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In common law countries such as England and Australia, violent and otherwise unnatural deaths are investigated by coroners who make findings as to the "manner of death". This includes determining whether the deceased person intentionally caused their own death. Previous research has suggested that coroners are reluctant to reach such determinations, citing the stigma of suicide and a need for sensitivity to grieving and traumatised families. Based on interviews with both English and Australian coroners, this article explores whether an "ethic of care" evident in English and Australian coronial suicide determinations, can be understood as an application of the "practices and techniques" of therapeutic jurisprudence. Based on the ways in which coroners position the law as a potential therapeutic agent, we investigate how they understand their role and position as legal actors, and the effects of their decision-making in the context of suspected suicides.

<DIV>INTRODUCTION

Since the inception of the role of the coroner in the 12th century, one of their central tasks has been to investigate deaths "considered worthy of inquiry".[1] This has included deaths caused by accidents, those where there was some suspicion of wrongdoing, and significantly for this article, suspected suicides. In fact, in both Australia and England, only coroners are required to decide whether or not a death is a suicide, and as a consequence it is they who have the power to decide how the notion of suicide is practically conceptualised, where its boundaries lie, which deaths are adjudged a suicide, and how these deaths are recorded. In short, the "truth" of a suicide lies with the coroner, and for a complex set of historical, social and pragmatic reasons, it is a conclusion they can be particularly reluctant to reach.[2]

There have been numerous attempts to address the "problem" of coronial underestimations of suicide[3] and such was the dissatisfaction with official suicide statistics that a senate committee was established in Australia in 2010 to investigate these issues. Their findings, published in a report entitled *The Hidden Toll: Suicide in Australia*[4] did find that suicide was under-reported by coroners. What this means is that some suicides which are identified as a fact by other agencies involved in the social and statistical management of suicide, are not recognised as such in coronial findings and are hence not suicide as a matter of law. This goes to the heart of the matter in suicide determination in countries such as Australia and England where official suicide statistics can only be determined by the coroner. As a consequence of this, the Australian Bureau of Statistics now attempts to compensate for such "under-estimation" issues, post facto by reviewing findings of law and where appropriate, making different findings of "fact".

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[1] Burney I, *Bodies of Evidence: Medicine and the Politics of the English Inquest 1830–1926* (Baltimore MD, Johns Hopkins University Press, 2000) at 3.

[2] Tait G and Carpenter B, "Regulating Bereavement: Inquests, Family Pressure and the Gatekeeping of Suicide Statistics", article presented at the Crime, Justice and Social Democracy Conference (Queensland University of Technology, November, 2013).

[3] Harrison J, Abou Elnour A and Pointer S, *A Review of Suicide Statistics in Australia*, (2009) Cat No INJCAT 121, Canberra: AIHW, URL (Last viewed August 2014): http://www.aihw.gov.au/pubication-detail/?id=6442468269; De Leo D, Dudley M, Aebersold C, Mendoza J, Barnes M, Harrison J et al, "Achieving Standardised Reporting of Suicide in Australia: Rationale and Program for Change" (2010) 192(8), *Medical Journal of Australia* 452-456.

[4] Senate Community Affairs Reference Committee, *The Hidden Toll: Suicide in Australia* (Canberra, The Senate, 2010).

This article is not another attempt to address the underestimation of suicide. Existing research has generally dealt with coronial suicide rates as a technical problem[5] or as a mis-representation of the "real" rate of suicide.[6] In this way of thinking, rates can be corrected by reorganising aspects of how coronial offices conduct their affairs or by intervention after the fact. Rather, this article explores how a concern for the feelings of bereaved families can lead to reluctance by the coroner to reach a suicide finding. While coroners may always have been aware of the social stigma of suicide and the adverse legal consequences which can flow from such a finding, this ongoing reluctance may now constitute a component of what Freckleton[7] refers to as the rise of therapeutic jurisprudence, understood as "the study of the role of law as a therapeutic agent". So despite the formal legal function of their coronial determinations, some coroners appear to be functioning as an informal therapeutic filter, through which the factual circumstances of a death are directed, in order to try and "manage" the social stigma and individual emotional impact (or anti-therapeutic consequences) of a death being ascribed the legal status of "suicide".

This sense of responsibility for the well-being of the family of the deceased may have implications for the coroner's principal role – accurately informing the state as to the manner of death. Within therapeutic jurisprudence, the law is not simply a set of codes to be followed without reflection: legal institutions, and those charged with making them work, are deemed to have some responsibility for the mental and emotional well-being of all participants. According to this approach, it would be inappropriate for a coroner to reach a suicide finding, without considering how this finding might impact on those close to the deceased person; having regard to the stigma attaching to a suicide and the feelings of guilt that frequently arise. It is important to expressly acknowledge at this stage, however, that therapeutic jurisprudence conceives of this as only happening where it is possible to do so without breaching the extant requirements of due process via procedural fairness. Therapeutic jurisprudence does not advocate skewing or manipulating the formal process so that any step lacks transparency. If coroners intentionally make a finding which they may believe is inaccurate or vague, and are not transparent about this, their therapeutic actions may serve to lose the normative and legal force of their ruling. For these reasons therapeutic jurisprudence can provide coroners with a vehicle for becoming transparent about their reasoning. The rest of this article considers the ways in which utilising such an "ethic of care" is manifest by coroners in their suicide determinations, and the implications of this for their role in accurately informing the state and other interested parties as to the manner of death.

<DIV>THERAPEUTIC JURISPRUDENCE

Co-founder of therapeutic jurisprudence, David Wexler, gave the first significant definition of the nature and scope of therapeutic jurisprudence in a 1992 paper written to propose a new, interdisciplinary approach to mental health law in the United States. At that time, he wrote:

> [t]herapeutic jurisprudence is the study of the role of the law as a therapeutic agent. It looks at the law as a social force that, like it or not, may produce therapeutic or anti-therapeutic consequences. Such consequences may flow from substantive rules, legal procedures, or from the behaviour of legal actors (lawyers and judges). In other words, one may look at the law itself as being a therapist—or at least a therapeutic agent or tool.[8]

The therapeutic jurisprudence movement was, as originally conceived, an attempt to apply research findings from the social sciences to legal processes in order to make those legal processes

[5] Gunnell D, Bennewith S, Simkin S, Cooper E, Klineberg C, Rodway L et al, "Time Trends in Coroner's Use of Different Verdicts for Possible Suicides and their Impact on Officially Reported Incidence of Suicide in England: 1990–2005" (2013) 43(7), *Psychological Medicine* 1415-22.

[6] Walker S, Chen L and Madden R, "Deaths Due to Suicide: The Effects of Certification and Coding Practices in Australia" (2008) 32(2), *Australian and New Zealand Journal of Public Health* 126-130.

[7] Freckleton I, "Therapeutic Jurisprudence Misunderstood and Misrepresented: The Price and Risks of Influence" (2008) 30(2), *Thomas Jefferson Law Review* at 576.

[8] Wexler D, "Putting Mental Health into Mental Health Law" (1992) 16(2), *Law and Human Behaviour* at 32.

less damaging to the well-being of those involved with and affected by them. That well-being could encompass psychological, physical, economic and social factors.[9] The normative rationale of the therapeutic jurisprudence movement is that there exists an obligation on the part of the legal system to promote therapeutic outcomes and reforms and to identify, limit and, where possible, ameliorate anti-therapeutic roles and processes. The influence of the movement in achieving these goals, especially through the operation of the problem-solving courts (drug courts, gambling courts, mental health treatment courts, veteran's courts, Indigenous sentencing courts and others), has been widespread and significant.[10]

Now the therapeutic jurisprudence movement, in what is sometimes referred to as its "maturation phase"[11] has set itself a somewhat broader and more ambitious agenda in order to build on these successes. Partly for economic reasons, the idea of "mainstreaming" therapeutic jurisprudence requires an examination of the legal rules and procedures in mainstream courts to see how "tj-friendly"– or unfriendly – they may be.[12] This agenda includes influencing the work and functions of judges and lawyers outside the specialist criminal courts and among those who have not had significant experience or training in the principles of therapeutic jurisprudence.[13] Here, therapeutic principles associated with "solution-focused" judging, such as the promotion of voice, validation and respect are argued to have broad application to judging more generally, including coroners courts**.** Michael King[14] has been quite explicit in his call for an increasingly therapeutic approach to coronial practice:

> Coroner's courts are intimately concerned with matters affecting the wellbeing of deceased person's families; with those who may be the subject of adverse comment; and with public health and safety issues. Therapeutic judging principles such as more collaborative decision-making processes, judicial case management, more support for families and ADR processes may promote coronial functions.[15]

There is certainly evidence of the harmful or anti-therapeutic potential of coronial processes. Biddle[16] and Chapple, Ziebland and Hawton[17] both explored the ways in which coronial inquests adversely affected the emotional and psychological well-being of families suffering the loss of a loved one through suicide. A lack of timeliness in the decision-making and poor communication with the family were cited as key to heightened feelings of distress and trauma. Freckleton[18] has explored how therapeutic jurisprudence could be used by coroners in their work. He suggests sensitive decision-making, opportunities for the family to express their grief and distress, clear communication with the family during the process, and accountability mechanisms for preventative recommendations. The rest of this article explores how these techniques and practices of therapeutic

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[9] Wexler, n 8 at 27.

[10] King M, "Therapeutic Jurisprudence's Challenge to the Judiciary" (2011) 1, *Alaska Journal of Dispute Resolution* 1-13.

[11] Freckleton, n 7 at 575-595.

[12] Wexler D, "New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence 'Code' of Proposed Criminal Processes and Practices" (2012) [xxx ?] *Arizona Legal Studies Discussion Paper* 12-16.

[13] Wexler, n 12.

[14] King M, "Non-adversarial Justice and the Coroner's Court: A Proposed Therapeutic, Restorative, Problem-solving Model" (2008) 16(3), *Journal of Law and Medicine* 442-457; King M, *Solution-Focused Judging Bench Book* (Australian Institute for Judicial Administration, Melbourne, 2009); King, n 10.

[15] King, n 14 *Solution-Focused Judging Bench Book* at 187.

[16] Biddle L, "Public Hazards or Private Tragedies? An Exploratory Study of the Effects of Coroner's Procedures on those Bereaved by Suicide" (2003) 56(5), *Social Science and Medicine* 1033-45.

[17] Chapple A, Ziebland S and Hawton K, "A Proper Fitting Explanation? Suicide Bereavement and Perceptions of the Coroner's Verdicts" (2012) 33(4), *Crisis* 230-238.

[18] Freckleton I, "Death Investigation, the Coroner and Therapeutic Jurisprudence" (2007) 15, *Journal of Law and Medicine* 242-253; Freckleton, n 7 at 575-95.

jurisprudence are evident in the decision-making of coroners in England and Australia during the investigation of suspected suicides.

<DIV>METHOD

This article details the results from two associated research projects. These projects involve the analysis of English and Australian coronial practice regarding suicide determination. In both jurisdictions, experienced full time coroners were approached and then self-selected to be part of this project.

The first research project was conducted within one geographic area in England, and consisted of two parts. In the first part, observations were made at 20 public inquests into possible suicides. Contact was made with each coronial office, who then suggested which inquests to attend. All the inquests were within the same part of England; they were conducted over a four month period, some lasting two days, some lasting less than an hour; most took between 3-4 hours. The inquests attended reached a variety of different conclusions, including suicide, accident, open verdicts, and narrative verdicts.

The second part of the English research involved semi-structured interviews, informed by observation made at the inquests. These were conducted with six coroners who had presided over the above inquests. Once again, all were from the same part of England. The interviews were conducted over a two month period; generally, they lasted about an hour, and they were conducted in a variety of locations.

The second research project was conducted within one State jurisdiction in Australia. Unlike the English study, no observations were made at inquest. In Australia, inquests are not a regular part of coronial practice for making determinations of suicide, except under special circumstances. Instead, the research consisted solely of semi-structured interviews with coroners. These interviews were conducted with five coroners, all from the capital city of the State, and its surrounding areas. The interviews were conducted over a one month period, and were conducted in the coroner's offices, also lasting about an hour.

Questions revolved around coronial decision-making, particularly focusing on issues of intent, the role of mental illness, drugs, alcohol and age in mitigating intent, the significant differences between findings of suicide and accident, and the importance of information such a notes, previous attempts and triggers in suicide determinations. Thematic analysis was the key process utilised in this research and an inductive approach to the data was favoured.[19](Braun and Clarke 2006) Thematic analysis of the transcripts began with a process of schematic coding, which required all transcripts to be read in their entirety by the research team. Themes were identified through a series of discussions between the research team where both dominant and emergent themes were identified and then reviewed. The role of the family and the appearance of therapeutic jurisprudence was an unexpected theme which was found to be dominant in the interviews.

<DIV>THERAPEUTIC JURISPRUDENCE AND CORONIAL DECISION-MAKING

Two significant differences between the coronial systems are worth noting at the outset since they help inform the findings of the research. First, in England, a suicide determination must be based on the criminal standard of proof – beyond a reasonable doubt, as opposed to the Australian model which applies the civil standard – on the balance of probabilities. This ostensibly makes suicide verdicts harder to sustain in England than in Australia. Second, in England, the family of the deceased has a significant role to play within the suicide inquest while coroners in Australia make most of their suicide determinations in their chambers and "on the papers". This should mean that Australian coroners are more "protected" from family pressure when a suicide verdict is being challenged. It should also be noted that in both England and Australia, coronial investigations are inquisitorial and as distinct from all of the other courts in both countries, which are adversarial. This is relevant since the vast majority of discussion and research on the pro and anti-therapeutic benefits of the law have been within the adversarial system, with little attention beyond.

[19] Braun x and Clarke x, please provide missing reference information.

In this research, therapeutic jurisprudence was made manifest by coroners in two primary ways. The first engaged them in practices and techniques which recognised the need to be sensitive to families and the creation of an environment that facilitated closure rather than exacerbated grief and distress. The second was through coronial processes which emphasised communication with the family. An expectation that timely findings and the importance of prevention would be discussed by the coroners[20] as an element of therapeutic jurisprudence, did not occur in the context of this research. It is important to note at this stage that a therapeutic approach does not only mean protecting families from painful decisions but that it may also be therapeutic to reach and deliver a decision in a sensitive way with adequate support for the family. In the context of coronial decision-making, sensitivity and adequate communication and support were noted by coroners as crucial to their role irrespective of the outcome of their decision. However, it was the stigma of suicide that was ever-present in the minds of the coroners interviewed, and the rest of this article explores the outcomes of such family pressure in the context of making suicide determinations that are heavily resisted.

<subdiv>Practices and techniques

Sensitivity and support for closure are evident in the practices and techniques of coroners in investigations into suspected suicides. These responses place the family at the heart of the matter and are well informed by research which demonstrates that losing a family member through suicide instigates a significantly different grieving process by family members than other unnatural deaths.[21]

<group>Sensitivity

In therapeutic jurisprudence, sensitivity is a key requirement.[22] As Rottman and Casey[23] have observed, "the orientation underlying therapeutic jurisprudence directs the judge's attention beyond the specific dispute before the court and toward the needs and circumstances of the individuals involved in the dispute." In such a context, judicial officers can help to make a difference for people appearing before them by expressing concern and compassion for the situation of their fellow human beings and by using processes conducive to a therapeutic effect. According to King[24] this has the potential to promote public confidence in the court as an institution that listens, acts and responds to the needs of those it serves. Coroners in both jurisdictions prioritised such an approach to families of those bereaved by suicide.

> But you can't do this job without having been mindful of the feelings and so on of the families that are left behind. You've got to have that in your mind all the time, I think. I mean it's impossible not to have it in your mind. No matter what I might say, I'd still have it in my mind. (Australian coroner 3)

> You know, I do the job as I think fit, and by trying to put families first. I think I'm as guilty as anyone sometimes of being a softy. I appreciate that it must rankle statistics completely, but in terms of perhaps the way people can live with themselves thereafter, I think that probably is a better aim. (English coroner 1)

[20] Freckleton, n 18; Biddle L, "Public Hazards or Private Tragedies? An Exploratory Study of the Effects of Coroner's Procedures on those Bereaved by Suicide" (2003) 56(5), *Social Science and Medicine* 1033-45.

[21] Jordan J, "Is Suicide Bereavement Different? A Reassessment of the Literature" (2001) 31, *Suicide and Life-Threatening Behaviour* 91-102.

[22] Freckleton, n 18.

[23] Rottman D and Casey P, "Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts" (1990) 12, *National Institute of Justice Journal* 240.

[24] King M, "Non-adversarial Justice and the Coroner's Court: A Proposed Therapeutic, Restorative, Problem-solving Model" (2008) 16(3), *Journal of Law and Medicine* 442-457.

Such sensitivity occurred irrespective of whether or not a verdict of suicide was the outcome. Coroners interviewed for this research argued that when the evidence supported a suicide verdict, heightened sensitivity was required due to the stigma attached to such a finding for many families. This commitment to sensitivity extended to legally meaningless statements within findings to decrease the shame and guilt for families. This included findings such as "while the balance of his mind was unsound", or "while the balance of her mind was disturbed". Such an approach by coroners sits squarely within a therapeutic approach. Ideally the law should do no harm, but in some cases due to the particular values that the law must promote (such as due process and procedural justice), some harm is possible.[25] In such a context, this harm can be minimised through the use of therapeutic jurisprudence techniques.

> Families obviously sometimes are concerned about suicide because of their own issues of guilt or anger or should we have seen it, and I often will say in a finding look, this is just a paper finding that the circumstances were such that no one would have been able to predict this. I think that sometimes gives them some feeling of therapeutic healing, so they just wouldn't have known, because these things can be unpredictable. (Australian coroner 1)

> Well, mental illness is all part and parcel of it, at the end of the day. I do take that into account and it always tempers my verdict, because I know it doesn't mean much but it actually means a hell of a lot to the bereaved. I add always, 'whilst the balance of her mind was disturbed'. Now, I know that doesn't have any legal significance but it does to them, those words. (English coroner 5)

Such an emphasis on sensitivity via the promotion of an "ethic of care", is according to King[26] firmly within a therapeutic jurisprudential approach, based as it is on a "respectful and proactive engagement with the families, rather than a neutral but mechanical and unsatisfying closing of files". For suspected suicides in particular, research suggests that the stigmatisation experienced by families may greatly complicate their bereavement experiences, contributing significantly to problems in the mourning process after suicide.[27] A sensitive coronial investigation is thus positioned by coroners as an important part of the grieving process.

<group>Closure

Legal processes can have both pro-therapeutic and anti-therapeutic consequences. The purpose of a therapeutic approach is to minimise those that are harmful. Previous research has suggested that coronial processes can cause further trauma to family members already suffering significant grief. This has been noted during the inquest,[28] in the scandals relating to the retention of organs[29] and experimentation on bodies,[30] as well as in the legislative necessity of autopsy.[31] The distress and grief

[25] King, n 14 *Solution-Focused Judging Bench Book* at 24.

[26] King, n 14 *Solution-Focused Judging Bench Book* at 30.

[27] Feigelman W, Gorman B and Jordan J, "Stigmatisation and Suicide Bereavement" (2009) 33(7), *Death Studies* 591-608.

[28] Biddle L, "Public Hazards or Private Tragedies? An Exploratory Study of the Effects of Coroner's Procedures on those Bereaved by Suicide" (2003) 56(5), *Social Science and Medicine* 1033-45; Green J, "The Medico-legal Production of Fatal Accidents" (1992) 14, *Sociology of Health and Illness* 373-389.

[29] Robb B and Sullivan J, "The Past and the Present: Listening to Parental Experiences of Autopsy Practice" (2004) Winter, *Grief Matters* 39-43; Drayton D, "Organ Retention and Bereavement: Family Counselling and the Ethics of Consultation" (2011) 5(3), *Ethics and Social Welfare* 227-246.

[30] Walker B, *Inquiry into Matters Arising from the Postmortem and Anatomical Examination Practices of the Institute of Forensic Medicine* (New South Wales Department of Health: North Sydney, 2001).

[31] Robb B and Sullivan J, "The Past and the Present: Listening to Parental Experiences of Autopsy Practice" (2004) Winter, *Grief Matters* 39-43; Clarke E and McCreanor T, "He wahine tangi tikapa ...: Statutory Investigative Processes and the Grieving of Maori Families who have Lost a Baby to SIDS" (2006) 1:1, *Kotuitui: New Zealand Journal of Social Sciences Online* 25-43.

of families in the coronial system is exacerbated, it is argued, by the added trauma of the unexpected and often violent nature of the death.[32] Coroners are well aware of the grief and trauma suffered by families but continued to suggest that an investigation into suicide, if done well, can help the families move on in their grief.

> I think an inquest usually – if it's done well – usually helps closure and has a bit of a cathartic effect. We get a lot of people thanking us afterwards and most people I think do feel better for it. (English coroner 6)

> You can make a difference because one of the non-statutory functions which is not recorded anywhere but a lot of us do it, is to try and help families in closure, without being paternalistic. It can be a cathartic exercise and to that extent I think you've justified your own existence, never mind the state's work which you do. (English coroner 2)

> There's a sort of mixture of judge craft, the judicial approach, but also one of the reasons why I do this is helping those who mourn, they should be comforted. It's all about enabling people to get on with their own lives, giving them closure, actually lifting them up and explaining things because the purpose of the coroner's service is enable society and learning lessons. It's not what the law tells us it's about, but that's the reality of what it should do. (English coroner 3)

Australian coroners seem to place less emphasis on this issue perhaps because of the more frequent face to face relationship English coroners have with families as a result of the requirement that all suspected suicides have an inquest in England. This is not to say that Australian coroners failed to see the importance of a sensitive investigation for a family's capacity to move through the grieving process. However, it was not as often discussed and rarely in the context of closure, but rather in the context of a thorough investigation.

> But I will go out of my way to help the parents or family, next of kin, to help them through what is a grieving process. If they say that I've left a stone unturned, well I'll go and turn it over. (Australian coroner 4)

Suspected suicides are possibly the most confronting for families of all the coronial deaths. Jordan[33] discusses three distinct ways in which grief may be different after a suicide. First, survivors seem to struggle more with questions of meaning around the death and struggle to make sense of the motives and frame of mind of the deceased. Second, survivors show higher levels of feelings of guilt, blame, and responsibility for the death than other mourners, blaming themselves for not anticipating and preventing the actual act of suicide. Third, several studies indicate that survivors experience heightened feelings of rejection or abandonment by the loved one, along with anger toward the bereaved. Jordan's research concludes that "there are qualitative aspects of the mourning process that are more intensified and frequently more problematic for survivors of suicide loss than for other types of mourners".[34] An approach which places the family and their needs at the centre of the death investigation is thus well supported in the context of therapeutic jurisprudence. The significant guilt and blame associated with a suspected suicide may also account for the increased pressure coroners feel when investigating such a death.

<subdiv>Coronial processes

Clear communication is the coronial process most often mentioned by coroners as important for families as they deal with the loss of a family member through suicide. It thus engages with larger

[32] NeriaY and Litz B, "Bereavement by Traumatic Means: The Complex Synergy of Trauma and Grief" (2004) 9, *Journal of Loss and Trauma* 73-87.

[33] Jordan J, "Is Suicide Bereavement Different? A Reassessment of the Literature" (2001) 31, *Suicide and Life-Threatening Behaviour* 91-102.

[34] Jordan J, "Is Suicide Bereavement Different? A Reassessment of the Literature" (2001) 31, *Suicide and Life-Threatening Behaviour* 92-93.

critiques of the legal process,[35] as well as more recent legislative changes to coronial Acts in both countries, such as an increasing role for families and a greater focus on prevention.[36]

<group>Communication

Therapeutic jurisprudence emphasises the harmfulness of exclusion and alienation of participants to any legal process and conversely the advantages of being given a meaningful voice and treated as integral to the matters being investigated. The Victorian Parliament Law Reform Committee[37] investigation into the coronial system similarly emphasised the need for improvements in the frequency of communications between the coroner and the family of the deceased. In their report, anti-therapeutic effects were identified by family members when communication about an investigation was delayed or lacking in sensitivity while therapeutic effects were identified when family had the opportunity to express their perspectives about a death, what caused it and what occurred in its aftermath.[38] The experienced coroners interviewed for this research certainly understood the need for timely and sensitive communication with families traumatised by a sudden death.

> Now I may well soften that by saying to the family look, I'm sorry I'd be flying in the face of common sense, flying in the face of the evidence to come to any other conclusion that your husband killed himself. I'm sorry, I understand your feelings but I've got to go on the basis of the evidence I've been given here, and I will say to them you are of course perfectly entitled to take your own view of the facts that we've heard today but I'm afraid based on the evidence and the law that's what I have to do. (English coroner 4)

> I still think you can do something by way of a therapeutic justice in even that very, very structured environment, just depending on the way it all pans out and the way people are behaving. I always commence with talking, speaking directly to – asking people to identify – the counsel, the barristers, et cetera to identify who are the family in the courtroom and say good morning, good afternoon, who they are, so I know and they know who I am, sort of thing. Then making sure that they know counsel assisting can assist them because generally they're not represented, and giving them the opportunity to have breaks so they can touch base with that person and sort of all that sort of thing. (Australian coroner 5)

However, therapeutic jurisprudence is not just about open and effective communication: it is also premised on the ways in which families can be active participants in the process to which they are a party.[39] According to Ronner[40] one of the central principles of therapeutic jurisprudence is a commitment to dignity and this is made apparent through participants having a voice in the process, and a chance to tell their story to a decision-maker. Research suggests that being genuinely listened to, heard, and taken seriously gives participants a sense of validation. "When litigants emerge from a legal proceeding with a sense of voice and validation, they are more at peace with the outcome. Voice and validation create a sense of voluntary participation, one in which the litigant experiences the

[35] King M, "Non-adversarial Justice and the Coroner's Court: A Proposed Therapeutic, Restorative, Problem-solving Model" (2008) 16(3), *Journal of Law and Medicine* 442-457.

[36] Freckleton I, "Anglo-Australian Coronial Law Reform: The Widening Gap" (2010) 17, *Journal of Law and Medicine* 471-480.

[37] Victorian Parliament Law Reform Committee, *Coroner's Act 1985: Final Report* (Government Printer, Melbourne, 2006).

[38] Victorian Parliament Law Reform Committee, n 37, Ch 8.

[39] Bartels L and Richards K, "Talking the Talk: Therapeutic Jurisprudence and Oral Competence" (2013) 38(1), *Alternative Law Journal* 31-33.

[40] Ronner A, "Songs of Validation, Voice and Voluntary Participation" (2002) 71, *University of Cincinnati Law Review* at 94.

proceeding as less coercive."[41] Coroners in both jurisdictions were aware of the importance of the family having a voice in the proceedings, and this occurred in the context of both inquests and paper findings.

> Family will get back to me and if we've had a reasonably complex investigation, I'll actually send them a draft finding and say look, our process was that, if you want to make any comment about any of these things, do so. They might then get back to us and say look, we actually find that perhaps there's a little bit that's inaccurate and I can provide you with this information and I'll certainly vary and change and amend. (Australian coroner 1)

> If I have a family here and it's unclear as to what the intention was I will say to them, look members of the family, you knew this guy best. In the days preceding his death did he ever say anything that gave you the impression he might want to end his life? You'll get a clear view from them, and if they have cogent reasons like, he was planning to do this, he was happy at this stage, it takes you away from the bold impression you might have otherwise had. (English coroner 2)

> We write to the family or the next of kin immediately and we then start fielding their enquiries almost straight away. Sometimes that affects our investigation because they raise issues that we investigate further. I think all of my colleagues try and thoroughly investigate every issue raised by next of kin because that's what I see is my job, really. (Australian coroner 3)

Communication skills in the law have traditionally been concerned with the "linguistic and logical dimensions of communications".[42] This has included a focus on evidence, skilful arguments, and the delivery of verdicts. Legal communication has largely not been concerned with the emotional, behavioural or cognitive processes of communication. In contrast, these aspects are key within the context of therapeutic jurisprudence, which aims to promote an "ethic of care" and to be seen to be doing so by participants. Such a process requires sound communication skills, including skills not only in "comprehending what is said and in explaining decisions, but also in empathetic listening".[43] The experienced coroners interviewed for this research focused on these elements of communication in their engagement with families, citing them as paramount to an appropriately run investigation.

<DIV>STIGMA, SUICIDE AND THERAPEUTIC JURISPRUDENCE

As the previous discussion has demonstrated, coroners recognise that a finding of suicide comes with a range of negative connotations for both the deceased and the family left behind. The currency of this stigma can be seen in how recently amendments to remove the crime of suicide from the statutes have occurred – 1958 in Australia (*Crimes Act (Victoria) 1958*); 1961 in England (*Suicide Act 1961*); 1972 in Canada (*Criminal Code of Canada 1972*); and 1993 in the Republic of Ireland (*Criminal Law (Suicide) Act 1993*). The finding of suicide is not morally neutral for many families.[44] When Langer, Scourfield and Fincham[45] analysed suicide case files, they discovered that families were intent on demonstrating that they themselves were not at fault. Coroners are well aware of the stigma of suicide for many families. In the context of therapeutic jurisprudence, such recognition places a heavy burden on them to, at times, not make a finding of suicide.

> I think a lot of coroners – me included – sometimes take a sympathetic view of the family, and perhaps, well, you know – why leave them with the stigma of this, when we can actually make their situation better? ... So, I think coroners, to some extent, are softies, and might not necessarily bite the bullet and say, yes, this is a suicide. (English coroner 1)

[41] Ronner, n 40 at 95.

[42] King, n 14 *Solution-Focused Judging Bench Book* at 6.

[43] King, n 14 *Solution-Focused Judging Bench Book* at 7.

[44] Chapple A, Ziebland S and Hawton K, "A Proper Fitting Explanation? Suicide Bereavement and Perceptions of the Coroner's Verdicts" (2012) 33(4), *Crisis* 230-238.

[45] Langer S, Scourfield J and Fincham B, "Documenting the Quick and the Dead: A Study of Suicide Case Files in a Coroner's Office" (2008) 56, *Sociological Review* 293-308.

> The only issue of stigma I feel is whether they feel stigmatised by it. That makes me think hard before I make a decision about whether it's a suicide or not. (Australian coroner 3)

Coroners do of course make suicide findings, often and regularly. The most recent World Health Organisation statistics put the United Kingdom's suicide rates at 10.9 per 100 000 for males, and 3.0 per 100 000 for females. In Australia, the figures are 12.8 per 100 000 for males and 3.6 per 100 000 for females.[46] At such times, however, they remain cognisant of the stigma of a suicide verdict and seek to ameliorate the harmful effects wherever possible.

> There is a constant pressure from the family [to not make a finding of suicide]. In this case, just to use a convenient example, the sister said, I know what happened, but just don't tell mum and dad. So, I've been writing to her and now when I make my findings, they will be dressed up. (Australian coroner 4)

> There are ways of talking to people, I find, which can change the view they originally come into court with. If you use expressions like took his own life whilst the balance of his mind was disturbed, if the evidence stacks up you can then I think get them to accept it. That is kind of the cathartic process I think. (English coroner 2)

> The blame that the family feels, and the crazy presumption that if you were a caring, loving family you would have foreseen this and stopped it. There's the social stigma, a huge one. If your kid gets run over it's not your fault. (Australian coroner 2)

For coroners, the stigma of a suicide determination comes back to the history of the act and its conceptualisation as self-murder by the Church. Self-murder was equivalent to homicide, positioned as a crime against God where the deceased was banned from burial in consecrated ground and the family ordered to forfeit all monies to the Crown.[47] In this context the higher burden of proof for English coroners – beyond a reasonable doubt – is understood as relevant and appropriate to this most serious finding.

> Felo de se was not only a crime but it was a huge, huge social stigma because you know you're damned … So massive issues about being buried in Christian ground and stuff like that … So over the intervening years you know perfectly well that the case law has found that to convict somebody of this crime of self-murder there must be a very high standard because of the stigma that it retains. (English coroner 4)

Therapeutic jurisprudence is a mechanism for promoting wellbeing as the lens through which the law is practised. It is informed by research from the behavioural sciences as the source of possible remedies that could be adapted for use within the legal system. It seems clear that the coroners we interviewed are making use of therapeutic jurisprudence in the context of suicide verdicts by placing the family as central to their determinations. This is particularly noted by coroners in terms of sensitive communication with families, including a reluctance to bring down a finding of suicide in certain circumstances.

<DIV>THERAPEUTIC JURISPRUDENCE AND SUICIDE VERDICTS

It has been argued elsewhere[48] that coroner's in both Australia and England require a high degree of certainty before they are willing to find a verdict of suicide. This generally includes a suicide note as an indicator of intent, a location where the deceased cannot be interrupted, triggers or previous attempts, and a diagnosed mental illness. These are well known risk factors in the literature and thus it does not seem unrealistic for coroners to expect at least some of these existing before a suicide verdict is handed down. Unfortunately, a proportion of suicides do not come neatly packaged with all these

[46] World Health Organization (WHO), "Suicide Rates" http://www.who.int/mentalhealth/prevention/suicide_rates/en/ (Last viewed August 2014).

[47] Bahr A, "Between 'Self-Murder' and 'Suicide': The Modern Etymology of Self-Killing" (2013) 46(3), *Journal of Social History* 620-632.

[48] Tait G and Carpenter B, "Suicide, Statistics and the Coroner: A Comparative Study of Death Investigations" (2014) *Journal of Sociology*. The online version of this article can be found at DOI: 10.1177/1440783314550058.

risk factors attached and a proportion of suspected suicides also come with significant family involvement.[49]

> Most people give in to the family's wish to slide away from it [a finding of suicide]. (Australian coroner 2)
>
> It's very small. When I say that they do it [challenge a suicide finding], they do it, but it might only be – anecdotally, it might be one in a 100. But, the ones who do it are dead set against it [a finding of suicide] and I try to accommodate them as much as I can. (Australian coroner 4)
>
> If you've got 10 members of the family with their eyes burning on you, and they really don't want that verdict [of suicide], it is very, very hard then. (English coroner 1)
>
> It's very tempting to give a sympathetic verdict to the poor widow who stands before you saying we can't be sure he took his own life – this dreadful thing. (English coroner 3)

Pressure brought to bear by the family comes to the fore more often in English suicide investigations than in Australian ones, because of the requirement of an inquest prior to a suicide finding being handed down in England. However, this research demonstrated that Australian coroners are also subject to family involvement, especially when a suicide verdict is being resisted. In such situations, and when the evidence permits, some coroners may be less likely to find a suicide. Certain methods, for example, drowning or drug overdose, lend themselves more to uncertainty for both the family and the coroner. In the context of therapeutic jurisprudence this may be perfectly defensible.

However, we are also convinced that coroners are not writing fiction, and that part of the problem for coroners in reaching a suicide verdict is in balancing the competing demands of accurate manner of death findings and the need for care and sensitivity toward the family. In suicide verdicts these are made more complicated by the difficulty of determining intent in the context of a highly stigmatised death and in the context of the various and varying definitions of suicide that currently exist.[50] These comments by English coroners demonstrate the significant ambiguity or "wriggle room" in a finding of suicide, ambiguity that is also acknowledged in the literature.[51]

> It boils down to evidence as far as I am concerned. It boils down to evidence and if there is evidence there that there is doubt and there isn't a background, there aren't any, you know all the other factors that would lead you to return a verdict of suicide then I might be persuaded. (English coroner 5)
>
> You can stretch to some extent your interpretation of the evidence but you can't completely ignore it. So if it is totally clear-cut then I would say suicide. (English coroner 6)

Such thought processes, when family pain and suffering is evident, may be perfectly legitimate in the context of therapeutic jurisprudence which allows a judicial officer to take a more comprehensive and creative approach to determining cases.[52] It may also not fly in the face of due process or procedural justice if the evidence does not support a finding of suicide, "beyond a reasonable doubt", for example. Criticisms of coroner's verdicts in the context of accurate suicide statistics may therefore need further consideration.[53] Suicide verdicts depend on a range of relevant cues from the biography of the deceased and the context of the death.[54] The capacity of coroners to interpret a cause of death

[49] Tait G and Carpenter B, "Suicide and the Therapeutic Coroner: Inquests, Governance and the Grieving Family" (2013) 3(2), *International Journal for Crime, Justice and Social Democracy* 92-104.

[50] Tait G, Carpenter B, De Leo D and Tatz C, "Problems with the Coronial Determination of 'Suicide'" (2014) *Mortality* ~~Forthcoming~~[xxx pg?].

[51] Cholbi M, "Self-manslaughter and the Forensic Classification of Self-inflicted Death" (2007) 33, *Journal of Medical Ethics* 155-157.

[52] King, n 25.

[53] Gunnell D, Hawton K, and Kapur N, "Coroner's Verdicts and Suicide Statistics in England and Wales" (2011), *British Medical Journal* Doi=10.1136/bmj.d6030; Carroll R, Hawton K, Kapur R, Bennewith O and Gunnell D, "Impact of the Growing use of Narrative Verdicts by Coroners on Geographic Variations in Suicide: Analysis of Coroner's Inquest Data" (2011) 34(3), *Journal of Public Health* 447-453.

as accidental or undetermined, rather than as a suicide, is made possible because of the varying definitions of suicide that exist and the difficulty of determining intent in the context of, for example, risk taking behaviour.[55] It may be that as a consequence we are hinting at four different conceptions of manner of death: factual (died of gunshot wound to head); legal (deliberate act of the deceased intended to cause own death); normative (how we ought to classify the death); and therapeutic (what would be the least emotionally damaging way to classify the death).

<DIV>CONCLUSION

This research has demonstrated that when coroners seek to implement principles of therapeutic jurisprudence while dealing with possible suicides a tension can arise with their obligation to make findings based only on the evidence. With the rise of therapeutic jurisprudence, coroners have found themselves an ally in their desire to place the family at the heart of a suicide investigation. This has been aided by legislative change in both Australia and England which has emphasised a clear preventative function for coronial recommendations as well as positioning families more centrally in the investigation.[56] But this has increased the pressure on coroners not to make suicide findings in those cases where the family makes it plain that to do so will increase the distress of their bereavement. Since the 1990s, the little research that has been conducted on coronial death investigations has indicated that families bereaved through a coronial death – which is often unexpected and violent – are not aided in their grief by coronial processes. It appears that the experienced coroners interviewed for this research have utilised such knowledge and have made concerted efforts to decrease the added distress caused by elements of their legal processes. One of the most significant ways in which this occurs is when coroners allow families to use their knowledge of a loved one to resist a suicide verdict being handed down. This approach by coroners has been heavily criticised and the consequences for accurate suicide statistics and appropriate suicide prevention programmes cited as cases in point.[57]

The resulting distortion of public health statistics that would result if this were to occur with sufficient frequency could be avoided if the responsibility to identify suicides were transferred from coroners to some other agency. This would also enable a more nuanced classification of deaths caused by the deceased than the binary suicide/not suicide that the legal coronial system often utilises. This may include for example, possible suicide, probable suicide and suicide beyond a reasonable doubt[58] or introduce the idea of self-manslaughter[59] to take into account deaths where intent may be unclear but risk taking behaviour was evident.

However, on balance we believe it would be preferable to better equip coroners to discharge their traditional core function of determining the manner of death while minimising the adverse impacts of suicide findings on the families of the deceased. Coroners are best placed to establish all of the relevant circumstances of an unnatural death: they see the witnesses, speak to the family members and have access to the best experts. Their growing commitment to therapeutic jurisprudence is not necessarily incompatible with their fact-finding role, provided steps are taken to ameliorate its

[54] Chapple A, Ziebland S and Hawton K, "A Proper Fitting Explanation? Suicide Bereavement and Perceptions of the Coroner's Verdicts" (2012) 33(4), *Crisis* 230-238.

[55] Tait G, Carpenter B, De Leo D and Tatz C, "Problems with the Coronial Determination of 'Suicide'" (2014) *Mortality* ~~Forthcoming~~[xxx pg?].

[56] Shaw H and Coles D, "Unlocking the Truth: Families Experiences of the Investigation of Deaths in Custody" INQUEST (London, 2007) 14-17; Ranson D, "Objections to Medico-legal Autopsy: Recent Developments in Case Law" (2007) 14, *Journal of Law and Medicine* 463-468.

[57] Tait G, Carpenter B, De Leo D and Tatz C, "Problems with the Coronial Determination of 'Suicide'" (2014) *Mortality* ~~Forthcoming~~[xxx pg].

[58] De Leo, Dudley, Aebersold, Mendoza, Barnes, Harrison et al, n 3.

[59] Cholbi M, "Self-manslaughter and the Forensic Classification of Self-inflicted Death" (2007) 33, *Journal of Medical Ethics* 155-157.

potentially harsh aspects. This might require heads of jurisdiction to give clear directions on how such cases should be handled and training for coroners to deal sensitively with families distressed by the potential of a suicide finding. In our view, coroners and public health officials have a responsibility to participate in public education campaigns aimed at reducing the stigma associated with suicide and dispelling the misconceptions that loved ones have failed a relative who takes his/her own life. Indeed, assisting family members better understand the uncertainty of mental illness and the impetuosity of suicide could be framed as important elements of therapeutic jurisprudence. Coroners and their staff are well placed to lead this reform that could better serve the needs of bereaved families and public health records and reviews.

