

Innovative Justice Responses to Sexual Violence

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Aims

Show the need for

- **Innovative justice** responses to sexual violence
- **Thinking broadly and globally about innovation** and not be confined to one mechanism (e.g., restorative justice) or one context of violence

Note: Remarks today focus on one context of violence in affluent, democratic nations like Australia

Two projects

- **Rape Case Conviction and Attrition**

Daly, K. and B. Bouhours (2010) “Rape and attrition in the legal process: a comparative analysis of five countries”, *Crime and Justice: An Annual Review of Research*, Vol. 39: 485-565

- **Conventional and Innovative Justice Responses to Sexual Violence**

Daly, K. (2011) “Conventional and Innovative Justice Responses to Sexual Violence”, *ACSSA Issues 12*;
Daly, K. and B. Bouhours (2011) *Appendix to Issues 12*

Inspiration

- On average, for 98% of experienced sexual victimisation, there is no justice mechanism (calculated by multiplying 14% victim report rate by 12.5% conviction rate = 1.8% justice response; estimate will vary depending on victim report rate and conviction rate)
- Most victim/survivors want something to be done, but are reluctant to criminalise people they know or to participate in a legal process
- How to address legal and societal “justice gaps” without increasing criminalisation?

I. Case Conviction and Attrition

- **Five jurisdictions:** Australia, Canada, England & Wales, Scotland, and the United States
- **Timeframe:** 1970-2005, with
 - early period (1970-1989)
 - later period (1990-2005)
- **Official data** in five jurisdictions (reports to police, victimisation surveys, court data)
- **Estimates from 75 unique studies** of case attrition in five jurisdictions

Temporal & jurisdictional variation

- **Temporal**

significant decline over time: 18 to 12.5%

- **Temporal and jurisdictional**

England & Wales: 24 to 10%

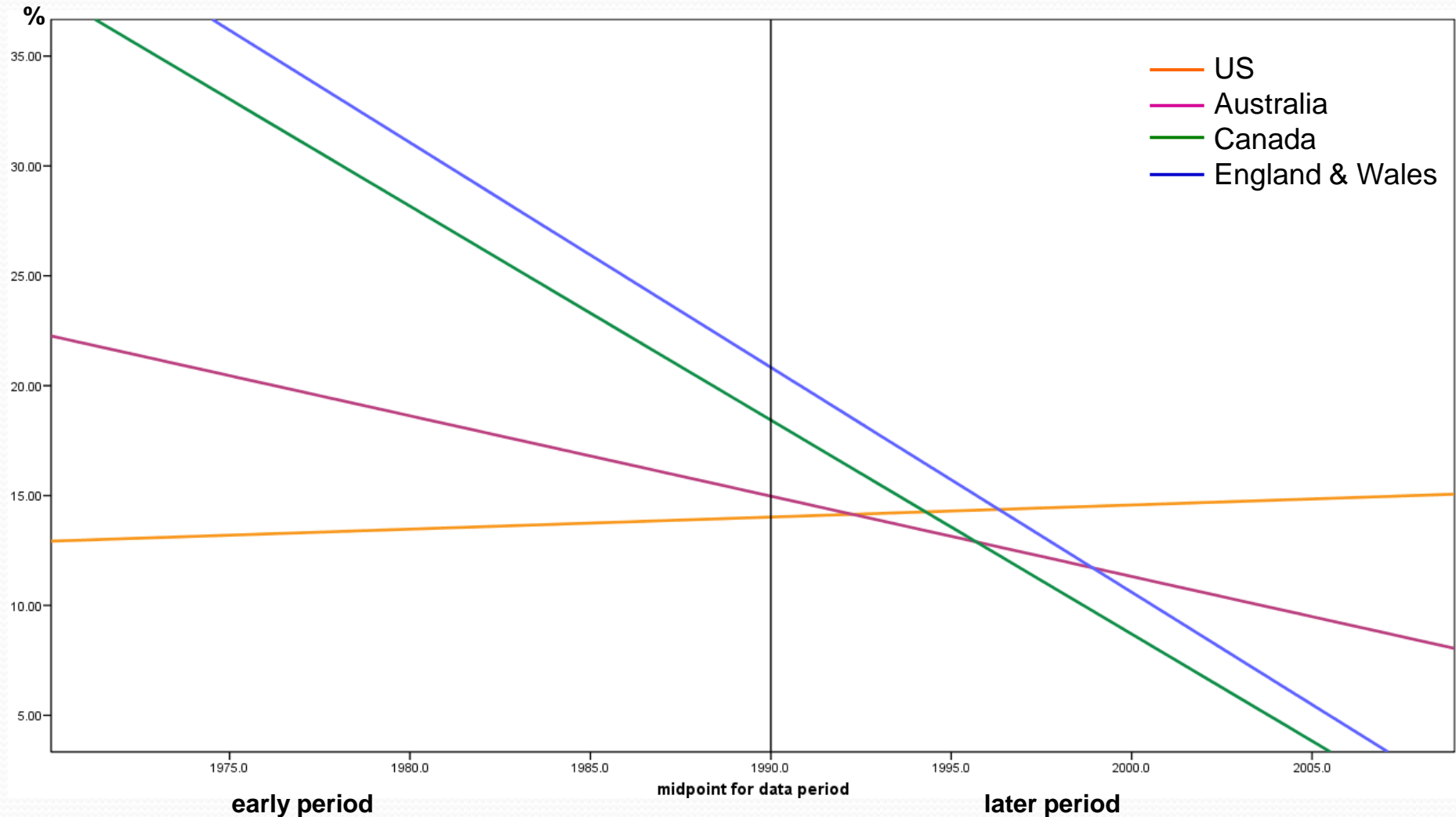
Canada: 26.5 to 14

Australia: 17 to 11.5

United States: 13 to 14 (no change)

Scotland: 18 to 17.5 (no change,
based on small N)

Mean estimated rate of conviction to any sexual offence, by jurisdiction, 1970-2005



Australia, 1990-2005

- Of assaults experienced, 15.5% reported to police
- Of cases reported to police, 20% reach court
- Of cases in court, 61% convicted of any sexual offence
- Overall conviction to any sexual offence (of cases reported to the police), 11.5%

Australia over time

- No change in “flow into court” rate (still 20%)
- Decrease in court conviction rate (74 to 61%)
- Decrease in conviction rate at trial (60 to 41%)

What should be done?

- Do not rely solely on incremental legal reform
- Identify a menu of options within and outside the legal system
- Have a more inclusive and less demonising response to sex offending
- Review and assess conventional and innovative justice responses to sexual violence

II. Conventional and Innovative Justice Responses

- Not separate categories; can be combined to create hybrid forms.
- Dynamic and evolving (e.g., conventional mechanisms have potential to become innovative)

Conventional justice responses

- Concerned with better ways to gather evidence and prosecute cases, and to provide better services and supports for victims/survivors in the legal process
- Prosecution and trial is the major justice pathway for victims
- Unitary model of formal criminal and civil mechanisms
- Part of CJS or work alongside it
- First step in changing the CJS to be more accountable and accommodating to victims

Innovative justice responses

- Not concerned solely with arrest and prosecution
- Address victims' justice needs (i.e., participation, voice, validation, vindication) and offender accountability
- Mixed model of formal mechanisms (criminal, civil, administrative), informal mechanisms, and civil society practices
- Part of CJS, work alongside, or be independent of it
- Offer more justice options for victims

Criteria for inclusion

- Victims' justice needs (not health or survival needs, or prevention) in affluent democratic countries
- Penetrative sexual offences
- Adult female victims of male perpetrators
- Victim/survivors more than offenders
- Practices or activities, not just proposals for legal change

Note: Exceptions made for responses that could be applicable or had promise

Inventory of responses

- Stage of legal process
- Name of approach
- Jurisdiction(s) where it is practiced
- Stated aims
- A focus on system efficacy (conviction rates), improving victims' experiences, both efficacy and victims' experiences, or on offenders
- Activities and practices
- Knowledge available or status of research

48 types of responses

- **Specialisation:** specialist police teams and multidisciplinary responses; specialist prosecution units and courts (N=18)
- **Offender focus:** case management; offender support and supervision (N=3)
- **Legal reform:** definitions of consent, admissible evidence, and adjudication processes (N=4)
- **Victim advocacy and participation:** victim support and advocacy; victim participation *within* a legal process and *outside* a legal process (N=23)

Victim participation, voice, validation *within* a legal process

Conventional justice responses

- Victim impact statement
- Victim compensation
- Civil suit
- Victim has legal representative
- Victim participation and reparation, in addition to prosecution (ICC model, conventional-innovative hybrid)

Victim participation, voice, validation *within* a legal process (cont.)

Innovative justice responses

- Community Holistic Circle Healing
- Restorative justice guilty plea
- Conferences using restorative justice:
 - youth conferences: court diversion, pre-sentence, post-sentence (NZ, SA, QLD, England, Belgium)
 - adult conferences: suspend prosecution, pre-sentence (Arizona, NZ)

Victim participation, voice, validation *outside* a legal process

All are innovative justice responses

- Victim-offender meetings (Denmark, VIC)
- Victim-prisoner meetings (Canada, United States, NSW, Sycamore Tree project worldwide)
- Memorials, days of reflection, and cultural performance

Assessing innovative and conventional justice responses

- Specialist police teams and integrated service provision viewed positively
- Specialist sexual assault courts (South Africa) less positive, more mixed; victims still face problems
- Legal representation for victims viewed positively (civil law countries), but need to consider trade-offs between it and other types of victim support, advice, and information

Assessing conventional and innovative justice responses (cont.)

- Little research on victim support and crisis care work, and on how victims are accessing compensation schemes and with what outcomes
- Positive results from restorative justice conferences and victim-offender meetings, but more research is required

Ways forward

- Debate and clarify justice goals: single or multiple victim pathways? More criminalisation or other options?
- Do not rely solely on criminalisation or punitive penal strategies
- Reconsider the ineligibility of sexual assault cases for conferences
- Resource practices and modify protocols to be appropriate for sexual violence
- Provide a menu of options for victims: both those who report and do not report offences