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ARTICLE

Putting justice needs first: a case study of best practice in restorative justice

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Abstract

This paper presents the findings of an empirical study into the process and outcomes of a post-sentencing, victim-centred, restorative justice practice (victim–offender conferencing) for victims and adult offenders convicted of serious crime in New South Wales Australia. Using victim–offender conferencing as a case study of restorative justice, a mixed-method approach was used to explore 74 of the 76 victim offender conferences completed by the Restorative Justice Unit between 1999 and 2013. This involved a reconstruction of completed cases (using documentary analysis of case files and in-depth interviews with original facilitators, 60 each); an ethnographic study of fourteen current cases using observation and pre- and post-participant interviews (twelve observations, 103 interviews); and a follow-up study exploring participant experiences five years later (32 interviews). With a 95 per cent ‘success’ rate, Toews’s (2006) ‘justice needs’ framework is developed to explain motivations, experiences and outcomes for victims.

Keywords: post-sentencing restorative justice; serious crime; victims; justice needs; victim offender conferencing

1. Introduction

In a recent commentary on contemporary justice innovations, Maruna (2011) suggested that restorative justice (RJ) as a social movement faces two challenges. First, despite

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being on the scene for nearly two decades it remains a 'fringe-dweller'; both 'boutique' and 'tokenistic' in terms of its overall place in the majority of Western criminal justice systems. While the groundswell for RJ (in Western democratic countries) dates back to the early 1990s, RJ remains peripheral to the majority of Western criminal justice systems¹ and far from mainstream.² Second (and likely relatedly), Maruna suggests there remains for many criminologists and criminal justice practitioners 'uneasiness' about restorative justice, 'when pressed, many admit that their reaction is more gut-level than rational; they fear there is something too evangelical or too proselytizing about restorative justice's support base, and as naturally skeptical social scientists, they resist it' (2011: 667).

To an extent this is puzzling, as RJ would undoubtedly have to be one of the most researched justice innovations of the twenty-first century; there is research on procedural justice (Shapland et al., 2006); satisfaction (Umbreit, Coates & Kalanj, 1994; Van Camp & Wemmers, 2013); cost-effectiveness (Shapland et al., 2008); ritual (Bolivar et al., 2013; Braithwaite, 2000; Rossner, 2011); public opinion (Moore, 2012); emotions such as shame (Braithwaite, Braithwaite & Ahmed, 2006); and reoffending (Nugent & Paddock, 1995; Smith & Weatherburn, 2012; Triggs, 2005). There are meta-analyses (Latimer, Dowden & Muise, 2001); reviews (Miers, 2001; Sherman & Strang, 2007); qualitative (Rossner, 2011); and mixed-method approaches (Morris & Maxwell, 2003; Umbreit, Coates & Roberts, 2000); and even the so-called gold star research studies based on randomised controlled experiments (Hoyle, Young & Hill, 2002; Sherman et al., 2005; Strang, Barnes, Braithwaite & Sherman, 1999). The diversity and quality of data is strong.

RJ has a vast scope, and perhaps in conjunction with rapid expansion into many contemporary criminal justice systems, a lot of writing on RJ is now fairly unintelligible when taken as one body of work. While commonly RJ practices share a set of principles valuing relationships, dialogue and process over outcome, practices now diverge in many ways that make direct comparison difficult. RJ practices are operationalised at different stages of criminal justice systems and established within broader rubrics attempting to achieve other goals such as diversion in the case of the many young offender and young adult pre-sentencing programmes (see respectively, Bolitho, 2012; Rossner, Bruce & Meher, 2013) or (less commonly) offender rehabilitation in the case of in-prison programming such as with surrogate victims (see for example the Sycamore Tree Project, Prison Fellowship Australia, 2013). Moreover, the operationalisation of RJ takes myriad forms ranging from an exchange of letters to face-to-face meetings with or without the presence of the actual victim. Trying to meaningfully compare the RJ effect of each of these programmes is difficult as there is often very little parity, and the impact

1 Notable exceptions include New Zealand where RJ is an integrated component of the youth and adult criminal justice systems (Bowen, Boyack & Calder-Watson, 2012) and Northern Ireland (Doak & O'Mahony, 2011).

2 The concept of 'mainstreaming' has been borrowed from the affiliated field of therapeutic jurisprudence where it is understood as moving from specialist courts and pilot programmes to a more systemic infusing of the philosophy into criminal justice systems (Wexler, 2014).

of RJ needs to be separated out from other programme effects. The volume and continuing proliferation of RJ practices in existence across the globe makes clear that when attempting to understand the impact of RJ we need to build knowledge bases around specific forms of RJ with a view to feeding these back into the shared philosophy.

The scope and proliferation of RJ may be challenging, but in this paper I will contend that there is a more substantive concern that may explain the ‘uneasiness’ to which Maruna (2011) alludes. While intuitively the benefit of allowing those directly affected in conflict to come together is there, we are less sure of the exact terrain of what is going on inside that intervention (or ‘black box’). That is, there is less written about exactly what it is that RJ itself offers or ‘is’ (and why it works), on top of a procedurally fair process to address and acknowledge harm outside of the courts (Van Camp & Wemmers, 2013). Braithwaite’s theory of reintegrative shaming (1989) certainly offers explanatory power for the experience of *offenders* in RJ practices. More generally there is conceptual work concerning the power of ritual and ceremony (Bolivar, Aertsen & Vanfraechem, 2013; Braithwaite, 2000; Rossner, 2011) and on emotion in restorative practice (Kelly & Thorsborne, 2013; Moore, 1993; Rossner, 2012). For victims, the impact of crime is recognised (Herman, 2003, 2005, 1997; Janoff-Bulman, 1992; Janoff-Bulman & Frieze, 1984; Kilpatrick & Acierno, 2003; Shapland & Hall, 2007), as is the potential of RJ for addressing victim needs (Strang, 2002). Globally, small pockets of victim-focused RJ practices have existed for quite some time (Armour, Sage, Rubin & Windsor, 2005; Gustafson, 2005; Miller, 2011; Umbreit, Bradshaw & Coates, 2001; Umbreit et al.; 1994; Umbreit et al., 2000). While there are a small number of studies that point to the potential of RJ to reduce post-traumatic stress symptoms (Angel, 2014; Gustafson, 2005), to date there is less empirically based writing concerning how victims (particularly after serious harm) understand their experience of RJ, and consequently, how this may inform what we know about how RJ works.

This paper is an effort to attend both to the need for data on specific kinds of RJ (in particular on post-sentencing practices), and to the need for new conceptual work founded in practices where victims’ experiences are the starting point. This paper draws from a large dataset collected as part of a study into the motivations, experiences and outcomes for participants of one well-established, victim-oriented, post-sentencing RJ practice in New South Wales (NSW) Australia. Operating since 1999, the Victim Offender Conferencing (VOC) programme is offered by the Restorative Justice Unit (RJU) as part the state’s adult-focused correctional agency (Corrective Services NSW) and is the only state-sanctioned model of its kind existing in Australia. This particular RJ practice is particularly useful for theory building as it is a purist, or ‘fully’ restorative model (as per McCold & Wachtel, 2003) in offering face-to-face encounters with at least one of the primary victims³ as well

³ McCold and Wachtel (2003) define primary stakeholders as those that have been directly affected by a crime event while secondary stakeholders are those where the harm has been more vicarious, the harm is aggregate rather than specific and/or impersonal rather than personal.

as the offender present. In addition, being post-sentencing, the focus of the study was not about whether RJ qualifies as an equivalent or appropriate main redress, but on more deeply engaging with what (if at all) the practice offers and how this works.

Indeed, in post-sentencing RJ, justice is understood as something more than the justice offered by traditional adversarial court systems. While a legally mediated truth will remain integral to Western democratic societies and important for many victims of crime, at times victims (and, indeed offenders) want and emotionally need something more. RJ encounters are an avenue for achieving a different and perhaps deeper form of justice. This paper will describe this different form of justice through the lens of victims who have taken part in VOC, and explore how this different justice was achieved. The starting point for this paper is the argument that it will only be through the gathering of targeted evidence that builds theory that the scepticism and uneasiness to which Maruna (2011) alludes will be addressed.

2. Research design and method

The research on which this paper is based was conducted over four years with ethics approval gained from both the University of New South Wales Australia and Corrective Services NSW. A case study approach where the victim–offender conferencing programme was used as a single case study of RJ programmes more generally, drew data from a number of different sources to build an understanding of how and why the practice works, and how it may inform RJ theory. In case study approaches a variety of lenses are used to explore a particular phenomenon in detail; as a constructivist approach it values the gradual building of theory using multiple perspectives (Yin, 2003). The first component of the research was a census of recorded information relating to each VOC completed by the NSW Restorative Justice Unit from inception in 1999 through to 2010. The 60 departmental case files consisted variously of notes from the RJJU facilitator on the assessment, suitability, preparation and de-briefing phases of a VOC, on the VOC meeting itself and any agreement reached; sentencing remarks from judges; victim impact statements (where tendered and on file); psychological reports tendered in court and regarding in-prison behaviour; and all correspondence (for example letters sent by victims, offenders or other participants before or after the VOC). In addition, to better understand the perceived strengths, challenges and outcomes of each VOC an in-depth interview was conducted with the original facilitator of each case (60 interviews⁴ were conducted with a total of ten facilitators). Facilitators were given the case file to prompt their memory and then taken through a series of questions about each phase of the process, their thoughts, feelings, recollections of key moments, strengths, challenges and views of the overall

⁴ There was only one VOC where the actual facilitator was not contacted; in this case another member of the RJJU present at the VOC was interviewed instead.

outcomes. Interviews lasted approximately an hour and were conducted in person with the majority of facilitators with a small number conducted over the telephone.

The second component of the research was an in-depth qualitative exploration of current VOC cases (held between 2011 through to 2013) using observation, in-depth interview and analysis of the departmental case file. Participants were given the option of opting into all or discrete components of the study. Consent was obtained to collect at least one form of data in fourteen of the sixteen cases completed by the RJJU during this period; the two cases where consent was not given related to historical child sexual assault. Because of the sensitive nature of this research the core four-person research team (with many years of experience in RJ fieldwork) completed all of the interviews and observations. Twelve⁵ VOCs were observed (each with two of the four researchers present, all of the team observed at least two VOCs). In-depth semi-structured interviews were conducted with nineteen victims, fourteen offenders and twenty other participants. A facilitator interview was conducted in all fourteen cases, and documentary analysis of the official case file occurred in thirteen out of fourteen cases. The majority of offender interviews were conducted in prison; the majority of victim interviews were conducted in the victims' homes. Each interview completed for the research lasted for approximately one hour. The third component of the research was a five-year follow-up study of VOCs run between 2006 and 2008.⁶ Due to the severity of crime and potential for parties to be retraumatised through unexpectedly being recontacted, initial recruitment of these participants was conducted indirectly via a letter sent by the Restorative Justice Unit. Of the 22 cases that were conducted between 2006 and 2008, consent to be interviewed was received from at least one party in fourteen of these cases and 32 in-depth interviews were conducted. Five offenders responded, four of who were still serving their sentences for the murder or manslaughter for which their VOC was held. Seven victims, eight victim support people, and twelve offender support people made up the remainder of the respondents for this part of the study. The final component of the research involved fifteen in-depth interviews with all RJJU managers and facilitators (past and present) and the main victim advocacy groups in NSW to better understand the history, dynamics and challenges of the RJJU over time, the role of facilitators and perceptions of best practice.⁷

The quantity of data on each case varied: in the 'current case' component of the study, many perspectives on the VOC were gathered, including most importantly the pre- and post- victim and offender interviews as well as our own observations which we could use (in conjunction with facilitators version of the events) to augment the case file analysis.

⁵ In two cases the observational component was declined by one of the parties though other data was collected: these cases both involved sexual assault.

⁶ This time frame was chosen so that in each year of our study we could send out—as the five-year follow-up period was reached—a round of invitations to participate.

⁷ To be explored in a future publication.

In the 'five-year follow-up' component we had the case file, facilitator interview and also at least one other participant's version, five years later. As with any historical interview, these may have been affected by a variety of recall errors; it is also possible that the participants that chose to participate in the five-year follow-up had either a more positive (or in one instance negative) experience than participants that did not reply to the invitation to participate. In other cases we had to rely on the case file analysis and the facilitator's interview to reconstruct a sense of the VOC. Though facilitators attempted to give a balanced version of the strengths and weaknesses of each VOC, it is possible that a range of biases affected their presentation of each VOC. Thus the case files, which included a range of documents from outside of the RJJU (in particular, correspondence from key parties), were particularly important in cross-checking versions of events.

3. Victim–offender conferencing in NSW Australia

The Restorative Justice Unit is a small unit of six staff (including two dedicated VOC facilitators) that has operated within the Corrective Services Department NSW since 1999 (Milner, 2012). Though established to run post-sentencing VOCs in the aftermath of adult crime leading to conviction, the unit also manages a victims' register,⁸ runs internal workplace mediations, and offers other restorative practices such as an exchange of letters between offenders and victims, and family group conferences. This research focused only on the VOC component of the RJJU's work. The specific objectives of VOC are to 'meet the unmet justice needs of victims of crime'; facilitate a consensus about how to reduce the harm caused by the offending; address the issues left unresolved by the court system; provide a process for converting hostility into dialogue; provide the people who are victims of crime with a space to have a voice and ask questions, to express how they feel, and have a say on how the harm can be repaired; and hold the offender accountable for their offending (Corrective Services NSW, 2015). The RJJU accepts referrals from victims, offenders and other parties speaking on their behalf (for example victim support groups, counsellors, and prison psychologists). However, the process will only proceed if the victim agrees to participate and the offender is assessed as both eligible (post-sentence and without pending legal matters) and suitable (demonstrating some responsibility as assessed by the RJJU). Though any matter involving an adult offender convicted of a crime in NSW may be referred to the RJJU,⁹ according to one manager the offence types taken to VOC have most commonly related to:

- 8 By registering on the 'victims register', victims of adult offenders currently sentenced may be entitled to a range of information such as when the offender will be released, applications for parole, and (during the prison term) other short releases into the community.
- 9 There are however specific practice notes that specify the parameters around cases where offenders have forensic mental health needs, are young adult offenders, sex offenders or convicted of an offence related to domestic violence.

situations where there's been significant harm, very high level trauma and often chronic post-traumatic stress certainly for the victim and sometimes for the offender also ... Our experience over the 13 years of practice is that victims' responses are very similar. If you take away the prospect of a more beneficial court outcome for an individual and you actually make it purely about the heart and people putting things right, then the offence types that motivate people to want to participate in are very serious ones. (Interview with RJU manager 03)

Indeed just over half (40/74, 54 per cent¹⁰) of the VOCs conducted by the RJU related to cases where death occurred—murder (19/74, 26 per cent), manslaughter (13/74, 18 per cent) and driving causing death (8/74, 11 percent). The next most common offence type seen in VOC was armed robbery (13/74, 18 per cent). The RJU has run a small number of cases relating to serious sexual assault¹¹ (5/74, 7 per cent). Custodial sentences ranged from eight months to life imprisonment. Just over a third (24/67, 36 per cent) were sentenced to five years or less, just under a third (20/67, 30 per cent) to six to ten years, 18/67 (27 per cent) to between eleven and twenty years, and 5/67 (7 per cent) to more than 21 years imprisonment. The majority of offenders were affected by drug and/or alcohol at the time of the offence (47/58, 81 per cent), most had a criminal record (47/62, 76 per cent), and nearly half a recorded clinical mental health issue (33/62, 53 per cent). In just over half of all VOC cases (42/74, 57 per cent), the perpetrator and victim were known to each other (whether as intimates, family, friends or acquaintances). The average length of time from sentencing to referral was 3.6 years (ranging from one month to fifteen years, the median was 23 months).

Between 1999 and 2013 the majority of referrals (42/74, 57 per cent) came from offenders or their representatives, though the proportion of victim referrals increased over the decade (likely related to the development of good working relationships with the main victim advocacy groups in NSW). Only a small number of referrals resulted in a face-to-face conference between the offender and their victims: about ten victim offender conferences are run each year (of the 924 referrals¹² made to the RJU between 1999 and 2013, 76 [8 per cent] eventuated in a VOC). The majority of the RJU's time is spent on a robust assessment process, and then in locating and preparing the parties. The initial interviews with both offender and victims are a critical component of assessing whether the participants and the matter are suitable for victim–offender conferencing. The final decision is based on an assessment of the main parties including the extent to which an offender takes responsibility for the crime, and for both offenders and victims, their motivations for attending, empathy, levels of resilience and ability to access appropriate support. Safety issues are canvassed and the dynamics of any pre-existing relationship considered. Ultimately, the benefits

¹⁰ All percentages are rounded to the nearest whole number.

¹¹ Data relates to the most serious offence recorded so is not representative of all sexual violence included in VOC matters, e.g. where sexual violence occurred in conjunction with murder. Sexual violence will be explored in a later publication.

¹² The RJU supplied the research team with data on all referrals and reasons for a referral not eventuating in a VOC drawn from an internal caseload registry.

for the victim are considered as against the possibility of further harm (Corrective Services NSW, 2013: 17). Indeed in practice these factors are weighed against each other with the RJU manager and facilitator together making a final determination as to whether or not to proceed. The number of preparation meetings varies and includes a number of face-to-face meetings, many telephone calls, and communication from the RJU to other supporting parties (such as a victim advocacy group or counsellor). The most common reasons for a VOC not proceeding past a referral related to an offender not being interested or contactable (27 per cent), the victim not being contactable (21 per cent), a victim not being interested (20 per cent) or the offender been assessed as unsuitable (17 per cent).

The VOC process involves preparation (the mean length of time from referral to VOC was eleven months with a range of one month to 43 months, mode was ten months); the process itself (the majority [67 per cent] took one to two hours to complete); and de-briefing (the average length of time from VOC to a case being 'closed' was six months). The VOC itself follows a carefully worded script based on the Transformative Justice Australia model of Moore and McDonald (2000). Since inception, RJU facilitators have included both male and female workers, with a range of professional backgrounds. It is standard for facilitation to be done individually though co-facilitation has been used to safeguard practice in cases with particular complexity.¹³ In all cases there will be at least one other member of the RJU in the room assisting coordinate the logistics around victim and offender arrival, departure and the refreshment period. All facilitators have had experience working with offenders and/or victims before joining the RJU, nearly all had completed standard mediation accreditation, and upon employment all complete training in restorative practice.

The majority of VOCs were held on the prison grounds (48/74, 65 per cent), followed by community-based Corrective Services offices (15/74, 25 per cent). A small number were held in the community (11/74, 15 per cent). On average the majority of conferences were attended by six to ten participants (51/74, 69 per cent); in 52/74 (70 per cent) of cases victims had at least one support person present while 99 per cent (73/74) of offenders had at least one support person present. Though not a mandatory part of VOC, in 42/60 (70 per cent) cases a written agreement was documented with the most common item being the provision of written information by an offender to a victim, for example supplying medical information or specific updates on progress completing programmes in gaol.

4. The impact of crime and court on victims who participate in VOC NSW

The proportion of victims of serious crime in NSW who are accessing VOC is not known and it is possible that victims in this study vary from victims of similar offences that do

¹³ There were some periods of time in the RJU's history where only one of the two VOC facilitator positions was filled. Co-facilitation is standard in the in-house workplace mediations conducted by the RJU.

not go to VOC. For the victims in this research, the impact of crime differed in type and severity, related to the specifics of that crime and as mediated by the type of relationship held with the offender. However *all* presented with, at a minimum, one negative and longstanding effect of the crime.¹⁴ Close to 90 per cent of VOCs have been in the aftermath of psychologically traumatic events—that is, where there has been a threat to life or bodily integrity, or a close personal encounter with violence and death (Herman, 1997). Post-traumatic stress disorder (PTSD) was not formally measured in this research, however the criteria were used to inform our interviews. In this research, where interviewed, victims were prompted to talk about the impact of the crime over time, specifically probing for experiences of intrusion (e.g. flashbacks, rumination), avoidance, negative changes to thoughts and mood and alterations in arousal and reactivity (such as hyper-vigilance, sleep disturbance), as well as how their everyday activities were affected, if at all (parenting, work, study, recreation activities) and how these changed over time (if at all). Some reported one main symptom, for example heightened startle responses: 'You walk into work and every loud noise makes you jump. It wears on you' (Victim 061, armed robbery). For others, fear:

I was terrified, couldn't trust anybody, anything. I was always afraid that something would happen or somebody was coming. Any creak or noise it sends you off. I had to walk around the house to make sure no windows were broken before I could come in. That went on for months, years really. (Victim 067a, murder of mother)

Or rumination: 'I think God, what were you doing, why were you doing it? His dad or I would have helped move [the car] on the weekend ... It's always what if' (Victim 064, driving causing death of son).

A common theme relating to harm in this research related to the impact of relationships both now and in the future. One victim of historical child sexual assault noted:

He has ruined my life. There are still so many issues I have to still confront everyday. I don't know if I'm going to meet someone, I don't know if I'm going to be able to have kids, I don't know if I'll be able to get intimate because I'm never going to trust. (Victim 075)

For others the impact related to current familial relationships:

It's changed my life. It has fractured my relationship with my siblings, it's had an impact on my relationship with my husband and it's also had an impact on my small children. I haven't always been a very nice person in the last couple of years. Up and down—it's never really been stable. The way that I was going I was going to end up really sick or dead because of the stress. (Victim 075, manslaughter of brother)

¹⁴ Based on victim's own words via interview where possible, where not possible this claim is made based on facilitator's perception in conjunction with the analysis of notes in the case file.

Some victims described the harm caused by the crime as permeating all parts of their lives:

It impacts every part of your life—it impacts your work, your relationships with your family and friends, it impacts how you think about things. There's nothing that's left untouched apart from your sense of self and even that's questioned. (Victim 073, manslaughter of brother)

A typical example seen in this research of severe and long lasting harm is seen here:

He put an arm around my throat, his right arm, and he put a box cutter into my head, it was a pretty horrific experience. I had to seek psychiatric help—I couldn't sleep because I had emotional problems. I started drinking a real lot. It took weeks and weeks to remember everything that went on—it must be the shock. I left the country for two and a half years to get away from it all. I take sleeping tablets now; otherwise I can't get to sleep at all. I don't sleep all night to be quite honest, because I wake up with nightmares a lot of the time. (Victim 062, assault with grievous bodily harm)

Another common theme in this research was grief in conjunction with fear or anger, despite many years (in some cases more than a decade) passing since the crime. Ryneарson's (2006) work on violent death is useful as it describes a specific kind of 'complicated grief' or 'traumatic bereavement' where the experience of loss for the victim is compounded by the horror at the manner of death which comes unexpectedly, brutally, in isolation and quite often involving great fear and pain. Because violent death is outside of our societal expectations about end of life experiences the normal progression of grief is affected, at times leaving that person locked within that grief. This kind of harm concerning violent death is described here:

I was never given the opportunity to say goodbye. Even before she was buried, I was never advised to see her so I could never say goodbye, because she was strangled, and that was the next day that the cord was taken from around her neck, so her face and her head were presumably black. So that's not the way you want to remember your mum but unfortunately my sister did—she found her. (Victim 067b, murder of mother)

In line with past research (Herman, 2003; Parsons & Bergin, 2010), victims interviewed in this study reported frustrations with the court process including the length of trial and appeal process:

We had to wait 18 months for the first trial. At that trial, all three culprits were found guilty, they appealed against the conviction, this was upheld, we had to go through a second trial and the same result, it took about six years, at the end of the time, we still didn't know why—why did it happen? (Victim 050, murder of father)

For some, the court process exacerbated their feelings of isolation:

The trial really sucked, seriously it did. I'm a young woman, I'm here on my own, these men murdered my Dad and the court case is full of his people and I'm sitting here on my own. I cried all day. (Victim 023, manslaughter of father)

In cases where offenders plead guilty a common theme was the ensuing lack of information about what happened and why, this victim noted:

He pled guilty to having the knife and to raping her and so they weren't ever discussed. There was no discussion; it was only about the murder in the trial. I didn't come away from that trial all that better informed about what had gone on. He didn't speak; he didn't say anything. He didn't do anything. He was allowed the right of silence. (Victim 047, murder of friend)

In many cases there was congruence between victim and offender perceptions of the court process in that it was understood as a critical performance space directed by others. Thus one offender noted, 'I never showed remorse at court. Court is just an argument between barristers who are both telling lies' (Offender 061, assault with grievous bodily harm). For some offenders, this performance is mediated with a view to future experiences in prison, as one participant noted:

Both trials were a farce—nothing came out at those trials. I think the only thing I can think of is you have the right to remain silent. You have to be very aware if you're labelled a dog¹⁵—that can stick with you for your whole custodial sentence and no one wants to be a dog in gaol. (Offender 050, murder)

For other offenders their 'performance' at court was mediated less by lawyers and more by their anger at police, courts and the criminal justice system:

I had absolutely no respect for authority, and to me, being put in the courtroom with the judge sitting higher than me and all this sort of stuff, it was like their efforts to intimidate me, so I went exactly the opposite. I tried everything I could to be the biggest asshole that I could. Unfortunately the victim's family had to see that. (Offender 052, murder)

A clear theme then is that the court space provides the opportunity for a legally mediated truth, but that this narrative still leaves some victims and offenders dissatisfied with the 'justice' experience. In contrast, victim–offender conferencing is understood as an alternative, as one offender noted:

I really started thinking that I wanted to express my contrition to the victim's family without the police involvement, without the judge being involved. It was something that was on my mind when I was thinking clearly and then this came about and it was the perfect opportunity for that. (Offender 052, murder)

¹⁵ Colloquial for an informant or 'snitch'. The offender previously described this as 'to go and make admissions that may not have been made previously'.

5. Motivations for and expectation of VOC

When offenders and victims were asked why they were motivated to attend a VOC (and then afterwards how they felt about participating), it was immediately apparent that they talked in the language of 'need'. The importance of understanding needs is not new. Needs have been discussed in psychology (Freud, 1915; Maslow, 1943); in mediation by those such as Mayer (2012);¹⁶ and in the RJ sphere (Bolivar, 2010; Daly 2014¹⁷, 2011; Strang 2002; Zehr, 2005). While Bolivar (2010) cautioned about the therapeutic connotations of 'need' as against the restorative philosophy, and Daly (2014) prefers 'interests' in recognition of the victim as a citizen (not just psychological being), Toews's (2006) framework of needs was used in this research for a number of reasons. First, focusing on needs was inherently a good match with the RJU's explicit aim 'to address the unmet needs of victims of crime'. Second, this model of justice needs was founded on Toews's many years of working with adult offenders within prison (akin to the population in this research), and moreover, it proved an accurate fit with the victim and offender narratives in this research. Drawing from her work as a RJ practitioner in prison, Toews (2006) outlined the existence of eight 'universal' justice needs; universal in that they are applicable to any person affected by wrongdoing. To better understand victim's needs in this study, we developed this framework by operationalising the concepts and matching it to victims' experiences¹⁸ (see Table 1).

Using Toews's needs framework as a guide, we documented every 'need' before the VOC (drawing from all sources of data), then matched this to reflections on the VOC afterwards. In this study we found that for *every* victim there was, at a minimum, one very clearly articulated 'unmet justice need';¹⁹ unmet in that the need had persisted despite a guilty finding at court and sentencing and despite the passage of time. However, while victims consistently articulated a range of unmet justice needs, their expectations of the VOC and of the offender were relatively low, potentially because of the extensive 'reality testing' routinely done by facilitators during preparation for VOC. More than this though, expectations seemed to be grounded in an understanding of their own needs, and the VOC as just one step in their 'justice' journey. The VOC was understood to be (perhaps their only) opportunity to seek what they needed but there could be no guarantee that they would get an answer, that they would like the answer or even believe the answer, as articulated by this victim: 'I don't necessarily mean we'll get the answers we want, but we'll get an answer. It's about finding out truths'

¹⁶ Mayer (2004: 153) suggests justice needs consist of voice, validation, vindication, procedural justice, impact and safety.

¹⁷ Daly (2014: 388) suggests justice needs consist of participation, voice, validation, vindication and offender accountability.

¹⁸ Offender needs and experiences in VOC will be explored in a later publication.

¹⁹ Unmet justice needs for victims in homicide cases are explored in detail in Chan, Bolitho & Bargen, in press.

Table 1: Using Toewa (2006) framework to understand 'unmet justice needs'

Justice need	Operationalised as	Indicative quote
Relationships & Safety	Physical <i>and</i> emotional safety before, during and after the VOC. Many victims (and offenders) expressed fear of physical retaliation after release from prison. A common fear for victims from small, or regional communities or where the offender was family was the first face to face encounter back in that community. Often this was expressed as a desire for a safe space to negotiate 'right relations' post release.	'peace of mind that I think he's not going to be a further threat to me as I wouldn't put murder/suicide out of the equation, that would be a possible' (Victim 062, assault with grievous bodily harm) "The biggest reason why I'm doing it is I do not want to confront him in the street for the first time. I love the idea of dealing with this in a controlled situation and what I think it will do is that it will take away that fear of seeing him for the first time" (Victim 065, murder of daughter).
Empowerment	This is the victims survival instinct, the desire to stand up for the self against the injustice of harm.	'To me it was just simply he'd been to court, he'd been given a 38 year sentence but to me he didn't know who [victim] was. That was what I needed to do; to let him know who he was and what he'd done to us' (Victim 052, murder of son).
Information	This is the need to understand what happened and why, it is the need for more than what is articulated at court. For some victims it concerns details about the extent of harm because they are ruminating on whether their loved one died in pain.	'I just want the truth. Not his truth, the real truth. Not the truth that he said in court, that he might have got sentenced a little bit more for. I want to know why he got involved' (Victim 068, assault with grievous bodily harm).
Venting	This is the need to express feeling and emotion, the need to have others listen to the impact of the harm.	'I just wanted to get something off my chest, because it was weighing me down. I could say it till I'm black and blue. But it just didn't seem to work until I actually said it to him' (Victim 022, murder of grandmother).

(Continued)

Table 1: Continued.

Justice need	Operationalised as	Indicative quote
Growing	This is the need to be forward looking in life, to not being emotionally locked into particular negative emotions such as anger or rumination.	'16 month after the sentence the boys in here talked about being victims. Lot of soul searching. I want to make peace with myself and with the victims' (Offender 061, armed robbery).
Accountability	This is the need for acknowledgement of the specific experience and the <i>particular</i> harm, it is personal rather than public, and often more than that provided through a guilty finding at court.	'I wanted him to acknowledge that he'd left the scene, not because he had post-amnesia; that he left the scene because he's just saving his own butt' (Victim 064, driving causing death).
Meaning	The ultimate need for a way to acknowledge the harm but integrate this experience with the present and future in a way that allows forward movement. Commonly this was expressed as a desire for 'closure'.	'I want to be able to move on from all this. I'm not going to forget it obviously, but just want to put it behind me in the sense that I want to be able to deal with it once and for all to get closure out of it' (Victim 074, manslaughter of child).

(Victim 067a, murder of mother). For some, expectations were low because of the offender being 'an offender': 'Part of me thinks we're just going to walk away and we're being none the wiser. I think I'm preparing myself for that so that I'm not going to be disheartened at the end' (Victim 075, manslaughter of brother). And for those where the offender was known there was a realism borne of many years of disappointment: 'We were prepared that he could say things that could upset us, but we just had to let that go and think well that's [the offender] yeah' (Victim 064, driving causing death). For others there was a sense of needing to protect themselves from disappointment: 'So I'm probably going to be disappointed by some of the answers, but I'm prepared for that' (Victim 061, armed robbery). For many, expectations were not framed in reference to the offender at all: 'This isn't about [the offender]. If he shoves it in my face, I've done what I need to do and this is actually for me. This is for me to be free, not for him' (Victim 074, manslaughter of infant). And for some, expectations were low because their experiences of the justice system were jaundiced:

I'm just open for anything positive really. I'm not a thousand per cent confident whether it'll work or not. I'm just hoping it will, and it sounds something that could possibly work. And

without no disrespect to anybody—it's the only thing I've been offered really. (Victim 062, assault with grievous bodily harm)

In summary, victims were motivated to participate in a VOC because of at least one unmet justice need, however their expectations of the process were low.

6. Does it work? Meeting the needs of victims of crime

All of the available data were explored to look for evidence that the encounter 'worked', this included how participants felt about their overall decision to take part, whether they found it useful, whether they would do it again if given the chance, and whether they would recommend it to others in similar situations. We also looked for evidence of counter-stories—doubt about an outcome, concern about a dynamic and/or outright statement of regret or critique. Where possible, participants' own words were used to code data; where not available, the facilitators' interviews were important. In all cases, the documents kept in the case files were used to cross-check these accounts; for example debriefing notes sometimes included short verbatim descriptions of a victim's statement about well-being, or a letter from correctional staff commenting on the VOC experience. Across the 74 cases that eventuated in a VOC, 95 per cent were described as *positive* experiences ($n = 70/74$ cases). A positive experience was defined as one where the participant was comfortable with their decision to take part, was satisfied with the process, would recommend it to others in akin situations, and had their expectations met (or exceeded). Where emotional disappointments were noted, these were weighed against these other statements about the worth of participating to make an overall judgment about the 'positive experience'.

Furthermore, using Toews's needs framework we matched the unmet justice needs of each victim as articulated before the VOC to those articulated after the VOC. For the 60 cases on file the documentary material and facilitator interview (reconstructing the event) as well as five-year follow-up data (where relevant) were used to code victims' unmet justice needs. For the current cases, victim interviews were coded for unmet justice need before, and then after, the VOC. In the case where a victim interview was not conducted, the facilitator's perception was used. For each victim there were a different number of needs articulated, each of these were documented.

Overall we found evidence that the majority of articulated unmet justice needs as identified before the VOC were met in 95 per cent of all cases (70/74). This meant in each case, that there had to be more 'met' than 'unmet' needs documented. Care was taken to reflect on the *meaning* individuals had around their pre- and post- needs, with many participants being reflexive of their experience. For example, in one case a parent of a victim of sexual assault expressed a need to ask the offender why it had happened, to express abhorrence of the crime, and to (re)establish a

relationship with a family member that had fallen apart. While the first two unmet justice needs were achieved via the VOC, the third was not (and this is how the matter was coded), but commenting on this afterwards, the participant noted that to restore the fractured relationship had not been a 'realistic' goal. For this participant the VOC was worthwhile, though she intuitively understood that it could not be a panacea.

In two cases there was evidence of some victim and other participant dissatisfaction, and in two cases the facilitator expressed concern about the overall outcome. The less positive cases highlighted some early learning for the RJU: to meet the needs of victims, facilitators would need to balance workplace goals of (for example) efficiency with the complexity of serious crime. Taking more time to assess offenders' accounts of the crime; being comfortable in VOCs where there were numerous individuals displaying intense emotion including grief, and/or with mental health issues; and being aware of the effect of language around the crime event (for example not using words like 'accidental' to describe manslaughter) were all found to be important in leading to good practice. On a practical level, VOC agreements had to be feasible, and given the lengthy sentences for many offenders, financial components were made redundant very early in the life of the RJU. The RJU also quickly realised the utility of having other Corrective Services staff sit within (not outside) the circle, participating fully, though a continuing challenge for some correctional psychologists was navigating their role: while attending officially as the offender 'support' (in many cases families long having given up on the offender), they were not *personally* supportive or necessarily an advocate for their client. In a few cases participants expressed concern around the perceived vulnerabilities of participants such as more elderly individuals, or in one case where a disability affected the participant's ability to lift their head (so the participant who was used to gauging body language via the face was less sure of the emotional dynamic), noting it inhibited their capacity to fully vent their emotion. To date, the RJU has focused on the preparation of victims and offenders in terms of the potential content of the meeting and the face-to-face experience. While more peripheral, other issues can affect perceptions of the experience, and preparation for meeting *all parties* could easily be added to the pre-VOC preparation.

The data from the five-year follow-up study suggested that whatever the 'intervention effect' was that occurred in the VOC, the effect remained the same five years later. In thirteen out of fourteen cases where the experience was positive and where there were positive shifts in emotional and behavioural well-being (measured by reference to renewed ability to participate in all forms of life including work, relationships with partners, children and friends, and recreational activities), this remained the same five years later. For the one case that was described more variably, all participants interviewed expressed similarly mixed views about the experience five years on.

7. Why does it work?

There are three features that primarily shape the success of VOC in consistently achieving this deeper sense of justice: this research suggests that it is the structure (comprising of the policies and procedures that govern practice) and the use of a small number of advanced and experienced facilitators with specific skills and attributes, that form an apparatus from which a particular kind of space is created and in this space a series of trauma-reducing therapeutic techniques come into play. Each of these will be discussed.

7.1 Structures, policies and procedures

The work of the RJU is framed by one principle—‘to do no harm’—and the data overwhelmingly supported the existence of principle informed practice. ‘Doing no harm’ is implicitly operationalised in the extensive assessment and suitability screening process (where less than 10 per cent of referred cases end up in VOC); the extensive preparation and de-briefing done with the main parties which means that VOCs simply do not happen until people are ready and afterwards there is no pressure to quickly shut down communication; and the use of a particular scripted model of conferencing which ensures a degree of consistency in practice both between facilitators and across VOCs (participants also reported that it was reassuring to know in advance the sequence of the VOC). However, while there is script, it is thoughtfully applied: an offender’s offence narrative will have been discussed and reality tested (with the offender) extensively during preparation and the RJU can and do modify the script to better meet a victim’s need, for example, a victim may tell their story before an offender. Facilitators do not work in isolation but within a team and this means that decisions weighing up risk and benefit are rarely taken alone. Critically, ‘doing no harm’, is operationalised via the extensive use of a range of experts. The data suggests that being based *within* the Corrective Services Department meant there was an efficient avenue for communication from the RJU to other prison staff (particularly prison psychologists and correctional officers) and vice versa. Whilst the RJU were reportedly known as the ‘care bears’ of Corrective Services (that is, not as ‘tough’ as the ‘real’ correctional staff) being in-house seemed to be an advantage in terms of building the trust needed for professionals to exchange sensitive information. Furthermore the data suggested that the RJU staff developed good relations (again specifically trust) over time with the main victim advocacy groups in NSW (including homicide victims support) where there was similar evidence of an efficient and productive flow of information and advice between professionals before, during and after the VOC. It is likely that this flow of up to date and expert information between workers is integral to ‘doing no harm’.

7.2 The facilitators

In post-sentencing RJ convened after serious crime, the role of a facilitator cannot be overstated. Facilitators work behind the scenes to prepare a case and in this sense are part of the apparatus that supports the encounter, but they are also responsible for guiding the VOC. They bring skill (all having training in restorative practice), and display a range of typical conflict resolution skills (Mayer, 2004). In addition to skill, the RJU facilitators have knowledge—not just in the dynamics of conflict but also in the complex dynamics of prisons and prisoners; for a number there was also knowledge relating to the impact of crime on victims and trauma. Furthermore, the longevity of some staff (for one, a decade) across the RJU's small team meant that there was a level of experience, and newer facilitators were able to 'learn the craft' from more experienced staff. In addition to these attributes, there are some characteristics that are more difficult to learn but that make someone inherently able and successful in this kind of work. For example, the facilitators we observed consistently displayed Rogers's (1959) three core conditions for therapeutic growth: 'unconditional positive regard' (accepting the person as they are, not who they might wish them to be), 'empathy' (being comfortable enough in the self to enter another's perceptual world to better understand the here and now), and 'congruence' (having a presence which is firm and authentic but not overly professionalised). In fact, because facilitators displayed all of these skills and attributes from the time that first contact is made, our research suggests that the restorative justice 'intervention effect' should be measured from that moment of referral, right through to the very last interaction noted in the records.

While previous research concerning victims and RJ has found variability in facilitation method and examples of poor participation, preparation or de-briefing, offences still being disputed, or bias (Shapland & Hall, 2007; Strang, 2002), 100 per cent of victims and offenders interviewed in this research were satisfied with the facilitator's preparation, process and de-briefing. Furthermore while facilitators in the RJU do not use a needs framework to formally shape practice, implicitly there is a match between the programme goals and their practice so it is likely that identifying and meeting needs comes to be implicitly understood and then operationalised by facilitators.

7.3 VOC as an emotionally transformative space

The high success rate of VOC is at least in part related to a structure guided by a principle of doing no harm, with advanced facilitators who work to meet unmet justice needs. However it is also something in the actual VOC space that brings about transformation. In this research, regardless of unmet justice needs being met, there was variance in the emotional intensity of the VOC event itself, with some being described (and observed) as truly 'transformative'. And, where outcomes had been positive, there was evidence from

the five-year follow-up study of this intervention effect continuing. While it has long been known that the process of telling a story (narrative) and listening (bearing witness) are potentially powerful mediators of victimisation experiences (Herman, 1997; Armour, 2001; Rynearson, Correa, Favell, Saindon & Prigerson, 2001) why they are so effective is not well understood. A key finding from this research concerned a novel application of an existing neurobiological finding to the RJ sphere. In brief, it is argued that VOC might impact traumatic memory specifically through the process of 'memory reconsolidation' (MR). Memory reconsolidation (Schiller & Phelps, 2011) refers to an inherent (possibly adaptive) process whereby it is possible for significant emotional learnings to be disrupted and updated with new learnings that then provide an immediate and long lasting emotional closure. The sequence needed for memory reconsolidation are said to be the reactivation of a traumatic memory and then a deeply felt contradictory experience whereby a disjunction occurs between the original emotional memory and a current presentation of that situation (see Ecker, Ticic & Hulley, 2012; Schiller & Phelps, 2011). The reactivation and contradiction trigger a memory reconsolidation 'window' thought to be between one and five hours (Schiller & Phelps, 2011), during which the original memory is made 'labile', and any new learning overwrites the original learning with the effect being immediate and permanent. It is argued that VOC (and perhaps many other RJ practices) *inherently mimics* the sequence needed for MR: reactivation would routinely occur through the giving of a detailed offence narrative (a scripted component of the process); then, where a participant or the process deeply mismatches expectations, the MR window will be activated allowing for new learning to replace old learning. Thus where we see immediate and long-term eradication of a victim's (or indeed an offender's) deeply felt and long lasting emotion (such as fear, anger or violent rumination) it is likely that MR has occurred. This finding concerning traumatic memory and VOC may become an important part of the RJ 'black box'.

8. Conclusions

The chief finding from this research is that *it is* possible to safely and usefully practice a victim-oriented RJ process for adult offenders convicted of crimes including murder, manslaughter, driving offences leading to death, and sexual offences. In this study, using an extensive dataset on the VOC programme in NSW Australia, evidence suggested that the majority of articulated unmet justice needs were met in 95 per cent of cases, and participants were positive and satisfied by their VOC experience in both the short and longer term (five years later). This is strong empirical evidence that it is possible to consistently offer a safe restorative encounter in the form of VOC after serious crime, and that this encounter consistently provides victims, offenders and their loved ones, with a different and deeper sense of justice.

In this paper I have suggested that the consistently high success rate of VOC relates to the structure (comprising of the policies and procedures that govern practice) and the advanced facilitators which form an apparatus from which a particular kind of space is created, and in this space a series of trauma-reducing techniques come into play. Guided by the principle of 'doing no harm', the RJ intervention begins *at the moment of referral* (a telephone call) and goes right through to the final de-brief—possibly months after the VOC meeting. During this time a trusting relationship with the facilitator is built and this is integral to the restorative experience. In the VOC model, the RRU staff are employed within the Corrective Services Department and this gives immediate access to a range of other experts. Moreover, the expertise of the three victim main advocacy groups in NSW were also extensively used; this 'insider' information on offenders and victims was drawn upon extensively and it is likely that this continual flow of expert opinion meant that victims' needs could be safeguarded. Indeed victims' needs are prioritised over the enactment of any one 'policy'- the model can (and is) amended if need be to ensure emotional (and at times physical) safety, and a range of RJ practices can be used to prepare for the actual VOC (for example, exchange of letters, or family group conference). Practitioners operate reflexively and in a team, akin to 'ethical jugglers', weighing up a complex and dynamic range of offender and victim risks and need. This finding is important for practitioners in building their best practice.

The role of the facilitator cannot be overstated. Given the complexity of cases it is possible for victims to be further retraumatised by an offender, and the fact that this was not evident across the 74 cases studied here is in part testament to the skills of facilitators. The advanced practitioner draws from a larger toolkit of strategies than other practitioners; as a foundation they have been trained in mediation so that the micro skills of a standard conflict resolution practitioner are garnered. In addition, they have completed specific RJ training. Nearly all had experience working in prisons or with serious, violent offenders in the community so neither the prison environment itself, nor working with violent offenders were an impediment to practice. Given the complexity of cases, it is possible that it is only advanced practitioners working in a team, guided by an explicit principle of doing no harm, with few pressures of time and perhaps months of preparation, and with the advice and support of other correctional staff, that can have the capacity to safely 'hold the circle', in order to ensure, as far as possible, that a victim of serious harm, can have their justice needs met.

A key finding from the study is that the VOC intervention is successful because it meets the needs of victims as articulated during the referral and preparation phases of a case. The victims canvassed in this study were consistently motivated to attend VOC to seek safety, to seek information, to speak and be heard, to vent emotion, to seek accountability, to feel empowered, and ultimately to find a different meaning around the event that would better allow them to move forward. These needs are all part of the universal justice needs framework first articulated by Toews (2006). The RRU does not use a needs model explicitly to frame practice (although they have

implicitly tapped into it), and it does not necessarily follow that a ‘justice needs model’ should be formally proscribed. Instead, this finding should be seen as useful background knowledge for practitioners: where the motivations of key participants are well understood, safe VOC encounters can be designed to specifically address these needs. The findings from this study suggest that using a justice needs model to understand and prepare for RJ will assist in good practice.

Furthermore, explicitly prioritising victim needs can inform the application of core assumptions in RJ practice, for example that an offender must present with a certain level of responsibility taking. Where a victim has a very specific unmet justice need (such as for specific information about, for example, the manner of death) and where the RJ practice is explicitly victim-oriented and designed to meet unmet justice needs, it is possible to bring the parties together in a tightly choreographed VOC encounter to address those needs *even when* the offender does not meet the RJ ‘ideal’.²⁰ Violent offenders may present with a range of capacities and characteristics including distorted thinking and minimisations of responsibility, and emotional disorders such as being less able to feel (psychopathy), or express (alexithymia) emotion. While the RJU do use screening measures to protect participant safety, it is very much guided by discretion and at times victims’ needs were met regardless of an offender’s narrative including some minimisations and/or being underscored by a lack of deeply felt emotion. Observing a victim emotionally shifting in these cases suggests that victims actively ‘see’ these characteristics in the VOC and this becomes part of a better, more nuanced, understanding of what happened and why. Victims would lose a valuable opportunity for this different form of justice if (for example) some offenders were mandatorily screened out of such encounters. Instead, this research suggests that with a focus on victims’ needs and proper precautions the majority of serious harms can be taken to VOC.

Using a justice needs model is appropriate in RJ encounters, but drawing upon needs to better understand why something works does not mean that we need to (re)introduce any particular professionalised frameworks in a formal way to RJ practice. Facilitators do not need to be psychologically trained (indeed the fact that the facilitators in this study were able to intuitively understand need before, during and after the VOC without any explicit knowledge around this goes to this point); it would be of concern to prescribe a particular disciplinary knowledge for RJ for fear that it would become overly professionalised (as per Christie, 1977), and for the fact that it may eradicate the ‘flavour’ that different practitioners bring. Instead, (and again) the research findings from this study suggest that a wide range of expert bodies of knowledge should be drawn upon to help understand and frame best practice.

²⁰ Exactly what a minimum level of responsibility might be would be contested. While an exchange of letters may be a better fit for cases where responsibility is not fully taken, in some cases a facilitator may feel that it is the face-to-face encounter that will really attend to the victim need.

It is now a few decades on from the genesis of the RJ movement in the Western world and while we have a wealth of research findings there is very little mainstreaming of RJ in criminal justice systems; furthermore according to Maruna (2011), there still appears to be some unease around it. To bring offenders convicted of serious, usually violent crime together with their victims is incredibly complex and yet the RJU appears to exist on the fringe in terms of bureaucratic importance: VOC operates on a modest budget, largely under the radar. Practitioners have varying levels of experience but there is no career trajectory and little real status (the grading and remuneration of facilitators is that of low- to mid-level public servants). Of most concern is that the team's size means they have the capacity to deal with only a small proportion of potential matters. A serious concern should be whether *all* victims of serious crime have equal access to VOC. Little is known about the likely large number of victims who do not report crime, or about those who do but where it is not recorded or proceeded with, where offenders are found not guilty on evidentiary grounds or where offenders are not available, interested or suitable. The concept of intersectionality (Crenshaw, 1989) means it is likely that race, class, gender, age, sexuality (amongst other characteristics) are compounded in ways that further marginalise some victims of serious crime more than others, making it less likely for them to know about and access interventions like VOC that might 'work.' This should be a research priority.

In the brutal world of tough budgets and law and order politics, governments need to be not just 'sold' on an idea but see coherent programme logic, followed by real behavioural impact. In this paper I suggest that RJ is more than a framework that leads to a sense of procedural justice. Practised carefully by advanced facilitators, it can consistently offer victims a different form of justice that meets a range of unmet justice needs. For many it will be an emotionally transformative process and an intervention that radically and measurably improves everyday lives, offering relief from the immense suffering caused by wrongdoing. It is time for governments to get serious about the impacts of crime and to invest the appropriate time and resources into practices such as VOC that actually work.

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