ARTICLE

The strategic use of terminology in restorative justice for persons harmed by sexual violence

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Abstract

An argument for the importance of strategically selected terminology in the practice of restorative justice in sexual violence cases is presented through reviews of restorative justice, communication, social constructivist and feminist literature. The significance of language and its impact on those who use it and hear it is established from its use in classical antiquity, psychotherapy and semantics. The use of the terms 'victim' and 'survivor' is explored in the fields of legal definitions and feminist theory. Reports in the existing restorative justice literature are used to bring together the literature on the impact of the use of terminology and the legal and feminist understandings of the significance of the use of the terms 'victim' and 'survivor'. We argue that the restorative justice practitioner has a crucial role in guiding the person harmed in sexual violence cases in the strategic use of 'victim' and 'survivor' to enhance the positive impact of terminology on the persons harmed in acts of sexual violence. Conclusions from our explorations support the creation of a proposed sexual violence restorative justice situational map for use as a navigational aid in restorative justice practice in sexual violence cases.

Keywords: Restorative justice, sexual violence, victim, survivor, feminism.

1 Introduction

Words are a primary communication tool used in restorative justice mechanisms, making consideration of vocabulary critical for navigating complex restorative processes. This article explores the role of language for restorative justice facilitators working with sexual violence cases and recommends some ways forward. We rely heavily, but not exclusively, on feminist debates of language around 'victims' and 'perpetrators' because of that movement's antecedence in the field and femi-

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nism's acknowledgement of the role of power in diagnosing causes of sexual violence and facilitating healing.

People use language not merely to describe and communicate our worlds, but also to shape and change them (Fairclough, 2001; Gee, 2011). Issues, and the representations we make about them through our use of language, are intertwined: by changing the representation, the issue is changed (Bacchi, 2004). For example, when applying 'criminal justice system' and 'criminal legal system' to the same institution, the first signifies a justice perception of the system, while the second emphasises legality with justice conspicuously absent and implies the failure of the legal system to be 'just' (Das Dasgupta, 2003). By representing the same events or social practices in different ways we can draw attention to a harm or injustice in the event or social practice being described.

Language reflects conscious efforts to shift power relations in battlegrounds over policy and power because it is one tool of social change (Schmidt, 2002 cited in Fischer, 2003). Debate in feminist circles about language is essentially a debate about power structures within society and the way in which these contribute to the victimisation or empowerment of women (Spender, 1980). Challenging language simultaneously challenges the social practice that the language describes. For example, 'herstory' as an alternative to 'history' not only denotes women's stories; it is also highly political because herstory makes a pointed comment on the invisibility of women in dominant narratives (Miller & Swift, 1977).

Language allows us to communicate, and to challenge and construct reality (Foucault, 1982). It also contributes to our *being*, that is, our sense of self and our identity in the world, through the labels associated with us (Gee, 2011). The labels women adopt for themselves or that others give them – girl, woman, lady, female, weaker sex, spinster, wife, matron, maiden – affect their view of themselves, how they act, how they interact with others and how others think of them and treat them (Spender, 1980).

Language and labels, then, are clearly important and political. This article is about the use of the labels 'victim' and 'survivor' in cases of sexual violence in a restorative justice context. It explores usage and discusses the consequences of using these labels for the participants in the process.

The semantics of victim and survivor have a long history of debate in the feminist literature on sexual violence. Although discourse analysis is prevalent in feminist literature, it is only relatively recently that we find the dynamics of labels such as 'victim' and 'survivor' written from the perspective of discourse analysis in the restorative justice context (Bavelas & Coates, 2001; Bletzer & Koss, 2013; Dunn, 2004). What has been written reveals disagreement about the appropriateness of various terms for the person harmed and the person responsible.

We contend that a dialogue about labels such as victim and survivor is not just a matter of semantics but a key issue in the shaping of restorative justice and its ability to meet the justice interests and therapeutic outcomes of people who have been wronged by the actions of others (Daly, 2017). In particular, because Jülich's (2001, 2006, 2010) research on victim-survivors of sexual offending showed the efficacious impact on recovery of them feeling a sense of justice, we

propose that restorative justice facilitators use language strategically to enhance both therapeutic and justice outcomes. We draw on the work of early feminists to reignite a discussion that has lapsed in recent years. Our proposed sexual violence restorative justice situational map (see Figure 2) is offered to promote this discussion and as a navigational aid for those working in this area to enhance restorative outcomes.

2 Literature review

Language is part of an entangled web of individuals and groups, settings, expectations, obligations and goals in the sexual violence environment. This section reviews literature from historical and current sources to establish the potential and actual impact of the use of significant words in therapeutic and judicial processes to achieve positive outcomes for stakeholders in sexual violence cases – particularly those who have had sexual violence inflicted on them. The review considers the potential impact of a word or words on the well-being of the hearer as a background to a more detailed review of the use of the terms in law. A social constructivist perspective is taken to demonstrate the value of including feminist understandings and a Foucauldian, co-constructivist paradigm in the use of words for effect.

2.1 The significance of words

Entralgo (1970) documented the therapeutic use of words in the works of Greek classical antiquity from the eighth century BCE to the fourth century BCE as an effective tool in the hands of a skilful, curative rhetorician. He argued that the therapeutic word had an intrinsic quality that directly affected the physical, emotive and cognitive faculties of the hearer and resulted in the restoration of wellness to someone suffering from physical, social, spiritual or psychological disease.

This connects in many ways with the focus of this study of the potential impact of terminology in restorative justice for addressing sexual violence cases through its ability to produce positive psychological, physical, social and spiritual effects on the person harmed. It includes the reality of the person harmed having their normal, stable, secure, familiar systemic environment shattered by their distress (Pemberton, 2019) and the goal of restoring with the person harmed a new, positive, stable, secure systemic environment. A recent and extensive review of the significance of language in therapeutic interactions is provided by Romano, Arambasic and Peters (2017), who concluded that there is a causal relationship between positive client change talk and positive therapist reflections and affirmations that respond to a combination of client needs, expectations and wishes.

The work of Eco (1976) and Peirce (Atkin, 2013; Borges, 2014) highlighted the importance of participants in a communication event having an agreed understanding of what a word signifies in relation to the object it refers to for effective communication to occur. Derrida (Derrida, 1978; Derrida & Norris, 2002) believed that the participants' understandings of the meaning of a word is

restricted to the setting of time and space in which the communication occurs. The setting of a sexual violence case increases the impact of this dynamic, especially for the person harmed whose sensitivity to the effect of language is heightened by their traumatic experience.

Thus, there exists a long and varied interrogation of the therapeutic use of language and of the power of words. This suggests that the positive effect of a word is the result of the speaker and the hearer working together to determine the most appropriate and helpful word or words for the particular condition and situation. We explore these elements of communication with respect to the use of the two terms of interest, 'victim' and 'survivor', in legal, feminist and restorative justice literature, in an attempt to arrive at recommendations for facilitators.

2.2 Legal definitions

International and domestic law tends to use the term victim in an unambiguous but narrow way. The United Nations General Assembly resolution 40/34 (United Nations, 1985) stated that a victim is a person or persons

> ... who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power (para. 1).

In New Zealand, the Victims' Rights Act 2002 (New Zealand Legislation, 2010) is an example of nation states defining a victim as a person who has been offended against or who has suffered physical injury, emotional harm and loss or damage to property as a result of an offence committed by another person. The legislation includes parents or guardians of children or young people as victims and the immediate family of those who have died or become incapacitated unless such persons were responsible for the offence (New Zealand Legislation, 2010). This definition does not acknowledge the impact an offence has had on people close to an adult victim of an act that has not resulted in death or incapacity.

The Crown Prosecution Service of England and Wales (The Crown Prosecution Service, 2010, para 4) has defined a victim as

> a person who has complained of the commission of an offence against themselves or their property. The term includes bereaved relatives or partners (including same sex partners) in homicide and fatal road traffic cases, as well as parents or carers where the victim is a child or a vulnerable adult.

The definitions discussed above are typical of formal definitions of victim as encountered in criminal justice systems around the world. These formal understandings of victims have been challenged by feminists writing about gendered or sexual violence. As the following review shows, the language of victimhood is important because it not only describes an experience, but also contributes to the

person's understanding of events, their identity and their recovery (Young & Maguire, 2003).

2.3 The feminist debates: from victim to survivor to thriver

It is in the context of sexual violence that feminist debates developed with diverse and competing opinions over the use of victim or survivor. We will use the labels 'sexual violence' and 'sexual abuse' interchangeably to denote the continuum of behaviours (Kelly, 1988) that fall under the umbrella terms of gendered and sexualised violence (Hudson, 2002) or gendered harm (Daly, 2002).

The feminist debates about the words 'victim' and 'survivor' have both a personal and a wider political dimension. The labels are important for the individuals concerned – how they view themselves, how they are viewed by others and how the labels contribute to their recovery by helping them understand wider issues. But the labels also contribute to the wider debates about the ways in which societal structures and values contribute to sexual violence.

Prior to the second wave of feminism and the rise of women's groups, sexual violence was viewed as a private and personal problem for victims.[1] In many cases, there was an assumption that the victim's actions contributed to the abuse. Through multiple channels that provided women with fora to speak about the abuse they were experiencing in their lives (Alcoff & Gray, 1993), feminists challenged these paradigms of silence and victim-blaming (Barry, 1979). These developments emphasised the serious social and political implications of sexual violence; sexual offending was not the result of individual pathology but part of wider socio-political structures (Cunningham, 1994). By applying the label 'victim' to women and children who had experienced sexual abuse, the awfulness of their experience was being acknowledged. Furthermore, their innocence was proclaimed because the word victim suggests a lack of control over events and consequently a lack of responsibility for events (Young & Maguire, 2003). The victim was not at fault.

But while the label victim heightens consciousness of the experience of sexual violence, it is also a term that describes a person's identity focused solely on their victim experience. Barry (1979) claimed that in doing so, it denied the full humanness of the woman and contributed to the continued objectification of that person that had commenced with the act of sexual violence. It reduced the woman to a passive recipient of another's violence, engendering pity. Defining women as victims ignored the active strategies women had constructed to cope with sexual violence and its aftermath (Barry, 1979).

The term 'survivor' first emerged towards the end of the 1970s (Hyman, 1993; Leamy, 1994). The majority of victims do survive sexual abuse in that they are not killed by the event itself, so technically speaking, they are survivors. But

1 While the acknowledgement of sexual violence in the home and in the family and the widespread nature of this 'secret' was not publicly discussed until the second wave of feminism, there were, however, many previous campaigns by women to end sexual practices such as the sexual exploitation of slaves and sex trafficking, as detailed in Harrington's book *Politicization of sexual violence: from abolitionism to peacekeeping* (2010).

Barry (1979), in her landmark book *Female Sexual Slavery*, was the first person to advocate for the use of the term survivor as a respectful acknowledgement of a person who had lived through a dangerous experience (Hyman, 1993). Barry claimed that women, unlike men, had not been socialised to deal with survival but rather to see themselves in terms of being, as opposed to doing; a passive existence as opposed to an active existence. Consequently, while women tended to handle survival in a haphazard manner, Barry (1979: 46) pointed out that, irrespective of how a woman handled a threat, she was attempting to survive. Even actions that could be described as acquiescence were '…part of a complicated process of survival'.

Barry (1979), however, argued that women needed to be more than individual survivors of individual instances of sexual abuse. To bring an end to rape would require what Barry termed effective survival, which speaks to a wider political project that involves the banding together of women to bring about societal change. Rape is a political problem that will not be solved unless power imbalances between men and women are resolved. For feminists, the personal and the political are intertwined. The purpose of consciousness-raising groups in which women discussed their own oppression was not therapy, for therapy assumes the subject is sick and the solution to their sickness is a personal one in the form of treatment or a cure (Hanisch, 1969). The purpose of such speak-outs, instead, was to provide a platform for political action. Because the problem was sexism, the solution was social change, not personal therapy.

Armstrong (1994) echoed a similar sentiment in her book *Rocking the Cradle of Sexual Politics* in which she reflected on the way in which incest had become a public affair, with confessions on television and in magazines. While these confessions may have been cathartic for the individuals, they were totally devoid of wider political context and were sensationalised and exploited by the mass media (Alcoff & Gray, 1993). While such public survivor discourse had an empowering element to it (Alcoff & Gray, 1993), the discourse of sexual violence became appropriated and undermined by the psychotherapy industry and lawyers, neither of which shared feminist perspectives on gendered power (Armstrong, 1994). Armstrong argued that the only way to stop incest was to stop treating it as a consequence of family dysfunction, able to be solved via psychotherapy. What was required instead, Armstrong argued, was socio-political change to put an end to the belief held by many men that they had sexual rights over their children. While the use of the term survivor gained popular usage in the 1980s, it was not in Barry's effective survival sense. Armstrong argued that a political explanation of incest not only made it possible to prevent incest, but also helped survivors better understand the experience that they had been through.

While Barry (1979) rejected the victim label because it connotes passivity, others use both 'victim' and 'survivor' as terms to describe different stages of the experience. These writers focused on analysing the transition required to move from victim to survivor. 'Victim' describes the condition of the person during or immediately after the violent event as 'someone to whom violence was done' (Barry, 1979: 38), whereas survivor describes their subsequent state (Young & Maguire, 2003). The processes that enable survival are those coping strategies

that are put in place to enable life to continue, and it is the development of these strategies that marks the transformation from victim to survivor (Bannister, 1992; Figley, 1985). As Figley (1985), a trauma specialist, noted, both victims and survivors have experienced painful events. He suggested that the underlying difference was that victims have been immobilised, whereas survivors have overcome an ordeal and have been able to draw on it as a source of strength. They have gained control over the direction of their life, have developed mastery, have resolved the damage of the abuse and have accepted and integrated the trauma. While Figley wrote generally about victim and survivor, feminist writers such as MacLeod and Saraga (1988) located the victim-to-survivor transition within the development of feminist theories.

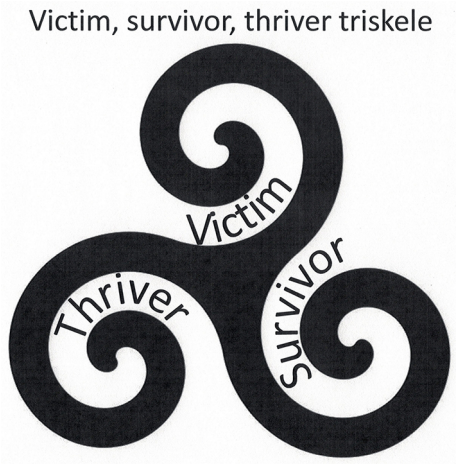
The use of 'survivor' as a label for those on the receiving end of sexual violence has not received universal acceptance from feminists. While survivor has been adopted as a term of empowerment, using it risks downplaying the seriousness of the harm done. Patricia Easteal (4 August 2008) asserted, 'I'm not happy with the word "survivor" because I don't believe that we all do survive'.[2] She averred that victim 'doesn't, to me, reinforce women as passive and weak, but calls it as it is – violent victimisation', arguing that 'if women do in fact continue to be victimised, then I think we need to name it'.

Feminists working with women and children who have experienced sexual violence note the importance of subjective experience to the use of labels; this is a key point we highlight for restorative justice facilitators. Language plays an important role in the healing process for people who have experienced abuse. It influences the individual's ability to make sense of the experience and 'to negotiate one's identity in response to it' (Young & Maguire, 2003: 40). Because language choice is influenced by sociocultural forces, the way therapists and society in general use language around sexual violence is an important constraint or enabler of the recovery process (Phillips & Daniluk, 2004; Young & Maguire, 2003). According to Young and Maguire (2003), when individuals label themselves a victim, they are acknowledging that harm was done to them, limiting self-blame. An individual who is comfortable with the label survivor is signalling that she is ready to move forward with recovery.

Young and Maguire (2003) asked women who had experienced sexual assault to discuss the labels that they felt described their experiences and feelings. Not all the women in Young and Maguire's small ethnographic study were comfortable using those labels to describe themselves. Because the use of language helps women with the healing process and impacts on the way in which they view themselves and how they are treated by others, Young and Maguire advocated a flexible approach to terminology, one that reflects the experiences and the realities of those involved. They argued that labels should not be used for the sake of being politically correct because 'the recovery process may be impeded by restricting language choices or by forcing labels on individuals that they are unwilling or unprepared to embrace' (Young & Maguire, 2003: 40).

2 Personal communication, 4 August 2008, with Dr Patricia Easteal, author of 'Voices of the Survivors', Melbourne: Spinifex (1994).

Figure 1 The victim, survivor, thriver experience



They suggested that the terms victim and survivor do not accurately express the broad spectrum of experiences. These terms imply victims are weak, passive and immobilised and that survivors have recovered. People who have been sexually assaulted may not feel comfortable with either of these definitions, or they could feel that both labels accurately describe their experience, for example 'I am a victim because I was victimised; I am now in the process of becoming a survivor'. It is not simply a matter of either/or. Young and Maguire (2003) contended that people who have been sexually victimised need to be consulted over the language used to describe their reality at that point in time; otherwise labelling runs the risk of perpetuating abuse by making assumptions about the personal journey of recovery, which might not be accurate. This will hamper recovery.

Herman (1997) argued that the journey of recovery is never complete and that the consequences of sexual abuse continue to impact on the survivor. In contrast, a number of scholars have written on the need for women to eventually move on from survivor-mode, lest their lives be forever defined by the abuse they had suffered (Jordan, 2008; McGregor, 2008; Phillips & Daniluk, 2004). In this vein, Dinsmore (1991) maintained that recovery enabled the survivor to move from surviving to thriving.

Informed by the literature reviewed in the foregoing, we represent the harmed person's experience of being a victim, survivor and thriver in a Celtic triskele of interlocking spirals with a shared centre to signify forward motion to reach understanding (see Figure 1). This allows for the person harmed to perceive and present themselves as being a victim, survivor or thriver separately or in any combination depending on the psychological, cognitive, social, physical and systemic context in which they are acknowledging any of these states.

This triskele promotes feminist perspectives, in which there is a difference of purpose in the use of labels when addressing the wider political project of reducing sexual violence and the use of labels in a psychotherapeutic environment in

which the focus is on the elimination and management of symptoms (Parekh & Givon, 2019). In the therapeutic environment, an either/or approach to the use of victim and survivor creates an inherent tension between the need to honour the survivor and acknowledge the harm done. The latter point is important in the focus of the restorative justice process on achieving justice for the person harmed as one aspect of repairing the harm caused by the person responsible. As part of this focus, an awareness of the political and social change needed in the area of sexual violence can also contribute to recovery for the person harmed. We believe that restorative processes provide an opportunity to incorporate aspects of these perspectives, expectations and goals.

3 Restorative justice

Restorative justice is a process that aims to address harm caused by someone's actions (Pemberton, 2019). This may be through the court system, but it is increasingly used in schools and workplaces and within the community. Typically, a restorative process involves a facilitated encounter between the stakeholders – the person responsible, the person harmed and their communities. Key aims of restorative justice are that the person responsible will demonstrate responsibility and accountability for their actions and that the person harmed has the opportunity to experience a sense of justice (Daly, 2017; Jülich, 2006; Zehr, 1995). The restorative intent of the restorative justice construct has a complementary, implicit aim of facilitating and enhancing a reparative process for the participants through what Lopez and Koss (2017: 212) described as 'restorative justice with therapeutic components'. The timing of restorative justice processes varies. For example, in the New Zealand criminal justice system, restorative justice conferences are available after conviction and prior to sentencing for those offenders pleading guilty (Morris, Kingi, Poppelwell, Robertson & Triggs, 2005). The focus of this article is on sexual violence, which may be the subject of a criminal justice process, but often is not, as reporting levels are low.

3.1 Sexual violence and labels in a restorative justice context

It is in the field of sexual violence that restorative justice overlaps with the feminist literature (Goodmark, 2018). Feminism's focus on language challenged the social processes – rape, domestic violence, child sex abuse and so forth – that the language described. Language was deployed to highlight injustice and harm caused, not just by individual persons, but by the socio-political system in which they were situated. As well as making a radical challenge to the existing socio-political order, the plight of individual persons who had been subjected to gendered violence was a concern. Deconstructing labels was a key to helping recovery and locating blame. The debate on labels was not confined to the academic sphere; it informed the practice of therapists working with those who had been victimised.

The principles and practices of restorative justice are applied in sexual violence cases to facilitate more positive outcomes for the person harmed, the per-

son responsible and their communities. These processes involve the person responsible, as well as the person harmed, and this influences the focus and practice. Wider social structures and practices may contribute to the behaviour of the person responsible, but the aim is to have them take responsibility for the events, not pass off responsibility to society. Restorative justice is not the same as mediation, because it expects the person responsible to accept responsibility and demonstrate accountability for their actions and the consequences of those actions; it does not ask the person harmed to compromise in the interest of reaching an outcome (Jülich & Buttle, 2011). We should note that it is not desirable to 'restore' a violent relationship to a previous state. An unequal relationship enables sexual violence to occur. The old normal can never be restored, but facilitating, encouraging and enhancing the possibility of a new normal is the aim of restorative justice. If this is to be achieved, restorative justice must address this inequality so that substantive equality or equality of outcome can be achieved (Jülich & Thorburn, 2017). Transforming relationships so that persons harmed and persons responsible can co-exist in shared communities can be cathartic and provide the victim with a sense of justice.

The restorative justice literature on sexual violence reveals a range of perspectives on the use of the labels victim and survivor, as well as the labels applied to the person responsible. McAlinden (2006) used the terminology of child victims and sex offenders in advocating for the use of restorative justice with low to middle risk offenders of current child sexual abuse. Yantzi (1998), an early leader in the field of restorative justice and sexual violence, advocated using less stigmatising language by avoiding destructive labelling and focusing on the behaviour as opposed to the person. He argued that addressing recidivism requires the use of respectful terms and preferred referring to an offender as 'a person who has sexually offended' and to the victim as the survivor or victim-survivor as a recognition of their resilience (Yantzi, 1998: 14). Koss and Achilles (2008), similarly used the conjunction survivor/victim, because, as they pointed out, it retains '…the empowerment conveyed by the word survivor and the outrage implied by the word victim' (Koss & Achilles, 2008: 1).

RESTORE, a programme operating in Arizona that uses restorative justice to address date or acquaintance rape, refers to the offender as the 'Responsible Person' and uses survivor for the person who has been harmed (Koss, Bachar, Hopkins & Carlson, 2004). Programmes in Finland and Denmark, one addressing domestic violence and the other sexual violence, have both used the standard criminal justice system terminology of victim and offender (Flinck & Iivari, 2004; Iivari, 2010: 114-117; Sten Madsen & Andersson, 2004).

Some writers have explored the difficulties of creating restorative dialogues when there are different perceptions of the event. Sten Madsen and Andersson (2004) argued that the dominant discourse of victim and offender applied only to attack rapes and did not include those rapes perpetrated by people known to the victim or those that did not require force. A similar argument was put forward by Kathryn McPhillips (29 July 2008), who described a continuum of sexual

violence.[3] At one end sexual violence in the form of attack rape was indisputable, but that at the other end it was not so definitive. She likened sexual violence at this end of the continuum to a dance, where the two parties metaphorically move around each other with different motivations, different understandings of the outcomes and different understandings of the roles they are playing. So what might be claimed as rape could also be understood as misinterpreted signals. The victim experiences rape, but the offender did not intend rape. Until the recent phenomenon of the #MeToo movement, consent, particularly where the parties are known to each other, has often been a grey area (Ministry of Justice, 2008). Even if restorative justice is used at both ends of the continuum of sexual violence, it might not be always be helpful to label people as victims and offenders for the entire continuum.

Project Restore, one of the few restorative justice programmes worldwide that has been developed specifically to address sexual violence in New Zealand, is situated in the community and is funded by the New Zealand Ministry of Justice. It receives referrals from both the court system and the community for current and historical sexual violence (Jülich & Landon, 2017).[4] In New Zealand, a mandatory referral is made by the court system for those offenders who plead guilty.

As policies, procedures and guidelines were developed, facilitators at Project Restore tended to use the language they were familiar with. For example, those coming from agencies that provide support and advocacy for those who have been subjected to sexual violence tend to use the term survivor, while those from community groups providing restorative justice processes tend to use the term victim. As the practice guidelines were being finalised, it was noticed that the terms victim, survivor and victim/survivor had been used interchangeably; so too had the terms 'offender' and 'perpetrator'. This initiated their first debate on the language used. As the debate has progressed, the use of appropriate language has been part of this dialogue. Underpinning this are the assumptions regarding which field of practice Project Restore belongs to: is it a restorative justice provider group with expertise in sexual violence or a sexual violence support group with expertise in restorative justice?

Walgrave reinforced the importance of language as he spoke about a Belgian pilot project that used restorative conferencing.[5] He said that one agency had a high rate of victim cooperation, while another had a low rate. It was discovered that the language used in invitations to participate was different: 'the facilitator of the first service used language that spoke of crime, the facilitator of the second service used the word conflict'. This was not reported as a finding because the lack

3 Personal communication 29 July 2008, with Kathryn McPhillips Clinical Manager of Auckland Sexual Abuse Help, a founding member of Project Restore, Leader of the Project Restore Clinical Team and a member of the Executive and Practice Committees.

4 First author, Shirley Jülich, is a founding member of Project Restore and a member of the Executive and Practice Committees.

5 Personal communication with Emeritus Professor Lode Walgrave of Leuven Catholic University, 21 November 2008. A brief report of this project is available in *Restorative conferencing in Belgium: Can it decrease the confinement of young offenders?* (Vanfraechem & Walgrave, 2004).

of data did not allow reliable conclusions but raised a suspicion that terminology could influence the decision to participate in restorative processes. The agency speaking in terms of crime had a higher uptake in victim participation. Although that project dealt with young offenders, victim feminists such as Easteal would perhaps not be surprised. However, others working in the field of sexual violence would argue that victims or survivors do not always understand that their victimisation can be defined as a crime (Jülich, 2001). This is particularly true of adult survivors of historical child sexual abuse. Further, some victims and survivors are disengaged by the language of crime. It is simply too difficult for them to reframe the victimisation they have been subjected to in the context of crime. The same might be true of other forms of sexual violence that have not used force, particularly where the wronged party has some familial or positive ties to the wrongdoer.

4 Discussion

Debate in and between feminist communities has not led to unanimous agreement on the usage of key terminology to describe women and children who have been subjected to gendered crime. Part of this lack of unanimity is to do with the context that is being addressed: the wider project of challenging gendered power in society, or the therapeutic needs of the woman or child, which benefits from an understanding of the wider context but must proceed at a pace that is most helpful to the person harmed. But within feminism, there are also subgroups that disagree, even when the context is the same (for example, Easteal and Barry). With restorative justice being a diverse field, operating in many contexts and covering many different kinds of wrongdoing, what can a debate about its use of labels achieve? Is the development of best-practice label guidelines possible?

The feminist debate on labels, connecting power and language and centring on the person harmed, impacts the framing of debates and practice dealing with gendered violence. We think the topic of labels is important, for the same reason feminists do: language and power are intertwined, and restorative justice practice needs a conception of power in order to be effective (Braithwaite, 2002; Jülich, Buttle, Cummins & Freeborn, 2010; Sullivan & Tifft, 2005). Without it, the dynamic between the person harmed and the person who has harmed risks being manipulated, reinforcing the existing power dynamics – social as well as personal – that contributed to the harm (Goodmark, 2018). The following discussion raises some of the tensions and issues around labelling that we see for restorative justice practice and theory.

Power can be subtle and complex. Restorative justice sometimes references power in terms of empowerment and maintaining a balance of power between stakeholders. But with sexual violence, power relationships are complicated (Goodmark, 2018). Inequality enables sexual violence, and so a state of inequality pre-dates specific incidences of sexual violence. Victims and offenders might have to be treated differently to ensure that a victim can be empowered. The facilitator, therefore, is not the neutral third party. While he or she might be impartial,

the facilitator must be prepared to challenge any rape myths, especially explanations that minimise offending or blame the victim, and practice balanced partiality. To do otherwise is merely replicating the structures in society that enable, facilitate and maintain inequality (Jülich, 2001). If restorative justice facilitators want credibility in the sexual violence sector, they need to explicitly address issues of power.

Daly (2002) provided a framework of three levels for analysing what was happening in restorative justice; first, what occurs in the justice practice itself; second, the relationship between this and broader system effects; and, third, how restorative justice is located in the broader politics of crime control. This framework is useful for highlighting where power can be misused within restorative justice. There is no consensus in the literature as to how this might best be achieved in practice, that is, at the first level of Daly's framework. Some commentators refer to the facilitator's neutrality (Marshall, 1998), or impartiality (Swanson, 2003), while others accept the inevitability of compromised neutrality (Jülich, 2009).

On the other hand, Coker (1999) upheld that restorative justice has never subscribed to the ideal of the neutral mediator, maintaining that such a concept, together with the structural disadvantages women have experienced, would likely ignore past injustices between victim and offender. If the facilitator does not challenge victim-blaming or gender-biased explanations, then he or she would be reinforcing not only the offender's belief and value systems (Coker, 1999), but also those structures within society that foster such belief and value systems. Therefore, the relationship between the justice practice itself and the broader structures of power within society – the second level of Daly's model – are likely to contribute to the revictimisation that victims of sexual violence experience as they pursue justice.

Unless specifically trained to address sexual violence, restorative justice facilitators may bring with them personal belief and value systems that do not enable them to recognise the misuse of power within restorative justice processes (Goodmark, 2018). Sullivan and Tifft (2005) situated harm in a wider political economy of relationships, that is, the underlying social, political and economic forces that encourage violent dysfunctional relationships – the third level of Daly's model. They advocated not just a needs-based justice system in which power inequalities are addressed, but sustainable communities in which the needs of all members are attended to.

We think it is likely that language variation (and practice) is partly explained by the backgrounds of the restorative justice facilitators: that is, the discipline within which facilitators have been trained has an influence over their choice of language and their ability to recognise and address power imbalances. A range of social movements fed into the development of restorative practices, including feminism and civil rights movements, as well as church-based workers involved in reconciliation projects, lawyers, judges and community-based counsellors and academics (Daly & Immarigeon, 1998; Ptacek, 2010). These people all bring their own understandings about society, power and the role of restorative justice. A lawyer attracted to restorative justice because of disenchantment with the crim-

inal justice system may be unaware of feminist analyses of rape myths, just as a person from the dominant ethnic group in a society may be oblivious to the ways in which racial discrimination is embedded in social norms.

Adopting the language of their discipline or context raises a question for restorative justice facilitators: if they adopt the language of their background or the context unquestioningly, are they reinforcing existing power structures in society, rather than challenging them? This is part of the bigger question about the purpose of restorative justice: to what extent does its responsibility end with helping the people at the centre of the case, and to what extent is it about changing society? At which one of Daly's (2002) levels do facilitators operate?

Conversely, context-dependent language gives restorative justice facilitators a strategic advantage when it comes to achieving their goals. The restorative justice process works only when all participants to the action are engaged with the process. Language, therefore, needs to include and not alienate potential stakeholders, while simultaneously avoiding the trap of minimising harm. Respectful labels such as 'person harmed' and the 'person responsible' have been advocated by some facilitators and theorists (Sullivan & Tifft, 2005; Yantzi, 1998). But being too respectful and too inclusive has the potential to minimise the trauma that is experienced as a result of, for example, sexual violence. By minimising the trauma we might be detracting from the central aim of addressing the harm and allowing the perpetrator to demonstrate responsibility and accountability. Restorative justice must develop language that balances the need to be inclusive of participants while accurately reporting on the harm that has been done.

As the debate within feminism suggests, while there is no single or easy solution to the issue of labels, it is a debate worth having.

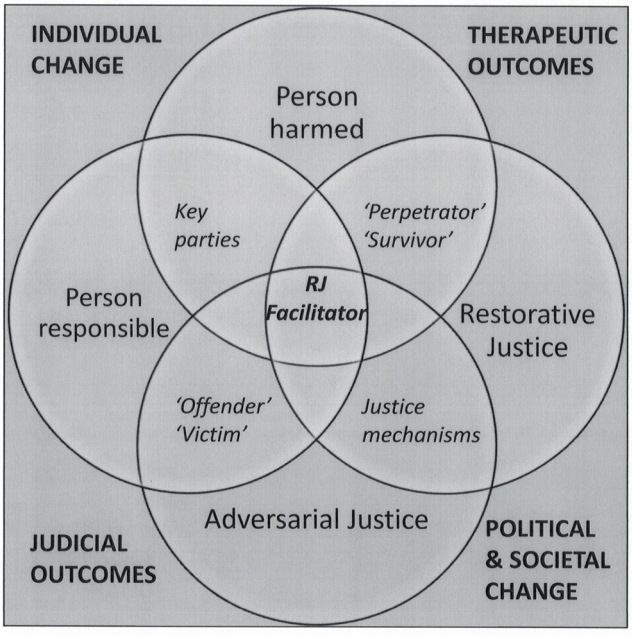
4.1 Strategic terminology

This article asserts that the terminology used for victims of sexual violence is important for both therapeutic and wider societal reasons. But the topic is complicated, as we have outlined. There have been debates in feminism that provide useful insight into the issues and their complexity. We believe there is a gap in the restorative justice literature and practice around the use of language, with some practitioners adopting the terminology of their background, as a default. We encourage interrogation of the appropriateness of terminology and its impact in a restorative justice context, particularly in cases involving sexual violence.

We wish to promote the continuation of the debate and hope the above survey is of use. Above all, we advocate for the adoption of language in a *strategic* way, which progresses a move towards healing and change, guided by the goals and interests of the stakeholders, with primacy given to the person harmed.

To assist with this, we have developed a situational map that provides a visual schema of the complex interplay of systems, stakeholders and language involved in the use of terminology for restorative justice practitioners dealing with sexual violence cases (see Figure 2). The map does not recommend a specific use of terminology but, rather, situates the restorative justice practitioner at the centre of a complex interplay of overlapping, highly subjective and contested factors that require negotiating. The map highlights the central role of the facilitator

Figure 2 Sexual violence, restorative justice, situational map



in helping the person harmed navigate situational elements, some of which are competing, others complementary and complimentary. We recommend a collaborative, flexible process that gives priority to the interests of the person harmed (Goodmark, 2018), who is placed at the top of the map, as the participant for whom the event is most traumatic (Jülich & Landon, 2017; Pemberton, 2019). The map captures both the justice and restorative aspects of the restorative justice construct although the justice system will not be at play in many cases (Ward, 2017; Zinsstag & Keenan, 2017).

The dynamic potential of the victim, survivor, thriver triskele (Figure 1) is embedded in the map through empowering the person harmed, with the help of the facilitator, to choose when, where, how and why to use relevant terms in their journey to seek justice and restoration of well-being. The potential for both justice mechanisms cooperating to bring political and societal change is included as a prompt to restorative justice facilitators to look for opportunities to pursue this path.

Early analysis of a four-year study investigating those who have engaged with Project Restore, persons harmed, persons responsible and support people for both parties (Jülich, 2020), implied some confusion over whose rights and needs were privileged in the restorative justice process in sexual violence cases. This confusion related to varied understandings of the impact of the language used to refer to the persons harmed, which affected perceptions of the scope, purpose and prerogatives of restorative and adversarial justice mechanisms and their rela-

tionship. Outcomes and goals for the key parties and justice mechanisms were mentioned, but understandings of these was sometimes vague. All these contributed to different perceptions of the sexual violence, its impact and the restorative justice process, highlighting the importance for restorative justice facilitators to help participants navigate the process. We offer our restorative justice, sexual violence, situational map as a visual aid for facilitators to use with participants to increase their understanding of what they are involved in and reduce variance and disparity of their perceptions of the situation.

5 Concluding thoughts

The practice of restorative justice continues to evolve, and so does the theory (Moore, 2004). The context for the restorative process and whether the wrong is classified as a crime or not contributes to variation in language. As the scope of restorative justice widens, so does the potential for its language to evolve and diverge. Some authors, such as Sullivan and Tifft (2005), use different terms depending on the context. While terminology such as the person harmed and the person who has harmed sits comfortably alongside the values of restorative justice and other forms of conflict resolution, if applied to cases of sexual violence it de-dramatises what happened, downplaying trauma. Thus, it is important to have a strategic means of using terminology that retains the reality of the traumatic impact of sexual violence on the abused and undeniable criminality of the abuser, while empowering the abused to address their harm and challenging the abuser to demonstrate responsibility and accountability for causing that harm.

This raises the question of whether restorative justice's values – such as the fundamental tenet of inclusivity – are sometimes incompatible with naming harm. As the practice, theory and accompanying language evolves, it is crucial that the work of feminists that put sexual violence on the agenda is not undermined and the victimisation that women and children have experienced is not minimised by mutualising and reframing it as a dispute or as conflict (Cobb, 1997; Coker, 1999). Additionally, restorative justice must avoid any notion that might indicate that the sexual abuse of women and children could be decriminalised. The challenge for restorative justice theorists and facilitators is to develop language use that engages the many communities it serves, but also language that challenges power structures, thereby enabling victimisation. Harm must be called what it is: rape is rape, not merely wrongdoing. This is an area of work that needs further attention, particularly in the development of practical tools and raising awareness of the power and biases inherent in language choices. Our sexual violence restorative justice situational map is designed to assist restorative justice theorists and facilitators use language strategically, thereby increasing the possibility of individual judicial and therapeutic outcomes being achieved.

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