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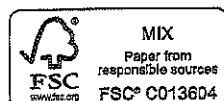
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# Justice for Victims

## Perspectives on rights, transition and reconciliation

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## Reconceptualizing sexual victimization and justice

Kathleen Daly

### Introduction

The argument advanced here is based on two decades of researching and writing on victims' experiences in the aftermath of crime and their desires for justice. It reflects my interests to move across the fields of domestic and international criminal justice, to understand diverse contexts of sexual victimization and to consider the ways in which context matters for justice, from a victim's perspective. I wish to broaden the meanings of 'justice' for victims by identifying a wide range of justice mechanisms, both in law and civil society and to devise a robust method to assess and compare them. The Victimization and Justice Model presented here encapsulates these themes with three components: justice mechanisms, victimization contexts, and victims' justice needs (or interests). Sexual victimization is my focus, but the model has general applicability to serious crime.

I lodge the usual caveats about 'victims' (or a victimhood status). A victim status is not fixed, but socially constructed, mobilized and malleable (Rock 2002); and many prefer the term 'survivor'. Further, we know that there are blurred boundaries of victimization and offending (Daly 2010). Individuals have diverse experiences of victimization, diverse demands for justice and multiple goals for justice, which can change over time. There is no generic 'victim orientation' (Pemberton *et al.* 2007) and 'ideal' victims are in short supply (Christie 1986). These caveats can be stated more affirmatively. Victimization is a process, not a category or identity; likewise, justice is a process, not an event or intervention. At the same time, we require a word to refer to a person who has been victimized and 'victim' most readily comes to mind.

This chapter advances these arguments. First, government and civil society politics often eclipse the mantra of evidence-based policy in criminology and this problem is especially acute in addressing sexual victimization. I identify ways forward, but recognize that my proposals will be controversial to some readers. Second, the justice field needs a new way to depict and compare justice responses and I propose using the terms *conventional and innovative justice mechanisms*. The oppositional contrast of retributive and restorative justice was a 'catchy exposition' (Roche 2007, p. 87) in its early years, but it should now be set aside. We

need a more sophisticated understanding of justice practices, not popular slogans. Relatedly, the elements discussed in justice practices (e.g. reparation, restoration, restitution, retribution and punishment) are defined and used differently, depending on the author; this must change if we are to build a scientific understanding of conventional and innovative justice mechanisms. Third, researchers specialize in one context of sexual victimization, but that context should be situated in a broader field of reference. I introduce the *Sexual Violence and Justice Matrix*, which arrays varied country contexts (developed and developing countries at peace and in conflict zones) and victimization-offending contexts (individual, institutional, organizational and collective) of violence. By giving attention to different contexts of victimization, we can build a more systematic and stronger empirical base on victimization and justice. Fourth, the justice field needs a better measure of victims' experiences of justice than vague notions of 'satisfaction' or the 'therapeutic effects' of justice activities. I introduce the construct of *victims' justice needs (or interests)*, which can be used to assess and compare conventional and innovative justice mechanisms from a victim's perspective. The construct also invites discussion and debate on normative questions of what victims should expect in a justice activity.

### Political context

The Victimization and Justice Model identifies the main components in *the research problem*, which is to identify and compare justice mechanisms in responding to sexual victimization in diverse contexts of violence. However, the research problem sits in a contentious political field. I outline its contours in broad-brush terms with reference mainly to domestic contexts of criminal justice.

The response to rape and sexual violence seems to be contradictory: there is a *minimization* of sex offending and victimization, on the one hand, and a *demonization* of certain groups as 'sex offenders', on the other. Victims' rates of reporting these offences to the police are low (14 per cent, on average, in five common law jurisdictions from 1992 to the present; see Daly and Bouhours 2010, p. 572). Once reported, levels of attrition are high as a case moves from the police, to prosecution and court adjudication. Of those cases reported to the police, the conviction rate to any sexual offence is 12.5 per cent (1990 to 2005 data); but in an earlier period (1970 to 1989 data), it was higher (18 per cent) (Daly and Bouhours 2010, p. 597). Although an improved conviction rate should not be viewed as the only goal of rape law reform, its erosion over time in the jurisdictions studied suggests that we may have exhausted the potential of legal reform to effect significant change.<sup>1</sup>

At the same time, the 'sex offender' continues to attract a high degree of social outrage, exclusion and strong penal measures. This relatively small group has been convicted of or imprisoned for sex offences, or has been suspected (or convicted) of particular types of sex offences (e.g. serial offending against children by adults). Policies and practices vary by jurisdiction, but they include sex offender

registries, community notification, preventive detention and GPS tracking. As McAlinden (2007, p. 21) suggests, 'the sex offender is demonised as a monster or fiend and is singled out above other dangerous offenders in society'.

Although seemingly contradictory, the minimization and demonization of sex offending are mutually reinforcing. Minimization occurs because most sex offending bears no relationship to the monstrous sex offender or to the less monstrous, but no less atypical 'real rape' (that is, between strangers in a public place, with visible injuries to a victim; see Estrich 1987); and because punitive penal measures are not appropriate for many forms of sex offending (McAlinden 2007). Demonization occurs because 'the sex offender' is a convenient scapegoat for social fears and vulnerabilities (Best 1990), which are amplified by sensational media stories about highly atypical cases (Thomas 2005; McAlinden 2007). Although scholars have analysed a societal obsession with 'the sex offender' and its negative effects on society and criminal justice (Simon 1998; Zimring 2004), few have observed how this phenomenon is linked to a minimization of sex offending and to debates over what should be done about it. For some, the way to address minimization is to 'get tougher' on sex offending by increasing the numbers of arrests, convictions and sentences.<sup>2</sup> The emphasis is on what I term *symbolic justice*: to send 'strong messages' to would-be offenders that sexual offending will not go unpunished and to vindicate victims by criminal justice responses. Others see the value of what I term *pragmatic justice* (Daly 2011), which relies on multiple pathways of formal and informal justice mechanisms, with an emphasis on victim participation.<sup>3</sup> This position recognizes that most victims will never see their case reach court and that non-stranger sexual offending will continue to face hurdles in a legal process, no matter how artful new legal language or procedures may be. The questions posed by Hudson (1998) and myself (Daly 2002a) more than a decade ago remain apt:

How does one move away from punitive reactions, which – even when enforced – further brutalize perpetrators, without, by leniency of reaction, giving the impression that sexualized ... violence is acceptable behaviour?

(Hudson 1998, p. 245)

How do we treat harms as 'serious' without engaging in harsh forms of punishment or hyper-criminalization?

(Daly 2002a, p. 62)

More recently, I have suggested these ways forward (Daly 2008, 2011; Daly and Bouhours 2010):

- 1 **Debate and clarify justice goals.** It is imperative to clarify the goals for socio-legal change: are they to increase arrests and convictions, impose more severe sentences, validate victims, deter would-be offenders or change people's behaviours and attitudes about gender and sexuality? For victim advocates and feminist scholars, these questions remain unsettled and contested. Those emphasizing

*symbolic justice* are concerned that hard-won gains from criminal law reform will be dissipated with 'more lenient' types of informal justice responses or apparently lighter sentences. Debate can be difficult because we lack a common metric to assess and compare justice mechanisms. I argue for a pragmatic justice position, which proposes the next four points.

- 2 **Focus on early stages.** For criminal justice responses, emphasize the early stages of the justice process, rather than the last stage of trial. For the period of time preceding or leading up to criminal justice responses, the early phase is crucial: it is when victims first disclose offences to people they know and perhaps then to authorities; and it is when suspects are first interviewed and investigations are conducted.
- 3 **Do not rely solely on criminalization and penal strategies.** Increasing criminalization and penalization will not help most victims. Greater attention should be given to responses that are more socially inclusive and re-integrative of offenders. Mechanisms should be considered to encourage more *admissions* to offending (only when it has occurred, of course) in legal or non-legal settings. Such admissions need not necessarily be tied to *convictions* for sexual offences.
- 4 **Lift the bans on sexual offence eligibility for informal justice mechanisms.** Although informal justice mechanisms, such as conferences or mediation, are used in some jurisdictions for admitted youth and adult offenders (see Daly 2011, 2012), policymakers are wary of supporting them because they may appear to be 'too lenient'. However, the trade-off is not between a 'more' or 'less serious' response, but between any response or none at all. Careful introduction of justice mechanisms can be monitored and researched; and from this, an evidence base can be built.
- 5 **Identify a menu of options.** There should be a menu of options for victims, including those that do and do not articulate with criminal justice. Responses can run on multiple pathways, not just one pathway of formal criminal justice. Informal justice processes can occur in many socio-legal contexts (e.g. instead of reporting an offence; after charges are withdrawn by the police or prosecutor or dismissed in court; parallel with a court process, at sentence, post-sentence and post-release) and organizational contexts (e.g. government agencies and the non-government sector).

Other scholars have argued for using innovative responses to sexual violence (see for example Koss 2006; McAlinden 2007; Madsen 2008; Jülich 2010; Jülich *et al.* 2010; Naylor 2010; McDonald and Tinsley 2011; McGlynn 2011; Pali and Madsen 2011; McGlynn *et al.* 2012). This is encouraging, but a consideration of new justice ideas cannot be confined to just one context of violence (an individual hurting or harming another) in developed countries at peace.<sup>4</sup> With increasing attention to sexual victimization and justice in post-conflict societies, it is important that theory and research in domestic contexts inform developments in international or transitional contexts and vice versa (McEvoy 2007). The two are rarely

analysed together (but see Waldman 2007; Boesten 2010), despite the recognition that the handling of rape cases in the International Criminal Court shows patterns similar to those in domestic courts (Mertus 2004).

The Victimization and Justice Model was developed to address the research problem, but it cannot easily alter the politics of rape and security, which range wildly between ignoring or doing nothing for most victims and ostracizing a small number of offenders. Victimology has a central role to play in challenging this situation by lowering the political heat, crossing the boundaries of domestic and international criminal justice and encouraging citizens and governments to think more deeply and constructively about the problem.

## Victimization and Justice Model

### *Justice mechanisms*

For some time, I have been critical of the oppositional contrast of retributive and restorative justice (Daly and Immarigeon 1998; Daly 2000, 2002b). This contrast has created obstacles for understanding what is and what could be optimal justice practices. Rather than review older arguments, however, I want to persuade you of the value of using new concepts.

I propose that we view *justice mechanisms* as residing on a continuum from conventional to innovative. The categories of conventional and innovative are overlapping; they are not mutually exclusive and can be combined in hybrid forms.<sup>5</sup> *Conventional* responses are concerned with improvements to evidence gathering, prosecution and trial, and support for victims in legal contexts. They may be part of a criminal justice system or work alongside of it. Most assume reliance on formal legality, with a focus on prosecution, trial, and sentencing. Other conventional responses include victim impact statements, specialist courts, civil litigation, state-based compensation or financial assistance, victim advocates and victim lawyers. *Innovative* responses may work alongside of or be integrated with criminal justice, be part of administrative procedures, or operate in civil society. They include mediated meetings or conferences of victims and offenders; informal justice mechanisms; truth-telling or truth-seeking; reparations packages having material elements (compensation, other forms of assistance) and symbolic elements (apologies, days of remembrance, and memorials); people's tribunals, documentary and street theatre and other types of art and activist projects in civil society.<sup>6</sup>

There are advantages to conceptualizing justice responses in this way. First, when viewing conventional and innovative responses as residing on a continuum, not as fixed or oppositional, we can recognize their dynamic quality, capacity for change, and interdependence. Second, we see that innovative responses are a broad set of justice mechanisms of which restorative justice is just one type. One reason why restorative justice is hard to define is that the term contains a diverse set of agendas, principles and practices: it is often used as an

umbrella concept for any justice activity that is not a standard form of criminal justice. I am proposing that 'innovative justice' be used instead, as an umbrella concept, to contain a variety of *justice mechanisms*,<sup>7</sup> which may provide more openings for victim-defined participation and voice in justice activities. These may be part of a legal process, reside in civil society or be a combination of the two. I would emphasize that conventional mechanisms have equal importance and standing. Although prosecution and trial were not designed with victims' interests in mind, there have been improvements, particularly in providing some degree of participation for victims in a legal process. Conventional criminal justice cannot be disparaged as the 'bad' or 'punitive' justice, as often happens when restorative justice advocates compare retributive and restorative justice.<sup>8</sup> Rather, the theoretical and empirical tasks should be to determine the degree to which conventional and innovative justice mechanisms can address victims' justice needs or interests.

### *Key terms*

If we are to build an empirically informed knowledge on conventional and innovative justice mechanisms and what they can (or cannot) achieve, we require some agreement on how to define and use key terms such as reparation, restoration, restitution and the like. Currently, there is no such agreement (see Daly and Proietti-Scifoni 2011).<sup>9</sup> Writers attribute different meanings to these terms, depending on their frame of reference and whether they are working in domestic or international criminal justice. The problem is even more acute in domestic criminal justice because the aim by some is to identify a new 'system' of justice. By contrast, in international criminal justice, a conventional mechanism of adjudication and punishment of offenders is a remedy distinct from that of reparation to victims. In an early collection on restorative justice in domestic settings, Harland (1996, p. 507) observed that the field should 'define and clarify the most essential aims and related mechanisms, beginning with restoration itself [but also] reconciliation, reparation to the community, mediation ... and so on'. His call for an authoritative glossary of key terms for domestic criminal justice has largely gone unanswered.

Those of us researching conventional and innovative justice mechanisms should reflect on the varied uses of key terms, within and across domestic and international criminal justice. Some translational work will be necessary because we are working in different contexts of victimization, with different types of justice mechanisms and legal conventions. An example of this endeavour is Clamp and Doak's (2012) analysis of the 'portability' of restorative justice to transitional justice contexts. What would be useful is an Oxford English Dictionary-style publication, which traces the development and evolution of key terms. Consistency for its own sake is not the goal. Rather, it is to build a solid and defensible theoretical and empirical literature, which requires shared understandings of the terms used.

### Contexts of victimization

Most of us carry out research on victimization and justice with one context of victimization in mind. This is reasonable, but it is important to situate the work in a wider field of reference. I devised the Sexual Violence and Justice Matrix to array varied country contexts (developed, developing, at peace or conflict/post-conflict) and offending-victimization contexts of violence (Table 18.1). The three country categories reflect differing legal, economic and political capacities to respond to sexual victimization, along with differences in social organization and cohesion for countries in conflict or relative peace. The offending-victimization contexts are *individual* (row 1); *organizational* – i.e. a person using a position of organizational power (row 2); *institutional* – i.e. within a closed institution (row 3) or symbolically closed community (row 4); and *collective* – i.e. by loosely organized gangs or quasi-state combatants (row 5). The matrix identifies differing social relations and place elements, along with a broader political-economic context of violence.<sup>10</sup> Each cell identifies typical relations and places of victimization, along with the problems that victims face in seeking justice. Although not itemized, each cell may also use or have available differing types of justice mechanisms.

In general, one matrix cell – A1, an individual context in developed country at peace – dominates the landscape of thought. An individual context of violence is an individual hurting or harming another person outside an institution or without using a position of organizational power. If you are sexually victimized in an A1 context, the standard advice is to ‘call the police’ and mobilize criminal law and criminal justice, although, as we know, most victims do not do so.

In other contexts of sexual victimization, the situation is more difficult. I have in mind assaults in total institutions – for example detention centres, prisons, training schools, orphanages, military organizations (row 3); in racially or religiously segregated enclaves in urban areas or in remote indigenous settlements (row 4); and in war and conflict zones (column C). Reflect on being a victim in these contexts. What are your options? Calling the police and mobilizing criminal law may not be optimal, feasible or desirable. Our research of 19 major cases of institutional physical and sexual abuse of children in Australia and Canada (cell A3) shows that although some victims did make complaints to people in authority, including the police or government officials, no legal action was taken (Daly 2014). Their stories were ignored or disbelieved and investigations were dropped or did not result in laying charges. It took, on average, nearly 40 years for an official response to be initiated, using a conservative measure. Official reactions occurred after pressure was placed on governments or churches by victims’ groups and the media, law suits against governments or churches and, at times, the charging or conviction of perpetrators.

In an Australian case that came to public attention in April 2012 in Melbourne, the clergy sexual abuse of young people was linked to higher than average rates of suicide. A Catholic Church Archbishop was quoted as saying that the “‘great majority” of victims did not want to go to the police. ... Obviously the church has

Table 18.1 Sexual violence and justice matrix, A and C country contexts (B country contexts, developing country at peace, excluded)

Offending-victimization context of sexual violence	Country A Developed country at peace	Country C Conflict, post-conflict, or post-authoritarian regime
(1) Person acting alone	<b>A1</b> <b>Relations:</b> peer, familial, known, and (atypically) stranger relations <b>Place:</b> mainly residential <b>Problem:</b> must fit ‘real rape’ template (stranger relations, injury)	<b>C1</b> <b>Relations:</b> peer, familial, known, and (atypically) stranger relations <b>Place:</b> mainly residential <b>Problem:</b> must fit ‘rape as weapon of war’ template
(2) Person using position of organizational authority	<b>A2</b> <b>Relations:</b> religious, medical, or state official (e.g. clergy, doctor, police) and child/adult victim <b>Place:</b> residential and occupational <b>Problem:</b> trusted person or state official is the abuser	<b>C2</b> <b>Relations:</b> foreign peacekeepers, aid workers, and soldiers, in addition to A2 <b>Place:</b> residential and occupational <b>Problem:</b> legal jurisdiction, police or peacekeeper is the abuser, zero tolerance policy
(3) Person using position of organizational authority inside closed institutions (includes peer relations in institutions)	<b>A3</b> <b>Relations:</b> religious or state official having duty of care and child/adult victim <b>Place:</b> residential schools, prisons, detention centres, armed forces facilities <b>Problem:</b> trusted person or state official is the abuser, unable to escape, inmate code of silence	<b>C3</b> <b>Relations:</b> state official having duty of care and refugee/prisoner <b>Place:</b> refugee camps and detention centres, in addition to A3 <b>Problem:</b> official is the abuser, unable to escape, inmate code of silence
(4) Offending in symbolically closed communities	<b>A4</b> <b>Relations:</b> peer, familial, and known relations <b>Place:</b> remote communities or segregated urban enclaves <b>Problem:</b> fear and negative community consequences of disclosing; unable to escape	<b>C4</b> Limited documentation; but relations, place, and problem are likely similar to A4.
(5) Offending by loosely or well-organised groups	<b>A5</b> <b>Relations:</b> gangs, criminal enterprises, human trafficking groups <b>Place:</b> residential and occupational <b>Problem:</b> serious reprisals by offenders if reported, repatriation to home country	<b>C5</b> <b>Relations:</b> gangs, state or quasi-state combatants, militia, armed forces <b>Place:</b> everywhere <b>Problem:</b> scale of mass violence, civilian terror, no security presence, fear and negative consequences of disclosing

to ... walk with victims, but it is always to the extent to which they will let us, you see. That is the challenge' (McKenzie *et al.* 2012, p. 2).<sup>11</sup> If reporting offences to police authorities is not desirable or optimal for many (or most) victims, we should consider: what other justice options are available?<sup>12</sup>

Most research on sexual victimization and justice centres on cell A1, although more is emerging in C5 (collective contexts in countries in conflict or post-conflict) and, to a lesser degree, A2 (clergy abuse outside a total institution). Research and policy will improve when greater attention is paid to the specificity of victimization context and especially how context matters for justice from a victim's perspective. Otherwise, responses and justice practices generated from A1 contexts will be misapplied to other contexts. Here, the recent work by transitional justice scholars, who are calling for a better understanding of 'justice from below' is relevant (Lundy and McGovern 2008; McEvoy and McGregor 2008). Their research is challenging a 'top-down' rule of law perspective (i.e. international criminal law), which announces particular recommendations and unrealistic goals. The problem, in part, is that those victimized have few options, no voice and limited participation in justice agenda-setting; and in part, human rights advocates and organizations use a highly westernised individualized concept of crime and justice, with a focus on 'legalism' (Weinstein *et al.* 2010). Translating this into the vernacular of the Sexual Violence and Justice Matrix, justice responses that may be appropriate to an A1 individual context are being wrongly applied to C5.<sup>13</sup>

### **Victims' justice interests**

For some time, I have been conducting research that seeks to compare conventional and innovative justice responses to sexual violence and to assess the merits of innovative justice responses, from a victim's perspective. For example, I have compared outcomes of youth sex offence cases that went to court and to conferences (Daly 2006) and presented case studies of the experiences of sexual assault victims who participated in conferences (Daly and Curtis-Fawley 2006). An important intervention was a critique of my research by Cossins (2008), who said that I did not provide sufficient evidence for my conclusion that conferences offered more for sexual assault victims than did court. In my response (Daly 2008), I said that Cossins had provided no evidence that court processes were better than conference processes from a victim's perspective. Our exchange reveals the state of 'debate' in the field: it was stalled because we did not have a common metric to compare justice mechanisms.

The problem is profound. We have no robust method of determining what is or is not an effective justice mechanism from a victim's perspective. We cannot assess the merits and limits of any one conventional or innovative mechanism nor can we make comparisons between them in a systematic way. There are some exceptions. For example, research carried out by the Justice Research Consortium randomly assigned burglary and robbery victims to court only or to court and a supplemental conference (Sherman *et al.* 2005; see also Shapland *et al.* 2011). This was a ran-

omized field experiment, and it is one way to make comparisons. However, field experiments are expensive and have their own problems of sample selection bias.<sup>14</sup>

With some exceptions, research on conventional and innovative justice responses relies on general measures of victim *satisfaction* or with elements of *procedural justice* (e.g. being treated with respect, being listened to). For satisfaction, the dominant question in victim studies is: 'How satisfied were you ...?' or 'To what extent were you satisfied?' with a particular justice activity. This is despite the fact that most of us would say that the satisfaction variable is overly simplified, ambiguous and largely uninterpretable (Pemberton and Reynaers 2011, pp. 238–239).

Some researchers have used behavioural or psychological measures such as the frequency of apologies and their perceived sincerity by victims in court and supplemental conference practices (Sherman *et al.* 2005). These measures are more concrete than 'satisfaction', but they centre solely on the psychological benefits of justice activities for aiding victims' recovery from crime. Pemberton *et al.* (2007) have outlined several types of social-psychological measures to assess reductions in anxiety and anger for victims participating in restorative justice processes. Erez *et al.* (2011) have applied ideas from therapeutic jurisprudence to assess victims' experiences with criminal justice. In my view, therapeutic jurisprudence offers a limited range of options for victims: it centres on legal mechanisms and what legal actors do, and it uses satisfaction as a key measure. Furthermore, what is 'therapeutic' or 'anti-therapeutic' lacks specificity. For example, in Erez *et al.* (2011), the term 'therapeutic' refers to any activity that is 'helpful' for victims.

A radical reconceptualization is required. Rather than asking, 'are victims satisfied with a justice mechanism?', 'are they more satisfied with one than another?' or 'do they receive greater psychological or therapeutic benefits from one than another?', we should ask instead, *does a justice mechanism have the capacity to address one or more of victims' justice needs (or interests) and to what extent does it do so?* The construct of *victims' justice interests* contains some elements of procedural justice (i.e., aspects of participation and voice; see Tyler 1990; Wemmers 2010), but it encompasses more than respectful and fair treatment. It also includes validation, vindication and offender accountability. These five elements – participation, voice, validation, vindication and offender accountability – have been identified by others in the domestic criminal justice and transitional justice literatures as important to victims' sense of justice (e.g. Herman 2005; Koss 2006; Henry 2009; van der Merwe 2009; Auckland University of Technology Centre of Restorative Justice 2010; Backer 2012). My contribution is to give the construct greater weight and definitional precision, and to use it to assess and compare conventional and innovative justice mechanisms.

Contrary to those who focus on social-psychological effects of justice mechanisms, I believe that we should distinguish victims' justice needs (or interests) in a justice activity from *the effects* of that activity for changing psychological states (for example, for reducing victims' anger and fear or increasing self-esteem). It is important to separate these 'two logics' (van Stokkom 2011, pp. 209–211). A victim's justice need (or interest) is concerned with the legitimacy of a legal or justice



element *in its own right*, independent of its emotional or psychological impact on a victim's well-being. This is where I am critical of therapeutic jurisprudence as applied to crime victims: it jumps too quickly to consider the consequences of law and justice activities without first asking, what principles or entitlements should we, as victims and citizens, expect from justice? Although I welcome research on the psychological impact of justice mechanisms, there needs to be prior consideration of what the optimal justice elements should be, from a victim's perspective.

The term 'victims' justice *needs*' is more often used in the literature (e.g. Koss 2006; van der Merwe 2009) than is justice *interests*. To me, *needs* connotes a psychological requirement, whereas *interests* connotes a victim's standing as a citizen in a justice activity, a connotation I prefer.<sup>15</sup> For now, I use the two interchangeably, although my preference leans to justice interests. The major elements of the construct are as follows.

- 1 **Participation.** Being informed of options and developments in one's case, including different types of justice mechanisms available; discussing ways to address offending and victimization in meetings with admitted offenders and others; and asking questions and receiving information about crimes (e.g. the location of bodies, the motivations for an admitted offender's actions).
- 2 **Voice.** Telling the story of what happened and its impact in a significant setting, where a victim/survivor can receive public recognition and acknowledgment. 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.
- 3 **Validation.** Affirming that the victim is believed (i.e. acknowledging that offending occurred and the victim was harmed) and is not blamed for or thought to be deserving of what happened. It reflects a victim's desire to be believed and to shift the weight of the accusation from their shoulders to others (family members, a wider social group, or legal officials). Admissions by a perpetrator, although perhaps desirable to a victim, may not be necessary to validate a victim's claim.
- 4 **Vindication.** Having two aspects of the vindication of the law (affirming *the act* was wrong, morally and legally) and the vindication of the victim (affirming *this perpetrator's actions* against the victim were wrong). It requires that others (family members, a wider social group, legal officials) do something to show that an act (or actions) were 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, memorialization, financial assistance) and standard forms of state punishment.
- 5 **Offender accountability.** Requiring that certain individuals or entities 'give accounts' for their actions (Stenning 1995). It refers to perpetrators of offences taking active responsibility for the wrong caused, to give sincere expressions of regret and remorse, and to receive censure or sanction that may vindicate the law and a victim.

Victims' justice needs differ from survival or coping needs (e.g. for safety, food, housing, counselling), service needs (e.g. for information<sup>16</sup> and support) and violence prevention. All are relevant and some have greater priority than others, depending on the victimization context. For example, studies of severely disadvantaged groups in post-conflict societies show that for many survivors, food and housing are of more immediate importance than 'justice' (Robins 2011).<sup>17</sup> Likewise, in familial- or residential-based contexts of victimization, safety may be of more immediate importance.

'Victims' justice needs' (or interests), as defined here, is an emergent and untested construct. Members of my project team and I are operationalizing the meaning of each element in analyses that apply the construct to real cases and victims' experiences. As this work progresses, definitions of each element may require modification. However, the construct offers a promising way to assess and compare conventional and innovative justice responses to crime. We know that such responses have different aims, limits and potentials – a crucial, if overlooked, fact when efforts are made to compare their strengths and limits. For example, a conventional mechanism of the criminal trial was not designed primarily to address victim participation, voice or validation. In contrast, an innovative mechanism of mediated meetings or conferences of victims and admitted offenders was designed to enhance victim participation and voice, but it may be inadequate for addressing other justice needs.

There is more work to be done in applying the idea of victims' justice interests. My first step is to apply it retrospectively to data and cases I have already gathered to determine how to operationalize each of the elements. What I envision is that we can build a solid body of evidence about the strengths and limits of justice mechanisms because we have a common metric. In attempting to apply the idea, we may find that other elements should be added, or that other types of refinements are required. In doing so, we can engage in a normative discussion about the standing and interests of victims as citizens in justice activities. I have avoided the term 'victims' rights' for practical and political reasons. It gets caught up in a zero-sum game discussion of the entitlements of alleged offenders and victims in a legal process, and it invites conjecture on ways to balance these rights in an ideal justice 'system' (Cape 2004). My goal is more modest, at least initially: it is to address a problem I faced several years ago in the exchange between Cossins and myself on the relative merits of court and conference processes in responding to sexual violence. We could not engage in a meaningful debate because there was no common ground, no common metric. With the construct of victims' justice interests, we can begin to redress that problem.

## Conclusion

In this chapter, I have called for a reconceptualization of sexual victimization and justice, working within and across domestic and international justice fields. I reiterate the key points. First, for politics, while we might wish that research evidence can trump ideology and prejudice, this is naïve for offences falling under the rubric of 'sex crime'. These offences are minimized or not addressed for most victims

and they are demonized for a relatively small group of offenders. The political and media construction of sex offending and victimization has served to stymie discussion on rational and constructive change. Second, for research, we must get our conceptual house in order, as much as this is possible in light of working in new and expanding fields of knowledge. If we want to improve victims' standing and options in the aftermath of crime, we need a stronger evidence base. That requires a more coherent use of key concepts and more sound ways of depicting justice mechanisms that operate within, alongside or outside a legal process in civil society. Third, for research, we must respect the boundaries of domestic and international or transitional justice because each works in different victimization contexts and on different problems of justice for victims. For example, transitional justice is concerned with state building, economic development and social-political transformation whereas domestic criminal justice is not.<sup>18</sup> However, there are points of overlap in studies of sexual victimization in countries at peace and in conflict zones. Furthermore, we might imagine that a justice mechanism that is used in one context of victimization could be adapted to another context, which could, in turn, expand the repertoire of justice options for victims. Finally, for research and policy, it is time to say goodbye to 'satisfaction' as the measure of justice for victims. We can and must do better. I propose a new way to assess and compare justice mechanisms, which can further our research and understanding of victims' experiences in seeking justice. There is much work ahead.

## Notes

- 1 Overall conviction rates declined in England and Wales, Canada and Australia, but not in the United States or Scotland; on average, rates range from 10 to 14 per cent (except Scotland, whose rates are 16 to 18 per cent). Research in civil law jurisdictions finds greater variability: from 4 and 8 per cent in Belgium and Portugal, respectively, to 18 and 23 per cent in Austria and Germany, respectively. These percentages are of 2004–2005 cases in a project headed by Lovett and Kelly (2009). By 'overall conviction rate', I mean the percentage of cases resulting in conviction (by plea or at trial) to any sexual offence of those reported to the police.
- 2 A 'get tough' stance is particularly focused on adults who sexually victimize children, 'as political parties vie for ever more punitive sanctions' (McAlinden 2007, p. 15).
- 3 McGlynn (2011, pp. 840–841) traces how these concerns unfolded in England and Wales in 2011 with a proposed sentencing discount for offenders who pleaded early to sex offences; she demonstrates the divisions among symbolic and pragmatic feminist positions, as I define them here.
- 4 The proposed ways forward, listed above, were written with this one context in mind; and they are likely to require revision for other contexts.
- 5 With respect to 'large-scale state-based conflict', Aertsen (2008, pp. 413–434) suggests that differing types of justice mechanisms – 'informal, formal, and in-between' – needed to be 'combined in a flexible way'. It is important that conceptual understandings of justice in both domestic and transitional justice contexts begin to appreciate the strengths of hybrid mechanisms.
- 6 These activities, although 'outside law', may use legal formats (e.g. popular tribunals, see Chinkin 2001). Examples of documentary theatre and art and activist projects are given in Buikema (2012) and Simić (2010), and are particularly visible in transitional justice contexts.

- 7 I am interested in identifying and researching *justice mechanisms*, not a 'justice system' or a 'type of justice' (e.g. transformative justice).
- 8 I would be less concerned if people used the terms 'conventional' and 'restorative' justice. My point is that it is inappropriate to characterize the entire apparatus of conventional criminal justice as 'retributive'; and in addition, retribution has value as a justice aim.
- 9 These ideas are developed in Daly and Proietti-Scifoni (2011) and glossed here. The problem is not that people do not define terms (although many do not), but rather that they seem to be unaware of how others have defined them or used them in empirical research.
- 10 The matrix's rows and columns could be expanded considerably (or sub-divided further) as researchers identify where their research sits in the matrix and how it is further inflected by differing cultural meanings.
- 11 There was mounting pressure from mid-2012 in Australia to address complaints of sexual abuse by clergy associated with Catholic and other churches in Victoria and New South Wales, which resulted in the Prime Minister's announcement on 12 November 2012 of her recommendation to create a Royal Commission. On 11 January 2013, the Governor-General issued Commonwealth Letters Patent for a Royal Commission into Institutional Responses to Child Sexual Abuse, appointing six commissioners and its terms of reference.
- 12 I am concerned with proposals for mandatory reporting of sexual abuse because this may not be desirable for many victims.
- 13 An example of misapplication is the common recommendation given by international NGOs to address sexual violence in developing countries in conflict or post-conflict. The advice is to use conventional forms of criminal justice, in particular, to implement international legal protocols and conventions, and to strengthen and enforce domestic criminal justice (Daly and Dalsgaard 2010).
- 14 An example is the Justice Research Consortium London Experiment (Sherman *et al.* 2005, p. 377). For each eligible case, an offender was first invited to participate; and if the offender agreed, then the victim in the case was invited. In the burglary experiment 59 per cent of victims consented to participate (from a set of 78 per cent of offenders who agreed to participate); and in the robbery experiment 52 per cent of victims consented to participate (from a set of 83 per cent of offenders). *Overall, then, 46 and 43 per cent, respectively, of victims in eligible burglary and robbery cases self-selected in the project.* The victims who opted in were then randomly assigned to participate in a supplemental conference (or not) pre-sentence. This protocol is undoubtedly appropriate from an ethical point of view. However, Sherman *et al.* (2005) then compare the orientations of this group of victims on such items as feeling 'forgiveness' towards an offender with the victims in the Re-Integrative Shaming Experiments (RISE). RISE victims had no choice to opt in (or not) to RISE because the process was entirely based on offender admissions before a random allocation of cases to a diversionary conference (or court). Thus, we might expect that the two groups of victims would be quite differently oriented towards the two types of justice activities, a fact that Sherman *et al.* (2005) do not consider.
- 15 My thanks to Robyn Holder, who suggested that justice 'interests' may be preferable to 'needs'.
- 16 Service needs for information can be distinguished from the role of information in victim participation in that the latter assumes a more active role for a victim to choose among several justice options.
- 17 Similar items have been proposed by transitional justice scholars (Backer 2012; Sonis, as summarised in van der Merwe 2009, p. 128). They consider not only victims' justice interests, but also societal reconstruction and transformation. Backer's 'justice index' has twelve elements: 'awareness/acknowledgment, voice, truth, admission/account-



ability, apology, liability/punishment, reparation, non-repetition, restoration, development, redistribution and transformation (socio-political)'. Sonis' 'justice scale' was developed to assess victims' views of the South African Truth and Reconciliation Commission; it has eight elements: 'voice, punishment, truth, accountability, acknowledgement, financial restitution, apology, and transformation'. Aertsen (2008, pp. 435–440) identifies these elements as important in responding to large-scale violent conflict: 'identity, dignity, truth, restoration, and justice'.

- 18 Of course, some argue that domestic criminal justice *should be* concerned with social and political transformation, with 'social justice' as the goal, but here I am comparing the standard aims and objectives of the two.

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