The morality of evidence: the second annual lecture for *Restorative Justice: An International Journal*

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1. Abstract

In the past two decades restorative justice (RJ) has been the subject of more rigorous criminological research than perhaps any other strategy for crime prevention and victim support. A misalignment between practice and research, however, has resulted in much confusion about what practices are, or are not, supported by the existing research base. This confusion raises the moral problem of doing things to people without evidence those things do no harm. In what has become a wide array of justice practices called 'restorative,' there are serious risks of both direct and indirect harm in promoting--or even condoning-- untested practices: 1) Many practices remain untested, despite claims that tests of *some* RJ practices support *all* RJ practices, so that the *untested practices may be causing harm directly*; 2) Practices that have been rigorously tested and found to be effective are not widely used, while *untested RJ practices have arguably caused harm indirectly* by diverting resources from practices known to be effective; 3) Victims of violent crime are indirectly harmed by the diversion of RJ resources to property crime, where evidence shows RJ is less effective. We therefore assert a moral obligation for RJ practitioners to assure that their work does no harm by promoting rigorous evaluations of what they are doing, and encouraging investment in tested strategies for the kinds of victims and offenders with whom RJ is known to have the strongest effects.

2. Introduction

On a cold winter's evening in Canberra in the late 1990s, four well-dressed young white Australians sat in the upstairs room of a suburban police station. Each was accompanied by one or more members of their families, all of whom sat in a circle. Also in the circle were two young Aboriginal boys and their exhausted-looking grandmother. Peter, aged 11, and his brother Chris, aged nine, were subdued when they arrived, but before long were fidgeting uncomfortably. They knew they were in trouble with the police, which they had been many times before, but they were unfamiliar with this situation.

The police officer trained to be the facilitator for this face-to-face restorative justice conference introduced the participants to each other. He explained that they were here to talk about an offence that the boys had admitted to, and to decide what could be done to repair the harm caused. He then asked the boys to describe what they had done, but the boys said very little.

Next, the police officer turned to each victim and asked what had happened and how they had been affected. Each said they had been exercising in a YMCA gym during their workday lunch hour. Each victim described the shock of finding that their lockers had been forced open and the valuables inside taken and their annoyance with the security arrangements at the gym. But these emotions had been short-lived. Even though the experience had made them more wary and less trusting, none of them had suffered any serious harm.

The police officer then turned to the two boys and asked them what they thought about what they had just heard. Peter studied his shoes and Chris looked around the room; neither of them, throughout the meeting, even looked at the victims of their crime. The facilitator finally asked their grandmother what she thought about what had happened. She began by explaining that the two boys lived with her because their mother was a heroin addict unable to care for them and their father was in prison. She said that she found the boys very hard to look after; that they often wouldn't go to school and that they ran wild in the city centre most days. She said she felt very sorry for what they had done that day and apologised to the four victims.

The facilitator then asked the victims what they thought should be done to repair the harm they had suffered. The four looked blankly at each other. Plainly there was no restitution to be had. The boys had quickly sold the valuables they had stolen, and they didn't want to ask their grandmother for money. Finally everyone present agreed to an undertaking from the boys that they would stop thieving, start going to school regularly and do what their grandmother asked them to do.

When the boys were interviewed some weeks later, the RJ meeting was already a distant memory. When the victims were interviewed, however, they recalled the event very clearly. All of them said they had felt such huge social distance between their own lives and those of the boys that they could not imagine any kind of empathetic understanding between them. But they all had felt very sorry for the boys, and were especially pleased the crimes had not been the cause of yet another trip to the Children's Court for the boys.

Ten years later, Chris was dead of a heroin overdose. Peter was in prison.

3. What Works For Whom?

We tell this story not just to give a taste of the frustrations of RJ processes that fail to unfold in the expected manner, that elicit little empathy between the participants, that comprehensively fail to make a difference to the lives of either the victims or the offenders. We could have told many other stories, all of them about success: RJ conferences which had been a true turning point in the lives of the participants, in which offenders desisted from their lives of crime, in which victims were freed from the anxiety and fear they had suffered after the crime. Stories are stories: they are powerful illustrations of a point that may or may not be supported by good evidence. But it is only when we put the facts together from a systematic sample of stories that we can discern what the evidence really shows: patterns of benefit, of no effect—or harm.

[Insert Figure 1 Here]

Sadly, the YMCA locker-room theft story of Chris and Peter was part of a pattern in which RJ conferences clearly caused harm. We found that pattern in the first phase of

the Jerry Lee Foundation's Program of Randomised Controlled Trials in Restorative Justice Conference, conducted in Canberra over a five year period in the late 1990s. In this phase, known as 'RISE' (for re-integrative shaming experiments), we looked at the effects of face-to-face RJ conferences, conducted by police officers, on both white and Aboriginal offenders. Two of the experiments involved face-to-face meetings between offenders and personal victims, and therefore met the full definition of a *restorative* justice conference we used in the Campbell Collaboration systematic Review of the effects of such conferences (Strang, et al, 2013). These experiments enrolled young persons arrested for either property crimes (under age 18) or violent offending (under age 30). The violence experiment was half the sample size of the property experiment, which led us to combine the two experiments in order to examine differences by race. The differences we focus on were intent-to-treat (not treatment actually delivered), difference-of-difference comparisons between offenders randomly assigned to diversion from prosecution to an RJ conference and those prosecuted in court.

As the YMCA thefts case illustrates, the effect of RJ conferences on Aboriginals was often not what had been hoped. Figure 1 shows that, for *Aboriginals* randomly assigned to be diverted to RJ conferencing, there was an almost three-fold increase in their arrest rate compared to the two years prior to random assignment—a statistically significant difference when compared to a 65% drop in reoffending over the four years among those assigned to court. In sharp contrast, *for whites*, there was no evidence of a statistically significant difference in subsequent reoffending over the next two years (compared to the two years prior to random assignment) between juveniles randomly assigned to be diverted to RJ conferencing for their offence and those prosecuted in court in the usual way.

The findings in Figure 1 combine two experiments – violence and property - in order to obtain a large enough sample of Aboriginals for adequate statistical power to test the effects of RJ conferences just on that sub-group. Figure 2 offers an additional insight from just looking at RJ conferences after violent crimes, with white and Aboriginal offenders up to age 29. Figure 2 shows that for white youths, restorative justice conferences caused a large *reduction* in repeat offending, while similar offenders who had been sent to court had the opposite result: an *increase* in offending

frequency. A 57 percent increase in reoffending for whites assigned to court was what could have been expected without diversion to an RJ conference, while those who were diverted had a 27 percent reduction in arrest rate. This success for whites charged with violence contrasts with no statistically significant effect on the small sample of Aboriginal youths charged with violence; whether they went to court or to RJ, their offending rates increased substantially.

[Insert Figure 2 here]

One could conclude that the RJ conferences with Aboriginals for violent crimes at least did no harm. Yet such a conclusion must always depend on reasonable statistical power, in order to effectively 'prove' a negative. The statistical power for RJC effects on Aboriginals in the violence experiment is arguably too limited by the small sample size: just 15 Aboriginals out of the 121 people in the experiment. A better insight into the effects of RJ conferences on Aboriginals can be obtained by Figure 1, which combines the two experiments to examine a larger sample of Aboriginals (38) randomly assigned to the two different justice pathways.

What is most important about the evidence in both Figures is the overall *lack of harm to white offenders* from RJ conferences when both property crimes and violence were combined, and the overall *increase in harm for Aboriginal offenders* randomly assigned to RJCs for both property crimes and violence. The findings challenge any claim that while restorative practices may not always 'work,' at least they 'can't hurt.' They can, and they did. The experiment tells us that more victims were harmed, and offenders descended further and faster into crime, when RJ conferences were used with Aboriginals instead of prosecution in court.

These deeply dispiriting findings cannot be set aside. We must learn from this evidence. The lesson is that RJ conferences can harm, under at least some conditions. It therefore follows that all RJ practices could have that risk, with some kinds of offenders or offences. Unless and until RJ practices are rigorously tested with different kinds of offenders, victims and crime, we suffer the moral hazard of potentially causing harm. It is no longer 'obvious' that restorative practices are better than conventional justice. It is, instead, a matter requiring utmost care.

We would never say that RJ *cannot* work for Aboriginal young people in reducing their offending, or that court is 'better' for them, since there could be many more tests of many more variations in many important dimensions. It could make a big difference, for example, as to who leads the conferences. Police may have such bad relations with Aboriginals that anyone else could get better results, such as social workers or elders from an Aboriginal community. While we do know that this particular model of RJ conferencing failed comprehensively for Aboriginal young people in this study, many other models of alternatives to conventional justice could be tested and shown to reduce their reoffending.

But given the strong evidence that the RJ conferencing model tested in Canberra has been effective with many other white populations (Strang, et al, 2013), it is especially important to place this 'health warning' on those results. Whether the Canberra results would apply to marginalized minorities in other communities remains unknown. Yet efforts to roll out that model of RJ could benefit from further tests to compare results for majority and minority groups. The lesson is that RJ can backfire, that it can cause harm. Rather than simply asserting that RJ 'works' or 'doesn't work', we ought usefully to change the question to *'what works for whom?'*

4. The Specificity of Evidence

A strong evidence base has now been developed to guide criminal justice policy on the application of RJ programmes that conform to certain basic principles, but those principles are not scientific 'laws'. The growth of evidence, valuable as it has been, has not been sufficient for RJ to flourish and fulfil its maximum potential. All too often the evidence on one kind of programme is received as a success, and new programmes are established with the evidence on *different* programmes as the justification for the new one. Yet the new programmes go off in different directions, far away from the exact methods used in the test. Without careful, evidence-based replications, the policies 'based' on the evidence may have very different effects.

What happened in Canberra is a case in point. The RJ conference we have described was one of several hundred in the RISE programme. As a result of this research, a permanent RJ Unit was established in Canberra to deliver such conferences, with some ten years of work completed by 2015. Yet the differences in the programme

delivered by the permanent unit from the RJ conferences that were actually tested are substantial:

1) The facilitators in the test were all trained police, but none of the facilitators in the permanent unit have been; there is no evidence whether the non-police facilitators are effective, or even that they do no harm.
2) In the permanent programme, no adults have been eligible for RJ conferences, despite good evidence that RJ can work on violent offenders under 30.
3) In the permanent programme, serious crimes have been excluded, despite good evidence in the test that RJ works best with serious crimes.
4) In the permanent programme, Aboriginal young people are still subject to RJ, despite the test evidence that using this model of RJ with Aboriginal youth increases crime.

The inconvenient truth that does not go away is this: *RJ conferencing may have different effects on different kinds of people, especially when it is delivered in different kinds of offences by different kinds of staff*. No legal or moral framework is available to help with the resulting dilemmas, but it may be helpful for us to invoke a framework of 'bounded Utilitarianism' under the principle of 'First, do no harm.'

5. Evidence Versus Principles

RJ as it is widely understood is based on a set of principles. These have been articulated, for example, by Braithwaite (2002). Although there may be some disagreement around the details, the RJ principles Braithwaite describes are widely accepted. RJ requires consensual, uncoerced participation by everyone affected by an offence, with an opportunity for deliberative dialogue between these parties in a process managed by an impartial facilitator. These principles are not always observed, as we shall see shortly. But even if they were, there is a major question about reconciling evidence and principles. *If an RJ practice observes these principles, why should it be tested?* The answer, we propose, is because principles do not predict effects. Yet effects that harm form an additional, implicit principle in Braithwaite's (2002) framework that is evident in his extended analyses of whether victims benefit and offenders commit less recidivism with restorative justice than without it: first, do no harm.

We take this principle to provide the foundation for our moral viewpoint of 'bounded Utilitarianism,' or Utilitarianism that is bounded by forbidding acts that are morally wrong (such as death penalties and torture) even if they can create 'the greatest happiness for the greatest number,' as Francis Hutcheson (1725: 61) first stated the Utilitarian philosophy as a founder of the Scots Enlightenment (Buchan, 2003). Yet bounded Utilitarianism also bans doing things that have *opportunity costs* from not doing *more* good with the same resources than the things we are doing. It is a philosophy that recognizes the limited resources any society has for justice, exactly mirroring the rationing of medical care in the UK by the National Institute for Health and Care Excellence, known as 'NICE.' This body is charged with the responsibility of not only banning interventions that harm, but also banning those that cost more per year of quality life extension than other services that are more cost-effective. NICE therefore extends the principle of 'do no harm' to limiting benefit for some to avoid others who might get more benefit for the same cost.[1] The most obvious example is spending huge sums on medical treatments of older people while health care for the very young is under-provided.

Some might object that justice is not health care, which is true but not relevant. What justice and health care share, in many countries, is a limited budget provided by taxation of all citizens. They also share a public duty to use their limited budget in the most cost-effective way possible. Finally, what they are beginning to share is the moral guidance of a (sector-specific) evidence base on which practices are *more or less* cost effective than others. The evidence base in medicine is far more extensive than in justice, but it is extensive enough to support a moral framework in which evidence of effectiveness is a basic (but bounded) principle.

Some, though not all, RJ proponents might then raise an additional question: *why do effects matter if justice is done*? The question implies that justice is priceless, that government funding is endless, that the entire Gross Domestic Product of a country could be spent on justice if citizens voted to do so. But societies have other needs for

[1] See www.nice.org.uk/ .

survival and a good life besides justice. It is fraudulent to claim otherwise, even if the rhetoric of never-ending justice is appealing.

'If you want peace, work for justice,' it is said. The 'spin' that justice always causes peace is clearly implied by that claim. Others might cite evidence that retaliatory justice causes more war than peace, and that justice is hardly a guarantor of peace—among street gangs in Los Angeles or among land disputants in Israel.

If justice is to be blind to its effects, then it is honor-bound to disavow any claims of its extrinsic benefit. Yet to do so would be to abandon a major line of development for restorative justice. Its potential for transforming modern societies will likely depend very heavily on the evidence for a Utilitarian case that it reduces more harm than conventional justice practices. This is as it should be, if we place justice in the context of global warming, illiteracy, HIV, and other problems that could be addressed with the money that is spent on prisons, for example, especially in the United States. It is only with the framework of bounded Utilitarianism that a political movement has arisen in the US joining right-wing and left-wing groups who argue that prison is not cost-effective. For example, the statement of principles for *Right on Crime* includes the following points consistent with our moral framework: [2]

> 'Conservatives correctly insist that government services be evaluated on whether they produce the best possible results at the lowest possible cost, but too often this lens of accountability has not focused as much on public safety policies as other areas of government. As such, corrections spending has expanded to become the second fastest growing area of state budgets—trailing only Medicaid.
>
> 'Conservatives are known for being tough on crime, but we must also be tough on criminal justice spending. That means demanding more cost-effective approaches that enhance public safety. A clear example is our reliance on prisons…'

[2] http://www.rightoncrime.com/

We suggest that research evidence for justice can and does provide the morality we need to guide policy for better effects. We therefore propose the following moral claims:

- It is immoral to use a *tested* form of justice with the kinds of offenders for whom it causes *more* crime than conventional justice
- It is immoral to use *untested* forms of justice that could cause more crime than conventional justice
- It is deceitful to claim an *untested* form of justice is beneficial based on evidence that comes from a test of a form of justice that is *different* in major ways.
- It is immoral to provide *untested* forms of justice while not providing *tested* and effective alternatives.

As a corollary, we make three empirical claims about the state of RJ policy and practice in many countries around the world in relation to evidence:

1. Too little use is being made of *tested* practices, especially for serious adult crimes
2. Too many RJ practices remain *untested*, despite their widespread use
3. Too many tested practices go unused because untested practices have captured the available public funding for Restorative Justice, thus indirectly harming those victims whose crimes could be prevented or resolved by evidence-based RJ that is not provided to them.

Our concern is that while the quest for strong evidence about one model of RJ conferences has largely succeeded, that success in producing evidence can only be a starting point. The failures of reformers to connect good evidence to practice can only be rectified by a willingness by policymakers and practitioners to take evidence seriously, not just in RJ, but in all matters of justice and government more generally.

Some critics may argue that practising an untested intervention is a matter of small importance, so long as a consensus exists to support that policy. They may argue that the consensus is right if, all things considered, people *seem* to benefit from that intervention. Yet over the past century, there has been a growing preference among policymakers to favour practices that have an evidence base. This preference extends

even to the regulation by the European Union of fortune tellers who, since 2008, have been required to make clear to their customers that their fortune telling is 'not experimentally proven' and is 'for entertainment value only'. Sadly no such requirement is made of our criminal courts, even though they too have not been experimentally proven to be effective on any particular criterion (Sherman, 2009).

There is a growing moral expectation that claims of benefit should be supported by objective evidence. In many arenas, there is a legal duty as well as a moral duty to do so. Advertising claims are a prime example. The fire safety of most electronic products must be assured by rigorous testing. Vehicle safety standards have risen dramatically, with corporations held culpable of murder if they knew of a potentially lethal defect. Governments are obliged to assure water and air quality. Food manufacturers must comply with laws on content labelling, and not include undisclosed content such as horsemeat or nuts. We accept, our political culture now expects, so many things to be subject to careful regulation by our governments. Why, them, should criminal justice practices be any different, especially when their consequences can be as uncertain and unpredictable as those in any other arena?

Joan McCord (2003), for example, reviewed the importance of recognizing the possibility for doing harm when intentions are good. She described several examples showing that well-planned and adequately executed programmes provide no guarantee for safety or efficacy, and included reflections on her own Cambridge-Somerville study (1978) where an apparently benign and well-intended programme of support for disadvantaged youths failed so badly. Similarly, despite widespread support from police and community groups about the likely benefits in reduced offending of the 'Scared Straight' programme, Petrosino et al (2003) showed that the programme was worse than ineffective. Many other examples of effects that backfire are to be found in criminal justice research. As McCord said (2003:17),

> 'They ask, Does the program work or not? This question is too narrow because it fails to recognize that some treatments cause harm.'

Recent research in McCord's tradition estimates precisely how likely it is that unintended harm will flow from crime prevention programmes. Welsh & Roque's

(2014) systematic review identified 574 studies of programmes intending to reduce crime. They found that that 22 of those outcomes (3.8 percent) showed adverse effects with significant increases in crime. Across all these tests of what works (or harms), there was a 1 in 26 risk of a well-intended programme actually doing harm. This risk alone, we would argue, justifies a culture of rigorous testing of all such interventions. It is this reasoning which underpins the programme of research into the effects of RJ reported in the Campbell Collaboration Systematic Review (Strang et al, 2013, Sherman et al, 2014).

6. The Rise of Strong Evidence for *One* Model of RJ Conferences

For better or for worse, the evidence supporting one form of RJ conferencing is strong, even while strong evidence about other forms of RJ is lacking. That one form is the model used by the same trainers to train facilitators in every one of the available randomised trials included in the Campbell Collaboration Systematic Review (Strang, et al, 2013). This means that for RJ to offer evidence-based practices, practitioners must either limit their work to this form of RJ conferences, or undertake new tests of hitherto untested practices. This is a strong indictment. but it is well-supported by both the morality of evidence and the scientific methods of systematic reviews of research.

All attempts at sifting through findings on interventions labelled 'RJ' have encountered both highly variable *definitions* and highly variable evaluation *methodologies*. Latimer et al (2001), for example, devised their own definition and criteria for RJ in their meta-analysis of RJ; Sherman & Strang's Smith Institute Report (2007: 32) also acknowledged that RJ 'means different things to different people,' using broad boundaries in their overview to include any and all 'reasonably unbiased tests of effects of RJ'.

In the 2013 Campbell Collaboration Systematic Review of RJ Effects (Strang et al 2013), however, a more restrictive approach was adopted to both definitions of 'eligible' RJ programmes and minimal quality of the evaluation. The definition was limited to RJ conferencing; the methods were limited to randomised trials. Conferencing is certainly not the only form of RJ that conforms to generally-agreed restorative principles. Programmes under the banner of 'victim-offender mediation'

and ‘circle sentencing,’ for example, are widely viewed as meeting the wider standard. Yet the Campbell Review found no tests that met a high standard of rigorous evidence in evaluating such other forms of RJ.

While there is much to say about the question of methodological rigor, *homogeneity* of programmes is not usually mentioned as a prominent issue, but it is. Mixing diverse RJ programmes into a single ‘average’ effect is potentially misleading, just like mixing the effects of all forms of transportation on accidental death rates: motorcycles and two-door cars have very different death rates, just as different forms of RJ may have very different success rates in reducing recidivism. But if there were no data on cars, a death rate review limited to motorcycles would have to say so. The Campbell Review could only look at one kind of RJ conferencing, since there were no rigorous evaluations of any other kind. Even if there had been one or two, the mixture may still have been inappropriate.

It is generally acknowledged that randomised controlled trials (RCTs) on the medical model ensure the most reliable estimates of effectiveness when one ‘treatment’ is compared with another (Braithwaite, 2002: 56). The Campbell Review (Strang, et al, 2013) limits its assessment of RJ effectiveness to measures of offender recidivism and victim satisfaction in a face-to-face meeting ‘that brings together offenders, victims and their respective kin and communities, in order to decide what the offender should do to repair the harm that a crime has caused’ (Sherman & Strang, 2012: 216). The Review also limits itself to evidence derived from RCTs where consent to participate by offenders and victims was obtained before randomising, not after (since to do otherwise results in a high rate of drop-out that undermines the integrity of the random assignment process). Furthermore, only crimes with personal victims were included and the results were analysed on an ‘intent-to-treat’ (ITT) basis, that is, on the basis of the random assignment of each case regardless of whether or not the assigned treatment was actually delivered. The ITT approach approximates the real world much more closely than any other method, acknowledging as it does that the efficacy of a programme must be judged on the basis of a policy roll-out rather than a contrived ‘pilot’ setting.

In restricting the Campbell Review in this way, the intention was to focus on providing advice for policymakers. That advice focused on the kind of RJ programmes that could be expected to operate most effectively for different kinds of offenders, victims and offences in different social settings and at different points in the criminal justice system. For these reasons, the authors heartily wish that their 2007 Smith review could be 'retired' for the good reason that policy should be formulated on the basis of the best, most homogeneous, and most recent evidence, rather than the most general and variable in quality.

The Campbell Review found a total of ten experiments meeting the eligibility criteria, with recidivism outcomes involving a total of 1,879 offenders. Two of these were part of the Canberra RISE programme of experiments, one was an Indianapolis study of very young offenders (<14 years), and the remainder were British programmes focused on a range of offences of varying seriousness dealt with at various points in the criminal justice system. The synthesis of these studies showed that 'on average, RJCs cause a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims. A cost-effectiveness estimate for the seven United Kingdom (UK) experiments found a ratio of 8 times more benefit in costs of crimes prevented than the cost of delivering RJCs' (Strang et al, 2013: 2).

6a. Conferences Work Best for Violence, Least for Property Crime.

The synthesis also reveals the importance of disaggregating the effects of an intervention, especially when there is good theoretical reason for anticipating differential effects for different kinds of offences, as there is in RJ. For an intervention which depends at least in part on the power of the emotions it elicits in its participants, one might expect that more emotional crimes, such as those with violence, might be more effective in changing subsequent behavior than less emotional crimes, such as most property crimes. Indeed, this turns out to be the case, as Figures 3 and 4 show (for the locations of each study included in the analysis, see Strang et al 2013: 24). For RJ conferences with *property crime,* the difference in reconvictions between the experimental group ('RJ') and the control group ('CJ', or conventional justice) across all three experiments included in the Review is negligible (d = .001) and not statistically significant (p = .989). The difference across the five

violence experiments included, however, is much larger (d = .198) and is statistically significant (p =.045).

[Insert Figure 3 about here]

[Insert Figure 4 about here]

6b. Conferences Reduce Victim Post-Traumatic Stress.

One study featured in the Campbell Review (Strang et al, 2013) shows the benefits of RJ conferences in reducing post-traumatic stress for crime victims in robbery and burglary cases in London. This result (Angel, et al, 2014) also shows that women victims benefit more than men, since they suffer more from post-traumatic stress after these crimes. The evidence suggests a high priority for delivering RJ in cases of violent crimes against women.

6c. Conferences are Cost-Effective in UK Estimates.

Computing benefits in terms of financial costs of crime prevented, Shapland et al (2008) carefully calculated the costs of delivering RJ conferences on a 'running' basis (as distinct from start-up costs) in relation to Home Office formulae on cost of crimes. The latter were applied to the crimes for which offenders in both RJC and conventional justice groups were convicted after random assignment. These costs included not only costs to the criminal justice system: crucially, from a normative view of what restorative justice is for, the costs of crimes to victims and society were also included in the estimates. Table 1 shows that while the cost-benefit ratio varied across experiments, in part with the absolute recidivism levels of the offenders, Shapland and her team estimated the overall return on investment in the seven randomised trials of Restorative Justice Conference that the co-authors designed and completed at eight pounds of cost prevented for every one pound spent on restorative justice conferences.

[Insert Table 1 here]

6d. Summary: This Model Works.

In summary, the evidence shows that RJ conferences delivered on the model that has been tested (ten times across three countries) are very effective for violent offences, but not very effective for property crimes. That evidence shows that RJ conferences for violent crime could play a major role in cost-effective crime reduction (see Table 1). The evidence suggests that, with further research, there could be a priority given to female victims of stranger crime, based on greater benefits of this model for women victims than for men. There may also be a case for RJ conferences helping victims of domestic violence, but only with further research (Mills, et al, 2013). In an ideal world, that evidence could be guiding the development of policy and practice in RJ. Yet like the testing of citrus juice to prevent scurvy, which took 48 years to influence policy in the British Navy (Bown, 2003), the transition from evidence to practice has been disappointingly slow.

7. The Rise of Evidence-Free Innovations.

RJ has long suffered from a particular problem about its definition: a very wide range of informal justice practices are now simply called 'RJ'. The good news about one form of RJ, the tested conferencing model, has been widely circulated but poorly specified, and frequently cited as evidence that many other kinds of RJ are effective. We add here to the discussion of the problem of misappropriation of evidence from one type to support another.

7a. Definitions, Values and Processes.

Many RJ scholars have reflected on this problem. Aertsen et al (2013), for example, discuss it at some length and quote Roach (2013) as simply concluding that 'RJ means different things to different people.' We are reminded here of Humpty Dumpty's remark in Lewis Carroll's '*Through the Looking Glass'* that 'When I use a word it means just what I choose it to mean—neither more nor less.' Alice's response is very relevant here: 'The question is whether you can make words mean so many different things.' And we would say in reply: no, you can't, at least in RJ, without enormous confusion.

The body of evidence that flowed from the research agenda devised by Braithwaite and others has been substantial. It did not, however, anticipate the plethora of disparate interventions that would adopt the restorative justice label, a development which has given rise to uncertainty and sometimes well-justified scepticism in interpreting their value vis-a-vis the evidence base.

When we attempt a core definition of RJ there are some things that will just not go away, no matter how much the definition would expose those using the figleaf of the RJ label to promote their ideas. The UN definition (*UN Basic Principles on the Use of Restorative Justice in Penal Matters*, 2002), for example, defines an RJ programme as one that uses restorative processes and seeks to achieve restorative outcomes. Furthermore, a restorative process means *'any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator'* (2002: 3).

Perhaps more useful for both researchers and practitioners in defining RJ is the proposal by Braithwaite (2002: 14) for a framework on the content of RJ values. He suggests they should include respect for human rights specified in international human rights agreements, and that the values found there include both emotional and material restoration after the harm caused by the crime. This broad view has the advantage of excluding categorically many programmes that presently clutter the scene that we discuss below.

Beyond RJ principles and values, however, are some important aspects of the process itself without which, we suggest, the RJ label should never be applied. Indeed it might be argued that process can sometimes trump values in deciding what is important in RJ. Umbreit (2004: 82) for instance calls RJ 'a process rather than a particular program model' which can accommodate a wide array of practices so long as they conform to a basic idea. That idea features uncoerced communication between everyone affected by some harm, responsibility for which lies with an offender who admits to their culpability (or, in the New Zealand formulation, who at least declines to deny it). What we suggest is that RJ requires a commitment to *both* values and processes (Braithwaite & Strang, 2001), both of which stretch over a continuum that

can generously accommodate a wide range of interventions.

Perhaps the best use of these attempts at definition is to exclude those interventions calling themselves RJ when they clearly do not meet commonly agreed requirements. At the same time, we can think carefully about those that may fall over the line in some respects but not others. Let us now consider the characteristics of some of these in the United Kingdom.

7b. UK Innovations and Evidence.

Over the past decade, practices known as RJ have proliferated in the UK. Much of this growth followed the completion of the Home Office-funded multi-million pound test of RJ Conferencing by the Jerry Lee Center of Criminology at the University of Pennsylvania, in collaboration with the Australian National University (see Shapland et al 2004, 2005, 2007, 2008). This series of randomised controlled trials, testing RJ conferencing under a variety of conditions for a wide range of participants, clearly showed in seven UK tests the benefits that can accrue with the use of this model in reduced reoffending and increased victim satisfaction. In addition, reductions in costs amounted to a cost/benefit ratio across all the experiments of eight pounds saved for every pound invested in operating the programme (Figure 5 above).

Unfortunately, few of these carefully tested programmes survived more than a short time after the conclusion of the experiments. Yet RJ did not expire in the UK, at least in name. A recently commissioned study by Sheffield Hallam University (Meadows et al, 2014), designed in conjunction with the Restorative Justice Council and the Ministry of Justice, has mapped the provision of RJ within criminal justice in England and Wales. The study reveals a proliferation of programmes bearing the label. Indeed the authors comment: 'Definitions and terminology are diverse and changing' (p7) and add that 'definitions [of RJ] remain contested and …this exercise has inevitably faced challenges in relation to the lack of consistent terminology. It is clear…that there could be wide variation in interpretation of response categories.' (p9).

Although the Sheffield Hallam authors were disappointed in the number of responses from police agencies, where so much of what is called RJ is currently taking place, they still received 248 responses from 171 separate organizations. Some were

governmental, and most of the remainder voluntary. All of them described themselves as delivering RJ. It was not possible to calculate what proportion of all programmes the responses related to (with no comprehensive listing to serve as a denominator), but a very large number of people were found to be involved to a greater or lesser extent with those programmes reported upon. One organization indicated it had 5,000 volunteers under its auspices (p3). Almost ten thousand people were said to have been trained as facilitators. A further eight thousand had received an introduction to RJ training (p4).

Just over a third of the responding organisations (N=65) were Youth Offending Teams which have been delivering Youth Justice Panels for more than a decade. They have been subject to criticism over many years from RJ advocates for their focus on the offender and sometimes cursory treatment of victims (see for example Miers 2001).

The area of greatest concern, however, relates to the extraordinary growth of what is often called 'Street RJ', which includes both Youth Restorative Disposals (YRDs) and Community Resolutions (sometimes Restorative Resolutions).

YRDs, now used throughout the country, are truly 'street' justice because that is where they are most often used. They deal with low level offending, mainly nuisances, and may or may not involve the victim of the offence. They have been found to be cheap to use, relative to more elaborate criminal justice processing, and popular with the police.[3] But their effects on reoffending have not been measured. Nothing is known about whether they are more effective than either more complicated (e.g. arrest and charge) or less complicated (warnings) police actions. Most important, no one knows whether they cause more harm than alternative resolutions.

Community Resolutions (CRs) are police programmes that are targeted at minor crime committed most often by juvenile offenders. Typical procedural guidelines for CRs are those of the Cambridgeshire Constabulary (2013). These describe the aim of their programme as being 'designed to allow certain offenders to make amends for low-level offending and the harm they have caused, using individually tailored

[3] www.restorativejustice.org.uk/what_is_restorative_justice/in_criminal_justice/restorative_policing/

restorative solutions. Victims are placed at the centre of the process and stakeholders have a say in the outcome' (p. 3). Yet this last objective is routinely ignored. That is allowed by virtue of the *Ministry of Justice Quick Reference Guide to Out of Court Disposals* (July 2014) which states that a Community Resolution can proceed without victim consent--and indeed without their involvement at all. The hundreds of such disposals each year in Cambridgeshire alone rarely entail any victim input and usually result in nothing more for the victim than a dictated letter of apology from the offender. Yet this criminal justice disposal is routinely referred to as 'restorative justice' by police and others involved.

The Restorative Justice Council (RJC) has taken steps to distinguish between RJ as they define it and Community Resolutions with a statement on its website.[4] They define the latter as

> 'an out of court disposal the police can use to deal with antisocial behaviour and low-level crime. Community resolutions can be used with or without restorative justice (RJ) - the process which brings those harmed by crime or conflict, and those responsible for the harm, into communication. However, Home Office figures do not distinguish whether community resolutions have involved RJ or not. Community resolutions and RJ are distinct and separate. RJ is not a disposal – it is a process that can be used at any stage of the criminal justice system for any level of crime alongside or as part of an appropriate sentence or out of court disposal.'

Indeed the UK Association of Chief Police Officers (reconstituted in April 2015 as the National Police Chiefs' Council) has issued its own warning about the misuse of terminology and attempts to clarify when community resolutions can and cannot be considered RJ.[5] The Cambridgeshire Police guidance, as at least one example of the low impact of the RJC statement, appears not to have paid close attention to it.

There is no doubt that these disposals have been enthusiastically welcomed by the large number of British police constabularies that employ them. They are seen as, and sometimes referred to as, 'common sense policing': a return to an era in which police possessed much more discretion about dealing with minor crime than they have

[4] www.restorativejustice.org.uk/news/community_resolution/
[5] www.restorativejustice.org.uk/what_is_restorative_justice/in_criminal_justice/restorative_policing/

had over the past decade, when strict performance management prevailed in an effort to raise crime detection rates.

The issue of course is that so little of this practice has an evidence-base adequate to support the proliferation of practice. That which exists is focused on cost savings and police satisfaction with the process. For example, the UK Restorative Justice Council reports on a 2009 study undertaken by KPMG for Cheshire Constabulary. The study found substantial cost savings associated with what they term 'Street RJ' and that the programme was popular with police.[6] Nothing was claimed, because nothing was measured, about its effectiveness either in reducing reoffending or providing benefits to victims.

The lack of evidence about these programmes is compounded by the propensity to employ evidence from restorative justice conferencing, summarised in the Campbell Systematic Review (Strang et al 2013), as the evidence base for something the Review did not address. Regardless of any debate about precise definitions, it is surely misleading to use the label of Restorative Justice for programmes in which

- offenders may be coerced into participation,
- where victims may or may not be invited to participate and
- where outcomes may be at the discretion of the police or other agencies rather than agreed between victims and offenders.

These features simply do not meet the fundamental requirements of RJ as the UN defines it, let alone all the other sources cited above. Any evidence about RJ conferencing is surely irrelevant to such disposals.

One RJ training consultancy, for example, cites research on its website about the degree of victims satisfaction and reductions in repeat offending from the Sherman & Strang (2007) Smith Institute report, as well as the Shapland et al (2008) report on randomised trials of RJ conferences. The consultancy goes on to offer services in relation to a 'proven and effective alternative' in 'schools, workplaces, social housing...' without citing any evidence that comes from testing RJ of any kind in those settings. Much of the training that consultancy has delivered has been used to

[6] www.restorativejustice.org.uk/what_is_restorative_justice/in_criminal_justice/restorative_policing/

support untested RJ innovations such as YRDs, CRs, and similar practices that often exclude victims.[7]

We propose that citing evidence on RJ conferences to support programmes that do not even involve victims is misleading and inappropriate. No one would suggest in the realm of education, for example, that one year of schooling yields the same educational benefit as twelve years of schooling. Why should anyone be free to assert that a two-hour RJ conference of victims and taking a facilitator 40 hours to prepare should yield the same effects as a few minutes of on-the-spot street justice?

8. Opportunity Costs for RJ Based on Evidence

The greatest moral objection to these UK developments, however, is not mis-representation of evidence, nor the risk that the programmes will cause harm, nor even that they will not work. The greatest objection is that they have taken money away from the victims and offenders and communities who could have benefited from an evidence-based programme of RJ conferences for serious crimes. It is this opportunity cost that is most demonstrable, and which the bounded Utilitarianism of the health care sector (such as NICE) would now declare unacceptable.

There is special irony in the current British RJ scene described above. The very large government investment a decade ago in funding a rigorous evaluation of RJ Conferencing (Shapland 2004) provided substantial and detailed guidance on what was to be tested for what kind of results. These experiments, funded by the British Home Office and Ministry of Justice and building on prior research in Australia (Strang 2002), led to clear findings, and recommendations, about where RJ Conferencing can be most effectively used for reductions in reoffending and improved victim satisfaction with their criminal justice experience. The widespread reaction to these details, however, has been a vague and uneven application of what was tested.

The irony is compounded by the reaction of the Ministry of Justice to these findings. After a three year research effort and a two-year follow-up period to track

[7] www.restorativesolutions.org.uk/page/92/Why-Restorative-Justice-.htm, downloaded 24 January 2015

reoffending, the major report documenting reoffending effects (Shapland 2008) was effectively buried for more than a year and, when finally released, was accompanied by no media release or any Ministerial statement. Thus, while strong evidence was paid for (at a high cost) and was readily available, the policy implications were deemed politically unpalatable.

RJ had been found to be relatively ineffective for young offenders and low level offending, yet programmes targeting precisely the opposite – young people and trivial offending – have been encouraged. Times had changed: by the time the evidence was available, the focus was on saving money.

The investment in research on RJ is, of course, in marked contrast to almost all other institutions of justice. Policing, prisons, probation, even prosecution, all began as theories, just as RJ did. All of them are phenomenally expensive to operate at even minimum levels of efficiency. All of them experience ups and downs in funding. Yet none of them has a strong evidence base on what works, or even what measures of effectiveness are the most important.

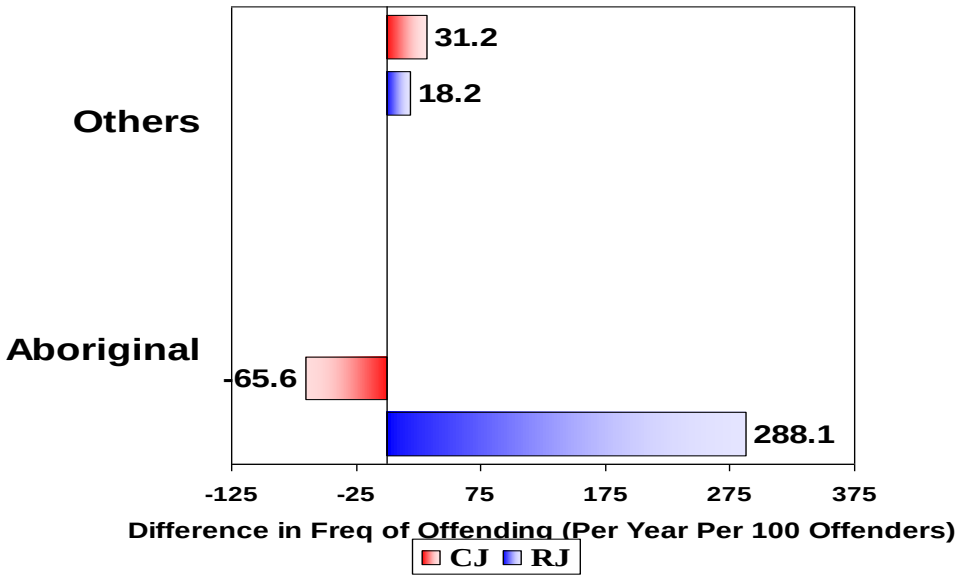
There are lessons here for institutionalising RJ, a topic covered comprehensively by Aertsen et al (2013). In this volume Crawford (2013) makes the important point about the 'ambivalent dynamics' at work: in the implementation of RJ policies in the UK in the use of youth justice referral orders, he describes the equivocation between the 'managerialism' of criminal justice bureaucracy and RJ principles such as participation and flexibility. He also refers back to Christie's (1977) critique of the 'professionalization' of justice, which we might even see as a good thing if professionals were held to account for providing evidence-based practice that does no (known) harm.

We suggest that RJ can escape these dilemmas most effectively by relying more on the morality of the evidence than on the morality of theory. There may be great potential value in RJ or its processes for their own sake, but a theoretical potential is not enough. It is a normative good for all of society to help offenders to change their lives so that they desist from crime, but only rigorous testing of effectiveness can say which policies achieve this objective. Only evidence can make it moral for RJ to

make that claim. That is just as true for all other criminal justice practices, yet RJ should warmly embrace that morality as an example to practitioners of all other forms of justice.

We suggest that criminal justice around the world resorts to principle to justify its practices, while claiming Utilitarian benefits without valid evidence. Furthermore, we suggest that there is too much reluctance among many criminal justice practitioners to accept advances in knowledge and to deny the sometimes inconvenient implications of findings from criminological research. Finally, we propose that Restorative Justice can be better than conventional justice practices in this way as in so many others. RJ already has far more evidence than conventional justice. Anyone who invests in RJ for trivial matters limited to juveniles is working against the evidence. The moral power of RJ can only be strengthened by the morality of working with the evidence, not around it.

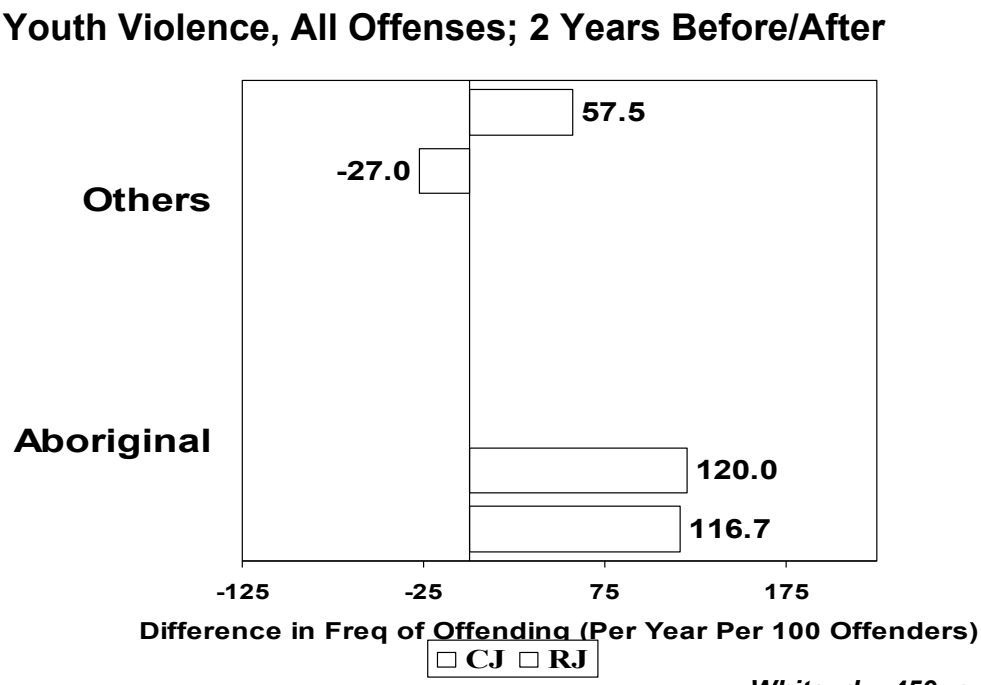
Figure 1: RISE Reoffending; All Offence Types; 2 Years Prior to Random Assignment Compared with 2 Years Post, Restorative Justice vs Court Justice.



White: d =.083, p =.488

Aboriginal: d =.683, p =.049

Figure 2: RISE Reoffending; Violent Offences Only; 2 Years Prior to Random Assignment Compared with 2 Years Post, Restorative Justice vs Court Justice.



White: d =.459, p =.027

Aboriginal: d= .062, p = .979

Figure 3: Frequency of Reconvictions Across All Experiments with Violence Offences Included in Campbell Review.

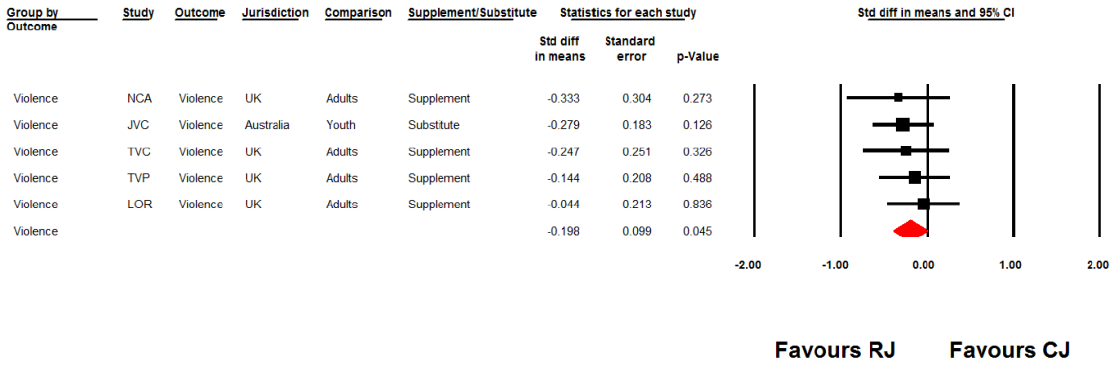


Figure 4: Frequency of Reconvictions Across All Experiments with Property Offences Included in Campbell Review.

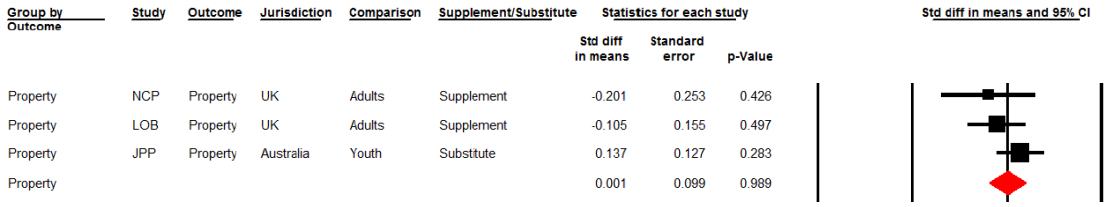


Table 1: Cost-Effectiveness of Restorative Justice Conferences in 7 UK Experiments (2001-5) Based on UK Home Office Cost of Crime Estimates

SITE	RJ COST	Total Benefit	Total Ratio
London (Crown Court burglary, robbery)	598,848	8,261,028	1:14
Northumbria (Magistrates Court: property, assault)	275,411	320,125	1:1.2
Thames Valley (Prison, Probation; serious violence)	222,463	461,455	1:2
Total	1,096,722	9,042,608	1:8

* Computed from Shapland et al, 2008. All amounts expressed in Pounds Sterling
**CJ benefit estimated at an average 22% of total costs of crime

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