Chapter 7

Reconciling Restorative Justice with the Law for Violence Against Women in Europe: A Scheme of Structured and Unstructured Models

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ABSTRACT

Violence against women (VAW) has slowly found its place in many international policies and conventions. The objectives, enforceability and foci of these international initiatives vary depending on a number of factors including political, sociological, economical and legal. However, they share one common feature. They are all based on the legal positivistic understanding of delivering justice. This chapter accepts this understanding and moves on to argue that what is also undeniable is that justice has a normative concept that is universal truth. The chapter proceeds to illustrate that Restorative Justice (RJ) outside the law has, is and will continue to manifest itself even for VAW cases. Ultimately, the chapter aims to contribute to the book’s general objective of advancing the multi-dimensional growth of therapeutic jurisprudence with a gender sensitive and gender focused approach.

INTRODUCTION

Violence against women (VAW) has slowly found its place in many international policies and conventions. The objectives, enforceability and foci of these international initiatives vary depending on a number of factors including political, sociological, economical and legal. However, they share one common feature. They are all based on the legal positivistic understanding of delivering justice.

This understanding accepts that each legal system is based on the accepted notion of justice by society which then entrusts its application and enforcement to legal practitioners such as judges and lawyers. This statement, by definition, leads us to assume two things; first, that there are different legal systems...
and second that there are different types of justices depending on a local community’s understanding. Therefore, at the international level, conventions aim to coordinate national laws e.g., by providing minimum standards and a general consensus.

This chapter accepts this understanding and moves on to argue that what is also undeniable is that justice has a normative concept that is universal truth. The paper uses the School of Thought of Aristotle’s Natural Law theory to unravel the dimensions of an alternative, non-punitive response to VAW and domestic violence in particular. This approach has recently been named “restorative justice” (RJ) (Eglash, 1977; Gavrielides, 2008), a notion that has been in existence in various shapes and forms since the early societies (Gavrielides, 2011).

From the outset, it is worth pointing out that when it comes to VAW cases, RJ is not generally favoured amongst feminist and some victim groups (Stubbs, 1997 and 2002; Acorn, 2004). The truth is that the appropriateness of RJ with cases of VAW remains largely unexplored (Cook et al 2006; Gitana & Daly 2011). Consequently, this area of practice is under-researched and in the shadow of the law (Hopkins et al 2004; Gitana & Daly 2011). In fact, the UN and the Council of Europe have issued guidance that prohibits their member states from using mediation, a form of RJ, “in all cases of VAW, both before and during legal proceedings” (United Nations, 2009, p. 42; Council of Europe 2009).

Nevertheless, this did not hinder passionate practitioners from piloting conferences, mediation and other RJ programmes most of the times without any government support (e.g., Hudson, 2002; Gavrielides & Artinopoulou, 2012; Gavrielides, 2015). As the evidence will show, RJ exists with or without the law and this applies also to VAW cases.

It is within this framework that the chapter aims to investigate therapeutic jurisprudence and the role of the legal (i.e. ‘justice’) and non-legal (i.e. ‘fairness’) provisions of RJ for VAW and domestic violence (DV) in particular. As it will be argued, RJ has struggled to find its place within the current criminal justice system, while many think that when it comes to VAW and DV it is simply not reconcilable with the law. The chapter argues that co-existence is possible.

The chapter proceeds to illustrate that RJ outside the law has, is and will continue to manifest itself even for VAW cases. It is thus important that reconciliation is achieved and that RJ practices come out of the shadows. This reconciliation can be achieved by understanding the two forms that RJ can appear. The chapter describes these forms and gives some warnings for policy makers and practitioners internationally. Ultimately, the chapter aims to contribute to the book’s general objective of advancing the multidimensional growth of therapeutic jurisprudence with a gender sensitive and gender focused approach.

CONCEPTUAL AGREEMENTS

Restorative Justice

Gavrielides and Artinopoulou (2013) argued that it is folly to try and define RJ. “Despite its objective existence, it is an evolving norm as its constituent objects is to be found in living nature … Therefore, restorative justice will always be accused by empirical researchers for lacking clarity. Restorative justice is a short-cut term constructed under the mentality of our busy and managerial lives. Therefore, attempts that continue to define restorative justice in the narrow sense will remain vain and out of touch with its evolving and ever changing nature.”