

Introduction: 'Moving On'? Official Responses to Mass Harm and the Question of Justice

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Abstract

How are claims to justice formulated, invoked and confronted in relation to reports of mass human suffering? What notions of justice inform the scope and nature of official inquiries into harms and the responsiveness of governments to their findings and recommendations? Why, despite legal and public recognition of claims of injustice, does harm so often continue? This introduction to the Special Issue *'Moving On'? Official Responses to Mass Harm and the Question of Justice* critically reflects on the hypothesis that official responses to claims of injustice that focus on 'moving on' risk ignoring, or precluding, the structural causes and legacies of personal suffering and suggests an interdisciplinary framework within which to analyse the effectiveness of official responses to mass harm as mechanisms of justice.

Key words

Structural justice; structural injustice; commissions of inquiry; royal commissions; post-conflict

Our gratitude goes to the IISL for the opportunity to bring together such a range of scholars over two days of robust and fruitful discussion, and to Cristina Ruiz for her supportive steering of this special issue. The workshop and special issue arose out of our collaborative work on the cross-sectorial Minutes of Evidence Project [Australian Research Council Linkage Project LP110200054] between Indigenous and non-Indigenous researchers, education experts, performance artists, community members and government and community organizations to promote new modes of publicly engaging with historical and structural injustice through research, education and performance. See, Minutes of Evidence Project, www.minutesofevidence.com.au

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Resumen

¿Cómo se formulan, invocan y confrontan las demandas de justicia en relación con los informes de sufrimiento humano colectivo? ¿Qué nociones de justicia dan cuenta del alcance y la naturaleza de las investigaciones oficiales de daños y la capacidad de respuesta de los gobiernos ante las conclusiones y recomendaciones? ¿Por qué continúa tantas veces el daño, a pesar del reconocimiento legal y público de las denuncias de injusticias? Esta introducción al número especial *'Moving On'? Official Responses to Mass Harm and the Question of Justice* hace una reflexión crítica sobre la hipótesis de que las respuestas oficiales a las denuncias de injusticias que se centran en "avanzar" corren el riesgo de ignorar, o excluir, las causas estructurales y los legados de sufrimiento personal y sugiere un marco interdisciplinario en el que analizar la eficacia de las respuestas oficiales a los daños masivos como mecanismos de justicia.

Palabras clave

Justicia estructural; injusticia estructural; comisiones de la verdad; comisiones reales; post-conflicto

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1. Introduction

How are claims to justice formulated, invoked and confronted in relation to reports of mass human suffering? What notions of justice inform the scope and nature of official inquiries into harms and the responsiveness of governments to their findings and recommendations? Why, despite legal and public recognition of claims of injustice, does harm so often continue? In view of the sheer number of commissions of inquiry in the 19th century and their continuation in the 20th and 21st centuries, what are the limitations and opportunities of such processes?

In July 2015, twenty scholars from a range of disciplinary backgrounds – socio-legal studies and sociology of law, criminology, transitional justice, law, political science and history – came together at the International Institute for the Sociology of Law in Onati to grapple with these questions. We critically reflected on the hypothesis that official responses to claims of injustice that focus on ‘moving on’ risk ignoring, or covering over, the structural causes and legacies of personal suffering. With reference to a number of case studies – ranging from domestic inquiries into social inequities in 19th century Britain and pan-imperial and colonial inquiries into the governance of Indigenous populations throughout its vast empire, to more recent inquiries into historical injustices in Albania and Sierra Leone, the South African Truth and Reconciliation Commission, and the Australian National Inquiry into the Stolen Generations – workshop participants considered how relatively detached governance mechanisms can shape highly personal social justice and human rights outcomes, whether through the practices of individual nation-states or globalised institutions such as the League of Nations and the United Nations. The scope of papers enabled a broad-based global empirical exploration that placed the varying circumstances of these individual inquiries—and the personal testimonies they collected—within a comparative historical and global context. Through this innovative approach, participants were able to make linkages between past practices of inquiring into mass harms and contemporary ‘transitional justice’ frameworks, as well as locate historically, and assess, current initiatives for identifying and addressing harms and injustices that are specifically structural in nature. (see also Balint *et al.* 2014, 2016)

An important methodological aspect of the workshop was its dynamic conceptual framework. It first sought to understand how scholars from different fields consider and work with personal testimonies to suffering and injustice. In aggregating this broad-based expertise, the workshop then acted as a prism through which governmental actions across time and space could be appraised and critiqued. It allowed us to reflect collectively on the intensely personal experience/s of those affected by various forms of conflict, violence and oppression, in relation to the more abstract modes of governance applied to the task of ‘moving on’.

Together we examined what concepts of justice and injustice are relied on in these commissions of inquiry, what underlies the framing of these responses, and the connections between past official responses to injustice and contemporary responses. In examining the relationship between commissions of inquiry and the practice of governance, we focused attention on what constitutes a structural injustice – when, and how, does an injustice becomes structural? In considering the continuing effects of the past in the present, we debated the capacity of official investigations to facilitate a broader structural change and sought to initiate the development of an interdisciplinary framework within which to analyse the effectiveness of official responses to mass harm as mechanisms of justice and to consider their relationship to fostering structural equity.

This special issue, “‘Moving On’? Official responses to mass harm and the question of justice”, contains an important selection of these papers which collectively enrich our understanding of how official responses to injustice acknowledge, redress or elide structural change and, in turn, shape and impact the personal legacies of structural injustice.

2. Creating meeting points around structural in/justice: The Minutes of Evidence Project

The workshop and this special issue originated in the cross-sectoral and interdisciplinary 'Minutes of Evidence' Project (www.minutesofevidence.com.au). This project also began with a concern about the limits and possibilities of official inquiries to recognise and redress structural and historical injustice. It engaged in particular with a specific historical commission of inquiry undertaken in Australia: the 1881 Coranderrk Parliamentary Inquiry into the conditions on Coranderrk Aboriginal reserve in the colony of Victoria. The residents themselves had petitioned officials to hold a public inquiry, effectively creating a space in which their claims of injustice could be heard together with an enduring legal record of the colonial harms they suffered. The strategy initially succeeded in securing autonomous Aboriginal tenure on the land but within a few short years a new government legislated in favour of systematic assimilation and further dispossession. The 1881 Inquiry demonstrates that while official inquiries can point to the structural injustices of colonialism, and might even facilitate some temporary reforms, official responses can eventually turn to bolstering the dominant order and 'moving on'.

This complicated relationship between law, structural injustice and a broader structural justice became a theme of the project. How enduring legacies of past injustices continue into the present – creating a structural injustice that law both struggles to address and is implicated in. A collaboration between Indigenous and non-Indigenous researchers, education experts, performance artists, community members, government and community organisations, the Minutes of Evidence project sought to enhance the appreciability of structural and historical injustice in order to spark new modes of public engagement with it and work collaboratively towards structural justice in the present and the future. (see Balint *et al.* 2015)

Here a question we could ask (and which was asked at the workshop) is what is characteristically structural about this form of justice and what are the boundaries between structural and other types of justice? In the case of the Coranderrk Inquiry, the minutes of evidence of the Inquiry reveal the determination of Aboriginal witnesses, and of their settler supporters, to focus less on individual grievances and highlight, instead, the structural injustices inherent in settler colonialism and their suggestions for more equitable ways forward. A structural justice would involve, as we discuss elsewhere, 'a shift from individualistic and state-focused modes of redress towards a more thoroughgoing evaluation of the structural vestiges of 'past' harms and an openness to deep and wide-ranging reforms, including indigenous jurisprudences, which would transform social, political, legal and economic arrangements that enabled the harms' (Balint *et al.* 2014, p. 213).¹

3. A new conceptual approach: the contribution of this collection

The papers in this collection each demonstrate a particular lens on the issue of 'moving on' and further our understanding of the effectiveness, shape and impact of official responses to injustice. In bringing history and socio-legal studies together with transitional justice, alongside criminology and political science, separate bodies of scholarship are brought into conversation, providing a wide-ranging and multi-faceted engagement with how justice claims have been formulated, invoked and confronted across time and space.

Oz Frankel explores the big-picture questions at the heart of this special issue through his detailed consideration of official inquiries held within Britain and the British world. Frankel's fine historical eye invites us to appreciate the long history of information gathering by officials, the controversy that has always surrounded

¹ We draw here on the understanding of lawful relations articulated in (Dorsett and McVeigh 2012). See also Black (2011) and Genovese (2014).

them, and the significance of their proliferation in the mid-nineteenth century when the British state embraced opportunities for “fact finding”. Through collecting massive amounts of what we might call social science data, the liberal state – as the neoliberal state now – could draw strategically on the specialist empirical knowledge of a new class of experts to support policy decisions. In Frankel’s view, such developments could operate to ‘depoliticize social problems’, many of which had become worryingly apparent to members of parliament as the full impact of the industrialisation played itself out in the suffering of the masses of working class men, women and children inhabiting Britain’s burgeoning factories and slums. Accordingly, while official investigations could and did produce some benefits and reforms for working people, they rarely engaged with the kinds of structural inequities and concerns that supported the status quo. This dynamic analysis illuminates our understanding of the past and present practices of state inquiries, their tendency to maintain rather than challenge existing forms, but also of the limits of the capacity of governments to control the ways in which their information gathering might be put to use. For as Frankel notes, too, public inquiries could position witnesses as active ‘knowers’ not simply as passive ‘sufferers’, thereby paving the way for new forms of organised protest and critique.

Francesca Dominello demonstrates how State apologies have resulted in a paradox. Dominello takes us on a journey in which State apologies to a historically marginalised group – in her article: Indigenous peoples in Australia and Canada – ultimately highlights the need for a proper (and just) telling of history to be imbued in, and indeed foundational to, the apology making process. Where States’ make official apologies to populations harmed by the State itself, Dominello suggests that the apology allows an opportunity for the State to give a particular and/or different version of history which is not commensurate with the experiences and perspectives of Indigenous peoples. This outcome, according to Dominello, results in an ability for the apology, and apology making process, to create further injustice to Indigenous peoples and thereby impeding past injustices to be dealt with in the present and simultaneously impedes justice for Indigenous peoples into the future.

Jaco Barnard-Naudé then takes readers on a meditative and reflective exploration of the imperative of forgiveness, as a way of dealing with the past, in the South African Truth and Reconciliation Commission process. He problematises the valorisation of forgiveness as a higher, more ‘productive’ response to atrocity and teases out the effects of such a move – demonstrating, for example, how this serves to devalue other emotions such as anger as negative and takes place in the context of unequal power relations where it is those with less power who are entreated by those with more power to forgive. Barnard-Naudé demonstrates how contemporary approaches to forgiveness serve to downplay the complexity and exceptionality of this response to harm, instead normalising and routinising it. In so doing, they represent a post-apartheid biopolitical governmentality that can stymie claims for justice and maintain the structural inequities of the apartheid state.

Maria Rae examines the official legal response to justice claims from the human rights group Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo) in Argentina. One of the outcomes of the human rights abuses of the military regime during the ‘Dirty War’ was the removal of babies from ‘subversives’ and their adoption by military families. The Grandmothers have been instrumental in seeking the return of their grandchildren. Her contribution examines the impact – and unintended consequences – of Article 218, passed in 2009, that amended the criminal code to allow compulsory DNA testing of anyone suspected of being a stolen child. She argues that the law here is complicit with the state in further victimization, part of a national project more interested in the reconciliation of families than accountability for the injustice perpetrated. As she concludes, ‘collective justice demands may result in legal redress that impinges on personal justice in a way that can make victims feel they have ‘disappeared’ twice’.

Agata Fijalkowski and Sigrun Valderhaug draw our attention to the powerful role of art as a form of engaging with the past, beyond the dictates of linear temporality. Focusing on two distinct case studies of histories of violence in Albania and Sierra Leone, they tease out the way in which diverse art forms (a museum, a photograph, documentary films) enable more flexible and complex ways of remembering. The authors argue that these art forms signify in unique ways and create new spaces and modes of engagement with the past. In this sense, they are heterotopic sites that more easily accommodate narrative plurality and multiple temporalities and, in turn, diverse forms of participatory and intersubjective interaction with experiences of violence. As such, even though they come with their own contextual constraints, they adopt and accommodate more flexible relations between injustice and the past, present and future.

Collectively, these papers ask us to consider who is translating, interpreting and shaping the claims, discourses and narratives of responses to injustice, and what conceptual frameworks are employed for this work of justice claims and commission making – as well as frameworks that may exist alongside these. They do ultimately reveal how official responses do not always allow for complex narrations of harm, and in fact can preclude them. Yet they show too the ways in which these commissions and legal responses can be productively utilised by those before them. In drawing our attention to the shape and impact of official responses to injustice that attempt a ‘moving on’, they demonstrate the openings between these and a structural change that may ultimately result in a more enduring structural justice.

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