Victim Participation
The Thin Edge of the Wedge

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Plenary to
Participatory Justice: achieving justice for victims at local, national, and international settings
Australian National University, Canberra
17-18 September 2012

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Aims

- Broaden meanings of ‘justice’
- Work across domestic and international justice
- Devise method to assess and compare conventional and innovative mechanisms
- Encapsulated in the Victimisation and Justice Model
  - justice mechanisms
  - victimisation contexts
  - victims’ justice interests
Caveats about ‘victims’

• Status not fixed, but socially constructed and mobilised
• Diverse experiences of victimisation, diverse demands for justice, and multiple goals for justice

• More affirmatively
  Victimisation is a process, not a category or fixed identity; justice is a process, not an event or intervention
Key points

- Need new ways to describe and compare justice responses

  *Conventional and Innovative Justice Mechanisms*

- Need to consider diverse contexts of victimisation

  *Sexual Violence and Justice Matrix*

- Need a better measure of victims’ experiences or judgments of justice

  *Victims’ Justice Interests (or Needs)*
Justice mechanisms

- Not retributive and restorative justice, but conventional and innovative justice mechanisms

- Conventional and innovative justice
  - reside on continuum
  - overlap and are not mutually exclusive
  - can be combined in hybrid forms
Conventional justice responses

- Evidence gathering, prosecution and trial, supports for victims in legal processes

- Part of criminal justice or work alongside of it

- Formal legality with focus on prosecution, trial, and sentencing

- Other mechanisms: victim impact statements, specialist courts, state-based compensation, victim lawyers, civil litigation
Innovative justice responses

- Work alongside or be integrated with criminal or civil justice, part of administrative procedures, or in civil society
- Examples of mechanisms
  - meetings or conferences of victims and offenders
  - informal justice mechanisms
  - truth-telling or truth-seeking
  - material and symbolic forms of reparation
  - people’s tribunals
  - documentary and street theatre
  - other art, activist, and memory projects in civil society
Summing up

Innovative justice
- broad set of justice mechanisms; restorative justice is one type
- may provide more openings for victim-defined participation and voice

Conventional justice
- should have equal importance and standing, not be disparaged as the ‘punitive justice’
Victimisation contexts

Sexual Violence and Justice Matrix
arrays country and offending-victimisation contexts

- **Country**: developed or developing nations, at relative peace or conflict/post-conflict

- **Offending-victimisation**: *individual*, *organisational* (individual using position of power), *institutional* (closed or symbolically closed community), and *collective* (‘gangs’; state or quasi-state forces or combatants)
Victimisation contexts (cont.)

- Individual context dominates landscape of thought
- Need to consider other contexts
- Pay attention to how context matters for justice from a victim’s perspective
<table>
<thead>
<tr>
<th>Offending-victimisation context</th>
<th>Country A Developed country at peace</th>
<th>Country B Developing country at peace</th>
<th>Country C Conflict, post-conflict</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Person acting alone</td>
<td>A1 - peer and familial violence</td>
<td>B1</td>
<td>C1 - peer and familial violence</td>
</tr>
<tr>
<td>(2) Person using position of organisational authority</td>
<td>A2 - clergy abuse</td>
<td>B2</td>
<td>C2 - foreign peace-keepers and aid workers</td>
</tr>
<tr>
<td>(3) Person using position of organisational authority inside closed institution</td>
<td>A3 - residential schools</td>
<td>B3</td>
<td>C3 - refugee camps or detention centres</td>
</tr>
<tr>
<td>(4) Offending in symbolically closed communities</td>
<td>A4 - Indigenous communities</td>
<td>B4</td>
<td>C4</td>
</tr>
<tr>
<td>(5) Collective or organised group</td>
<td>A5</td>
<td>B5</td>
<td>C5 - gangs, state or quasi-state actors in groups</td>
</tr>
</tbody>
</table>
Victims’ justice interests
(background)

- Critique of my research and character of ‘debate’
- No robust method to determine what is an effective justice mechanism
- Research relies on victim satisfaction
Radical re-conceptualisation required

Rather than ask
- Are victims satisfied ... ?

We should ask
- Does a justice mechanism have the capacity to address one or more victims’ justice interests (or needs) and to what extent does it do so?
Victims’ justice interests

Elements
• participation, voice, validation, vindication, and offender accountability

Should distinguish
• legitimacy of a legal or justice element *in its own right*
• emotional or psychological *effects* of a legal or justice element on a victim’s well-being
Victims’ justice interests (cont.)

Participation
- discussing ways to address offending and victimisation
- asking questions and receiving information (‘truth’)
- having information about case development and justice options

Voice
- telling the story of what happened and its impact
- truth-telling
Victims’ justice interests (cont.)

Validation
• affirming wrong occurred and victim was hurt
• being believed
• shifting weight of accusation from victim to others

Vindication
• vindication of the law (affirming act was wrong) and the victim (affirming a perpetrator’s actions were wrong)
• censuring offence and affirming solidarity w/victim
• expressed by symbolic and material forms of reparation and standard forms of state punishment
Victims’ justice interests (cont.)

Offender accountability
- requiring individuals or entities to ‘give accounts’ for their actions
- taking active responsibility for the wrong caused
- offering sincere expressions of regret and remorse
- receiving censure or sanction that may vindicate a victim

Other types of victim needs
- Survival (food, water, housing), service or support, and prevention
Participation?

- No single form or rationale
- Control vs influence on decisions

McGonigle Leyh (2011)
- Different types of participation in inquisitorial and adversarial systems

Doak (2005)
- Victim’s interest over state’s interests?
- Can private and public interests be accommodated?
Set big Qs to the side

- Start with smaller building blocks: justice mechanisms in context
- Expand elements of justice interests beyond participation
How can victims’ justice interests be applied?

- Individual contexts in developed countries at peace (cell A1)
- Institutional contexts in developed countries at peace (cell A3)
- Collective contexts in post-conflict societies (cell C5): more difficult
Challenges for C5

- Transitional justice: a huge field

- Scale and severity of human suffering: are these magnified forms of ‘ordinary crime’ or something else?

- ‘Justice’ in a different register: ‘participation’ means to ask questions or receive information about ‘the missing’ and dead; ‘on-going process of “remaking the world” a ‘deep form of justice’ (Kent 2011)

- Additional elements (Backer 2012): development, redistribution, and political transformation
From international/transitional to domestic justice

- Redistribution or recognition?
- Limits of prosecution and truth-telling
- What are the priorities? Whose priorities?
- Need for a major re-think of the transitional justice ‘toolkit’ that has emphasised ‘legal justice’
- Innovative justice mechanisms: a necessity in C5, but ‘too risky’ in A1
- Time for a major re-think of the domestic justice ‘toolkit’?
Concluding points

- Study *justice mechanisms*, the building blocks of justice, in context
- Recognise diverse *contexts of victimisation*
- Devise way to assess and compare, with *victims’ justice interests*

- Moving across international-transitional and domestic contexts