

Sexual Violence and Victims' Justice Interests

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1. Introduction

The idea of using restorative justice for adult sexual violence cases was almost unthinkable not so long ago. Beginning in about 2010, a discernible shift occurred and has been building ever since.¹ More commentators today—academics, policy makers, community advocate groups, judicial officers, among others—are saying that formal justice processes alone cannot effectively handle the complexity and range of sexual violence cases. In addition, many victims or survivors do not wish to engage formal processes and are seeking other avenues of response. Although effective criminal law and conventional justice responses are required, there is growing interest to develop other justice avenues for victims in the aftermath of sexual violence. These may work alongside criminal justice (Naylor, 2010) and outside the realm of criminal law (Powell, Flynn & Henry, 2015). The European Commission Daphne project on restorative justice and sexual violence is indicative of this shift.

With popular, academic, government and judicial interest in the idea, we need to consider, what's next? For theory and research, how do we build a body of evidence that can assess and compare justice mechanisms in responding to sexual violence? To address these questions here, I draw mainly from research and argument on justice responses in an individual context of sexual victimisation in developed countries at peace (an 'A1 context', described below), although my research interests are not limited to this context. My starting point is changing justice responses to sexual violence.² I ask, how can we assess and compare differing responses to sexual violence from a victim's perspective? I have in mind a wide array of justice responses, both conventional and innovative, not solely those associated with restorative justice.

1.1 Clarifying aims and rationale

My aim in this chapter is not to show the ways in which restorative justice (RJ) practices may operate in individual cases, with consequences for victims, admitted offenders and relevant others. I have written on this topic since 1994 and still do, but my conceptual frame has shifted. Nor is my aim to consider whether RJ processes are appropriate for sexual violence; this too has been a longstanding concern. Today, I assume that if an RJ process adopts good

¹ Evidence for this claim can be supplied on request to the author.

² I define sexual violence broadly to include other related offences of assault, kidnapping and torture. In other non-A1 victimisation contexts, it is part of a broader regime of fear and control.

practice protocols, i.e. they are modified to address the dynamics of gender violence, the question of appropriateness is moot. Yes, of course, RJ is appropriate for sexual violence; and as this volume shows, researchers and practitioners have developed (and are developing) effective protocols and practices (see also Mercer, Madsen, Keenan & Zinsstag, 2015).

Researchers have different starting points in assessing the relationship of restorative justice and sexual violence. Some start with restorative justice, asking what it offers victims (and perhaps others). Others start with sexual violence, asking what justice responses are optimal from a victim's perspective. Both approaches are important. However, because the first question is the focus of this edited collection, I have been asked to explain my reasons for pursuing the second.

My focus here is on *assessing and comparing different justice mechanisms* in responding to sexual violence and violent victimisation more generally.³ To do that, a perspective on justice processes is required, and the perspective I develop here and apply empirically in chapter 7, is a *victim's perspective*. As that chapter will show, a victim's perspective is not narrow or self-centred, but widens to embrace others in a justice activity, including admitted offenders, supporters of victims and offenders, and a wider societal view on the wrong and harm of sexual violence.

I should clarify my definition of restorative justice because it too is a subject of contention and confusion. Restorative justice is a justice mechanism, not a type of justice (Daly, 2016). It is a meeting (or set of meetings) of people; thus, it falls within an encounter or process conception of RJ, not an outcome conception. We might expect that desired outcomes will vary by the context and purpose of a meeting; thus, they should not be restricted to repairing harms or restoring relationships. I agree with Shapland (2014: 122-123) that there needs to be an 'explicit recognition' of differing 'restorative justice processes in different contexts'. However, I do not bound RJ processes by values (as Shapland does), but rather by rules and procedures that should govern any legitimate justice mechanism. In any event, RJ scholars have produced many different lists of values or principles—another significant source of variation—and a topic for another day.

To advance the evidence base and demonstrate the potential of innovative justice mechanisms (restorative justice being just one), we need to do the following:

³ I have developed my arguments with reference to sexual and other forms of violent victimisation, but the arguments can be generalised to other offences.

- Go beyond *satisfaction* as the sole measure of victims' experiences and judgments of justice, and of *re-offending* as the sole measure of change in offenders' behaviours.
- Assess and compare the strengths and limits of different justice mechanisms in a systematic manner.

To realise these goals, I developed the Victimisation and Justice Model, which has three components: contexts of victimisation, justice mechanisms and victims' justice interests. In previous work, I described and applied the model (Daly, 2014a, 2014b) and analysed contexts (Daly, 2015) and mechanisms (Daly, 2011). Here I focus on victims' justice interests.

Responses to sexual violence must also have in mind change-oriented treatment programs for offenders, which work alongside justice mechanisms, whatever form they take. My research on conference and court responses to youth sex offending in South Australia finds that both responses relied on the Mary Street Adolescent Sexual Abuse Prevention Programme (Daly, 2006; Daly, Bouhours, Broadhurst & Loh, 2013). Programs like these give police and court authorities some confidence that official responses to youth sex offending do not require increased criminalisation or the segregation of youth in detention.⁴ Importantly, they also encourage admissions to offending (only when it has occurred, of course), an important first step in breaking patterns of denial or minimisation of offending, which in time may shift to taking active responsibility for offending. For conferences to be more widely used for adult sexual violence, not just for a small number of cases, it is imperative that effective programs for offenders are in place and accessible.

2. How to compare justice mechanisms?

The need to identify a way to assess and compare different justice mechanisms became clear to me when I reflected on Annie Cossins' critique of my research, which compared the court and conference handling of youth sex offences (Daly, 2006; Daly & Curtis-Fawley, 2006). She said that I did not have sufficient evidence to show that conferences were better than court, from a victim's perspective (Cossins, 2008). In turn, I said that she did not have sufficient evidence that court was better than conferences, from a victim's perspective (Daly, 2008). We were talking past one another. Would it be possible, I wondered, to establish a set of criteria that could adjudicate research findings and debate on the efficacy of different justice responses to sexual violence? I reasoned that what was required was a systematic way

⁴ Other programs for intra-familial sexual offending (e.g. Adriaenssens, 2014 for Belgium) give family members confidence that such behaviour can be addressed without necessarily reporting it to the police or breaking up families and social bonds.

to assess the efficacy of any one justice mechanism and to compare the efficacy of two or more justice mechanisms.

This led to more questions. Which contexts of sexual victimisation should be examined? What exactly is to be assessed and compared? What are optimal measures of ‘efficacy’? What outcomes are expected or desired? These are pressing questions when we know that large datasets, field experiments, or meta-reviews that attempt to compare justice responses to sexual violence are rare. Except for studies of youth sexual offending or post-sentence conferences, the situation is unlikely to change in the foreseeable future. Therefore, the methods of conducting research must be artful, imaginative and innovative.

Answering the questions above:

1. *All contexts of victimisation* should be considered.
2. *Justice mechanisms* should be assessed and compared, not ‘types of justice’ such as restorative justice and conventional justice.
3. *Measures of efficacy* should not focus on measures of satisfaction alone, but assessed against the construct of ‘victims’ justice interests’.
4. The *desired or expected outcomes* should be victims’ reasonable expectations as citizens seeking justice in the aftermath of crime.

2.1 Differentiating justice and therapeutic (‘healing’) outcomes

Items 1, 2 and 3 above are the components of the Victimisation and Justice Model, which I will consider shortly. Here I clarify item 4 on outcomes. I believe that researchers have placed too much emphasis on achieving therapeutic outcomes for victims, as the sole or primary aim of a justice activity. For example, they may ask whether a justice mechanism achieves closure, recovery, healing, reduced symptoms of PTSD and other related outcomes. This approach centres on the mental and physical consequences of justice mechanisms,⁵ not the prior moral and political matters of what *victims as citizens* (Holder, 2013) should expect in seeking justice. These expectations I call victims’ justice interests. If one (or more) of these interests is achieved, a victim’s sense of well-being may be affected. However, we should not focus on a victim’s well-being *alone* as a justice objective. Daems (2009) refers to this as ‘therapeutic consequentialism’, in which the metaphor of ‘healing victims’ has ceased to be a metaphor and is now an expected outcome for victims engaged in criminal justice.

⁵ Others have made a similar point (e.g. Stover, 2005: 11).

Pemberton and Vanfraechem (2015: 28) make a stronger point when they critique ‘a repeated tendency [of justice advocates] to manufacture exaggerated and therapeutic sounding claims on the basis of ... research that does not and cannot support the far-reaching conclusion’. I suggest we give primary attention to *justice interests* and then observe what the potential impact may be on measures of well-being. At a minimum, victims’ justice interests and victims’ well-being should be viewed as separate dimensions.

3. Victimisation and justice model: contexts and mechanisms

This section sketches two legs of the model (contexts of victimisation and justice mechanisms), and section 4 gives sustained attention to victims’ justice interests.

3.1 Contexts of victimisation

The contexts of victimisation are conceptualised by the Sexual Violence and Justice Matrix, which depicts a broad sweep of places, positions and relationships of victimisation. It arrays country contexts (developed, developing, at peace, in conflict or post-conflict) and offending-victimisation contexts of violence (Appendix 1).⁶ The country categories reflect differing legal, economic and political capacities to respond to sexual victimisation,⁷ along with differences in social organisation and cohesion for countries in conflict or relative peace. The offending-victimisation contexts are *individual* (row 1); *organisational-occupational*, i.e. a person using a position of organisational or occupational power in a community-based setting (row 2); *institutional*, i.e. a person using a position of power in a closed institution (this context also includes peer relations) (row 3); victimisation in a *symbolically closed community* such as geographically remote communities or segregated urban enclaves, based on race-ethnicity, nation or religion (row 4); and *collective*, i.e. by loosely organised gangs or by state and quasi-state combatants (row 5).

Each matrix cell has different relations of victimisation and offending, social and place locations, and country contexts. The ubiquity and variability of sexual violence is such that we should not expect a two-dimensional matrix to accurately map all forms and contexts of sexual victimisation and offending that occur (or have occurred) in human society. My aim is to name and organise what is known from research in different contexts of victimisation and offending—in families, workplaces, closed institutions, war zones—in a compact way.

⁶ This is an abbreviated form of the matrix, showing less detail than in Daly (2014a).

⁷ The matrix is applicable to violent and other forms of victimisation, but created from the literature on sexual violence.

With the matrix as an organising tool, we can gather and synthesise research on sexual victimisation, the problems victims face in seeking justice, available justice mechanisms and victims' experiences with them, with reference to each cell in the matrix. In addition, the many and varied cells in the matrix encourage reflection and analysis of victimisation and justice in a comparative manner.

3.2 Justice mechanisms

A justice mechanism is a justice response, process, activity, measure or practice—all of these terms could be used interchangeably. 'Justice mechanism' is the term of choice for transitional justice scholars, who assess and compare a variety of justice mechanisms in transitions from repressive state regimes and civil war toward more democratic rule and peace. Drawing from Backer (2009: Appendix Table A2.1) and Olsen, Payne & Reiter (2010: 31), these include criminal prosecution; lustration, bans and purges; reparations (financial, employment, symbolic); investigations (truth commissions or independent inquiries); institutional reform; immunity (amnesties and pardons) and memory projects. The value of the term is that distinct and multiple mechanisms are used by countries in transition, and these can be assessed (alone or with other mechanisms) to determine what is effective, using a cross-national comparative method.

Empirical research on mechanisms in A1 contexts (the cell for which most research is carried out today)⁸ can learn and benefit from this method of assessing and comparing justice mechanisms. I focus my discussion next on A country contexts and criminal justice mechanisms, but it is important to also have in mind civil and administrative justice mechanisms.

Justice mechanisms reside on a continuum from *conventional to innovative*. These are umbrella terms that hold a variety of justice mechanisms: they are not types of justice, nor are they mutually exclusive. In other words, differing mechanisms (conventional and innovative) can be used in one case (Daly, 2011, 2015). *Conventional* mechanisms are standard approaches to criminal prosecution, trial, sentencing and post-sentence; they also include modes of victim participation in a legal process (for example, victim impact statements). Specialist courts for domestic or sexual violence may be conventional or a conventional-innovative hybrid,

⁸ Some forms of victimisation such as partner violence and intra-familial sexual violence may be better placed in A4, i.e. within the symbolically closed community of 'the family'.

depending upon how they operate.⁹ *Innovative* mechanisms do not rely solely on the standard tool kit of criminal procedure or justice practices, or those wedded to legal processes alone. They permit greater participation and interaction of the relevant parties. The processes are often more informal, although structured by rules and procedures.

Restorative justice is a *justice mechanism*, not a type of justice (Daly, 2016). Typical practices are conferences, victim-offender mediation and victim-offender dialogues. Restorative justice mechanisms are *one of many justice mechanisms under the innovative justice umbrella*. Others include contemporary Indigenous justice practices, circles of support and accountability, a variety of informal (non-state) justice mechanisms, truth telling or truth seeking mechanisms, cultural performance, days of remembrance and other art and activist projects in civil society. Innovative justice mechanisms may work alongside of or be integrated with conventional criminal justice or operate in civil society. When part of criminal justice, the process is set in motion only after admissions to offending.¹⁰

4. Victims' justice interests

The third leg of the model is the construct of victims' justice interests, a term akin to victims' visions of justice (Herman, 2005), sense of justice (Jülich, 2006; Jülich, Buttle, Cummins & Freeborn, 2010) and justice needs (Clark, 2010, 2015; Koss, 2006, 2010). All the foregoing scholars have sexual victimisation in mind and have identified these elements from interviews with victims or the research literature. All have assumed an *individual* context of sexual victimisation in developed countries at peace (A1). By comparison, others have analysed *institutional* contexts in developed countries at peace (A3) (Daly, 2014b);¹¹ and still others, *collective* contexts in countries in conflict or in post-conflict transitions (C5) (Backer, 2004; Henry, 2009).¹² Drawing on these and other sources, I identified a parsimonious set of victims' interests: participation, voice, validation, vindication, and offender accountability-

⁹ Problem-oriented courts (such as drug courts) are closer to conventional mechanisms, although they assume new roles for participants, especially judicial officers; thus, they may be considered innovative in some respects. A conventional mechanism that can be innovative or a hybrid, depending on actual practices, is victim advocacy. I do not wish the terms conventional and innovative justice to suffer the same fate as the false juxtaposition of retributive and restorative justice, specifically, the inference that one is the 'bad' justice and the other, the 'good' justice, respectively. The precise classification of justice practices—as conventional, innovative or a hybrid—is less important than the actual workings of the justice mechanisms themselves in specific contexts of victimisation (Daly, 2016).

¹⁰ In New Zealand's Project Restore, community referrals to adult conferences (as compared to court referrals) require an offender to acknowledge 'the incident to an acceptable degree' (Jülich et al., 2010: 75).

¹¹ Keenan (2014) interviewed individuals (or their family members) who were victimised in A1, A2 and A3 contexts.

¹² In C country contexts, the list of justice interests expands to include redistribution of land or other income-producing assets, along with reform of a country's legal and political institutions.

taking responsibility.¹³ In defining each, I give greater attention to the three latter elements because they are variably understood by researchers. I give brief examples here of how each element can be operationalised, but a more comprehensive empirical application is given in Daly & Wade (chapter 7, this volume). To clarify the construct of victims' justice interests, I next consider my choice of terms.

4.1 Justice needs and survival needs

With A1 contexts in mind, Koss (2010: 221) suggests that victims have 'two major categories of needs: survival needs and justice needs'. Survival needs are for 'safety; physical health; economic [security], including housing and employment, education, or retraining; and [addressing] immigration problems'. If survivors cannot live and make decisions in a secure state of body and mind, seeking justice will come after survival needs are met.¹⁴ Although survival and justice needs are important, the two need to be distinguished, if we wish to assess and compare different justice mechanisms.

4.2 Justice needs or interests?

When I began work on the construct, I used the term victims' justice *needs* because it was the term others were using. However, I have come to see that a better term is victims' justice *interests*. Bennett (2007: 248) argues that the empirical basis of 'victims' "needs"' leads to a 'consumerist approach', which is not satisfactory in his view. He proposes instead a 'moral basis' for what 'victims can reasonably expect from offenders ... and from the state' (p. 248). He identifies 'what is owed' to a victim in righting a wrong (p. 247) and what victims 'rightly feel entitled to in the wake of an offence' (p. 261). Holder (2013) argues for analysing victims' justice interests *as citizens*. Drawing on interviews of victims who called the police, Holder shows that their justice interests were not only for themselves, but for offenders and the wider society. I use the term 'interests' to signal a political relationship that victims, as

¹³ In previous work, I called this element 'offender accountability', but I have since revised it to include a second dimension of an offender's 'taking responsibility' and to remove any association with censure or sanction. The term 'offender', used precisely, means that a person has admitted to an offence or been convicted of it; and it is important to distinguish an offender from an alleged perpetrator or wrong-doer. However, for 'accountability-taking responsibility', this is more difficult because the processes of accountability involve asking questions of suspects, accused or alleged perpetrators, or admitted offenders. For this reason, it is not possible to be precise every time the term is used.

¹⁴ This is well documented in C country contexts, where survival needs are a dominant focus for survivors (Robins, 2011).

citizens, have in pursuing justice in the aftermath of crime (see also Pemberton and Vanfraechem, 2015: 36-37).

4.3 Which justice interests?

Researchers have identified a variety of justice elements from a victim's perspective, but they have done so in a vacuum, seemingly unaware of the work of others.¹⁵ Appendix 2 orders the body of work by year of publication.¹⁶ Each entry lists the author(s), terms used and the element(s) identified. With one exception (Bennett, 2007), the source of authority for identifying the elements is empirical, i.e. drawn from interviews or inferred from the extant research literature. The appendix provides a sampling of the literature and is not meant to be exhaustive.¹⁷ For each entry, I list and quote the elements in the same order as the author(s).

Several observations can be drawn from it and the wider literature. First, the named set of justice elements varies, but some elements do recur, even if different words are used. Second, there are differing definitions (or meanings) for some elements; and this is especially the case for acknowledgment, validation, vindication and accountability. At times, validation is embedded within vindication (Zehr, 1990), or vindication is embedded within an analysis of validation (Clark, 2010, 2015). Acknowledgment may refer to validation, vindication or both. I shall clarify the definition and interpretation of these elements with the objective of bringing greater precision to the field. Next, just four of the entries explicitly defined one or more justice elements (Backer, 2004; Bennett, 2007; Law Commission of Canada, 2000; Strang, 2002). Although four gave examples of what people said (Choi, Green & Kapp, 2010; Clark, 2010, 2015; Herman, 2005; Jülich et al., 2010, an explicit definition of elements was not typical. Of the 14 entries, five applied the elements to one or more justice mechanisms. Ordered by entry number in Appendix 2, Strang (2002) applied her justice elements to victims' experiences of two mechanisms (court and a diversionary conference after an offender's admission); Backer (2004), to survivors' judgments of one mechanism (South Africa's Truth and Reconciliation Commission); Choi et al. (2010), to one mechanism (victim-offender mediation, diversionary after an offender's admission); Godden (2013), to

¹⁵ Herman's publications (1997, 2005) are often cited by others, however. I first used the term in Daly (2011), relying on the work of Herman (2005) and Koss (2006).

¹⁶ Several 2010 publications were ordered based on whether the author had been developing the idea in earlier work and then, alphabetically.

¹⁷ For example, I do not include Toews's (2006) set of 'universal' justice needs and its application by Bolitho (2015) because it was developed from research on adult prisoners; furthermore, I am doubtful that such needs can be 'universal' (i.e. the same) for victims and offenders unless they are pitched at an abstract level.

three mechanisms (criminal prosecution, civil litigation and restorative justice); and Wager (2013) to one mechanism (restorative justice meetings).

Some identified elements are not germane for my purposes. These include ‘support and safety’ or to ‘feel safe’ (which, in my framework, is a survival need more than a justice interest)¹⁸ and ‘access to counselling and education and training’ (which, in my framework, is a coping or rehabilitation need). Some elements concern procedures (‘receive a response with minimal delay’) or outcomes (‘reparation’, ‘retribution’, ‘material restoration’, ‘emotional restoration and an apology’) that are relevant, but would have been better conceptualised and operationalised as part of a more encompassing element. Wager’s (2013) attempt to combine victims’ justice needs (drawing from Herman, 2005) and healing needs (drawing from Draucker et al., 2009) results in confused blend, and reinforces my earlier point that justice needs (or interests) and well-being should be assessed as separate dimensions.

5. Defining victims’ justice interests

The five elements of victims’ justice interests—participation, voice, validation, vindication, and offender accountability-taking responsibility—are sufficiently broad to be operationalised with different items, depending on the victimisation context. Thus, it is useful to put forward a *generic* definition for each element; and if required, modify it to accord with what occurs in a particular context. In one study, for example, I modified participation and voice to assess non-criminal justice mechanisms in response to historical institutional abuse of children (Daly, 2014b). In what follows, however, my discussion of validation, vindication, and offender accountability-taking responsibility assumes criminal justice mechanisms.

5.1 Participation

The generic definition of participation is as follows: being informed of the options and developments in a case, including the different types of justice mechanisms available; the ability to address offending and victimisation in meetings with admitted offenders and others; and the ability to ask questions and receive information about crimes (e.g. the location of bodies or the motivations for an admitted offender’s actions).¹⁹

¹⁸ However, victim safety may result from offender accountability-taking responsibility.

¹⁹ Such questions include whether victims were specifically targeted or the circumstances of death and injury. This differs from asking alleged or admitted offenders to explain what they did and why, i.e. interactions that seek ‘to hold an offender accountable’.

This definition is relevant to victims' interests in a criminal justice process, but I needed to modify it when analysing other justice mechanisms for historical institutional abuse such as redress schemes, civil litigation and public inquiries (Daly, 2014b: 118-119). In the modified definition, I added 'active participation in shaping the elements of redress, including optimal modes of implementation; being informed of negotiations and having a say (or vote) in ratifying a redress scheme (or settlement agreement); and understanding how the process works'. By comparison to their participation in criminal justice (Edwards, 2004), victims can have a stronger role in shaping decisions and outcomes in non-criminal justice mechanisms. Ordered by entry number in Appendix 2, participation is identified as a justice element in Zehr (1990), Strang (2002), Henry (2009), Koss (2010), Clark (2010, as 'information' and 'control') and Keenan (2014). Among the items we use to operationalise participation are these: was the victim (or victim representative) asked what legal process they desired, and could they ask all their questions? (Daly & Wade, 2017).

5.2 Voice

The generic definition of voice is as follows: telling the story of what happened and its impact in a significant setting, where a victim-survivor can receive public recognition and acknowledgement. Voice is also termed truth-telling and can be related to participation in having a speaking or other type of physical presence in a justice process.

Voice or the ability to tell one's story is the most frequently mentioned justice element. Ordered by entry number in Appendix 2, ten of the 14 entries identified voice (Zehr, 1990; Strang, 2002 [discussed in her first element]; Backer, 2004; Henry, 2009; Jülich et al., 2010; Koss, 2010; Choi et al., 2010; Clark, 2010; Goddens, 2013; Keenan, 2014). In research on the trial process, scholars have critiqued the manner in which 'truth' is elicited from victim-witnesses, with a question-and-answer format that does not permit victims to explain what happened and its impact in their own words.²⁰ Among the items we use to operationalise voice are these: was the victim able to tell their story and to say everything they wanted to say? (Daly & Wade, 2017).

²⁰ To be relevant to historical institutional abuse, the voice element can be modified this way: 'voice can be present in a range of texts and formats, but may be variably preserved and accessible' (Daly, 2014b: 162). This aspect of voice is captured by the element 'establishing an historical record; remembrance', which was identified by the Law Commission of Canada (2000: 75-80).

5.3 Validation

The generic definition of validation is as follows: affirming that the victim is believed (i.e. acknowledging that offending occurred and the victim was harmed) and is not blamed for what happened. It reflects a victim's desire to be believed and to shift the weight of accusation from their shoulders to others (family members, a wider social group or legal officials).

Four sets of words invite discussion: 'acknowledging', 'victim was harmed', 'victim not blamed' and 'shift the weight of accusation'. The term acknowledgment appears in several entries in Appendix 2, but it is sometimes difficult to know what, precisely, analysts are referring to. For example, in the Law Commission of Canada's (2000: 80-83) definition of acknowledgment, its meaning shades into vindication. A clear definition comes from a survey item by Backer (2004: 216): 'I am satisfied that what happened to me (or my family member) has been recognized by society'. Thus, recognition and acknowledgment have a shared meaning with validation, as long as attention is paid to validating *what a victim said happened and the harm it caused*. The repeated phrase given by victim-survivors is *being believed* (Clark, 2010).

Herman (2005: 585) defines validation as 'an acknowledgment of the basic facts of the crime and an acknowledgment of harm'. Here, I interpret acknowledgment to mean that others (for example, a victim's family members or friends and legal officials) are saying, 'I agree with the victim's version of what happened and its impact'. Harm refers to the consequences of an offence for a victim (or others) such as hurt, injury or loss; and in a criminal justice response, it can be distinguished from the '*wrongfulness* of those harms' (Duff, 2011: 71, emphasis added). Godden (2013: 58-63) gives careful consideration to the 'core', 'consequential' and 'material' 'harms of rape', as well as legal responses to rape that are harmful, to identify what aspects of justice are important to victims. 'Victim not blamed' refers to a complex set of movements from potential victim self-blame or others blaming the victim to assurances by others that the victim is not to blame.

'Shifting the weight of accusation' means that others (e.g. a victim's family members or friends and legal officials) have come to side with the victim's account of what happened and its impact. This accords with Herman's (2005: 585) observation that the 'validation of so-called bystanders was of equal or greater importance' than an offender's 'confession' (see also Jülich, 2006: 129-131; Keenan, 2014: 64). Among the items we use to operationalise validation are these: was there an acknowledgement by legal authorities and/or others that the

offence was serious, was there a discussion of the harms, and was any victim self-blame or blame by others checked or challenged? (Daly & Wade, 2017).

5.4 Vindication

The generic definition of vindication has two components: vindication of the law (affirming *the act* was wrong, morally and legally) and vindication of the victim (affirming *this perpetrator's actions* against this victim were wrong). It requires that others (family members, a wider social group, legal officials) do something to show that an act (or actions) was wrong by, for example, censuring the offence and affirming their solidarity with the victim. It can be expressed by symbolic and material forms of reparation (e.g. apologies, memorialisation, monetary payments or financial assistance to victims) and standard forms of state punishment.

Herman (2005: 585) defines vindication as ‘communities [taking] a clear and unequivocal stand in condemnation of the offense. [Such] denunciation ... affirm[s] the solidarity of the community with the victim and transfer[s] the burden of disgrace from victim to offender’. Conviction at trial ‘condemns [a person’s] criminal action and censures him as its agent’ (Duff, 2011: 77); thus, a criminal conviction is vindication.²¹ Bennett (2007: 261) does not discuss denunciation of an offence or the censuring of an offender. Instead, he outlines what an offender should do to ‘repent’ a wrong, which is ‘retracting it through an apology’ and making ‘proportionate amends’; and what a polity²² should do to ensure that this occurs.

My definition of vindication includes *public condemnation and censure* (of the act as wrong and of the offender’s acts against a victim as wrong, respectively) and actions prescribed by a polity for an offender to make up for the wrong. Thus, a sentence or penalty imposed is vindication. However, what an offender *actually does* to ‘make up’ for the wrong I place within the second part of the element of ‘offender accountability-taking responsibility’. It is important, I believe, to distinguish a polity’s actions in censuring an offender and prescribing what an offender should do to ‘make up’ for it (vindication) and what an offender actually does (taking responsibility), after having admitted to or been

²¹ Duff (2011: 77) argues, in addition, that conviction ‘is also a kind of punishment’ and in fact ‘a pure kind of punishment’ because ‘condemnation by one’s fellow citizens is intended to be particularly burdensome ...’

²² I use the term ‘polity’ (following Duff, 2011) rather than community because it conveys the meaning of what ‘we’ should consider or are required to do in responding to crime, both as fellow citizens and legal authorities.

convicted of an offence. In research on sexual violence, for example,²³ survivors speak of the failure of legal accountability when convicted or sentenced offenders do not take full responsibility for their behaviour (Clark, 2015: 24-27).

Duff (2011: 79) distinguishes ‘reparation for the *harm* caused’, a common expression used in the restorative justice literature, and ‘*moral reparation* for the *wrong* that was done’. He has pointed out for some time that restorative justice advocates may forget that a crime is a ‘public wrong [that] requires a public response’ (Duff, 2011: 74).²⁴ A problem with some restorative justice mechanisms, such as diversionary conferences for youth, is that although they are a part of a criminal process, they are diverted to a private activity, where the full expression of public condemnation and censure cannot occur. Further, by focusing on harms or repairing harms *alone*, not on both *harms and wrongs*, condemnation and censure may be softened or reduced, and a polity’s prescribed activities may be inadequate. It is beyond the scope of this paper to consider justice in private, public and hybrid settings. If the elements of victims’ justice interests are operationalised well, it should be possible to assess and compare justice mechanisms in a range of settings.

Duff (2011) also suggests that an apology may be all that is required for moral reparation; but if a wrong is more serious, an apology must ‘take more than a merely verbal form’.²⁵ Specifically, an offender must undertake a ‘burdensome task’, which gives ‘material form and [thus] greater moral force, to that apology’, although offenders may not be apologetic nor express ‘a genuinely repentant recognition of the wrong they have done’ (Duff, 2011: 79).²⁶ Among the items we use to operationalise vindication are these: was the act said to be legally wrong or morally wrong, was the act minimised, was the alleged wrong-doer convicted, and was the imposed or agreed outcome tied to the wrongfulness of the act? (Daly & Wade, 2017).

²³ This phenomenon is relevant to other offences.

²⁴ Duff (2011: 73-74) notes instances when informal processes are appropriate in responding to ‘conflict’.

²⁵ By ‘moral reparation’, Duff (2011: 79) means ‘making up’ for the wrong by ‘repentant recognition’, or if the offence is considered to be more serious, by undertaking an additional burdensome task. These actions form part of the ‘communicative dimension of punishment’ (Duff, 2011: 79).

²⁶ Duff (2011: 79, emphasis added) draws a startling conclusion to his argument when he says that ‘criminal punishment is ... *a species of required apology*: the offender is required to go through the motions of apology, even if he does not mean it’. Duff’s analysis focuses on calling and holding alleged wrong-doers to account and on the meaning and purpose of punishment, but he does not explicitly discuss the relationship of accountability to punishment and vindication.

5.5 Offender accountability-taking responsibility²⁷

My definition of this element has evolved from earlier work (Daly, 2014a, 2014b). Drawing from Duff (2011), I now distinguish two aspects of accountability: *calling* alleged wrong-doers to account and *holding* them to account.

Further, I clarify the relationship between vindication and accountability, which was not clear in my earlier work. I distinguish the *identified set of tasks for an offender to undertake* to vindicate a victim and the polity, which is *prescribed* by a polity or *agreed to* by an offender (part of the vindication element), from *how or whether those tasks are carried out* by an offender (taking responsibility). Arguably, both the ‘what’ and the ‘how’ of vindication by an offender to a victim and the polity could be contained within the vindication element, as philosophers Bennett (2007) and Duff (2011) might propose. However, by separating them, we may assess what an admitted offender actually did (or did not do) to ‘make up’ for the offending, i.e. the degree to which they took active responsibility for it.²⁸ Furthermore, it accords with what we know from studies of sexual violence victims: although individuals may be found guilty in a court, ‘they were ... not forced to take responsibility for their behaviour by the system’ (Clark, 2015: 25). ‘Taking responsibility’ should begin to emerge, at least in theory, in the process of ‘holding alleged offenders accountable’.²⁹ However, this typically does not occur. Thus, we look to indications that a person has been ‘held accountable’ *after the fact* (i.e. post admission, conviction or sentence).³⁰ The indications we expect to see, at least ideally, are that an offender is taking responsibility.

My revised definition of accountability-taking responsibility is as follows: requiring that alleged perpetrators are called to account and held to account for their actions; and if admitting to or convicted for offences, expecting that they will take active responsibility for their wrongful behaviour, by for example, sincere apologies or expressions of remorse and completing prescribed justice requirements.

²⁷ See fn. 13 on using the term ‘offender’.

²⁸ This aspect is not developed by Duff or Bennett.

²⁹ Of course, this point is relevant only if questions to and answers by alleged wrong-doers lead to the conclusion that they *were* responsible for an offence.

³⁰ Other scenarios are possible. For example, post-plea or conviction, but pre-sentence, an offender can engage in an intensive counselling program that demonstrates ‘taking responsibility’. This may also occur without an offence being reported to the police. Furthermore, indications of accountability or taking responsibility are dynamic and may vary over time.

For calling and holding to account, Duff (2011: 73) suggests that responses to wrongs should be addressed ‘by tackling, or trying to tackle the person(s) who wronged’ the victim.³¹ This occurs in a series of steps. First, alleged perpetrators are called to account. This occurs when victims report offences to the police or when the police discover offences. Then, second, it occurs when police investigate offences and when prosecutors bring charges against suspects. Third, alleged perpetrators are then held to account for what they did. This occurs when they are asked and expected to answer questions by authorities.³² In Duff’s (2011: 76) view, the criminal trial ‘constitutes the kind of calling to account that ... criminal wrongdoing requires’. Backer (2004: 216) operationalises accountability with two survey items (negative and positive, respectively): ‘The person who committed the violation against me (or my family member) has not been called to account for his/her actions’ and ‘I am satisfied that the person(s) who committed the violation against me (or my family member) has explained why they committed the act’.

In reality, ‘calling to account’ and ‘holding to account’ occur in complex interactions between authorities and victims, and between authorities and alleged wrong-doers. For example, a person may report to the police that they were sexually victimised, but the police may have insufficient evidence to charge, believe the person reporting the offence lacks credibility, or cannot locate a suspect. It is infrequent that alleged wrong-doers are ‘held to account’ with questions by authorities at trial. More commonly, they plead guilty, perhaps to less legally serious offences, and give no explanation for their actions and perhaps minimise what they have done. In diversionary youth justice conferences, there are incentives to make admissions early to avoid a court process and an official criminal conviction. However, as Hayes (2006) observes, during the conference itself, there are ‘competing demands’ on youth when they are asked to both explain what they did and apologise for it. They ‘may *drift* from apologetic discourse to mitigating accounts and back again’ (Hayes, 2006: 378, emphasis in original). The real world of interactions between authorities, victims and alleged wrong-doers is some distance from the normative arguments of philosophers. In assessing accountability, then, among the questions we ask are these: was an individual charged, did they make early admissions, did they cooperate with authorities, were they asked to explain what happened,

³¹ Duff does not explain why he chose the word ‘tackle’. Its connotation of a physical pinning down of an alleged wrong-doer is somewhat jarring.

³² However, alleged (or admitted) offenders may be ‘held to account’ in counselling or therapeutic programs (discussed below) or in conferences when participants ask offenders questions.

did they have an opportunity to give an explanation, and did they answer questions about the offence? (Daly & Wade, 2017).

After an individual is called and held to account,³³ they may (or may not) plead guilty, be convicted on one more charges, or be acquitted of all charges. Following Duff (2011), a criminal conviction is public condemnation of an act and a censuring of an offender's actions; thus, it is properly within the vindication element. Likewise, the identification of what an offender *should do* to 'make up' for the wrong falls within the vindication element. Thus, for example, offenders 'owe [a victim] an apology', and they may be required to do more than this by undertaking a burdensome task or sanction (Duff, 2011: 79). What happens, then, if offenders do not apologise or carry out the task? They may again be 'called to account' for failing to carry out what the polity prescribed.

However, if they apologise sincerely and carry out a burdensome task (if required), we may now say they are 'taking responsibility' for their wrong-doing, or as Duff (2011: 79) suggests, they 'own the wrong'.³⁴ In addition to giving a sincere apology and completing a prescribed task, there may be other indicators of 'owning the wrong' such as expressions of remorse.

Although an apology may be 'central to moral reparation' (Duff, 2011: 79), my research on diversionary youth conferences (Daly, 2003, 2006) and Choi et al.'s (2010) on youth victim-offender mediation shows that sincere apologies are difficult to achieve. In addition, Herman (2005: 586) finds that although the victims she interviewed were 'unanimous in their desire for validation and vindication, they were roughly evenly divided on the question of apology'. While 'some expressed a fervent wish for a sincere apology', only five of the 22 she interviewed 'actually received what they considered a genuine and satisfactory apology'. It is important, then to assess *the quality of an apology*, not just whether an offender 'gave an apology' in the abstract. 'Making up' for harms and wrongs not only requires a proportionate alignment between them and a prescribed sanction (part of the vindication element, using a retributivist justification), but also an assessment of what an offender actually did (i.e. taking responsibility). Thus, among the items we ask for taking responsibility are these: did an offender say that what they did was wrong, did they apologise

³³ The actual sequencing of 'holding to account' with other legal and non-legal (counselling or therapeutic) processes can be expected to vary by the case and change over time.

³⁴ Duff (2001: 111, 123) suggests, however, that some offenders may not be 'active participants in their own punishments'; when this occurs, they are engaged in 'apologetic ritual', rather than an 'appropriately reparative apology'.

to a victim, was their apology viewed as sincere, did they give expressions of regret or remorse, and did they complete all parts of the sanction? (Daly & Wade, 2017).

6. Accountability: toward clarification

In both popular and academic usage, accountability is used in many ways. My focus is on alleged or admitted offender accountability, not other types (see Shapland, Robinson & Sorsby, 2011: 84-85 for ‘multiple accountabilities’ in restorative justice). I give examples from several authors to demonstrate varied understandings of, and at times confusion surrounding, the term accountability and its relationship to vindication and punishment. My analysis is illustrative. Far more could be said about the meanings and interpretations of offender accountability.

To situate my analysis, I first consider the relationship of punishment to vindication and accountability. As commonly understood, there are two broad types of punishment theories. One, retributivism, is concerned with punishing (‘making up’ for) *past* crime in proportion to the wrong against society and the harm caused; it is associated with retribution. The second, consequentialism (or utilitarianism), is concerned with preventing *future* crime; it is associated with deterrence, rehabilitation and incapacitation, whose punishment aims are to reform offenders or protect society. My analysis draws from (and is sympathetic to) the ideas of Duff and Bennett, both of whom use retributivist arguments as their normative starting point.³⁵ Of course, what is said in imposing a sentence or deciding a conference agreement may combine punishment theories. Furthermore, we would expect that over a longer period of time in a ‘justice response’, what is said will oscillate between accountability, vindication and imposed punishment. However, conceptually, I can declare a relationship of punishment to vindication and accountability. It is this: *punishment is one component of vindicating the crime and the victim; it is not a component of accountability.*³⁶ As my following review will show, analysts sometimes use these terms in ways that I believe are accurate; but at other times, the terms are used inaccurately.

Herman (2005: 589) asked victim-survivors ‘what they thought should be done to hold their perpetrators accountable and to envision what they would consider a just disposition’. She found that most were ‘not interested to see their perpetrators suffer’ and nor

³⁵ However, Duff (2011: 78) argues that punishment, based on retributivism, is ‘not purely backward looking [because] to censure someone for their past conduct is also to say both that they should take care to reform their future conduct to avoid such wrongdoing, and that they should make some suitable reparation to those whom they wronged’.

³⁶ My earlier definition of offender accountability (Daly, 2014a: 388) said that it included ‘receiving censure and sanction that may vindicate the law and the victim’, but I have since removed this association.

were ‘they interested in reconciliation or forgiveness’ (p. 591). She says that ‘rather than retribution or reconciliation, the goal most frequently sought ... was exposure of the perpetrator’ (p. 593). Here, I infer that ‘exposure’ combines some aspects of calling or holding an individual to account. For example, some victims said they wanted family and community members ‘to see through the perpetrator’s deceptions and lies’ or to see the person ‘embarrassed [because] ... he was going to have to get a lawyer ... and to tell his family’ (p. 594). However, the desired *consequences* of exposure then shift to punishment, specifically to ‘deprive the perpetrator of undeserved respect and privilege’ (p. 594). Herman says that the ‘vision of accountability’ of those she interviewed was ‘incapacitation ... to prevent offenders from committing future crimes, rather than to punish them for those already committed’ (p. 597). Here, Herman equates accountability with punishment, not to public exposure. Although she is right to say that the justification for incapacitation is to prevent future crime, it is nonetheless a justification for punishing an individual. When considering participants’ visions, Herman notes that a ‘retributive element’ is evident in wishing to see ‘offenders exposed and disgraced’. Here, exposure and disgrace are combined as one phenomenon, i.e. punishment (not as I would see them as representing, respectively, ‘being called to account’ and punishment). And in this passage, Herman equates ‘retributive’ with ‘punitive’, a common error. She concludes that the ‘main purpose of exposure was not to get even by inflicting pain, [but rather to seek] vindication from the community as a rebuke to the offenders’ display of contempt for their rights and dignity’ (p. 597). Reading this passage in context, we may assume that by ‘exposure’, Herman is referring to both ‘exposure and disgrace’, i.e. to punishment, as she defines it. Here, then, she is arguing that punishment to victims meant vindication from their community. This is precisely how I define punishment, i.e. as a component of vindicating the crime and the victim. Although Herman’s paper contains many useful insights, it is also marred by confusion and error, in part caused by a common-sense understandings of key terms such as retributive (‘being punitive’) and punishment (‘getting even’ or concerned solely with past crime) and in part, by equating punishment not only with vindication, but also offender accountability.

The Law Commission of Canada (LCC) (2000: 87) states that ‘accountability should not ... be seen as synonymous with punishment or the imposition of liability’. The LCC has in mind criminal and civil justice in responding to historical institutional abuse of children. For these contexts, other forms of accountability may be relevant, such as seeing ‘the record set straight and the perpetrators identified’ (p. 87). This comes closest to accountability, as I define it: by calling and holding offenders to account for what they have done. However,

then, the LCC conflates ‘holding people to account for their actions’ with ‘a finding of criminal guilt’ (p. 88). This is not correct. Holding people to account is one aspect of accountability, but a finding of guilt is, strictly speaking, vindication. The LCC then says that the ‘need of survivors for accountability is more than just a desire for revenge through the punishment of perpetrators ... Rather they seek the public denunciation of perpetrators’ (p. 88). Public denunciation is vindication, not accountability. Likewise, a polity’s imposed punishment is vindication, not offender accountability. Thus, there are errors in the LCC’s analysis of accountability and its relationship to vindication and punishment, and how these concepts are used to interpret authorities’ actions, legal decisions and victims’ needs.

Clark (2015) argues that the failure of an offender to ‘take responsibility’ is a failure of the legal process to hold an offender accountable, which accords with my understanding. However, she then implies an added meaning of accountability as punishment when saying that victims want ‘the perpetrator to make an admission and *take* accountability’ (Clark, 2015: 25, emphasis added). By this, I infer that Clark means to ‘take’ censure and sanction, which is vindication. Popular understandings of accountability often include notions of what constitutes deserved punishment of wrong-doers. However, when punishment is imposed by a polity, this is vindication of the law and of the victim, not holding offenders to account.

Jülich et al.’s (2010) description of how Project Restore operates comes closest to my definition of offender accountability-taking responsibility. Because the program operates within the real world of justice activities, ‘calling to account’ or ‘holding to account’ do not occur in the ways imagined by philosophers or legal theorists. For an offender to be eligible for Project Restore, they must first acknowledge the offence to ‘an acceptable degree’, or there is a criminal charge lodged and a guilty plea entered, or a conviction to guilt (Jülich et al., 2010: 75). Thus, individuals are at different points on a continuum of criminal liability before they are referred to Project Restore; at the same time, they may be at similar points in ‘accepting responsibility’ for their offending. For Project Restore, the ‘first stage in being held accountable for their actions is the acceptance of their wrong-doing’ (p. 36). Such ‘acceptance’ is expected to deepen in time to ‘coming to take full responsibility for [their] actions’, of the sort that is ‘deep and profound ... for the provision of true accountability’ (p. 36).³⁷ Here, I imagine that project staff members are ‘holding an offender to account’, by probing more deeply into their explanations for what they did in ways that legal officials

³⁷ Other restorative justice practices may define and understand ‘accountability’ differently (see, e.g. Beck, Bolívar & Vanseveren, 2017, for practices in Belgium). Although restorative justice practices assume eligibility only for ‘admitted offenders’, such admissions are often partial or incomplete.

often fail to do. A good deal of preparation, of both the offender and the victim, occurs before a conference meeting. In part, this involves identifying ‘clearly defined action plans that reflect what participants think will put offending right’, including ‘consequences if the action plan is not complied with’ (p. 37). An offender and victim specialist may need to work with an offender to ensure the quality of their undertaking, such as how an apology letter is written. For Project Restore staff, to ‘demonstrate accountability’ means that an individual is expected to carry out an action plan fully and in a way that ensures ‘the psychological safety of the victim’ and that ‘cannot be construed as re-victimisation’ of the victim (p. 38). The term I use is an offender’s ‘taking responsibility’, which includes the quality of the actions taken by an offender.

Although beyond the scope of this paper, counselling or change-oriented treatment programs may play an important role in ‘holding offenders accountable’ and encouraging them to ‘take responsibility’. This can occur at many points along the legal liability continuum, as well as outside a legal process. Thus, other justice goals of survivors, such as prevention and safety can be enabled with on-going counselling or therapeutic engagement of those who have committed sexual offences.

7. Summary and implications

This paper responds to a changing landscape of interest to use conferences or other innovative justice mechanisms in responding to sexual violence. I outlined the Victimisation and Justice Model and its three components: contexts of victimisation, justice mechanisms and victims’ justice interests. Using the model to guide research, we can re-analyse what we have learned from past studies and craft new research projects. This is essential for building evidence on the strengths and limits of conventional and innovative justice responses to sexual violence.

For context, the Sexual Violence and Justice Matrix gives a global picture of the varied relationships and contexts of victimisation and offending, together with different problems victims face in seeking justice, the mechanisms available and differing legal and political-economic capacities to respond. There exists a depth of knowledge for matrix cell A1, a context that dominates analysis of justice responses to sexual violence, although research is growing for context cells A3 and C5. It is crucial that researchers begin to locate their research context more explicitly (particularly those in A1) and not assume that what is learned in A1 can be readily generalised to other contexts.

For justice mechanisms, we need to move away from seeing restorative justice as a ‘type of justice’ and instead see it as one of several mechanisms under a broader innovative justice umbrella (Daly, 2016). A type of justice approach poorly specifies the actual workings of a justice activity. We are on more solid evidentiary ground by defining the restorative justice mechanism itself (such as a conference or victim-offender mediation), which is then subject to empirical inquiry. Moreover, responses to a single case of sexual violence may have a mix of conventional and innovative justice mechanisms (e.g. criminal prosecution and civil litigation, with a conference post-sentence or settlement). We need to understand how each is perceived and relates to the other, from a victim’s perspective. Conventional justice mechanisms should not be disparaged or erroneously termed ‘retributive’ or ‘punitive’ justice, as some analysts do. Instead, the task should be to determine the degree to which conventional and innovative justice mechanisms can address one or more victims’ justice interests in the aftermath of crime.

In analysing victims’ justice interests, we need to take a large step beyond victim satisfaction by focusing more precisely on what victims as citizens (Holder, 2013) ‘can reasonably expect from offenders ... and from the state’ (Bennett, 2007: 248). The elements of victim’s justice interests combine findings from empirical research and philosophical argument on what crime victims are ‘owed’. I have sought to define the elements and how they may be operationalised in research. Retrospectively, the construct of victims’ justice interests can be used to re-analyse data or published research, as Fileborn (2014), Jülich & Landon (2017) and Powell (2015) have. Prospectively, it can be used to operationalise items for research on victims’ experiences with, or researcher observations of, a variety of justice mechanisms, alone or in combination. The construct is provisional and evolving. Perhaps, in time, elements will need to be added or modified.

Empirical research must be guided by clear definitions of concepts. Thus, I clarified the elements of accountability and vindication, and their relationship to punishment, with examples of how analysts have used (and mis-used) these concepts, either in their definitions or when interpreting empirical findings. We know that the real world of interactions and relationships between and among alleged or convicted offenders, victims, authorities and wider social groups is complex, nuanced, contingent and varies over time. Although it is difficult to capture such complexity in a few words, conceptual precision and accuracy are crucial building blocks in our research.

Knowledge and debate on sexual violence and justice will be enhanced by aggregating research on conventional and innovative mechanisms, using a systematic

method. We may learn from a small number of case studies or interviews of victim-survivors; but unless this material is aggregated and analysed using a common framework, we will have many studies that do not add up to advancing knowledge. What is first required is a broad understanding of sexual victimisation contexts and justice mechanisms; then, second, the identification of a common metric to assess (or to both assess and compare) the efficacy of one or more justice mechanisms. I will be repeating myself in saying that measures of victim ‘satisfaction’ and re-offending *alone* are not good enough. We can and must do better.

The trick in all of this—and it is profound and challenging—is that we cannot continue business as usual. Indeed, the enterprise requires a radical reconceptualisation. Foremost, as individual researchers, we need to see ourselves as part of a larger endeavour. We need to see the value of different justice mechanisms and not be tied to just one. We need to be aware of the diverse contexts of victimisation and where our work is located, and the implications of this for generalising to other contexts. We need to be able to move flexibly across the knowledge gained from research on sexual victimisation and justice in different contexts of victimisation; and in that movement, to glimpse the potential for new and emergent justice forms.

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Appendix 1. Sexual Violence and Justice Matrix

Offending-victimization context of sexual violence	Country A Developed/affluent country at peace	Country B Developing country at peace	Country C Conflict, post-conflict, or post-authoritarian regime
(1) Person acting alone	A1 Relations: peer, familial, known and (atypically) stranger relations Place: mainly residential	B1 Relations and place similar to A1	C1 Relations and place similar to A1
(2) Person using position of organizational-occupational authority in community-based settings	A2 Relations: religious, medical, state or voluntary org workers (clergy, doctor-nurse, teacher, police) in professional relationship with child/adult Place: residential and occupational	B2 Relations: in addition to A2, aid, NGO and related staff from other countries in professional relationship with child/adult Place: similar to A2	C2 Relations: in addition to A2 and B2, foreign peacekeepers and soldiers Place: similar to A2
(3) Person using position of organizational-occupational authority in closed institutions (includes peer relations in institutions)	A3 Relations: religious, medical, state or voluntary org workers having duty of care to child/adult Place: residential care or schools, prisons, detention centres (crime or asylum-related), mental health facilities, armed forces facilities	B3 Relations: in addition to A3, aid, NGO and related workers from other countries Place: similar to A3	C3 Relations: in addition to A3 and B3, duty of care to conflict-related refugees and prisoners Place: in addition to A3, conflict-related refugee camps and detention centres
(4) Offending in symbolically closed communities	A4 Relations: peer, familial and known relations Place: remote communities or segregated urban enclaves	B4 Relations and place likely similar to A4	C4 Relations and place likely similar to A4
(5) Offending by loosely or well-organised groups	A5 Relations: gangs, criminal enterprises and human trafficking groups Place: residential and occupational	B5 Relations: in addition to A5, international transiting web of relations Place: similar to A5	C5 Relations: in addition to A5 and B5, conflict-related state or quasi-state combatants, militia and armed forces Place: everywhere

Appendix 2. Justice elements from a victim's perspective

Entry # and year	Author (ordered by date), context and offences	Term used	Elements identified (as ordered by the author, using the author's words)	Are elements defined?	Are elements applied to justice mechanisms?	Notes
(1) 1990	Zehr (1990: 191-195, 200-203) (A1 context; offences not specified)	victims' needs	<ol style="list-style-type: none"> 1) 'support and a sense of safety 2) opportunities to tell their story and vent their feelings 3) tell their truth 4) need others to suffer with them, to lament with them the evil that has been done 5) to feel vindicated [see Notes] 6) reassurance, reparation, [and] empowerment' (the latter includes 'participation and safety') 	no	no	<p>Validation falls within Zehr's (1990: 191) definition of vindication ('victims want to hear others acknowledge their pain and validate their experience').</p> <p>Victims' needs is analysed discursively. 'Accountability' is 'multi-dimensional and transformative', but is broadly focused on concepts of 'needs and responsibilities' of victims, offenders and society (Zehr, 1990: 200-203).</p>
(2) 2000	Law Commission of Canada (2000: 74-93) (A3 context; historical institutional abuse of children)	needs of survivors	<ol style="list-style-type: none"> 1) 'establishing an historical record; remembrance 2) acknowledgment 3) apology 4) accountability 5) access to therapy or counselling 6) access to education or training 7) financial compensation 8) prevention and public awareness' 	yes	no	

(3) 2002	Strang (2002: 8-23) (A1 context; common crime)	what victims want	1) 'a less formal process where their views count 2) more information about both the processing and outcome of their cases 3) to participate in their cases 4) to be treated respectfully and fairly 5) material restoration 6) emotional restoration and an apology'	yes	yes, assessed for conferencing and court (chapter 5)	
(4) 2004	Backer (2004: 216) (C5 context; Truth and Reconciliation Commission [TRC] in post-conflict South Africa)	justice index	1) 'acknowledgment 2) voice 3) truth 4) accountability 5) apology 6) punishment 7) reparation 8) systemic change'	yes	yes, to TRC	Based on research in West Africa, Backer and Kulkarni (2013) amended Backer's (2004) original elements (acknowledgment is now 'awareness/acknowledgment') and replaced 'systemic change' with five elements ('non-repetition, restoration, development, redistribution, and transformation of leadership').
(5) 2005	Herman (2005: 585-589) (A1 context; sexual and domestic violence, including historical intra-familial)	victims' visions of justice	1) 'validation from the community [that is,] acknowledgment of facts of the crime and its harm 2) vindication [that is,] their communities [taking] a clear and unequivocal stand in condemnation of the offense 3) apology' (Items 1 and 2 were most important; informants were divided on apology.)	by examples of what people said	no	Elements drawn from interviews of 22 victim-survivors.
(6) 2007	Bennett (2007: 261) (A1 context; offences not specified)	victims' rightful entitlements	1) Victims are 'rightly ... entitled to vindication from the offender in which a wrong retracted by the offender through apology and proportionate amends'. (continued)	yes	no	For (1) Bennett (2007: 256) uses vindication synonymously with 'repentance'.

			2) 'However, victims are also entitled to the vindication from their community, ... but the collective cannot require a sincere apology [but instead] something less such as making proportionate amends, regardless of the spirit in which this is carried out'.			Bennett's (2007: 256) 'proportionate amends' (also termed 'proportionate reparation') has the same meaning as Duff's (2011) 'moral reparation'. For (2), vindication from the community, Bennett adopts Duff's (2001: 110-11) argument that a collective cannot compel an offender to make a genuine apology, but it can require an 'apologetic ritual'.
(7) 2009	Henry (2009: 116) (C5 context; international criminal justice, three cases from the International Criminal Tribunal for the former Yugoslavia)	none: elements listed	1) 'participation 2) validation 3) acknowledgment 4) voice'	no	no	Analysis is of three aspects of testimony and outcome: procedural fairness and justice, telling one's story, and the trial verdict. At times, these are related to the four justice elements, but not systematically.
(8) 2010 (2001,2 006)	Jülich, Buttle, Cummins & Freeborn, 2010: 21) (A1 context; sexual violence, including historical intra-familial) A 'sense of justice' is discussed in Jülich (2001, 2006), but consolidated in the 2010 publication.	a sense of justice	1) 'have stories heard by witnesses in a safe forum based on substantive equality of victim and offender 2) acknowledgment of the difference between right and wrong 3) offender to take responsibility and demonstrate accountability 4) experience of victimisation validated by offenders, bystanders, and outsiders 5) ability to transform relationships to co-exist with offenders in	by examples of what people said	no	Elements initially drawn from interviews of 21 victim-survivors (Jülich 2001, 2006). Jülich (2006: 130-131) identified two other elements: 'addressing the underlying causes of offending, that is, the motivations for offending' and 'to be more involved in the process of justice'.

			shared communities'			
(9) 2010 (2006)	Koss (2010: 221-222) (A1 context; sexual violence) Victims' justice needs is discussed in Koss (2006), but consolidated in the 2010 publication.	victims' justice needs	<ol style="list-style-type: none"> 1) 'contribute input into key decisions and remain informed about their case 2) receive response with minimal delay 3) tell their story without interruption 4) receive validation 5) shape a resolution that meets material and emotional needs 6) feel safe' 	no	no	
(10) 2010	Choi, Green & Kapp (2010: 277) (A1 context; three property and one violent offence)	victims' needs	<ol style="list-style-type: none"> 1) 'sharing victimisation 2) asking questions and acquiring answers 3) receiving a genuine apology' 	by examples of what people said	yes, assessed for victim offender mediation	Choi et al. (2010: 217) view the achieving of victims' needs as connected 'to how victims "become empowered" in restorative justice'.

(11) 2010, 2015	Clark (2010: 31-35; 2015: 21-32) (A1 context; sexual violence, including historical intra-familial)	victims' meanings of justice; victims' justice needs	<p>Clark (2010):</p> <ol style="list-style-type: none"> 1) 'information 2) validation 3) voice 4) control 5) outcomes' <p>Clark (2015):</p> <ol style="list-style-type: none"> 1) 'acknowledgment and validation 2) perpetrator accountability and responsibility 3) retribution 4) safety and prevention' 	by examples of what people said	no	<p>Elements in both articles are based on 22 interviews of victim-survivors (the N of women and men reported in 2010 was 19 and 3, respectively; and in 2015, as 18 and 4).</p> <p>Vindication falls within Clark's (2010, 2015) analysis of validation.</p> <p>Elements differ in Clark (2010) and Clark (2015), but no explanation for the change is given.</p>
(12) 2013	Godden (2013: 27, 89) (A1 context; sexual violence)	victims' needs and interests	<ol style="list-style-type: none"> 1) 'recognition of wrongful violation of sexual autonomy 2) respect diverse experiences and harms of rape 3) tell stories and be heard in a meaningful way 4) wrongdoers held responsible for the harms of rape 5) symbolic and material reparation for the harms of rape' 	induced and summarised from a review of the literature	yes, assessed and compared using reports and case studies for criminal justice, restorative justice, and civil litigation	
(13) 2013	Wager (2013: 22) (A1 context; sexual violence)	survivors' healing and justice needs	<ol style="list-style-type: none"> 1) 're-establishing a sense of safety for self ... which can include the offender being held accountable 2) gaining answers to questions 3) repair of damaged relationships with others, which relates to validation and vindication 4) restoration of self, such as overcoming self-blame' 	partly, not precisely; a confused blend of aims for justice and well-being	yes, assessed for restorative justice meetings	

(14) 2014	Keenan (2014: 28) (A1, A2 and A3 contexts; sexual violence)	victims' justice needs and interests	<ol style="list-style-type: none"> 1) 'participation 2) voice 3) opportunity to tell their story 4) validation and vindication 5) to ask their questions 6) offender accountability 7) protection for children and vulnerable adults 8) recompense where desired' 	by examples of what people said	no	Analysis of victims' experiences in the criminal and civil process, clerical and institutional abuse, and intra- and extra-familial relations.
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