

Contextualizing Sexual Violence in a Global Perspective

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Contextualizing Sexual Violence in a Global Perspective: Implications for Restorative and Innovative Justice

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Aims

- Reposition restorative justice as one type of innovative justice
- Introduce the Sexual Violence and Justice Matrix, a comprehensive way to conceptualize sexual violence and justice
- Consider the implications of the Justice Matrix for restorative and innovative justice

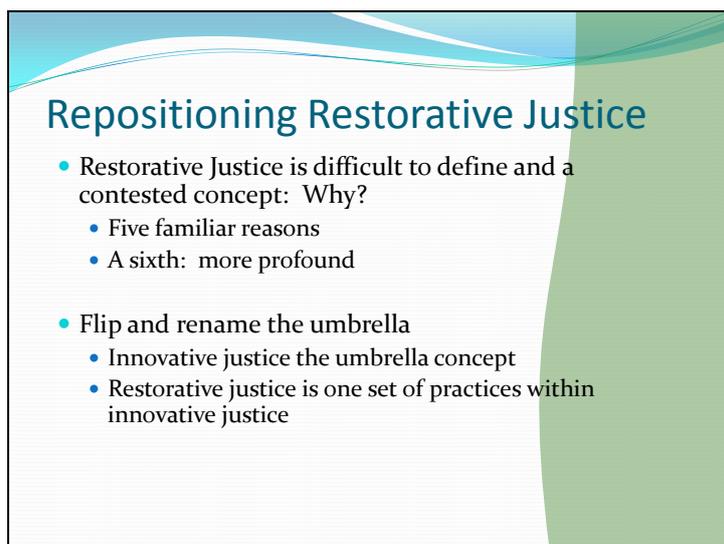


In the domestic and international criminal justice literatures, Daly and Proietti-Scifoni (2011) find a good deal of conceptual confusion in defining and using terms related to restorative justice.

A comprehensive analysis of rape case attrition and conviction in five countries over 35 years is given in Daly and Bouhours (2010).

Daly, K. and G. Proietti-Scifoni (2011) "Reparation and restoration." Forthcoming in M. Tonry (ed.) *Oxford Handbook of Crime and Criminal Justice*. New York: Oxford University Press.

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.



Five reasons why RJ is not easily defined and contested: (1) it has developed in piecemeal fashion; (2) it is used and applied differently across time, place, and country; (3) it has enjoyed immense popularity with many thousands of people working in varied sectors and disciplines; (4) it is defined and used differently by a core group of theoreticians; and (5) it is moving between the domestic, international, and transitional justice literatures.

Examples of umbrella concepts. Menkel-Meadow's (2007) links restorative justice to Indigenous circle practices, therapeutic jurisprudence, problem-solving courts, and transitional justice. Daicoff (2007: 1-2) calls varied justice mechanisms the comprehensive law movement; King et al. (2009), non-adversarial justice.

Daicoff, S. (2006) "Law as a healing profession: the 'comprehensive law movement'." *Pepperdine Dispute Resolution Law Journal* 6(1): 1-61.

King, M. et al. (2009) *Non-Adversarial Justice*. Sydney: The Federation Press.

Menkel-Meadow, C. (2007) "Restorative justice: what is it and does it work?" *Annual Review of Law and Social Sciences* 3: 161-187

Innovative Justice

- Innovative justice is a set of mechanisms, modalities, and practices
- Not concerned solely with arrest and prosecution
- Gives more attention to victims' experiences of crime and desired modes of redress
- May work alongside of, or be integrated with, conventional criminal justice
- May be part of civil or administrative procedures, or practiced in civil society

Innovative Justice (cont.)

- Mechanisms differ, depending on legal or non-legal context
(e.g., no perpetrator identified; admitted offender pre- or post-sentence; criminal, civil, or administrative procedure; activities in civil society; hybrids of legal and civil society actions)
- Attention to victim participation, voice, validation, and vindication; and to outcomes that demonstrate offender accountability

Innovative and Conventional Justice

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

Examples

- Mediated meetings, part of or independent of, a legal process
- More culturally appropriate ways of responding to offending and victimization
- Truth-telling and truth-seeking mechanisms
- Dialogic and informal processes of truth-telling/seeking in courtrooms
- More victim control in civil suits, administrative procedures, or when seeking compensation

Examples (cont.)

- Reparation packages with material (education, housing, survival needs) and symbolic elements (apologies, days of remembrance, memorials)
- Truth commissions
- People's tribunals and cultural performance in civil society

Values and Principles of Innovative Justice

- More to be done
- Tensions between human rights law and realities on the ground

Sexual Violence and Innovative Justice

- Introducing the Sexual Violence and Justice Matrix
- Three country contexts (developed and developing nations; at relative peace, war, or post-conflict)
- Five offending-victimization contexts (individual, individual using organizational power, institutional, community, and collective)

The three country contexts reflect the differing legal, economic, and political capacities to respond to sexual violence, along with differences in social organisation and cohesion for countries in conflict or relative peace.

The five offending-victimization contexts reflect the differing circumstances in which perpetrators offend, alone or in groups, and with or without using a position of authority or trust; and the differing degrees to which victims are 'captured' within institutional or communal walls (real and symbolic) and come to understand their experience of victimisation as individuals or as collectivities.

Within each Matrix Cell

- Victim-offender relations
- Places where violence occurs
- Justice problems victims face
- Elements direct attention to
What it is about context that matters for justice, from a victim's perspective

Offending-victimization context	Country A Developed country at peace	Country B Developing country at peace	Country C Conflict, post-conflict
(1) Person acting alone	A1 - peer and familial violence	B1	C1 - peer and familial violence
(2) Person using position of organizational authority	A2 - clergy abuse	B2	C2 - foreign peace-keepers and aid workers
(3) Person using position of organizational authority inside closed institution	A3 - residential schools	B3	C3 - refugee camps or detention centres
(4) Offending in symbolically closed communities	A4 - Indigenous communities	B4	C4
(5) Collective or organized group	A5	B5	C5 - gangs, state or quasi-state actors in groups

Justice problem facing victims in each highlighted context

A1: person alone

- **Justice problem:** must fit “real rape” template (stranger relations, injury)

A2: person using position of power

- **Justice problem:** trusted person or state official is the abuser

A3: closed institution

- **Justice problem:** trusted person or state official is the abuser; unable to escape

A4: symbolically closed community

- **Justice problem:** fear and negative community consequences of disclosing; unable to escape

Country C: Conflict, post-conflict

C1: person alone

- **Justice problem:** must fit “rape as weapon of war” template (i.e., C5)

C2: person using position of power

- **Justice problem:** legal jurisdiction, police or peacekeeper is the abuser, zero tolerance policy

C3: closed institution

- **Justice problem:** official is the abuser; unable to escape

C5: collective or organized group

- **Justice problem:** scale of mass violence, civilian terror, no security presence, fear and negative consequences of disclosing sexual violence

Implications for Restorative and Innovative Justice

- Empirical
- Theoretical
- Political

Empirical

- Assemble and compare evidence on contexts and experiences of victimization, and on conventional and innovative responses, in a systematic manner
- Victims face different justice problems, depending on context
- Despite different contexts, similar terms are used
- A range of innovative justice mechanisms exists across contexts
- Need to synthesize research on the impact of conventional and innovative responses on victims
- Learn about and adapt justice mechanisms across contexts

Theoretical

- Develop a victim-based theory of justice
- Identify a more flexible set of innovative justice mechanisms, some of which use restorative justice
- Integrate literatures on domestic and international criminal justice, and transitional justice

Political

- Challenge a world view that criminal law and conventional justice are the preferred or sole responses to sexual violence
- Shift the terms of feminist debate on innovative justice and sexual violence
- Address trade-offs between symbolic justice and pragmatic justice