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10 The RESTORE Program for sex crimes

Differentiating therapeutic jurisprudence from restorative justice with therapeutic components

Elise C. Lopez and Mary P. Koss

Introduction

Models of 'therapeutic jurisprudence' (TJ) and 'restorative justice' (RJ) appear to overlap significantly in philosophy and in practice. In cases where psychotherapeutic interventions and community support services are desirable, the two approaches may seek similar ends through different means. Despite some common goals, TJ and RJ have been implemented so differently in practice that it would be imprudent to use the terms interchangeably. TJ can be implemented in a variety of ways including training judges and other legal actors in the emotional and psychological effects of court processes on individuals going through said processes, development of court dockets for certain types of cases or through the creation of large-scale specialty courts. RJ can be and has been practised in communities around the globe in both court and non-court settings, and with and without therapy as a component of the restorative process. This chapter defines TJ, indexes similarities and differences of RJ and TJ, assesses the relationship between TJ, RJ and therapy, and presents case studies of TJ courts and of RESTORE, a model RJ programme with therapeutic components for sex crimes that was designed, implemented and evaluated in the US (Koss, 2014). This chapter is narrowly focused on TJ and RJ implementations that are intended to process criminal sex offence cases. TJ will be discussed in the context of specialty courts, and RJ will be specifically focused on legal system-affiliated RJ programmes, including those implemented by community-based agencies in partnership with legal system entities, and will not include discussion on community-based RJ programmes that are unaffiliated with systems processing active criminal sex offence cases. The chapter concludes with recommendations for evaluating outcomes of RJ conferencing that include referral to therapeutic services.

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Therapeutic jurisprudence and restorative justice

What is therapeutic jurisprudence?

TJ is a criminological philosophy that was developed and nurtured in the US by David Wexler and Bruce Winick in the late 1980s. Wexler and Winick specialised in mental health law and the processing of cases involving offenders experiencing mental illness. For these founders of TJ, the initial goal of the TJ framework was specifically to enhance legal process and outcomes in mental health law. However, the philosophical definition of TJ has undergone several revisions over the years. Despite its name, TJ does not necessarily revolve around the provision of therapy services to parties in a court case. Rather, the definition of TJ began simply as 'the study of the role of the law as a therapeutic agent' (Wexler, 1990: 43). By 'the law', Wexler meant three overarching categories that play a role in a defendant's experience: legal rules (i.e. what is done, or laws), legal procedures (i.e. steps in rule-making and how the rules are carried out, for example, court processes) and legal actors (i.e. judges, lawyers and anyone associated with creating and/or carrying out legal rules and procedures) (Wexler, 1992). In essence, Wexler hoped that the criminal justice system would be more conscious of how its processes, rules and actors impacted mentally ill defendants because 'the therapeutic jurisprudence heuristic suggests that the law itself can be seen to function as a kind of therapist or therapeutic agent' (Wexler, 1992: 176). By the mid-1990s, the definition and scope of TJ was under scrutiny. The term *jurisprudence* is fairly straightforward: Black's dictionary, the most-cited law reference in America, defines it as 'the philosophy and study of law' (Black & Nolan, 1993). But what, exactly, is meant by *therapeutic* jurisprudence? What if the law or practice in question is therapeutic for one group of people, but not for others? Should it still be considered therapeutic? Do therapeutic reference environments that minimise harms imply that courts can have clinically therapeutic effects?

The question of whether the court should be in the business of striving for clinically therapeutic effects has been subject of discussion in TJ literature. Later in this chapter, we will discuss the evolution of TJ from a broad philosophy to TJ as a practice and how it is implemented via specialty courts such as mental health courts and drug courts. Divergent views have long existed on what the word therapeutic means in the context of these courts. Winick's argumentation lines tend to support a structured theory of TJ application that called for non-paternalism and a separation of court and therapeutic intervention (i.e. Winick used a clinical interpretation of therapeutic – see generally Winick, 1996, 1997). In contrast Wexler consistently maintained that scholars should avoid a narrow definition of therapeutic since the legal system has such broad spectrum effects on a wide variety of actors and participants (Wexler, 1992, 1999). Ultimately, Wexler and Winick did not come to a consensus on whether therapeutic in TJ practice references psychotherapeutic or generally salutatory effects. However, they agreed that a proposed definition by Christopher Slobogin (1995) best sums

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up the scope of TJ as a *philosophy*: 'The use of social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects' (p. 196). This definition leaves the source of the therapeutic agent open to interpretation. Is it an adjunct therapeutic service or the court itself? The definition also does not restrict the scope of TJ to offenders, but rather to 'people', in general. Since RJ is concerned with the well-being of multiple stakeholders, does this broad definition of TJ, then, make RJ a type of TJ? And if RJ follows TJ as a *philosophy*, does that also equate it to TJ as a case processing *practice*? In the next sections of this chapter, we will explore these questions through discussion of RJ and TJ philosophy and practice, and comparison of TJ specialty courts to RJ conferencing models for case processing.

Are 'therapeutic jurisprudence' and 'restorative justice' synonymous?

Most RJ practitioners reference Zehr's (2002) definition of RJ to summarise the philosophy of the practice:

> Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs and obligations, in order to heal and put things right as possible.
>
> (p. 37)

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RJ shares TJ's complication of having an overarching philosophy that is translated into a constellation of practices. Legal system-affiliated RJ programmes exist in a variety of formats and are inserted in different points in the court, sentencing or reintegration process. For example, this chapter will present a case study on an RJ conferencing model in the US that was offered for certain sexual offence cases as a condition for case dismissal in misdemeanours with plea agreements, and as pre-charge court diversion for felonies.[1] More fine-grain analysis of RJ programmes would differentiate between those that are 'fully' restorative (i.e. including all levels of entities that have been affected by the offence – such as most conferencing models), or 'partially' restorative (i.e. lacking involvement of all three classes of affected parties (victims, offenders, family, friends and community)) or limited/no requirement to make reparations, such as some post-sentencing victim–offender dialogue models. RJ programmes for both youth and adult sexual transgressions in New Zealand and Australia have used varying formats of conferencing (Daly, 2001; Daly, Bouhours, Broadhurst & Loh, 2013; Jülich & Bowen, 2015; Jülich, Buttle, Cummins & Freeborn, 2010).

More recently, Daly (2016) introduced a definition of RJ on the basis that the definition of RJ has become convoluted, too broad and empirically worthless to evaluate because of definitional inconsistencies and the general habit of RJ practitioners and theorists to include anything under the RJ umbrella that does not

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fall on the spectrum of, as Daly would put it, conventional criminal justice. We agree with Daly's argument that for empirical and scholarly analysis of RJ to move forward, we must have a concrete definition of RJ. Daly's definition of RJ as a justice mechanism, rather than a form of justice itself, follows: 'Restorative justice is a contemporary justice mechanism to address crime, disputes, and bounded community conflict. The mechanism is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people' (2016: 21).

For this volume specific to RJ and sexual violence, we will focus on RJ conferencing that includes several levels of stakeholders as the RJ method of reference. A close analysis shows that the relationship between TJ and RJ is not agreed upon in the literature.

There are some similarities including that both present empathy to the effects of justice processes on the human condition, both are examples of problem-solving that, when involving therapy services for offenders, can focus on modifiable underlying factors that led to offending (i.e. criminogenic risks and needs) and both identify constructive solutions to prevent re-offence (Braithwaite, 2002). In Menkel-Meadow's (2007) review of RJ practices, she argues that 'restorative and rehabilitative practices have made their way into the formal justice system as specialized courts' (p. 168), and that a more appropriate term would be 'specialized reparative courts' (p. 177). We disagree with the characterisation of specialty courts as forms of RJ, as restoration is not the aim of the courts. Although these courts are non-traditional approaches to justice that could fall under the umbrella of *innovative justice mechanisms* alongside RJ programmes, they should not be considered informal or non-adversarial justice (see generally Wexler, Winnick & Stolle, 2000). *Innovative justice mechanisms* are those that 'do not rely solely on the standard tool kit of criminal procedure or justice alone … they permit greater participation and interaction of the relevant parties … are more informal, although structured by rules and procedures' (Daly, 2016: 18). TJ began as a philosophy to shape mental health law in the US, and over time has been adapted into criminal, family, juvenile and other law venues. TJ expanded in the US beyond a philosophy of law and, by the late 1990s, into a practice that is implemented as specialised courts for various law disciplines (Wexler, 1999; Wexler & Winick, 1996). We can say that RJ does fall into the philosophy of TJ in that both are concerned with humanising the justice experience, but court programmes that follow TJ in practice are not intended to be restorative. For example, a mental health specialty court would still be concerned with adversarial fact-finding, and would not necessarily focus on the offender making reparations to the victim or community. In cases of guilty pleas or verdicts, punishments may still heavily focus on jail or prison sentences that are intended to be punitive to the offender and not on sanctions that would involve addressing the harm done to the victim.

TJ has primarily been applied in offender-focused specialty courts (e.g. problem-solving courts, drug courts). Specialty courts take a TJ approach that considers the emotional and psychological well-being of offenders but ultimately the procedural checkboxes remain unchanged. Specialty courts proceed through

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the normal proceedings of discovery and fact-finding, weighing of evidence, establishment of guilt or innocence and, in cases of criminal conviction, punitive sanctions. Despite a process that is aimed at nudging offenders towards accountability, offenders often on advice of counsel will still minimise their involvement in the criminal act, plea to a lesser offence or maintain innocence throughout the proceedings because the overall process is still held within an adversarial system. In these ways, although offender accountability is encouraged, the adversarial system that houses TJ programmes and courts is very different from the non-adversarial environment of RJ conferencing programmes. Thus, we cannot use the terms interchangeably in practice. Although legal system-affiliated RJ conferencing may be ordered or recommended through the judicial process, the conference *itself* is not intended to be adversarial. Where TJ-inspired courts continue to utilise forms of passive responsibility (i.e. fact-finding and determination of guilt), RJ programmes are founded on the premise of active responsibility (Braithwaite, 2006). RJ requires that offenders accept responsibility as a pre-condition to the process. RJ is not concerned with fact-finding and weighing of evidence; rather, the foundation of RJ is the normative principles that a responsible person admits to causing harm, the affected parties can voice the impacts of the harm and a plan for repairing that harm is established and carried out.

If a TJ process is therapeutic to most, but anti-therapeutic to a subgroup, how then can we make a meaningful choice on whose welfare is most important? When solely considering offenders as the central figures of concern, both TJ and RJ can be considered examples of procedural justice (King, 2008). The general concept underlying procedural justice is that offender compliance with adjudication outcomes will be higher when the offender feels that the process was fair and that the legal actors exercised legitimate authority. In other words, offenders are more likely to comply when they feel that their dignity and humanity was respected during the adjudication process (Tyler, 1996; Winick, 1997). However, the meaning of procedural justice is more complex when considering the multiple persons whose needs RJ conferencing strives to balance, such as direct victims, secondary victims (e.g. family and friends of victims and offenders) and the larger community.

Although by definition TJ should be concerned with 'people' in general, most TJ courts and literature on the therapeutic nature of TJ have been concerned with the effects on offenders (Wexler & Winick, 1996). There has been little discussion on how to address the incongruence of therapeutic effects on offenders that may be prioritised at the expense of emotional and social effects on victims. In general, Wexler has been vague on the question of 'therapeutic for whom?' He has promoted the idea of neutrality for TJ, in that 'the therapeutic lens provides no answer and no particular limit' and that TJ 'does not resolve the normative debate' of whose needs count (Wexler, 1995: 224). Winick has offered that the court must 'address the emotional needs and interests of the victim', but that the victim will often have 'his or her own interest … but it may not truly reflect the public interest' (Winick, 2009: 542–543). He argues that prosecutors should

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take the victim's voice into account and consult with them but that 'what the victim needs is a voice, not necessarily a veto' (p. 543). Winick seems to downplay the importance of victim perspectives on justice. Ultimately, he argues that TJ can best serve victim needs by improving the way that prosecutors listen to victims. Prosecutors 'should hear the victim's views, listen to the victim's voice, convey empathy, and in the process treat the victim with dignity and respect', even when the prosecutor is going to take a different direction with the case from that which the victim desires (p. 543).

Others suggest that TJ should promote the well-being of all affected parties in ways that balance victim recovery and offender rehabilitation (King, 2008; Scheff, 1998; Schopp, 1998). This tension in the criminology literature over whose interests count therapeutically have given rise to a small literature that explores victims' experiences through a TJ lens. Literature on victims of violent crime have used a TJ perspective to examine battered women and the justice system (Erez & Hartley, 2003), police interviewing (Fisher & Geiselman, 2010), TJ approaches to domestic violence felony trials (Hartley, 2003), effects of mandatory arrest (Saccuzzo, 1998) and victim participation in case processing (Wemmers, 2008). All of these evaluations have found that the ways that victims are treated by the justice system can have an effect on their mental health, willingness and ability to participate in the court process. Consistent with Winick's views, these evaluations tend to conclude that victim voice is essential to getting cases of intimate partner violence through the court system. However, they do not necessarily consider whether victims may have other visions of justice that do not rely on going through an adversarial process.

RJ is true to the spirit of TJ, but not to its application in practice. Although the broad lens of TJ is appropriate to apply to RJ in that RJ makes a commitment to have therapeutic effects that minimise re-trauma and promotes healing (at least, à la Zehr's definition), TJ programmes and courts *in practice* have largely focused on offender welfare with the overall goal of offender compliance in order to reduce recidivism. It is thus impossible to equate TJ and RJ without confusing the intentions and practical applications of each. It is more appropriate to say that all RJ is therapeutic in nature (by Slobogin's definition of TJ), but not all programmes rooted in TJ take a specifically restorative approach. TJ in practice intentionally maintains a focus on offender well-being. RJ programmes are victim-centred processes that can attend to offender rehabilitation, taking responsibility for harm, and making reparations.

Therapeutic jurisprudence specialty courts and sex crimes

Specialty courts are rooted in TJ and have been developed for certain types of cases (e.g. Drug Courts, Domestic Violence Courts) or offenders (e.g. Mental Health Courts). These courts all operate within the overarching adversarial system, but may include additional components such as referrals to community agencies for social or mental health services, Child and Family Team meetings for defendants with cases in multiple systems (i.e. parents who have open cases

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for illicit drug charges, but also cases of children in protective custody) and special guidelines for sentencing (e.g. sentencing may include mandatory attendance in mental health programmes). All of these courts operate within the basic tenets of TJ to consider how best to gain offender compliance with court processes to achieve higher rates of compliance and lower rates of recidivism.

Although TJ-inspired specialty courts may include mental health and social service components, evaluations of these courts has primarily focused on justice outcomes such as re-arrests, court hearing attendance and successful completion of conditions of probation as proxies of community safety, offender rehabilitation and programme efficiency. Systematic reviews of evaluations of US mental health and drug courts in fact have found positive effects of specialty courts, concluding that rates of re-arrest drop and rates of programme completion increase when defendants are under specialty court supervision (Mitchell, Wilson, Eggers & MacKenzie, 2012; Thompson, Osher & Tomasini-Joshi, 2008; Wilson, Mitchell & MacKenzie, 2006). Evaluations of specialty courts in Australia have also focused on justice process and outcomes, as well as some examinations of cost-effectiveness, with positive results similar to those found in the US (Parkinson, 2016; Payne, 2006). However, because specialty courts are by design primarily concerned with offender welfare, compliance and recidivism, evaluations of these models lack success outcomes related to victim welfare.

The founders of TJ have been silent or adverse on the use of specialty courts for adjudicating sex crimes. To our knowledge, Wexler has not directly addressed sex crimes and Winick (2009) issued a call to action 'to help us reimagine a more humane criminal process that helps to bring about healing for the victim, rather than revictimization' (p. 542). However, in his other writings, victims of *sex crimes* would be automatically precluded from any type of TJ court because Winick specifically argues that sex offenders are not treatable and that sexual offending is a crime that does not stem from mental illness but from 'dangerousness' (Winick, 1997: 193).[2] In other words, Winick believes that 'it is a misuse of psychiatry to label individuals as mentally ill simply because they have a proclivity to act out in ways that are dangerous to others' and thus there is no need for specialty mental health courts for sexual offences (p. 194). Rather, La Fond and Winick (2003) have argued for the development of specialty courts aimed at sex offender re-entry and re-integration. These courts would provide close supervision and support to sexual offender parolees as they transition from prison to the community in an attempt to decrease the likelihood of recidivism. Although a sex offender re-entry specialty court has not yet been developed, the idea was piloted through a specialist docket for sex offenders in Oswego County in the US (Richmond & Richmond, 2015). In the first year, no new sexual offence charges were brought to any offender on the docket (Grant, 2007). This was an astounding success that led to the development of sexual offending specialty courts throughout the state of New York in the US. However, it is important to note that this docket was successful in offender management, but no victim-related outcomes, including reparation of harm to victims, was evaluated for this court programme.

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Although TJ specialty courts have been developed for some types of interpersonal violence cases (e.g. domestic violence, child abuse), the criminal justice system, even with TJ principles instilled, is insufficient for supporting *victims* of violent crime (Feldthusen, 1996; King, 2008). According to an Australian systematic review of specialty courts, there have only been four examples of court processes specifically designed for processing sex crimes (Parkinson, 2016). Two were specialist court dockets (the Oswego County pilot described above, and a second was a sub-docket for cases involving child sexual abuse in a specialty Family Court in Manitoba, Canada). The other two examples are specialty courts for sexual offending in South Africa and New York, USA. These courts are described in detail in the following sections of this chapter. Although both have produced some successes in offender-related justice outcomes, victim outcomes have either been largely negative or unevaluated.

Specialty courts for sex crimes in South Africa have been seen as successful models for managing sexual offenders (for a review of the research on positive offender-related outcomes in these courts, see Parkinson, 2016). On the other hand, these courts have been largely unsuccessful in improving justice or therapeutic outcomes for victims. The TJ goals of Specialty Courts for Sexual Offences in Wynberg and Bloemfontein, South Africa, are centred on victim needs that had been identified as unmet in the traditional court system: decreasing case processing time, increasing victim support in court, increasing victim access to community support and medical services, and increasing guilty verdicts and pleas (Viviers, 1994; Walker & Louw, 2005). An evaluation of the Wynberg court found that many prosecutors and magistrates actually had adverse reactions to some of the victim support court services (e.g. closed circuit television testimonies) and were concerned that provision of these services would tip the adversarial process in favour of victims (Walker & Louw, 2003). An evaluation of the Bloemfontein court found that most victims were never referred to support services, and, after court testimony, more than three-quarters were never informed of the outcome of the case (Walker & Louw, 2005). Victims interviewed as part of this evaluation did not uniformly feel supported and felt that prosecutors cared more about winning cases than about victims' welfare.

Clinically therapeutic outcomes have not been evaluated for either court, and both evaluations suggest that the adversarial processes that overshadow the court carried more weight than the victim-centred TJ goals set forth when the courts were established. Furthermore, support for TJ courts centred on sex crime victim needs have taken a backseat in the policy arena in South Africa. Although the National Prosecuting Authority (NPA) and Department of Justice and Constitutional Development (DOJCD) developed a strategy in 2003 to establish additional sexual offence courts, a moratorium on all specialty courts was called two years later by the Minister of Justice and Constitutional Development (Vetten, 2012). The argumentation against specialty courts was that they put too high a demand on judicial resources and forced magistrates to specialise in certain types of issues and cases. Without the policy-level and court administration-level

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support for these courts, TJ successes for *victims* of sex crimes in South Africa have not been achieved as intended.

More recently, there has been one pilot cohort of specialty courts for sex crimes in the US. Three jurisdictions in the state of New York have developed and piloted Sex Offense Courts. Sex Offense Courts are one branch of the state's Problem Solving Courts system, and processed over 4,500 cases from 2005–2014 (New York State Unified Court System, 2015b). However, unlike other problem-solving courts, the Sex Offense Courts are not an opt-in programme (Herman, n.d.). All felony-level sex offences are processed through this specialty court. According to the New York State Unified Court System (2015a), the goals of the Sex Offense Courts are to 'increase sex offender accountability, enhance community safety, and ensure victim safety while protecting the rights of all litigants'. The courts include processes to keep victims informed of the case processing, specially trained judges, additional post-conviction/plea monitoring, and coordination with probation and service providers. The court operates within adversarial guidelines and is not an alternative to incarceration. Sex offender treatment is offered in some cases as a component of conditions of probation. Victim services works closely with the court to provide victims with crisis intervention, legal and social services advocacy, housing/shelter services and assistance with protective orders. Evaluation data of these courts has not been publicly published. The evaluation is being conducted by the Center for Court Innovation and New York Office of Court Administration, using a process data collection tool to track offender demographics, disposition outcomes and offender compliance (Thomforde-Hauser & Grant, 2010). To our knowledge, there are no measures of therapeutic outcomes or surveys on victims' perspectives as part of the evaluation of these pilot specialty courts for sex crimes.

The RESTORE conferencing model

The RESTORE (Responsibility and Equity for Sexual Transgressions Offering a Restorative Experience) pilot programme in the United States is a case study of RJ for sex crimes with therapeutic components. RESTORE followed an RJ conferencing model with linked community-based therapy services to process adult misdemeanour and felony sex crimes cases referred by county prosecutors in Tucson, Pima County, Arizona, USA. From this point forward, we will move away from the common language used to describe criminal case parties in the literature ('victim' and 'offender'), and utilise the terms from the RESTORE model: survivor-victim (SV) and responsible person (RP).

Conferencing is one of the most-widely used RJ methods because it is in theory fully restorative, meaning that it involves all the principal constituencies to crime while also being victim-centred and victim-sensitive. There has been particular disagreement expressed about whether RJ should be used in cases involving gendered sexual violence, with some feminist theorists expressing doubt about safety and re-traumatisation (Daly & Stubbs, 2005, 2006) and others reasoning that RJ could be quite empowering for women who have been sexually

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victimised (Hopkins & Koss, 2005; Hopkins, Koss & Bachar, 2004; Jülich, 2010; Keenan, 2014; Koss, 2000). The conferencing model is particularly salient to sex crimes because of the difficulty of prosecuting these crimes in traditional courts due to underreporting, case attrition and the low level of returned guilty verdicts in criminal courts (Daly & Bouhours, 2010; Seidman & Pokorak, 2011; Seidman & Vickers, 2005; Temkin & Krahe, 2008). Furthermore, the traditional criminal justice process and sentencing that comes with a guilty verdict often do not leave victims of sex crimes with a feeling that justice was served (Keenan, 2014; McGlynn, Westmarland & Godden, 2012). Conferencing can mitigate these challenges by bringing together face-to-face the SVs, RPs and their families and friends to process the harm done and work together to develop a redress plan that is meaningful to the SV's vision of justice.

RESTORE was designed around the unique nature and effects of sex crimes. The programme theory, model and evaluation results have been catalogued in depth in other publications (see Koss, 2010, 2014; Koss, Bachar, Hopkins & Carlson, 2004). The programme consisted of four case processing steps. Briefly, the programme stages were: (1) *referral*: from the county prosecutor's office, informed consent first by SVs and then by RPs, and intake into the programme; (2) *preparation*: independent preparation of SVs and RPs to review safety concerns, ground rules for participation, the conference agenda, development of written statements, discussion of what a redress plan might include and preparation of support networks (i.e. friends and family of SVs and RPs) to attend the conference; (3) *conference*: took place in a local police station, led by a trained RESTORE facilitator, and with a pre-planned agenda, and; (4) *accountability and re-integration of the RP*: over twelve months, the RP was required to complete the redress plan, maintain regular telephone and in person contact with a case manager, attend quarterly meetings with a Community Accountability and Reintegration Board (CARB), comply with stay-away orders and present a written statement of apology at the final CARB meeting. In cases where SVs wanted a restorative experience to communicate the impact of the harm but did not want to participate in a face-to-face conference, community members were trained as Victim Representatives who attended the conference, read written statements prepared by SVs when provided and otherwise expressed the impact of victimisation by imposed sexual acts. SVs, RPs, Victim Representatives and family/friends of SVs and RPs were surveyed on their satisfaction with conference preparation, conference process and outcomes, and redress plan completion. Overall, most SVs chose to participate in conferences, and SV satisfaction with the programme process (consent, conference preparation and safety during the conference) exceeded satisfaction levels that are typical of conventional justice system proceedings.

Evaluation of success in RESTORE focused on measurement of process outcomes, satisfaction and safety. Process outcomes included mapping of referral through redress completion and fidelity monitoring of staff adherence to implementation protocols. Safety monitoring was carried out through assessment of SVs and RPs. RPs were mandated to undergo forensic examination as a

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condition of enrolment into RESTORE. RPs were assessed for potential for re-abuse of SVs, criminogenic risks and for potential threats to safety. RPs were not admitted into RESTORE if they were deemed through this examination to pose imminent threat to the safety of SVs, programme staff or the community. SVs were assessed for post-traumatic stress symptoms to assess iatrogenic programme effects (i.e. harms to individuals as a direct result of programme participation). PTSD symptomology was consistent with traumatic symptom expression patterns, and there were no cases where the initiated RJ conference was cancelled due to safety concerns. Significant measures were taken to include specific preparation of all conference attendees, development of an agenda, adequate training and evaluation of facilitators, and concrete measures for assessing follow-through with the redress plan agreed upon at the conference.

Future directions

Lessons learned from RJ programmes have been enumerated by practitioners so that future directions for RJ for interpersonal violence crimes, including sexual offences, can anticipate and proactively plan ways to address challenges that may arise. The remainder of this chapter will use the RESTORE experience as a backdrop for recommendations.

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'Restorative justice' should not be considered a 'therapeutic jurisprudence' practice

RJ and TJ differ too much in philosophy and practice to be used interchangeably. As TJ specialty courts begin to step into the realm of addressing sex crimes, it becomes dangerous for RJ conferencing to be considered a TJ practice because specialty courts are adversarial and offender outcome focused. RJ conferencing for sex crimes should be non-adversarial, and include reparative processes and outcomes that fit into victims' visions of justice. For the sake of clarity, we recommend that RJ practitioners avoid the term 'therapeutic' to promote their programmes within the criminal justice system and in the larger community. To avoid confusion with problem-solving courts and other TJ-inspired specialty courts, we propose that RJ programmes that connect SVs and RPs to therapy services can be best described as *RJ with therapeutic components*.

Evaluations of restorative justice conferencing programmes with therapeutic components should differentiate justice and therapeutic outcomes

Evaluation studies on RJ will be stronger when the outcomes measures map on to the programme components. Many RJ evaluations conglomerate justice and psychological outcomes without mapping which desired outcomes are attributable to which programme components. One exception is Daly et al.'s (2013)

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attempt to disaggregate the therapeutic effects of referral to the Mary Street programme, a treatment centre for adolescent sex offenders, from the impact of restorative conferencing. She concluded that participation in a therapeutic programme enhanced outcomes whether cases were processed by court or conferencing. However, provision of therapeutic services was more likely to result from the RJ conference. Distinction of justice and therapeutic terminology, processes and outcomes will help researchers and practitioners to more carefully investigate the scope of RJ conferencing effects on participants. Because RJ conferencing itself is not a therapeutic process, evaluation studies of conferencing must focus on outcomes intended for justice processes. Justice outcomes can include referral to programme completion rates, participant satisfaction with the process, whether re-abuse occurred during the conference, redress plan components, recidivism during the redress period and redress completion, and SV satisfaction that justice was realised. Therapeutic outcomes, on the other hand, are those that can be expected to result from psychotherapeutic treatment designed to lessen survivors' psychological distress, reduce the frequency of psychiatric diagnoses and improve social functioning.

Although SVs and RPs may be engaged in community-based therapy services through referral from the RJ conferencing programme, outcomes that are clinically therapeutic cannot necessarily be ascribed to the RJ programme. For RJ conferencing programmes with therapeutic components where investigation of therapeutic outcomes are desired, evaluation studies could determine the extent to which therapy participation predicts lower symptoms and whether it adds to predictions of overall justice satisfaction. However, this would require intervention and non-intervention groups (i.e. RJ conference with ancillary therapy, and RJ conferencing without) and more complex evaluation to include psychosocial metrics. This design may not be possible in most community-based settings that house RJ programmes, and there could be ethical concerns with non-provision of therapy services and whether delayed therapy intervention is appropriate. An alternative design could be a one-group cohort study of RJ conferencing with therapeutic components, with quantification of therapy doses and also attempts to determine dose-response effects of ancillary therapy services. In theory, if psychotherapeutic services improve justice outcomes, more therapy up to a point should correlate with improved justice outcomes. Using study designs that attribute therapeutic outcomes to ancillary therapy services used by SVs and RPs but also measure justice outcomes related to the conferencing process will ultimately provide a more holistic picture of the scope of effects of RJ with therapeutic components.

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Restorative justice should reconsider the use of language that implies therapeutic outcomes from conferencing

RJ can have many levels of emotionally positive effects, both in the non-clinical realm of being a process that is satisfying to participants, and in the more tangible provision of or requirement to attend therapeutic services to assess and

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treat clinical needs. From both practical and liability standpoints, an RJ process alone should not purport to be a clinically therapeutic intervention. Although a conference may be overseen or facilitated by programme staff that have clinical training, these community-based programmes are not group therapy; they are either alternatives to or part of justice processes. RPs were required to attend therapy, and SVs were offered therapeutic services, but the RESTORE conference itself was not presented as therapy. Although Zehr's definition of RJ includes the term 'healing' and the RESTORE Program was described to participants as 'Justice That Heals', the programme evaluation did not find that victims in particular uniformly evaluated their experience as offering closure or healing. For example, nearly one-third of SVs disagreed that they consented to the programme in order to hear an apology; rather, they nearly all agreed that the primary consideration was to have input into the RP's consequences and redress plan. No SVs attended final hearing board meetings where RPs read letters of apology after completing their redress plans. However, they were nearly unanimous in satisfaction with procedure fairness and felt that the outcomes were just. Participant satisfaction with the process and redress plan was consistently high among all groups, but this did not translate into clinically relevant reduction in psychological symptoms that could be described as 'healing' in the psychiatric sense. The restorative programme did not necessarily 'heal' SVs compared to the normal course of decline in PTSD symptom acuity over time. These evaluation results indicate that SVs' visions of justice were generally met, which was ultimately more in line with what any justice process can aspire to.

One survivor defined rape as forcefully penetrating and implanting 'land mines of horror' into the bodies of victims (Winkler & Winninger, 1994: 248, quoted in Koss, Figueredo & Prince, 2002: 926). Rape changes people forever (Koss & Figueredo, 2004). It influences core life beliefs such as the control over future outcomes, the goodness of people, confidence in decision-making and self-worth. Although some of these changes occur after many major traumas, some may also be part of the natural maturation process, and a portion may represent positive change such as better insight and less naiveté about future life directions, there may be upper limits to how much psychological repair of SVs is possible after sexual violation, most especially through justice process alone (Daly et al., 2013). To date, the evidence suggests that RJ with therapeutic components achieves better victim satisfaction than adversarial process, even within a TJ speciality court environment. Much more innovation and evaluation is needed before this conclusion can be stated with confidence. Although undoubtedly valid, these concerns must not discourage legal actors and the processes they design from continuing to strive for options that better respond to and balance the justice needs of victims.

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Notes

1 In the US, all indictable offences fall into classes of misdemeanour or felony (Black & Nolan, 1993). Felony offences are more atrocious crimes as defined by state and federal statutes, and are punishable by more than twelve months in state or federal prison. Misdemeanours are all other 'lesser' crimes which do not rise to the level of felonies, and confinement as punishment does not exceed twelve months in a county jail. Sexual offences may be misdemeanours or felonies depending on the state and federal statutes and severities of the crimes.

2 Countering Winick's position is outside the scope of this chapter, but we would be remiss in failing to cite for the reader the literature on effective treatment for sex offenders. For overviews of research on effective treatment of sexual offending, see Hanson, Bourgon, Helmus and Hodgson, 2009; Marshall, Fernandez, Hudson and Ward, 2013; Marshall, Marshall, Serran and O'Brien, 2011; Yates, Prescott and Ward, 2010.

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