



5-1-2021

Mainstreaming Restorative Justice and Therapeutic Jurisprudence Through Higher Education

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**MAINSTREAMING RESTORATIVE JUSTICE AND
THERAPEUTIC JURISPRUDENCE THROUGH
HIGHER EDUCATION**

Ian D. Marder & David B. Wexler*

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INTRODUCTION

Criminal justice reformers spill much ink in explicating the benefits and challenges of restorative justice and therapeutic jurisprudence.¹ These writings show that our fields have much in common. They incorporate normative frameworks and methodologies through which to express their values in criminal justice.² In doing so, they challenge modern justice to become more humane.³ Restorative justice asks criminal justice practitioners and legal professionals to involve people in identifying their needs, repairing harm and building strong relationships, rather than imposing a proportionate amount of harm on perpetrators.⁴ Therapeutic jurisprudence recognizes that legal rules, procedures, and actors have pro-therapeutic or anti-therapeutic effects, and looks for methods to prioritize and realize the former.⁵ Both propose a relational, participatory criminal justice process that departs from modern standards by providing citizens with opportunities for empowerment and to have their needs met.⁶

Some have sought to identify areas of theoretical and practical convergence between the two fields regarding their implications for criminal justice reform.⁷ Developing these ideas is not our primary

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We would like to thank Anne Brunelle, Dr. Tali Gal and Dr. Anna Kawalek for their comments on a draft of this paper, as well as Jorge Arroyo for his assistance.

1. See John Braithwaite, *Restorative Justice and Therapeutic Jurisprudence*, 38 CRIM. L. BULL. 244, 244–47 (2002).
2. See *id.* at 257–58.
3. See Michael S. King, *Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice*, 32 MELB. U. L. REV. 1096, 1097, 1113–15 (2008) (discussing how both models seek to improve and reform the way the law operates).
4. See *Lesson 1: What Is Restorative Justice?*, CTR. JUST. & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.Mb2ZdAAAn.dpbs> [<https://perma.cc/DME9-Z6TX>] (last visited Mar. 30, 2021).
5. See David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125, 125–26 (2000).
6. See Braithwaite, *supra* note 1, at 244–45.
7. See, e.g., *id.* at 244–47; King, *supra* note 3; Robert F. Schopp, *Integrating Restorative Justice and Therapeutic Jurisprudence*, 67 REV. JUR. U. P.R. 665 (1998); Jessica

goal. Rather, we aim to promote enhanced collaboration among those who teach restorative justice and therapeutic jurisprudence at universities. As advocates for these fields, we spend much of our time reflecting on how best to promote our ideas in the political and practical spheres. We develop theoretical frameworks, initiate and evaluate practices, and seek to engage with policymakers and practitioners, in order to exert influence and encourage change within the criminal justice process. Yet, we spend much less time reflecting on our teaching, even though most future criminal lawyers, criminal justice professionals, and government officials will study with us at some point in their lives. The growing recognition that tertiary curricula and andragogies (i.e., the methods and practices of teaching adult learners) can support justice reform creates an opportune moment to propose that therapeutic jurisprudence and restorative justice scholars should collaborate to expand and enhance their university teaching.⁸

We begin by outlining the relationship between restorative justice and therapeutic jurisprudence, focusing on the challenges inherent in mainstreaming these concepts in practice and the need for their inclusion in higher education curricula.⁹ This Article then describes some recent developments in the teaching of restorative justice and therapeutic jurisprudence at universities, before reflecting on the types of activities that will benefit from greater international and interdisciplinary collaboration.¹⁰ We suggest five possible areas for this work: the incorporation of restorative justice and therapeutic jurisprudence in higher education programmes; the development of (a) teaching materials and (b) andragogical approaches; education for the public; and the implementation of these concepts in relation to crime, harm and conflict in universities.¹¹ The Article concludes that interested educators from both our fields should engage in structured conversations to develop educational initiatives that equip criminal justice and law students to use restorative justice and therapeutic jurisprudence in practice.¹²

Traguetto & Tomas De Aquino Guimaraes, *Therapeutic Jurisprudence and Restorative Justice in Brazil*, 64 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 654 (2020).

8. See discussion *infra* Part IV.

9. See *infra* Parts I–II.

10. See *infra* Part III.

11. See *infra* Part IV.

12. See *infra* Conclusion.

I. THE RELATIONSHIP BETWEEN RESTORATIVE JUSTICE AND THERAPEUTIC JURISPRUDENCE

Restorative justice and therapeutic jurisprudence share several features. They are equally contested concepts, and both disciplines combine normative frameworks and methodologies that are constantly being refined and rearticulated.¹³ They both emerged from analysis of modern criminal justice as an inhumane, ineffective process in which professionals impose their preferred outcomes on citizens—rather than arriving at more legitimate, responsive, healing, and constructive conclusions through respectful, inclusive deliberation.¹⁴ Both disciplines have matured in recent years; generations of thinkers have identified and addressed theoretical limitations and contradictions, while seeking to build upon early practices, overcome barriers to implementation, and establish and evaluate new approaches.¹⁵

Indeed, practices in both fields have undergone constant evolution.¹⁶ To simplify greatly, restorative justice has moved away from small-scale victim-offender reconciliation programs in the U.S. and Canada,¹⁷ penal mediation in Europe,¹⁸ and family group conferencing

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13. See, e.g., Gerry Johnstone & Daniel W. Van Ness, *The Meaning of Restorative Justice*, in HANDBOOK OF RESTORATIVE JUSTICE 5, 11–12 (Gerry Johnstone & Daniel W. Van Ness eds., 2007); see also David B. Wexler, *New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence “Code” of Proposed Criminal Processes and Practices*, 7 ARIZ. SUMMIT L. REV. 463, 463–68 (2014).
 14. Susan Daicoff, *The Role of Therapeutic Jurisprudence within the Comprehensive Law Movement*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 465, 465–92 (Dennis P. Stolle et al. eds., 2000). See generally HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE (3rd ed. 2005).
 15. See, e.g., Emma Jones & Anna Kawalek, *Dissolving the Stiff Upper Lip: Opportunities and Challenges for the Mainstreaming of Therapeutic Jurisprudence in the United Kingdom*, 63 INT’L J.L. & PSYCHIATRY 76, 76–84 (2018); Anna Kawalek, *A Tool for Measuring Therapeutic Jurisprudence Values During Empirical Research*, 71 INT’L J.L. & PSYCHIATRY 1, 1–2, 13 (2020); Meredith Rossner, *Restorative Justice, Anger, and the Transformative Energy of Forgiveness*, 2 INT’L J. RESTORATIVE JUST. 368, 368–70, 381–84 (2019); Wexler, *supra* note 13, at 463–68, 478–79; David B. Wexler, *The DNA of Therapeutic Jurisprudence*, in THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE 3, 3, 9 (Nigel Stobbs et al. eds., 2019); Roxana Willis, *‘Let’s Talk About It’: Why Social Class Matters to Restorative Justice*, 20 CRIMINOLOGY & CRIM. JUST. 187, 202–03 (2020); William R. Wood & Masahiro Suzuki, *Are Conflicts Property? Re-Examining the Ownership of Conflict in Restorative Justice*, 29 SOC. & LEGAL STUD. 903 (2020).
 16. See *infra* notes 17–21 and accompanying text.
 17. See generally Frieder Dünkler et al., *Restorative Justice and Mediation in Penal Matters in Europe - Comparative Overview*, in 2 RESTORATIVE JUSTICE AND MEDIATION IN PENAL MATTERS: A STOCK-TAKING OF LEGAL ISSUES, IMPLEMENTATION

in New Zealand,¹⁹ towards mainstream, specialist restorative services that offer an array of practice models.²⁰ Likewise, from its earliest applications in U.S. drug treatment and mental health courts, therapeutic jurisprudence now underpins a range of problem-solving courts that differ in their target populations, objectives, and composition.²¹

With this expansion comes much soul searching, as the institutionalization of restorative and therapeutic practices has led to their dilution.²² Both fields have faced fundamental challenges as developments taking place under their auspices deviate substantially from their core principles and research evidence regarding best practice.²³ Their advocates must ask not only how to persuade the criminal justice system to adopt these ideas, but how they can “accomplish a greater extent of participatory justice, without losing important protective devices” within existing processes.²⁴

Nonetheless, advocates of restorative justice and therapeutic jurisprudence seek new ways to move their ideas from the margins to the mainstream of criminal justice. Increasingly, restorative justice supporters adopt the language of restorative *practices* as a comprehensive philosophy and method that enables relational engagement with colleagues and citizens, both proactively and—as restorative justice theorists first envisioned—in reaction to crime,

STRATEGIES AND OUTCOMES IN 36 EUROPEAN COUNTRIES 1015, 1015–96 (Freider Dünkel et al. eds., 2015).

18. *Id.*

19. *Id.*

20. See U.N. OFF. ON DRUGS & CRIME, HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES 23–24 (2d ed. 2020).

21. See Wexler, *supra* note 13, at 463–64.

22. See *infra* notes 23–24 and accompanying text.

23. See Caroline Cooper, *Evaluating the Application of TJ Principles: Lessons from the Drug Court Experience*, in THE METHODOLOGY AND PRACTICE OF THERAPEUTIC JURISPRUDENCE, *supra* note 15, at 287, 287–303. See generally John Blad, *Institutionalizing Restorative Justice? Transforming Criminal Justice? A Critical View on The Netherlands*, in INSTITUTIONALIZING RESTORATIVE JUSTICE 93, 93–119 (Ivo Aertsen et al. eds., 2006)

24. NILS CHRISTIE, LIMITS TO PAIN: THE ROLE OF PUNISHMENT IN PENAL POLICY 110 (2007); Sharon Levrant et al., *Reconsidering Restorative Justice: The Corruption of Benevolence Revisted?*, 45 CRIM. & DELINQ. 3, 7–10 (1999); see also Cooper, *supra* note 23, at 287–303 (elaborating on the risk that these concepts might serve regressive goals).

harm, and conflict.²⁵ Proponents of therapeutic jurisprudence are likewise invested in pursuing an expansion in its range of applications.²⁶ They use its basic conceptual framework (of the law, combining legal rules and procedures and the roles and behaviour of legal actors) to drive home the relationship between the therapeutic *design* of the law and the crucial, yet more difficult component to sustain: therapeutic *application* of the law.²⁷ In other words, both fields are looking beyond the institutionalization of their specialist and marginal applications (i.e., restorative justice services and problem-solving courts) and towards the widespread adoption of their principles and processes in day-to-day criminal justice.²⁸ In addition, their proponents have turned their attention to family courts and child protection, schools, institutional cultures, and, in the case of restorative justice, even asking entire cities and towns to operate along these lines.²⁹

Globally, many thousands of criminal justice professionals and legal practitioners have received some instruction in one or both disciplines, either during an undergraduate or postgraduate degree, as part of their preliminary training, or as continuing professional development.³⁰ However, even in countries where these are relatively popular concepts, we have yet to identify how we might deliver education, training, and opportunities for reflection at the scale required to change institutional and systemic cultures along restorative and therapeutic lines. One part of achieving this objective must be to

25. Terry O'Connell, *The Best Is Yet to Come: Unlocking the True Potential of Restorative Practice*, in ROUTLEDGE INTERNATIONAL HANDBOOK OF RESTORATIVE JUSTICE 422, 422–39 (Theo Gavrielides ed., 2019).

26. Wexler, *supra* note 15, at 3–9.

27. *See id.*

28. *See generally, e.g.*, IAN D. MARDER, BUILDING RESTORATIVE PROBATION SERVICES (2020), <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/06/Academic-Insights-Building-restorative-probation-services.pdf>; David B. Wexler, *Moving Forward on Mainstreaming Therapeutic Jurisprudence: An Ongoing Process to Facilitate the Therapeutic Design and Application of the Law*, in THERAPEUTIC JURISPRUDENCE: NEW ZEALAND PERSPECTIVES (Warren Brookbanks ed., 2015).

29. *See, e.g.*, Shelley Kierstead, *Therapeutic Jurisprudence and Child Protection*, 17 BARRY L. REV. 31, 35–42 (2011) (analyzing the expansion of therapeutic jurisprudence into the realm of child protection).

30. *See, e.g.*, James Maron et al., *A Vineyard in a Law Clinic: The Practical Application of a Therapeutic Jurisprudence Philosophy in a UK Law Clinic*, 2019 SING. J. LEGAL STUD. 124, 133–46 (2019) (discussing the implementation of therapeutic jurisprudence into clinical education programs).

teach these concepts comprehensively and universally in higher education programs.³¹

II. WHY TEACH RESTORATIVE JUSTICE AND THERAPEUTIC JURISPRUDENCE AT UNIVERSITIES?

Empirical evidence reveals that we can implement restorative justice and therapeutic jurisprudence safely, and in ways that improve the outcomes for citizens.³² Yet, criminal justice practitioners and policymakers are hesitant to embrace these concepts or to adopt and mainstream their concomitant practices. Both concepts represent a complex combination of values and ways of expressing those values through human interaction, deviating from common assumptions and media representations of how justice does and should operate.³³ In other words, when learning about restorative justice and therapeutic jurisprudence, one must first unlearn deeply held beliefs about crime and justice: that there is a clear, moral distinction between victims and offenders;³⁴ that a fair decision can only be made on people's behalf by professionals;³⁵ that justice is a zero-sum game;³⁶ and that retribution is synonymous with justice.³⁷ People who work within the system must also contend with a range of organizational goals and managerial imperatives—e.g., on efficient case processing—which inform institutional cultures and ways of working, but which do not correspond with a restorative-therapeutic goal of a process that meets the needs of those with the greatest stake in its outcome.³⁸ Teaching these subjects in universities would help sensitize future practitioners to their principles and methods, enabling them to reflect deeply, from an early stage in their careers, on restorative-therapeutic analyses of prevailing processes, objectives, norms, institutions, and ways of working.³⁹

31. See *infra* notes 53–60 and accompanying text.

32. See, e.g., Lawrence W. Sherman et al., *Twelve Experiments in Restorative Justice: The Jerry Lee Programme of Randomized Control Trials of Restorative Justice Conferences*, 11 J. EXPERIMENTAL CRIMINOLOGY 501, 502–03 (2015); PHIL BOWEN & STEPHEN WHITEHEAD, *PROBLEM-SOLVING COURTS: AN EVIDENCE REVIEW* (2015), <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/problem-solving-courts-an-evidence-review.pdf> [<https://perma.cc/6PU3-N3YD>].

33. See *infra* notes 34–39 and accompanying text.

34. ZEHR, *supra* note 14, at 169–70.

35. *Id.* at 33.

36. *Id.* at 63–65.

37. *Id.* at 107.

38. See generally Blad, *supra* note 23.

39. See *infra* notes 51–73 and accompanying text.

Strategies to achieve restorative or therapeutic reform are incomplete if they do not account for the role of university teaching. Although internationally comparable figures do not seem to be available, a cursory glance at statistics from the U.S., Europe, and India suggests that there are millions of law graduates annually—despite declining enrollments in some countries, and a continuing gap between the number of graduates and the positions available in legal practice.⁴⁰ For other criminal justice professions—such as police officers, probation officers, and prison officers—whether one requires a degree to apply (and, if so, in what subject) is contingent on the country in question.⁴¹ Nonetheless, criminology is a burgeoning discipline in many countries, increasingly studied by people who aim to work in non-legal positions within the criminal justice system or alongside it (i.e., in NGOs).⁴²

In some countries, a growth in criminology preceded more specialist higher education programs that criminal justice agencies commission, or that universities establish with the intention to attract aspiring practitioners.⁴³ In England and Wales, where one of us (Marder) formerly taught, there has been an explosion of universities offering undergraduate policing degrees, as one manifestation of efforts to professionalize policing.⁴⁴ England and Wales also recently established a new national scheme—Unlocked Graduates—to attract more graduates to become prison officers, with the offer of an MSc in Leadership and Custodial Environments: Rehabilitation and

40. *Law School Enrollment*, LST DATA DASHBOARD, <https://data.lawschooltransparency.com/enrollment/all/> [<https://perma.cc/SRT3-G9AL>] (last visited Mar. 30, 2021); *Tertiary Education Statistics*, STATISTICS EXPLAINED, https://ec.europa.eu/eurostat/statistics-explained/index.php/Tertiary_education_statistics [<https://perma.cc/YGK3-HWKH>] (Dec. 2, 2020, 6:46 PM); Prachi Shrivastava, *In Two Years, Number of Law Schools Increased From 800 to 1,200: Now BCI Hopes to Put Brake on Mushrooming Epidemic*, LEGALLY INDIA (Dec. 9, 2014, 6:21 PM), <https://www.legallyindia.com/law-schools/in-two-years-number-of-law-schools-increased-from-800-to-1-200-now-bci-hopes-to-put-brake-on-mushrooming-epidemic-20141209-5408> [<https://perma.cc/QPP6-8GFY>].

41. *See What Are the Requirements for a Career in Criminal Justice and Law?*, COLLEGE CHOICE (Mar. 17, 2021), <https://www.collegechoice.net/faq/what-are-the-requirements-for-a-career-in-criminal-justice-and-law/> [<https://perma.cc/M2QK-WX94>].

42. *See* Claire Hamilton & Deirdre Healy, *Introduction*, in *THE ROUTLEDGE HANDBOOK OF IRISH CRIMINOLOGY* 1, 8 (Deirdre Healy et al. eds., 2016).

43. *See infra* notes 44–47 and accompanying text.

44. *See* Tracey Green & Stephen Tong, *Policing Education: International Perspectives*, POLICING, Oct. 17, 2019, at 1, 1.

Desistance.⁴⁵ In Ireland, trainee prison officers study for the Higher Certificate in Custodial Care, a program delivered largely by social care educators.⁴⁶ Qualifications for probation officers—in particular, whether one must be a qualified social worker to apply—likewise vary by jurisdiction.⁴⁷

There is considerable debate over the merits of these developments. In terms of policing degrees, for example, some see them as an opportunity to teach future officers evidence-based approaches,⁴⁸ while others note that there is insufficient empirical research to draw definitive conclusions about their value.⁴⁹ Others wonder whether these programmes and collaborations permit universities to transform criminal justice institutions, or are more likely to result in the “capture” of universities by institutional priorities and resources.⁵⁰ Our suspicion is that the impact of these programmes will depend partly on their contents. Their existence represents a unique opportunity for higher education professionals to shape the learning of entire cohorts of criminal justice practitioners, in ways that were not possible when their longer-serving colleagues were first recruited. Educators who design and teach these programmes should approach their work with this opportunity in mind.

Few law and criminology graduates will go on to a long career in criminal justice.⁵¹ Still, high levels of enrollment in these subjects gives us an opportunity to foster a more sociologically, legally, and criminologically literate population. This could have significant

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45. *Master's Degree*, UNLOCKED GRADUATES, <https://unlockedgrads.org.uk/programme/masters-degree/> [<https://perma.cc/KG8U-Y7S5>] (last visited Mar. 30, 2021).
 46. *Certificate Custodial Care*, WATERFORD INST. TECH., <https://www.wit.ie/courses/higher-certificate-in-custodial-care> [<https://perma.cc/VS2E-83T2>] (last visited Mar. 30, 2021).
 47. For example, probation officers in Ireland must be registered social workers and hold a master's in social work, which is not the case in England and Wales. See *Careers*, PROB. SERV., <http://probation.ie/EN/PB/WebPages/WP16000058> [<https://perma.cc/2FNE-2QFP>] (last visited Mar. 30, 2021).
 48. Ian Pepper, Colin Rogers & Helen Martin, *Evidence Based Policing: A View on its Development Within the Police Service*, 12 J. WORK-APPLIED MGMT. 91, 91–92 (2020).
 49. Jennifer Brown, *Do Graduate Police Officers Make a Difference to Policing? Results of an Integrative Literature Review*, 14 POLICING 1, 12–14 (2020).
 50. See Simon Baechler, *Do We Need to Know Each Other? Bridging the Gap Between the University and the Professional Field*, 13 POLICING 102, 106–11 (2017) (arguing strongly in favor of collaboration between academia and policing, while recognizing the concern of a negative impact on academia).
 51. See, e.g., *Legal*, DATA USA, <https://datausa.io/profile/cip/legal> [<https://perma.cc/H748-69U2>] (last visited Mar. 30, 2021).

implications for the framing and discussion of crime and justice in the public and political spheres. Many myths pervade the public debate surrounding crime and criminal justice, but people with the expertise to dispel these myths seldom think strategically or collectively about how to communicate their knowledge to the public.⁵² We must design and deliver our higher education courses not solely—or even primarily—with the education of future practitioners in mind, but also recognize the potential to create a new generation of critically minded democratic actors. At the same time, most judges, criminal lawyers, and justice professionals will receive some form of university education, meaning that our programmes are an opportunity to cultivate future professionals who have the critical skills to challenge and transform the ineffective and inhumane features of the system in which they will work.

Again, however, whether this goal is achieved depends on the content and teaching of these courses. As far back as 1977, Nils Christie pondered whether the growth of academic criminology “amplified a process where conflicts have been taken away from the parties directly involved.”⁵³ Criminology, he noted, has “to a large extent functioned as an auxiliary science for the professionals within the crime control system” and has “added to all those forces that have reduced the victim to a nonentity and the offender to a thing.”⁵⁴ Meanwhile, law students receive a “trained incapacity in letting the parties decide what *they* think is relevant.”⁵⁵ The point, we believe, is that legal and criminological teaching is dehumanizing if it frames human beings as victims and offenders to whom justice will be served, rather than as capable agents who can be empowered to negotiate a sense of justice, or for whom justice is a unique quality of the totality of their lives, stories and experiences.

Christie’s critiques still apply today.⁵⁶ Too often, legal education is generic and technical, involving rote learning of cases and codes to be applied on behalf of clients, while the role that lawyers play in identifying people’s needs and acting as therapeutic agents is neglected.⁵⁷ As Geske comments, legal education generally does not encompass:

52. See generally IAN LOADER & RICHARD SPARKS, PUBLIC CRIMINOLOGY? (2011).

53. Nils Christie, *Conflicts as Property*, 17 BRIT. J. CRIMINOLOGY 1, 1 (1977).

54. *Id.* at 5.

55. *Id.* at 8.

56. See *supra* text accompanying notes 53–55.

57. See Christie, *supra* note 53, at 4.

The listening skills, the techniques of ensuring that someone knows that he or she has been truly heard and understood, and the designing of a process that can best address the conflict Some attorneys possess those abilities naturally, but many do not, and as a result, their clients receive less than the full benefit of their counselor at law best meeting their needs.⁵⁸

Geske further explains that “the best way for future lawyers to learn about serving their clients, particularly the disadvantaged, is for them to listen to and collaborate with others in working toward creating processes and programs that truly address issues of justice and equality through addressing peoples’ interests and needs.”⁵⁹ Recent years have seen a push for a more diverse legal education, culminating in more availability of sociological and Alternative Dispute Resolution (ADR) modules in some legal programs.⁶⁰ At one of our institutions (Marder), the four-year LLB program includes options to study negotiation, dispute resolution, design innovation, anthropology and criminology, in addition to traditional law modules.⁶¹ Students find these modules challenging, but leave with the practical skills that only ADR courses can provide, and exposure to the notion that there are different ways of interpreting the social world that have been debated and articulated for many centuries. At one of our institutions (Wexler), law students in their final year are required to enroll in a year-long clinical program, training for which includes a “brief and basic” introduction to therapeutic jurisprudence.⁶² Other progressive legal training centers (including the Helena Kennedy Centre for International Justice at Sheffield Hallam University) have developed and operated their clinical legal education programs from a therapeutic jurisprudence perspective, closing the gap between the norms and theories learned in the classroom and the skills required to change the culture of legal practice.⁶³

58. Janine Geske, *Why Do I Teach Restorative Justice to Law Students?*, 89 MARQ. L. REV. 327, 330 (2005).

59. *Id.* at 327.

60. *See, e.g., id.* at 332–34.

61. *Bachelor of Laws (LLB)*, MAYNOOTH UNIV., <https://www.maynoothuniversity.ie/study-maynooth/undergraduate-studies/courses/bachelor-laws-llb> [<https://perma.cc/SX88-F3QJ>] (last visited Mar. 30, 2021).

62. *Clinica*, UNIVERSIDAD DE PUERTO RICO RECINTO DE RÍO PIEDRAS: ESCUELA DE DERECHO, <https://derecho.uprrp.edu/clinica/> [<https://perma.cc/ZZ73-2DQ3>] (last visited Mar. 30, 2021).

63. Maron et al., *supra* note 30, at 124–26.

Likewise, there are calls for criminology programs to encompass a wider range of perspectives.⁶⁴ Some programmes foreground critical, feminist, and post-colonial thinking.⁶⁵ Others, however, are more managerial in their approach, neglecting to teach the processes of social construction and the power dynamics inherent in the practice of criminal justice and social control.⁶⁶ Instead, they would prioritize technical-administrative concerns around efficient crime control and investigation.⁶⁷ The battle for the soul of criminological education has become increasingly important as enrollments grow, as aspiring justice professionals are expected to apply with a degree in hand, and as research reinforces the conclusion that most basic tools of criminal justice—including arrest, prosecution, imprisonment and punitive sentencing—cause more social problems than they solve in most cases.⁶⁸

Where is the place of restorative justice and therapeutic jurisprudence in this discussion? Modern criminological and legal educators often seek ways to combine the critical and the technical, or the theoretical and the practical. These concepts tick all of these boxes because they incorporate deep critiques of modern justice practices and values alongside practical tools to change and transform what happens in the system on a day-to-day basis.⁶⁹ Their inclusion in university programmes would help enable legal and criminological educators to “re-emphasise the old tasks of understanding and criticising,”⁷⁰ while also providing an alternative vision of how people who interact with the legal system should be treated and what this system should aim to achieve.

Certainly, restorative justice and therapeutic jurisprudence might benefit from some humility; we must teach them in a way that does not imply we have all the answers to social problems. Indeed, claims made about restorative justice and therapeutic jurisprudence must be

64. See generally TEACHING CRIMINOLOGY AT THE INTERSECTION: A HOW-TO GUIDE FOR TEACHING ABOUT GENDER, RACE, CLASS AND SEXUALITY (Rebecca M. Hayes et al. eds., 2015).

65. See *id.* at 2–3.

66. See *id.* at 1 (“Students come to our classroom with their preconceived notions about criminal justice and many expect to learn about policing, incarceration and theories of crimes.”).

67. See *id.*

68. See *Law School Enrollment*, *supra* note 40 (showing increased law school enrollment from 1963 to 2019). See generally ZEHR, *supra* note 14, at 33–44.

69. See ZEHR, *supra* note 14, at 215–27; Geske, *supra* note 58, at 327.

70. CHRISTIE, *supra* note 24, at 14.

critically assessed like any other,⁷¹ and these subjects provide an opportunity to engage students on crucial issues around dogmatism and ideology, the limitations of research methodologies, and gaps between theory and practice in law and policy. Where our frameworks are particularly valuable, however, is in helping students to see that other approaches are possible. The biggest myth in criminal justice is that the system that one is used to—or, perhaps more accurately, that one presumes to exist—has always been that way, and is the only way of doing things. Yet, one cannot continue believing in a single, natural order when learning about the times and countries in which alternative concepts have been adopted.⁷² Most importantly, by teaching about our shared restorative-therapeutic principles—such as stakeholder participation and justice as meeting human needs⁷³—we can provide students with a new understanding of the purpose of criminal justice. We may have little control over what people do after studying, but we can design and deliver our own programs in a way that primes students to work towards and understand the need for a more humane criminal justice system.

III. DEVELOPMENTS IN RESTORATIVE AND THERAPEUTIC EDUCATION

Restorative justice and therapeutic jurisprudence scholars often aim to ensure that their universities include these topics in relevant programs. This leads to regular ebbs and flows in their teaching as faculty members come and go, and programs vary in their format and content. It is important for educators of these disciplines to work together to ensure that they reach as broad a student body as possible, in terms of the countries, disciplines and levels of study with which they engage. This section considers some recent developments in each topic's teaching to contextualize the following discussion about the potential for collaboration.

Restorative justice appears on a range of undergraduate and postgraduate programmes that cover criminology, psychology and political studies, and programmes aimed at training future teachers, social workers and lawyers.⁷⁴ In criminology, whether it should be a

71. Susan Smith-Cunnien & Peter Parilla, *Restorative Justice in the Criminal Justice Curriculum*, 12 J. CRIM. JUST. EDUC. 385, 390 (2001).

72. *See id.* at 386.

73. *See supra* notes 32–39 and accompanying text.

74. *See Academic Teaching Programmes*, EUR. F. FOR RESTORATIVE JUST., <https://www.euforumrj.org/en/academic-teaching-programmes> [<https://perma.cc/Z7W3-NYCE>]

stand-alone course or integrated into other courses (e.g., victimology or youth justice) remains a subject of debate.⁷⁵ Still, there is now a range of dedicated programmes on restorative justice and practices. These include a Certificate at Simon Fraser University in Canada,⁷⁶ a Graduate Certificate at Victoria University of Wellington in New Zealand,⁷⁷ a Master of Science at the International Institute for Restorative Practices,⁷⁸ and a wide range of programmes at Eastern Mennonite University in the U.S.⁷⁹ Questions remain as to the sustainability of dedicated programmes, however, following the discontinuation of some well-established postgraduate programmes at the University of Hull and Ulster University in the U.K., and the furloughing of a Certificate at Maynooth University in the Republic of Ireland.⁸⁰ Notably, however, 2020 saw new restorative justice centers established at the Vermont Law School in the United States⁸¹ and at Dalhousie University in Canada,⁸² as well as a transition in

(last visited Mar. 30, 2021). This information is mostly from 2016, although there are ongoing efforts to update the catalog in 2021 as much has changed in recent years.

75. Sarah Britto & Mary Reimund, *Making Space for Restorative Justice in Criminal Justice and Criminology Curricula and Courses*, 16 CONTEMP. JUST. REV. 150, 151–52 (2013).
76. *Restorative Justice Certificate: Why This Program?*, SIMON FRASER UNIV., <https://www.sfu.ca/continuing-studies/programs/certificate-in-restorative-justice/why-this-program.html> [<https://perma.cc/S29R-ZWKA>] (last visited Mar. 30, 2021).
77. *Graduate Certificate in Restorative Justice Practice*, VICTORIA UNIV. WELLINGTON TE HERENGA WAKA, <https://www.wgtn.ac.nz/explore/graduate-quals/certificate-in-restorative-justice-practice/overview> [<https://perma.cc/X7R9-E4RW>] (last visited Mar. 30, 2021).
78. *Graduate Programs*, IIRP GRADUATE SCHOOL, <https://www.iirp.edu/graduate-education/graduate-programs> [<https://perma.cc/T6ZY-52U3>] (last visited Mar. 30, 2021).
79. *Restorative Justice*, E. MENNONITE UNIV., <https://emu.edu/restorative-justice/> [<https://perma.cc/VEW3-ACQ9>] (last visited Mar 30, 2021).
80. *See Postgraduate Taught*, UNIV. HULL, <https://www.hull.ac.uk/study/post-graduate/taught> [<https://perma.cc/M6CN-KE8Z>] (last visited Mar. 30, 2021); *see Postgraduate Prospectus 20/21*, ULSTER UNIV., https://www.ulster.ac.uk/_data/assets/pdf_file/0007/530773/PG-Prospectus-20-21_WEB.pdf [<https://perma.cc/G5SZ-83YP>] (last visited Mar. 30, 2021); *see Postgraduate Masters, Diplomas & Certificates*, MAYNOOTH UNIV., <https://www.maynoothuniversity.ie/study-maynooth/postgraduate-studies/taught-programmes> [<https://perma.cc/SS47-SP63>] (last visited Mar. 30, 2021). These universities do not have restorative justice courses listed among their courses of study.
81. *National Center on Restorative Justice: VLS Announces the National Center on Restorative Justice*, VT. L. SCH., <https://www.vermontlaw.edu/ncrj> [<https://perma.cc/NT4H-36RK>] (last visited Mar. 30, 2021).
82. *Dalhousie Officially Launches First Ever International Restorative Justice Lab*, DALHOUSIE UNIV. (June 10, 2020), <https://www.dal.ca/news/2020/06/10/dalhousie-officially-launches-first-ever-international-restorati.html> [<https://perma.cc/N8L5-42GE>].

leadership at the Victoria University of Wellington's Diana Unwin Chair in Restorative Justice.⁸³

With all these ups and downs, it is difficult to establish a clear trend in restorative justice education, although other developments bode well for the future. In late 2018, the Council of Europe adopted a landmark European legal framework on restorative justice, Rule 57, which regards the need “to raise the awareness of all [criminal justice] staff and managers . . . [about] the principles of conflict resolution and restorative justice, so that they understand these principles and are able to apply them in the course of their day-to-day work.”⁸⁴ The corresponding commentary for Rule 57 states: “University courses which pertain to criminology or to the administration of the criminal justice system should include restorative justice as part of their curricula.”⁸⁵ More recently, the United Nations Office on Drugs and Crime (UNODC) published a second edition of its “Handbook on Restorative Justice Programmes” that likewise advised that “restorative justice can be included in school and university curricula.”⁸⁶ Neither document is legally binding, but they represent policy-leveraging tools that can help those advocating for the development of restorative justice at universities and elsewhere.⁸⁷

There have been further developments at the international level. In 2019, UNODC's Education for Justice Initiative (E4J) included restorative justice as a module in its University Module Series on Crime Prevention and Criminal Justice.⁸⁸ This led to a collaboration between one of us (Marder) and E4J on a series of international roundtables, each focusing on a different aspect of restorative

83. *Leading Researcher to Head Diana Unwin Chair in Restorative Justice*, VICTORIA UNIV. WELLINGTON TE HERENGA WAKA (June 10, 2020), <https://www.wgtn.ac.nz/news/2020/06/leading-researcher-to-head-diana-unwin-chair-in-restorative-justice> [https://perma.cc/6TFD-NMS2].

84. Council of Eur., Comm. of Ministers, *Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States Concerning Restorative Justice in Criminal Matters* (adopted by the Committee of Ministers at the 1326th meeting of the Ministers' Deputies, Oct. 3, 2018), <https://www.cep-probation.org/wp-content/uploads/2018/10/Recommendation-CM-Rec-2018-of-the-Committee-of-Ministers-to-member-States-concerning-restorative-justice-in-criminal-matters-.pdf> [https://perma.cc/CRH5-HLJ7].

85. *Id.*

86. U.N. OFF. ON DRUGS & CRIME, *supra* note 20, at 65.

87. *Id.* at 1; Council of Eur., Comm. Of Ministers, *supra* note 84.

88. *Crime Prevention & Criminal Justice Module 8: Restorative Justice*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-8/index.html> [https://perma.cc/549G-BR6K] (last visited Mar. 30, 2021) (first published in Apr. 2019).

teaching.⁸⁹ Participants in the first roundtable, entitled *Restorative Justice Education in the Asia-Pacific Region*, discussed teaching restorative justice in Eastern and postcolonial settings, in light of efforts to take a more global and holistic approach to teaching criminology and other disciplines.⁹⁰ The second roundtable, entitled *Teaching Restorative Justice Restoratively: Towards a Restorative Pedagogy*, considered applying restorative principles and using experiential learning in restorative justice teaching.⁹¹ Wexler addressed this session on the use of therapeutic principles in teaching therapeutic jurisprudence, and on the potential for collaboration between our fields.⁹² The final roundtable, entitled *Teaching Restorative Justice to the Practitioners of the Future*, explored restorative justice instruction for students who will work in human services.⁹³ UNODC recorded and published these roundtables, which brought together over seventy academics from thirty jurisdictions to discuss their programmes and experiences of restorative justice teaching.⁹⁴ Participants included two authors of “The Little Book of Restorative Teaching Tools,” a recent publication that articulates a relational and empowering restorative pedagogy, and outlines games, activities and simulations to support students to understand the subject.⁹⁵ Through the book’s corresponding website,⁹⁶ scholars can sign up to receive games and ideas for restorative practice training and education. The participants also included Dr. Masahiro Suzuki, a professor at Central Queensland University, who recently helped establish a mailing list that enables academics around the world to

89. *E4J Webinar Series: UNODC Education for Justice and Maynooth University Collaborate to Host Online Roundtables on Restorative Justice Pedagogy*, U.N. OFF. ON DRUGS & CRIME [hereinafter *E4J Webinar Series: Roundtables on Restorative Justice Pedagogy*], https://www.unodc.org/e4j/en/tertiary/events/e4j-webinar-series_roundtables-on-restorative-justice-pedagogy.html [https://perma.cc/63FR-CPUM] (last visited Mar. 30, 2021).

90. *Id.*

91. *Id.*

92. United Nations Office on Drugs and Crime, *UNODC E4J Online Roundtable on Restorative Justice Pedagogy – North, Central and South America*, YOUTUBE (Jun. 17, 2020), https://youtu.be/6y07tpDp_Ic [https://perma.cc/J2BJ-PBU6] (relevant content at 1:39:00).

93. *E4J Webinar Series: Roundtables on Restorative Justice Pedagogy*, *supra* note 89.

94. *Id.*

95. *See generally* LINDSEY POINTER ET AL., *THE LITTLE BOOK OF RESTORATIVE TEACHING TOOLS* (2020).

96. RESTORATIVE TEACHING TOOLS, <https://restorativeteachingtools.com> [https://perma.cc/3NYT-9J87] (last visited Mar. 30, 2021).

share their restorative justice curricula.⁹⁷ In restorative justice teaching, the seeds of international collaboration are apparent.

There are also interesting developments in therapeutic jurisprudence education.⁹⁸ Some law schools and allied departments offer full courses in the subject, while others introduce the topic in courses on child protection, family law, and juvenile justice, as established by a survey conducted via the International Society for Therapeutic Jurisprudence (ISTJ) network.⁹⁹ The ISTJ aims to facilitate the development of therapeutic jurisprudence internationally, publishing a blog and bibliography, and moderating a Facebook discussion group, a ListServe, and more.¹⁰⁰

The ISTJ is thinking creatively about the teaching mission. Certainly, the adoption of courses in therapeutic jurisprudence is a core goal, as is the inclusion of therapeutic jurisprudence alongside related concepts. For example, courses like those taught at the University of Puerto Rico include, in addition to therapeutic jurisprudence, introductions to the “comprehensive law movement”¹⁰¹ that cite its various “cousins,” including restorative justice, preventive law, facilitative and transformative mediation, collaborative divorce and other subjects.¹⁰² Following that, a representative course should introduce therapeutic jurisprudence as the basic conceptual framework relating to the design and application of the law, while exploring its development, challenges and future applications.

There is always a curricular debate about new offerings. One new approach to teaching suggests that we can take advantage of therapeutic jurisprudence as a *method of thinking*. As an alternative

97. United Nations Office on Drugs and Crime, *UNODC E4J Online Roundtable on Restorative Justice Pedagogy – Asia Pacific Region*, YOUTUBE, (Jun. 2, 2020), <https://youtu.be/fyI2z0VRIWM> [<https://perma.cc/2JUR-77SF>] (relevant content at 58:41).

98. See *infra* notes 99–106 and accompanying text.

99. See generally *Survey on Therapeutic Jurisprudence Education*, INT’L SOC’Y FOR THERAPEUTIC JURIS., http://intljtj.com/wp-content/uploads/wpforo/default_attachments/1575674546-TJ-teaching-responsesedited12-10-18updated-1-7-18.pdf [<https://perma.cc/2S2N-KV26>] (last visited Mar. 30, 2021).

100. INT’L SOC’Y FOR THERAPEUTIC JURIS., <https://intljtj.com/> [<https://perma.cc/X3LF-YG8F>] (last visited Mar. 30, 2021).

101. See generally Daicoff, *supra* note 14.

102. See *id.* at 466–67; see Wexler, *supra* note 14, at 479; see, e.g., INTER AM. U. OF P.R., SCHOOL OF LAW CATALOGUE 2019–2021 65–67 (2021), <http://www.derecho.inter.edu/wp-content/uploads/2019/09/IAUPR-School-of-Law-Catalogue-2019-21.pdf> [<https://perma.cc/L3XF-ZR5P>].

to pushing for a heavy curriculum to get heavier, we might instead provide brief, basic therapeutic jurisprudence education over one or two class sessions. In “The Methodology and Practice of Therapeutic Jurisprudence,” Wexler wrote in the opening chapter that he was pleased to write in a book on therapeutic jurisprudence “methods” because it:

Is in itself a method—a method of thinking—more so than it is a specific body of knowledge. [Therapeutic Jurisprudence] is not a packet of materials one simply learns and then applies; instead, it is an ongoing process of analysis, insight, proposal(s), discussion, revision, evaluation, further revision and growth.¹⁰³

Following up on that idea, Wexler recently proposed that, in a single classroom session (or maybe two), students could be introduced to therapeutic jurisprudence in a manner that will “stick,” and that they can then carry to other classes, to their legal clinics and on into practice.¹⁰⁴ Before class, the students are asked to watch an eighteen-minute video and to read two short introductory articles: *Therapeutic Jurisprudence: An Overview* and *From Theory to Practice and Back Again in Therapeutic Jurisprudence: Now Comes the Hard Part*.¹⁰⁵ The Wexler Proposal was written with particular reference to law students and suggested that the subject could be introduced in basic first-year courses on Legal Professionalism or Legal Method and Writing, and in an introduction to their clinical offerings.¹⁰⁶ Of course, such an abbreviated orientation to therapeutic jurisprudence would be profitably taught within restorative justice courses, and vice versa. On developing this proposal and many others, scholars from these fields should make a concerted effort to collaborate.

103. See Wexler, *supra* note 15, at 3.

104. David B. Wexler, *A Proposal for Basic and Brief TJ Education: Promoting Academic, Ethical, and Vocational Objectives* 3 (Ariz. Legal Stud. Discussion Paper, Paper No. 20-02, 2020), <https://ssrn.com/abstract=3523226> [<https://perma.cc/4SW5-R6DY>].

105. NASEM Health & Medicine Division, *Wexler*, YOUTUBE (Mar. 3, 2014), https://youtu.be/XBIO_SzS92o [<https://perma.cc/38AW-YUXK>]; Wexler, *supra* note 5; David B. Wexler, *From Theory to Practice and Back Again in Therapeutic Jurisprudence: Now Comes the Hard Part*, 37 MONASH U. L. REV. 33 (2011).

106. See Wexler, *supra* note 104, at 3.

IV. THE NEED FOR INTERNATIONAL AND INTERDISCIPLINARY COLLABORATION

We propose to establish a group of scholars who collaborate on activities that develop the teaching of restorative justice and therapeutic jurisprudence in higher education, and that contribute to mainstreaming these disciplines globally. This group will build bridges between key thinkers and doers in our fields, enabling us to share knowledge and experience, and co-create ideas, materials and approaches to teaching. The specific activities will be a matter for determination by the group. However, we wish to suggest five areas that might be worthy of consideration because of their interest to both fields, and because their development would benefit from joint consideration.

A. Maximize the proportion of students exposed to our subjects

Our ambition is for higher education institutions to provide both restorative justice and therapeutic jurisprudence to all students of law, criminology, and cognate disciplines.¹⁰⁷ In an ideal world, the relevant departments will give these subjects a place in core curricula for both undergraduate and postgraduate programmes, ensuring that students receive at least an introduction to both topics at a lower level. There would also be options to study them in more depth at a higher level.

To win this argument in our own institutions, we should share our experiences in proactively identifying and communicating with academic departments that do not teach these subjects. Many faculty will not have received instruction in these subjects during their own studies, and may therefore be skeptical about the necessity of their inclusion. However, we can use the restorative and therapeutic skills of active listening, inclusive communication, and problem solving to work with colleagues on identifying the most appropriate ways to teach these skills at varying levels and across different countries, disciplines, and institutions.¹⁰⁸ Particularly in the wake of COVID-19, we have more opportunities to teach these subjects to students around the world, and on each other's courses, as universities increasingly utilize blended learning and online technologies to

107. See, e.g., *Our Mission*, EUR. F. FOR RESTORATIVE JUST., <https://www.euforum.rj.org/en/our-mission> [<https://perma.cc/GFK9-GJUB>] (last visited Mar. 30, 2021) (focusing on “the application of restorative justice to criminal matters [and] other areas, such as family, school and community mediation”).

108. See Britto & Reimund, *supra* note 75, at 150–51, 155.

enable international speakers.¹⁰⁹ We might draft and publish a list of educators who are willing to deliver classes online, and the topics we would be able to cover for different audiences.

We could also work together to develop, publish, and disseminate effective introductions to these topics. These can be delivered quickly and, where necessary, by non-experts. We can create a range of curricula aimed at different disciplines: the curricula for international development or peacebuilding programs, for example, may focus on transitional justice and international conflict, whereas the curricula for law programs might use examples from, and focus on, criminal and family law. We could even work across departments to co-create and co-deliver curricula that enable students from different disciplines to learn together.¹¹⁰ This brings us to another arena of possible, fruitful collaboration: that of developing course content.¹¹¹

B. Share and co-create course content

Restorative justice and therapeutic jurisprudence use a range of content and teaching materials, including case studies; videos; stories; research explanations; peer-reviewed journals; newspaper articles; metaphors; images and games; and so on. Collaboration will aid the development of full courses or effective introductions to these topics. We could share and reflect on effective tools, discuss how we convey key messages and advanced theoretical points; and consider collectively how we might evaluate and build on existing approaches. In the spirit of co-creation and stakeholder participation, we could involve our students in establishing how different materials are experienced in the classroom. We could also develop materials to effectively train single-subject educators to introduce students to the other subject. All of these materials will need to be adapted for different cultures and audiences. Likewise, we should support the translation of materials into languages other than English—most importantly, slides and subtitles for videos.

109. See *E4J Webinar Series: Roundtables on Restorative Justice Pedagogy*, *supra* note 89 (demonstrating how global educators can teach restorative justice using remote learning platforms).

110. See Barbara A. Carson & Darrol Bussler, *Teaching Restorative Justice to Education and Criminal Justice Majors*, 16 *CONTEMP. J. REV.* 137, 137–149 (2013).

111. See *id.* at 147–48 (reflecting on the value of collaborative development on restorative justice course content).

C. *Explore how to express shared values through andragogy*

Michael Gilbert, Mara Schiff, and Rachel Cunliffe encourage us to use the term “andragogy” in place of “pedagogy” in recognition of the fact that that our work is with adult learners.¹¹² Andragogical principles include that adult learning requires trust, respect, strong relationships, and active participation from educators and learners alike to determine class content.¹¹³ The principles that facilitate an effective adult learning environment are akin to those that underpin both restorative justice and therapeutic jurisprudence.¹¹⁴ Moreover, many have noted the importance of experiential learning in our subjects.¹¹⁵ For example, restorative justice education can itself become a restorative experience and avoid replicating the cultural insensitivities and inequalities of criminal justice, if it is delivered in accordance with restorative values.¹¹⁶ We should therefore collaborate to develop our techniques for building and maintaining classroom climates that reflect our topics’ values.

Restorative educators increasingly seek to express restorative values in their teaching approaches. For example, there is a long tradition of using circle processes in classrooms to build relationships and enable participation.¹¹⁷ Everyone sits in a circle, the instructor asks a question, and the right to speak revolves around the circle sequentially.¹¹⁸ A talking piece is used and its holder cannot be interrupted, but they are not required to speak.¹¹⁹ The benefits of circle processes enable people to feel heard and respected, encourage listening and reflecting deeply on others’ experiences and perspectives, allow students to feel connected and supported, and prevent the conversation from being dominated by louder voices.¹²⁰

112. See Michael Gilbert et. al., *Teaching Restorative Justice: Developing a Restorative Andragogy for Face-to-Face, Online and Hybrid Course Modalities*, 16 CONTEMP. J. REV. 43, 44–45 (2013).

113. See *id.* at 45.

114. See *id.*

115. See *id.* at 51, 55–56, 58, 63.

116. See generally Barb Toews, *Toward a Restorative Justice Pedagogy: Reflections on Teaching Restorative Justice in Correctional Facilities*, 16 CONTEMP. JUST. REV. 6, 6, 13, 15, 17–20, 22, 24–25 (2013).

117. TED WACHTEL, *DEFINING RESTORATIVE* 7–8 (2016), https://www.iirp.edu/images/pdf/Defining-Restorative_Nov-2016.pdf [<https://perma.cc/QG9T-WVFF>].

118. *Id.* at 8.

119. *Id.*

120. See Jean Greenwood, *The Circle Process: A Path for Restorative Dialogue*, UNIV. MINN.: CTR. FOR RESTORATIVE JUST. & PEACEMAKING (Oct. 2005), <http://rjp>.

The circles also enable students who have been conditioned to be passive learners to participate comfortably.¹²¹ One of us (Marder) has used circles in classes for years, and is experimenting with using circles to involve students in reviewing and redesigning an undergraduate module. Others use circles to facilitate a range of conversations on campuses and in student accommodation.¹²² The circle process is a foundational piece of a restorative and relational andragogy, with wide-ranging potential applications: they can be used in any situation where there is a topic to be discussed or a question to be asked.¹²³ They also have a role to play in building the sense of community that enables respectful, critical, and open dialogue in classes that facilitates empathy among and between staff and students, and that motivates active participation in learning and teaching.¹²⁴

There is yet to be a discussion about a therapeutic andragogy, but the same logic as in the legal system certainly applies in higher education: lectures, seminars and assessments can have pro- and anti-therapeutic qualities, as does any interaction between our students and colleagues. TJ is part of the Comprehensive Law Movement and so it stresses a more humane and psychologically sensitive approach to both law and legal teaching.¹²⁵

For one of us (Wexler), who has taught TJ since its inception, therapeutic teaching methods are respectful and desirous of student voice and participation. Where class sizes permit, students sit around a seminar table and each student has an opportunity to offer their views, questions and insights regarding assigned readings, as well as relevant personal experiences—akin to the circle process. Most of the rest of class time is for student presentations and open class discussions. Instead of exams, we evaluate students by participation, oral presentations and a final written paper, which we aim to circulate and even publish where possible. Indeed, these papers will play a

dl.umn.edu/sites/rjp.dl.umn.edu/files/media/the_circle_process.pdf [https://perma.cc/PS4K-A2RA].

121. Craig W. Adamson & John W. Bailie, *Education Versus Learning: Restorative Practices in Higher Education*, 10 J. TRANSFORMATIVE EDUC. 139, 148–50 (2012).

122. Lindsey Pointer, *Restorative Practices in Residence Halls at Victoria University of Wellington, New Zealand*, 36 CONFLICT RESOL. Q. 263, 263, 265 (2019); LINDSEY POINTER, SUSTAINED RESTORATIVE DIALOGUE AS A MEANS OF UNDERSTANDING AND COMBATting SEXUALLY HARMFUL BEHAVIOR (2018), <https://lindseypointer.files.wordpress.com/2018/08/sustained-restorative-dialogue-report.pdf> [https://perma.cc/YAA8-MPS3].

123. WACHTEL, *supra* note 117, at 7–8.

124. *Id.*

125. Daicoff, *supra* note 14, at 465–67.

prominent role in the work of the Centre for Restorative and Therapeutic Justice, which the University of Puerto Rico is currently establishing.¹²⁶ Certainly, an area of interest to both groups will be how we might apply restorative and therapeutic values in student assessment—perhaps the most stressful, anxiety inducing part of higher education for students and staff alike. Relevant assessment for students in law clinics might involve the drafting of Legal System Victim Impact Statements,¹²⁷ and restorative justice students could likewise be assessed through real-world applications of its theory and practice.¹²⁸ If restorative justice and therapeutic jurisprudence are to transform criminal justice, then the way we teach and assess them must also be transformative.¹²⁹

D. Education for the wider public

Beyond the recognition that our students are members of the public (whether or not they will work in the criminal justice system), we can consider collaborating on the development of materials and opportunities to directly engage the wider public. Teaching for the public is an important, if often neglected, element of “public criminology.”¹³⁰ The public often know little about restorative justice and therapeutic jurisprudence, even in jurisdictions where these are widely applied. Considering the public’s keen interest in issues of crime and justice, media misrepresentations of crime and the criminal justice system, and the research suggesting that public attitudes towards punitiveness may be more ambivalent, dynamic, and complex than we often considered,¹³¹ we might explore how best to introduce

126. Detailed information on the Centre for Restorative and Therapeutic Justice has not yet been released.

127. David B. Wexler, *Victim Legal Clinics and Legal System Victim Impact Statements: Addressing the Therapeutic Aspects of Victim Participation in Justice*, in THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE: INTERNATIONAL PERSPECTIVES 89, 90 (Edna Erez et al. eds., 2011).

128. See Marilyn Armour, *Real-World Assignments for Restorative Justice Education*, 16 CONTEMP. JUST. REV. 115, 116, 120, 130 (2013).

129. Toews, *supra* note 116, at 7, 11.

130. Claire Hamilton, *Towards a Pedagogy of Public Criminology*, 5 ENHANCING LEARNING SOC. SCIS. 20, 20–21 (2013).

131. See generally, e.g., Julian Roberts & Mike Hough, *Sentencing Young Offenders: Public Opinion in England and Wales*, 5 CRIM. JUST. 211, 212 (2005); Flemming Balvig et al., *The Public Sense of Justice in Scandinavia: A Study of Attitudes Towards Punishments*, 12 EUR. J. CRIMINOLOGY 342, 343 (2015); ALL. FOR SAFETY & JUST., CRIME SURVIVORS SPEAK: THE FIRST-EVER NATIONAL SURVEY OF VICTIMS’ VIEWS ON SAFETY AND JUSTICE 4 (2016), <https://allianceforsafetyandjustice.org/wp->

the public to restorative justice and TJ processes and principles. Again, this may be easier to achieve now more than ever, following the public's increased use of online communication technologies during the pandemic.¹³² Massive Open Online Courses aside, many organizations now provide free, online educational webinars open to the general public, which are increasingly used to interact with large groups on conference calling platforms.¹³³ Easily, we could develop, say, a series of four two-hour sessions on each subject that we could deliver online and free of charge to any interested persons.

E. Applications in higher education institutions

The final subject on which we might collaborate is on transforming the way that harm, crime, and conflict are handled by universities. University conflict resolution and adjudication systems all too often mirror the problems within the criminal justice system, or even go beyond their worst excesses.¹³⁴ Responses to student and staff conflict and discipline are adversarial, costly, time consuming, do little to meet the needs of those harmed, and fail to enable stakeholder participation.¹³⁵ They are also subject to considerable power imbalances and often do not offer collaborative alternatives.¹³⁶

content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf [https://perma.cc/2EE8-UHFB].

132. See Rahul De et al., *Impact of Digital Surge During Covid-19 Pandemic: A Viewpoint on Research and Practice*, 55 INT'L J. INFO. MGMT., Dec. 2020, at 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7280123/pdf/main.pdf> [https://perma.cc/2DA4-E3AX].
133. See Dian Schaffhauser, *Free Resources to Help with Remote Learning in 2021*, JOURNAL (Feb. 8, 2021), <https://thejournal.com/articles/2021/02/08/free-resources-to-help-with-remote-learning-in-2021.aspx> [https://perma.cc/TXX6-W7MF].
134. DAVID R. KARP, *THE LITTLE BOOK OF RESTORATIVE JUSTICE FOR COLLEGES AND UNIVERSITIES: REPAIRING HARM AND REBUILDING TRUST IN RESPONSE TO STUDENT MISCONDUCT* (2d ed. 2019); *RESTORATIVE JUSTICE ON THE COLLEGE CAMPUS: PROMOTING STUDENT GROWTH AND RESPONSIBILITY, AND REAWAKENING THE SPIRIT OF CAMPUS COMMUNITY* 5–7 (David R. Karp & Thom Allena eds., 2004); JOSHUA WACHTEL, TED WACHTEL & STACEY MILLER, *BUILDING CAMPUS COMMUNITY: RESTORATIVE PRACTICES IN RESIDENTIAL LIFE* (2012).
135. See Virgil Van Dusen, *Liability and Litigation Risks for Colleges and Schools of Pharmacy*, 75 AM. J. PHARM. EDUC., Apr. 11, 2011, at 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109806/pdf/ajpe52.pdf> [https://perma.cc/GD8Q-3FVS].
136. See Ali Ibrahim & Wafaa El Zaatari, *The Teacher-Student Relationship and Adolescents' Sense of School Belonging*, 25 INT'L J. ADOLESCENCE & YOUTH 382, 382 (2020), <https://www.tandfonline.com/doi/pdf/10.1080/02673843.2019.1660998?needAccess=true> [https://perma.cc/EVF3-TBNQ].

Many universities have introduced restorative processes on campus, or are actively considering doing so.¹³⁷ Yet, all universities and relevant staff should also recognize the pro- or anti-therapeutic effects that their disciplinary hearings (and all the engagements before and following these) can have on people, as well as the social and emotional learning that could emerge, if students engaged in restorative and therapeutic processes when confronted with problems and conflicts.¹³⁸ Again, we might collaborate across our fields to develop our work in this area. We cannot spend our working lives telling other human service providers to be restorative and therapeutic, if we do not apply the same standards to our own institutions.

CONCLUSION

More and more countries face growing calls to transform their criminal justice system and societal response to crime and harm.¹³⁹ The current generation of criminal justice and law students will play a central role in leading that reform process. They will be best equipped to do so if they study in a learning environment that facilitates their participation in open, critical and respectful dialogue, and that includes a range of content that introduces them to new and different ways of thinking about crime and justice.¹⁴⁰ Interested educators of restorative justice and therapeutic jurisprudence should join to discuss how we might collaborate to these ends.

137. See TREVOR FRONIUS ET AL., WESTED, RESTORATIVE JUSTICE IN U.S. SCHOOLS: AN UPDATED RESEARCH REVIEW 2–3 (2019), <https://www.wested.org/wp-content/uploads/2019/04/resource-restorative-justice-in-u-s-schools-an-updated-research-review.pdf> [<https://perma.cc/S8WZ-TU8K>].

138. Carol L. Zeiner, *A Therapeutic Jurisprudence of Government's Directives on Student to Student Campus Rape*, 47 J.L. & EDUC. 427, 448 (2019).

139. Rossner, *supra* note 15, at 369.

140. Britto & Reimund, *supra* note 75, at 161–62.

