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SEXUAL ASSAULT AND RESTORATIVE JUSTICE

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ABSTRACT

Many resources have been devoted to the prevention of sexual crimes and the management of sex offenders in the past decade. Sexual assaults are among those that invoke the most public problems. Sexual assault not only damages or impairs a victim's body but can also cause serious psychological trauma. In addition, restorative justice is to make up the damage or injury caused by the crime through the perpetrator's compensation and restitution for the victim. Maintenance of relationship and consultation are important for restorative justice. In this review we discuss epidemiology of sexual assaults, the characteristic of restorative justice, and restorative justice responses to sexual assault.

Introduction

In addition to damages or impairs a victim's body, sexual assault causes serious psychological trauma (Tung, Lin, Huang, & Shan, 2017). In terms of behavior, sexual assaults are comprised of different behavioral manifestations. These manifest behaviors could be attributed to different clinical symptoms, and specific clinical symptoms must also indicate specific mental and psychological mechanisms (Ponseti, et al, 2014). Due to not all sexual offenders are equally likely to reoffend, it is important to assess and treat sexual offenders and determine who are the highest risk offenders and then provide appropriate interventions that are proportional to the level of risk and causes of the offending (Mann, Hanson, & Thomton, 2010). The types of causes include genetic predispositions, adverse developmental experiences, psychological dispositions/trait factors, attitudes supportive of sexual assault, empathy deficits, emotional skill deficits, interpersonal problems, social and cultural structures and processes, contextual/situational factors (Ward & Beech, 2016).

Theory of restorative justice is to make up the damage or injury caused by the crime through the perpetrator's compensation and restitution for the victim (Chen & Tung, 2017). The restorative justice not only applies to programs that view crime as a violation of people and relationships, causing harm for which offenders and communities are accountable and have an obligation to repair, but also gives victims the opportunity to communicate with their offender to explain the real impact of the crime (Koss, Wilgus, & Williamsen, 2014). Restorative justice often involves a meeting called a conference, where a victim meets the offender face to face. When the face to face meeting is not the best way, the victim and offender will communicate through letters, recorded interviews, video, or facilitator. This review aims to explore the applications of restorative justice responses to sexual assaults.

The epidemiology of sexual assaults

The variation of prevalence estimates of sexual assault which likely could be attributed to disparity of methodology across studies, including varying sexual assault definitions, study design and sampling methods, assessment of timeframes, and target populations (Fedina, Holmes, & Backes, 2016; Mellins, et al, 2017). Previous studies indicated that Two-thirds of the sexual victims were aged 15-24 yrs, 75% had met the offender before the sexual assault and 70% reported the assault to the police (Larsen, Hilden, & Lidegaard, 2015). The medical intervention to sexual assault should comprise included the collection of forensic evidence, the treatment of post-injuries, and follow-up counseling and care. Observed injuries and requests for prophylactic antibiotics or emergency contraception were not influenced by whether the victims reported directly to the police (Schei, Sidenius, Lundvall, & Ottesen, 2003). Due to the variation in prevalence estimates included different definitions of sexual assault and assessment methods, population-based study samples with behavioral specificity, relative higher response rates, representative samples and sufficiently statistical power to examine risk for specific subgroups, and detailed information on personal, social, or contextual risk factors are needed to more accurately define prevalence or incidence and inform evidence-based prevention programs for sexual assaults (Mellins, et al, 2017; Wood, Sulley, Kammer-Kerwick, Follingstad, Busch-Armendariz, 2016). In addition, the postmenopausal women are not immune from sexual assault. The epidemiology of post sexual trauma in this age group is uniquely different when compared to younger women, that is, which may be useful in planning more specific intervention and prevention strategies (Jones, Rossman, Diegel, Van Order, & Wynn, 2009). While accurate estimates of prevalence are essential for paying attention to the population-health influences of sexual assault, knowing more about risk factors is critical for determining resource allocation and developing cost-effective programs and policies for prevention (Mellins, et al, 2017).

Risk factors for sexual assault are conditions, circumstances or characteristics related to an individual environment that increase the probability of the individual becoming a perpetrator or a victim of sexual assault. The presence of one or more risk factors is not a cause of sexual assault, but it could increase the risk that sexual assault will occur (Baril & Tourigny, 2009). Sexual assault risk factor contents and clinical treatment effectiveness have discovered that those who commit child sexual assault is quite differ from other types of offenders and regular people in cognition, emotions, and motivations (McPhail, Hermann, & Nunes, 2013). By comparison, these specific offenders have higher anxiety, depression, a lack of attachment, and poor interpersonal skills. In contrast to the externalizing behavior of rapists, child sexual assault offenders more clearly demonstrate psychological and social problems (Woodworth, et al, 2013). In Taiwan, based on the Article 20, Sexual Assault Crime Prevention Act, "Should the offender fall into one of the following categories, and it is considered to be necessary after examination the competent authority of the municipality or county (city) should order the offender to receive physical and psychological treatment or counseling education". It implies that in addition to criminal punishment, sexual offenders are also required to undergo compulsory treatment (Tung, et al, 2017). Integrated assessment, clinical treatment, and government policy efforts could all benefit from a better understanding of the etiology of sexual offending.

Regardless of whether the evaluation is before or after the completion of a sexual offender's sentence, an offender identified as at risk of recidivism is required to undergo compulsory treatment. Therefore, the evaluation and post-prison release treatment are vital to current cases involving sexual offenders. A large-scale meta-analysis of 80 independent comparisons of a range of sex offenders (n=22,181) in institutional settings who were exposed to different types of treatment interventions (CBT, psychosocial and organic treatment modes) yielded results indicating a positive and significant effect of sex offender treatment: 11.1% of the treated offenders recidivated sexually compared to 17.5% of the offenders in the control groups (Lösel & Schmucker, 2005). The needs for sexual offenders to undergo necessary and compulsory physical and psychological treatment

and counseling education is considered a commonly held belief. Behavioral therapy, psychotherapy, psychiatric treatment, and cognitive model reestablishment may reduce the possibility of recidivism (Lin, 2009). it is only possible to assist judicial and health professionals to solve the problem of sexual assault treatment by employing the results of clinical and empirical research and further constructing a more comprehensive theory of the clinical symptoms, mental and psychological mechanisms, and developmental causes of sexual assault through clinical and statistical inference. In addition, for most sexual offenders, appropriate treatment programs to reintegrate them into the community after incarceration is widely accepted (McGrath, Cumming, Hoke, & Bonn-Miller, 2007). For sexual offenders already released from prison, connection with their prison therapists and community therapists should be strengthened, careful and coherent community monitoring should be maintained, regular long-term tracking should be established, community security and maintenance measurements should be strengthened, and chances of victimization should also be severed (Tung, et al, 2017).

The characteristics of restorative justice

There is no university definition of restorative justice and it is essential to note that advocates of restorative justice may not always have the same thing in mind (Stockdale, 2015). The most well known definition of restorative justice is that "a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall, 1996). Maintenance of relationship and consultation are important for restorative justice (Barbara, 2002). In the view of restoration justice, crime is not only a violation of the penal law, but more important is against the specific victims (Chen & Tung, 2017). Restoration justice looks at the problem of crime with a social point of view rather than legal point; it argues that crime is an injury to the relationship between a person and a community, rather than violating the abstract meaning of the law. In the contemporary democratic rule of law society, crime is defined by law: crime is a responsible person doing something that should not be done, and the penalty attached to the behavior. The physical and mental, social and religious factors of the offender are only meaningful when discussing the crime prevention or measuring of actors to alleviate or aggravate the criminal responsibility. The execution of criminal justice is entirely the responsibility of the government. Restoration justice is used to make up for that between the victim and the perpetrator. The empirical theory that supports of restoration justice is based on the study of crime and termination of crime in the course of life. Different theories of crime termination emphasize the different dimensions of life history, from external factors, such as marriage and employment, to the inner sense of cognition and identity established. Restoration justice emphasizes that punishment and correction are not effective in a society full of conflict. Mutual interaction, rather than enforcement, is the cornerstone of a harmonious society. Restoration justice argues that crime is an injury to the relationship of an individual and a community, instead of a violation of social abstract legal definition.

Many international studies promote restorative justice options as satisfying and empowering to crime victims. The conceptualization of restorative justice includes three constituencies. Firstly, survivor/victims and secondarily victimized family and friends who suffer distress along with their loved one. Secondly, community members who experience less safety and social connection when they perceive high levels of crime and low deterrence, yet who simultaneously may be contributing to an environment supportive of sexual violence. Thirdly, offenders as well as their families and friends, who experience guilt and shame that is associated with being accused of a sexual crime or belonging to the interpersonal relationship context from which the offense arose (Koss & Achilles, 2008). Due to the direction of the guide is different, no matter in practice or concept are presented on a different orientation, and causing the different understanding of restoration justice (Lokugamage & Pathberiya, 2017). Thus, the reason of its formation is hard to attribute to a single factor, including dissatisfaction with the penalty system, informal justice, the proposition of the judicial economy, the development of crime victim studies and requirement of the victims (Chen & Tung, 2017).

Restorative justice responses to sexual assault

Not many evidences of actual work in restorative processes with victims of sexual assault and their offenders. Several possible reasons may account for this. Firstly, most restorative justice practitioners know something of the seriousness and high risks of working in this field, but may be lack the resources to properly address themselves to the task, and therefore do not accept sexual assault cases. Secondly, interested practitioners may be limited by legal or other gate people who see much more risk than benefit in 'opening the door' to referring sexual assault cases to restorative justice programs. Thirdly, it is obvious that some of the work that is going on in this area has caused much less benefit and this also may cause some practitioners to want to close the communicated door totally. Finally, interested and appropriated programs and practitioners may desire someone's road map to use as a oneself guideline into this area. However, restorative justice could be an acceptable tool for certain types of offenses, but we should not ask victims of sexual assault to suffer an even greater burden by making them take part in their offenders' so-called "reformation."

Previous studies indicated that conventional justice had over a period of years been very good at doing little to respond to sexual assault reports. Some of the notable evidence of resistance to change in this system includes the lack of a positive trend despite dedicated activism and education/training in increasing reporting or conviction rates in sexual assaults (Koss & Achilles, 2008). With some exceptions, empirical evidence is lacking that all jurisdictions put the offences beyond the reach of restorative justice for sexual offenders. Even so it is limited to juvenile cases, New Zealand to some extent and much of Australia are the only jurisdictions where restorative justice for sexual assault is routine (Koss & Achilles, 2008). We confront a justice problem that could not be solved when considering the viability of restorative justice in cases of sexual assaults (Daly, 2006). The main challenge for restorative justice is *how to treat serious offences seriously* without engaging in hyper forms of criminalization (Daly, 2006). Compared to current practice, groups that could receive services from restorative justice programs include: 1. Adult survivor/victims who choose not to initiate a report to law enforcement. 2. Those who reported but whose cases were closed against their wishes. 3.Survivor/victims whose offenders were never apprehended. 4.Adult survivors of child sexual assault who were unable to come forward at the time of the offense. 5. Juvenile survivor/victims whose offenders are young family members and friends where the offense was an overly extreme developmentally driven sexual exploration occurring in the absence of evidence of deviant sexual arousal. 6. Family and friends of survivor/victims, who may suffer equal or more distress than the survivor/victims (Koss & Achilles, 2008). Based on the victim's perspective, the restorative process may be less victimizing than the court process and its penalty regime may produce more expected effective outcomes. From the conventional justice system, the credible argument is that sexual assault service providers, advocates, and policy makers could take leadership in the development of restorative selections both in parallel with and independent.

Conclusion

In conclusion, with appropriate safeguards for both claimants and respondents, restorative justice could be a useful tool in the recovery effort. The integration of restorative justice into a larger public health response to sexual assault may also provide an alternative that is better for victims, more likely to lead to real changes in the behavior of the offenders, and more likely to change life. Although many women's organizations believe that restorative justice has no applications and effects to sexual victims, and that victim-offender mediation could only be dangerous. Restorative justice has much to offer victims and offenders of sexual assault in certain cases and if certain appropriate conditions are met. If restorative justice is to be taken seriously as a complementary valuable intervention in cases of sexual assault, it will take useful steps to maximize victims' safety and choice, and

establish opportunities for offenders to reflect on their actions and make new decisions.

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