative justice movement have embraced an

²² See Marc Philpart et al., *Healing Together: Shifting Approaches to End Intimate Partner Violence*, POLICYLINK & ALLIANCE FOR BOYS AND MEN OF COLOR, https://www.policylink.org/sites/default/files/pl_report_healing_FINAL_10-18-19.pdf.

²³ Ptacek, *supra* note 3.

²⁴ *Id.* at 20–21.

²⁵ James Ptacek, *Re-Imagining Justice for Crimes of Violence Against Women*, in *RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN* 281, 283 (James Ptacek ed., 2010).

²⁶ Fania Davis, *Whole School Restorative Justice as a Racial Justice and the Liberatory Practice: Oakland’s Journey*, 1 *INT’L J. RESTORATIVE JUST.* 428, 431 (2018).

²⁷ DANIELLE SERED, *UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR* 155 (2019). Critics of RJ have long argued that RJ fails to account for structural inequality, notably economic and racial inequality, that are related to criminal offending. Critics also argued that the common alliance with the criminal legal system legitimates an unjust system, does not allow for critique of the state’s role in fostering crime, and the existence of RJ programs encourages “net-widening.” See, e.g., Donna Coker, *Transformative Justice: Anti-Subordination Processes in Cases of Domestic Violence*, in *RESTORATIVE JUSTICE AND FAMILY VIOLENCE* 128 (Heather Strang & John Braithwaite eds., 2002); Andrea Smith, *Beyond Restorative Justice: Radical Organizing Against Violence*, in *RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN* 255 (James Ptacek ed., 2009); Thalia González & Annalise J. Buth, *Restorative Justice at the Crossroads: Politics, Power, and Language*, 22 *CONTEMP. JUST. REV.* 242 (2019); Kim, *Anti-Carceral*, *supra* note 4.

²⁸ SERED, *supra* note 27, at 156.

anti-subordination²⁹ view of their mission and understand their work as part of the movement to end mass incarceration.³⁰ The development of school RJ programs designed to interrupt the school-to-prison pipeline—with a focus on the racially discriminatory effects of punitive school policies,³¹ the engagement of incarcerated and formerly incarcerated persons in RJ programming,³² the related growth in the number and influence of RJ practitioners of color, many of whom are engaged in other social justice work,³³ and the increased visibility and recognition of Indigenous Peacemaking practices³⁴ have combined to shift the movement to a stronger anti-carceral and anti-racist stance.

Additionally, RJ practitioners have come to recognize that “generic RJ”³⁵ is often not appropriate or sufficient in cases involving IPV and sexual harm. RJ programs addressing IPV and sexual harm have long been available in a number of countries. For example, Austria and Finland see “thousands of VOM [victim offender mediation] cases each year, and one fifth (Austria) or

²⁹ See SONYA SHAH ET AL., ZEHR INSTITUTE FOR RESTORATIVE JUSTICE, RESTORATIVE JUSTICE LISTENING PROJECT, FINAL REPORT 10 (Nov. 2017) (RJ has “evolved into a social movement” involving “a growing set of voices” who have the “intent to integrate social justice and anti-oppression values at every level of restorative justice from its values, to theory, design, and practice”); Angela P. Harris, *Beyond the Monster Factory: Gender Violence, Race, and the Liberatory Potential of Restorative Justice*, 25 BERKELEY J. GENDER L. & JUST. 199, 211 (2010) (reviewing SUNNY SCHWARTZ WITH DAVID BOODELL, *DREAMS FROM THE MONSTER FACTORY: A TALE OF PRISON, REDEMPTION, AND ONE WOMAN’S FIGHT TO RESTORE JUSTICE TO ALL* 224 (New York, Scribner 2009) (calling for “a fruitful collaboration between restorative justice and the anti-subordination work of critical race feminist and grassroots advocates”).

³⁰ SERED, *supra* note 27, at 156.

³¹ See, e.g., Thalia González, *Restorative Justice from the Margins to the Center: The Emergence of the New Norm in School Discipline*, 60 HOWARD L. J. 267 (2016).

³² See, e.g., THE AHIMSA COLLECTIVE, www.ahimsacollective.net/ (members of this RJ collective include people who were formerly incarcerated); National Association of Community and Restorative Justice, *6th National Conference: Moving Restorative Justice from Margins to Center: We’re the Ones We’ve Been Waiting For* (Aug. 11, 2017), https://www.nacrj.org/index.php?option=com_content&view=article&id=87&Itemid=715 (the conference is designed to “[e]levat[e] historically marginalized voices in the areas of race, class, ethnicity, gender expression, sexual identity, age, ability, religion (e.g., Islamophobia), immigration, and incarcerated or formerly incarcerated status”).

³³ Shah et al., *supra* note 29, at 3 (“Two factors have moved restorative justice partially in the direction of social justice: the increased recognition of the indigenous roots of peacemaking as a form of restorative justice, and the adoption of restorative justice by practitioners who intersect with various social justice movements because of their identities as people of color or marginalized people.”). RJ is still a largely white movement, and the dominant voices are white. See generally, González & Butth, *supra* note 27.

³⁴ Shah et al., *supra* note 29, at 3.

³⁵ See Stubbs, *supra* note 2, at 206.

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one sixth (Finland) of them are cases of IPV.³⁶ Cases involving IPV are regularly seen in New Zealand RJ programs as well.³⁷ Some juvenile sexual harm cases are routinely handled in RJ processes in parts of Australia.³⁸ Conferencing in child welfare cases is used in the U.S., Canada, England, Australia, and New Zealand.³⁹ Some Indigenous Peacemaking programs within the borders of the U.S., notably that of the Navajo Nation, have seen IPV and family violence cases for some time.⁴⁰

Changes in the movement to end mass incarceration have also contributed to this opportunity as reformers recognize that a significant reduction in imprisonment numbers cannot be achieved by releasing only the “non- non- non-,” that is those convicted of “non-serious, non-violent, and non-sexual” crimes.⁴¹ Diminishing incarceration on a large scale requires addressing interpersonal harm, particularly violent harm⁴²— “which is where restorative justice does its work.”⁴³

These movements and policy trends provide an opportunity for less punitive and non-carceral responses to IPV and sexual harm, including RJ, and simultaneously for RJ responses that are intentionally gender- and race-conscious, attending to both individual and system change.

What is Restorative Justice? The most common understanding of RJ practice is that it is a response to “specific wrongful acts or existing states of

³⁶ LISANNE DROST ET AL., RESTORATIVE JUSTICE IN CASES OF DOMESTIC VIOLENCE: BEST PRACTICE EXAMPLES BETWEEN INCREASING MUTUAL UNDERSTANDING AND AWARENESS OF SPECIFIC PROTECTION NEEDS 27 (2015).

³⁷ See, e.g., Venezia Kingi, *The Use of Restorative Justice in Family Violence: The New Zealand Experience*, in A RESTORATIVE APPROACH TO FAMILY VIOLENCE: CHANGING TACK 145 (Anne Hayden et al. eds., 2014). There is a significant amount of international practice literature now available. See, e.g., A RESTORATIVE APPROACH TO FAMILY VIOLENCE (Anne Hayden et al. eds., 2014); DROST ET AL., *supra* note 36; VINCE MERCER & KARIN STEN MADSEN, DOING RESTORATIVE JUSTICE IN CASES OF SEXUAL VIOLENCE: A PRACTICE GUIDE (2018).

³⁸ Kathleen Daly, *Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases*, 46 BRIT. J. CRIMINOLOGY 334, 334–40 (2006).

³⁹ See generally Joan Pennell & Gale Burford, *Family Group Decision Making: Protecting Children and Women*, in 79 CHILD WELFARE 131 (2000).

⁴⁰ See *infra* discussion section II.A.3 (discussion of Indigenous Peacemaking and the Navajo Nation Peacemaking Program).

⁴¹ Daniel Denvir, “Non-Serious, Non-Violent, Non-Sexual”: Fixing Our Mass Incarceration Problem Means Getting Past the Easy Steps, SALON (Oct. 26, 2015), https://www.salon.com/2015/10/26/non_serious_non_violent_non_sexual_fixing_our_mass_incarceration_problem_means_getting_past_the_easy_steps/.

⁴² James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 48 (2012) (“the state’s response to violent crime—less diversion and longer sentences—has been a major cause of mass incarceration”).

⁴³ SERED, *supra* note 27, at 155.

injustice,”⁴⁴ whereby “all the stakeholders affected by an injustice have the opportunity [. . .] to tell their stories about the effects of the injustice and what should be done to make them right.”⁴⁵ The harm or injustice sought to be addressed may be interpersonal and regard recent events or it may be a historical harm or involve institutional responsibility.⁴⁶ For cases involving contemporary harm, the common conception of RJ is a process that involves what I have termed *matched dialogue*⁴⁷—that is, a dialogue that, at a minimum, includes the person(s) who caused harm and the person(s) they harmed. Indeed, some RJ scholars hold matched dialogue as the ideal, without which a process is not “fully restorative.”⁴⁸

While matched dialogue describes a significant amount of RJ programming, it is an incomplete description. There are practices and programs centered on responses to specific contemporary harms that do not involve matched dialogue and there are restorative practices that are not centered on a response to harm, but rather on community-building, prevention, education, and empowerment.

In this article, I provide an overview of this broader understanding of restorative justice as it relates to responses to and prevention of IPV and sexual harm. Understanding these distinct, though very much related, meanings provides a fuller picture of how a restorative approach differs from that of conventional approaches. I divide the remaining discussion in two parts. In Part II, I describe RJ responses to specific cases of IPV and sexual harm.⁴⁹ I

⁴⁴ Jennifer J. Llewellyn, *Restorative Justice: Thinking Relationally About Justice*, in BEING RELATIONAL: REFLECTIONS ON RELATIONAL THEORY AND HEALTH LAW 89, 91 (Jocelyn Downie & Jennifer J. Llewellyn eds., 2012).

⁴⁵ John Braithwaite, *The Fundamentals of Restorative Justice*, in A KIND OF MENDING: RESTORATIVE JUSTICE IN THE PACIFIC 35, 35, 37 (Sinclair Dinnen et al. eds., 2010).

⁴⁶ I limit my discussion in this article to interpersonal harm and do not address the use of RJ when an institution is responsible for harm. For an excellent example of a RJ approach to institutional wrongdoing, see COMMISSIONERS, ALSO KNOWN AS THE COUNCIL OF PARTIES, JOURNEY TO LIGHT, FINAL REPORT OF THE RESTORATIVE INQUIRY – NOVA SCOTIA HOME FOR COLORED CHILDREN (Province of Nova Scotia, 2019), <https://restorativeinquiry.ca/report/Restorative-Justice-Inquiry-Final-Report-Cover-Table-of-contents.pdf>.

⁴⁷ Donna Coker, *Restorative Responses to Intimate Partner Violence*, COMPAR. DISPUT. RESOL. 46, 47 (Maria Federica Moscati et al. eds., 2020) [hereinafter Coker, *Restorative Responses*].

⁴⁸ See TED WACHTEL, *DEFINING RESTORATIVE JUSTICE 1* (International Institute for Restorative Practices 2016) (teen courts, panels or reparative boards are examples of “community justice” rather than restorative justice because they do not offer “victims and their supporters an opportunity to talk directly with offenders”).

⁴⁹ The term “cases” rather than “incidents” is intentional. One of the distinguishing features of IPV is that it is frequently ongoing, involving psychological abuse as well as physical. See Goodmark, *TROUBLED MARRIAGE*, *supra* note 8; Stubbs, *supra* note 2.

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distinguish what I term “matched dialogue” processes that involve the person who caused harm and the person they harmed from other processes. I also distinguish between RJ programs that are designed to effect institutional decision making regarding parties and those that are not. I include brief descriptions of three distinct processes: Family Group Decision Making (FGDM), Indigenous Peacemaking, and Transformative Justice. FGDM may include a matched dialogue, but the focus of the process on engaging family networks in child welfare planning distinguishes it from other RJ processes. While Indigenous Peacemaking and Transformative Justice are distinct from RJ practice, each has significantly shaped current RJ practice. I then describe some of the benefits of matched dialogue restorative responses to IPV and sexual harm, concluding with some cautions. In Part III, I discuss the growing number of RJ programs that are community-based prevention, education, and community building. My focus is the U.S. context, but I occasionally draw on work in other countries.⁵⁰

II. RESTORATIVE JUSTICE RESPONSES TO CASES OF IPV AND SEXUAL HARM

For the most part, RJ originated as an adjunct to the criminal legal system, and it remains true that many programs are affiliated with the criminal legal system. Much of the RJ literature reveals this link, referring to “offenders” and “victims.” This nomenclature is, of course, not appropriate for the several RJ programs that are outside of the criminal system, but it is also problematic for cases involved with the criminal system. It is essentializing in ways that are inconsistent with core values of RJ. For cases involving interpersonal harm, I prefer the terminology suggested by Mary Koss in the context of RJ responses to sexual harm: the person who caused harm is referred to as the Responsible Person (RP), and the person who was harmed is referred to as the Survivor/Victim (S/V).⁵¹

A. *Practice Overview*

RJ programs vary in their connection to institutional governance. Many RJ programs are designed to provide an alternative to the conventional system response to harm in ways that are more responsive to survivors and less punitive to those who caused harm. Thus, these programs are designed to have

⁵⁰ In earlier work, I compared RJ IPV programs across several countries. See Coker, *Restorative Responses*, *supra* note 47.

⁵¹ Mary P. Koss, *Restorative Justice for Acquaintance Rape and Misdemeanor Sex Crimes*, in *RESTORATIVE JUST. & VIOLENCE AGAINST WOMEN* 218, 219 (James Ptacek ed., 2010).

an impact on a governing institution's decision making with regard to participant(s), most often RPs.⁵²

In cases affiliated with the criminal legal system, the RP may be offered diversion to RJ, either pre- or post-charge; RJ processes may result in sentencing recommendations to the court following an adjudication of guilt; RJ may also be incorporated in a treatment program that is part of a court-mandated sentence⁵³ or terms of probation.⁵⁴ Failure to complete the RJ process may result in criminal sanctions against the RP. In the child welfare context, family group decision making allows the extended family to devise a plan for the safety of children.⁵⁵ The process builds on the strengths of familial networks to create a less traumatic and more responsive plan than would be the case without the family's involvement. The final plan must be approved by an agent of the state child welfare system. Once approved, the plan governs the state's interaction with the family, provided the family adheres to the plan. In the school context, RJ processes that respond to student misconduct replace more harsh and often racially biased discipline and have an impact on the school's response to an individual student's misconduct.⁵⁶

In contrast, RJ are programs that do not contemplate having an impact on the choices of governing institutions with regard to what happens to participants.⁵⁷ For example, the Centre for Victims of Sexual Assault in Copenhagen provides restorative dialogue for survivors of sexual harm who

⁵² See Cissner et al., *supra* note 11, at 21 (A U.S. survey of RJ IPV programs found that the criminal legal system was the most common source of referral and the second most common was a state child welfare agency; referring agencies commonly determined what cases were eligible for RJ and required a report back on progress from the RJ program.) For criticism of the "system-focused" understanding of RJ, see González & Buth, *supra* note 27, at 249 (arguing that "[a]s long as restorative justice operates within and upholds the prevailing system framework, it cannot effectuate transformative structural change").

⁵³ See Linda Mills et al., *A Randomized Controlled Trial of Restorative Justice-Informed Treatment for Domestic Violence Crimes*, 3 NAT. HUM. BEHAV. 1284 (2019).

⁵⁴ Thalia González, *The State of Restorative Justice in American Criminal Law*, 2020 WIS. L. REV. 1147, 1162 (2020).

⁵⁵ See generally Joan Pennell & Gale Burford, *Family Group Decision-Making and Family Violence*, in FAMILY GROUP CONFERENCE: NEW DIRECTIONS IN COMMUNITY-CENTERED CHILD & FAMILY PRACTICE (Gale Burford & Joe Hudson eds., 2000) (describing Family Group Decision Making).

⁵⁶ Davis, *supra* note 26, at 4 ("For youth, the School-to-Prison Pipeline (STPP) refers to the national trend of criminalizing instead of educating them. Exclusionary discipline policies such as suspension, expulsion, and school-based arrest are often used to address even the most minor infractions." African American and other students of color are suspended and referred to juvenile authorities at much higher rates than are white children).

⁵⁷ These RJ programs may be similar to Transformative Justice (TJ), but their aims are not necessarily those of TJ. See *infra* discussion section II.A.4 (describing TJ).

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request it, many of whom choose not to report their assault to police.⁵⁸ "In these circumstances, women and men who, by their own choice, engage in the unpleasant process of facing each other—and agree to undertake lengthy preparation with the facilitator—seem motivated . . . to do the right thing. Mostly for themselves."⁵⁹ Similarly, the Collective Healing and Transformation (CHAT) Project created by sujatha baliga and Mimi Kim does not involve law enforcement or other governing institutions.⁶⁰ As described more fully below, Transformative Justice dialogues, by definition, are not connected to state governing institutions. Additionally, there are prison-based programs that occur after appeals are exhausted that by design have no impact on the processing of the RP's criminal case.⁶¹

1. MATCHED DIALOGUE, SUPPORT CIRCLES, SURROGATE DIALOGUE, & BATTERER INTERVENTION PROGRAMS

⁵⁸ See Brunilda Pali & Karin Sten Madsen, *Dangerous Liaisons? A Feminist and Restorative Approach to Sexual Assault*, 14 TEMIDA 49, 49–65, 57 (2011) (reporting early findings that 11 of 16 restorative dialogues involved survivors who did not report to the police).

⁵⁹ *Id.* at 59.

⁶⁰ See, e.g., THE COLLECTIVE HEALING AND TRANSFORMATION PROJECT (CHAT), <http://www.cocofamilyjustice.org/services-before-import/capacity-building-before-import/chat/> (last visited Nov. 1, 2021); RESTORATIVE JUST. & GENDER BASED VIOLENCE, *supra* note 15 (Mimi Kim describing the origin of CHAT, formerly named Community Restorative Justice Solutions). It is not uncommon for RJ practitioners to facilitate dialogues on the request of an individual. See interview with Gretchen Kelly in Gainesville, Fla. (May 5, 2021) (describing facilitating campus sexual harm cases, initiated by the S/V, where there was no involvement by the criminal legal system or by the university.); Tod Augusta-Scott, *Preparing Men to Help the Women They Abused Achieve Just Outcomes: A Restorative Approach*, in INNOVATIONS IN INTERVENTIONS TO ADDRESS INTIMATE PARTNER VIOLENCE: RESEARCH AND PRACTICE, 191 (Tod Augusta-Scott, K. Scott, & L. Tutty eds., 2017) (describing RJ dialogues initiated by S/Vs that follow the RP's completion of a court-ordered Batterer's Intervention Program).

⁶¹ See SUSAN MILLER, AFTER THE CRIME: THE POWER OF RESTORATIVE JUSTICE DIALOGUES BETWEEN VICTIMS AND VIOLENT OFFENDERS 206 (2011) (distinguishing "diversion" RJ from "therapeutic" RJ that occurs inside prisons between an incarcerated person and the person they harmed after appeals are exhausted).

As noted earlier, the most common understanding of RJ practices for responding to harm involve what I refer to as a “matched dialogue.”⁶² A matched restorative dialogue is one that includes the RP and S/V. The most common matched dialogue practices are victim-offender mediation or victim-offender dialogue (VOM/VOD), conferencing,⁶³ and circles.⁶⁴ VOM/VOD has historically included only the person who caused harm, the victim, and a facilitator.⁶⁵ Conferencing includes members of the support networks of the RP and S/V, and may include professionals (e.g., counselors, addiction treatment professionals) and trained community members. Circles frequently include a wider set of people than is true of conferencing.⁶⁶ In addition, circle processes are usually more fluid and give a greater degree of autonomy to participants to set the agenda.⁶⁷

Participation in a matched dialogue must be knowing and voluntary. The RP must admit to having engaged in the conduct. This “usually involve[s] acceptance of the central facts, including the harm experienced by the victim, although it would not necessarily be a formal admission to the legal elements of the offence.”⁶⁸ The process is not a backward fact-finding determination,

⁶² Matched dialogues are often face-to-face, but they need not be. See, e.g., Joan Pennell & Mimi Kim, *Opening Conversations Across Cultural, Gender, and Generational Divides: Family and Community Engagement to Stop Violence Against Women and Children*, in RESTORATIVE JUST. & VIOLENCE AGAINST WOMEN 177, 184 (James Ptacek ed., 2010) (describing that in the context of conferencing in child welfare cases, an abusive spouse may join by telephone or the facilitator may hold separate or staggered meetings); Orcutt et al., *supra* note 6, at 212 (campus sexual assault RJ facilitators may use “indirect facilitation,” where “a facilitator meets independently with each party and participant and ‘shuttles’ between . . . participants[.]” sharing responses back and forth between the parties).

⁶³ See Paul McCold, *The Recent History of Restorative Justice: Mediation, Circles, and Conferences*, in HANDBOOK OF RESTORATIVE JUSTICE: A GLOBAL PERSPECTIVE 23 (Dennis Sullivan & Larry Tift eds., 2006).

⁶⁴ See Barry Stuart & Kay Pranis, *Peacemaking Circles: Reflections on Principal Features and Primary Outcomes*, in HANDBOOK OF RESTORATIVE JUSTICE 121 (Dennis Sullivan & Larry Tift eds., 2006). There are other circle processes including sentencing circles, in which participants provide recommendations to the criminal court regarding sentencing post-guilt determination. See McCold, *supra* note 63.

⁶⁵ See McCold, *supra* note 63.

⁶⁶ *Id.* at 28.

⁶⁷ See Stuart & Pranis, *supra* note 64.

⁶⁸ Bronwyn Naylor, *Effective Justice for Victims of Sexual Assault: Taking up the Debate on Alternative Pathways*, 33 U.N.S.W.L.J. 662, 677 (2010). There are exceptions to this requirement. See Pali & Madsen, *supra* note 58, at 49–65.

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but rather a forward-looking movement towards repair and accountability.⁶⁹

Though some RJ programs use only one process, the better practice is to adopt a restorative *approach*, “driven by restorative principles rather than an uncritical adherence to a particular process.”⁷⁰ “The use of a particular practice will depend upon the needs and desires of the person who has been harmed and the person who caused the harm, the areas of training and expertise developed by an institution, as well as the specific circumstances surrounding the harm.”⁷¹

There are restorative responses to gender violence harm that do not involve matched dialogue. Survivor support circles may be organized around an individual S/V and include their network of friends, family members, and advocates, but not include the RP.⁷² Alternatively, a survivor circle may be a group of survivors who come together to provide support and encouragement for each other. In HarborCOV’s Survivor Circles, members share “stories of resilience, wellness, healing, self-esteem, healthy relationships, self-care practices, and challenges in their lives.”⁷³ “[The circle] allows people to come together in our individualistic society and build relationships with one another. Empowerment is a buzzword, but it really happens in circle.”⁷⁴

Surrogate dialogues may refer to the practice of having someone stand in for a survivor in a dialogue with the person who harmed them. The term is also used to refer to when a survivor of harm meets with persons who caused

⁶⁹ Some RJ theorists would exclude processes that do not involve matched dialogue from the term “restorative justice.” See, e.g., WACHTEL, *supra* note 49, at 1 (Teen courts, panels, or reparative boards are examples of “community justice” rather than restorative justice, because they do not offer “victims and their supporters an opportunity to talk directly with offenders”).

⁷⁰ GOODMARK, DECRIMINALIZING, *supra* note 7, at 136.

⁷¹ Orcutt et al., *supra* note 6, at 209–10.

⁷² See Cissner et al., *supra* note 11, at 36–39 (describing the survivor circles of the Domestic Violence Restorative Circle program).

⁷³ Cissner et al., *supra* note 11, at 36 (comments of HarborCOV program participants); See also *id.* at 39 (Domestic Violence Restorative Circles (DVRC) invite “survivors and the support person of their choice to join circle keepers and community members . . . who provide . . . a space to discuss past violence, healing, and growth.”).

⁷⁴ *Id.* at 45 (quoting response from HarborCOV respondent).

harm to someone other than the survivor.⁷⁵ Reentry programs and batterer intervention programs (BIPs) may incorporate support circles for those who caused harm.⁷⁶ Programs may be flexible, providing support circles for survivors, but leaving open the possibility of including a matched dialogue.⁷⁷ Circles are also useful to respond to the aftermath of abuse in social networks; for example, a survivor of campus sexual assault may meet with friends and former friends with whom his or her relationship was shattered as a result of the allegation of sexual harm.

2. FAMILY GROUP DECISION MAKING

⁷⁵ See, e.g., MARK UMBREIT & MARILYN PETERSON ARMOUR, RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE 25 (2010) (describing surrogate victim-offender community dialogue); Washington County, Oregon, *Domestic Violence Safe Dialogue*, co.washington.or.us/CommunityCorrections/VictimServices/Services/domestic-violence-surrogate-dialogue.cfm (last visited July 20, 2018). See James Gilligan & Bandy Lee, *The Resolve to Stop the Violence Project: Reducing Violence in the Community Through a Jail-Based Initiative*, 27 J. PUB. HEALTH 143 (2005) (community members who are victims or survivors of extreme violence, including rape and the murder of a loved one, describe the impact of the violence on their lives with incarcerated men who committed a violent crime). Alisa Ackerman and Jill Levenson use the term “Vicarious Restorative Justice” to describe this practice. See ALISSA ACKERMAN & JILL LEVENSON, HEALING FROM SEXUAL VIOLENCE: THE CASE FOR VICARIOUS RESTORATIVE JUSTICE (2019).

⁷⁶ Reintegration RJ generally refers to support for someone who is returning to the community from a period of incarceration, but the term has also been used to refer to assistance for students who were suspended for a period following an adjudication of responsibility for causing sexual harm. See DAVID R. KARP ET AL., UNIV. OF SAN DIEGO CENTER FOR RESTORATIVE JUSTICE, CAMPUS PRISM: A REPORT ON PROMOTING RESTORATIVE INITIATIVES FOR SEXUAL MISCONDUCT ON COLLEGE CAMPUSES 3 (Apr. 2016) (describing CoSAs (Circle of Support and Accountability)). Circles of Peace (COP) is a batterer’s intervention program (BIP) that incorporates RJ processes. COP circles consist of the RP, the S/V (if she or he chooses to attend), their families, COP professionals trained in RJ and domestic violence counseling, and trained community volunteers. S/Vs may participate in person or by phone. A 2019 study of the COP program in Utah found that RPs who participated in COP had statistically significant lower rates of recidivism for all crimes including domestic violence as compared to participants in the standard BIP program. See LINDA G. MILLS ET AL., *A Randomized Controlled Trial of Restorative Justice-Informed Treatment for Domestic Violence Crimes*, 3 NAT. HUM. BEHAV. 1284, 1290 (2019). The Domestic Violence Restorative Circle (DVRC) program of Men as Peacemakers provides Transition Circles with men who have multiple convictions for domestic violence. They are referred from the criminal process post-adjudication, usually as a condition of probation and often after a period of incarceration. See Cissner et al., *supra* note 11, at 36–39.

⁷⁷ See, e.g., Mimi Kim’s description of CHAT (formerly Community Restorative Justice Solutions), in RESTORATIVE JUST. & GENDER BASED VIOLENCE, *supra* note 15.

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Family Group Decision Making⁷⁸ is a conferencing process that occurs in conjunction with the child welfare system. The process allows extended family networks to develop a plan for addressing issues related to the children's wellbeing and, in the substantial number of cases in which IPV co-exists with child abuse, includes safety planning for the adult S/V.⁷⁹

While a person who caused IPV may well participate in a FGDM dialogue that includes the intimate partner they harmed, the matched dialogue distinction does not fit entirely comfortably when describing FGDM. The reason this is so because of the difference in focus of FGDM. FGDM is not centered on repair for the adult survivor, but rather on supports for the entire family network⁸⁰ and on creating a safe environment for children. FGDM is focused even less on holding an RP "accountable," as is often claimed for RJ IPV processes.

This is not to say that the needs of adult survivors are ignored. Adult IPV S/Vs are assisted with confidential safety planning and services before the conferencing session and are consulted about who to include in a restorative dialogue.⁸¹ Victim advocates and other supporters, including therapists, may attend the meeting, providing additional support for S/Vs.⁸² The final plan for the child's placement and care is shared with the group, but safety measures for the S/Vs are kept confidential.⁸³

The facilitators must create "cultural safety in which family groups can speak in their own language and access their traditional practices."⁸⁴ "The conference may begin with an opening of the family's selection, such as displaying the children's photographs or joining in song."⁸⁵ The coordinator discusses the ground rules and the child welfare social worker sets out the state's concerns and the issues that must be addressed in a plan.⁸⁶ The

⁷⁸ Family Group Conferencing, from which FGDM derives, was developed in New Zealand in response to *Māori* concerns about the over-incarceration of *Māori* youth and their over-representation in child welfare proceedings. See Joan Pennell & Stephanie Francis, *Safety Conferencing: Toward a Coordinated and Inclusive Response to Safeguard Women and Children*, 11 VIOLENCE AGAINST WOMEN 666, 672 (2005).

⁷⁹ See, Pennell & Burford, *supra* note 55; Cissner et al., *supra* note 11, at 28 (describing EPIC 'Ohana conferencing in Hawaii).

⁸⁰ Pennell & Kim, *supra* note 62, at 183 (describing FGDM meetings as "family centered" meetings).

⁸¹ *Id.* at 184 (describing safety measures and consultation with the S/V regarding who to invite).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Pennell & Kim, *supra* note 62, at 184.

⁸⁵ Pennell & Francis, *supra* note 78, at 673.

⁸⁶ *Id.*

professionals then leave the room for the family to determine a plan.⁸⁷ The plan must be finally approved by the state child protection agency.⁸⁸

FGDM ameliorates the systemic problem of over-representation in the child welfare system of families of color, particularly African American and indigenous families. For example, EPIC `Ohana, a program in Hawaii, responds to the disproportionate number of Native Hawaiian and Polynesian descent families in child welfare caseloads by addressing “the historical and systemic oppression that have torn [families from their cultural roots.”⁸⁹

The process provides a forum for building on the strengths of the family network in ways that have a lasting impact. Research finds that families who participated in FGDM had significantly higher reductions in child maltreatment and IPV of the mother than did families who experienced traditional child welfare responses.⁹⁰

3. INDIGENOUS PEACEMAKING

RJ is frequently described by scholars and practitioners as originating in the traditional practices of indigenous people.⁹¹ Sometimes this literature romanticizes without attention to the modern re-invention of indigenous practices.⁹² The Navajo Nation has been a leader in this process of re-invention. In the 1980s, the Navajo Nation judiciary began a process of “decolonizing”⁹³ Navajo law by establishing Navajo common-law (including customary law) as a source of legal authority and by creating traditional processes of dispute resolution—i.e., Peacemaking.⁹⁴

⁸⁷ *Id.*

⁸⁸ *Id.* at 674.

⁸⁹ See Cissner, *supra* note 11, at 28–29 (describing EPIC `Ohana conferencing).

⁹⁰ Pennell & Kim, *supra* note 62, at 675.

⁹¹ See, e.g., *The Indigenous Origins of Circles*, LIVING JUSTICE PRESS, http://www.livingjusticepress.org/index.asp?Type=B_BASIC&SEC=%7b0F6FA816-E094-4B96-8F39-9922F67306E5%7d (“The Circle process that many non-Native people are using today is rooted in the tradition of talking Circles that Indigenous Peoples in North America use and have used for millennia.”).

⁹² Chris Cunneen, *What are the Implications of Restorative Justice’s Use of Indigenous Traditions?*, in CRITICAL ISSUES IN RESTORATIVE JUSTICE 346, 350 (Howard Zehr & Barb Toews eds., 2004) (RJ literature has “a tendency to romanticize indigenous dispute resolution”).

⁹³ Frank Pommersheim, *Liberation, Dreams, and Hard Work: An Essay on Tribal Court Jurisprudence*, 1992 WIS. L. REV. 411 (1992) at 413.

⁹⁴ Coker, *Autonomy*, *supra* note 3.

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The Navajo Peacemaking program has grown substantially as has its influence both within Native American communities and more broadly.⁹⁵ Today, more than 25 Native American tribal codes or ordinances include Peacemaking enabling legislation⁹⁶ and Peacemakers are frequently called upon to train non-Native staff of RJ organizations.⁹⁷

Though Peacemaker programs differ in significant ways,⁹⁸ they are similar to each other and distinct from RJ in their basis in cultural traditions and spirituality.⁹⁹

[T]he peacemaking circle is sacred.' . . . Once a sacred circle is set up to address a conflict or crime, there are four elements that make up its process: communication; cooperation; consensus in unity; and comity. Fundamental to the practice of peacemaking is respect for one another and respect for the process.¹⁰⁰

⁹⁵ See Native American Rights Foundation, *Indigenous Peacemaking Initiative*, <https://peacemaking.narf.org/> (describing Indigenous Peacemaking models and tribal legislation and providing resources, manuals, and technical assistance).

⁹⁶ *Id.*

⁹⁷ See, e.g., Polly Elizabeth Hyslop & Brian N. Jarrett, *Circle Peace-Making in Alaska: A Return to Indigenous Practice Through Intercultural Dialogue*, in *INTERCULTURAL AND INTERFAITH DIALOGUES FOR GLOBAL PEACEBUILDING AND STABILITY* 146, 152 (Samuel Peleg ed., 2019) (Tlingit Peacemakers trains outside members); CTR. FOR CT. INNOVATION, *REDHOOK PEACEMAKING GUIDE*, http://www.restorativejuviledetention.org/uploads/1/0/6/5/106502445/red_hook_peacemaking_program_guide.pdf (Redhook Peacemaking Program in New York trained by Navajo Nation Peacemakers).

⁹⁸ For example, the Pokagon Band program is available only for civil matters. See Pokégnek Bodéwadmik, *Native Justice*, <https://www.pokagonband-nsn.gov/government/tribal-courts/native-justice>. In contrast, the Navajo Nation accepts referrals from a broad range of systems as well as self-referrals. *Peacemaking Program of the Navajo Nation*, <http://www.courts.navajo-nsn.gov/Peacemaking/PMP-brochure-2017.pdf>.

⁹⁹ See Hyslop & Jarrett, *supra* note 97 at 150 (“The community [in Kake, Alaska] came to identify Circle Peacemaking as a solution, because it was part and parcel of a long historical tradition in Tlingit society and a long-standing practice that solved social misbehavior through its emphasis on forgiveness, healing, and community wellness.”).

¹⁰⁰ See Sasson, *supra* note 11 at 4–5 (remarks of Peacemaker participants).

Indigenous Peacemaking responds to the impact of colonization and intergenerational trauma¹⁰¹ through a shared understanding, the incorporation of traditional practices and cosmology (when appropriate for the participants),¹⁰² and the sharing of individual stories.¹⁰³

While some Peacemaking programs do not see IPV or sexual harm cases, programs such as that of the Navajo Nation have seen IPV cases from the program's inception.¹⁰⁴ Navajo Peacemaking receives both system referrals (i.e., courts, child welfare) as well as self-referred cases. My early study of Navajo Peacemaking found that a significant number of Navajo Peacemaking cases involving IPV were initiated by women survivors who sought assistance with ending an abusive relationship.¹⁰⁵ The following excerpt from a petition for Peacemaking provides an example.

We've gotten [into] many physical confrontations, both hurting the other, some requiring [a] doctor's care. . . . So I am asking the [P]eacemaker [C]ourt to assist us in resolving a termination of this marriage I believe we have hurt, shamed, humiliated, and mistrusted each other long enough. We both need to end this marriage to begin our healing--healing emotionally, mentally, physically and spiritually in

¹⁰¹ See, e.g., Brian Jarrett & Polly Elizabeth Hyslop, *Justice for All: An Indigenous Community-Based Approach to Restorative Justice in Alaska*, 38 N. REV. 239, 243–247 (2014) (the arrival of Europeans brought influenza and smallpox epidemics that resulted in mortality rates between 25%-50% that "shredded the community social fabric by eliminating key people from leadership roles"; from the 1900s-1970s, Native children were removed from their homes and sent to boarding schools where they were forbidden from speaking their languages or practicing traditions, becoming "the lost generation."); Coker, *Autonomy*, *supra* note 3 at 16–27 (European colonizers were offended by Navajo complementary gender roles and set out to instill male- female and parent- child hierarchies U.S.); In 1864, Navajo people were forced from their homes and driven like cattle to imprisonment in Fort Sumner where many died of starvation, exposure, and disease. DEER, *supra* note 3 at 49–51 (describing the use of rape of Native American women by European colonizers and that "Indian uprisings" were sometimes in response to rape).

¹⁰² See Robert Yazzie, "Life Comes From It": *Navajo Justice Concepts*, 24 N.M. L. REV. 175,184 (1994).

Peacemaking can be understood as a ceremony; "a ceremony is a means of invoking supernatural assistance in the larger community of reality").

¹⁰³ Hyslop & Jarrett, *supra* note 97, at 159.

¹⁰⁴ See Coker, *Autonomy*, *supra* note 3. Advocates for victims have made some of the same criticisms about Peacemaking that are made with regard to RJ. See, e.g., DEER, *supra* note 3.

¹⁰⁵ Coker, *Autonomy*, *supra* note 3, at 84.

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our own ways. My [way] is with my faith in my higher power....¹⁰⁶

4. *TRANSFORMATIVE JUSTICE (TJ)*

TJ's roots are in the prison abolition movement and in other social justice movement organizing.¹⁰⁷ The TJ movement differs from that of RJ not only in its history and analysis, but also in proponents' rejection of connection to the criminal legal system,¹⁰⁸ understanding the criminal system "as primarily responsible for the violent oppression of marginalized communities."¹⁰⁹

Transformative Justice is not simply a method but is a flexible set of politics and practices committed to collective and community-based mobilization, nonpunitive practices of accountability, and the theory and practice of violence prevention and intervention that addresses the context of historic and systemic oppression.¹¹⁰

TJ proponents work to create community-based non-carceral responses to interpersonal harm including IPV and sexual harm.¹¹¹ They work to strengthen the capacity of marginalized communities to intervene—in contrast to mainstream programs, which too often see communities as obstacles to an effective response to IPV.¹¹² These efforts involve activism to create system change as well as intervention in interpersonal violence. The

¹⁰⁶ *Id.*

¹⁰⁷ See Mimi Kim, *From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration*, 27 (3) J. OF ETHNIC & CULTURAL DIVERSITY IN SOC. WORK 226 (2018) [hereinafter Kim, *Feminism*].

¹⁰⁸ Smith, *supra* note 27.

¹⁰⁹ Kim, *Feminism*, *supra* note 107.

¹¹⁰ Kim, *Anti-Carceral*, *supra* note 4, at 11.

¹¹¹ See, e.g., CREATIVE INTERVENTION TOOLKIT, *supra* note 20; see also KABA, *supra* note 20.

¹¹² Soniya Munshi et al., *Building Towards Transformative Justice at Sakhi for South Asian Women*, 5 UNIV. MIAMI RACE & SOC. JUST. L. REV. 421, 426 (2015).

latter work may involve matched dialogue,¹¹³ community-building/organizing circles,¹¹⁴ as well as S/V support.

B. Foundational Concepts

1. “WHO OWES WHAT TO WHOM?”¹¹⁵

In a widely adopted formulation, Howard Zehr writes that a RJ response to harm centers on three questions: (1) Who has been harmed? (2) What are their needs? (3) Whose obligation is it to meet those needs?¹¹⁶

As Danielle Sered notes, addressing these questions “requires us to reopen a core question in our society: when harm has been done, who owes what to whom—and why?”¹¹⁷ Building on the work of Jennifer Llewellyn, I ground my understanding of RJ in a relational view of justice:

[A relational understanding of justice] aims at realizing the conditions of relationship required for well-being and flourishing. It identifies as wrong those acts or circumstances that prevent or harm such conditions . . . The goal of justice . . . is the establishment of relationships that enable and promote the well-being and flourishing of the parties involved.¹¹⁸

I understand this relationality in three related but distinct meanings. First, RJ addresses “the ways in which harms related to wrongdoing extend from the individual victim[s] and wrongdoer[s] to affect those connected with

¹¹³ For example, see the agreement reached as part of a matched dialogue TJ response to the sexual assault of a member by an organization leader of the youth organization, Black Youth Project 100. The S/V requested the process and the RP agreed to participate. Separate teams—a survivor team and an accountability team—worked with the S/V and the RP, and the process was led by a person with extensive RJ experience. These teams met weekly for 15 months before meeting collectively in a circle. The RP made a public admission of responsibility, agreed to avoid movement spaces, and resigned his organization membership. See Judith Armatta, *Ending Sexual Violence Through Transformative Justice*, 5 INTERDISC. J. P’SHIP. STUDS. (2018); Transforming Harm, *Summary Statement Re: Community Accountability Process* (2017), <http://transformharm.tumblr.com/post/158171267676/summary-statement-re-community-accountability>.

¹¹⁴ See text accompanying *infra* notes 191–194 (discussion of TJ community building circles.)

¹¹⁵ SERED, *supra* note 27, at 140.

¹¹⁶ HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 21 (2014) at 31.

¹¹⁷ SERED, *supra* note 27, at 140.

¹¹⁸ Llewellyn, *supra* note 44, at 91.

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them.”¹¹⁹ As Mary Koss et al. explain in the context of sexual assault, “harm has ripple effects on (a) family and friends of victims who suffer distress over the injury . . . [and] (b) family and friends of responsible persons who may experience shame, anger, and other emotions.”¹²⁰

The second meaning of relational is found in an expanded understanding of who is responsible for causing and repairing harm. Harmful acts are not understood “in isolation but within a broader social and cultural context.”¹²¹ Thus, while RJ processes focus on the responsibility of individuals who directly caused the harm, the process has the potential to transform social and familial networks¹²² and increase social and material supports for the S/V and the RP.¹²³ For example, the Circle of Peace program (COP), a batterer’s intervention program (BIP) that incorporates RJ processes, opens communication lines within family, including extended family, to promote discussions of the intergenerational transmission of violence. RPs are allowed to speak about their own history with violent victimization.¹²⁴

A restorative justice response to sexual harassment in Dalhousie University School of Dentistry provides another example.¹²⁵ Several female dentistry students brought a sexual harassment claim against a group of male classmates who posted misogynist demeaning messages about them on a

¹¹⁹ Jennifer J. Llewellyn & Daniel Philpott, *Restorative Justice and Reconciliation: Twin Frameworks for Peacebuilding*, in RESTORATIVE JUSTICE, RECONCILIATION, & PEACEBUILDING 14, 16 (Jennifer J. Llewellyn & Daniel Philpott eds., 2014).

¹²⁰ Mary P. Koss et al., *Campus Sexual Misconduct: Restorative Justice Approaches to Enhance Compliance with Title IX Guidance*, 15 TRAUMA VIOLENCE & ABUSE 242, 246 (2014).

¹²¹ Alletta Brenner, *Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape*, 36 HARV. J.L. & GENDER 503, 561 (2013).

¹²² Pennell & Burford, *supra* note 39.

¹²³ See Coker, *Autonomy*, *supra* note 3, at 14–15 (study found that Navajo Peacemaking Courts processes can disrupt familial support for an abusive partner’s behavior by confronting sexist beliefs and marshalling support, both material and emotional, for the survivor).

¹²⁴ For more information regarding COP, see generally Linda G. Mills et al., *Cirulos De Paz and the Promise of Peace: Restorative Justice Meets Intimate Violence*, 33 N.Y.U. REV. L. & SOC. CHANGE 127 (2009). A study of the COP program in Arizona comparing recidivism rates for COP participants, as compared to those in a traditional BIP in the same locale, had statistically significant lower recidivism rates for *non-domestic violence crimes*, but there was no difference in recidivism for domestic violence. *Id.* A Utah study found that COP participants had statistically significant lower rates of recidivism for all crimes, including domestic violence crimes. Mills et al., *supra* note 53, at 1290.

¹²⁵ Jennifer J. Llewellyn et al., *Report from the Restorative Justice Process at the Dalhousie University Faculty of Dentistry* (2015), www.dal.ca/cultureofrespect/background/report-from-the-restorative-justice-process.html (last accessed August 15, 2018).

private Facebook page. Both parties agreed to a restorative justice process. As is usually required, the RPs admitted to having made or shared the posts. The RPs spent hundreds of hours training on topics such as sex bias, rape culture, power and privilege, bystander intervention, and professionalism.¹²⁶ RPs met with the S/Vs in private sessions, with facilitators in individual sessions, and with community organizations that were involved in other RJ processes.¹²⁷ At the conclusion of this process, the participants organized a Day of Learning “to share some of the valuable lessons they gained” with more than eighty participants—all of whom were members of organizations that had been a part of the university RJ process.¹²⁸

A third understanding of relationality is the potential in RJ to address what Sonya Shah refers to as “the cause of the cause of the cause.”¹²⁹ The occurrence of IPV is related to gender expectations, trauma history, and is frequently aggravated by pressures, including financial ones. To understand IPV, one must understand that the social supports for abuse include not only sexism, but also “economic policies that result in an inability to support families, racist structures that hurt individuals both materially and spiritually, substance abuse and addiction, and histories of horrific childhood abuse.”¹³⁰ Law provides little opportunity to acknowledge these “myriad social, spiritual, cultural, familial, addiction, and sex-hierarchy links”¹³¹ to violence against an intimate. RJ preparation, conferencing, and reparative plans are starting points to address this larger picture.¹³²

2. VOICE, VALIDATION, & VINDICATION

¹²⁶ *Id.* at 36.

¹²⁷ *Id.* at 37. For example, they met with Halifax fire fighters who had used RJ processes. *Id.*

¹²⁸ *Id.* Meetings with students and faculty uncovered widespread student concerns that (1) some of the mostly male faculty were suspected of having sexual relationships with some female students, prompting concerns of favoritism; (2) the centrality of alcohol use and a “work hard/play hard” attitude contributed to sexual harassment and other problems; (3) male faculty frequently engaged in conduct that made female students uncomfortable, including sharing sexually inappropriate jokes; (4) the rules for making sexual harassment (or other) complaints were unclear to both students and faculty; and (5) foreign students were not well integrated, there was no programming to ensure their integration, and faculty treated these students in a “culturally insensitive” and discriminatory manner. *Id.* at 50–52.

¹²⁹ Personal communication (on file with author). Shah is a founder of the Ahimsa Collective at www.ahimsacollective.net/.

¹³⁰ Coker, *Autonomy*, *supra* note 3, at 50–51 (internal citations omitted).

¹³¹ *Id.* at 54.

¹³² See e.g., Maxine W. Rennie, *Titiro Whakamuri-Looking Back: Titiro Whakamua-Looking Forward*, in *A RESTORATIVE APPROACH TO FAMILY VIOLENCE: CHANGING TACK* 77 (Anne Hayden et al. eds., 2014).

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RJ may provide “voice, validation, and vindication” for S/Vs.¹³³ Voice refers to “the opportunity to tell one’s story, unmediated.”¹³⁴ As sujatha baliga describes, this victim-centered approach begins with how RJ facilitators frame preparation with the S/V: “How do *you* define the harm? What do you think you need moving forward? What are your safety concerns? What are your material needs? How have you been harmed—[in] all the different ways you could be harmed—financially, emotionally, physically, spiritually?”¹³⁵

IPV may include emotional abuse that damages the S/V’s sense of worth and dignity. RJ affirms the victim’s “dignity, self-respect, and self-confidence.”¹³⁶ and thereby challenges these assaults on personhood. Restorative processes allow victims to challenge the perception that their lives are ruined and to re-narrate their life stories as “survivors” rather than “victims.”¹³⁷

By engaging community members to address the violence, restorative programs take issue with norms and conditions that foster intimate partner violence (e.g., sexism, racism, community violence, secrecy), while attempting to permanently break down the isolation frequently experienced by harmed persons (as opposed to the short-term separation offered by arrest and incarceration).¹³⁸

3. REPAIR & RESTORATION

As Jennifer Llewellyn describes, the goal of restoration is not “preserving [an] existing relationship or returning [the S/V] to some prior state,” but rather to move the S/V toward a position of “equal dignity” in the context of her or his relationship with the RP and with others.¹³⁹ An S/V may see RJ as an opportunity to build support for separation from an abusive partner. For example, Joan Pennell and Gale Burford describe the motivations of an S/V to participate in conferencing:

Sarah . . . had been feeling a great deal of pressure from [her husband’s] family to take him back . . . [Sarah’s] family

¹³³ Kathleen Daly, *Sexual Violence and Victims’ Justice Interests*, in *RESTORATIVE RESPONSES TO SEXUAL VIOLENCE: LEGAL, SOCIAL AND THERAPEUTIC DIMENSIONS* 108, 115 (Estelle Zinsstag & Marie Keenan eds., 2017).

¹³⁴ GOODMARK, *TROUBLED MARRIAGE*, *supra* note 7, at 169.

¹³⁵ Mimi Kim et al., *supra* note 8, at 372.

¹³⁶ GOODMARK, *TROUBLED MARRIAGE*, *supra* note 7, at 170.

¹³⁷ MERCER & MADSEN, *supra* note 37, at 12.

¹³⁸ Cissner et al., *supra* note 121, at 47.

¹³⁹ Llewellyn, *supra* note 44, at 102.

were extremely angry with this man and were supportive of her, but . . . it was hard for her to talk to them about her feelings because they were so protective of her and negative toward him. She saw this [conferecing] Project as a way to get information to both sides of the family about her decisions and ask for their support. She also saw the Project as a way to get support for herself and particularly her older son (age 11) who had witnessed the most violence, had been a victim of emotional abuse by this man, and was experiencing the most fear.¹⁴⁰

Restoration involves “careful attention to the current conditions and terms of relationship” in order to amend them towards a more just relationship.¹⁴¹ “The greatest promise of restorative justice appears to be its potential to build community and mobilize resources (e.g., social, emotional, and spiritual) around victims of intimate partner violence and offenders in ways not possible through traditional forms of criminal justice.”¹⁴²

For this to occur, RJ facilitators must “identify or if necessary, build micro-communities” of support.¹⁴³ RJ then becomes “a starting point, a gateway to support, therapy, and economic resources, rather than an endpoint.”¹⁴⁴ It is particularly important that RJ facilitators recognize the importance of material needs. IPV is a leading cause of women’s poverty and homelessness, and low income and economic stress are associated with increased incidents of male-on-female IPV in heterosexual couples.¹⁴⁵ It is important to attend to the materials needs of RPs, as well. Economic anxiety

¹⁴⁰ Pennell & Burford, *supra* note 55, at 172.

¹⁴¹ Llewellyn, *supra* note 44, at 102.

¹⁴² Aileen Cheon & Cheryl Regehr, *Restorative Justice Models in Cases of Intimate Partner Violence: Reviewing [sic] the Evidence*, 1 VICTIMS & OFFENDERS 369, 388 (2006) (emphasis omitted).

¹⁴³ Joanna Shapland et al., *Situating Restorative Justice Within Criminal Justice*, 10 THEORETICAL CRIMINOLOGY 520 (2006).

¹⁴⁴ Ptacek, *supra* note 25, at 283. A majority of respondents to a survey of U.S. IPV RJ programs ranked improving social supports for S/Vs as an “extremely important” program outcome. As Julie Stubbs warns, “standard restorative justice programmes, typified by a single event such as a conference, may not be sufficient to engender empathy for victims and responsibility among (some) perpetrators.” Stubbs, *supra* note 2, at 206.

¹⁴⁵ See Michael L. Benson & Greer L. Fox, *Concentrated Disadvantage, Economic Distress, and Violence Against Women in Intimate Relationships*, DEPT OF JUSTICE, NAT’L INST. JUSTICE (Jan. 2004), www.ncjrs.gov/pdffiles1/nij/199709.pdf. See also Deborah M. Weissman, *Countering Neoliberalism and Aligning Solidarities: Rethinking Domestic Violence Advocacy*, 45 SW. L. REV. 915 (2016).

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is associated with higher rates of adult male-on-female IPV¹⁴⁶ and youth are sometimes made homeless as a result of their offending.¹⁴⁷ Respondents to a U.S. survey of RJ IPV programs reported that participants had critical needs in “affordable housing, employment and training, immigration assistance and related documentation, re-entry programming, substance use treatment, and access to living wages.”¹⁴⁸

Preparatory meetings are a critical part of developing support for S/Vs, ensuring safety and non-coercion.¹⁴⁹ Preparation should occur not only with the S/V and the RP, but with other supporters who may attend a dialogue meeting.¹⁵⁰ The RJ facilitators assist the S/V and the RP with finding services¹⁵¹ and developing realistic expectations for the dialogue.¹⁵² Preparatory meetings are also an opportunity to ensure that the S/V is not feeling coerced into participation.¹⁵³ When necessary, preparation may be “detailed to ensure that all aspects such as seating, eye contact, body language, support for both parties and the possibility of intimidation are addressed prior

¹⁴⁶ Benson & Fox, *supra* note 145 (finding higher incident rates of male-on-female IPV in households with more than one period of male unemployment and in households that reported subjective feelings of economic strain).

¹⁴⁷ Interview with Shakeh Grady, Director of Restorative Programs, S.O.U.L. Sisters Leadership Collective (June 24, 2021) (notes on file with author).

¹⁴⁸ Cissner, *supra* note 11, at 27.

¹⁴⁹ Coker, *Restorative Responses*, *supra* note 47, at 50–51 (describing safety planning processes in New Zealand family group conferencing program and with a U.S. Family Group Decision Making program).

¹⁵⁰ Coker, *Crime Logic*, *supra* note 5, at 191.

¹⁵¹ See Cissner et al., *supra* note 11, at vi. The large majority of programs responding to a national survey of RJ IPV programs reported making referrals to external social service agencies: for the person causing harm (66%) and the person harmed (60%). Referrals included counseling, housing, medical, mental health and substance use treatment, vocational, and access to benefits. Services should not cease after a dialogue meeting, “a restorative process cannot . . . be deemed successful without effective follow-up programmes or courses [and] monitoring . . .” Julia Hennessy et al., *Restorative Practice with Family Violence*, in *A RESTORATIVE APPROACH TO FAMILY VIOLENCE: CHANGING TACK* 123, 124 (Anne Hayden et al. eds., 2014) (describing New Zealand RJ IPV programs).

¹⁵² Koss, *supra* note 51, at 230-232 (in the preparation process for RESTORE, a pilot U.S. RJ project involving selected sexual harm cases, S/Vs sometimes required assistance with having realistic expectations of reparation amounts and forms of community service; RPs sometimes believed that they not need the treatment that was required by the program).

¹⁵³ Hennessy et al., *supra* note 151, at 124.

to the meeting.”¹⁵⁴ Many programs allow the survivor a final veto over which supporters or family members will be present in a dialogue meeting.¹⁵⁵

RJ offers avenues of support for RPs as well as S/Vs. Preparatory conversations frequently lead to a discussion of the RP’s own experiences of childhood physical or sexual abuse.¹⁵⁶ Leigh Goodmark argues that RJ can help an RP overcome immense feelings of shame and lack of self-respect that for some is tied to the use of violence.¹⁵⁷ RPs who committee IPV are frequently seeking services, “worried about the intergenerational transmission of violence,” and wanting help to make it stop.¹⁵⁸

4. REPARATIVE PLANS

Many RJ matched dialogue processes result in a reparative plan. “Plans may include victim compensation, rehabilitative measures for the [RP] (counseling, for example), stay-away provisions, and community service.”¹⁵⁹ RJ program staff follow up with the RP to be sure that the plan is completed and with the S/V to see that they are receiving support and that they have not experienced retaliation.

Plans “not only address what offenders will do to fulfill their responsibilities and obligations to repair the harm to victims, but what they will do to better understand their conduct and how they will prevent future such acts.”¹⁶⁰ [N]uri nusrat describes the reparative plan desired by some of the high school girl survivors of sexual harm with whom she worked. The S/Vs would say something similar to:

¹⁵⁴ *Id.*

¹⁵⁵ sujatha baliga, *A Different Path for Confronting Sexual Assault*, VOX (Oct 10, 2018, 8:10am EDT), <https://www.vox.com/first-person/2018/10/10/17953016/what-is-restorative-justice-definition-questions-circle> (describing a sexual harm case seen by Impact Justice Restorative Justice Project, noting that the S/V was allowed to decide that no male members of either family would be present at the conference); *see also*, Coker, *Restorative Responses*, *supra* note 47, at 50 (describing the process in New Zealand family group conferencing).

¹⁵⁶ Coker, *Restorative Responses*, *supra* note 47, at 50 (describing Family Group Conferencing cases in New Zealand); Joan Pennell et al., *Family Violence, Fathers, and Restoring Personhood*, 1(2) RESTORATIVE JUSTICE: AN INTERNATIONAL JOURNAL 268, 282 (2013) (participants in the RJ Strong Fathers program for men who had abused their spouse frequently “recognized the impact of their childhood experiences on their parenting”).

¹⁵⁷ *See* LEIGH GOODMARK, *DECriminalizing*, *supra* note 7, at 132-134 (describing research linking lack of self-respect and shame in men to the use of violence and arguing for amending the “traditional feminist narrative” that understands IPV as a function of a desire for power and control over the S/V).

¹⁵⁸ Pennell et al., *supra* note 12, at 283.

¹⁵⁹ Coker, *Crime Logic*, *supra* note 5, at 191 (alteration in original).

¹⁶⁰ Valli Kalei Kanuha, *Final Report* 19 (unpublished report, Jan. 2007) (on file with U.S. DEPT. JUST.).

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You need to learn about sexual violence. I need you to watch documentaries about rape culture. I need to know that you are never going to do this again. And for me to feel comfortable knowing that, I need to know that you actually get what was at the bottom of this; [that] you get that the ways that you acted towards me are part of a larger societal kind of norm and that these are the things that I go through in my daily life.¹⁶¹

The plan may address the structural and cultural factors that support violence. For example, in the context of campus sexual assault, if a male RP's assault "was perpetrated in the context of a high-risk male organization [he] might agree to work with the University to develop new rules for fraternity and sorority life, work to change alcohol use, or assist with student training and gender subordination and sexual assault."¹⁶²

C. *Cautions*

In this section, I describe three critical issues that are true for any RJ program but are particularly important for system-connected programs that address IPV and sexual harm.

1. *PRIVILEGED COMMUNICATION*

RJ programs must address the potential for court admissibility in later proceedings of evidence gathered in the RJ process. In practical terms, a prosecutor could compel the testimony in a subsequent criminal matter against the RP of someone who heard his or her statements made in preparatory meetings or in a dialogue. Thalia González's 2020 review of RJ state statutes found only nine states that affirmatively protect statements made during an RJ process.¹⁶³ Even in the minority of states that afforded protection, the

¹⁶¹ Interview with nuri nusrat, Restorative Justice facilitator and trainer, (March 2, 2017) (on file with author).

¹⁶² Donna Coker, *Feminist Response to Campus Sexual Assault in the Republican Era: Crime Logic, Intersectional Public Health, and Restorative Justice*, in *THE POLITICIZATION OF SAFETY: CRITICAL PERSPECTIVES ON DOMESTIC VIOLENCE RESPONSES* 171, 189 (Jane K. Stoever ed., 2019).

¹⁶³ See González, *supra* note 54, at 1190–92. Illinois legislation privileging evidence obtained in RJ processes became effective July 15, 2021. See Illinois Public Act 102-0100. The new law includes the following provisions:

protection was sometimes limited either as to the context of the evidence (i.e., protecting only statements made during a conference) or to the person to whom it applies (i.e., protecting only statements made by the juvenile or his guardian).¹⁶⁴ Absent statutory protection, some programs enter into a Memorandum of Understanding (MOU) with local prosecutors which stipulates that the prosecutor will not use evidence from RJ processes in any subsequent criminal matter against any participant.¹⁶⁵

Anything said or done during or in preparation for a restorative justice practice or as a follow-up to that practice, or the fact that the practice has been planned or convened, is privileged and cannot be referred to, used, or admitted in any civil, criminal, juvenile, or administrative proceeding unless the privilege is waived The privilege afforded by this Section does not apply if: (1) disclosure is necessary to prevent death, great bodily harm, or the commission of a crime; (2) necessary to comply with another law; or (3) a court, tribunal, or administrative body requires a report on a restorative justice practice, but such report shall be limited to the fact that a practice has taken place, an opinion regarding the success of the practice, and whether further restorative justice practices are expected.

¹⁶⁴ See González, *supra* note 54, at 1190–92. Other evidentiary rules may provide protection in some states, depending on statutory definitions and the context of the RJ practice. See e.g., Coker, *Crime Logic*, *supra* note 5, at 202–203 (evidence derived from a campus RJ process may be covered by state statutes that privilege communications in alternative dispute resolution processes or mediation); sujatha baliga, *The Day the Jail Walls Cracked: A Restorative Plea Deal*, 27(1) *TIKKUN* 22 (2012) (RJ dialogue conducted in pre-plea negotiations was privileged).

¹⁶⁵ González, *supra* note 54, at 1193. For an example of an exemplary MOU, see Impact Justice Restorative Justice Project’s Juvenile Diversion Toolkit, *A Diversion Toolkit for Communities*, RESTORATIVE JUST. PROJECT (2019), https://rjtoolkit.impactjustice.org/wp-content/uploads/2019/06/RJD-Toolkit_June2019.pdf [hereinafter Impact Justice Toolkit]. The MOU reads in part:

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2. CRIMINAL ENTANGLEMENT

As Deborah Weissman describes, people charged with or found guilty of a domestic violence misdemeanor are frequently referred to a Batterer's Intervention Program (BIP) and, as is the case more generally,¹⁶⁶ are required to pay program fees.¹⁶⁷ Failure to pay may result in jail time and/or additional fines. In theory, a court should not find a violation when a person is unable to pay; the common result is that courts work out payment schedules at best.¹⁶⁸ Frequently, court assessments of ability to pay are "abbreviated and made without court records, where defendants do not have legal counsel."¹⁶⁹ Perhaps not surprisingly, the trend to require fees for programs is becoming increasingly true for court referrals to RJ programs.¹⁷⁰

This is just one of the many ways in which involvement in the criminal system can ratchet up penalties—increasing liability and further entanglement in the system. The problem of net-widening and ratcheting penalties are

The DAO understands that any information learned in the RJD program (including pre-circle/pre-conference meetings and the post-conference, plan completion phase) is confidential and will not be accessible. Should the DAO gain access to any information via any aspect of the RJD program, the DAO agrees that such information will be treated as confidential ("Confidential Information") and shall not be used against any participant accused of a crime in any juvenile or criminal proceeding or determination of probation violations. The DAO agrees not to subpoena information or testimony from RJD facilitators or other . . . staff or otherwise ask them to share Confidential Information learned in matters that involve any individual who participates in the RJD process. The DAO also agrees not to subpoena or otherwise interview/investigate other RJD participants (e.g., individuals who participated in prep meetings or in the circle/conference itself) to testify about any Confidential Information that is learned through the RJD program. Finally, the DAO . . . agrees that a youth's agreement to participate in RJD, or the failure of a case to successfully resolve through RJD, will not be introduced into any juvenile or criminal proceedings for any purpose including for impeachment purposes.

Id. at 5–6.

¹⁶⁶ See Beth A. Colgan, *The Excessive Fines Clause; Challenging the Modern Debtors' Prison*, 65 UCLA L. REV. 2 (2018) (the use of criminal court-imposed economic sanctions including fees has exploded with serious consequences, including effectually perpetual indebtedness).

¹⁶⁷ See Deborah Weissman, *In Pursuit of Economic Justice: The Political Economy of Domestic Violence Law and Policies*, 2020 UTAH L. REV. 56–62 (2020).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 61.

¹⁷⁰ González, *supra* note 54, at 1193–95.

critical issues for the development of RJ programs that are affiliated with the criminal legal system. Criteria for referral must avoid net-widening by requiring that only cases involving potentially serious charges are referred.¹⁷¹ Programs should inform RPs of sliding scale alternatives and should insist that courts not find failure to pay a basis for violation of terms of diversion or probation.

3. *IMPLICIT BIAS*

RJ staff should develop measures to counter implicit and systemic bias, including engaging in implicit racial bias training and developing a “high level of self-awareness.”¹⁷² The decision to refer a case is frequently at the complete discretion of a state actor.¹⁷³ When this is the case, RJ staff should receive arrest and referral data that allows them to review for selection bias. Programs should review referral criteria to avoid replicating criminal legal system bias. For example, given racial bias in arrests, a prosecutor’s choice to refer only cases where the RP has no prior criminal history replicates the racial bias of the system. Similar concerns about implicit bias or system capture are true for any system-based RJ program. For example, campus RJ facilitators should be aware of the risks of racial and gender bias.¹⁷⁴

III. RESTORATIVE CIRCLES FOR COMMUNITY-BUILDING, PREVENTION, EDUCATION

*My dream is that restorative justice might help move us from an ethic of separation, domination, and extreme individualism to an ethic of collaboration, partnership, and interrelatedness.*¹⁷⁵

¹⁷¹ See Impact Justice Toolkit, *supra* note 165. Impact Justice Restorative Justice Project has a detailed toolkit for developing a pre-charge juvenile diversion project that takes only cases involving conduct that could result in high level misdemeanor or felony charge.

¹⁷² Davis, *supra* note 26, at 430 (“White restorative justice practitioners interacting with youth of color” must “constantly ask themselves: ‘In the way I practice restorative justice and interact with students and educators, am I perpetuating or challenging structural inequities?’”).

¹⁷³ González, *supra* note 54, at 1177. Of state laws that specified a decision maker for RJ referral, 96% gave discretion to a state actor, most commonly courts or prosecutors.

¹⁷⁴ Coker, *supra* note 1, at 392 (“The dominant sexual assault narrative is deeply gendered” making the prospect of gender bias affecting campus adjudication and RJ processes a significant concern; in addition, racial bias may affect the ways that minoritized students are perceived.).

¹⁷⁵ Fania E. Davis, *What’s Love Got to Do With It?*, 27 *TIKKUN* 30, 32 (2012).

RESTORATIVE APPROACHES: INTIMATE PARTNER VIOLENCE & HARM

A second understanding of RJ is characterized by “Peacemaking Circles”¹⁷⁶ or simply “Restorative Circles.”¹⁷⁷ While circles may be organized in response to harm, what I have in mind here are Circle programs that, rather than responding to specific harms, are instead centered on community-building, education, prevention, capacity-building, empowerment, or youth leadership development. Some RJ scholars would not define these practices as restorative *justice*, preferring instead to call them restorative *practices*¹⁷⁸ or instead examples of relational theory put into practice.¹⁷⁹ But many use the more familiar term “restorative justice” to refer to both restorative responses to harm and building community.

Circle programs vary significantly, ranging from short-lived problem-solving college campus circles,¹⁸⁰ to ongoing youth programs centered on building relationships and empowerment,¹⁸¹ to circles of boys and men of

¹⁷⁶ See Christina Parker, *Who’s In and Who’s Out? Problematizing Peacemaking Circles in Diverse Classrooms*, in *COLORIZING RESTORATIVE JUSTICE: VOICING OUR REALITIES* 65 (Edward C. Valandra & Wanjbli Wapháha Hokšila eds., 2020) (describing the use of Circles in school settings to build relationships and communication skills); compare Cissner et al., *supra* note 12 at 4 (peacemaking circle “brings together individuals who wish to resolve harm . . .”).

¹⁷⁷ See CAROLYN BOYES-WATSON & KAY PRANIS, *CIRCLE FORWARD: BUILDING A RESTORATIVE SCHOOL COMMUNITY* (2015) (describing Circle practices in school settings).

¹⁷⁸ See Wachtel, *supra* note 49, at 1 (the International Institute for Restorative Practices understands restorative *justice* to be “reactive, consisting of formal or informal responses to crime and other wrongdoing after it occur[s]” while restorative *practices* is a broader category that includes restorative justice as well as “processes that precede wrongdoing, those that proactively build relationships and a sense of community to prevent conflict and wrongdoing.”); Shah et al., *supra* note 30, at 35 (noting that practitioners who work in schools frequently preferred the term “restorative processes” to describe their work, and that some practitioners who worked in criminal settings preferred that the term “restorative justice” be limited to criminal justice affiliated programs). See also Llewellyn, *supra* note 44, at 104 (a RJ is a response to harm).

¹⁷⁹ Llewellyn, *supra* note 44, at 104.

¹⁸⁰ See Karp et al., *supra* note 76.

¹⁸¹ See, e.g., S.O.U.L. SISTERS LEADERSHIP COLLECTIVE, “OUR MISSION AND VALUES,” <https://soulsistersleadership.org/about/our-mission-vision/> (last visited Aug. 28, 2021); CIRCLES & CIPHERS, <http://www.circlesandciphers.org/> (last visited Aug. 28, 2021) (Circles and Ciphers is “a hip-hop infused restorative justice organization led by and for young people impacted by violence. Through art-based peace circles, education, and direct action we collectively heal and work to bring about the abolition of the prison-industrial complex.”).

color to “interrupt cycles of violence [and] generational trauma,”¹⁸² to public health-informed youth sexual harassment prevention.¹⁸³ Some of the programs I describe are specifically focused on violence prevention or responding to the harms of having experienced violence, but others are more generally focused on empowerment and organizing in ways that respond to trauma and oppression.

“The Circle is a carefully constructed, intentional dialogue space.”¹⁸⁴ A Restorative Circle facilitator will often begin by asking circle members to identify “the values they wish to hold in the collective space.”¹⁸⁵ These shared values become a guide for the dialogue that follows. The facilitator may ask open ended questions, giving each person an opportunity to speak or to “pass” (decline to speak).¹⁸⁶ Christina Parker notes that the Circle process may allow “quieter and marginalized voices . . . greater valence and the opportunity to participate,” provided the circle keeper incorporates an awareness of culture, diversity, and equity.¹⁸⁷ Thalia González and Annalise Buth argue that these community-building restorative approaches are not merely an additional form of RJ, but rather an alternative understanding of the meaning of RJ. They criticize the system-focus, particularly criminal legal system-focus, of most RJ literature that sees RJ “as an alternative or adjunct to the legal process [citation omitted] rather than a philosophy supporting the establishment of societal conditions necessary for right and equitable relationships.”¹⁸⁸ RJ is better understood as “a philosophy supporting the establishment of societal conditions necessary for right and equitable relationships[,]”¹⁸⁹ and a means of expanding “personal autonomy or freedom to cover all possible areas of justice seeking.”¹⁹⁰

¹⁸² Cissner et al., *supra* note 12, at 107 (quoting The Compadres Network interviewee). While the distinctions I draw are useful, they are also provisional and incomplete. As illustrated by The Compadres Network’s work, community building circles may address the traumatic impact of past harms in the lives of participants in the circle.

¹⁸³ Interview with Quince Hopkins, Director, Erin Levitas Initiative for Sexual Violence Prevention-University of Maryland Francis King Carey School of Law (Feb. 15, 2021) (notes on file with author) [hereinafter Hopkins Interview].

¹⁸⁴ BOYES-WATSON & KAY PRANIS, *supra* note 177, at 27.

¹⁸⁵ *Id.*

¹⁸⁶ See generally, BOYES-WATSON & PRANIS, *supra* note 177.

¹⁸⁷ See Parker, *supra* note 176, at 68. Parker describes the ways in which school-based circles often fail to meet the ideal. She notes that “[e]xclusion permeates many restorative peacemaking Circles” when less powerful minority voices are “ignored or silenced by those who have more power, e.g., racially dominant students, teachers, and/or administrators.” *Id.* at 74.

¹⁸⁸ González & Buth, *supra* note 27, at 250.

¹⁸⁹ González & Buth, *supra* note 27, at 250.

¹⁹⁰ *Id.* at 247.

RESTORATIVE APPROACHES: INTIMATE PARTNER VIOLENCE & HARM

A significant portion of the Transformative Justice (TJ) movement is focused on building just communities, and that focus now characterizes a number of RJ initiatives, as well. Ahjané Billingsley’s study of restorative and transformative justice programs found that a significant number were focused on strengthening social bonds and creating capacity to meaningfully respond to harm, when it occurs.¹⁹¹ As one respondent noted, “[i]f you don’t have good relationships in the first place, you can’t just jump into a circle to repair harm.”¹⁹² Another respondent noted the importance of creating “infrastructure where we don’t have to just respond to incidences of harm and violence but instead, we’re trying to proactively create the kind of communities that we think will be able to respond to harm and violence better.”¹⁹³ These organization leaders “believed that relationship development is integral to fostering positive changes on the interpersonal, community, and structural levels.”¹⁹⁴

A number of RJ initiatives are focused on youth, and in particular, BIPOC, LGBTQ, and gender nonconforming youth. The mission of S.O.U.L. Sisters Leadership Collective (SSLC) is to “mobilize systems-involved girls, femmes, and TGNC youth of color—Black, Brown, and Indigenous—to interrupt cycles of state violence, poverty, and oppression.”¹⁹⁵ SSLC’s Sisterhood Academy develops youth leadership in “trauma-informed” ways that are “based in restorative practices and social justice education & action.”¹⁹⁶

Thalia González and Rebecca Epstein study found that gender-specific school-based RJ programs “can provide girls with a safe space for the development of healthy peer-to-peer relationships and improved listening, anger management, and empathic skills.”¹⁹⁷

Circle taught me to take care of myself, to accept where I am in each moment, and to listen to myself in making decisions rather than being swayed by culture in the opinions

¹⁹¹ Ahjané Billingsley, *Reimagining Gender Violence: Understanding Community-Based Organizations’ Use of Restorative and Transformative Justices as Social Change Strategies* (Dec. 12, 2019) (Ph.D. dissertation, University of Miami), https://miami.userservices.exlibrisgroup.com/discovery/delivery?vid=01UOML_INST:ResearchRepository&repId=12355321570002976#13355498620002976.

¹⁹² *Id.* at 107.

¹⁹³ *Id.* at 111.

¹⁹⁴ *Id.* at 119.

¹⁹⁵ S.O.U.L SISTERS LEADERSHIP COLLECTIVE, *supra* note 181.

¹⁹⁶ *Id.*

¹⁹⁷ Thalia González & Rebecca Epstein, *Increasing School Connectedness for Girls: Restorative Justice as a Health Equity Resource*, GEO LAW CTR. ON POVERTY AND INEQ. 12 (2020).

of others. I am determined to defy self-described stereotypes about Puerto Rican women, such as dependence on remand for my identity and my livelihood. I am seeking my own passions—making art in creating a unique way forward.¹⁹⁸

Restorative Circle approaches assist the “social-emotional development” of youth, including gains in “self-awareness, self-management, social awareness, relationship skills, . . . positive conflict resolution and responsible decision-making.”¹⁹⁹ These RJ programs are particularly important for “marginalized” girls—BIPOC, LBTQ or gender nonconforming.²⁰⁰ These youth experience higher rates of trauma²⁰¹ and Black girls, in particular, are significantly more likely to have higher rates of contact with the juvenile justice system.²⁰²

Community programs such as The National Compadres Network are focused on boys and men of color. The founder notes:

We boys and men of color get criminalized early on in our schooling as marginalized men, . . . that manifests itself later in our relationships and in our community. In this patriarchal and racist society, all men and boys have been impacted . . . we all need healing, rebalancing, rights of passage, and support and decolonization, to return to our sacredness and know how to manage ourselves in an honorable way in this often oppressive disconnected, toxic society. To that end, National Compadres Network views the restorative process as intersectional and intergenerational. Beyond any single intervention, the program is seen as a commitment by individuals, families, communities, and systems to transform the trauma and hurt into relationships based on healing and interconnected responsibility.²⁰³

Similarly, Abdul-Malik Muhammad argues that school Circle practitioners must “consciously and explicitly address the challenges facing

¹⁹⁸ *Id.* at 13 (“Sharleene’s Story” was related by a 16-year-old girl in an RJ circle).

¹⁹⁹ *Id.* at 11.

²⁰⁰ González & Epstein, *supra* note 197, at 1.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Cissner et al., *supra* note 11, at 107.

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our Black and Latinx males, perhaps the most marginalized among us,”²⁰⁴ a process that requires “overtly confront[ing] issues of power disparities, oppression, racism, sexism, white privilege, male privilege, and sexual-orientation privilege.”²⁰⁵

Other programs use a circle process for more specific problem-solving, education, and prevention. For example, David Karp et al. describe a campus student circle organized to address the risk for sexual harm in off-campus daytime drinking parties, commonly referred to as “darties.”²⁰⁶

The first question for the circle was, “How would you describe the level of safety at darties?” This question yielded very mixed opinions. Some students felt that it depended on which house hosted the event, whether they personally knew the hosts, the level of crowding, whether the event prioritized drinking over other forms of socialising, and even the weather (on warm days, the parties went longer and people drank more). At darties, students sometimes found themselves becoming much more intoxicated than they planned or expected to be. This led to situations where people lost track of friends or became much less aware of the actions of those around them, limiting their skills as bystanders even if they had good intentions to act as such. Other participants identified a problem of what they called “implied consent”: the shared concept that by attending darties, and by leaving the darty with someone, that an individual was consenting to anything that happened thereafter. After a participant shared that example, other participants stressed that they didn’t themselves hold this belief but that it was a widely identifiable belief on campus.

After the circle shared its concerns, the facilitators asked, “What would need to change about darties to make them more safe?” This question proceeded as an open space conversation rather than a structured circle [and resulted in a concrete plan of action].²⁰⁷

²⁰⁴ Abdul-Malik Muhammad, *The Cipher, Circle, and Restorative Practices with Black and Brown Boys*, in *COLORIZING RESTORATIVE JUSTICE: VOICING OUR REALITIES* 213–214 (Edward C. Valandra & Wanjbli Wapháha Hokšila eds., 2020).

²⁰⁵ *Id.* at 214–215.

²⁰⁶ Karp et al., *supra* note 76.

²⁰⁷ Karp et al., *supra* note 76, at 16.

More formalized programs organize Restorative Circles around a detailed curriculum. For example, the Erin Levitas Initiative for Sexual Assault Prevention has designed a restorative dialogue circle program with 7th grade students for the prevention of sexual harm.²⁰⁸ *E.R.I.N.* (Empathy, Respect, Integrity, and No More Sexual Assault) *Talk*, a program of the University of Maryland Law School, trains law and social work students to co-facilitate the circles.²⁰⁹ Under the leadership of Quince Hopkins, the program developed a unique curriculum organized around eight modules that include “verbal and nonverbal communication skills, safe use of social media and technology, healthy gender norms, digital boundaries, consent, sexual harassment, cross- gender empathy, and bystander intervention.”²¹⁰ The modules and circle practices are based in research regarding protective factors for committing sexual harm – that is, factors that decrease the likelihood of perpetrating harm. For example, research suggests that tight-knit male friendships – referred to in the research as “peer network density” – is a *protective* factor,²¹¹ as is empathy. The *E.R.I.N.* model’s circle process is designed to strengthen male social bonds and aid in the development of empathy.²¹²

In a circle, there are no physical barriers between participants and each person speaks without interruption. Facilitators model deep listening, giving their undivided attention to each speaker, which in turn encourages students to do the same. Facilitators introduce a topic, describe a scenario, and then ask carefully selected questions designed to assist students to develop their own critical thinking and to share their personal experiences. As a result, “[students] do their own learning and teaching.”²¹³

IV. CONCLUSION

²⁰⁸ See Erin Levitas Initiative, University of Maryland Francis King Carey School of Law, <https://www.law.umaryland.edu/Programs-and-Impact/Other-Initiatives/Erin-Levitas-Initiative/>.

²⁰⁹ The information about the Erin Initiative is drawn from my interview with Quince Hopkins, unless specifically indicated otherwise. Hopkins Interview, *supra* note 183. Student facilitators also learn about the impact of trauma, the research on Adverse Childhood Experiences (ACEs), and trauma informed practices.

²¹⁰ Erin Levitas Initiative, *supra* note 208.

²¹¹ Kevin M. Swartout, *The Company They Keep: How Peer Networks Influence Male Sexual Aggression*, 3(2) PSYCH. OF VIOLENCE 157, 167 (“[Young men] with highly dense peer groups . . . tend to harbor less hostility toward women” which in turn is associated with committing sexual harm.).

²¹² Hopkins Interview *supra* note 183. In contrast to most school curricula on gender norms, *E.R.I.N. Talk* curriculum is not based on a gender binary presumption. *Id.*

²¹³ *Id.*

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Until recently, the U.S. RJ movement did not center racial justice and did not align with the movement to end mass incarceration.²¹⁴ As I described at the outset of this article, this has changed in growing sectors of the RJ movement. In what ways does this matter for the significant number of RJ programs that are system-affiliated? How does RJ align with racial justice and prison abolition?

System-affiliated RJ programs are unlikely to radically transform governing institutions with which such programs are linked.²¹⁵ But they nonetheless can “play an important role in ameliorating the harms of punitive racially discriminatory . . . system practices, increasing support for victims, and transforming familial and friend networks that are important to the maintenance of violence.”²¹⁶ RJ programs that are not system-affiliated can help build the capacity of communities to prevent and respond to violence, as is the aim of TJ. When girls of color have their own Restorative Circle space in schools, they do better in school because they are given tools to respond to discriminatory racialized gender expectations.²¹⁷ FGDM programs such as EPIC O’Hana blunt the racially discriminatory processes of child welfare system and build resilience in indigenous families, while also interrupting patterns of violence. And community-based programs such as S.O.U.L. Sisters Leadership Collective provide opportunities for girls and femme -identified youth of color to engage in social justice organizing as well as addressing trauma.

Fania Davis urges a “parallel strategy” that both engages schools and communities in restorative justice dialogues while also advocating for larger systemic change – a process Davis refers to as “restorganizing.”²¹⁸ “Restorganizing” requires recognizing that a restorative approach is broader than individual programs. In the “reimagined movement to end gender

²¹⁴ See SERED, *supra* note 27, at 155–56.

²¹⁵ RJ critics from the left have long been concerned that when RJ is affiliated with the apparatus of state and institutional governance (criminal, child welfare, schools), the result is to legitimize oppressive state systems, not contest them. See, González & Buth, *supra* note 27; Kim, *Anti-Carceral*, *supra* note 4; Smith, *supra* note 27, at 265 (RJ programs tied to the state may extend the criminal justice control over more people). As Amy Cohen describes, the RJ movement can be understood as a “moral-relational movement,” not a movement that challenges social and structural inequalities. Amy J. Cohen, *Moral Restorative Justice: A Political Genealogy of Activism and Neoliberalism in the United States*, 104 MINN. L. REV. 899 (2019) at 917. As Cohen describes, the anti-state position of RJ has been attractive to conservative Christians and libertarians who would diminish both the welfare state and the penal state. *Id.*

²¹⁶ Coker, *Restorative Responses*, *supra* note 47, at 58.

²¹⁷ See González & Epstein, *supra* note 197.

²¹⁸ Fania Davis, *supra* note 26, at 429 (describing RJ work to reform the Oakland school system).

violence,” RJ in both the response-to-harm side and the community-building/prevention side is a part of a larger transformational project to radically reshape state priorities in funding and services and to make equally critical changes in culture.²¹⁹

These reforms are premised on the idea that preventing and responding to gender violence requires recognizing the complexity of the roots of violence.²²⁰ Reforms include, for example, “decoupling victim services from law enforcement”²²¹; funding community-based strategies to prevent and interrupt violence; creating affordable interventions to assist self-referred persons seeking to stop their violence; creating trauma centers that provide psychological and material assistance for those harmed by violence; creating alternatives to police as first responders; and replacing domestic violence mandatory arrest practices with mandatory assistance and engage community organizations to assist S/Vs. Reform also requires increasing economic assistance across the board; recognizing in treatment programs²²² and elsewhere the link between economic strain and IPV perpetration,²²³ and aggressive enforcement of anti-discrimination laws in housing and employment.²²⁴

“Restorganizing” is to understand the Restorative Justice movement as a movement for social justice.

²¹⁹ Many of the reforms outlined in this paragraph are described by Philpart et al., *supra* note 22. See also, SERED, *supra* note 27 at 243; GOODMARK, DECRIMINALIZING, *supra* note 7 (describing in detail alternative ways of addressing IPV).

²²⁰ See Coker & Macquoid, *supra* note 4 (describing the relationship of economic strain and trauma to the perpetration of violence); Weissman, *supra* note 167 (describing the need to address the political economy of domestic violence); Philpart et al., *supra* note 22 (recommending trauma centers and other methods of addressing trauma).

²²¹ SERED, *supra* note 27, at 124.

²²² Weissman, *supra* note 167 (describing the failure of batterer treatment programs to assist with employment).

²²³ See Benson & Fox, *supra* note 145 (finding increased rates of male-on-female IPV in households experiencing male unemployment and economic strain).

²²⁴ See George Lipsitz, “*In an Avalanche Every Snowflake Pleads Not Guilty*”: *The Collateral Consequences of Mass Incarceration and Impediments to Women’s Fair Housing Rights*, 50 UCLA L. Rev. 1746 (2012) (describing the ways in which racial discrimination in housing and employment, gender norms in the structure of caretaking responsibilities, vulnerability to male abuse, and the resulting economic vulnerability of African American women and Latinas, combine to make poor women of color particularly vulnerable to incarceration).