

Conference Panel



Centering Victims in Criminal Justice: Philosophical and Legal Perspectives

15 September 2023

Ritsumeikan University, Kyoto/Japan

Within the framework of the 11th International Association of Penal Law (AIDP) Young Penalists Symposium on Victim-Centered Criminal Justice



AIDP International Association
of Penal Law

Young Penalists





SPEAKERS / COMMENTATORS

Emmanouil Billis (Max Planck Institute for the Study of Crime, Security and Law)

Linus Ensel (Max Planck Institute for the Study of Crime, Security and Law)

Alexandra Giannidi (University of Cambridge)

Nandor Knust (UiT The Arctic University of Norway)

Cristina Valega Chipoco (Max Planck Institute for the Study of Crime, Security and Law)

Valerij Zisman (Max Planck Institute for the Study of Crime, Security and Law)

Date: Friday, 15 September 2023

Location: Kinugasa Campus, Ritsumeikan University, Kyoto, Japan

Sponsored and hosted by: Otto Hahn Research Group on Alternative and Informal Systems of Crime Control and Criminal Justice (Max Planck Institute for the Study of Crime, Security and Law)

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Int. Symposium Organizer: AIDP Young Penalists Committee
(<https://www.youngpenalists.com/xi-symposium.html>)
(<https://ochmgm.wixsite.com/megumiochi/general-8-1>)

Registrations: <https://forms.gle/YV7Kk7qWomgj6ScQ8>
(in-person and online attendance)



PANEL DESCRIPTION

The role of victims in the criminal justice system and the opportunities and challenges of a more inclusive and victim-centered approach to justice are of paramount significance for legal studies and criminal law theory. The Max Planck Panel on “Centering Victims in Criminal Justice: Philosophical and Legal Perspectives” explores various interconnected and conflicting aspects of such an approach.

Our discussions begin with a critique of the attempt to justify criminal punishment based on the moral status of the victim. The exploration of retributive and conventional arguments exposes the limitations in using the moral status of victims as a foundational premise for criminal punishment. While these arguments offer an insight, they also prompt an evaluation of their effectiveness in grounding the practice of criminal punishment.

Subsequently, we examine the concept of a victim-centered approach within a republican theory of criminal justice. This approach reimagines the foundations of punishment by emphasizing the centrality of victims and their interests. By highlighting the potential for a penal system that attends to both victims’ needs and the inherent complexities of punishment, existing paradigms are challenged.

As we delve into practical implications, our focus transitions to issues of sentencing rationalization through a victim-centered perspective. The exploration of a structured evaluative framework presents the idea of gauging the gravity of offenses based on the degree of impairment of a victim’s quality of life. The incorporation of computer-aided decision support systems offers a novel avenue for transparent and equitable sentencing practices in line with the principles of victim-centered justice.

Concluding with a gender perspective, we explore the potential of restorative justice methods in addressing gender-based violence. By critically addressing the adoption of these methods, the discussions will shed light on the transformative potential of centering survivors/victims, addressing power dynamics, and challenging conventional punitive processes. The analysis resonates with broader societal imperatives for change and calls for a comprehensive reevaluation of justice mechanisms.

The panel’s objective is to give speakers and discussants the opportunity to collectively traverse the nuanced terrain of a victim-centered justice. From philosophical musings on the victims’ rights and moral status to legal and practical considerations about structured evaluative frameworks and restorative justice methodologies, the presentations aim to offer a comprehensive perspective on the evolving role of victims in the criminal law landscape. We endeavor to ignite a discourse that challenges existing norms, fostering an inclusive and transparent vision for the future of criminal justice.



PROGRAM

MAX PLANCK PANEL ON CENTERING VICTIMS IN CRIMINAL JUSTICE: PHILOSOPHICAL AND LEGAL PERSPECTIVES

* This panel is sponsored and hosted by the Otto Hahn Research Group on Alternative and Informal Systems of Crime Control and Criminal Justice (Max Planck Institute for the Study of Crime, Security and Law)

Friday, 15 September 2023, 16:00-18:00 (Japan Standard Time)

Moderator / Introduction: **Emmanouil Billis** (Research Group Leader, Max Planck Institute)

Commentator: **Nandor Knust** (Associate Professor, UiT The Arctic University of Norway)

What Is the Role of the Victim in Criminal Law Theory?

Valerij Zisman (Postdoctoral Researcher, Max Planck Institute)

Making Victims Relevant: Republican Freedom and the Justification of Criminal Punishment

Alexandra Giannidi (Doctoral Researcher, University of Cambridge & Otto Hahn Fellow, Max Planck Institute)

Towards More Rational Sentencing: Exploring a Victim-Centered Approach and the Role of Computer-Aided Sentencing

Linus Ensel (Doctoral Researcher, Max Planck Institute)

Assessing Restorative Practices: A Critical Analysis for Gender-Based Violence Cases and their Survivors/Victims

Cristina Valega Chipoco (Doctoral Researcher, Max Planck Institute)

Discussion and Conclusions



ABSTRACTS

What is the Role of the Victim in Criminal Law Theory?

Valerij Zisman

Recently, philosophers and legal scholars have re-discovered the importance of the victim for the justification of criminal punishment. Criminal punishment is understood as the intentional infliction of harm on offenders for their wrongdoings. As the state normally has no business in intentionally harming its citizens, we are faced with the problem of punishment: how can such harm be morally justifiable?

This talk is concerned with the attempt to justify the imposition of criminal punishment based on the rights, interests, or generally the moral status of the victim. Two kinds of arguments have been discussed in the recent literature.

The first is a retributive argument. The central claim here is that there is an intrinsic connection between respecting the victim's moral status as a person and imposing harm on offenders. If we wouldn't punish offenders, the victim's status as a person would not be respected. But we should respect the victim's moral status. Therefore, the victim's rights or interests offer a compelling reason to punish criminal wrongdoers.

The second attempt to justify punishment builds on an epistemic or conventional argument. Here, the idea is not to argue that there is an intrinsic connection between punishment and the moral status of the victim, but rather a conventional one. It is simply a matter of fact in societies such as ours — or maybe regarding humanity as a whole — that victims will only feel acknowledged with regards to their moral status if the state takes up the task of imposing punishment on offenders. As it is important to respect the victim's moral status, the state has reasons to punish, even if the claim is a conventional one.

I will argue that both the retributivist and the conventionalist arguments fail to convincingly ground criminal punishment. The retributivist argument fails on the same ground that other retributivist arguments have in the past: there simply is no convincing argument to think that there is an intrinsic connection between harming wrongdoers and respecting victims. The conventionalist argument has a better chance to convincingly justify criminal punishment. But it is essentially committed to the empirical claim that paradigmatic criminal punishment is the best means of restoring the victim's moral status. Currently available empirical evidence does not support such a claim, at least not comprehensively. Thus, the victim's rights and interests cannot be used to ground criminal punishment.

Making Victims Relevant: Republican Freedom and the Justification of Criminal Punishment

Alexandra Giannidi

Braithwaite & Pettit's book "Not Just Deserts" juxtaposes their republican and victim-centered theory of criminal justice to offender-centered theories, especially von Hirsch's retributive theory of "just deserts". Their republican theory is innovative in making victims relevant, indeed central, to the philosophy of punishment and the criminal justice system. This paper is concerned with the evaluation of republican theory as a theory of punishment. It begins by outlining the main claims of the theory, illustrating how the interests of victims can be linked both to the justification and the practice of punishment. The main part of the paper then focuses on the philosophical evaluation of a republican theory of punishment. It is argued that, as a result of its purely consequentialist character, republican



theory cannot be accepted without significant adjustments, which would reconcile it with the mandate for a stable protection of rights and the principle of proportionality. Nevertheless, the central element of republican theory, that is the concept of “dominion”, is of great significance to the philosophy of punishment. In particular, it contributes to penal theory in two major ways: it lays the foundations for a humanist penal system which takes care of victims, and it makes the inherent “evil” of punishment salient, grounding penal parsimony in reasons “internal” to penal theory. The final part of the paper is concerned with analyzing the practical implications of republican theory, addressing the tensions between the republican preference for restorative justice and the protection of offenders’ rights and reconsidering the more fundamental tension between the victims’ needs and the offenders’ rights. This paper concludes that, despite certain theoretical objections, republican theory contributes to the move towards a model of criminal justice which reconciles caring for victims with parsimonious and rights-respecting punishment of offenders. It is suggested that Braithwaite and Pettit should perhaps not be talking about “not just deserts”, but about “not just just deserts”.

Towards More Rational Sentencing: Exploring a Victim-Centered Approach and the Role of Computer-Aided Sentencing

Linus Ensel

In most jurisdictions, including Germany, the assessment of the offender and their actions is at the center of the criminal process. If the victim assumes the role of a mere witness, aspects of victimhood and the consequences of the act for the victim recede into the background. However, in instances of crimes against individual legal interests, the state's response in the form of criminal proceedings and sanctions is justified precisely because of the harmfulness of such acts for those affected. Hence, when determining the punishment during sentencing, it appears inherently logical to gauge the gravity of the offense based on its implications for the victim. In practice, however, local sentencing traditions and the personal inclinations of judges take overhand, resulting in substantial sentencing disparity and a lack of transparency. Understandably, the call for the rationalization of sentencing practices remains strong. Yet, if the severity of a sentence is to be aligned with the harm suffered by the victim, the question of concrete implementation arises.

Such an implementation would presuppose a more precise evaluative framework in sentencing. The degree of impairment of the victim's quality of life could be a promising benchmark, as proposed by Andrew von Hirsch & Nils Jareborg (1991). They distinguish between four tiers of quality of life: subsistence (1), minimal well-being (2), adequate well-being (3), and enhanced well-being (4). The further the conditions for a level of quality of life are impaired by the crime, the more severe it is. In assessing impairment of quality of life, four different dimensions of interest are considered and evaluated: physical integrity, material support and amenity, freedom from humiliation, and privacy/autonomy. If a more abstract, rationalized victim-centered perspective is taken, concrete impairments of the victim could be taken into account as aggravating or mitigating circumstances afterwards.

I will argue that the deciding judges must be guided in the assessment of the severity of the crime if a rationalization of sentencing is to be achieved and the existing deficit of justification is to be combated. In this regard, the utilization of a computer-aided decision support system holds promise. With the help of a decision tree, the different levels of quality-of-life impairment could be formalized. Moreover, an AI-supported decision database could provide cases for a comparative assessment of the severity of the crime. Consequently, it becomes evident that a victim-centered approach simultaneously constitutes a



viable avenue for realizing a more rational approach in the assessment of offense severity and thus for sentencing as a whole.

Assessing Restorative Practices: A Critical Analysis for Gender-Based Violence Cases and their Survivors/Victims

Cristina Valega Chipoco

This presentation explores whether restorative justice methods might offer better outcomes for survivors/victims of specific acts of gender-based violence than primarily punitive processes such as those that are mainly carried out today, for example, criminal prosecutions or administrative sanctioning procedures. My main argument is that restorative justice methods could generate better outcomes for survivors/victims of certain gender-based acts and contribute to changing sexist structures, social norms, and practices, at least to a greater extent than a purely punitive approach.

To examine this matter, I first discuss the definition and elements that constitute restorative justice, examining them based on a gender perspective. Second, I review the concerns that the literature has highlighted in relation to the adoption of restorative justice methods in addressing gender-based violence and enter into a responsive and critical dialogue with them. Third, I outline certain elements that I submit institutions should consider if they decide to incorporate restorative justice methods to address acts of gender-based violence.

Ultimately, I present a hypothetical scenario that applies the developed theory to address instances of sexual harassment within universities. This shows that for the implementation of restorative practices in gender-based violence to be positive for survivors/victims, institutions that incorporate these methods would need to involve women's and LGBTQ+ movements in the construction of the restorative process, adopt a survivor/victim-centered approach, apply a vulnerability perspective that addresses power dynamics, prepare and supervise the people that have perpetrated the violence and the community, ensure compliance with the law, and continuously monitor, evaluate, and adjust the process.