CrimRxiv

Review 2 of“Leave your pain here:’ An Illustration of Therapeutic Jurisprudence through the Remarks of Judge Rosemarie Aquilina from The State of Michigan versus Lawrence Nassar”

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Vote: Publish pending minor changes

[For votes to count, referees must reasonably explain why they voted as they did. Thus, please explain your vote. If you voted to publish pending minor changes, specify each change, why it is needed, and, possibly, how it should/could be done.]

Suggested minor revisions:

- 'scores of sexual abuse experiences' - 'experiences' does feel right here
- 'TJ is in rooted in the idea that the legal system, particularly judges, has the power to act as a therapeutic agent (Kawalek, 2020).undefined TJ research suggest(s)' review - remove 'in' and consider use of 'has' after judges 's' on suggests
- 'content process(es)' - not 100% clear on the meaning
- 'leave their pain in her hands and the hands of the court'

Substantive comment:

'In terms of language, due process concerns may center on the potential inflammatory nature of word choice, such as Judge Aquilina's words referring to the defendant as 'predator' or 'beast.' It may be possible for TJ to coexist with judicial neutrality via careful consideration of word choice, particular those phrases that are used to refer to the defendant.'

However hard this may be, my view is that TJ, and indeed compassion, requires us not to turn the accused into a 'monstrous other'. I don't think you necessarily need to make any adjustments to this para but I do think that TJ can absolutely coexist with judicial neutrality and with language and approaches that fully recognise the harm, the need for condign punishment and condemnation of the offence whilst refraining from turning the offender into a monster (however monstrous their offending). After all, he does remain a human being who is the product of causes and conditions, not least of which is the patriarchy and a culture of male violence against women. That said, I can definitely see a counter argument in this case that would suggest that there is therapeutic benefit to rendering the offender less than human for the sake of survivor healing. Maybe we are in agreement. I think that my view and that of Bartels in relation to compassion and TJ in relation to offenders is set out in the chapter you cite (Hopkins & Bartels 2019).