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Evaluating New Zealand's restorative promise: the impact of legislative design on the practice of restorative justice

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ABSTRACT

Restorative justice is regarded in modern criminal justice systems as one approach to address inadequacies in the conventional justice model. New Zealand has become a leader in implementing legislatively mandated restorative procedures. This reputation is due in part to a handful of supportive statutes: the Sentencing Act 2002, the Victims' Rights Act 2002, the Parole Act 2002, the Corrections Act 2004 and subsequent amendments to those acts. In this article, I evaluate the practices bolstered by these acts and how effectively they operate, accounting for how legislative design may contribute to achievements and shortcomings in New Zealand's restorative justice programmes. I supplement the results by comparing New Zealand's efforts to those in Vermont, a U.S. state similarly well-regarded for its restorative policies. The evaluation of each jurisdiction's restorative justice programme is based on metrics for restorative success from Bazemore and Schiff (2005. Juvenile justice reform and restorative justice: building theory and policy from practice. Cullompton: Willan Publishing). I employ qualitative and quantitative data, surveying existing evaluations of restorative justice in New Zealand and Vermont, collecting longitudinal statistics, and conducting interviews with restorative justice practitioners. Overall, this analysis reveals that the design of restorative justice programmes requires negotiation; it is difficult to balance the dimensions of effective restorative justice with the needs of modern justice systems.

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Introduction

New Zealand has earned a reputation as a global leader in restorative justice (RJ), bestowed because of the country's extensive implementation of restorative practices into its criminal justice system (Maxwell and Morris 1993, 2006; Watt 2003). However, reputation notwithstanding, there is room to question the efficacy of New Zealand's RJ efforts. This article aims to interrogate how New Zealand has designed its RJ programmes and what impact that programmatic design is having on the integration of RJ into the criminal justice sector.

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RJ is a method of conflict resolution by which parties work together to address the source of contention and attend to harm caused by the dispute, therein *restoring* the well-being of the people involved. Historically, restorative approaches have not featured in the development of modern criminal justice. Instead, criminal justice systems – comprised of institutions aimed at law enforcement, criminal adjudication, and the management of criminal offenders – have relied on a conventional justice approach that perceives crime as a violation against the state and therefore allows the state to determine and issue punishment while overseeing the branches of justice institutions (Zehr 2005; Daly 2016).

Framed as an alternative to this conventional approach, RJ refocuses the criminal resolution process on the violations against individual victims and the effected community, rather than the state (Zehr 2005; Bazemore and Umbreit 1995, p. 302; Bazemore and Schiff 2005, p. 28; Daly 2016, p. 15). Through a restorative lens, criminal behaviour is viewed as doing harm, and RJ seeks to repair the harm. Therefore, in a justice system informed by restorative practices, the response is characterised by an effort to understand the relationship between all relevant stakeholders (victims, offenders, and the community), to define the harm inflicted, and to determine how best to repair this harm (Zehr 2004, p. 306; Umbreit and Armour 2011, p. 3; Van Ness and Strong 2015, p. 44).

In this article, I discuss RJ as one type of justice mechanism, an understanding of RJ borrowed from Kathleen Daly (2016). She contends that RJ should be perceived as a 'response, process, activity, measure, or practice' under the umbrella of 'innovative justice,' designed to engage the individuals affected by the crime (Daly 2016, p. 14, 18, 21). This characterisation aligns with how RJ is presently being implemented into modern justice procedures.

Indeed, modern criminal justice systems are more and more interested in harnessing restorative mechanisms for their potentially reformative power. This is in response to growing discontent with conventional justice, which is blamed for high incarceration rates, skyrocketing prison costs, and the disenfranchisement of both victims and offenders. RJ practices have, as a result, proliferated throughout the world. Many of these restorative programmes are coordinated by, or at the very least, exist alongside state-controlled justice institutions (Zehr 2004).

As a flagship among these efforts, New Zealand has taken bold steps in institutionalising RJ using legislative support. The country has passed several legislative acts that dictate the establishment of restorative processes in the justice sector. The Children, Young Persons and their Families Act 1989 (now known as the Oranga Tamariki Act) creates a conferencing procedure to be used with young offenders. Meanwhile, four other acts and their amendments account for the use of RJ options with adult offenders: the Sentencing Act 2002, the Victims' Rights Act 2002, the Parole Act 2002, and the Corrections Act 2004. Limiting the scope of this article to the legislation that dictates the treatment of adult offenders, my central research question asks how these mandating statutes affect the practice of RJ. I answer that question through an analysis of the acts, as well as an evaluation of the RJ practices used. I compare New Zealand's programmatic decisions to those implemented in the state of Vermont, another jurisdiction that has gained recognition for its legislated use of RJ. The outcomes in both New Zealand and Vermont provide context for how legislative action and programmatic design in each location have affected the relative success of restorative practices.

In measuring the success of the programmes in New Zealand and Vermont, I rely on three sources of data: existing reviews of the RJ mechanisms, a longitudinal appraisal of the jurisdictions' RJ statistics, and qualitative findings from interviews with local RJ practitioners. This evaluation provides insights into how well RJ programmes achieve their goals as part of modern criminal justice systems, and how legislation can shape those outcomes.

The research I am presenting here was conducted in pursuit of a Master's thesis that explored the relationship between legislative design and RJ implementation. My ethical obligations were overseen by an independent Human Ethics Committee at the University of Otago, which approved my research proposal. In accordance with the University's guidelines, all interviewees signed an informed consent form and agreed to the anonymous use of their expressed opinions.

I begin this article by providing an overview of the relevant literature, discussing how to evaluate the success of RJ mechanisms and how scholars are weighing the benefits of legislative regulation of RJ. I then provide context for how RJ operates in New Zealand and Vermont by discussing some of the origins of restorative practices in each jurisdiction and introducing the legislative acts that have lent institutional support to those practices. Next, I present an accounting of RJ success in each location. This assessment allows me to reflect critically on the relationship between RJ and legislation. Ultimately, I find that the institutionalisation of RJ in New Zealand has been the site of ongoing compromise and that the country still has decisions to make about how to prioritise restorative objectives and integrate restorative practices into existing criminal justice procedures.

Literature review

To review the relevant literature, I start by discussing the kind of results and benefits that are meant to accrue from RJ programmes and how that output has been tested both quantitatively and qualitatively. Then, given my focus on legislative regulation and implementation of RJ, I explore the potential advantages and disadvantages associated with top-down RJ directives.

Measuring and evaluating restorative justice

Measuring the success of RJ in New Zealand requires a set of metrics that enable a probative evaluation. To build this evaluative foundation, I rely on Bazemore and Schiff (2005) who connect restorative values, practices, and outcomes. In elucidating these connections, they clarify why scholars believe that RJ can be an effective crime response and establish expectations for what successful restoration looks like.

Bazemore and Schiff (2005, p. 89) borrow Van Ness & Strong's three guiding principles of RJ: repairing harm, stakeholder involvement, and community/government role transformation. From there, they identify the common goals or process outcomes that are associated with each principle, and then specify restorative practices that facilitate those outcomes (Bazemore and Schiff 2005, pp. 45–46).

The first principle of repairing harm manifests in practices that focus on amends-making, which include outcomes like the creation of reparative agreements, the acceptance of responsibility by an offender, and the opportunity for victims to describe their

experiences and voice their needs (Bazemore and Schiff 2005, p. 53). Harm can also be repaired through outcomes that build relationships, such as the provision of support opportunities for both the victim and the offender, and including all participants in the completion of the reparative agreement (Bazemore and Schiff 2005, p. 56).

The second principle of stakeholder involvement concerns the restorative opportunities for victim-offender exchange and reintegrative shaming (Bazemore and Schiff 2005, p. 89). Victim-offender exchange engages the two parties closest to a criminal offence in a dialogue and produces outcomes such as reducing the fear experienced by a victim, fostering a sense of relief, vindicating a victim's experience, encouraging an offender's sense of remorse, and inducing empathy in both parties (Bazemore and Schiff 2005, p. 60).

Reintegrative shaming is a practice strategy advanced by John Braithwaite that explains and contributes to the transformative power of restoration (Bazemore and Schiff 2005, p. 61). It promotes feelings of shame as potentially powerful motivators for behavioural change among offenders. When shame is harnessed and used to foster constructive disapproval from the other participants, it can convince offenders to denounce criminal behaviour and to fear the disgrace engendered by reoffending (Bazemore and Schiff 2005, p. 61). The presumed outcome is reduced recidivism.

Community role transformation, the third restorative principle, is embodied in the processes of professional role change, norm affirmation, and skill building (Bazemore and Schiff 2005, p. 89). Professional role change requires that justice system professionals and RJ facilitators shift their focus from providing 'expert' justice services to maximising community involvement, resulting in a restorative outcome of increased community participation (Bazemore and Schiff 2005, p. 73). Norm affirmation is an opportunity for community members to educate offenders regarding community values and to reclaim community order from the disturbance often caused by crime, which allows for the outcome of increased sense of safety and relief among participants (Bazemore and Schiff 2005, p. 80). Finally, skill building occurs when restorative mechanisms provide participants with lessons in restoration and conflict resolution. As community members gain more experience with RJ and the associated skillset, the assumed outcome is the increased use of RJ (Bazemore and Schiff 2005, p. 88).

Armed with a better understanding of possible RJ outcomes, it becomes easier to make choices when selecting measurable process outputs. Existing RJ programme evaluations offer both qualitative and quantitative variables that can measure restorative success and are readily grouped by the three guiding principles above. However, it is worth noting that these variables are imperfect measures of RJ success. Scholars acknowledge the ongoing challenge in RJ research to find empirical measures for hard-to-quantify restorative outcomes such as relationship building and acquired empathy, among others, and continue to advocate for new frameworks of analysis that can more effectively investigate the reality of RJ's operationalisation (Ward et al. 2014; Daly 2016).

Variables that have been used as indicators for repairing harms include: rates of restitution and outcome plan compliance (Presser and Van Voorhis 2002; Latimer et al. 2005); the rates at which apologies are included in outcome plans (Poulson 2003); and the perceived fairness and adequacy of outcome plans (Presser and Van Voorhis 2002; Poulson 2003). Indicators for stakeholder involvement include opinions related to satisfaction levels and whether participants felt heard (Presser and Van Voorhis 2002; Poulson 2003; Latimer et al. 2005). The aspirational outcome of long-term changes in an

offender's behaviour also lead most evaluations to measure the recidivism levels of participating offenders (Presser and Van Voorhis 2002; Latimer et al. 2005). Finally, indicators for community role transformation include: measures of community well-being such as the amount of volunteerism and crime levels (Presser and Van Voorhis 2002); feelings of safety among participants (Presser and Van Voorhis 2002; Poulson 2003); and robustness of the RJ mechanism, measured by the number of participants and the frequency with which people use the restorative service (Bazemore and Schiff 2005).

I embrace the indicative power of these variables, except for fluctuations in reoffending behaviour. Recidivism finds its cause in overlapping criminogenic needs: the characteristics, personal problems, and other factors that influence an individual to commit further crimes (Latessa and Lowenkamp 2005). To address all those needs is beyond the scope of a single restorative justice intervention, especially considering that the restorative interaction is meant to be equally focused on victims and the community. As a result, I largely disregard reoffending as a measure of RJ efficacy in the following evaluation and discussion.

One point, before I leave this discussion of recidivism behind, is the existence of crime 'desistance' as a potentially more nuanced and probative method of measuring the cessation of offending (Ward et al. 2014, p. 33). 'Desistance factors' consist of a litany of probative variables: employment status, nature of social relationships, education levels, and changing, personal attitudes (Ward et al. 2014, p. 33). While I was unable within the scope of my own research to include desistence variables in my analysis, it is certainly a worthwhile area of continued inquiry to determine what quantitative effect, if any, RJ can have on these more mutable and atomised contributors to an offender's decision to turn away from criminal behaviour.

Legislating for restorative justice

Because this article aims to understand the impact of New Zealand's institutional support for RJ on the country's relative restorative success, it is also important to understand existing scholarly considerations of the effects of institutionalisation and standardisation on RJ. Several researchers have asked whether RJ practices are best-served by legislative regulation and come to a variety of conclusions about the possible benefits and potential pitfalls. While not all of these scholarly considerations apply to the specific application of RJ in New Zealand, it is interesting to understand the general outline of the existing debate.

On one hand, many experts have expressed anxieties about what could be lost if attempts at legislating and standardising restorative practices do not properly account for the true intention and reformative impulses behind the RJ movement (Braithwaite 2002; Hudson 2007; Leverton 2008, p. 527; Van Ness and Strong 2015, p. 48). Restorative processes are intentionally decentralised to provide space for all voices to participate in the conversation. It is often considered best practice to avoid scripted interactions or preordained outcomes because restoration is meant to be responsive in real-time to the exchanges between victims and offenders (Braithwaite 2002, pp. 565–566; Hudson 2007, pp. 60–61).

These aspirations produce a method of justice that is indirect and potentially unpredictable, and with the pressures on legal systems to be efficient, consistent, and cost-effective,

some advocates are concerned that those systems will demand more 'wieldy,' centralised, and routinised restorative instruments (Hudson 2007; Leverton 2008, p. 526).

Furthermore, standardisation may curb the possibility of future innovation and disincentivize creativity in the search for reparative outcomes (Braithwaite 2002, p. 565; Leverton 2008, p. 525). Finally, institutionalisation of the practice often leads to accredited RJ training. Extensive training schemes may inadvertently disqualify local innovators who have spearheaded restorative initiatives but may not have access to or interest in Westernized accreditation requirements (Braithwaite 2002, p. 565).

Nevertheless, there is an acknowledged need for some level of oversight; standardisation may provide guidance and resources for the successful implementation of RJ (Groenhuijsen 2000; Braithwaite 2002; Leverton 2008; Lee 2011). Both Christopher Lee (2011) and Marc Groenhuijsen (2000) urge the importance of legislation. These authors claim that statutes: can prevent the 'underutilization' or 'dormancy' of restorative practices; can empower local actors hoping to implement RJ programmes; can reduce 'territorial differentiation and discrepancies'; and can create the appropriate safeguards to protect victims' and offender's rights (Groenhuijsen 2000, pp. 5–7; Lee 2011, p. 537).

Analysing the existing restorative justice legislation

Next, I introduce the RJ mechanisms in New Zealand and Vermont as well as the pieces of legislation that regulate them. This overview allows me to assess whether the statutory schemes under review would be expected to produce adequately restorative mechanisms and to introduce the initial points of comparison between New Zealand and Vermont.

The development of adult pre-sentencing conferences in New Zealand

This history of RJ in New Zealand did not start with Parliamentary action; rather, RJ was championed by local activists as a potential, modern justice response (Fox 2015). Ultimately, policymakers took up the cause of youth justice reform and overhauled New Zealand's youth justice processes in the 1980s using some restorative approaches. When Parliament passed the Children, Youth Persons, and their Families Act 1989 (now known as the Oranga Tamariki Act), it represented a new status quo for the treatment of young offenders. Chief among those innovative justice processes was the institutionalisation of the restorative Family Group Conference (FGC) (Watt 2003). The FGC was quickly touted as a justice reform success. As new values of accountability, harm repair, victim participation, and community involvement took root in the system, pioneers of RJ like Judge Fred McElrea advocated for restorative processes to be extended to adult offenders as well (Mansill 2013, p. 112).

Accordingly, experiments in conferencing and mediation with adult offenders began in pockets of the country in the early 1990s (Bowen and Boyack 2003). The first restorative justice group was Te Oritenga, a group of social workers, lawyers, religious ministers, teachers, and other community organisers that was founded in 1995 and began offering community group conferences (Bowen and Boyack 2003). Shortly thereafter, community-based restorative efforts such as Project Turnaround in Timaru and Te Whanua Awhina on the Hoani Waititi Marae in West Auckland received early government funding for their community panels (Maxwell and Anderson 1999). Similarly, initiatives

like the Whanganui Restorative Justice Trust and the Rotorua Second Chance Restorative Justice Programme began providing conference-based RJ services in the late 90s (Paulin et al. 2005). Several of these organisations still provide restorative services to their communities and it is important to acknowledge the role that these local RJ efforts played in the development of a more nationalised scheme.

This article focuses on that nationalised scheme not to undermine the community-based RJ efforts in New Zealand, but because my research question is specifically focused on what happens to RJ when it is centrally regulated and legislated. So, while community panels and marae continue to lend important components to the entire picture of RJ in New Zealand, I turn to a more particular consideration of adult pre-sentencing conferences as they have been implemented through legislative acts and the Ministry of Justice.

The Ministry of Justice's efforts to fund and research these RJ efforts progressed in 2001 with a four-year pilot programme that implemented court-referred conferencing in four district courts (Mansill 2013). Shortly thereafter, Parliament passed three major criminal justice Acts, all of which incorporated RJ into New Zealand's criminal justice system. However, the initial inclusion of restorative language in criminal justice legislation was not just a Parliamentary vote in support of the existing RJ practices. New Zealand's 2002 criminal justice reform package was at least partially rooted in a 'tough on crime' mindset (New Zealand Hansard Report 14 August 2001). A public referendum in 1999 revealed that 92% of New Zealanders supported mandatory minimum sentencing and harsher responses to serious offending, putting substantial pressure on the Labour government at the time (Fyers 2018). Therefore, when RJ was introduced into the conversation, it was presented as a tool for victim advocacy (New Zealand Hansard Report 14 August 2001).

The resulting reformative package included the Sentencing Act 2002, the Victims' Rights Act 2002, the Parole Act 2002, and then later the Corrections Act 2004. The Sentencing Act 2002 and the Sentencing Amendment Act 2014 delineate the bulk of the criteria that determine whether individual offenders are eligible for RJ. As passed in 2002, the Sentencing Act gave judges' discretion to refer eligible cases to an RJ service. However, the Amendment passed in 2014 changed the language so that, for all eligible cases, judges *must* adjourn trial proceedings prior to sentencing to allow for RJ options to take place. The shift from discretionary to mandatory case adjournments represents substantial, institutional buttressing of RJ and a significant change to New Zealand's legislative support for its restorative processes.

However, the parameters of the adult conferencing mechanism are not defined by the legislative acts described above. Instead, adult conferencing is governed by a framework of best practices, assembled through a collaboration between academics, practitioners, and policymakers, then published by the Ministry of Justice in 2004 and updated in 2017 (New Zealand Ministry of Justice 2017). The process is targeted at perpetrators of serious crime who plead guilty (Bowen and Boyack 2003; New Zealand Ministry of Justice 2017). For a conference to proceed, victims must be willing to attend, or to appoint a support person or community representative who can attend and participate on their behalf (New Zealand Ministry of Justice 2017).

Once a case has been adjourned for RJ, a local coordinator will explore whether the victim and the offender are willing to participate and assign a facilitator to the case

(New Zealand Ministry of Justice 2017). Facilitators are community-based and well-trained, having participated in training sessions offered by the Ministry of Justice. They can be volunteers or employees of the local service provider; many are compensated for their time and expenses. Facilitators are tasked with arranging separate pre-conference meetings with both the victim and the offender, along with any other supporters. At the conference, participants discuss the harm and impacts of the offence and attempt to produce a restorative outcome plan. After the conference, facilitators report the conference proceedings to the court (New Zealand Ministry of Justice 2017). These RJ conferencing results are then considered by judges once the case returns to court for sentencing. Accordingly, this RJ mechanism doesn't completely divert offenders from conventional adjudication procedures; rather, offenders temporarily exit the adversarial justice stream to engage in restorative opportunities and are returned to the adversarial justice stream for all final case decisions.

Acts No. 148 and 115, reparative probation, and Community Justice Centres

RJ legislation in Vermont differs markedly from the statutes passed in New Zealand. There are three notable distinctions within Vermont's programmatic design: the use of RJ panels rather than conferences as the statutory mechanism; the introduction of local, non-profit organisations called Community Justice Centres (CJC) that function as the primary location for RJ programmes; and the type of legislation – acts that are less prescriptive and more focused on establishing broad, system-wide goals – that Vermont uses to enforce its restorative vision. These dissimilarities are what make for compelling points of comparison between the restorative approaches in New Zealand and Vermont.

First, RJ panels are a mechanism during which an offender convicted of a minor offence meets with a board of community volunteers to discuss the incident and negotiate a reparative agreement (Karp 2001). These panels are most commonly used as a sentencing option called reparative probation and were added to the Vermont Statutes by Act No. 148. In this context, the tasks delineated by the reparative agreement must be completed during the probationary period (Karp 2001). An offender who successfully completes the programme will have their case adjourned (Karp 2001). The use of RJ panels has significant implications. Primarily, panels make for an offender-centric intervention. Victim participation is not required, and the panel board is largely concerned with shifting the perspective of the offender.

Second, CJCs contribute a unique supplement to RJ practices in Vermont. CJCs are focused on providing RJ programming and meeting their community's mediation, conflict resolution, and crime prevention needs. The centres were codified in the Vermont Statutes by Act No. 115 and now, a majority of the state's RJ panels are housed within these CJCs, relying on the centres for administrative support, facilities, and volunteer recruitment and training. Most centres are administrated by a small, full-time staff and use community volunteers to operate the justice services provided. These centres direct funding towards several restorative operations, implementing everything from conflict mediation, to diversionary RJ panels, to the aforementioned reparative probation panels, to post-release accountability circles that assist parolees with their reintegration into the community.

CJCs are powerful determinants for Vermont's restorative approach. They provide opportunities for more expansive justice innovation, as seen in the diversity of RJ options above. CJCs also have the benefit of being housed fully in the community they serve and operated according to local by-laws. Meanwhile, New Zealand centralises the implementation of restorative policy, granting the Ministry of Justice extensive oversight of adult conferencing. Finally, CJCs emphasise a departure from the formality of conventional justice. Such a departure is an aspiration of the New Zealand mechanisms as well, but given that adult offenders in New Zealand must return to court for final adjudication, they are not always spared from those formalities.

Third, rather than drafting RJ statutes that tightly define a RJ mechanism, Vermont used Act No. 148 to establish broad, programme-wide goals. The Act codifies these restorative goals as state policy and infuses Vermont State Law with an expansive vision for the implementation of RJ. In taking this approach, Vermont grants greater practice discretion to its local implementors who are expected to comply with general restorative principles.

Accordingly, a picture emerges of Vermont's contrasting decisions for its RJ programme design. Compared to New Zealand, Vermont has implemented an offender-centric RJ mechanism rather than a victim-centric one, removed its RJ mechanism from the conventional justice stream, and exchanged ministerial oversight for a locally operated management scheme. The stage is now set to evaluate the success of the RJ approaches in these two jurisdictions and see how they stack up against each other.

Evaluating restorative justice in New Zealand

Methodology

Using these accounts of RJ practices in New Zealand and Vermont, I now appraise the relative success of each scheme. As stated, my results come from existing surveys of these RJ mechanisms, my own numerical evaluation, and interviews with current practitioners. I use these three different data sources to address how well each mechanism meets the standards of success established by Bazemore and Schiff's (2005) groupings of restorative outcomes: the capacity to repair harm, the level of stakeholder involvement, and the extent to which the community's role in the justice process is transformed.

For the purpose of my own numerical evaluation, I collected jurisdiction-wide information for several outcome measures. The most relevant within the context of this article were the variables I collected to measure the robustness of the various RJ practices. I tracked the number of referrals and the number of completed restorative procedures. Then, to give further context to what proportion of criminal cases are being handled by RJ, I compared the number of referrals to the total number of cases passing through the system in general. In New Zealand, I was able to compile the number of adult RJ conferences for the years 2011–2017 (Response to OIA Request). In Vermont, I was able to compile the total number of referrals and the total number of reparative probation panels for the years 1995–2015 (Vermont Department of Corrections Annual Reports).

My supplemental qualitative analysis was built on interviews with RJ practitioners. I used a partially open interviewing style with a template of questions that allowed interviewees to direct the conversation according to their interests and their perspective while still

covering certain, closed inquiries. In New Zealand I was able to speak with five adult conferencing facilitators, one adult conferencing coordinator, and one police prosecutor. In Vermont, I interviewed five employees of CJCs throughout the state and the current Department of Corrections Director of Community Justice.

Results

Adult pre-sentence conferencing

For adult conferencing, I rely on two surveys of victim satisfaction, one published in 2011 and one in 2016 (New Zealand Ministry of Justice 2011, 2016). There are also three, multi-year studies conducted by the Ministry of Justice that investigate whether participation in a RJ conference can have a statistically significant effect on the reduction of reoffending. However, as stated, I disregard reoffending rates as having a significant bearing on restorative success. This leaves me with limited results with which to evaluate all three dimensions of restorative outcomes, even after I include my own robustness variables and my interviews with practitioners.

In general, I have little insight into how effectively adult conferences repair harms. There was no aggregation of outcome plan components or indicators regarding the quality of participation and attendee interaction, meaning that there are few available measures for understanding how well these conferences make amends or build relationships. These gaps in information are illustrative of a larger problem with the current landscape of RJ data. Until RJ programmes do a better job of consistently recording and publishing more nuanced accounts of their procedural output, researchers will be hard pressed to speak to all aspects of their functionality.

Meanwhile, there is data available to indicate that adult conferences facilitate effective victim-offender exchange, a component of stakeholder involvement. The Ministry report found that 84% of victims were satisfied with their conferencing experience, 93% felt well-prepared for the meeting, 60% had more positive views of the criminal justice system following their participation, and 80% would recommend the process to others (New Zealand Ministry of Justice 2016). As previously explained, the participation of either a victim or a victim representative is mandatory in an adult conference, and the increased victim engagement is therefore inherent in the structure of this justice mechanism. Notably, the ways in which a victim-centric approach has a substantial impact on the restorative capacity and success of a RJ mechanism are illustrative of the potential influence of programmatic design.

The final restorative component – community role transformation – finds adult conferencing struggling with shortcomings in systemic support. The small handful of adult conferencing facilitators who I was able to interview felt that they did not have buy-in from local police. Interestingly, the police prosecutor that I interviewed contradicted this story, insisting that the police force viewed restorative interventions favourably. Why do practitioners assume that police officers are unconvinced about the usefulness of RJ? One possible explanation is that the police prosecutor was inaccurately reporting the opinions of the police force because he believed that I was sympathetic to the RJ movement. Alternatively, it is possible that facilitators have unfairly attributed a reticent mindset to police because they have their own biases about law enforcement.

My final consideration is the robustness of the adult conferencing mechanism. In this case, the number of referrals has grown drastically, with 2252 cases being referred in 2011 and 12,867 cases being referred in 2017. The cases that have progressed to a conference have also followed an upward trend, but with a steadier growth rate, increasing from 1360 conferences in 2011 to 2401 in 2017. The spike in referrals dates to the Sentencing Act amendments in 2014 that required eligible cases to be adjourned for RJ prior to sentencing.

New Zealand practitioners indicated that this change has frontloaded the administrative work, rather than creating more conferencing opportunities. Coordinators receive more referrals from the courts, but after initial reviews and conversations with both the victim and the offender, they find that a shortage of willing victim participants prevents them from converting more referrals to conferences. This means that further increase in the robustness of this RJ mechanism would rely on cultural changes and shifts in the attitudes of crime victims rather than legislative or programmatic adjustments.

Community Justice Centres and restorative justice panels

Comparing CJCs and RJ panels to conferencing in New Zealand, there are moments of both analogous and contrasting success. First, I consider how well Vermont's RJ mechanisms repair harm. I base my evaluation on a study by Karp et al. (2002) that identified four dimensions of desired programme goals and assessed, along each dimension, several related programme outputs. Two of those dimensions – community restoration and offender accountability – relate to how well RJ panels were able to repair harm. Karp et al. (2002) found that 65% of offenders were assigned community service and of those service assignments, 92% of them took place in the town where the crime took place. A further finding that spoke to the process of relationship-building was that 78% of offenders felt that their participation in reparative probation increased their sense of membership in the community (Karp et al. 2002).

Second, I consider whether RJ panels in Vermont are involving stakeholders. Karp et al.'s study (2002) measured how well panels were meeting victim's needs and found that, while the Vermont Department of Corrections is committed to soliciting more victim participation and increasing training around issues of victim engagement, only 9% of panels featured victim participation. This is one evident area in which Vermont's restorative approach produces a different outcome from its New Zealand counterpart.

Third, I examine whether RJ panels are transforming the community's role in the justice process. RJ panels are operated by community volunteers and Karp et al. (2002) found that these panels have a high level of decision-making authority and increasing numbers of volunteers. This has positive implications for the transference of control of the RJ mechanism from the criminal justice system to community members. Researchers also conducted interviews with active panel members to determine the role and attitudes of the programme's practitioners (Karp et al. 2004). These interviewees reported that they feel more connected to their community because of their involvement in the process, find that citizen involvement produces a more democratic approach to criminal justice, and experience the RJ panels as significant opportunities for offenders to rebuild a community's trust (Karp et al. 2004). These results indicate that Vermont's restorative scheme features potent opportunities for community role change.

This finding is reinforced by my own interviews with RJ practitioners in Vermont. Compared to facilitators in New Zealand who reported issues with obtaining police buy-in, CJC administrators in Vermont had different experiences in engendering productive interactions with local police agencies. Every administrator described a unique and personal process in which they had to craft a special working relationship with a police chief or hone appropriate police cooperation over the course of repeated exchanges. Evidently, police buy-in is not manufactured by a legislative mandate. Rather, law enforcement is brought on board through ongoing interactions with the RJ mechanism. This might explain the miscommunication between facilitators and police in New Zealand; because adult conferences do not require practitioners and investigating officers to work together, there is no opportunity to develop the relationships that produce symbiotic RJ efforts.

Finally, looking at the robustness of the RJ mechanism in Vermont, the number of referrals to reparative probation have remained relatively stable, fluctuating between 1300 and 1800 referrals per year, for the last fifteen years. This represents less than 20% of the total probation population in Vermont, which averages over 5000 offenders in a fiscal year. But it is important to remember that reparative probation is only one portion of the restorative work that is happening at CJCs. The centres are of varying sizes, and manage differently proportioned caseloads, but there are currently twenty spread throughout the state and, at the higher capacity centres, administrators reported that they process about fifty new cases every month. Therefore, one CJC may be handling as many as 600 cases per year and restorative practices are likely being applied to more than the 1800 individuals who qualify for reparative probation.

Discussion

Overall, it is evident that the decisions of the legislature can have a major bearing on the restorative nature and success of the justice mechanism in use. In drawing connections between programmatic design and RJ success, I find the relationship best characterised by trade-offs. As shown above, neither New Zealand nor Vermont were successful along all three dimensions of restorative output: harm repair, stakeholder involvement, and community role transformation. The inability of these jurisdictions to achieve certain RJ results is attributable to ongoing compromise in the justice sector. These compromises are reflective of competing jurisdictional priorities and the tensions, some of which were discussed above, between RJ and conventional justice. As mentioned, RJ advocates for flexible, responsive, and discursive justice practices, which can be at odds with the conventional insistence on mechanisms that are consistent, predictable, and governable.

Due in part to these tensions, the institutionalisation of RJ in New Zealand upholds some restorative objectives but undermines others to maintain the regulatory interests of the justice sector. Below, I discuss two primary areas of compromise that highlight this reality. First, New Zealand locates its adult conferencing mechanism within the conventional justice stream, making it easier to retain control of the final disposition but more difficult to achieve fully restorative outcomes. Second, New Zealand grapples with whether to prioritise stakeholder involvement at the expense of the RJ mechanism's applicability. Vermont contends with similar areas of decision making and I compare jurisdictional

choices in both places to further illuminate the connection between programmatic design and RJ outcomes.

New Zealand demonstrates its inclination towards consistency by maintaining centralised control of the RJ mechanisms and by establishing a more uniformly trained corps of RJ practitioners. This control is exerted by retaining judicial discretion over final sentences, and by using ministerial guidelines to direct facilitator behaviour.

On the other end of the spectrum, Vermont relinquishes substantial control to its CJCs. These centres are empowered to innovate in their provision of restorative services and are granted real autonomy in the management of cases. Implementers are encouraged to pursue localised programmes, with the expectation that those efforts align with the restorative vision issued by the state. Generally, Vermont demonstrates a greater willingness to allow RJ to move out of the formal, professionalised context of conventional criminal justice.

New Zealand's decision to make RJ a mandatory component of the conventional justice process for eligible cases has competing policy implications. While judicial control of final dispositions retains predictability and consistency in justice sector outcomes, such control also restricts the extent to which the crime response mechanism can be characterised as fully restorative. Nevertheless, it is inescapable that New Zealand could not embrace Vermont's RJ model without sacrificing some uniformity in its justice sector results. Vermont has fewer tools for providing RJ quality control, for tracking RJ practices throughout the jurisdiction, and for minimising the impact of sentencing variation.

The second site of compromise is how much New Zealand is willing to constrain the mechanism for the purposes of prioritising victim participation. Adult pre-sentence conferencing guarantees victim involvement and balances the needs of victims and offenders. Meanwhile, in Vermont, RJ panels allow the restorative justice mechanism to proceed without victim input. Comparatively, adult conferencing is able to achieve victim-offender exchange and effective stakeholder involvement at a more consistent rate than the RJ panels, which are hard-pressed to produce adequate rates of victim participation. Given the victim advocacy origins of adult conferences, this raises a question: does a restorative justice mechanism need to be built *for* victims to produce practices that adequately manage a balance between victim and offender? It is possible that the only way to counter the modern justice system's preoccupation with offenders is to manufacture an extensive, procedural focus on victims.

However, prioritising victim participation comes at the cost of the applicability of the RJ mechanism. Adult conferences are limited components of the New Zealand justice system. As evidenced by the incremental growth of pre-sentence conferences even in the face of added referrals, it is very possible that the number of cases that are appropriate for victim participation *and* have victims willing to participate has a natural plateau, which may mean that the mechanism cannot grow into a primary justice response without substantial cultural changes in how victims view their role in the justice process. Meanwhile, RJ panels experience much more extensive use.

Conclusion

While much work remains, we can draw tentative conclusions from the research reported herein. The legislative frameworks in New Zealand have played an essential role in

developing effective and well-resourced RJ programmes. If these state-sanctioned programmes are to be maximally restorative, then there is continued effort required to understand how jurisdictions should best operationalise, enact, and implement RJ mechanisms. Primarily, jurisdictions are still learning how to balance the justice sector's need for control and consistency with the restorative elements of repairing harm and community role transformation, both of which seem best served by decentralised and non-routinised practices. Additionally, the offender-centric focus of much criminal procedure can make it difficult for legislatures to structure models that ensure full victim participation as part of the restorative process. In truth, New Zealand (and all jurisdictions) may be hard-pressed to incorporate RJ processes into the justice system in ways that fully reproduce restorative objectives. Still, the comparisons drawn here between New Zealand and Vermont demonstrate that there are several ways to weigh RJ priorities and outcomes in the final programmatic design.

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