

ARTICLE

Dangerous Promises: Restorative Justice and the Complex Realities of Intimate Partner Violence in Aotearoa New Zealand

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Aotearoa New Zealand has persistently high rates of intimate partner violence (IPV). Women, and particularly Māori women, are disproportionately affected. Dissatisfaction with punitive criminal justice responses has prompted increasing interest in restorative justice as an alternative framework centred on participation, accountability, and community-based healing. This article examines whether restorative justice can appropriately respond to IPV within Aotearoa's social, legal, and institutional context. Drawing on feminist and intersectional scholarship, the article conceptualises IPV as a pattern of coercive and controlling harm embedded in gendered and structural power relations. The article argues that restorative justice relies on idealised constructions of survivors, harm-doers, encounters, and communities; and makes flawed assumptions of safety, equality, and restoration that are often incompatible with the lived realities of IPV. An intersectional critique further demonstrates how restorative justice, when implemented through state-controlled and culturally generic models, risks reproducing colonial and institutional harms for Indigenous women. The article concludes that, while restorative justice offers valuable possibilities for justice reform, its current framework is ill-suited to addressing IPV until its principles and safeguards are re-imagined to prioritise survivors' interests.

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I Introduction

The traditional criminal justice system (CJS), centred on retributive punishment, has long been the cornerstone of society's response to crime. Despite the system's goals of deterrence, high recidivism rates suggest that punitive measures alone are ineffective at preventing reoffending because they simply do not rehabilitate harm-doers.¹ Growing dissatisfaction with the traditional CJS has led to increased attention on alternative approaches to justice, particularly those focusing on repairing harm caused by the harmdoer rather than merely punishing harm-doers. Restorative justice has emerged as a prominent alternative, offering a framework focused on repair and restoration. However, questions remain regarding restorative justice's effectiveness in complex and sensitive cases, such as intimate partner violence (IPV). This article investigates whether restorative justice can appropriately respond to IPV in Aotearoa New Zealand, where the traditional CJS has struggled to address the nuanced impacts on survivors.²

This article proceeds in the following parts. Part II defines and deconstructs IPV while examining the contributions of existing feminist scholarship. Part III then situates IPV within the real-world context of Aotearoa, focusing on the prevalence and distinct dynamics of IPV harmdoing in the region. Part IV explores restorative justice within that same context, examining its framework, practical implementation, and potential benefits in addressing IPV.

While the first three parts provide a more generalised account of restorative justice, the final three parts offer a nuanced critique, addressing restorative justice's limitations, assumptions, and challenges in responding to IPV. Part V explores the "ideal" concept, interrogating the "ideal" survivor, harm-doer, restorative justice encounter, and community. The section analyses how deviations from these idealised notions directly impact the success of restorative justice processes. Part VI scrutinises three major assumptions underlying restorative justice: that it ensures survivors' safety, that encounters are inherently equal, and that it aims to restore relationships. These assumptions will reveal problematic foundations of restorative justice that may render it inadequate to respond to IPV. Finally, through an intersectional feminist lens, Part VII assesses whether restorative justice can adequately respond to the needs of Indigenous women in Aotearoa, who are over-represented as survivors of IPV. It considers whether restorative justice risks becoming an extension of the punitive Western traditional CJS.

While restorative justice offers promising elements for justice reform through its focus on healing and transfer of power back to the community, this article argues that its application to IPV is fraught with challenges. The significant power imbalances inherent in IPV, obstacles inhibiting genuine participation in restorative justice processes, and the intersectional realities faced by Indigenous women in Aotearoa all raise critical concerns. These challenges suggest that without fundamentally rethinking restorative justice's principles and processes, restorative justice may fail to deliver the justice and safety it promises for IPV survivors. The author does not share the lived experiences of Indigenous women; nevertheless, this article aims to critically examine restorative justice's implementation in IPV cases in Aotearoa. For restorative justice to effectively address IPV

1 Te Uepū Hāpai i te Ora *He Waka Roimata: Transforming Our Criminal Justice System* (Ministry of Justice, 2019) at 49.

2 Family Violence Death Review Committee *Seventh report: A duty to care* (Health Quality & Safety Commission, June 2022) at 69–76.

in Aotearoa, a thorough re-examination of its foundational assumptions and careful implementation are required to ensure it meets the needs of survivors.

II Feminist Perspective on IPV

A *Defining and deconstructing IPV*

(1) “Domestic violence” remains too narrow

Understanding IPV requires distinguishing it from related but distinct concepts. While IPV overlaps with both domestic violence and family violence, it remains distinct. At the narrow end of the spectrum, domestic violence is typically defined as incidents of physical or emotional abuse between spouses, limiting the focus to specific, overt acts of harm.³ This narrow conception presents two issues. First, only spousal partners can be said to commit this violence. Second, violence is confined to physical and emotional abuse, rendering other types of abuse (such as financial, psychological, and sexual) irrelevant under this definition. This narrow understanding has limited academic discussion by focusing predominantly on overt forms of abuse between spouses.

However, the legal definition of domestic violence has broadened in recent times. Section 3 of the Domestic Violence Act 1995 broadened the definition of “domestic violence” to include a “person who has been in a domestic relationship”, extending the definition to include violence perpetrated by ex-spousal partners. Section 4(1) provides further guidance, defining a “domestic relationship” as including a spouse, family member, someone who shares a household, or someone who has a close personal relationship with the other person. This represents a notable shift from traditional narrow understandings of domestic violence by incorporating a broader range of actors. Additionally, s 3(2) expanded the definition to include sexual and psychological abuse. Despite these expansions, domestic violence remains limited in scope as it does not account for coercive and controlling behaviour. Moreover, despite these legislative shifts, traditional concepts of domestic violence continue to influence contemporary understandings of gendered violence. If traditional understandings of gendered violence continue to shape the behaviour of those implementing these laws, any legislative or policy improvement will remain ineffective. There is a need to move beyond the narrow term altogether.

(2) “Family violence” appears too broad

In contrast to the narrow definition of domestic violence, family violence represents the other end of the spectrum, potentially encompassing too broad a range of actors. Section 9 of the Family Violence Act 2018 defines family violence as acts by those in a “family relationship”. The Act clarifies that a “family relationship” includes spouses, partners, family members, household members, and those in a close relationship.⁴ This broader definition significantly expands the group of actors to include not only partners, but also parents, children, siblings, and non-blood relationships that serve the function of a family, such as adoptive families.⁵

3 Ann Wolbert Burgess *Victimology: Theories and Applications* (3rd ed, Jones & Bartlett, Burlington (Vermont), 2019) at 509.

4 Family Violence Act 2018, s 12.

5 Section 8.

The definition of violence is similarly expanded to include physical, sexual, and psychological abuse.⁶ Crucially, the Act further captures “patterns of behaviour that are coercive or controlling” that “may cause cumulative harm”.⁷ The often neglected financial abuse is also included under psychological abuse in s 11(1)(e). While this comprehensive legal definition represents a legislative shift in the right direction, adopting such a broad definition may risk superficial analysis, obscuring in-depth examination of critical issues. For this article’s analysis, a middle ground between the narrow focus of domestic violence and the broad scope of family violence is the most appropriate conceptual lens.

(3) Focusing the analysis: “intimate partner violence”

Defining IPV too narrowly as domestic violence, or too broadly as family violence, risks undermining a nuanced and balanced analysis. This article, therefore, adopts a definition of IPV as a middle ground between the two extremes. IPV acknowledges that violence extends beyond spousal relationships and includes former, current, and intimate partners. Moreover, the definition of harm in IPV moves beyond physical and emotional abuse to also incorporate psychological and sexual harm.⁸ However, this article argues that the definition of harm should be even broader, incorporating what the Family Violence Act defines as a “pattern of behaviour that is coercive or controlling” that may “cause cumulative harm”.⁹ Although there is no specific legal definition of IPV, the New Zealand Family Violence Clearinghouse, now known as Vine, adopts the definition that IPV includes “physical violence, sexual violence, psychological/emotional abuse, economic abuse, intimidation, harassment, damage to property and threats of physical or sexual abuse towards an intimate partner”.¹⁰ This definition is comprehensive in capturing the various forms of violence that survivors may experience, while remaining sufficiently narrow in its scope of harm-doers to retain analytical focus.

The language used to describe interpersonal violence carries significant implications, shaping both societal understandings of IPV and the mechanisms developed in response to it. Language has the power to either validate or erase lived experiences and to empower or marginalise those involved. Within the traditional CJS, labelling individuals as either “victims” or “offenders” imposes problematic assumptions and reinforces a reductive binary that simplifies complex lived experiences.¹¹ These labels suggest mutually exclusive roles and fail to capture the complex dynamics often present in IPV cases where, for example, “victims” are not always passive or powerless,¹² and “offenders” may also have been “victims” of abuse themselves.¹³ This article adopts the terminology of “survivor” and “harm-doer” to more accurately reflect the nuances of IPV and to minimise disempowerment caused by the use of language. Furthermore, while IPV can affect people

6 Section 9(2).

7 Section 9(3).

8 Burgess, above n 3, at 509.

9 Family Violence Act, s 9(3).

10 Clare Murphy and others *Understanding connections and relationships: Child maltreatment, intimate partner violence and parenting* (New Zealand Family Violence Clearinghouse, Issues Paper 3, University of Auckland, April 2013) at 4.

11 Nils Christie “The ideal victim” in Ezzat A Fattah (ed) *From Crime Policy to Victim Policy: Reorienting the Justice System* (Macmillan, London, 1986) 17 at 18–19.

12 Julia Tolmie and others “Social Entrapment: A Realistic Understanding of Criminal Offending of Primary Victims of Intimate Partner Violence” (2018) 2 NZ L Rev 181 at 182–183.

13 Mark T Berg and others “The Victim-Offender Overlap in Context: Examining the Role of Neighborhood Street Culture” (2012) 50 *Criminology* 359 at 360.

of all genders, women are disproportionately represented as survivors. According to the 2018 New Zealand Crime and Victims Survey (NZCVS), 71 per cent of IPV survivors were women.¹⁴ Accordingly, this article adopts a feminist lens and focuses specifically on female IPV survivors who have experienced harm at the hands of male harm-doers.

B *Feminist theoretical approaches to IPV*

Lenore Walker's 1979 "cycle of violence" theory was one of the first feminist frameworks to address gaps in the understanding of IPV.¹⁵ Walker's theory suggests IPV survivors become desensitised through repeated exposure to violence and develop "learned helplessness", a psychological state in which they may start to believe they cannot escape the abusive relationship.¹⁶ According to Walker, IPV operates within a cycle of three distinct phases.¹⁷ The cycle begins with the gradual escalation of tension, where the harm-doer expresses dissatisfaction, and the survivor attempts to "calm him down".¹⁸ This is followed by a violent outburst, which is often termed as the acute battering incident.¹⁹ This is the phase in which physical injuries tend to take place. The final phase is one of reconciliation, in which the harm-doer may express remorse or offer an apology, and the survivor forgives him.²⁰ Notably, Walker also argues that the harm-doer does not need to apologise, and the mere absence of violence during this phase is equally reinforcing for the survivor.²¹ This third phase is particularly relevant to this article's analysis because it mirrors the desired outcome of many restorative justice processes: achieving apology and forgiveness. Walker's framing of IPV as a repetitive pattern resonates with the lived experiences of many survivors and underscores the enduring nature of harm in abusive relationships. However, Walker's theory is not without its limitations.

Evan Stark critiques Walker's cycle of violence, arguing that it perpetuates harmful myths about abusive relationships.²² A major critique concerns Walker's use of "learned helplessness", which, according to Stark, portrays women as passive agents who "choose" to endure violence by remaining with their abusive partners.²³ However, this framing obscures the reality that many women do attempt to leave their abusive relationships and seek help.²⁴ Stark contends that the core issue is not women's reluctance to reach out for help, but rather the lack of adequate safety measures available for women when they do seek help.²⁵ Despite these criticisms, Walker's theory remains foundational to feminist literature on IPV. Recent scholarship has expanded Walker's contributions to a more

14 Te Pokapū Taunakitanga *Understanding the Impact of Offending and How to Prevent Harm* (Oranga Tamariki Ministry for Children, August 2019) at 12.

15 Lenore Edna Walker *The Battered Woman* (Harper & Row, New York, 1979).

16 Lenore E A Walker *The Battered Woman Syndrome* (3rd ed, Springer Publishing, New York, 2009) at 69.

17 At 91.

18 At 91.

19 At 94.

20 At 94.

21 At 95.

22 Evan Stark *Coercive Control: The Entrapment of Women in Personal Life* (Oxford University Press, New York, 2007).

23 At 151.

24 Janet L Fanslow and Elizabeth M Robinson "Help-Seeking Behaviors and Reasons for Help Seeking Reported by a Representative Sample of Women Victims of Intimate Partner Violence in New Zealand" (2010) 25 JIV 929 at 936.

25 Stark, above n 22, at 121–123.

comprehensive understanding of IPV harm. The “social entrapment” model is especially relevant as it addresses the limitations in Walker’s theory by situating IPV within the broader structural inequalities and focusing on systemic barriers to safety faced by survivors.²⁶

James Ptacek was one of the first scholars to develop the social entrapment theory, expanding the definition of IPV beyond incident-based physical harms to include coercive and control-based violence.²⁷ Ptacek argues that IPV harm entraps survivors by undermining their ability to participate freely in social life.²⁸ He emphasises that social entrapment captures the social dimensions of women’s vulnerability, their experiences of violence, and their ability to resist and escape abusive relationships.²⁹ Stark builds on Ptacek’s model by proposing that “coercive control” is the most appropriate measure for IPV because it shifts focus from isolated incidents to ongoing patterns of domination.³⁰ Harmful victim-blaming narratives frequently focus on the conduct of the survivor, often questioning why women do not just leave their abusive relationships. Ptacek and Stark’s frameworks directly rebut this, explaining that coercive control in IPV harmdoing is a gendered form of oppression designed to strip women of their autonomy, thus entrapping them.³¹

Notably, Julia Tolmie, Rachel Smith and Denise Wilson further argue that even coercive control does not fully capture the complexity of IPV, especially when it comes to Indigenous women.³² An understanding of IPV through coercive control must also account for the broader social and systemic context that Indigenous women face, including compounded forms of oppression.³³ In essence, the survivor’s experience of IPV is heavily influenced by their intersectional identities, including their race, gender, and socio-economic status. For example, the experiences of an upper-middle class European woman would differ significantly from those of a marginalised Māori woman. Without attention paid to the intersectional realities of IPV survivors, research and policy may be misinformed and, in turn, inadequate to respond to specific marginalised identities.

III Contextualising IPV in Aotearoa New Zealand

One in three women in New Zealand have experienced physical or sexual IPV in their lifetime.³⁴ This number rises to over one in two when psychological or emotional abuse is included.³⁵ However, this data under-represents the true scale of IPV, as it excludes

26 At 178–180.

27 James Ptacek *Battered Women in the Courtroom: The Power of Judicial Response* (Northeastern University Press, Boston, 1999).

28 At 10.

29 At 10.

30 Stark, above n 22, at 5.

31 At 203–205; and Ptacek, above n 27, at 27.

32 Julia Tolmie, Rachel Smith and Denise Wilson “Understanding Intimate Partner Violence: Why Coercive Control Requires a Social and Systemic Entrapment Framework” (2023) 30(1) VAW 54 at 55.

33 At 55.

34 Janet L Fanslow and Elizabeth M Robinson “Sticks, Stones, or Words? Counting the Prevalence of Different Types of Intimate Partner Violence Reported by New Zealand Women” (2011) 20 *Journal of Aggression, Maltreatment & Trauma* 741 at 756–757.

35 At 756.

non-physical forms such as coercive control, economic abuse, and patterns of manipulation that many survivors endure, leaving critical aspects of IPV unaccounted for.

Traditional definitions of violence, confined to physical abuse, have significantly inhibited understanding IPV's true prevalence. These outdated definitions fail to capture the complexity of IPV, as they focus too narrowly on physical violence.³⁶ In response, legislative definitions in New Zealand have expanded to include sexual harm, psychological abuse, and coercive and controlling behaviour.³⁷ Despite this legal expansion, the NZCVS presents an incomplete view of IPV. In its 2023 cycle 6 report, the NZCVS expressly acknowledged that it does not attempt to directly measure the complex patterns of behaviours that define family violence.³⁸ Specifically, the methodology report noted that coercive and controlling behaviours were beyond the scope of the survey.³⁹ As a result, the NZCVS focuses on traditional understandings of violence, predominantly in its physical form. While acknowledging these limitations is a step forward, it still leaves a significant hidden figure of IPV harmdoing, implying that the NZCVS under-represents the true prevalence of IPV. However, given IPV's complex and context-dependent nature, capturing an entirely accurate picture of IPV harmdoing in New Zealand may ultimately be impossible.⁴⁰

Other research, however, has shown that it is possible to measure incidents of economic abuse and coercive control. A national family violence survey found that New Zealand has high rates of both controlling behaviour and financial abuse.⁴¹ This suggests that a fuller understanding of IPV can be achieved, provided that researchers ask the right questions and target the appropriate population groups. The framing of questions is crucial, as it directly impacts the results and influences the overall research outcomes. There is also a cyclical relationship between research, findings, and policy.⁴² Research often informs policy, shaping real-life outcomes and further affecting future statistics.⁴³ Incomplete or flawed statistics are frequently used to justify misinformed policies in the first place.⁴⁴ This negative feedback loop can have particularly harmful effects on marginalised communities. For example, the over-representation of Indigenous Māori in Aotearoa's CJS is a statistic often cited to justify racialised punishments and policing practices. Over-policing areas where Indigenous people congregate directly contributes to the criminalisation of these communities.⁴⁵ The resulting high criminalisation rates of Indigenous peoples are then used to validate these racialised practices, creating a negative cycle that reinforces the over-policing and criminalisation of Māori communities.

36 Stark, above n 22, at 84–85.

37 Family Violence Act, s 9.

38 NZ Crime and Victims Survey *NZCVS key results: 2023 (Cycle 6)* (Ministry of Justice, June 2024) at 20.

39 NZ Crime and Victims Survey *NZCVS Methodology Report: 2023 (Cycle 6)* (Ministry of Justice, June 2024) at 81.

40 Trevor Bradley “Counting Crime and Victims: The Case of ‘Volume Crime’” in Elizabeth Stanely, Trevor Bradley and Sarah Monod de Froideville (eds) *The Aotearoa Handbook of Criminology* (Auckland University Press, Auckland, 2021) 23 at 26.

41 Janet Fanslow and others “Change in prevalence of psychological and economic abuse, and controlling behaviours against women by an intimate partner in two cross-sectional studies in New Zealand, 2003 and 2019” (2021) 11 *BMJ Open* 1 at 1 and 8–9.

42 Tahu Kukutai and Maggie Walter “Recognition and indigenizing official statistics: Reflections from Aotearoa New Zealand and Australia” (2015) 31 *Statistical Journal of the IAOS* 317 at 317.

43 At 317.

44 At 317.

45 Chris Cunneen and Juan Tauri *Indigenous Criminology* (Policy Press, Bristol, 2016) at 72–73.

If the NZCVS continues to overlook economic abuse and controlling behaviours, this gap in statistics will have severe implications for policy development, including formulating justice responses to IPV. The issue is no longer the survivor's reluctance to seek help; the problem lies in the inadequate safety measures available for survivors when they do reach out. Failing to account for economic and controlling behaviours represents a significant gap in understanding IPV. If flawed or incomplete data informs safety measures, survivors will continue to be harmed by the systems designed to protect them. Similarly, if restorative justice processes are based on incomplete understandings of IPV, such processes will also need to be re-evaluated to become an appropriate tool to address IPV.

IV Restorative Justice and Its Applications in Aotearoa New Zealand

A Framework and philosophy of restorative justice

In the traditional CJS, the voices of survivors are often silenced, with survivors reduced to the role of witnesses in legal proceedings.⁴⁶ The system's punitive objectives frequently override the interests of the survivor. The growing inadequacy of the traditional CJS to address sensitive cases like IPV has paved the way for alternative approaches such as restorative justice. Despite these reform efforts, many women continue to experience re-victimisation at the hands of justice processes that purport to protect them.⁴⁷

In contrast to the traditional CJS, where harm-doers are sentenced primarily to punish, restorative justice aims to restore relationships by repairing harm, with punishment taking a secondary role.⁴⁸ Under restorative justice, harm is understood as a violation of people and relationships,⁴⁹ extending beyond the immediate survivor, and rippling out to affect their family, friends, and community. Restorative justice seeks to repair these relationships, restoring all key stakeholders: the survivor, the harm-doer, and the community. Given restorative justice's origin as a response to the survivor's marginalised role in the traditional CJS, survivors' needs and interests are prioritised.⁵⁰ Restorative justice is an emerging response to gendered violence that emphasises the survivor's role, challenging the punitive responses embedded in traditional systems.⁵¹ Alongside the survivor's role, restorative justice also highlights the importance of the community. In the context of IPV, communities are not only seen as potential perpetrators of violence but also as key sites for prevention, intervention, and transformation.⁵²

46 Andrea Păroșanu "Restorative Justice in the Context of Gender-Based Violence and Harm" in Anita Gibbs and Fairleigh Evelyn Gilmour (eds) *Women, Crime and Justice in Context: Contemporary Perspectives in Feminist Criminology from Australia and New Zealand* (Routledge, Abingdon (UK), 2022) 119 at 119.

47 At 124–125.

48 Lode Walgrave *Restorative Justice, Self-interest and Responsible Citizenship* (Willian, Cullompton (UK), 2008) at 24.

49 Howard Zehr *Changing Lenses: A New Focus For Crime and Justice* (Herald Press, Scottdale (Pennsylvania), 1990) at 184–185.

50 At 191.

51 Mimi E Kim "From carceral feminism to transformative justice: Women-of-color feminism and alternatives to incarceration" (2018) 27 *Journal of Ethnic & Cultural Diversity in Social Work* 219 at 225–226.

52 At 227.

A conventional measure of success in the justice system is whether approaches effectively reduce recidivism and re-imprisonment rates. Under this measure, restorative justice must reduce recidivism and imprisonment rates to be considered a viable alternative to the traditional CJS. However, William Wood argues that restorative justice is unlikely to affect incarceration rates significantly.⁵³ While restorative justice can target the behaviour of individual harm-doers, broader structural factors drive incarceration rates.⁵⁴ Even if restorative justice succeeds in rehabilitating individual harm-doers, it may only substantially impact the overall prison population if the underlying systemic issues are addressed. In this sense, restorative justice operates at a micro-level and cannot address the structural problems embedded within the CJS.⁵⁵ This critique does not suggest restorative justice is ineffective; rather, restorative justice's strength arguably lies in addressing individual harm. Measuring restorative justice's success by its impact on incarceration rates may undermine its core values. Given that restorative justice emerged as a response to empower the usually sidelined survivors, the measure of success for restorative justice should instead focus on survivors' healing and satisfaction, rather than on the harm-doer's potential recidivism. The fact that restorative justice does not reduce imprisonment does not diminish its value. Furthermore, as a relatively new concept, restorative justice may need more time to fully demonstrate its potential, especially concerning deeply rooted issues like intergenerational trauma and cycles of incarceration.

B Practical implementation of restorative justice

In Aotearoa, the Sentencing Act 2002 allows for proceedings to be adjourned before sentencing to enable a restorative justice process.⁵⁶ Following this, the judge may consider the harm-doer's involvement in restorative justice programmes when determining the final sentence. Outside of the sentencing process, s 7(2) of the Parole Act 2002 similarly directs the Parole Board to give weight to any restorative outcomes. However, the Sentencing Act mandates that an enquiry must first be conducted, potentially involving restorative justice facilitators or providers, to assess whether restorative justice is appropriate for the specific circumstances of each case.⁵⁷ Crucially, this enquiry considers both the survivor and the harm-doer's interests.⁵⁸

For a harm-doer to be referred to restorative justice, they must have pled guilty to the harm, there must be one or more survivors, and, importantly, restorative justice must not have been previously conducted for the particular offence.⁵⁹ While the requirement of a guilty plea may evidence the harm-doer's assumption of some responsibility for the harmdoing, the fact that restorative justice must not have previously occurred is potentially problematic. This requirement only provides harm-doers with one opportunity to engage in restorative justice for a particular offence, implying that a single restorative justice encounter is sufficient to address the harm-doer's underlying issues that contributed to the harmdoing. However, the root causes of harm-doer behaviour, particularly in cases involving complex and persistent patterns of harm such as IPV, are

53 William R Wood "Why Restorative Justice Will Not Reduce Incarceration" (2015) 55 *Brit J Criminol* 883.

54 At 890.

55 At 893.

56 Sentencing Act 2002, s 24A.

57 Section 24A(2)(a).

58 Section 24A(2)(a).

59 Section 24A(1).

unlikely to be resolved through a single restorative justice encounter. Limiting harm-doers to a single restorative justice opportunity oversimplifies the complexities of harmdoing, especially in IPV.

Project Restore is the national provider of restorative justice services in Aotearoa, specialising in gendered violence in the form of sexual harm. Project Restore facilitates face-to-face meetings where there is a shared understanding of the events and a willingness from both the survivor and the harm-doer to meet.⁶⁰ Alternatively, shuttle mediation and other forms of resolution for situations where face-to-face meetings are inappropriate can also be facilitated. Project Restore uses a “three-legged stool” approach, which includes a restorative justice facilitator, a survivor specialist, and a harmful sexual behaviour specialist.⁶¹ This model ensures that survivors and harm-doers receive tailored support, aligning with one of restorative justice’s core goals of addressing the needs of all parties involved. Moreover, Project Restore places great importance on the power of language, describing the survivor and harm-doer as the “person who was harmed” and the “person who has caused the harm” respectively.⁶² This empowering use of language avoids further victimisation. Project Restore’s procedures also reflect its commitment to promoting the survivor’s well-being, where specialists undertake constant safety assessments throughout the restorative justice process.

Despite its merits, the operation of Project Restore faces several limitations that are important to address. First, Project Restore exclusively focuses on sexual violence. IPV encompasses a broad spectrum of abuse beyond sexual violence, and the narrow focus on sexual violence excludes many survivors who could greatly benefit from a restorative justice provider like Project Restore. Second, there is an incentive for harm-doers to participate in restorative justice to receive a reduced sentence. For a restorative justice process to occur, harm-doers usually need to assume some level of responsibility by pleading guilty to the harmdoing. However, harm-doers may also be motivated by the potential for a more lenient sentence rather than by a genuine desire to engage in restorative practices, which risks diluting the effectiveness of restorative justice. Third, the familial context of IPV, especially in cases involving incest or family violence, complicates restorative justice processes. Project Restore must navigate these dynamics carefully to avoid further marginalising the survivor or silencing their voice, particularly in situations where the community or family are also implicated in the harm. Fourth, while specialists are dedicated to supporting the survivor and the harm-doer, no specialist represents the community’s interests. This oversight fails to acknowledge the support and healing a community may require as part of the restorative justice process. Finally, funding constraints significantly limit the reach and impact of Project Restore. With only around 10 specialists nationwide, their capacity is insufficient to meet the needs of the many survivors of gendered violence who could benefit from their services. The limited funding of Project Restore likely exacerbates all the challenges mentioned above, reducing the overall effectiveness and accessibility of Project Restore’s services.

60 Project Restore NZ “Our Work: What We Do” <www.projectrestore.nz>.

61 Project Restore, above n 60.

62 Project Restore, above n 60.

C *Benefits of restorative justice in IPV*

Considering the various ways restorative justice may be implemented in IPV cases, it is essential to highlight the arguments favouring restorative justice as a more effective approach than the traditional CJS. Restorative justice offers a survivor-centred framework, encourages harm-doers to take responsibility, and involves the community, which are factors often neglected in the traditional CJS process.

First, restorative justice enables survivors, who are frequently overlooked by the traditional CJS, to participate actively in the justice process.⁶³ When the state assumes control in criminal proceedings, it often takes away the survivor's voice, depriving them of ownership over the narrative that rightfully belongs to them.⁶⁴ This is particularly problematic, as many survivors express a strong need to tell their stories in a safe environment.⁶⁵ Restorative justice responds to this need by creating a safe space where survivors can share their experiences, express their pain, and validate the harm they have experienced, things that the traditional CJS often fails to provide.⁶⁶

Second, restorative justice's confrontational nature encourages harm-doers to face both the survivor and the community directly, compelling them to acknowledge and take responsibility for their actions.⁶⁷ This contrasts with the traditional CJS, in which harm-doers are represented by defence counsel in criminal cases and remain largely shielded from direct accountability. Under s 73(1) of the Evidence Act 2006, harm-doers in criminal proceedings are not compellable witnesses, meaning they are not legally obligated to testify, further diminishing the direct assumption of responsibility. Additionally, the traditional CJS often incentivises harm-doers to deny responsibility, as seen in the use of mitigating factors to reduce sentences.⁶⁸ Conversely, restorative justice encourages accountability by creating a space for harm-doers, survivors, and the community to engage meaningfully, fostering responsibility and dialogue.

Third, restorative justice offers an opportunity to repair the relationships between the survivor and harm-doer, the survivor and their community, and the harm-doer and their community.⁶⁹ In the traditional CJS, the state often appropriates the survivor's narrative, reframing the harm as a direct offence against the state rather than a relational violation between individuals.⁷⁰ Restorative justice returns this conflict to its rightful stakeholders, the survivor, the harm-doer and the community, allowing them to work together to address the harmdoing with minimal state intervention.⁷¹

By empowering survivors and creating a space for meaningful engagement for all key stakeholders, restorative justice facilitates healing not just for individuals but also for communities. In this way, restorative justice offers a more holistic approach to justice, returning control to those directly impacted by the harm. Despite the numerous benefits

63 Gerry Johnstone "Restorative justice for victims: inherent limits?" (2017) 5 *Restorative Justice* 382 at 385–386.

64 William R Wood and Masahiro Suzuki "Are Conflicts Property? Re-Examining the Ownership of Conflict in Restorative Justice" (2020) 29 *Social & Legal Studies* 903 at 904.

65 Shirley Jülich "Views of justice among survivors of historical child sexual abuse: Implications for restorative justice in New Zealand" (2006) 10 *Theoretical Criminology* 125 at 129.

66 At 129.

67 Gerry Johnstone and Daniel W Van Ness "The meaning of restorative justice" in *Handbook of Restorative Justice* (Routledge, Abingdon (UK), 2007) 5 at 9.

68 Sentencing Act, s 9(2).

69 Johnstone and Van Ness, above n 67, at 5.

70 Wood and Suzuki, above n 64, at 907.

71 At 906.

outlined, restorative justice's success largely depends on the genuine participation of all key stakeholders. The following sections of the article provide an in-depth analysis of restorative justice's challenges when addressing IPV cases.

V Challenging the “Ideal” in Restorative Justice

A *The “ideal” survivor*

IPV's gendered and familial nature calls for a careful approach to these particularly sensitive cases.⁷² Restorative justice processes are only appropriate for IPV survivors if they can adequately respond to their needs. Much like the concept of the “ideal” victim in the traditional CJS, restorative justice constructs an “ideal” participant and, more specifically, an “ideal” IPV survivor. Nils Christie introduced the notion of the “ideal” victim to explain why some individuals are more readily assigned the whole and legitimate status of being a victim.⁷³ According to Christie's concept, the “ideal” victim possesses traits such as vulnerability, respectability, and lack of blame, with the harm-doer being evil, physically large, and unknown to the victim.⁷⁴ It quickly becomes apparent that IPV survivors and harm-doers do not readily fit into this framework; harm-doers are known to, and often in close relationships with, the survivor.

The “ideal” concept is also applied to participants in restorative justice processes. Giuseppe Maglione argues that the “ideal” victim in the traditional CJS overlaps with restorative justice's “ideal” participants.⁷⁵ In this view, the “ideal” restorative justice victim is portrayed as embodied, vulnerable, and ontologically distinct from the harm-doer.⁷⁶ Additionally, the “ideal” restorative justice victim is often seen as disempowered, emotional, yet resilient.⁷⁷ This creates challenges for IPV survivors, as many of these characteristics do not apply and sometimes directly conflict with one another.

First, IPV survivors are often victimised not only by the direct perpetrator but also by their friends and family who failed to intervene. Moreover, survivors may be re-victimised by the very institutions, such as police and social workers, that are supposed to assist them. In this sense, IPV survivors rarely fit the notion of an “embodied” victim harmed by an identifiable harm-doer.⁷⁸ Second, given the persistent dangers of victim-blaming, placing excessive focus on the emotionality and vulnerability of survivors as qualities that make them “ideal” is problematic.⁷⁹ Restorative justice's focus on the emotionality of survivors has faced criticism from feminist scholars, who argue that it can further victimise survivors.⁸⁰ Third, the idea that survivors must be ontologically distinct from the harm-doer is overly simplistic and fails to account for instances where survivors may retaliate against their harm-doer or where harm-doers may themselves have been survivors of abuse. Finally, the requirement that the “ideal” survivor be both

72 Păroşanu, above n 46, at 123.

73 Christie, above n 11, at 18.

74 At 18–19.

75 Giuseppe Maglione “Embodied victims: An archaeology of the ‘ideal victim’ of restorative justice” (2017) 17 CCJ 401 at 402–403.

76 At 408.

77 At 408.

78 At 408–409.

79 At 409.

80 Julie Stubbs “Beyond Apology? Domestic Violence and Critical Questions for Restorative Justice” (2007) 7 CCJ 169 at 177.

disempowered and resilient is internally contradictory, as truly disempowered survivors may find it challenging to maintain resilience. The emphasis on these personal characteristics can influence how restorative justice practitioners facilitate encounters, often privileging survivors who fit the “ideal” framework. This is problematic, as most IPV survivors are unlikely to meet these “ideal” criteria. As a result, restorative justice processes may seldom be appropriate for many IPV survivors who fall outside this narrow construct.

B *The “ideal” harm-doer*

The concept of the “ideal” harm-doer is similarly problematic. In the traditional CJS, the “ideal” harm-doer is often seen as a large, evil figure who randomly targets their victim.⁸¹ Again, IPV harm-doers do not fit into this typology, as the harm is committed by someone known to the survivor. The binary distinction between harm-doer and survivor is overly simplistic, as empirical evidence shows that individuals who commit harmdoing are often survivors of violence themselves, often beginning in childhood.⁸² The “ideal” harm-doer in restorative justice processes is expected to engage in the restorative justice process voluntarily, take responsibility for their actions, and display genuine remorse. In reality, harm-doers may be driven by external incentives rather than a genuine commitment to restorative justice. The question remains whether genuineness, especially in voluntary participation, should be a prerequisite for harm-doer participation.

Coercion is a significant barrier to genuine participation.⁸³ Harm-doers may be incentivised to participate in restorative justice to avoid harsher punishment.⁸⁴ In New Zealand, judges and the parole board often consider a harm-doer’s involvement in restorative justice when determining sentences or parole.⁸⁵ For instance, s 9(2)(f) of the Sentencing Act allows for a reduced sentence if a harm-doer expresses remorse, including through an apology to the survivor.⁸⁶ The Sentencing Act further specifies that judges must consider the genuineness of the harm-doer’s actions.⁸⁷ If restorative justice’s success hinges on the harm-doer’s sincerity, the traditional CJS’s incentives for participating in restorative justice may undermine the authenticity of harm-doer participation. On the other hand, the question remains whether genuine participation in restorative justice processes, free from coercion, is ever achievable. While some harm-doers may have committed the harmdoing consciously, their subsequent detection and capture cannot be voluntary. This is because most harm-doers would not consider the possibility of being detected and punished when they commit the harmdoing. Given that most harm-doers find themselves in the involuntary position of punishment, it is unlikely that any subsequent decisions of the harm-doer would be entirely genuine. Perhaps a lesser degree of genuineness in participation is more realistic. Furthermore, even if harm-doers do not genuinely participate in restorative justice in the first place, they may develop

81 Christie, above n 11, at 18–19.

82 Berg and others, above n 13, at 359–364.

83 Masahiro Suzuki and Tamera Jenkins “Apology-forgiveness cycle in restorative justice, but how?” (2023) 29 *International Review of Victimology* 259 at 267.

84 At 267.

85 Kathryn J Fox “Trying to Restore Justice: Bureaucracies, Risk Management, and Disciplinary Boundaries in New Zealand Criminal Justice” (2015) 59 *International Journal of Offender Therapy and Comparative Criminology* 519 at 525.

86 Sentencing Act, s 10(1)(d)(ii).

87 Section 10(2)(a).

genuine engagement throughout the process or may still greatly benefit from participation regardless of their motivations.

C The “ideal” restorative justice encounter

The “ideal” restorative justice encounter is built on the assumption that “ideal” participants are involved. In particular, the process centres on the survivor, focusing on the “ideal” survivor’s needs and interests. Assumptions about what the survivor desires from the encounter, such as answers to questions like “Who are you?”, “Why me?”, “What happened?” or “What will you do with your life now?”, are based on assumptions that a stranger committed the harm.⁸⁸ However, IPV cases involve pre-existing relationships between the survivor and the harm-doer, rendering many of these questions irrelevant or inappropriate. If restorative justice processes assume that all survivors have the same interests, this risks re-victimising those whose needs differ from the “ideal” survivor. For restorative justice to be appropriate in IPV cases, the unique circumstances of each survivor and harm-doer must be considered.

The primary goal of restorative justice encounters is often seen as facilitating the harm-doer’s apology and the survivor’s forgiveness.⁸⁹ While these outcomes can benefit some harmdoing, they pose significant risks in IPV situations. Most notably, the restorative justice process may place undue pressure on the survivor to accept an apology and forgive the harm-doer despite ongoing fear or trauma.⁹⁰ This pressure is significantly exacerbated in IPV cases where society may exert further pressure on women to forgive. Furthermore, the CJS may also coerce or incentivise harm-doers to participate in restorative justice and offer apologies. As mentioned, s 9(2)(f) of the Sentencing Act suggests that displays of remorse, such as apologising, can lead to more lenient sentences. This diminishes the likelihood that the harm-doer apology is genuine.

Additionally, the restorative justice process that encourages apology and forgiveness resembles the loving-contrition phase of Walker’s cycle of violence.⁹¹ Walker’s theory highlights how apology and forgiveness are often part of the cycle of abuse. Although Walker’s model is not without flaws, it reflects the risk that restorative justice processes may inadvertently reinforce cycles of abuse by encouraging apologies that are part of a manipulative strategy used by harm-doers to win back their partners.⁹² Given the cyclical nature of IPV, many survivors may have already experienced the apology-forgiveness cycle in their relationships. Encouraging these dynamics within restorative justice risks perpetuating harm rather than healing it. For a genuinely restorative encounter, practitioners must carefully navigate the ethical concerns of encouraging survivors to accept apologies.⁹³

88 Rupert Ross “Victims and Criminal Justice: Exploring the Disconnect” (2002) 46 Crim L Q 483 at 492–498.

89 Suzuki and Jenkins, above n 83, at 259.

90 At 266.

91 Walker, above n 16, at 94.

92 Stubbs, above n 80, at 177.

93 At 177–178.

D *The “ideal” community*

The restorative justice movement emerged with the intention of shifting power away from the state and returning it to the community.⁹⁴ Restorative justice emphasises the active involvement of the community in addressing harm.⁹⁵ When harm occurs, it affects the survivor, harm-doer, and the wider community. The ripple effect of harming justifies the more active role of the community.⁹⁶ In the traditional adversarial system, the state represents the survivor, with the community usually having little involvement, if any. In contrast, restorative justice processes directly involve the community as a key stakeholder.⁹⁷ Given the community’s heightened role as a stakeholder, the success of restorative justice encounters depend on the participation of an “ideal” community, one that is both willing and able to engage. However, this idealised notion assumes a traditional, family-like, genderless, and innocent group, often closely aligning with Western concepts of community.⁹⁸ This assumption overlooks the reality of many communities where social structures may have fostered or facilitated harm.

Setting aside the question of whether communities have the resources or willingness to participate, restorative justice also assumes a positive relationship between the survivor, harm-doer, and community. Just as Christie’s “ideal” survivor is innocent, the “ideal” community is also portrayed as an innocent group.⁹⁹ However, in IPV cases, the violation of trust extends beyond the survivor and harm-doer to the community that is supposed to support the survivor.¹⁰⁰ Given that IPV cases often occur within familial or close-knit community contexts, survivors are usually harmed not only by their intimate partner but also by the community that failed to protect them. Janet Fanslow and Elizabeth Robinson’s 2010 study found that while up to 76.7 per cent of women who experienced IPV sought help, 40 per cent of all women who had experienced IPV reported that they did not receive support.¹⁰¹

Furthermore, where survivors and harm-doers belong to the same community, this may create conflicting loyalties where the community may side with the harm-doer, further marginalising the survivor.¹⁰² When communities are supposed to be sites of intervention but fail to provide assistance, they become sites of harm instead.¹⁰³ The “ideal” community must be powerful enough to sustain restorative justice outcomes yet simultaneously powerless in the first place that they failed to prevent the harm done. Furthermore, if the “ideal” restorative justice encounter depends on the participation of the “ideal” survivor, harm-doer, and the community, it immediately becomes clear that this is an impossibly high threshold to satisfy. Given the inherent power imbalances and familial nature of harm in IPV cases, the “ideal” concept is one problematic aspect of restorative justice that potentially renders it inappropriate for IPV cases.

94 Johnstone and Van Ness, above n 67, at 5.

95 Daniel Van Ness and others *Restoring Justice: An Introduction to Restorative Justice* (6th ed, Routledge, New York, 2022) at 51.

96 Kathleen Daly “Restorative justice: The real story” (2002) 4 *Punishment & Society* 55 at 61.

97 At 58.

98 Giuseppe Maglione “*Communities at Large: An Archaeological Analysis of the ‘Community’ Within Restorative Justice Policy and Laws*” (2017) 25 *Crit Crim* 453 at 459.

99 At 459.

100 Stubbs, above n 80, at 180.

101 Fanslow and Robinson, above n 24, at 936–938.

102 Kim, above n 51, at 227.

103 At 227.

VI The Flawed Assumptions Underpinning Restorative Justice

A Assumption of safety

Cases of IPV frequently involve patterns of coercion and control. There is a significant power imbalance between the survivor and the harm-doer. This poses a threat to the survivor's physical and emotional safety. Survivor safety has long been considered a primary concern when responding to IPV, mainly due to the significant violation of trust involved in such cases. Restorative justice processes claim to address this need by providing safety and protecting survivors from the risk of re-victimisation.¹⁰⁴ The core values of restorative justice suggest that these encounters are designed to ensure survivors' physical and emotional safety.¹⁰⁵ However, the effectiveness of restorative justice in delivering this promise is questionable. While some scholars argue that restorative justice may not provide adequate protection for survivors,¹⁰⁶ others go further, suggesting that restorative justice processes may actually compromise survivor safety.¹⁰⁷

Research indicates that while restorative justice has the potential to safeguard survivor interests, the complex and sensitive nature of IPV makes it risky to assume that restorative justice processes inherently guarantee safety.¹⁰⁸ Importantly, restorative justice should not proceed if there is even the slightest concern for the survivor's well-being. Additionally, IPV cases typically involve recurring patterns of abuse rather than isolated incidents. A single restorative justice encounter is unlikely to address the root causes of these recurring patterns of harm.¹⁰⁹ Without long-term structural support, restorative justice may end up causing more harm than it prevents. Contrary to misconception, many female survivors actively endeavour to leave abusive relationships and seek help. However, when survivors do reach out, the safety measures in place are inadequate. If restorative justice cannot ensure survivor safety, it becomes another unattractive or unviable option for these survivors.

B Assumption of equality

The primary goal of restorative justice is to re-establish a relationship of mutual equality and respect.¹¹⁰ This notion is echoed by survivors of historical child sexual abuse, who view the restoration of equality as central to achieving justice.¹¹¹ However, restorative justice encounters often depend on the idea that survivors and harm-doers can participate on equal footing, with survivors empowered enough to confront their harm-doers and share their stories.¹¹² This assumption of equality, however, is fundamentally at odds with the dynamics of IPV, where significant power imbalances exist between the parties.¹¹³

104 Maglione, above n 75, at 406; and Păroşanu, above n 46, at 122.

105 Păroşanu, above n 46, at 122.

106 At 124.

107 Stubbs, above n 80, at 181.

108 Păroşanu, above n 46, at 124.

109 At 126.

110 Annalise Acorn *Compulsory Compassion: A Critique of Restorative Justice* (UBC Press, Vancouver, 2000) at 2.

111 Jülich, above n 65, 130-131.

112 Shirley Jülich "Restorative Justice and Gendered Violence in New Zealand: A Glimmer of Hope" in James Ptacek (ed) *Restorative Justice and Violence Against Women* (Oxford University Press, New York, 2010) 239 at 242.

113 At 242.

The inequality between survivors and harm-doers in IPV cases is often entrenched by coercive control, stripping the survivor's autonomy in various aspects of their lives. Patriarchal structures have long shaped multiple aspects of society, including politics, economics, public life, and family systems.¹¹⁴ While patriarchy may have evolved into less overt forms, it continues to persist, especially in cases of gendered violence. Harm-doers in IPV relationships often exert coercive control to ensure survivors conform to traditional gender roles.¹¹⁵ One common method used to exert coercive control is financial isolation. This is most commonly characterised by the harm-doer manipulating economic resources, leaving the survivor financially dependent and reinforcing gendered stereotypes of female dependence.¹¹⁶ Restorative justice's encouragement of survivor forgiveness can also be seen as an attempt to pressure survivors to conform to traditional feminine ideals of empathy, endurance, and reconciliation.

Restorative justice's assumption that equality can be restored between survivors and harm-doers fails to recognise the power imbalances and coercive dynamics inherent in most IPV relationships. By ignoring these asymmetries, restorative justice risks reproducing the very harm it seeks to address. Therefore, any restorative justice process that ignores these fundamental power disparities is unlikely to be suitable for addressing gendered violence, particularly IPV, where the harm is deeply rooted in gender inequality.¹¹⁷

C Assumption of restoration

Unlike the punitive traditional CJS, where harmdoing is framed as a violation of the law, restorative justice conceptualises harmdoing as a violation of relationships.¹¹⁸ Accordingly, restoring relationships is often cited as the central goal of restorative justice encounters. Apology and forgiveness are typically viewed as the "ideal" outcomes that mark a successful restorative justice encounter. The broader value of restoration explains the encouragement of apology and forgiveness.¹¹⁹ In particular, the harm-doer's apology is thought to have a healing effect on the survivor, helping restore their self-respect and dignity.¹²⁰ Similarly, the survivor's forgiveness is seen as a method of restoring the harm-doer's trustworthiness and re-establishing the community's sense of justice.¹²¹ Restorative justice thus seeks to re-balance the relationship, healing the harm between the harm-doer and survivor.¹²² However, as Annalise Acorn argues, this approach reflects a "fantasy of idealised harmony," which contrasts sharply with reality, where survivors and harm-doers may not wish to restore their relationships.¹²³

While restorative justice's emphasis on restoration may be suitable for "conventional" harmdoing involving strangers, it is far less appropriate for IPV. Harmdoing in IPV occurs within pre-existing relationships, necessitating a different form of analysis.¹²⁴ In contrast

114 Stark, above n 22, at 172.

115 At 211.

116 At 211.

117 See at 6.

118 Păroşanu, above n 46, at 121.

119 See Suzuki and Jenkins, above n 83, at 260.

120 At 263.

121 At 263.

122 Acorn, above n 110, at 2.

123 At 9.

124 Ross, above n 88, at 499.

to “conventional” harm, which focuses on repairing an “imposition of an unwanted relationship,” restorative justice in IPV cases must address the “betrayal of an existing [relationship]”.¹²⁵ IPV disrupts the relationship’s equilibrium and represents a profound breach of trust. For restorative justice to be successful in any IPV case, it must first address this fundamental violation of trust.¹²⁶

The core problem with restorative justice’s approach in IPV cases is that the language of “restoration” implies returning harm-doers and survivors to their original state, which is potentially an abusive relationship.¹²⁷ In IPV cases, where the pre-existing relationship was abusive, restoring the survivor and harm-doer to their former positions may be more harmful than beneficial. Rather than focusing on restoring relationships to their previous condition, scholars argue that restorative justice should aim to transform relationships to prevent future harm.¹²⁸ Instead of restoring the original dynamic between harm-doers and survivors, restorative justice should focus on creating conditions in which harm-doers, survivors, and the community can co-exist without the risk of future harm.¹²⁹ Given the sensitive and complex nature of IPV, the goal of restoration in restorative justice is neither feasible nor desirable in such cases, suggesting that restorative justice may not be a suitable method for addressing IPV.

VII An Intersectional Critique of Restorative Justice and Indigeneity

A Colonial legacies and the over-representation of Indigenous peoples

A common and defining characteristic among settler-colonial jurisdictions is the over-representation of Indigenous peoples at every stage of the CJS. In New South Wales, for example, Aboriginal people make up only 3.4 per cent of the adult population but represent over 30 per cent of the prison population.¹³⁰ In Canada, this over-representation is even more severe among women, with Indigenous women comprising just four per cent of the population but 42 per cent of incarcerated women.¹³¹ This trend is mirrored in the context of IPV in Aotearoa, where Indigenous women are disproportionately represented as survivors of IPV,¹³² while Indigenous men are over-represented as harm-doers.¹³³ Māori face significantly higher rates of harm,¹³⁴ and this disparity is further pronounced by the finding that Indigenous women are twice as likely to experience psychological violence.¹³⁵ The root causes of these patterns can be traced to the enduring legacy of

125 At 499.

126 Stubbs, above n 80, at 180.

127 Kim, above n 51, at 227.

128 Jülich, above n 65, at 131.

129 At 131.

130 New South Wales Bureau of Crime Statistics and Research “Aboriginal over-representation in the NSW Criminal Justice System” <<https://bocsar.nsw.gov.au>>.

131 Office of the Correctional Investigator of Canada *Annual Report: 2020-2021* (30 June 2021) at 41.

132 New Zealand Crime and Victims survey *Survey findings - Cycle 4 report: Descriptive statistics* (Ministry of Justice, June 2022) at 116.

133 Dannette Marie, David M Fergusson, and Joseph M Boden “Ethnic Identity and Intimate Partner Violence in a New Zealand Birth Cohort” (2008) 33 *Social Policy Journal of New Zealand* 126 at 128.

134 Michael Slyuzberg “Understanding the Impact of Offending and How to Prevent Harm” (Evidence Centre seminar, 27 August 2019) at 23.

135 At 24.

colonialism, which persists today through modern forms of control, such as racialised policing practices.¹³⁶

Police resources are often disproportionately concentrated in areas where Māori communities reside, contributing to the over-representation of Māori as harm-doers.¹³⁷ Conversely, the under-policing of private spaces, such as homes, leaves Māori women vulnerable to violence and contributes to their disproportionate representation as IPV survivors.¹³⁸ The failure of state agencies to adequately respond to the needs of Indigenous women, combined with the historical oppression of Indigenous communities, fosters deep mistrust in these institutions.¹³⁹ Young Māori mothers, positioned at the intersection of youth, pregnancy, and race, are particularly vulnerable to IPV.¹⁴⁰ The structural barriers they face, compounded by the state's unresponsiveness, further explain their over-representation as survivors of IPV.

In their 2021 study, Simran Dhunna, Beverley Lawton and Fiona Cram found that participants emphasised the centrality of whānau in Māori social structures, an emphasis which, on the surface, aligns with the principles of restorative justice.¹⁴¹ However, some participants also reported experiencing violence from non-partner whānau members, highlighting that the very family that is meant to offer protection from violence can also be a source of harm.¹⁴² This paradox reveals the significant risks of restorative justice's reliance on community-based responses. The survivor may not only fear their harm-doer but also the community, which may have indirectly or directly contributed to the harm. Restorative justice, therefore, cannot be a simple solution to the injustices caused by the traditional CJS. For restorative justice to be a suitable response to IPV in Indigenous contexts, it must be implemented with sensitivity to the unique realities of Indigenous women, ensuring it produces less harm than the traditional CJS.¹⁴³

Indigenous women often face secondary victimisation in the traditional CJS process.¹⁴⁴ The traditional CJS fails to account for the intersectional lived experiences of Indigenous women.¹⁴⁵ This failure is evident in the over-representation of Indigenous peoples as both harm-doers and survivors. This risk is also present in restorative justice processes, where survivors risk being harmed by the harm-doer, the community, and restorative justice practitioners. If restorative justice initiatives do not genuinely consider Indigenous experiences, they risk doing more harm than good. Although restorative justice is often perceived as being informed by Indigenous principles and philosophies, Julie Stubbs cautions that generic restorative justice models cannot be relied upon to advance the

136 Cunneen and Tauri, above n 45.

137 At 73.

138 At 78.

139 Katherine Lorenz, Stacy Dewald and Rachel Venema "“I Was Worried I Wouldn't Be Believed”: Sexual Assault Victims' Perceptions of the Police in the Decision to Not Report” (2021) 36 *Violence and Victims* 455 at 4; and Cunneen and Tauri, above n 45, at 70.

140 Simran Dhunna, Beverley Lawton and Fiona Cram “An Affront to Her *Mana*: Young Māori Mothers' Experiences of Intimate Partner Violence” (2021) 36 *Journal of Interpersonal Violence* 6191 at 6196.

141 At 6204.

142 At 6210.

143 Păroşanu, above n 46, at 123.

144 Jan Jordan “Gender and Victimology: A necessary pairing” in Anita Gibbs and Evelyn Gilmour (eds) *Women, Crime and Justice in Context: Contemporary Perspectives in Feminist Criminology from Australia and New Zealand* (Routledge, London, 2022) 27 at 35.

145 Cunneen and Tauri, above n 45, at 93.

interests of survivors in cases of gendered violence.¹⁴⁶ Contrary to the intended healing effect, restorative justice, in its current state, may exacerbate harm rather than promote healing. Significant safeguards must be implemented before restorative justice can be considered a viable option for IPV cases.

B *Restorative justice: A new form of colonial control?*

It is well-established that the traditional CJS perpetuates social marginalisation and inequality, privileging the powerful at the expense of the powerless. Restorative justice, as an alternative, aims to remedy some of these injustices. On the one hand, restorative justice can appear as a more culturally responsive approach that is capable of addressing inequalities. On the other hand, restorative justice may just be an extension of the punitive traditional CJS. The increasing institutionalisation of restorative justice practices means that these practices are becoming embedded within the unequal structures of the traditional CJS.¹⁴⁷

There is growing concern that restorative justice may serve as the final tool of colonisation, as another mechanism through which the settler-colonial state attempts to manage and regulate Indigenous peoples.¹⁴⁸ The process of indigenisation, where the state incorporates Indigenous principles into programmes to make them more responsive to Indigenous needs, risks being merely tokenistic.¹⁴⁹ Aotearoa's Family Group Conference, marketed as being informed by Indigenous principles, has become a commodity in the global crime-control market.¹⁵⁰ In practice, however, these forums often fail to deliver restorative outcomes and are not rooted in authentic Indigenous worldviews or lived experiences.¹⁵¹ Instead, the state promotes the "Indigenism" of these programmes to increase their marketability and selling potential rather than to empower Indigenous communities genuinely. Unless restorative justice practices meaningfully engage with Indigenous peoples, restorative justice risks becoming a colonial project that further disempowers Indigenous peoples.¹⁵²

The tokenistic adoption of Indigenous principles in restorative justice has negative consequences for Indigenous Māori in Aotearoa.¹⁵³ Given Aotearoa's influence in the global crime control market, its practices often inform restorative justice models in other jurisdictions. Consequently, any adverse effects experienced by Indigenous Māori may similarly be experienced by Indigenous peoples in other settler-colonial contexts that are informed by Aotearoa's restorative justice models.¹⁵⁴ Even when restorative justice programmes genuinely attempt to engage Indigenous principles, they remain embedded

146 Julie Stubbs "Restorative Justice, Gendered Violence, and Indigenous Women" in James Ptacek (ed) *Restorative Justice and Violence Against Women* (Oxford University Press, New York, 2010) 103 at 115.

147 Wood and Suzuki, above n 64, at 906.

148 Juan Marcellus Tauri "Restorative justice as a colonial project in the disempowerment of Indigenous peoples" in Theo Gavrielides (ed) *Routledge International Handbook of Restorative Justice* (Routledge, London, 2018) 342 at 342.

149 At 351–352.

150 At 350.

151 Juan Marcellus Tauri "Restorative Justice: The 'Land of the Long White Lie'" in Elizabeth Stanely, Trevor Bradley and Sarah Monod de Froideville (eds) *The Aotearoa Handbook of Criminology* (Auckland University Press, Auckland, 2021) 201 at 204.

152 Tauri, above n 148, at 349–352.

153 Tauri, above n 151, at 204.

154 At 205.

within Eurocentric state processes.¹⁵⁵ The state or its employees still run these “Indigenous” programmes. Harm-doers who engage in restorative justice processes may receive a lesser sentence from the court, demonstrating the close interconnection between restorative justice and the traditional CJS. Additionally, some practitioners may lack the cultural competency to uphold Indigenous worldviews.¹⁵⁶ Even if restorative justice programmes recognise Indigenous perspectives, practitioners lacking genuine cultural understanding will likely hinder their effectiveness.

VIII Conclusion

Restorative justice offers a compelling alternative to the traditional CJS, shifting the focus from punitive measures to healing, reconciliation, and community involvement. Restorative justice challenges conventional justice paradigms by prioritising repairing the damage caused by the harm over punishment. However, its application to the deeply personal and complex cases of IPV raises significant concerns. This article has critically analysed restorative justice’s application in the context of IPV, highlighting key challenges when reconciling restorative justice’s “ideal” processes with the harsh realities of IPV. At the same time, restorative justice does hold promise as an alternative to the CJS; the unique dynamics of IPV present obstacles that restorative justice, in its current form, may struggle to address.

One of the primary challenges restorative justice faces in IPV cases is the significant power imbalance inherent in such relationships. IPV is often characterised by coercion and control, where one partner exerts dominance over the other, creating a fundamentally unequal dynamic. In this context, “restoring” relationships oversimplifies IPV’s complex and often dangerous realities. Restoration implies a return to a pre-existing imbalance, which risks further endangering the survivor. Instead, in IPV cases, the focus must be on ensuring the survivor’s safety, autonomy, and empowerment rather than restoring a potentially harmful relationship.

Additionally, the concept of the “ideal” participant in restorative justice processes, whether the survivor, the harm-doer, or the community, fails to account for the diversity of real-world IPV cases. Restorative justice often assumes participants engage on equal terms, with a shared understanding of the harm caused. However, this is rarely the case in IPV. Survivors may face ongoing threats, trauma, or societal pressures that make genuine participation in restorative justice difficult or impossible. Harm-doers may lack accountability, particularly if they have a history of manipulation or control. Moreover, restorative justice’s reliance on community involvement can be problematic in IPV cases. The community may not always be neutral or supportive; sometimes, it perpetuates harmful norms, holds biases, or even sides with the harm-doer. This framework risks excluding those who do not fit its mould, thereby limiting restorative justice’s effectiveness in IPV cases. Therefore, the challenge is not just in implementing restorative justice but also in adapting it to address the specific vulnerabilities of IPV survivors.

155 Paora Moyle and Juan Marcellus Tauri “Māori, Family Group Conferencing and the Mystification of Restorative Justice” (2016) 11 *Victims & Offenders* 87 at 97.

156 At 95.

The intersectional analysis in this article highlights complexities concerning Indigenous women in Aotearoa, who are disproportionately represented as IPV survivors. The historical and ongoing injustices faced by these communities, rooted in systemic racism, colonisation, and socio-economic disparities, all complicate restorative justice processes. These factors exacerbate power imbalances and create additional barriers to achieving genuine restorative outcomes. In some cases, restorative justice may unintentionally reinforce these inequalities rather than mitigate them, further marginalising Indigenous women and perpetuating the very injustices restorative justice seeks to address.

While restorative justice remains a promising alternative to the traditional CJS, its application in IPV cases requires careful and critical evaluation. The foundational principles of restorative justice must be reconsidered in light of IPV's complexities. The challenge lies not only in implementing restorative justice but in rethinking its core assumptions to ensure it serves those most in need. This rethinking requires a more nuanced understanding of the diverse experiences of IPV survivors, especially those from marginalised communities. Restorative justice processes must be flexible and responsive to the specific dynamics of IPV rather than relying on a one-size-fits-all approach. Moreover, continuous dialogue with survivors, advocates, and communities is essential to ensure restorative justice evolves in a genuinely restorative way rather than being inadvertently harmful. Ultimately, the future of restorative justice in addressing IPV in Aotearoa hinges on its ability to adapt to the realities of those it aims to serve. Restorative justice can only realise its potential as a transformative force for justice, healing, and social change by adopting a more critical and context-sensitive approach.