Restorative Justice and Sexual Offences

Can »changing lenses« be appropriate in this case too?

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Abstract
The use of Restorative Justice (RJ) for sexual violence has been the subject of on-going debate among RJ advocates, victim rights movement and feminist activists, for some time. This article will examine existing theories on RJ with a specific focus on the appropriateness of RJ for sexual violence. Theories surrounding the benefits of RJ in cases of sexual violence will be explored and comparisons will be drawn between the approaches taken by RJ and the traditional criminal justice system to address sexual violence. Concerns about the use of RJ for sexual violence will also be discussed, including concerns about re-victimisation, power imbalances, due process rights of offenders and the relationship between RJ and the criminal justice system. Theoretical considerations of practical challenges such as the establishment of appropriate points of referral to RJ programmes and decisions regarding the types of sexual offences suitable for RJ will be examined in detail. The paper will conclude by offering some reflections as to possible ways forward.

Keywords: Sexual offences, restorative justice, criminal justice

Restorative Justice: Ein neuer Fokus für den Umgang mit Sexualstraftaten?

Zusammenfassung
Die Frage, ob Restorative Justice (RJ) auch bei Sexualstraftaten eine sinnvolle Intervention sein könnte, wird seit geraumer Zeit kritisch diskutiert. Der vorliegende Artikel untersucht RJ-Theorien mit dem besonderen Fokus darauf, ob RJ tatsächlich auch für Sexualstraftaten geeignet sein könnte. Neben den theoretischen Überlegungen werden des Weiteren kritische Aspekte diskutiert, die sich in besonderer Weise aus der Übertragung von RJ auf Sexualstraftaten ergeben könnten, wie Reviktimisierung, das Machtgefälle zwischen Täter und Opfer, prozessuale Rechte des Täters und das Verhältnis von RJ und dem Strafjustizsystem. Dabei untersuchen wir im Detail, zu welchem Zeitpunkt der RJ-Prozess eine adäquate Einbettung erfahren könnte und welche Arten von Sexualstraftaten von der Anwendung von RJ profitieren könnten. Der Aufsatz schließt mit einigen Überlegungen dazu, wie weitere wegweisende Entwicklungen aussehen könnten.

Schlüsselwörter: Sexualstraftaten, Restorative Justice, Strafjustiz

1. Introduction

In his now classic book »Changing Lenses«, *Zehr* (1990) proposed to change the lens through which to look at crime and justice. Over twenty years later and within a continuing punitive climate, *Zehr*'s proposed alternative has been (re-)emerging to deal or help deal with a large variety of crimes and offenders but also other stakeholders in a crime, and that is Restorative Justice (RJ). Sexual violence is among these crimes but in its case the introduction and use of RJ practices is certainly not without debates and controversies. However, mostly due to the failure of the criminal justice system to deal adequately with this particular offence, this new/alternative approach has proven to have many attractive traits and demands to be considered seriously, also for sexual offences (*McAlinden* 2008). Its onset may therefore be considered more of a default approach, but this is far from taking anything away from its merits. Little is known to the wider public about this new development but recent research has shown that

practice is actually already well ahead of theory in this domain (*Zinsstag, Teunkens & Pali* 2011).

Through the unique nature and in particular unique consequences of sexual offences, for the victims but also more generally for all stakeholders in this type of victimisation, the use of RJ may prove to be a much more efficient avenue for redress and achieving justice (*Miller* 2011; *Keenan & Joyce* 2013). In general it means that victims have a say in what happened to them while remaining safe, offenders have to take responsibility for their acts but have also the right to be treated humanely in the process and the community may gain from a more constructive approach to the crimes committed in its midst.

We will in this article first present some general aspects characterising RJ and second in relation to its applications for sexual violence. We will address both from a normative and empirical point of view some of the main debates and criticisms and conclude by offering some insights about its possible future applications.

2. Restorative Justice: Theory and practice

There already have been numerous descriptions of the nature, aims and possibilities of RJ, we will therefore limit ourselves to some general introductory remarks to set the ground for an examination of RJ in relation to sexual offences.

2.1 Origins

A number of authors have written about the origins of RJ ideas and practice and in much of that literature some aspects of restorative principles and ideas can be dated back as far as the ancient Greeks (see e.g. *van Ness & Strong* 2010; *Walgrave* 2008; *Zehr* 1990). Some argue also that it actually originates and takes after a number of traditional forms of justice such as the ones used by the Maoris in New Zealand, the Navajos or First Nation people in North America etc. for centuries (see, e.g. *Daly* 2002a; *Zinsstag et al.* 2011). The modern use of the term »restorative justice« is generally dated back to *Albert Eglash* in the late 1950s who used this exact term consistently for the first time (see *van Ness & Strong* 2010). Other authors in the 1970s have also contributed to its revival, such as *Nils Christie* (1977) and *Randy Barnett* (1977) who both contributed defining pieces of writing on which much of the developments in RJ have been based.

The practice of RJ can be dated back to Kitchener, Ontario, as it is generally considered as the birthplace of the modern RJ movement, whereby in 1977, a probation officer used mediation successfully to deal with two young offenders who had pleaded guilty to vandalising several properties. Accompanied by a probation officer, the offenders visited each of their victims and arranged to pay restitution (*van Ness, Morris & Maxwell* 2001; *Zehr* 1990).

2.2 Definitions and debates

While there are no agreed definitions of RJ because RJ's meanings depend very much on which aspect and/or aim one favours, a number of definitions have received much attention and should be considered here. One much cited definition has been the one by *Marshall* and reads »restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future« (*Marshall* 1996, 37). We would also like to cite the definition of a restorative process as written in the Handbook of the United Nations on RJ: it »is any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of

matters arising from the crime, generally with the help of a facilitator« (United Nations 2006, 6).

However, as *Walgrave* (2008) argues, these definitions tend to focus on the outcome of the process, rather than simply on the process in itself. The process is considered by some as needing to be an aim in itself as it may be extremely important for the stakeholders and may achieve results that neither the criminal justice system nor »pure« RJ programmes may dream of achieving. *Bazemore & Walgrave* (1999, 48) therefore propose a very basic definition which only mentions the essentials: »Restorative justice is every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime.« With the latter definition, we have entered the purist/maximalist debate (for more information see e.g. *Walgrave* 2008; *Aertsen et al.* 2013). In this article we will follow a more maximalist approach since in the case of sexual violence »pure RJ« programmes and approaches may not be appropriate, and therefore have very little result or impact on their own (namely without the intervention of the criminal justice system, or if not accompanied by psychosocial treatment). However, adapted restorative processes to the specific needs and consequences of this particular type of violence may in many cases already have much impact on the stakeholders.

There are a number of other debates regarding other aspects of RJ, such as for example the benefits and limitations of the institutionalisation of RJ (see e.g. *Aertsen, Daems & Robert* 2006) as opposed to the development of more community-based RJ initiatives (see e.g. the top-down vs. bottom-up approaches to RJ in *Braithwaite* 2002).

It is also important to understand that RJ practices may take place at any stage after a crime and this has also caused some debate within the field. Indeed, some programmes may take place at a pre-sentence stage, some at post-sentence stage and some may take place completely outside any court proceedings or even without police involvement (*Daly* 2002a) – and this is particularly true in the case of sexual offences, for which there is a very low rate of reporting and even when reported there is a high rate of attrition (see e.g. *Hopkins & Koss* 2005; *Daly & Curtis-Fawley* 2006).

2.3 Comparing Retributive Justice and Restorative Justice

Although RJ is often portrayed as an alternative to the retributive form of justice that is administered through the arms of the criminal justice system, such as the police, legal professionals, the probation service and the courts, the starting point has often been the fact that victims are almost totally left out of criminal justice proceedings. In many cases, RJ programmes are thus actually presented as a complement or a parallel initiative to the criminal justice system (see e.g. *Miller* 2011) and any antagonism between both is inaccurate since the two approaches may serve different purposes. However, there are significant distinctions to be considered when comparing both approaches to justice and it is important that we take into account some of the criticism of RJ that emerge from such analyses: RJ has sometimes been decried for example as being a »diversion« from courts and for being too lenient on offenders. In addition, some of the potential problems in RJ practice which have been identified are »victim safety«, »manipulation of the process by offenders«, »pressure on victims«, »mixed loyalties« and »cheap justice«, but as *Daly & Curtis-Fawley* (2006, 234) explain in reviewing this list, some of these elements may also feature in sexual assault cases dealt with in court. Victims can be intimidated by offenders in the court room; there are just as likely to be mixed loyalties; if an offender is not convicted, he may believe he did nothing wrong; and often the penalties handed down in court could be deemed »too lenient« (*Daly & Curtis-Fawley* 2006, 234). *Miller* (2011, 159–160) also explains that RJ generally attempts to »correct

a harm« and »favor dialogue« while the criminal justice system, which focuses on the offender, attempts to give a »proportionate punishment« in an adversarial system.

2.4 Main programmes

For the purposes of this article we chose just a few possible RJ programmes among the many possible (and creative) alternatives today, as we would like to focus on the ones which have a relevance for sexual offences. Here we will therefore briefly examine mediation, assisted dialogues and conferencing.[1] One of the main conditions for any such programme to take place is that the offender recognises his/her guilt prior to the initiative. A second condition is that participation by both parties is completely voluntary. The programme may take place within or without the involvement of the court. It is a fact that today many such initiatives happen informally, organised by rape crisis centres, hospitals, within prisons and often through self-referrals rather than referrals generated by the criminal justice system. One of the main keys to any of these programmes is a very intense preparation of all parties prior to a meeting, facilitated dialogue, conference or circle. The outcome of the process often depends on the quality of the preparation.

Mediation or dialogue – the most common RJ programme to date is mediation, in particular when it comes to sexual violence. It is a »one-to-one meeting between the crime victim and the offender… generally facilitated by a mediator who helps the parties to achieve a new perception of their relationship and of the harm caused« (*Zinsstag et al.* 2011, 44). It may be a direct or indirect encounter (see generally *Zinsstag et al.* 2011). Through the specific characteristics and nature of sexual violence for victims – feelings of shame, guilt, etc. – mediation has been seen in a safe environment as favouring feelings of empowerment and autonomy instead (see *Madsen* 2004). It may take place through the exchange of letters, face-to-face meetings between the two main stakeholders or through surrogates, sometimes with the involvement of support persons (but not as a rule) (*Miller* 2011).

Conferencing – the origins of conferencing can be found in New Zealand when the Children, Young Persons and Families Act was passed in 1989 and in Australia in the early 1990s (for more details see e.g. *Zinsstag* 2012). The main characteristic in comparison to other RJ programmes is the involvement of the family or close friends, in general called the community of care. It means therefore the involvement of all the parties affected by an offence in the process of decision making after a crime, under the supervision of a facilitator and with the participation of a number of other relevant persons depending on the type of conferences, for example a police officer, a social worker, a community representative or a lawyer (see *Zinsstag et al.* 2011).

3. Restorative Justice in cases involving sexual offences

At present, the fundamental structure of the criminal justice system and the gendered operation of the adversarial system make it a highly problematic forum for addressing sexual crime (*Naylor* 2010). However, because of an increasing awareness of the inadequacies in the criminal justice system in meeting the needs of victims, there is a growing movement to use alternative, more informal forms of instituting justice for victims, offenders and communities affected by sexual violence (*van Wormer* 2009). Nonetheless, *Koss* (2010) notes that within jurisprudence scholarship, the consensus is that restorative methods must be approached cautiously in cases of sexual violence.

1 Mostly due to lack of space in this article, we have left out Circles of Support and Accountability (COSA) and Peacemaking Circles but these are two very interesting alternatives whose potential should be explored further in this context.

3.1 Defining »sexual violence«

Before considering the applicability of RJ to sexual crime, it is necessary to discuss what is meant by sexual violence, since language and its usage are central to the emergence of social problems and to their depiction. How a problem is »languaged« will influence whether or not it will be privileged over other issues and what »core« features will be seen as central to how the problem is understood (*Keenan* 2012). This is an important consideration in light of the ambiguity surrounding the very definition of sexual violence itself in varying international professional and legal codifications and within the RJ community. For the purposes of this article we define sexual violence as a broad term that is legally and culturally defined and which encompasses many types of sexual acts including contact and non-contact child sexual abuse, sexual assault, rape, sex trafficking, war-time sexual violence and sexual violence perpetrated through the use of communication technology (*Bluett-Boyd et al.* 2013).

Our definition also encompasses the World Health Organisation's (WHO) broad definition of »violence« which includes:

> The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.

We acknowledge that this definition is influenced and constrained by the limits of our cultural and social conditions, time and place.

3.2 Types of sexual offences suitable for restorative justice processes

The literature on the use of RJ for cases of sexual violence suggests that distinguishing between different types of sexual crimes may be an important factor in determining whether a given case ought to be handled restoratively (*MacDougall* 2009) and if so how. For example, stranger rapes are characterised by a greater degree of violence and aggression than other types of sexual abuse and in these cases risk assessment of the offender and careful preparation of the victim so as to avoid further abuses of power is seen as especially important (*MacDougall* 2009, 92). In cases where the victim-survivor and offender are acquainted, such as in families, the nature of the sexual violence can involve very different forms of power and control (p. 93), requiring attention to the subtle and covert dynamics of power that are often involved. *Curtis-Fawley & Daly* (2005) argue that in cases of domestic violence, where the victim-survivor and the offender are acquainted, facilitators must be highly skilled in the dynamics of domestic abuse in order to prevent re-victimisation. Juvenile sexual offenders are also often seen as particularly suitable for RJ as an opportunity to encourage them »to grow out of crime without punishment and stigmatisation« (*Cossins* 2008). *McAlinden* (2006) maintains that distortions of power in all sexual violence cases are addressed when RJ programmes stick closely to restorative values and principles.

According to *Hargovan* (2005), RJ for sexual violence should be on a case-by-case basis with the focus being placed on the suitability of the participants rather than the type of crime *per se*. He sets out a number of criteria for admission of victims and offenders to an RJ programme, which includes potential harm to victim, the history of previous incidents of excessive violence, the psychopathic tendencies in the offender or the victim and the willingness of the offender to take responsibility for actions. *Umbreit & Greenwood* (2000) argue further that each RJ programme should have its own criteria for case selection, such as type of offence, age of offender and whether this is a first-time or a multiple offences offender. However, an analysis of the relevant literature suggests that all types of sexual violence offences that involve identifiable victim-survivors and offenders are suitable for RJ approaches and it is the victim-survivors' and offenders' perceptions, as opposed to the crime itself, that will

best determine suitability (*Liebmann & Crosland* 2003). *Umbreit & Greenwood* (2000) suggest, however, facilitators should continually exercise discretion as to offender and victim suitability or readiness as each case proceeds. At each step of the preparation process facilitators should ask themselves, in consultation with the key actors, if the case in hand is suitable for RJ. As highlighted by *Daly* (2012, 118), recent empirical findings indicate that RJ is however an approach that is suitable for sex offenders and for victims of sexual offences.

3.3 Procedural safeguards in restorative justice processes for sexual violence

Because of the special nature and dynamics involved in sexual crime and because of the particular and often long lasting harm that results from sexual crime RJ practice in the area of sexual violence needs to be rooted in a clear set of values and principles that will ensure the best outcome for all participants. These values and principles include: victim-led, voluntary participation, offender accountability, safety for all, victim choice and system accountability (*Hargovan* 2005, 55). Quality assurance and the setting of minimum standards of practice are essential. Such minimum standards include some measure of risk assessments of victims and offenders, the prevention of re-victimisation, the implementation of confidentiality safeguards and adequate training of facilitators. Facilitators need to understand the impact of trauma and the dynamics of sexual offending as well as the principles of RJ in order to facilitate the meeting well, including safety and procedural requirements such as the prohibition of hostile, blaming or profane language (*Koss* 2010, 223). In relation to the physical safety of participants, if there are any uncertainties as regards a participant's safety, the RJ process can take place through indirect communication (*Roberts* 1995, 56).

The preparation stage of RJ is also key to ensuring emotional safety for all participants during the RJ process (*Umbreit et al.* 2003b, 12). However, confidentiality is a contentious issue in the context of procedural safeguards in situations where participants are not required to sign a confidentiality agreement or where cases are referred back to court, with written reports provided to the judge detailing the events of the RJ meeting (*Julich et al.* 2010, 52). One solution to problems relating to confidentiality is that confidentiality limitations could be agreed by the victim and offender prior to the meeting (*Bird & Reimund* 2001, 10) in order to keep some elements of the RJ process confidential. In a European context, Article 12 of the EU Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime (2012) specifically provides for confidentiality safeguards in restorative processes.

3.4 Risk assessment of victims and offenders

With respect to RJ processes dealing with cases of sexual violence, it is highly recommended that risk assessment is part of the process as a method of assessing issues such as victim safety and offender accountability (*Hargovan* 2005, 51). Risk assessment is also seen as a possible way of assessing potential re-victimisation and power imbalances between the participants (*Keenan & Joyce* 2013). *Koss* (2013a) recommends careful screening for appropriateness of victims and offenders in RJ processes which will address the psychological and emotional readiness of both parties to meet each other and participate in a facilitated meeting. In particular, the victim-survivor's ability to represent his or her own interests and needs are important (*Julich et al.* 2010; *Keenan & Joyce* 2013; *Koss* 2013a; *Pali & Madsen* 2011). Guidelines and protocols should be in place to detect victims and offenders who are not suitable for RJ processes regardless of the crime involved.

In practice, risk assessment is a core feature of the RJ programmes catering for sexual offences (*Julich et al.* 2010; *Koss* 2013a; *Umbreit et al.* 2003a). However, keeping with the core principles of RJ which puts the victim and offender – rather than professionals – at the

centre of the decision-making process, every effort must be made to facilitate the wishes of victims to meet with offenders or engage in RJ, within the parameters of best practice and the optimum conditions for participants' safety. In the spirit of RJ, professionals must not take the important decisions about their lives away from victims or offenders, but they must prepare them well for what RJ might offer.

3.5 Preventing re-victimisation

The power imbalance that sexual violence creates is a major concern for victim advocates who view RJ processes as an opportunity for offenders to re-victimise the victim unless the proceeding is prepared and managed well (*Daly* 2002b, 87). The logic of RJ places the relationship between the victim and offender as central to the »justice« project, rather than the offender and the state, as is the case in the criminal justice system, and it could therefore be argued RJ could reproduce and reinforce the imbalance of power that had occurred in the dynamics of the crime (*Hudson* 1998, 247). However, sexual violence warrants a powerful response, which not only combines meaningful censure of the behaviour and the protection of the victim against further abuse, but also works to enable victims of sexual crime to find voice and take back power. Measures to reduce the likelihood of re-offending and to reintegrate the offender into society must also be part of the responses by any state to the problem of sexual crime (*Hargovan* 2005, 51). RJ has much to offer in fostering these aims. However, the behaviours associated with sexual violence challenge RJ practitioners to formulate strategies that can deal with large numbers of victims and offenders; can provide protection and redress for victim; can change social attitudes from tolerance to disapproval of sexual crime; can inculcate remorse and a desire for change in perpetrators; can bring about a rebalancing of power within the crime relationship and can work for the re-integration of all into a safer society (*Hudson* 1998, 247).

In order to explicitly prevent re-victimisation when RJ is used in cases of sexual violence, practitioners need to access quality training in the realities and complexities of sexual violence, the dynamics of power and control, the particularities of sexual trauma and the difficulties of holding abusive men accountable for their actions; and the trends, patterns and circumstances of abuse incidents also need to be explored (*Hargovan* 2005, 51). In a European context, Article 12 (p. 48) of the EU Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime is an important reference as regards the prevention of re-victimisation, as it sets out safeguards in the context of RJ services to ensure that victim-survivors not be re-victimised.

4. Outcomes of restorative justice

Most evaluations of RJ have concentrated primarily upon obtaining measures of victim and offender »satisfaction« (*Shapland et al.* 2007, 7) and there is no particular standard for measuring participant satisfaction, since it is such a subjective concept (*McCold* 2003). However, the primary topics included in an evaluation of satisfaction are the following: participant (victim and offender) satisfaction with the way the case was handled; participant satisfaction with the process itself; victim and offender satisfaction with the facilitator; fairness of the process and fairness of the outcome; whether participants would recommend the programme and whether they would participate again under similar circumstances. In the context of sexual violence, it is important to review additional outcomes for the participants including the short and long term psychological effects of RJ, such as reduction in post-traumatic stress, reduction in fear, experiencing a sense of justice, progressing on a journey of recovery, integration into the community, re-uniting fractured or polarised families, closure and impact on recidivism (*Koss* 2013a; *Julich et al.* 2010; *Shapland, Robinson & Sorsby* 2011; *Roberts*

1995). According to *Julich et al.* (2010), while funding agencies often require the hard data of quantifiable outputs, not all outcomes can be readily quantified and often, the most valuable outcomes are qualitative.

Godden (2013) argues that there is a dearth of evidence to assess the merits and demerits of RJ for sexual violence and with the exception of the Sexual Assault Archival Study in Australia, there is no comparative analysis of sexual offences finalised in court compared to those dealt with by RJ conference (*Daly* 2011). However, while remaining cognisant of the limited available data measuring the effectiveness of RJ in cases of sexual violence, it is nevertheless important to focus on the information that does exist so as to assess the trends in the effectiveness of RJ in the area of sexual violence.

4.1 Outcomes for victims

As RJ continues to develop in numerous communities around the world, assessing outcomes for survivors is one of the most essential components of evaluation in RJ policies and practices (*Umbreit & Greenwood* 2000). Several studies show that victims received good preparation for RJ process and they were satisfied with the preparation process (*Koss* 2013a; *Pali & Madsen* 2011, 58; *Umbreit et al.* 2002). Victims report that talking about the sexual abuse at the preparation stage of the process gives them strength to be honest about what happened to them. There is also a strong endorsement of pre-conference meetings among victims, stating that the preparation meetings prepared them for what they could expect once they got to the restorative meeting or conference (*Goldsmith, Halsey & Bamford* 2005, 25).

There are high levels of victim satisfaction also with the restorative meeting itself and with how their case was handled (*Koss* 2013b). Some victims report that justice is served in the RJ process as a result of talking about the sexual abuse during the conference or meeting, as the crime is no longer seen as the victim's problem and the responsibility shifts to the offender. This finding supports the view that RJ can help to diminish any blame felt by victims of sexual crime (*Naylor* 2010; *Koss & Achilles* 2008). Other outcomes reported from restorative meetings are unique to the individual, such as receiving responses to previously unanswered questions (*Pali & Madsen* 2011).

According to *Daly* (2002b) an essential outcome for survivors during the RJ meeting is the sense of empowerment that the process confers on them through their active participation in decision-making and in proposing outcomes for an agreement. This denotes the »sense of justice« fostered by RJ to transform the role of the victim from that of a witness (which is the victim's typical role in the adversarial system) to that of an active claimant seeking justice in a humane and compassionate way. Victim empowerment as an outcome of the RJ process also challenges the sceptical view of many RJ commentators that RJ can have a negative impact on power dynamics (*Cossins* 2008; *Hudson* 2002; *Naylor* 2010).

Other important outcomes for survivors in the aftermath of RJ meetings or conferences are closure and healing (*Koss* 2013b). However, closure is not an outcome for all and the issue of closure is subject of much theorising and empirical analysis. Findings from some programmes indicate that merely providing a structured opportunity for the victim to tell the offender of the impact the crime had on them can contribute to a sense of closure for them. *Pali & Madsen* (2011) suggest that a restorative meeting represents merely one step towards achieving closure, which will continue beyond the restorative meeting.

Apology may or may not be a factor that enables victims to obtain a sense of closure and the function of an apology in sexual assault cases is also the subject of ongoing study. Contrary to some expectations that a public apology is validating for victims, many victims do not attend exit meetings following a RJ meeting, where the offender offers an apology (*Bletzer & Koss* 2012). *Bletzer & Koss* (2012) suggest that the victim's absence from the exit meet-

ing may indicate a preference for private closure. Whether it is an apology, an agreement/commitment or an emotional account of the impact of the crime in the presence of the offender, it is clear that some kind of emotional exchange between the parties as an outcome of RJ has the potential to bring about an outcome of closure, be it public or private (*Koss* 2013b) in the aftermath of the RJ process.

Several studies suggest that satisfaction for victims during the RJ meeting is not necessarily predicated on an agreement or even an apology, but on an array of possible outcomes such as procedural fairness and any number of the following unique outcome(s) desired by the individual survivor: voicing the impact of the crime; receiving answers to questions; validation; placing the responsibility for the crime into the hands of the offender; seeing that the offender is remorseful; and feeling empathy for the offender. *Buntinx* (2007) suggests that the high levels of satisfaction that are achieved among participants in RJ are relatively independent of the extent to which a formal agreement is achieved.

In some cases, victims participating in RJ report that the meeting enables them to develop an amount of empathy for the offender with some victims even expressing a desire to help offenders in some cases (*Goldsmith et al.* 2005, 27; *Miller & Hefner* 2013) which may be a by-product of the effect that the offender's remorse has on the victim. Individual cases suggest that the remorse exhibited by the offender for the crime committed impacts positively on the victim's desire to help him. The positive effect of the offender's remorse on the survivor is also connected to the shift in responsibility. By showing remorse and thus accepting responsibility for the crime, the offender relieves the survivor of the heavy burden of the crime and there is a »sense of justice«.

There is a growing body of empirical evidence demonstrating the therapeutic impact of the RJ approach on victims (*Gustafson* 2005, 199). Apart from being able to talk about the offence and its effects the psychological effects of RJ include a reduction of post-traumatic stress, improved well-being, reduction in fear, and improvement in social and relational life (*Gustafson* 2005, 221; *Julich et al.* 2010, 56; *Koss* 2013a; *Shapland et al.* 2011, 144–146; *Stulberg* 2011). In addition, statistical and pre and post RJ meeting comparisons reveal no significant negative impact on victims' emotional health following participation in RJ (*Koss* 2013a). Victims are adamant that they have experienced RJ as a healing intervention, eclipsing other attempts at remedy, enabling them to achieve therapeutic goals that have eluded them in other processes (*Gustafson* 2005, 221). Victims' relationships with family members and the wider community also benefit from RJ processes (*Couture et al.* 2001). The empirical evidence states that victims are happier and more emotionally stable as a result of taking part in RJ (*Couture et al.* 2001). Of course, engaging in therapy is also an option for victims who are participating in RJ which may also contribute to improvements in the victim's emotional well-being (*Julich et al.* 2010, 45; *Stulberg* 2011, 4). A significant issue of interest, however, is the finding from one study which found that victims suffering from high distress as a result of the crime were far more likely to remain angry and fearful of offenders, and to be negative towards them, than victims suffering from lower levels of distress on entering the RJ process (*Daly* 2005, 162–163).

4.2 Outcomes for offenders

Evaluations of RJ programmes tend to focus more on outcomes for victims than on outcomes for offenders (*Shapland et al.* 2007, 7). Nevertheless, a considerable amount of research has been undertaken to evaluate offenders' satisfaction levels and their perceptions of fairness after participating in RJ programmes (*Latimer, Dowden & Muise* 2005; *Shapland et al.* 2011).

Offenders have expressed high levels of satisfaction with the preparation undertaken for RJ (*Goldsmith et al.* 2005; *Julich et al.* 2010, 48; *Koss* 2013a). The preparation stage of RJ is crucial in encouraging the offenders to uncover important feelings (*Umbreit et al.* 2003a, 271–272) and »revisit the crime and its associations« (*Gustafson* 2005, 220). Offenders also report high levels of satisfaction with the RJ meeting itself and would recommend RJ to others (*Goldsmith et al.* 2005; *Julich et al.* 2010, 48; *Koss* 2013a; *McGlynn, Westmarland & Godden* 2012; *Miller & Hefner* 2013; *Stulberg* 2011). Satisfaction with RJ for offenders also includes high satisfaction with procedural fairness (*Koss* 2013a; *Miller & Hefner* 2013), although the lack of confidentiality safeguards impacted on the offenders' perceptions of procedural fairness in some cases (*Goldsmith et al.* 2005, 36; *Julich et al.* 2010, 53).

Accountability is also cited as an important outcome for offenders participating in RJ, as the RJ process enabled them to take full responsibility for the harm caused (*Goldsmith et al.* 2005; *Julich et al.* 2010, 38; *Koss* 2013a; *Miller & Hefner* 2013). Offenders participating in RJ were »quite keen« to take such responsibility for their actions (*Goldsmith et al.* 2005, 33). Contributing to the survivors' recovery is also found to increase the offenders' accountability for the crime (*Miller & Hefner* 2013, 17). Empathy, which can be measured according to the related outcomes of remorse and apology, is another important outcome for offenders (*Goldsmith et al.* 2005; *Koss* 2013a; *Miller & Hefner* 2013). Findings demonstrate that offenders gain substantially from the RJ meeting in terms of understanding how their actions impacted people's lives and that their offending has consequences not just for themselves but for their immediate victims and for all who are harmed indirectly by their behaviour (*Goldsmith et al.* 2005, 34).

Remorse is considered by some as an important outcome for offenders participating in RJ conferences (*Koss* 2013a; *Miller & Hefner* 2013) and an important indicator of the offender's remorse is the regret expressed for the harm caused to the victim (*Goldsmith et al.* 2005, 30). However, there is a lack of consensus in the RJ outcome literature regarding the importance of apology as an outcome of the RJ meeting (*Daly* 2006; *Goldsmith et al.* 2005; *Julich et al.* 2010; *Koss* 2013a). Since it has been found in practice that the offender's ability to apologise is to some extent predicated on his ability to empathise and understand the impact of the harm done, programme flexibility with regard to the focus on apology as a potential outcome of an RJ meeting is seen as desirable (*Julich et al.* 2010, 37).

There is a growing body of research on the effects of RJ on offenders' psychology and well-being (*Daly* 2006; *Goldsmith et al.* 2005; *King* 2008, 1106; *Koss* 2013a; *Miller & Hefner* 2013, 15) with one study showing that psychometric assessments of offenders participating in a RJ programme indicated levels of post-traumatic stress symptom reduction for these men (*Koss* 2013a). Perpetrators of intra-familial sexual abuse are also encouraged to participate in therapy as well as in RJ, and this can also contribute to improved offender well-being (*Julich et al.* 2011, 225–226; *Miller & Hefner* 2013; *Roberts* 1995; *Stulberg* 2011; *Umbreit et al.* 2003b, 16). Eighty two per cent of offenders participating in the Texas and Ohio victim-offender dialogue programmes said that the RJ process contributed to their rehabilitation, personal growth and healing (*Umbreit et al.* 2003b, 16). Similarly, offenders participating in victim-offender mediation programmes in Canada have described the process as »deeply healing« with therapists and prison programme facilitators reporting significant commitment to relapse prevention in those who participated (*Gustafson* 2005, 200). Participation in RJ also resulted in some offenders exploring ways in which they were victimised as children or youths, which in turn also became an important contribution to their emotional healing and well-being (*Roberts* 1995, 106).

Participation in RJ conferencing also helped with offender reintegration in a family context (*Gustafson* 2005; *Julich et al.* 2011, 225–226; *Stulberg* 2011). In the aftermath of partici-

pation in a victim offender mediation programme in Canada, more than half of the offenders surveyed reported an opening up of relations with their family and friends, which they attributed to their participation in RJ (*Roberts* 1995, 106). This is heartening as a finding as a key value for RJ is that offenders having taken responsibility for their wrongdoing and taken steps to repair the harm should be reintegrated into their communities again (*Shapland et al.* 2011, 134).

In the aftermath of the RJ meeting, offenders show a desire not to re-offend (*Julich et al.* 2011, 226; *Koss* 2013a; *Miller & Hefner* 2013; *Stulberg* 2011) and remain committed to action plans developed during the conference or meeting (*Daly* 2006; *Koss* 2013a). Participation in treatment programmes during or following the RJ process also demonstrates offender motivation to follow-through, thus enhancing various aspects of their lives (*Miller & Hefner* 2013, 20).

5. Conclusion

As the literature demonstrates, victims of sexual violence and perpetrators of sexual offences experience an array of positive outcomes by participating in RJ, so it is possible to say that changing the lens may be appropriate in this case too. However, RJ in sexual violence cases is not without complexity and as demonstrated above a number of critical areas of policy and practice must be adequately addressed: safety for all; prevention of re-victimisation; redressing power imbalances; confidentiality; due process rights for offenders to a fair trial, to have legal counsel and not to be self-incriminating (*Joyce & Keenan* 2014). These challenges suggest a number of ongoing areas for further research, consideration and analysis; the importance for legislation to underpin RJ in sexual violence cases; the relationship between the criminal justice system with regard to confidentiality and sentencing; the location and timing of RJ and whether it should be offered before, during or following criminal proceedings and whether it should be located within or in parallel to the criminal justice system itself. While these concerns continue to occupy scholars and practitioners of RJ it is our conclusion that the time has come to develop RJ services in all jurisdictions for victims and offenders of sexual crime, that are victim-led, based on offender accountability, involving voluntary participation, based on the best procedural protections and safeguards that are known and that work to repair the harm caused by sexual crime for the victims and for all who are harmed by this occurrence.

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