Kaleidoscopic Justice:
making sense of the lived complexities of justice for sexual violence survivors

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Justice is a quintessentially contested concept. Philosophers have been debating what justice means for centuries. From Plato and Aristotle, to the more modern day articulations by Rawls, Dworkin and many others. We have libraries full of books seeking to define, explain and propose what justice means and should mean.

We might all agree, therefore, that justice is a troubled and troubling concept; a concept which more often obscures debate, than helps to clarify.

Yet, at the same time, and quite paradoxically, it is also a notion and idea that permeates public discussion and debate in a manner in which it is assumed we all know what it means and agree on what it means.

This is true in many areas of policy and political debate; and it is particularly true when we talk about the phenomenon of sexual violence.

It is commonplace in political debates, in media discussions, to hear people talk about justice being done, or not being done in particular cases. Cries of ‘injustice’ greet the outcomes of some trials; demands for reform are accompanied by justice claims.

And this is not just in public and political debate. In our scholarly work, I am sure we have all made reference to justice; we have advocated a particular reform, a proposal, or re-interpretation of the law on the basis that it will be more just, it will bring justice for victim-survivors.

The paradox – to reiterate - is that it is so often assumed that we share a common understanding of what justice means. Let me paraphrase from the US Supreme Court in another context - we know it when we see it. This is despite us knowing deep down, that it is a highly contested concept.

In policy and political terms, this paradox of justice takes on a very particular meaning. The assumed understanding of justice that we see and hear in these public discussions is an understanding of justice tied to the conventional criminal justice system. It is a perception of justice as being synonymous with convictions through the criminal justice process and long prison sentences.

The cry of injustice greets the perceived leniency of a caution or restorative process for a sexual offence; the celebration of justice being done where a long prison sentence is handed down.

As we all know, and as we are here at this conference to discuss, our understandings of justice are broader than this conventional approach. And this conference is focused on one particular form and process of justice, namely restorative justice.
I want to contribute to our debates by taking a step back from the specifics of particular forms or mechanisms of justice and by asking what justice means for victim-survivors of sexual violence.

I am moved to ask this question because of what I see as these assumptions being commonly made in the political arena regarding what justice means, especially when combined with a dominant discourse of ‘victim-led’ justice and the political imperative to put the victim at the ‘heart’ of the justice system.

Therefore, while we so often hear, and repeat ourselves, the desire for justice, what does this actually mean? What does justice for victim-survivors actually look like? Do we know it when we see it?

And, if we want to put victims at the ‘heart’ of our justice system, or at least ensure they are better treated and supported, do we actually know what victim-survivors want?

**Lacuna in research on victim-survivors views**

In essence, we actually know very little about what victim survivors of sexual violence understand by justice.

This is, of course, why there are so many of us here today engaging in research projects which seek to better understand some of these issues. Why the excellent Daphe project is revealing valuable insights into the experiences of restorative justice.

But our understandings are in their infancy.

**Public reports and academic studies**

You may think that such a statement is surprising. This would be because in most jurisdictions, we can find numerous reports and academic studies over the years detailing the failings of the criminal justice system in this area and what needs to be improved to give better treatment to victims. And most such reports and studies have talked to victims in their deliberations.

But the victims’ voice is just one among many; among all the various bodies, authorities and groups that were consulted.

Further, in such reports and studies, often it is very specific questions that are asked – how was the treatment by the police and how can we improve on it? To which, understandably, the answers are very specifically about the police.

So, victims are engaged in public debate and academic research: we see victim’s stories in the press; they are consulted by various bodies investigating the failings of our justice system. These studies provide invaluable evidence which must be used to shape change. We need this nuanced, detailed research into all the specific elements and experiences of victims across the different elements of the justice system and of victim-survivors experiences.

But their input is often constrained – the parameters of debate have already been set; and there is not more systematic discussion of victim’s views and perspectives.
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But what about this overarching question of what victim-survivors think of as justice? When the context is not constrained, and the parameters not already set, what is the concept of justice which emerges?

Research on justice for victim-survivors

Two studies from the early 2000s help us begin to consider these issues. Judith Herman spoke to around twenty victims of domestic and sexual violence in the US about their ideas of justice; while Shirley Julich, in New Zealand, interviewed around the same number of adult survivors of childhood sexual abuse with a similar focus for discussion.

At the conceptual level, these two studies demonstrated that victim-survivors express their ideas of justice in terms beyond the conventional justice system. In particular, Shirley Julich found that while the expressed interests of survivors might be met by restorative justice processes, the survivors themselves were sceptical. Similarly, Judith Lewis Herman found that justice from the participants’ perspectives was neither ‘restorative nor retributive in the conventional sense’.

These findings underline for us that the vision of justice from victim-survivors was neither driven by, nor reflective of, either conventional criminal justice systems or emerging restorative practices.

This suggests a need for a new conceptualisation of what justice means for victim-survivors of sexual violence.

Rape Justice Project

It was in this context that my colleague Nicole Westmarland and I undertook our current study.

Over the past few months, we have held workshops and interviewed 20 women victim-survivors of sexual violence about their ideas of justice. The sample was drawn from the north east of England, with women aged from 16 and into their 60s from a wide range of educational backgrounds. The women had experienced many different forms of sexual violence. Just over half had reported at least one incident of sexual violence to the police. All participants were of white ethnic origin.

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Our participants provided a vision of justice which is considerably different from conventional assumptions.

We have called this idea of justice – kaleidoscopic justice. And I will try to explain what this means. But, first, in order to enable us to see the considerable differences between conventional and kaleidoscopic justice, I want to emphasise some of the features of conventional criminal justice systems.

Conventional justice

The term ‘conventional’ is used here synonymously with the state run criminal justice system. Justice in this system is generally understood and practiced as a linear system. There is a clear beginning – the ‘event’ or ‘incident’ which sparks off the search for justice.
This is followed by a clearly understood sequence of events and processes through the criminal justice system – police report, investigation, prosecution, trial, sentencing, punishment.

As well as a specific beginning, there is a finite end. This might be conviction and punishment – or it might be far earlier if a case is not pursued. There is a clear result - either justice or not. Justice here is dichotomous. It is one-directional.

This conventional, linear and incident based approach to justice represents the dominant understanding of justice in public and policy discourse around sexual violence. It frames reform debates and is culturally embedded as to what justice is and should be. It does not, of course, represent all justice processes, even within the conventional criminal justice system. There is a growing range of mechanisms and processes which seek to dilute the predominantly retributive orientation of the conventional criminal justice system, many of them based around principles of restorative justice.

Indeed, there are, rightly, moves to try to shift debate beyond an oppositional positioning of retributive (conventional) and restorative mechanisms, to a more nuanced and fluid discussion. Nonetheless, at this time, the more innovative or alternative approaches are often viewed as experiments, add-ons, exceptions and often subject to considerable challenge and denigration.

**Kaleidoscopic justice**

Perhaps not surprisingly, the conventional justice system was not synonymous with justice as conceptualised by the victim-survivors with whom we spoke. We have conceptualised their visions of justice as kaleidoscopic justice.

What does this mean?

The kaleidoscope is a children’s toy – invented in the 19th century – where we look down the barrel of a tube, twist and turn it, to produce a multitudinous variety of shapes, colours and perspectives; each viewing being unpredictable in outcome, each producing a different pattern. It was the poet Lord Byron who coined the term ‘kaleidoscopic’ - referring to a ‘constantly changing pattern’.

Let me be more specific. Kaleidoscopic justice means that:

- there is no clear beginning. There are multiple starting points.
- There is also no finite end. A conviction and long prison sentence does not bring closure; it does not complete any justice process.
- It is not linear, with one particular direction. There is not necessarily an end point to get to.
- This is justice as a continually shifting pattern; justice constantly refracted through new circumstances, experiences and understandings;
- justice as a lived, on-going and ever-evolving experience rather than an ending or result;
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- justice as experienced and lived differently for each victim-survivor and changing for each individual over time.

The elements of kaleidoscopic justice

We have identified seven main factors or elements which make up this multi-layered experience of justice: consequences, voice, recognition, support, prevention, dignity and social and cultural change.

Prevention as Justice

‘I think the only way you could get justice is for it not to happen really, that’s the only justice that I can see in a broad sense.’

So, from the perspective of our victim-survivors, preventing further acts of sexual violence was fundamental to their sense of justice.

Now, this can be part of the conventional criminal justice system. Deterrence and rehabilitation are rationales for punishment.

And, prevention is a key impetus for women to report to the police: One participant said: ‘if I do this then whoever did it to me will not have the opportunity to do this to anybody else’.

However, for victim-survivors, prevention extends far beyond the conventional criminal justice system and is a key part of securing a safer, more just society for all.

So, another participant said:

- ‘rather than punishing exactly... I’d rather no-one go through it’.

The point here is not just that victim-survivors want to prevent sexual violence. We all do – and no surprise that they should want to.

My point is that, for them, this was integral to feeling a sense of justice in the context of their own experiences. For them to feel justice, prevention is vital.

Justice is societal, as well as individual.

This is a message about priorities and resourcing – towards prevention, not punishment per se.

Social and Cultural Change as Justice

Linked to prevention, is seeing social and cultural change as axiomatic for a sense of justice.

Participants particularly talked about (re)education.

- Of criminal justice personnel
- Of perpetrators
- Of education in schools on sex, consent and relationships
- Of society in general, around attitudes and myths, to education friends, families and communities
One participant said:

- ‘I don’t think any type of punishment will be enough for somebody that’s gone through it because it can’t get that time back. It can’t heal the wounds you can’t see. So there has to be some kind of education, safety, something put in place because of the society we live in. Apart from education, what else can we do?’
- Participants also pointed to the high cost of imprisonment and many agreed that ‘putting money into education and those sorts of things … and rehabilitation’ is money ‘better spent quite honestly’ than imprisonment.

Again, the point is about:

- A sense of justice being beyond the resolution or outcome in a particular case.
- Social justice is critical to these women’s understandings of individual justice. The two are inter-linked.
- It is about priorities and what is most important.

### Dignity as Justice

We know procedural justice is very important for victims; and we heard of many examples of procedural injustice from the experiences of our victim-survivors.

But what I want to emphasise here today, is that victim-survivors of sexual violence want more than mere adherence to process and procedures: they want to be treated with dignity. Victim-survivors want to be met with empathy; being recognised as someone who has been harmed. It is about being informed, being heard and being taken seriously.

Thus, when victim-survivors describe the myriad failings of the criminal justice system, rectifying them is not just about better procedures for consultation or informing survivors, important though these are. It is about how survivors are treated. Feeling a sense of justice entails fair, respectful and dignified treatment.

One participant said:

"I think actually just like being sensitively treated throughout and they would never guarantee that."

In many ways, the sentiment was summed up by one woman who talked about being treated ‘like a bit of evidence’ rather than as a human being.

"making women who report not so much a witness as like having a say in the investigation in their case so that they’re not just basically evidence"

It is important to emphasise that this is more than just dignity of treatment within criminal justice system:

- Dignity with friends, family and communities

The indignities suffered by many were in contrast to the treatment received by many from women’s support services.

One participant commented:
"The greatest thing is that they [women's support service] allow you to have your choices, they allow you to make decisions they empower women and walk side by side, step by step. They have walked beside me every step of every way and if it wasn’t for [women's support service] I wouldn’t be sat here now having this conversation with you."

Inter-linked

We can begin to see the different elements of kaleidoscopic justice are closely related and inter-linked.

For example, if there was social and cultural change, victim-survivors are more likely to be treated with dignity.

**Consequences as Justice**

When asked about what justice meant to her, one participant responded with clear conviction: she said ‘consequences’.

Crucially, ‘consequences’ is not synonymous with conventional understandings of punishment. It does include punishment, but is not limited thereto.

For one victim-survivor, ‘justice is a guilty conviction’. For another, the death penalty was a viable option that should be brought back. When talking about rape, another said that the ‘only kind of justice is prison’. There was general agreement that few victims of sexual violence ever receive justice and that there should be changes to the conventional justice system such that more victims felt able to report and more convictions were secured.

Nonetheless, the clear limitations of the criminal justice system were evident.

One woman wondered that ‘even if you received justice kind of through [the criminal justice system], is it the kind of justice that you wanted?’

It was evident, therefore, that when considering what constitutes justice, consequences for perpetrators is vital. Victim-survivors [all] spoke of their wish for perpetrators to experience consequences for their actions, symbolically and emphatically to underline the significance and harm of their actions.

**What sort of consequences?**

**Exposure:**

- ‘I would have liked him to have been exposed for what he was and I would like the opportunity to know that he wasn’t able to perpetrate any more offences against anyone.’

**Admission of guilt:**

- ‘I would never ever say putting somebody like that into jail would make things right, like I say, it’s admitting ... them to admit’.

**Restorative justice process:**
The consequences sought by each victim-survivor varied; and varied over time. What is clear, however, is that convictions and prison sentences are not the only consequences which victims envisage or identify with securing some form of justice.

**Recognition as Justice**

’I think it’s that recognition of hurt that would mean or does mean justice to me personally.’ (Sophie)

Recognition entails an expectation or entitlement to consideration; it is a form of acknowledgement conveying support. Recognition is the perception of something as existing or true: they have been harmed and victimised. Any sense of justice for victim-survivors is predicated on recognition.

Recognition by:

- criminal justice system and personnel
- friends, families
- society at large

An important element of recognition is being believed – which is fundamental to the sense of justice of all our victim-survivors.

One woman explained that:

‘justice for me is having not only the perpetrator but also different sections of society as a whole understanding that I was really hurt and ... be able to see and appreciate that actually that must have been awful’.

Another explained that recognition from the perpetrator was important. She said:

‘for me it was more about him understanding the severity of what he’d done and acknowledging it’.

**Voice as Justice**

Recognition as Justice is closely related to justice as Voice.

Victim-survivors wish to name, to give voice to, the harms they have suffered and for this to be recognised.

Having a voice, and being heard, is both as a means of securing recognition of harm and of bringing about social and cultural change through a better understanding of sexual violence.

Voice is also about power and control; power to make and shape your future, to ensure decisions are taken with the victim-survivor’s input. It was clear from those who had engaged with the conventional criminal justice system that they often felt powerless,
compounding their already depleted feelings of power as a result of the sexual assaults they had experienced.

For one young survivor, it was also about the loss of power when her parents were making decisions on her behalf.

Another participant expressed this as follows:

"I think power is the most important thing in a situation like that, I think you've got to have power because you've had... there's been an incident where all power has been taken away from you so for it to then be taken away from you again and again and again it's not how... how I would have liked to deal with it anyway. I think having power is very important"

**Support as Justice**

The final area raised by participants is what we have – initially – called support.

This is similar to the argument of Susan Herman in *Parallel Justice* who refers to the goal of parallel justice being to ‘provide justice to victims by helping them to rebuild their lives’ (Herman 2010, 75).

Rebuilding lives can entail a wide range of support, from material needs (perhaps through compensation) for the purposes of housing, employment and health needs. It can refer to emotional support through counselling, as well as support from organisations or individuals when taking cases through the criminal justice system.

- As Alice explained, all aspects of justice are about ‘making the victim of sexual violence whole again’ and ‘enabling them to have a life again that is devoid of having that constantly playing out in their heads’.

All those who had accessed support were clear that this had been vital to them – both to managing any criminal justice process, as well as just surviving the aftermath of assaults.

So, again, we might ask ourselves: where is the link to justice?

The connection between the kinds of support women are valuing, and our common understandings of justice, is not as obvious as for some of the elements already described. Yet, the women were clear in their discussions, that support was vital to ensuring justice, as well as being part of feeling they have received justice.

We might, in this context, talk of state obligations towards victim-survivors. We might also think about how the lack of resources and support for victim-survivors reinforces their sense of a lack of recognition, a lack of dignity, of voice.

We might also think in this context of the fact that victim-survivors talked about justice as ‘being whole’; about ‘freedom’; about ‘fairness’. Receiving support is part of enabling such a sense of justice to emerge.
Conclusions

The concept of kaleidoscopic justice is our attempt to explain the understandings of justice shared with us by a group of women victim-survivors of sexual violence. It is a group of women who have very different life experiences, educational and workplace backgrounds, across all ages, and they have different experiences of sexual violence and of the conventional justice system.

They are also speaking as only women, as all of a white ethnic background, and are all living in a western liberal democracy.

Their experiences are therefore both varied and constrained.

In that context, what are the implications we can begin to draw from having undertaken this research?

Justice as personal and political

What clearly emerged from victim-survivors understandings of justice was that for them justice was personal as well as political. Victim-survivors did want to feel justice for themselves, in response to their own experiences. But they also wanted to be part of a society which was just and afforded justice for all victim-survivors of sexual violence.

Without that broader, societal understanding of justice, they felt little justice.

What are the Implications of this for us?

This tells us about priorities, about what is important. It tells us about where the focus should be for politics, activism, and resourcing.

It reminds us that we must not divorce questions of social justice from our examination of the criminal justice system.

Lived, on-going, ever-evolving experience

The second main message is that justice for victim-survivors of sexual violence is not dichotomous – either there is justice or there is not. Justice is a lived, ever-evolving experience. There is no clear starting point; or finite end.

And what constitutes justice varies over time. For each woman, different elements of kaleidoscopic justice will be more or less important at particular times, and this will change over time.

What are the implications of this?

Understanding justice as a lived, ever-evolving experience provides a real challenge for us all.

We want to find solutions to the phenomenon of sexual violence. We want to secure justice. We want to introduce reforms, then measure their success so they can be rolled out.

But it is never going to be so straightforward. There is no magic bullet; no holy grail.
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Only qualitative information - only understanding the nuances, the complexities, the experiences of survivors - will provide clues as to whether a feeling of justice is experienced.

It is difficult to translate this into easily implementable and justifiable policy and legal reforms.

Restorative justice

Let me turn to the theme of this conference – on the potential of restorative justice in cases of sexual violence.

Kaleidoscopic justice has many resonances with restorative justice; many common elements which victim-survivors value. Voice, Recognition, Consequences, Social and Cultural Change, Prevention, all are part of the ambition of restorative justice.

But kaleidoscopic justice is not synonymous with restorative justice. Restorative justice is one means by which we might afford some victims a sense of justice. It has potential. It also has its own limits – most obviously the reliance on offender engagement. It will only ever be one part of a broader search for justice.

Kaleidoscopic justice

To finish – and to emphasise – as a concept, kaleidoscopic justice seeks to illustrate the constantly evolving experience of justice for victim-survivors.

Kaleidoscopic justice emphasises the individual, as well as social dimension to justice. It draws attention to the diffuse, yet also shared understandings of justice among survivors.

Ultimately, kaleidoscopic justice has victim-survivors’ sense of justice at its core. And this should be at the core of our debates.