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Navigating Subordination: The Potential of Restorative Justice

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Abstract

The patriarchal foundation of society is built on the domination of others. Gender, sex, race, and age, all place individuals in a subordinated position within the social hierarchy. For women, this is a complex and precarious position to be in, as not only must they navigate the complicated intersections of gender, race, and age, but they must also contend that their sex renders them secondary to the domineering male figurehead of the state and its subsequent extensions. The aim of this thesis is to convey how the patriarchal structure of the retributive legal system opposes the justice needs of victim-survivors in the aftermath of sexual violence, proposing that alternative methods of justice delivery must be implemented to ensure that all in society have access to justice. To do this, the literature surrounding sexual violence, rape myths and their interaction with the criminal justice system will be explored. Following this, a review of the literature on the functioning of conventional adversarial legal systems and their treatment of victim-survivors of sexual violence is examined. Lastly, the use of restorative justice in cases of sexual violence is explored, in a bid to discern its potential to better meet the individualized needs of victim-survivors of sexual violence. If the condition for benefitting from retributive due process is adherence to the patriarchal and paternalistic conceptions of women and their role in society, then restorative justice can potentially offer them a means of navigating their subordination to achieve justice.

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Chapter 1

Introduction

The subordination of women in male-dominated societies is no new concept. Since the 1970s, feminist scholars have argued this issue. It is now widely understood that there is a connection between the male-dominated social order of differing societies and sexual violence perpetrated against women. The patriarchy and sexual violence are cyclic in their pursuit of female subordination. This positioning of women within the social framework is damaging as the patriarchal ideology places women as both dependent upon, and at the mercy of, men for protection and security. They are both the protectors of women, and their predators (Brownmiller, 1975).

For this thesis, the concept of patriarchy will be derived from Hunnicutt's (2009: 557) definition: it is the accumulation of a series of social arrangements benefitting men, positioning them as the dominant group in the social hierarchy, ideologically and structurally. It manifests in various ways across the social and historical landscape. The advantages for men within this social structure are far-reaching and present at both macro and micro levels within society. Patriarchal structures are consistent with the formation of the state, and the political, legal, and economical spheres that operate within it. Whereas micro level patriarchal structures exist within the family and the community. Both levels disseminate gendered narratives into society, propagating the patriarchally assigned traditional sex-role behaviours of men and women. These dictate the sexual and interpersonal ways in which men and women interact within the overarching patriarchal structure.

Patriarchal systems are structured along categorical lines of domination, with gender being just one among many which influence the behaviour of institutions and their actors. This, I argue, is clearly seen in the functioning of the traditional justice system. As Hunnicutt (2009) contends, its' retributive conception of justice and the emphasis it places upon the domination and control of those subordinate to it is coherent with patriarchal ideals of the domineering male-figurehead. The domination of the criminal justice system extends beyond its rule over

individuals in society, taking precedence above other institutions in its delivery of justice. The conventional criminal justice system has positioned itself as the individual distributor of justice. By commanding that the state becomes the sole means by which individuals can achieve justice, the retributive system paternalistically removes the victim and offender from the judicial process. It reframes the offence as a crime committed against the state rather than the individual, giving those facing prosecution access to official justice resources to combat the full might of the state.

In cases of sexual violence, the victim-survivor is removed from court proceedings, relegated to the position of witness in their own pursuit of justice. Just as patriarchal narratives regarding traditional sex-role behaviours of men and women influence individual actors within society, so too do they within the criminal justice system. Thus, rape myths can be considered as an extension of the proliferation of gendered domination, contributing to the continued subordination of women within the social patriarchy. The operational functioning of the retributive system is dependent upon those operating within it, many of whom prescribe to patriarchal notions of specific gender role. This adherence to a hierarchically structured social and gendered norm places women in an increased position of subordination due to paternalistic narratives of what constitutes an ideal victim, and what constitutes as a real rape.

Paternalistic conceptions of ideal victim-survivors insist they adhere to socially constructed gendered norms of behaviour and positioning within society. Conversely, society's unideal version consists of women who find themselves in what is constituted as male-dominated areas of society. This results in many victim-survivors enduring the additional punishment of reduced access to justice, on top of the initial reprimand of existing in a predominantly patriarchal society. This paternalistic dimension to the construction of women invites the rhetoric that women contribute to their own subordination. The reality is that society is patriarchally structured to subordinate women. The violence committed against them, overtly or otherwise, is perpetrated by the very male-domineering figureheads who women must turn to for protection, representing just one dimension of their subordination within the patriarchal hierarchy. The further denial of their self-determination by diminishing their social and legal standing within society and the criminal justice system serves as an additional method of demoting them to their secondary position within male-dominated cultures.

The composition of retributive mechanisms within structurally patriarchal societies reduces their ability to seek justice for the violence committed against them. If conventional methods of justice delivery are continuously denied, it is time for alternative modes of justice to be implemented. This is where restorative justice (RJ) has the potential to alleviate the harms committed by the criminal justice system. While any system connected to the retributive model can breed paternalistic conceptions of the sex-role behaviours of women within society, the intimate and informal setting of victim-offender mediation (VOM) has the capacity to mitigate against the patriarchal narratives that dominate courtrooms, challenging them one case at a time. Through this process, practitioners can prepare a strategy that can potentially revolutionize the way men and women perceive of their positions within hierarchal systems of discrimination. RJ has the potential to be a transformative experience through the most basic form of human interaction, dialogue. It can potentially foster equality among parties, contributing to the relearning of social roles and removing the diametrically opposing conditions of domination and subordination. Instead, reframing individual interactions as those between people.

The aim of this thesis is to explore the extent to which RJ can potentially meet the justice needs and interests of victim-survivors of sexual violence. This will be done by examining the criminal justice system through the lens of societal and legal patriarchal domination, with the intention of first interrogating the proliferation of rape myths within society and the judicial system. This is to determine the ways in which patriarchal narratives surrounding the sex-role behaviours of women and men impact the ability of the retributive system to deliver on its self-ordained ruling of unbiased justice delivery for all. Chapter 1 will look at how sexual violence is defined by feminist theorists, exploring the literature in a bid to provide a reason for its occurrence in society. It will then go on to review four common rape myths which persist within society, drawing on both empirical and theoretical literature spanning from early feminist publications, to work as recent as 2020, to convey their prevalence in patriarchally dominated societies across time, and to illustrate their ability to reduce the likelihood of victim-survivors achieving justice through conventional means of justice delivery.

Chapter 2 will look at the treatment of victim-survivors of sexual violence who are processed through the retributive system, and the extent to which patriarchally structured approaches to justice can meet their needs. Focusing primarily on the adversarial process, this chapter

examines the literature pertaining to the experiences of victim-survivors within the criminal justice system. This review of the literature is done through the lens of patriarchally dominated legal structures, which is a prominent factor in how retributive systems handle cases of sexual violence. It then goes on to look at the effects of sexual violence upon victim-survivors. Attention is drawn to the cyclic nature of patriarchal domination and sexual violence in the subordination of women within society. Following this, literature surrounding the needs of victim-survivors is explored, drawing from Daly's (2017) comprehensive review of work in this area, demonstrating how these needs are discordant to retributive justice goals.

Chapter 3 looks extensively at the practice of RJ, exploring the extent to which it can potentially accommodate the justice needs and interests of victim-survivors as established in the previous chapter. It will first review the theoretical literature surrounding RJ, positioning it as an alternative means of justice delivery. It then examines the extent to which RJ can potentially meet the needs of victim-survivors of sexual violence, taking into consideration criticisms surrounding its practice, particularly in relation to its possible future connection with the criminal justice system. Following this, the potential benefits of the use of restorative justice will be explored. Drawing from a range of sources, this is to convey that RJ practices, such as that of VOM, harbour the potential to address all the justice needs and interests of victim-survivors of sexual violence. Chapter 3 will then go on to examine the potential problems connected to the use of RJ in cases of sexual violence, exploring criticisms and reasons for the hesitancy surrounding its use. It will then examine the literature combatting such concerns, indicating to the paternalistic conceptions surrounding the applicability of RJ in cases of sexual violence. This is to argue that the potential for RJ is vast, and when carefully embarked upon it can transform common conceptions of the law as justice for some, to a multifaceted and multidimensional method of elevating justice for all.

Chapter 2

Sexual Violence: Rape Myths and the Patriarchy

Sexual violence persists within society. Scholars have written for decades of its prevalence; hence it remains a topic that demands debate. While men also suffer from sexual victimization, it is women who predominantly endure such crimes. Sexual violence has the potential to impact everyone, it is the ‘shadow pandemic’ of recent times (Bhattacharyya, 2021: 2). However, prosecuting such offences remains difficult. Research indicates that the criminal justice system revictimizes complainants, rather than provide retribution or recovery. Critiques of the traditional justice system draw attention to the overarching denial of victims’ rights in the courtroom, particularly in cases of sexual violence. The phallogentric nature of the justice system positions women seeking prosecution with scepticism (Smart, 1989). Myths and false beliefs permeate the legal process, negatively impacting victim-survivors while placating, justifying, and trivializing sexual violence. Such fallacies promote a rape culture that allows for the sexual objectification of women, laying the foundation for a justice system that adheres to the patriarchal narrative of women as vindictive liars who invite their victimization. Criminal justice actors at all levels potentially adhere to such beliefs, resulting in negative experiences for those involved in a procedure that reduces chances of conviction in contested cases and which fails to meet the justice needs and interests of victim-survivors. This chapter seeks to explore these beliefs and demonstrate that they negatively affect complainants seeking recognition of their victimization, whilst simultaneously excusing and rationalizing the behaviour of the perpetrator. In doing so, this chapter demonstrates how rape myths, stemming from overarching patriarchal narratives surrounding sexual violence, permeate the courtroom, impacting the outcome and further subordinating victim-survivors within the patriarchal social hierarchy.

To do this, this chapter will begin by providing a definition of sexual violence as per the World Health Organization’s classification which serves as an umbrella term, covering an array of offences. It then explores the theoretical definitions of sexual violence, to capture the

multifaceted nature of its perseverance in both academic and judicial environments. Imperative to the discussion of sexual violence is the debate surrounding its motivations, occurrences, and influences. Here, the connection between patriarchal societies and gendered sexual violence is highlighted. Following this, Christie's (1986, 2018) theory of an 'ideal victim' is discussed, a topic many have made note of regarding its unideal parallel which bears striking similarities with popular rape myths and paternalistic notions regarding traditional sex-role behaviours of women, which permeate public consciousness and courtrooms alike. Drawing from the work of Peterson (2019), rape myths stem from a domineering rape culture, providing a space for societal beliefs that slyly endorse male sexual violence and assert such fallacies as fact. Penultimately, it provides an overview of four common false beliefs that permeate judicial perceptions of victims and perpetrators of sexual violence. All of which contribute to the likelihood that victim-survivors' needs will not be met within the conventional justice system. This chapter concludes that sexual violence affects all in society. False stereotypes about perpetrators and victim-survivors negatively impact trials and judicial prosecution, contributing to the high levels of dissatisfaction associated with the prosecution of sexual violence and stemming from a societal culture that encourages misogyny and trivializes sexual violence to benefit patriarchal norms. Consequently, jurors' perceptions are pre-conceived in favour of societal norms that perpetuate sexual violence.

Defining Sexual Violence

Sexual violence is pervasive in society (Gillen Report, 2019). It has the potential to affect everyone, regardless of their social category (Gillen Report, 2019). While the global pattern for homicide positions men as forerunners in perpetrating violence against themselves, it is women who bear the brunt of sexual violence (Razavi, *et al*, 2019; UNODC, 2019). Though, men are not free from sexual victimization (Davies, 2000; Ellis, 2002; Doherty and Anderson, 2004; Light and Monk-Turner, 2009; Jina, *et al*, 2020). When discussing such a topic, it is important to clarify that rape is an apt definition for all sexual encounters that lack the understanding and consent of either party; rape is non-consensual sex (Archard, 2007), and is present beneath the umbrella term of sexual violence (Krug, *et al*, 2002). The World Health Organization captures the multifaceted nature of sexual violence, defining it as:

“any sexual act, or attempt to attain a sexual act... using coercion, by any person regardless of their relationship to the victim... Coercion can cover a whole spectrum of degrees of force... Sexual violence includes *rape*, defined as physically forced or otherwise coerced penetration... using a penis, other body parts or an object... Sexual violence can include other forms of assault involving a sexual organ...” (Krug, *et al*, 2002: 149, *emphasis in original*).

A definition of sexual violence is imperative as it encompasses many acts. Additionally, given the prevalence of rape myths within society the criminal justice system may handle its varied contexts differently (Spohn and Tellis, 2012). As demonstrated above, it manifests not always as overt violence, it can also be covert. According to Zinsstag and Keenan (2017), attempts at finding an all-encapsulating definition of all its eventualities is complex. As such, it is understood as encompassing several different crimes, affecting both men and women at varying degrees (Zinsstag and Busck-Nielsen, 2017). It can be used during times of war (Ferrales and McElrath, 2014), as a motivation to fight (Kelly, 2010), or as a means of ethnically cleansing a population (Hale, 2010).

A theoretical definition of sexual violence has long been debated, with Brownmiller (1975) laying the foundations for its exploration. While not all academics adhere to a singular perspective, there is a consensus that defines sexual violence as the result of patriarchal traditions of male dominance within political, familial, and economic spheres, which reflect and reinforce the sexual relations between men and women (Spivak, 2011). Finding a definitive definition of sexual violence is important to the wider discussion of its prevalence in society. There have been damning socio-evolutionary theories put forward by Thornhill and Palmer (2000), which promote the notion of sexual violence as natural (Thornhill and Palmer, 2000; Travis, 2003; Spivak, 2011). According to Thornhill and Palmer (2000), female choosiness hinders the evolutionary process. As a result, sexual violence and coercion is conceptualized as a type of sexual selection (Thornhill, Palmer and Wilson, 2000). Feminist scholars rebutted this argument and broadened their perspective, with Kimmel (2003), arguing that sexual coercion is not only about sex but that it occurs alongside other feelings of entitlement, and disregard for the integrity or bodily autonomy of the victim. It is propagated by patriarchal norms which position women in a subordinate position to men (Spivak, 2011; Travis, 2003; Hunnicutt, 2009; Daly, 1989; Brownmiller, 1975). According to Heberle (2014), the narrative that sexual violence can be understood in terms of sexual

selection reduces sexuality to reproduction, further problematizing our understanding of the complexities intertwined in sex and violence. Such misunderstandings contribute to myths about sexual violence, permeating public opinion and judicial proceedings.

It is important here to clarify the connections between gendered sexual violence and the structure of patriarchal societies, as there is now implicit agreement among feminist scholars as to the link between a male-dominated social order and violence against women (Hunnicut, 2009). The notion of patriarchal dominance is a running theme throughout this thesis, as it is inherent to the functioning of society. According to Hunnicutt (2009: 557), the term patriarchy describes a set of “social arrangements which privilege males”. It is an ideological and structural scheme of domination in which men are also victimized through institutions such as the criminal justice system (Hunnicut, 2009). A complexity inherent to women’s subordinated position within the patriarchal system is that they are not victimized because of their gender, but because of their adherence, or lack thereof, to traditional sex-role behaviours, or in accepting the masculinist protection coherent to their subordinate position in the social hierarchy (Hunnicut, 2009; Daly, 1989; Bloom, 2018). This culminates in selective protections for those willing to adhere to the patriarchal prototype, with women becoming increasingly both dependent upon, and at the mercy of, men for protection (Brownmiller, 1975; Hunnicutt, 2009; Bloom, 2018).

Sexual violence is not solely about sex (Kimmel, 2003; Spivak, 2011; Travis, 2003; Kelly, 2010). It is an amalgamation of misogyny, gendered power imbalances, and a want to inflict pain and humiliation upon a victim who represents an opposing faction, a femininity that is subordinate to the patriarchal ideology (Ferrales and McElrath, 2014; Wood, 2010; Kelly, 2010; Brownmiller, 1975). To this end, I posit that patriarchal domination and sexual violence are cyclic in nature, each contributing to the other in a campaign of female subordination within the social hierarchy.

Ideal Victim Theory and Rape Myths

When it comes to sexual violence, there are pre-conceptions about victims and perpetrators that are present in both public and court opinions. These pre-conceived notions manifest as rape myths (Burt, 1980). According to Burt (1980: 217), rape myths are defined

as “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists”. Gerger, *et al* (2007: 423) define rape myths as:

‘Descriptive, or prescriptive beliefs about rape... that serve to deny, downplay or justify sexual violence that men commit against women’.

Rape myths first gained traction during the 1970s, with Brownmiller (1975) and Schwendinger (1974) classifying them as a set of cultural beliefs that support sexual violence against women and trivialize acts of sexual violence (Parratt and Pina, 2017). They exert considerable influence on society, which in turn applies profound influence over its prosecution in the courts (Torrey, 1991). According to Parratt and Pina (2017), false beliefs about rape and sexual violence can explain the high rates of attrition associated with formal prosecution. Myths about rape and other forms of sexual violence harbour elements of Christie’s theory of an “ideal victim” (1986, 2018). For Christie (2018: 12-14), there are six traits that define a person as such, those being: they are weak, “...sick, old, or very young at the time of attack”; they were carrying out a “respectable project”, such as caring for a loved one; they were “where they could not be blamed for being”, such as a brightly lit street; the perpetrator was “big and bad”; they did not know nor have a personal relationship with the victim; and they are capable of making known their case and outright claim the status of victim.

Conversely, a victim who is not deemed to be ideal is someone who: is strong, thus able to resist an attack (Parratt and Pina, 2017; McMahon and Farmer, 2011; Smith and Skinner, 2017); not conducting a respectable project, such as consuming alcohol (Parratt and Pina, 2017; McMahon and Farmer, 2011; Torrey, 1991; Ellison and Munro, 2013); someone who could and should have protected themselves by not being somewhere they should not have been (Parratt and Pina, 2017; McMahon and Farmer, 2011); they were as large as their attacker; thus on equal footing (Schwendinger & Schwendinger, 1974); and, they have a prior relationship or are known to the offender (Parratt and Pina, 2017; Smith and Skinner, 2017; Ellison and Munro, 2013). These differences in characteristics are important when it comes to discerning whether they are an ideal victim (Christie, 1986, 2018). This is echoed by Stevenson (2000: 345), who found that those alleging sexual assault are expected to portray themselves as “unequivocal victims” to ensure their credibility. This persists in modern courtroom proceedings, contributing to myths regarding false allegations in legal institutions (Edwards, *et al*, 2011). Victims are understood in terms of the events they have endured, and

judgements of their character relate to the socially desirable moral characteristics of those who employ the role of the victim (Lewis, *et al*, 2019). Therefore, an ideal victim must be deemed weaker when compared with the offender, and they ought to have fought to protect themselves from victimization (Christie, 2018). This view is exemplified in the courtroom, with beliefs about sexual violence echoing the description of an unideal victim (Leverick, 2020; Christie, 1986, 2018).

Schwendinger and Schwendinger (1974) presented five rape myths. Those being: the myth of the impossibility of rape; that the victim was “asking for it”; man’s “uncontrollable passion”; the sex-role myth; and that the legalization of prostitution will reduce incidences of rape (Schwendinger and Schwendinger, 1974: 18-23). Brownmiller (1975: 311) theorized three primary male myths of rape, those being that: all women want to be raped; women cannot be raped against their will; that victims’ “ask for it”, and as a result should “relax and enjoy it”. For Torrey (1991: 1025) classic rape myths can be divided into four categories: that only women with ‘bad’ reputations are raped; women are prone to violent sexual fantasies and enjoy it; women precipitate sexual violence by their appearance and behaviour; and, the vindictive woman, who falsely claims rape after consenting. According to Peterson (2019: 475), the most notable myths about rape victims are that: victims often lie about being raped; victims precipitate the rape through their behaviours and actions; and, that victims have the responsibility to protect themselves from the attack. Leverick (2020: 257) categorized such rape myths into four categories of prejudicial beliefs, those being: beliefs that blame the victim/survivor; beliefs that cast doubt on allegations; beliefs that excuse the accused; and beliefs about what “real rape” looks like. These false beliefs are propagated throughout the media, with Easteal, *et al* (2015) contending that the recurring theme of mutuality of responsibility reinforces dominant social conceptions which blame the victim for their own victimization. These myths are interconnected, and repeated time and again throughout the literature on perceptions of victims of sexual violence both in the courts and the wider public.

According to Peterson (2019), these myths are cultivated by a societal culture that normalizes, trivializes, and justifies rape and sexual violence. For Buchwald, *et al* (1993), in a culture such as this, women reside in a world where physical and emotional violence against them is considered routine. ‘Rape culture’, as defined by Peterson (2019: 470), is a set of societal beliefs that subtly endorse male violence against women. Attitudes that make up a rape culture assert that myths about sexual violence are widely believed as facts regarding the

assailant and victim (Peterson, 2019). It is identified in the activist context through certain “communicative acts such as catcalls, scripts of street harassment and rape jokes”, and through the perpetuation of rape myths, media legitimization of sexual aggression and violence against women, along with their sexual objectification (Rentschler, 2014: 67; Hildebrand and Najdowski, 2014: 1060; Garland, *et al*, 2016; Fadnis, 2018). Alcohol has also been found to be not only a tool for committing sexual violence, but it is also ingrained into rape culture (Hayes, Abbott and Cook, 2016). The trial of Brock Turner is an example of how criminal trials are influenced by the cultural endorsement of rape myths in the media and the courtroom (Peterson, 2019). There is evidence that jurors take with them false and prejudicial beliefs about what ‘real rape’ looks like, and what genuine victims of sexual violence would do in such situations before stepping foot into the courthouse (Peterson, 2019; Leverick, 2020: 273).

Across the literature surrounding rape myths, there are several consistent and repeated narratives which persist in blaming the victim for their assault, absolve the perpetrator of responsibility, and reduce the severity of sexual violence. Such myths make it difficult to establish whether an incident of sexual violence has occurred (Torrey, 1991). Of which is the foundation of the criminal justice system, to discern the truth based upon the evidence presented at court. These false beliefs ultimately impact the likelihood of sexual violence cases ending in successful prosecution, resulting in the denial of victim-survivors’ needs. To explore the correlation between rape myths and negative court outcomes, four recurring narratives will be explored below.

Evidence of Resistance

According to Lees (1996), a lack of visible injury is considered evidence of consent, rather than as the result of a fight, flight or freeze response. The latter response results in the victim becoming unable to move or speak (Peterson, 2019). This rhetoric is repeated throughout the literature surrounding rape myths and court proceedings, something which is often held against victims who continue through the criminal justice process (Lees, 1996; Smith and Skinner, 2017; Ellison and Munro, 2013; Schwendinger and Schwendinger, 1974; Torrey, 1991; Bohmer, 1974). According to Bohmer (1974: 305), judges consider circumstantial evidence important when determining whether an act of sexual violence occurred. Such circumstantial evidence that indicates to the ‘good faith’ of a victim includes evidence of

physical trauma and testimonies from witnesses who would have seen the victim in a ‘state of disarray or injury’ following the incident. Both such conditions provide credibility to the victims’ allegation of assault. Similarly, Schwendinger and Schwendinger (1974: 20) found that a lack of ‘cuts and bruises’ is often noted by defence attorneys in a bid to prove that the perpetrator is innocent. This lack of evidence of resistance is further exhibited as a means of maximising the ‘moral responsibility’ of the victim to defy their attacker and escape. Thus, their undamaged body is declared as an indication of their consent. Torrey (1991: 1049) reiterated what Field and Bienen’s study revealed, that many potential jurors know very little about the reality of rape, with 32% believing that resistance on the part of the victim was a critical factor in determining if an act of sexual violence had occurred, with another 59% feeling that a victim should do all in their power to resist an attack. Ellison and Munro (2013: 314-315) found that jurors upheld the expectation that a ‘genuine victim’ of sexual violence would have made a significant attempt at resisting and as a result there would be proof of injury upon either their person, the suspects’, or both. This was echoed by Smith and Skinner (2017), who contended that rape myths remain relevant to the deliberations of jurors, despite attempts at emphasizing the reality of sexual violence. Leverick (2020) also raises this false belief as one of the primary prejudicial beliefs among jurors. What can be derived from this research is that this false narrative has persisted over time, regardless of the strides made by feminist scholars to highlight the varied responses of victim-survivors to sexual violence.

Precipitating Sexual Violence

The notion that victim-survivors precipitate their attack is another prominent rape fallacy (Edwards, *et al*, 2011). Such a belief is aimed to absolve the perpetrator of responsibility for the assault (Ellison and Munro, 2013). According to Schwendinger and Schwendinger (1974: 21), there are various assumptions made about the behaviour of the victim prior to their assault, with the most common being that they were ‘asking for it’. The idea that a victim asks to be sexually violated falls into an umbrella category under which there are more precise notions such as acting promiscuously, dressing provocatively, consuming alcohol, or have a prior history with the perpetrator (Edwards, *et al*, 2011; Ellison and Munro, 2013). For Brownmiller (1975), it is a classic way for rapists to shift the blame from themselves to the victim. Despite Torrey (1991) indicating that as many as 82% of incidents of rape are pre or partly planned, the myth persists. For Buddie and Miller (2001: 139), the notion that a victim

had ‘asked to be raped’ is one of the primary stereotypes surrounding victims of sexual violence. According to Ellison and Munro (2013), those who are victimized by acquaintances are most likely to be blamed by jurors and other third-party spectators of precipitating the attack. McMahon and Farmer (2011: 71) have written that a common myth which reappears over time is that the way a victim dresses or acts indicates that they are ‘ask[ing] for it’. This is akin to findings presented by McMahon (2010), who found that most college students either strongly agreed or agreed that “if a girl acts like a slut, she is eventually going to get into trouble” (McMahon, 2010: 9; Edwards, *et al*, 2011). In a study conducted by Parratt and Pina (2017: 80), male officers more often blamed victims of sexual violence if they wore seemingly ‘provocative clothing’. Similarly, Leverick (2020: 257) found that a common belief regarding victims of sexual violence is that those who voluntarily consume alcohol are ‘partly to blame’ for their victimization.

Female Vengeance (False Allegations)

The myth that a complainant ought to be viewed with scepticism stems from the words of Sir Matthew Hale in the 17th Century (Schwendinger and Schwendinger, 1974; Torrey, 1991; Edwards, *et al*, 2011), who wrote:

“rape is a detestable crime... but it must be remembered, that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent...” (Schwendinger and Schwendinger, 1974: 24; Edwards, *et al*, 2011: 768).

According to Brownmiller (1975: 22, *emphasis in original*), the story of Potiphar’s wife also serves as a warning and morality lesson, expressing concern for what might happen “to a fine, upstanding fellow if a *vengeful female lies* and cries that she has been assaulted”. Edwards, *et al*, (2011) further contends that the belief that women falsely accuse men of rape as punishment for their rejection of romantic interest has existed for centuries, utilizing the Greek myth of Hippolytus and Phaedra which portrays the patriarchal narrative that women are vindictive liars in cases of sexual violence, as an example of its prevalence. Such cautionary instructions have persisted throughout the academic literature, with Torrey (1991) categorizing this false belief as one that is motivated by vengeance, envy, or embarrassment on behalf of the victim following a consenting sexual encounter. According to Edwards, *et al* (2011: 768), the legal system is an institution which, throughout its history, has laid claim to

the belief that women falsify allegations of sexual violence, with the “Hale Warning” continuing to be read by jurists in court as recent as the late twentieth century. Ellison and Munro (2013: 318) found that members of the jury would suggest that complainants who had a prior relationship with the alleged offender would self-inflict injuries to “bolster the credibility of [their] false rape allegation”. According to Smith and Skinner (2017), delayed reporting of the assault or inconsistencies in a victims’ evidence is also considered by juries as an indicator of a false allegation. This same study found that complainants’ who were not visibly distraught or, conversely, ‘too upset’ were also considered to be less credible to juries during trials of sexual violence (Smith and Skinner, 2017: 444). Furthermore, Leverick (2020: 269) found that the myth of false allegations endures with jurors expressing views regarding its prevalence in cases of sexual violence, stating that in each study jurors “constructed a narrative whereby the complainant was angry that the defendant did not wish to start or resume a relationship and made a false rape allegation out of a desire for revenge...”.

Uncontrollable Male Desire

According to Peterson (2019), there are two common depictions of those who commit sexual violence, each of which are perpetuated by a societal rape culture. The first being that the perpetrator acts out of passion and are at the mercy of their uncontrollable urges (Peterson, 2019; Schwendinger and Schwendinger, 1974). The second is that they are violent, manic, or mentally disturbed criminals (Peterson, 2019; Schwendinger and Schwendinger, 1974; Torrey, 1991). As for the latter, the reality is that many victims know their assailant, whether they be an acquaintance, partner, or family member (Peterson, 2019). According to Schwendinger and Schwendinger (1974), the idea that sexual violence is committed by men who cannot control their sexual passions maintains that it is a repercussion of victim precipitation, placing the offender on a continuum of sexual violence perpetration. Torrey (1991: 1040) writes that behavioural and social science research has established that those who commit acts of sexual violence are not “sex-starved momma’s boys”, but rather they are everyday individuals. Such findings indicate to the influence of patriarchal rape cultures. Ellison and Munro (2010: 793) found that this myth was regularly expressed, with jurors contending that the defendant was at the mercy of his sexual desires, insinuating they were “so transfixed” that he could not “register what [the victim] was actually doing”. Similarly,

McMahon and Farmer (2011) contend that the myth that victims are abused because the perpetrator could not control themselves is continuously cited. Smith and Skinner (2017: 444) found that during sexual assault trials the existing narrative emphasized throughout depicted women as those who must police “men’s single-minded pursuit of sex”, thereby describing offenders as less culpable should the victim be perceived as having ignited the perpetrators’ uncontrollable need for gratification. The belief in man’s uncontrollable sexuality is again reiterated by Leverick (2020), who categorized it as one of four common prejudicial beliefs about sexual violence that is still held by jurors.

Conclusion

Sexual violence affects everyone in society. Though primarily experienced by women, men are also victimized. The most acknowledged form of sexual violence is rape, but it is not limited to this. The term sexual violence serves as an umbrella term which covers an array of coercive tactics, encapsulating wide degrees of force, literal or threatened. It can also be used strategically during times of war, though this varies across conflicts (Kelly, 2010; Ferrales and McElrath, 2014; Wood, 2010). Motivations for such offending are complex, just as the relationship between sex and violence. Sexual violence is considered a result of the patriarchal structure of society, which operates along gendered lines and insists upon individual adherence to traditional sex-roles for protection, contributing to the cyclic pattern of male-domination and female subordination. Acknowledging that sexual violence is a consequence of the ways in which society is structured is key to addressing the underlying reasons for such severe offending.

From a theoretical perspective, a definitive motivation and definition of sexual violence has been heatedly debated among feminist and social scholars alike. Feminist theorists have reached a consensus that it is a consequence of patriarchal societal traditions within familial, political, and economic spheres that not only reproduce, but also reinforce the sexual relations between men and women. It is motivated by misogyny, feelings of entitlement and the disregard for the autonomy of the subordinated victim. Reasons for such violations are complex, and to argue that sexual violence is solely about procreation is to disregard the complexities entwined in both sex and violence. As a result, false beliefs regarding perpetrators and victim-survivors of sexual violence infiltrate the legal process. Such beliefs harbour elements of Christie’s (1986, 2018) ideal victim theory, creating a dichotomy

between the reality of rape, and the patriarchal perceptions held by the wider public, and by extension, those who work in the criminal justice system. Consequently, complainants must portray themselves as an unequivocal victim, ensuring their credibility by adhering to the male-dominated stereotypes related to traditional sex-role behaviours.

Rape myths are not a new occurrence. Beliefs such as that false accusations are more common than not stem most recently from the 17th Century, and as early as biblical narratives such as Potiphar's wife (Brownmiller, 1975; Edwards, *et al*, 2011). Other mistruths excuse the perpetrators actions. These patriarchal narratives feed into the domineering ideology of male supremacy and female subordination. The notion that victims' play a role in their victimization diverts the blame onto the complainant, normalizing sexual violence in society, and tying into the ideal that men cannot be in control of their sexual urges. Such a belief, coupled with the myth that victim's must resist their attack at all costs, and present evidence of such resistance, further affects their morality in the eyes of the judiciary and the wider public.

These stereotypes are widespread and negatively impact complainants of sexual violence, serving to rationalize the actions of defendants and exert considerable influence over outcomes in prosecution. They contribute to the high levels of attrition often associated with cases of rape and sexual violence. These myths create an environment that serve to revictimize victim-survivors of sexual violence, as those involved in the court proceedings will already harbour preconceived notions regarding the validity of their victimization. Such false beliefs stem from a societal culture that not only subtly encourages violent and misogynistic attitudes towards women, but also seeks to normalize acts of sexual violence for the benefit of the patriarchal norm. As a result, juror perceptions of both offenders and victims who become involved in the criminal justice system and those who make it to the courtroom are pre-conceived, and prejudicial, in favour of the perpetrator.

Chapter 2

Patriarchal Justice: The Criminal Justice System and the Needs of Victim-Survivors

It is widely acknowledged that conventional criminal justice mechanisms fail to address victim-survivors' needs and justice interests in cases of sexual violence. In particular, the adversarial system, which is the focus of this chapter, provides members of the judiciary a dominant role in selecting and challenging the evidence presented in court through witness confrontation, cross-examination and the "pre-trial discovery" of evidence to garner information from the opposition (Fan, 2014: 776). This combative approach neglects the needs of victims of sexual violence, who have varied individual needs that cannot all be addressed through the conventional retributive system (Herman, 2005). The conditions of the adversarial systems can cause victim-survivors to experience revictimization. For those vwho have already endured humiliation, degradation and who have been terrorized by their offender, criminal trials offer little in the way of protection from further harm. Change is crucial if victims are to be granted the justice they continuously seek and are overtly denied. Victim-survivors', as Herman (2005: 4) states, "understand only too well that what awaits them in the legal system is a theatre of shame". In the aftermath of serious crime, victims deserve respect. What is important to consider in the following chapter is the reality that the justice needs of victim-survivors' of sexual violence are not met in the current system, despite the inclusion of victim impact statements (VIS) and shield laws to protect complainants pursuing prosecution. If the criminal justice system continuously fails to meet victim-survivors' needs, then an alternative mode of justice ought to be considered to remedy the problems inherent to the retributive system.

To convey this, this chapter will begin by exploring the literature on the treatment of victim-survivors in court. Patriarchal narratives regarding sexual violence permeate the judicial system. Thus, victim-survivors are often revictimized by the court process. Revictimization occurs when an individual who has experienced trauma receives negative reactions when

disclosing their experience (Carroll, 2021). This term relates to the experience of victim-survivors' within the criminal justice system, and the "unresponsive people and procedures they encounter" (Carroll, 2021: 2). This chapter will then examine the functioning of the adversarial system, drawing attention to its paternalistic nature in how it removes conflicts from victim-survivors' and offenders', reordering the crime as a violation against the state. It will also look to the tactics of the judiciary when victim-survivors continue through the process, centring on the extraction of evidence by lawyers when adverting or securing conviction. This is experienced through the intense examination tactics and strategies of intimidation employed by the defence to denounce the victim before the court. Following this, the effects of sexual violence upon victim-survivors will be examined, highlighting the multifaceted ways in which trauma impacts victim-survivors. Literature surrounding five commonly repeated needs of victim-survivors' will then be explored. Daly (2017: 115) describes this research surrounding the justice needs and interests of victim-survivors' as being conducted in a "vacuum". The chapter concludes with the recognition that the justice needs and interests of victim-survivors' are kaleidoscopic, contingent on individual, lived experiences of victim-survivors. Victimization, and its consequences, are unique to the individual. As a result, the traditional justice systems' response to sexual violence must be equally as varied.

Treatment of Sexual Violence Victim-Survivors in Court

According to Herman (2005), crimes of dominance are intended to demean the victim in the eyes of the public, rendering them "impervious" to formal legal proceedings (Herman, 2005: 4). Patriarchal false narratives surrounding acts of sexual violence further hinder judicial processes. Standard criminal procedures are poorly designed to provide adequate remedies to crimes that are widespread and socially tolerated (Herman, 2005). According to Foucault, (1980: 194), culturally and socially, our lives are arranged through dominant discourses, producing, and reproducing our knowledge and understanding of events based upon hierarchically selected social norms. These norms are attributed to the patriarchal structure of society, whereby men dominate women (Hunnicut, 2009). Discourse surrounding sexual violence is no exception (Flynn, 2015). The patriarchal foundation of the justice system results in societal values being reproduced in the courtroom, influenced by false narratives surrounding victim-survivors of sexual violence and traditional sex-role

stereotypes (Hunnicut, 2009; Daly, 1989). Smith and Skinner (2017) found that while rape myths are sometimes rejected by the judiciary, they were still used routinely during the court process. According to Erez, *et al*, (2020), victims' experiences of the adversarial legal system are shaped by the conduct of judicial actors. The risk of re-traumatization is exacerbated by overarching patriarchal narratives depicting female victim-survivors as blameworthy and overly emotional (Erez, *et al*, 2020). Such fallacies can result in the victim-survivor withdrawing from formal legal processes, contributing to high attrition and low conviction rates (Hohl and Stanko, 2015).

Retributive Approaches to Justice

As Schafer noted in 1960, victims of crime are typically considered the “Cinderellas” of the criminal justice system (Schafer, 1960: 8; Erez, *et al*, 2020). This being that their suffering is paid little regard in the eyes of traditional justice mechanisms (Davies, 2015). Strides have been made towards better incorporating them into the adversarial system, yet these reforms have failed to fully realise an outcome whereby victim-survivors are included (Erez, *et al*, 2020). According to Erez, *et al* (2014), many victims still harbour feelings of frustration and dissatisfaction with their treatment by the judiciary, despite being provided ample legal supports. Although Roberts (2009) contends that the opportunity for victims to prepare a VIS represents validation for many, victim participation rights represent a “radical departure” from the ideology of common law justice systems (Erez, *et al*, 2020: 324). Both adversarial and inquisitorial models harbour the prerequisite for the presumption of innocence (Spencer, 2016). However, inquisitorial systems place greater emphasis upon pre-trial processes, in which evidence of the defendants' guilt *or* innocence is gathered and presented to the judge prior to trial (Spencer, 2016). Just as a victim-survivor only becomes as such before the law following the successful prosecution of the offender (Keenan, 2014, 2017), so too does the defendant only become an offender should they be found to be, or plead, guilty at trial. This aspect of the retributive justice model opposes the justice need of offender accountability, and further reduces the likelihood of vindication before the community and the law. Regehr, *et al* (2008) found that when defendants entered a guilty plea there were less opportunities for victim involvement in the process. According to the dominant patriarchal structure of the retributive system (Hunnicut, 2009), it is the states' primary responsibility to both obtain a conviction and to ensure the punishment is deserving

(Keenan, 2014). For Hunnicutt (2009), the “just deserts” model coheres with the patriarchal emphasis on the domination and control of those considered weaker than the domineering male figurehead. According to Fan (2014), over time the adversarial system has developed tactics that retraumatize victim-survivors of sexual violence, whereby the system harkens upon historical “ideals” which reframe crimes against the individual as offences against the sovereign (Fan, 2014: 781). As initially argued by Christie (1977), the retributive system steals conflicts from both the victim and the offender during the justice process, assuming control over proceedings by positioning both parties as secondary in the delivery of justice. Dylan, *et al* (2008: 679) contend that the retributive justice model often places victims at the “mercy” of a judicial system that takes sole responsibility in proving the guilt of the defendant beyond reasonable doubt. This paternalistic stance is due in part to the structure of criminal justice systems within patriarchal societies. Their composition is hierarchical, as is the traditional retributive system (Hunnicutt, 2009; Moulds, 1978). At its core the criminal justice system has a patriarchal foundation, structurally tied up with other systems of domination (Hunnicutt, 2009; Bloom, 2018; Chesney-Lind, 2006).

In modern criminal trials, the state has taken over complete representation of the victim. The patriarchal ideology of the justice system is that it is the state’s responsibility to determine whether a crime occurred, and to punish accordingly. This is to such an extent that, in many jurisdictions, victims are denied the right to fully participate in the justice process, or excluded altogether (Christie, 1977; Antonsdóttir, 2018). In cases of sexual violence, the victim-survivor becomes a complainant or witness, rather than a victim (Fairclough and Jones, 2017). They become the realized embodiment of specific patriarchal narratives of how sex-roles are assigned within the broader structure of society: the subordinated woman. This stereotype manifests in pockets of protection for some, but not for all. It is those who adhere to traditional gendered behaviours as assigned by the patriarchal social hierarchy who benefit from traditional approaches to justice (Hunnicutt, 2009; Daly, 1989; Bloom, 2018). As witnesses, they undergo the criminal trial process, their testimony serving as a “bit of evidence” rather than a lived experience of victimization (McGlynn, *et al*, 2017: 5). Burman (2009: 383) confirms that witnesses in sexual violence cases are required to “recount their experience in graphic detail”, during their time in the witness box. Historical evidence tracing the rise of rape trials presents them as “pornographic spectacle[s]” (Smart, 1989: 40). According to Clark (1987), throughout the eighteenth and nineteenth centuries in England, women who told of their violation in court were deemed immoral. This persisted to the point

where magistrates would defer such cases on the foundation that “a public airing of the case would corrupt public morals” (Smart, 1989: 40; Clark, 1987). Smart (1989: 40) argues that the demand for women to provide detailed accounts of their assault renders them “more and more of a spectacle” to prosecute their rapist. As demonstrated by Burman (2009), this element of the judicial process has persisted into the twenty-first century. This element removes the ability of the victim to control the format in which their story is told, a justice need reiterated across the literature (Daly, 2017).

Ellison (2000) described the adversarial system as confrontational and competitive. Smith and Skinner (2012) contend that the training received by barristers stems from the works of Wellman (1997) which advocates for attorneys to dominate the witness. This “macho adversarialism” (Taslitz, 1999) encourages victim degradation, placing winning at the forefront of the justice process, rather than justice itself (Smith and Skinner, 2012). For Taslitz (1999: 104), the culture that lawyers are trained in “promotes winning at... any cost”. Similarly, Smith and Skinner (2012: 304) found that barristers would frequently seek to “confuse, coerce and silence victims” to win their case. This behaviour is thought to be done “for good reason, if the ultimate goal is punishment” (Regehr and Alaggia, 2006: 37). These strategies include the frequent interruption of the witness, the use of closed questions, the repetition of certain questions, the use of leading questions, and the demand for the exact recollection of outlying details. This is done in a bid to align witness comments with the argument of the defence (Smith and Skinner, 2012; Kebbell, *et al*, 2007). Participants in a study conducted by Dylan, *et al*, (2008) found that the language used by the judiciary reduced victim-survivors’ ability to partake in the discourse surrounding them. These strategies can make it difficult for jurors, judges, and magistrates to determine the validity of a witness testimony, whether it be false, or due to confusion due to unfair questioning (Fairclough and Jones, 2017). As the adversarial system is geared towards oral evidence, witness testimonies can be challenged directly (Fairclough and Jones, 2017; Smith and Skinner, 2012; Burman, 2009). Finally, there remains three strategies that can allow for witness intimidation, such as maintaining the right to self-representation, or seeking pretrial contact, to coerce the victim-survivor to abandon legal action (Fan, 2014). Defendants may also force their victims to “physically face them while on the stand” (Fan, 2014: 788). Should the victim reject this demand, the defendant can argue it as a violation of their right to confrontation. Lastly, the defendant may request access to the victim’s mental health and medical records, revealing the victims’ private history and potentially exposing them to further revictimization (Fan, 2014).

Commanding the patriarchal position as sole proprietor of justice, retributive processes extend their domination by withholding information from victim-survivors' regarding alternatives to criminal justice following their victimization, further denying their ability to determine the correct means of achieving justice for them. A key element of patriarchal societies is the paternal protection of women, who are predominantly victims of sexual violence (Hunnicut, 2009; Bloom, 2018; Moulds, 1978; Basile and Smith, 2011). Paternalism indicates to the power relations which reflect the social and legal inferiority of women in relation to men (Moulds, 1978). It is a consequence of overarching male-dominance within patriarchal societies, further exacerbated by its pervasiveness within legal, social, and political dimensions (Moulds, 1978; Daly, 1989; Bloom, 2018). The patriarchal element tasks the state with shielding victim-survivors from potentially risky alternatives of justice delivery. This paternalistic standpoint stems from the rationalization that women are defenceless, ignorant, and in need of guidance (Moulds, 1978). They are unable to determine for themselves the correct mode of justice. Hence, it must be the state that decides for them the correct means of achieving it. I posit that it is here that the unrecognized violence of such paternalistic tactics is prominently highlighted. By positioning itself as the sole proprietor of justice, the retributive system is shrouded in a mist of seeming compassion for victims (Federle, 2014). This narrative is contrasted by what it truly is: an extension of the politically patriarchal governance of individuals. This paternalism has a profound effect upon the subordinated, creating patterns of behaviour that are inconsistent with the operation of a democratic state (Moulds, 1978), culminating in the denial of victim-survivors pursuit of their own concepts of justice.

The Effects of Sexual Violence Upon Victims-Survivors

Sexual violence is an unmatched crime. It attacks a victim-survivors' bodily integrity, self-respect, and garners widespread controversy (The Stern Review, 2010: 7). What separates it from other forms of criminality is the repercussions of such offending. While all crime can be distressing, sexual assault is often a deeply traumatic experience (Haskell and Randall, 2019). This has a neurobiological impact unique to the varying factors associated with this type of victimization (Haskell and Randall, 2019). In the case of trauma experienced because of intended, or imminent sexual violence, an individuals' stress response is activated, resulting in a temporary loss of executive functioning (Haskell and Randall, 2019).

According to Haskell and Randall (2019: 10), female victim-survivors of sexual violence are “more than twice as likely” than male victim-survivors to develop post-traumatic stress disorder (PTSD). This corresponds with Ellis, *et al* (1981: 266) who found that victim-survivors of sexual violence experienced severe and lasting symptoms due to their victimization, including increased depression, increases in fatigue and “report more interpersonal problems than women who [had] not been raped”. Victim-survivors are also negatively impacted regarding their education, economic well-being, and employment following their assault, issues which can detrimentally affect their livelihood (Potter, *et al* 2018; Loya, 2015). Their intimate relationships are also impacted following a sexual assault, with some (re)entering abusive relationships, and others avoiding intimacy altogether due to their PTSD (Moschella, 2020). I posit that it is clear that the consequences of sexual violence upon victim-survivors further contribute to the subordinated position of women within the social patriarchy. In turn, their subordination places them at a higher risk of sexual violence. The patriarchal subordination of women and sexual violence are cyclic, each contributing to the perpetuation of the other.

The Needs of Victims-Survivors of Sexual Violence

Victim-survivors’ experience crimes differently (Erez, *et al*, 2020). Their victimization is subjective, as are the consequences of their experiences. A broad range of studies confirm this diversity, including victims’ reactions to their victimization, their expectations of the legal system, what they want from the law, their views regarding their ill-treatment, the actions of the offender, and the response they expect from the legal process in handling their case (Erez, *et al*, 2020; Herman, 2005; McGlynn and Westmarland, 2019; McGlynn, *et al*, 2017; Flynn, 2015). Herman (2005) found victims of similar crimes each have a variety of interests, views, wishes and approaches regarding offenders and their punishment (Erez, *et al*, 2020). Similarly, McGlynn and Westmarland (2019) found that, by nature, victims’ conceptions of justice are kaleidoscopic, they are ever-changing and connected to their individual lived experiences. Of their informants, each acknowledged the inherent fluidity of justice, all while maintaining a commonality among their responses to victimization. Daly (2017) conducted a comprehensive review across the literature of the needs of victim-survivors of sexual violence, with five recurring elements. While some progress has been made in implementing better victims’ rights into the adversarial system, as

Erez, *et al* (2020) state, the “add victims and stir” approach continually fails to ensure that victim-survivors’ needs are met. The following sections will provide an overview of each justice element as recognised throughout the academic literature, each of which representing the rudimental basics of victim-survivors’ justice interest.

Participation

Participation consists of the victim receiving information throughout the course of the legal process pertaining to all developments in their case and alternative means of securing justice (Daly, 2017). Likewise, Clark (2010) categorized participation for victims within the realms of receiving information regarding the system processes, and elements of control over procedural outcomes. Flynn (2015) writes that this need is commonly identified by victims throughout the legal procedure, with this element increasing levels of satisfaction with the justice system among participants (Flynn, 2015). Regehr, *et al* (2008), found that victim-survivors felt excluded from participating due to the language and customs of the court. The concept of participation in this study extended to the ability of the informant to prepare and provide a VIS. Herman (2005: 16) noted that of the participants who sought redress through the justice system, many experienced their role in the process as a “humiliation... reminiscent of the original crime...”. Dylan, *et al* (2008) found that the esoteric nature of the judicial system served to both exclude and confuse their informants, reducing their ability to participate in the process. For Antonsdóttir (2019: 326), the misframing of the victims’ role in the court results in their misrecognition throughout the justice process, considered an additional status injury by denying victims their necessary standing “as a result of institutionalized hierarchies of value within a gendered legal culture”. The need for victims to participate in the legal process is central to their justice interests, a requirement not currently met by the retributive process.

Voice

For McGlynn and Westmarland (2019), voice is central to victim-survivors’ understanding of justice. A definition of voice, according to Daly (2017), is for victim-survivors’ of sexual violence to be provided an opportunity to tell of the impact of their victimization. This way, the victim garners public recognition of their abuse and acknowledgement of their trauma

(Daly, 2017). Clark (2010: 34) also contends that participants in their study advocated for a platform to give voice to their experiences, with many who were directly involved in a trial process finding the judicial procedure “frustrating and traumatic” as it did not allow for them to relay their story in full to the court nor allow for them to explain the impact the assault had upon them. According to McGlynn, Downes and Westmarland (2017), for many victims, being able to share their experiences is an essential element to their depiction of justice. Tyler (1997) found that victims value the opportunity to voice their grievances during sentencing hearings, which can be achieved through VIS, regardless of whether they influence sentencing. However, should the defendant plead or be found to be guilty, before on or the day of trial, their chance to speak to the courtroom is rescinded (Regehr, *et al* 2008; O’Connell, 2012; McGrath, 2008). As Herman (2005: 6) states, “victims need an opportunity to tell their stories in their own way”, in a setting they are most comfortable in. Koss (2014: 1651) found that some victims seek a forum for which to voice the harms committed against them in a bid to better understand the experience and to become involved in “determining the consequences imposed upon the responsible person”. For Pali and Madsen (2011: 59), victims of sexual violence wish to “add another narrative to the story of the assault and restore their dignity”. Giving voice to their experiences allows space for recognition and vindication of their trauma by the perpetrator, their families, friends, and the wider community, aiding in their recovery and reestablishment in society. It is a means for victims to take ownership of the justice process (McGlynn and Westmarland, 2019).

Vindication

Victims of sexual violence want their communities to “take a clear and unequivocal stand in condemnation of the offence” (Herman, 2005: 20). Communal denouncement of the crime is important for victim-survivors. It affirms that the community stands in solidarity with them, and that they no longer bear the burden of shame placed upon them by the crime, it is reverted onto the offender (Herman, 2005). For Daly (2017), the definition of vindication has two components. The first being by the law, which affirms that the act perpetrated against the victim was morally and legally wrong. The second is vindication of the victim, which affirms that the perpetrator’s actions against this victim were wrong (Daly, 2017). Vindication requires others, such as legal officials and family members, deem the actions perpetrated against the victim-survivor were wrong by affirming their solidarity with the complainant or

by censuring the offence (Daly, 2017). Vindication for victim-survivors can also occur when the perpetrator is convicted for the offence (Daly, 2017). This justice need opposes the retributive requirement of burden of proof, as actions of the defence are only deemed criminal should a conviction be secured against them. For McGlynn and Westmarland (2019), vindication can be found in the theme of connectedness which represents belonging in a society. Connectedness is about “receiving societal support in the aftermath of trauma... It is about being recognized” (McGlynn and Westmarland, 2019: 194). Connectedness goes beyond individual actions or offender consequences. It is the “material expression, and recognition, of society’s commitment to ensuring victim[s] are full members of society and feel a sense of justice” (McGlynn and Westmarland, 2019: 195). While the main element of vindication focuses on public denouncement of the assailant and the legal ramifications for their actions, another aspect is accountability (Daly, 2017). This can be achieved through moral reparation (Duff, 2011), yet this may not always be suitable depending on the crime. Most importantly, there ought to be recognition that the victim is not responsible for their victimization (Julich and Landon, 2017). Primarily, vindication for victim-survivors centres on notions of offender accountability and the recognition of victim suffering. This can be difficult to achieve due to the retributive prerequisite of presumed innocence for the offender, and the wider representation of society by judicial actors, rather than the individual. This can result in victim-survivors being viewed with scepticism due to a preconditioned bias that they are seeking revenge, rather than justice (Erez, *et al*, 2020). This is key to understanding the limitations of traditional modes of justice delivery, and its benefits for those who adhere to the paternalistic conceptions of an ideal victim.

Validation

As defined by Daly (2017), validation is the affirmation of belief in the victim. It is the acknowledgement that the offence occurred, and that the victim suffered harm. They are not blamed for the victimization (Daly, 2017), but validated in their experience. Clark (2010) found that validation is more than belief being conveyed to the victim by the justice system, but also through official acknowledgement of the crime occurring, and the impact their victimization has had upon them. For many victim-survivors, the most important objective is to receive validation of their victimization from the law, their families, and the wider community is of “equal or greater importance” than solely the offenders’ confession

(Herman, 2005: 20). Clark (2010: 32) has highlighted that the expression of belief to victim-survivors is “necessary to their healing process”. McGlynn and Westmarland (2019) found that validation was crucial to their feeling that justice had been achieved. They also recognized that validation, for their participants, is encompassed in the notion of recognition, highlighting that the education level of family and friends regarding sexual violence may negatively impact a victims’ opportunity to experience any form of validation (McGlynn and Westmarland, 2019). Antonsdóttir (2019) contends that recognition is a key component of a victims’ understanding of justice, entailing more than simply being believed, but also acknowledgement of their suffering. While for some victims’, attendance at court hearings may provide them with a sense of validation (Keenan, 2014), for others, this sense of validation occurs should the offender admit to their wrongdoing (Daly and Curtis-Fawley, 2016).

Offender Accountability-Taking Responsibility

Holder (2013) found that participants strongly reiterated their want for offender accountability as a primary reason for proceeding to prosecution. Some indicated that prosecution, along with a form of rehabilitative counselling, would be preferable to harsh punishment (Holder, 2013). Victim-survivors’ want of prevention is echoed across the literature in various forms. McGlynn and Westmarland (2019) found this arises in their informants perceived element of consequence, with some identifying offender accountability as a key theme throughout. According to McGlynn and Westmarland (2019: 186), the repeated emphasis on taking responsibility is essential to ensuring that the consequences faced by the perpetrator are “meaningful”. While some participants considered conviction to be a meaningful consequence in some cases, their motivations for imprisonment centred on prevention rather than revenge. This reveals that victim-survivors’ conceptions of justice take a variety of forms, “including and beyond the conventional criminal justice system” (McGlynn and Westmarland, 2019: 187). For Herman (2005), some victim-survivors’ did not endorse conventional retributive sentencing, nor reconciliation by way of an apology. Rather, their aim was “exposure of the perpetrator” (Herman, 2005: 30). For these participants, offender accountability coincided with incapacitation. McGlynn, *et al* (2017: 8) found their participants had similar perspectives regarding incapacitation and prevention, with one participant perceiving justice as a “guilty conviction” due to their concern as to

whether “he did it to somebody that maybe wasn’t as strong”. Daly (2017), drawing from the work of Duff (2011), distinguished two aspects of accountability/responsibility. Those being, calling an alleged offender to account, and holding them to account (Daly, 2017). As noted above, there is a connection between offender accountability and vindication. To achieve vindication, victim-survivors often need the perpetrator to accept responsibility for their crime, their acknowledgement that it was a wrongful act. Conversely, offender accountability/responsibility is key to achieving vindication, in that the perpetrator is exposed to the public for their actions, and justice is gained through their incapacitation (Daly, 2017).

Conclusion

To reiterate Herman (2005: 6), “if one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law.” Crimes of sexual violence are acts of domination, aimed at contributing to their already diminished status of female victim-survivors within the patriarchal social and legal hierarchy. The culture, structure, and organization of adversarial justice models, coupled with overarching patriarchal narratives surrounding traditional sex-roles, culminate in primary conditions for the further subordination and revictimization of those who enter the process. It has historically excluded victims, thus the “add victims and stir” has failed to adequately take their justice needs and interests into account, nor does it challenge the patriarchal groundings of adversarial proceedings (Erez, *et al*, 2020: 325). While VIS have allowed for some to experience validation, many victim participation rights represent a radical departure from the patriarchal ideology of retributive justice. The retributive system, an extension of the patriarchal domination of the state, is paternalistic in its reframing of crime as offences against the sovereign. This paternalism offers protection for some, but not for all, best serving those who accept its masculinist protections by adhering to the gendered patriarchal norm.

The arrival of modern justice practice has encompassed the role of the victim, and in cases of sexual violence, they become a witness. Those who persevere are required to recount their traumatic ordeal in graphic detail, akin to what Smart (1989: 40) has described as a “pornographic spectacle”. Tactics utilized by court attorneys are combative and competitive, a consequence of their occupational culture that encourages winning above the wellbeing of the victim-survivor, further subordinating them within the patriarchal structure of the criminal justice system. Such strategies are considered by adversarial processes as the best means of

discerning the truth, given the consequences constitute a reduction in the liberty of the offender. As traditional adversarial courts are centred on the presentation of oral evidence, statements from victim/witnesses can be challenged before the judiciary, a strategy that is deemed harsh by critics and victim-survivors alike. Along with these elements of the judicial procedure, the defence council can also employ three further tactics of intimidation in a bid to further reinforce the subordinated position of victim-survivors within the patriarchal structure of the justice system. Their further exclusion from the judicial process is represented in how the criminal justice system takes sole control of the distribution of justice, resulting in victim-survivors' receiving little information as to how to access justice outside of its remit. This paternalistic approach deems those who are subordinated within the patriarchal hierarchy are unable to attain justice for themselves, nor do they possess the correct means by which to achieve it. Paternalism is key to the subordination of women, deeming them weaker, and in need of guidance and assistance. The denial of information regarding alternatives to retributive justice culminates in the denial of victim-survivors' self-determination. The consequences of sexual violence further contribute to the subordinated position of women within the social hierarchy. Given the unique impact of sexual violence upon victim-survivors, coupled with the retributive approach to justice, a clear consequence is their secondary rape. The connection between patriarchal societies and sexual violence is cyclic, both contributing to an endless sequence of male dominance and female subordination. The approach taken by the court to achieve justice does little to reduce the risk of re-traumatization. Its' very ideological nature positions it diametrically opposite the needs of victim-survivors, serving to demote them rather than empower.

It is imperative to note that across the literature, the above five justice needs appear time and again, with little progress made towards their implementation into the adversarial system. Victims want to participate in their case, to have some input in the offenders' prosecution, and to maintain a sense of control over the outcome. They seek a platform to voice their feelings regarding their victimization, the actions of the offender and to have their questions answered. They want to safely relay their experiences in a flexible environment, to relieve some of the burden of shame after their attack. Victim-survivors seek vindication, recognition of their violation and the collective condemnation of their abuser. For the law, the legal system, family, and the wider community to make clear their denouncement of the crime and to affirm their solidarity with the victim. For some, this can extend beyond traditional retributive punishment to a form of moral reparation. For others, justice lies in the conviction

of their abuser. Yet, most important is the recognition that they are not responsible for their own victimization. Crucial to their conceptions of justice is validation of their experiences. That the offence occurred and that they have suffered. This can be attendance at court for some, and for others it is when the offender takes accountability for their crime. Finally, the need for offenders to accept responsibility for their actions is repeated across the literature. This conception of offender accountability is best represented in their incapacitation. This final justice need can be potentially attained through each of the above-mentioned interests. However, as evidenced throughout this chapter, these needs are diametrically opposed to the traditional functioning of the retributive system, which contends that the only means of distributing justice is through its punishment. If the goal of any criminal justice system is to protect those subordinated beneath it, then the justice needs of all must be catered for. Conclusively, if the needs of victim-survivors are to be addressed, then the criminal justice system must relinquish its role as the sole proprietor of justice and allow for alternative models to be implemented to ensure justice for all, not only those who adhere to its masculinist protections derived from patriarchal conceptions of gendered norms.

Chapter 4

Restorative Justice: Transforming Justice for Victim-Survivors

What does it mean to do justice? For Daly (2002), it varies depending on the experiences of those who search for it. Justice is often denied to victim-survivors of sexual violence by the conventional criminal justice system. It is due to this continued failure to provide a sense of justice that alternative modes of justice are sought. One such alternative is restorative justice (RJ). A term that encompasses a board array of criminal justice innovations, this approach aims to bring a victim of a crime and its perpetrator into contact. This can be done directly, or indirectly, and can include external stakeholders. In cases of sexual violence, a face-to-face meeting, often known as victim-offender mediation (VOM), is a common approach and will be the focus of this chapter.

Research on VOM has documented its impact, with the likes of Bolitho (2015, 2017) noting that such a meeting can potentially alter the ways trauma is remembered. As with criminological discourse, not all advocates of restorative justice adhere to the same conception of the practice (Johnstone, 2011). Yet, there remain core themes which sum up its processes. The first of which being that our traditional modes of justice delivery are not our only means of responding to crime. Prior to common and civil law systems framing crime as offences against the state, community-based methods of conflict resolution were commonplace (Johnstone, 2011). Hence, restorative justice presents a re-emergence of community-led modes of resolving conflicts between individuals.

Secondly, once a crime has been committed, RJ says that the focus ought to be on addressing and repairing the harm done to the victim, not imposing harm on the offender. The point of RJ is to assist victims in their recovery from the complex emotional, psychological, and relational harms associated with their victimization (Johnstone, 2011). The third theme of RJ centres on the ways society deals with offenders. Their ostracization and exclusion from the community contributes to their alienation, resulting in their continued association with criminal subcultures (Johnstone, 2011). It is apparent that traditional retributive approaches

do not account for the thicker stories inherent to the transformative nature of restorative conferences (Dzur, 2016). Stemming from narrative therapy, the thick stories inherent to RJ practices allow for the exploration of the underlying dysfunctions associated offending behaviour to be acknowledged, and for harmed to describe how the crime incident affected them, thereby unveiling the social truth and divulging the thicker story of what occurred (Hajdu, 2019; Chapman and Chapman, 2016).

To explore the applicability of restorative justice in cases of sexual violence, this chapter will first operationalize RJ as a means of addressing the harms caused unto a victim in the aftermath of crime. It then interrogates the potential for RJ process meet the justice needs of victim-survivors of sexual violence. Despite the lack of randomized control trials in this area, there is empirical evidence pointing to the success of VOM in addressing their needs. It is important to take account of the similarities between what victim-survivors seek in the justice system and those that are met in programmes such as Project Restore and the RESTORE project in New Zealand and Arizona, respectively.

Following this, concerns surrounding the use of RJ will be examined, its hesitancy regarding its use in cases of sexual violence is discussed alongside feminist critiques of the risk posed by the reprivatisation of family and domestic violence and the issue of mediation exacerbating inequalities between stratified groups. This chapter then considers the safeguarding and legitimizing of RJ practices for cases of sexual violence, in particular the issue of paternalism extending from existing criminal justice systems, and the level of training received by RJ practitioners. Should the state assume control over the provision of RJ, steps must be taken to ensure it does not suffer from the same downfalls the retributive system does.

This chapter will then explore the potential benefits RJ processes harbour for victim-survivors of sexual violence, and the degrees to which it can adhere to their justice needs and interests as defined in the previous chapter. This will demonstrate how the justice needs and interests of victim-survivors align with the ways in which restorative justice procedures are executed, such as how victim-offender mediation allows for victims to give voice to their experiences and participate in the justice process. Conversely, the potential problems with the use of restorative justice and sexual violence will be examined, highlighting the repeated concerns of feminist critics of RJ. These concerns, while legitimate, can be combatted against

through the specialized training of practitioners and the processes' adherence to feminist theories of justice provision.

The chapter concludes that restorative justice presents a viable option for victim-survivors of sexual violence to access alternative forms of justice which extend beyond what the conventional justice system can provide. It is not an alternative to justice, but instead an alternative form of justice. When approached thoughtfully and practitioners are given an appropriate amount of preparation and specialized training, RJ can reveal positive outcomes for victim-survivors, and effectively minimize the potential risks as proposed by critics of the process.

Restorative justice: What is it?

Daly (2016) suggests that the practice of RJ is best defined as a justice mechanism, a “meeting (or several meetings) of affected individuals, facilitated by one or more impartial people” (Daly, 2016: 14; Rossner, 2017). For Rossner (2017: 917), this definition is the most useful as it avoids the “imprecision and confusion of alternative approaches”. While the term RJ has served as an umbrella term describing a range of criminal justice interventions, including victim-offender mediation, family group conferences, restorative conferences, restorative cautions, sentencing circles and community reparation boards (Rossner, 2017), such diversity makes it difficult to operationalise. This lack of consensus is said to stem from the works of Braithwaite (2002), who at times defines it as a set of values, and others as a practice. This diversity resulted in contestation within the community, with Johnstone (2011: 5) arguing that to reach an all-encompassing definition, advocates should on the range of goals and values which embody its practice, rather than deeming it as “a new technique for controlling crime”. In this regard, Shapland (2014: 124) contends that the aim for the future of RJ endeavours is to fortify “a common core of values and ethics.”. To which Daly (2016) reiterates that without a precise definition, it cannot be subject to further empirical or theoretical research. Thus, it is imperative for proponents of restorative justice to reach a consensus as to what truly the practice is.

RJ is now a widely discussed development in the field of criminal justice (Johnstone, 2011; Braithwaite, 1989; Hartman, 2018). It has been present in Westernized justice systems since the 1970s. However, it has been argued to have a grounding in more ancient practices of

dispute resolution (Braithwaite 1989, 2001; Rossner. 2017). Once considered a “new lens” through which to view criminal justice, it is increasingly incorporated as a complementary mode of justice delivery (Rossner, 2017: 967), with Belgium utilizing it within a hybridized model of justice delivery which benefits the Belgian judicial process (Joyce and Keenan, 2013).

Braithwaite (2001) has said that for justice to be considered restorative, it should be about restoring victims, offenders, and the community. Advocates of RJ have suggested that once a crime has been committed, the priority must be to first meet the needs of victims, then ensure that the offender is aware of the damage they have caused to people and their liability to repair that damage (Johnstone, 2011). While early practices of RJ did not always actively involve victims and their advocates (Julich and Thorburn, 2017), for the justice system to become truly victim-oriented, Johnstone (2011: 68, *emphasis added*) contends that the campaign for RJ has evolved to answer the question “*What is to be done for that person?*” harmed in the aftermath of crime. While this is a significant challenge for the criminal justice system as it is offender centric, Keenan and Zinsstag (2014: 98) have written that it is possible to incorporate a successful restorative justice programme in cases of sexual violence into the conventional process provided it is “rooted in a clear set of values and principles” ensuring victim safety on both an emotional and physical level, along-side the provision of quality assurance measures. Minimum standards of practice are essential to the formation of a restorative approach being available at all levels of the justice paradigm.

What is Justice to Victim-Survivors of Sexual Violence?

To achieve justice for victim-survivors of sexual violence, we must first question what it means to provide justice in such cases? For some, it means identifying the correct punishment. For others, it means “identifying the right response” (Daly, 2002: 2). As indicated in the previous chapter, victim-survivors’ perceptions of justice are kaleidoscopic in that they are multifaceted; ever-changing and evolving with the victim-survivors’ experiences (McGlynn and Westmarland, 2019). A singular, uniform response to violence fails to address the complex needs and justice interests of victim-survivors. Julich (2001) found common themes among participants that centred on their need for the offender to accept responsibility for their actions, a desire to receive answers regarding their victimization, a want to confront the offender directly, and to do so in front of their family members, and to have their

experiences validated before the community. These results are echoed across the literature regarding the justice needs and interests of victims. Julich and Thornburn (2017) further contend that rather than victim-survivors seeking an apology from the offender, or providing them with forgiveness, their conception of justice was centred on having the underlying causes of the perpetrators offending habits addressed, for a “transformation of their relationship[s] with the offender so that they could co-exist in [their] shared communities”, and for there to be a reduction in the risk posed by the offender unto others (Julich and Thornburn, 2017: 36). As will be demonstrated further below, RJ has the potential to meet all victim-survivors justice needs.

Safeguarding and Legitimizing the Use of Restorative Justice in Sexual Violence Cases

To safeguard and legitimize RJ processes in the aftermath of sexual violence, it must combat the failings of conventional justice mechanisms. To do this, the overarching element of paternalism within patriarchal legal institutions must be addressed. As the criminal justice system is paternalistic by nature, there is the potential for its patriarchal ideology to permeate other structures attached to the criminal justice system. As Moulds (1978) has stated:

“To the extent that paternalistic views dominate the criminal justice system, programmes designed... within that system will be affected by those views” (Moulds, 1978: 430).

While this sentiment was expressed regarding rehabilitation programmes for female offenders, I posit that this potential issue can be extended to the implementation of RJ. As Bloom (2018: 1959) states, a patriarchally paternalistic state can be considered as an “unreliable service provider”. The primary goal of RJ is to do no harm. Under the wrong guidance, this can be perceived as another reason for the mode of justice delivery to be determined by those considered in charge of protecting the already subordinated victim-survivor. To decide on behalf of the victim-survivor whether RJ is appropriate following their victimization bears striking similarities to the current model of prescribing the retributive system as the sole provider of justice. Therefore, precautions must be put in place to ensure that all RJ programmes allow access for *all* affected by crime, not just those affected by low-level offending. Research has shown that the RJ practice of VOM positively impacts victims’ by contributing to their recovery in the aftermath of serious crime (Bolitho, 2015, 2017

Angel, *et al*, 2014; Strang, *et al*, 2013; Shapland, *et al*, 2011; Marder, 2019). To avoid the issues connected with state paternalism and the inability of victim-survivors' to determine their best approach to achieving justice, consideration ought to be paid to the ways in which RJ programmes can be tainted by our patriarchal system.

We must acknowledge that sexual violence differs from other forms of violence. As a result, it is important to ensure that the practitioners involved receive training that is appropriate to the situation (Keenan, 2018; Mercer, *et al*, 2015). Another fundamental requirement is the amount of preparation provided for any VOM involving sexual violence, along with careful consideration of the correct time to offer RJ processes to victim-survivors (Keenan, 2018; Mercer, *et al*, 2015). According to Mercer, *et al* (2015), the ability of RJ practitioners to be mindful of false beliefs surrounding sexual violence is imperative. They must be aware of the subtle power imbalances which may arise due to the prevalence of rape myths within society and the judicial system (Keenan, 2018). According to Julich and Thorburn (2017), the ability of RJ to effectively handle cases of sexual violence is embedded in the role of the facilitator. While Keenan (2018: 292) warns of the risk of RJ becoming “overly prescriptive or constraining” when it comes to implementing standards of professionalisation, the below proposed conditions for practitioners are not intended to be so rigid as to hinder restorative justice ingenuity. Rather, they are to enable practitioners to be “competent in their responses” to the varied possible outcomes inherent to RJ processes (Keenan, 2018: 292). Both Keenan (2018) and Mercer, *et al* (2015) recommend that specialist training is needed to assist practitioners in identifying and responding knowledgeably to the risk of re-traumatisation during the restorative process. For Keenan (2018), this specialist training encompasses three dimensions of RJ practice, those being its therapeutic, ethical, and legal dimensions. Therapeutically, RJ facilitators must possess a “deep appreciation of sexual trauma and its impacts”, to have a full understanding of the psychology of the offender, and to have a “working knowledge of the dynamics of sexual offending” (Keenan, 2018: 297). Ethically, their additional training must ensure students of restorative justice aware of the “triple role problem” (Keenan, 2018: 298). An issue which formulates due to the struggle of practitioners to balance ethical concerns surrounding community protection, justice and vindication for victim-survivors, and the well-being and autonomy of offenders (Keenan, 2018). Practitioners must be ethically and philosophically sound to consider these complex ethical dilemmas that are associated with the practice of RJ in cases of sexual violence (Keenan, 2018). Legally, Keenan (2018) contends that as acts of sexual violence create needs at both

the public and private levels for citizens and the state, practitioners must be trained to address, obtain, and safeguard public confidence and legitimacy in the use of restorative justice in sexual violence cases.

Potential Benefits of Restorative Justice in Cases of Sexual Violence

RJ has the potential to address all the primary justice interests as identified by Daly (2017). Despite the hesitation surrounding its implementation in response to severe incidents of sexual violence, the potential benefits of RJ have been identified by a range of academics. This section will first explore the potential for RJ to provide victim-survivors an opportunity to participate in the justice process and give voice to their experiences. It then will look at the potential for victim validation and offender responsibility-taking, the communicative and flexible environment which restorative justice can provide, and the potential for stakeholders to repair relationships, should this be desired.

Victim Voice and Participation

Through RJ, victim-survivors can give voice to their experiences (Daly and Stubbs, 2006). In a VOM, according to Daly (2006), victims can be empowered by confronting their abuser. Their participation in decision making regarding the outcome of the process aligns closely with feminist goals of respecting the differing realities of victims in relation to their oppression, the promotion of dignity and the worth of marginalized individuals, thereby addressing the power imbalances at both the structural and individual levels (Julich and Thorburn, 2017). Julich and Thorburn (2017) contend victim-survivors must be central to the process for a sense of justice to be experienced. This includes providing them with the opportunity to “speak for themselves”, and give voice to their experience, corresponding with feminist conceptions of truth-telling (Julich and Thorburn, 2017). From the perspective of victim-survivors, RJ can potentially give voice to the “real harms of sexual offences”, assisting them in naming their experiences in a way that the retributive system cannot (McGlynn, *et al*, 2012: 214). Julich and Thorburn (2017) go on to state that the requirement of offender accountability that is inherent to the RJ process is favourable to victim-survivors, contributing to their interest in participating in the proceedings.

Victim Validation and Offender Responsibility

Julich (2001) found that victim-survivors' perceptions of justice include the need for offenders to demonstrate responsibility for their actions. Alongside this is the need to be validated in their experience (Herman, 2005; Daly, 2017). This occurs in the acknowledgement that they are not to blame for their victimization (Daly, 2006, 2017). To take part in RJ processes, offenders are required to accept accountability for their behaviour, thus censuring their offending (Daly and Stubbs, 2006; Daly, 2006). Increasing access to RJ programmes can also aid those whose offenders are likely to avoid prosecution by means of a referral from the community. This is achievable, as demonstrated by Project Restore in New Zealand (Julich and Landon, 2017). Cases such as these are accepted by the RJ provider "in recognition that the majority of sexual violence cases are not reported to the police" (Julich and Landon, 2017: 193). Through this process the victim is vindicated in their experience and avoid the "disabling consequences of the adversarial process" (Daly, 2006: 338). According to Braithwaite and Daly (1994), the availability of restorative conferences can encourage more victims to speak of, and be supported in, their victimization, allowing them to confront the perpetrator who has accepted the responsibility for their wrongdoing.

Relationship Repair, Where Desired

Julich (2001) found that some victim-survivors, the desire to transform their relationship with the offender to enable coexistence in shared communities was common. This interest appeared alongside having underlying causes of their offending addressed and reducing the risk of others suffering harm at the hands of the perpetrator (Julich, 2001; Julich and Thorburn, 2017; Herman, 2005). While neither forgiveness nor reconciliation are the principle focus of RJ (Kohen, 2009), the latter cannot be achieved without the former. According to Clark (2010), RJ has the potential to foster such reconciliation. Reconciliation can best be defined as the "mutual acceptance by groups of each other... that they come to see the humanity of one another..." (Staub, 2006: 868). While for some victim-survivors reconciliation is difficult, as they are asked to not only forgive, but to (re)establish a relationship with their abuser (Kohen, 2009), in cases of intrafamilial sexual violence, some victim-survivors' may not want to have siblings "sent away", opting for reconciliation rather than ostracization (Daly, 2002: 338). RJ can thus present the opportunity for stakeholders to foster reconciliation, should this be the desired outcome for all who are involved.

Possible Problems with Restorative Justice in Cases of Sexual Violence

Despite the potential benefits of RJ in cases of sexual violence, there have been and remain to be criticisms regarding its use. Hesitancy as the result of a lack of empirical evidence (McGlynn, *et al*, 2012) represents one aspect of the concern surrounding the implementation of restorative practices. Others align with the perspective that the informal and private nature of VOM may result in reprivatizing gendered violence altogether (Curtis-Fawley and Daly, 2005). This presents advocates of RJ with a considerable problem, as it could hinder the progress made by feminist academics who have raised awareness of the prevalence of gendered violence for decades. Martin (1998) warned that restorative processes in cases gendered violence should not result in the “decriminalization of family violence and a return to the viewing of family violence as a private matter or ‘just a domestic’” (p. 59). Hudson (1998) similarly indicated that a move away from punitive reactions to sexual and gendered violence may give perpetrators the impression that “sexualized... violence is acceptable...” (p. 245). This issue is still prevalent, as only when a victim-survivor has been safely removed from their abuser and has had the “benefit of time and counselling to ease [their] self-blame and fear” are they less vulnerable to possible attempts at “well-honed manipulations and revictimization” (Miller and Iovanni, 2013: 11). Along with these concerns, Daly and Stubbs (2006) identified a range of other potential issues from across the literature critiquing RJ, which will be explored below.

Victim Safety

Due to the informal nature of RJ processes, victims may be put at risk of continued violence (Daly and Stubbs, 2006). According to Daly (2006), an RJ process may permit the inherent power imbalances connected to incidences of sexual and gendered violence to go unchecked, therefore reinforcing already present abusive behaviours. Regarding domestic violence, which oftentimes overlaps with instances of sexual violence, Stubbs (2002) contends that VOM offers great promise but does not guarantee victim safety.

Manipulation of the Process by Offenders

Another implication of the informal nature of RJ is that offenders can potentially use the process to trivialize their violent offending, diminish their guilt, or attempt to shift blame on to the victim (Daly and Stubbs, 2006). This means of reorienting the balance of power to their advantage is an element that is not possible in traditional court proceedings (Daly, 2006). Perpetrators of domestic violence are also “adept at using apology to manipulate their purposes and others”, thereby indicating to the risk posed by a restorative justice encounter in which the process can be manipulated by the offender (Stubbs, 2002: 18). Furthermore, should the restorative justice procedure occur at the wrong time, there is the risk of opening another avenue for manipulation by the offender, particularly in instances of intimate partner violence (Miller and Iovanni, 2013).

Pressure on Victims

In RJ processes, there is a chance that some victims may not be able to “advocate effectively on their own behalf” (Daly and Stubbs, 2006: 17). As some restorative processes are based upon building group consensus, they may serve to minimize or overshadow victims’ justice interests’ such as giving voice to their experience in a safe and comfortable environment (Herman, 2005). Daly (2006) has stated that some victims taking part in RJ processes may feel pressured into accepting an apology, despite it feeling inappropriate or insincere. RJ processes may also “intentionally or unintentionally” feel pressurized to return to a dangerous relationship despite the offence occurring more than once (Hopkins, *et al*, 2004: 303). Hopkins, *et al* (2004) further indicate that victims may feel pressured into “forgiving and reconciling” with the perpetrator in family conferences which require both stakeholders to present (p. 305). Stubbs (2002) indicates that the focus on restoration in RJ processes may pressurize a couple, in cases of domestic violence, to reconcile. This can be to the detriment of the victim-survivor, who, as Miller and Iovanni (2013) agree that victim-survivors may feel pressured to acquiesce to conditions they could regret later, particularly should the process be focused on consensus building.

Role of the “Community”

For Daly (2006), there is a possibility that community norms may reinforce rather than undermine male dominance and victim blaming. As demonstrated throughout this thesis, false beliefs surrounding sexual violence and victim-survivors are cultivated by patriarchal narratives that can permeate communities. Therefore, some communities may not be adequately resourced to take on such cases in a restorative context (Daly, 2006). Hopkins, *et al* (2004) have also indicated that face-to-face community conferences may create an opportunity for further victimization of the victim. For Coker (2006), racial biases or cultural insensitivity towards victim-survivors within assisting institutions and justice system actors can serve to reinforce messages of communal betrayal should a victim seek recognition of their victimization. The community is typically aware of occurrences of domestic violence, yet this does not equate to the community being well-versed in the area (Stubbs, 2002). Some communities may place a greater emphasis upon privacy surrounding family issues, resulting in disincentives for members of the community to involved themselves with victim-survivors of domestic violence (Stubbs, 2002).

Mixed Loyalties

As evidenced prior, victims seek support from their friends and family for vindication of their experience. However, this may be impossible due to the divided loyalties of both groups (Daly, 2006). This may be especially prevalent in cases of intrafamilial sexual violence (Daly and Stubbs, 2006). This may occur if either the victim/offenders’ family or friends do not possess the capacity to offer meaningful support or assistance, “or at the time may collude with the violence” (Stubbs, 2002: 12). Coker (1999) has also indicated that denial by family and friends or familial solidarity can also impede restorative justice initiatives.

Limited Impact on Offenders

According to Daly and Stubbs (2006), there is a possibility that the RJ process may do little to change the offender’s behaviour. Well-established patterns of violence, sexual or otherwise, can require more than a face-to-face meeting (Daly, 2006). Another risk is the assumption that the process would be more likely to impact the behaviour of, or initiate a

change in, the offender (Stubbs, 2002). There is also a chance that offenders, or potential offenders, may perceive the RJ process as being “too easy” (Daly and Stubbs, 2006: 17). As a result, Daly (2006) contends that if so, restorative justice may reinforce the belief that their offending behaviour is justifiable, and therefore not wrong. A study on the use of restorative circles indicated that its impact upon offenders was “mixed”, with one perpetrator of domestic abuse altering their behaviour completely (Gaarder, 2015: 255). Thus, without effective programmes in place and the threat of further legal repercussions, the offender may not alter their offending behaviour.

Symbolic Implications

Participation, reparation, and apology have been promoted as benefits of RJ, yet this disregards the fact that apologies are a common tactic utilized by perpetrators of domestic abuse (Stubbs, 2002). Perhaps the outcome of the restorative process may be deemed too lenient or appear as a “so-called soft option” (Curtis-Fawley and Daly, 2005: 607). Coker (2006) has termed this as “cheap justice”, should the restorative justice process place an over-emphasis on the importance of the offender’s apology (p.77). Saulnier (2015) further indicate that the ways in which the restorative justice procedure is practiced has consistent effects on the quality of apology offered by offenders, which may impact the subjective experiences of offenders.

Combatting Concerns Surrounding the use of Restorative Justice in Cases of Sexual Violence

The retributive system is ill-equipped to address the needs of victim-survivors. As a result, there is a call among proponents of RJ and feminist scholars to adhere to the Belgian hybridized model (Stubbs, 2007). RJ is now found across most of the world (Rossner, 2017), with countries such as New Zealand hosting Project Restore (Julich and Landon, 2017), and in Northern Ireland, which boasts a range of restorative justice programmes aimed at tackling youth offending (Zinsstag and Keenan, 2017). Despite this, there remains hesitancy regarding its widespread implementation in cases of sexual violence, perhaps in part to do with the “profound” deficit of empirical evidence indicating its success in this field (McGlynn, *et al*, 2012: 214).

Another area of concern which breeds this reluctance to implement RJ in cases of sexual violence stems from feminist critique that it may be used in the interest of offenders, rather than the victim, resulting in their repeat victimization (Keenan, 2017). Stubbs (2007) warns that there is a potential risk to victim safety and the reprivatisation of domestic violence, suggesting that facilitators take a directive role in opposing the subordination of women in such cases. This approach would challenge prior literature professing the inherent neutrality of RJ practitioners. Similarly, Naylor (2010) notes that feminist critiques stem from concerns regarding its use in instances in family violence, where there are unequal and abusive relationships between partners that may be exacerbated or reinforced during a restorative session. Feminist resistance to the implementation of RJ also stems from assumptions that it is like processes of civil mediation, which leads to the presumption of equality between participants (McGlynn, 2011). Thus, it is argued that restorative processes lack understanding of the inherent power dynamics associated with ongoing domestic abuse (McGlynn, 2011). Delgado (2017) has also indicated that an alternative dispute resolution, such as VOM, can potentially increase the inequality gap between litigants who already suffer from widespread social stratification. According to Delgado (2017), two large-scale investigations found that “women, minorities and other relatively disempowered litigants” achieved poorer results when their cases were resolved by a non-formal procedure, rather than a formal court process.

However, there are important variations between cases of domestic and sexual violence, thus they can be treated with “some degree of separation” (McGlynn, 2011: 7). Furthermore, in cases of acquaintance rape, there may be little risk of the victim-survivors returning to an abusive relationship as this is “generally” not their primary goal, nor are they likely to share children or accommodation with the offender (Hopkins and Koss, 2005: 712-713). The principal difference between RJ and mediation is the prerequisite that the offender take accountability and acknowledge their responsibility for the offence, establishing the role of the harmer and the harmed prior to participating (McGlynn, 2011). Conferencing has been argued to positively impact victim-survivors of intrafamilial sexual abuse, combatting power imbalances by “ensuring procedural fairness”, providing support to the disempowered, and by directly challenging the powerful (Morris and Gelsthorpe, 2000: 417). This correlates with a recent study by Klar-Chalamish and Peleg-Koriat (2021), who found that participants described the RJ process as having a positive impact upon their recovery and as a platform for which all stakeholders could focus upon maintaining a strengthening their family ties in the future.

While such concerns are valid and deserve further consideration from feminist and restorative scholars alike, these are sometimes based in patriarchal myths and oversimplifications about RJ processes and gendered violence (McGlynn, 2011). To combat such misconceptions and respond to feminist critiques, Hopkins and Koss (2005) have indicated that restorative responses to sexual violence must incorporate feminist theories. According to Julich and Landon, 2017, an example of how restorative programmes can meet feminist demands is in the RESTORE project in Pima County, Arizona. This programme inspired the RJ provider Project Restore in New Zealand, which specializes in addressing sexual violence within the criminal justice system (Julich and Landon, 2017) RESTORE was designed around the unique nature of sex crimes, providing consequences for gendered and sexual violence where pre-existing retributive systems failed to do so (Hopkins and Koss, 2005; Lopez and Koss, 2017). This requisite corresponds with liberal, cultural, Marxist, radical and multiracial feminist theories, with each stance incorporating the understanding that gender and gendered harms, are “socially, culturally and historically constructed” (Hopkins and Koss, 2005: 706). RESTORE provides consequences for perpetrators of sexual and gendered violence by allowing for individualized responses to the unique harms experienced by victim-survivors, addressing economic inequalities between parties, providing a less structural hierarchy for conflict resolution, and providing for culturally relevant and intersecting responses to the harms committed through community conferencing, respectively (Hopkins and Koss, 2005). Programmes such as Project Restore, and its predecessor RESTORE, each demonstrate the potential of RJ processes to adhere to the justice needs of many victims (McGlynn, 2011).

Conclusion

The use of RJ in cases of sexual violence is contentious. The complexities of such a crime make it a difficult subject to broach with such an emotionally charged process that is VOM. RJ practices in the aftermath of crime hosts a variety of approaches, thus making it difficult for academics to agree upon its overall definition. Despite this, Daly’s (2016) depiction is deemed the most useful as it describes its variety of practices, which are victim-oriented and strive to restore victims, offenders, and the community. Overall, its aim is to repair the emotional, psychological, and relational damage caused by crime. It is an alternative justice, not an alternative to justice (McGlynn, 2011). Increasingly, it is thought of as a mode of justice that can function alongside the conventional retributive system,

comprising of a hybrid system of justice delivery. Examples of such hybridity are evident in Belgium, New Zealand, and the United States.

It is no secret that the criminal justice system fails victim-survivors of sexual violence. While there is hesitancy regarding the use of RJ in such cases, there are increasing calls for its use. According to Keenan (2014), both offenders and victim-survivors of sexual violence have indicated that were they made aware of RJ they would have participated in the process. There is no uniform conception of justice. It is kaleidoscopic and dependent upon the ever-evolving nature of victim-survivor experiences. Despite this, common themes central to needs and justice interests of victim-survivors focus on their desire to have the offender accept responsibility for their wrongdoing, to have their questions answered, to confront the offender in the presence of their family and to be validated before the community. These are echoed across the literature and are accompanied by having the causes of the offending behaviour addressed, transformation their relationship to ease coexistence in the community, and for there to be a reduction in the risk posed by the offender unto others.

These desires adhere to the five primary justice interests of victim-survivors, each of which have the potential to be addressed by RJ, specifically, VOM. RJ can provide victim-survivors with the opportunity to participate in the justice process, give voice to their experiences and play a part in the reparation paid to them and the rehabilitation of the offender. Through RJ, the victim-survivor can be validated in their experience, have the desire for offender accountability-taking responsibility met, share their experiences of victimization in an open, communicative, and flexible environment, and potentially repair their relationships with the offender to ease coexistence within the community. These options are oftentimes not made available through the conventional retributive system. RJ, for those who wish to pursue it as a justice option, can potentially deliver on all aspects of victim-survivors justice interests and needs.

To safeguard and legitimize its use in cases of sexual violence, the overarching patriarchal narratives surrounding victim-survivors' must be addressed. If the state is to provide a hybridized service of restorative justice, there is the potential that the patriarchal ideology to infiltrate its practice. Over-adherence to the RJ goal of do no harm could result in the justice model again deciding the best mode of delivery on behalf of the victim-survivor, further denying their self-determination, and contributing to their already subordinate position within the social hierarchy. To mitigate against this, precautions must be put in place to ensure *all*

victims of crime have the option of RJ. I argue that its potential benefits far outweigh the potential risks of its use. Sexual violence differs from other forms of crime. It is embedded in, and reproduced by, the patriarchal structure of society. Therefore, it requires a particularly trained facilitator to ensure that patriarchal narratives surrounding sexual violence are mitigated against during restorative encounter. It would also guarantee that facilitators are aware of the inherent power imbalances that can skew the outcome of victim-offender mediation. Preparation is also fundamental to the execution of successful RJ programmes in such cases. While attention ought to be paid to the risk of RJ practices becoming overly prescriptive through precise training, the goal of such specifically designed and rigorous guidance is to empower facilitators to competently respond to the many varied possible happenings inherent to RJ processes

Criticisms of RJ, while valid and do deserve further consideration from RJ advocates and feminist scholars alike, in cases of sexual violence they can be avoided and mitigated against. Most concerns stem from disquiet surrounding its use in cases of ongoing domestic abuse and family violence. However, acquaintance rape, of which many sexual violence incidences occur, pose less of a threat of repeat violence or of victim-survivors returning to an abusive relationship due to the nature of the crime itself. Power dynamics, while inherent in cases of sexual violence, are less pronounced. The likelihood of victim-survivors sharing accommodation, though this can happen, is less common. There is a reduced likelihood of stakeholders of children together. When RJ is removed from the context of ongoing familial or domestic violence, it can benefit victim-survivors of sexual violence in ways the retributive system fails to.

Other concerns surrounding the effectiveness of RJ be mitigated against, and the timeframe at which RJ services are recommended to victim-survivors is crucial to its success. Aside from VOM, should either stakeholder wish to pursue another option, non-contact interventions can be facilitated. Victim-oriented and survivor driven RJ services are possible, the RESTORE project in Arizona, and Project Restore in New Zealand, each demonstrate the potential of RJ to fill the gaps left by the justice system and ensure justice for all who seek it. Conclusively, when RJ is thoughtfully embarked on, such processes can produce positive outcomes for victim-survivors, thereby ensuring that any potential risks are minimized, if not eradicated altogether. It can provide those subordinated within the current patriarchal structure another means of achieving justice, something currently denied by the retributive system.

Conclusion

Navigating Subordination for Victim-Survivors of Sexual Violence

Sexual violence is pervasive in society, affecting everyone regardless of their position. While the term sexual violence encapsulates its many forms, it can also be classed within the broader category of gendered violence. Theoretically, its motivations are complex, and has been hotly debated across the social and feminist literature. The arrived at consensus is that sexual violence does not reflect socio-biological strategies of reproduction, but rather that it is the result of the patriarchal structure of conventional societal traditions. It is the repercussion of male dominated familial, political, and economic spheres. It serves as a means of reproducing and reinforcing the sexual and interpersonal relations between men and women. It is motivated by misogyny, a disregard for individual autonomy, entitlement, and the reassertion of male dominance and female subordination. It is cyclic in nature, functioning as a consequence of the patriarchy, and as an extension of it, colluding in the maintenance of the hierarchical advantage men hold over women.

The complexities entwined in sex and violence proliferate the expression of false beliefs surrounding victim-survivors and perpetrators of sexual violence. These infiltrate both public consciousness and the legal system. An institution structured along patriarchal lines of domination and harbouring paternalistic views of women and their roles in society. What constitutes an ideal victim reflects the inherent paternalism associated with patriarchal domination. Women are stereotyped to adhere to this narrative, and any who diverge from it are held to a lower standard and punished according to their social position. Their consumption of alcohol, presence in a male-dominated area, or location deemed unusual for women to exist in, and their prior relationship with the offender all impact the specific social construction of what constitutes as a real victim of sexual violence. These myths surrounding incidences of rape are antiquated within society, embedded into the subconscious, and reiterated through media and juror discourse.

These mistruths depict men as animalistic, at the mercy of their sexual urges. This overbearing storyline spearheads a culture of false beliefs which place further blame upon the victim-survivor for precipitating their attack, or not resisting enough. Such anecdotes further rationalize the actions of the offender, extending their influence over court proceedings. They encourage misogynistic attitudes towards women, legitimizing violence against them. This safeguards the patriarchal norm, contributing to the cyclic pattern of sexual violence, male-domination, and female subordination, reiterated in the pre-conceived biases of the judiciary. The infiltration of patriarchal narratives into the courtroom illustrates why the traditional retributive system is ill equipped to provide justice to all. Instead, it is only those adhering to its masculinist protections that receive fair treatment.

Evidenced in the literature critiquing the response of the retributive system to sexual violence is that the process debases the victim-survivor in the eyes of the public. This reduction in status corresponds with their already subordinated within the hierarchal structure of the patriarchal system. The culture of the courtroom further lends to the historical precedence of victim exclusion from formal proceedings, despite increasing calls for their better incorporation into the judicial system. Their participation rights represent a drastic shift away from the nature of retributive systems. Paternalism is a key element of patriarchal societies, best represented in how retributive approaches to crime steal conflicts from the primary stakeholders. Instead, they are reframed as crimes against the state. In a patriarchal society, the justice system is hierarchical, the state representing the domineering male figurehead. The just deserts ideology corresponds with the patriarchal emphasis on the domination and control of those deemed in subordination to it.

At the core of the retributive system is a patriarchal foundation. Its ideological nature structures it as the dominant means of delivering justice. It is an extension of the rule of the state. In a patriarchal society, its treatment of those beneath it is paternalistic. As the self-appointed proprietor of justice, it is its responsibility to determine whether a crime occurred and to deliver its punishment accordingly. In cases of sexual violence, the victim-survivor is viewed in terms of the specific patriarchal narrative of their predefined sex-roles, as conceived of within the broader structure of society. This manifests in pockets of protection for some, but not all. Victim-survivors outside of its protective remit suffer the additional punishment of limited access to justice, atop of their initial punishment of existing in a male-dominated social hierarchy. Their rejected attempts at pursuing justice result in them

navigating their subordination by engaging in paternalistic behaviours inconsistent with democratic ideologies.

The retributive system thrives beneath this shroud of paternalistic altruism, a distraction from the reality that it is an extension of the politically patriarchal governance of individuals. In cases of sexual violence, the victim-survivor is further subordinated, relegated to the position of witness, and placed lower within the hierarchal structure of criminal justice systems. They only become victim-survivors in the eyes of the court if a conviction is secured by the prosecution. As a witness their victimization is challenged before the judiciary and the public. For many who find themselves in this position, traversing the aggressive tactics of the defendants' attorney, relaying their ordeal in graphic detail, and being confronted with negative reactions to their story, can be a deeply traumatic experience. Unsurprising that critics of the retributive approach consider it a form of judicial rape, with many victim-survivors contending that their experience left them with a sense of being revictimized by the process.

The occupational culture of the courtroom promotes the use of dominating language that seeks to further subordinate those in the witness box. The paternalistic perception of victim-survivors results in judicial actors vying to deceive them into aiding the narrative of the defence without their knowledge or consent. Adversarial systems encourage strategies that can guarantee a victory for the more aggressive barrister, thought to be done for good reason given the consequences of failure for the accused. Such tactics further serve to demonstrate to the jury, judge, or magistrate that they are unreliable or undeserving of the title. Excluded by the structure, culture, and ideological underpinnings of the retributive system, victim-survivors are further omitted from the process through the withholding of information regarding their case, and alternative means to access justice should they fail to achieve prosecution. This contributes to the denial of their self-determination, and their continued subordination within society.

The paternalistic nature of a retributive justice system serves under the guise of protecting those subordinated beneath it. Yet, its consistent failure to offer protection for all undermines this fallacy. As its patriarchal ideology situates it as the sole provider of justice, it is the responsibility of the criminal justice system as an extension of the state and its actors to determine what constitutes as a suitable response to what it determines is serious crime. This narrows the ability for other justice actors to address its consistent failure of victim-survivors

of sexual violence. This is done through the paternalistic rationalization that those subordinated through sexual victimization are unable to conceive of fair retribution for the harms committed against them. Despite growing evidence indicating that victim-survivors wish to be involved in the justice process, to give voice to their experiences in safe environments, be validated and vindicated in their experiences and for the offender to accept responsibility for their wrongdoing, the retributive system persists in its contribution to the already diminished status of those subordinated within society's structural hierarchy.

The use of RJ in cases of sexual violence remains contentious. The complexities entwined in sex and violence result in false truths regarding the motivations of victim-survivors who seek this approach to justice, making it a difficult and emotionally charged subject to broach. Particularly when RJ is misconstrued as a soft justice option. This narrative is laced with paternalistic conceptions of what constitutes as a correct response to the overt subordination of women. What this stance fails to do is consider what constitutes as justice to the subordinated. RJ is an alternative form of justice, not an alternative *to* justice. Nor is it a soft option, as it requires all involved to elevate their expectations of one another, contending that we are more than predator and prey. Increasingly RJ is thought to be capable of functioning alongside retributive justice models. This hybridized model has the capacity to address what the conventional system cannot.

Research indicates that there are common themes which are central to victim-survivors' conceptions of justice. Each of which correspond with the potential benefits of RJ, particularly VOM. Through RJ, victim-survivors are participants in the process, contributing directly to the outcome of the restorative encounter. They can voice their grievances in a safe environment, empowering them to challenge patriarchal stereotypes coherent with their subordinated position, and to spearhead their reintegration into society. They can be validated in their experiences of subordination and be vindicated in the recognition by their family and the wider community of the need to condemn the actions of their subordinator. The prerequisite of the offender accepting responsibility to participate in an RJ programme further ensures that this justice need for victim-survivors is met. Through VOM, the root causes of the offending behaviour can be addressed, victim-survivors can transform their relationship with the offender, and most importantly, be in control of the process, to ease coexistence within the same community, and potentially reduce the risk posed by the offender unto others altogether by involving family and the wider community them in the process.

Given the patriarchal structure of the retributive system, there is the potential for any associated justice service to be manipulated by the underlying paternalistic notions of women as weak and in need of guidance. This leaves RJ vulnerable to manipulation by patriarchal notions of what determines justice following sexual violence. Should the state provide a hybridized service, we must ensure it does not interfere with victim-survivors self-determination. It must be a service for *all*, not the few, as it currently is. Practitioners, service providers, advocates and criminal justice services alike must carefully consider this. RJ is also at risk of rape myths permeating its services. To militate against this, facilitators must receive specialized training that is specific to sexual violence. This can enable them to competently to patriarchal narratives and power imbalances surrounding sexual violence which may revictimize the victim-survivor. Neither the retributive system nor RJ are free from false beliefs propagating male-dominance and female subordination.

While critics are correct in their concerns regarding the reprivatisation domestic and family violence and the potential of revictimizing the victim-survivor by placing them in a position potential re-subordination, such criticisms correspond with cases of ongoing abuse. This is an area which deserves more scrutiny from feminist scholars and proponents of RJ. While there is overlap between sexual violence and continuing abuse, both within and outside of domestic and family circumstances, RJ proposes an opportunity for instances of acquaintance rape to be addressed. In such cases, there is less risk posed to victim-survivor due to the disintegration of any relationship following an assault. They are less likely to have commitments connected to the offender, to have experienced ongoing abuse, and are not at risk of returning to a dangerous relationship following the restorative encounter. VOM is not mediation. Nor is it a flippant endeavour. Its successes can be seen in organizations such as Project Restore and RESTORE, both serving as examples of how carefully organized RJ processes can meet the justice needs of victim-survivors.

When dealing with people there is always risk of things going awry. As a result, does this mean that RJ should be denied those who seek it? The paternalistic narrative that victim-survivors will be re-traumatized by meeting their offender assumes that a restorative approach is riskier than a retributive one. The research critiquing conventional justice methods provides evidence that the risk of revictimization is foremost within the criminal justice system. Thus, further feeding into the patriarchal stereotype that those subordinated by sexual victimization are weak and in need of guidance, unable to discern their own form of justice.

Not all victim-survivors will experience the same trauma following their victimization. Therefore, not all victim-survivors will be negatively impacted by such a process. It is to the detriment of victim-survivors self-determination to deny RJ to victim-survivors of sexual violence.

The correlation between the prevalence of sexual violence and male-dominated societies is difficult to ignore. Their continued subordination and the reluctance address their needs is no coincidence. In a socially structured patriarchy, the subordinated position of women fits neatly into the narrative that they dependent upon male-dominated legal institutions for protection. The hesitancy surrounding the use of RJ in cases of sexual violence reiterates the notion that the subordination of women is undeserving of attention. It is an expression of the paternalistic ideology which says that women do not know how best to respond to their own victimization. It is destructive, impacting their social, political, and psychological agency, resulting in paternalized behavioural patterns that damage the very individuals the retributive state claims to protect. To deny victim-survivors access to another means of achieving justice further contributes to their continued subordination within society. If safeguarding victim-survivors is the goal of the criminal justice system, it is imperative that alternative forms of justice delivery are made available to them. RJ presents an opportunity to tailor the justice system to the individualized needs of individual victim-survivors. The issue is not whether restorative justice in cases of sexual violence is appropriate, it is the denial of the agency of victim-survivors in their pursuit of justice.

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