

RESPONSES

Re-imagining the transformative potential of therapeutic jurisprudence and restorative justice using a relational paradigm

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1 Introduction

In her Notes from the Field, Professor Wemmers focuses on potential shortcomings regarding the treatment of victims in restorative justice processes that occur in the criminal legal context and embraces therapeutic jurisprudence as offering a potential remedy that can be ‘truly transformative’. Her main concern about restorative justice is the need to prioritise victim’s concerns and incorporate ‘reparation’, meaning both tangible (financial) restitution and less tangible forms, such as apology, in order to avoid re-victimisation. In her view, therapeutic jurisprudence as informed by procedural justice and its emphasis on the importance of ‘voice’ and ‘validation’ can potentially influence the field of restorative justice in a positive direction. When combined with a therapeutic jurisprudence approach, she believes that restorative justice can achieve healing and growth for *all* participants, especially victims.

Professor Wemmers approaches these topics as a highly experienced and knowledgeable researcher of criminal legal processes and also as a scholar who is deeply committed to victimology and to prioritising victims’ needs and interests. Given her background and her encounters with victims/survivors of serious harms and suffering, her emphasis on the need to centre victim’s experiences and potential re-traumatisation in the criminal legal system and in restorative justice processes is unsurprising. To her credit, she nevertheless acknowledges the complexities and broader contexts of harmful behaviour. When speaking of the potential contributions of therapeutic jurisprudence, at several points in her essay she refers to the need to consider the effects of restorative justice on the well-being of *both* offenders and victims. Importantly, she acknowledges that *many offenders have also been victims*. ‘[V]ictims and offenders are not distinct populations and individuals who have experienced multiple victimizations, especially during childhood, may later commit offences themselves.’ Professor Wemmers concludes that therapeutic jurisprudence can inform and reinforce basic principles of restorative justice by providing dignity and respect as well as mean-

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ingful participation which ‘allows us to consider a more complete view of victims and offenders’.

I agree wholeheartedly that therapeutic jurisprudence can inform and reinforce basic principles of restorative justice. Indeed, my own take on these issues begins essentially where Professor Wemmers’ analysis ends and goes much further or perhaps in a different direction entirely, depending on one’s perspective. Her approach might be described as one advocating *reforming* the law, that is, working within the existing system or status quo to make what I would call modest improvements. In contrast, I view my own approach as *re-imagining* the entire system. Specifically, with respect to Professor Wemmer’s restorative justice framework, I would want to focus on how we can transcend the labels of ‘offender’ and ‘victim’ to envision and create processes, and perhaps, new systems, that can providing healing and growth for all who have been affected by the harms defined by the criminal legal system. My vision of restorative justice also aspires to go beyond these labels to provide healing and growth for all of us, as we all experience some form of harm or brokenness in our lives. I am reminded of the words of the attorney/law professor/bestselling author Bryan Stevenson:

We are all broken by something. We have all hurt someone and have been hurt. We all share the condition of brokenness even if our brokenness is not equivalent. [...] Our brokenness is also the source of our common humanity, the basis for our shared search for comfort, meaning, and healing. Our shared vulnerability and imperfection nurtures and sustains our capacity for compassion. (2015: 398)

2 Setting the context

Full disclosure – I am not a criminologist or victimologist. My education and professional training have been in the fields of social work and law, with the bulk of my career focusing on law practice and teaching. Much of my research and teaching has drawn upon my social work roots and has also been informed and shaped by the therapeutic jurisprudence movement.

The majority of my legal practice experience has been in the role of a faculty member teaching and supervising graduate law students in a legal clinic representing family members affected by the civil child protection system. More recently, I have also helped to establish a community-based legal clinic in an area of West Philadelphia affected by deep poverty and the accompanying social concerns about meeting basic human needs, along with high crime, mental illness, and addictive behaviour. My law school is participating in a larger university-wide effort to partner with neighbourhood residents to identify and support community-identified and community-driven goals and interests (Brooks & Lopez, 2015).

In addition to the legal clinic, which provides direct services and policy advocacy projects, I have been working diligently with university leaders and local community partners to create a restorative justice peacekeeping dialogue project. Our idea is to train residents to be circle keepers and support them to establish

regular dialogue circles in the neighbourhood that can be used for relationship building and deepening democratic participation as well as conflict resolution. The project is responsive to ongoing requests we have received from community members to help equip them with more tools for dialogue and for navigating conflicts peacefully. We believe these peacekeeping circles will also serve to reduce and prevent harmful behaviour and will improve residents' safety and well-being.

3 Restorative justice as relational justice

I share this information to help situate myself in this conversation about restorative justice and therapeutic jurisprudence. For me the core aspect of restorative justice is its fundamentally *relational* worldview, which stands in stark contrast to the more individualistic rights-based approach of the criminal legal system. As articulated by prominent US-based restorative justice practitioners and authors Fania Davis and Jonathan Scharer (2017), the principles and practices of restorative justice are rooted in the fundamental insight affirming our inherent interconnectedness to one another as humans; what one person does in a community, however large or small the act, affects the entire community. In this context, restorative justice 'recognizes the equal moral worth of all human beings and invites mutual recognition of one another's humanity' (Davis & Scharer, 2017: 97). From a relational point of view, harm between individuals reverberates out to affect an entire web of interconnectedness, and restorative justice seeks to heal the entire rupture. This relational emphasis distinguishes restorative justice as a holistic and balanced view of justice (Davis & Scharer, 2017: 98).

Jennifer Llewellyn is another leader and scholar in the restorative justice movement who focuses on its fundamentally relational character (Llewellyn & Howse, 1998).¹ Llewellyn and other movement leaders, such as Kay Pranis, emphasise that the restoration referred to in the term 'restorative justice' is forward looking and is about restoring 'right' relationships in the sense of social equality, dignity, concern, and respect, rather than being about resurrecting past relationships (Llewellyn & Howse, 1998; Pranis, 2005).

This relational approach to restorative justice and the healing potential of shifting the legal paradigm toward what I call 'relational lawyering' has been the focus of the work of a number of other scholars, including Peter Gabel, editor-at-large of *Tikkun* magazine. Gabel states that embracing a relational paradigm can move us

toward a new vision of law and legal culture that seeks to foster empathy, compassion, reconciliation with the other, and the fundamental rediscovery that the other is not essentially a threat, but the source of our completion as social beings. (2013: 64)

1 See also the editorial of a special issue of this journal entitled 'Deepening the relational ecology of restorative justice', which Jennifer Llewellyn and Brenda Morrison guest-edited in 2018, 1(3).

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Gabel embraces the restorative justice movement as ‘the most significant harbinger of the new paradigm’ (2013: 65).

My own work on relational lawyering focuses on supporting law students’ and lawyers’ positive, humanistic professional identity formation and well-being and ways to enhance their ability to work effectively with others as legal professionals, including clients and communities (Brooks, 2018; Brooks & Madden, 2010). I think of relational practices as habits of mind and tools all of us can cultivate to help us engage in meaningful conversations across differences, with the end result of creating new possibilities. I have recently begun referring to this work as an effort to foster *wholehearted lawyers*, a term I use to emphasise the heart-centred nature of these practices (Brooks, 2018). Legal professionals and others working in the legal system can choose to engage and pursue our roles in ways that affirm this mutuality and connection, or we can act in ways that contribute to greater separation and disconnection. The latter approach – viewing the law primarily as a tool for protecting ourselves against others – unfortunately has traditionally held sway in our dominant adversarial legal culture. To achieve a more relational legal culture, this work therefore needs to be a pervasive effort across all contexts.

4 Therapeutic jurisprudence as an expansive critical lens

Along with this different emphasis on the inherently relational nature of restorative justice, I also want to suggest that therapeutic jurisprudence might bring other dimensions to this inquiry to help transform restorative justice beyond the modest improvements envisioned by Professor Wemmers. While I agree with her conclusion about the transformative potential of therapeutic jurisprudence for the field of restorative justice, in my view that potential is perhaps even greater and could be more consequential. To begin with, I believe it is important to emphasise that therapeutic jurisprudence is a *critical lens* that applies theory and research from the social sciences and from interdisciplinary sources to examine laws and policies and is not merely abstract (Wexler, 1995). Further, it provides a useful vehicle for investigating the law, legal practices and legal actors from many perspectives and is not limited to promoting one particular theory or viewpoint. As much as therapeutic jurisprudence embraces procedural justice and its values of dignity, respect, voice and validation (Tyler, 2003), it is important to recognise that therapeutic jurisprudence contemplates a broader set of theoretical and research-based ideas than solely procedural justice and a wider array of possible reforms beyond solution-focused courts. In a similar vein, restorative justice can benefit from being more heavily theorised and can encompass much more than victim-offender mediation in the criminal legal context.

In a recent essay, David Wexler, co-founder of therapeutic jurisprudence, reflected on the distinctive features of therapeutic jurisprudence, including its multi-disciplinary methods, incorporation of empirical knowledge, encouragement of broad participation and consultation and aspiration towards a broader cultural shift, namely ‘promoting a culture of psychological wellbeing and real and

perceived access to justice as important goals of the law' (2014: 10). Wexler went on to mention the example of procedural justice, and, while he acknowledged its many important contributions, he also cautioned against conflating therapeutic jurisprudence and procedural justice, as part of his effort to emphasise the importance of inviting additional theories and areas of inquiry (Wexler, 2014).

5 Conclusion: therapeutic jurisprudence as a vehicle for re-imagining restorative justice

When seen in this light, therapeutic jurisprudence can be the vehicle for introducing more theory and research into the field of restorative justice, which has historically been critiqued as undertheorised (Llewellyn, Archibald, Clairmont & Crocker, 2013). In this way therapeutic jurisprudence could contribute to increased accountability and quality control in the field of restorative justice. Additionally, the introduction of relational theory as well as other theoretical perspectives could lead to re-thinking how restorative justice processes are assessed and, specifically, how success might be measured beyond individualised outcomes (Llewellyn et al., 2013). Other possible theories that therapeutic jurisprudence could engage with systemically to foster the development of restorative justice would include citizenship theories, social rights theory, deliberative democracy and attachment theory (Llewellyn et al., 2013). In sum, therapeutic jurisprudence can aspire to transform restorative justice on a much bigger scale by harnessing theories and research methods that can help the movement realise its relational potential.

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