Response: Responding to Sexual Violence: Is there a Role for Restorative Justice?

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Response Influenced By:

- Irish Research: *Sexual Trauma and Abuse: Restorative and Tranformative Possibilities?* (2014)
- 40 years working with Victim-survivors of sexual abuse and violence
- Prison based work with men who rape (1980s-1990s)
- Founding member and co-ordinator of treatment programme for men who had sexually abused minors (Granada Institute) (1996-2002)
- Facilitator of RJ in cases of sexual violence
Outline of Response

- Locate My Interest in RJ
- Motivations: why some victims and offenders of sexual crime would want RJ
- ‘Justice’ for Victim Survivors
- Identify some of the key areas of international debate regarding RJ in cases of SV
Locating my Interest in RJ
Locating my Interest in RJ

- Justice Gaps for Victims……..

- Accountability Gaps for Offenders…..

- Healing Gaps for Both……even where there have been Conventional Criminal Justice Responses
Motivation for Restorative Justice:
Why do some Victim Survivors want it and Why are Offenders willing to Participate
Motivations for RJ:
*Sexual Trauma and Abuse: Restorative and Transformative Possibilities* (2014)

- Qualitative Study, Oct 2012 - May 2014,

- 149 People interviewed (30 victim – survivors; 23 offenders)

- Qualitative interviews on average 2-3 hours [some less]

- Analysis using Atlas ti
Victim Survivors: Criminal Justice Mechanisms

- Evidential Threshold “Beyond Reasonable Doubt” problem in (a) cases proceeding to trial and (b) in securing convictions

- Secondary Victimization by process itself

- Even when ‘Justice’ achieved in Criminal Proceedings there are unmet needs for Voice…
Why Some Victim Survivors want RJ – mixture of Justice and Healing Interests

- Face the Offender …with Statements
- Face the Offender …with Questions
- Face their Fears
- Change “the Memory Card”
- Healing
- As a Mechanism of Accountability
- Understand but Not Excuse Sexual Violence
- Family Reconciliation
- ‘Getting out of Relationship’ with the Offender
- Apology and Forgiveness
Concerns of Victim Survivors re RJ

- That RJ would be promoted as alternative to CJS
- RJ not as Alternative to CJS but Additional Justice Mechanism
- Exception: Intra-familial and Young Offenders (some retrospective abuse situations)
- Victims want RJ available for all who require it (even if not for themselves)
- Too much time had Elapsed – moved on, trauma
- Ownership and Control of Decision-Making
- State Support and Legitimacy – Bottom Up and Top Down
Why Offenders would agree to Participate in RJ

- Debts owed, Moral Obligation
- Opportunity for Victims to Confront person who harmed them
- For Victim to ask questions and get ‘Honest’ answers
- Apology and Expression of Sorrow
- Healing for Victim, Offender and families of both
- Desire to see Victim move on with their Lives
- Forgiveness....
- RJ would fill a gap in the CJS

- Offenders would take part if requested to do so
Justice Interests of Victim Survivors
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- Differentiate justice and therapeutic (‘healing’) outcomes (Daly)
- Not ‘needs’ – Justice ‘interests’ as citizens (Daly, 2017) – Moral basis for what survivors can expect
- Victimization is a process – not a category or identity
- Justice is a process – not an event or intervention
- Diverse experiences of victimization
- Diverse demands for justice
- Multiple goals for justice which can change over time… requiring multiple responses (Daly, 2014)
Justice Interests of Victim Survivors

McGlynn
- Voice
- Recognition and acknowledgement of Offending
- Dignity
- Belonging
- Consequence
- Prevention

Daly
- Participation
- Voice
- Validation
- Vindication (vindication of the law and of the victim)
- Offender accountability-taking responsibility
Assessing differing Justice mechanisms from a Victim Survivor’s perspective (Sibling Incest Situations)

Conventional Justice (Criminal Prosecution)

- Validation (50%)
- Vindication (50%)
- Voice (25%)
- Offender Accountability taking responsibility (40%)
- Participation (almost 0%)

Innovative Justice (Restorative Justice)

- Voice – 80%
- Validation (80%)
- Offender Accountability taking responsibility (67%)
- Participation (60%)
- Vindication (60%)
Why Consider the Role of RJ in SV?

- Justice Gaps for Victims……..

- Accountability Gaps for Offenders…..

- Healing Gaps for Both……even where there have been Conventional Justice Responses
Key Areas of International Debate Regarding RJ in Cases of Sexual Violence
Key Areas of International Debate

• Is RJ Dangerous for Victim Survivors?
• Are Sex Offenders suitable for RJ?
• How can RJ co-exist with the Rule of Law, Due Process, Presumption of Innocence, Right against self incrimination, Right to a fair trial etc?
• How can Public Interests and Private Interests be both served in aftermath of sexual crime?
• Relationship of RJ to CJS – timing, legislation or policy or both, who decides etc?
Dilemma

• If we constrain ourselves to Therapeutic Jurisprudence – which centres on legal mechanisms and legal actors - are we serving Victims and Offenders well – or are we limiting the range of justice options for victims?
Conclusions

- The Practice is happening ‘Under the Radar’
- Time to consider Innovations in Justice Responses to SV as well as continuing to improve Procedural Justice and Conventional Justice Mechanisms
- Not alternative but addition to CJS – with some exceptions
- Education of CJS agents
- Special Training for Facilitators
- Preparation, Preparation, Preparation
Conclusions

• Managing Human Risk – Always risk

• Work with Imagination as well as Evidence

• Proceed with Courage as well as Caution
Thank You

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