

Tilburg University

The controversial nature of victim participation

Pemberton, A.; Reynaers, S.

Published in:
Therapeutic jurisprudence and victim participation in justice

Publication date:
2011

Document Version
Peer reviewed version

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
Pemberton, A., & Reynaers, S. (2011). The controversial nature of victim participation: Therapeutic benefits in victim impact statements. In E. Erez, M. Kilchlinh, & J. J. M. Wemmers (Eds.), *Therapeutic jurisprudence and victim participation in justice: International perspectives* (pp. 229-248). Carolina Academic Publishing.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1745923

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

The controversial nature of victim participation: therapeutic benefits in victim impact statements

Antony Pemberton and Sandra Reynaers.

Forthcoming in Wemmers, J.-A. & Erez, E. (2010). *Therapeutic Jurisprudence and the position of victims*. Oxford: Hart Publishing.

Abstract

Over the past thirty years the position of victims of crime in the criminal justice system has shown vast improvement. Many victims' rights are relatively uncontroversial. That victims should be treated with respect and recognition, that they should receive comprehensible information, should be able to receive support and assistance and be reimbursed for their expenses and compensated for their damages, are recognized. Participation in the criminal justice system is a more complicated matter. The topic of this paper, the victim impact statements, is criticised on the grounds of the pressure it may place on the rights of suspects and the impartial nature of the trial. Moreover it is argued that the therapeutic focus of these reforms is in essence alien to the criminal justice process. Finally the effectiveness of victim impact statements is called into question. In this paper it will be argued that specifying therapeutic benefits and closer inspection of the therapeutic literature will simultaneously reduce the tension with established criminal justice principles and provide a more fruitful base for conducting research into the effectiveness of victim impact statements.

Introduction

The position of victims of crime has shown vast improvement since the 1970's. Thirty years ago it was correct to assert that the victim was the forgotten party of the criminal justice process, while today this would be at odds with the actual situation of victims (e.g. Groenhuijsen & Letschert, 2008). International legal instruments, like the UN Declaration of Basic Principles for Victims of Crime and Abuse of Power, the Council of Europe Recommendations 85(11) and 2006(8) and the EU Framework Decision on the standing of victims in criminal proceedings as well as national legislation in a large number of countries illustrate that the following rights for victims are increasingly recognized (e.g. Groenhuijsen and Pemberton, 2009):

- A right to respect and recognition at all stages of the criminal proceedings;
- A right to receive information and information about the progress of the case;
- A right to provide information to officials responsible for decisions relating to the offender;
- A right to have legal advice available, regardless of the victim's means;
- A right to protection, for victims' privacy and their physical safety;
- A right to compensation, from the offender and the State;
- A right to receive victim support;
- The duty for governments to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure;
- The duty for the State to foster, develop and improve cooperation with foreign States in cases of cross border victimisation in order to facilitate more effective protection of victims' interests in criminal proceedings.

A number of these rights are relatively uncontroversial. The notions that victims should be treated with respect and recognition, receive support in coping with crime and information concerning the criminal justice procedure, adequate protection and compensation are widely shared and not often debated with any intensity.

The same cannot be said for victims' rights which, depending on the way that they are interpreted, imply a stronger procedural position for victims of crime. This is clearly evident in the right to mediation. The debate concerning victim-offender mediation and the related concept of restorative justice, has led to a vast literature containing the arguments for and against (e.g. Christie, 1977; Ashworth, 2002, Braithwaite, 2002, Strang, 2002, Daly 2002, Groenhuijsen, 2000), not in the least part, due to the fact that many restorative justice advocates argue the necessity of a full-fledged overhaul of the criminal justice system (see recently Walgrave, 2008).

However, less far-reaching instruments which offer victims the right to be heard in the criminal justice procedure are also controversial. The case in point, discussed in this paper, is the class of measures referred to as victim impact statements. The precise form of victim impact statements can vary, from a written statement that primarily serves a function in awarding compensation to an oral statement that may influence the sentence given to the offender (also referred to as a victim statement of opinion). All have in common that they allow victims the right to express the harm they have experienced as a part of the court proceedings (Erez, 2004).

In this paper we will outline two central debates concerning victim impact statements. First there is discussion of the pressure victim impact statements exert on the rights of the offenders and other central criminal justice norms like proportionality and due process. The tension between the therapeutic rationale underlying victim impact statements and criminal justice principles has led opponents of these instruments to dismiss striving for therapeutic benefits for victims as a paradigm, alien to the criminal justice system. Although we agree with many of the arguments put forward against the introduction of concepts like 'healing' or 'closure', we find that other therapeutic constructs do not suffer from the same problems.

Second there is controversy concerning the effectiveness of victim impact statements. Do they in fact enhance victims' well-being? Or are they ineffective or even counter-productive in the sense that they entail victims risking secondary victimisation?

In both debates the therapeutic perspective is relatively amorphous. Therapeutic jurisprudence is a container-term and can incorporate any construct that is related to victims' mental welfare (e.g. Winick, 2008). The central argument of this paper is that the tension between established criminal

justice principles and therapeutic benefits for victims can be reduced by clearly specifying *what* therapeutic constructs are invoked. In addition we will underline the difference between therapeutic sounding language and constructs and mechanisms that actually reflect the current psychological literature concerning victims of crime. This has implications for the way that effectiveness of victim impact statements should be studied.

Balancing victim participation and criminal justice concerns: gauging criminal justice correspondence

Central issues in the debate concerning victim impact statements

Erez (2004) shows that the introduction of victim impact statements has been argued on a variety of grounds. First the victim's expression of harm may be used as a tool for the courts to grant compensation to victims. This is particularly relevant to common law jurisdictions, who unlike their civil law counterparts, do not allow victims the opportunity to file for compensation in the capacity of an injured party (e.g. Brienen and Hoegen, 2000). Compensation is the least controversial function. In most civil law jurisdictions, instruments with a similar focus have been in place for a long time. The scholars critical of enlarging the position of the victim within the criminal justice system concur that, as Ashworth (2002) states, 'the victim's legitimate interest is in compensation and reparation'. In essence, regarding this purpose, the victim impact statements fulfil a tort law, rather than a criminal law function. The harm caused is therefore a natural and necessary component of the justice procedure (e.g. Duff, 2003).

Second there is the reduction of secondary victimisation. The lack of a role in the criminal proceedings has been shown to be a primary source of dissatisfaction of victims (Shapland et al, 1985). Social acknowledgement of the harm done to victims is a protective factor in the development of traumatic complaints (Maercker and Muller, 2004) and recent research has shown acknowledgement to be an important criterion for victims' assessment of sentencing outcomes (Orth, 2003). Third and related is the opportunity that victim impact statements allow for 'voice'. The body of research into procedural justice demonstrates that offering participants a role in the proceedings enhances its legitimacy and the acceptance of its outcome (e.g. Röhl, 1997; Tyler, 1990; Tyler and Huo, 2002) and this also applies to victims of crime (Wemmers, 1996). Erez finds this function to be central to victim impact statements (see Erez, 2004; Roberts and Erez, 2004). It is not the influence on the sentence that is important, but rather the mere fact that the victim is given a role in the proceedings.

Finally the victim impact statements are promoted as a means for victims to influence the sentence of the offender. This is particularly relevant to the class of VIS known as the victim statements of opinion. With these instruments the victim is explicitly invited to express a preference concerning the sentence. These are the most controversial form of victim impact statements, in particular as they are also admissible in capital cases in the United States.

The discussion concerning the victim statements of opinion brings the two central concerns concerning victim impact statements to the fore. First of all it is argued that victim statements of opinion will lead to harsher, disproportionate and inconsistent sentences, which is of particular concern in death penalty cases (as discussed in Erez, 2004). Second it is argued that the motivation for these measures introduces an alien, therapeutic, victim-focused paradigm into the criminal justice procedure (Van Stokkom, this volume). We will discuss these objections in turn.

Victim impact statements and the effects on sentences

The debate concerning the effects on sentencing revolves around two separate questions. The main initial concern was that allowing victim impact evidence to influence sentencing will lead to harsher sentences. As Erez (2004) notes, 'victims were also portrayed as vindictive, punitive, and motivated by a desire to maximise sentence severity'. This portrayal is, as Erez shows, at odds with most research findings, consistently showing victims to be no more or less punitive than non-victims (e.g. Maruna and King, 2004) and with research showing many victims to prefer restorative options (Strang, 2002). Nevertheless there is some room for concern. It is still quite possible that victims are more punitive than magistrates (e.g. De Keijser et al, 2007). Moreover the research showing the

relatively lenient position of victims is based on large scale population surveys. Most victims in these surveys have suffered relatively minor crimes. Pemberton (2008) hypothesises that the perspective of victims of severe crimes, like co-victims of homicide, does not have to follow this more general pattern. He notes that both the available research into these groups (e.g. Rock, 1998) and the actions of organisations representing their particular interests (see for a description, Goodey, 2005) suggests a higher level of punitivity. As victim impact statements are often solely on offer for victims of severe crimes, caution is necessary in applying the image of the non-punitive victim.

Concerning consistency, Ashworth (2002) points out that offenders may benefit or be disadvantaged due to differences between 'their' victims. A victim's opinion of the desired sentence is likely to be influenced by many other factors than the culpability of the offender, which is the issue at stake in the trial. Instead of viewing the outcome of the trial in terms of the wrong committed, victims will be likely to use the harm caused as their primary criterion, which will lead to inconsistency (see Buruma, 2004; Pemberton, 2007). The disparity this causes is partly, but not completely cushioned by the fact that harms and wrongs are correlated in criminal justice (Duff, 2003). Differences in personality characteristics, like trait vengefulness and forgiveness (e.g. McCullough et al, 2001), will also play a role. People vary in the extent they are vengeful and this general notion applies to victims as well. It is clear that if the victim's opinion was directly translated into the sentence the principle of consistency would be threatened.

Notwithstanding the merit of these principled objections, however, research has yet to show that victim impact statements in fact lead to more severe sentences or to inconsistency in sentencing (Erez, 1999). It appears that the mitigating influence of the judge or jury presiding over the case largely reduces the effects of victim impact statements on sentencing. Even concerning the victim statements of opinion, evidence of victim impact on sentencing has yet to be shown.

Moreover, it is questionable whether victims desire a direct influence over the sentence. Research suggests that most victims prefer their opinion to be heard, rather than decision control over the sentence (Wemmers and Cyr, 2004). In fact, victims may consider more far-reaching forms of control over the outcome of the process to be an unwanted burden (e.g. Reeves and Mulley, 2000).

Nevertheless, for some victims influencing the sentence of the offender is the main reason for participation. Sanders et al (2001)' results showed about half of the participating victims mentioning this motive (although nearly two thirds did so for 'therapeutic' reasons). Pemberton (2005) reports that 59% of Dutch victims 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%.

Therapeutic notions in criminal justice

In Van Stokkom's contribution to this volume he criticizes the notion of victim-centred therapeutic jurisprudence (Van Stokkom, 2009). Van Stokkom views striving for therapeutic benefit as a component of a separate paradigm, alien to the criminal justice process. It may be 'risky where concepts as 'harmony', 'healing', 'personal growth', 'closure' and 'reconciliation' get the upper hand and are outstripping discussions on the crime and its aftermath'. And this risk has become a reality in the case of the victim statements of opinion. As Daems (2007) shows the concept of victim 'closure' was regularly invoked in the rhetoric surrounding victim statements of opinion in death penalty cases. Furedi comments that surrounding the trial of Timothy McVeigh, 'closure' was the most frequently used word (Furedi, 2004). Allowing victim statements of opinion in death penalty cases is supposed to help victims achieve closure, so they can 'move on with their lives' and is one of the main drivers for their implementation (see for a critical discussion Sarat, 1997). This leads to the situation that key criminal justice principles, like proportionality, are in danger of being sacrificed or compromised in the name of achieving closure.

There are a number of different reasons to share Van Stokkom's reservations. First of all, the 'therapeutic' notions he mentions, have in common that they are vague, underspecified and are in fact not often used in recent psychological literature concerning therapeutic approaches to victims of crime (see Winkel, 2007). A search of the contents of the *Journal of Traumatic Stress*, the leading scientific journal on stress reactions to victimisation, reveals that not one article in the past 20 years included the words 'healing' or 'closure' in its title. Moreover 'closure' only appeared twice in the text bodies of the articles in this journal.

As these constructs are not normally used in scientific research, it should not be surprising that there is no reliable evidence for or against the notion that victim impact statements lead to healing or closure. Evidence is either anecdotal or derived from research with other constructs, for instance satisfaction.¹ This leads to a strong emphasis on individual cases and paves the way for hijacking of the victim's plight by populists. This is particularly problematic in the case of closure due to victim statements of opinion. The criminal justice process is neither equipped nor intended to reach this goal. The impact of sudden bereavement, in particular by violent causes, cannot be overstressed (e.g. Kaltmann and Bonanno, 2003). Coming to terms with this impact is often a long and arduous process, which will not be magically achieved through the outcome of a justice procedure (Pemberton, 2008b). Moreover the process leading to capital punishment prolongs victims' suffering, with research showing that the process is an equal burden for the families of the victim and the offender alike (King, 2004).

In sum: van Stokkom is quite right to be concerned about the influx of therapeutic sounding language in the discourse concerning victims' rights in criminal justice. But does this lead to the conclusion that striving for therapeutic benefits for victims is necessarily alien to the criminal justice system, as Van Stokkom suggests? The fact that the application of some therapeutic constructs within criminal justice is problematic, does not rule out the possibility that others may be more easily aligned with the criminal justice procedure.

Instead, the previous discussion can provide two central principles to assess the match between therapeutic jurisprudence and the criminal justice system. First, the goal of achieving 'closure' through victim statements of opinion in capital cases is unrealistic; in the sense that it is not supported by evidence and it is not reasonable to expect a justice procedure to reach this goal. This suggests that proposed therapeutic benefits need to be realistic and evidence-based. Moreover, where therapeutic constructs are used or therapeutic analogies invoked, they need to accurately and fully reflect current victimological and psychological knowledge. It makes obvious sense to use therapeutic constructs that are actually employed in current therapeutic approaches to psychological suffering after criminal victimisation. Together this is what we call '*therapeutic coherence*'. Second, Van Stokkom's objections show that closure in death penalty cases introduces a therapeutic construct that may conflict and even 'get the upper hand' over criminal justice principles. To prevent this we propose that striving for therapeutic benefit for victims should be restricted by the limits placed by established criminal justice principles (see also Winick, 2008). In addition, therapeutic benefits should be aligned with criminal justice goals, implying that therapeutic perspectives should correspond with the purpose of the criminal justice system for victims. This is what we call '*criminal justice correspondence*'. We will expand the latter point in the remainder of this section. Therapeutic coherence will be discussed in the following section.

Matching therapeutic jurisprudence and criminal justice: reduction of anger and anxiety

To assess the match between therapeutic benefits for victims and the criminal justice system we need to reflect briefly on the purpose of the criminal justice system for victims. In terms of the ultimate outcome of the criminal justice system, the punishment of the wrongdoer, the two most pronounced motives are retribution (as implied by 'just deserts' theory) or behaviour control (as implied by utilitarian theories of punishment) (see Vidmar, 2000). Most social-psychological research suggests that the first motive is predominant in lay-people's judgements (see Carlsmith, Darley & Pittman, 2002, Carlsmith, 2006).

Orth (2003) connects these general perspectives on punishment to victims' punishment goals. He notes that victims may want to see offenders punished due to their feelings of anger at the injustice suffered and the associated desire for revenge (see also Fitzgibbons, 1986) and/ or their need to protect themselves and reduce their fear of repeat victimization by the offender. The former goal is related to retribution, the latter to behaviour control. The punishment goals map onto the two most important emotional reactions to victimisation, namely anger and anxiety (Winkel, 2007).² Reduction of anger and anxiety are not only goals that are directly related to the central functions of

1 See Erez, 2004 for examples of the confusing use of measures of satisfaction.

2 Winkel (2007) shows conclusively that, in emotional terms, anger is an equally prominent reaction to criminal victimization as anxiety, although the latter receives far more attention in policy and research (see also Ditton et al, 1999).

the criminal justice procedure, but also lie at the core of therapeutic approaches to aid victims of crime. The approaches relating to anxiety are well-known with post-traumatic stress disorder being classified as an anxiety disorder (see NICE, 2005 for an overview of techniques), but reduction of anger is a therapeutic goal as well. This is most evident in the various forms of forgiveness therapy (Wade et al, 2005), but also in anger management (Howells and Day, 2002) and cognitive behavioural therapy for domestic violence perpetrators (Dutton, 2006). Moreover recent research shows successful techniques for reducing or resolving PTSD simultaneously reduce anger (Renssen, 2002, Winkel, 2007).³

In our opinion, specifying the therapeutic benefit of the criminal justice procedure in terms of reduction of anger and anxiety reduces the tension between the therapeutic and justice paradigms. Unlike constructs like 'closure' or 'healing', reduction of anger and anxiety are well-specified in the relevant psychological literature and are the focus of recent academic work into therapeutic approaches for victims of crime. Moreover reduction of anger and anxiety is closely connected to the central functions of the criminal justice procedure, retribution and behaviour control. Finally, as we will show in the following section, reducing anxiety and anger reduction does not necessarily imply pressure on other criminal justice principles.

Therapeutic mechanisms in criminal justice: reviewing therapeutic coherence

The second debate concerning the victim impact statements relates to their effectiveness. According to one often cited evaluation of the victim impact statements, they 'don't work, can't work' (see Sanders et al, 2001), while others find exactly the opposite (Chalmers et al, 2007).

This discussion is hampered by a lack of research evidence concerning the therapeutic effects of victim impact statements. First of all the outcome measure employed is invariably the victim's satisfaction or a similar construct. However neither satisfaction nor dissatisfaction can be directly translated into therapeutic and anti-therapeutic effects. Second, where therapeutic analogies are invoked to explain the mechanism by which victim impact statements could lead to positive or negative effects, the literature is not adequately reflected. Finally the debate neglects the possibility that individual differences in victims' personal characteristics or the crime suffered mediate or moderate the effects and the usefulness of participating in victim impact statements. In all three of these issues there is marked lack of the use of relevant research findings and theory from the psychological study of victims.⁴

Victim satisfaction and dissatisfaction

Surveys of the victim's experience in the criminal justice system tend to employ the victim's satisfaction as an outcome measure (e.g. Winkel, 2002; Pemberton, Winkel and Groenhuijsen, 2007). The use of satisfaction is problematic for two reasons. The first is a general one. The construct validity of satisfaction is questionable (Bouckaert and van de Walle, 2003). Satisfaction measures many other things than the quality of service. It is influenced by expectations and intrinsic aspects of the service (with fire-fighters generally being the most valued public service, irrespective of their performance (Bouckaert and van de Walle, 2003)). Moreover, satisfaction is influenced by the frequency of use of the service, the knowledge of the service, the homogeneity of service and the directness of contact (Dinsdale and Marson, 1999), regardless of the quality of service. Second, and more specific for victimology, satisfaction has shown to be a poor measure of therapeutic benefit. Various studies (McNally, Bryant, & Ehlers, 2003; Zech & Rime, 2005) have documented that satisfaction is *not* a reliable indicator of therapeutic performance. Psychological debriefing, for example, is a widely used method to mitigate psychological distress and to prevent the emergence of PTSD. The majority of debriefed victims describe it as helpful, and report high levels of satisfaction with the intervention. There is no convincing evidence that debriefing reduces the incidence of PTSD,

3 In fact according to Winkel (2007) PTSD could be seen as an anger disorder as well as an anxiety disorder.

4 In this respect it represents an example of what we call the 'two faces of victimology' (Winkel, 2002; Pemberton, Winkel and Groenhuijsen, 2007), which denotes the divide between the 'law-related' disciplines in victimology and the 'psychology-related' disciplines.

and some controlled studies suggest that it may impede natural recovery (Van Emmerik et al, 2002). McNally et al. (2003:65) concluded: “we believe that consumers’ satisfaction ratings apparently reflect polite expressions of gratitude, rather than intervention efficacy”.

The evaluation studies of the Victim Impact Statements have also used satisfaction as an outcome measure and therefore suffer from the same shortcomings (for an overview of studies, see Erez, 2004 and Roberts and Erez, 2004). Both supporters and opponents of the measures have exhibited a tendency to extrapolate from satisfaction (or dissatisfaction) to other consequences.⁵ That input at sentencing leads to satisfied victims may well be true (see Wemmers, 2002), however whether it reduces trauma to any significant extent remains to be seen (e.g. Orth and Maercker, 2004). Similarly it may well be true that failing to meet victims’ raised expectations may lead to (some) dissatisfaction, as Ashworth (2000), Edwards (2001) and Sanders et al (2001) suggest.⁶ But disappointment is not synonymous with secondary victimisation (see Orth, 2002 for the most convincing development of the latter construct) and we fail to see why preventing the *possibility* of victims being disappointed should be used as an argument against measures purporting to serve victims interests.

Reduction of anger and anxiety through victim impact statements: the importance of voice

In the previous section we have already stated that the victim’s primary interest in the use of victim impact statements is ‘voice’, i.e. the opportunity to be heard in their own case. The fact that the victim’s own expression is taken to be the primary mechanism for therapeutic benefits has led some authors to assume a correspondence with the importance of expression in a therapeutic setting. Erez (2004) for example cites the well known book ‘*Opening Up: the healing power of confiding in others*’ by James Pennebaker (1990) in this respect. In the debate surrounding the Dutch oral victim impact statement, similar arguments were used against the new instrument (e.g., De Keijser and Malsch, 2002). The gist of these arguments is that the court room is not suitable for allowing the sort of therapeutic catharsis intended by Pennebaker. A therapeutic environment is one of confidence and safety, which qualities are notoriously absent in most court-rooms (see also Herman, 2003).

In addition, the oral versions of the victim impact statements lack most of the necessary ingredients of therapeutic techniques for victims of crime. There is no evidence for the efficacy of ‘single-shot’ forms of expression in the reduction/ prevention of trauma (see Van Emmerik et al, 2002; Winkel, 2007). This would imply that making a victim impact statement, oral or not, will not lead to therapeutic benefits for victims merely through the act of expression.

However, this does not imply that victim impact statements will not have therapeutic benefits. On the contrary, there are various avenues through which this could be the case. It is not the mere act of expression that leads to the supposed benefit, but the significance of expression during a court case.

First of all, there is the assessment of procedural justice. As has been repeatedly shown, allowing victims the possibility of participating in their own case leads to a higher sense of procedural justice. Relevant is that enhancing procedural justice will diminish anger and retributive tendencies (see Karremans en Van Lange, 2005; Tripp et al, 2007). This is also evidenced by evaluations of restorative justice programmes in which high levels of perceived justice coincide with stark reductions of anger (Strang, 2002). This reduction of anger, which may also be seen as a process of forgiveness (Worthington & Scherer, 2004) is also shown to have a beneficial effect on victims’ mental health (Karremans et al, 2003).

Second, the choice to participate in a VIS-programme can be viewed as a method of giving victims control over their own recovery and an avenue for action (see Pemberton, 2008b). Both of these features of victim impact statements can be linked to theories of recovery after post-traumatic stress. Frazier (2003) shows that victims who have a strong sense of control over their own recovery and are focused on avenues for action in the present, have a low risk of developing post-traumatic

5 In addition, the interpretation of the results is sometimes questionable. The Sanders et al (2001) conclusion of ‘don’t work, can’t work’ is based on a survey in which 77% of participating victims found the VIS to be helpful directly after submission of a written victim impact statement and 59% at the end of the process, which does not seem to support the rather flippant title of their article.

6 Although we should also note that the argument that these authors make concerning the superiority of substantive rights for victims over procedural rights, namely that explaining the way the criminal justice works should help victims’ welfare should also be a promising avenue for the prevention of dissatisfaction when using procedural rights.

stress disorder. Similarly, recent research into the concept of post-traumatic growth (Tedeschi & Calhoun, 1996) has shown that avenues for action are important in making sense of extreme negative experiences (Hobfoll et al, 2007). Participating in one's own court case, could be such an avenue (Pemberton, 2007).

On theoretical grounds, therefore, there is reason to believe that victim impact statements may reduce victims' anxiety and anger. We should note that in both instances this reduction of anger and anxiety may be achieved without placing undue pressure on other criminal justice principles, as neither achieving a sense of procedural justice and/ or a perception of control necessitates victim control over sentencing.

Individual differences

Debates concerning victim instruments tend to suffer from the application of a single stereotype of victims. This leads to general statements concerning the effects of criminal justice measures on victims, which disregards the variety in victims' relevant psychological characteristics, the differences in their experiences and the context of their victimization.⁷ In many instances the debate centres around the question whether an instrument 'works' for victims *in general*, rather than the question for *which* victims an instrument works or under *which conditions* this is the case.⁸ However, in therapeutic approaches to victimization the latter question is the more important one. Approaches to mass victimization stress the importance of matching treatment to the individual circumstances of victims, rather than applying certain methods across the board (see for example Foa et al, 2005; Pemberton, 2009). There are a number of reasons to apply this conditional approach to the study of victim impact statements.

First of all there is the correlation between victims' experiences with crime and their perspective on justice. The importance of retributive justice and thereby punishment of the offender increases with the severity of crime (see Gromet and Darley, 2006). In addition, both the age of the offender and the question whether the offender and the victim belong to the same community play a role. Wenzel, Okimoto, Feather and Platow (2008) show retribution to be less important in cases with young offenders and more important in cases where victims and offenders do not belong to the same community or group.

These differences in perspectives on justice are likely to impact victims' perspectives on the function of victim impact statements. As we have already noted, where most victims primarily use victim impact statements for their expressive function ('voice'), a sizable minority sees them as a means to influence sentencing (see Sanders et al, 2001; Pemberton, 2005). This use of a justice instrument for different purposes is also clearly visible in victim participation in restorative justice procedures (see Strang, 2002; Daly, 2003). The perspectives on the purpose of an instrument are likely to have an effect on victims' evaluation of these instruments.

Finally recent research suggests that extreme anger and anxiety may form barriers for the experience of procedural justice. Murphy (2008) shows that fair procedures do not affect the experience of justice of people who have high intensity anger. Winkel (2007) shows that the benefits of participating in restorative justice conferences only apply to victims who do not suffer from post-traumatic stress disorder (see also Cheon & Regehr, 2006).

Conclusion

The introduction of victim participation in the criminal justice procedure is controversial, particularly when motivated by therapeutic concerns. However this apparent tension can be reduced by clearly specifying the nature of the therapeutic constructs and reviewing how these constructs relate to the fundamental goals of the criminal justice process. This review is what we have called *criminal justice correspondence*.

Retribution and behaviour control are the most important purposes of the criminal justice system. These general perspectives may be connected to victims' punishment goals. Their perspective

⁷ See Pemberton, Winkel and Groenhuijsen, 2008 for a more extensive discussion of this point.

⁸ See case Pemberton, 2008 for an application of this notion to restorative justice.

on punishment is related to their anger at the offender and/ or their fear of being revictimized by the offender. This implies that striving to reduce anger and anxiety, the most important therapeutic goal for victims of crime, is not at odds *a priori* with established criminal justice principles.

We have argued for the correct application of relevant therapeutic knowledge to criminal justice instruments. Correct use of therapeutic constructs is what we have dubbed *therapeutic coherence*. The literature reviewed in this article suggests the use of outcome measures relating to anger and anxiety, rather than satisfaction; shows the effects of these instruments to be explained through the concept of voice, rather than through an analogy to expression in therapeutic settings; and stresses the need for an individual differences perspective, rather than viewing victims as a sociological class.

Literature

Ashworth, A. (2000). Victims' rights, defendants' rights and criminal procedure. In A. Crawford, A. & Goodey, J. (eds.). *Integrating a victim perspective within criminal justice*. Aldershot. Dartmouth Publishing.

Ashworth, A. (2002) Responsibilities, rights and restorative justice. *British Journal of Criminology*, 42, 578-595.

Bouckaert, G. & van de Walle, S. (2003). Comparing Measures of Citizen Trust and User Satisfaction as Indicators of "Good Governance": Difficulties in Linking Trust and Satisfaction Indicators. *International Review of Administrative Sciences*, 69(3), 329-343.

Braithwaite, J. (2002). *Restorative justice and responsive regulation*. Oxford. Oxford University Press.

Brienen, M.E.I. & Hoegen, E.H. (2000). *Victims of crime in 22 European criminal justice systems*. Nijmegen. Wolf Legal Publishers.

Buruma, Y. (2004). Doubts on the Upsurge of the Victim's role in Criminal Law. In: Kaptein, H. & Malsch, M. (eds.). *Crime, Victims and Justice. Essays on Principles and Practice*. Aldershot UK, Ashgate.

Carlsmith, K. M. (2006). The roles of retribution and utility in determining punishment. *Journal of Experimental Social Psychology*, 42, 437-451.

Carlsmith, K.M., Darley, J.M., & Robinson, P.H. (2002). Why do we punish? Deterrence and just deserts as motives for punishment. *Journal of Personality and Social Psychology*, 83, 1-16.

Chalmers, J., Duff, P. & Leverick, F. (2007). Victim impact statements: Can work, do work (for those who bother to make them). *Criminal Law Review*, May, 360-379.

Cheon, A. & Regehr C., (2006). Restorative justice models in cases of intimate partner violence: Reviewing the Evidence. *Victims and Offenders*, 1(4), 369-394.

Christie, N. (1977). Conflicts as property. *British Journal of Criminology*, 17(1), 1-17.

Daems, T. (2007) De slachtofferdimensie van herstelgerichte interventies. Een sluimerende therapeutisering? *Tijdschrift voor Herstelrecht*, 7(1), 7-21. (In Dutch: with an English summary).

Daly, K. (2002). Restorative justice: the real story. *Punishment & Society*, 4 (1), 55-79.

Daly, K. (2003). Mind the gap: Restorative Justice in Theory and Practice. In: Von Hirsch, A., Roberts, J.V., Bottoms, A., Roach, K. & Schiff, M. (eds.) *Restorative and criminal justice: competing or reconcilable paradigms*. Oxford, UK: Hart Publishing.

De Keijser, J.W. & Malsch, M. (2002). Is spreken zilver en zwijgen goud? Spreekrecht en het ontstemde slachtoffer. *Delikt en Delinkwent*, 32(1), 5-20.

De Keijser, J. W., Van Koppen, P. J. & Elffers, H. (2007). Bridging the gap between judges and the public. A multi-method study. *Journal of Experimental criminology*, 2007(3), 131-161.

Dinsdale, G. & Marson, B.D. (1999) Citizen/Client Surveys: Dispelling Myths and Redrawing Maps. Ottawa: Canadian Centre for Management Development.

Duff, R.A. (2003). Restoration and retribution. In: Von Hirsch, A., Roberts, J.V., Bottoms, A., Roach, K. & Schiff, M. (eds.) *Restorative and criminal justice: competing or reconcilable paradigms*. Oxford, UK: Hart Publishing.

Dutton, D.A. (2006). *Rethinking domestic violence*. Toronto: UBC Press.

Edwards, I. (2001). *Victim participation in sentencing. The problem of incoherence*. The Howard Journal, 40(1), 39-54.

Edwards, I. (2004). An ambiguous participant: The Crime Victim and Criminal Justice Decision-

- Making, *British Journal of Criminology*, 44(6), 967-982.
- Emmerik, Van, A.A.P., Kamphuis, J.H., Hulsbosch, A.M., & Emmelkamp, P.M.G. (2002). Single session debriefing after psychological trauma: A meta-analysis. *Lancet*, 360, 766-771.
- Erez, E. & Laster K. (1999). Neutralizing victim reform: Legal Professionals' perspectives on victims and impact statements. *Crime and delinquency*, 45(4), 530-553.
- Erez, E. (2004). Integrating restorative justice principles in adversarial proceedings through victim impact statements. In: Cape, E. (ed.). *Reconcilable rights? Analysing the tension between victims and defendants*. London: Legal Action Group.
- Foa, E.B., Cahill, S.P., Boscarino, J.A. et al (2005). Social, Psychological, and Psychiatric Interventions Following Terrorist Attacks: Recommendations for Practice and Research. *Neuropsychopharmacology*, 30, 1806-1817.
- Frazier, P.A. (2003). Perceived Control and Distress Following Sexual Assault: A Longitudinal Test of a New Model. *Journal of Personality and Social Psychology*, 84, 1257-1269.
- Furedi, F. (2004). *Therapy Culture*. London. Routledge.
- Goodey, J. (2005). *Victims and victimology. Research, policy, practice*. Harlow, UK. Pearson.
- Groenhuijsen, M.S. & Letschert, R.M. (2008). Reflections on the development and Legal Status of Victims' rights instruments. in: Groenhuijsen, M.S. & Letschert, R.M. (eds.) *Compilation of International Victims' rights Instruments (2nd edition)*., Nijmegen, Wolf Legal Publishers.
- Groenhuijsen, M.S. & Pemberton, A. (2009) The EU Framework Decision on Victims. Does hard law make a difference? *European Journal on Crime, Criminal Law and Criminal Justice*, 17, 43-59.
- Groenhuijsen, M.S. (2000). Victim-offender mediation: legal and procedural safeguards. Experiments and legislation in some European jurisdictions." In The European Forum for Victim-Offender Mediation and Restorative Justice (Ed.). *Victim-Offender Mediation in Europe. Making Restorative Justice Work*. Leuven, Belgium. Leuven University Press.
- Gromet, D.M. & Darley, J.M. (2006). Restoration and Retribution: How Including Retributive Components Affects the Acceptability of Restorative Justice Procedures. *Social Justice Research*, 19(4), 395-432.
- Herman, J.L. (2003). The Mental Health of Crime Victims: Impact of Legal Intervention. *Journal of Traumatic Stress*, 16(2), 59-166.
- Howells, K. & Day, A. (2002). Readiness for anger management. Clinical and theoretical issues. *Clinical Psychology Review*, 23, 319-337.
- Kaltman, S., & Bonanno, G.A. (2003). Trauma and bereavement: Examining the impact of sudden and violent deaths. *Journal of Anxiety Disorders*, 17, 131-147
- Karremans, J. C., Van Lange, P. A. M., Ouwerkerk, J. W., & Kluwer, E. S. (2003). When forgiving enhances psychological well being: The role of interpersonal commitment. *Journal of Personality and Social Psychology*, 84, 1011-1026.
- Karremans, J.C. & Van Lange, P.A. M., (2005). Does activating justice help or hurt in promoting forgiveness? *Journal of Experimental Social Psychology*, 41: 290-297.
- King, K. (2004). It hurts so bad. Comparing Grieving Patterns of the Families of Murder Victims with Those of Families of Death Row Inmates. *Criminal Justice Policy Review*, 15(2), 193-211.
- Lens, K.M.E. Pemberton, A. & Groenhuijsen, M.S. (2010). *Het spreekrecht in Nederland: Een bijdrage aan het emotioneel herstel van slachtoffers?* Tilburg: Intervict (in Dutch: with an English summary).
- Maercker, A. & Muller, J. (2004). Social Acknowledgment as a Victim or Survivor: A Scale to Measure a Recovery Factor of PTSD, *Journal of Traumatic Stress*, 17(4).
- Maruna, S. and King, A. (2004). Public opinion and community penalties. In Bottoms A.E., Rex, S.A. and Robinson, G. (eds.). *Alternatives to Prisons*. Cullompton, Devon, UK. Willan.
- McCullough, M.E., Bellah, C.G., Kilpatrick, S.D., & Johnson, J.L. (2001). Vengefulness: Relationships with forgiveness, rumination, well-being, and the big five. *Personality and Social Psychology Bulletin*, 27, 601-610.
- McNally, R.J., Bryant, R.A., & Ehlers, A. (2003). Does early psychological intervention promote recovery from posttraumatic stress? *Psychological Science in the Public Interest*, 4, 2, 45 - 79.
- Murphy, K. (2008). Procedural justice and affect intensity: understanding reactions to regulatory authorities. *Social Justice Research*, 22, 1-30.
- National Institute for Clinical Excellence. (2005). *Posttraumatic stress disorder. The management of*

PTSD in adults and children in primary and secondary care. Gaskell and the British Psychological Society. Downloaded

from:<http://guidance.nice.org.uk/CG26/guidance/pdf/English/?template=download.aspx>

Orth, U., & Maercker, A. (2004). Do trials of perpetrators retraumatize crime victims? *Journal of Interpersonal Violence*, 19, 2, 212 – 227.

Orth, U. (2002). Secondary Victimization of Crime Victims by Criminal Proceedings, *Social Justice Research*, 15, (4), 313-325.

Orth, U. (2003). Punishment goals of Crime Victims, *Law and Human Behavior*, 27 (2), 173-186.

Pemberton, A. (2005). Het spreekrecht. Vergelding of herstel? *Tijdschrift voor Herstelrecht*, 5 (3), 34-44. (in Dutch, with an English summary).

Pemberton, A. (2007). De Nederlandse slachtoffer-dader gesprekken: een theoretische verkenning. *Tijdschrift voor Herstelrecht*, 7(4), 37-52. (in Dutch, with an English summary).

Pemberton, A., Winkel, F.W. & Groenhuijsen, M.S. (2007). Taking victims seriously in restorative justice. *International Perspectives in Victimology*, 3, 1, 4 – 14.

Pemberton, A., Winkel, F.W. & Groenhuijsen, M.S. (2008). Evaluating victims' experiences in restorative justice. *British Journal of Community Justice*, 6 (2), 98-119.

Pemberton, A. (2008a). Victim Support and the International Crime Victim Survey: a consumer perspective. In Aromaa, K. & Heiskanen, M. (eds.). *Victimisation surveys in comparative perspective*. Helsinki, HEUNI.

Pemberton, A. (2008b). Over egels, vliegen vangen en herstelrecht. *Tijdschrift voor Herstelrecht*, 8(4), 53-65. (in Dutch, with an English summary).

Pemberton, A. (2009). The needs of victims of terrorism. In: Letschert, R.M., Staiger, I., & Pemberton, A. (eds.). *Assistance to victims of terrorism*. Dordrecht, the Netherlands. Springer.

Pennebaker, J. W. (1990). *Opening up: The healing power of confiding in others*. New York: Morrow.

Reeves, H. and Mulley, K. (2000). The New Status of Victims in the UK: Opportunities and Threats. In Crawford, A. & Goodey, J. (eds.). *Integrating a victim perspective within criminal justice*. Aldershot. Dartmouth Publishing.

Renssen, M. (2002) Traumatherapie na verkeersongevallen. Eyemovement Desensitization and Reprocessing (EMDR). Dissertation. Amsterdam. Free University.

Roberts, J.V., & Erez, E. (2004). Communication in sentencing: exploring the expressive function of Victim Impact Statements. *International review of Victimology*, 10, 223-244.

Rock, P. (1998). *After homicide*. Oxford. Clarendon Press.

Röhl, K. (1997). Procedural Justice: introduction and overview. In Röhl, K.F. & Machura, S. (eds). *Procedural Justice*. Aldershot. Ashgate.

Sanders, A., Hoyle, H. Morgan, R. and Cape, E. (2001). Victim impact statements: Don't work, can't work , *Criminal Law Review*, June, 447-458 .

Sarat, A. (1997). Vengeance, Victims and the Identities of Law, *Social and Legal Studies*, 6(2), 163-190.

Strang, H. (2002). *Repair or revenge: Victims and restorative justice*. Oxford: Oxford University Press.

Tedeschi, R.G. & L.G. Calhoun (1996) The Posttraumatic Growth Inventory. Measuring the positive legacy of trauma. *Journal of Traumatic Stress*, 9, 455-471.

Tripp, T.M., R.J. Bies & K. Aquino (2007) A vigilante model of justice. Revenge, reconciliation, forgiveness and avoidance. *Social Justice Research*, 20(1), 10-34.

Tyler, T.R. (1990). *Why people obey the law*. New Haven, USA. Yale University Press.

Tyler T.R. & Huo Y.J. (2002). *Trust in the Law*. New York. Sage.

Van Stokkom, B. (2008). The expressive function of restorative punishment: a 'public' interest perspectives. In: Mackay, R. et al (eds.). *Images of Restorative Justice Theory*. Frankfurt am Main. Verlag fur Polizeiwissenschaft.

Van Stokkom, B. (2010) Victim needs, self-respect and 'closure'. Does revenge satisfy? This volume.

Vidmar, N. (2001). Retribution and revenge. In: Sanders, J. and Hamilton, V.L. (ed.) *Handbook of Justice Research in Law*. New York. Kluwer.

Wade, N.G., Worthington, E.L. & Meyer, J.E. (2005). But do they work? A Meta-Analysis of Group Interventions to promote forgiveness. In: Worthington, E.L. (ed.), *Handbook of Forgiveness*. New York. Routledge.

- Walgrave, L. (2008). *Restorative justice, self-interest and responsible citizenship*. Cullumpton, UK. Willan Publishing.
- Wemmers J. M. & Cyr. K. (2004). Victims' perspective on restorative justice. How much involvement are victims looking for? *International Review of Victimology*, 11: 1-16.
- Wemmers, J.M (1996). *Victims in the criminal justice system*. The Hague, The Netherlands, WODC/Kugler
- Wemmers, J. M. (2002). Restorative justice for victims of crime: A victim-oriented approach to restorative justice. *International Review of Victimology*, 9, 43-59.
- Wenzel, M., Okimoto, T.G., Feather, N.T. & Platow, M.J. (2008). Retributive and restorative justice. *Law and Human Behavior*, 32(5), 375-389.
- Winick, B. (2008). *Therapeutic jurisprudence and victims of crime*. Downloaded from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1102350 .
- Winkel, F.W. (2007). *Posttraumatic anger. Missing link in the wheel of misfortune*. Inaugural lecture Tilburg University. Nijmegen. Wolf Legal Publishers.
- Worthington, E. L., Jr., & Scherer, M. (2004). Forgiveness as an emotion focused coping strategy that can reduce health risks and promote health resilience: Theory, review and hypotheses. *Psychology and Health*, 19, 385-405.
- Zech, E., & Rime, B. (2005). Is talking about an emotional experience helpful? Effects on emotional recovery and perceived benefits. *Clinical Psychology and Psychotherapy*, 12, 270 -287.