JUST INTERESTS:
Victims, citizens and the potential for justice

A thesis submitted for the degree of Doctor of Philosophy

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by

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DECLARATION

I hereby declare that this thesis is the result of my own work.

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Robyn Lea Holder

December 2013

DEDICATION

For my son, Liam, who is interested in justice for the natural world. *Bon courage!* You are my heart and my joy. To the rest of the gang – Dad, Mum, Jo, Christina, Philip, John, Ciara and Leila – thank you all so very much.

ABSTRACT

JUST INTERESTS: Victims, citizens and the potential for justice

As a social and legal value, justice is a highly contextual and contested construct. In this thesis the ideal of and ideas about justice are told mainly through the narratives of ordinary people victimised by violence who then engage with the criminal justice process. Mapped alongside is the discourse of elite legal officials that sketch the discursive underpinnings to an institutional ideology about justice. For both – ordinary people and official elite – this is 'justice in the real world'.

The stories of these two groupings are often posed in counterpoint. Rather than call for complete or partial redesign of state administered justice, I explore the ways in which peoples' thinking – from below – opens the space for justice that accommodates both public and private interests. In doing so, I refocus attention on the social and political status of the victim as a *citizen first.* Their institutional interactions create an engagement with justice that constitutes a practice of citizenship.

When mobilising law, the victim-citizen draws upon an architecture of beliefs and values that operate in a particular time and space. Diverse ideas and images about justice open lines of action and stimulate attention to different objects of value. I find these cohere on a trilogy of relational interests: victim, offender and community. This justice trilogy accommodates multiple goals which are themselves accompanied by varied criteria and explanation. Face-to-face interviews conducted on three occasions with victim-citizens in a longitudinal prospective panel as they interact with different justice entities reveals these goals as partially ordered. The sequencing of these justice goals – whatever the differing priorities –allows public and private interests to be arranged and accommodated in a communicative process.

However, after recording high levels of satisfaction with police intervention, the victim-citizen's satisfaction with prosecution and court tumbles, and does not recover even six months after the case is finalised at court. Unpacking what lies behind this assessment reveals a rich dimensionality to justice judgments. Here reasoning about outcome, interpersonal treatment, voice, and respect for the offender is layered,

nuanced and affirms the contingent nature of justice in different settings. Perhaps inevitably the resolutions experienced are partial and incomplete.

The longitudinal design of the thesis not only reveals people's thinking as responsive, contextual and dynamic but was indispensable in identifying the importance of interaction with public authorities. I show that victim-citizens want a voice that is influential, but they do not wish to dominate decision makers. They recognise justice as a unique public space in which they expect equal concern and respect accorded to the justice interests of their trilogy. I show victim-citizens were primarily interested in participatory opportunities that came after an authoritative finding. Justice emerges as a communal construct.

The structured opening provided through law is an opportunity for people to rise to the demands their citizenship entails. Both justice and democracy lie at this point of convergence where the capacity of directly affected citizens is engaged.

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ABBREVIATIONS

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AFP	Australian Federal Police
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
GBB	Good Behaviour Bond
VIS	Victim Impact Statement
VoCC	Victims of Crime Coordinator

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PREFACE

DAVID: Victim, citizen and his potential for justice

David[1] was one of the people interviewed for this study. His is a story difficult to classify. If the system does prefer 'ideal' victims then David is not one of them. He would not see himself as a victim. He said he was able to look after himself. He articulated a number of motivations in turning to the law following an incident of violence against him, and expressed preferences for what he wanted to see happen. To these he gave reasons and context.

Over the course of three interviews, David used his experiences with the justice entities he encountered to reflect on the idea of justice and how it applied to people like him. It is through David's own references to his membership of the community that, in this thesis, I radically re-position victims as citizens.

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I first met David after a neighbour had threatened him with a knife and after police had charged that person with an offence. David was living in small apartment in the city. Though it was a bright day, the curtains were drawn, the air was smoky and David was sleepy. Asked why he turned to the law after the incident, he said he wanted to make the person go away and this seemed the easiest way. But he also said he 'was raised not to "dog" and not go to the cops. But now I haven't offended for four years or more and am trying to work and was worried about my girlfriend.' When I asked about his idea of justice prior to the incident he said it was about 'police and the court system'. Perhaps these images were to the forefront of his mind in part because David also had a prior history of non-violent offending (fraud, drugs). He thought 'cops' understood crime but that magistrates were 'too soft'. He wanted his neighbour to 'do as much time as possible' for the offence against him. 'Punishment' was the principle he prioritised. On this occasion I was struck by his frankness about his past and about himself.

[1] All names used in this thesis for the lay participants are pseudonyms.

The second time I interviewed David, some 10 months later, he was staying temporarily with his mother. I couldn't ignore the fresh injuries to his face from another assault. Perhaps it was this alongside what he said on this occasion that made me more aware of how articulate he was. By that stage the earlier case had finished and I asked him about both the prosecution and the court. He had given evidence and the person had been acquitted. He said 'I'll never call the cops again. It was a waste of time and effort.'

He went on to say that: 'I wanted to change my life and I went to the police but it's left a bad taste. They did their best but there wasn't enough evidence. We all waited around, I gave evidence but they brought up my old mental health history and that I wasn't a competent witness.'

He said that, when he had been offending, 'they treated me well and kept me out of prison'. This time, he felt he had been discriminated against and treated 'unfairly'. He reckoned 'if it had been a little old lady threatened, it would have been different ... they would have put a more experienced lawyer on it'. The young prosecutor, David said, did not respond to the attacks on him. As an offender he said he had barristers defending him. This time, 'because I was an ex-offender, live in public housing and am a young man there was no effort in it'.

On the third occasion, at our final interview a further 6 months later (and some 16 months since the actual incident), David and his girlfriend had been allocated a new house in a new suburb. It was far away from his old life but he reiterated he wouldn't call for help again except 'if it was someone else then maybe'. Again he said, 'if it was an old lady they would have done something. Maybe they think because of my history. It's much harder as a victim. I guarantee you that. … I wouldn't call or help them. I've never really felt like a member of the community really. Living in refuges etcetera you feel like a piece of shit. You get looked at. I'd deal with it myself next time.'

Reflecting on being a participant in the process David said, 'I was always there. I did what I was required to do and testify and meet the prosecutor in advance. I wanted to change who I was and didn't want to hurt others … I see it's not like the movies or TV. It's based on money and circumstances.' Asked if he thought 'justice had been done',

David said, ‘if they try it’s sort of being done. They invest money and time but the way they treat the victim isn’t justified. You get torn to pieces on the stand. It’s ridiculous.’

His final comments were that, ‘Before I thought I had a choice to be a responsible citizen but now I see it’s also how they see you. Is it about the past or the circumstances of the past? I can understand it to want to help an old lady rather than me. Unless we design a computer program, we can never be objective or completely fair to everyone. There are definitely differences between rich and poor. It’s hypocritical.’

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A person such as David (or any of the thirty-three lay people interviewed) is generally not allowed the luxury of self-representation, and almost certainly not in the public space of criminal justice. As a victim-citizen his capacity for reflexive and contextualised thinking is untapped. There is no room provided for thinking such as David’s that unfolds; nor for thinking that connects with different objects of value or different principles important in his life. The capacity, capability and ‘embeddedness’ of a person such as David is rich in potential for justice.

In the rigid and scripted confines of criminal justice, socially and politically situated reflections such as David’s are routinely ignored. Whether he is an ‘ideal victim’ or a ‘good citizen’ or neither of these, David is simply a *thing* in the institutional space.

David is a critical thinker about his world where a focusing event – and process – has served to shift generalised opinion to something specific. Arguably both justice and democracy require just such critical thinkers. David is also explicit in drawing attention to his social and political status. These senses of himself exist prior, during and after his engagement with justice as a victim: ‘it’s how they see you’, he says. So this story is also then about a relationship with ‘they’ – power-holders who represent the state.

CHAPTER 1: INTRODUCING IDEAS OF JUSTICE

> 'It belongs in utopia', said Imogene. This was our third and last conversation. It had been over three years since the assault on her. My final question to her was 'after everything, what now is your idea of justice?' She said (in part), 'I'd have to say it's an ideal. It belongs in utopia. It shouldn't but it does. If it does exist it is more a lottery. It's not what I believe but it's what happens in practice.' (Imogene 2013)

> In a different place and time, during an interview with an ex-Director of Public Prosecutions, I asked a slightly different question – though I was trying to get at a similar concern. I asked, 'What was the conception of justice you carried in your working life as a prosecutor?' The reflection was (in part), 'the requirements of justice point in different ways which makes it difficult to define it in any comprehensive way.' (P3 2011)

This thesis sits in an extended conversation about the idea of justice. I was working full time as a statutory advocate for victims' rights[2] when I commenced the research. Conversations such as these introductory two were commonplace. Daily interactions with victims of all types of offences involved in justice processes revealed to me their reflective and contextualised responses. Innumerable discussions and debates about the role and rights of victims with domain professionals (judicial officers, prosecutors, police, victim advocates, probation and correctional officers, policy makers and law reformers) served to emphasise as many perspectives as there were operational areas to justice. Justice was clearly important to everyone but were we all talking about the same thing?

[2] Pursuant to s14 *Victims of Crime Act 1994* as the Victims of Crime Coordinator (VoCC) for the Australian Capital Territory (ACT). The position was an appointment of the Attorney General. As an independent statutory position the VoCC combined the promotion of victims' rights and investigation of breaches of rights. I was appointed in 1996 and served with successive appointments until 2011. I was instrumental in two major reforms to the legislation. Briefly, the first reform brought services for victims under the responsibility of the VoCC, and the second saw the position (and its powers) changed to that of a Victims of Crime Commissioner. The administration of justice involves diverse processes in police, prosecution, courts and tribunals, probation and corrections, and encompasses youth and adult jurisdictions as well as criminal and civil areas of law. The victims' legislation is located at http://www.legislation.act.gov.au/a/1994-83/default.asp

From this grounded place I emerged with an understanding that people victimised by violence who engage with the justice system thought and talked in complex ways about the idea of justice. Listening to their many voices suggested to me that justice was about a whole host of things, just as their identity was more than that of 'victim'. Much of this, however, was hidden from view by the way victims were excluded, ignored or diverted. This seemed to me to be a loss.

Victimisation and the mobilisation of the criminal law in response present a unique opportunity to cultivate 'the capacity of citizens to rise to the demands of justice in their own political lives' (Sarat and Kearns 1996: 17). An opportunity, moreover, that recognises justice is a virtue of citizenship.[3] Or, perhaps at a more concrete level, provides spaces for citizens to *produce justice*; that is, as an activity arising from their citizenship. Finding a way to describe and understand this capacity and the interests of victims as citizens in their multi-dimensional role emerged as central to my research.

1.1 DIFFERENT TALES, ONE STORY

Of course, as I heard in my working life and discovered anew in the course of this research, there are many tales in the story of justice. In one such are the astonishingly rare people who become victims of crime, who report the offence to police and who then see that case proceed through the criminal justice system. The vast majority vote with their feet and do not engage with authorities, especially if the offence against them involves physical or sexual violence. Part of this version, extensively told, is about the barriers, the casual humiliations and the structured alienation of people from access to justice. This is where the law fails in its promise. Another part, far less commonly told, is about those who enter this system.

This is a different narrative; one where people believe (albeit tentatively) that a wrong may – or perhaps should be recognised; where there is a sense that they, with their torn human dignity, will be treated with respect and concern, and where fairness is paramount. While they may be propelled by the circumstances of the victimisation, no

[3] Iris Young referencing Agnes Heller (*Beyond Justice,* Basil Blackwell, 1987) arguing for persons deliberating about problems and issues that confront them as opposed to justice as a particular distributive pattern (Young 1990: 33).

authority coerces them to report. At this point, where different interests and influences converge, conflate and conflict, decisions must be made.

Here then is a profound story where ordinary people reasonably think that the meaning both of *rights* and their status as *citizens* will be respected. Indeed, that these two aspects of their social and political identity will be foundational to the manner in which the system will operate. Embedded within the telling is a perspective that the system is designed to deliver justice for all its citizens, 'pure and simple' (Sarat and Kearns 1996: 2). Indeed, that the system is somehow a servant to them in that honourable purpose. This story is about how justice is valued in the wider social world.

Is this a fairytale? So bruising are people's actual encounters, so taxing the process and so disappointing are its outcomes that a very real question hangs over what could be described as the fanciful expectations of citizens. So the idea and ideal of *justice* is the central concept of this thesis. It is examined mainly through the eyes of ordinary people but also through the reflections of legal officials. Rather than a philosophical ideal, it seeks an idea of justice in the real world. For the people in this study – ordinary and official – justice mattered very much.

The stories of these two groupings are often posed in counterpoint. Nils Christie (1977) famously charges the state and its agents as thieves of the private disputes of citizens. This critique precipitated calls for complete or partial redesign of state administered justice. In this study I want to do something else – I want to open up a space for justice that accommodates both public and private interests.

1.2 THE CONTESTED PLACE OF VICTIMS IN JUSTICE

Human rights scholar Francesca Klug states 'victims are at the heart of human rights thinking'. She goes so far as to say that 'no other group of individuals has a more sacred place in human rights law' (2004: 111). This claim is increasingly realised in international criminal jurisdictions and post-conflict justice sites. Over the past twenty years or so, rapid and radical adjustments have been made to recognise, respect and represent victims in these settings (McGonigle Leyh 2011; De Brouwer 2009; Mani 2004). In consequence, the literature from these domains has opened new and rich lines of reflection about victims and justice. In contrast, in the domestic criminal

environment of liberal democracies such as Australia, legal and conceptual recognition of victims remains controversial and, perhaps in consequence, scholarly work feels locked down and stale.

In these settings the marginal status of victims reflects their institutional irrelevance in criminal justice (McBarnet 1983). This was not always the case. The centuries-old practice whereby victims had initiation and carriage of prosecution of justice in England and Wales did make the transport to the Australian colonies. But in the modernist epic, bureaucratic centralisation and professionalisation was as rapid in Australia as it was episodic and inexorable at the centre of Empire. In both countries people as victims became instruments for institutional ends. Rationalising this process involved weaving different historic threads into a blanket account of an abstract and universal 'public' owning the common good. Now, people victimised by crime have come to make a profound and trenchant critique of their exclusion and thereby to question how that public is constituted and considered. They claim the system could not function without them. It is this person, group or entity who suffers the intrusion, articulates the violation, decides whether and how to inform and cooperate with formal or informal authorities, provides primary evidentiary and forensic information, is interrogated as a witness and is offered in validation (or not) of the outcome. They are also a part of the public.

This person, however, is subjected to innumerable indignities – as is the individual accused – in a system that espouses principles of respect, rights and equal treatment. These indignities do not appear by happenstance but are made manifest as statements of institutional authority and value. Prior debate has centred on and probed this disregard. In particular, critical scholars have appraised as wanting the differential ways the law and its practice, and practitioners and institutions dealt with particular offences and associated characteristics of victims.

Looking back in history as well as looking sideways to inquisitorial and other legal systems, more recent argument has emerged seeking recognition of victims with inherent civil and human rights, and – controversially – as parties (Doak 2008). In late modernity this argument joins the general tide of discontent with the alienation of peoples from institutions of democracy and governance. Here the agitation is for

participatory practices and participatory institutions that re-centre the inherent power of citizens (Fung 2012; Young 2000; Barber 1984; Pateman 1970). Positioning victims within this space conceives them as members of the social mass – the public. This public (or 'publics') is at once singularly sovereign and plural. It asks awkward questions about accountability of authorities, in particular about the normative heritage of that authority. It turns a harsh light on the representational claims justice entities make.

1.3 VICTIMS AND IDEAS OF JUSTICE

Most tales of victims and justice narrow their interests away from this broader public and locate them at an end point. In this confined space, assessments about justice or injustice are on the *culmination* outcome, and the influences upon it (Sen 2009: 215). From this place justice is viewed as a singular standard.

Confining people's viewpoints and assessments in this manner leads to an impoverishment of the idea and institutions of justice. The messages that are conveyed discourage citizens from their intrinsic and highly situated complex conceptualisations. They discourage thinking that justice matters, that they matter, or that the infraction matters. These messages are personal, social and political. They communicate information about values, about who and what is important, and about where power lies and how it operates.

In this thesis I move firmly away from single representations to explore complex realisations of justice. My conversations took place 'beneath the constitutional surface' of the law (Dryzek 2002: 2). Unsurprisingly the approach opened space for articulating interpretations about justice that *layer* interpersonal, social and institutional influences. The reflections I bring to light from people who were victims of violence and who engaged with the criminal justice system are partial, ambiguous and yet at times both firm and contradictory. There is nothing single or simple to their contemplation on the idea of justice. Their thinking is refracted through a spectrum of ideas, principles, rules and criteria that act as heuristics. As victims of violence, people felt acutely the presence of power and the absence of justice. For them, the shift in the meaning of justice as a utopian ideal (Imogene's comment) to 'just a word' can be jolting (Stover 2011: 139).

Most Australians display a disengaged cynicism about the law and its institutions. For those who become victims of violence this quickly becomes insupportable when they enter the portals of the criminal justice system. They have to think about what they think. They have to think about what to do and why, on occasions where pure feeling dances with reasons. Over time and in interactions with different entities, thinking about justice *unfolds.* People are informed both by the practical and the objective context in which they find themselves, as well as by their own moral and social intuitions. They become everyday philosophers of their situation.[4]

1.4 THE IDEA OF JUSTICE IN THE REAL WORLD

Even as we are stimulated to look for justice, however, it emerges with an 'immense variety and complexity of meanings, applications and ideological associations' (Campbell 2001: 9). Vast libraries speak to earnest and erudite depictions of justice. Much of this is abstracted and located in positions removed from the actual injustice. In the rough and tumble of the real world a malleable, more human, construct appears, one that interacts with the idea of justice from a range of different positions. Despite Klug's claim about the centrality of victims, much of this theorising makes little room for injustice and its victims. Injustice can be messy, bloody and painful. So finding Sen's 2009 book, *The Idea of Justice,* came like the discovery of a cool pond in heated and treacherous terrain. His attention to how justice lives and moves in the real lives of ordinary people proved a refreshing draught.

Sen engages with justice in its social and political dimensions. In doing so, he explicitly incorporates 'the presence of remediable injustice' as 'connected with behavioural transgressions' as well as with 'institutional shortcomings' (p. x). He suggests that justice need not be about prioritising one good over another. He asks whether:

> the analysis of justice must be so confined to getting the basic institutions and general rules right? Should we not also have to examine what emerges in the society, including the kind of lives that people can actually lead, given the institutions and rules, but also other influences, including actual behaviour, that would inescapably affect human lives? (2009: 10)

[4] Antonio Gramsci, a radical political theorist and philosopher in early twentieth century Italy, argues all men [sic] are philosophers of the social and political concerns of their everyday lives.

What is inescapable in human lives, Sen argues, is a complex account of beliefs, motivations and interactions. His theorising is imbued with respect for these diverse lives in many settings – in any of which people may apply different criteria when claiming what is just or unjust. There is no point, he says, in attempting to find a transcendent principle and calling that *justice* as it will always leave something behind. Justice in the real world finds a plurality of grounds (or injustices) from which diverse reasoning flows (about justice criteria, what's right, and what emerges).

Different contexts and components of injustice and the resulting thinking about justice, will elicit attention to different objects of value, says Sen. In this thesis those objects emerge as victim, offender and the wider publics in which the former two are embedded. Judgments about justice 'take on board the task of accommodating different kinds of reasons and evaluative concerns' for the range of interests that flow from these different objects (p. 395). How this is done – the process of realisation – embraces emotion, reasoning, scrutiny and dialogue. Justice is not an allocation to a single reason. In the real world, Sen contends justice will inevitably see 'incomplete resolution' exist in a partial ranking of reasons. Plausible outcomes, as 'rankings of alternatives that can be realised' (p. 17), are distinguished from those which might be clearly rejected. Sen proposes that realisable justice makes room for non-congruence and partial resolutions. That is, going 'as far as we reasonably can' is justice in the real world (p. 401).

As a theoretical framework and an analytic argument, Sen creates bridges between accounts that confine justice in the law to its *rectificatory* purpose, those who present justice as a supreme obligation, those who propose that justice is about maximising particular goods for the maximum number, and those who see justice as a rights-based conception. He does this principally by presenting justice coming through dialogue.

The radical departure Sen makes from predominant ways of presenting justice is away from transcendence and towards particularity. He proposes an approach to justice that enriches 'reasoned engagement through enhancing informational availability and the feasibility of interactive discussions' (p. xiii). By this I take Sen to mean drawing information from different relevant sources and into deliberation on justice. Perfect justice is not what transpires from such an approach. Rather, we advance towards it.

1.5 JUSTICE INTERESTS AS POLITICAL INTERESTS

In the arcane and rather closed world of contemporary criminal justice this type of approach may be tolerated on the fringes in diversionary practices, restorative conferences and therapeutic courts, for example. Although criminal justice systems in liberal democracies lay claim to long histories of organic evolution, there is no acknowledgment that change is a continual process. Tomorrow is viewed as more of the same. The principles of inclusion and participation are ribs to an umbrella of justice covering both innovative and conservative practices.[5] By drawing on the democratic underpinning to Sen's idea of justice as a discursive exercise,[6] I aim to contribute a different and perhaps radical re-positioning of ordinary people in relation to state-centric and law-centric versions of justice. Fringe reform, I suggest, does not disturb what is controlling whom.

Institutional interests in justice argue that they represent a higher embodiment of the public in the form of the state. The various publics, it is said, are free to self-regulate with minimum interference. Limits are set in standards and rules for which there exists a normative social consensus. The state then, in the form of the criminal law, represents that consensus. Criminal law thus forms kind of law of the public. Should these norms and that law be transgressed, then the state will take what the victimised citizen proffers and says 'we will take action not for you but for all of you'. Furthermore, the state then says, 'we take the right and responsibility for punishment of those transgressions in order for you not to punish'. Doing these things becomes 'achieving justice' or 'delivering justice' for the public's common good. A universal conception of the common good, in turn, permits sacrifice of individuals or smaller interests.

Ironically, this depiction of a paternalistic and monolithic state lends itself to 'capacious interest' in its controlling and punitive nature (Crawford 2011: 17). This vision cleaves the idea of justice to both the state and its institutions, as well as to the centrality of punishment. The characterisation fuels different narratives. One says that

[5] Kathleen Daly and Brigitte Bouhours use the term 'innovative justice' to describe 'non-traditional' practices and procedures such as circle sentencing, restorative justice and special courts (Daly and Bouhours 2011).

[6] The emphasis on discursivity seeks to detach deliberation from liberal institutional structures. It does not, however, pose these democratic dynamics as in conflict (Dryzek 2002).

the state and its institutions of justice reflect, adhere to and uphold the values and norms of the public, while at the same time are neutral to and removed from the disputing publics; and the other narrative says that the state sustains social order and control through the harsh instrument of criminal law.

Into the gaps created by this state-centric and schismatic portrayal, the victimised citizen falls. Indeed, both victim and offender are extracted from the public, decontextualised and used in performance roles to an institutional script. The narratives characterise victims as moralising and interested in private goals and therefore illegitimate. So what are they to do? In the main they keep private pain private. They deal with it themselves. They do not approach the state. A small proportion may turn to the institutions of justice that claim to represent the public they came from and ask that the injustice they have experienced be acknowledged and addressed.

The larger frame to this story asks what is that relationship between citizens and the state at this site of criminal justice? When the citizens themselves are in dispute or conflict with each other, what does the state owe to each of them at the site of criminal justice? What constraints are placed on citizens and on the state that we can approve of, take to ourselves and impose on others? What is the convergence and divergence between ideas of justice envisaged by state entities and those of its citizens – those directly affected and those more indirectly concerned?

These questions are political as they 'raise and address issues of the moral value or human desirability of an institution or practice whose decisions affect a large number of people' (Young 1987: 73). They maintain an open question over the extent to which citizen interests, specifically for this thesis those citizens who are victims, coincide with the interests of the state through its justice entities. They ask for re-examination of the portrayal of public and private interests as rigidly and necessarily distinct. They take seriously the offer of law to citizens. This is a different kind of civic politics to the idea of justice.

1.6 JUSTICE AND DEMOCRACY

Within this characterisation of the debate, claiming the status of *citizen* for victims may seem obvious to some and deeply troubling to others. At one level it is recognition that people are more than what happened to them at a moment in time. At another it arises from noticing how simple and singular representations of victims act for the convenience of authority; how it blurs what is at stake.

The demand for inclusion and participation in the justice space challenges narrow representations, but it also requires a more rounded portrayal of all involved. Inclusion and participation argue instead for recognition of diversity alongside what is shared, and hence for recognition of context and contingency. They introduce seeing people not solely or only as a victim, or indeed as an offender. They acknowledge that victims do not speak with one voice, and that the individual and the many victims have different ways of seeing justice. The idea of 'public interest' must openly acknowledge many publics and a range of interests. Including diversity and difference in participatory practices is core to citizenship in a mature liberal democracy (Young 2000). Inclusion and participation both reflect and generate a thick belonging. More than an afterthought to institutional legitimacy, they are foundational.

In the course of this thesis I subject these ideas of normative justice, of the democratic citizen, and of participation and deliberation, to critical attention. For now I take a further step and signal my interest in the justice system(s) as institutional arenas 'in which competing demands can be listened to, argued about, and negotiated' (Loader 2006: 214). These are civic spaces for the public. The possibility of (re)connecting justice to these essentially democratic footings considers the courtroom (and other justice sites) as a place for the validation of belonging, a subjective experience of it, and a site of challenge in which social relations are made and re-made.

This call for inclusion and participation in justice is not uncontested nor without troubling fringes. In highly charged debate it is claimed that the crime victim has become the 'idealised political subject … whose circumstances and experiences have come to stand for the general good' (Simon 2007: 77). The critical attention paid to the role of crime and victimisation in the politics of law and order has ensured that the

victim identity and experience remains subject to divisive and heated controversy. Justice, it is said, is not only about the victim.

Jonathon Simon's work, *Governing Through Crime* (2007: 7), deals with the United States but has been influential in Australia and elsewhere. He expands arguments against victim inclusion by claiming that new forms of knowledge to bring victim 'truths' into the criminal justice process 'undermine the forms of solidarity and responsibility necessary for democratic institutions'. He infers that citizens who become victims of crime and engage with authorities constitute new and dangerous anti-democratic actors.

My professional and scholarly interest in exploring justice was agitated by this extraordinary claim and its attack on the legitimacy of *any* role for persons as victims. Just what, I thought, are citizens expected to be and do when victimised by violence and crime? Leave it to the professionals seemed to be Simon's answer. At first sounding soft behind my probing and unpacking of the meaning of justice to ordinary people, questions about what justice was in a democracy and what democracy had to say to justice emerged to drive my thesis. Following Iris Young, I hold that democratic practice, here through an inclusive norm, is not confined to representational events (Young 2000). I argue that deepening democratic practices within criminal justice deepens justice itself.

1.7 THE SCOPE OF THE STUDY

This study is an exploratory one. I develop two main pathways, which I suggest are converging. One contemplates the meaning of justice (mainly) through the eyes of men and women victimised by violence who engage with the justice process. The second considers how the idea of justice is arrived at. This is about the participatory ideal, its origins in democratic theory and what it says to justice as an institution.

The questions about both issues were put to the lay victim participants in a 'real world' setting. The research accompanied them on the journey they embarked upon as members of the public who were victims and – in a formal sense – witnesses for the Crown. I situate these reflections 'from below' alongside another 'top-down'

discourse. The narration of ex-Directors of Public Prosecution (DPP) serves to illustrate an ideology through which their institutional power is legitimated.

The research setting is criminal justice that is local, and part of the liberal democratic architecture of contemporary Australia. When members of the public in the Australian Capital Territory (ACT) call for police assistance following an incident of violence there is the usual taking of statements, gathering of evidence, locating a suspect(s), and consequent decision-making about whether all the information police have gathered amounts to an alleged criminal offence. If a charge results then a victim complainant should be told, given information about what is likely to happen and kept informed as per the *Victims of Crime Act 1994.* If they are a victim of a domestic assault or a sexual assault then – as a result of extensive and sustained local reform efforts – this process is almost uniform.[7] If it is a different type of assault then it is much more hit-and-miss.[8]

All criminal offences in the ACT are prosecuted by the statutory office of the DPP. This office will review the charges, and will (usually) liaise with both the investigating officers and with defence on the nature of the charges and the evidence. The DPP will come to its own decision about whether to prosecute and on what charges. If a charge is preferred then it is most likely to be heard and finalised in the lower court before a magistrate. The victims' legislation similarly places certain requirements to inform on aspects of the process as they affect witnesses, and the availability of opportunities such as the making of a Victim Impact Statement (VIS).[9] These requirements on prosecution and the courts are more uncertain in delivery. Nothing in the victims' legislation constitutes a legal duty on any institution or an actionable right for the victim. Having been responsible for this particular statute for fifteen years I probably know too much about the compromises justice agencies make in juggling all their functions. For sure I know that the rights-promoting and rights-protecting role of the statutory advocate for victims of crime has limited authority and few powers.[10] Since commencement in 2004, human rights legislation in the ACT has not been invoked by the Human Rights Commissioner in relation to victims of crime in any court

[7] The most recent evaluations of relevant programs are Cussen and Lyneham (2012) and Anderson, Richards and Willis (2013).
[8] For a critical overview conducted when I was the statutory advocate, see Holder, R. (2008).
[9] Part 4.3 *Crimes (Sentencing) Act 2005* at http://www.legislation.act.gov.au/a/2005-58/default.asp
[10] Holder (2008), *op.cit.* For information on aspects of the criminal justice process in the ACT see http://www.victimsupport.act.gov.au/information_guides and see fn.1 for the legislative link.

proceedings. Where submissions have touched on the interests of crime victims, comment has tended to be extremely cautious.[11]

From this environment, there were many questions that drove the original conception of my research and many more that arose in its course. My initial focus on how victims experienced procedural justice and how it was delivered became subsumed in a broader conceptualisation of justice. The people who were victims who spoke with me for my research commented on what motivated them to mobilise the law, what they sought, and what their feelings were about the person who had been violent towards them. I asked about their perceptions, expectations and experiences of the institutions of police, prosecution and court. I asked what outcomes they wanted from these institutions. Perhaps above all I asked for their reasons and their reasoning. I asked a lot of 'whys'.

Of the prosecuting elite, I invited them to reflect on their role within the longer history of an evolving criminal law system. I enquired into the underlying features of the concept of the public interest and where, if at all, private citizens stood within that system. I also asked what conception of justice they carried with them in their working lives, and how they understood the different demands that victims put on prosecuting authorities.

In this enquiry I use a number of key conceptions that arise from theories of justice: that is, normative and duty-oriented features, ideas of fairness and accountability, moral and practical reasoning, relational and contextual aspects, process as well as outcome, and of the public and private reach of justice. By these means I make apparent the ways in which the thinking of the lay victim participants was threaded with intellectual strands of ancient lineage as well as being concretely situated. Citizen engagement is a demanding exercise from an institutional perspective, but it is equally demanding of citizens if adequate and authentic space, time and encouragement are provided.

[11] For example, a submission from the Human Rights Commission (HRC 2008) in relation to proposed legislative changes aimed at improved protections for victim witnesses in violent and sexual offence proceedings expressed concern about the proposal to restrict direct cross-examination of the complainant witness by the accused in violent matters, and to require an accused to be legally represented. The HRC supported the proposals in relation to sexual offences. A public list of submissions from the ACT Human Rights Commission is located at http://www.hrc.act.gov.au/humanrights/content.php/category.view/id/215

In the end, the meanings given to the idea of justice by both victims and legal officials were far richer than the original procedural focus. Ironically, the courtroom created a space where the two groupings shared (if different) interests in justice – though this is unacknowledged and unrecognised. A sense of justice appeared as a dynamic construct of human ingenuity in heightened circumstances. It was also fractured and elliptical. These rich reflections provide a springboard from which, in the final chapter, I make strategic reflections on the relationship between citizens and the state in this unique public space.

My study is deeply influenced by feminist exhortations to make visible that which power renders invisible, and to scope multi-dimensional meaning where one (or even two) predominates. Feminist and other critical theorists in the grounded theory tradition encourage not only different ways of seeing, but also demand interrogation of dominant world-views. In the institutional setting, my analysis examines ways in which the 'force of law' reveals and deconstructs power relations (Bourdieu 1987). Developing Bourdieu's analysis, I drew upon critical theory to mine historical legacies and justifications. In this manner we see 'what the law does' as well as understand 'what the law is' (Silbey 2005: 324). I examine the discursive structure underpinning institutional boundary setting between an abstract 'public' and real private citizens in order to uncover a potential for interaction that is enabling *as well as* constraining.

I began and remain deeply cognisant of critical scholarly opinion that the law routinely and persistently fails to live up to its promise. But I do not subscribe to positions that would see it diminished or abolished. Undoubtedly the 'myth of rights' described by Scheingold (1974) seduces attention from the more 'ambivalent relationships to law and legal institutions' that studies reveal (Silbey 2005: 340). But I have seen what violence does and the power it wields. I know there is a place for guardians of individuals and of the public interest. The problem is how comprehensively and exclusive that place is conceived.

1.8 BACKGROUND TO THE STUDY DESIGN

A methodology of justice in the real world should give life to complexity. It should allow for contradiction and inconsistency. While it ought to look for the diverse influences on individual thinking and action, human dignity must be able to speak in its

own voice. Such a methodology should notice what is dominating and what is marginal in the portrayal of justice, as well as what structures these realities. Norman Denzin (2010: 421) has called this 'the space of politics and moral discourse'.

Both politics and moral discourse were strong presences during my professional career. For nearly fifteen years I worked in a complex and contested space where ordinary people encountered something they thought they would recognise and that would recognise them. In this space arguments about what was just/unjust, objective/subjective, and public/private were more than an academic binary. If I was to look at justice through the eyes of those to whom it mattered and in a place where it was supposed to live then I needed a design and methodology that could explore this complexity as well as to hold 'tensions and conflicts' (Nespor 2006: 123).

Several small workplace studies that I designed and conducted during my time as a statutory advocate showed some ways forward. They exposed the importance of context and timing in survey responses, as well as nuance and perspective. The studies revealed that victims of all types experienced similar as well as different issues.[12] None of this depth was well reflected in the academic or other literature on victims and justice.

One of the workplace studies derived from a group of thirty-nine victims of domestic violence interviewed at the finalisation of their matter at court.[13] About a quarter of those first interviewed displayed considerable ambivalence if not hostility to the justice process and its outcome. Twelve months later, fifteen of the earlier group (39%) were re-interviewed. At this second interview most people reported feeling very or fairly safe,[14] expressed satisfaction and a feeling that 'justice was done'. These results showed that to sample at one occasion locked people into a single and simple statement. A static reflection of opinion at a particular point in time becomes the research outcome. Surveying people twice, however, showed that attitude formation is a dynamic process, influenced by the context and timing of the questioning.

[12] Studies were conducted focusing on victims of residential burglary, domestic violence, sexual assault and on victims of crime as a general category.
[13] Discussed in Holder, R. and Mayo, N. (2003).
[14] Only one indicated a new incident of assault.

A second study[15] involved ninety-seven women and men answering a client evaluation survey from a community-based advocacy service – the Domestic Violence Crisis Service (DVCS). In one particular year, under half (41%) of the sample indicated that the prosecution of the violent incident was 'not beneficial' to them. Nine of those who expressed this view participated in a follow-up telephone interview exploring further their preferences for decision-control (or victim 'choice' in the literature – see Mills 1999), their justice objectives and their predictions for future engagement. These specific lines of enquiry revealed that people were conscious of the decision-making authority of justice agents. It also showed some considerable overlap of personal objectives with official 'public' objectives of justice. The sample said that they wanted to be listened to but declined decision-making control, and – if faced with similar circumstances in the future – would re-engage with the system even when they had expressed dissatisfaction.

The follow-up interviews in this second workplace study showed that it is not only important to ask people what they think but why they think it. The perspective that time and distance provided suggested that individuals could and did think in layered ways and from different 'positions' about the one issue. However, these were studies designed to describe, to probe and to sharpen attention. They were primarily for policy and reform audiences. They involved small and self-selected samples. It was not possible to determine whether they were representative of the populations from which they came. As the samples were offence specific it could also be said that the results could not be applied to victims in general.

Workplace studies such as these have their own unique objectives and characteristics but much of the academic literature examining victims of violence and their experience of criminal justice is constrained in other ways.[16] The victim of crime constituency is an extremely diverse population. Researchers and activists tend to

[15] Discussed in Holder, R. (2008).

[16] See, for example, discussion from a US perspective in Moriarty, L. and Jerin, R.A. (eds) (2007), *Current Issues in Victimology Research,* Carolina Academic Press, and from a UK perspective in Goodey, J. (2005), *Victims and Victimology: Research, Policy and Practice*, Pearson Education Ltd, Harlow, Essex. In Australia, while there are a number of small scale and scattered studies derived from non-academic research, there are no comparable volumes or compilations. The report *Victims' Needs, Victims' Rights: Policies and programs for victims of crime in Australia* prepared by Cook, B., David, F. and Grant, A. in 1999 comprised a desk-based review of practice and did not involve primary research.

respond to this diversity by focusing on offence-specific characteristics. The relevance of findings to victims of other types of offences is then open to contention. Commonly, research subjects self-select into studies, which produces well-known sampling biases. Typically, people are also sampled at one time and are asked to recall their experience and to reflect upon perceptions and judgments as a result of that experience. Retrospective recall is a flexible friend and issues of verification tend to be answered through examination of official records.

Finally, what is not measured in justice studies is as important as what is and in what context. Measures of emotional resolution, cooperation, safety, fairness and advocacy have been examined in 'real world' settings. In the main, however, the victim and justice research has tended to focus on victims' *satisfaction* with outcomes – what police did or didn't do, whether a prosecution proceeded, if a conviction was reached and the sentence. There is very little knowledge of peoples' journey and still less of the beliefs and expectations they held at the outset. The resulting representation of peoples' perspectives is at once static, flat and passive.

Seminal UK research conducted in the early 1980s by Shapland, Willmore and Duff achieved a more substantial depiction of victims and justice. The study involved a four-stage interview process with victims: in the first instance after the recording of the offence by police, then after committal proceedings, then case finalisation and finally after the result of any application for criminal injuries compensation. Of the 276 victims of violence interviewed at the first stage, final interviews were obtained from 78% (n=218) of the original sample (1985: 7–9).[17] The researchers stated that implementing a prospective study was 'difficult to carry out [*but*] invaluable in detecting changes in attitudes and in enabling a full picture to be obtained at each stage of the process' (p. 4). It was found that victims were 'dissatisfied with the operation of various parts of the system, but their reasons vary … according to the agency being considered' (p. 3).[18] The study focused on describing victim experiences and did not attempt to probe or test for causal relationships between different factors.

[17] For this thesis, the proportion of participants retained for a final third interview was 58%.

[18] This study pointed to the differences in expectations and priorities between victims and justice practitioners (Shapland, et al., 1985: Chapter 5), a finding that was later reinforced by Robinson and Stroshine (2005) in their examination of the relationship between 'expectation fulfilment' and satisfaction for victims.

It is one of the only prospective, longitudinal studies of its kind to focus on victims and the justice system as a whole and, to my knowledge, only one replication has been attempted.[19]

My experience combined with my frustration with the limits of existing literature led me to seek a research design that grounded people's lived experiences in the broader context of their beliefs, expectations and motivations. I felt strongly that the nuance which people struggled to bring to their understanding of what was happening to them and around them needed to be teased out in 'real time'. It needed to take account of their different agency interactions, to accommodate a dynamic and iterative process, and to enable contextualised reflection. I felt too that the dominance of the institutional perspective on justice needed a critical lens. A focus on individual victims, however rich and thick, would only enable a partial telling of this justice story. The social and institutional landscape also needed description. In short, I wanted a research design that would generate the complexity that I observed and experienced in the everyday.

1.9 THESIS STRUCTURE

The structure of this thesis presents a constructivist approach to the idea of justice. Chapters 1 to 3 develop this perspective through engagement with and elaboration of the theoretical literature.Chapter 2 opens with a brief critical examination of contemporary representations of victim interests in justice. I interrogate the nature of the 'public' in the civic realm, in the criminal law, and as an embodiment of difference. I particularly draw on Iris Young's critique of the private/public divide and the manner in which this serves a picture of justice as universal, rational and objective. I then explore the idea of justice through consideration of selected literature from political philosophy and the social sciences. Given the enormous breadth of the scholarly discourse, I develop a number of dimensions to the idea of justice that serve both to frame the discourse of victims and professionals, and as analytic codes. Specifically, these dimensions pose justice as normative guide, as duty, as accountability, as

[19] A doctoral study was conducted at the University of Southampton (UK). However, the researcher found it very difficult to access respondents (email communication with Professor Joanna Shapland, University of Sheffield (UK), 4th December 2009). Longitudinal studies focused on restorative justice in Australia have paid attention to the role of victims (Strang 2002; Daly 2002). However, the starting point of the studies has been at disposition and sentencing.

fairness, as relational, and as contextual. In order to accentuate the critical turn of later enquiry I broaden justice as an interpretive conception and as a heuristic in social and political consciousness.

I then move from the esoteric to the concrete in Chapter 3 to consider relations between the social world, and law and its institutions. I sketch ways in which law presents itself as both strange and familiar, accessible and remote. Then, in order to decentre it in the social world, I emphasise the influences at work that open or shut down awareness of law, whether as boundary setting or as an available resource. From an analysis of different theories of legal mobilisation I identify and highlight key concepts as 'top down' or 'bottom up'. The movement people make from their everyday world to connect with legal authority is shown not as a simple and direct instrumental choice, but as beset by complex decision making. I outline the research that shows recourse to law to be a minority exercise and disentangle myth from evidence in critically analysing the literature on victim motive. The pathways (interpersonal, social and institutional) that are available (and not available) to people following a disruptive event are presented as both real and imagined; and as created by them as well as for them. There is nothing automatic or certain about turning to the law following violence.

Stepping from these theoretical and review chapters, Chapter 4 describes the research design and the reasoning behind my choice of mixed methodology. I discuss the triangulation of data sources, data types and analytic method as means to engage with the multi-dimensional and multi-layered nature of justice in the real world. I define the characteristics of both the lay and the official participants in the research and also describe some of the scales developed from the data that are then used in later chapters. I emphasise the way different methods enable the lay participants in particular to author themselves and to place their thinking in wider context.

Chapters 5 to 9 comprise the research that is new to the field. In Chapter 5 I introduce perspectives on justice from a group of ex-Directors of Public Prosecution. I situate these perspectives in both the present day and as products of certain historic transitions that are selectively told. I unpick core prosecution concepts of independence, representing community and public interest. The construct of public

interest is presented not simply as boundary setting but as a gap in the rules in which discretion flourishes. It legitimates as well as silences. At the same time, this gap is revealed as rich in prospect for dialogue and interaction.

Chapter 6 moves to examine the grounded perspective of the individual men and women I interviewed who turned to the law following violence. I step away from narrow representations by re-framing people as voices from below, and situate them as citizens in a political arrangement to authorities. In making this transition to legal actor, I first sketch the contested construct of 'victim' and then provide an alternative rendering, drawn from cultural theory, of 'ordinary people'. To this I add further comment on people's citizen-status. I introduce the lay study participants and situate them alongside data drawn from larger national samples. I add flesh to bare statistics with people's outlook on the law and justice prior to their current engagement. These comments are sharpened by reflection on their objectives and reasoning in reporting to police. In so doing, the tensions and contradictions inherent in meaning-making are explored.

I then move in Chapter 7 to explore, through a substantive justice lens, what matters in the idea of justice. Using the concept of *justice goals* (Gromet and Darley 2009), I present an understanding of fairness that is both contextual (individual, social and institutional) and consequential (constructed over time and experience). In this manner I portray ideas of justice with multiple goals that face in different directions. I present the notion of a justice trilogy to encompass the concerns people show for the victim, the offender and the community.

In Chapter 8 I explore further how people's ideas about justice hold up against their lived experience within the criminal justice system. Here, a procedural and an outcome justice lens focus on what lies behind assessments of satisfaction. I ponder people's reflections about their interpersonal treatment and dimensions to it. In the different contexts of the justice process the idea of justice itself becomes slippery and unstable.

Chapter 9 narrows discussion to those lay study participants who contributed in all three interviews comprising the longitudinal study. I do this in order to explore how participation works and the extent to which individuals might want to influence decision making. I situate the discussion in a broader literature about citizen and user

participation in public and service spaces. I describe participation in the justice sphere as a unique citizenship practice. I further demonstrate that some participatory roles derive from state-centric priorities around the 'decision' and fail to delineate the nature of the interests that the state and victims may (or may not) share. I show that arriving at just decisions is derived, in large part, from a just process in which mutually constitutive public and private interests are articulated. Rather than insisting upon a rigid distinction between public and private, I show that these interests are co-determining. The space of criminal justice is revealed as enabling the sequencing of justice objectives. I conclude that it is a deliberative space which provides opportunities for citizens to rise to the demands of citizenship.

In the final chapter I develop, from the key findings of the research, an argument for participatory justice that draws upon deliberative democracy literature. I conclude with commentary on justice as foundational to the concept of citizenship. I argue that people's interaction with justice institutions, as a deliberative system, is constitutive of democratic governance. I contend that the exclusion of constituencies of directly affected interests represents a democracy deficit and one that trends against contemporary demands for involved publics and the integration of pluralism within justice. I argue that coherence about the inclusion and participation of victims as parties within justice is not only desirable for our shared collective interest, but necessary.

CHAPTER 2: APPROACHING JUSTICE

> To me justice … you say the word and you know almost what it means.
> (Edward 2011)

> When we come to say 'we just don't speak the same language' we mean something more general [than obvious variation]: that we have different immediate values or different kinds of valuation, or that we are aware, often intangibly, of different formations and distributions of energy and interest. (Williams, 1976: 9)

> The pursuit of a theory of justice has something to do with the kind of creatures we human beings are. (Sen, 2009: 414)

2.1 JUSTICE MATTERS

Justice matters. Why it matters will always be different. Justice encompasses both actual realisations in people's lives, and acts as an imaginary against which we might evaluate and compare. It is a social and legal value that is not bound to law but may be found there. It can be invoked as a claim and as a weapon, and can also act to settle disputes and to distribute from them. It is the stuff of moral and political philosophy. Despite the many ways in which justice is understood, the concept has been under-examined in literature on victims of violence. Like Edward (another of the people interviewed for this thesis), it is as if it is accepted that 'you know almost what it means'.

This chapter makes a path through the diversity of justice literature to identify meanings relevant to victims of violence. I commence in the real world by touching on two predominant notions that are ascribed to victims and that have particular resonance in wider scholarly work on justice. I suggest that these ideas are a partial rendering and fail to take account of broader conceptions of justice that circulate in and are relevant to everyday life. These more fluid accounts are drawn upon by people who are situated in various ways, including as victims and, I argue, are informed by philosophies of venerable lineage. They generate a richer depiction of justice in the social world.

This exercise is necessarily selective of a vast panorama of thinking. Reflections on justice have an unfortunate habit of slipping from one association to another. Justice is a norm, a philosophical ideal, a standard, an outcome and also an institution. Rather than fight this slipperiness, I come to emphasise the manner in which the *idea* of justice *works*; that is, as an interpretive tool,[20] a trope in discourse, and as an analytic and critical code. In this manner justice is conceived as a commonplace and *public* idea that is also vernacularised in interpersonal worlds. In these more intimate spaces, the terms what is *fair* and what is *right* are more commonly used. Justice is a word more generally reserved for public discourse. Therefore it works as a *connecting* idea; something that links private to public, and offers opacity to language that, paradoxically, communicates what is important.

I follow the work of critical political philosophers, such as Iris Marion Young and Amartya Sen, in interrogating dominant theorising which divides private from public, and which separates emotion and moral discourse from the notion of reason. Critical analysis is historically, socially and politically situated. While arguing from a normative or ideal basis, critical analysis is cautious of claims for the transcendent and universal. Critical theory, says Iris Young:

> does not derive such principles and ideals from philosophical premises about morality, human nature, or the good life. Instead the method of critical theory … reflects on existing social relations and processes to identify what we experience as valuable in them, but as present only intermittently, partially, or potentially. (Young 2000: 10)

The chapter works with the analytic and interpretive characteristics that the *idea* of justice offers to victims of violence, located in existing social relations and processes. I find these provide a unique capacity for the idea to work at particular and general levels, and with social and political implications. The features of the word, I will show in later chapters, enable ordinary people to raise possibilities, to ask questions, to communicate, and to think broadly in the context of criminal justice. More specifically it facilitates participation in a unique public space. Finally, in highlighting dimensions to

[20] Gibbs (2009) discusses the law as 'an interpretive social practice'. He grounds this idea in the 'practical understanding of legal agents'. While his emphasis is on the *practical*, both of us are nonetheless interested in the way *agents* act to bring meaning.

the idea of justice that facilitate critical analysis, I consider the distinction between justice *interests* and *needs*. The difference applies a more political hue to the relationship between people as victims and criminal justice entities representing the state.

Of course I am acutely aware of the classical concept of justice as duty, and the dominance of this idea in much moral and political philosophy. I distinguish between this concept, and *conceptions* of justice. The former is the broadly agreed 'general structure' of the term and the latter is a 'particular specification of that "concept", obtained by filling out some of the detail' (Swift 2006: 11). Interpretive rendering of the idea of justice – explored in this thesis through the reflections of people who are victims of violence – are conceptions. It is in their real world settings that a more intangible, fluid and ambivalent conception of justice comes alive.

2.2 VICTIMS AND JUSTICE CLAIMS

I cannot explore these different ways of seeing the idea of justice without first taking note of some contemporary claims that are made about victims and justice. The debate is riven by a number of schismatic separations – between private and public interests in justice, between victim and offender, between outcomes that are retributive or restorative, between legal and communal justice, and between elite technocratic visions of justice and those that are more ambiguous and contingent. These orientations are thin and unnecessarily polarised.

Discussions touch on deeper debate about the nature of human behaviour, especially in communal settings, and whether justice can be pinned to a universal and single standard. That people seek justice has been conceived as a product of social learning (Bandura 1977), of moral development (Piaget 1929/2007), of cognition (Levine et al. 1993), and as a personal contract within the wider social contract (Lerner 1977). Early debate pitched the duty ethic of justice (Kohlberg 1976) against relational conceptions (Gilligan 1982). These, in turn, connected to philosophical argument about justice being what was *right* and that which was *good* in consequence (Sen 2009; Rawls 1971).

What is said to be important to victims draws in a rather confused manner from these (and other) very wide fields of enquiry. A couple of assertions in particular are

frequently used against them. In the first instance, people who are victims are said to be focused on winning their own ends – the substantive outcome. A second contention is that people who are victims are unwilling or unable to see beyond their own position. Through these arguments it is suggested that victim interests are inimical to justice.

2.2.1 Victims and outcome justice

On the first claim it is said that, for victims, getting justice is getting what they want (Matravers 2010). The idea – discussed further in Chapter 3 – suggests that it is a rational calculation to maximise the utilities law brings. Moreover, the maximisation sought is characterised as vengeance or, at least, retributive punishment (Garland 2001; Sarat 1997; Miller and Vidmar 1981). The privileging of substantive justice rests, to some extent, on studies that connect victim satisfaction with criminal justice, with outcomes such as arrest, prosecution and conviction (Erez 2004; Whitehead 2001).

What people 'get' from their encounters with others and with authorities, is said to deeply influence their assessments of fairness. The idea suggests that justice is a matter of exchange in which cost-benefit assessments of fairness are embedded. Yet, there is no single standard upon which assessments of fair exchange rest. Distributive justice studies argue equity, equality, merit, need and desert as criteria to assess fairness in distributions of a 'good' (Deutsch 1985; Hatfield et al. 1978).[21] Central to these lines of thinking are the *consequential* implications of the distribution. Moreover, it is argued that people who pursue self-interested advantage will prefer an adversarial process that achieves this (Thibaut and Walker 1975).

However, other studies examining the relationship between assessments of justice and process and procedure, say that it is being treated well that is important to people (Lind and Tyler 1988).[22] Procedural justice argues that the perception of their in-group value generates compliance with authorities. It is argued that, if legitimacy is the goal, then institutions must make (and be seen to make) an effort to discharge respect and courtesy in fair decision-making procedures (Tyler 2001). In combination, the attention

[21] 'Just desert' is a common conception of justice. There are two key distinctions in the idea. One is that it refers to 'legitimate entitlement' and the other refers to some type of 'compensation or equalization' (Swift 2006: 44–45).

[22] The group value theory has not been examined with regard to victims of crime. However, the theory is generally relevant to interactions between citizens and authority (Lind and Tyler 1988).

to fair process is said to address both the compliance of the governed and the legitimacy of the entity (Tyler 1990/2006). The latter point says that, regardless of actual outcome, if the process is fair then institutions have done their job. In this manner procedural justice has ameliorative effects for victims in justice processes.

2.2.2 Victim self-interest and justice

People who are victims are also said to be motivated by self-interest in engaging the law and consequently to perceive justice in terms of achieving their desired ends (discussed above). Not only does the observation frown on apparent selfishness and an inability to see beyond their own position (Simon 2007), it is claimed to be outside the frame of justice itself. More specifically, it is said justice is what we owe others, or what is owed others (Swift 2006; Scanlon 1998). It is not that connected to a self-regarding imperative – preferences that are personally beneficial. When acting from self-interest, human beings are motivated by advantage and any social or collective benefits are incidental.[23]

However, individualised accounts simplify, narrow, flatten, and de-contextualise human motivation and behaviour, while holding it static. They also tend to extract individuals from their interpersonal and social connections and to abstract them from their class, cultural, gendered and racial identities. In effect, the claim serves to undermine the social legitimacy of persons as victims seeking a role within the public sphere of justice. The representation of the unencumbered individual has been criticised by communitarian and feminist philosophers (Young 1990; Sandel 1984), as well as social psychologists (Lerner 2003; Montada 1998). Their more multi-dimensional conceptions of humanity conceive of individuals as reflective and adaptive rather than calculative and passive.

Victim self-interest is further categorised as 'private'. This has, of course, been recognised as a historically and politically situated notion and one that, for centuries, excluded from public justice most violations of women and children that took place in the domestic sphere. More generally the rejection of the 'private' is understood to deny affective and relational concerns (Gilligan 1982). Iris Young further critiques

[23] What we owe to others is conceived as a *duty* and, therefore, cannot be incidental (Swift 2006: 11–12). We must necessarily share willingness 'to modify our private demands in order to find a basis of justification that others also have reason to accept (Scanlon 1998: 5).

positioning the private realm in opposition to an 'ideal of the civic public'. The ideal, she says, rests on an 'assumption of normative reason as impartial and universal' that 'exhibits a will to unity' that is, ultimately, exclusive of difference (Young 1987: 59). The abstract image of a universalist public, I show in Chapter 4, is a critical component of the rationale for public prosecution as a state instrumentality.

2.3 VICTIMS AND PUBLIC JUSTICE

Core to criticism of the assumed outcome focus and self-interest of victims is that justice is a *public* ideal. Thus it does not belong to any single constituency and is composed of the interests of many. Here I discuss some key dimensions to the public character of justice: the nature and scope of the public realm, what is 'public' about the criminal law, and the nature of people's relationship to criminal law and justice.

2.3.1 Conceptions of the nature and scope of the public realm

One conception of the civic rests in 'the public realm of sovereignty and the state'. This comprises a representation of a universal and homogenous public in and through which 'citizens express their rationality and universality, abstracted from their particular situations and needs and opposed to feeling' (Young 1987: 63 and 73). What remains untouched is the primacy of institutional dominance and institutional arrangements. It is the citizen who is problematised against a state that is purportedly neutral.[24] The state itself is conceived in two principal ways: firstly, it is minimally facilitative of citizens pursuing their own ends, with no obvious other normative obligation; or secondly, it is deeply implicated in structures and relations of power in which 'the common good' acts to blanket difference, contestation and privilege.[25]

Another conception of the civic emphasises openness and accessibility. This sense of the public incorporates variability arising from a 'particularist and affective experience of moral life'. This is not just an idea of the public as multiple and messy. It is one where public is constitutive of private and vice versa. The representation is of embodied persons with history, and with diverse identities and community

[24] This has also been discussed as the triumph of a 'managerialist' approach to criminal law as opposed to one that centres a 'moralistic' conception (Lacey and Wells 2007: 6).

[25] Mulhall and Swift (1996) provide an overview of debates about the state in *Liberals and Communitarians*. Iris Young addresses the different conceptions through an extended discussion on the politics of inclusion in *Inclusion and Democracy* (2000). See also Sandel, M. (1984).

memberships who comprise the public. People's occupation of the individual and group identity of 'victim', therefore, is at best temporary and transitional. They still carry with them prior identifications and statuses. Furthermore, in an open and accessible public realm, 'no persons, actions or attributes of persons should be excluded from public discussion and decision-making' (Young 1987: 58 and 59). This particular claim firmly embeds the democratic ideal of inclusion within an open and accessible public.

This latter conception of a deep civic public incorporates a discursive dimension (Young 2000; Dryzek 1990). It envisages dialogue, reasoning and scrutiny of matters of shared and particular importance.[26] While in discursive engagements 'reason and emotion play complementary roles in human reflection', there is good reason to be wary of 'reason' itself. The notion of *reasoning* is more useful in allowing space for the expression of reasons, motivations, preferences and connections that may derive from the private but are given voice in public.[27] Discussion on the nature and causes of injustice draws upon different experiences, observations and ideologies. Therefore the subjective is necessarily and rightly present. The discussion on justice that then arises takes account of these 'plural groundings' and 'plural reasons' (Sen 2009: 2–3). A consensus is not required.

As theorists with their feet firmly in real worlds, neither Iris Young nor Amartya Sen presume that the spaces that are public are singular (an open air domain for example) or are confined to certain moments (an election for example). Their publics are many, as are the spaces they inhabit and visit. Because of this, they recognise that ideas about 'universal' standards and the 'unity' of the public can act to smother heterogeneity, dissonance and the incomplete resolutions that mark contemporary societies. The abstracted 'public' to which criminal justice frequently refers similarly ignores this diversity.

2.3.2 The public justice of criminal law

It is one of the ironies of criminal justice that it claims to 'own' harms and wrongs on behalf of the public while – at least in dominant discourse – setting aside particular

[26] Young also brings in scope for others to 'witness', and opportunity to respond and discuss (1987: 73).
[27] Sen's depiction of 'public reasoning' has been criticised for its potential to 'disadvantage those for whom this is an unfamiliar or uncomfortable form of communication' (Dryzek 2013: 5).

features of individuals, diverse communities and, in part, diverse offences. It does so in the interests of consistency and treating like with like. Part of the reasoning for the state's ownership of the wrongs of crime is that there are 'public dimensions' to the harm that arises, and because of its role as a guarantor of overall security (Matravers 2010: 7). Thus criminal law is a distinctive kind of public law that is intimately tied to the sovereignty, core functions and legitimacy of the state.

There are a number of dimensions to criminal law's public nature, but what is noticeable for this thesis is that it does not deal with the scope of this argument. Unacknowledged is the state's extensive exercise of discretion in prosecuting wrongs; and unacknowledged is the absence of security that actually exists. More particularly it still says that, apart from prosecuting, the state arguably has no (human rights) obligation to those members of the public who are victims of wrongs (Cape 2004: 14).[28] That is, individual persons may be used for some version of the common good that the state decides upon. When used as an instrument for other ends, there is no respecting individual dignity.

Alternative abolitionist arguments that claim conflict as the private property of citizens do not allow any room for the state (Christie 1977). While the state's interest in security is acknowledged, the abolitionist approach does not envisage the multiple publics also having a vested interest in protection. An interest, moreover, that is not evenly distributed because, individually and collectively, people are situated differently in spaces that are laced with oppressive and discriminatory features. Different types of offending, in these contexts, are not neutral engagements around property. Similarly, as the segmentation and differentiation of social groups and neighbourhoods are lamented by abolitionists, cohesion and commonality are assumed to be the desired goal.

A different case for recognising a role for the state is that civil society is not uniform and does not have unified goods. In mediating these differences therefore, 'those who wish to undermine injustice cannot turn their backs on state institutions as tools for that end' (Young 2000: 8). Thus there remains a regulatory role for the state in

[28] For a contrary and thorough discussion of the human rights that are owed victims, see Doak (2008).

responding to the disadvantage that victimisation (of various types) brings. This role encompasses decision-making and enforcement.

Beyond focus on the state, a different account of the public nature of criminal law and justice has it grounded in and intelligible within human practices and the social world. The 'normative moral language on which the law draws' follows 'thick ethical concepts' that are shared – even when the specifics are vehemently contested (Duff 2001: 191). The wrong of crime as a public one is twofold: first that it goes against a law that we accept, and can impose on ourselves and others by 'virtue of [our] shared membership of the political community' (Duff 2009: 254); and second that these 'are wrongs in which the community shares' (Duff 2001: 63). This theoretical basis for criminal law is wider than the older proposition of justice in this realm as *rectificatory*; that it is only concerned with the justification of punishment. It is instead a far broader exposition of a normative[29] system that seeks to take account of the basis of laws, the different spaces in which they are applied, and their relationship to the polity. These points, Antony Duff suggests, create different meaning to the notion of criminal law as a 'common law'.

The bringing in of the *political community* to the realm of justice is of course not new.[30] For my purpose, however, there are two key things to notice. The first is that Duff directs attention to the moral authority of criminal law as vesting in its constitutive relationship with the values of the collective. The second is to highlight the status of people's pre-existing relationship as citizens to the state and hence to state authorities. Neither of these claims obviates contestation around those values, nor presumes a stable and solitary relationship between citizen and state.

[29] By normative in this context I mean relating to standards or rules or norms of what 'ought to be'. A norm has a moral basis. A normative institution derives its authority and rationale from those norms.

[30] The term *communitarian justice* has been given to the ideas of a number of different theorists who (in part) want to refocus on 'our moral and social attitudes and commitments' (Alasdair MacIntyre (1984), *After Virtue*, 2nd edition, Duckworth, London, p. 259). See also, Iris Young (1990), Michael Sandel (1982) and Michael Walzer (1983). Antony Duff puts a different argument for an interlinked liberal-communitarian account of the relationship between the state and persons (2001: Chapter 2).

2.3.3 Victim as citizen and member of the civic public

It is this 'citizen first' perspective that directs attention from the exercise of human practices to their meaning in a social and political context.[31] Ascribing citizen status to the victim gives pause on the significance of the term as it relates to citizenry as the ultimate source of authority and accountability. It then asks what being a citizen *does*. Firstly, it invites consideration of claim-making as a citizenship activity. Citizens – responsible, irresponsible or more commonly both – are said to make claims upon authority, indeed, do so on the basis of their status, while at the same time having a collective responsibility to the ways in which that authority works and works for all members (Isin 2009; Isin and Turner 2002).[32]

Secondly, it creates a means of unifying people in their various relationships to a state which has different faces. From this vantage the criminal law is opened out as a site of challenge where, as a member of a political community, the victim-citizen acts to bring the criminal law to life. Similarly the person alleged to have committed a wrongdoing, as another citizen member of the political community, also acts to bring the law to life. Their shared political interest is in specification.[33]

Thirdly, it is in this manner that citizens are '*connected through* the practices and values of that community to their fellow citizens … in a distinctive enterprise of *living together* [my emphasis]' (Duff 2010: 5). For my purpose Duff's interpretation helpfully merges two contesting notions of the citizen – that it is bounded (in some manner) and rights possessing, and that it rests in the 'extent and quality … of one's participation' in a community (Kymlicka and Norman 1994: 353). Citizens are said to enact their status at micro and macro levels – formal and informal, social and political – in equal and mutually respectful ways in the civic enterprise (Duff 2010: 5). Their *citizenship* (as activity and practice) connects explicitly with those schools of democratic theory that

[31] The 'citizen' has put in an appearance in crime control literature and is usually problematised as an instrument of government policy. See for example, Gilling, D. (2010), 'Crime Control and Due Process in Confidence-Building Strategies', *British Journal of Criminology*, vol.50, no.6, pp.1136–1154. However, this is a top-down perspective that does not consider citizens as plural or as agents in situated localities, or as having relationships of cooperation as well as challenge with the state.

[32] See Mansbridge et al. (2010: 77): 'provided these fall within the range permitted by the broad constraints of human rights and morality and the deliberative constraints that run from mutual respect to mutual justification'.

[33] Here Antony Duff speaks of the shared interest in persons being brought to account before their fellow citizens for their law (2010; 2009).

emphasise the involvement and participation of citizens (Young 2000; Barber 1984; Pateman 1970). These points leave open (to be explored in later chapters) the nature and specifics of the unique citizenship activity that the victim-citizen enacts.

2.4 MAPPING ANOTHER PATH TO JUSTICE

The previous sections revisited some of the claims and debates made in relation to victim interests in justice. I sought to reformulate an inclusive public where affected persons with a direct interest in a matter ought to be involved as a foundational point of democratic theory. I also re-framed and situated the victim as a citizen in association with other citizens and alongside the state. In the next sections of this chapter I take up these invitations to place justice within human practices. To do so requires mapping another path through justice theory. Debates on justice as outcome or process connect only lightly to ancient dialogue about justice as a stern and virtuous end (what's *right*), and justice being that which comes in consequence (what's *good*). There is another story of justice as deeply constitutive of human engagements with one another in contexts where fairness matters.

The dichotomy that is often posed between right and good has deep epistemological roots. The dialogue has, through the ages, been imbued with the colours of the world around it (Williams 1990). Since the ancient Greeks, scholars have discussed whether justice is *the* virtue or *one of* the virtues, and have presented nuanced conceptions of the nature of the outcome justice serves. Justice has been posed as universal or particular; and presented as either humane and benevolent, or chilly and remote. Still others have focused on justice as an evaluative framework for the arrangement of institutions and about procedures for the allocation of resources or decisions. There is extensive argument that justice is grounded in moral value; or that it is bound by pure reason excluding all other considerations. Some claim that justice is about the rules or, if not that, then it is about the rights. Philosophical approaches to justice also reveal divergence and contestation.

The different approaches in part reflect the different domains in which the idea of justice is important. Context and standpoint clearly matter. Thus, while the *language* of justice is very different if one is reading philosophy or economics or psychology or law, it reverberates through everyday realities (Ross and Miller 2002). Here the

expression of justice is about what is *fair* or what is *right* or what is for the *good*. Since it is towards these everyday and ordinary interpretations that I look in this thesis, I intend to map a path through this literature in three steps.

Firstly, I lay out some conceptions of justice. I intend to draw out core components or dimensions to the idea of justice that resonate in the everyday world. Secondly, I discuss justice as interpretation. I suggest that, when linked to injustice, the idea of justice works as a heuristic in rights and legal consciousness. Finally, I summarise where this different map of justice might take us.

2.5 CONCEPTIONS OF JUSTICE

In mapping some (and by no means all) conceptions of justice I aim to draw upon insights from the social sciences, as well as from moral and political philosophy. I do not mean to elevate these conceptions to empirical truths. Rather, these are a *fleshing out* of the concept of justice *for* people who are victims. I could also ascribe these conceptions to particular domains. It may seem logical, for example, to locate 'justice as duty' to institutional settings; or 'relational justice' purely to civil society. However, I resist the temptation. That type of schematic is unhelpful to my task of mapping complexity.

The key conceptions I highlight are:

- justice as normative guide
- justice as duty
- justice as accountability
- justice as fairness
- justice as relational
- justice as contextual.

2.5.1 Justice as normative guide

A normative conception of justice says what *ought to be*. Setting out what ought to be or ought to be done can also be understood as a norm, some of which have a moral basis while others do not. A normative conception is also is a way of describing the rules, standards or norms that comprise a particular specification.

However, this leaves open how justice norms operate and are constituted. The normative question, according to moral philosopher Christine Korsgaard, is the way in which certain standards 'make claims on us. [Claims that can] command, oblige, recommend or guide' (1996: 8). Whether claimed in desires, beliefs or judgments, normativity can be posed as ethics that operate to prioritise and organise our commitments and actions in personal, social and political realms. The idea of justice as a normative guide is that it makes a claim on how and why we might act (or not). Indirectly, guiding norms can act as a kind of algorithm for framing if not determining action.

For people victimised by violence, a normative conception of justice provides a way of thinking through 'what's the right thing to do'. While this has a simple surface, the conception does hide 'a more complicated picture' (Sandel 2009: 9). It does not, for instance, say what justice itself *ought* to be comprised of.

2.5.2 Justice as duty

This is left to the conception of justice as duty. This is perhaps the most ancient of conceptions and is closely connected to justice as a normative guide or system.[34] Justice in this realm is imperative and demanding. It is about constraint. Justice as duty aims to be rational, objective, impartial and neutral as to consequence. It prioritises what is *right* over what might be *good* and is even said to be a 'natural duty' (Rawls 1971: 115). Justice is giving people what is their due, and not giving what is not their due.

Justice as duty and right speaks strongly to legal systems. It offers some explanation for why legal systems assert an obligation to obey. Institutional arrangements and rules emphasise this obligation by maintaining transparency, consistency, predictability and the absence of bias. Justice here prides itself on its rigour in the face of scrutiny. An institution will claim it is just through the existence of such rules. It will draw much of its legitimacy as well as its authority from them.

This stern justice can reflect 'unattractive or even incoherent assumptions about human interests and human community' (Kymlicka 1988: 173). This type of justice

[34] The connection of justice to duty has been traced to ancient Rome (Wacks 2009: 59).

requires thin information for what is rich decision-making (Braithwaite and Pettit 1990: 28). Obviously the conception of justice as duty has implications for how people act towards each other. It also has implications for the ways in which institutions act towards persons.

2.5.3 Justice as accountability

Justice as duty is closely related to justice as accountability. The Aristotelian idea of 'rectificatory' justice addresses harms or wrong. Many streams then flow from action that brings a wrongdoer to account. Justice may generate effects that are retributive, punishing, restorative, rehabilitative, and that denounce and deter. These can be described as some of the aims of justice. Bringing wrongdoers to account (or ending impunity) is a common call to justice in many settings.

Deeply embedded within the idea of justice rectifying harm or wrong lies consideration of the responsibility of people for their conduct, and hence their deservingness. It has an enduring, even commonsense, place within conceptions of justice (Sadurski 1985). Desert further connects to principles of merit, equity, equality, need or entitlement. Assuming the conduct does involve choice or intent, responsibility and accountability then informs the nature and content of what follows and could be just.

The idea of responsibility and accountability is foundational to the theory of belief in a just world (Lerner 1977). This influential hypothesis says that an individual's expectation of justice constitutes an internalised personal contract derivative of its environment and of the wider social contract. It is said that we believe just outcomes will eventually follow from our psychological, material and physical investments, and therefore we are able to accommodate short-term injustices.[35] The proposition suggests that self-constraint is a component in a just world.

2.5.4. Justice as fairness

John Rawls' corpus re-introduced *fairness* as a (if not *the*) central component to justice.[36] Fairness emerges as a key determinant to the justice of allocations, of

[35] In his later work, Lerner also said that our belief in a just world was a delusion (1980).

[36] The avowal of the centrality of fairness is made in relation to liberal democracies. It is open as to whether or not, and the extent to which, fairness is a key determinant in other societies.

procedures, and of decisions. It works to calibrate the distribution of benefits and burdens.

Furthermore, fairness as a rubric performs routine even mundane assessment across a wide variety of human activity. Thinking about and asking what is fair in a given situation is a common human guide. In the discourse about justice, fairness operates as a vernacular grounded in the moral powers people have. Fairness brings to justice the consideration of others and moderates rational self-interest. Thus fairness is a 'cognitive shortcut' that steers decisions about investments with others and in situations; and also guides assessments about these various involvements (Lind 2001: 190). It is responsive to information-rich environments. Fairness as a guide is influential on the ways in which persons assess their relationship to others and in groups (Lind and Tyler 1988). It is particularly evident in situations of flux and changes in relationships – features that are typical for victims of violence.

2.5.5 Justice as relational

In a relational universe, people's lives are deeply connected rather than individuated and separated.[37] People's justice judgments in this world are seen as emerging, not just from their own needs or the particular needs of others, but as evolving from particular relationships *with* others. This 'ethic of care' is cast as animated and multi-dimensional (Gilligan 1982). It does not draw boundaries, nor pin down and suppress subjectivity. Relational justice challenges the ideal of impartiality (Young 1990).

A relational conception of justice is often posed as gendered in noticing that a disconnected and detached masculine justice represents itself as a full account of civilisation and humanity. Rather than strive for universalism, justice that is relative performs as 'a marker of the human condition' (Gilligan 1982: xviii). From this perspective, the answer to the question 'what is justice?' becomes, *it depends*.

Relational concerns in justice are not confined to the familial or to in-groups. A relation exists irrespective of the distance between persons. Justice is claimed as 'fundamentally an interpersonal construct' because we do not live in isolation from others (Skitka 2003: 293). This particular reflection says that to think in terms of justice

[37] This depiction does not assume connection that is cooperative or conflicting. Rather it simply says there is inter-dependence.

necessarily asks us to think of others. To do so then argues room is made for the views and suggestions of others. From this point, conceptions of justice appear as provisional, multiple and even contradictory.

2.5.6 Justice as contextual

Relational justice recognises people as situated in a variety of ways in their social and political space. Identities are multiple and shift, merge and form. People are not singular. The spaces they inhabit are generally not settled or discrete. Highlighting different contexts in which the need for justice might arise thus questions any universalised standard. In making assessments and thinking what is just, people will draw on moral reasoning, a sense of fairness in distribution, and judgment about their treatment. That is, justice is context-sensitive, and emerges as contingent (Skitka et al. 2010).

In different contexts there is 'complexity and flexibility of people's justice reasoning', and justice judgments are seen to 'vary both between and within persons over time' (Skitka et al. 2009: 1–2). This point is particularly important for victims who not only engage with a number of different institutions, but maintain varying levels of connection and distance with others (including the offender). The wider frame around the social and institutional spaces that victims traverse allows consideration of multiple assessments of justice using different criteria. This gives rise to the possibility of partial ordering of priorities for justice, as well as incompleteness (Sen 2009: 102–105). Imperfect, though comprehensive, outcomes may result. Incompleteness, however, does not mean dropping particular concerns.

Furthermore, in the wider frame, different dimensions to people's individual and social lives come more clearly into view. For example, personal identity characteristics such as age or gender may become more salient. Similarly, emergent features consequent upon the victimisation, such as mental health or financial harm or family breakdown, will also become more apparent. People inhabit spaces and lives where concrete social and political practices precede their engagement with and search for justice (Young 1990). Casting and recasting ideas of justice in these fluid environments suggest it is a never-quite-filled vision.

2.6 MAKING MEANING ABOUT JUSTICE

The different conceptions of justice that I have highlighted do not indicate a fixed perspective. They demonstrate a concept that is enlivened in human hands. In this section I select further theoretical approaches that deepen understanding of this human context.

2.6.1 Finding meaning in the world

It is apparent that the idea of justice is open to different interpretations in different contexts. Three key premises underpin an interpretive approach. Firstly, 'human beings act toward things on the basis of the meanings that the things have for them'. Secondly, the meanings attributed to things 'is derived from, or arises out of, the social interaction that one has with one's fellows', and finally, 'meanings are handled in, and modified through, an interpretive process used by the person in dealing with the things he encounters'. Interpretation is a process 'through which the individual handles his world and constructs his action' (Blumer 1969: 2 and 14), and from which he might 'map and construct lines of conduct' (Turner 1988: 18). Human beings are profoundly social in this process.

Contributing to meaning-making are 'stocks of knowledge' that presume a degree of shared understanding.[38] The ideal of justice, therefore, is a 'sensitising concept' that is facilitative of action (Blumer 1969). Justice becomes an *imaginary* that serves as 'a word of magic evocations'.[39] The idea acts as a pull to those who have experienced injustice. Furthermore, institutionalised manifestations of justice can act as a symbol of 'outer power' through which indeterminate experience may be mediated and managed (Crespi 1992: 99).

As a theory, symbolic interactionism accommodates the constraints that context and situation impose on people by recognising adaption, adjustment, re-definition and re-presentation. Many interactions and influences – interpersonal, cultural, and institutional for example – contribute to appraisal and reappraisal.

[38] The term is from Alfred Schutz (1932) and is discussed in Turner (1988: 79-83).
[39] Edmund Cahn quoted in Stover (2011: 1).

2.6.2 Reasoning and agency

The different conceptions of justice form a prism through which to see, understand and engage with the world. Exploring this idea further requires identifying core features of the human condition. The first is our capacity to think and to reason.[40] This capacity interacts with other features of our makeup: values, emotions, beliefs and attitudes. Secondly, human reasoning also interacts with our moral and relational sensibilities. Finally, I assume that human beings have agency; not of the individualist and atomised kind, but that which is encumbered in our social and political relations (Sandel 1984) as well as burdened by responsibilities, and by experiences of injustice and disadvantage (Meyers 2012).

Presenting people in this manner does not require that persons are all rational or reason rationally; one simply has to acknowledge that especially (but not only) we think about what to do. While there are different understandings of practical reasoning I take a simple definition that it is 'the sorts of reasoning that we attempt in contexts of action' (O'Neill 2001: 11). Reasoning will not take place on a blank canvas either. Values, norms, and beliefs form an existing infrastructure. However, these can be 'too abstract, general and incomplete to guide specific concrete action in specific concrete situations' (Zelditch 2001: 51). Thinking and reasoning about what to do and how to interpret justice will be an information-rich exercise. Appraisal and assessment will weigh many aspects including features of the situation, prevailing norms, contextual power relations, and relevant criteria such as desert. Reasoning these combinations reveals the idea of justice to be a method of evaluation.

Of course, static portrayals of persons do not emerge from these assumptions. Neither is their agency unconstrained. The 'space for action' is not the same between persons (Coy and Kelly 2011). Yet they emerge with moral status and ethical standing. They are conceived as whole persons who act in relation to prevailing norms in a relationship with a 'range of bodies and people who are continuously mediating their daily lives' (Pattie, Seyd and Whiteley 2004: 110). If persons are conceived as rights-bearing

[40] Here the capacity to reason is posed as the activity of *reasoning*. This does not presume or prioritise reason as rational and objective.

citizens[41] then there is compelling argument that they should not be sacrificed for some larger social good.

2.6.3 Finding justice from injustice

But something must make it occur to us to think about justice. It is people experiencing, claiming, perceiving and acknowledging victimisation, oppression, disadvantage, domination or discrimination that brings to life the idea of justice. Injustice animates thinking and signals certain human values at risk. Only looking at justice misses these deep roots.

In recognition of this, Sen opens his book with a story about the indignity and affront of violence victimisation. An excerpt from Dickens' *Great Expectations* describes Pip's reflection on the violence in his childhood. Sen uses the story to pose 'the identification of redressable injustice' (p.vii) in the 'lives and freedoms of the people involved' (xii) as central to his theory of justice. The experience or perception of injustice with its 'inequities or subjugations' moves us, he says (p.vii). It is the emotional (indeed, moral) power of injustice that stimulates scrutiny (Sen 2009: 40).

Violence – as an experience of injustice – acts as an instrument to undermine, if not destroy, human flourishing. Philosopher Christine Korsgaard claims that '[i]f justice is what makes it possible for a person to function as a single unified agent, then injustice makes it impossible' (2008: 108). If there is an immorality in violence such that it stirs a moral response, it is that it targets human dignity and autonomy and makes self-respect, 'worthiness',[42] equality and freedom contingent.

However, not all injustice is perceived as such. Human beings in a range of situations have been shown to believe powerfully that their world is just when it is, on objective fact, patently not (Lerner 2003, 1977). Therefore the interpretation of injustice is one often done with third parties. This 'ideal observer'[43] is said to be 'in the realm of justice' rather than in 'the realm of fortune' where ill luck, disadvantage and misfortune (the natural and social contingencies) are determinative (Snare 1986: 41).

[41] As is foundational in liberal democratic theory.
[42] Cornell 1995: 11–12.
[43] The concept originates with Adam Smith and is discussed, for example, by Postow (1978).

From this distanced standpoint, we are invited to consider difficult dilemmas or decisions as they affect others.

Empirical work, however, unsettles suggestions that injustice acts as an imperative for action. Studies reveal a complex picture. For example, it is possible for victims of injustice to live with or neutralise an awareness of the injustice (Mikula and Schlamberger 1985) or to not perceive a situation as unjust against objective criteria that reveals it as such (Sen 2009). Victims may minimise harm and deflect fault. They may assess the cost of doing something in relation to victimisation as too high. The experience of injustice does not necessarily prompt a feeling of discomfort or disadvantage, nor necessarily prompt action.

Key to these scenarios may be *judgments* about something as just or unjust. That is, a perceived violation of rights or entitlements involves 'attributions of causality, controllability and intent to an agent who is not the victim, as well as perceived lack of justification' (Mikula 1993: 229). Furthermore, the responsibility attributed to the harm-doer and the degree of intention in particular 'affect the evaluative, emotional and behavioural reactions of victims and third parties' (Mikula 2003: 805). Taken together these findings suggest that the emotional *weight* of injustice may assume and carry more consequence than the perceived violation of entitlement or right.

2.6.4 Justice in interaction

This rich reflexive capacity to interpret and draw meaning is foundational to contemporary understandings of social action (Giddens 1984). Central therefore to specification about injustice and justice is dialogue. Dialogue is information gathering and information assessing. It brings forth different interests and different criteria in an evaluative exercise that takes account of different points of view. Justice on this account is dialogically constructed and constituted, and comes 'within the human horizon' (Williams 1990: 11). Furthermore, the dialogic nature of interpretation, communication and action potentially repositions individuals in a fundamentally powerful role in the polity. Dialogue and dissention inform a stronger civil society in relation to the state.

Although justice's call on the individual may be to ask questions, seek clarification and articulate principles, it is through a dialogic process that the self is understood *in* the

world. In Amartya Sen's terms, 'the evaluation needed for the assessment of justice is not just a solitary exercise but one that is inescapably discursive' (2009: 337). This invitation to reciprocate and collaborate on an understanding of the meaning of justice involves not simply a confirmation but is also a creation. That is, an invitation to re-pattern common interests and shared values. The call to justice 'involves the transformation of existing interests and the creation of new, shared interests' (Mendus 1999: 68). These shared interests may involve alterations to the enterprise of living together, or the articulation of emergent norms. These too are not necessarily fixed.

2.6.5 Reflecting on conceptions of justice

This section has grasped hold of some strands of intellectual thought about justice that are current and circulate in society; and traces of which are found in debate about victims. Knitted together into conceptions, these thought trails can be used uncritically and unreflectively by ordinary people, and thus can appear conflicting and contradictory. Equally, the thinking resonates strongly precisely because it comes from and is used by people.

These conceptions do not find fixed meaning – perhaps because the classic concept of justice being what is due to persons remains open to context. How then is this figured and decided? What will it mean between this person and the next, or between persons in conflict situations? These questions come when real lives, diverse social groupings, and actual institutions interact in ways that are socially and historically situated.

None of these conceptions of justice are argued as a human *need*. Rather the emphasis is that people have *interests* in justice that derive from their status as citizens in the first instance, and as persons who have become victims in the second. I diverge from Iris Young's restriction of 'interests' to those which are 'self-referring' and 'whatever is necessary or desirable in order to realise the ends the agent has set' (Young 2000: 134). Her definition focuses on means to ends, and thus 'instrumentalises' the notion of interests. I follow Jane Mansbridge's definition of interest as an 'enlightened preference. That is, what hypothetically one would conclude after ideal deliberation was one's own good or one's policy preference, including other-regarding and ideal-regarding commitments' (Mansbridge et al. 2010: 68). My argument, consistent with the conceptions I have outlined, is that interests expand beyond the self and

incorporate individuals in their diverse social worlds.[44] Citizens have interests in how others are treated, as well as themselves, and interests in the manner in which civic and state institutions work. Citizen interests comprise an instrumental and ethical meld.

I do not argue against the notion that persons who are victims have justice *needs* (Herman 2005; Sebba 1996). I suggest that resolution of the justice *interests* of victim-citizens is their priority when engaged with criminal justice. The resolution of their *needs* may be consequential upon the satisfaction of their interests. Furthermore, I suggest that the needs focus has diverted attention to various therapeutic arguments about what justice could be (Erez et al. 2011). Interests in justice speak to a form of civic membership, engagement and participation that has its roots in democratic ideals.

2.7 SEEKING JUSTICE IN THE REAL WORLD

This chapter illuminates the fluidity and contextualisation of ideas about justice. Following critical theorists, I have departed from a search for 'transcendent' justice while acknowledging the ways in which this ideal *works*. Ideas about justice help to connect people's experience of violation, victimisation and injustice to wider public concerns. In this manner conceptualisations of justice animate consciousness of rights, and open possible lines of action.

One of these lines of action consists of offers from the law. There are practical and actual concerns that violence gives rise to, involving self and others. It is a focal point from which we might begin to talk about *approaching law*. If the idea of justice feels malleable, *law* feels solid, 'thing-like', and something like a device (Mezey 2001: 158). It feels instrumental. It stands in contrast to the ductile nature of justice. The next chapter explores thinking about the way law is considered within social settings and ways in which it may interact with ideas of justice. It charts how the phenomenon of

[44] I note others' difficulty with the question of victim interests. For example, the Victims' Rights Working Group, established to promote the rights and interests of victims before the International Criminal Court, can agree no shared theoretical or practical view on 'interests' except that it 'requires special attention' and that 'voices' should be heard. Viewed at http://www.vrwg.org/victims-rights/interest-of-victims

law also starts to shift in people's hands. Here too we encounter a similarly wide range of ideas about what law is, what law does and how law can be acted upon.

CHAPTER 3 APPROACHING LAW

> I would have said [the law is] there for our benefit. (Roslyn 2010)

> We tell ourselves stories in order to live ... We look for the sermon in the suicide, for the social or moral lesson in the murder of five. We interpret what we see, select the most workable of the multiple choices. We live entirely, especially if we are writers, by the imposition of a narrative line upon disparate images, by the 'ideas' with which we have learned to freeze the shifting phantasmagoria which is our actual experience. (Didion, 1979: 11)

3.1 THINKING ABOUT LAW

Justice is a dynamic concept highly responsive to human practices. In the domain of law it collides with an institution that rests on a self-image as separate to the everyday world. Law leans towards certainty rather than to indeterminacy. The separation of law from discursive ideas of justice is, of course, neither a new nor an uncontroversial proposition. The institutions of criminal justice represent themselves as embodiments of the state. This stance presents neutrality as set in opposition to the private realm but as responsive to a disembodied *public*. Why, when and how do members of that public turn to law in search of justice? It is not an obvious choice.

This chapter maps the landscape around these questions in a number of steps. First I sketch the dominant ways in which law presents itself in a social context. I then foreground everyday legal consciousness as counterweight to law-centric and state-centric visions. I consider consciousness of the law and its constitutive relationship to social life in order to illuminate connections and disconnections between meaning-making and action. As part of this, I outline conceptual and empirical enquiries into the ways people interpret victimisation. In this space there is much that is open to question and to construction by human actors. In this space law is powerful but limited, authoritative but uncertain. Therefore I also look at the different ways in which theorists acknowledge this ambivalent relationship in their various presentations on people's actual recourse to the law.

One obvious aim in the chapter is to decentre formal legal institutions and procedures but also to take 'seriously the idea that ordinary people can be legal actors' (Marshall and Barclay 2003: 617). In so doing, I pay attention to law's offer and how people understand its relationship to their situated selves. I suggest that the mobilisation of criminal law is as much a social and civil practice as it is a means to some self-interested end. As a practice it is influenced by cultural as well as legal schemas and emerges from people's membership of a bounded polity of citizens (Duff 2009). This argument highlights the interconnected and derivative nature between behavioural standards embodied in criminal law and wider social norms. Through legal mobilisation people seek to re-inscribe these norms and to re-establish their collective context.

Finally, another of my aims in the chapter eyes the heterogeneity of the collective public and the nature of its status as a community of citizens. In particular I take note of the different ways in which people of diverse backgrounds and experiences organise around social and legal norms, and the law itself. Through this orientation I re-focus attention on the broader political character of ordinary people's engagement of the criminal law as victims. I argue that it is *political* in that the interaction activates and signifies a relationship with state authority that has wider public implications.

3.2 LAW'S IMAGE

Law projects different images. In the ordinary and everyday worlds law is both 'strange and familiar' (Ewick and Silbey 1998: 16). As epiphenomena, law's 'own story' emphasises its centrality to liberal democracy through the rule of law and its separateness to that which is common and unremarkable (Mezey 2001: 155). It is a formal presence and formal entity comprising lofty adherence to rule and principle, and immanent rationality. The authoritative discourse of legal text, legal doctrine and of professional legal actors such as judges, lawyers and legal academics is posed as a reality of continuity, form, truth and internal cohesion where law is its own master (Raz 1980; Austin 1998/1832). Within this view, law is foundational to the consensus basis of the sovereign order (Hart 2012/1961). Here law is command and its subjects are 'ordered, dominated, and ruled' (Bumiller 1988: 30).

From this perspective, the impact of law and legal practices is unidirectional but works in different ways. Ordinary people – as citizens, complainants, defendants and litigants

– are acted upon rather than making legality. If approaching, they do so cautiously. They are submissive 'before the law'. Law is taken to transcend individuals and moments, and justness is presumed. If law, legal procedure and law's institutions are experienced in some frustration, this does not weaken their authority (Ewick and Silbey 1998: 47). If approached, ordinary people are most often portrayed as resisting, evading and re-casting law and legality (Merry 1990). They are said to be 'against the law' and may be mulish, resentful or defiant (Ewick and Silbey 1998: 48). However, this perspective minimises the 'institutional autonomy and operational elasticity' of the law. As a consequence it can make law 'lifeless' (Wong 1995: 221).

Viewing law as detached and self-governing also detaches it from its context. This is particularly so for criminal law. A law-centric and state-centric position accentuates the threat and control of sanction. Other viewpoints emphasise law's relationship to its social context. This view asks 'what kind of criminal law, serving what ends and expressing what values, is appropriate for … citizens of a particular kind of polity'. Here there is a very direct connection: 'the law should see and address those whom it claims to bind as citizens' (Duff 2010: 3 and 5).

Duff's argument joins other critics of legal centralism. A law-centric stance renders ordinary people as external and passive, and invests law and legal institutions with the power to attract and repel. Although the law is 'all over' in ways that people – indeed whole constituencies – experience differently (Sarat 1990), it is also true that people 'understand and use law' (Merry 1990: 5). How they do this, however, is also highly responsive.

3.3 LEGAL CONSCIOUSNESS AND LAW

3.3.1 The everyday

We see this 'responsivity' by looking at law and pondering justice from below. That is, from the *everyday* world of ordinary people. While the notion of the everyday is a construct,[45] respect for the complexity of this empirical reality is central to authentic interpretation. It is a place of shared meanings and understandings where the ordinary

[45] On this point, French theorist Henri Lefebvre says that the everyday is a product of decisions, activities and histories in which ordinary people do not participate and about which they may not even be aware (Lefebvre 1947). Michel de Certeau, on the other hand, invests more weight, authority and challenge in the 'tactics' people employ in the everyday (de Certeau 1984).

is dignified. Conversely, it is also a place where the marginality inherent in modernity is encountered.

In the everyday, people act, react, interact and connect; they ignore, interpret and re-construct; and they negotiate, manipulate, manage, mobilise and plan in a complex reality that is material and imagined (de Certeau 1984: xi). It comprises spaces where power is exercised, understood and resisted in lived experience (Foucault 1980). Multiple, often overlapping, realities jostle – for example, the 'intimate intrusions' of sexual and physical abuse (Stanko 1985, 1990); and racial discrimination being 'everywhere' (Bumiller 1988). The everyday is riven with stereotype and competing narratives (Holmes 2008; Sarat and Kearns 1993; Deegan and Hill 1987). It is notnecessarily a beatific place.

The activities of the everyday take place beneath the radar and the notice of the world of formal rules and formal institutions.[46] It is as much places, spaces and occasions where rules and laws are evaded, reinvented and discounted, as it is where they are made, re-made and respected. The deep patterning of rules comprise habits of legality. Consciousness of the boundaries, standards, possibilities and mitigations of the social world do not require the formal institutions of the state. They are submerged frames and guides to social practices and interactions.[47] As one of these frames, the 'discourse of law' provides language for meaning-making and 'shaping our taken-for-granted understandings of the social world' (Albiston 2006: 56). *Legal consciousness* works hand-in-hand with rights consciousness (Blackstone et al. 2009). Consciousness of rules and rights influences turning away from or towards law.

3.3.2 Looking away from law

Early studies of legal consciousness sought to depict 'ways in which people make sense [of law], that is, the understandings which give meaning to people's experiences and actions' (Ewick and Silbey 1992: 734). More recent work examines the manner in which 'legal life and everyday social life are mutually conditioning and constraining' (Hunt 1996: 179; Fleury-Steiner and Nielsen 2006). These constitutive theorists emphasise that bottom-up engagement with law and legal institutions is as influential

[46] However, see Sandra Walklate's (2007) discussion on the use and misuse of victims of crime in policy and political debate in Britain.
[47] On Pierre Bourdieu's sociology of the everyday, see Schwartz (1997).

on law's meaning as top-down imposition. In this guise there can be more of the servant in law's image.

In their ground-breaking and deep ethnographic study of legality in everyday American life, Patricia Ewick and Susan Silbey (1998) suggest three approaches to the notion of legal consciousness.[48] One approach takes together the beliefs, attitudes and actions of individuals and social groups to 'determine the form and texture of social life' (p.35). Liberal political and legal theory stresses the consensus forged around ideals of fairness and equal treatment. A second approach conceptualises law and legal consciousness as 'epiphenomena because a particular social and economic structure is understood to produce a corresponding or appropriate legal order, including legal subjects' (p.37). An aspect of this perspective concentrates on the legitimating functions of law within the social order. Finally, legal consciousness is identified as cultural practice. It is conceived as 'part of a reciprocal process in which the meanings given by individuals to their world, and law and legal institutions as part of that world, become repeated, patterned and stabilised, and those institutionalised structures become part of the meaning systems employed by individuals'.[49] Here human action and structural constraint are integrated and law is *produced*.

The perspective argues that understandings of legality are constructed and mediated through signs, signals and storytelling in a socialised discourse (Bruner 2002; Greenhouse et al. 1994). These narratives encode and position people, places and events. However, they tell many complex and contradictory stories; stories which interact with other schemas. For example, political consciousness (McCann 1994), the 'injustice frames' of feminism (Marshall 2005), workplace ideology (Hoffman 2003), legal imaginations (Daly 2002), legal norms (Zemans 1982) and local cultures (Greenhouse et al. 1994). Legal consciousness is soaked in change and contingency.

3.4 LAW IN SOCIAL CONTEXT

The law-centric and state-centric view tends to accentuate the instrumental functions of law. It is 'used by the state to achieve the community's chosen collective goals'. In

[48] Ewick, P and Silbey, S. (1998), *The Common Place of Law*, The University of Chicago Press, Chicago.
[49] Ewick and Silbey 1992: 741. This is also the approach of Sally Engle Merry's book, *Getting Justice and Getting Even: Legal consciousness among working-class Americans*, The University of Chicago Press, Chicago (1990).

doing so law is 'authoritative rules backed by coercive force, exercised by a legitimately constituted (democratic) nation-state'. As 'stylised concepts', law is both threat and umpire (Morgan and Yeung 2007: 4–6). In a social context it both shapes behaviour and gives expression to community standards.

Yet this version of law in social context is insufficient. Following the constitutive theorists described in the preceding sections, law and legality also becomes something created and acted upon. They are manifestations of social bonds and of the collective. They signal boundaries and ways to do things that are devised by people in their diverse social contexts. I expand on the 'stylised concepts' from Bronwen Morgan and Karen Yeung's work to add a third image and role to law (Table 3.1).

Table 3.1: Law in social context

Law's role	Law's image		
	Law as threat	Law as umpire	Law as servant
Law's *facilitative* role: law as an instrument for shaping social behaviour	Proscribing conduct and threatening sanctions for violation to deter that conduct	Creating and policing the boundaries of a space for free and secure interaction between participants	Enabling cooperation through defining and re-defining standards and norms
Law's *expressive* role: law institutionalising values	Legitimating coercion	Reflecting shared or agreed morality of the community of players	Enabling articulation and deliberation on values and priorities
Law's *constitutive* role: law and society as mutually constitutive	Legality comprising of social practices	Mediating indeterminacy of lived experiences	Imagining the real

Adapted from Morgan and Yeung (2007: 6). My additional text is shaded.

My expansion incorporates ideas about legal consciousness (Ewick and Silbey 1998), mediated practices (Crespi 1992), law's imaginative capacity (Geertz 1983), and law's

discursive and definitional capability (Sarat et.al. 1998). Morgan and Yeung say that their original concepts were designed 'to summarise patterns of empirical variation' (2007: 339). The rest of the chapter considers these concepts alongside empirical patterns relevant to victimisation.

3.5 LEGAL CONSCIOUSNESS AND VICTIMISATION

3.5.1 Thinking about victimisation

The perception and experience of victimisation, unfairness, disadvantage and discrimination enlivens all aspects of the conceptual frameworks to law in its social context. These injustices lie deep within legal consciousness literature. As everyday experiences they invite questioning and act to sharpen definition to legality and rights. However, neighbour problems, abusive partners, employment issues and stranger transgressions are everyday experiences that are not automatically scripted as law problems, or even as problematic.

Consciousness of wrong or harm can be considered along a scale from experience, to perception and recognition. A number of studies have shown that actual victimisation is not determinative of an assessment of disadvantage, harm or injury (Clare and Morgan 2009; Felsinter et al. 1981). Further, whether an event or condition is perceived as wrong or even harmful may be outside a pre-existing frame of reference. Problem perception and labelling are generally a requirement for action (Ruback et al. 1984; Zemans 1982).

Critical studies of help-seeking in relation to violence have shown how the formation of a consciousness of victimisation is itself rooted in internal psychological and cognitive processes that constantly interpret, re-interpret, construct and re-construct the bounds of 'normal' and 'understandable' or even 'permissible' and 'expected'. What is culturally acceptable and unacceptable and therefore subject to considerations of what is 'wrongful' or 'unjust' has been shown to be historically and socially situated. There are different perceptions of what actually happened (Baumeister et al. 1990), different situational and social contexts (Jonzon and Lindblad 2004; Vidmar and Schuller 1987; Greenberg et al. 1982), differential impacts of race, gender and relationship (Kaukinen 2004), and the disorienting effects of victimisation itself (Herman 1997). Diverse cultural and structural conditions reveal enormous

variety in the manner and style of handling interpersonal, group or social problems, disputes and victimisations (Menkel-Meadow 2004; Black 1984; Miller and Sarat 1981; Nader 1969). Victimisation then is only part of a puzzle.

3.5.2 To act or not to act

In examining further the interaction between victimisation and law, some emphasise the 'subjective rationality' of the individual decision-maker (Zemans 1982: 1069). Others emphasise what are 'culturally available motives for action' (Yngvesson 1993: 9). Across this range of views, a solid body of research shows a strong tendency for people *not* to formalise an event or problem (of a wide variety) through recourse to law (Clare and Morgan 2009; Lievore 2005; Genn 1999; Carcach 1997; Bumiller 1988; Galanter 1981).

Those who have experienced a 'justiciable event'[50] but who nonetheless do not turn to the law are described as 'lumpers', 'self-helpers' and 'the advised'. Those who might 'lump it' when confronted by a problem or event are cast as tolerant or accepting – however grudging that may be. Self-helpers use available resources and opportunities relevant to the issue at hand. Some will access advice and proceed no further. People move in and out of these categories and may occupy all of them in relation to a problem (Genn 1999: 19–21). Going deeper into these categories does reveal porous boundaries, however. Lumping a problem or event, for example, ignores coping strategies that can involve self-medication and self-harm (Kelly 1988). Similarly, self-help may involve the deployment of multiple and multi-layered methods of resistance, accommodation, avoidance and negotiation.

The complex interaction between consciousness and victimisation is found in relation to both public and private legal systems. Studies in these domains show the decision by a citizen to mobilise law is not a simple or singular reaction to a problem or event. At a meta level, population surveys ask people about incidents that have happened to them and their responses. Across different countries and systems, these find that, so widespread is non-reporting across countries with similar and dissimilar legal systems, 'legal inaction [is] the dominant pattern in empirical legal life' (Black 1973: 133; van

[50] Genn (1999: 5 and 21) defines a justiciable event as one for which a legal remedy exists, whether or not the subject recognises the matter as being 'legal'.

Dijk et al. 2007). Perceived victimisation and the availability of law are also only further parts of the puzzle.

Reasons for not turning to law enforcement authorities refer to prevailing social and legal norms, situational assessments, perceptions of authorities, and perceived efficacy. On the contextual norms, people say the incident was 'not serious' or 'too trivial' or 'unimportant'. This was the most common reason given for non-reporting in an international survey across twenty countries, and also in a number of national surveys.[51] Johnson's examination of the Australian component of the International Crime Victim Survey revealed similar reasons given for not reporting with 43% of assault victims and 33% of burglary victims indicating that the incident was not serious enough to warrant police intervention (2005: 43–44). Similarly, in the UK, the most frequently cited reason for not reporting to police was that victims perceived the incident as too trivial, there was no loss or they believed that the police could not or would not do much about it. For violent crime, the most common reason for not reporting was that victims considered the incident to be a private matter and dealt with it themselves.[52] Analysis has also revealed gender and offence differences in reasons for not reporting. Reasons given reveal privacy concerns, fear of reprisal and a desire to protect offenders.[53] The differences indicate a socially constructed deference to the private world.

Perceived efficacy of the law and legal institutions is a strong feature in legal consciousness studies and is an important link to access to justice literature. Crime surveys expose assessment of the receptivity, efficacy and sensitivity of justice agencies, and of police in particular, as influencing non-reporting. About a quarter of assault victims say that they did not tell police because they took care of it themselves,

[51] van Dijk et al. (2007: 112), *International Crime Victim Survey*, showing that 34% thought it was not serious enough. Nearly half (48%) of New Zealanders gave similar reasons for not reporting (Mayhew and Reilly 2007: 63). Between a quarter and a third of Australian respondents felt that the assault against them was too trivial or unimportant to report (ABS April 2005).

[52] Kershaw et al. (2008), p.39.

[53] In Australia 42% said that they dealt with the incident themselves, and 27% said they did not regard it as serious (ABS 1996: 29–31). In the UK, 41% of women and 68% of men who had experienced domestic violence in the previous year did not report to police because they thought the matter too trivial, or that it was a private family matter (Walby and Allen 2004). In NZ, 56% of victims of 'partner offence' dealt with the matter themselves, 45% felt the incident was too trivial to report and 20% felt that police would not have bothered (Mayhew and Reilly 2007: 64). For the USA see Felson et al. (2002).

it would be inappropriate to do so, or because the 'family solved it'.[54] In New Zealand, a third of respondents felt that police could not have done anything, would not have been bothered, or were too busy to attend (Mayhew and Reilley 2007: 63). The International Crime Victim Survey found that a significant and substantial proportion of respondents felt that police could not or would not do anything, a factor that was at a higher level in main cities (van Dijk et al. 2007).

The theoretical and empirical research outlined thus far point to ordinary people as actors in their world; not free and unburdened, but also not inert. Assessments of victimisation – of different kinds – are socially constructed as much as legally defined. However, legal concepts 'influence the goals, options, choices, and problems of ordinary individuals' (Marshall and Barclay 2003: 617). Yet the research shows people tend not to involve formal law and 'deal with it themselves'. They may be in constrained and circumscribed contexts but encumbered agency is theirs.

3.6 LEGAL MOBILISATION

Chapter 2 highlighted perspectives which said that it is through injustice that people look for justice. In a similar way, something must happen to bring forward law as a possibility following violence victimisation. Naomi Mezey (2001: 153) has commented that the 'law' in legal consciousness could be lost except for legal mobilisation. In this section I outline different explanations for people's recourse to law. I consider the importance ascribed to assessments of law's relevance, availability and salience. I specifically draw attention to approaches that emphasise the political meaning to mobilisation of law.

3.6.1 Legal mobilisation as social control

In one of the earliest studies of legal mobilisation, Donald Black posed an 'entrepreneurial model of law' whereby citizens rationally pursue their own interests in a kind of 'self-help' system but without a role in the law's development. In so mobilising the law, 'the greatest legal good of the greatest number presumptively [*arises*] from the selfish enterprise of the atomized mass' (1973: 138). Black suggested that a reactive legal system – such as a criminal legal system – 'acts to reinforce the

[54] Found in similar proportions in Australia (ABS 2005), across countries in an international survey (van Dijk et al. 2007: 113), and in New Zealand (Mayhew and Reilly 2007: 63).

tendency of citizens to use law only as a last resort, since it allows citizens to establish their own priorities' (p.134).

Black situated his discussion within a larger enquiry in which law itself was the quintessential 'governmental social control' (Black 1980). From this perspective 'the common man' is posed either as a mere instrument to 'highly aggressive' government entities intent on 'ferreting out illegality' or as naive, ignorant and often mistaken in their 'legal intelligence'. As key determinants to legal mobilisation, Black suggested that the greater the 'relational distance between the parties in dispute, the more likely is law to be used to settle the dispute' in addition to the event seriousness, the community and institutional context, and features of the parties. Furthermore, he suggested the organisation of mobilisation, the social conditions of event distribution, the availability of legal opportunities, and the 'countervailing normative system' all influence legal mobilisation (Black 1973: 129–140).

Black's thesis of legal mobilisation further proposed that the mobilisation of the law by private citizens is based on 'a margin of freedom or discretion'. Informing this discretion, he claimed, are 'the moral standards of the citizenry' and 'particularistic law enforcement'. For Black these features rest upon moral diversity and prejudice and exemplify reactive legal systems as 'the more democratic form of legal process' (Black 1973: 141–144).[55]

3.6.2 Legal mobilisation invoking norms

Richard Lempert critiques Black's theorising as narrow, unidirectional and formalistic. Instead he depicts legal mobilisation as 'a process by which legal norms are invoked to regulate behaviour' (1976: 73). Legal norms, he suggests, are derivative of social norms and may influence actions taken even when law is not expressly engaged (p.174). Lempert claims two features to legal mobilisation. In the first instance, it is a mechanism for transferring disputes from one arena to another, that of the legal system. In this transition, third parties – such as lawyers – act as gatekeepers to interpret, divert, forestall and facilitate access. Second, he says that the goal of legal mobilisation is avoidance of future disputes or problems. Citizen perception of the

[55] Aspects of Black's thinking, in particular the idea of the victim as a moral entrepreneur, resonate with theorists examining the social construction of deviance.

cost, efficiency, efficacy, and relevance of legal avenues as well as of the uncertainty and contingency of outcomes, all contribute to understanding that 'it is not irrational to fail to invoke available … law' and neither is it 'a simple reaction to problems' (pp.178–179).[56]

3.6.3 Legal mobilisation as transformative

Felstiner, Abel and Sarat (1981) discuss legal mobilisation from an analysis of how a problem or event shifts from the immediate environment of the parties to something involving external authority. Their influential model of dispute transformation posits a three-step process. The first step involves acknowledging something is injurious ('naming'); secondly there is a perceptual shift to seeing the injurious experience as a grievance ('blaming'); and finally a step to consciousness of the availability of some remedy ('claiming'). Felstiner and his colleagues acknowledge that this transformational process is influenced by social structural features as well as personal ones. They explain, therefore, that the characteristics of transformation are its subjectivity, instability, reactivity, and its complexity and incompleteness (p.637). Their answer to the question, 'why do so few people turn to law?' – is a conclusion that 'relief from trouble' is uncertain, contingent and costly (p.653).

3.6.4 Legal mobilisation as political participation

Frances Zemans (1983; 1982) marks out the participatory essence of legal mobilisation. She suggests it is a form of citizen 'demand' designed to influence or implement government policy and to receive entitlements (1983: 694). Zemans claims that the legal system 'relies upon the individual actor to personally evaluate the burdens and benefits of invoking the law on his or her own behalf' (1982: 989). She sees 'legal mobilisation as analogous though not identical to other forms of help-seeking and resource use behaviour' (1982: 1002). 'The law', Zemans suggests 'informs the citizenry of the circumstances under which the power of the state can be employed'. It provides 'an endorsement to action per se' (p.1006).

Zemans' decision-making model is similarly transformational as in the work of Felsinter and colleagues but draws on more influences and information. First there is the

[56] Zemans reinforces this point by expressly stating that 'it is rather perfectly rational not to expend scarce resources to pursue complaints if no positive results are reasonably expected' (1982: 999).

perception of an event or situation that is 'potentially in need of a response' (1982: 1003). The decision to act is described as a dynamic that is 'continuous and not perfectly sequential' where legal and social norms act alongside situational factors to stimulate or inhibit (p.1004). The model further ponders attributes of the decision-maker and, in particular, the presence of 'rights consciousness'. As Zemans notes, it is not knowledge of the law that is determinative of a decision to act but rather 'the salience of rights on the one hand and the sense of justification in asserting them' (p.1009). Rights consciousness is influenced by socialisation as well as socio-economic and other demographic aspects. Perceptual variables such as expectations of success, cost, time and space, as well as calculations of the 'social costs'[57] further influence the decision to act. The uneven distribution of these resources and of the social costs results in 'an individualized system' (Zemans 1983: 695).

Taking action is posed not as a discrete and separate option, but more of a dynamic of conversation with others (formal or informal), acting for oneself, and engaging the intervention of others.[58] The 'subjective rationality' embedded within the process acknowledges that, in practice, an individual's decision 'is bound by limited knowledge of alternatives and their consequences' (p.1069). Zemans asserts that 'the citizen's assertion of perceived rights is central' to the operation of the legal system and that 'the public good' emerges from this fundamental point as an aggregation of demand (p.995).

As a political scientist, Zemans claims this type of citizen initiative defines the citizen regulator as a critical actor not only in the enforcement of the law but particularly in the implementation of public policy from which law derives political authority (1982: 996).[59] Her definition casts legal mobilisation as 'a form of political activity by which the citizenry uses public authority on its own behalf' (1983: 690).

[57] Social costs being the impact on interpersonal and social relations including on family and friendship networks, and reputation (Zemans 1982: 1024).

[58] Zemans is critical of the 'disenfranchisement' of non-lawyers in the process of legal mobilisation and as a subject of scholarly enquiry (1982: 995). In making this critique she references the work of Edgar Cahn and Jean Cahn (1970).

[59] Zemans discusses the public policy outcomes from legal mobilisation as the aggregation of individual demands. Democratic theorists differentiate between this type of aggregation, and the public interest or common good (Dahl 1989: 71). I consider that there is rather less emphatic distinction between the two.

3.6.5 Legal mobilisation as strategic resource

It is from this standpoint of legal mobilisation as a mechanism for political participation that Michael McCann extends enquiry by looking at how law is used by social groups and social movements.[60] His 1994 examination of legal mobilisation in pay equity campaigns in the United States is interpretive and process oriented.[61] Arguing against conventional understanding that legal mobilisation is ineffective and that legal and other rights are myths, McCann poses law as a strategic resource. He conceptualises rights as 'cultural conventions in social practice' (1994: 5). People's legal consciousness is joined to their interpretation of inherited and learned legal symbols and discourses through which social relationships may be negotiated and strategies of action considered (p.6–7). However, as an inherited set of conventions, practices and structures, law is posed as contributing 'only limited, partial, and contingent constitutive influences in most domains of citizen activity' (p.8).

In social and political contexts, the use of law is strategic. The diversity of settings in which legal ideas are deployed and the pluralism of the legal order suggest that turning to law is neither 'insular or autonomous' in people's lives (p.10). Instead, legal mobilisation is 'one among many constitutive and strategic dimensions' of social movements (p.11). Legal consciousness is formative in that it 'structures meaning' even though it 'dictates no particular course of action' (p.283). McCann concludes that an analysis of legal mobilisation needs to accommodate the context of contingent factors and relational dynamics to capture the unstable, ambiguous and contradictory effects of consciousness (p.287).

3.6.6 Legal mobilisation in summary

Theories of legal mobilisation are intimately connected to ideas about the law and perspectives on the social context. One set of approaches are law- and state-centric. These emphasise the law's role in shaping, directing, modifying and controlling behaviour. The interaction between law and society is generally unidirectional and

[60] McCann's 2006 edited volume, *Law and Social Movements* (Ashgate), brings together the intellectual and research traditions of socio-legal scholars with those of social movement specialists.
[61] McCann, M. (1994), *Rights at Work*, University of Chicago Press, Chicago.

presupposes remedy as the primary objective.[62] Another approach attempts to unsettle law and to foreground the social context. In so doing, the heterogeneity of peoples situated in various ways to each other and to sources of power are necessarily acknowledged. In consequence, the salience and availability of law is contingent. Thus reciprocal meaning-making between the self, 'individual action and larger social structures such as law' is emphasised (Ewick and Silbey 1998: 151). The different concepts are summarised in Table 3.2.

As an overall view, legal mobilisation is an uncommon enterprise in the realm of private and public law, whether initiated by individuals or social movements. Law looks different depending on insider and outsider perspective (Matsuda 1987). Problems are framed with diverse schema and invested with multiple meaning. At the same time, law itself frames and structures permissible action (Hadfield 2008). It is, at best, a 'structural opportunity' (McCann 1994: 239). The relationship(s) between law and society is impregnated with deep ambivalence.

[62] The manner in which legislators 'frame' possible options and constrain the idea of remedy to a financial one is critiqued by Gillian Hadfield in her analysis of the development and implementation of the 9/11 Victim Compensation Fund in the USA (Hadfield 2008).

Table 3.2: Theories of legal mobilisation

Theorist	Mobilisation concept	Mobilisers	Motivation	Features
Black (1980, 1973)	Law as governmental social control	Entrepreneurial and rational pursuit of own ends	Self-help informed by moral standards of citizenry	Law as last resort. More likely use of law where greater relational distance between persons, event seriousness, community and institutional context, features of parties and social context.
Lempert (1976)	Legal norms as regulatory	Aligning to social norms	Avoidance of future disputes or problems; reaction to problems dependent on citizen perception	Mechanism for transferring disputes from one arena to another. Mobilisation influenced by third parties.
Felstiner, Abel and Sarat (1981)	Dispute transformation (naming, blaming, claiming)	Individualistic	Search for remedy	Process reveals uncertainty in dispute transformation
Zemans (1982, 1983)	Form of political participation	Subjective and constrained, rationalist, evaluating burdens and benefits.	Assertion of perceived rights. Salience of rights on one hand and sense of justification in asserting them.	Legal and social norms act alongside situational factors; analogous to other help-seeking and resource use behaviour
McCann (1984)	Constitutive and strategic assertion of rights	Interpretive; conscious of self and context	Structural opportunity not dictating action	Law limited, partial and contingent but also structures meaning. Law as one resource for social change.

3.7 LEGAL MOBILISATION AND VICTIMISATION

In that ambivalent space very few people turn to the law with problems, disputes or claims. But what of those who do? Deciding whether or to whom to tell about an incident is perhaps one of the most elementary help-seeking decisions for victims of any type of crime to make. Certainly reporting to law enforcement – as a first step in mobilisation of a criminal legal response – is selective, and a largely voluntary and self-motivated endeavour.

3.7.1 Help-seeking

As an active behaviour help-seeking is a form of communication 'directed towards obtaining support, advice, or assistance in times of distress' (Gourash 1978: 414). It constitutes single and multiple sets of actions, and is generally divided between informal networks and formal helping agents (Pescosolido 1992). Actions can proceed through discrete stages but may not be linear (Willis and Gibbons 2009; Blackstone et al. 2009). Help-seeking is highly related to the nature of the problem and event, the characteristics of the help-seeker, and the availability and perceived efficacy of resources. It is deeply influenced by the socio-economic context (Kaukinen 2002; 2004).

There is a clear pathway from help-seeking in family and friendship networks to formal helping agents such as legal institutions (Blackstone et al 2009; Kaukinen 2002). Population-based surveys of crime victims support these findings. National and international surveys, especially of women victims of physical and sexual violence, consistently show people seek succour and support predominately from personal networks.[63]

3.7.2 Legal mobilisation through police

Following on from this, police can be viewed as a helping agent. It is important, therefore, to acknowledge legal mobilisation through police as largely discretionary and self-motivated. The majority of crime investigated by police results from notification by citizens (Black and Reiss 1967) and the vast majority of these are victims

[63] In New Zealand (Mayhew and Reilly 2008), the UK (Walby and Allen 2004), and Australia (Mouzos and Makkai 2004; ABS 1996). For Canada, Kaukinen (2002) found that male victims of violence tend not to disclose and when they do it is to police. On help-seeking patterns and behaviour in domestic violence see Liang et al. (2005) for an overview.

(Sced 2004; Hindelang and Gottfredson 1976). This is also true in relation to certain offences such as domestic assault (Holder 2007; Fleury 2006; Walby and Allen 2004).

Across comparable countries, the decision to report an incident of crime to a formal authority such as police is made by about half or less than half of all crime victims (Skogan 1984).[64] There is, however, considerable difference in reporting depending upon the type of offence. Property crime is generally highly reported but interpersonal offences are not.[65] Reporting patterns have also been shown to differ over time. For example, reports to police of sexual assault and other forms of assault have increased in the US since 1973 (Baumer and Lauritsen 2010: 165).[66] However, in the UK, the proportion of people participating in the British Crime Survey who indicated that they had contact with police fell from 43% in 1981 to 27% in 2005/06. In 1981 the reason most commonly given for the contact was to ask directions. In 2005/06 it was to report a crime (Janson 2008: 22).

3.7.3 Reasoning legal mobilisation

A question now remains as to what informs citizen-based assessments of priority for mobilising public law through police. This question has only recently become the subject of enquiry (Robinson and Stroshine 2005; Felson et al. 2002). Attention has focused on barriers and inhibitions rather than incentives and pathways.

What then of the motivational complexity behind this voluntary endeavour? In examining both incentives and costs associated with victim reporting using data from the US National Crime Victimization Survey 1992–1998, Felson and his colleagues consider the behaviour to be 'rational in the sense that victims are attempting to achieve something they value, whether it be something practical or something they

[64] More recent analysis suggests the proportions are lower. In the UK about 42% of all crime is reported (Kershaw et al. 2008). In the USA, between 1973 and 2005 only 40% of non-lethal violence and 32% of property crimes were reported to police (Baumer and Lauritsen 2010: 153). In New Zealand just 36% of crimes are reported to police (Mayhew and Reilly 2007: 62).

[65] In Australia, 74% of victims of a break-in will report to police, while only 31% of victims of assault will do so (ABS 2005). In the UK, 93% of victims of thefts from vehicles and 76% of burglaries report to police, while only 34% of assault without injury report (Kershaw et al. 2008). In the USA, 47% of all violent victimisations and 40% of all property crimes are reported (Rand 2009). In Australia, the UK, Canada, NZ and the USA the reporting of domestic violence is less than for other crimes (Mayhew and Reilly 2007, Walby and Allen 2004; Kaukinen 2002; Mouzos and Makkai 2004; Rodgers 1994).

[66] These increases were observed for violence against women as well as men, and stranger and non-stranger violence, as well as for victims from all ethnic and racial categories. The changes are also discussed in Baumer, Felson and Messner (2003).

think they ought to do out of civic duty or a sense of justice' (Felson et al. 2002: 619). The goal orientation of motivation as 'something of value' accommodates both instrumental and non-instrumental objectives.

Early research tended to focus on situational characteristics especially incident seriousness (Skogan 1984)[67] and assessment of 'durable harms' (Goudriaan et al. 2004). However, this emphasis has obscured contextual and normative factors (Greenberg and Ruback 1992). For example, features of the social context that tend towards 'collective efficacy' of neighbourhoods are influential on engagement with authorities (Goudriaan et al. 2006; Morenoff et al. 2001). The normative influence of the social network is also clearly pronounced on female victims of violence reporting to police (Kaukinen 2004, 2002).

Moreover, crime and safety surveys in three countries reveal clusters of motives around normative reasoning, a sense of civic duty and desire for protection. In the USA, the primary reason victims of violence give for reporting is a belief that the incident was a crime (30%). The second most common reason was self-protection (19% prevent future violence, 17% stop offender). A further 15% express a concern for others (9%) and their duty to tell police (6%) (Hart and Rennison 2003: 7).[68] Of those who reported crime to police in the UK, 43% did so because they felt that crime 'should be reported' and 37% reported because they wanted to see the offender punished (Allen et al. 2006).

On violence categories, the motivations are similar. Responses to the 2000 International Crime Victim Survey across seventeen countries showed that victims of sexual incidents and assaults were (predominately) more interested to stop the violence and (secondly) for retribution, than were victims of property offences. Between a quarter and a third of victims of violence offences reported to police

[67] Johnson's study of the Australian component of the ICVS confirms incident seriousness as a predictor for reporting, along with factors including older aged persons and lower household incomes. Controlling for other factors, Indigenous victims of assaults were also more likely than non-Indigenous victims to report to police (Johnson 2005: 41). Carcach (1997: 4) also confirms seriousness as affecting victim reporting in Australia. Mayhew and Reilly (2007: 66) conclude for NZ that seriousness is an overriding driver of reporting. See also, Gottfredson and Hindelang (1979 and 1981)

[68] Victims of more serious offences such as rape and sexual assault, aggravated assault and serious violent crime express a higher degree of concern to protect others than do victims of other violent offences such as robbery or 'simple assault'.

because they felt they ‘should’ and that it was ‘serious’. A further quarter reported ‘to get help’. Across all crime types, the majority of victims reported because they felt they ‘should’ and that it was ‘serious’ (Van Kesteren, et al. 2000: 68–69). Victims of domestic assault also reveal this mix of protective and other-regarding motivations in reporting to police. In the USA, for example, women are ‘more likely to desire protection, they are less likely to think that their partner’s violence is a private matter, and they are less likely to think the incident was trivial’. This study concludes that ‘the factors encouraging women to report to police are much stronger than the single factor that discourages their calling’ (Felson et al. 2002: 640).

3.7.4 Summary

Considering these data, the victim of crime is an informed citizen making contingent choices – expressed transparently or otherwise – about which of the resources available in the community will assist him or her with his or her purpose(s). They use, develop, ignore and create ‘networks of action’ (Blumer 1969). They seek guidance from a range of personal and social supports. They do so according to different circumstances and with different expectations. As citizens, victims of crime make judgments about whether and who to access, why and when. In Black’s terms, they use their discretionary authority and become legal actors. There is nothing automatic or certain, however, to the mobilisation of law.

3.8 LEGAL CONSCIOUSNESS, MOBILISATION AND JUSTICE

The theoretical and empirical discussion in this chapter presents people’s interpretation of events and problems as deeply socially embedded and situated. Their meaning-making is influenced by the discourse of law and the legal, as well as through a justice imaginary. These ideas shape and guide but do not direct action.

Perceiving victimisation and injustice, seeing the availability of law, making assessments about law’s salience, efficacy and relevance, and moving into the possibilities created by law all comprise part of the puzzle of legal mobilisation. The component parts reinforce an image of the citizen actor exercising discretion in ways that are socially and politically situated. At the same time schemas of legality interact with other frames to permissible and available action. The option of legal mobilisation is hedged by constraints and contradictions.

Notwithstanding, a conception of the victimised citizen as an agent in determining the frame and thereby – at least in part – the response to an incident, event or problem, centralises their role in civil society. Acting to invoke *law* and become a *legal actor* is but one option open to them. In aggregate, these actions draw attention *through law* to the boundaries set by public policy. They 'enact' law and 'create the possibility of change' (Marshall and Barclay 2003: 618). They give flesh and meaning to the flat letter of law. The discursive movement between peoples, laws and law's institutions fashion and re-fashion the everyday.

Republican theorists envisage these as 'communitarian sources of order … empowered with opportunities and resources to participate directly in any local area of collective-decision-making that has an important effect on their lives' (Ayres and Braithwaite 1992: 17). It is more than social order, however, that this chapter has highlighted. In particular, the role of ordinary people in forming, reinforcing, re-ordering and offering definition and specificity to communal norms in collective settings is revealed as social practice with civic implications.

From this perspective Roger Cotterrell (2006: 164) goes so far as to pose the option of legal mobilisation as part of an 'individual's obligation to maintain mutual interpersonal trust in the form necessary for the particular relationships of community' such that 'betrayal of this trust … can give rise to liability, to some kind of sanctioning of the individual within the community'.[69] The proposition fuses legal mobilisation as part of an individualist rights narrative, to that of a broader narrative of the social and political. This narrative is a complex one where cohesion and contestation are in dynamic tension.

In this space law is not the neutral umpire it purports to be. It is potentially oppressive as well as liberating. How ordinary people as victims of violence view law and come to experience it comprise part of the new research in this thesis. The extent to which the law and legal institutions affirm or disabuse them of their faith in its fairness, the extent that it respects the equality and dignity of citizens emerge from an intense,

[69] At this point I do not explore critiques of the trend of governments to 'responsibilise' citizens to undertake crime prevention or to participate in law as an obligation of citizenship (Goodey 2005; Tapley 2003; Young 1996).

long-term engagement. It is through a detailed examination of interaction with authority and involvement in commonplace conversation that this research considers the quest for justice through the law.

CHAPTER 4: METHODOLOGY

> I didn't fit in anywhere but it's about me. It was weird. (Xenia 2011)

> Stories that are capable of countering the hegemonic are those which bridge, without denying, the particularities of experience and subjectivities. (Ewick and Silbey 1995: 220)

4.1 THINKING ABOUT DESIGN AND METHODOLOGY

The multi-dimensionality and malleability to ideas of justice attracted me. An enquiry from this perspective required methods that were attentive to the ways in which people 'create, enact, and change meanings and actions' (Charmaz 2006: 7). Yet I also knew that the research project had to *speak* to different audiences about victims, violence, justice, inclusion and power.

A mixed methods approach involving a 'practice of active engagement with difference' opens out the research question (Greene 2007: 14). In this, the integration of methods, analysis and interpretation is central to pragmatic, critically informed research. A pragmatic approach can, however, over-emphasise the *what* of research inquiry. I wanted a degree of fluidity in the design components that responded to the situated and real world process in which the lay participants were involved, as well as being responsive to the meanings that emerged from the surveys and interviews. I also needed a design that was not only open to storytelling, but was robust enough to examine attitude formation 'fraught with ambiguities' (Sebba 1996: 86). In short, mixed methodologies potentially facilitate recognition of the social construction of individual meaning-making alongside its acknowledged constraint by rigid, persisting structures and patterns.

In deciding upon a research design that emphasised the social construction of meaning, I could not claim that the discoveries I hoped to make in this research would be unexpected. I was not entering the field unencumbered. I could not expunge the learning I had absorbed over the years. Neither could I pretend 'the field' presented a

clean slate for me.[70] As Kathy Charmaz has pointed out, 'we *construct* our grounded theories through our past and present involvements and interactions with people, perspectives, and research practices' (2006: 10, emphasis in the original). However, as we will see, this creates a tension between a deductive starting point to research and later inductive theorising that arises from fieldwork – especially longitudinal fieldwork. At relevant points in the analysis I reflect on my role and influence in this interpretive endeavour.[71]

4.2 A MIXED METHODS STUDY

The research design attempts to mirror (though not replicate) the strengths of the pioneering research by Joanna Shapland and her colleagues in the UK and to use the insights from my earlier workplace studies discussed in Chapter 1. It is an exploratory study where I attempt to 'unpack' and explore experiences and assessments made about justice as an experience, and as an idea that is fluid as well as fixed (Stebbins 2001).[72] I assumed complexity and ambiguity, and I aimed for a 'thick' understanding of justice in the real world (Geertz 1973: 6).

A mixed methodology supported this intention. Both quantitative and qualitative methods were used concurrently and at different stages of the research. As a core component of mixed methods, triangulation anchored the study. Although perhaps an overused word, triangulation here refers to 'combinations and comparisons of multiple data sources, data collection and analysis procedures, research methods, investigators and inferences that occur at the end of a study' (Teddlie and Tashakkori 2009: 27). Figure 4.1 illustrates these components of my study design. It shows the use of survey, interview and secondary source data. It posits reflection from lay people as well as from legal officials. As methods to display the richness of justice conceptions, these also served the requirement for 'inference quality' and transferability (Teddlie and

[70] In discussing the influence and orientation of 'standpoint epistemology' within feminist research, Mary Allen argues that it is pretence to say researchers come with a blank mind (Allen 2011: 25–26). In being transparent about the journey that lead me to undertake this research on victims and justice I hope to have both honoured those from whom I have learnt much while at the same time displayed openness to differing realities. I stress that this capacity for reflexivity is shared and displayed by both the lay and legal participants in this study. That is, in us all.

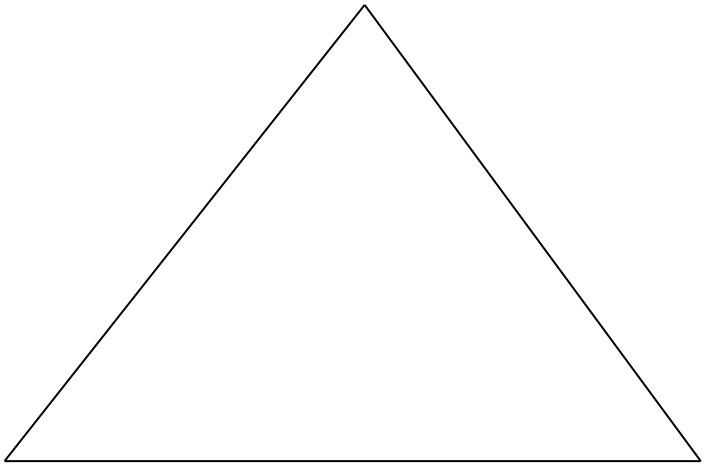
[71] Researcher reflexivity is situated in validity debates and intends 'consciousness of construction' (Gergen and Gergen 2007: 467).

[72] Although with less emphasis on exploration as a form of 'naturalistic' enquiry and more on the idea of it as an examination of space, place and people from a number of perspectives.

Tashakkori 2009: 26).[73] This approach to triangulation emphasises its usefulness in deepening and widening understanding as well as establishing the validity of a study (Olsen 2004).[74]

Figure 4.1: Research design

Data sources: lay and official participants, service data, national and local surveys, documentation, research literature.



Data type:
qualitative, quantitative,
primary, secondary

Data method: survey, interview,
longitudinal prospective panel,
discourse mapping

The components to the methodology are as follows (and described in later sections):

- the use of lay and official samples (section 2.3)
- a longitudinal prospective panel (section 2.5)
- quantitative survey with repeated measures and scales
- qualitative interviewing
- discourse mapping and analysis.

[73] Quantitative research demands internal and external validity from statistical analysis. Qualitative researchers substitute these terms with *trustworthiness* and *credibility.* Mixed methodology researchers use the terms *inference quality* and *inference transferability* to encompass both approaches (Teddlie and Tashakkori 2009: 26–27). Triangulation also attempts to offset weaknesses and to explore findings (Creswell 2003: 217).

[74] Wendy Olsen calls this a 'dialectic of learning' (Olsen 2004).

4.3 STUDY SAMPLES

A purposive sampling strategy was used to identify both the lay participants and the legal officials.

4.3.1 Lay sample

The lay sample comprised persons who had been victims of violence and who were in contact with support services.. The selection criteria for the sample were that:

- people were aged 18 years and over,
- people were primary victims in that they had directly experienced the conduct from which the criminal charge arose,
- the incident included some element of violence, and
- the incident from which the charge arose was committed in the Australian Capital Territory (ACT) and hence would be resolved in the ACT courts.

No claims of population representativeness are made for the lay participants. Their characteristics suited the research purpose and were pertinent to refining my emergent ideas.[75] The notion of representativeness is discussed in Chapter 6 in terms of the participants as 'ordinary people' in an extraordinary situation. Interviews with the lay participants were conducted in settings that emphasised their ordinariness – in cafes, libraries, parks and in their homes. Although a purposive sample, people did not differ markedly either from the local population, the population of violence victims locally or, on values and beliefs, from national Australian samples.[76] Thus the findings that emerge are transferrable to victims in similar research settings (Teddlie and Tashakkori 2009: 193 and ch.12).

[75] The panel could also be described a *convenience sample* in that they were drawn from a locality for which it was practical for me to research (where I lived, worked and studied), and who made themselves available (they volunteered).

[76] The two national datasets are described in Murphy, K., Murphy, B. and Mearns, M. (2010b), *The 2007 Public Safety and Security in Australia Survey; Survey methodology and preliminary findings*, Working Paper No.16, Alfred Deakin Research Institute, Deakin University, Geelong; and Braithwaite, V. (March 2001), *The Community Hopes, Fears and Actions Survey: Goals and measures,* Centre for Tax System Integrity, Working Paper No.2, The Australian National University, Canberra. The validity and reliability of Braithwaite's scales is further discussed in Braithwaite, V. (2005), *Preliminary findings and codebook for the how fair, how effective survey: the collection and use of taxation in Australia*, Australian National University, Canberra.

The sample comprised two sub-groups: female victims of male domestic (or spousal) assault,[77] and male or female victims of non-domestic assault (committed by male or female non-family others).[78] With these sub-groups the intention was to explore the nature of the offence and the influence of relational and gender factors on the justice judgments of victims. However, only six male victims of non-domestic assault by another male were recruited through the contact process (see below) and agreed to participate.

In total, forty-five individuals agreed to have their contact information referred to me (section 4.3.1.2 describes contact arrangements). Five failed to respond to my contact, a further six either declined or indicated their unavailability in other ways, and one referral did not meet the selection criteria. Thus a final total of thirty-three individuals participated in the first interview.

The decision to recruit only victims of violence was deliberate. This was done to constrain some of the more obvious differences in victimisation experiences. Mainly it was done in recognition that the experience of violence carries a unique assault on human dignity. I assumed that this characteristic transcended the gendered nature of the different experiences. I further assumed that the assault on human dignity would itself influence justice judgments (Tyler et al. 1997).

The decision to recruit lay participants from only one region was also made in an effort to constrain irrelevant sources of variation. It was also a practical decision about access to people and the capacity to conduct face-to-face interviews over a long period of time.

4.3.1.1 Lay sample characteristics

The demographic characteristics of the lay sample were both consistent with and divergent from key demographic characteristics of the region as evidenced in census data.[79]

[77] Also known as domestic violence or intimate partner violence.

[78] The term 'stranger assault' can be too narrow as it does not easily allow for relationship scenarios that involve acquaintances or neighbours.

[79] Census information is sourced from the Australian Bureau of Statistics (October 2007), *2006 Census QuickStats.*

As a panel of people, most of the six men and twenty-seven women were Australian born. A small proportion (12%) hailed from far-flung countries in Europe, Africa, the Middle East, South America and Asia. Census data for the region as a whole shows nearly 30% of the population was born overseas. However, participants' heritage was evidenced by 27% of the sample speaking a language other than English at home. This is a slightly higher proportion than the 20% of the region's general population speaking a language other than English at home. None of the study panel described themselves as having an Aboriginal or Torres Strait Islander background, while 1% of the region's population did so.[80]

Participants' socio-demographic profiles were equally diverse. While nearly a third of the ACT's employed population are professionals, 21% of the panel described themselves as such. A similar proportion of the panel as in the region described their occupation as managers (15%); 11% of the region described themselves as employed in technical and trades, with 9% of the panel doing so.

Employment and educational patterns also showed some differences to that for the region. Thirty nine per cent of the panel stated that they were employed full-time as opposed to 65% for the region. A further 24% were employed part-time with 26% for the region. Most of the study participants had a tertiary qualification as their highest level of education.

Income for the lay participants was dispersed in a manner similar to that for the region. Over half (55%) reported their income level under $45,000 per annum, with 42% reporting their annual income over this figure.[81] Over half of the panel (55%) said that they rented their home, as opposed to 29% in the region. Finally, only 30% of the panel were married compared with nearly half (48%) of the region's population.

Table 4.1 provides a summary of the characteristics of the study participants as a total and as distributed between the two sub-groups of domestic assault (all female) and non-domestic or street assaults (all male).

[80] The selection criteria and contact process is described later in this chapter. No additional measures were adopted to boost numbers of people from Aboriginal and Torres Strait Islander backgrounds, or from Cultural and Linguistically Diverse communities, or persons with a disability.
[81] N=32, one missing.

Table 4.1: Demographic characteristics of lay participants, number and %[1]

DEMOGRAPHICS[82]	Domestic assault (female) N=27 (%)	Non-domestic assault (male) N=6 (%)	TOTAL N=33 (%)
Australian born	23 (85)	6 (100)	29 (88)
English only spoken	19 (70)	5 (83)	24 (73)
ATSI	0	0	0
Disability	1 (4)	2 (33)	3 (9)
Relationship status – single	19 (70)	4 (67)	23 (70)
Children at home	19 (70)	2 (33)	21 (64)
Home rental	13 (48)	5 (83)	18 (55)
Employment status			
Full-time	11 (41)	2 (33)	13 (39)
Part-time	6 (22)	2 (33)	8 (24)
Other	10 (37)	2 (33)	12 (36)
Occupation			
Professional, managerial	9 (33)	3 (50)	12 (36)
Clerical, sales, service	4 (15)	1 (17)	5 (15)
Tradesperson, labourer, transport, factory	2 (7)	2 (33)	4 (12)
Missing	12 (44)	0	12 (36)
Level of education			
Tertiary	9 (33)	2 (33)	12 (33)
Secondary	16 (59)	3 (50)	19 (57)
Other	1 (4)	1 (17)	2 (6)
Gross annual income			
Under $25k	10 (37)	3 (50)	13 (39)
$25–45k	4 (15)	1 (17)	5 (15)
$45–100k	11 (41)	2 (33)	13 (39)
$100–250k	1 (4)	0	1 (3)
Missing	1 (4)	0	1 (3)

[1] Percentages rounded up or down to the nearest percentage point.

[82] Definitions and classifications are drawn from Australian Bureau of Statistics Census Survey.

4.3.1.2 Contact arrangements

Participants for the domestic violence sample were invited to participate through their liaison with the Domestic Violence Crisis Service (DVCS). The DVCS is a non-government agency that is engaged through both legislative provision and administrative memoranda as a partner to statutory criminal justice agencies in the ACT (Holder and Caruana 2006).

A safety protocol for contact was negotiated with the DVCS that recognised the particular dynamics of domestic violence situations (Langford 2000). Once one of their clients had agreed to involvement, and with her agreement, her contact details were passed to me. Initial telephone contact or other contact method as agreed then took place according to any safety considerations advised by both the client and the service.

Participants for the non-domestic violence sample were invited to participate in a similar manner through their engagement with a government agency, Victim Support ACT. This avenue did not generate any potential participants. Therefore agreement was later secured with the Australian Federal Police (AFP ACT Policing) to facilitate contact with non-domestic assault victims. AFP victim liaison officers offered an invitation to participate to victims with whom they would make routine contact after the initial report to police. If people indicated an interest they were asked to agree that their contact details be passed to the researcher. Following this I would make contact by the agreed method (usually telephone).

In all circumstances, participants were offered information about the study by post, email and/or in person. This information package included a plain English statement about the research, consent form and details of support and justice agencies. Participants were asked to consent to three interviews, although they were advised that consent to the first interview did not imply consent to the second or third interviews. Additionally, participants were advised that they could withdraw from an interview at any stage.

4.3.2 Legal officials sample

The decision to use a new data source as a theoretical sample emerged during the second wave of interviews with lay research participants. Data from these interviews sharpened focus on the *situation* in which lay participants were acting and

constructing meaning. I needed a way to make transparent the structural and ideological conditions in which they found themselves.

I decided to sample persons with a particular perspective of the public interest in justice. These legal officials had all been (but were no longer) Directors of Public Prosecution in different Australian jurisdictions. Directors have experience and expertise in their field. Ex-directors were further assumed to have greater latitude to speak freely about the tensions and challenges to the role vis á vis victims of crime. Fifteen potential legal officials were identified through a key informant and an internet search. There are nine criminal jurisdictions in Australia. Eight persons from a range of these jurisdictions were approached directly with a request for an interview. Six persons accepted the invitation. The sample of six persons had practiced as Directors in six different criminal jurisdictions in Australia.[83]

Interviews with the legal officials were semi-structured (Appendix A). This allowed for improvisation and judgment in the conduct of the interviews (Fontana and Fey 2000). All but one of these experts was interviewed in a professional setting – these surroundings created a 'meta-narrative' of authoritative ease. They were in a place of performance.

4.4 RESEARCH ETHICS

A critical ethical aspect of the research was the potential vulnerability and security of the victims of violence. Understanding the traumatic and practical impacts of the incident as well as the possible exposure of the lay participants to further assault, threat and intimidation were fundamental.[84]

In addition, the research was mindful of the implications to lay participants of being in a complex legal environment. All respondents were de-identified. Furthermore, the consent documentation needed to address the potential – albeit limited – for subpoena of survey documents as well as the existence of obligations on reporting suspected child abuse.

[83] One (ex) senior prosecutor had undertaken an interview as a pilot. This interview is not included in the analysis.

[84] In addition to my own professional expertise and experience, guidance was derived from '*Principles and Guidelines for Research with Vulnerable Individuals and Families*', May 2003, Centre for Children and Families in the Justice System, Ontario, Canada.

Finally, there was some small scope for actual and perceived conflicts arising from my having obligations as a statutory appointee under the ACT *Victims of Crime Act 1994.* This appointment overlapped with the research until early 2011. While not a conflict, it was also possible that the lay participants may seek to access, or I might offer, 'insider' knowledge of the justice process and the availability of various entitlements and remedies for victims. In fact this did transpire on a few occasions. In general I provided factual, contextual and/or contact information. Where an opinion was asked for it was provided at the end of an interview but with the suggestion to contact other formal sources of advice. Given these issues, the plain English statement contained service and other contacts, information about people's rights in the justice process and information about the role of the statutory advocate in assisting them to access these rights.

Ethical issues with regard to the legal officials related mainly to the importance of anonymity to them. Those interviewed thus received an information sheet setting out assurances that no personal or professional characteristics would be used in any publication of their data. This restriction extended to the identification of the jurisdiction in which they had served as a Director of Public Prosecutions.

All participants – lay as well as official – were offered a movie voucher as a token of appreciation for their time and expertise. The lay participants were offered a voucher for each successive interview.

The ethics application and two subsequent variations were approved by the Human Research Ethics Committee, The Australian National University (2007/0104).

4.5 A LONGITUDINAL PROSPECTIVE PANEL

A unique feature of the study is that it involved a longitudinal and prospective panel of victims of violence – the lay participants. Such a design is particularly suited to an examination of the dynamics, influences and characteristics of attitude formation, as well as social processes (Ruspini 1999). Panel design is commonly used in household, economic and labour force studies. Other types of panel can be repeated cross-sectional studies (eg US National Crime Victim Survey), or retrospective such as in oral histories.

The participants formed a cohort panel based on sample selection criteria. They were not a cohort in commencing and finishing at the same time. They were also not a cohort as recipients of the same 'treatment' but rather through their shared experience of participation in the standard and routinised procedure of criminal case processing. The panel was prospective in that participants were recruited at the commencement of this process.

A problem with panel design is attrition. Dropping out of the study was anticipated as arising from people's personal circumstances as well as possible perception of the survey and interview as confronting and complex. Nonetheless the rate of attrition was not unusual.[85] Participant retention from the first to the third interviews was 58% (see Table 4.2). While the participant experiences are described at each of the three interviews, only a core nineteen participants can be said to constitute the completing panel.

Table 4.2: Numbers and % of interviews at three stages

INTERVIEW	TOTAL (%)
TIME 1	33 (100)
TIME 2	26 (79)
TIME 3	19 (58)

Attrition creates a missing data problem. The majority of the participants who left the study after the first or second interviews were domestic assault victims.[86] No explanatory pattern (other than this characteristic) could be discerned for this. While only 18% of participants at the first interview were non-domestic assault victims, by the third interview these comprised 26% of the final panel. Although all participants agreed to contact for a second or third interview, the majority of those who were not

[85] The attrition rate of approximately 25% at each stage is consistent with other studies (Wenzel 2000: 161).

[86] In this study retention of domestic assault participants was lower (52%) than for non-domestic assault victims (83%) at the third interview.

interviewed beyond the first occasion simply failed to respond to multiple attempts to contact them.[87]

Panel conditioning is also described as problematic (Van Der Zouwen and Van Tilburg 2001; Trivellato 1999). Conditioning refers to the effect that participation in the study has: that is, the questioning, the interviewer, and the terminology. Some say that it is important to 'trigger' an interviewee's response in a concept study so that pre-existing beliefs and attitudes become accessible. Others say that the panel conditioning effect must be managed and made transparent (Ruspini 1999). I chose to use the rapport developed over the life of the panel between myself and the lay participants as a constructive aspect of the study. In later chapters I discuss the manner in which the interviews helped people reflect upon, digest and 'frame' what had happened and what was happening. I came to consider the idea, practice and theory of deliberation as critical to participatory research as it is to participatory justice and participatory democracy (see Chapter 9).

The time between the first and final interviews varied between six to thirty-six months. The key factor to the length of time was whether the case finalised quickly in the court system or whether a contested trial ensued. Each participant commenced and finished their participation in the justice process – and hence in the research process – at different times. The fieldwork commenced in November 2009 and completed in March 2013. Participants were interviewed at three stages (see Table 4.3).

Table 4.3: Prospective interview schedule

INTERVIEW	PROCEDURAL INTERVIEW POINT
TIME 1	After police had charged an accused person with an offence and prior to a court hearing
TIME 2	After the finalisation of the matter at court
TIME 3	Approximately six to eight months after finalisation

[87] Of the fourteen who only had one interview, nine failed to respond to multiple attempts for further contact, two declined further interviews (one after consultation with her partner), two made a number of appointments that they did not keep, and one commenced an interview and then declined to continue.

4.6 SURVEY AND INTERVIEW DESIGN WITH LAY PARTICIPANTS

The surveys and each of the three interviews with lay participants combined quantitative and qualitative questions. Both data were gathered concurrently. In the first interview, the enquiry was deductive with quantitative data dominant.[88] By the third interview, qualitative questioning reflected an inductive shift.

This shift in the dominance of a particular method was informed by grounded theory but also emerged from the fluidity of the longitudinal design. Discussed later in the section on interpretation and representation, grounded theory respects the research participants and the research data as central to concept development (Strauss and Corbin 1990). Thus, while the first interview of lay participants focussed on concepts drawn from the literature, the second and third interviews created opportunities for a higher degree of narrative. This accommodated the different levels of engagement and participation with prosecution and with court that was experienced by individuals. The third interview involved more open-ended questioning as lay participants looked back on their experience after some months.

The quantitative variables were drawn from the literature, especially that dealing with procedural and distributive justice. These acted as 'sensitising concepts' and formed a conceptual analytic frame (Bowen 2006) through which the unsettling reflection – the 'why' – could be directed (Charmaz 2006: 133). This contextualising and the integration of interview and survey data recognises the social construction of perspective.

The questions at the first interview (Appendix B[89]) grouped around:

- contextual and situational variables (personal and social, including relationship to offender),
- emotional state as well as the emotional orientation to the offender,
- attribution to the offender of the offence,
- the nature and impact of the incident and assessment of seriousness,

[88] See Tashakkori and Teddlie (1998: ch.3) for a discussion on dominant–less dominant design issues in mixed methodology.

[89] There were only a couple of small differences between the first and second surveys for domestic and non-domestic assault victims to do with the nature of their relationship with the violent person. Therefore only the surveys for domestic assault victims are included in the appendices.

- perceptions of community attitudes to victim help-seeking,
- the initiation, reasoning about and experience of police contact, including prior experiences,
- preferences for outcome at court, preferred sentencing principle, and through which preferred court processing method, and
- attitudes towards Australia's law and justice system, trust in civic institutions and personal values.

At the second interview the lay participants were asked what they wanted prosecution or court to do (and why), and what the agencies actually did (Appendix C). The interviews at each stage went on to ask about participants' experiences and opinions with the decision-making process and the outcomes of each agency's decision. The agency decisions constituted the substantive outcome relevant to distributive justice theory (see Table 4.4). The third and final interview reflected back on the justice system as a whole (Appendix D).

Table 4.4: Nature of the substantive outcomes

INTERVIEW	SUBSTANTIVE OUTCOME
TIME 1	The police arrest and charge decision
TIME 2	The decision to prosecute or not, and on what charges
	The court verdict and sentence (if any)
TIME 3	The justice system outcome

Final decisions on the design and questions of the second and third surveys and interviews were influenced by what had gone before. Early proponents of grounded theory emphasise the constant comparison of data and its 'verification' by participants (Glaser and Strauss 1967). In this study, participant authentication evolved through iterative narrative from interview to interview.

4.6.1 Lay participant survey questions

Framing questions about the decisions, outcomes and process preferences of lay participants was one of the more challenging components of the survey design. A starting point for the research acknowledged people were in a real process and facing

real choices, dilemmas and opportunities that would have an impact in their own real world. It was important that in the interviews the detail and language of the possibilities before them reflected the institutional and personal reality in which they found themselves.[90]

The first and grounding questions to be asked at the first interview were whether the person had initiated the contact with police, had wanted the arrest, and – looking ahead – whether they wanted the violent person found (or to plead) guilty, to be found not guilty or to have the charges dismissed. From this point, people were then asked their preference on a range of seventeen actual sentence options,[91] and from this list then asked to rank their first, second and third preference. Finally, they were asked which of the statutory sentencing principles[92] they felt should be applied by the judge or magistrate to the sentence.

The questions about what steps and process the participants would like to use in their case were complicated. Thibaut and Walker's (1975) seminal research on procedural justice posed options that asked subjects to consider from the perspective of an accused person. More recent literature has tended, since the explosion of interest in restorative justice, to discuss options for 'traditional' court or 'restorative' processes as opposing alternatives. The restorative justice studies tend to commence after a plea decision (Strang 2002). However, a key feature of my research was to explore the complexity of opinion and opportunity from the beginning, rather than pose binary options. I wanted to see if and how, in the real world, people displayed and sought multiple 'justice objectives' and through what process (Gromet and Darley 2009). Therefore the process preference questions in the survey came after people were asked their opinions and preferences for verdict and sentence. Then the process questions posed eight possible pathways: diversionary, traditional, traditional plus victim input, and versions of a traditional and restorative hybrid. Visual flowcharts were prepared as interview aids. Where a particular option was not in fact currently available in the justice system for the types of cases under examination, interviewees

[90] A senior legal policy officer with experience of court practice, and in-depth knowledge of the ACT *Crimes Act 1900* and the ACT *Crimes (Sentencing) Act* 2005 was consulted on appropriate terminology for this section of the survey.
[91] ACT *Crimes (Sentencing) Act 2005* sections 6 and 7, located at http://www.legislation.act.gov.au
[92] Ibid.

were informed so as to avoid their being misled. At the second interview a more direct question was asked requesting a narrative response: '*if offered a face-to-face discussion with the accused and with a trained facilitator would they have taken it up and, if so, when in the process*?'

At the second interview, actual decisions had been made in each case. That is, to prosecute (or not), to convict (or not) and with what sentence. Therefore the survey had to deal with the possibility that for a proportion of victims, the case may have finalised when the prosecution made a decision not to proceed. The questions asked participants not only what outcome was arrived at (by prosecution and by the court) but also what they would have preferred to see happen; a ranking of preferences; their perspective on the suitability and effectiveness of the decisions; and their perspective on the justice principles they thought had been applied in the case.

All the domestic assault victims knew the actual outcome of the matter at court by the time of the second interview. It was noteworthy that some of the non-domestic assault victims did not. This reflected the different local arrangements in place for victim notification. Where non-domestic assault victims did not know the outcome at court, they were given contact information to assist them in finding out. Eventually the information was secured by participants.[93]

In the first and second interviews, participants were also asked whether they had a prior experience of victimisation and prior experience of the justice agencies, police, prosecution or courts. If they responded in the affirmative, they were asked questions designed to determine if these had been positive or negative experiences, and in what ways.

4.6.2 Quantitative measurements and scales

A number of repeated measures were used in the survey design to examine lay assessments of justice across the three interviews and in relation to the different justice agencies. The measures related to procedural and distributive fairness.

[93] This issue of notification affects research outcomes in addition to it being a perennial problem for members of the public involved in the system. In one of her procedural justice studies in Canada, Professor Jo-Anne Wemmers has said that she could not assess the relative importance of procedural and outcome measures because the respondents generally did not know the outcome (personal communication 14 September 2011).

Across the three interviews with lay participants, some questions asked for categorical yes or no answers. Others invited a response to a statement on a Likert-type scale. The majority of such questions used a five-point scale from 1 = strongly disagree to 5 = strongly agree. Four-point and seven-point scales were more appropriate to some questions. Prior to performing any statistical analysis, the data were cleaned and some variables were reverse scored or recoded. Descriptions of participants' experience used the mean and standard deviation derived from the software program SPSS.[94]

The first survey comprised eighty-two questions, generating 273 variables plus qualitative narrative. Factor analysis of assessment of justice items was used to reduce the data and to identify clusters. This analysis is discussed in depth in Chapter 7.

Scales relating to various aspects of people's civic identity and orientation were created. A scale aimed at capturing the participants' overall beliefs (or opinions) about justice separate to their personal victimisation experience was derived from a national Australian study of citizen attitudes towards crime and policing (Murphy et al. 2010a) (see Table 4.5). The measures were chosen above the more well-known 'belief in a just world' (Lerner 1980). Lerner himself came to argue that suggesting a belief in a just world was 'a fundamental delusion' did not fully account for the complexity of people's opinions and beliefs in real world settings (Montada and Lerner 1998: 247–253). Murphy's study employed phrasing that is in more common usage and that relates directly to the Australian justice system.

The research sought to situate the respondents not only as rights-bearing citizens but also as citizens per se. Therefore the first questionnaire asked about their community and other activities, political beliefs, trust in civic institutions and their personal values. Conceptions about citizenship ranging from active citizens to relational ideas were developed using variables from Professor Valerie Braithwaite's studies into the micro foundations of Australian democracy.[95] Participants were asked to respond to statements using a five point Likert scale from 1 = strongly disagree to 5 = strongly agree. Trust in civic institutions was measured using a four-point scale from 1 = trust

[94] Standard deviation (SD) is a measure of how well the mean represents the data. Large SD (relative to mean) indicates that the data points are distant from the mean (Field 2000: 6).

[95] Located in the Micro Foundations of Democratic Governance Project, Regulatory Institutions Network, The Australian National University at http://regnet.anu.edu.au/demgov/home

them a lot to 4 = do not trust them at all.[96] People's personal values, ranging from security-orientated values to harmony-oriented values, were measured using Braithwaite's (2009a) seven-point scale from 1 = reject to 7 = accept as of utmost importance. Scales were created using factor analysis (see Table 4.6). These scales, and those in Table 4.5, were used as repeat measures.

Table 4.5: Items comprising the disinterested justice assessment scales (N=1204), from Murphy et al. (2010a)

Scale	Variables	Reliability score[A]
Obligation to obey	Obeying the law is the right thing to do I feel a moral obligation to obey the law I may not like all the laws and rules we have in place, but obeying them is a part of life we must accept	0.857
Confidence in justice	I feel our criminal justice system reflects the needs of the community The laws of our criminal justice system are generally consistent with the views of ordinary Australians about what is right and wrong I have a great deal of confidence in our criminal justice system Our criminal justice system needs to undergo significant changes to make it a fairer system for all[B] Australia's criminal justice system does not protect my interests[B]	0.769

[A] Cronbach's alpha; [B] Reverse scored

Finally, scales were created as measures of each participant's sense of agency and of their perception of the violent person and the offence (see Table 4.7, p.87).

4.6.3 Qualitative analysis

Qualitative coding is 'the process of naming segments of data with a label that simultaneously categorises, summarises and accounts for each piece of data' (Charmaz 2006: 43). Early grounded theorists emphasise repeated cycles of coding from the data as inductive generators of theory (Glaser and Strauss 1967). However, as a mixed

[96] Reverse scored in analysis.

method study examining, in the first instance, *a priori* concepts of justice, this research moved from deductive to inductive in its analysis of data. Thus the coding was managed through the specific lines of questioning contained in the interviews of both lay and official participants rather than line-by-line analysis. These provided fertile ground for the later thematic analysis, and their location with other dominant concepts drawn from the literature.

The interviews with lay participants were completed face-to-face and as part of the surveying. Participants usually marked the survey paper with their answers to questions, and then handed the survey back to me to write responses to open-ended questions. Transcription was therefore a relatively simple process of typing up, coding and filing. I taped and transcribed interviews with official participants myself.

For the lay participants, the interview questions related directly to actions they or others had taken or were about to take, and asked them to reflect on these. The coding, therefore, translated easily into:

- objectives and motivations
- preferences
- expectations
- reflections.

The codes – crafted manually – depicted the 'intentional understanding' of lay participants (Kögler 2007: 365). Through the reasoning and context provided in narrative by lay participants, I aimed for an understanding of what was behind their intentions rather than explanations. I sought depth and perspective to people's accounts through an integrated analysis of the qualitative and quantitative data. For example, a description of how many participants might have wanted prosecution is unsettled by narratives that diverge or join on different reasoning. Therefore, variation and variability leveraged multi-level understanding.

Table 4.6: Items comprising the social value scales (N=3558) from Braithwaite (2001)

Scale	Variables	Reliability score[A]
Self-reliant citizenship	Good citizens give a helping hand to others Good citizens work hard and do their fair share Good citizens accept that others have a right to be different Good citizens get on with their own lives and let others live as they want to	0.739
Involved citizenship	Being a good citizen is about becoming involved in your community Being a good citizen means taking an active interest in politics Being a good citizen means standing up for what you think is right even if others disagree	0.646
Harmony	Self-knowledge Inner harmony Self-improvement Wisdom Self-respect Pursuit of knowledge	0.867
Security	Recognition by community Economic prosperity Authority Ambition Competition	0.755
Trust in authorities	Trust – local government Trust – federal government Trust – local law courts	0.603
Trust in public services	Public schools in your area Fire stations in your area Hospitals in your area Police stations in area	0.667
Personal agency	What happens in the future depends on me I have control over the direction my life is taking I often feel helpless in dealing with the problems of life[B] There is really no way I can solve some of the problems I have[B]	0.659

[A] Cronbach's alpha; [B] Reverse scored

Table 4.7: Items comprising the personal and offender assessments (N=33)

Scale	Variables	Reliability score[A]
Fear/distress	At time of incident I felt: • fear • distress	0.900
Humiliation	At time of incident I felt: • humiliation • other	0.588
Warm feelings toward offender	Feelings for offender: • love • empathy • forgiveness	0.722
Distanced feelings toward offender	Feelings for offender: • frightened • confused/puzzled • sadness • pity	0.567
Intentional offence	Offender knew what he was doing	Not scored
Unintentional offence	Offender did not mean to hurt me Offender influenced by drink/drugs	0.326
Offence provoked	Offender provoked Offender influenced by others	0.499

[A] Cronbach's alpha

In addition, aspects of the qualitative data were transformed quantitatively. The core concepts that arose are discussed alongside other research findings on victims and justice. I aimed to identify convergence and difference. The repetition of certain measures through the three stages of interview reveals what matters in justice assessments, when and why.

The ideas and concepts that emerged from the coding were framed by the themes or dimensions of justice identified in the literature. These dimensions, as well as my professional knowledge, provided 'analytic choices' for sifting the data (Miles and Huberman 1994: 8). Analysis involved comparing and integrating statements relevant

to the themes. While early grounded theorists abjure this approach, later constructivists acknowledge that 'social phenomena exist not only in the mind, but in the objective world as well, and there are some lawful, reasonably stable relationships to be found among them' (p.429). This position recognises that individual views and actions are marked and underpinned by the patterning of social processes. Direct quotes from the participants serve as exemplars of these connections.

As the longitudinal process generated a considerable volume of qualitative data, visual displays further categorise the meanings given to the idea and experience of justice, and locate these within particular places and times. Discourse analysis of the legal officials' interviews noted what meanings to justice were privileged, and in what ways. As a critical tool, discourse analysis considers the meaning of what is said within and alongside the social and institutional structures in which things are said. As such it looks at power relationships and seeks to make hidden power more visible (Chouliaraki and Fairclough 1999). As an analytical tool, discourse analysis sharpens the boundaries between, and distinctiveness of, the multiple perspectives and multiple realities thrown up by the lay and official participants.

4.7 LIMITATIONS

Exploratory studies such as mine are necessarily tentative in asserting findings. The self-selection and small number of lay participants in itself limits generalisability. Similarly, the disparity between the sub-groups of domestic and non-domestic assault victims limits analytical power in relation to gender and other relational characteristics. The study is also limited in the significant disparity in numbers between the population samples from the various national datasets used and that for the study sample. However, as the intention was to explore in depth and over time the idea and experience of justice in a real world situation, the study possesses depth, detail, emotionality, nuance and coherence.

4.8 INTERPRETATION AND REPRESENTATION

Constructivists say that analysis and interpretation are two sides of the same coin (Miles and Huberman 1994). However, if analysis is sorting and classifying,

interpretation is the patterning, its continuity and ruptures. Interpretation asks what these ways of accounting can mean.

In this sense, interpretation is about choices that have social and political resonance. One of my choices is to privilege the perspectives of ordinary people, but also to present their rounded as well as discordant selves. There is no point in replacing one simplistic image with another. In a further instance of choice, this 'imaginative rendering' (Charmaz 2006: 149) is attuned to and reflexive with the 'space of politics and moral discourse' in which research about victims and justice is located. This space is historically and ideologically situated. I intend this deeper understanding of ordinary people's complex reasoning to illuminate a path through this space for the reader.

I want my re-centring of ordinary people to provide a representation that challenges state-centric discourse about authority and legitimacy. A critical perspective doesn't determine how we see the world but works as a strategy for exploring; stimulates analyses of competing power interests; and examines the social construction of identity and experience (Benhabib and Cornell 1987). Giving pseudonyms in this thesis to the lay participants was an essential part of re-centring – and perhaps a not-so-subtle argument against power. Through their eyes I was conscious of critical readers.

My interpretation of the prosecutorial discourse about justice resists its hegemony. I view their discourse as power/knowledge formations that serve institutional authority (Foucault 1980). In this I recognise that institutional imperatives create straightjackets for practitioners as well as for the lay publics (victim and offender). Denzin and Lincoln have called for 'compassionate, critical, interpretive civic social science … [to] produce radical democratising transformations in the public and private spheres' (2000: 1019). This invitation can also be extended to all those who work *for justice* where public and private interests intersect in the private/public spaces *of justice.*

In the end, not only do analysis and interpretation interact but they do so also with representation. Interpretation is not the conclusion. My sympathies lie with those struggling within 'structured circumstances which consistently work to deny them any effective voice at all'.[97] For this research I re-present an examination of one supreme

[97] Adrian Peace (1993: 203) quoted in Edmondson, R. (2007), 'Rhetorics of Social Science: Sociality in writing and inquiry' in *The Sage Handbook of Social Science Methodology,* p.492.

idea – *justice* – from different perspectives in order to create new possibilities *in the real world.*

CHAPTER 5: MAPPING INSTITUTIONAL DISCOURSE ABOUT JUSTICE

> You are not running a service for the victims who want to feel better. (P1 2011)

> Competition for control of access to the legal resources inherited from the past contributes to establishing a social division between lay people and professionals by fostering a continual process of rationalization. Such a process is ideal for constantly increasing the separation between judgments based upon the law and naive intuitions of fairness. (Bourdieu 1987: 817)

> Institutional fundamentalism may not only ride roughshod over the complexity of societies, but quite often the self-satisfaction that goes with alleged institutional wisdom even prevents critical examination of the actual consequences of having the recommended institutions. Indeed, in the purely institutional view, there is, at least formally, no story of justice beyond establishing the 'just institutions'. Yet, whatever good institutions may be associated with, it is hard to think of them as being basically good in themselves, rather than possibly being effective ways of realising acceptable or excellent social achievements. (Sen 2009: 83)

5.1 WHERE POWER LIES

This chapter considers institutional and legal orientations to the victim in criminal justice, and to the idea of justice itself. The discussion looks back to identify some key conceptual transitions in the historical evolution of criminal law and justice, pauses on present-day realities, and then looks forward to touch on future possibilities. The rather panoramic depiction situates lay people and professionals – as well as their narratives – in a specific socio-historical context.

I start with a brief description of the processes and entities that comprise institutional aspects of this environment. In particular I explore the evolution of public prosecution and contrast some differences between Australian and English histories. I enquire into the perspectives and orientation of prosecuting authorities – using the reflections of an elite sample – as exemplifying a dominant (and dominating) paradigm about justice. While I identify and trace the contours and strands of thinking both in appreciation and as critique, my ultimate aim is to situate the various discourses on justice within a

political frame.[98] The analysis works *through* the question 'where power resides' in criminal justice (Kearon and Godfrey 2007: 33). From this perspective I will argue that the authoritative prosecution discourse on justice acts as an ideology that legitimates the practices through which power becomes hegemonic.[99] In concrete terms I argue that the exercise of discretion as a practice is central to prosecution power. Nonetheless, discretion also emerges as rich in potential for dialogue and engagement.

5.2 WHY FOCUS ON PUBLIC PROSECUTION?

In today's world the institutions of criminal justice are imbued with an extraordinary degree of power and authority over ordinary citizens. Mostly this is indirect and criminal justice lies in the background of people's everyday lives. Whereas police and the courts are sharper in focus, prosecutors conduct their business largely hidden from the public eye. Theirs is an under-researched practice and an under-theorised role, yet its central organising concepts are emblematic of criminal justice as a whole.

In this chapter I use the reflections of six Australian ex-Directors of Public Prosecution[100] in single narrative form in order to map representations of justice and to articulate institutional orthodoxies. Discourse analysis treats individual reflections as a whole and as connected to the production and reproduction of power (Chouliaraki and Fairclough 1999). The six performed their public role in six different jurisdictions. Between them they had over fifty-one years of prosecuting experience (average 8.5 years). Interviews were conducted in a semi-structured manner and comprised over 10 hours conversation in total (one and three-quarter hours per person on average) (Pfadenhaeur 2009: 84).

As an elite grouping, theirs is not posed as a 'truth' or source of objectivity. Indeed, their disciplinary and institutional settings impose 'cognitive and social norms' that are habituated and routinised in their professional lives (Meuser and Nagel 2009: 18–19). As legal officials, prosecutors inhabit a space where their decision-making in the name

[98] I extend Iris Young's conception of the political (1987: 73) in order to attend here to the relationship of ordinary people to the state (through its institutions).

[99] Here I rely on Raymond Williams' exposition of 'hegemony' as a dynamic process as much as it is a system of dominance. Hegemony is adaptive and not necessarily total (Williams, R., 1977, *Marxism and Literature,* chapter 6*).*

[100] Quotations from prosecution interviewees are de-identified but differentiated numerically from P1 to P6.

of the state or Crown – discretionary and unseen – moves them 'from the language of administration to the language of power'. In making decisions to prosecute or not, they decide what is to come under the purview of law and what is not. In a modern democracy, public prosecution enacts 'the logic of sovereignty' (Sarat and Clarke 2008: 387).

5.1.2 Prosecution as legal mandarins

As legal professionals, prosecutors abjure any suggestion of such monopolistic command. They commonly situate themselves as one in a chain of decision-making sites, as 'just one cog in the process' (P3). This perspective accords with some criminal justice scholars who refer to it as a *process* rather than as a system.[101] In the process, prosecutors are pragmatic actors who are prosecuting 'because you have a case' (P1).[102] Their role is described modestly to act 'professionally with the body of evidence and wherever that and the law and the guidelines take him or her' (P3). This managerialist approach[103] presents prosecutors as administrative practitioners and dissociates criminal justice from their authority. In counter-pose, prosecutors tend also to make a further claim as 'ministers of justice' (P4, P5).[104] The depiction serves to emphasise the point about prosecution intimacy with sovereign authority. At this end of their representational spectrum prosecutors take this 'responsibility really really seriously' (P2). They will typically refer to their 'duty' (P1, P4, P5, P6) and 'obligation' (P1, P4) and, as high mandarins (Gordon 1984), invoke higher principles in language that has been critiqued as 'unworkably vague' (Plater 2011: 166).

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[101] For an Australian perspective see Findlay, M., Odgers, S. and Yeo, S. (2010), *Australian Criminal Justice,* 4th edn, Oxford University Press, Melbourne. For the UK see Ashworth, A. and Redmayne, M. (2010), *The Criminal Process*, 4th edn, Oxford University Press, Oxford, and McConville, M. and Wilson, G. (2002), *The Handbook of the Criminal Justice Process*, Oxford University Press, Oxford. Discussing case processing in a public defender's office, David Sudnow emphasises how it produces stereotypes of those on the conveyor belt (Sudnow 1965).

[102] Susan Silbey discusses the 'sociological citizen' as a pragmatic actor (2011). She describes a regulator who goes outside the script. Prosecutors tend to emphasise the importance of their applying the rules, as 'never allowed to cheat' (P5). At the same time, discretion (going beyond the rules) and deciding within a frame of multiple possible criteria is central to their work.

[103] Sometimes also described as 'actuarial justice'. For a discussion in the European context, see Wade 2008).

[104] A contemporary statement is located in NSW Director of Public Prosecutions (2007), *Prosecution Policy*, Office of the Director of Public Prosecutions, Sydney, p.5. For an argument that the notion of the prosecutorial 'minister of justice' is out-dated see Plater (2011) and for further discussion on the ways in which the depiction is over-stated, see Young and Sanders (2004).

The disjuncture between these pictures of their work – the mundane and the lofty – could be almost a stereotype of criminal justice per se. As legal officials they contribute to shaping a 'dominant vision' (Gordon 1984: 71). However, it is important to take these accounts seriously 'without losing sight of the particular settings and circumstances in which they were developed and articulated' (Blumenthal 2012: 174).

The term 'mandarin' captures a sense of the features of Directors of Public Prosecution as higher officials modelling the justice discourse and pauses on a picture of 'benevolently competent authority' (Duff 2001: 8).[105] Their disciplinary and 'social cohesion' confers them particular authority (Bourdieu 1987: 819). Whereas doctrinal mandarins speak to the legal system in wrapping the law 'in hyper-formal elaborations of its doctrines, or mechanical rigidity in applying its rules or precedents', the legal mandarins of prosecution speak to the general public in circumstances where one can see 'the low-lying details of how law makes itself felt' (Gordon 2012: 205). At this interface, prosecution acts to delineate between that claimed as legitimate, credible and worthy, and that which is not.[106] It is here also that one can appreciate 'the stakes, intellectual and political, that the managers of the legal system [have] in their own constructs' (Gordon 2012: 208). It is from this starting point that I commence tracing areas of dissonance and congruity in perspective between lay and official ideas of justice.

5.2 CONTEMPORARY CRIMINAL JUSTICE

The discussion first requires grounding in the present day and locating prosecution alongside other key justice entities. I follow the notion of criminal justice as 'a sequence of decision situations' (Findlay et al. 2010: *Preface xx*) in order to sketch the contemporary institutional landscape. The description emphasises the pragmatic and administrative interdependence of the various justice entities, and their work as social practice. I touch on the responsibilities of authorities to the victim-citizen who becomes involved with these bodies in later chapters.

[105] A mandarin denotes a high official or bureaucrat in imperial China. Noam Chomsky uses the term in critiquing assumptions about the benign neutrality of the American intellectual and technical class (Chomsky 1969).

[106] Pierre Bourdieu argues that the specific power of legal professionals consists in *revealing rights* – to create, amplify or discourage and veto (1987: 833–834).

My simplified picture risks presenting the various justice entities as having common purpose, shared values, and both internal and external coherence. These are all contestable presumptions. In the interests of brevity I also do not engage with the various debates and controversies associated with the powers of the respective agencies and the extent to which they fulfil their mandate.[107] However, it is relevant to acknowledge the expansive use of discretion – as low-lying detail – across all agencies.[108]

Police are the most visible and accessible to ordinary citizens of all criminal justice institutions. As such they are a likely first port of call for those acting in relation to an incident.[109] They are 'official gatekeepers of the criminal justice process' (Findlay et al. 2010: 115). They receive and harvest a wide range of information. The police function is an interpretive, selective and filtering one. Thus they may record an incident as a crime or not, and may (or may not) mount an investigation and determine the level of investigative effort. In electing whether to divert, caution or charge it is police who decide the resolution pathway for an incident. They determine whether to summons or to arrest an alleged offender (with resultant decisions about bail), and they decide the nature and number of initial charges. It is the police preparation of the brief of evidence that provides prosecution with its preliminary orientation. In doing so, they assume the role of informant.

Prosecutors[110] present this early brief at court and will have carriage of the finalisation of the matter on behalf of the state or the 'Crown'. Usually at the first appearance of the defendant in court, prosecution will make further representations about bail. The

[107] On both these points the references at fn 3 are germane. Much of this descriptive section is drawn from these sources. I provide a truncated depiction of the criminal justice process in describing the adult jurisdiction and not touching on the correctional system or the nascent varieties of victim support and advocacy.

[108] Pollock, J. (2003), *Ethics in Crime and Justice: Dilemmas and decisions*, 4th edition, Wadsworth Publishing.

[109] There are, of course, different ways of counting non-reporting of incidents to police (see Chapter 4). The whole criminal process acts as a sieve for the resolution of cases. It has been estimated that for every 1000 incidents reported to police, a suspect is detected in 64, 43 result in convictions, and one person is jailed (Hogg and Brown (1998), *Rethinking Law and Order*, Pluto Press, Sydney, p.10). In addition, police are not the only portal to criminal justice. In the USA, for example, a criminal complaint can be made directly with public prosecution (Ford 1991).

[110] In most Australian jurisdictions police prosecutors perform this function in summary proceedings and an independent DPP conducts indictable prosecutions. In the ACT – within which the lay respondents in this study are situated – the DPP conducts all summary and indictable prosecutions. There are no police prosecutors.

prosecutor has discretion in framing charges and may amend, add to or discontinue charges – an authority that paves the way for charge negotiation and highlights prosecutorial power.[111] Prosecution guidelines commonly describe a two-step decision-making process on whether to proceed to prosecute. The first step considers whether the evidence is sufficient to suggest that there is a reasonable prospect of conviction. The second step 'is that, having regard to the provable facts and the whole of the circumstances, it is in the public interest to prosecute' (Refshauge 2010: 4).[112] The basis of this discretion is said to derive from the statutory independence of prosecution and is claimed to be unbound 'by any enforceable standard'.[113] While most matters are resolved by way of a guilty plea,[114] prosecutors will be central to those which proceed to trial, often by way of committal proceedings, and will also determine the exact nature of the indictment.

The majority of all crimes prosecuted in Australia are usually resolved in a lower court before a magistrate – the vast majority by way of a guilty plea from the defendant.[115] It is in higher courts that a trial is conducted before a judge and may also involve a jury. The low proportion of criminal cases resolved at this level has led some to suggest this aspect is a showcase of ceremony and formality.[116] It is here also that the adversarial performance is at its most ritualistic. The role of the judicial officer is 'to supervise proceedings, to act as umpire, to determine questions of law, and to direct the jury in their task of determining the factual issues' (Findlay et al. 2010: 166). The judicial

[111] The practice of charge negotiation (or bargaining) in the Australian context is outlined in Samuels, G. (2002), *Review of the New South Wales Director of Public Prosecutions' Policy and Guidelines for Charge Bargaining and Tendering of Agreed Facts*, Attorney General's Department, Sydney.

[112] In Australia each prosecuting authority publishes its own guidelines. However, there is broad commonality between them. Commonwealth Director of Public Prosecutions (2008), *Prosecution Policy of the Commonwealth*; Director of Public Prosecutions (NSW) (2007), *Prosecution Guidelines of the Office of the Director of Public Prosecutions*; Director of Public Prosecutions (ACT) (1991), *Prosecution Policy and Guidelines of the Director of Public Prosecutions (ACT);* Director of Public Prosecutions (NT) (2005), *Director of Public Prosecutions Guidelines*; Director of Public Prosecutions (Qld) (2003), *Directors Guidelines;* Director of Public Prosecutions (SA) (1992), *Prosecution Policy*; Director of Public Prosecutions (Tas) (1994), *Director Public Prosecutions Guidelines*; Office of the Director of Public Prosecutions (Vic) (2010), *Director of Public Prosecutions Policy*; Director of Public Prosecutions (WA) (2005), *Statement of Prosecution Policy and Guidelines*.

[113] Richard Refshauge (2010: 1) referencing Ronald Dworkin's delineation between strong and weak discretion See Dworkin, R. (1977), *Taking Rights Seriously,* Harvard University Press, Cambridge. Sarat and Clarke discuss the case law on this point with regard to the US Supreme Court (2008: 394–404).

[114] In 2011–2012, approximately 91% of criminal cases were finalised in lower courts across Australia. Of those finalised at this level, 89% were adjudicated, and 86% were proven guilty or plead guilty, and of these 91% resulted in a non-custodial sentence (Australian Bureau of Statistics 2013).

[115] Ibid.

[116] And as 'the arena where the ideology of justice is put on display' (McBarnet 1981: 153).

officer will, upon a verdict of guilty, determine the nature of a sentence (if any) for the accused. In Australia, the aims of sentencing are commonly described as retribution, deterrence, rehabilitation, denunciation and incapacitation. A sentence may seek to address one or more of these aims.

5.3 A CIVILISING TRAJECTORY

Two key features engender 'power to project a discourse of inevitability and naturalness' to the legitimation of justice entities (Harris 1997: 110). That is, the association of law with an arc of social and political enlightenment, and the appropriation and reformulation of certain historical moments as inevitable modernisation.

5.3.1 Framing criminal law and justice

The institutional landscape is saturated by the criminal law itself. Prosecution interacts with the ideas, principles and assertions of law in sustaining a self-referencing world. Their perspective on the law in social context drew on both the stern threat image and the benign umpire (see Table 3.1). Asked what was the role of criminal law and justice in society, prosecutors invoke both descriptive and normative theories of law (Wacks 2006). In the former vein, law was described as if it were a piece of equipment – a 'mechanism' (P1, P4) and a 'brake' (P5). The metaphor extends to reflection on its operation as 'more like a sledge hammer than a jeweller's pliers' (P1) and 'pretty blunt' (P5).

Prosecutors draw out the instrumental meaning behind the imagery by emphasising functionality; that is, law as a means to various ends. [117] It is a mechanism 'for keeping order ... for controlling the power of other public officials … for protecting the community … for publicly expressing the community view of what ought to or ought not to be permitted ... And essentially in its day-to-day activities it is a mechanism by which persons accused of things are prosecuted and dealt with …' (P1).

More broadly the law's instrumentality is explained as a means 'to ensure that the society can be managed in a way that allows people to get the benefits from the

[117] These sentiments echo realist approaches to law. Karl Llewellyn, for example, posed law as a functional system doing 'law-jobs'. Prosecutors representing themselves as 'cogs' in the process is reflective of this notion. (Wacks 2006: 94).

society' and 'to regulate and promote positive interaction' (P4). Criminal law comprises 'the rules that govern conduct' (P5). Normatively, criminal law expresses 'what ought to or ought not to be permitted' (P1) and as drawing 'the lines within which the community can comfortably live' (P4). It is 'the first and most basic system of norms' that any society – democratic or despotic – requires (P5). Furthermore, these norms involve 'moral wrongdoing easily recognised and readily acceptable throughout the world' (P5). Law's multiple relationship(s) to peoples range from it as a 'subservient construct on society' (P4) to it as a 'guard' (P2).

These statements about the criminal law invariably draw on an account of social, legal and political historical change that steadily progresses towards liberal democratic capitalism and which systems of laws naturally and properly enable (Gordon 1984). Emphasised variously as a civilising process (Elias 1939), as 'the solidarity project' (Garland 2001:199), and as 'the Enlightenment project' (Lacey 2007), these changes are posed as following a linear path with an air of inevitability. '[A]s time progressed' (P1) informal or fragmentary rules would 'gradually solidify' in 'an evolutionary process' (P4).

It is a common claim that the evolution of laws and societies follows 'a generally enlightened, humanitarian and progressive trajectory' (Emsley 2005: 2).[118] As such, the system of laws evolves from an image of medieval brutishness (P1), to claim liberty against autocracy (P3), to disinterested professionalising of a 'flawed' process (P4), and finally to provide a stern independence of decision-making against the venality and arbitrariness of a politician – Attorney General or other (P2, P3, P5). Through the flow of history criminal law nonetheless is said to claim 'a common core of values' that reaches back to the Babylonian era and is found infused in the world's major religions (P5). The historical references constitute markers in a 'chain of legitimation' (Bourdieu 1987: 824).

5.3.2 Evolutionary claims

The association of criminal law with the civilising of human societies gains power not simply through the air of inexorability but in depictions of English legal history –

[118] The claim is also critiqued by democracy theorists. See, for example, Pateman, C. (1970), *Participation and Democratic Theory*.

claimed as Australia's inheritance (P1–P6) – 'that occurred over hundreds and hundreds of years' (P5). In particular, successive efforts from the twelfth century to introduce 'the concept of offences being a breach of the King's peace' are viewed as foundational to the present idea of criminal offences being notionally committed against 'the public' rather than against individual members of that public (Kearon and Godfrey 2007: 19–20). More pointedly, the origin of British criminal law, it is claimed, 'was to prevent victims from taking the law into their own hands' (P1).

As a classic doctrinal text in this system of thought, *Blackstone's Commentaries* asserts that crime was an offence against the Crown 'because the sovereign, in whom centres the majesty of the whole community, is supposed by law to be the person injured by every infraction of the public rights belonging to that community' (Blackstone 1769: 12). In practice 'indictments ... are preferred ... in the name of the King, but at the suit of any private prosecutor' (p.303). Acting on behalf of this public is 'converted into accepted facts' (Bourdieu 1987: 817) by contemporary public prosecution notwithstanding its historically intermittent actual appearance in the daily court calendar.

5.3.2.1 The English context

As a question of *political* history rather than legal history, the forces behind the 'inexorable centralisation of power' (Ziegenhagen 1977) are empirically contested in the English situation.[119] Industrialisation and urbanisation in England over the eighteenth and nineteenth centuries provided the foundations to later consolidation and professionalisation of state justice bureaucracies.

However, that the institution of public prosecution was a 'historical latecomer' in England has not been widely acknowledged (Langbein 1973: 313).[120] At its origin public prosecution was tightly restricted to treason and related state trials.[121] It was more extraordinary than ordinary. Indeed, features such as adversarial trial procedure and the involvement of legal counsel (prosecution as well as defence) developed slowly

[119] See for example, Emsley 2005; King 2003; Hay et.al eds 1975. There is particular contestation in relation to gender (D'Cruze 2000; Kermode and Walker eds, 1994) and class (Thompson 1975).

[120] However, see Plater (2011, *op.cit.,* and Refshauge, R. (2005), 'The Prosecution Role in Upholding the Right to a Fair Trial and Responding to Victims/Witnesses', Speech to the National Conference, *Peaceful Coexistence: Victims' rights in a human rights framework*, Canberra, on file with the author.

[121] The sources I draw on in this section include Langbein 2003, 1973; Cairns 1998; Philips 1989; Beattie 1986; King 1984; Hay 1983.

and patchily over the eighteenth and nineteenth centuries.[122] Even with the establishment of an organised urban police service in 1829 and the gradual evolution of a 'system of police-conducted prosecution', by the mid nineteenth century in England prosecution counsel was used only in one in twenty cases (Langbein 2003: 256).[123] Criminal procedure and hence the criminal justice system as a whole relied upon private prosecution[124] well into the nineteenth century (Langbein 1973: 317).[125] It was, says historian Douglas Hay, 'the paradigm of prosecution' (Hay 1983: 167).[126] While the indictment might be brought in the name of the Crown, it was usually carried by a private individual or a private association of individuals.[127]

Pressure for reform of English prosecution was intermittent and a long-drawn out affair. Through the various reform attempts in the nineteenth century, arguments for greater involvement of a public official in criminal prosecutions railed against the inefficiencies and inconsistencies of the existing laissez faire system. The greater capacities of the state were invoked as well as the spectre of an urbanised, fractious and unruly populace. Private individuals were castigated variously as frivolous, vexatious, unreliable, ignorant, helpless and easily intimidated.[128] They were described as blocked by the expense and inconvenience of prosecution, or diverted with bribes

[122] Indeed, aspects of trial claimed as traditional rights such as the 'right to a fair trial' were only settled and extended in the twentieth century (Bronitt and McSherry 2005).

[123] For a detailed discussion of the practices of prosecution in England and Wales prior to the eighteenth century see Beattie (2008); in the eighteenth and nineteenth centuries see Langbein (2003); and Rock (2004).

[124] Private prosecution refers to the initiation of criminal proceedings from an individual victim or person acting as an agent of the victim. Persons of some wealth could be members of an association for the prosecution of felons (Kearon and Godfrey 2007: 21; Hay 1983:171–172).

[125] Estimates of the volume of private prosecution in England in the nineteenth century vary. One detailed regional study estimates that, in 1880, eight out of ten prosecutions for violence were initiated and conducted by individuals. A database of cases from 1880 to 1940 showed over three-quarters of prosecutions for violence were prosecuted by individuals (Godfrey 2008). The potent portrayal of prosecution and criminal law as weapons of ruling elites (Thompson 1975; Hay 1975) has been contested in detailed archival research (see King 1984; Godfrey 2008; Langbein 1973). At a minimum, as King (1984: 53) notes, 'attitudes to and usage of the [*criminal]* law differed between social groups'.

[126] There are differences of view as to the import of private prosecution. On the one hand, simply put, is the idea that because substantial numbers of people from lower socio-economic groups initiated prosecutions, the law and legal institutions enjoyed legitimacy (Langbein 2003). On the other hand is the argument that the poor 'exploited the powers of the state' for malicious ends. See Hay (1989). The argument as to the motivations of victimised citizens who turn to the law remains current.

[127] Even in 1960 a legal scholar could write that 'every *police* prosecution is in theory a private prosecution; the information is laid by the police officer in charge of the case, but in so doing he is acting not by virtue of his office but as a private citizen interested in the maintenance of law and order' *(*Devlin, P. *The Criminal Prosecution in England,* Oxford University Press, London, 1960 pp.16–17).

[128] See, for example, the comments of Denman J in Plater (2011: 70)

from accused persons, or simply uninterested in the effort to support a common good (Rock 2004: 336-339). At the same time arguments against centralisation and professionalisation found fertile ground in references to allegedly oppressive state practices in continental France and Cromwellian England, as well as fear of state indolence or indifference (Rock 2004: 333; Hay 1983). The 'monopolistic control of prosecutorial power' was generally viewed with some alarm (Cardenas 1986: 361; Hay 1983: 173).

This centuries-old right to a private prosecution was not viewed as resulting from administrative oversight. Rather it was 'of great constitutional significance' to people's hard won freedoms against tyranny and their sovereign status as citizen-subjects.[129] On the occasions establishing the Director of Public Prosecutions (1879) and the Crown Prosecution Service (1985), the retention of the right to private prosecution was argued as 'a valuable constitutional safeguard' (Hetherington 1989: 153).[130] Indeed numerous and diverse submissions to the Royal Commission on Criminal Procedure in 1981 argued for retention of the right to private prosecution as the 'ultimate safeguard against official inaction, whether due to corruption, inefficiency, or other causes' (Hay 1983: 181).

A 'very small' office of the Director of Public Prosecutions was finally established in England in 1879 (Rock 2004: 342), operating under the Attorney-General and with an emphasis that prosecuting would be an exception rather than the rule. Notwithstanding these reforms, the principle endured – prosecutions 'remained largely private in law and in practice' (p.333). The governing statute establishing the Director of Public Prosecutions in England and Wales in 1879 was explicit that this right to private prosecution was not to be interfered with. It would not be until 1985 that the prosecution of offences would finally be taken out of police hands by a new Crown Prosecution Service (Rock 2004; Krone 2003).

Clearly the assertion that private individuals had and have no place in the criminal justice system is a tale of twentieth century construction. In his study examining the

[129] Sir James Stephen (1883), *A History of the Criminal Law in England*, quoted in Hay (1983: 167).
[130] Interestingly, both the DPP at the time and the Criminal Bar Association submitted to the RCCP that the right to private prosecution should be retained (Hetherington 1989: 57 and 64).

importance and ultimate disappearance of the English private prosecutor, Douglas Hay comments that it:

> marks how far memories of executive tyranny have receded, as well as how far the assumption that a universal franchise ensures benign government has proceeded. (Hay 1983: 181)

5.3.2.2 The Australian context

The English emphasis on the *constitutional* importance of private prosecution as a defence against 'executive tyranny' (Hay 1983: 180) was absent in the Australian environment.[131] Similarly, the assertion of an organic and grounded evolution made in relation to the English common law and the lay institutions of magistracy, justices of the peace, village bobbies and the like becomes something different during the dramatic rupture of a penal and later settler colony (Godfrey and Dunstall 2005; Braithwaite 2001).

The profound differences in social, economic and political beliefs and practices – and not least in the geography of the colonies, dispersed European populations, and hostilities with Aborigines – caution against too many assumptions of commonality with English developments. The dispersed Australian colonies struggled to survive – literally and as emergent state identities (Hughes 1986). People's relationships to the slowly establishing instruments of law were both intensely intimate, and distant and uncertain.

David Neal's work *The Rule of Law in a Penal Colony* (1991) argues that New South Wales was colonised on the cusp of old and new systems then in transition in England (p.14). Despite or really because of the penal origins of the colony, he stresses the importance of law – especially the idea and role of law. A rule of law ideology,[132] articulated most trenchantly in *Blackstone's Commentaries*, declared '… the law is the birth right of every subject, so wherever they go they carry their laws with them'. The

[131] David Plater says that private prosecution and grand juries were 'never as prominent in Australia as in England' (Plater 2011: 128). The ex-directors interviewed for this study who mentioned the availability of private prosecution were nonetheless assertive in saying they 'took over' and discontinued all of them. That concern about constitutional protections against sovereign will was also not present in Canada (Hay 1984) but very much so in the United States (Waye and Marcus 2010; Marcus and Waye 2004) suggests potential for deeper comparative historical research.

[132] Described by Neal as, 'a set of concepts encompassing legal rules, institutions, processes of reasoning and powerful symbols' (Neal 1991: xii).

colonists – whether convict or free, Neal argues, drew on the power and tools of this ideology as 'the means of expressing and contesting the differing conceptions of social and economic relations in the colony' (Neal 1991: xii and 24; Hughes 1986: xii). Australia's convict heritage – referred to delicately by Dowling J in 1831 as 'local difficulties and peculiarities'[133] – required attention from a legal tradition that could be both inclusive and exclusive. Thus the rule of law as inheritance and as tradition was important to the construction of identity among all classes in colonial Australia (Hughes 1986).

With this background, contemporary prosecutors assert that 'we came to this country with the Magna Carta in our back pockets' (P5) and 'inherited the English system lock, stock and barrel in the beginning' (P3). At the same time, both colonial and contemporary changes are seen to have shaped differences (P3) between the local and imperial systems (Woods 2002; Neal 1991). Therefore the capacity of the systems of thought to 'drift [...] apart' (P3) and, at the same time, to remain 'closely aligned' (P5) reveal elasticity and relevance of the ideology of tradition.

While much archival historical research into colonial prosecution practices remains to be conducted in Australia,[134] it is apparent that, as in England, the criminal law was 'put into effect by victims'. Indeed, 'it was the responsibility and obligation of individuals' to do so (Woods 2002: 108 and 192). The penal administration provided for the establishment of civil and criminal courts but, for the first thirty or so years, decision-making was exercised by an autocratic executive with a 'military element' (Woods 2002: 49). Legislative reform in 1823 placed initiation of the criminal process in the hands of an Attorney-General. However, the responsibility of Attorneys-General to initiate and conduct prosecutions was, as in England, restricted to serious crimes. Regulation of police in the 1830s and 1860s reflected the spread and demands of growing settler and emancipist groups for security as much as for good government. By the 1890s the institutionalisation and centralisation of policing in the colonies enabled development of permanent and specialist police prosecutors.[135]

[133] Quoted in Plater (2011: 91).
[134] Plater's doctoral research marks a notable departure. However he relies on high profile cases to depict colonial prosecution (Plater 2011).
[135] New Zealand Ministry of Justice (2011).

The trends towards institutionalising, centralising and standardising of criminal practice and procedure that commenced in the nineteenth century and accelerated in the twentieth in England were similar if not more pronounced in Australia. However, it would not be until the 1980s and 90s that independent prosecuting authorities were established in the Australian states and territories.[136]

5.4 CONTEMPORARY GUARDIANS OF CORE PROSECUTION CONCEPTS

This sketch of the main themes and markers of history affirms the rationalising and bureaucratising underpinnings of the appearance of public prosecution in both Australia and England. The result of which is an institution with 'a great deal of power' (P3). It 'is legally approved but generally unchecked, legally exceptional but yet almost totally commonplace' (Sarat and Clarke 2008: 411). However an ideology 'does not passively exist as a form of dominance. It has continually to be renewed, recreated, defended, and modified' (Williams 1997: Preface xx). Contemporary public prosecution maintains exclusivity by becoming 'commonplace' administrators[137] in sustaining an 'official-centric' jurisprudence (Marcus and Waye 2004: 114) *and* affirming and reaffirming its custodianship of certain core concepts.

Within the institutional landscape, prosecution has been described in neutral terms as forming 'the crucial link between law enforcement and penal sanction' (Sanders 1996: xi), and – more caustically – as 'the most secretive, least understood and most poorly documented aspect of the administration of justice' (Australian Law Reform Commission 1980: 61). The degree of discretionary privilege and independence enjoyed by prosecuting authorities has been noted in the USA (Frederick and Stemen 2012), Japan (Johnson 2002), England and Wales (Ashworth 2000), Canada (Stenning 1986) and New Zealand (Stenning 2008).

Contemporary prosecution authorities are 'organized around a body of internal protocols and assumptions, characteristic behaviours and self-sustaining values'

[136] In 1896 the first police prosecution department was established in Van Diemen's Land. Directors of Public Prosecution began in 1973 with Tasmania (established by statute later in 1986), Victoria (1982), Queensland and the Commonwealth (1984), NSW (1986), the ACT (1990), Western Australia and the Northern Territory (1991) and South Australia (1992). To date, only in the Commonwealth, Tasmania and the ACT is the Director of Public Prosecutions responsible for both summary and indictable matters.

[137] Valerie Braithwaite states in her study of tax officials that 'invisibility becomes the ally of durability and tradition' (Braithwaite 2009b).

(Terdiman 1987: 806). The legislative framework and published guidelines for prosecution demonstrate a pronounced emphasis on certain classifying concepts such as independence, representing community and public interest. It is through these core concepts – as internal and institutionalised patterns of knowledge – that the discourse of the ex-Directors of Public Prosecution interviewed for this study is arranged.

5.4.1 Independence

Prosecutorial independence is a prized attribute and signifier.[138] Independence is maintained against a number of influences; that is, from politics, police and the public. Its special significance is claimed in the first instance to politicised interference in the form of actions (or inactions) of recent and long past Attorneys-General (P2, P3, P5, P6).[139] Prosecution was 'in private hands probably until the 1880s, 1890s when the first Director of Public Prosecutions was appointed. It was in political hands in this country for a very long time. The Attorneys-General used to do it ... they are basically politicians.' This came to be 'regarded as quite wrong – there was a perception at least – that they should be making decisions about persons [..] they might be beholden to …' (P6).

Independence from political intrusion is also pragmatic. Directors of Public Prosecution tend to say to Attorneys-General 'don't try and second guess us because once you do that you buy into the argument and then you have to make the decision. One of the points about having a DPP is to have someone else making the decision and wear the opprobrium' (P4). It also recognised that prosecution is an intrusive power – 'it is the line that protects everybody because one day … who is to say that a weakened and futile prosecution ought to be run this week but not next week?' (P2).

While police have a more extensive history in prosecuting,[140] prosecution independence from police as investigators assumed greater significance over the twentieth century (Rozenes 1996). In England and Wales, this is claimed in relation to a succession of miscarriages of justice (McConville and Wilson 2002: 155; Hetherington 1989) and, in Australian jurisdictions with police prosecutors, in relation to more

[138] When asked what were the three greatest qualities of his office, Nicholas Cowdery QC, then NSW Director of Public Prosecutions, said 'independence, independence, independence'. Cowdery, N. (1995), 'Hot Seat or Siberia', *Journal of the NSW Bar Association,* vol.5.
[139] On this point see Bugg (2007).
[140] For a discussion on the historical evolution see Corns (2000).

generalised concerns about probity if not outright corruption (Krone 2003). Here the argument is that police seek to 'win at all costs' whereas the obligation of justice institutions is to abide 'by your oath to act according to the law' (P1). Nonetheless there is a continuum from, at one end, an ethical stance about what is the 'appropriate moral censure' a prosecutor seeks (Young and Sanders 2004: 194), to understanding, at the other end, 'that every prosecutor ever born wants the person to be found guilty – which is different to being convicted' (P6).[141]

More generally contemporary prosecution is said to operate in a charged environment. Some claim 'there was a period when what the Director said was not questioned, it was accepted publicly and by politicians' (P2). There is unanimity (P1–P6), however, that the 'rantings of the shock jocks and the media tabloids and all the rest of it' (P3) have produced a tense atmosphere.

Finally, argument about independence finds traction in the day-to-day decision-making of prosecution. Here independence was not being told what to do, whoever was expressing a preference. It is an institution of the state that decides on the exception (Sarat and Clarke 2008). Discretionary decision-making both indicates independence and enacts it. A noble rationale is that discretion 'is a tool indispensable for the individualisation of justice' (Davis 1975). More prosaically it 'allows for compromise and expediency' (Findlay et al. 2010: 114). Without discretion it is said 'our system would grind to a halt' (P5). While there are different perspectives on discretion and the independent role,[143] there is a shared view of what it is not; that is, being directed by an individual what to do – it is 'quite wrong to [prosecute] because the victim wants to' (P1). Rather, it is a matter of 'professional judgment' (P1) framed by 'extensive' guidelines (P3, P6).

From whatever perspective independence is discussed in the discourse, there is a sense in which contemporary public prosecution can see itself as misunderstood if not assailed from all sides. A central challenge is perceived to be 'to protect the

[141] Professional and scholarly literature also discusses representations of prosecutors as zealots on the one hand, and Ministers of Justice on the other (Plater 2011: 2–3).

[143] Sarat and Clarke summarise some of the arguments in relation to discretion as enabling the seeking of justice, as a consequence of 'legal imprecision', and as a dangerous power (Sarat and Clarke 2008: 389).

prosecution process from all external pressures, whether blatant or subtle, which can arise in a divided society' (Cowdery 2013: 18).

5.4.2 Representing community

In its assertions of independence, public prosecution commonly refers to founding statutes supported by judicial decision.[144] These provide the constitutional footing to prosecutorial independence and their status as part of the apparatus of the state.[145] Being 'the state' requires close attention to integrity and fairness, and mindfulness of the imbalance in power and resources vis a vis the accused (Dal Pont 2009). Beyond the constitutional legality, however, public prosecution claims normative roots in the privilege to 'represent community' (P2, P3, P4). That is, to prosecute 'on behalf of society' (Myjer, et al. 2009: 1) – 'the whole community' (P3). The normative and legal dissimilarity between the concepts and forms of Crown, state and community appear unacknowledged.

The term 'community' evokes a ductile, more exposed assortment of publics – 'those who can't protect themselves', 'the weak and vulnerable' (P2) who should be kept safe 'from aggression' (P4). At the same time, and linked with the curse of 'expectations', communities can become something wielded as a kind of threat (P1) but also in entreaty (P4). It is a source of those blatant and subtle external pressures. As a word 'community' can obscure the fact that it 'is made up of many disparate groups and individuals with widely divergent views' (P5) and there is some cynicism in the perception that it can 'mean whatever a politician wants [it] to mean at a particular time' (P1).

Conceptualising the subjects of victim and offender as members of community are both abstracted and particularised for the former, and generally situated in rights discourse for the latter. The individual offender as rights bearing is uncontested – 'we do bend over backwards to be fair' (P6). Public prosecution will easily turn to say 'we

[144] Deane J in *R v. Whitehorn* affirmed that 'prosecuting counsel in a criminal trial represents the State', (1983) 152 CLR 657; and see Plater (2011: 139).

[145] The word 'constitutional' is used here with reference to the legally established aims and powers of the public prosecutor, not to the constitution of a state. Committee of Ministers (2000), *The Role of Public Prosecution in the Criminal Justice System*, Council of Europe, p.5. Accessed at https://wcd.coe.int/com.instranet.InstraServlet?Index=noandcommand=com.instranet.CmdBlobGetandInstranetImage=1465387andSecMode=1andDocId=366374andUsage=2 viewed on 11 April 2013.

have to ensure that the accused is treated fairly' (P5, P6).[146] There is equal readiness to reach for particular stories that act as exemplars for certain representations of victim. On the one hand, for example, there's the image that the victim is 'hysterical, out of control' (P1) and, on the other hand, a gesture to those who 'have hope and optimism, are still kind and concerned' (P2). A more detached image of the victim evokes 'somebody who has been wronged … who is looking for a remedy which we call justice' (P3). But as rights-bearing individuals in the community, victims 'don't have any rights. No, certainly not' (P6).[147] It is declared that 'of course the victim is a member of the public'; but then '… one can't say I represent the public which means I represent the victim, therefore I am the victim's advocate … to represent the community as a whole means that you take an objective approach' (P2). In the discourse, therefore, the idea of community becomes 'figments of fiction, of imagination' (P4). An answer to the question 'what's the cut of community' is that 'it's the greater community interest' for 'the greater good' (P2) – it is a circular argument. The prosecutor is left, it is said, to 'take a holistic view of what's in the interests of the community' (P4).

As an alternative term, 'public' can allude to a harder, more astringent entity. In this guise, the public guardian role depends on a distinct characterisation of a public in which criminal law and justice are required 'to guard against anarchy and vigilantism' (P2) and contain 'unrestrained passions, vengeance, criminal acts' (P5). A more specific Hobbesian characterisation colours observations that 'a society without [law] is anarchic, out of control' (P1). Indeed, law both accompanies and assists the move out of 'the realm of stone-age thinking' (P5). Here the criminal law is simply 'to protect the society from the bad people' (P6).

Within discussion about prosecution and community, there is recognition that 'the community generally has [no] high regard for the operational workings of our criminal

[146] Fairness to the accused is prominent in the prosecution policy of all Australian Directors of Public Prosecution, and is protected in the United Nations Declaration of Human Rights (at http://www.un.org/en/documents/udhr/) and in the International Covenant on Civil and Political Rights (at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx). Furthermore, it is claimed that the protection of the accused person's right to a fair trial is a core if not *the* component to the prosecution's role as a Minister of Justice (Plater 2011: 31–32).

[147] It is even argued that the idea of victims' rights should more properly 'be assessed on general principles' (Ashworth and Redmayne 2005: 49). In contrast to the rights of the accused, victims' rights in international law are regarded as 'soft'. The 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is at http://www.un.org/documents/ga/res/40/a40r034.htm

justice system' (P5). But with this recognition public prosecution walks a conceptual tightrope – it is representing community as a greater, a holistic, an almost incandescent ideal; is responsive to community norms as it sees them, and yet is extremely sensitive to contentions of accountability from community – or from sections of community. Responsiveness to changing community norms, for example in prosecuting offences such as domestic violence and child abuse as serious public concerns,[148] or indeed responsiveness to regional and local circumstances,[149] is set in contrast to perceived obligations to resist a punitive public (P1, P3, P6) (Garland 2001) and to resist notions of direct answerability to the public or specific publics.

Where the idea of accountability is viewed 'in a unitary mode that if you are accountable then you are beholden in some way or subservient or at the direction or at the behest of the person' then 'most prosecutors I suspect would, as soon as you talk about victims and accountability in the one phrase, run a mile' (P4).[150] Consequently 'there [is] no mileage in explaining' prosecution decisions (P1). Formal accountability as a state agency rests in 'superintendence' by the Attorney-General, annual reports, court rules and providing reasons for decision 'in certain circumstances' (P3).[151] A mid-way point in the debate might accept that, where persons might be 'heavily invested in something they are entitled to a proper explanation as best we can give them' (P2). There is recognition that 'many prosecution decisions made by independent prosecutors are not reviewable by the Courts and it is important to maintain public confidence in the fairness, integrity and impartiality of prosecutors' (Bugg 2007: 7). However, with the spectre of invested others directing prosecutorial decision-making there is little to no specificity to depictions of accountability in the everyday prosecutorial world.

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[148] Interviewees commented on the way their guidelines 'move' (P1) in relation to social mores. For further discussion on this point, see Hetherington (1989: 139) and more generally Young and Sanders (2004).

[149] Hetherington (1989: 79) and Council of Europe (2000: 4).

[150] Barristers have a duty to the administration of justice and to their client (see Australian Bar Association, *Barristers' Conduct Rules*, November 2010, p.1). However, the barrister in a prosecution role has no client but has a duty to the court (p.16) (and at a Federal level in the USA, see Gershman 2005). The prosecutor owes no enforceable duty of care to either the victim or the accused (Plater: 2011: 27). Krone describes three internal ways in which the prosecutorial role is controlled: control of authority, control of role and policy control (Krone 2012).

[151] For a statement about these formal accountabilities see Bugg, D. (2007), *op. cit.*

Furthermore, and central to the claim to represent community and, consequently, to debate about accountability, is the separation of private and public interests (P2).[152] Contemporary prosecutors strongly assert that 'the Crown is acting for the public, the people, the State' (P1). They invoke 'the theory behind that [being] when somebody commits a crime that crime is committed against the whole community not just against any individual victim' (P3). With the sovereign origins of criminal law per se extending back over centuries, it is common for prosecution authorities to claim similar longevity. However, as discussed earlier, this claim is tenuous at best. Nonetheless, the institutional depiction is that 'when you come to the court room there are only two parties, one is the community or the Crown (the prosecutor) and the other is the accused. There is no place at the bar table for the victim in our system' (P3). The rejection of the interests and involvement of particular publics in the form of the victim complainant on the grounds that these are private (and therefore illegitimate) is emphatic. It is in this assertion that 'the sovereign power of prosecutors is most vividly on display' (Sarat and Clarke 2008: 387).

5.4.3 Public interest

It is largely because the term 'public interest' is so indeterminate and malleable yet so normatively resonant that it holds a central place in the ideology of public prosecution. The phrase has a unique capacity to silence questioning. Elish Angiolini QC, Solicitor-General in Scotland, commented in 2005 that it can serve 'as a useful decoy to dazzle those who would otherwise probe decisions taken under that label'.[153]

Public interest, it is said, 'can't be found by way of mathematical or political calculation'[154] and has been described as 'a highly political concept' (Bronitt and McSherry 2005: 58). At its most benign, the concept of public interest in politics, for example, is claimed to be 'indispensable as benchmark and guide. It requires us to think about means as well as ends. It commits us to good process as well as good

[152] The claim that private interest has no place in criminal justice is a claim stated strongly in public. One interviewee was prepared to say 'we have interests that countervail the public interest in all sorts of things'. There were 'no simple right answers' – 'not always, not always' (P5).

[153] Angiolini, A. (2005), 'Public Prosecutor: Hero or villain,' Speech delivered at 'The Edinburgh Lectures,' 25 January 2005, available at: http://download.edinburgh.gov.uk/lectures/4_SG39s_speech.doc

[154] Gallop, G. (July 2010), 'The Curious Mix Known as the Public Interest', *Sydney Morning Herald*, viewed on 12 April 2013 at http://www.smh.com.au/opinion/politics/the-curious-mix-known-as-the-public-interest--20100712-106cj.html

policy. It broadens our understanding of the interests that are relevant when considering policy and it compels us to think and act beyond the constraints imposed by self-interest.'[155]

The notion of public interest is said to be 'the underlying philosophy' (P2) to prosecution guidelines. These then specify a long list of criteria that may be taken into account when deciding what is in the public interest – 'if you are looking for a peg to hang your coat on you might find one there' (P3). The policy frameworks conclude that, 'in many cases, of course, the interests of the public will only be served by the deterrent effect of an appropriate prosecution'.[156] In practice, however, thinking will turn to ask 'are there reasons as to why in the public interest nevertheless the case should not be prosecuted?' (P3, P6). In this ambivalent and media-saturated space it is suggested that 'the thing that Directors are most criticised for is not prosecuting' (P2).[157] With the core two-part test through which the assessment is made, it will either be on the sufficiency of evidence or the public interest to which that criticism is directed.

In a classic depiction, Sir Thomas Hetherington describes the role of Director of Public Prosecutions in the UK as one whose:

> paramount duty is to the public, and every action he takes, and every decision, must be in the interests of the public as a whole or in the interests of an individual member of the public. These two interests sometimes conflict as, for example, when the prosecutor has to balance the interest in protecting society by prosecuting someone who appears to have committed an offence against society, against the interest of the individual who will benefit by not being prosecuted. (Hetherington 1989: 137)

As a statement about prosecutorial ethics it is said that the standards that a prosecutor should apply when weighing up the public interest 'should be the highest standards to which the community would or should aspire if it were aware of all the

[155] Ibid.

[156] The criteria across Australian prosecuting authorities are mostly the same. The reference here is from the ACT Director of Public Prosecutions (1991), *Prosecution Policy* at 2.6, accessed on 11 April 2013 at http://www.dpp.act.gov.au/publications/prosecutions_policy

[157] A decision to prosecute is reviewable by courts but the decision not to is 'largely immune from public or even judicial scrutiny and review' (Australian Law Reform Commission 1980: 61).

facts and were equipped to make an objective and informed decision' (Crispin 1995: 181). At the same time, it requires consciousness of 'several audiences' (P5). As an activity, this weighing up 'requires you to look back, to look out and to look forward' and 'acting in the public interest is taking that continuum, that historical continuum and balancing all the factors that are operating now in a way that will serve that continuum satisfactorily' (P3). As a practice it is largely to internal discussants – 'colleagues, their supervisors, with senior people' (P3) – that prosecutorial determinations about the public interest are made as 'informed by some shared understanding … within the legal community' (P4). Engaging with the public on the nature and scope of their interests is largely formal – through speeches and presentations – and cautious (P2, P3, P4, P5, P6).

How public interest is more generally vernacularised in prosecution discourse does vary – in part because of the multiplicity of formal criteria – but there is a shared view of what it is not. That is, prosecution is a decision made free of any sectional or representational interests in the name of 'the public' (P1–6), never 'simply because it might get the media off my back' (P2), or 'in some atavistic interest of somebody who is pressuring you into doing something' (P1).[158] An individual, asking where they as a member of the public fit in the conception, might 'often think that the public interest is at one with theirs'. Consequently, prosecution sees little that is constructive arising from such 'inflammatory' discussion (P2). The preference is to conceive 'an independent statutory authority casting his or her mind over the entirety of the case' (P5) as properly arriving at a decision about the public interest in a particular circumstance that is 'buyable by the community' (P4).

Ultimately it is prosecution prerogative to decide what is in the public interest. 'Their decision has to be final … I don't know of any other public official with quite the same role' (P4).

[158] In Australia as well as in England and Wales, the independence of the decision to prosecute from what is presumed to be the institutional interests of police is a matter of some debate. See Findlay et al. (2010: 160), Ashworth and Redmayne (2005: 173), and Sanders (2002: 158) (in McConville and Wilson eds).

5.5 VICTIMS THROUGH PROSECUTION EYES

Accompanying the decision-making power of an ascendant institutionalised public prosecution is the power of definition and narration. To it the victimised citizen is said to have 'surrendered' their constitutional authority to prosecute (Plater 2011: 71–72). In the end is a system in which there is no 'legal or conceptual role for the victim' (Sebba 1996: 40). As there is no structured space or resources[159] for victim representation or advocacy of their interests, they are 'ignored as a class of people' (P6), 'nowhere to be seen' (P4) and thus allowed to become 'forgotten' (Rock 2007: 38). If there is a competition for the control of access to legal resources, it is won, in the late twentieth century, by the professional legal elite (Bourdieu 1987). Arguing as an institution for 'more resources to deal with people' (P1) leaves untouched the structural void in which the victim-citizen finds him or herself.

From prosecution perspective – 'in the old days' (P3) – 'victims were simply another witness on the list and came and went and were given … no special consideration at all and treated quite heartlessly really' (P2). The victim was 'expected to put up with whatever happened to them [in the witness box] and too bad' (P3). People who were 'caught up in the criminal justice system' (P3) were 'irrelevant' (P4). They could be conceived, on the one hand, as 'merely the vehicle by which the [community] norm has been broken' (P4) or simply as 'cannon fodder' (P6) for the machinery of criminal justice.[160] While there may be 'a whole range of influences that cause someone to come forward and complain' (P5), in such a heartless environment (P2), public prosecutors could reasonably 'wonder why' (P1) members of the public might come forward to report and cooperate with authorities. People cooperate 'because they have got to' (P1). It was taken 'for granted' (P3).

In the present day there is some recognition in common law countries that this state of affairs is no longer acceptable (Doak 2005; Beloof 2005). The drivers of change range from the political and social 'rise of victims in recent times' (P1), to humanitarian

[159] Where 'resources' are taken to encompass political, intellectual, material, financial and institutional capital.

[160] In the early twentieth century 'the role of the victim in criminal justice processes was re-imagined and reconfigured, with the socially located victim of crime as a real actor in the day-to-day practice of criminal justice becoming usurped by the "victim of crime" as a symbolic and generic construct' (Kearon and Godfrey 2007: 24).

recognition that victims are 'people for crissake' (P6), and to broader political pressure that 'people don't these days put their trust in authority figures who are opaque and unaccountable or unquestioned' (P4). Consequently, a range of legislative and administrative measures has been put in place in attempts to address victim concerns (Hall 2009). Nonetheless there remains 'an uneasy tension between prosecution and victim' (P4). Victim-oriented reforms are still regarded in some quarters as a 'danger' and a 'throwback to medievalism' (P1), and authorities are – to some extent – 'frightened of being seen to be pandering to victims' (P4). As a constituency, victims are contaminated with this danger – notwithstanding acknowledgment of the diversity of expectations and responses to the formal justice process and its outcomes (P2, P3, P4, P5, P6).

Of course the question is whether the reforms create (or recreate) legal and conceptual roles for victims. In the main, public prosecution views communication as 'part of the solution to the problem' (P3). That is, communication with both the broader public as well as with victims. While occasionally spoken of as 'dialogue' (P3), the discourse reveals a predominant top-down emphasis consistent with prosecution's discretionary authority. Communication is informing. In this vein, some 'can't contemplate prosecuting a matter without keeping the victim informed' (P2). And some will go so far as to say 'there is an entitlement for the victim to have an explanation' for a decision (P4). Here prosecution is 'discharging a duty … to explain and to inform and that's where it ends' (P4).

Communication is also conceived as consultation at a 'proper level' and 'something we've learnt over the last 10 or 15 years which didn't exist before' (P3). Prosecution is 'required to take into account the views of the victim, not to act on them as instructions' (P3). At the same time, the institutional culture of prosecution challenges the consultative effort – 'the buggers wouldn't do it and we had to work like hell to get them to do it' (P6) – thus giving rise to pleadings that 'listening to people and caring about them doesn't impede your effectiveness' (P2). Notwithstanding these sentiments, contemporary offices of public prosecution will maintain they are as resource poor as other government services in meeting public demands (P1, P4, P5, P6). Consequently consulting is a 'second order consideration' (P4) and it is an

'unfortunate truth' (P3) that the individual victim remains a tool in the process, with no unique human rights, identity or agency.[161]

Even though there is acknowledgment that, when 'caught up in the criminal justice process, the victim wants to have a champion, wants to have a representative, wants to have somebody working for them' (P3), this does not extend to welcoming the possibility of representation. It would 'distort what the court is on about' (P1) and challenge the 'theoretical foundations' of the current system (P3). Existing requirements to keep victims informed and consult them in some circumstances to some extent recognises interests that are distinct from the overall public ,but there is no structural recognition (P3), and a sense that one 'can't take an independent prosecution to a more closer relationship than that' (P2). To move further would require authorities and civil society to 'clearly define what the role and expectations are' for a victim representative, 'to work it through' (P4). For public prosecution 'the big change has happened' (P3) with legislative reform modelled on the 1985 United Nations instrument.[162] There is no 'particular juggernaut' demanding structural change and the shifts to victim inclusion and participation at the level of international courts and tribunals is 'only a result of very strong lobbying' (P3).

5.6 REPRESENTING JUSTICE

5.6.1 The justice of prosecution

It is of course possible to conceive conceptual space for victim inclusion and participation within prosecution objectives. However these too are somewhat contested. On one hand, prosecution is ambiguously depicted as 'fearlessly' protecting 'the greater good' (P2) in the public interest, and on another it is claimed not to 'set standards' but to do 'his job and that's it' (P3). In between these depictions it is suggested prosecutors 'have to value add, to bring something to it' (P4) and that the reason for prosecution 'is to enable the court to do these things [apply the sentencing principles] (P6). Arguably 'empty formalism' is what emerges from ticking the boxes of public interest criteria (Young and Sanders 2004: 207).

[161] Contrary to this claim, Jonathan Doak has closely examined the scope and constraint of the human rights framework in the UK for victims of crime (Doak 2008).
[162] See fn 53.

A coherent, normatively-based conception of what is the public interest or of justice itself is missing. Procedural formality becomes the fallback (P5). Ideas of doing justice or achieving justice or delivering justice in their daily practice are articulated as being 'professional' because 'on a day-to-day basis you run the case that you are doing … the process takes over and you hope in some sort of way ultimately that it gets to, in general terms, a just result' (P1). Professional public prosecution does 'the best we can with the tools we have' (P2) to 'achieve a generally acceptable outcome' (P3) 'according to the law' (P1). Prosecutors model constraint (P4).[163] Doing the best one can is described as scrutinising the case 'as closely as you can' because 'justice can't be perfect' (P2). Not doing this means not being 'properly prepared' and being unable or unwilling to make an 'effort at persuasion' (P2). The idea of justice is – in the parlance of a modern bureaucracy – the prosecution mission (P6). That is, to be independent, professional, effective, to operate with integrity and to be fair and just. Being fair and just is 'broad overall consistency', 'equality of treatment' (P5), 'dealing with the individual fairly' (P6), and ensuring that 'the same test applies to you and to me but not one for the high profile cases and not for others' (P2). In this frame, prosecution argues that it does not deal with 'some abstract concept of justice' (P1).

In the discourse, public prosecutors shy away from expressing what might constitute justice as values or the type of outcome that is just (P2, P4). These are 'going to depend on judgments that are made by people' (P3): 'the requirements of justice point in different ways which makes it difficult to define it in any comprehensive way' (P3). If pressed, 'I suppose you come out with a few basic things like convict the guilty and acquit the innocent, fairness, fair trial, sentences that were proportionate' (P4).

5.6.2 The justice of victims

The menace of the vengeful victim to these conceptions of justice is never far away in the discourse of public prosecution – 'many victims are punitive' (P4). Yet in the day-to-day 'all kinds of reactions' are acknowledged – 'it varied enormously' (P3). Of course prosecutors see victims struggling with 'unbearable losses' (P2) such that they get a sense of the 'depth of harm that can actually be done beyond what you might

[163] Constraint is discussed as one component to the Minister of Justice conception of prosecution (Plater 2011: 162). For an example of the reference see NSW DPP (2007: 5).

otherwise think' (P5). Additionally they see those who are 'victims at a very minor level who just react badly' (P2).

People who are victims are located at 'both ends of [a] spectrum' (P2) from those who are 'reasonable' (P6) and 'restrained' (P5) to those 'who will never be happy' (P2) 'whatever the outcome' (P3). The focus of victim attention is also seen to vary. To some it is the outcome that victims focus on – 'the decisions we make' (P3). Theirs is a 'desire for redress' (P5). For others it is wanting the accused 'to know how they felt', to acknowledge 'fault' and to get 'some sort of explanation' (P6).

Accounting for the differences in victim perspective from prosecution eyes varies greatly. To some, the range of reactions result from the 'quirks of human nature' and as 'part of human makeup' (P3), to noticing those who may 'have really good quality people helping them through' (P2). While victims are 'entitled to feel exactly as they feel', their perceived volatility necessarily legitimates the moderating role of the public prosecutor (P4).

5.7 CONCLUSION

The skill of the modern bureaucratic state is to portray that moderation – to look competent, appear benign and to nestle in neutral phraseology that 'is capable of compelling universal acceptance' (Bourdieu 1987: 818). Mandarin pronouncements on the body of ideas, beliefs and claims that comprise the liberal legal ideology consecrate particular legal norms. These depict a way of seeing and engaging with the world. Hegemony is the capacity to both fashion a field according to that world view and to require it. Prosecution mandarins not only define what is correct, but have the authority to compel conformity. It is through the claim to *be* the entity representing public *and* the mandate to determine who and what among the publics are legitimated *and with* definitional authority on the interests of that public that the ideological power of prosecution achieves pre-eminence.

Acknowledging the state monopoly of criminal justice is of course not new. However consideration of the state's use of its monopoly power has, in the main, focused on the rule-breaker. The implications of the sacrifice of individual members of the public, as victims, in furtherance of the law's role in promoting 'the common good' has been

rather less explored (Harris 1997: 124; Duff 2001). The individuation of procedural and substantive fairness extended to the accused has only recently been proffered to victims. However these are not rights upon which citizens can rely. The legal ideology upon which prosecution authority rests has, to date, successfully promulgated the view that the interests of the individual victim correspond to the interests of the prosecution and that rights are an unnecessary encumbrance. 'Trust me' (P6) says the prosecutorial mandarin.

Trust is assumed in the exercise of discretion as it takes the legal official 'beyond the bounds of formal legality' (Findlay et al. 2010: 112). In this 'gap' the exercise of discretion creates 'exceptions and exclusions' that impact directly on individuals (Sarat and Clarke 2008: 410; Levenson 1999). This capacity and authority to act unbound is revealing of where power resides in criminal justice.

Yet the discourse of public prosecution is as textured as it is deeply patterned. Their narration on their work is redolent with complexity and nuance. Their daily exposure to claim and counter-claim lays bare that 'human beings are messy' (P1). Their retreat into a sanitised procedural version of justice and reliance on abstraction perhaps tells of this. But there is honesty enough to acknowledge that victims' 'sense of justice is as diverse as is the sense of justice in the community' (P4).

What the narration also reveals is that the exercise of discretion does not exist simply in a gap in the rules. Discretion is enacted in a space where public and private intersect; and where formal rules and informal other knowledges co-mingle. The elasticity of the norms of public interest and community representation are powerful not because they are meaningless but precisely because they are meaningful. They resonate within deeper societal norms alongside commitment to a justice imaginary.

The gap in the rules thereby exposes a further gap – an opening for a greater degree of interaction and communication. This possibility, however, requires deeper recognition of the mutually constitutive nature of criminal law and its public; a recognition, moreover, that is put into practice with those citizens whose direct and affected interests are engaged. What has been characterised as a struggle for control and domination of the public over the private is therefore rather 'overdetermined and ambiguous' (Bourdieu 1987: 851). In the chapters that follow, what members of the

public – as victims of violence – might bring to the world of justice is probed and explored. The multiplicity of voices that can be heard from the community, and the citizen interests they carry, ponder the potential – in the gap – for democratising justice.

CHAPTER 6: ORDINARY PEOPLE ACCESSING JUSTICE

> [It's] having your rights and feeling you need to be protected by the system. If you don't feel safe and your rights aren't protected then what's the point. (Winona 2010)

> They are ordinary people, after all. For a time they had entered the world of the newspaper statistic; a world where any measure you took to feel better was temporary, at best, but that is over. This is permanent. It must be. (Guest, 1976: 94)

6.1 FOCUSSING IN

Institutional narratives on punitive or pathetic victims perform two key functions. In the first instance – as explored in the last chapter – they cast monopoly power in mellow light. In the second, they disconnect people from their communal context and fragment rounded identities and perspectives. In this chapter I sit down with the selection of ordinary men and women who participated in this research and bring to the fore some of who they are as persons.

Here I enable people to author themselves, to sketch a little of how they portray their social values, their interpersonal and social environments, and how they orient themselves towards law and its institutions. In preceding chapters I have used the terms 'victim' and 'ordinary people' without definition. In this chapter I interrogate the meaning and usefulness of the terms. I emphasise the way in which a depiction of people as ordinary works to embed them in their everyday worlds without washing them of variation and grittiness. As ordinary people they are joined more fully to their various publics, and make a stronger distinction to the institutions of the state. This indicates a political position from which I develop a link to people's citizen-status.

Finally, the chapter focuses in on the decision to mobilise the law as one of the responses people made to the incident of violence against them. Using Zemans' decision-making model of legal mobilisation introduced in Chapter 3, I analyse the narratives put forward to contextualise people's actions. In doing so I pay particular

attention to the ways people link their thinking to perceived community norms and perspectives on the availability of law to them. I sketch people's 'psychological infrastructure' as it interacts with the circumstances of the incident (Braithwaite 2009: 40). Through this contextualised rendering I show people turning to law with distinctly variable degrees of confidence.

6.2 ORDINARY PEOPLE

The discussion in the previous chapter on legal consciousness and its material manifestation, legal mobilisation, begs the question of who are the ordinary people to whom they relate. In two texts that are central to legal consciousness literature, Sally Engle Merry's *Getting Justice and Getting Even* and Patricia Ewick and Susan Silbey's *The Common Place of Law*, the notion is not defined. Yet groups and group definition are central to law and society scholarship. The availability of an identifiable 'group' and specifically one that may be deemed disadvantaged or powerless is influential in legal consciousness and legal mobilisation literature. Groups such as working class Americans (Merry 1990), the welfare poor (Sarat 1990), victims of sexual harassment (Nielsen 2000), and organised labour (McCann 1994) are key examples of this feature. These are 'non-ruling communities' (Barzilai 2003).

The idea of 'victims' as one such grouping is both powerful and inherently unstable, given their diversity. Victims of violence are 'not a natural social group'; they 'neither share a distinctive background nor common ties of sentiment; [and] they vary greatly in their life situations' (Sarat 1990: 348). If this research focused specifically on social location, for example on female victims or child victims, then definite social group identities could be used. The analysis would more easily focus on issues of social discrimination, structural oppression and the operation of power. However, the base characteristic that unites the lay participants in this research is their experience and perception of victimisation. Second is the fact that the violence was reported to police. These points acted to sharpen victim identity through an institutional imperative. Of course there is irony in seeking to depict victims as 'ordinary' when their experience of victimisation and their participation in the criminal justice system generates an exception that is decidedly not common. Notwithstanding, the concept of 'ordinary

people' is deployed here as an analytic and interpretive device to overcome the confines of the 'victim construct'.

6.2.1 The victim construct

The political and academic discourse on victims has tended to pose one-dimensional representations depending upon the ideological inclination. They have been drawn as passive and pathetic; often as punitive and pernicious. Victims have been cast as a pawn in some wider game of social control and as political actors who have distorted criminal justice policy. In these ways victims are posed as somehow different to the wider community or as toxic within it. Representations join around *victims* as a problematic. Stereotypes such as these make exclusionary practices possible if not permissible and serve to facilitate injustice.

A singular notion of *victim* is clearly limiting and narrow. Kristin Bumiller's 1988 study of race discrimination and civil rights in the United States provides a useful framework identifying dimensions to the construct. She says that, in social and legal discourse, historical personality is irrelevant, and that individuality and plurality of persons as well as their humanity are actively suppressed and denied. Features that enable the victim construct are the docility of the grouping, a weak basis to group identity, and their powerlessness in network situations. The social formation of victims is 'dependent on the stability of power relations', in that their relative powerlessness serves to reinforce dominant political and legal structures and discourse (1988: 59–71). The mask of *victim* is a construct both of legal reasoning and a socially fashioned abstraction.[164] Ironically, when victims do claim agency through public action, this frequently attracts a response that is blaming – both for not acting responsibly to avoid victimisation, and for perceived vengeance or avarice (Hadfield 2008; Scheingold 1974/2004).

Just at the time that the victimisation experience atomises individuals and detaches them from their normal, the social and legal constructs of victim, complainant or witness further render them as 'other'. People's identities, their connectivity, their intents and their experiences become wedged – and judged. In the media and in popular imagination, a sacrificial victim stirs both revulsion and reverence, and

[164] Bumiller isolates the themes of sacrifice, exclusion and distortion as comprising both the 'psychology' and the 'politics' of victimhood (1988: 72–76).

'community' is thereby bonded against disorder (Young 1996: 16). In the late twentieth century, the 'victim' also emerged as a political and professional construct, and as an instrument of policy (Walklate 2007a; Rock 2006). People are no longer presented as multi-dimensional individuals who navigate, construct and re-construct their relationships with each other and with social institutions.

The victim construct also obscures the historicity and plurality of legal cultures within communities (Barzilai 2003; Sarat and Kearns 1993). There are differing experiences of victimisation and power, given features of race and gender in particular (Marchetti 2008; Davies et.al. 2007; Cossins 2003; Newburn and Stanko 2002; Crenshaw 1991). Communities and the people within them are at once different and the same. Returning people to their ordinariness is a way to side-step these constructs.

6.2.2 Constructs of ordinary people

Since the label of victim is a construct of many features, so too is the description of people as 'ordinary'. Cultural theorists use it as a term to distinguish between those who have power, status, resources and knowledge, and those who don't. In this sense, ordinary people are construed as those other than 'professionals' or 'technicians', as voices from below or from the margins (Thumim 2006: 266), and 'the seldom seen and rarely heard'.[165] At the same time, the boundary distinguishing the ordinary from others is permeable, and continually constructed and reconstructed (Couldry 2000). Theorists are careful to acknowledge that, while the social realities of ordinary people are a construction, 'these constructs have real, lived consequences' (Thumim 2006: 265).

In the political realm, the concept is variously handled. One account has ordinary people as intentional actors who shape history. They are not simply political subjects. They rise up at extraordinary moments to defy rules and to disrupt institutions.[166] Here ordinary people mould and sculpt their own lives as 'sovereign' personalities. Deliberative democrats thus pose ordinary people as a counter-weight to the power of elites (Dryzek 1990). Another account has ordinary people claimed and valorised by rival ideologies. Creating connections with their lot serves a legitimating function.

[165] Gilliom, J. (2001), *Overseers of the Poor: Surveillance, resistance, and the limits of privacy*, University of Chicago Press, Chicago quoted in Thumim 2006: 266).
[166] See Piven (2006) and Brake (1998).

When so deployed, however, the concept is often promptly decried as oppressive and as bleaching diversity (Sarat and Kearns 1993). There is inherent instability and volatility to the relationship between ordinary people and sources and institutions of power.

In other domains, the idea of ordinary people has been developed with active intent. In public health care, for example, the idea of 'bringing in' ordinary people as service-users is connected both to the discourse of participatory practice and of 'democratic renewal' (Martin 2008: 35). In the cultural sphere, the idea of ordinary people acts in a bifurcated manner where members of the public are invited to participate and create representations of themselves and their 'place', and are posed as a source of accountability. As a matter of self-representation, ordinary people are said to author themselves.[167] In the cultural enterprise, previously excluded experience is re-centred (Thumim 2006: 265).[168] Stanley Deetz talks about this as the 'amplification of voices' (1992: 53).

Nancy Thumim captures these various meanings in four broad senses of the term: *hierarchical-pejorative, hierarchical-celebratory, customary* and *public.* In the first iteration, ordinary people are beneath and a 'mass'. They are defined 'in opposition' to differentiated others: experts, special people, and those above. As such, ordinary people can be 'inferior', 'mundane', and without identity. In the second meaning, ordinary people are celebrated precisely because they have been marginalised. Thumim suggests this sense 'indicates a political position, which disputes whose account of reality matters'. Here, groups of people are united across their differences before some dominant and dominating account. A third sense of ordinary people refers to people whose practices are ordinary. It acts both as a claim to commonality and as a means of including the banal and the bizarre. Finally, ordinary people are cast as citizens of democracy: *the public*. Political force is located and invoked in *the people*. For public institutions, the use of the term in this manner has dualist meaning where the people are both a source of legitimacy and accountability, and are a consumer

[167] Cheung 2000: 51 quoted in Thumim (2006: 262).

[168] It is outside the scope of this chapter to expand further on the debates about 'ordinary people' as a construct. Nonetheless it is important to note that there is extensive critique about what biases self-representation and participation carry with them and the extent to which the 'ordinary people' construct acts as a cynical legitimising device. Both Thumim (2006) and Martin (2008) discuss these issues with regard to the cultural sphere and public health care.

base (Thumim 2006: 262–265). In this thesis I mine all these categorisations of the term.

In summary, ordinary people are neither simple nor singular. Their identity is plural, with numerous influences on personal and group identity formation and deployment. Multiple, often overlapping, realities of what is ordinary jostle, just as violations and oppressions are casually deployed and made ordinary. Ordinary people act, react, interact and connect; they ignore, de-code and re-construct; and they negotiate, manipulate, block, manage, mobilise and plan in a complex reality that is both material and imagined.

6.3 ORDINARY PEOPLE IN EVERYDAY WORLDS

In this section I put more detail around ordinary people. I examine what the lay participants in this research share with other ordinary Australians, and what is distinct to them. How different are they from others in the community? Are they more or less 'moralistic' than others? Do they have greater faith in the power of the law? Are they more trusting of authority? I do not provide definitive answers. Mainly I aim to show that what is in people's heads is an important part of the influences on their recourse to law. Further, I situate the lay participants in their wider social world.

The ordinariness of those interviewed for this study is evidenced in their diversity. The thirty-three people included senior federal government officials as well as mothers drawing social security. There was a body piercer and an IT analyst, private business owners, a warehouseman and a hospital technician, a musician and a service worker among others.

Within the group were doctoral and masters students, law graduates, and trades qualified persons. People had varying levels of involvement in local activities such as sport, culture and community. Very few described themselves as active in religious or political activities although nearly half said they were very or fairly interested in politics. They were busy in their ordinary lives – taking children to school and expecting new babies, working in high-pressure policy jobs, studying hard, and going to the gym and to parties. They were trying to establish new businesses and make existing ones flourish. As individuals in a social world, the lay participants referenced to many

different relationships that defined and connected them. Some of these personal networks came to sustain them through the experience of violence and their journey through the justice process. Others in their social circle did not.

While victims are often popularised in terms that emphasise their passivity, the study group displayed a high sense of personal agency. Over half (58% n=19) felt that they had control over the direction their life was going, and slightly less (49% n=18) felt good about themselves all or most of the time. This strong sense of self is a shared characteristic with other Australians. Using a scale derived from Valerie Braithwaite's large national sample (N=3465), the sense of personal agency of the lay study sample was similar.[169] This characteristic may, of course, be a feature of selection bias in the sample. But the strong sense of personal agency is also reflected in the fact that 64% of the study participants reported the incident to police themselves.[170]

However, nearly a quarter (24% n=8) of the lay study sample felt good about themselves only 'now and then' or 'hardly ever'. They also expressed significantly higher pessimism compared to the national sample. Eighteen per cent agreed that it was very much like them that 'there is really no way I can solve some of the problems I have' whereas just 5% of the national sample agreed that this was very much like them. This reflects a grounded estimation of their circumstances and the upcoming justice processes.

6.4 ORDINARY CITIZENS

In ordinary and everyday worlds, who people *are* and what they do form a submerged, deep social fabric. When they come into contact with public authority these features come closer to the surface – in an easy glide or with a jolt. The nature of their relationship with those authorities is questioned and becomes more specific. In this process their political identity is foregrounded and their citizen identity becomes salient.

[169] The mean of the personal agency scale for the national sample was 3.8 (N=3465), and for the study sample it was 3.7 (N=33).

[170] Half of the male assault group initiated the report, and 68% of the female domestic assault group. The latter finding is compatible with an earlier study that found that 70% of spouse/ex-spouse incidents attended by police and recorded by them over a three-year period within the ACT arose from contact initiated by the victim (Holder 2007).

There are as many conceptions of the idea of 'citizen' as there are of ordinary people. As an issue of *status* it is a term that can mark sharp boundaries between 'us' and 'them' in a manner similar to the terms victim and offender. Defining the 'us' of community membership is of central concern in citizenship literature. Antony Duff answers the question by asserting 'we' are 'citizens of a particular kind of polity' 'whom its laws claim to bind' (Duff 2010: 3 and 5). While placing citizens within normative boundaries, there is recognition too that the various visions of the citizen are plural, multiple and overlapping (Young 2000). This account of their status carries more robust import than people simply being community members.

There is considerable political and academic debate about what citizens owe themselves, each other and the state, as well as what the state owes and can expect from its citizens. Undoubtedly posing 'citizen-as-status'[171] affects how we view people's relationship to the state and its entities. It suggests that the structure and application of power requires careful calibration. It further suggests that the tone and conduct of institutional relations with citizens ought, as a default, be respectful and abjure paternalism. This can only be because of the authority inherent in understanding the foundational nature of the citizen to democratic theory (Barber 1984). Certainly there is nothing in this cast to citizen status that differentiates between persons who could be either or both 'victim' or 'offender' at any given moment.[172] Both are part of 'the public'.[173]

Here I am particularly concerned to focus on the citizen as politically sovereign in order to create a sharper boundary between their interests and the interests of 'the state'. Thus, ordinary people are conjured as citizens within communities, in direct contrast to institutions and their power to define. This representation nonetheless calls for a closer examination of values, attitudes and beliefs of the *demos* – those comprising the

[171] That is citizen as *social* and *political* status, in addition to the more usual citizen-as-*legal*-status. For a thorough discussion on the various models of citizen and citizenship see Bosniak (2000). Scholars such as Bosniak are concerned with citizenship as a transnational concept as well as one determined through the nation state. In this thesis, I focus on the citizen as a member of a particular bounded and territorial community.

[172] However, for a thoughtful discussion of the proposition that convicted and imprisoned offenders should be viewed as temporarily foregoing some citizenship rights see Hampton (1994).

[173] I acknowledge that the citizen-status of some 'subjects' (for example, refugees, itinerant workers) and their concomitant enactment of citizenship activities are topics of deep debate (Isin 2009; Rubenstein 2000).

study sample and the wider society – as a precursor to exploring how these influence interaction with authorities.

6.4.1 Values, attitudes and beliefs

Values, attitudes and beliefs are the 'psychological infrastructure' underpinning social action as well as relationships to authority. Foregrounding these features reveals people's agency, 'both moral and otherwise' and their capability to choose 'to cooperate overtly [with authorities] and defy covertly' (Braithwaite V. 2009b: 15 and 18). From this standpoint, we understand that a decision to turn to the law is not simply a feature of circumstance, in which people act like automatons. To explore this infrastructure the lay participants were asked questions, drawn from three different national surveys,[174] about their personal values, their trust in society's institutions and certain of their attitudes towards law and justice. Because of the very large N difference between the surveys I looked at general trends and patterns rather than for specific values.

In a series of large-scale studies, two key dimensions to the personal values of Australians were identified. The security dimension comprises strength, order and social and economic status. The harmony dimension focuses on 'the quality of relationships, knowledge, understanding and human dignity' (Braithwaite 2009a: 122). The two value systems point to different, although not mutually exclusive, bases for considering people's orientation towards others as well as towards authority (Braithwaite 1998). One orients to exchange and security, while the other to commitment and the communal. The lay participants in this study were found to share the Australian tendency towards the harmony value system.[175] Given the greater

[174] Braithwaite, V. (March 2001), *The Community Hopes, Fears and Actions Survey*; Murphy, K. et al. (2010 a, b), *The Public Safety and Security Surveys 2007 and 2009*; and Mackenzie, G. et al. (2012), *Australian Sentencing and Confidence in Justice Survey 2012*. When examining the comparisons between the local sample and all three of the national studies I expected the means to be roughly equal because the samples come from the same population. I would expect large differences between sample means to occur very infrequently (Field 2000: 208). On this basis I have drawn conclusions observable from the means.

[175] The mean of the harmony scale for the national sample was 5.8 (N=3523), and for the study sample it was 6.4 (N=33). The mean of the security scale for the national sample was 4.4 (N=3523), and for the study sample it was 4.0 (N=33). Derived from a seven-point Likert scale where 1 = reject and 7 = accept as of utmost importance.

number of women than men in my study sample, there may be a gender influence at work.[176]

People's civic ideas and their level of involvement in community and political affairs provide further insight into the way in which they orient themselves within the wider community and towards others, as well as how they orient towards authority. Two scales developed from Braithwaite's national sample captured conceptions of citizenship – one being of 'self-reliant citizenship', and the other of 'involved citizenship'. Once again, the conceptions held by the study sample were similar to those held by other Australians.[177] Both groups are more strongly oriented to a self-reliant citizenship conception.

The lay participants expressed a high degree of trust in the public services in their area (being public schools, emergency services, neighbours), at a level similar to that of other ordinary Australians.[178] In the local and national groups, trust in authorities (being local and federal government and law courts) was not strong. In the study sample, this pattern of trust in community institutions was broadly similar for domestic and non-domestic assault victims, although the former had stronger trust in those communal institutions commonly associated with relational features such as public schools and neighbours. The non-domestic assault group had a stronger sense of trust in law courts, hospitals and charities.

The lay participants were also asked a series of questions about some of their beliefs regarding law and justice. These were drawn and adapted from another national study examining people's experience and assessment of police performance (Murphy et al. 2010a, b). Both domestic and non-domestic assault victims in the current study displayed a strong adherence to the idea of rules, with a strong majority agreeing that:

[176] The gender balance in the national sample was more equal than in the study sample. The national survey comprised 47% men and 51% women (Braithwaite 2001).

[177] The mean of the self-reliant citizenship scale for the national sample was 4.1 (N=3535), and for the study sample it was 4.5 (N=33). The mean of the involved citizenship scale for the national sample was 3.5 (N=3535), and for the study sample it was 3.5 (N=33). Derived from a five-point Likert scale where 1 = strongly disagree and 5 = strongly agree.

[178] The mean of the trust in authorities scale for the national sample was 2.2 (N=3544), and for the study sample it was 2.3 (N=33). The mean of the trust in public services scale for the national sample was 3.4 (N=3544), and for the study sample it was 3.0 (N=33). Derived from a four-point Likert scale where 1 = do not trust them at all and 4 = trust them a lot (reverse coded).

- Obeying the law is the right thing to do.
- I feel a moral obligation to obey the law.
- I may not like all the laws and rules we have in place, but obeying them is a part of life we must accept.

The mean of the scale measuring this obligation to obey was similar between the study sample and the larger Australian sample.[179] The 'confidence in justice' scale measured people's sense that laws and justice were aligned with the wider community. For both the national and the local samples, this confidence is moderate.[180] Indeed, the responses of the local lay participants reveal a high degree of uncertainty. A substantial proportion could neither agree nor disagree that the justice system reflected the needs of the community (42%) or that they had confidence in the justice system (49%). A slight majority (52%) agreed/strongly agreed that they 'sometimes question the laws we are asked to obey'. The sense that the justice system is not fair for all is also reasonably strong for the study sample (58% agree/strongly agree), as well as for the national sample. In addition, 64% of the local study disagreed/strongly disagreed with the statement that 'the justice system did not protect [their] interests'.

In terms of preparedness to comply with and accept authority, there was a three-way split on the question that 'people should accept the decisions of police even if they think they are wrong', although 42% disagreed/strongly disagreed that 'disobeying the law was sometimes justified' (27% agreed).

Australians' cynicism about the application of our laws and justice is generally well established.[181] For example, there is a belief that the criminal courts have greater regard for defendants' rights than for victims' rights,[182] and only a slight majority (52%) agree that they deal with matters fairly (Roberts and Indermaur 2009). But Australians'

[179] The national sample asked confidence, legitimacy and performance questions primarily in relation to police. Therefore the scales developed for the current study are different to those reported by Murphy and her colleagues (Murphy et al. 2010b: 23–25). For the national sample, the mean of the obligation to obey scale was 4.3 (N=1173), and for the study sample it was 4.6 (N=33). Derived from a five-point Likert scale where 1 = strongly disagree and 5 = strongly agree.

[180] The mean of the confidence in justice scale for the national sample was 3.2 (N=1125), and for the study sample it was 3.0 (N=33).

[181] Similar comment is made about others in comparable societies. See, for example, Tyler (2006/1990) for the USA and Roberts (2007) in relation to Canada.

[182] With 70% agreeing the courts have regard for defendants' rights and 47% agreeing they have regard for victims' rights (Roberts and Indermaur 2009).

commitment to the 'moral credibility' embedded within legal arrangements is also well established (Robinson 2000: 1865). The views of the local lay sample accord with this paradoxical stance – although this ambivalence is much more pronounced for women than men. However, in the national sample, responses by men and women were similar on confidence in justice and for their critical orientation to authority.

Related to people's beliefs about our laws and justice is their opinion on the sentencing applied by courts. Overall the views of the study sample are similar to those of victimised respondents in a national study conducted by Geraldine Mackenzie and colleagues (Mackenzie et al. 2012). Nearly two-thirds of both samples agree that the sentences handed down by courts are too lenient/much too lenient (76% in the study sample and 74% in the national sample). About a quarter of the local sample and a third of the national sample say that sentencing is 'about right'.[183]

6.4.2 Interrelationship of elements

The picture of the ordinary people in this study appears broadly consistent with national characteristics in that they have:

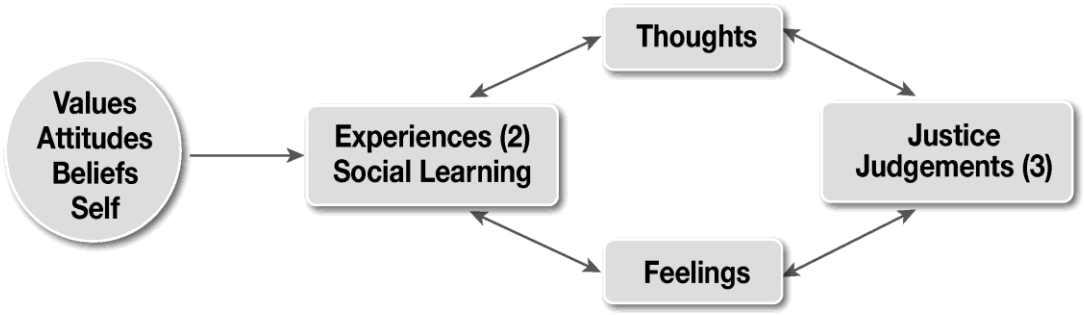
- a strong sense of personal agency
- a moral pathway mapped between their personal values and their stated beliefs
- a personal value set that orients them towards communal trust norms
- a strong moral and normative commitment to the rule of law, alongside less robust confidence in the fairness and efficacy of the legal system
- a belief that sentencing by courts for offences in general is too lenient
- an orientation to a concept of self-reliant citizenship
- a sense of trust in society's helping responses alongside weaker trust in authorities.

The objective of this section was to construct a more rounded portrayal of the study sample as not so different to other ordinary people in Australia. Their values are

[183] Although the local study sample appears slightly less punitive than the national sample in that 21% say the sentences are much too lenient as opposed to 34% in the national sample. However, the study sample is too small to regard this difference as reliable. In the national sample there is a tendency for victims to be more punitive than those who have not been victimised (74% of victims answering a little too lenient and much too lenient versus 67% of non-victims), but this tendency is not very strong.

presented as shaping their inclinations and orientations, and as influencing their expectations. While values and beliefs are interconnected, beliefs cluster in particular circumstances (Scholz 1998) and are important to constructions of identity (Harris 2007). Both are influential on the idea of trust in society's institutions as a dynamic rather than static construct (Levi 1998). The overall conceptual model of the latent structures informing assessments of experience and then of judgments about justice is portrayed in Figure 6.1.

Figure 6.1: Conceptual model of interrelationship of latent factors in justice judgments[1]



(1) Adapted from Tyler *et al* (1997:7) and Braithwaite, V. (2009:17).
(2) Where 'experiences' includes elements including the victimisation and its context, considerations about the offender and others, as well as experiences of justice process.
(3) Where 'judgements' relate to the institutions of justice as well as to the idea of justice itself.

There may be a temptation to view the victim participants as 'ideal'[184] but this is not my intention. As unique individuals, some had little or no knowledge of the justice system prior to their current experience while others had previous involvement as offenders. Human actions arise from a complex interaction of personal and social factors and differing identities, and not solely from the calculation of cost-benefit or the avoidance of threat. A tendency to 'think morally' and from a sense of 'ethical identity' may be triggered by engagement with authorities (Harris 2007). This can be seen, for example, in the civic duty reasoning people often give when reporting crime to authorities.[185] These reasons suggest that ethical identity may underpin ethical citizenship practices such as cooperative participation in criminal processing.

[184] A representation that is particularly relevant to representations of 'good' and 'bad' victims and the function these constructs serve justice agencies (see Christie 1977).
[185] As discussed in Chapter 3.

Within the personal and social worlds ordinary people inhabit, institutions move 'between states of irrelevance and relevance' (Braithwaite 2009b: 254). As such, assessments made from a position of some social distance may be subject to rapid reappraisal when the authority is approached cooperatively or approaches in a manner that is somehow experienced as threatening.[186] The extraordinary circumstances of victimisation stimulated cooperative approaches to authority from the lay participants in this study.

6.5 ORDINARY PEOPLE IN EXTRAORDINARY CIRCUMSTANCES

In this section, the lay participants are described as ordinary people in extraordinary circumstances. Firstly the incident of violence sets them apart, although for some people the abuse was an unfortunate regular visitor in their lives. Secondly, their mobilisation of justice resources is outlined as uncommon.

6.5.1 The incident and its effects

All of the lay participants had been a victim of violence for which another person had been charged with a criminal offence. At the first interview (from which the data in this chapter are drawn), the case had yet to proceed through the justice system. All of the six men had been victims of acquaintance or stranger assault,[187] and all of the twenty-seven women had been victims of a partner or ex-partner.

The participants described a range of experiences with abuse and violence. The incidents of non-domestic assault took place either in social or neighbourhood settings.

> He was the ex-boyfriend of a person in a group of friends. He made a scene, smashed a glass and left. Then I walked to the door to make sure he had left. I saw another friend leave and go up to this man to confront him to say 'you can't do that'. She pushed him on the shoulder. I pushed her aside and he hit me instead. (Bailey)

[186] McAdams presents the idea that law provides a 'focal point' for the 'coordination' of behaviour (McAdams 2000). This idea of the focal point can expand to accommodate the idea, also posed by Zemans (1983), that citizens use an event (or series of events) that gives rise to some adjustment or decision around which to consider other criteria to the possibility of mobilising law.

[187] Two were victims of neighbors known casually or by sight.

> His body language was like he wanted to fight. I couldn't get away from him. After he punched me, I grabbed him and took him to the ground. He yelled to let him go. I did and then he stood up and punched my friend full in the face. (Finn)

The incidents of domestic assault commonly comprised part of a pattern of abuse that took place in relationships, some of which were long standing. Some incidents were unexpected or arose from particular circumstances.

> He'd belittle me to such an extent – everything was wrong. He'd beat me but then be the nicest person. He was really controlling on everything I bought or did. He was that possessive. Said I was ugly and useless and he wanted full control. (Molly)

> He'd never done this [hit me] before. He was just really down but he flew at me and was insulting and abusive. I sat down. He was hitting me on either side of the face. (Ursula)

The incidents of non-domestic assault were described predominately as physical assaults while the incidents of domestic assault were accompanied by a high degree of verbal abuse (Table 6.1).[188]

Table 6.1: Victims' experience of violent incident assessed as 'quite a lot/quite a bit', number and %

NATURE OF INCIDENT	Domestic assault N=27 (%)	Non-domestic assault N=6 (%)	TOTAL N=33 (%)
Verbal abuse	25 (93%)	3 (50%)	28 (85%)
Physical abuse	13 (48%)	5 (83%)	18 (55%)
Other abuse	8 (30%)	0	8 (24%)
Sexual abuse	1 (4%)	0	1 (3%)

Perhaps because of the combination of the verbal abuse within the intimacy of a relationship it is unsurprising that the domestic assault victims described stronger emotional after-effects than the non-domestic assault victims (Table 6.2).

[188] Tables 6.1–2 derived from four-point Likert scale where 1 ='none at all' and 4 = 'quite a lot'. All percentages in the tables in this chapter are rounded up or down to the nearest percentage point.

Table 6.2: Victims' assessment of injury arising from incident as 'quite a lot/ quite a bit', number and %

NATURE OF INJURIES	Domestic assault N=27 (%)	Non-domestic assault N=6 (%)	TOTAL N=33 (%)
Emotional injury	26 (96%)	2 (33%)	28 (85%)
Physical injury	9 (33%)	4 (67%)	13 (39%)
Damage to property	9 (33%)	0	9 (27%)
Other injury	7 (26%)	2 (33%)	9 (27%)

The physical effects were described in stronger terms by the non-domestic assault victims.

> I was spitting blood out.' (Edward)
>
> My ear was hurting. I put my hand up and there was blood. (Finn)
>
> He's been harassing, stalking, nasty. It just never stops. (Quinn)

The lay participants described feeling a high degree of distress and fear at the time of the incident (see Table 6.3).[189] A small majority also felt humiliation. These feelings were distributed in a similar pattern for domestic and non-domestic assault victims, although in stronger proportions.

Table 6.3: Victims' assessment of their feelings at time of incident as 'very/ extremely', number and %

FEELINGS AT TIME OF INCIDENT	Domestic assault N=27 (%)	Non-domestic assault N=6 (%)	TOTAL N=33 (%)
Distressed	26 (96%)	1 (17%)	27 (82%)
Frightened	24 (89%)	1 (17%)	25 (76%)
Humiliated	17 (63%)	1 (17%)	18 (55%)
Angry	12 (44%)	4 (67%)	16 (49%)

[189] Tables 6.3–4 derived from five-point Likert scale where1 ='not at all' and 5 ='extremely'.

Overall 61% (n=20) assessed the incident they experienced as very or extremely serious, although victims of domestic assault were twice as likely as victims of non-domestic assault to make such an assessment (67% and 33% respectively).

Of the twenty-seven domestic assault victims, just over half (52%) described the assailant as husband, de facto partner or boyfriend, and a third (30%) as ex-husband, ex-de facto partner or ex-boyfriend. One-quarter (26% n=7) had been in that relationship for over ten years, one-third (33% n=9) between five and ten years, and over a third (37% n=10) for under three years. One person had been in the relationship for three to five years. A significant majority (82% n=22) indicated that they definitely/maybe did not want the relationship to continue. Five domestic assault victims (19%) indicated that they may have wanted or definitely wanted the relationship to continue.

Only those who had experienced domestic assault described experiences of violence from the same assailant prior to the most recent incident.[190] Of the twenty-four victims who indicated previous violence, nearly half (48% n=13) revealed that it had happened quite a few/many times before. Reflecting the repetitive nature of domestic abuse, these participants were further asked to assess whether their situation was escalating in seriousness and whether the situation they were in was worsening. Half of the twenty-four victims (52% n=14) described the abuse as becoming very/pretty serious, and over half (56% n=15) described their situation as becoming very/pretty bad.[191]

In summary:

- The lay participants indicated that they were subjected to a high degree of verbal abuse and quite a lot of physical abuse in the incident.
- A majority said that the incident was extremely or very serious, with this perception being stronger for domestic assault victims (67%) than for non-domestic assault victims (33%).

[190] Of the non-domestic assault victims, in their narratives three persons described experiencing violence at other times from other assailants. These experiences were not part of this study.
[191] On a six-point Likert scale where 1 =‘a lot less serious/a lot less bad’ and 6 =‘very serious/very bad’.

- The majority indicated that there had been quite a bit/a little bit of physical effects arising from the incident and quite a lot of emotional effects. Domestic assault victims identified more emotional effects arising from the incident, while non-domestic assault victims identified more physical effects.
- Overall the participants said that they had felt a high degree of fear and distress at the time of the incident, with these feelings being significantly stronger for domestic assault victims.
- The vast majority of domestic assault victims revealed prior abuse and assessed this as worsening.
- The majority of victims initiated the contact with police.

6.5.2 Survey participants as a sample of victims in the ACT

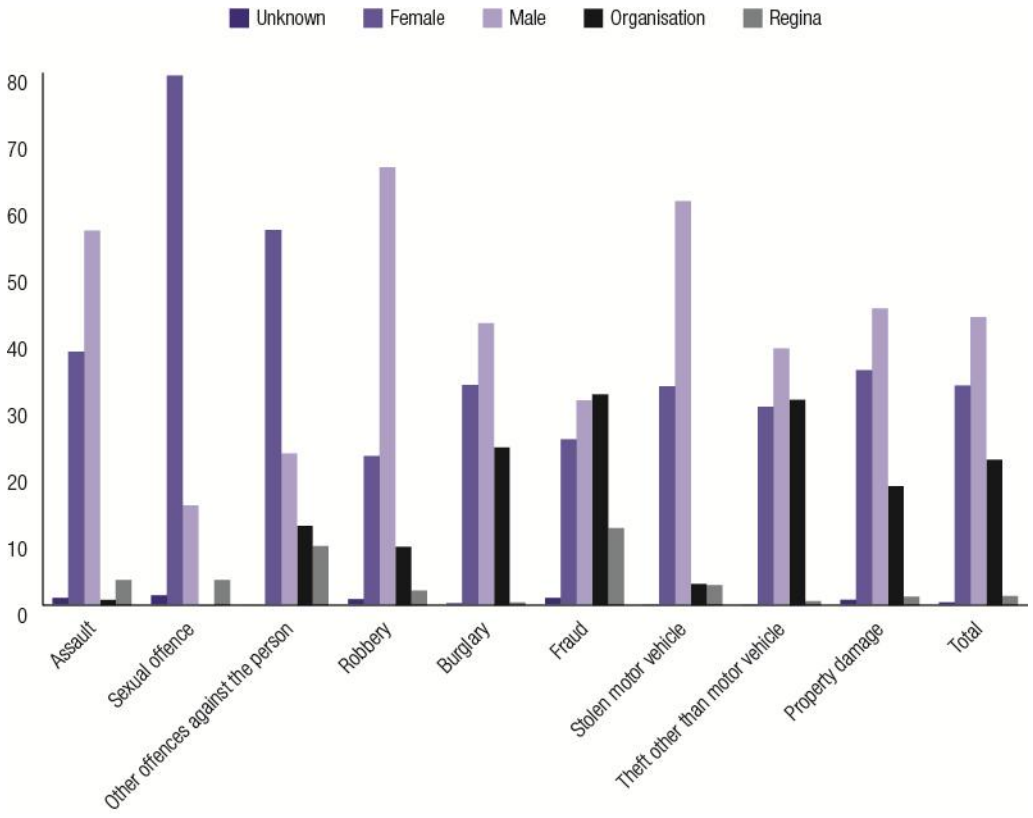
The lay participants found themselves in extraordinary circumstances not only by virtue of their victimisation, but because they formed part of that reasonably small proportion of people who report violence to police and the even smaller proportion for whom the report to police actually resulted in a matter being charged, prosecuted and resolved in court action. In the representative year 2007–2008, just over 26,000 individual victims reported a wide range of offences to police in the ACT. Of these, less than 10% were victims of offences against the person (homicide, assault, sexual assault, other offences against the person, robbery).[192]

Of the 26,000 victims of crime, nearly 11,000 (42%) were male and 8500 (33%) female.[193] As Figure 6.2 indicates, males were the majority of victims of assault. Figure 6.2 presents, by offence type, this breakdown of the type of victim for each offence.

[192] ACT data are derived from a report by McGregor, K., Renshaw, L. and Andrevski, H. (2013). Data for 2007–08 was supplied to the researchers by the Australian Federal Police (ACT Policing).

[193] The percentages do not add to 100% because some victims were recorded as unknown, as an organisation or as Regina. For the latter, these are where the victim is an ACT/Commonwealth representative or ACT/ Commonwealth property is offended against.

Figure 6.2: Gender/ type of victim by offence type, ACT, 1 July 07 to 30 June 08[194]



Source: McGregor, Renshaw and Andrevski (2013: 17)

Of the male victims, 15% were also recorded by police as an alleged offender over the same period. Of the female victims, 9% were recorded as an alleged offender (McGregor et al. 2013: 17). In the police recorded data, male victims also constituted the largest proportion of victims of assault.

The vast majority (82%) of all offences reported to police in the region were recorded by them as 'not cleared', with 5% cleared by way of arrest and 1% charged and before the court for 2007–2008. For assault matters, 20% (n=453) were subject to arrest with 1% (n=27) recorded as charged before the court (McGregor et al. 2013: 21). Thus the study sample of thirty-three is distinctive of the small overall proportion of victims of violence for whom the matter reaches court.

Although not directly comparable data sets, another report using ACT Policing data showed police recording 2807 family violence[195] incidents in 2007–08 of which 84%

[194] Note: Regina is the victim who is an ACT/Commonwealth representative or ACT/Commonwealth property. Figure created from specific data request made to ACT Policing, April 2009.

(n=1085) involved female victims. Males comprised 83% of offenders. Approximately 50% of incidents attended by police were recorded as offences, although only half resulted in a person being apprehended. Of the formal resolutions to the incidents, 94% resulted in formal charges. The most common offence type leading to formal charges were assault matters. In the representative year 2007–08, 435 defendants appeared before the court for family violence offences. Of the adult defendants, 88% were male (Cussen and Lyneham 2012).

By way of further background, the twenty-seven female participants were among the 800-plus crisis visits conducted by a community-based victim agency within the ACT.[196] While the service assists people subjected to violence as well as people using violence, the overwhelming proportion of clients are females subjected to violence (DVCS, undated: 47). A client evaluation conducted by the service in the representative year 2007–08 was responded to by sixty-six persons, of whom fifty-eight were female (88%) and eight (12%) were male. Of this sample, forty-eight (73%) had contact with the police in the year in question with 40% seeing criminal charges arise from the incident (DVCS, undated: 25–43).

This snapshot of victim reporting, and the responses of both justice and community services confirms the general picture that, for the region from which the lay sample was drawn, turning to the law is an uncommon response from victims of violence. Moreover, it is an even more unusual occurrence when victim reporting results in court action.

6.6 CONTEMPLATING LEGAL MOBILISATION

The fabric and busy-ness of daily life was a backdrop to the contemplation of legal mobilisation by the lay participants. Their lives are patterned by habit, punctuated by interactions of various kinds, and suffused with meaning. These continuities framed people's victimisation experience and during the long months of the justice process.

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[195] ACT Policing record a range of incidents as 'family violence'. A sub-category is described as 'spouse/ex-spouse' (or domestic violence and assault). Using ACT Policing data, Holder (2007) has described the key differences in characteristics between the 'spouse/ex-spouse' sub-category within the 'all family violence category'.

[196] Domestic Violence Crisis Service (DVCS undated), *Annual Report 1988–2008*, DVCS, Canberra, p.44. The service receives nearly 9000 calls per annum on its helpline.

These influences also comprised multi-factored decision-making. The possibility of a resolution or the attainment of an outcome for the incident was just 'one among many reasons to invoke the law' (Zemans 1983: 994). As a precursive frame to reporting, this section describes the ways in which people understood what had happened to them and the meaning it held. I further discuss how their orientation to the perpetrator of the violence and their sense of attribution informed decision-making. I then consider how others acted as facilitators to legitimate pathways to law enforcement within a specific social and cultural milieu. I draw on legal consciousness theory discussed in Chapter 3 to reflect on the mutually constitutive relationship between private and public elements to assessments of the incident as potentially justiciable. Throughout, I touch on how differently these issues appear to work in relational terms. Finally, I sketch how the evocation of justice was moderated by participants' assessments and expectations.

6.6.1 Making meaning of the event

The lay participants deployed a number of interpretive 'frames' to assemble meaning and to construct possible lines of action (Blumer 1969). Self-assessment is, without doubt, no neutral exercise. It is riven with community values, infected by personal doubt, and influenced by third party views.[197] An incident or event thus carries *potential* for either action or inaction.

People's 'ambivalent invocation' of victimhood is stultifying on many levels and this was certainly evident with the lay participants (Bumiller 1989: 99). Interestingly, there was much more tentativeness and ambivalence in the comments about their actions from the men. Young men hear polarised social messages about their involvement in violence as well as mixed messages about their representation as victims (Clare and Morgan 2009; Burcar and Kerström 2009; Löfstrand 2009).[198] In this environment the male participants more readily verbalised the criteria they considered for their engagement of police. That is, clear attribution of the incident to the violent person, a

[197] Studies by Morenoff et al. (2001) and Sampson et al. (1997) have examined the characteristics and nature of the social context that contributes to the 'collective efficacy' of neighbourhoods in enforcing collective norms and informal social controls. A Dutch study confirmed the importance of social cohesiveness and socio-economic disadvantage of the neighbourhood as factors affecting reporting (Goudriaan et al. 2006). The normative influence of the social network is also clearly influential on female victims of violence reporting to police (Kaukinen 2004, 2002).

[198] For a discussion of this issue in a context of mass violence, see also Linos (2008).

sense of blamelessness on their part, the absence of any provocation, and assessed seriousness.

For a couple of the men the fact that police were on the scene and witnessed the incident lent an immediate reliability to assessments of what and who was in 'the wrong'. Said Bailey:

> The incident took place directly opposite a police van. They intervened. I pushed him away and then the cops came. They told me to sit down. He resisted police and had drunk far too much. They took him into custody. They had seen everything. They dispersed the crowd.

The men were also explicit in asserting their blamelessness. The statement of one man typifies this point and further sets out another criterion – that of initiation – that would have diminished his assessment of being the innocent party.

> I hadn't invited the violence upon myself. It had just happened. I'm not sure what happened. If I had somehow started it I'd feel more like taking responsibility and accept my losses. But I hadn't. (Charlie)

That the violence apparently came 'from nowhere' also contributed to a sense of blamelessness. Finn was assaulted in his neighbourhood. He said:

> I remember thinking 'how dare he hit me?' Basically because I had my daughter's birthday [the next day] and I felt very indignant and felt it was very unwarranted and random.

In contrast, these validating criteria were largely absent from the accounts of women as victims of domestic assault. Instead, a stronger sense of social support was in evidence, perhaps as one outcome from repeated government and community assertions over previous decades that 'domestic violence is a crime' (National Council to Reduce Violence Against Women and their Children 2009). One comment encapsulated this combination of the breached personal, community and legal norm with the identification of the entity appropriate to deal with it.

> I knew [it] was illegal, a crime. It was obvious to me … I just knew that this was not on and that the best way of dealing with it was to go to the police. (Aimee)

The issue of social or relational distance has been raised as influential on people's legal mobilisation (Black 1984). However, for both men and women in this study, the idea that the less relational distance between victim and assailant brings less law was only part of the story. Other factors came into play. David, assaulted by a neighbour, referred both to his desire to change his previous cultural milieu as well as his concern for others as influencing his report to police. He said:

> As a kid I was raised not to 'dog' and not go to the cops. But now I haven't offended for four years or more and am trying to work and was worried about my girlfriend. I don't want them to look closely at me so I 'm cautious about what to tell them and whether to get help from them.

Alex, also assaulted by a neighbour, suffered retribution following his report to police. He said:

> I think the biggest issue I had was actually talking to police because of how this is viewed by others. Others think this is dobbing. Maybe this is something the judge can say when sentencing: 'people have the right to ask for help from police'. Because I talked to police I had repercussions. Like-minded people to […] see police as different. I see police as protectors of society. They see police as those who come and lock you up, as authority. When the protection order was served, people drove by and said 'dog'. When I was down the street people yelled out and I tried to defend myself and I got a black eye. In this type of neighbourhood there are repercussions to talking to police. In Sydney you get your house burned down.

Notwithstanding their stronger sense that they had community support for turning to the police about domestic violence, a number of the women referred to differing levels of validation they received from family and friends. Two comments represent the extremes experienced – said one:

> My sister said I deserved it. I didn't like that. (Zola)

Winona received a different response. She said:

> Yes, my friend told me to [contact police]. I knew I didn't want any more contact with him [the assailant] but I was not sure about telling police. I wasn't sure what his reaction would be.

The qualitative comments and survey responses suggest different cultural schema at work for the different groups when 'framing' the incident and interpreting it. For all the participants, family and friends were the most likely source of help,[199] but considerable nuance was expressed about how this worked at a micro level. For example, Charlie deciphered the complex messages and information he received in the following way:

> I had a cut above my eye so the level of injury also mattered. It was more serious. My friends and family are all fine and thought it was the right thing to do to tell police. My nearest and dearest were upset that it had happened at all. That was tempered by their view that I was out at 4am and alcohol was involved. My father thought I'd been careless. My friend had his brother assaulted and his jaw broken and all our friends knew. I saw what they went through. The general view is that it was the right thing to do.

Overall, however, this group of people saw the incident as embedded within a strong community norm with 70% of participants agreeing ('agree/strongly agree') that 'the community saw incidents such as happened to me as serious'.

Event seriousness is certainly not posed as determining action but the lay participants frequently remarked that it was the perceived seriousness (or lack) of the incident either to themselves and/or to others that served as a motivator. Cathy's comments encompassed her child and unborn baby:

> It happened in front of [our son] and I was hit in the stomach and was afraid for the baby. I was not having [our son] grow up thinking it's ok.

In counterpoint, Roslyn (who did not initiate the contact with police herself) said that she would call police:

> If he was physically violent to me or threatened me somehow that I perceived there was a grave danger [I would call police].

Distress and fear were particularly salient for victims of domestic assault in informing their assessment of the situation, with 89% saying they were very or extremely

[199] Only a third (33% n=11) said they had never turned to family, and 21% (n=7) said that they had never turned to friends for help.

frightened and 96% saying they were very or extremely distressed at the time of the incident (see page 135). The sense too that their situation was worsening and the violence was escalating added to the cold feeling of dread. For example, Deanna said, 'I was very fearful for my life' and Eliza commented, 'I was extremely terrified of him'.

The emotional landscape was vastly different for the non-domestic assault victims. The men were significantly less likely to feel distress and fear at the time of the incident, with shock and anger being predominant. Anger was expressed by 67% of the men as opposed to 44% of the women. Anger has been associated with a sense that the social order is 'under siege' (Tetlock et al. 2007: 201). While this is an overstatement for the men in the study, a couple did refer to the problems of violence in social settings as providing secondary motivation to the report to police.[200] Said Bailey:

> And fighting in general shouldn't be supported then if there's a way of preventing it. There's a huge lack of young people not getting this message.

In the next chapter I show these emotions are an element to people's orientation to the violent person and a consequent assignment of attribution to this person. The attribution for causality has been shown as an important component of 'an exculpation continuum' (Tetlock et al. 2006: 197).

6.6.2 Making meaning in a social context

The previous sections have situated the lay participants in various ways. This section explores the importance of their social milieu in influencing meaning-making. Third parties act as important validators and facilitators of both interpretation and action (Galanter 1981; Marks 1976; Ladinsky 1976). Similarly to other researches, people in this study turned primarily to friends (79%) and family (68%) for assistance. The domestic assault victims were more likely than non-domestic assault victims to seek help from family and friends quite a few or many times. Just over 40% had never sought help from a health or a community service, and were significantly more likely not to seek assistance from a lawyer, a mental health service or a spiritual leader.

[200] Survey participants in general also emphasised this theme in their reflections about their preferences in sentencing the violent person.

Conversation with informal others is a form of advice seeking without deliberate intent. In these networks, social norms and contacts are highly influential.[201] The conversations the lay participants described were with friends, colleagues and family. Bailey said:

> Later that night a lawyer friend and I were having a drink. He advised me to go over and make a statement to police. I felt supported to do that.

Winona commented:

> I haven't told my parents. I called another friend and she got me to go. I called police next morning.

Both domestic and non-domestic assault victims used these conversations to test out their interpretation of the events and to gain information about likely responses from the justice system. The concept of social validation is important to the interpretive exercise and works to assess the calibration of one's views with trusted and respected others (Harris 2007), as the following examples show.

> Later I discussed it with a lawyer colleague at work. They talked to me about the system. (Edward)

> My best friend's partner is a police officer and he talked to me about it. (Nada)

> In my current job I … was very across the issues. I knew the justice system was pretty strong. (Aimee)

Not all these conversations were supportive of the victim or of decisions to report incidents. While the majority of lay participants (70%) agreed or strongly agreed that the community saw incidents such as theirs as serious, this feeling was neither uniformly nor robustly held. Some recognised that their decision to turn to police went against the practices of their cultural and social sub-group. These nuances are evidenced in the responses of the participants to reflections on how third parties may perceive incidents such as theirs. As a formal third party, police are more usually emphasised in the victim literature as disinterested or discourteous to crime victims

[201] These features have been shown to be salient in relation to medical practice and client control (Freidson (1960) referenced in Zemans 1982: 1032). See also Genn (1999) and Curran (1977).

(Belknap 2001; Pagelow 1984). However, for this study, police were viewed as a sympathetic source of assistance (see Table 6.4).[202]

Table 6.4: Victims' perception of third party views of the incident; assessed as 'strongly agree' with statement[1], number and %

REFLECTION ON THIRD PARTY VIEWS	Domestic assault N=27 (%)	Non-domestic assault N=6 (%)	TOTAL N=33 (%)
Police see incidents such as happened to me as serious	17 (63%)	2 (33%)	19 (58%)
Police understand how it feels to be a victim of violence	11 (41%)	3 (50%)	14 (42%)
The community sees incidents such as happened to me as serious	11 (41%)	1 (17%)	12 (36%)

[1]Five-point scale where 1 = 'Strongly disagree' and 5 = 'Strongly agree'

It is interesting to note that the domestic assault victims in this study felt strongly that police would view the incident against them as serious. A similar analysis from the US National Victimisation Study describes the context given for reporting to police as 'incentives' (Felson et al. 2002). Later work examining the US National Violence Against Women Survey emphasises the complex influences of social relationships on decision-making. Closeness to or distance from the offender is influential on victim decision-making but it is neither linear nor determinative (Felson et al. 2005: 607). Perhaps a simpler proposition can be made with regard to Australia that the social marketing messages, delivered by governments and law enforcement over the past twenty years, have been heard by women in the community. These messages are that domestic assault is serious and that police will take reporting seriously.

However, turning to informal or formal sources of help does not translate into certainty. The lay participants in this study perceived support sources to be contingent. Asked a series of questions probing their expectations of the reception and possible

[202] Combining the data 'strongly agree/agree' across the two sub-groups produces stronger results: 94% believe that police see incidents as happened to them as serious, 64% say that police understand what it feels to be a victim of violence.

outcome of their mobilisation of legal resources, participants revealed moderated and grounded perspectives (see Table 6.5). Again it is interesting to note that domestic assault victims had significantly higher expectations for participation and for efficacy.

Table 6.5: Victims' expectations of the justice system; assessed as 'strongly agree/agree' with statement[1], number and %

EXPECTATION	Domestic assault N=27 (%)	Non-domestic assault N=6 (%)	TOTAL N=33 (%)
I expect the justice system to be fair	23 (85%)	5 (83%)	28 (85%)
I expect that the prosecution lawyers will ask me what I want to see happen to the case	15 (56%)	3 (50%)	18 (55%)
I expect to have my say at court about the case	17 (63%)	1 (17%)	18 (55%)
I expect the justice system to be able to stop the violence	15 (56%)	2 (33%)	17 (52%)

[1]Five-point scale where 1 = 'Strongly disagree' and 5 = 'Strongly agree'

In summary, this section reveals a body of people operating with a complex set of social messages to their mobilisation of law. We see their *legal consciousness* conceived as 'part of a reciprocal process in which the meanings given by individuals to their world, and law and legal institutions as part of that world, become repeated, patterned and stabilized' through their various interactions and conversations (Ewick and Silbey 1992: 741). Thus both consciousness and mobilisation of law are deeply socially embedded and constitutive.

Moreover, a picture of these ordinary people as rationally calculating individuals attracted by the incentive of certainty in the law as a tool is destabilised. This more contingent representation goes to Frances Zemans' comment that a resolution or the attainment of an outcome for a problem is just 'one among many reasons to invoke the law' (Zemans 1983: 994). I now turn to consideration of these many reasons.

6.7 A JUSTICE IMAGINARY

The striking finding that the vast majority of lay participants in this study *expect* the justice system to be fair (even when a majority also generally agree that the justice system is not fair to all) requires some examination. Here I discuss justice as an *imaginary* that is both stable as an ideal and unstable as a civic resource.

As discussed in Chapter 2, the notion of *fairness* performs a unique set of functions to perceptions of justice. It is firmly embedded within everyday ideas of justice. What is imagined about a set of social institutions infuses meaning into situations and interactions, influences interpretation and acts to open and to close pathways. The orientation and views of citizens about different aspects of justice – often characterised in terms of 'confidence' – have been extensively examined largely through population surveys. However, these fail to capture the nuanced and situated perspectives revealed in this study.

To illuminate this richer prior thinking, I built a representation of the citizen evaluator by asking the lay participants two key questions at their first interview: 'prior to the incident [in which they were the victim], if someone had asked you what you thought about the justice system in our community, what might you have said?', and 'when you think about the idea of justice, what sorts of things come to mind for you?' For many the formal legal world barely registered until it was propelled to relevance for them. Said Yvette, 'I probably wouldn't have had any thoughts about it because I've never had anything to do with it.' Others drew on their exposure to the legal world as jurors, students, and as litigants or parties. Still others had prior experience as offenders and as victims in other situations.[203]

Nonetheless, the ostensibly disinterested interpretive mode of citizen appraisal facilitated participant comment, and enabled them to place themselves in a different social and political space than simply as victim. Legal liberalism suggests that, within this space, law has *encoded* ideals of fairness and equal treatment in ordinary people (Silbey 2005: 337). On the surface of it, the lay participants appeared to reflect these 'taken-for-granted assumptions of shared values and common identities' of liberalism

[203] Fourteen of the women in this study (42% of the total) had previously reported a domestic abuse incident to police. Three men mentioned previous violence victimisation. Two of the men and two of the women also referenced past histories with welfare and criminal justice authorities.

(Sarat and Kearns 1998: 2). Said Quinn (for example), 'I would have said I assume the justice system did what it was supposed to do and that I believed in it.' Yet considerable variation and ambiguity was expressed.

6.7.1 Thinking about the idea and institutions of justice

Overall, people's evaluative citizen narratives clustered into four themes: *symbolic* acknowledgment, assessments of *efficacy*, the *governance functions* of justice, and the system's *normative performance*. Symbolic representations acknowledged (for example) 'the legal scales of justice' (Edward), and 'police and the court system' (David).

The efficacy assessment was, perhaps not surprisingly, readily mentioned. Many opinions were critical, such as from David, who said, 'It's too soft, very liberal. Magistrates are useless. Cops are OK and understand crime and what should happen but Magistrates just don't follow through.' Ursula had been on a jury years ago and 'came out of there thinking it sucks', while Lorraine thought 'they're probably not very good'. Olivia connected her view on efficacy to inputs by saying that 'we do the best we can with the resources we have'. Relativity also informed Winona's claim that 'if it's really big then they help. If it's small, it's not important to them …'

Others offered a generally confident view that moderated with direct experience. Asked about her prior view of justice, Roslyn (for example) said that, 'I have the belief that it's there for our benefit. I just had no idea how long and convoluted it would be using it for myself.'

Some people had positive assessments of efficacy. Nada thought that 'it was adequate so far as I knew about it'. Teresa, born outside Australia, thought that the system was efficient and not corrupt. She said:

> I think I always had a high opinion of the Australian system in general. The [other country] system is quite good but the size of the population affects the capability of the system to address all the issues. I think the number of police and the system can cope better here [in Australia] with demand. It was all more efficient – even the tax system. Processing works better.

Comments on the governance functions of justice touched on its role and purpose for the polity. Charlie said it was about 'adherence to the law'. Ursula claimed that:

> Well to me it's just like rules – you have to have rules to keep people in check so they don't go running amok and doing strange things. They're here to protect people – hopefully.

Reference to the public function of justice was also made. It was 'common-sense that I put it in the hands of the public', suggested Zola.

Observation on the governance functions of justice also referenced its rectificatory purpose. Aimee said that it was about 'rightful outcome, truth, safety, protection'. Quinn's idea of justice embodied common understandings of 'deservingness' being 'just the guilty will be charged and innocent will come through. People pay for their mistakes or that they've done wrong.' Bailey said that his idea of justice:

> Would be fitting retribution. Basically making sure that people who do wrong are corrected in their ways and giving remedies to those who are affected.

The rights-protecting function of justice was acknowledged by some. Winona, for example, said that justice was 'having your rights and feeling you need to be protected by the system. If you don't feel safe and your rights aren't protected then what's the point?'

Connecting the governance function of justice strongly to its normative appeal, Olivia said it was:

> Ensuring a fair and equal chance for everyone to live their life in a fair and equal way and for everyone to live the lifestyle they choose without fear and regardless of background. Justice is about a support network, about community and laws for a cohesive community.

The theme of normative fulfilment reflected upon the extent to which the justice system calibrated to the practices and values of perceived relevance and importance to the community at large. How the ideal of fairness worked proved a common refrain. To Xenia, for example, justice was about 'fairness and professional[ism]. [It's] looking after the victim and a fair outcome.' Whereas Molly said simply, 'it's unfair'. Polly claimed that 'they do what they think is best in their eyes but it might not be best in

actuality […] half of it was very fair and the other half is downright toxic'. Nada was indignant that 'Criminals have got more rights than victims … I don't have the right to be treated like a human being. Where are my basic human rights?'

Other normative criteria prioritised protecting people over property. Said Bailey:

> I think it does serve a purpose to the best of its ability but it is lacking enforcement or is misdirected. There's a huge undertaking on traffic infringements and disproportionate to tackling minor crimes but violence in the city at night is a greater risk to social conduct.

In his comments, Finn took a long view and said that 'in historical accounts justice was blind and swift but these days it can take a long time and doesn't really get any results'.

Reflections on justice norms also included that of consistency. Svetlana (for example) commented that justice was about 'not going from one extreme to the other on certain matters'. However, she felt that 'there are too many differences between the judges and it depends who you get and the mood they're in. It can also come down to the lawyer.'

These citizen appraisals worked as stocks of knowledge and rendered the law as both available to and distant from their everyday life. People's general and particular stories revealed schematic complexity about what the justice system did or was to them in their community. While the codes of legal liberalism were indeed powerful, they were not accepted uncritically. As citizens, the perspective of the law in action was that it is unstable, uncertain and ambiguous. At the same time, the justice system was acknowledged to play social roles with a number of purposes, in which the ideal of fairness was deeply embedded as well as imperfectly executed.

6.8 CONCLUSION

Constructing meaning is not a simple exercise. It comprises both rapid appraisal along with information gathering and interpersonal reflection. The components to meaning-making that emerged from the lay victim participants are summarised in Table 6.6. It should not be taken, however, that the features drawn on to construct meaning applied to all the persons in this study. Indeed, some were more salient for the

domestic assault victims, and others for the non-domestic assault victims. Similarly, the features are *perceived* by the participants as available and salient.

Table 6.6: Victim meaning-making informing legal mobilisation

Situational	Perceived seriousness Attribution to violent person Blamelessness Absence of provocation
Social	Relevant and available communal norm breached Salient public policy discourse Social legitimacy to legal mobilisation Concern for others
Interpersonal	Validation by social supports Relevant and applicable information from social networks
Civic	Symbolic imagery Perceived efficacy Governance relevance Normative salience

Drawing on this mix of elements and soliciting an intervention from legal authorities constitutes an act of agency. For victims, it is agency that is bounded as well as 'burdened' (Meyers 2011). As an activity that is 'with the law', it *imagines* consensus forged around ideals of fairness and equal treatment (Ewick and Silbey 1998), while at the same time actually expects remarkably little. The encoding that law is said to work on ordinary people clearly must accommodate a context of conditional factors and relational dynamics to capture the unstable, ambiguous and contradictory effects of consciousness.[204]

We are drawn, therefore, to Michael McCann's contention that legal consciousness may help structure meaning, or 'imagination', but it does not dictate a particular

[204] As Stuart Scheingold reflects in an updated preface to his influential *Politics of Rights,* a 'melange of different and contradictory strains of rights consciousness regularly coexist in society' (Scheingold 1974/2004: xxv).

course of action (McCann 1994: 283). Law, he suggests, merely creates a 'structural opportunity' (p.239). Thus, both the incident itself, as well as public pronouncements about the availability of protective law, generates separate and distinct opportunities for ordinary people that could be said to lubricate the *potential* for action. They can be seen to recognise, from their status both as persons in need and as citizens, the unique opportunity created through legal mobilisation to enable the law to 'step up' and do the work they imagine it is there to do. They also recognise, however, that they are stepping into uncertainty. The next chapter considers how people's mixed expectations interact with the goals they seek from justice.

CHAPTER 7: EXPLORING JUSTICE GOALS

> [It] was mean and nasty and he shouldn't have done it. (Zola 2010)
>
> What is … central to the idea of justice is that we can have a strong sense of injustice on many different grounds, and yet not agree on one particular ground as being the dominant reason for the diagnosis of injustice. (Sen 2009: 2)

Those who experience an injustice only infrequently access the institutions of justice. As an imaginary, justice acts as a lure to the law. However, when people do mobilise law in response to violence victimisation they think of justice in a variety of ways. It is a concrete assortment of entities and institutions; it is processes and activities as well as an authority with specific civic purpose and effect. They carry with them a bundle of paradoxes and contradictions that expect fairness as well as a degree of ineptitude.

Just as importantly, ordinary people carry with them a set of ideas that emerge from their social and civic imagination that intermingle with the act of legal mobilisation. The *potential* that the law embodies lies within it as a structural opportunity. Within their reading of the social and civic world, ordinary people imagine it is just possible their ideas may be realised. Ideas including that their understanding of justice will be a shared understanding; that they will be treated with courtesy and respect; that their status and identity will be affirmed; the problem may be resolved equitably and with needs addressed; and that they will be able to communicate with influence with decision-makers.

The previous chapter considered some of the personal and social influences that act upon decisions to mobilise the law. This chapter will lay out more of the specific contextual issues as motivations and objectives. I unpack Sen's suggestion that there are different grounds to ideas about justice which give rise to multiple goals. I argue that the different objectives people give combine deontological and consequential reasoning, and expand to consider the interests of the victim, the offender and the community. Moreover, from conversations conducted over three occasions, I show that these multiple objectives are sequenced.

The longitudinal prospective panel provides particularly rich and unique data in this exploration of the relationship between precipitating motivations, justice goals and justice outcomes. In particular, the data reveals much continuity and some discontinuities between what people say are their overarching objectives alongside their preferences for sentence outcome.

I start with some emotional and relational features to the context in which people express their objectives, and then move to consider the specific reasoning people gave at their first interview for their mobilisation of law. I particularly attend to the issue of victims 'getting what they want'. Their narrative on this is seen to speak to the complex and sometimes contradictory perspectives that people have of justice.

7.1 WHAT VICTIMS WANT

People who are victims of crime are popularly portrayed as vindictive in motivation and retributive in their objectives, and that these are rooted in anger. The next sections explore this representation through the different reasons people gave for their mobilisation of law, and the concrete outcome preferences they express. Outcome favourability has been described as something that is 'personally beneficial', being the attainment of a personal goal(s) (Krehbiel and Cropanzano 2000: 340–341). I consider aspects of the context, their influence on these preferences, and their consistency over time. I reflect on the extent to which 'getting what they want' is influential on justice appraisals.

Statements about justice are highly contextual. The next section considers the emotional content of victims' situations; their circumstances and their orientation to the offender as critical components of context. The small numbers in this study, especially those at the second and third interviews, caution placing undue weight on the statistical analyses. Overall, in this and the next two chapters, I emphasise the narratives people give.

7.1.1 Emotion and context

Emotion is a key driver to human action. It lay entwined with explanations and reasoning about justice by the lay participants. However, emotion is also a complex phenomenon that interacts with different subjects. Said Finn, 'I remember thinking

"how dare he hit me?" Basically because I had my daughter's birthday and I felt very indignant and felt it was very unwarranted and random.' Aimee's emotional reaction also encompassed others. She said, 'I didn't think about any other course of action ... His son was witness to it and so my maternal instincts came forward. I wanted to protect him.'

So how is it, if at all, that the after-effects of the incident and the emotions of the situation influence people's preferences and viewpoints about justice? More generally, research shows a relationship between emotion and justice, especially injustice (Mikula 1998). Some, for example, have found a correlation between post-traumatic impacts of the incident on the victim with feelings of revenge (Orth et al. 2006). However, other studies have unsettled the punitive picture (Doak and O'Mahoney 2006; Strang 2002). The assumption that the idea of 'just deserts' is equated with punitivensss has also been questioned (Darley and Gromet 2010; Gromet and Darley 2009).

Emotion was certainly present for the lay participants. At the first interview, people told of a high degree of distress and fear at the time of the violent incident (see Chapter 6, page 135). A small majority also felt humiliation. These feelings were stronger for domestic assault victims, who were numerically dominant in the first and second interviews.[205] Most victims (85% n=28) signalled emotional after-effects from the incident ('quite a bit/a lot').[206] At the second interview, a little over half (58%) described these emotional effects as continuing.

Notwithstanding these effects, the lay participants displayed a strong sense of personal agency. Nearly three-quarters felt strongly that 'what happens to me in the future mostly depends on me'. A majority also felt they had control over the direction their life was taking, and disagreed that they felt helpless in dealing with the problems of life. Furthermore, a majority (61%) felt good about themselves all or most of the

[205] Domestic assault victims were 82% of the study sample (n=33) at the first interview, 81% of the sample at the second interview (n=26), and 74% at the third interview (n=19).
[206] 96% of domestic assault victims described feeling emotional after-effects as opposed to 33% of non-domestic assault victims.

time. The sense of personal agency was similar at the second interview after the case had finalised at court.[207]

People's emotional orientation towards the violent person also showed complexity and fluidity over time. Overall, the most common feelings expressed at the first interview by people towards the violent person at the time of the incident were anger, fear, confusion and sadness. These feelings moderated substantially over time (see Table 7.1).[208] While feelings of anger subsided, it remained dominant among other emotions and dominant for both groups of victims.[209] Feelings of fear were dominant for domestic assault victims at the first interview but these also moderated substantially over time.

Table 7.1: Victims' feelings about the violent person at Time 1 and Time 2 (% saying 'maybe/definitely yes')

'I FEEL … '	Time 1 (%) N=33	Time 2 (%) N=26
Angry about this person	79	69
Frightened of this person	55	39
Confused/puzzled about this person	55	54
Sad for this person	55	54
Numb about this person	46	35
Empathy for this person	46	38
Pity for this person	36	42
Forgiving to this person	33	27
Like getting even with this person	27	23
Love for this person	24	35

[207] The mean of the personal agency scale at Time 1 was 3.9 and at Time 2 it was 3.7. The scale was derived from a five-point Likert scale where 1 = 'Not at all like me' and 5 = 'Very much like me'.

[208] At the time of the incident (Time 1) domestic assault victims (n=27) were more likely to feel fear, anger and love in relation to the violent person. Non-domestic assault victims (n=6) were more likely to feel numb, empathy, getting even, forgiveness and pity. However, given the small numbers in the samples, these findings are treated with caution. The sub-group numbers were even smaller at Time 2 and so are not broken down.

[209] Anger is especially associated with the experience of injustice (Mikula et al. 1998).

People's feelings about the violent person were clearly not narrow and one-dimensional. At the first interview this range of feelings factored along two dimensions. One reflected warm feelings of love, empathy and forgiveness. The other reflected more emotional distance from the violent person and included fear, confusion, sadness and pity. These scales both measured moderately and did not shift noticeably over time.[210]

At the time of the first interview five (15%) of the lay participants indicated that they wanted a relationship with the violent person to continue. All of these were domestic assault victims. At the second interview four of these people maintained this intention. Unsurprisingly, there was a strong and significant relationship between this desire and warm feelings toward the violent person.[211]

At the second interview the lay participants had varying perceptions of how the violent person felt about what he had done (see Table 7.2). A majority (65%) felt that the violent person blamed them for the incident. The sense of blame was felt most strongly by domestic assault victims. Under half of this group thought that the violent person felt a degree of remorse for, sorry about and shame for what he had done.

Table 7.2: Victims' perception about the feelings of the violent person regarding the incident at Time 2 (% 'agree/strongly agree')

'THE OFFENDER … '	Time 2 (%) N=26
Blames me	65
Feels justified	46
Feels shame	42
Feels sorry	39
Feels guilty	38
Feels remorse	35

[210] The scale measuring *warm feelings toward the offender* had a Cronbach alpha reliability score of 0.72. At Time 1 the mean score was 3.0 and at Time 2 it was 2.7. The scale measuring *distanced feelings toward the offender* had a reliability score of 0.57. At Time 1 the mean score was 3.1 and at Time 2 it was 3.0.

[211] Spearman's correlation coefficient at Time 1 was r_s = 0.67 (p<0.01) and at Time 2 was r_s = 0.69 (p<0.01).

Another emotional realm for lay participants was their view about the violent person's conduct. In laboratory research, the extent to which people in general ascribe intentionality to an offender's motivations has been shown to be an important component of 'an exculpation continuum' (Tetlock et al. 2006: 197) and to influence interests in retribution (Gromet and Darley 2006; Carlsmith 2006; Darley and Pittman 2003). In the current study, the lay participants had a very strong perception, at both their first and second interviews that the violent person knew what he was doing at the time (see Table 7.3). Both domestic (81%) and non-domestic assault victims (83%) held this impression. The ascription of intentionality to the violent person strengthened over time as did, paradoxically, an assessment that the person had been influenced by drink or drugs at the time of the incident.

Table 7.3: Victims' perception of offender attribution at Time 1 and Time 2 (% 'agree/strongly agree')

'THE OFFENDER … '	Time 1 (%) N=26	Time 2 (%) N=26
Knew what he was doing at the time	77	85
Was influenced by drink/drugs	50	62[212]
Was influenced by other people	27	23
Did not mean to hurt me	12	15
Was provoked by me	12	12

There was a strong and significant relationship between the sense that the violent person 'knew what he was doing' and feelings of emotional distance from that person.[213] At the second interview, there was a significant negative relationship

[212] Of the eight participants interviewed at Time 1 but not at Time 2, four agreed/strongly agreed that the violent person was influenced by drink/drugs, two neither agreed nor disagreed and two disagreed/strongly disagreed.
[213] Correlation coefficient at Time 1 was $r_s = 0.575$ ($p<0.01$).

between the sense that the violent person 'knew what he was doing' and perceptions that the person did not mean to hurt and felt sorry for what he had done.[214]

The strength of the intentionality assessment could be an artefact of the sample. However, it is consistent with research in legal mobilisation and social psychology more generally. In essence, emotion bonds to the experience of an injustice; and emotional distance connects with but is not causative of the attribution of intentionality.

However, the emotional complexity and nuanced reflections the lay participants made about the violent person complicates certainty. A focus only on the broad structural relationship of the variables does not allow an account of the expressive content of this relational landscape described in this section. Neither, however, does the emotional context account for the intricate reasoning about engaging formal authority that accompanies decision-making by these ordinary citizens.

7.2 MOTIVATIONS AND GOALS

The research literature on decision-making reveals a raft of instrumental and non-instrumental reasoning. The binding characteristic, however, is that the decision is a subject-based assessment of priority located within perspectives drawn from their social and cultural environment.

From the standpoint that the lay participants were neither ill-informed nor inexperienced in accessing forms of support more generally available in their community, why did they turn to police and the legal system? Given that their prior thinking about the institutions of justice was largely negative, and that this criticism is widely held, the question is pointed. Turning to the law is not simple and clear-cut as Teresa's reflection shows. She said:

> When I went to talk with [the police] I had already kept a logbook of what happened. I wanted them to take my statement and make a report. But I didn't know what they were going to do. When the sergeant came out and said he would be arrested I felt a mix of emotions and I had to tell myself it wasn't me. I

[214] 'Did not mean to hurt me' had a correlation coefficient at Time 2 of r_S = -0.5 (p<0.05) and 'feels sorry' correlated at r_S = -0.418 (p<0.05).

> wanted a clear decision, that it was wrong and it wasn't the right thing to do. I wanted him to know he had done wrong and to stop.

Indeed, analysis of responses to the question about turning to police showed clustered and layered thinking with people giving more than one reason (see Table 7.4).

Table 7.4: Victims' reasons for reporting to police at Time 1 (N=33)

Why reported to police?	Frequency of mentions[1]
Safety/protection	13
To stop the violence	10
For others (children, the public, others)	10
It's a police function	9
Justice/response to wrongdoing	9
To get help	7
To get help for the assailant	4

[1] Total mentions do not add to 100% because people cited more than one reason.

For many of the lay participants, the general evaluation appeared to be that the nature of the incident warranted a particular set of responses that would most likely be forthcoming from police. Police were viewed as a trusted help agency that had both legitimacy and authority to deal with the issue. This is evidenced in the following observations:

> I wanted them to fix it up, for the stats about what's happening. It's just what you do if you are growing up and you're a kid and you're in trouble. You're told to go to them. (Edward)

> The police would have to do something. A neighbour he would have just sworn at. (Molly)

For others the levels of reasoning about turning to the law encompassed longer term goals as well as the immediate purpose. Two quotes say similar things about their desire for future safety – one from a domestic assault victim and one from a victim of a neighbour assault:

> I wanted him arrested. I just wanted to be safe at the time. (Cathy)

> I knew they'd calm the situation and put an end to it. [I wanted them to] put an end to the incident so I could feel safe again. (Ari)

Others also focused on the short and longer term but with different and specific goals. The first quote is from a victim of a stranger assault, and the following three from victims of domestic assault:

> Justice, retribution – they've done something wrong so something has to happen. To make sure they're punished. (Edward)

> I just wanted him to stop doing it. I wanted them to identify the support services and make him go to hospital or get counselling and make him aware of the consequences of what he was doing. (Olivia)

Other of the participants recalled an initial motivation that evolved in layers. The following reflection from Teresa encapsulates this fluidity:

> I wanted to be able to move on with my life. I wanted him to know he was doing the wrong thing and to stop. I thought police would tell him that. I didn't really have in mind to have him arrested. I wanted justice, to leave me in peace.

Teresa went on to acknowledge a wider social context to her decision. She said:

> This is why police step in to say these are the rules we live by and this is what we are going to do. If there is a breach of the law then there has to be a consequence.

The overwhelming immediate priority of the lay participants was to feel and be safe, and to end the violence. These are the selfish motivations for legal mobilisation. However, these were accompanied by other goals. While there is an extensive literature canvassing the constraints, barriers and restrictions to ordinary people's access to law and justice (Morash 2006; Buzawa and Buzawa 2003; Genn 1999; Dobash and Dobash 1992), significantly less discusses 'incentives' such as those given by the participants (Felson et al. 2002).

The next section further explores these layered goals through questions asked of the lay participants at the first interview about their preferences for the finding of the

court, for a sentence (if any) and for the type of justice principle(s) they would like to see the court apply to their case.

7.3 OUTCOME PREFERENCES

Much of the research about outcomes are laboratory studies in which disinterested respondents are asked to make a judgment (Gromet and Darley 2009: 2). In real world settings opinions are more fluid. The previous section showed people's objectives for involving police (as the gateway to the justice system) cluster around the instrumental imperatives of safety and protection, and stopping the violence. A further substantive cluster is for the protection of others, notably children and the public in general. But, confronted by a looming and, in many ways unknown process awaiting them, what precisely did people want the various justice agencies to do or to decide in order to achieve these goals? Do these outcome preferences equate with outcome favourability? This section considers the findings and the qualitative narrative that people gave for their preferences. It is divided into seven sections:

The first interview: looking back and looking forward.

- Reflections on the findings of the first interview.
- Assessments made at the second interview.
- Summarising discussion of the second interview.
- Co-determination of private and public interests.
- Reflections arising from the third interview.
- Third summarising discussion.

7.3.1 Looking back, looking forward – the first interview (N=33)

The lay participants were interviewed a first time after the police intervention and the police decision was made to charge a person with an offence, but before the matter had finalised at court. The time lapse between the actual incident and the first interview varied between two weeks and two months.

At the first interview a slight majority (52% n=17) confirmed that they had wanted police to arrest the violent person and take him away, with 18% (n=6) being unsure

what they wanted.[215] A greater proportion of the non-domestic assault victims said they had wanted police to arrest (83% n=5) than did the domestic assault victims (44% n=12). Of the latter group, a further proportion (19% n=5) were unsure what they had wanted, and another 11% (n=3) had wanted the violent person taken away but not arrested.[216]

The greater sense of uncertainty displayed by the domestic assault victims did not immediately translate into an attempt to get police or prosecution to drop charges. A strong majority (85% n=28) indicated that they had not asked the police or prosecution to drop the charges arising from the incident. Five (19%) individuals said that they did ask for them to be dropped. A further two stated that they thought they couldn't do this. Of those who did ask to have the charges dropped, one did so because she felt her husband was mentally unwell, another because she felt shared culpability for the incident, another because she felt the arrest was sufficient to produce changes in behaviour, and two because of their emotional attachment to and concern for the violent person. Further nuance arising from individual cases is discussed later at pages 177-178.

Of those who did not ask to have the charges dropped, the most common concern was for accountability and from a normative perspective.[217] Said Winona, for example:

> I wouldn't drop it because he needs to learn he shouldn't touch females.

As a non-domestic assault victim, Charlie said something similar. Asked why he wanted the charges to proceed, he said:

---

[215] Of the demographic and incident type variables, only level of education correlated with significance to this preference ($r_s = 0.49$ $p<0.05$). People's sense of their agency ('I feel I have control over the direction my life is taking') also had a strong and significant correlation ($r_s = 0.52$ $p<0.05$). No incident variables correlated with this preference.

[216] This study did not set out to examine gender differences in conceptions of justice. It did aim to examine differences and similarities as they may relate to offence type. The ambivalence shown by domestic assault victims towards formal external intervention is well researched (Hoyle 2000). Distinguishing the differential influence of gender and of offence type on victims' justice judgments is an important area for future research. The influence of personal characteristics is a contested area. For example, Scott and his colleagues noted significant gender differences in distributive justice norms (Scott et al. 2001). Brockner and his colleagues also noted that the interactive relationship between procedural and distributive justice was more pronounced among those with more interdependent forms of self-construal (Brockner et al. 2000). They argued that the nature of the interpersonal and social culture of respondents needed also to be better explored.

[217] 'Bringing people who commit crime to justice' was rated as the top priority for the criminal justice system in the 2007–2008 British Crime Survey by both victims and non-victims (Smith 2010: 19).

> Because of the nature of the event. I don't believe [in] punching people on the head and getting away with it. If I thought I got into a fight of my own accord I would have a different view and there were injuries sustained.

Variants to this theme related to a concern that 'truth' should be known and that wrong behaviour highlighted.

> He should know better, know what's right and wrong. (Svetlana)

The next most common reason for not dropping the charges was for protection and stopping the violence. Said Teresa:

> Because this has been going on for quite a while … this is my last resort to stop him. I have tried counselling, AVO [Apprehended Violence Order] and he has not accepted the boundaries. This is all I have left.

Looking forward to the justice process ahead of them and assuming charges were not dropped, people were also asked about their preferences on the court outcome. An issue here is that some research suggests that respondents give a response to a survey question that they think they should, or that they think the researcher would prefer (Carlsmith 2006; Carlsmith, Darley and Robinson 2002). These problems were mitigated in that people were in a 'real world' situation and, in fact, had to think about and confront this question. The problems were further addressed by asking different questions on the nature of *outcome.* The participants were asked what decision at court they would like made, what sentence outcome they would prefer, and what principles of justice they thought were important to apply to their case.

On the first query about the finding, people were overwhelmingly in favour of a guilty verdict with 85% saying they were strongly in favour/in favour. Equal proportions of domestic and non-domestic assault victims (67%) strongly preferred this verdict. To the majority of people, the reason for the preference was simple. Asked why this choice, Charlie said, 'because they were [guilty]'. Some research would suggest that this firmness is consistent with the *a priori* viewpoint that led to the initial engagement (Folger 1996). It is also consistent with the problem-judgment element of Zemans' decision-making framework. Perhaps unsurprisingly, there was a strong and significant

correlation for the preference for a guilty verdict with more distanced feelings held by these victims towards the offenders (and see p.160 on attribution of intentionality).[218]

In addition to the question about verdict, the participants were asked to indicate their preference for a sentence outcome from a menu of seventeen items. The items were real-world possibilities open to the sentencing court.[219] Strong preferences were expressed for sentence outcomes that were protective, rehabilitative and drew on the authority of the court. Numbers add to more than the number of participants because they could cite more than one item as 'essential' (see Table 7.5).

Neither domestic nor non-domestic assault victims displayed a strong interest in a written or a verbal apology at this stage. The number of non-domestic assault victims is too small for substantive comment on their sentence preferences. However it is noteworthy that they distributed their preferences evenly across the sentence options. Domestic assault victims clustered strongly towards protective and rehabilitative options.

When asked their first and second priority out of the sentence preferences, people's views sharpened and reflected 'partial ordering' (Sen 2009: 394). Of equal primary importance was that the violent person attend a drug and alcohol rehabilitation program or have a custodial sentence of some type[220] (seven first preferences each). As a second priority, most people reported a preference for a violence rehabilitation program (five first preferences).

[218] The correlation coefficient at Time 1 was $r_s = 0.554$ ($p<0.01$).
[219] As set out in the ACT *Crimes (Sentencing) Act 2005.* Special thanks to Nicole Mayo, (then) Director, Criminal Law Section, ACT Department of Justice and Community Safety, for reviewing the accuracy of the options posed to lay participants.
[220] The different types of custodial sentence were weekend detention, a suspended sentence or full-time custody.

Table 7.5: Victims' preferences for sentence outcome at Time 1 (number rating preference as 'essential, the highest priority')[A]

Sentence preference	Domestic assault N=27	Non-domestic assault N=6	TOTAL N=33
Be ordered by the court not to come near me	16	2	18
Attend a violence rehabilitation program	15	1	16
Be ordered by the court to follow certain directions	13	2	15
Attend a drug/alcohol rehabilitation program	11	2	13
To receive a good behaviour bond from the court	10	2	12
Receive a custodial sentence	8	2	10
Apologise to me in writing	7	1	8
Perform a service for the community	7	0	7
Apologise to me in person	6	1	7
Pay me for the costs I incurred as a result of the incident	5	2	7
To hear a message of condemnation from the judge/magistrate	4	0	4
Pay a fine to the court	4	0	4
Other outcome	2	2	4
Not have any sentence imposed	3	0	3
Not have a sentence imposed but to hear a message of condemnation from the judge/magistrate	2	0	2
Perform a service for me	2	0	2
Perform a service that I decide	2	0	2

[A] Total mentions do not add to N=33 or to 100% because people cited more than one sentence as 'essential, the highest priority'. Five-point scale where 1 = 'Undesirable, would make things worse' and 5 = 'Essential, the highest priority'

While people were asked to prioritise their sentence preferences, all were comfortable with the idea of having a number of choices. Combined choices fitted with the multiple goals expressed. Said Bailey:

> With regards to this I don't think it should go unpunished because he did have a short-term impact on me. You do wrong, you get punished – that's how our society works. I think something should be done to get rid of violence. I don't like it. I'm not a violent person. This may be done through rehabilitation. I don't feel a personal need for protection but if these things happen more and more then the society might need protection. There's nothing to restore [with him]. He can't give me the week back where I looked bad. I think denouncing it will help deter it amongst the community in general.

Finally, people were also asked to indicate which justice principle or set of principles they would like a magistrate or judge to apply to their case. Table 7.6 shows that the participants thought the principles of rehabilitation, specific deterrence and victim protection were of the utmost importance to their case. While the lay participants prioritised the rehabilitation principle, this was largely driven by the domestic assault sub-group. The principle of next priority – specific deterrence – was of strong interest to the non-domestic assault sub-group.[221] Once again, however, the principles reflected goals that were multiple.

The participants were asked what was important to them about the particular justice principle they wanted applied to their case. Again, these clustered around the desire for accountability and that the person 'learn a lesson'. A further strong cluster felt the wrongfulness of the behaviour needed to be recognised. One comment encapsulated these interests in a multi-faceted manner. Xenia said:

> The most important ones are to rehabilitate the person. To see what they've done is wrong and to change. Protecting the victim is important and letting the community and the person know it is not acceptable.

[221] Gromet and Darley (2009: 55) note that 'in-group offenders who commit serious offences are likely to elicit a complex set of emotions and cognitions from respondents'.

Table 7.6: Victims' preferred justice principle at Time 1 (number rating principle as 'accept as of utmost importance')[A]

Justice principle	Domestic assault N=27	Non-domestic assault N=6	TOTAL N=33
To *rehabilitate* – do something to help the violent person face their problems and to help them change	21	2	23
To *deter* [specific] – do something to stop the person from committing violence again	13	4	17
To *protect* [victim] – do something to the violent person for the protection of the victim	15	1	16
To *deter* [general] – do something as a message to stop others in the community from committing violence	11	2	13
To *denounce* – do something to give a stern message about how wrong the violence is/was	11	1	12
To *punish* – do something to punish/discipline/penalise/chastise the person	10	1	11
To *restore* – do something to recognise the harm caused and to help restore all parties	9	0	9
To *incapacitate* – do something to remove the capacity of the person to commit violence in the future	8	1	9
To *protect* [community] – do something to the violent person for the protection of the community	5	1	6

[A] Total mentions do not add to N=33 or to 100% because people cited more than one principle as 'accept as of utmost importance'. Seven point scale where 1 = 'Reject' and 7 = 'Accept as of utmost importance'

Wider social meanings were further recognised in a number of different ways. Edward, for example, was inclined towards the punishment principle but with a rehabilitative sentence. He commented that it was:

> Better for them to give something back to the community. Better to do this than sending them to jail. It's the same message but it doesn't cost as much. As it's a lower offence it may help rehabilitate. The costs are significant, thousands of dollars. I was in the wrong place, now I'm out of pocket.

A bivariate statistical analysis shows no correlations between the stated outcome preferences at the first interview and any demographic variable. There was a strong and significant positive correlation between the verdict preference and the attribution of intentionality (r_s = 0.57 p<0.01).[222] The preference for a guilty verdict had a significant relationship with the scale measuring adherence to self-reliant citizenship (r_s = 0.52 p<0.01), and strong relationships to the harmony scale (r_s = 0.42 p<0.05), and to the measure demonstrating a commitment to laws (r_s = 0.43 p<0.05).

Overall, the proposition that people would exhibit consistency in their outcome preference in both concrete and abstract terms was affirmed. Contrary to common representations of victims as punitive, this sample of people indicated their preference for sentence outcomes that were protective, rehabilitative and authoritative. Those with closer relationships to the violent person, albeit strained, exhibited a stronger inclination towards protective outcomes. Clearly, people indicated a number of aims and preferences to the main goal of 'achieving justice'. What is also noticeable is the clear and strong perspective that a court should find the violent person guilty. This feature is emphasised in the recurring theme of accountability.

7.3.2 First summarising discussion

In summary, at the first interview the lay participants:

- wanted arrest and had a strong preference for a guilty verdict
- joined this preference with a desire for accountability and the reinforcement of a normative standard of behaviour
- wanted sentence outcomes that were protective, rehabilitative and which drew on the authority of the court
- wanted the principles of rehabilitation, specific deterrence and victim protection applied to their case.

[222] Darley and Pittman (2003) suggest that the desire for retribution derives from moral outrage in response to harm inflicted intentionally. Harm carelessly inflicted produces a reaction to seek restitution.

People's outcome preferences maintained consistency in both concrete and abstract terms. The outcome preferences were also consistent with people's stated motivations for legal mobilisation being for safety, stopping the violence, and protecting others.

7.3.3 Assessments and reflections – the second interview (N=26)

The second interview was conducted with the same panel of participants (albeit a smaller number n=26) after the case was finalised at court. Finalisation could have been a guilty verdict following a plea (the majority of cases), charges being dismissed or a verdict after a contested trial. The time lapse between the first interview and the second varied considerably between those who finalised within four to twelve months, and those who finalised after twelve months. The shortest time between first and second interview (that is, to court finalisation) was four months. The longest was twenty-seven months.[223]

At the second interview, a greater proportion of the lay participants than at the beginning indicated that they had asked police or prosecution to drop the charges. Just over a quarter (27% n=7) as opposed to 19% at the beginning said they had asked for them to be dropped. All of these – as on the first occasion – were domestic assault victims.

The reasons given for asking that charges be dropped are all familiar from the domestic violence literature and were often interrelated (Hoyle 2000). Some were particular to the incident and the relationship.[224] Others related to the parties reconciling or to a concern about the possibility of a jail sentence. Two women mentioned the length of time involved in the process. A further two discussed direct pressures placed on them. Finoula said the violent person 'talked me into it' and Polly that she was intimidated by both the violent person and the court. She said:

> I definitely didn't want to testify. I was frightened what would happen from people he knows. I thought there'd be retaliation. I didn't think the system would protect me. I had my tyres slashed. I was wondering what might happen.

[223] The majority of cases resulted in a guilty plea being entered in the Magistrates Court. The case that took the longest involved a contested trial at the Supreme Court.

[224] There were no correlations between the overall satisfaction with prosecution handling or the scale measuring outcome preference, and any contextual variables related to the relationship with the offender, emotional after-effects or continuing physical abuse.

Others commented on both positive and negative reasons. Said Aimee:

> I sought legal advice about [dropping charges] and was told it was not really possible. The police told me if I did it they would not be as helpful next time it happened. I wanted to drop it because we were reconciling and the length of time the court case was taking was causing a lot of stress.

Notwithstanding these minority views, when asked specifically what they wanted prosecution to do, only 15% did not want any prosecution and indicated preferences for counselling or a restorative conference. Thus 81% said they preferred all or some charges to be prosecuted.[225] All of the non-domestic assault victims wanted this (100% n=5). Despite prosecution being what the majority wanted, only 35% expressed high satisfaction with prosecution handling (discussed later at p.192).

The participants reiterated strongly their concern for accountability as a core reason for wanting the case to proceed to prosecution. This was voiced in terms of the violent person accepting responsibility for and the consequences of his actions. One of the non-domestic assault victims, Finn, said simply, 'I believe something had to be done about what happened'.

As a domestic assault victim, Roslyn emphasised accountability with regard to her own values. She said:

> I did want him to be accountable for what he did because I didn't want to be afraid in my own home. If I'm not true to myself, if I give up on my strong sense, then that's not good. It's being true to my values.

A proportion of the domestic assault victims indicated that prosecution combined with counselling or just counselling would have been preferable. The idea of the violent person 'getting help' was influential, as was concern for their children.

Others were clear that they wanted punishment or some other meaningful consequence. However, this interest in the consequence focused mainly on its possible longer term effect. Said Karla:

[225] All those who said they did not want any prosecution (n=4) were domestic assault victims plus one who was unsure what she wanted. Therefore, of all domestic assault victims, 19% indicated no prosecution. Of all domestic assault victims, three indicated an interest in a process that mixed prosecution and offender interaction (ie, counselling or restorative conference).

> I think primarily [I wanted it to go ahead] because he did the action and if he suffered the consequences maybe he won't do it again. It was a serious thing he did.

Edward also emphasised this point. He said, 'Why withdraw it? They've done all this work so why stop it? Mainly the deterrent effect.'

Another proportion indicated that prosecution recognised wrongfulness, seriousness and the degree of harm caused, and that accountability and responsibility were desirable. Taken together, these interests go to the manner in which 'justice' equates with 'accountability' (Folger and Cropanzano 2001).[226]

Also at the second interview, the majority were in favour of the court making a guilty verdict or finding, with 58% (n=15) being strongly in favour and a further 31% (n=8) being in favour. Similar proportions of non-domestic assault victims (60%) and domestic assault victims (57%) were strongly in favour of the guilty verdict. Three participants, all of whom were domestic assault victims, were in favour or strongly in favour of the charges being dismissed and two were in favour of the violent person being found not guilty.[227] However, as shown in Table 7.7, the overall proportions displaying a guilty verdict preference did not change markedly over time.

Table 7.7: Victims' preferences for a guilty verdict at Time 1 and Time 2 (% 'in favour/strongly in favour')

Preference	Time 1			Time 2		
	Domestic assault N=27	Assault N=6	TOTAL N=33	Domestic assault N=21	Assault N=5	TOTAL N=26
Guilty verdict	22 (82%)	6 (100%)	28 (85%)	18 (86%)	5 (100%)	23 (89%)

The nature of the sentence provided further definition to the meaning of the outcome. Between the first and second interviews there were small changes to people's stated

[226] There was no statistical correlation between overall satisfaction with prosecution handling and the scale measuring outcome preference (or getting what was wanted).
[227] Participants could rate more than one preference.

preference, the actual outcome and the evaluation of the sentence (see Table 7.8). The majority (58% n=15) said that they felt the sentence was 'about right'. [228]

Table 7.8: Individual outcome preferences and perceived outcome favourability (N=26)

Time 1	Time 2	
Sentence preference[A]	Actual sentence	Sentence assessment
Drug and alcohol program	Custody	A little too tough
Violence rehabilitation program	Good behaviour bond (GBB) and supervision	About right
Drug and alcohol program	GBB and supervision	About right
Drug and alcohol program	Suspended sentence and GBB	About right
Custody	GBB	A little too lenient
Custody	GBB	Much too lenient
Community service	GBB	About right
Community service	GBB	About right
Drug and alcohol program	GBB	A little too lenient
Custody	GBB	A little too lenient
Court ordered directions	GBB	About right
Drug and alcohol program	Custody	About right
No conviction recorded and message of condemnation from magistrate	Community service and violence rehabilitation program	A little too tough
Custody	GBB	About right
Custody	GBB and supervision	About right
Charges dismissed	Dismissed	About right
Court order to keep away	GBB and supervision	A little too lenient
No conviction recorded	GBB	About right
Charges dismissed	Dismissed	About right
Order to pay victim costs	GBB	A little too lenient

[228] Percentage calculations refer only to twenty-four cases, as one person did not answer the question about perceived leniency.

Violence rehabilitation program	GBB and supervision	About right
Community service	Conviction recorded and court costs	About right
Good Behaviour Bond (GBB)	Dismissed	-
Custody	Dismissed	Much too lenient
Community service	GBB, supervision and reparation order	About right
Court ordered curfew and school attendance	GBB	A little too lenient

[A] Stated as a first preference out of three top preferences for sentence outcome.

Those who expressed views that the sentence was too lenient or too tough did so from particular perspectives and circumstances. A small proportion (31% n=8) felt that the sentence outcome was too lenient. Four of these had indicated a preference for a custodial sentence. Two of the non-domestic assault victims had experienced an assault in their neighbourhood. David felt that the violent person had 'gotten away with' the assault against him. Finn felt that the good behaviour bond was not a sufficiently strong 'lesson' to the assailant about the wrongfulness of violence and the harm it causes.

The domestic assault victims who felt the sentence was too lenient also revealed particular circumstances as to why, and only two maintained a preference for a custodial sentence. None wanted a continuing relationship with the violent person. Zola was already financially disadvantaged and suffered further the cost of property damage done during the incident. She indicated at the outset that her preferred sentence was that the violent person be ordered to pay the costs and to keep away from her. At the second interview the case had finalised at court with the violent person being sentenced to a bond. Zola maintained her preference for a court order for the costs. In addition she added that the property damaged had been of sentimental value to her and that breaking it 'was mean and nasty and he shouldn't have done it'.

Karla had preferred a custodial and, when the violent person received a bond, felt that a custodial sentence would have provided 'time to think about it and to learn from what he'd done'. She maintained her preference for a custodial sentence.

Janelle had stated her preference for a full-time custodial but upon conviction the sentence was deferred, with the violent person subject to regular drug and alcohol testing. She felt this was too lenient but also at the second interview said she preferred rehabilitative sentences such as drug and alcohol and violence programs. She said:

> He definitely needs to get off the pot. It's the biggest problem and a big part of why he did the things he did. And he needs to control his anger as well. And stay away from me so it doesn't happen again.

Winona had indicated an early preference for a court order to keep the violent person away but, upon conviction, had preferred a custodial sentence. The court had recorded a suspended sentence with supervision and community service. She said she came to prefer the custodial sentence 'because they are harsher, he deserves it. He did apologise in writing though I'd prefer face-to-face.'

Imogene had indicated a preference for a drug and alcohol rehabilitation program but, upon conviction, indicated a first preference for a violence rehabilitation program. The court ordered a good behaviour bond and did not record a conviction. Imogene said that her ex-partner needed violence rehabilitation 'for his sake and others'. She went on to say, 'I believe in this more than punishment. But public shaming is the only thing that would work with him at the moment. He couldn't give a stuff except for others knowing.'

Finally, Nada felt her ex-partner's behaviour had been very serious. She felt that a bond neither addressed his problems nor provided a means for him to serve the community. While she had expressed a preference for a custodial sentence at the first interview, at the second she said she would prefer drug and alcohol and violence rehabilitation programs and community service. That is, something that would commonly be regarded as rehabilitative.

The two who expressed a view that the sentence was too tough did so from very particular circumstances. Birgit favoured the guilty verdict, but did not feel that

custody actually helped the violent person. She expressed a preference for court orders to keep the violent person away from her and for alcohol treatment. She did, however, want her child to have a relationship with his father. Roslyn also felt the sentence was too tough. She wished to remain with her partner and shared a business with him. While she did favour the guilty verdict, she felt that a message of condemnation from the magistrate would have adequately indicated to the violent person that the 'bad behaviour' had been noted and had to change.

On the surface of it, the majority of participants 'got what they wanted' from the court. However, when asked directly, just under half (46% n=12) indicated that the outcome was what they wanted (Table 7.9). The variation in assessment seems to suggest that people apply different criteria in their thinking about a 'right' outcome other than preference. Indeed, the notion of 'outcome' may be understood differently. When referencing to self it is noticeable that assessments are more negative.

Table 7.9: Victims' assessments of outcome at Time 2 (N=26)

Assessment of outcome	% Agreed/strongly agreed
Outcome 'fair'	69
Satisfied with outcome	62
Sentence 'about right'	58
Outcome what I wanted	46
Outcome what I expected	42
Outcome what I deserved	38

For the majority (n=22) of the twenty-six lay participants who were interviewed twice, the cases were resolved at court by way of a guilty plea. Of the remaining four cases, in three the prosecution offered no evidence and the charges were dismissed at court (one non-domestic assault and two domestic assaults); and one non-domestic assault resulted in an acquittal. Those that did not resolve in a manner that tallied with the preference stated by the victim at the onset of the court proceedings are described as follows:

Case 1: At the first interview this domestic assault victim stated a preference for the matter to be dismissed. By the second interview the violent person had entered a guilty plea and was sentenced to a good behaviour bond. The victim indicated at this stage that she preferred this guilty verdict. She indicated satisfaction with the outcome and agreed that it was what she wanted. She was neutral on whether the outcome was fair. She agreed that she was 'satisfied with the outcome and that justice was done'. She and the violent person continued in their relationship, with a child in common.

Case 2: At the first interview this domestic assault victim stated a preference for the matter to be withdrawn and dismissed. By the second interview the violent person had entered a guilty plea and was sentenced to a good behaviour bond. The victim maintained her preference at the second interview that the case should have been withdrawn and dismissed. She nonetheless strongly agreed that she was satisfied with the outcome, and agreed that it was fair and what she wanted. She agreed that she was 'satisfied with the outcome and that justice was done'.

The non-domestic assault cases that resolved in a manner different to the original stated preference are outlined as follows:

Case 3: At the first interview the non-domestic assault victim stated a preference for a guilty verdict. By the second interview the prosecution had offered no evidence and the case was dismissed at court. At this stage, the victim maintained his preference that the violent person should have been found guilty. He indicated that he neither agreed nor disagreed that he was satisfied with the outcome but agreed that it was fair. He disagreed that the outcome was what he wanted. He did not agree with the statement that he was 'satisfied with the outcome and that justice was done'.

Case 4: The non-domestic assault victim stated his preference for a guilty finding at the first interview. The violent person was acquitted at court. At the second interview, the victim maintained his preference for a guilty verdict. He voiced strong dissatisfaction with the outcome, that it was fair, or what he wanted. He strongly disagreed with the statement that he was 'satisfied with the outcome and that justice was done'.

The particularities described in the cases that did not resolve in the way people preferred or were somehow judged insufficient suggest that making assessments of satisfaction and fairness of the outcome are different to those that are self-regarding. Furthermore, outcome preference is – for this study group – different to outcome favourability.

7.3.4 Second summarising discussion

In summary, at the second interview after the case had finalised at court:

- the majority maintained a preference for the guilty verdict
- the main reason for this preference was for reasons of accountability and that there be consequences to the behaviour of the violent person
- the particular circumstances of some domestic assault cases influenced victims towards a preference for charges to be dismissed
- the majority felt that the sentence allocated was 'about right' even when it wasn't what they had wanted
- perceptions of sentence leniency did not necessarily translate to a preference for punitiveness – that is, if punitiveness is equated with incarceration
- satisfaction with prosecution and with court handling was not strong
- there was a distinction between assessments of satisfaction and fairness of the outcome, and getting what one wanted or what one deserved.

This detailed examination of goals and preferences shows that people's complex reasoning reflects deontological thinking about right and wrong, as well as consequential thinking about the offender and the wider community. The multiplicity of goals and preferences expressed at both the first and second interviews renders statistical analysis difficult. Nevertheless, the reasoning given throws doubt on the idea that outcome favourability can be reduced to something of singular and personal benefit. Overall, there was a remarkable degree of stability across time between preferences, outcomes and assessments on those outcomes.

7.3.5 Co-determination of private and public interests

At their first and second interviews the lay participants gave more than one reason for mobilising the law and in reasoning their preferences. These were (unsurprisingly)

instrumental (stop the violence) but also ethical (protect others). Both men and women frequently drew on public policy concerns in giving robustness to their reasons, saying that violence against women is wrong and violence in public is a problem. People did not see their recourse to law or their engagement with the criminal justice system as divorced from the communal and the civic. Only a couple of the participants viewed theirs as a 'private dispute' (Christie 1977). It is difficult to see private interests in this study as anything other than co-determined by wider public interests of which they were also a part.

7.3.6 Final reflections – the third interview (N=19)

The third interview was conducted approximately six months after the finalisation of the matter at court. Of the original thirty-three study participants, nineteen were interviewed on the final occasion, comprising five non-domestic assault victims and fourteen domestic assault victims.

Just under half (47%) indicated that they were somewhat satisfied overall with how the justice system handled their case, and another third (32%) indicated that they were extremely or very satisfied overall. There was a strong and significant correlation between overall satisfaction, and a feeling that their interests as a victim of violence were looked after ($r_s = 0.83$ $p<0.01$). A strong and significant correlation was also found between overall satisfaction and the view that, in a similar situation in the future, the victim would like the justice system to deal with it in a similar way ($r_s = 0.65$ $p<0.01$). When asked how well people felt their interests as a victim of violence were actually looked after, there were decidedly mixed views. While 42% felt they were definitely/maybe looked after enough, 42% felt that they were definitely/maybe not, and 16% were unsure.

Looking behind these data through personal reflection, some of the lay participants came to qualify their earlier assessments of unqualified satisfaction or unqualified dissatisfaction. Ursula was one of those in the latter category. At her second interview she said that the mental health condition of the violent person – her husband – was not appropriate for the criminal justice system to deal with and, given this, that justice was not done. While they remained married and living together and the criminal charges had been dismissed – rightly in her view – she had also wanted some form of

compulsion to his engagement with mental health services. Six months later at her third interview, she was consistent in the focus of her dissatisfaction but she also included an element of uncertainty with regard to her own interests. Ursula's comment was that:

> Supposedly he didn't know what he was doing. He got the outcome for him but I haven't. I'm no safer than I was then.

A greater proportion of participants shifted from unqualified satisfaction with the outcome and that justice was done at the second interview, to a more qualified satisfaction at the third and final interview. All were domestic assault victims, three of whom expressed their qualification on the sentence arrived at by the court. They were satisfied that there had been a result but questioned its appropriateness. Said Deanna:

> On one hand, I was content to see [the defendant] being convicted and sentenced but on another, I felt the sentence was a tad too light and the case was not finalised as thoroughly as I would have hoped.

Winona compared unfavourably the result in her situation with others:

> I'm just unsure. It could have been done better and the punishment didn't fit what happened. Other similar cases got more punishment.

Xenia, who remained married and living with the violent person, indicated that her dissatisfaction stemmed from the emotional, personal, family and financial consequences of the case. The matter had finalised with a guilty plea to some of the charges, with others withdrawn and the matter resulted in the conviction not being recorded but with a good behaviour bond. She had expressed great difficulty in communicating with prosecution while also giving voice to a degree of ambivalence about her personal situation. She expressed the complexity of her viewpoint in the following manner:

> I'm not sure what justice I wanted. I just wanted it to go away. At the end of the day they eventually listened. I can only guess it was from all the letters I wrote.

7.3.7 Third summarising discussion

Consideration of the particularities of cases highlights the challenges to globalising interpretations of people's experiences with substantive outcomes. In particular, the

dominance given at the second interview to offender and community goals appears to be softened by a sense that the goals for themselves as victims were somehow lost or unattended.

The dilution of attention to victim-related goals may lie behind the ambivalence contained in the final reflections. Goals for the offender and for community – here about rehabilitation and deterrence – may be satisfied, but the sense of something else missing points to justice as a composite concept being incomplete.

Nonetheless, and perhaps paradoxically, 74% of people who participated in all three interviews said that they would seek help from the justice system if something similar happened to them in the future. There is clearly something to the logic of institutional fit with peoples' instrumental motivations in mobilising the law, especially law enforcement. This necessarily highlights the contingent nature of satisfaction and draws attention once again to the nuance and particularities that layer and refract assessments that justice has been done.

7.4 MULTIPLE AND LAYERED GOALS FOR JUSTICE

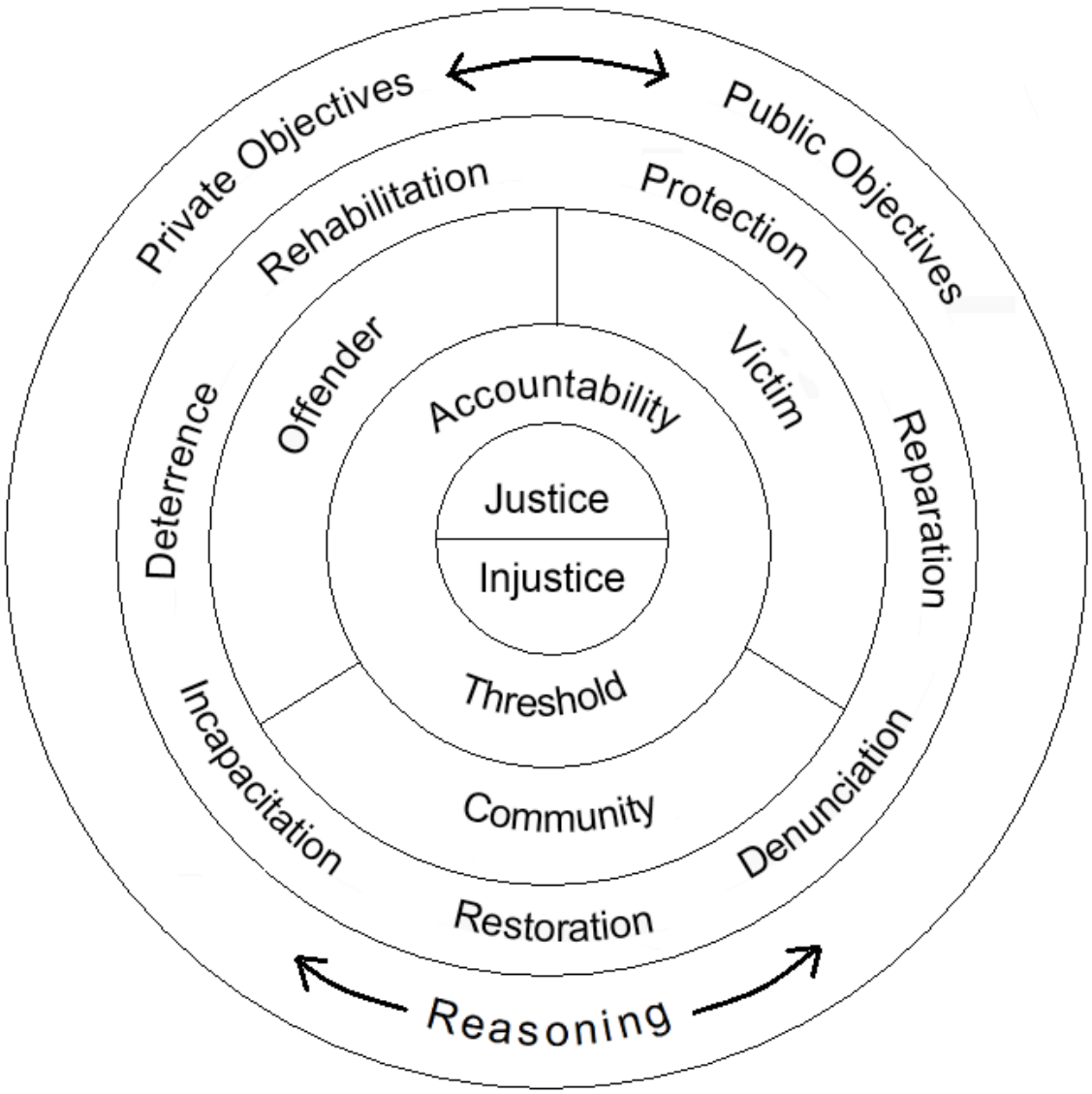
This chapter has highlighted an informationally rich depiction of people's thinking about justice goals. These ordinary people carry, interpret and manage their own and others' ideas about justice as a multi-directional conception infused with relational and emotional content that responds to shifts in context and emphasis. They think as citizens with perspectives on the implications to others around them of narratives in the public sphere. They also think as people who have been injured, and with ideas about responses for themselves as well as the offender. Deep and wide thinking such as discussed in this chapter is commonly unnoticed or diverted.

The idea of accountability emerged as a clear threshold to thinking about other justice goals. Indeed, people made a clear distinction between the guilty verdict – which they equated with accountability – and the sentence – which they equated both with consequence and future conduct. The interest in accountability did not equate with punitiveness. A *particular* interest in the accountability of the violent person is underpinned by a more general position that accountability is but one point to both

law and justice. Thus, accountability is both a motivating as well as a justifying feature of legal mobilisation. It is a first order preference.

I also demonstrated that people as victims direct their thinking about the good of justice in three ways: towards themselves as the subject victim, and to other objects of value being offender and community. This trilogy of justice interests attracts diverse *and* multiple goals. Achieving justice is a compound notion that has been obscured by a 'fixation on punishment' (Gromet and Darley 2009: 2). This layered conceptualisation of justice goals is depicted in Figure 7.1.

Figure 7.1: Justice outcomes for victims: different objects of value, multiple goals and reasons



My grounded and fine-grained analysis throws into question the notion of 'outcome favourability' being simply what is *personally* beneficial. People's thinking about the offender is nuanced, particularly and obviously for domestic assault victims, but not only for them. On a meta level, it has been claimed that greater social distance between victim and offender tends to a greater tendency to harshness (Black 1980). However, this is not strongly evident here. The notion requires more attention to particularity and to the motivational norms at play, as well as to the dynamic nature of attitude formation. I have also shown that a close or intimate relationship is not a requirement for thinking about the offender. A connection is forged not just in prior association but through the incident and responses to it. This has an emotional composition but not only that. Some of these feelings shift over time, notably anger.

At the same time, there was a strong perspective in both groups of victims that the offender 'knew what he was doing'. The assessment of intentionality is important to offence attribution as well as to perceived wrongdoing. However, the strong and significant relationship between offender attribution and the preference for a guilty verdict did not translate to punitive retribution. Rather, victims were interested in sentences that were protective, rehabilitative and which drew on the authority of the court. As such, they prioritised the principles of rehabilitation, specific deterrence and victim protection. There was very little interest in expelling the offender from the community. Even with feelings of fear and anger and a sense that the offender blamed them for what had happened, both domestic and non-domestic assault victims wanted outcomes that sought to address the causes of the behaviour and to constrain future occurrence. In taking the opportunity provided by law, people accept overarching public goals to justice while at the same time maintaining focus on private interests. These are not an either/or proposition as evidenced by reflections arising from their composite personal, social and civic identities.

When asked to think about justice – in the abstract as well as in their particular circumstances – people 'necessarily' thought expansively and considered others' concerns (Skitka 2003). Their justice trilogy looked to the victim, the offender and the community. Their priorities were consistent in both concrete and abstract terms at different points in the justice process and remained stable over time. Yet what was particularly striking was the almost complete silence – even with open and

supplementary questions – about what might be owed them, or what they might be entitled to. Put another way, it appears the concern for others can overwhelm concerns for oneself. Therefore, underneath 'surviving contrary positions' to assessments of justice, may lie partial ordering of priorities (Sen 2009: 394–400). In that ordering, attention to others may supersede attention to oneself.

My interaction with the lay participants over the three interviews made transparent their intrinsic capacities for reasoning as well as this ordering and contrariness; people's reasoning evolved and unfolded through our interaction.

The next chapter takes another approach to unpacking what people think is fair and just. It looks more closely at how people were treated and considers further the interactive relationship between this experience and outcomes. It also poses a question about the iterative dynamic between the subjective justice of ordinary people and their encounters with authoritative decision-makers.

CHAPTER 8: EXPERIENCING JUSTICE

> [They] treated me like a normal person, not sorry for me or anything, like I had a right to be there. (Janelle 2011)

> Justice is fundamentally an interpersonal construct, one that would be unnecessary if people lived in isolation from others. (Skitka, 2003: 293)

As we saw in previous chapters, ordinary people invest multiple meanings in the idea of justice and seek multiple goals through the mobilisation of law. There is remarkable stability and consistency over time and process to what they say they want from justice. The trilogy of interests underlying their goals reflects relational, social and civic concerns.

This chapter attempts to get behind, into and generally engage with the assessments that people make about justice. As I showed previously, as disinterested citizen-evaluators people use themes of symbolic acknowledgment, assessments of efficacy, the governance functions of justice, and the system's normative performance to imagine justice. When they then actually experience justice as a series of interactions, these themes persist or change. However, just as this pre-existing thinking is not fixed and narrow, neither do people have a single and simple encounter with the justice system. As an institutional manifestation it is a long and complex process made up of a number of parts. As a journey, it tests and changes the understanding that ordinary people have of justice to themselves and to others. The idea of justice becomes slippery and unstable.

8.1 THEORISING ON JUSTICE JUDGMENTS

Debates in the social psychology of justice have attempted to pin down this slipperiness. Since the 1960s the two paradigms of distributive and procedural have dominated. The frame of distributive justice argues that people in conflict will agree that a settlement is fair and just using different criteria of deservingness, equity, need, or merit (Adams 1965; Blau 1964; Homans 1961; Deutsch 1975; Hatfield et. al. 1978). The first two criteria are commonly referenced in assessments about the fairness of

criminal justice. In distributive justice theory, people are said to prioritise what they 'get' of a valued resource. A just process thereby becomes something that maximises a just outcome to the individual and their group (Thibaut and Walker 1975). The metaphor of *homo economicus* for this mode of thinking assumes humans are selfish beings who rationally calculate the costs and benefits of the attainment of goals (Skitka et al. 2009: 100).

In the second paradigm of procedural justice is embedded a metaphor of *homo socialis*. Here human behaviour is assumed to rest on relational concerns. Procedural justice attends to 'people's need for status, standing, and to belonging' as being key drivers in justice judgments (Skitka et al. 2009: 101).[229] It cares less about the steps that maximise gain and more about how the processes demonstrate value to the group (Lind and Tyler 1988; Tyler 1989) and validate social identity (Tyler and Blader 2003). The fairness of the procedures used by the decision-maker and the fairness with which they treat the person(s) subject to the decision are central concerns in procedural justice.

There is some tendency to pose these two theoretical approaches as conflicting or in tension. However there is now acknowledgment about the strong and interactive relationship between assessments of the outcome and of procedural aspects in overall justice judgments (Hauenstein et al. 2001; Brockner and Wiesenfeld 1996; Folger 1996; Tyler 1988). Some contemporary theorists go further to pose distributive and procedural justice as dimensions of an integrated, normative conception of justice (Colquitt et al. 2005; Folger and Cropanzano 2001; Lind 2001; Van den Bos et al. 1997). Moreover, justice judgments have been shown to be context sensitive (Cropanzano and Greenberg 1997) as well as malleable and fluid (Clayton and Opotow 2003). Rather than ascribe 'single motives or simple frames' at singular moments to human behaviour, people are 'both flexible and complex' in their thinking about justice. Reasoning about justice in the real world thus becomes contingent and less about 'competing conceptions' (Skitka et al. 2010: 28).

[229] Skitka (2009: 102) discusses a third metaphor, *homo moralis*. This conception directs attention away from wants and desires and towards 'ought'. I will draw on this third metaphor later in the chapter.

The two dominant theoretical approaches are nonetheless useful to unpack and to leverage understanding about what ordinary people think is fair and just. I do not ascribe predominance to either the focus on outcome or that on treatment. Nor do I intend to show that one is more or less important than the other. Rather, I will examine people's assessments as constructions that integrate variables identified as important from both theoretical approaches. Moreover, I intend to illuminate these constructions as active, dynamic and interactive. They *unfold* within criminal justice and within their wider social context.

8.2 VICTIMS IN THE JUSTICE PROCESS

As a process, criminal justice is at once simple and complex. This section discusses the steps as a series of locations and moments in which citizens interact with professionals. Here I lay the groundwork to consider 'the interdependence of sites within a larger system' in which deliberation might take place (Mansbridge et al. 2012: 1). Use of a systemic approach considers the whole as a sum of parts but, more particularly, as creating multiple opportunities for interaction. Thus the different exchanges will potentially be experienced positively or negatively; one exchange may cancel out the benefits of an earlier positive one or redeem the overall engagement. The different moments also grow possibilities for an expansive conception of justice to unfold.

It would be wrong, however, to either over- or under-state the enormity and intrusion of this engagement. Over time the intensity of the experience of violence victimisation dissipated for the lay participants as the activities constituting their ordinary lives continued. Some moved house (even towns), some changed jobs and others graduated. For most, life maintained its regular routines. At the same time, each person had interactions with institutions that were way outside their everyday life. Each person came to the realisation that, to varying degrees, they were not central to a process that had evolved from their individual experience. Comments from Holly and Bailey show how detached people came to feel from the system.

> 'It took so long I have very little faith in it', said Holly. 'For something so straightforward it took so long – over a year – just ridiculous.'

> 'The communication was a bit lacking at times. It would go a while without anything. It would have been nice to feel a bit more in touch', said Bailey.

People's most intense interaction with the system is usually at the beginning. Depending on the circumstances, victims can feel a strong connection with investigating officers. These are the moments of telling; that is, in response to questioning, a narrative of 'what happened' begins to emerge. There will be accompanying feelings of relief, embarrassment, uncertainty, shame and anxiety. Victims may say things without realising the consequences; or say things they think are vital which are unnoticed or ignored. Even with questions from police, people may or may not have been asked what they wanted to see happen. Victims may or may not be told when or if a person is arrested and on what charge. They may or may not be told what is to happen next. These steps can take place quickly in the space of 24 hours, or they can take weeks or months.

The laying of a charge against an alleged offender by police generates processes potentially involving both the prosecution and the court. To the outsider victim these offender-focused processes are almost all but invisible, and the institutions themselves opaque. Both processes require basic information about the charge and the alleged offender. Information about the victim may accompany the charge but usually doesn't. Within the prosecution, the evidence prepared by police is reviewed and critical decisions made about proceeding or not, and on what charge(s). Prosecution may or may not seek to contact or liaise with a victim. The confusion people generally feel when they learn that the prosecution is not 'their' lawyer can quickly turn to anger and frustration at what is commonly experienced as obfuscation if not rudeness and discourtesy.

Once the charge enters the court system, it will proceed through a step-by-step process of appearances, mentions, case management and – infrequently – a trial.[230] Because of the high rate of guilty pleas, victims as witnesses are rare. The occasion afforded to submit a written or verbal victim impact statement is also rarely taken up. Mainly victims are not told of their availability and matters are not stood over in order

[230] The majority of criminal offences that enter the court system in Australia result in a guilty plea and do not proceed to contested trial. See Australian Bureau of Statistics (2012), *Criminal Courts 2010–2011*, ABS, Canberra.

to solicit or produce one. For ordinary people exposed to a steady diet of flash television programs showing (usually) empathetic portrayals of interaction with victims, dynamic justice practitioners and rapid dénouement, the mannered, long and complex reality is a shock.

8.3 CONSIDERING VICTIM EXPERIENCES WITH JUSTICE

Any sense that they as victims (or citizens) matter collides rather quickly with this reality. The experiences of ordinary people – in all their diversity and victimised by a range of personal and property crimes – with the institutions of justice have been found almost universally wanting across common law countries.[231]

The experiences of victims are often telescoped to certain stock reductions: either that dissatisfaction with justice is about its outcomes, most notably sentence leniency; and/or that dissatisfaction with justice is about how as victims they were treated, most notably by exclusion and discourtesy. Very few studies go behind these narrow and particularised assessments of dissatisfaction. Most are limited by the singular, retrospective capture of experience at one point in time. Since the 1990s, exceptions have focused on restorative justice and on victim roles and perspectives within its diverse applications (Weitekamp and Kerner 2002; Zehr 1990; Braithwaite J. 1989). Although immensely influential, this work has also been constrained by its focus on the beginning or end of the criminal justice process. That is, on restorative justice as a diversion from court or in the sentencing process (Wemmers and Cyr 2006; Strang 2002; Umbreit et.al. 1994). More recent research has sought to examine victim experience through a procedural justice lens (Wemmers 2010).

Notwithstanding these debates, there remains, within the body of scholarship that deals with victims and justice, a notable consistency to the core criticisms offered and consistency to the critique irrespective of offence type or victim type.[232] These centre on:[233]

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[231] See for example, with regard to Australia (Cook et al. 1999), the UK (Hall 2009; Walklate 1989; Ponting and Maguire 1998), the USA (Davis et al. 2007) and Canada (Roach 1999).

[232] For seminal texts on the experience of domestic violence victims see Buzawa and Buzawa (2003), Temkin and Krahe (2008) on sexual assault, Morgan and Zedner (1992) on child victims, Maguire and Bennett (1982) on residential burglary, and Rock (1998) on homicide.

[233] For discussion of these experiences in the ACT see Holder (2008).

- victims' sense of alienation and exclusion from all aspects of the justice process,
- the experience of routine discourtesy and disrespect,
- the absence of information and the withholding of information,
- the lack of support, assistance and advocacy,
- disquiet as to the thorough, unbiased and timely performance of justice functions from investigation to prosecution to adjudication and sentence management,
- the perception that process efficiencies trump the proper administration of justice, especially with regard to charge negotiation,
- inappropriate or inadequate decision-making, especially with regard to sentencing,
- the failure to involve or hear from victims adequately or at all, and
- a perception that, while defendants have rights and representation, victims have neither.

These elements informed the design of the participant survey and interview questions for the current study. To what extent were people given the opportunity to express their views, and were these considered? Did they agree with and understand decisions reached? Were people treated with respect and provided with information? These questions cohere around victim interests in recognition and respect, and with inclusion and participation, and drew heavily from procedural and distributive justice literature. However, the research did not use existing validated instruments to measure these dimensions.[234] Decisions were made to draw variables both from existing surveys[235] and to use ones designed specifically for the research population and context. The choice of variables was judged in relation to their relevance to the literature.

8.4 SATISFACTION WITH JUSTICE

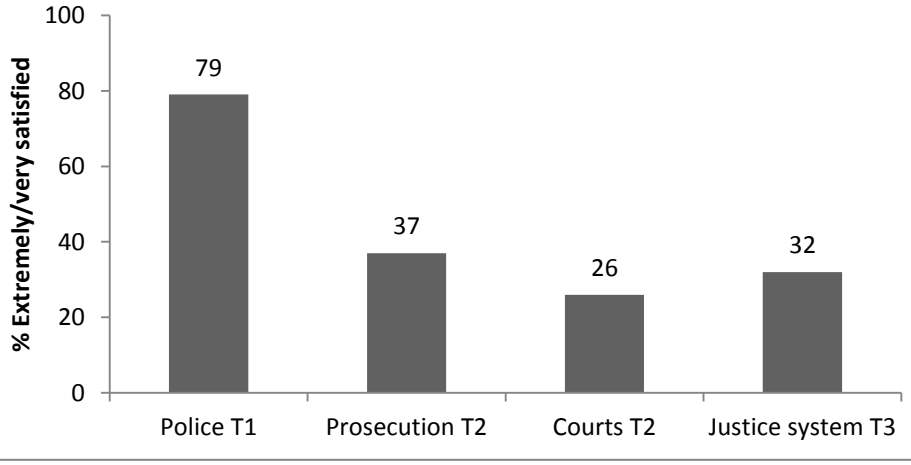
Satisfaction is a common measure of people's interactions with public authorities and services. However, satisfaction has been described as a 'simplistic criteria for [a]

[234] See, for example, Reisig et al. (2007) for tests into the reliability and validity of composite measures used in procedural justice studies.
[235] Survey questions were drawn from Braithwaite, V. (March 2001) and Murphy, K. et al. (2010 a, b).

dependent variable' (Sebba 1996: 87). It is a narrow quotient and provides a paucity of explanation. It is still less a full picture of complex interactions over time. Nonetheless, in this study, satisfaction does service as a measure around which to organise and explore different experiences. The rich reflections of the lay participants get behind the flat quantitative measures.

On three separate occasions in relation to four entities, the lay participants were asked, 'generally speaking, how satisfied were you with the [police or prosecution or court or justice system overall] handling of your case?' People were asked to rank their response on a five-point Likert scale where 1 = extremely dissatisfied, and 5 = extremely satisfied.[236] Because the overall satisfaction measure was asked in relation to different entities it does not generate direct comparisons. However, it does provide a means to reflect different interactions at different times. In Figure 8.1 the percentage of those stating they were extremely/very satisfied reveals these comparative assessments.[237]

Figure 8.1: Victims' percentage overall satisfaction with justice agencies at Time 1, Time 2, and Time 3 (N=19)



A one-way repeated measures ANOVA (analysis of variance) was conducted on the mean scores to determine if there was statistical significance on the overall satisfaction scores with regard to the different agencies at Time 1, Time 2 and Time 3.

[236] Reverse coded from original.
[237] Only using those respondents who participated in all three interviews (N=19).

An examination of the pairwise comparisons showed a significant difference between overall satisfaction with police, and overall satisfaction with regard to prosecution, court and the justice system overall. The difference between prosecution and court and justice overall, however, is not significant. In essence, the lay people in this study were very satisfied with police intervention; but afterwards their satisfaction with other agencies and with the justice system overall fell and did not recover.

What might account for these shifts in opinion and assessment by victims? Given that victims commonly initiate the contact with police, part of the explanation relates to these being citizen-initiated police encounters.[238] Members of the public who have sought engagement with law enforcement place a stronger emphasis on performance as opposed to procedural fairness (Murphy 2009; Hinds and Murphy 2008; Wells 2007). That is, the authority is being invited to do or to perform a function unique to it. The immediacy of the problem faced by the individual, the availability and salience of police, and their perceived and actual effectiveness are important criteria to those seeking help. Further, public trust in police is separate from and considerably higher than trust in law courts at a national level.[239] Clearly, citizens view police as a distinct emergency or help agency.

It is apparent that the institutions of the justice system proper – prosecution and courts – are viewed in a different light to law enforcement. Moreover, justice judgments are heavily contextualised and comprise a number of components. The assessment is also different if made from a disinterested stance, as opposed to those made by citizens who have direct experience and involvement. The following sections unpack these questions.

[238] Some earlier US research also noted this more positive orientation of victims towards police than towards prosecutors, judges and other justice personnel (Forst and Hernon 1985; Kelly 1984). However, other survey and population-based studies reveal a different picture. Shapland et.al. (1985) for example show that victim satisfaction with police diminishes over time. The British Crime Survey showed that victim/witnesses were more likely to be satisfied 'with other parts of the criminal justice system' than their 'dealings with police'. But the analysis also showed that people who had been victims of crime or witnesses in the past twelve months were less likely than were non-victims to express confidence in the criminal justice system (Smith 2010: 2 and 10). The Australian Social Attitudes Survey (AuSSA) showed that people who had contact with courts in the previous twelve months (ie, all the respondents undifferentiated between victims and non-victims in their contact with the courts) had higher levels of confidence and were less likely to support harsher sentencing (Indermaur and Roberts 2009: 3).

[239] In Valerie Braithwaite's Australian dataset, 35% of people expressed 'a lot' of trust and 45% 'a fair bit' in police. For law courts the percentages were 9% and 39%. In a Canadian study, Roberts suggests that the differences may be due to the crime control mandate of police more closely aligning with public priority and perception, and less with the due process model of criminal courts (Roberts 2007).

8.5 MEASURING EXPERIENCES OF JUSTICE

Considerable quantitative and qualitative data were generated in this study through which to consider what lies behind simple satisfaction. Quantitative items that focused on core conceptual elements of outcome and treatment were asked at the first and second interviews and in relation to all three justice entities – police, prosecution and court. From the first survey an exploratory factor analysis of these 'assessment of justice' items was used to reduce the statistical data and to identify clusters that might then be used as repeat measures.[240]

Clustering several variables suggests measurement of similar dimensions in the data. These clustered variables can be grouped into scales, which lends greater parsimony and coherence to analysis and interpretation (Pallant 2011: 182).[241] Although this process helps the researcher to pinpoint what is meaningful or trivial about the data, caution must be exercised over assumptions that factor analysis represents 'real-world dimensions' (Field 2000: 428). While the scales that ultimately result from the data are consistent with the literature, Field's cautionary comment urges that they be used only as starting points. Therefore, later in this chapter, discursive accounts of lay participant experiences are used to deepen and enlarge analysis.

Ultimately four conceptually coherent and meaningful scaled measures were derived from the data. Each recorded high reliability scores (see Table 8.1). Given the usual recommendation for a scale to comprise a minimum of three items, the mean inter-item correlation is reported for additional reassurance (Pallant 2011: 100).[242]

[240] The data was somewhat cautiously assessed as suitable for factor analysis using a number of different tests. Principal components analysis (PCA) generated seven components with eigenvalues exceeding 1 (Pallant 2011: 181). Sampling adequacy usually rests on the number of cases. However, it is also argued that the ratio of participants to items is relevant (Nunnally 1978; Tabachnick and Fidell 2005). In this study the ratio varied between 33:1 (Time 1) and 18:1 (Time 3). Furthermore, while the Kaiser-Meyer-Olkin (KMO) measure failed, Bartlett's Test was significant.

[241] Because of the small sample size, a conservative factor loading of 0.5 was used for interpretation purposes (Field 2005: 452). These features necessitated choice of non-parametric tests in analysing the data, specifically Spearman's correlation coefficient two-tailed (Pallant 2011; Field 2000).

[242] The reliability score is high notwithstanding that it is common to have low scores on scales with fewer than ten items (Pallant 2011: 97). A fuller discussion on the data analysis is located in Chapter 4.

Table 8.1: Items comprising the justice assessment scales (N=33)

Scale	Variables	Reliability Score[A]	Mean inter-item correlation
Outcome acceptance	Agree with decision Accept decision Honest explanation for decision Understand decision Decision fair Decision expected	0.9	0.78
Quality of interpersonal treatment[D]	I was treated with respect I was treated with dignity Fair treatment of me Respect my rights[B] Helpful[B] Treated as victim[B]	0.9	0.6
Influential voice	Opportunity to express views Able to influence decision Views considered before decision Decision deserved Decision wanted	0.84	0.52
Respect offender rights[D]	Treated the violent person with respect Respect offender rights[B]	0.83	0.71

[A] Cronbach's alpha (rounded)

[B] Reverse scored item

[D] Variables comprising these scales in the second survey were scored on a six-point Likert scale where 6 = not applicable. The 6 score was treated as a missing value and recoded using the mean of 1 to 5 for each variable.

These scales represent dimensions to people's experiences of justice. At the first interview in relation to the experience with police, *outcome acceptance* is a strong predictor, explaining 40.3% of variance. It can be described as a quasi-distributive measure. The scale incorporates items measuring victims' sense of the fairness of the decision of the authority as well as their perspective that the decision was expected. The items describing *interpersonal treatment* such as respect and dignity are commonly found in the procedural justice literature. However, the *quality* of that

treatment is emphasised with the inclusion of items that acknowledge aspects of the person's status. That is, 'my rights were respected' and 'I was treated as the victim of the incident/matter'.[243] At this point of interaction with the justice system, this cluster of items describing the quality of interpersonal treatment is less strong than the outcome acceptance scale, explaining only 13% of variance. The items to do with voice in the third scale also tend to be found in procedural justice studies. The scale is described as *influential voice* because of the way in which the expressive and participatory items cohered with assessments on the outcome decision – that it was an outcome the victim deserved and the outcome the victim wanted. The influential voice scale accounted for a modest 8.4% of shared variance at the point of police intervention. The fourth scale, *respect offender rights,* may seem unusual. Concern for the treatment and rights of the offender is not generally asked about in victim studies.[244] Given the importance ascribed by victims to objectives for the offender discussed in the previous chapter, this particular measure of *respect offender rights* is perhaps not so surprising. It represented a small 6% of shared variance.[245]

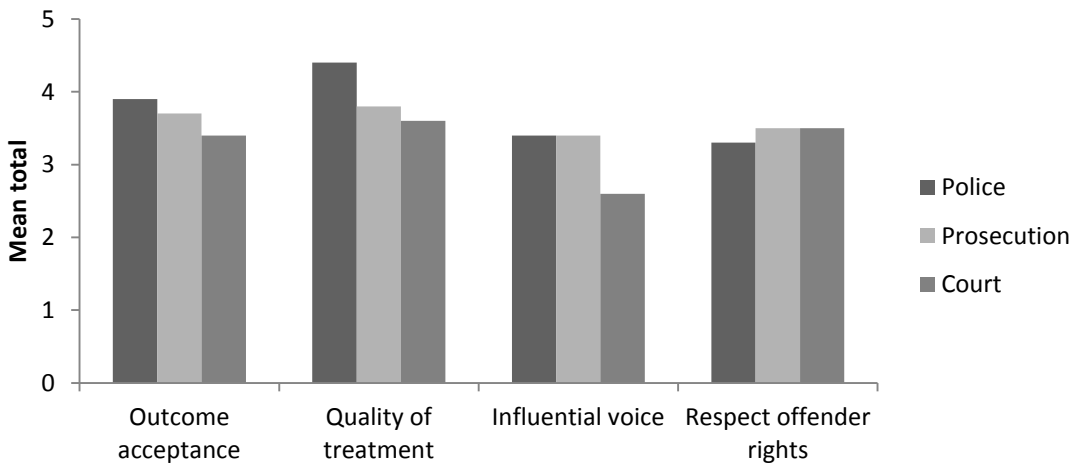
The mean of each of the scales (using only those cases N=26 who completed an interview at Time 1 and Time 2) allows comparison of interactions across the measures. That is, whether people have different views and experiences of police, prosecution and court (see Figure 8.2).

[243] In the circumstances of the study, this statement was intended to reveal the extent to which people felt disbelieved by authorities. Respondents understood and responded to the statement in this manner. Thus, a positive response indicated people's perception that authorities believed they were a victim and treated them as such.

[244] The study by Wemmers and Cyr (2004) illuminating victim concerns for young offenders stands outside this claim. Restorative justice researchers have generally noticed victim concerns for the rehabilitation of offenders, especially young offenders.

[245] For a further check, a second factor analysis was done only using the items that had initially clustered. These factored into the same four clusters. On this second analysis, the outcome acceptance scale explained 40.5% of shared variance, the quality of interpersonal treatment accounted for 18.3%, influential voice for 10.6%, and respect for offender rights accounted for 7.8%.

Figure 8.2: Victims' assessments of police, prosecution and courts at Time 1 and Time 2 (Scale mean, 1 = Strongly disagree, 5 = Strongly agree) N=26



People made strong and positive assessments of the quality of interpersonal treatment they received from police. Again using a one-way repeated ANOVA test, this was significantly different to the assessments made of the quality of interpersonal treatment experienced from prosecution and from court. The difference between prosecution and court on the quality of their interpersonal treatment of the victim is not significant. People had a negative assessment of the strength of their *influential voice* with regard to the court. The assessment was significantly lower than for police and prosecution. The difference between police and prosecution, however, was not significant. Finally, there was no statistical significance in assessments of police, prosecution and court with regard to the scales measuring victims' assessed *outcome acceptance* or victims' perspective on justice entities' *respect for offender rights.*

8.6 DISCURSIVE UNDERPINNINGS TO JUSTICE JUDGMENTS

Identifying and quantifying the underlying dimensions of the experiences of victims with different justice agencies, as in the preceding section, creates only a surface picture. If justice judgments are multi-criterion then the discursive underpinnings further reveal them as more layered, nuanced and contingent. In this section I use people's narratives to flesh out the integrated assessments they make about interpersonal treatment, outcome acceptance, and their influential voice (see Figure 8.3).

Figure 8.3: Integrated components to victims' justice judgments

8.6.1 The quality of interpersonal treatment

The importance of interpersonal treatment of citizens by authorities has a long research history. That people are treated with respect and dignity, and that the authority is fair and unbiased[246] in its treatment of citizens have been shown as important to people in a range of settings (Elliot et al. 2001; Dai et al. 2009; Murphy 2009).

[246] Among other key procedural features such as voice, accuracy and neutrality. See Thibaut and Walker (1975) and Leventhal (1980). And see Tyler (2006/1990) *Why People Obey the Law*, Princeton University Press.

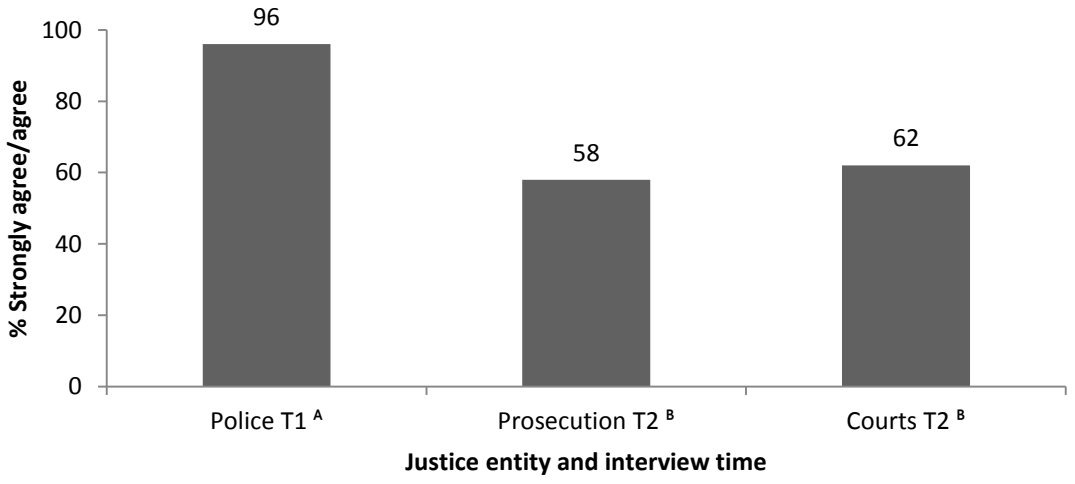
8.6.1.1 Correlation with satisfaction

Certainly the quality of interpersonal treatment was an important element of the experience of justice of the lay participants. The scale combining items and measuring the *quality of interpersonal treatment* presented a strong and significant correlation with the dependent variable of overall satisfaction with handling in relation to police, court and particularly to prosecution. The correlation coefficient between the quality of interpersonal treatment by police and overall satisfaction with their handling was r_s = 0.6 p<0.01 and explained 36% of shared variance. With regard to prosecution, the correlation coefficient was r_s = 0.76 p<0.01 and explained a strong 58% of shared variance. With court, the correlation coefficient was r_s = 0.64 p<0.01 and explained 41% of shared variance. The scale was consistently the strongest across all three entities.[247]

The actual experience was significantly different with regard to police and the other justice entities. This is shown on the multi-item scale (discussed above) as well as on a single measure of whether the treatment of the person by the relevant entity was fair (Figure 8.4). The vast majority of people (96%) felt that police treatment of them was fair. A lesser proportion felt the same with regard to prosecution (58%) and court (62%) at their second interview after the case was finalised.

[247] A positive relationship means that the *more* of the elements in the scale, the *more* satisfied people will be. The strength of the positive relationship is large if the values are between r = 0.50 and 1.0 (Cohen 1988 in Pallant 2011: 134–135).

Figure 8.4. Victims strongly agree/agree (%) that justice entity was fair in its treatment of them, Time 1 and Time 2, N=26



A Measured on a five-point Likert scale where 1 = strongly disagree and 5 = strongly agree

B Measured on a six-point Likert scale where 1 = strongly disagree and 5 = strongly agree, and where 6 = not applicable was coded as a missing score

Yet the literature highlights different reasons why these issues about fairness and treatment are important. Research has examined the manner in which fair processes generate fair outcomes (MacCoun 2005; Thibaut and Walker 1975); and has emphasised the 'effects of values associated with group membership' and the ways in which group procedures work (Lind and Tyler 1988: 231). Overall, the fair, respectful and unbiased treatment of individuals by authorities is emphasised as generating cooperation and compliance (Tyler 1990/2006; Tyler and Lind 1992).

The emphasis on compliance may not be as relevant for victims of violence as initiators of contact with authorities as it is for encounters with members of the public that are instigated by authorities (Murphy 2009). However, the issue of cooperation clearly is relevant, especially at the decision-making stage of prosecution. At their second interview just over a third (27% n=7) of the lay participants indicated that they did ask prosecution not to proceed, and all of these were domestic assault victims.[248] Four other domestic assault victims were also unsure or cautious about their willingness to cooperate with prosecution (19%). Nonetheless, a significant majority (69% n=18) of all the lay participants said that they did want all or some of the charges prosecuted. Only

[248] At the Time 2 interviews, N=26.

four of the domestic assault victims expressed a definite preference against prosecution.[249] Finally, two people – both domestic assault victims (8%) – said that they asked the court to drop the charges in relation to the incident.

Compliance and cooperation reflects a state-centric perspective on the relationship between citizens and authorities. A citizen-centric perspective, on the other hand, invites a different consideration of a different set of issues. One possibility is simply that the victim values 'customer service' and feels valued 'as a person' (Elliot et al. 2012). Another is that the quality of treatment carries a social and political message, and is a reflection of the justice system's recognition of the citizen-status of persons 'over whom it claims authority' (Duff 2010: 3).

8.6.1.2 Recognition of standing

Among the lay participants, being valued as a person was certainly present. These included perceptions that the incident and matter was taken seriously as well as the victim-citizen being taken seriously. Police, said Karla, 'never made me feel like a stupid woman'. The nuances and differing qualities to the experience of interpersonal treatment seem to signal more than a service-based assessment. Respect was experienced expansively and as constituting forms of recognition and equality.

Recognition connoted a reflection – positive and negative – of the person's particular status. Janelle, for example, said that authorities 'treated me like a normal person, not sorry for me or anything; like I had a right to be there'. Yvette, on the other hand, was indignant that the authorities 'wouldn't even talk to me'. Edward was also offended that he was treated like 'just another one'.

The connection between respect and recognition of one's standing as a citizen was particularly acute for people whose relationship with authorities was unstable. For Deanna, born outside Australia, the experience initially 'won my confidence in the justice system. At first I was paranoid because I am not a citizen and [I wondered] would they be biased. I thought they were fair.' Indeed, she went on to say, 'the law applies to everyone in the community'. For Birgit, whose life history involved care

[249] That is, 15% of the total sample at Time 2 (N=26), or 19% of the domestic assault group (N=21).

arrangements with welfare authorities as well as prior offending, the meaning of her positive treatment was clear. She said, 'it matters what happened to me.'

Respectful recognition also went directly to a perspective on the specificity of their individual standing. Xenia, for example, said, 'it's about me, not them'. At her final interview she went further to say, 'no-one cares what I want. They are only after what they want … who's interest is the law in?' For some, this sense of their unique role expanded to claims for particular advocacy or representation.[250] 'I needed someone just for me', was Ursula's comment.

8.6.1.3 Equality of treatment

Others drew strong connections between recognition and respect, and their perception of equal treatment. David, who also had a prior history of non-violent offending, felt he was not treated of equal worth to others in the community (in his words, like a 'little old lady'). At his second interview he described how he had wanted to change his life but 'felt discriminated against'. It was, he said, 'a waste of time and effort … we all waited around, I gave evidence but they brought up my old mental health history and that I wasn't a competent witness'. David reckoned, if he 'had been a little old lady they would have put a more experienced lawyer on it. Because I was an ex-offender, live in public housing and am a young man there was no effort in it.' He felt that the system had been fairer to him as an accused than when he was a victim. At his third interview David again emphasised how it was 'much harder as a victim, I guarantee you that'. He understood that it was not possible to 'be completely fair to everyone' but that getting 'torn to pieces' on the witness stand was 'ridiculous'. 'Before', he said 'I thought I had a choice to be a responsible citizen but now I see it's also how they see you'.

In a different way, Ursula came to feel more unequally treated than her husband who had been charged with a violence offence in relation to her. She had pushed strongly for her husband's mental health issues to be taken into account and was relieved that the charges were eventually dismissed. But at her third and final interview she felt able to notice that her own interests had been unattended. She said 'you get into issues

[250] For discussion on the issue of victim representation see, for example, McGlynn and Munro eds, (2011) on victims of sexual assault, and, for victims more generally, see Davis and Mulford (2008).

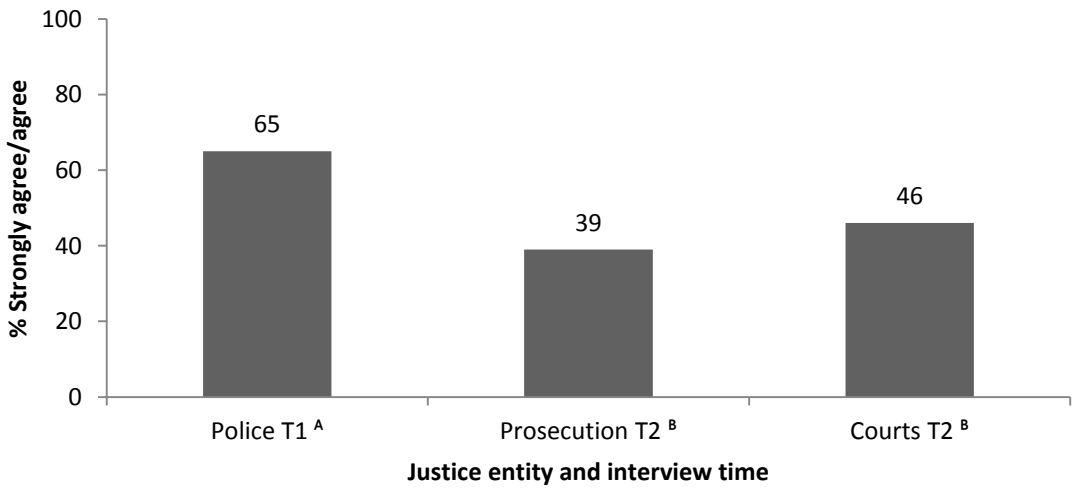
where you get into human rights. Mine get put to one side but his get thought about.' In the end she said, 'justice is about fairness to everyone'. Finn's perspective was that police and prosecution just 'swept it under the carpet' as the person who assaulted him was a juvenile. He said, 'they didn't seem to care [about me]'. He claimed that 'everyone in the situation should be heard'.

Equitable treatment also encompassed the offender and was, in the main, commented upon as a positive. While the items measuring respect for the rights of the offender did cluster in the factor analysis (see Table 8.1) the scale did not correlate strongly with overall satisfaction or indeed with any other factors. Nonetheless, the majority agreed that prosecution and the courts treated the violent person with respect and with respect for his rights. Zola strongly agreed, at her second interview after the case had finalised, that justice had been done. Asked why she thought this and she said that 'the fact that they're all neutral – prosecutors and judges – and they respected both our rights. They didn't eliminate his rights to help me. In that way justice was fair.' However, when asked about fairness to themselves as victims, the assessment reversed. 58% agreed/strongly agreed that prosecution treated them fairly, and 62% felt this with regard to the court.

8.6.1.4 Information as reciprocity and recognition

Respectful treatment was also more than equality, fairness and standing. People saw respect discharged practically in part through the provision of information. However, the provision of information by authorities was differentiated. A majority (77%) of people strongly agreed/agreed that police gave them information useful to help them deal with the problem, and 81% that police gave them information about victim services. However, comparable figures for prosecution were 35% and 50%. A similar experience is revealed in responses to the question whether people strongly agreed/agreed that they were kept informed about what was happening to the case (see Figure 8.5).

Figure 8.5 Victims who strongly agree/agree (%) that the justice entity kept them informed about what was happening to the case, Time 1 and Time 2, N=26



A Measured on a five-point Likert scale where 1 = strongly disagree and 5 = strongly agree

B Measured on a six-point Likert scale where 1 = strongly disagree and 5 = strongly agree, and where 6 = not applicable was coded as a missing score

Edward commented negatively on 'the lack of information'. He said, 'it was frustrating. You just didn't know even how to chase the case, chase the police officer. It's all just difficult really. I had to do the chasing.'

For many, the case status updates, information about their rights and responsibilities, and the sources of support offered and given pointed to their unique importance in a very particular space. Charlie's comment that 'they made time to see me and tell me' signalled to him that he was important enough for authorities to do so. Deanna received a different message about her importance. She said she 'was never even sent a subpoena' and 'felt like a ball being tossed about'. The significance of the information gulf to Imogene carried negative inferences about the equity of status as well as understanding. She said:

> Definitely not enough information is given. [He] was far more thoroughly briefed on what was to happen than I was. That's a huge hole. It says that the system doesn't take the situation seriously enough. It's just another job without taking into consideration that people's lives are considered.

Both men and women commented that, without the victim advocates,[251] they might never have known what was going on.

8.6.1.4 Interaction as respect

To the absence of information was added the absence of interaction with authorities. The provision of information indicated the possibility of dialogue – 'the ability to participate in a face-to-face way' as Karla put it. Without the interaction it was 'like I wasn't relevant to anything'. Nada further commented that 'maybe they have a mentality that victims are like second-class citizens. Maybe they think victims aren't serious and they don't take it seriously.'

When interaction did take place, people noted its quality in both positive and negative terms. Polly felt she was made to 'feel like a child who didn't know what was good for me'. For her, the interaction were occasions of disrespect. She recounted the prosecuting official saying to her, 'there are women like you all the time and we just carry on'. She said, 'I didn't like he said I had to do this and I had to do that'. Edward observed that he 'had to do all the chasing' and that it was 'no wonder that victims just give up'. Charlie, on the other hand, said that even though 'justice might not have been served on the perpetrator … I was certainly included and the positive was that I felt I was treated as a member of the community. The circumstances of the incident could have been swept away. They followed it as much as they could.'

If interaction signalled something important about the particular status and standing of the person, it also marked something of the citizen's wider interests. Nada's concluding comments in her final interview emphasised that 'part of justice is seeing the effort for justice they put in and the impact of that'. Her reflection says something of her interest in observing the normative and actual performance of public institutions charged with very particular responsibilities. It was her participation in the distinctive criminal justice journey that took Nada, as victim-citizen, to this point.

8.6.2 Outcome acceptance

The composite scale measuring outcome acceptance was a strong predictor in situations involving police (see Table 8.2). As a single item, the measure of acceptance

[251] In this instance, the advocates were staff from a community-based domestic violence advocacy service and from a government victim support service.

of the decisions of authorities was also very high – 85% strongly agreed/agreed that they accepted the decision of police and of court, and 92% for prosecution. However, whereas the majority felt that the decision that police (81%) and prosecution (85%) made was fair, only 69% felt this with regard to the court. A similar proportion agreed with the court decision. Only with the prosecution did a majority of people (69%) indicate that the decision made by the agency was what they wanted. With both police and court a smaller and similar proportion (46%) indicated that the decision arrived at by these entities was what they wanted.

8.6.2.1 Correlation with satisfaction

Despite this there was a strong and significant correlation between the scale combining items and measuring the *outcome acceptance* with the dependent variable of overall satisfaction with handling in relation to all three justice entities. It was the second strongest of the scale measures. The correlation coefficient between outcome acceptance at the point of police interaction and overall satisfaction with their handling was r_s = 0.48 p<0.01 and explained 23% of shared variance. Outcome acceptance at the point of prosecution explained 34% of variance, with the correlation coefficient being r_s = 0.58 p<0.01. The correlation coefficient of outcome acceptance and overall satisfaction with court handling was r_s = 0.65 p<0.01 and explained 42% of shared variance.

Clearly the very idea of 'outcome acceptance' holds considerable nuance in the differing contexts of police, prosecution and court. People's reflections at their second and third interviews after the case had finalised at court offered different themes to their assessment of the outcomes. These were about:

- what the offender 'got' and the impact on him
- what the victim 'got' and the meaning of this to them
- the normative and governance implications of the outcome.

8.6.2.2 Thinking on offender-related outcomes

The clustering of comments about the outcome the violent person received comprised the largest component of reflection for the study participants. These grouped into two key sub-themes: the nature and appropriateness of the sentence, and the perceived or hoped-for impact of the various decisions on the violent person.

Comments on the nature and appropriateness of the sentence were both positive and negative. Birgit was pleased that the court did not 'just let him out on bail' and 'the time inside [prison] is good'. She said 'I'm thinking the judge looked back over our history and the previous bail and stuff and the judge thought "right, you're not getting this"'. She did, however, think that eight months custody was 'too long' and that it 'should maybe be four months'. Also commenting on the time her ex-partner spent on remand, Holly felt that it was an 'opportunity to de-tox and that's been good for him'. Nada made a similar comment that 'the compulsory drug and alcohol attendance was really good. He was never going to get better unless that's done.'

Finoula and Aimee were also positive about the provision of mandated on-going engagement with the offenders in their case. Finoula was pleased that her ex-partner was 'going to get the counselling'. Aimee felt that the 'monitoring of [my] partner's counselling activities is helping keep him to his promises'. Similarly, Xenia had wanted authorities to look at the situation 'holistically'. The decision to proceed with some charges and not the assault charge 'was a good outcome for what happened' she said.

Yvette, Deanna, Karla, Svetlana and Bailey commented about the simple fact of the decision arrived at. Yvette felt the dismissal of the case against her husband was 'the right decision'. Karla thought the plea of guilty by her husband meant 'it is an ownership of his actions rather than it being forced upon him'. For Svetlana, 'he did what he did and got something for it'. Bailey said that the conviction meant 'something happened … there was an outcome'. Similarly, Deanna said, 'I'm very glad he's convicted'. To her it was modest indication that justice was done but also 'a personal victory'.

Janelle, on the other hand, felt that the twelve-month good behaviour bond for her ex-partner was 'a crock'. She said, 'I would have preferred weekend detention or lock-up. He's gotten away with so much, for example, his past driving offences. I feel he's gotten away with it and won't learn anything from it.'

People's thinking about the perceived or hoped-for impact of the various decisions on the offender were another strong sub-theme that obviously also bled into reflection on the appropriateness of the outcome. This sub-theme echoed the interest in efficacy that, as citizens, they had earlier articulated. Typically, the observations revolved

around the violent person himself having an opportunity to reflect. For Svetlana, 'he needs the supervision to see what he's done'. Zola was unhappy with the sentence arrived at by the court but also said that 'it has made him stop and think'. Nada's ex-partner had already been on a good behaviour bond so she didn't 'get it' that he was given another. Nonetheless she felt that the intervention 'scared him more than anything. He wanted to join the army and now he can't.' Finoula also said that her ex-partner 'has to stop and think about what he is doing now'. He has, she said, 'to deal with his stuff'. At her final interview she reflected that the outcome had 'planted a seed in his mind not to do this to anyone else. I hope he's learned from it, but I don't think so.'

The process for Holly had been long drawn out and she expressed dissatisfaction with the outcome. She said 'I want punishment to fit the crime. Two years is massive. If they really did give a crap about rehabilitation for him then the outcome of going to gaol isn't right.' Finn also felt that the good behaviour bond ordered by the court against the young offender in his case wasn't appropriate. He said it was not 'something he has to deal with'. He said that 'it's finished and all over in the eyes of the court' but the young person 'needs to face the fact if he is going to keep being a criminal or is he going to do something different'. At his final interview Finn also positioned his comments in a wider frame of reference. 'If you're hungry and steal a chocolate bar you're likely to get worse', he said. 'Stealing is bad but it isn't life threatening or hurting.'

8.6.2.3 Thinking on victim-related outcomes

The lay participants also made comment about what they as victims 'got' (or did not get) through the outcome and its meaning to them. In keeping with the strong emphasis on stopping the violence as an initiating motivation, many of the domestic assault victims commented about the implications of the outcome for their safety. Olivia felt that the outcome had stopped some of 'the extreme stuff'. However, she said that 'while it recognised what he'd done and was a kind of win … I still sleep with [my daughter] with the phone and the keys and with the door locked.'

On the other hand, for Genevieve the conviction made her 'feel safer'. Finoula also said she felt safer because the authorities 'wouldn't let [my ex] near me'. That her ex-

partner was ‘banned from the ACT was good for me and good to get him out of the environment he was in’, commented Nada. Emphasising the wider implications of safety, Birgit felt that the custodial sentence given to her ex-partner gave her and their son some ‘time out for us’.

Teresa had ‘just wanted peace’ and got it. Janelle said that the conviction of her ex-partner ‘made me realise a lot more what he was really like … I wondered what I was doing with him in the first place. The justice system opened my eyes.’

Others’ comments reflected on how the outcome missed connecting with what they as victims wanted. Although Karla said that the system ‘protected me from verbal bullying and assault’ she also wanted something more. She thought that the non-recorded conviction of her husband was expected ‘but probably not what I hoped for’. Instead she ‘would have liked and still would like a true recognition of the pain and angst he caused me through the experience’. Edward also felt that justice had been done to the offender but not towards himself. He said, ‘the costs [of my injury] are significant – thousands of dollars. I was in the wrong place, now I’m out of pocket.’ While the court made a reparation order in his favour, he was left to chase payment himself. Holly was disgruntled that her ex-partner ‘wasn’t punished for what he did to us. He was punished for missing an appointment.’

8.6.2.4 Thinking on normative outcomes

Other comments were emblematic of the normative theme to people’s reflections about the outcome. Karla felt the outcome was ‘the right thing’. Lorraine felt that the good behaviour bond told her ex-partner that ‘he couldn’t do it’. For Deanna, the criminal justice system ‘finally let him know that what he did was wrong’. She said that she had ‘warned him lots of times that it wasn’t right. He didn’t listen … now it’s the court telling him it’s not acceptable.’ Teresa said something similar in commenting that ‘the thing I most wanted was that he be shown what he did was wrong. That he was convicted and sentenced told him that.’

Charlie also had cause to reflect on the normative meaning of outcome when the case involving him as a victim was dismissed. He said he was ‘not too fussed’ about its dismissal. He said, ‘there was no great injury or emotional pain. I might care more if there was but there wasn’t.’ Nonetheless, at his final interview he did not agree that

justice had been done 'because I think there needed to be consequences on his actions'.

The normative meaning of the outcome overlapped with people's reflections about the wider context and governance implications of what had transpired. Bailey felt that the outcome 'was "fit" for the actual incident'. He was approving that, while his case 'was reasonably minor … it was noted and went through a due process'. At his final interview he went further, to comment:

> I think the outcome was appropriate to what happened. It wasn't that serious so didn't need a heavy-handed response. I imagine it's the same as others like it. I don't think he was mistreated and I wasn't underdone. He got his punishment and I didn't require any reparation.

Comments such as these re-focus attention on both the private and public frames people apply as citizens as well as victims. Deanna reiterated that 'the law applies to everyone in the community'. At her final interview, Finoula said that her ex-partner 'can't just go bashing people because he thinks he can. It's about consequences to actions. The justice system is there to remind people of this.' For Aimee, the 'strength of the legal system' had 'helped to draw a line at unacceptable behaviour'.

These comments were emblematic of *homo moralis* as a metaphor for human behaviour. This conception directs attention away from wants and desires and towards 'ought' (Skitka 2009: 102). It is particularly relevant when people feel the harm or wrong was intentional and undeserved. In this study, this conception oriented also towards wider civic implications.

8.6.3 Influential voice

The idea of 'voice' is central to procedural justice studies (Van den Bos 1996; Folger 1977; Thibaut and Walker 1975). In studies on victims of crime, voice has been explored in a number of ways: as contributing to higher confidence levels (Bradford 2011), in regulating anti-social behaviour (Bright and Bakalis 2003), in mediation (Wemmers and Cyr 2006), and in victim impact statements (Cassell 2009). Literally giving voice can take a range of different forms from vocalising or text, or even performance or silence. A key question in this literature is whether voice is passive, expressive, or whether it is designed to influence (Roberts and Erez 2004). However,

over the course of the three interviews, multiple different meanings emerged out of the notion of 'having a say' in relation to all three justice agencies – police, prosecution and court.

Phrases such as 'involvement', 'being able to talk' and 'being consulted' were frequent. However, these simple phrases hid more nuanced interests that:

- were about the uniqueness of being known and 'knowing',
- were demonstrations of respect and recognition,
- were constitutive of a dialogue between themselves and the entity,
- went to a perception that decision-making itself was full and 'proper', and
- saw the giving and receiving of information as a powerful transaction (as well as being powerful in itself).

The idea of knowing and being known expressed the sense that people knew something that was useful and particular; that their views were important and their experience valuable. Finn said, 'I've heard from people around here that he's a little bastard. He's been able to shrug and walk out.' About her ex-partner, Birgit said, 'We should have a say – we know the violent person better than the judge'.

More importantly, 'knowing something' was 'being known' and affirmed the centrality of their real lives. 'This is someone's life they're dealing with', said Roslyn. There was a sense that their centre of gravity was being pulled somewhere else – '[It's] about me, not them. It was weird', said Xenia – and that expressing opinions and wants re-focused back on their known and lived reality – the 'real world', not the institutional world. Embedded within this assertion was the claim on one's dignity – '[they] kept me up-to-date. It really helped', said Svetlana.

Having one's voice heard and understood was, unsurprisingly, experienced as a demonstration of respect and recognition. Deanna said that she was 'kept in the dark about the changes and updates, like I did not have a right to know.' Edward commented that – 'I got the feeling I was "just another one"'. Said Finn:

> I don't expect them to be over for a cup of tea every day but contact once every so often and to know what is happening with dates and things and what is the

> case made up of. I really didn't know. I kept the card for ages but there was no point. I don't think they really care that much.

Critically, victims perceived their own voice as not echoing in the dark but as constituting dialogue. At her first interview, Roslyn expected 'to be asked questions about what [I] wanted in the future'. Xenia said simply that the prosecution just 'never called to respond' to her questions. At her final interview, Olivia said she would have 'liked more input, to be more involved and get more information'. Dialogue was not undirected communication but went to understanding and 'answers' (Charlie). Said Teresa, 'I was never contacted by the prosecution or the court. I would have liked them to contact me. The DVCS gave information but if I had questions I don't know if they would have been able to answer. For example, I asked why he had not entered a plea and the DVCS couldn't tell me. I would have thought the DPP could tell me why.'

Having dialogue also went to the 'properness' of decision-making. Nada said that 'the magistrate needs to hear from the victim to make a proper decision. There is a lot lost between what happens and reading something off a paper.' Properness was about the decision-maker being fully informed – 'It shouldn't be done in isolation' said Roslyn. 'There should be an interview of sorts.' Hearing the whole story also meant that the decision-maker would see the 'many shades of grey' said Teresa; it would mean that 'everything' would be 'taken into account and … the best interests of everyone thought about', was Xenia's comment.

Remarks about the communicative effect of voice acknowledged the power of information. 'If you know something then you don't feel further victimised', said Roslyn. But, said Karla, 'who tells you about the process?' Edward also commented that he 'needed lots of information and had to ask all over the place'. These reflections also marked a shift from the subject 'victim' back towards the more critically informed citizen. Said Winona, 'I think it would be good to get more technical info about what happens in the justice system and a bit more detail on my case and why'. Wanting to be and perform as a respected victim-citizen underlay Polly's statement that, 'I don't know what the procedures are or what is expected of me. I would expect someone to let me know.'

The complexity inherent in voice has been simplified to just its expressive nature (Roberts and Erez 2004). As expression within the criminal justice system, the victim's voice is characterised as subjective (Edwards 2004: 976), designed to emote and, in consequence, to have therapeutic benefits (Erez et al. 2011).[252] The diverse meanings here highlighted point to something different; that is, to people's recognition of the unique character of the decision-making spaces with which they are engaged – spaces that have functions that address a convergence of different concerns for victims, offenders, communities. To consideration of these concerns victims feel they can, or even should, contribute.

For the lay participants, the variables on voice did in fact cluster with their preferred decision or outcome. There clearly was an interest in a voice that *influences*. So, the idea of an *influential voice* is one of the underlying dimensions to people's experience of justice, and, even when its strength is assessed as moderate to low, it bears a strong relationship with their overall satisfaction with each of the justice institutions.

8.7 CONCLUDING DISCUSSION

The nuance that observation and reflection reveal shows the importance of the specificity of context to procedural and distributive justice judgments. Satisfaction as a measure performed a useful function as dependent variable. Satisfaction with police was significantly higher than satisfaction with prosecution, court and with the justice system overall. However, as a measure of the long and complex interaction that citizens have with the justice process, satisfaction is parsimonious. Getting at the contingent nature of justice required 'real world justice research' (Skitka 2009: 107). I found different dimensions underlie assessments. These dimensions were outcome acceptance, the quality of interpersonal treatment, influential voice, and respect for offenders' rights. Under these was further layering of experience.

These components fluctuate in importance but all are present in assessments about the three justice agencies. For all three justice agencies, the strongest positive correlation with overall satisfaction was with outcome acceptance and the quality of the interpersonal treatment. But the elements also linked strongly with each other to

[252] Discussing international criminal responses to mass atrocities, Eric Stover also comments on the tendency to 'valorise "therapeutic value"' to victims in testifying (Stover 2011: 131).

differing degrees. Outcome acceptance and interpersonal treatment correlated strongly together. The influential voice scale connected strongly with outcome acceptance for all three agencies. While the elements can be separated, they are clearly not separate. Rather, they form dimensions of an integrated conception of justice that is supple in this real world context and does not require fixing to any single understanding of human behaviour.

Participant narration showed the nuances embedded in these dimensions of justice were highly contextualised and particularised. The emphases placed on the quality of their interpersonal treatment embraced recognition of their unique standing and circumstances, as well as respect for their personhood. Respect and recognition were demonstrated through the manner in which information was or was not provided to people by authorities. People experienced information both as a power resource and as reciprocity. They also understood interaction with authorities as dialogue. The strong expectation for fairness in criminal justice that people articulated at their first interview emerged here in experiences of equitable and fair treatment for themselves as well as for the violent person.

Justice as the attainment of outcome was experienced in a number of ways. The reflections people offered went to the trilogy of interests they articulated at the commencement of their engagement with authorities. At the same time these reflections sharpened to focus primarily on the nature, appropriateness and impact of the sentence on the violent person, and the consequence to themselves as a victim and a person. In an echo of their pre-existing citizen evaluations about justice, there was reflection on the extent to which the outcome calibrated with the normative and governance functions of justice. Perhaps inevitably, the resolutions people experienced were partial and incomplete (Sen 2009).

The importance of 'voice' is not just its expressive nature but is related to a sense that the outcome arrived at is acceptable and fair. People understood themselves as 'knowers' who added to the quality and meaningfulness of decision-making. To be heard was to be recognised as someone with distinctive and important insight into particular circumstances that carried more general import. The interest victims might have that their voice is influential or directing of the decision-maker is generally

disavowed in the criminal justice sphere. Moreover, institutional efforts to become 'customer friendly' miss the mark. As Ursula said, 'they all listen but you are no further ahead'. Common perceptions of voice as 'simply' expressive need to be re-thought.

The key conceptions of justice that were developed in Chapter 2 all emerged here in relation to experience, assessment and reflection. That is, justice as a normative guide, as duty or obligation, as accountability, as fairness, as relational, and as contextual. This chapter has highlighted engagement with justice as a series of interactions with different decision-makers through which these conceptions reverberate. Each interaction provides opportunities for ideas about justice to be articulated, made transparent and enacted. Many of these opportunities were badly handled and lost. The significance and implications of these losses are developed further in the next chapter. From this point I consider what participation in criminal justice looks like to victims of violence and what it might mean to the realisation of justice.

CHAPTER 9: PARTICIPATING IN JUSTICE

> I'm a little undecided [whether justice was done] because I don't know what happened in the end ... There was no discussion. I just think they have no regard for the victim. Maybe they have a mentality that victims are like second-class citizens. Maybe they think victims aren't serious and they don't take it seriously. (Nada 2011)

> The normative legitimacy of a democratic decision depends on the degree to which those affected by it have been included in the decision-making process and have had the opportunity to influence the outcomes. (Young, 2000: 5–6)

Justice is a complex, dynamic and nuanced conception that *unfolds*. If this constitutes the idea of justice in the real world, how can it be made, seen, experienced, performed and validated – in the real world? For hard-pressed systems dealing with multiple constituencies and competing demands, achieving thick and rich justice such as this can seem like an impossibility. For ordinary citizens made vulnerable through violence and unprepared for the industrial dimensions of contemporary justice, just coming through unscathed can be an optimistic objective. This chapter considers how demanding and citizen-centric expectations for justice can possibly be met through a lens of citizen participation.

Our thinking about justice originates from a multitude of claims and concerns (injustices) and many evaluative arguments flow from these, as I have shown in preceding chapters. Those from victim-citizens would remain hidden if no opportunities for disclosure and discussion were made. A 'realisation-focused understanding' of justice, given its plural grounding, cannot therefore be done in isolation. It is 'inescapably discursive' (Sen 2009: 10 and 337). Interviewing people on three occasions revealed this scope for involvement, interaction and dialogue under the rubric of participation, as well as its boundaries.

To explore this scope further a starting point is to deepen understanding of the notion of the *influential voice*, identified in the previous chapter. Voice will here be discussed not solely as an expressive feature but as a demonstration of participation and

engagement. That is, voice is conveyed as a practice of citizenship. In that mode, participation is further posed as diverse communicative opportunities that facilitate the exchange of information, conversation, observation, and direct and indirect engagement in a discursive and deliberative process. I show that it is through these participatory processes that the multiplicity of justice goals and orientations can be sequenced.

The chapter works through the notion of voice and the activities of participation to sharpen focus on victims' primary status as citizen. For this I draw on the literature dealing with citizen participation in other areas of public life and consider what it might say to citizen participation in justice, specifically the victim-citizen. One core rationale to citizen participation is that individuals should be involved in and able to influence decisions that affect their interests (Mansbridge et al. 2010).[253] This particular claim is foundational in democracy theory. Ordinarily, criminal justice is conceived as a critical pillar of the democratic architecture in liberal societies. Yet it is somehow outside the messy exercise and practice of democratic engagement. I argue that it is through inclusive participatory practices that this democratic deficit in criminal justice can be addressed.

The chapter first builds on the predominant notion of citizenship-as-status, touched on in Chapters 2 and 6, to develop a dynamic conception of citizenship-as-practice. Whereas the former encompasses a legal and political identity that is bound by the laws of the polity, the latter provides for a more fluid as well as diverse set of actions and interactions.

9.1 CITIZENSHIP PRACTICE

Presenting victims of crime as *citizens first* necessarily gives pause on the significance and meaning of the status, and then asks what being a citizen *does*. Citizens enact their status in various horizontal and vertical engagements. As activities directed outward and horizontally, these are myriad informal actions taken on a day-to-day basis as they go about their business. Formal vertical engagements are commonly more deliberate,

[253] As shown in Chapter 7, individuals seek to advance multi-faceted interests in their engagement with authorities.

conscious and confined. Taken together, these are the warp and weave of civic and political enterprise.

While the terms 'citizen' and 'citizenship' are often elided, the latter serves a strong 'integrative function' in the discourse. It is what people are said to *do* as citizens. As a practice, citizenship does a number of things. Firstly, it facilitates recognition and accommodation. Secondly, citizenship connotes social and political practices that constitute a thick depiction of people in their communal setting (Kymlicka and Norman 1994: 373).

In their various relationships to public and private authorities, citizens do not, however, have one identity or speak with one voice. Citizens can be both empowering and oppressive (Isin 2002). The political community is comprised of many publics as well as complex and shifting identifications. Individually and collectively, citizens are polyvocal and voice their interests from and within a range of different contexts (Gergen and Gergen 2010). Within debates about uses of the term, one account of citizens values transparency, consultation, accountability, and individual empowerment and choice. This works well with a dual conception of the victim-citizen as consumer (Williams 1999). Another account gives prominence to normative concerns in a 'citizen-facing agenda' that is located in public policy challenges (Livingstone, Lunt and Miller 2007: 79–81).[254] That is, those challenges – such as achieving justice – that are declared concerns of all members of the polity.

This plurality of voice and interest is sometimes posed as problematic in conceptions of democratic citizenship. Responding to this, political philosopher Chantal Mouffe suggests that:

> … what is at stake is to make the fact that we belong to different communities of values, language, culture, and others compatible with our common belonging to a political community whose rules we have to accept. (Mouffe 1992b: 30)

I place this idea of *making* the political community at the heart of notions of citizenship – responsible or irresponsible, good or bad, active or inactive, and more commonly all

[254] Livingstone and his colleagues further critique particularised notions of the citizen as vulnerable and disempowered. They say that to focus on the vulnerable and marginalised within 'citizen interests' actually serves to marginalise people further as a numerical minority, and to exclude the majority of the population from the broad concept of 'citizen interest' (2007: 83).

of these at different times. In the various practices of making the citizen body, competing versions of 'the common good' agitate for ascendancy in particular and general situations. While these versions themselves connect to wider bodies of political theory,[255] there is agreement that citizenship is lateral between citizens as well as vertical with the state and its institutions. Thus the citizenry are in 'continuous re-enactment' and citizenship 'aims at constructing "we"' (Mouffe 1992b: 30–31). This *practice* of citizenship is a democratic one. It is enacted in various participatory modes and arenas, does not assume arrival at a single point of 'the good', and cannot presume an end to disagreement or its domestication (Macedo 1999). Whether the citizenry are oriented towards cooperation or contestation, their private and communal interests enmesh through their many activities and engagements.

Although the roles of citizen and the activities of citizenship are most commonly claimed in relation to governmental and civic affairs, they have a long history in law and society scholarship. Writing nearly thirty years ago, on legal mobilisation as political participation, political scientist Frances Zemans described the legal system as 'quintessentially democratic'. 'Unlike other governmental structures', she stated, 'the legal system is structured precisely to promote individual rather than collective action' (Zemans 1983: 692–693). Law is a 'structural opportunity' for the citizenry to engage directly in a public space on issues of direct concern to them (McCann 1994: 239). More recently, citizen participation in criminal justice – juries, restorative conferences, panels – has been described as a form of 'collaborative governance' where those who join in are 'load-bearing' (Dzur 2012: 162). Criminal justice entities – comprising a *system* – offer a series of spaces providing opportunities for participation.

9.2 CITIZEN PARTICIPATION IN PUBLIC POLICY

It is germane to lay out how citizen participation works in other areas of public policy, to trace the historic arc to the idea, and some key areas of debate. Firstly, it is noticeable that the notion of participation is firmly yoked to that of citizen. Sherry Arnstein's influential work conceptualising the levels to a ladder of citizen participation

[255] These range from the atomism of libertarians to duty orientation of republicans and to the agonism of radical democrats – which is, of course, an over-simplification of the continuum (Isin and Turner 2002). I mean only to connect the discussion about citizenship to wider bodies of political theory as I have attempted to do throughout this thesis.

cemented the connection (Arnstein 1969). Her analysis emerged out of the turbulent 1960s and carries the zest of critical social movements of the time – civil rights and Black Power, feminism and student activism. It is perhaps not surprising therefore that she claims 'citizen participation is a categorical term for citizen power' (1969: 1). Ian Edwards, writing at the beginning of the twenty-first century on criminal justice, captures the managerialist flavour of the age, where citizens are consumers and clients to be folded gently into institutional priorities (Edwards 2004). With these book-ended descriptions, it is apparent that citizen participation says something about the interface between ordinary people and entities – be they agencies of the state, public services, community organisations, political parties and even social movements. It also says something about the nature of that interface and asks what is at stake in that particular space.

9.2.1 Conceptions of citizen participation

Participation is a potent term used in many different contexts (Cornwall 2009). It is generally conceived as a means to shape the type, scope and nature of services to communities, but also as a means to challenge, subvert, direct and prioritise who gets what, when and how. From its social movement roots, citizen participation has always been about the 'have not's' and 'power-holders'. Participation is a means of redistributing power and resources, and has valorised citizen control, for example, in urban planning and poverty reduction. In areas such as environmental resource management, citizen participation is often conceived as a process whereby those with a 'stake' or 'interest' can be identified and engaged to deconstruct and work through complex or 'wicked' problems, thereby arriving at acceptable or 'just' decisions (Collins and Ison 2009).

In social care settings much of the contemporary discourse is emancipatory and focuses on the autonomy, inclusion and empowerment of users (Beresford 2002). Citizen participation in public health, for example, is active involvement in *and* being in control of assessing, planning, implementing and evaluating their own *and* collective health care (Mullen et al. 2011). Citizen or user participation in social care settings has emerged in recent decades to challenge experts, clinicians and providers around issues of identity, the nature and definition of the problem, the 'solutions' on offer and the power to decide more generally (Carr 2007).

Users of services have also been characterised as consumers (McLaughlin 2009). In this guise, participation is informed both by market-oriented ideology and user advocacy (Bochel et al. 2008). It imagines the individual actor as rationally choosing. Here, citizen users make their voices known through these choices and through their wallets. The transactional nature of the conception is further emphasised in reference to consumers as taxpayers, whose contributions are tied to their utilisation of specific resources. Participation in this conception is through consultation and feedback.

Generally there is consensus that engaged citizenry is better than passive populations (Irvin and Stansbury 2004: 55). And – in the reverse – that powerlessness and alienation are problems for democratic institutions. Further, there is recognition that citizens participate when something is at stake that they care about or that is important to them, and that conditions exist to enable, facilitate or legitimate their involvement. At the same time, citizens are seen to act from different identity and social spaces and to seek a range of outcomes. Citizen participation in this conception involves a recognised mix of selfish and selfless motivation that is both instrumental and ethical. The participation of citizens in matters that affect them ranges from 'having a say', to controlling and directing the outcome.

This brief overview is captured in Table 9.1. I suggest that the citizen *identification* provides a frame and a platform to incorporate the other participation paradigms. This sharpens recognition that citizen participation is not a simple proposition, and that citizens occupy multiple roles.

Table 9.1: Paradigms of citizen participation

Population	Identity(ies)	Political character	Participatory sphere	Philosophy	Mode	Purpose of participation
Social movement (eg urban planning, environmental, poverty reduction, development)	Collective identity is primary Rights-based	Democratic Bottom-up	Interest-based	Redistribution of power and resources Citizen control Rights-based	Collective action Policy setting Decision-making	Redistribution of power, resources and control
Social care users (eg disability, HIV, mental health)	Personal identity is primary Rights-based	Emancipatory/ liberatory Bottom-up	Social welfare Social care Person-centric User-led	Empowerment Inclusion Autonomy Independence Rights-based	Collective action Individual choice Service planning Participation in decisions where affected	Redistribution of power, resources and control
Consumers Producers (eg health users, taxpayers, agriculture, development)	User/producer identity is primary Consumption/ production based	New Right market orientation Top-down	System-centric Provider-led	Managerial Instrumental	Individual choice Individual involvement Consultation Feedback	Efficiency Effectiveness Economy Productivity
Citizens	Multiple identities Rights-based	Democratic Bottom-up	Multiple locations Plural interests	Accountability Inclusion Equity	Mass action Collective action Individual action	Fair distribution of power and resources

	Equality Fair distribution of power and resources Representation	Mixed mode Participation in decisions where affected	Fair inclusion

Specificity and context obviously matter a lot. The different conceptions of participation can work discretely in specific spheres and modes. However, working from the premise that citizens have multiple identities, live and act in diverse spaces, and have myriad interests that are individual and communal, civic and personal, political and social, then these paradigms of participation also overlap and interact. The question of where power lies remains of central concern; and with this, who is defining the problem(s) as well as the solution(s). These points work to illuminate the purpose of participation. That is, if, how, in what ways and to what effects is the political community of citizens enacted and made.

9.2.2 Citizen participation in justice

Justice systems in many countries have stood resolutely against the citizen participation trend, despite low levels of confidence (Roberts and Indermaur 2009). For the victim-citizen the barriers to participation are structural and normative (Doak 2005). I dealt with the history behind this exclusion in Chapter 5, as well as its contemporary justifications. A range of reforms have been allowed on the margins and have tended not to challenge the fundamental distribution and structure of power. Indeed, the paradigm of therapeutic justice that is advocated by some as focussing on 'healing' is alien to criminal justice (Van Stokkom 2011).[256] Other reforms such as restorative justice and victim–offender mediation have been presented as forms of 'civic engagement' with social change implications (Dzur 2003: 279). Victim impact statements have been offered as expressive moments through which emotional, physical, social and material impacts are mediated (Pemberton and Reynaers 2011). Initiatives aimed at the provision of information and of service have been 'relatively non-contentious' (Doak 2005: 295). The idea of participatory rights – on a continuum from consultation to representation – remains controversial (Englebrecht 2011).[257]

Beginning his attempt at a typology of victim participation, Ian Edwards claims that 'the victim is not in a position of inequality *vis a vis* the state' (Edwards 2004: 972). In his perspective, these are persons who can negotiate and demand, and who have

[256] None of the lay participants in this study said that they became involved in criminal justice in order to 'heal' from the traumatic effects of the incident. Also none indicated 'closure' as an objective that they sought.

[257] Although in the domains of international criminal justice and post-conflict justice the controversies are less about *whether* and more about *how*. See McGonigle Leyh (2011).

freedom to choose their level of engagement. He further assumes that the interests of the victim-citizen are one and the same as the interests of the state as delivered through criminal justice institutions.

Edwards' focus is on the legal settlement and contains just two purposes for participation – getting the disposition (the substantive outcome) or not. At the non-dispositive levels, he limits victim participation to the optional supply of expression, information and preference. The power-holders (though Edwards avoids the term) *allow* or they *seek* and they *consider* these expressions. Further, there is no gradation between consultation in the non-dispositive group, and control in the dispositive layer.[258] They are singular and discrete moments. It is assumed that the ultimate aim of victim participation is to control the decision and exert authority as the decision-maker.

While there is weakness in this typology as well as in participation reforms, they sharply illuminate key points in the debate about victim-citizens' role in and relationship with criminal justice. Yet these debates still fail to attend to the complexities embedded in victim-citizens' desires for and their reasoning about involvement and participation. The previous chapter revealed that behind the measure of their *influential voice* were:

- features about the uniqueness of being known and 'knowing',
- demonstrations of respect and recognition,
- features constituting dialogue between themselves and the entity,
- features that went to a perception that decision-making itself is full and 'proper', and
- features that saw the giving and receiving of information as a powerful transaction (as well as being powerful in itself).

The next section explores these nuanced practices further. I ask whether voice is important and whether, through their influential voice, people wanted to control the

[258] Edwards' contextualising of the victim control proposition within certain supposed Islamic criminal justice codes is what Australians would call *dog whistling* (2004: 974–975).

outcome. Finally, I ask what were people's orientations towards the different possibilities for participation and their reasoning about their interest in them.

9.3 THE INFLUENTIAL VOICE IN PARTICIPATION

This multi-faceted depiction of the nature and power of voice is broader and deeper than the more usual suggestion of 'giving voice' as simply expressive (Roberts and Erez 2004). As expression within the criminal justice system, the victim's voice is commonly characterised as subjective, designed to emote and, in consequence, to have therapeutic benefits (Pemberton and Reynaers 2011). The diverse meanings that the lay participants actually articulated point to something different. But how different?

For the study participants, the variables on voice clustered with their preferred decision or outcome (see Table 9.2). This is a voice that *influences*.

Table 9.2: Scale comprising items clustered as 'influential voice'

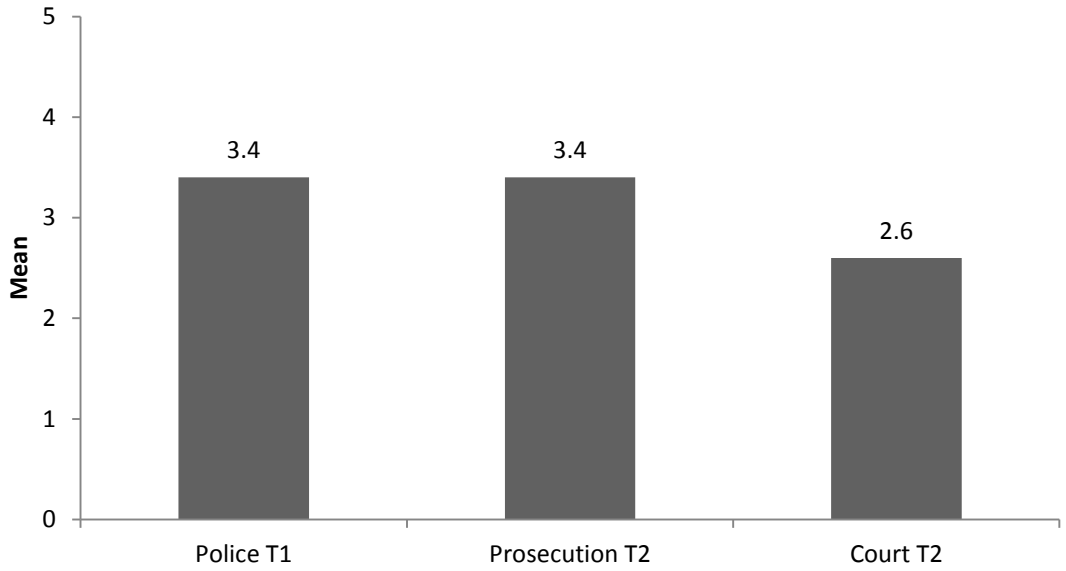
	Variables	Cronbach's alpha	Mean inter-item correlation
Influential voice	Opportunity to express my views Able to influence decision Views considered before decision Decision I deserved Decision I wanted	0.84	0.52

A different study in the Netherlands illustrates this point. In that study 59% of victims said they would welcome the opportunity to submit a victim impact statement, even if it did not have any impact on the sentence. However, if it would have an influence, this percentage increased to 84% (Pemberton 2005).

However, the opportunities for a voice that is influential in criminal justice are not restricted to the sentencing court. Lay participants were asked about their interaction with three different justice entities. Figure 9.1 shows how much people felt that their voice was influential with police, prosecution and the court. The higher score measures strongest agreement. People assessed their voice as moderately influential with police

and prosecution and weakly influential with court. An examination of the pairwise comparisons table showed that there is a significant difference between the scale measuring influential voice with regard to the court, and the same scale with regard to police and prosecution.[259]

Figure 9.1: Victims' rating of their influential voice N=26
Mean of 1 = Strongly disagree to 5 = Strongly agree



These findings about voice being influential and being experienced differently at different points in justice could be disregarded except for its strong positive relationship to overall satisfaction. The influential voice scale correlated in a strong and significant measure with the dependent variable for prosecution and court (see Table 9.3).

[259] There was significant effect for time, Wilks' Lambda = 0.54, F (2, 24) = 10.3, p < .0005, multivariate partial eta squared = 0.5 (Pallant 2011: 263). Using Cohen's guidelines (1988: 284–287), the latter suggests a very large effect size.

Table 9.3: Correlation coefficient between victims' overall satisfaction and scale measuring their influential voice (N=26)

Police (Time 1)	Prosecution (Time 2)	Court (Time 2)
0.36*	0.55**	0.61**

* Correlation is significant at the 0.05 level (2-tailed)

** Correlation is significant at the 0.01 level (2-tailed)

Also important to note is the strength of the relationships between the scales. With regard to all three agencies, the stronger the influential voice the more accepting are victims of outcomes reached by the entity.

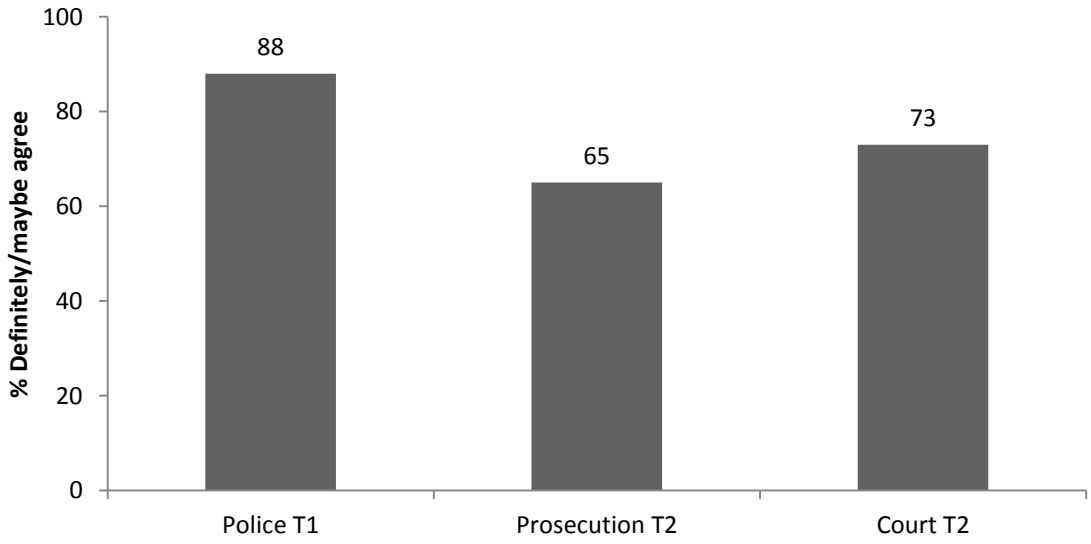
9.3.1 Decision control

Statistics like this only tell a small part of the story, however. They don't say how people thought about the nature of influence. For example, unprompted comments some people made around this question on the degree of influence they had over the decision-maker indicated that to have had influence would have been somehow 'improper'. So, if the *influential voice* is important, a next question is whether there is a desire for it to be dominant? Put more broadly, does the citizen participate in order to get what he or she wants? Do they aim for control?

On this point, people were asked whether they agreed or disagreed that justice decision-makers (police, prosecution and judiciary) should have responsibility to decide 'in situations such as theirs'. Figure 9.2 shows that a majority of people did in fact agree with this – although less strongly with regard to prosecution.[260]

[260] This finding concurs with a Canadian study into victim involvement with restorative justice by Wemmers and Cyr (2004).

Figure 9.2: Victims think entity should have responsibility to decide in situations like theirs, % Definitely/maybe agree N=26



This finding says that people are open to 'decision by non-deliberative methods' – to use Jane Mansbridge's term (Mansbridge et al. 2010: 68).[261] In their dual identity as victim-citizen, the panellists viewed *constraint* on their self-interest as expected and acceptable in the criminal justice space.

9.3.1.1 Expertise, experience, function

When asking people why they thought this, they reasoned in a number of ways. Strongest was the perspective that justice decision-makers were expert, were trained and experienced. This expertise was both formal: 'They're trained, qualified and educated and they are neutral' (Polly) and lived: 'Because they see different characters every day and it's their line of work and they are in the best position to make these types of decisions' (Quinn). Moreover, it was 'their job': 'That's what they're there for' (Genevieve); and 'it's the police job to protect society' (Alex).

9.3.1.2 Governance

Next were wider contextual and social meanings given to the perspective of the justice decision-makers doing their job. Not only was there a sense of – 'If they don't then who would'? (Teresa), but also 'you can't have ordinary people deciding these things.

[261] It is a space where coercion is intrinsic if not always overt - for both civilian parties.

Imagine the chaos if they did' (Edward). Molly said something similar: 'Otherwise you could turn around and lock up the neighbours. It is trust in the justice system.'

Charlie's comment went wider, to the public good focus of the justice decision-makers, in saying: 'Just because violence is a public crime and there are public policy concerns'.

9.3.1.3 Normative values

Reflections also related directly to the normative values that are constitutive of the justice concept – those of fairness, impartiality, and attention to evidence. Fairness was uppermost in Charlie's mind when he commented that, 'they are more experienced in knowing what is fair, that [the offender's] career might be affected'. Bailey concurred by saying, 'it removes the emotional factor and allows for the most fair method of decision making'. Emphasising a different perspective on fairness, Imogene felt that 'it has to be a third party. It's the only way of protecting the person.' Teresa reflected on the need for fairness to both parties when she said that:

> If the decision was to be made by me I wouldn't know what was reasonable or fair. I trust the system enough to know what to do, what is fair to both the parties.

Part of the issue of fairness was that the decision-makers were seen as impartial, trained and as working within a larger frame of reference. Svetlana commented that 'they are a whole group of people, not just one, who decide'. David concurred when he said that 'they should do it for the community'. Holly felt that impartiality had to do with dispassionate perspective when she said that, 'I guess because they're not emotionally involved in the situation they can be objective about it. If it was left up to me, who would know?!' Janelle said that she agreed with decision-makers having responsibility 'because they know the laws better than anyone. If they think what he did was wrong then it should go ahead.'

People also commented that decision-makers' access to more information and to evidence was a factor in supporting their responsibility. As Xenia said, 'they're the ultimate decision-maker and have all the evidence in front of them'. Olivia concurred by saying, 'they are impartial and do this on the evidence'.

9.3.1.4 Victim vulnerabilities

Finally, another strong convergence of reasoning was people's recognition of their own human frailties and that of others in a 'victim' position. Edward – even though he did not demonstrate this at all – commented that 'it would be crazy for victims to have this because there'd be a lot of revenge and eye for eye stuff'. Domestic assault victims were very aware of the vulnerability and complexity inherent in their position. Commenting about whether police should have the responsibility to decide in charging an alleged assailant, Imogene commented that:

> I think it's important because if the victim has [that] power then they can be influenced or persuaded or harassed or threatened to withdraw, therefore it's important that it is this way.

Further reflecting on the prosecution's responsibility to decide to prosecute, she said:

> It takes away the fear of being bullied and pressured and forced to drop the charge, which is also takes away the fear of reprisal. I have no doubt that if it was me then I would have been subject to all amounts of pressure including a belting to get me to drop the charges.

Karla also felt that the different pressures on her as an individual meant it was important for others to make the hard decisions. She said:

> It's easy for your mind to own some of the guilt or rationale on oneself. But in the light of day there's no excuse for violence. Those who are removed from the intense feelings of a relationship are in the best place to make decisions.

For those who were more uncertain about police, prosecution or court having responsibility to make decisions in situations such as theirs, there was recognition of the need for independent decision-makers combined with a desire for something more. For example, Aimee said, 'I have very mixed emotions about it. On the one hand I felt really empowered. I got a lot of support and he was gone out of the house. But on the other hand I felt powerless and I was told there was nothing I could do.'

Repeated most often on this issue was a refrain about being asked, being consulted, having views taken into account, and involving others. Basically having 'some say' somewhere (D16, A7, D24).

9.4 PROCESS PREFERENCES AND THE INFLUENTIAL VOICE

If this group of people brought multiple meanings to the idea of voice, including that it be influential, but generally abjured control, how did they envisage the operationalising of voice? To examine this question, the lay participants were asked their preferences as to the process for resolving the issue. Options were put to people (in both visual and written formats) that were descriptions of real possibilities to the process that was unfolding before them.[262] At the second interview after the case had finalised at court people were asked if they would have liked a restorative opportunity if they had been offered it. If they answered yes, then they were asked at what stage in the process would have they liked this opportunity.

The options are presented here as preferences with a variety of participatory and restorative opportunities. I understand restorative opportunities to fall under a broader participatory justice rubric.

At the first interview after the violent person had been charged by police and before the matter had been to court, of those who were interviewed twice, a majority (62%) expressed a first preference for a process that entailed some form of participatory opportunity (see Table 9.4).[263]

[262] Restorative opportunities are only available after sentencing for adult criminal matters in the ACT. However, pre-conviction options for a restorative encounter were put to the study participants. They were advised that these options were not actually available to them and that they were being asked in order to gain some idea of the interest.

[263] There was a total of thirty-two responses to the question at Time 1. Of this number, 63% preferred a non-restorative process. Only those responses from persons interviewed twice (n=26) are discussed here.

Table 9.4: Time 1 preferred justice process (N=26)

Process options		Non-DV N=5	DV N=21	Total N=26
Diversion (4=15%)	Admission, divert and mediate	0	3	3
	Admission, restorative opportunity, no formal sentence	0	1	1
No/minimal participation (6=23%)	Finding and sentence	1	5	6
Participation, no restorative opportunity (8=31%)	Finding, victim impact statement (VIS) and sentence	3	5	8
Participation and restorative opportunities (8=31%)	Finding, restorative opportunity, no sentence	0	0	0
	Finding, restorative opportunity, court hears agreement, sentence	0	3	3
	Finding, sentence, restorative opportunity	0	1	1
	Finding, VIS, sentence, restorative opportunity	1	3	4

9.4.1 Reasoning prospective process preferences

How did people understand and consider these participatory opportunities? What did these mean to their influential voice? The minority (15%) who expressed a first preference for diversion away from the formal justice system following the police intervention were domestic assault victims who wished to remain in the relationship

with the person who had assaulted them.[264] However, this was not a simple connection. Xenia's interest in diversion was strong although qualified. She said:

> The first one [diversion] is attractive because it recognises the situation may have changed from the emotion fuelled night. His rehabilitation has already started. The desired effect of the arrest has started. A mediator would help us talk about where to from here. If he hadn't hit rock bottom and bounced back I might have a different opinion.

Roslyn mentioned a similar contingency. She had had a previous domestic assault case before the courts and had been troubled by the delays in the process and the consequences in her relationship. On this second occasion she preferred 'avoiding the justice system but being able to work out the dilemma that's got us to this point. The others [process options] are unattractive because they all involve long timeframes. If you can work it out with a facilitator then the time would be considerably lessened.' Yvette as also interested in the possibility of working the issues through with her partner directly. She was adamant that 'in our situation I think it's wrong that people are making decisions on our behalf and not actually listening to us. All because it's got to go through "a process"!'

In contrast, a small majority of people expressed a preference for processes that entailed no or minimal participatory interaction. The interest in the court making a finding meant to Finn that 'there is no question he is guilty'. Others wanted authorities to just 'deal with it'. Eliza said, 'I just want them to deal with it. I don't want to have to. I just don't want any contact.' Zola said something similar. She said, 'I'd like the people in the right positions to make the decisions. I want it taken out of my hands.' Finoula commented that, 'I don't like the idea of the restorative justice. I don't want to see him, don't want anything to do with him.'

Others emphasised their process preference for an authoritative decision-maker (23%) by referencing to its meaning to or influence on the violent person. David's preference

[264] Of domestic assault victims interviewed twice, at their first interview 48% (n=10) indicated a first preference for a non-restorative opportunity and 52% (n=11) indicated a first preference for a process that included a restorative opportunity. Of this latter group, 66% (n=7) expressed a preference for the restorative opportunity to take place after a formal finding. Of non-domestic assault victims interviewed twice, at their first interview 80% (n=4) indicated a first preference for a non-restorative opportunity and 20% (n=1) indicated a first preference for a restorative opportunity.

for the court to deal with the case was reasoned on the basis that, 'people like […] is just a "crim", so a face-to-face wouldn't do anything. He brags about being a crim. He'd play along to get a bit off his sentence.' Lorraine felt that even a victim impact statement from her would be unhelpful in the process. She commented, 'I feel if I put in a VIS he will take it all negative and it will make this worse'.

Quinn also emphasised that it was the potential impact of the public authority on the violent person that she was looking for. She said, 'the fact that I don't have to be around him and that it's done by someone who is seen to be "the law" so it sends the message to him that what he's done is not acceptable'. This point was also made by Holly when she said, 'basically because if he doesn't get time he'll just keep doing it. It's all too stressful for me. I prefer the Magistrate.'

A substantial proportion of people (31%) felt that it was important for the court and the violent person to hear about the impact of the offence on them through a victim impact statement. Edward wanted the harm done to be heard in addition to the case being dealt with efficiently. He said, 'the system costs a lot to us in the community so we don't want the case coming to and fro. I would like the accused person to know the effect on me.' Janelle also commented on the opportunity to convey the harm done. She said, 'because I can tell him what it [the incident/abuse] has done and how it has made me feel. I couldn't face him without being in the court because we'd just yell at each other.'

However, reflection on the possibility of a victim impact statement was not simply about conveying the harm done as is commonly claimed. Polly felt that the statement meant:

> The judge hears what effects this has had on me, an opportunity to ask for what outcome I would like to see happen. For example, a twelve-month suspended sentence if he breaks A, B, C etc. Then the judge decides the sentence preferably so maybe it could be doing some good and gives a chance to make matters right. Hopefully by paper! I want to hear what he has to say and admits to and then I can respond and tell the judge how I feel and be able to respond and then the judge decide what is fair.

Similarly, Nada felt that the victim impact statement (VIS) was not just giving information but was also an opportunity for dialogue. She said, 'I think the Magistrate really needs to hear from the victim to make a proper decision. There is a lot lost between what happens and reading something off a paper. If they can read a VIS and ask questions it would be good. They need to hear the whole history.' The notion of the victim impact statement being influential informed the comments of a number of people. Alice, for example, said, 'I think what level of impact it has made on my life now and at the time should be dealt with accordingly – which should aid their sentence'. On the other hand, Bailey, who expressed a first preference for the court to hear his victim impact statement and to then sentence, was more ambivalent about the potential meaning of his input. He said:

> My preference is that I don't want to feel like … I want to feel like my impact has been heard but I don't want to feel like I'm sentencing. I don't think it is right for my personal feelings to be part of this. It is a conflict of interest. I do see the benefit of restorative justice after all of this in sorting out bad feelings and help clear the air and make sure there is nothing further there.

Another substantial proportion of people (31%) did express an interest in a hybrid mix of participation with a restorative opportunity. Most wanted this after the authoritative finding. Karla's preference for the court to make a finding, having a restorative opportunity, then the court hearing the agreement and sentencing reflected multi-layered interests. She reasoned her preference in the following way:

> I'd like him actively taking responsibility for his actions and being part of deciding what should happen in front of me would be quite healing for me. At the moment he has nothing but hatred and blame for me and I'd like that responsibility to shift. The feeling of his consent to the sentence feels important. The judge can impose it but he can still not own it.

Decision-making in a way that involved private interests and public authority was also part of Olivia's reasoning. She preferred the same process as Karla. She said:

> He's been found guilty and then the chance to come together to talk about the impacts on me but also to work together about how to make things different in the future. Also for me to highlight the services that could help. These could be

> agreed and then come back to the court. Both able to be heard and be heard at the sentence where our ideas are taken into account at sentence. Both have a chance to influence the sentence. But if you can't then the judge would make the final sentence.

For Winona and Aimee, having the public authority make the decision first was about clarity on the wrongdoing. Winona said, 'I prefer him to be found guilty and then have a face-to-face. Then he can be ashamed of what he did.' Aimee reasoned in the following way: 'If there was the finding from an authority and then the mandatory phase of examining what happened and working out steps so it doesn't happen again.'

Finn expressed something similar in saying that, 'the attractive thing about it is the judge deciding first, hears the impact and then there's the opportunity for face-to-face where there is no question he is guilty. There's no chance for crossed lines during court proceedings.' Imogene could almost have been reading from the formal objectives of sentencing when she reasoned her preference for a finding, a VIS, the sentence and a restorative opportunity by saying, 'I like the mesh between justice and mercy, between acceptance of responsibil*ity* combined with finger-waving deterrence "don't do it again"'.

The reasons lay participants gave for their prospective process preferences are summarised in Table 9.5.

Table 9.5: Summary of prospective process preferences and reasons (Time 1)

Process preferences	Reasons
Diversion	Commitment to relationship Work through issues themselves Avoid time of justice process Wrong for others to make decisions on others' lives Rehabilitation started after arrest Help from mediator
No/minimal participation	Public authority impact on VP Definite finding by authority – wrongfulness, clarity Just 'deal with it' – no contact, system to do it, no stress Make things worse
Participation, no restorative opportunity	Get help for VP Get on with own life VP to hear impact in 'safe' space Find answers Avoid cost to community of on-going process Impact and 'whole story' to aid sentencer Dialogue with sentencer
Participation & restorative opportunities	Find guilt first – no 'crossed lines' 'Mesh of justice and mercy' VP to hear impact Feel part of process VP take active responsibility, then be part of deciding what to do VP to 'own' outcome Care for VP – give information on sources of help Work out together and sentence to hear from each; work out prevention together

9.5 RETROSPECTIVE REFLECTION ON RESTORATIVE AND PARTICIPATORY OPPORTUNITIES

At their second interview once the court case had finished, people were asked if they would have liked a restorative opportunity had it been offered. A third (n=8, 31%)

agreed that they would definitely have taken the opportunity with a further third (n=7, 27%) indicating that 'maybe' they would have liked the opportunity. Of these, all of those with a definite opinion were domestic assault victims, and two non-domestic assault victims thought that 'maybe' they would have liked the opportunity.[265] Five people overall (19%) were unsure if they would have taken up the opportunity if it had been offered.

There were different views about when in the justice process the interaction could or should take place. Of the two non-domestic assault victims who maybe agreed that they would have taken up the offer of a restorative opportunity, both said they would prefer it after the finding.[266] Combining the domestic assault victims who definitely/maybe agreed that they would have taken up the offer of a restorative opportunity, about half said that they would prefer this before a finding and a further half after a finding.[267] For example, Yvette said she would definitely have taken up an offer of a restorative opportunity and expressed a preference for it to be 'towards the beginning'. In explaining her interest, she said, 'because in the early days you are in shock but it would make a better understanding for all involved and it might give another idea other than prosecuting – maybe counselling'.

The interest in the possibility of interaction envisaged opportunity to consider non-prosecution alternatives such as this. It also encompassed other things including getting answers, understanding, closure, forgiveness, getting things in the open and realisation of the impacts and of the wrongdoing.

For the non-domestic assault victims, the idea of a restorative opportunity appeared to provide a means of getting answers and satisfying their curiosity about why someone would have hit them. Edward said, 'I'm curious to know why. Was it entertainment for these guys?' Finn was both curious and cautious in his reasons for maybe taking up a

[265] Calculating the percentage preferences just among the twenty-one domestic assault victims, 38% (n=8) said they would definitely have liked the opportunity, with a further five (24%) saying that they 'maybe' would have liked it. Four (19%) were unsure with a further four (19%) saying definitely/maybe not.

[266] Only one of these non-domestic assault victims had said he was interested in a restorative engagement at his first interview (A7).

[267] Of those who would have taken up the offer of a restorative opportunity before the finding (n=7), three were wanting to continue their relationship with the violent person, and two did not. Six indicated a preference for the opportunity after the finding.

restorative opportunity. He said, 'I'm curious I suppose to see his reaction and my reaction'. He added his preference for the offer being made 'after the guilty because there's no error for him arguing the fact'.

For domestic assault victims, there was also an interest in answers. Polly would definitely have taken up a restorative opportunity had it been offered. In expressing an interest for the opportunity 'for prosecution maybe', she said, 'I wanted to know why. It ate away [at me]. It was really because it was just so aggressive.'

Deanna and Holly were also interested in the way an interactive process might work for them. However, both preferred the option to be available after conviction. Deanna said:

> It would have given us an opportunity for some understandings to be talked about. It would have helped give closure. Also if I had offended against someone it would mean a lot for me to be forgiven. I wrote to him to say I forgive him but I don't know if he got it. I don't think he is taking it in a positive manner.

Holly said, 'I don't think it would have hurt. It would have been a good opportunity to get everything out in the open and to sort of understand each other a bit better, why he needed to do his drink and drugs all the time. And for me to get it off my chest.' In responding to the question of when she would have taken up the opportunity, Holly said, 'probably after conviction and during the deferred sentence'. She said this was 'mainly because if he hadn't learned how to control his anger I'd feel safer. If I was to say something he didn't like.'

Mostly the interest of domestic assault victims was for being able to convey something to the violent person – about the harm, the consequences to others, the wrongfulness, the desire for a different person or relationship. Genevieve said she would 'have liked to have gotten him to admit what he was doing was wrong or to see if he could even admit this'. Karla expressed a definite interest in a restorative opportunity 'so to get the opportunity to try to make him realise how the violence made me feel'. She thought the opportunity could have been provided at 'any stage'. Imogene would definitely have taken up a restorative opportunity had it been offered. She said:

> It's an opportunity for actually being able to say 'ok this is what you did and these are the consequences to me and your son' and to try to get him to understand that there are consequences to others.

In response to a question about when in the process she would have liked the opportunity, she responded rhetorically by saying, 'when would be most likely to have an effect? After court I think – a closure and a move on for me and for him.'

Some felt that a restorative opportunity offered scope for more informed decision-making both by themselves as principal parties as well as by authorities. Roslyn said she definitely would have taken the opportunity 'right at the outset'. She reasoned that, 'I think so that from the outset they would have had information about me and about why it was an issue for me. We're only now talking about it and it should have happened earlier to make peace if wanted.' Olivia was also definitely interested in an early opportunity 'because it would be with a mediator and we hadn't had an opportunity to discuss the issues, why it had happened and what the law was. He could see it wasn't me. It would be negotiation and acknowledged.'

For those who were unsure or not interested in a restorative opportunity – both domestic and non-domestic assault victims – there was a preference for keeping or extending the distance between themselves and the violent person. Alex was assaulted by a neighbour and said, 'as there was no real relationship between us there is nothing to "salvage" through that conference'. Nada also recognised the distance between herself and her ex-partner. She said, 'I think I needed to be as removed as possible from the situation. He was such in a bad state that anything I would have done would have inflamed.'

For some of the domestic assault victims, concern about their safety underlay their caution about a possible restorative interaction. Winona said she wasn't sure 'because I don't really have anything to say to him and maybe I'd be a bit scared he would lash out at me again'. Ursula, who did want to continue her relationship with her husband, was nonetheless cautious. She said, 'because of the way he's a bit unpredictable. I'm not sure how he is at the time. This felt a bit unsure, unsafe. We talked about things

together at the hospital. This was OK. I don't believe in hiding things but I understand there's some problems and I do want to make sure that I'm safe.'

Some domestic and non-domestic assault victims commented that the violent person would not have been genuine or would have been manipulative, blaming or threatening in a restorative interaction. David, assaulted by a neighbour, said that 'he [the assailant] was happy about what he did. There'd be no point. He was just smiling all the way through.' Lorraine was unsure about a restorative opportunity. Talking about her ex-partner, she said, 'I'd have to think about it. He's very good at putting on a front especially when it comes to guilt. He's a very good actor.' Birgit also said, 'it wouldn't have made any difference. We spoke on the phone and he was blaming me for being in [custody]. Even after three weeks he was blaming me. He's just got to take responsibility.' Svetlana's past experience discouraged her. She said 'we'd done it before and tried. No.'

People's interest in participation in the justice process is discussed here primarily through their perspective on restorative opportunities. What is clear, however, is that their perspective on these and other participatory opportunities perceived the level of involvement they chose as entirely legitimate and reasonable. Their influencing voice was directed to conveying information, impact and consequences, both to the violent person and to the public authority.

Participation as a set of practices carried multiple ideas and was intended to enhance the justice process. Moreover, the lay participants recognised the unique character of the decision-making spaces in which they were engaged. They understood and accepted constraint on their role as necessary and even welcome.

9.6 PARTICIPATION AND SEQUENCING

The degrees of interest in interactive opportunities with the violent person may not be surprising. What is noteworthy is the *sequencing* that is revealed in people's reasoning and reflections.[268] At the commencement of the process the study participants expressed multiple goals (discussed in Chapter 7) for their engagement with justice,

[268] For discussion on the sequencing of justice objectives in post-conflict settings, see Braithwaite and Nickson (2012).

that looked in three directions – towards themselves, to the violent person and towards the community. This trilogy of justice interests raises questions of which comes first and how can they be realised? The social dilemma created within the space and ideation of justice asks for 'selfish' individual objectives to be accommodated in addition to a 'joint payoff' for a wider good (Schroeder et al. 2003: 374). The process preferences expressed at the first and second interviews and the reasoning associated with these suggest that there is both sequencing of objectives and sequencing of process options in achieving these that enable attendance to the dilemma.

The priority given by the lay participants to offender accountability at their first interview was confirmed by their interest in the court making a finding. After this, it is apparent that people are interested in differing interactive possibilities. A minority just want the court to come to a finding and to make a decision as to consequence. For example, Alex said, 'I guess I don't want to get that involved and just get on with it. I don't want to be involved in an on-going process. I just want […] to get the help he obviously needs and I can get on with my life.' Most people, however, were interested in something more.

Accountability is a threshold from which other justice goals can be contemplated. For some, these would be obtained through an orientation towards the violent person. It is with this person that they were primarily interested in communicating. Others oriented their goals and their communication primarily to the public authority. They saw their interaction here as informing or assisting the court to arrive at decisions that were appropriate, responsive, equitable and holistic to both parties and to the wider community. Still others expressed their interest in interactive opportunities as an engagement with *both* the violent person and the public authority. This triangulation of interaction[269] is made manifest with regard to that particular institution that is most associated with the idea of justice by ordinary people – the court.

Within the temporal and procedural space of the court, the sequencing of steps in the process facilitates this sequencing of justice objectives. Sequencing enables a partial ordering of justice objectives or priorities (Sen 2009). Citizen participation in justice is

[269] This is somewhat similar though additional to the idea of the 'virtuous circle' between top-down settlement and bottom-up restorative justice discussed by Braithwaite and Nickson (2012: 461).

not, therefore, a singular moment. Neither is it easily contained. The interest is clearly in the give and take of information and reflection upon it. This account argues that arriving at an *idea* and a *sense* of justice that is deep, broad and rich requires just this interaction and dialogue:

> … understanding the demands of justice is no more of a solitarist exercise than any other human discipline … not only are dialogue and communication part of the subject matter of the theory of justice … it is also the case that the nature, robustness and reach of the theories proposed themselves depend on contributions from discussion and discourse. (Sen 2009: 88–89).

The sequenced architecture that can be placed around the resolution of a violent event does not necessarily oblige that a particular objective is prioritised over another (Braithwaite and Nickson 2012: 473–474). What is suggested is that the different objectives and objects of value *can* be accommodated in a step-by-step manner. It is simply not necessary to pose multiple objectives and different actors as in perpetual and irreconcilable conflict.

9.7 REFLECTING ON JUSTICE FOLLOWING PARTICIPATION

Notwithstanding these possibilities, at the end of this particular criminal justice journey, at their third and final interview, the idea of justice emerged humbled for the victim-citizens, and somewhat hobbled in its institutional form. In Finn's view, 'it would be a good thing if it works. I know why the statue is blind. It doesn't have favouritism one way or another, victim or criminal. I don't know if that's a good thing. I know it's a way to get society to function.' From Teresa's perspective it was 'so broad and there are so many areas of grey … the law applies to different cases in different ways even though the laws are the same'.

The slippery contingent nature of justice left Janelle 'not really sure' and Nada 'a little confused'. Some people struggled to contain its meaning: 'To me justice … you say the word and you know almost what it means', said Edward. Holly also felt that 'it's hard to explain. Justice would be to protect the victim and to try and help the person who did it fix themselves up, to rehabilitate them.' David was sure 'it's not like the movies or TV. It's based on money and circumstances.'

At the same time, the idea of justice as a multi-criterion subject was sustained. Thinking on the question harder, Edward said justice meant 'there's an action and a reaction. Something that's fair and equitable. Something that helps get the victim back together and to feel protected and safe to go back into society. And for the perpetrator – a bit of a wake-up call that you can't perform like that.' Aimee's reflections emphasised justice working in multiple ways over time. She said:

> I think it's being confronted, that I am made aware that the perpetrator has been made to confront in a court of law the seriousness of his actions in a time frame that doesn't infringe on my rights and is compelled to continue to assess the consequences of these actions over twelve months or so that's suitable to the gravity of the crime. And that there are change behaviour techniques interwoven into that follow-up.

Svetlana reflected that 'I've learned everyone has a different [idea of justice] and everyone interprets it so differently it's ironic.' There is a way in which her comment captures the manner in which both justice and participation are demanding of citizens. Both ask people to consider possibilities other than their own, and to step up to something more – even something higher – without presuming eventual agreement or consensus.

In centring the victim on their status as a *citizen first*, what has been illuminated? Most obviously there are all the activities assumed without much acknowledgment – reporting, attending, meeting, and being available for authorities. But what else is added to the vocabulary of citizenship? Definitely there is speaking up and being involved where voice and being heard constitute a form of civic practice. But there are other contributions to this unique democratic practice that are more socially and politically situated. That is, adding specificity to certain social and legal norms, playing a part in public discourse about the nature of the common good, participating in re-calibration of inter-connectedness, and advancing inclusive justice to notice a few.

9.8 CONCLUDING DISCUSSION

In the wider public policy context of citizen participation these practices of citizenship are prized. Through their involvement in criminal justice, victim-citizens are able to

convey complex messages about what happened, why it happened, the after-effects and implications, and what they seek for the future for themselves, the offender and for others. Their various interests – as social group members, users, consumers, taxpayers, and as witness and victim – can be accommodated under the citizen mantle. They do not have to choose or be forced to choose.

This chapter has shown that *participatory justice* is a *series* of processes and interactions in which matters of importance to the victim, the violent person and the community at large 'unfold' (Skitka and Crosby 2003: x). Viewed in this light, the justice process comes more clearly into view as a (potentially) deliberative one involving citizens and justice decision-makers. The idea of citizen *power* that Arnstein equates with citizen participation we then see not as power *over* but power *to*. Citizens here are not conceived as passive and external, but as people with agency, intimately connected to achieving a just outcome in a just process. That is, as people whose voice is influential in the settling of matters of importance to them in their community. Justice in its institutional manifestation becomes a 'creative space'[270] for citizens to engage with each other and with authorities, and to deliberate what is fair and just.

In this context, influence means influence and not control. Victim-citizens' interest is in an interactive and communicative dialogue with decision-makers in which features of both their victim status and their citizen identities are respected. Their reasoning and reflections recognise the particular nature of the decision-making spaces and the multiple civic values (fairness, equality, efficiency) that inhabit these. They accept constraint on their self-interest in this unique public space. Self-constraint in this public domain is not abnegation of self. In the 'distinctive enterprise of living together' (Duff 2010: 5), this requires recognition, adjustment and the likelihood of incomplete resolutions.

Inclusion is demanding of citizens. Interviewing people three times over the course of the process revealed a shift from them (as any of us might) expressing a general opinion about the 'idea of justice', to thinking hard about it. They had to. Justice as a deliberative and participatory process asks people really what they think and really

[270] Ibid., p.474.

what they think in this particular circumstance. Asking about their reasoning opens the deliberative space further. This is hard work on people and work which takes time. But it is work which nurtures judgment and decision in citizens (Barber 1984). Their justice *interests* are revealed as expansive multi-criterion and multi-dimensional concerns that connect to a trilogy of interests. What they bring from their private world is codetermined with public concerns.

In claiming that justice is not a solitarist exercise, John Dryzek says that Sen has 'made democracy central' to justice (Dryzek 2013: 2). In this democratic evocation, citizens' voices are multi-faceted. They are constituted as being influential, and saying something about their identities and their connections and disconnections to the social world. Their involvement rests on the 'core principle' that those 'affected' – those with a direct interest in a matter – ought to be involved (Dryzek 2013: 6). The voices of victim-citizens are made manifest in the criminal justice process *because* of this democratic principle.

CHAPTER 10: CONCLUSION

> You need to have time to think. It can't be a heat of the moment but also not too long that it's forgotten. (Bailey 2011)

> Understanding the demands of justice is no more of a solitarist exercise than any other human discipline ... (Sen 2009: 88–89)

This thesis has surfaced citizen conversations about justice. It has offered a number of different lenses through which to read their ideas about justice, and to read at moments sharpened by the convergence of conflict. The lenses have filtered ancient and contemporary thought through more vernacular frames, and have illuminated focus on a number of concerns that demand the attention of justice. Seeing through the eyes of citizens has revealed justice as a means of critical evaluation, a standard of assessment, an inclusive structure, as a communal construct, and as an improbable horizon. Working towards justice was, for the victim-citizens in this study, frustrating, agitating, puzzling and demanding. That they were, nonetheless, prepared to be involved in a process intended to achieve justice is a core feature that has enlivened this enquiry.

It is well known that people who are victimised by violence and who engage with the criminal justice system usually find the experience unsatisfactory and bruising. On this point, scholars, legal officials, victim advocates and even the general public can agree. What flows from this recognition diverges widely. Some want to abandon formal criminal justice, some argue to graft ameliorative processes to the larger framework, and some in institutional elites argue for orthodox continuity. Underpinning these disparate visions are much larger debates about the values and reasoning that people ascribe to actions, cooperation or conflict models of society, the role of criminal law in social and political systems, and the nature and extent of state authority over peoples. Threaded through it all are questions about the involvement of ordinary people in decision-making on matters in which they are directly affected.

In this concluding chapter I draw on these deep debates to indicate the significance of my work. Amartya Sen's idea and analysis of justice in the real world made it possible for me to refigure and reconceptualise what has been to date a confused and somewhat toxic clash about victims. I extend his framework by drawing on other ideas regarding direct interests in deliberation, and on democracy and difference. I frame and briefly summarise my findings. I draw attention to the strengths and limitations in my research. In closing, I contemplate further lines of inquiry that arise from the tensions inherent in deliberating injustice.

10.1 REVISITING THE BEGINNING

Having commenced this thesis worrying over the *procedural treatment* of people who were victims of violence, their voices stilled and stabilised me to focus on what they were saying about the nature of justice itself. In many ways their bewilderment in encountering a system that was both familiar and foreign, mirrored my own confusion about its justifying arguments. In talking and working with the thirty-three people who comprise the bedrock to this study, I was encouraged to go below the surface arguments in search of what was really at stake. Returning to speak with many of them over several months showed the potency of the Gramscian assertion that ordinary people are philosophers of their everyday lives. It was this journey of reflection that pointed me towards justice as deliberation.

Ultimately, my thesis amplifies these voices from below – in all their diversity and complexity – in a place where power-holders circumscribe who may speak, when and how. Being heard, however, is more than a platitude. This is the challenge that victim-citizens acting to shape their individual and communal lives make of justice institutions in a democracy. I argue for the capacity and the right of the citizen to speak frankly and with dignity (White 1990). I imagine recognition of victim-citizens as members of a political community where collective and individual interests are accommodated; and where plurality and contestation may work towards that accommodation but not actually require it. I understand that some injustices in actual lives may not be amenable to the comprehensive outcome that Sen theorises. I expect that it is a particular challenge for the criminal justice system to be open to the indeterminate.

Nonetheless I further emphasise the obligation of the state to ensure conditions for the active participation of citizens in matters in which they have a direct stake; but also because it should and must check its own power. I join emphatically with Iris Young in prioritising inclusion as a fundamental ideal of democratic citizenship and democratic decision-making.

Recognising the citizen status of the victim enabled this democratic turn in my thesis. I used this lens to reframe justice as a civic institution that is, or should be, deferential to the people it serves. Introducing the *demos*, however, does bring inconvenience, uncertainty, contradiction and ambiguity. They are unruly and difficult to contain. All of these are things that the modernist project of institutional justice (represented in this thesis by my small group of legal mandarins) seeks to replace with consistency, regularity and stability. The narrowing and concentration of power that public prosecution has accrued, with token formal checks, is a manifestation of 'de-democratisation' (Tilley 2007: 59). Challenging this trend certainly raises a counter-argument about populist justice. Acknowledging the (entirely predictable) manner in which media and politicians conjure menacing majorities or oppressive opinion does not, I contend, detract from the main point. Attention to inflammatory representations of victim, victimhood and visions of public order mask authentic complexities. It obscures many publics with an abstract singular public. Perhaps worst of all, it confuses direct affected interest with majoritarian clamour.

10.2 MY ARGUMENT IN BRIEF – JUST INTERESTS

This thesis shows that justice emerges from injustice as means and a measure to address it. Justice acts as an imaginary that opens and orders action(s) but does not drive it. In the public space designated for matters that seek justice, people victimised by violence think in an expanded frame that is inhabited by three key areas of concern – victim, offender and community. These relational and communal concerns reveal private and public interests as constitutive and co-determining.

To these three domains the victim – posed as a citizen first – brings multiple goals that follow accountability and are grounded in reasoning that also reflects private and public interests. The victim-citizen draws on public policy narratives about ending

violence and places their personal desire to be safe within that frame. They bring with them the further public policy outlook that justice institutions will do their jobs, be fair and efficacious. Yet their actual expectations are uncertain. In reasoning their motivations, goals and expectations in the different decision-making moments of the justice process, victim-citizens comment through moral commitments *and* contemplate what might occur in the future. The conceptions of justice that spoke of normative guidance, of duty and of accountability all influenced victim thinking about goals.

Behind flat statements of satisfaction or dissatisfaction with justice lie a number of dimensions that constitute integrated justice judgements. These reveal the premium placed on fair outcome, fair and respectful treatment of victims and of the offender, and for the victim voice to be influential. Conceptions of justice that were context sensitive and contingent operated to calibrate these judgements.

In a further iteration of the interactive nature of private and public, victim-citizens indicate preferences for a range of participatory opportunities while deferring to public authorities as ultimate decision-makers. These opportunities denote occasions when citizenship becomes demanding. That is, where a person's everyday opinion on what is just must evolve to actual expressions with real consequence for all concerned. Principles of fairness, equality, respect and recognition underpinned victim-citizens' thinking about participation.

As a set of findings, none settles argument about what the constituency of victims of violence want, or identifies the correct emphasis to place on proper treatment or substantive outcome. Law is neither wholly certain nor a simple solution in this argument. The significance of my work lies in part on laying out the complexity of justice in real lives; and showing that the different philosophical approaches to justice do not reside only in libraries. I am aware that the ways in which I have examined justice in this thesis should arguably be separated – that is, justice as normative value, justice as judgement, justice as standard, and justice as institution. However, in real lives in a real and complex process, such separations slip. People confronted with radical particularity must step up to give opinion, respond to options, puzzle, think, reason, manage emotional states, and deliberate what justice means to them and to

those around them. They do not want a single thing; they want a lot of things. We cannot arrive at a sense of deep justice through one moment.

10.3 EXPANDED THESIS SUMMARY

This section sets out in more detail the findings and discussion. These follow the chapter chronology.

10.3.1 Mapping institutional justice

The first data chapter unpicked certain of the institutional logics to criminal justice. I did this through the narratives of an elite group of ex-Directors of Public Prosecution. This chapter worked from the questions of where power resides in criminal justice and how it works. Posed on the one hand as commonplace administrators and on the other as exercising sovereign prerogative, I see contemporary public prosecution as emblematic of actual institutional power and of symbolic command of criminal justice. Yet I could not spend a couple of hours in deep discussion on a subject about which they are passionate, and not also see good people. Good people putting their intellect, compassion and expertise to work. As good people they could not, however, say the unsayable – that individual members of the public are sacrificed to this work.

I am conscious of the irony in using the reflections of this elite group, good people though they are, in a depersonalised single narrative form. In the public realm it is usually they who have individual identity and substance. I showed the way in which, representative of institutional power, their selective telling of certain historical transitions has silenced a more complex account of the evolution and invocation of criminal law and criminal justice. That is, one in which private citizens emerged from their varied publics to author their own story of prosecution and what seeking justice meant to them. While the institutional birth of public prosecution is very recent, prosecutors nonetheless have attached themselves to an extended master narrative that maps to a civilising trajectory. They project a discourse of benign competence, inevitability and naturalness.

To this image of the benevolent mandarin, prosecutors add the language of high principle. The assertion of independence connects to visions of integrity. The claim to represent community diverts scrutiny; just as custodianship of public interest suggests

democratic authenticity. Essential to the authoritarian discourse are seemingly opposing depictions of a public that is vulnerable and in need of protection, and a public that is vengeful. The element to the discourse that is commonly ignored is that the prosecution is also the state.

I argue that it is through the claim to *be* the entity representing public *with* the mandate to determine who and what among the publics are legitimated, *plus* definitional authority on what constitutes the interests of that public that the unique ideological power of prosecution achieves pre-eminence. As discourse it compels universal acceptance. As ideology it masks hegemony. As hegemony it makes itself felt in the day-to-day exercise of unfettered discretion.

Does this practice of discretion always work to the interest of institutional power? It is, after all, flexibility in response to case circumstances. It takes place within a gap in the rules where public prosecution, representing the state and its own idea of common good, may appear merciful or may disadvantage individual members of the public.[271] It masks the fact that prosecution decision-making is absolute and essentially without review. The rights-bearing victim-citizen is simply impossible to recognise, whereas there is no doubt that the accused has rights. The idea of justice becomes simply a calculation of risk and benefit. Ironically, institutional constraint meant that prosecutors' reflections on justice were less resonant with the philosophical ideal than were those of lay people.

However, I also showed that the gap in which prosecution and the victim-citizen interact and where discretion plays out is richly textured. Considerable diversity of characterisation and experience inhabit prosecution anecdotes about their work with victims and offenders. That which is posed as rigidly formal is actually trodden with informality. A generic and abstract figure of the public is deeply marked by private tragedies and transgressions. Legal formality requires a particular modelling of these private affairs of citizens but it cannot change their essential informal nature. Pierre Bourdieu's suggestion that the distinction between public and private is over-

[271] Both the alleged offender and the victim, both being citizens, are disadvantaged if a prosecution proceeds or if it does not. Sometimes the disadvantage to each is similar and sometimes not. It may be argued that proceeding to prosecute is more likely in the victim's interests. However, this is a contestable proposition.

determined therefore works two ways. He illuminates those who benefit from the boundary setting. But he also invites us to look the other way, to notice the constitutive nature of public and private such that it emerges in the public realm of criminal justice.

10.3.2 Ordinary people and citizens

Looking down from above – as prosecutors do – people who are victims come from a private elsewhere and enter a public somewhere. Essentially, the individual becomes a tool for their larger project. Rather than articulate this, splintered pictures of the victim fill the public space.

In various realms – of the legal official, academia and wider society – these splinters are rendered pathetic or as punitive victims in others' media and political wars. In Chapter 5 I stepped away from this noise. In an effort to characterise people as more than their transitional victim status, I borrowed the terms 'ordinary people' and 'citizen'. I wanted to follow Amartya Sen's exhortation that a theory of justice must account for actual lives in the real world. In the first iteration I added flesh and depth to the lay participants by exploring the latent structure of values, attitudes and beliefs which revealed them embedded within a social world that is both various and regular. As ordinary people they have varied lives and histories, and different engagements with the civic world. They are part of a larger mass. By connecting people to this mass I made a pronounced distinction between them and power-holders such as public prosecutors. With this distinction in place, naming them next as *citizen* married social status with political status. As a definitional concept, describing victims as 'citizens first' opened a larger space in which the lay participants could talk about their ideas of justice.

While each of the lay people who participated was generous with their time, I fear I have not done justice to the light and shade of their thinking. At the second and third interviews the intensity of the incident and police intervention was subsumed by a different tone of comment about prosecution and court. I was struck by how consistently people would say, 'I know they have a job to do' and then go on to ask for something more individual to their circumstance. They wanted account taken of their questions, requirements, requests and reasons. At the same time, they were acutely

aware of the public function and duties of the various institutions. As citizens do, they thought of the particular *and* the general – a characteristic that is deep in ideas of justice.

In terms of their personal values, beliefs and attitudes about criminal justice the lay participants were not so different to the wider Australian population. They felt a strong commitment to the moral obligation of the law even though some of them had mixed histories with legal and welfare authorities. However, they were significantly more muted in their confidence in criminal justice. In this too they were similar to the wider Australian community. When faced with decisions in circumstances in which their control was circumscribed, these latent features were influential. But their beliefs were also unstable. If people expected the justice system to be fair, they also expected fairness to be discharged unevenly and differentially. This complex thinking in victim-citizens is generally veiled and unacknowledged in scholarly and public discourse.

This psychological infrastructure is one among a number of elements contributing to decision-making. The meanings that people make of the incident draw upon an emotional, cognitive and contextual mix that is intensely personal. Yet, in their engagement with significant others and with authorities, both men and women were informed by reasoning that was relational and communal, and that linked to public policy appeals that violence was wrong and not to be tolerated. This wider orientation showed that 'thinking like a citizen' did not oblige people to discard their own interests. It suggests that the idea of justice may act to engage people's 'ethical identity' in a unique and pivotal manner (Harris 2007).

Of critical importance to this possibility is seeing the number of ways justice was constructed by the lay participants. From the standpoint of disinterested citizen, justice is conceived from the potency of its symbols, to assessment of its efficacy, acknowledgment of its multiple governance functions, and finally to evaluation of its performance of certain norms that are core to the wider ideal. In unwrapping this imaginary, I showed justice to have concrete manifestations, performances and idealisations. In this latter form, the ideal elements of justice – fairness, equality, respect for all, and neutrality – are clearly compelling to lay people. However, they are also viewed as contingent and ambiguous in the real world.

10.3.3 Exploring justice goals

If the justice imaginary is unstable, then mobilising law is made with a hesitant step. In Chapter 6 I assert that the mobilisation of law by citizens is one among a number of options and is discretionary – even in the face of violence. It is a structural opportunity infused with drawbacks as much as with possibilities. To this opportunity I show that the victim-citizen brings multiple goals. Asking people what they wanted and why at different points in the justice process and at different times was revealing of how the idea of justice lived and moved.

The after-effects of violence – emotional and physical – were significant, although different in intensity and degree among the lay participants. Between the first and second interviews, feelings of anger and fear towards the person who had used the violence lessened for the victims. However, there was no change to the ascription of intentionality. Having been motivated to seek justice through the experience of injustice, the sense of a wrong done did not diminish over time. The desire for the wrong to be *brought to account* and for persons to be *held to account* is strong for the victim-citizen. Reasoning here was deontological in character. I conclude that accountability is a unifying threshold condition for justice and one that is sustained over the course of multiple encounters with different justice entities.

But if accountability is a starting point for the realisation of justice, is it also an end? On this point the idea of justice shifted to thinking about consequence. Here the lay participants articulated diverse goals to their reasons for seeking justice. These were instrumental and non-instrumental, personal and public. They were consistent in the abstract as well as the concrete. As goals they were directed towards three domains – to the victim, the offender and the community. This trilogy of interests represented different objects of value to which the good of justice was to be directed. This is the 'plural grounding' to ideas of justice that Amartya Sen asks us to attend to. Through the reflections of the lay participants I confirmed this inherent power and capacity in the idea of justice to trigger expansive thinking. In asking about justice, people necessarily thought of others.

What this point then complicates is the proposition that achieving justice for victims is getting what they want, or 'outcome preference'. If getting a favourable outcome is

something that is personally beneficial, then can this work with the different objects to which justice is directed? Part of the answer to this puzzle is Sen's argument that the plural grounds for justice can be 'partially ordered'. Interviewing people three times in a prospective longitudinal panel showed their multiple goals to be sequenced. The priorities of one person, however, are different to those of another and for different reasons. As a composite group, the lay participants wanted the court to arrive at sentences that were protective, rehabilitative and that drew on the authority of the court. They prioritised principles of rehabilitation, specific deterrence and victim protection. As a group they drew on reasons that were private as well as reasons that were communal. Each, however, ordered all of these features differently.

Plurality, ordering and sequencing illuminated a further puzzle. The lay participants were asked questions about getting the outcome they wanted, whether they were satisfied with the outcome, and whether justice was done. There was complexity and contradiction in just about every person's responses. People even said that the sentence (as one manifestation of outcome) was 'about right' even when it was not what they wanted. Clearly contrary positions appear to survive. In puzzling this complexity, what was revealing in people's reflections at their final interview was a sense of incomplete resolution. That is, that the interests of the offender and the community were accounted for in the justice deliberation, but not those of the victim.

This chapter highlighted informationally rich thinking about justice goals. As ordinary citizens, people carry, interpret and manage their own and others' ideas about justice as a multi-directional conception. Their thinking is infused with relational and emotional content that responds to shifts in context and emphasis. Reasoning their motivations and goals showed people thinking from moral commitments and as consequentialists. There is an oscillation that works between these two modes of thinking about justice that is particularly noticeable in interactions where people are provided with a number of occasions and a number of probes.

10.3.4 Experiencing justice

Chapter 8 explored further what lay behind flat assessments of satisfaction – this time through procedural and substantive justice inquiry. When the lay participants actually experienced justice as a series of interactions with authoritative decision-makers, I

weighed how their reflections sat alongside their earlier citizen-based expectations. Rather than arriving at an end point where procedural or substantive justice predominated in justice judgments, I came to see these as components that interacted strongly in an integrated conception of justice. Moreover, interviewing the lay participants a number of times showed their justice judgments to be context sensitive as well as malleable and fluid. I conclude that, rather than ascribe 'single motives or simple frames' at singular moments to human behaviour, people are 'both flexible and complex' in their thinking about justice. Reasoning about justice in the real world is contingent and less about 'competing conceptions' (Skitka et al. 2010: 28).

However, the procedural and substantive approaches did help unpack and to leverage understanding about what ordinary people think is fair and just. I illuminated these constructions as active, dynamic, interactive and unfolding within criminal justice and within people's wider social context. The interactions with authorities were moments during which ideas about justice could be experienced and enacted, and which then flowed into and changed with the next interface. Satisfaction with police is significantly higher than satisfaction with prosecution, court and with the justice system overall. However, I found that different dimensions, consistent with the literature, underlie assessments. These criteria of outcome acceptance, the quality of interpersonal treatment, influential voice, and respect for offenders' rights showed the experience of justice to be multi-layered.

These components fluctuate in importance but all are present in assessments about the three justice agencies. For all three justice agencies, the strongest positive correlation with overall satisfaction was with outcome acceptance and the quality of the interpersonal treatment. But the elements also linked strongly with each other in differing ways. Outcome acceptance and interpersonal treatment correlated strongly together; and the influential voice connected strongly with outcome acceptance for all three agencies. While the elements can be separated, they are clearly not separate. Rather, they form supple dimensions.

Moreover, these different dimensions were permeated with nuance in highly contextualised and particularised reflection from the lay participants. The emphases people placed on the quality of their interpersonal treatment embraced recognition of

their unique standing and circumstances, as well as respect for their personhood. Respect and recognition were demonstrated through the manner in which information was or was not provided by authorities. Victim-citizens clearly experienced information as a power resource. They also understood interaction with authorities as dialogue. The strong expectation for fairness in criminal justice that the lay participants articulated at their first interview emerged on later occasions in how they experienced equitable and fair treatment of themselves as well as of the violent person.

Justice as the attainment of outcome was also experienced in a number of ways. The reflections people offered went to the trilogy of interests they articulated at the commencement of their engagement with authorities. At the same time, these considerations sharpened at the second interview to focus primarily on the nature, appropriateness and impact of the sentence on the violent person, and the consequences to themselves and others. In an echo of their initial citizen evaluations about justice, people further pondered the extent to which the outcome calibrated with the normative and governance functions of justice. Perhaps inevitably, the resolutions they experienced were partial and incomplete.

10.3.5 Participating in justice

Chapter 9 expanded on the nature and reach of victim-citizens' voice as one of the components underpinning justice judgments. I showed that the importance of 'voice' is not just its expressive nature but that it is related to a sense that the outcome arrived at is acceptable and fair. The lay participants assessed their voice as moderately influential with police and prosecution and weakly influential with court. As a composite scale, influential voice showed strong and significant correlation between overall satisfaction with prosecution and with court.

People's narratives signalled voice to be a unique set of practices. They indicated that being heard was to be recognised as someone with distinctive and important insight into particular circumstances. To be heard was about influence that was meaningful; to be heard by authorities was a way of connecting 'the victim' to their different publics. To be heard was to have and to experience an influential voice embodied in the dual status of victim-citizen. Notwithstanding the stress placed on the *influence* of voice, the lay participants did not wish to supplant or dominate decision-makers. They

deferred to their expert status, to the experience and to the distinctive roles of authorities. In deferring they also referred to values constitutive of justice – fairness, impartiality and attention to evidence. They understood constraint in a unique public space.

Given the demanding expectations of justice that the longitudinal interviews revealed – including the importance of voice – I paid attention to how these could possibly be met and were actually met. At their first interview the majority of victim-citizens indicated a preference for a process that emphasised a finding. This particular decision is of course central to their desire for accountability. A majority also preferred that the process include some participatory opportunities. Of those who did indicate an interest in these as restorative opportunities, it was predominately for something after the finding and after the point of formal sentence. Interest in these opportunities was grounded in desires for the decision-maker as well as the offender to listen, to hear and to understand issues that referenced private and public concerns.

At their second interview (after the case had finalised) more people were prepared to consider a restorative opportunity *had it been offered*. Central to this interest was a desire to find answers, and to interact with both the offender and with the decision-maker. Through interaction, people felt they would have been able to convey messages about the harm, the wrongfulness, the consequences, and what was hoped for in the future. Restorative justice theorists emphasise these messages as flowing between victim and offender. I show that the interest in interaction triangulates between victim, offender and the public authority. I further conclude that, to the idea of sequencing justice goals, we can add sequenced steps in a process that works towards achieving multiple goals.

At the end of their justice journey, only a third of those participants interviewed on all three occasions expressed overall satisfaction with the handling of the case by the justice system. In their reflections on what the idea of justice now meant to them they pondered its contingent and slippery nature. At the same time, their remarks affirmed the expansive capacity of the term. That is, the different objects of value that comes within justice's realm, the many criteria embedded within it, and its ability to accommodate the ordering and sequencing of priorities.

10.4 AFTER THE DEMOCRATIC TURN

So where does the democratic turn to this thesis take debate about victims and justice? Firstly, it must be recognised that people who become victims of violence also exist as *citizens* in a social space and as members of a political community before, during and after their engagements with justice authorities. The political character of citizen status then argues for a humbler set of institutions, and for attention to the nature and meaning of the claims that citizens make. Here the standing of persons is not a legal construct. Moreover, it says that to exclude affected persons with a direct interest in a matter from its resolution is profoundly anti-democratic (Mansbridge et al. 2010; Fung 2010).

From this point comes a second one, that *citizens* have a range of interests in how justice is seen and done. Their justice interests look to different objects of value, and integrate a number of dimensions. When they interact on an individual basis with justice institutions their personal interests' surface but do not eradicate continuing attentiveness to public values and concerns. Thus private and public are not – as both restorative and orthodox justice advocates claim – in essential and irreconcilable conflict (Strang 2002: 201). Rather, they are constitutive and co-determining. In interpreting what is a wrong, one does not exist without the other; and in accepting complex accountabilities, neither what is public nor who is private are abstractions.

Third, bringing in these affected and affective voices necessarily makes transparent multiple meanings to the idea of justice and different principles for arriving at justice. Plurality and difference are not only part and parcel of contemporary democracy, but are arguably necessary to it. It seems ridiculous to have to state that people who are victims are as diverse as people who offend. Just as institutions of representative democracy must constantly adjust and respond to many communities and overlapping concerns, so too must justice institutions in serving diversity (Fung 2012). These institutions may be essential to the architecture of a democratic system, but engagement with its *demos* is essential to the legitimacy of justice in a wider and deeper sense.

Emerging from these three points is recognition that *space*[272] designed with particular characteristics – here actually *spaces* to achieve justice for the political community – can work to demand more of citizens. While some deliberative democrats may look for disinterested publics or non-partisan discussants, it is directly affected citizens who bring issues of personal and public concern to the door of criminal justice. Some quite obviously walk away and leave it to authorities to deal with. Most would like information about what is to be done, and many ask for more involvement. These spaces ask for a unique practice of citizenship – reporting, giving information, responding to query, being available, asking questions, being interviewed, giving evidence, offering impact and so on. Presently the institutions simply take these actions. As an opportunity, however, it is rich with potential; potential to recast the process as a deliberative system (Parkinson and Mansbridge 2012). It might ask what justice means to the individual (and those around them), what values they think might inhabit a just process and just outcome, and what outcomes they might wish to see for the trilogy of victim, offender and community. Moreover, the space can be made to do further work by asking for reasoning about preferences and encouraging thinking and discussion that is broad and deep, collective and individual. This is hard work, work that nurtures judgment and decision. It argues making deliberation work for justice (Dryzek 2013).

This argument imagines justice as a space for an emergent ethical citizen. Crucially, however, a fifth point necessarily must recognise that not everything can be resolved or is reconcilable after violence and from the experience of injustice (Mouffe 2005; Young 2002). While the emphasis on participation in justice of affected persons recognises a human capacity for reflexivity, it does not assume or require forgiveness, healing, restoration or even agreement. Inclusive deliberation is not a guarantee of an agreed shared outcome (if this is one idea of justice). It is certainly also no assurance of 'satisfaction'. Participation is simply based on rights of more profound origin than a legal nod.

[272] Braithwaite & Nickson, in their discussion about the sequencing of objectives in post-conflict settings, talk about the creativity in *making* space for justice (2012).

Finally, if the democratic turn I make to debate about victims is demanding of them as citizens, it is also (perhaps most importantly) demanding of authorities. On this point there is no gesturing to courtesy or reliance on good people. This point demands that authorities recognise and discharge their duties to people (victims and offenders) as rights-bearing citizens. Lest this assertion suggest subservience, the space creates demands for active ethical practice on authorities to guard against their own power as well as to engage with individuals. The victim-citizens in this study articulated goals for themselves as well as for others. When matters came to court, however, the personal goals often fell away. How easy it is for authorities to let victim-oriented concerns disappear into the shadows of the law. An ethical practice of justice would accept and act upon obligation to each in the justice trilogy.

10.5 STRENGTHS AND LIMITATIONS OF RESEARCH

I started this project determined to employ a method that would make transparent the range of interactions and decisions that comprised the justice system to victims of violence. I especially wanted to make space for different, sometimes contradictory, voices and to reveal the ways in which, in my working life, I had seen people's thinking about justice unfold. I had been critical of the single survey methodologies of so many studies of victims of crime and violence. The longitudinal prospective methodology certainly gave up rich and complex data, as I had hoped. Equally, the rapport that developed over time between me and the lay participants served to emphasise the reflective and communicative potential of shared deliberation over time. There is strength also in the interplay of narrative and quantitative data. Mixed longitudinal data is, however, difficult to work with and to wrestle into shape.

While I criticise the manner in which single survey researchers' box complex and fluid voices, it is a weakness that I did not manage to fully overcome. Each of the chapters broke stories into digestible parts. I pulled narratives apart to make particular points transparent. I wrestled with different ways in which I might give the reader a person's 'whole' story, and with which criteria to choose. So in placing David's story at the beginning, I hoped his voice would speak to the reader and for all the others. I hope this has, in some small way, honoured them.

Panel attrition is a real challenge. However, the 20% reduction in lay participants between each of the three interviews is consistent with other studies. I would have liked a better balance between domestic and non-domestic assault victims. However, this too had adjusted by the third interview. At that time, after proportionately more domestic assault victims had ceased participating, 26% of the final panel comprised men assaulted by strangers or known others. As an exploratory and interpretive study, issues of representativeness and numbers sufficient to establish causality were not vital. Nonetheless a future study would benefit from a larger sample and more equitable proportions between any sub-groups.[273]

10.6 THE PLACE AND POLITICS OF JUSTICE

In closing I return to ponder Jonathon Simon's remarks that people who were victims of crime and who sought recognition from and involvement with the justice system were anti-democratic. It was this inference that turned me to consider whether democratic theory had anything to say to justice. I hope I have been able to show a little of how 'solidarity and responsibility' can be enacted in spaces where people are afforded equal respect and concern.

Hitherto, the victim's exclusion from criminal justice has not been recognised as a democratic deficit. The orthodox space of contemporary criminal justice allows only strictly circumscribed roles and recitals to victims – and also to offenders. Criminal justice evokes different fears, expectations and imagery. It is a powerful presence in our democratic society more than it is actually present in ordinary people's lives. It provides a window through which to see mundane even squalid pictures of human interaction. It is a platform on which different performances are enacted – those drawing on the flourish of high principle and lofty language, and those depicting skirmish and dissonance.

The justice system highlights the social divisions, conflicts and entitlements that give rise to the commission of crime. It draws attention to ways in which the system

[273] Future research using longitudinal prospective methodology may also explore differences and similarities across diverse categories. For example, between victims of property offences and victims of violence offences; or between victims of physical violence and victims of sexual violence; or between victims in one legal system and victims in another different legal system.

regulates these divisions and acts to punish transgression. This way of thinking about the political in justice – its social control function – is recognised. Obscured from our understanding of the justice system as political is the exclusion of affected citizens – victims as well as offenders – from a direct and dignified role. The legal justification for this marginalisation has masked what is in effect a profoundly anti-democratic rationale. Underneath the high rhetoric about public interest and representing community is simply utilitarian logic. This is a project that human rights law and activism has yet to discover. What is at stake is not only fair and inclusive justice, but deep democracy.

APPENDIX A

Prosecution Interview Schedule

I want to commence with some questions that are very broad, but I think are necessary to understand and frame your opinions.

Overview

What do you think is the role that criminal law & justice performs in our society?

Where and how do you think 'legitimacy' for those roles come from in Australia?

What do you think 'the community' think of criminal law & justice? Are the viewpoints similar to or different from victims of violence in your experience?

How do you think public prosecution in Australia has gained (or lost) & maintains (or doesn't) its legitimacy with the community & with victims of violence?

Does confidence in justice equate with the legitimacy of justice? Is one necessary for the other?

Does anything need to change in your view – why & how?

Conceptions of Justice

What was the conception of *justice* you carried in your working life as a prosecutor? What are its main components? In what ways did you find your ideas of *justice* challenged/ affirmed in your working life as a prosecutor?

In your working life as a prosecutor, did you develop a sense of what *justice* meant to victims of violence? What were the similarities & differences to your own conception?

In your mind, why would a member of the public (as a victim of violence) report violence to police & cooperate with prosecution?

Prosecution role

What are the key historical influences to the establishment of public prosecution *in Australia*? Are there differences and similarities to this history with that for the evolution of public prosecution in England (other common law countries)?

What are the core legal and policy underpinnings to the role of a public prosecutor? Were there tensions, pressures and dilemmas for you in executing this role? If yes, can you expand on these?

How do you define *the public interest* in criminal law and justice? Is there any information or mechanisms (legal, administrative or other) you used to help you understand and work with this concept as a prosecutor? Were there tensions, pressures and dilemmas for you in performing your role *in the public interest*? If yes, can you expand on these?

How do you understand the private interest of a victim in criminal law and justice? Is there any information or mechanisms (legal, administrative or other) you used to help you understand and work with victims' private interests as a prosecutor? What were the tensions, pressures and dilemmas for you in accommodating (or not) these interests while performing your role *in the public interest*?

Do you see any connections between these issues and community confidence in the fair administration of justice? If yes, can you expand on these?

Future changes

There is debate amongst researchers, victim advocates & others about the issue of 'victim choice' as an aspect of empowerment and/or their 'rights' as citizens. What does this mean to you as a prosecutor? What choices do victims have/not have?

If there were to be structural, conceptual or legal changes to the ways in which criminal law and justice accommodates or involves the private interests of victims of violence, what might these look like to you?

APPENDIX B

VICTIMS OF VIOLENCE & JUSTICE (TIME 1)

REF NO: _____DATE OF INTERVIEW: _____

NAME OF INTERVIEWEE:
_____

DATE OF BIRTH:
_____

DATE OF INCIDENT:
_____

PROMIS NUMBER:
_____

CONTACT DETAILS:
_____

PERSON ALLEGED TO HAVE COMMITTED THE INCIDENT:

_____

DATE OF BIRTH:
_____

CHARGES	HOW FINALISED	DATE FINALISED	SENTENCE

INTRODUCTION

This survey is about listening to victims of violence. What you as a victim of violence say you would like from justice is vitally important to help improve the system. The research will explore in depth your experience and opinions. What you have to say matters very much!

NOTE ABOUT LANGUAGE: The term "violence" is used to describe the recent incident from which police became involved. This might not be the term that you prefer.

The survey asks you about a whole range of things. It asks you a bit about the recent incident itself and its impact on you. It asks about the response of the police and about what you want to see happen to the case at court. It also asks about some of your values and beliefs.

The survey starts off by asking you some basic questions about you and your family background. The questions are the same as asked in the national census.

SECTION ONE: PARTICIPANT BACKGROUND

Q1. Are you?

Male **1**
Female..... **2**

Q2. Gender of person who used violence against you? *MORE THAN ONE?*

Male **1**
Female..... **2**

Q3. What country were you born in? *Please circle one.*

Australia

Overseas (specify) …….

Q4. What country was your mother born in? *Please circle one.*

Australia

Overseas (specify) …….

Q5. What country was your father born in? *Please circle one.*

Australia

Overseas (specify) …….

Q6. Do you speak a language other than English at home? *Please circle one.*

No, English only **1**
Yes, Italian.....**2**
Yes, Greek **3**
Yes, Cantonese.....**4**
Yes, Mandarin **5**
Yes, Arabic.....**6**
Yes, Vietnamese.....**7**
Yes, other **8**

Specify ……

Q7. Do you identify yourself as Aboriginal or Torres Strait Islander?

No.....**1**
Yes, Aboriginal **2**
Yes, Torres Strait Islander **2**

Q8. Do you have a disability of any kind?

No.....**1**
Yes *(please specify)* **2**

……

Q9. What is your <u>current</u> relationship status? *(Please circle one)*

Married (including de facto relationships) **1**
Single (including divorced, separated, widowed)..... **2**

Q10. Did you have any children living with you at the time of the incident? *(Please circle one)*

No.....**1**
Yes.....**2**

Q11. Did you own or rent your home at the time of the incident? *(Please circle one)*

Own (including paying off a mortgage) **1**
Rent..... **2**
Other..... **3**

Q12. At the time of the incident, what was your employment status? *(Please circle one)*

Working full-time..... **1**
Working part-time **2**
Not employed **3**
Retired **4**
Studying full-time.....**5** **(Go to Q14)**
Home duties.....**6** **(Go to Q14)**

Q13 And your occupation? *Please circle one.*

Manager or Administrator **1**
Professional **2**
Tradesperson **3**
Clerical, sales or service worker **4**
Labourer, transport or factory worker **5**

Q14 What is the highest level of education you have completed? *(Please circle one)*

Received no formal schooling..... **1**
Primary school **2**
High school..... **3**
College/TAFE..... **4**
Bachelor's Degree **5**
Post Grad qualification (of some kind) **6**
Masters or PhD **7**

Q15 What is your gross annual income, before tax or other deductions, from all sources? *(Please circle a number)*

0 – 25,000 ..... **1**
25,001 – 45,000 ..... **2**
45,001 – 100,000 ..... **3**
100,001 – 250,000 ..... **4**
250,001 - above **5**

THANK YOU! This is the end of that personal background information.

SECTION TWO: THE RECENT INCIDENT

This section asks you a bit about the recent incident, but firstly I'd like to ask about some of your thinking beforehand.

Q16. Prior to this incident, had you thought or talked with anyone about using some sort of law or the justice system or something to try and address the problem? Can you tell me a bit about your thinking? For example, why, why not?

……
……
……
……
……
……
……
……
……

Q17. Prior to this incident, if someone had asked you what you thought about the justice system in our community, what might you have said?

……
……
……
……
……
……
……
……
……

Q18. When you think about the *idea of justice* what sorts of things might come to mind for you?

……
……
……
……
……
……
……
……

Q19. Now I would like to ask you some questions about the incident where police became involved and a person was charged. Did the incident involve: *(please answer all options)*

	None at all	A little bit	Quite a bit	Quite a lot
a. Physical abuse	**1**	**2**	**3**	**4**
b. Verbal abuse	**1**	**2**	**3**	**4**
c. Sexual abuse	**1**	**2**	**3**	**4**
d. Other *(please state what)*	**1**	**2**	**3**	**4**

Q20. Did you suffer any effects as a result of the incident? *Please answer all options*

	None at all	A little bit	Quite a bit	Quite a lot
a. Physical injury	**1**	**2**	**3**	**4**
b. Emotional injury	**1**	**2**	**3**	**4**
c. Damage to your property	**1**	**2**	**3**	**4**
d. Other *(please state what)*	**1**	**2**	**3**	**4**

Q21. Thinking about how you felt *at the time of the incident*, can you say if you felt: *(Please circle one on each line)*

	Not at all	**Not very**	**Somewhat**	**Very**	**Extremely**
a. Distressed	**1**	**2**	**3**	**4**	**5**
b. Angry	**1**	**2**	**3**	**4**	**5**
c. Frightened	**1**	**2**	**3**	**4**	**5**
d. Humiliated	**1**	**2**	**3**	**4**	**5**
e. Other *please state what)*	**1**	**2**	**3**	**4**	**5**

Q22. Do you think that this incident was: *(Please circle one)*

Not at all serious	Not very serious	Somewhat serious	Very serious	Extremely serious
1	**2**	**3**	**4**	**5**

Q23. At the time of this incident, was there a protection order in place between you and the person using the violence? *If more than 1 person, refer to main or primary charged person throughout.*

Yes.....**1**
No *(Go to Q25)*.....**2**
Don't know/Can't recall *(Go to Q25)*.....**3**

Q24. Who was the applicant for the order?

You (victim interviewee).....**1**
Other person.....**2**

Q25. When the incident took place, what is/was your relationship with the person using violence?

Husband/wife **1**
Ex-husband/wife **2**
De facto partner.....**3**
Ex-de facto partner **4**
Boyfriend/girlfriend **5**
Ex-Boyfriend/girlfriend **6**
Other (state what relationship to you).....**7**
.....

Q26. How long have you had/or did you have, this relationship with this person?

Under 12 months.....**1**
1-3 years **2**
3-5 years **3**
Between 5-10 years **4**
More than 10 years.....**5**

Q27. Do you wish for this relationship to continue? *Please circle one.*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

Q28. Has the person who was violent to you in this incident done so on a previous occasion?

Yes.....**1**
No (*go to question 29*).....**2**
Can't Recall (*go to question 29*).....**3**

(a) If yes, how frequently has this person done something like this to you before? *(Please circle one)*

Never done this before	Once or twice before	A few times before	Quite a few times before	Many times before
1	**2**	**3**	**4**	**5**

(b) In recent times, would you say that the violence has become: *(please circle one)*

a lot less serious	a bit less serious	about the same	a bit more serious	pretty serious	very serious
1	**2**	**3**	**4**	**5**	**6**

(c) In recent times, would you say that the violent situation you are in has become: *(Please circle one)*

a lot less bad	a bit less bad	about the same	a bit worse	pretty bad	very bad
1	**2**	**3**	**4**	**5**	**6**

Q29. Have you sought help about the violence/the situation before the recent incident?

	Never done this before	Once or twice before	A few times before	Quite a few times before	Many times befor
a. From my family.....	**1**	**2**	**3**	**4**	**5**
b. From friends.....	**1**	**2**	**3**	**4**	**5**
c. From a health service	**1**	**2**	**3**	**4**	**5**
d. From a community service....	**1**	**2**	**3**	**4**	**5**
e. From a spiritual leader	**1**	**2**	**3**	**4**	**5**
f. From a lawyer	**1**	**2**	**3**	**4**	**5**
g. From a mental health service	**1**	**2**	**3**	**4**	**5**
h. From the police	**1**	**2**	**3**	**4**	**5**
i. Other *(please state who/what)……..*	**1**	**2**	**3**	**4**	**5**

Q30. Did any of these people/services encourage or support you to contact police? If yes, which ones?

……

……

Q31. Thinking about the person who used violence in this *most recent incident*, how would you describe your feelings (emotions) now about him? *(Please answer every statement)*

	Definitely not	**Maybe not**	**I am not sure**	**Maybe yes**	**Definitely yes**
a. I don't have any particular feelings for this person.....	**1**	**2**	**3**	**4**	**5**
b. I feel numb about this person.....	**1**	**2**	**3**	**4**	**5**
c. I feel frightened of this person.	**1**	**2**	**3**	**4**	**5**
d. I feel love for this person.	**1**	**2**	**3**	**4**	**5**
e. I feel angry at this person.....	**1**	**2**	**3**	**4**	**5**
f. I feel empathy for this person.....	**1**	**2**	**3**	**4**	**5**
g. I feel like getting even with this person	**1**	**2**	**3**	**4**	**5**
h. I feel forgiving toward this person	**1**	**2**	**3**	**4**	**5**
i. I feel confused/puzzled about this person..	**1**	**2**	**3**	**4**	**5**
j. I feel sad for this person.....	**1**	**2**	**3**	**4**	**5**
k. I feel pity for this person					

Q32. With reference to the most recent incident please say how much you agree or disagree with the following statements.

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I think the offender knew what he was doing at the time.....	**1**	**2**	**3**	**4**	**5**
b. I think the offender did not mean to hurt me at the time.....	**1**	**2**	**3**	**4**	**5**
c. I think the offender was provoked to do what he did at the time.....	**1**	**2**	**3**	**4**	**5**
d. I think the offender was influenced by other people at the time.....	**1**	**2**	**3**	**4**	**5**
e. I think the offender was influenced by drink/drugs at the time.....	**1**	**2**	**3**	**4**	**5**

Q33. Have a look at these statements. How much do they seem like you and your feelings about your future at this time?

Please answer each statement	**Not at all like me**	**Not much like me**	**Not sure**	**Somewhat like me**	**Very much like me**
a. What happens to me in the future mostly depends on me.....	**1**	**2**	**3**	**4**	**5**
b. I feel that I have control over the direction my life is taking.....	**1**	**2**	**3**	**4**	**5**
c. I often feel helpless in dealing with the problems of life	**1**	**2**	**3**	**4**	**5**
d. There is really no way I can solve some of the problems I have	**1**	**2**	**3**	**4**	**5**

Q34. Would you say that you feel good about yourself: -

never	hardly ever	now and then	some of the time	most of the time	all the time
1	**2**	**3**	**4**	**5**	**6**

SECTION THREE: REPORTING TO POLICE & TREATMENT

Now I would like to ask you some questions about reporting the incident to police and the police response.

Q35. Who reported the incident to police?

You (victim interviewee) (*go to Q 37)*.....**1**
The person using violence **2**
One of your children.....**3**
Neighbour **4**
Don't know who reported it **5**
Other (state what relationship to you).....**6**
.....

Q36. If the person who reported to police was not you, did you:

Want the report made.....**1**
Not want the report made (*Go to Q39*.....**2**
Was unsure whether I wanted the report made or not **3**

Q37. If you did want the report made, what were the main reasons for getting police involved?

……

……

Q38. If you did want the report made, would you say <u>why the police</u> and not some other service/ agency or person at this time?

……

……

39 If you did <u>not</u> report the incident to police or were unsure, why not and what might be the circumstances in the future when you might seek help from police?

……

……

Q40. Below are some statements about how others might view the incident that took place. Can you say how much you agree or disagree with them? *Please answer each statement*.

	Strongly disagree	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. The community sees incidents such as happened to me as serious.	**1**	**2**	**3**	**4**	**5**
b. Police see incidents such as happened to me as serious.....	**1**	**2**	**3**	**4**	**5**
c. Police understand how it feels to be a victim of violence	**1**	**2**	**3**	**4**	**5**

Q41. When police attended the incident, which of the following did you <u>mainly</u> want them to do? *(Please answer one)*

I didn't want them there in the first place.....**1**
I wanted them to arrest the violent person & take him away **2**
I wanted them to take the violent person away but not arrest **3**
I wanted them to calm down the violent person but not arrest or take away **4**
I wanted them to take me away **5**
I didn't want them to do anything significant.....**6**
I wasn't sure/didn't know what I wanted them to do **7**
Other (*please state what you wanted them to do)*.....**8**
……

……

Q42. Can you say *why* you mainly wanted them to do this [what were you trying to achieve/your objective]?

……

……

Q43. When police attended the *most recent incident*, what did they actually do? *Please answer each option.*

a. They arrested the violent person & took him away ..... **No** **Yes**
b. They took the violent person away but did not arrest ..... **No** **Yes**
c. They calmed down the violent person but not arrest or take away ..... **No** **Yes**
d. They arrested me and took me away ..... **No** **Yes**
e. They took me away ..... **No** **Yes**
f. They didn't do anything significant ..... **No** **Yes**
g. They gave me information about services ..... **No** **Yes**
h. They applied for a protection order ..... **No** **Yes**
i. They gave me advice about options I might have ..... **No** **Yes**
j. I don't know what they did ..... **No** **Yes**
k. Other (*please state what they did)* ..... **No** **Yes**

Q44. When you think about the way you were treated by police during the recent incident, do you feel…?

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I was given the opportunity to express my views before a decision was made	**1**	**2**	**3**	**4**	**5**
b. I was able to influence the decision made by police	**1**	**2**	**3**	**4**	**5**
c. My views were considered when a decision was made	**1**	**2**	**3**	**4**	**5**
d. I agree with the decision the police made about the incident.	**1**	**2**	**3**	**4**	**5**
e. I accept the decision the police made about the incident	**1**	**2**	**3**	**4**	**5**
f. I was given an honest explanation for why the decision was made.	**1**	**2**	**3**	**4**	**5**
g. I understand why the police made the decision s/he did.	**1**	**2**	**3**	**4**	**5**

Q45. It is the police responsibility to decide to press charges if they think someone has broken a law. Can you say if you agree that they should have this responsibility *in situations like yours*?

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(a) Why is this? ……

Q46. Thinking about the decisions the police made to charge the person, would you say…

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I was satisfied with this decision.....	**1**	**2**	**3**	**4**	**5**
b. This decision I received was fair.....	**1**	**2**	**3**	**4**	**5**
c. This decision I received was what I expected.....	**1**	**2**	**3**	**4**	**5**
d. I received the decision I deserved.....	**1**	**2**	**3**	**4**	**5**
e. I received the decision I wanted	**1**	**2**	**3**	**4**	**5**

Q47. Generally speaking, how satisfied were you with the way the police handled your case *at the time of the incident?* (*Please circle one)*

Extremely satisfied.....**1**
Very satisfied **2**
Somewhat satisfied.....**3**
Very dissatisfied.....**4**
Extremely dissatisfied **5**

Q48. Thinking about the police response to the incident, do you think that you would call for police assistance in the future if something similar happened to you again? (*Please circle one)*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

Q49. In a similar situation in the future, would you like police to deal with it in a similar way? (*Please circle one)*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

Q50. Thinking about how you were treated by police *in relation to the incident* can you indicate whether you agree or disagree with the following statements?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. The police did not take the incident seriously.	**1**	**2**	**3**	**4**	**5**
b. I was treated with respect	**1**	**2**	**3**	**4**	**5**
c. The police did not respect my rights	**1**	**2**	**3**	**4**	**5**
d. I was treated with dignity by police	**1**	**2**	**3**	**4**	**5**
e. The police treated the violent person with respect.....	**1**	**2**	**3**	**4**	**5**
f. The police did not respect the rights of the violent person	**1**	**2**	**3**	**4**	**5**
g. I felt reasonably safe once police left	**1**	**2**	**3**	**4**	**5**
h. The police were polite to me	**1**	**2**	**3**	**4**	**5**

i. Police did not investigate the incident thoroughly	**1**	**2**	**3**	**4**	**5**
j. I was given information from police that was useful to me to help deal with the problem	**1**	**2**	**3**	**4**	**5**
k. Police kept me informed about what was happening to my case	**1**	**2**	**3**	**4**	**5**
l. Police did not give me information about services for victims	**1**	**2**	**3**	**4**	**5**
m. Police got enough information to make a proper decision about the incident	**1**	**2**	**3**	**4**	**5**
n. Police were unhelpful	**1**	**2**	**3**	**4**	**5**
o. Police treated me as they would any other member of the community	**1**	**2**	**3**	**4**	**5**
p. Police did not treat me as the victim of the incident	**1**	**2**	**3**	**4**	**5**
q. Police were fair in their treatment of me	**1**	**2**	**3**	**4**	**5**

Q51. Thinking about what police did as a result of the incident can you indicate whether you agree or disagree with the following statements in relation to your case?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. The procedures the police used were fair to me	**1**	**2**	**3**	**4**	**5**
b. The procedures the police used were not fair to the violent person	**1**	**2**	**3**	**4**	**5**
d. The police made the right decision according to the law	**1**	**2**	**3**	**4**	**5**
e. The laws the police used are not right for these situations	**1**	**2**	**3**	**4**	**5**
f. The police were not effective in dealing with the situation	**1**	**2**	**3**	**4**	**5**

g. I would expect police to make similar decisions with other people in the community	**1**	**2**	**3**	**4**	**5**

Q52. Thinking ahead to what might happen next in the justice process, do you agree or disagree with the following?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I expect that the prosecution lawyers will ask me what I want to see happen to the case.....	**1**	**2**	**3**	**4**	**5**
b I expect to have my say at court about the case.....	**1**	**2**	**3**	**4**	**5**
c I expect the justice system to be able to stop the violence.....	**1**	**2**	**3**	**4**	**5**
d I expect the justice system to be fair	**1**	**2**	**3**	**4**	**5**

Q53. Thinking ahead to what might happen next in the justice process, what sort of expectations do <u>you</u> have about it?

……

……

Q54. Did police put you in contact with the DVCS *at the time of the incident*?

Yes.....**1**
No (go to Q57) **2**
Can't recall (go to Q57).....**3**

Q55. Did DVCS attend or did you speak with them on the phone *at the time of the incident*?

They attended.....**1**
They telephoned.....**2**
Can't recall (go to Q57).....**3**

Q56. Was the contact with the DVCS support person at the time of the incident helpful or unhelpful to you?

Completely unhelpful	Very unhelpful	Somewhat helpful	Very helpful	Extremely helpful
1	**2**	**3**	**4**	**5**

Q57. Now thinking about the violent person and the decision made by police to charge him, do you think he "*got the outcome he deserved*"?

Strongly disagree	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
1	**2**	**3**	**4**	**5**

PREVIOUS INCIDENTS REPORTED

Q58. Has the person who was violent to you on this occasion been reported to police before for abusing you?

Yes (*go to question 60)* **1**
No.....**2**
Don't know/Can't recall (*go to question 62)* **3**

Q59. If no, why not?

……

……

Q60. If yes, can you recall what happened as a result of the *most recent <u>previous</u>* report to police? *Please circle any that apply.*

a. I don't know/can't recall what they did ..... **No** **Yes**
b. They arrested the violent person & took him away ..... **No** **Yes**
c. They took the violent person away but did not arrest..... **No** **Yes**
d. They calmed down the violent person but did not arrest or take away ..... **No** **Yes**
e. They arrested me and took me away ..... **No** **Yes**
f. They took me away ..... **No** **Yes**
g. They didn't do anything significant ..... **No** **Yes**
h. Other (*please state what they did)* ..... **No** **Yes**

Q61. Thinking about how you were treated by police at that *most recent <u>previous</u>* report made to them, would you indicate if you agree or disagree with the following statements about how you were treated then?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. The police did not take the incident seriously.	**1**	**2**	**3**	**4**	**5**
b. I was treated with respect	**1**	**2**	**3**	**4**	**5**
c. The police did not respect my rights	**1**	**2**	**3**	**4**	**5**
d. I was treated with dignity by police	**1**	**2**	**3**	**4**	**5**
e. The police treated the violent person with respect.....	**1**	**2**	**3**	**4**	**5**
f. The police did not respect the rights of the violent person	**1**	**2**	**3**	**4**	**5**
g. I felt reasonably safe once police left	**1**	**2**	**3**	**4**	**5**
h. The police were polite to me	**1**	**2**	**3**	**4**	**5**
i. Police did not investigate the incident thoroughly.....	**1**	**2**	**3**	**4**	**5**

j. I was given information from police that was useful to me to help deal with the problem.....	**1**	**2**	**3**	**4**	**5**
k. Police kept me informed about what was happening to my case	**1**	**2**	**3**	**4**	**5**
l. Police did not give me information about the Crisis Service (DVCS) or other victim service	**1**	**2**	**3**	**4**	**5**
m. Police got enough information to make a proper decision about the incident	**1**	**2**	**3**	**4**	**5**
n. Police were unhelpful	**1**	**2**	**3**	**4**	**5**
o. Police treated me as they would any other member of the community.....	**1**	**2**	**3**	**4**	**5**
p. Police did not treat me as the victim of the incident.....	**1**	**2**	**3**	**4**	**5**
q. Police were fair in their treatment of me	**1**	**2**	**3**	**4**	**5**
r. Police did not give me an opportunity to tell them what had happened.....	**1**	**2**	**3**	**4**	**5**
s. The police were impartial.	**1**	**2**	**3**	**4**	**5**
t. Police arrested the person who had used violence.	**1**	**2**	**3**	**4**	**5**
u. Police helped me get a protection order.	**1**	**2**	**3**	**4**	**5**
v. The police did not believe me.	**1**	**2**	**3**	**4**	**5**
w. The police were effective in dealing with the situation.	**1**	**2**	**3**	**4**	**5**

SECTION FOUR: YOUR JUSTICE GOALS (PROCESS AND OUTCOME)

This section is about what you would prefer to see happen now that the person who used violence against you has been charged with a criminal offence. I ask what decision you would like made about the case, what sort of outcome you would prefer, what type of process you would prefer, and what are your goals for justice.

Q62. Firstly, thinking about the incident that has recently happened to you when police became involved, what would be the three most important things for you to *"see justice done"?*

……

……

Q63.Have you asked police or prosecution to drop the charges in relation to the recent incident?

No.....**Yes**

(a) Why is that?

……

Q64. If charges are not dropped, what decision at court would you like made about your case?

Please answer every statement	**Strongly against**	**Against**	**Neither in favour nor against**	**In favour**	**Strongly in favou**
a. **Charges Dismissed** - To have the charges withdrawn and/or dismissed at court.....	**1**	**2**	**3**	**4**	**5**
b. **Not guilty** - The violent person be found not guilty [not proved].....	**1**	**2**	**3**	**4**	**5**
c. **Guilty** - The violent person be found or plead guilty [proved]	**1**	**2**	**3**	**4**	**5**

Q65. In our system, a person can be convicted but have no conviction recorded by the court and have no sentence. Or a person can have a conviction recorded and some sort of sanction or penalty decided by the court. This question asks you what you would like the offender to receive from the court?

Please answer every statement	**Undesirable, would make things worse**	**Neither desirable nor undesirable**	**Somewhat desirable, not a high priority**	**Desirable, high priority**	**Essential the highest priority**
No Conviction Recorded					
a. not have any sentence imposed.....	**1**	**2**	**3**	**4**	**5**
b. not have a sentence imposed but to hear a message of condemnation from the judge/magistrate.....	**1**	**2**	**3**	**4**	**5**
Conviction Recorded & Sentence Options					
c. to hear a message of condemnation from the judge/magistrate.....	**1**	**2**	**3**	**4**	**5**
d. perform a service for the community	**1**	**2**	**3**	**4**	**5**
e. perform a service for me.....	**1**	**2**	**3**	**4**	**5**
f. perform a service that I decide..	**1**	**2**	**3**	**4**	**5**
g. apologise to me in person.....	**1**	**2**	**3**	**4**	**5**
h. apologise to me in writing.....	**1**	**2**	**3**	**4**	**5**
i. pay a fine to the court.....	**1**	**2**	**3**	**4**	**5**
j. pay me for the costs I incurred as a result of the incident.....	**1**	**2**	**3**	**4**	**5**
k. attend a violence rehabilitation program.....	**1**	**2**	**3**	**4**	**5**

l. attend a drug/alcohol rehabilitation program.....	**1**	**2**	**3**	**4**	**5**
m. be ordered by the court not to come near me	**1**	**2**	**3**	**4**	**5**
n. be ordered by the court to follow certain directions	**1**	**2**	**3**	**4**	**5**
o. to receive a good behaviour bond from the court	**1**	**2**	**3**	**4**	**5**
p. receive a custodial sentence (*Please specify weekend? Suspended? Full time? Period of time?)*	**1**	**2**	**3**	**4**	**5**
q. Other outcome *(Please state what)*	**1**	**2**	**3**	**4**	**5**

……

Q66. Out of these sanctions or penalties, what would be your top 3 preferences? *Perhaps write first, second or third alongside your answers at Q65 or below.*

First preference……

Second preference……

Third preference…… ……

Q67. In our criminal justice system there is a step-by-step process in the court for decisions to be made about a case. This question gives you some options about what steps <u>you</u> would like to see happen and in what order. The options look similar but some of the steps are switched around to help you choose. Some of these options are not actually possible in our current system. However, the question asks you what process you would favour in order to achieve the decision and outcomes you indicated that you would prefer (Q63 and 64). It is helpful to you to know that a "*restorative conference*" is a meeting between the victim and offender with a trained facilitator.

Please answer every statement	**Strongly against**	**Against**	**Neither in favour of nor against**	**In favour**	**Strongly in favour**
a. Judge/magistrate to make a finding of guilt and, after this, deciding the sentence.....	**1**	**2**	**3**	**4**	**5**
b. Judge/magistrate to make a finding of guilt, hear about the impact of the offence on me and, after this, judge/ magistrate deciding the sentence.....	**1**	**2**	**3**	**4**	**5**
c. The case not going to court but have police divert the case to some sort of mediation or restorative conference*.....	**1**	**2**	**3**	**4**	**5**
d. Judge/magistrate sending us both to a restorative justice conference <u>before</u> the finding of guilt and instead of a sentence at court*.....	**1**	**2**	**3**	**4**	**5**
e. Judge/magistrate sending us both to a restorative justice conference <u>after</u> the finding of guilt and instead of a sentence at court.....	**1**	**2**	**3**	**4**	**5**
f. Judge/magistrate sending us both to a restorative justice conference <u>after</u> the finding of guilt and, after this, for the case to <u>come back</u> to court for a sentence*	**1**	**2**	**3**	**4**	**5**
g. Judge/magistrate making a finding of guilt and, after this, deciding the sentence, and <u>then</u> us having the opportunity for a restorative conference	**1**	**2**	**3**	**4**	**5**
h. Judge/magistrate making a finding of guilt, hear about the impact of the offence on me, then decides the sentence, and <u>then</u> us having the opportunity for a restorative conference	**1**	**2**	**3**	**4**	**5**

Q68. Can you tell me what would be your top three preferences from these options? *Perhaps write first, second or third alongside your answers at Q67 or below.*

First preference……

Second preference……

Third preference…… ……

(a) What is it about these particular processes or steps that is most attractive to you? OR what is it about the processes and steps that you would <u>not</u> prefer that are unattractive to you?

……

……

Q69. In our system, if a person is <u>convicted</u> of a criminal offence, the Magistrate or Judge has to decide what the <u>sentence</u> (if any) should be. I have a list of the things that a Magistrate or Judge must think about in deciding on a sentence. <u>Thinking about your particular case</u>, please indicate the extent to which you accept or reject each of the following as *principles that would guide you*.

1 = Reject
2 = Inclined to reject
3 = Neither reject nor accept
4 = Inclined to accept
5 = Accept as important
6 = Accept as very important
7 = Accept as of utmost importance

Read through the list before you start. This will give you an opportunity to decide which are the most important principles for you personally.

Justice Principles	Reject			Inclined to accept			Utmost importance
a. To *punish* - do something to punish/discipline/penalize/chastise the person.....	1	2	3	4	5	6	7
b. To *deter*[specific] – do something to stop the person from committing violence again ..	1	2	3	4	5	6	7
c. To *deter* [general] – do something as a message to stop others in the community from committing violence	1	2	3	4	5	6	7
d. To *rehabilitate* – do something to help the violent person face their problems and to help them change	1	2	3	4	5	6	7
e. To *protect* [victim] – do something to the violent person for the protection of the victim ..	1	2	3	4	5	6	7
f. To *protect* [community] – do something to the violent person for the protection of the community	1	2	3	4	5	6	7
g. To *restore* – do something to recognize the harm caused and to help restore all parties.....	1	2	3	4	5	6	7
h. To *denounce* – do something to give a stern message about how wrong the violence is/was. ..	1	2	3	4	5	6	7
i. To *incapacitate* – do something to remove the capacity of the person to commit violence in the future.....	1	2	3	4	5	6	7

Q70. What is important to you about the principles you chose?

……

SECTION FIVE: ABOUT YOU – ATTITUDES, BELIEFS AND VALUES

The previous sections asked about the incident and what you would like from the justice system in relation to your case. This section asks you some questions about a variety of issues such as what you think about certain institutions, about other people, some ideas about justice in general and something about your own values as a person.

Q71. Following is a list of organisations & community groups. Please indicate how much you trust each one.

Please answer every option	**Trust them a lot**	**Trust them a fair bit**	**Trust them only a little**	**Do not trust them at all**
	1	**2**	**3**	**4**
a. Newspapers & television stations..	**1**	**2**	**3**	**4**
b. The public schools in your area.....	**1**	**2**	**3**	**4**
c. The firestation in your area	**1**	**2**	**3**	**4**
d. Your local government.....	**1**	**2**	**3**	**4**
e. The hospitals in your area	**1**	**2**	**3**	**4**
f. The police stations in your area.....	**1**	**2**	**3**	**4**
g. The federal government.....	**1**	**2**	**3**	**4**
h. The local law courts.....	**1**	**2**	**3**	**4**
i. Charities.....	**1**	**2**	**3**	**4**
j. Neighbours				

Q72. How often do you think that people would try to take advantage of you if they got the chance? (*Please circle one*)

Almost never	**Some of the time**	**Half the time**	**Much of the time**	**Almost always**
1	2	3	4	5

Q73. Here are some statements about our laws and justice, please indicate whether you agree or disagree with them.

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither agree nor disagree**	**Agree**	**Strongly agree**
a. Obeying the law is the right thing to do	**1**	**2**	**3**	**4**	**5**
b. I feel a moral obligation to obey the law	**1**	**2**	**3**	**4**	**5**
c. I may not like all the laws and rules we have in place, but obeying them is a part of life we must accept	**1**	**2**	**3**	**4**	**5**
d. Our criminal justice system needs to undergo significant changes to make it a fairer system for all	**1**	**2**	**3**	**4**	**5**
e. I feel our criminal justice system reflects the needs of the community	**1**	**2**	**3**	**4**	**5**
f. The laws of our criminal justice system are generally consistent with the views of ordinary Australians about what is right and wrong	**1**	**2**	**3**	**4**	**5**
g. Australia's criminal justice system does not protect my interests.....	**1**	**2**	**3**	**4**	**5**

h. I have a great deal of confidence in our criminal justice system.....	**1**	**2**	**3**	**4**	**5**
i. I sometimes question the laws we are asked to obey.....	**1**	**2**	**3**	**4**	**5**
j. People should accept the decisions of police even if they think they are wrong.....	**1**	**2**	**3**	**4**	**5**
k. Disobeying the law is sometimes justified.....	**1**	**2**	**3**	**4**	**5**

And now, some questions about what you think about courts and the sentences they give.

Q74. In general, would you say that sentences handed down by the courts are too tough, about right, or too lenient?

Much too tough	**A little too tough**	**About right**	**A little too lenient**	**Much too lenient**
1	2	3	4	5

Q75. What type of criminal were you mainly thinking of when you answered this question?

……

Q76. What about non-violent offenders, would you say that sentences handed down by the courts are too tough, about right, or too lenient?

Much too tough	**A little too tough**	**About right**	**A little too lenient**	**Much too lenient**
1	2	3	4	5

Q77. And drug-addicted offenders?

Much too tough	A little too tough	About right	A little too lenient	Much too lenient
1	2	3	4	5

Q78. Finally, what about young offenders?

Much too tough	A little too tough	About right	A little too lenient	Much too lenient
1	2	3	4	5

Q79. What you value as a person is important to understanding your beliefs and attitudes. Below is a list of values. Please read through the list. To what extent do you accept or reject these values? You may choose the same response as often as you wish.

1 = Reject

2 = Inclined to reject

3 = Neither reject nor accept

4 = Inclined to accept

5 = Accept as important

6 = Accept as very important

7 = Accept as of utmost importance

Do you value …….? *Please give an answer to each*.

Please answer every statement	**Reject**			**Inclined to accept**			**Utmost importance**
a. Self-knowledge or self-insight (being aware of what sort of person you are).	**1**	**2**	**3**	**4**	**5**	**6**	**7**
b. Recognition by the community (having a high standing in the community	**1**	**2**	**3**	**4**	**5**	**6**	**7**
c. Inner harmony (feeling free of conflict within yourself)	**1**	**2**	**3**	**4**	**5**	**6**	**7**
d. Self-improvement (striving to be a better person)	**1**	**2**	**3**	**4**	**5**	**6**	**7**
e. Economic prosperity (being financially well off)	**1**	**2**	**3**	**4**	**5**	**6**	**7**
f. Authority (having power to influence others and control decisions)	**1**	**2**	**3**	**4**	**5**	**6**	**7**
g. Ambition (eager to do well)	**1**	**2**	**3**	**4**	**5**	**6**	**7**
h. Wisdom (having a mature understanding of life).....	**1**	**2**	**3**	**4**	**5**	**6**	**7**
i. Self-respect (believing in your own worth).....	**1**	**2**	**3**	**4**	**5**	**6**	**7**
j. The pursuit of knowledge (always trying to find out new things about the world we live in).....	**1**	**2**	**3**	**4**	**5**	**6**	**7**
k. Competition (always trying to do/be better than others)	**1**	**2**	**3**	**4**	**5**	**6**	**7**

Q80. Now here are some statements about "being a good citizen". How strongly do you agree or disagree with each of them?

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither agree nor disagree**	**Agree**	**Strongly agree**
a. Being a good citizen is about becoming involved in your community.....	**1**	**2**	**3**	**4**	**5**
b. Being a good citizen means taking an active interest in politics.....	**1**	**2**	**3**	**4**	**5**
c. Being a good citizen means standing up for what you think is right even if others disagree	**1**	**2**	**3**	**4**	**5**
d. Good citizens do not rely on government, they take responsibility for themselves	**1**	**2**	**3**	**4**	**5**
e. Good citizens give a helping hand to others	**1**	**2**	**3**	**4**	**5**
f. Good citizens accept that others have a right to be different.....	**1**	**2**	**3**	**4**	**5**
g. Good citizens work hard and do their fair share	**1**	**2**	**3**	**4**	**5**
h. Good citizens get on with their own lives and let others live as they want to.....	**1**	**2**	**3**	**4**	**5**

Q81. Finally, I have just a couple of questions about your activities in the community. In the past 12 months, how often have you participated in the activities of one of the following associations or groups?

Please answer every option	**At least once a week**	**At least once a month**	**Several times**	**Once or twice**	**Never**
	1	**2**	**3**	**4**	**5**
a. A sports association	**1**	**2**	**3**	**4**	**5**
b. A cultural association	**1**	**2**	**3**	**4**	**5**
c. A church or other religious organisation	**1**	**2**	**3**	**4**	**5**
d. A community service or civic association.....	**1**	**2**	**3**	**4**	**5**
e. A political party or organisation					

Q82. How interested would you say you personally are in politics?

Very interested	**Fairly interested**	**Not very interested**	**Not at all interested**
1	2	3	4

THANK YOU VERY MUCH FOR COMPLETING THIS INTERVIEW!

I know that this was a long interview but your views and experiences are important and I really appreciate your dedication in seeing it through to the end.

Do you agree for me to contact you again at the conclusion of your case at court? You do not have to agree to a second interview at this stage, just to me contacting you.

Yes

No

Primary contact number: ……..

Second contact number: ……

Q83. Finally, is there anything else you would like to tell me about what you feel as a victim of violence and want from police as a victim of violence?

APPENDIX C

VICTIMS OF VIOLENCE STUDY – TIME 2 INTERVIEWS

Some time ago you were kind enough to tell me what you wanted from the justice process after a person was charged in relation to an incident of violence against you. This second survey asks what happened about the case and what you think and feel about this. What you have to say for this research matters very much!

NOTE ABOUT LANGUAGE: Some of the terms used by the researcher may not be ones you would use yourself.

This second survey asks you about a whole range of things. It asks you how you feel now about justice and about your safety. It asks you about your experience with prosecution and with the court. It also asks you what you think about the outcome of the case.

SECTION ONE: OVERALL FEELING ABOUT JUSTICE & SAFETY

Q1. How are you feeling *now* about the justice system response to the violent incident from which criminal charges arose?

……..

……

(a) Why is that?

……..

……

Q2. What 2 or 3 things do you feel most *positive* about with regard to the justice system response?

……

……

(a) Why is that?

……

……

Q3. What 2 or 3 things do you feel most *negative* about with regard to the justice system response?

……

……

(a) Why is that?

……

……

Q4. Since the case has been finalised, how safe do you feel from further violence and abuse from the violent person?

Not at all safe	Not very safe	Somewhat safe	Fairly safe	Very safe
1	**2**	**3**	**4**	**5**

Q5. Here is a statement:- *The justice system intervention has had an impact in stopping the violence against me.* Do you agree or disagree with it?

Strongly disagree	Disagree	Neither disagree or agree	Agree	Strongly agree
1	**2**	**3**	**4**	**5**

Why do you think this?.....

Q6. Has a protection order been taken out between you and the violent person since the original incident from which charges were laid against this person? *If more than 1 person, refer to main or primary charged person throughout.*

Yes.....**1**
No *(Go to Q9)*.....**2**
Don't know/Can't recall *(Go to Q9)*.....**3**

Q7. Who was the applicant for the order?

You (victim interviewee).....**1**
The violent person.....**2**

Q8. Have the conditions of the protection order been breached, and if so how?

……

……

Q9. Since the original incident, has the violent person done any of the following to you?

			How many times since the original incident?				
a. Physical abuse	**Yes** - 1	**No** - 2	**0**	**1**	**2**	**3**	**4** or more
b. Verbal abuse	**Yes** - 1	**No** - 2	**0**	**1**	**2**	**3**	**4** or more
c. Sexual abuse	**Yes** - 1	**No** - 2	**0**	**1**	**2**	**3**	**4** or more
d. Other *(please state what)*	**Yes** - 1	**No** - 2	**0**	**1**	**2**	**3**	**4** or more

Q10. As a result of the original incident, have you had any continuing effects? *Please answer all options*

	None at all	A little bit	Quite a bit	Quite a lot
a. Physical effects	**1**	**2**	**3**	**4**
b. Emotional effects	**1**	**2**	**3**	**4**
c. Financial effects	**1**	**2**	**3**	**4**
d. Other *(please state what)* ……	**1**	**2**	**3**	**4**

Q11. Thinking about the violent person, how would you describe your feelings (emotions) now about him? *(Please answer every statement)*

	Definitely not	**Maybe not**	**I am not sure**	**Maybe yes**	**Definitely yes**
a. I don't have any particular feelings for this person.....	**1**	**2**	**3**	**4**	**5**
b. I feel numb about this person.....	**1**	**2**	**3**	**4**	**5**
c. I feel frightened of this person.	**1**	**2**	**3**	**4**	**5**
d. I feel love for this person.	**1**	**2**	**3**	**4**	**5**
e. I feel angry at this person.....	**1**	**2**	**3**	**4**	**5**
f. I feel empathy for this person.....	**1**	**2**	**3**	**4**	**5**
g. I feel like getting even with this person .	**1**	**2**	**3**	**4**	**5**
h. I feel forgiving toward this person	**1**	**2**	**3**	**4**	**5**
i. I feel confused/puzzled about this person	**1**	**2**	**3**	**4**	**5**
j. I feel sad for this person.....	**1**	**2**	**3**	**4**	**5**
k. I feel pity for this person					

Q12. Do you wish for your relationship with this person to continue? *Please circle one.*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

Q13. Thinking about the violent person and the original incident, please say how much you agree or disagree with the following statements.

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I think the offender knew what he was doing at the time.	**1**	**2**	**3**	**4**	**5**
b. I think the offender did not mean to hurt me at the time	**1**	**2**	**3**	**4**	**5**
c. I think the offender was provoked by me to do what he did at the time .	**1**	**2**	**3**	**4**	**5**
d. I think the offender was influenced by other people at the time	**1**	**2**	**3**	**4**	**5**
e. I think the offender was influenced by drink/drugs at the time	**1**	**2**	**3**	**4**	**5**

Q14. Thinking about the violent person and the original incident, please say how much you agree or disagree with the following statements.

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I think the offender feels remorse about what he did to me.	**1**	**2**	**3**	**4**	**5**
b. I think the offender feels justified about what he did to me	**1**	**2**	**3**	**4**	**5**
c. I think the offender feels sorry about what he did to me	**1**	**2**	**3**	**4**	**5**
d. I think the offender feels guilty about what he did to me	**1**	**2**	**3**	**4**	**5**
e. I think the offender blames me about what he did	**1**	**2**	**3**	**4**	**5**
f. I think the offender feels shame for what he did	**1**	**2**	**3**	**4**	**5**

Q15. Have a look at these statements. How much do they seem like you and your feelings about your future at this time?

Please answer each statement	**Not at all like me**	**Not much like me**	**Not sure**	**Somewhat like me**	**Very much like me**
a. What happens to me in the future mostly depends on me	**1**	**2**	**3**	**4**	**5**
b. I feel that I have control over the direction my life is taking	**1**	**2**	**3**	**4**	**5**
c. I often feel helpless in dealing with the problems of life	**1**	**2**	**3**	**4**	**5**
d. There is really no way I can solve some of the problems I have.....	**1**	**2**	**3**	**4**	**5**

Q16. Would you say that you feel good about yourself: -

never	hardly ever	now and then	some of the time	most of the time	all the time
1	**2**	**3**	**4**	**5**	**6**

SECTION TWO: THE PROSECUTION

This section asks you about the prosecution and their activities in dealing with your case.

Q17. At any time, did you ask someone from the prosecution office to drop the charges in relation to the incident of violence against you?

No……..**Yes**

(a) Why is that?

……..

Q18. It is the prosecution's responsibility to decide to prosecute criminal charges if they think there is sufficient evidence. Do you agree that they should have this responsibility *in situations like yours*?

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(a) Why do you think this? ……

Q19. Did you have much contact with prosecutors or other prosecution staff during the case?

No contact at all	Not much contact	Some contact	A fair bit of contact	A lot of contact
1	**2**	**3**	**4**	**5**

Q20. Would you say that, as a victim/witness, you were willing to cooperate with the prosecution during the case?

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

Q21. When prosecution were dealing with your case, which of the following did you <u>mainly</u> want them to do? *(Please answer one)*

I didn't want them to prosecute at all **1**
I wanted them to prosecute *all* the charges against the violent person **2**
I wanted them to prosecute *some* of the charges against the violent person **3**
I wan't them to send us both to counselling and *still* prosecute.....**4**
I wan't them to send us both to counselling and *not* prosecute.....**5**
I wan't them to send us both to a restorative conference and *still* prosecute **6**
I wan't them to send us both to a restorative conference and *not* prosecute **7**
I wasn't sure/didn't know what I wanted them to do.....**8**
Other (*please state what you wanted them to do)*.....**9**
……..

Q22. Can you say *why* you mainly wanted them to do this [what were you trying to achieve/your objective]?

……..

Q23. When prosecution were dealing with your case, what did they <u>actually</u> do?

Please answer each option	**No**	**Yes**	**Don't Know**
a. They prosecuted *all* of the charges against the violent person	**1**	**2**	**3**
b. They prosecuted *some* of the charges against the violent person	**1**	**2**	**3**
c. They prosecuted *none* of the charges against the violent person	**1**	**2**	**3**
d. They accepted a plea to lesser charges.	**1**	**2**	**3**
e. They asked me about bail conditions.	**1**	**2**	**3**
f. They asked me what I wanted to see happen with the case.....	**1**	**2**	**3**
g. They asked if I wanted to make a Victim Impact Statement.....	**1**	**2**	**3**
h. They put me in contact with a witness assistant.	**1**	**2**	**3**
i. They didn't do anything significant.	**1**	**2**	**3**
j. They gave me information about services for victims.	**1**	**2**	**3**
k. They gave me advice about options I might have.....	**1**	**2**	**3**
l. I don't know what they did.	**1**	**2**	**3**
m. Other (*please state what they did*.			

……

Q24. When you think about the way you were treated by prosecution during the case, do you feel…? NOTE: The *decisions* referred to are the decision to prosecute, or not; the decision to accept a plea, or not; the decision to accept a plea to lesser charges, or not.

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I was given the opportunity to express my views before decisions were made	**1**	**2**	**3**	**4**	**5**
b. I was able to influence decisions made by prosecution	**1**	**2**	**3**	**4**	**5**
c. My views were considered when decisions were made	**1**	**2**	**3**	**4**	**5**
d. I agree with the decisions the prosecution made about the case.	**1**	**2**	**3**	**4**	**5**
e. I accept the decisions the prosecution made about the case	**1**	**2**	**3**	**4**	**5**
f. I was given an honest explanation for why the decisions were made.	**1**	**2**	**3**	**4**	**5**
g. I understand why the prosecution made the decisions they did.	**1**	**2**	**3**	**4**	**5**

Q25. Thinking about the decisions the prosecution made to prosecute (or not) the violent person, would you say…

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
	1	**2**	**3**	**4**	**5**
a. I was satisfied with this outcome...	**1**	**2**	**3**	**4**	**5**
b. This outcome I received was fair ...	**1**	**2**	**3**	**4**	**5**
c. This outcome I received was what I expected.....	**1**	**2**	**3**	**4**	**5**
d. I received the outcome I deserved.....	**1**	**2**	**3**	**4**	**5**
e. I received the outcome I wanted ...					

Q26. Thinking about what prosecution did in relation to the case can you indicate whether you agree or disagree with the following statements?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. The procedures the prosecution used were fair to me.....	**1**	**2**	**3**	**4**	**5**
b. The procedures the prosecution used were not fair to the violent person	**1**	**2**	**3**	**4**	**5**
d. The prosecution made the right decisions according to the law	**1**	**2**	**3**	**4**	**5**
e. The laws the prosecution used are not right for these situations.....	**1**	**2**	**3**	**4**	**5**
f. The prosecution were not effective in dealing with the situation.....	**1**	**2**	**3**	**4**	**5**

g. I would expect prosecution to make similar decisions with other people in the community.....	**1**	**2**	**3**	**4**	**5**	

Q27. Thinking about how you were treated by prosecution *in relation to the case* can you indicate whether you agree or disagree with the following statements?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**	**Not Applicable**
a. The prosecution did not take the case seriously.	**1**	**2**	**3**	**4**	**5**	**6**
b. I was treated with respect ...	**1**	**2**	**3**	**4**	**5**	**6**
c. The prosecution did not respect my rights.....	**1**	**2**	**3**	**4**	**5**	**6**
d. I was treated with dignity by prosecution.....	**1**	**2**	**3**	**4**	**5**	**6**
e. The prosecution treated the violent person with respect.....	**1**	**2**	**3**	**4**	**5**	**6**
f. The prosecution did not respect the rights of the violent person	**1**	**2**	**3**	**4**	**5**	**6**
g. I felt reasonably safe during the prosecution	**1**	**2**	**3**	**4**	**5**	**6**
h. The prosecution were polite to me	**1**	**2**	**3**	**4**	**5**	**6**
i. Prosecution did not prepare for the case thoroughly	**1**	**2**	**3**	**4**	**5**	**6**
j. I was given information from prosecution that was useful to me to help deal with the problem.....	**1**	**2**	**3**	**4**	**5**	**6**
k. Prosecution kept me informed about what was happening to my case	**1**	**2**	**3**	**4**	**5**	**6**

l. Prosecution did not give me information about services for victims.....	**1**	**2**	**3**	**4**	**5**	**6**
m. Prosecution got enough information to make proper decisions about the case.....	**1**	**2**	**3**	**4**	**5**	**6**
n. Prosecution were unhelpful.	**1**	**2**	**3**	**4**	**5**	**6**
o. Prosecution treated me as they would any other member of the community.....	**1**	**2**	**3**	**4**	**5**	**6**
p. Prosecution did not treat me as the victim in the case.....	**1**	**2**	**3**	**4**	**5**	**6**
q. Prosecution were fair in their treatment of me	**1**	**2**	**3**	**4**	**5**	**6**

Q28. Thinking about the prosecution decisions & actions with the case, do you think that you would be involved in another prosecution in the future if something similar happened to you again? (*Please circle one)*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(a) Why do you think this?

.....

Q29. In a similar situation in the future, would you like the prosecution to deal with it in a similar way? (*Please circle one)*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(a) Why do you think this?

.....

Q30. Generally speaking, how satisfied were you with the way the prosecution handled your case*?* (*Please circle one)*

Extremely satisfied.....**1**
Very satisfied **2**
Somewhat satisfied.....**3**
Very dissatisfied.....**4**
Extremely dissatisfied **5**

SECTION FOUR: THE COURT (PROCESS AND OUTCOME)

This section is about what happened at court and what you think about what happened. If the case did not proceed to court, go to Q56 section five.

Q31. Firstly, did you ask the court to drop the charges in relation to the case?

No.....**Yes**

(a) Why is that?

……..

……

Q32. Did you attend court in relation to the prosecution of the case?

Yes.....**1**
No *(Go to Q36)*.....**2**
Don't know/Can't recall *(Go to Q36)*.....**3**

Q33. If yes, in what capacity did you attend court?

Please answer each option	**No**	**Yes**
a. To observe what was happening	**1**	**2**
b. To find out what was happening	**1**	**2**
c. To give evidence about the incident	**1**	**2**
d. To give a Victim Impact Statement	**1**	**2**
e. Other *(please state what)*	**1**	**2**

Q34. In order to attend court, were you provided with any of the following?

Please answer each option	**No**	**Yes**
a. I was provided with CCTV at court for me to give evidence	**1**	**2**
b. I was provided with protection at court	**1**	**2**
c. I was provided with a support person at court	**1**	**2**
d. I was provided with information about what to expect at court	**1**	**2**
e. I was provided with information about the date and time of court..	**1**	**2**
f. I was not provided with anything significant for court.....	**1**	**2**
g. Other (*please state what you were provided*.....		

Q35. In attending court, can you say if you agree or disagree with the following statements?

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I was given the opportunity to ask questions about the court	**1**	**2**	**3**	**4**	**5**
b. I felt well supported to attend court ...	**1**	**2**	**3**	**4**	**5**
c. I understood what was required of me at court.....	**1**	**2**	**3**	**4**	**5**
d. I felt safe in attending court.....	**1**	**2**	**3**	**4**	**5**

Q36. How involved would you say you were with the case at court?

Not at all involved	Not very involved	I am not sure	Involved	Very involved
1	**2**	**3**	**4**	**5**

Q37. Would you say you had enough involvement with the case at court?

Definitely not enough	Maybe not enough	I am not sure	Maybe enough	Definitely enough
1	**2**	**3**	**4**	**5**

WHEN THE QUESTION ASKS ABOUT "THE COURT" IT IS TAKEN TO MEAN "THE JUDGE OR MAGISTRATE"

Q38. When you think about the way you were treated during the court process, do you feel…?

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I was given the opportunity to express my views before the court made its decision	**1**	**2**	**3**	**4**	**5**
b. I was able to influence decisions made by the court.....	**1**	**2**	**3**	**4**	**5**
c. My views were considered by the court when decisions were made.....	**1**	**2**	**3**	**4**	**5**
d. I agree with the decisions the court made about the case.	**1**	**2**	**3**	**4**	**5**
e. I accept the decisions the court made about the case.....	**1**	**2**	**3**	**4**	**5**

f. I was given an honest explanation for why the decisions were made.....	**1**	**2**	**3**	**4**	**5**
g. I understand why the court made the decisions they did.	**1**	**2**	**3**	**4**	**5**

Q39 What actually was the decision arrived at by the court in relation to you case?

……

Q40. Thinking about the actual outcome at court, would you say that it was too tough, about right or too lenient?

Much too tough	**A little too tough**	**About right**	**A little too lenient**	**Much too lenient**
1	2	3	4	5

Q41. Thinking about the court decision in your case, can you indicate whether you agree or disagree with the following statements?

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. The court did something to punish/discipline/penalize/chastise the violent person	**1**	**2**	**3**	**4**	**5**
b. The court did something to stop the person from committing violence again	**1**	**2**	**3**	**4**	**5**
c. The court did something as a message to stop others in the community from committing violence.....	**1**	**2**	**3**	**4**	**5**
d. The court did something to help the violent person face their problems and to help them change.	**1**	**2**	**3**	**4**	**5**

e. The court did something to the violent person for the protection of the victim	**1**	**2**	**3**	**4**	**5**
f. The court did something to the violent person for the protection of the community.	**1**	**2**	**3**	**4**	**5**
g. The court did something to recognize the harm caused and to help restore all parties..	**1**	**2**	**3**	**4**	**5**
h. The court did something to give a stern message about how wrong the violence is/was.	**1**	**2**	**3**	**4**	**5**
i. The court did something to remove the capacity of the person to commit violence in the future.	**1**	**2**	**3**	**4**	**5**

Q42. What would have you preferred the court to decide about your case?

Please answer every statement	**Strongly against**	**Against**	**Neither in favour nor against**	**In favour**	**Strongly in favour**
a. **Charges Dismissed** - To have the charges withdrawn and/or dismissed at court.....	**1**	**2**	**3**	**4**	**5**
b. **Not guilty** - The violent person be found not guilty [not proved].....	**1**	**2**	**3**	**4**	**5**
c. **Guilty** - The violent person be found or plead guilty [proved].....	**1**	**2**	**3**	**4**	**5**

(a) Why do you think this?

.....

Q43. What sort of sanction or penalty would you have preferred the court to make in relation to the violent person?

Please answer every statement	**Undesirable, would make things worse**	**Neither desirable nor undesirable**	**Somewhat desirable, not a high priority**	**Desirable, high priority**	**Essential the highest priority**
No Conviction Recorded					
a. not have any sentence imposed.....	**1**	**2**	**3**	**4**	**5**
b. not have a sentence imposed but to hear a message of condemnation from the judge/magistrate.....	**1**	**2**	**3**	**4**	**5**
Conviction Recorded & Sentence Options					
c. to hear a message of condemnation from the judge/magistrate.....	**1**	**2**	**3**	**4**	**5**
d. perform a service for the community	**1**	**2**	**3**	**4**	**5**
e. perform a service for me.....	**1**	**2**	**3**	**4**	**5**
f. perform a service that I decide..	**1**	**2**	**3**	**4**	**5**
g. apologise to me in person.....	**1**	**2**	**3**	**4**	**5**
h. apologise to me in writing.....	**1**	**2**	**3**	**4**	**5**
i. pay a fine to the court.....	**1**	**2**	**3**	**4**	**5**
j. pay me for the costs I incurred as a result of the incident.....	**1**	**2**	**3**	**4**	**5**
k. attend a violence rehabilitation program.....	**1**	**2**	**3**	**4**	**5**
l. attend a drug/alcohol rehabilitation program.....	**1**	**2**	**3**	**4**	**5**

m. be ordered by the court not to come near me	**1**	**2**	**3**	**4**	**5**
n. be ordered by the court to follow certain directions	**1**	**2**	**3**	**4**	**5**
o. to receive a good behaviour bond from the court	**1**	**2**	**3**	**4**	**5**
p. receive a custodial sentence (*Please specify weekend? Suspended? Full time? Period of time?)*	**1**	**2**	**3**	**4**	**5**
q. Other outcome *(Please state what)*	**1**	**2**	**3**	**4**	**5**

Q44. Out of these sanctions or penalties, what would have been your top 3 preferences? *Perhaps write first, second or third alongside your answers at Q43 or below.*

First preference……

Second preference……

Third preference…… ……

Q45. Can you say why you would have wanted these preferences?

……..

……

Q46. Now thinking about the violent person and the outcome at court, do you think he "*got the outcome he deserved*"?

Strongly disagree	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
1	**2**	**3**	**4**	**5**

Q47. Thinking about the violent person and the outcome at court, how likely do you think it will get him to stop being violent towards you?

Very unlikely	**Unlikely**	**Unsure**	**Likely**	**Very likely**
1	**2**	**3**	**4**	**5**

Q48. Thinking about the decisions the court made about the case, would you say…

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I was satisfied with this outcome...	**1**	**2**	**3**	**4**	**5**
b. This outcome I received was fair ...	**1**	**2**	**3**	**4**	**5**
c. This outcome I received was what I expected.....	**1**	**2**	**3**	**4**	**5**
d. I received the outcome I deserved.....	**1**	**2**	**3**	**4**	**5**
e. I received the outcome I wanted ...	**1**	**2**	**3**	**4**	**5**

Q49. It is the responsibility of the judge or magistrate to decide what sentence to give an offender if the person is found guilty. Can you say if you agree that they should have this responsibility *in situations like yours*?

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(a) Why do you think this?

……

Q50. If offered an opportunity by the court for a face-to-face discussion with the violent person and with a trained facilitator (*restorative justice conference)*, would you have taken it up?

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(a) Why is this?

……..

(b) If yes, at what stage in proceedings would you like to have taken it up?

……..

……

Q51. Thinking about what the court did in relation to the case can you say whether you agree or disagree with the following statements?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. The procedures the court used were fair to me	**1**	**2**	**3**	**4**	**5**
b. The procedures the court used were not fair to the violent person	**1**	**2**	**3**	**4**	**5**
d. The court made the right decisions according to the law	**1**	**2**	**3**	**4**	**5**
e. The laws the court used are not right for these situations.....	**1**	**2**	**3**	**4**	**5**
f. The court were not effective in dealing with the situation.....	**1**	**2**	**3**	**4**	**5**
g. I would expect the court to make similar decisions with other people in the community	**1**	**2**	**3**	**4**	**5**

Q52. Thinking about how you were treated by the court *in relation to the case,* can you indicate whether you agree or disagree with the following statements?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**	**Not Applicable**
a. The court did not take the case seriously.	**1**	**2**	**3**	**4**	**5**	**6**
b. I was treated with respect ...	**1**	**2**	**3**	**4**	**5**	**6**
c. The court did not respect my rights.....	**1**	**2**	**3**	**4**	**5**	**6**
d. I was treated with dignity by the court	**1**	**2**	**3**	**4**	**5**	**6**

e. The court treated the violent person with respect	**1**	**2**	**3**	**4**	**5**	**6**
f. The court did not respect the rights of the violent person.....	**1**	**2**	**3**	**4**	**5**	**6**
g. I felt reasonably safe during the court process.....	**1**	**2**	**3**	**4**	**5**	**6**
k. I was kept informed about what was happening to my case.....	**1**	**2**	**3**	**4**	**5**	**6**
m. The court got enough information to make proper decisions about the case	**1**	**2**	**3**	**4**	**5**	**6**
n. The court was unhelpful.....	**1**	**2**	**3**	**4**	**5**	**6**
o. The court treated me as they would any other member of the community	**1**	**2**	**3**	**4**	**5**	**6**
p. The court did not treat me as the victim in the case	**1**	**2**	**3**	**4**	**5**	**6**
q. The court were fair in their treatment of me.....	**1**	**2**	**3**	**4**	**5**	**6**
q. The court were fair in their treatment of the offender.....	**1**	**2**	**3**	**4**	**5**	**6**

Q53. Generally speaking, how satisfied were you with the way the court handled your case*?* (*Please circle one)*

Extremely satisfied.....**1**
Very satisfied **2**
Somewhat satisfied.....**3**
Very dissatisfied.....**4**
Extremely dissatisfied **5**

Q54. Thinking about the court decisions & actions with the case, do you think that you would be involved in court proceedings in the future if something similar happened to you again? (*Please circle one)*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(a) Why do you think this?.....

Q55. In a similar situation in the future, would you like the court to deal with it in a similar way? (*Please circle one)*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(a) Why do you think this?.....

SECTION FIVE: SUPPORT FOR YOU

This section is about what you think in the end and about the support for you as a victim of violence in relation to this incident.

Q56. Which of the following statements best describes your views about the outcome of the case?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I feel satisfied with the outcome and feel justice was done	**1**	**2**	**3**	**4**	**5**
b. I am not satisfied with the outcome and feel that justice has not been done	**1**	**2**	**3**	**4**	**5**
d. I am not sure if I am satisfied with the outcome or not	**1**	**2**	**3**	**4**	**5**
e. I don't know what I think	**1**	**2**	**3**	**4**	**5**

(a) Can you say why you think this?

……..

Q57. The DVCS provides a range of services for victims during the justice process. For each of these services provided by DVCS during the justice process, please indicate how satisfied you were with the support you received.

Please answer very option	**Very dis-satisfied**	**Dis-satisfied**	**Not sure**	**Satisfied**	**Very satisfied**	**Not applicable – did not receive**
a. Crisis visit.	**1**	**2**	**3**	**4**	**5**	**6**
b. Follow-up phone calls.....	**1**	**2**	**3**	**4**	**5**	**6**

	1	**2**	**3**	**4**	**5**	**6**
c. Being updated on the case. ….						
	1	**2**	**3**	**4**	**5**	**6**
d. Advocacy on my behalf.						
	1	**2**	**3**	**4**	**5**	**6**
e. Court support.						
	1	**2**	**3**	**4**	**5**	**6**
f. Other *(please specify)*.....						

……

Q58. How easy was it for you going through the criminal justice process in relation to the case?

Very difficult	**Fairly difficult**	**Neither difficult nor easy**	**Fairly easy**	**Very easy**
1	**2**	**3**	**4**	**5**

(a) Why was this……

Q59. How easy do you think it would have been without the support of DVCS?

Very difficult	**Fairly difficult**	**Neither difficult nor easy**	**Fairly easy**	**Very easy**
1	**2**	**3**	**4**	**5**

(a) Why was this……

Q60. What further support or assistance do you think could be provided to victims of violence in the justice process?

……..

……

Q61. Would you say how much you agree or disagree with the following statements in relation to your case?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I feel it was the right thing to do to have taken this case through the justice process	**1**	**2**	**3**	**4**	**5**
b. I do not feel it was beneficial to me to have taken this case through the justice process.....	**1**	**2**	**3**	**4**	**5**
c. I feel I had the respect of the community in taking this case through the justice process.....	**1**	**2**	**3**	**4**	**5**
d. I do not feel the community supported taking this case through the justice process	**1**	**2**	**3**	**4**	**5**
e. I feel my interests as a victim of violence were well represented in the justice process...	**1**	**2**	**3**	**4**	**5**
f. I feel my interests as a member of the community were well represented in the justice process	**1**	**2**	**3**	**4**	**5**

Q62.Here are some statements about our laws and justice, please indicate whether you agree or disagree with them.

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither agree nor disagree**	**Agree**	**Strongly agree**
a. Obeying the law is the right thing to do.....	**1**	**2**	**3**	**4**	**5**
b. I feel a moral obligation to obey the law.....	**1**	**2**	**3**	**4**	**5**
c. I may not like all the laws and rules we have in place, but obeying them is a part of life we must accept.....	**1**	**2**	**3**	**4**	**5**

d. Our criminal justice system needs to undergo significant changes to make it a fairer system for all.....	**1**	**2**	**3**	**4**	**5**
e. I feel our criminal justice system reflects the needs of the community	**1**	**2**	**3**	**4**	**5**
f. The laws of our criminal justice system are generally consistent with the views of ordinary Australians about what is right and wrong	**1**	**2**	**3**	**4**	**5**
g. Australia's criminal justice system does not protect my interests	**1**	**2**	**3**	**4**	**5**
h. I have a great deal of confidence in our criminal justice system.....	**1**	**2**	**3**	**4**	**5**
i. I sometimes question the laws we are asked to obey.....	**1**	**2**	**3**	**4**	**5**
j. People should accept the decisions of the court even if they think they are wrong	**1**	**2**	**3**	**4**	**5**
k. Disobeying the law is sometimes justified.....	**1**	**2**	**3**	**4**	**5**

SECTION SIX: PREVIOUS INCIDENTS PROSECUTED OR THAT WENT TO COURT

This section is about previous times when the violent person may have been prosecuted for earlier incident f violence against you and went to court.

Q63. Has the person who was violent to you on this occasion been prosecuted before for abusing you?

Yes.....**1**
No (*go to question 68)* **2**
Don't know/Can't recall (*go to question 68)* **3**

Q64. Can you recall what happened as a result of the *most recent* <u>*previous*</u> prosecution? *Please circle any that apply.*

Please answer each option	**No**	**Yes**
a. They prosecuted *all* of the charges against the violent person.....	**1**	**2**
b. They prosecuted *some* of the charges against the violent person	**1**	**2**
c. They prosecuted *none* of the charges against the violent person.	**1**	**2**
d. They didn't do anything significant.....	**1**	**2**
e. I don't know/can't recall what they did.....	**1**	**2**
f. Other (*please state what they did*.		

Q65. Thinking about how you were treated by prosecution *in relation to the most recent previous prosecution,* can you indicate whether you agree or disagree with the following statements?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**	**Not Applicable**
a. The prosecution did not take the case seriously.	**1**	**2**	**3**	**4**	**5**	**6**
b. I was treated with respect ...	**1**	**2**	**3**	**4**	**5**	**6**
c. The prosecution did not respect my rights.....	**1**	**2**	**3**	**4**	**5**	**6**
d. I was treated with dignity by prosecution.....	**1**	**2**	**3**	**4**	**5**	**6**
e. The prosecution treated the violent person with respect.....	**1**	**2**	**3**	**4**	**5**	**6**
f. The prosecution did not respect the rights of the violent person	**1**	**2**	**3**	**4**	**5**	**6**
g. I felt reasonably safe during the prosecution	**1**	**2**	**3**	**4**	**5**	**6**
h. The prosecution were polite to me	**1**	**2**	**3**	**4**	**5**	**6**
i. Prosecution did not prepare for the case thoroughly.....	**1**	**2**	**3**	**4**	**5**	**6**
j. I was given information from prosecution that was useful to me to help deal with the problem.....	**1**	**2**	**3**	**4**	**5**	**6**
k. Prosecution kept me informed about what was happening to my case	**1**	**2**	**3**	**4**	**5**	**6**
l. Prosecution did not give me information about services for victims.....	**1**	**2**	**3**	**4**	**5**	**6**

m. Prosecution got enough information to make proper decisions about the case.....	**1**	**2**	**3**	**4**	**5**	**6**
n. Prosecution were unhelpful.	**1**	**2**	**3**	**4**	**5**	**6**
o. Prosecution treated me as they would any other member of the community.....	**1**	**2**	**3**	**4**	**5**	**6**
p. Prosecution did not treat me as the victim in the case.....	**1**	**2**	**3**	**4**	**5**	**6**
q. Prosecution were fair in their treatment of me	**1**	**2**	**3**	**4**	**5**	**6**

Q66. Did the *most recent previous incident* of violence committed by the violent person, come before a criminal court?

Yes.....**1**
No (*go to question 68)* **2**
Don't know/Can't recall (*go to question 68)* **3**

Q67. Can you recall what happened as a result of the *most recent <u>previous</u>* court actions? *Please circle any that apply.*

a. I don't know/can't recall what they did.....**No** **Yes**
b. The court dismissed the charges.....**No** **Yes**
c. The person pleaded guilty at court .....**No** **Yes**
d. The court found the person guilty after a trial .....**No** **Yes**
e. They didn't do anything significant.....**No** **Yes**
f. Other (*please state what they did)* .....**No** **Yes**
……

THANK YOU VERY MUCH FOR COMPLETING THIS INTERVIEW!

I know that this was a long interview but your views and experiences are important and I really appreciate your dedication in seeing it through to the end.

Do you agree for me to contact you again 6 months from now? You do not have to agree to a second interview at this stage, just to me contacting you.

Yes

No

Primary contact number: ……..

Second contact number: ……

Q68.Is there anything else you would like to tell me about what you feel as a victim of violence and the response of the justice system to you?

APPENDIX D

VICTIMS OF VIOLENCE & JUSTICE (TIME 3)

INTRODUCTION

Some time ago you were kind enough to tell me what you wanted from the justice process after a person was charged in relation to an incident of violence against you. This third and final survey asks your feelings and views about justice 6 months after the case finished at court. What you have to say for this research matters very much!

NOTE ABOUT LANGUAGE: Some of the terms used by the researcher may not be ones you would use yourself.

SECTION ONE: OVERALL FEELING ABOUT JUSTICE & SAFETY

Q1. How are you feeling *now* about the justice system response to the violent incident from which criminal charges arose?

……

……

(a) Why is that?

……

……

Q2. What 2 or 3 things do you feel most *positive* about with regard to the justice system response?

……

……

(a) Why is that?

……

……

Q3. What 2 or 3 things do you feel most *negative* about with regard to the justice system response?

……

……

(a) Why is that?

……

……

Q4. Since the case has been finalised, how safe do you feel from further violence and abuse from the violent person?

Not at all safe	Not very safe	Somewhat safe	Fairly safe	Very safe
1	**2**	**3**	**4**	**5**

Q5. *The justice system intervention has had an impact in stopping the violence against me.* Do you agree or disagree with statement?

Strongly disagree	Disagree	Neither disagree or agree	Agree	Strongly agree
1	**2**	**3**	**4**	**5**

(b) Why do you think this?.....

……

Q6. Have you had any contact with the violent person since the case finished at court?

None at all	Once or twice	A few times	Quite a bit	A lot
1	**2**	**3**	**4**	**5**

IF NONE, PLEASE GO TO QUESTION 9

(b) If yes, what has this been like for you?

……

……

(c) If no, would you like there to be contact (why)?

……

……

Q7. Since the case finished at court, has there been any other abuse or violence (physical, verbal or other) against you from the violent person?

None at all	Once or twice	A few times	Quite a bit	A lot
1	**2**	**3**	**4**	**5**

(a) If yes, can you describe a little what this has been?

……

……

(b) If yes, did you report any of these incidents to police? Why/why not?

……

……

(c) If yes, did you contact DVCS (other victim service) for assistance? Why/why not?

……

……

Q8. Do you wish for your relationship with this person to continue? *Please circle one.*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

Q9. Since the case finished, have you had any continuing effects or impacts from the situation (positive or negative or mixed)?

……

Q10. Have a look at these statements. How much do they seem like you and your feelings about your future at this time?

Please answer each statement	**Not at all like me**	**Not much like me**	**Not sure**	**Somewhat like me**	**Very much like me**
a. What happens to me in the future mostly depends on me.....	**1**	**2**	**3**	**4**	**5**
b. I feel that I have control over the direction my life is taking.....	**1**	**2**	**3**	**4**	**5**
c. I often feel helpless in dealing with the problems of life	**1**	**2**	**3**	**4**	**5**
d. There is really no way I can solve some of the problems I have	**1**	**2**	**3**	**4**	**5**

Q11. Would you say that you feel good about yourself: -

never	hardly ever	now and then	some of the time	most of the time	all the time
1	**2**	**3**	**4**	**5**	**6**

Q12. Was there anything about the justice system response or the response of DVCS (or victim services) to you that contributed to these feelings?

……

Q13. After everything, how do you feel the justice system treated you as a member of our community?

……

SECTION TWO: JUSTICE SYSTEM RESPONSE

This section asks a bit about your thoughts & feelings now about the justice system response to you.

Q14. Thinking about the decisions made by the justice system, would you say…

Please answer each statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I was satisfied with the outcome	**1**	**2**	**3**	**4**	**5**
b. The outcome I received was fair	**1**	**2**	**3**	**4**	**5**
c. The outcome I received was what I expected.....	**1**	**2**	**3**	**4**	**5**
d. I received the outcome I deserved	**1**	**2**	**3**	**4**	**5**
e. I received the outcome I wanted	**1**	**2**	**3**	**4**	**5**

Q15. Thinking now about the actual outcome in your case, can you say what you would have **preferred** to see happen? Why do you think this?

……

……

Q16. Would you say you had enough involvement with the case as it went through the justice system?

Definitely not enough	Maybe not enough	I am not sure	Maybe enough	Definitely enough
1	**2**	**3**	**4**	**5**

Q17. Can you tell me a bit more about why you think this?

……

……

Q18. How well do you think your interests as a victim of violence were looked after by the justice system?

Definitely not enough	Maybe not enough	I am not sure	Maybe enough	Definitely enough
1	**2**	**3**	**4**	**5**

Q19. Can you tell me a bit more about why you think this?

……

……

Q20. Generally speaking, how satisfied were you with the way the justice system handled your case*?* (*Please circle one)*

Extremely satisfied.....**1**
Very satisfied **2**
Somewhat satisfied.....**3**
Very dissatisfied.....**4**
Extremely dissatisfied **5**

Q21. Can you tell me a bit more about why you think this?

……

……

Q22. Thinking about the decisions & actions taken with the case*,* do you think that you would seek the help of the justice system in the future if something similar happened to you again? (*Please circle one)*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(b) Why do you think this?

……

Q23. In a similar situation in the future, would you like the justice system to deal with it in a similar way? (*Please circle one)*

Definitely not	Maybe not	I am not sure	Maybe yes	Definitely yes
1	**2**	**3**	**4**	**5**

(b) Why do you think this?

……

……

Q24. Which of the following statements now best describes your views now about the outcome of the case?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I feel satisfied with the outcome and feel justice was done.....	**1**	**2**	**3**	**4**	**5**
b. I am not satisfied with the outcome and feel that justice has not been done	**1**	**2**	**3**	**4**	**5**
d. I am not sure if I am satisfied with the outcome or not	**1**	**2**	**3**	**4**	**5**
e. I don't know what I think	**1**	**2**	**3**	**4**	**5**

(a) Can you say why you think this?

……

……

Q25. Would you say you agree or disagree with the following statements?

Please answer every statement	**Strongly disagree**	**Disagree**	**Neither disagree or agree**	**Agree**	**Strongly agree**
a. I wish I had never become involved with the justice system	**1**	**2**	**3**	**4**	**5**
b. After my experience, I would encourage my sister/brother to get help from the justice system if they experienced violence ..	**1**	**2**	**3**	**4**	**5**
c. After my experience, I would not cooperate with the justice system to help out with a problem in my neighbourhood.....	**1**	**2**	**3**	**4**	**5**

Q26. What support or assistance do you think is needed for victims of violence in the justice process?

……

……

Q27. How much support have you received as a victim of violence since the case finished at court?

None at all	**Not much**	**Didn't want/need anything**	**A bit**	**A fair bit**
1	**2**	**3**	**4**	**5**

(a) Can you say a bit more about your answer?

……

……

Q28. Could you tell me a bit about what *the idea of justice* now means to you?

……

……

SECTION FOUR: YOUR VALUES, ATTITUDES & BELIEFS

This section asks you some questions about what you think about certain institutions, some ideas about justice in general and something about your own values as a person.

Q29. Following is a list of organisations & community groups. Please indicate how much you trust each one.

Please answer every option	**Trust them a lot**	**Trust them a fair bit**	**Trust them only a little**	**Do not trust them at all**
a. Newspapers & television stations..	**1**	**2**	**3**	**4**
b. The public schools in your area.....	**1**	**2**	**3**	**4**
c. The firestation in your area	**1**	**2**	**3**	**4**
d. Your local government.....	**1**	**2**	**3**	**4**
e. The hospitals in your area	**1**	**2**	**3**	**4**
f. The police stations in your area.....	**1**	**2**	**3**	**4**
g. The federal government.....	**1**	**2**	**3**	**4**
h. The local law courts.....	**1**	**2**	**3**	**4**
i. Charities.....	**1**	**2**	**3**	**4**
j. Neighbours	**1**	**2**	**3**	**4**

Q30. In general, would you say that sentences handed down by the courts are too tough, about right, or too lenient?

Much too tough	**A little too tough**	**About right**	**A little too lenient**	**Much too lenient**
1	2	3	4	5

Q31. What type of criminal were you mainly thinking of when you answered this question?

……

Q32. What you value as a person is important to understanding your beliefs and attitudes. Below is a list of values. Please read through the list. To what extent do you accept or reject these values? You may choose the same response as often as you wish.

1 = Reject
2 = Inclined to reject
3 = Neither reject nor accept
4 = Inclined to accept
5 = Accept as important
6 = Accept as very important
7 = Accept as of utmost importance

Do you value …….? *Please give an answer to each*.

Please answer every statement	**Reject**			**Inclined to accept**			**Utmost importance**
a. Self-knowledge or self-insight (being aware of what sort of person you are). ….	**1**	**2**	**3**	**4**	**5**	**6**	**7**
b. Recognition by the community (having a high standing in the community	**1**	**2**	**3**	**4**	**5**	**6**	**7**
c. Inner harmony (feeling free of conflict within yourself)	**1**	**2**	**3**	**4**	**5**	**6**	**7**
d. Self-improvement (striving to be a better person)	**1**	**2**	**3**	**4**	**5**	**6**	**7**

e. Economic prosperity (being financially well off).....	**1**	**2**	**3**	**4**	**5**	**6**	**7**
f. Authority (having power to influence others and control decisions)	**1**	**2**	**3**	**4**	**5**	**6**	**7**
g. Ambition (eager to do well)	**1**	**2**	**3**	**4**	**5**	**6**	**7**
h. Wisdom (having a mature understanding of life).....	**1**	**2**	**3**	**4**	**5**	**6**	**7**
i. Self-respect (believing in your own worth).....	**1**	**2**	**3**	**4**	**5**	**6**	**7**
j. The pursuit of knowledge (always trying to find out new things about the world we live in).....	**1**	**2**	**3**	**4**	**5**	**6**	**7**
k. Competition (always trying to do/be better than others)	**1**	**2**	**3**	**4**	**5**	**6**	**7**

THANK YOU VERY MUCH FOR COMPLETING THIS INTERVIEW!

I know that this was a long interview but your views and experiences are important and I really appreciate your dedication in seeing it through to the end.

Do you agree for me to contact you again when the research is finished in order to tell you the results? You do not have to agree to an interview, just to me contacting you and giving you information.

Yes

No

Primary contact number: ……..

Contact address: ……

Contact email……

Q32. Is there anything else you would like to tell me about what you feel as a victim of violence and the response of the justice system to you?

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