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From Cinderella to Consumer: How Crime Victims Can Go to the Ball

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Introduction

Historically, as Schafer noted in his seminal 1960 publication, crime victims were the ‘Cinderellas’ of the criminal justice system (Schafer 1960: 8). One of the most dramatic shifts in adversarial criminal justice since that time has been the transformation of the role of victims (Garland 2001: 11).

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Decades of victim advocacy through the victim rights movement has led to major reforms to afford victims a greater role in criminal proceedings and better meet their needs (Roberts 2009).

In the US, as well as internationally, victims have been accorded rights aimed at integrating them into criminal justice proceedings.¹ Victims' charters of various kinds underscore the provision of tailored information resources and victim support services, such as counseling, and an obligation to treat victims with dignity and respect (O'Hara 2005; Zweig and Yahner 2013). Many jurisdictions have legislative provisions requiring that victims be notified about various stages in the proceedings against an offender (Hall 2010). Nearly all have mandated opportunities for victim input into sentencing through various forms of Victim Impact Statements (VIS) (Cassell and Erez 2011), including written documents or the opportunity for the victim to address the sentencing judge directly (referred to as the victim right of allocution). In some jurisdictions, victims also have the right to be heard at parole hearings (for an overview see Erez and Roberts 2013). These diverse victim participatory reforms acknowledge, at long last, victim rights and agency.

Victim rights charters, for instance, are common in Australia. Almost all states and territories have enshrined a charter or declaration in legislation. Broadly, these legislative statements set out how victims of crime should be treated by people and agencies such as police and courts. For example, the Victorian *Victims Charter Act 2006*, the first of its kind in Australia, lists 12 principles which govern the response to victims of crime by investigatory agencies, prosecuting agencies, and victims' service agencies. These principles include that victims should be treated respectfully, informed about their rights and the progress of the investigation, protected from unnecessary contact with the accused, and given the opportunity to make a VIS.

Despite expanded victim rights and greater victim involvement in the criminal justice system, such reforms have failed to fully realize the desired outcome of victim inclusion. The attempt to graft victim rights onto the adversarial system remains controversial and challenging. Legislative fiat

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alone cannot move legal culture from its historic exclusion of victims to their inclusion. Despite the grand legislative efforts over recent times, many victims continue to remain frustrated and dissatisfied with their experience and treatment (Erez et al. 2014).

In this chapter, we propose a reconceptualization of the role of victims in the criminal justice system to redress the shortcomings of current victim inclusion regimes. Conceptualising victims as ‘consumers’, would, we suggest, help to realize the spirit of victim reforms. At the very least, in the Digital Age, adopting a ‘customer service’ approach to victim participation could overcome the ambivalence towards victims and the confusion about their role.

The chapter is divided into two parts. Part 1 outlines why victim reforms, while positive in many respects, have not fully realized their intended objectives. We begin by spotlighting the strong hold that adversarial theory and practice continue to exert on current criminal justice culture and processes. We argue that victim participatory rights have not displaced traditional criminal justice approaches which, for both ideological and pragmatic reasons, have enduringly excluded victims. Legal culture has also accorded a new master status to victimhood which overshadows the diversity and individuality of victims and their varying needs and preferences. We highlight how unsupportable myths about victims continue to influence attitudes to them throughout the criminal justice system.

In Part 2, we make the case for reconceptualising victims as ‘consumers’ of criminal justice services. We suggest this serves as a better framework for realizing victim participatory reforms. We begin by outlining the criteria that an effective framework for victim inclusion would need to fulfill. We then review some of the alternative models proposed to better meet the needs of victims in the light of these criteria and argue that they still miss the mark. We discuss how previous attempts to conceptualize victims as consumers have been met with justified criticism for, in fact, failing to advance the interests of victims as intended. However, we contend that the contemporary status accorded to consumers in the Digital Age affords opportunities to address these past difficulties.

Drawing on the history of the consumer rights movement, we demonstrate how victims could benefit from the success of contemporary consumer advocacy and power. We go on to consider practical applications of the reconceptualization of victim as consumer, including ‘victim

satisfaction surveys', 'user centered design' and customer focus, to systematically gather data to improve the quality of service and enhance accountability. We use the medical context as a case study of how a more profound change is possible even in conservative systems.

In the conclusion, we explore a more radical implication of the reconceptualization of victims as consumers. We posit that, potentially, the consumer framework, where victims become the proxy for the community, could have a transformative effect on the crisis of trust in contemporary criminal justice system.

Part 1: The Limits of Victim Participation Reforms

Unquestionably, victim rights legislation has been a positive and empowering force for many victims. While still lacking full standing as parties to proceedings, victims in adversarial systems now have the opportunity to be consulted, informed, and provide input into proceedings more than ever before.

Participation in the criminal justice process has gone a considerable way to recognizing victims' needs and agency (Erez et al. 2014). Generally, it has restored victims' dignity and increased their sense of control (e.g. Erez and Tontodonato 1992). Attendance at court proceedings provides many victims with symbolic validation. A violator being referred to as 'the accused' or appearing in prison garb or handcuffs, for example, graphically highlights that their victimization is being dealt with seriously (Erez et al. 2011). The opportunity to prepare a VIS, knowing that their account of their experience will form part of the court record, has been a significant form of validation for many victims (Roberts 2009).

At the same time, victim participation rights represent a radical departure from adversarial theory and practice. Victim integration reforms over the last four decades attempted, often in an abrupt and ad hoc manner, to graft a host of victim rights on to a system which, by design and express ideology, had denied victims standing and deliberately excluded them from proceedings. It is therefore not surprising that victim rights, 'added on' to a tightly honed adversarial legal structure, remain problematic. Although some victim rights advocates view the new privileges and

powers of the victim as evidence of progress toward the goal of full participation in the criminal process, for many in the criminal justice system, victim rights still present a major threat to the core values of the adversarial model (Erez 1994, 1999; Erez and Roberts 2013).

The Adversarial Challenge: One Step Forward, Two Steps Back

Historical accounts of the evolution of the modern criminal justice system document how victims were progressively banished from legal proceedings (e.g. Kirchengast 2006: 127–158). This development is celebrated as leading to the elimination of blood feuds and vigilantism. Court-based trials replaced ‘trial by battle’ or ‘trial by ordeal’ (Kirchengast 2010), and shifted the onus of prosecuting offenders from victims and their community to state-based police and prosecution services (Corns 2000; Fenwick 1997).

Critics, though, contend that the triumph of adversarial justice allowed the state to progressively ‘steal’ conflicts from the protagonists, including victims (Christie 1977). In adversarial theory, crime is conceptualized as harm perpetrated against the state rather than an individual. The modern criminal trial is now a (verbal) battle between two presumed equal adversaries—the state and the defendant—presided over by an impartial adjudicator—the judge. The prosecutor, as the authorized representative of the state, is required to bring the offender to justice, standing in the stead of the individual victim. At best, victims, as non-parties to proceedings, were confined to testifying at trial as witnesses (van Dijk 1988; Fenwick 1997). They were only permitted to answer questions put to them by the prosecution and the defense during examination and cross-examination, where incivility and hostility have become ‘normal’, common occurrences (O’Connor 2003: 226).

Victim rights legislation of the late twentieth century were designed to go some way to redress this historical shift from this victim- to- state-centric model and provide victims with various welfare and participatory rights. But an ‘add victims and stir’ approach did very little to challenge the foundations of adversarial proceedings. ‘We are’, as Duff explains

(1988: 147–148), ‘endeavouring to use a social institution which has developed to fulfil one particular role for other purposes’. In criminal courts, deeply steeped in adversarial ideology and practice, ‘business as usual’ has prevailed.

The scale of the reforms also raised victims’ expectations. Service delivery often does not keep pace with political rhetoric and the promises made to victims about meaningful reforms (Tapley 2005). And with greater opportunity to observe the routines, behaviors, and responses of what has been dubbed the ‘courtroom workgroup’ (the judge, prosecutor, and defense attorney (Eisenstein and Jacob 1977) victims now see for themselves the limits and failures of the system, including how legal professionals arrive at their decisions. As Otto von Bismarck reminded us over a century ago, laws—and, we would add, legal decision-making—are like sausages, ‘it is better not to see them being made’ (cited by Pear 2010).

For many victims, exposure to the ‘law’ as practiced in adversarial proceedings has been disappointing, even distressing. For instance, victims have a hard time accepting considerations such as ‘convictability’ (Frohmman 1991) in decisions about filing charges or prosecutors’ interest in negotiating a plea that minimizes the offender’s blameworthiness. Victim rights are also often incompatible with institutional demands and professional routines and practices. Legal practitioners and court staff resent and resist the ‘extra work’ as well as the additional players they suddenly have to accommodate. In many jurisdictions (notable American exceptions being states that have passed or adopted California’s Marsy’s Law: California, Illinois, Arizona, and North Dakota), there are neither sanctions nor remedies for noncompliance with, or violations of, even expressly stated victim rights (see also, in relation to the UK experience, Fenwick 1997; Jackson 2003). Implementation thus remains entirely dependent on the variable goodwill of key court actors.

Not all legal personnel can, or are willing to, mollify, placate, or attend to victims’ wishes. For instance, participants with an ambiguous status such as victim advocates, staff of NGOs, and victim service agencies have described being threatened with charges of practicing law without a license for explaining mundane terms such as joint accounts to victims or being reprimanded by judges for explaining legal terminology to victims

during court hearings (Globokar and Erez 2019). These kinds of incidents are indicative of failures to live up to the aspirations of victim inclusion. In the busy 'wholesaler' legal environment inhabited by professional insiders (Laster 2018), practitioners forget themselves and, at times, demonstrate a lack of sensitivity to victims. Many victims report being traumatized by legal professionals' indiscretions before, during, and after proceedings (Erez et al. 2014), such as the prosecutor and defense attorney exchanging hugs and vacation experiences in Hawaii in front of the parents of a murdered child as they waited for the trial to commence. Prosecutors are often patronizing, in one instance telling a victim that, since she is not a lawyer, she would not be able to understand the basis of a plea bargain. Victims were perturbed that judges rolled their eyes in response to a party's argument, and even apparently falling asleep during hearings (Erez et al. 2014).

Participatory reforms come at some cost and risk for victims and court professionals alike. For practical and ideological reasons, there are clear tensions in the effective implementation of victim inclusion reforms on the ground. These reforms did little to disrupt the values, prejudices and misconceptions of key actors about victims and victim status. Below, we discuss some of the contributing factors to the less than smooth adoption of hard-won victim participatory rights.

Victim as Master Status

Once victims were recognized as significant players in the criminal justice system, victimhood quickly assumed a new 'master status', a sociological concept that marks the essence of a person's social identity.

Once uttered, the term conjures up various stereotypes associated with a person of 'this kind'. As with other types of 'master status', key players in the justice system, the media, and legal scholarship tend to view victims as a homogenous and static group, rather than as diverse, dynamic, and multifaceted individuals. This is notwithstanding consistent research findings showing that victims defy the casual categorization or typecasting which is so prevalent. Victims, in short, experience crime differently and individually (Erez and Rogers 1999; Fletcher 1999; Greer 2017).

Studies confirm the diversity of victims in every respect including how they react, what they want from the law, how they view their victimization and the offender, and the response they expect to their victimization (Regehr and Alaggia 2006; Vanfraechem et al. 2014; Wemmers and Cyr 2004). Even victims of ‘like’ crimes, such as women who have experienced violence through sexual assault or domestic abuse, evince a variety of views, wishes, interests, and approaches to their offenders and their punishment (Herman 2005).

Our own ethnographic interviews with victims found that they do not feel listened to and that the court and other key players make often inaccurate assumptions about their needs and motivations and seek to control victims’ emotions (Erez et al. 2011). In interviews we conducted in one jurisdiction, a mother of a murder victim painfully recalled being told to refrain from displays of emotion in the courtroom:

‘I was told by the prosecutors that I was to walk in there and that I was to perform, basically. I was not to cry, I was supposed to keep my cool and they needed for me to be on my best behavior—that was their famous words. Can you imagine how hard that is ... you’re told that you cannot cry when you have a ... murderer in the room looking at you, all these jurors, and now you’re supposed to portray yourself as the cold-hearted mom who can just sit there and talk?’

For victims, their experiences, shaped largely by the conduct of lawyers, judges and others that operate within the legal system, are often just as, if not more, important than the outcome of the proceedings (Erez et al. 2014; Van Camp and Wemmers 2013). And yet, their overarching master status as the homogenous ‘victim’ seems to dominate criminal justice actors’ responses to them (see also Hall, Chapter 10 in this volume).

To some extent, the failure to individualize responses is a feature of all bureaucratic systems, especially those with major resourcing constraints where the tyranny of numbers demands speedy disposal. Individualized approaches are sacrificed in the interests of efficiency or ‘to keep things moving’ (e.g. Sudnow 1965; Feeley 1979). While some agencies have specialist staff to deal with victims directly, efforts to integrate victims into the process inevitably pose an added strain on an already overloaded

system. Interactions tend to be formulaic and minimalist (Kirchengast 2016). Victims find themselves ‘processed’—much like defendants.

Underlying the less than accommodating attitudes to the needs of victims as individuals are the persistent (even if empirically unsupportable) myths about victims including the overarching fear that victim inclusion is a threat to the fair administration of justice, often invoked as a concern for possible infringement of defendant rights (Ashworth 1993).

Lingering Victim Myths

Despite decades of empirical research to the contrary, there are three persistent sets of myths underscoring attitudes to victims. First, victims are often assumed to be driven by punitive or vengeful motives (Herman 2005; Erez 1999). Second, there is the lingering suspicion that victims are at least partly to blame for the situation in which they find themselves and so are undeserving. Finally, victims are perceived to be ‘emotional’—anathema to a legal system which prides itself on objective, ‘rational’ and impartial decision making (Bandes 1996).

Myth 1: Victims Are Vengeful and Punitive

The image of the victim as a person who seeks revenge—the myth of the vengeful victim—is commonly found in legal scholarship (Ashworth 1993; Fletcher 1999). It remains embodied in the attitudes of professionals who interact with victims (Erez et al. 2014) and underlies the sometimes fierce opposition from some legal practitioners to victim input into proceedings (e.g. Erez 1990, 1994), especially in the form of VIS, the nature, content, and impact of which remain controversial.

This image persists, notwithstanding that it been discredited by research on victims of diverse crimes and in all legal systems studied (Doak and O’Mahony 2006), at least in the context of adversarial national legal systems (cf. international criminal justice fora). It has been consistently shown that victims most commonly seek validation rather than retribution; they also wish to be accorded dignity, respect, and

recognition, rather than to lobby for harsher punishment of their offenders (Van Camp and Wemmers 2013).

In the scores of VIS that we have read, victims request, at most, that judges merely apply the sanction meted out by the law (see also Erez and Rogers 1999). Victims maintain that they want fair, commensurate punishment—just deserts (e.g. Starkweather 1992; Erez 1999). In other cases, particularly if the perpetrator is a family member, they ask for treatment and services for their violator (Herman 2005).

Some criminal justice actors have a political bias against victim participatory reforms because these are seen to be associated with ‘law and order’ agendas including harsher penalties. The ‘culture of crime control’ that has emerged in late modernity (Garland 2001) has made victims part of its rhetoric and rationale, but it is simplistic to see victims themselves as the vanguard of what are much broader social forces.² As we well know, correlation is not causation. Indeed, surveys of public attitudes toward punishment confirm that victims’ wishes for commensurate punishment generally reflect those of the general public; the two do not differ in their preferred type or degree of harshness in sentencing (see Roberts et al. 2007). Victims’ views and preferences are closer to prevailing public sentiments than those of legal professionals. The latter, in their efforts to dispose of cases efficiently, can become insensitive to human suffering in the routine processing of cases (Davis et al. 1984). For instance, they often agree to drop charges or negotiate pleas that are more likely to result in what the wider community perceives to be overly lenient sentences.

Myth 2: Victims Are Blameworthy

There are hardly any so-called ‘ideal victims’ (Christie 1986), but that does not make victims responsible for their victimization. Victims do not bring their victimization upon themselves. The most pernicious and prevalent of these assumptions is that women who are victims of domestic abuse are ‘asking for it’ and are to blame because they do not leave or if they return to their abuser (Loseke and Cahill 1984; Erez and King 2000). Myths about rape and victim precipitation and provocation are

likewise widespread and stubbornly problematic, resistant to victims' attempts at denial (Lonsway and Fitzgerald 1994).

Although criminological research has documented a substantial overlap between victims and offenders (DeLong and Reichert 2019), the overwhelming majority of persons who are victimized do not become victims because of any criminal involvement (although this may be true for many offenders, see DeLong and Reichert 2019).³ Furthermore, when victims do not report victimization, or report it with significant delay, it is not because they are responsible for their misfortune, but often due to shame, fear of retaliation, or because they do not think the incident is important enough or will receive an adequate response from police (Kidd and Chayet 1984; Ullman 2010; U.S. Department of Justice 2012).

Myth 3: Victims Are Emotional

There is no denying that crime causes harm, pain and anguish to victims. And there is a natural human need to express such sentiments and have them heard and formally validated.

Underlying legal fears about emotional display is the risk that victims' emotions will inject subjectivity into the trial process, which, according to legal ideology, is meant to remain 'objective' (Erez and Rogers 1999). The criminal justice system has its own rules for emotion display (Schuster and Proppen 2011). Indeed, a goodly proportion of the law of evidence is concerned with the sifting of impressions, opinions and emotions from the 'facts' that alone should determine jury decisions about guilt or innocence. Lawyers themselves are schooled that as professionals they do not 'think', 'feel' or 'believe' but rather only 'submit' or 'argue' before a court. Even judges, it is feared, might be influenced by displays of emotion, which could then skew a sentence and thus lead to sentencing disparity (Erez 1999; Roberts 2009).

'Emotions', however, are not the same as 'emotionality', and having feelings is not tantamount to allowing irrationality to reign (Bandes 1996). There is scope for victims to display their emotions, and have those emotions validated, in a legal environment, without necessarily threatening the rules-based objectivity of the legal process.

In sum, despite the evidence, and the efforts to render court culture more receptive and accommodating towards victim participation, adversarial traditions as well as ‘business as usual’ imperatives continue to shape responses to victims and victim participation reform. So pervasive are these prejudices that whatever the dictates of a new legislative regime might be, the cultural default position is to be suspicious of victims and their involvement in proceedings (Laster and Erez 2000). If victim participation measures are to be effective, we need to move beyond just formal reforms and create a victim-responsive culture across the criminal justice system. In Part 2 below, we consider how this might be achieved.

Part 2: Reconceptualizing the Victim as Consumer

The limitations of the adversarial system and victims’ role in such criminal justice systems are well documented (Boateng and Abess 2017). Advocates of defendants and victims endlessly argue about tilting the balance of rights between each side through ad hoc procedural reforms. Here we make a case for reviving the model, or metaphor, of ‘victim as consumer’ of criminal justice services as a better framework for realizing victim participatory reforms. But what criteria should a victim-friendly new scheme meet?

Criteria for a New Victim Paradigm

The overarching challenge for a victim-friendly justice system is to reconceptualize the rights and role of victims without undermining the time-honored protections accorded to accused persons. Beyond this core requirement, there are five criteria that any workable victim integration approach would need to satisfy. These are:

1. *Practicality*: the new approach should be ‘doable’. Criminal justice processes are already time-consuming, cumbersome and complex both for the professional workgroups including judges, legal practitioners and

court staff, as well as for offenders and victims. Simplicity and ease of administration and compliance are therefore critical.

2. *Comprehensibility/Marketability*: the new approach needs to be readily understood by criminal justice personnel, victims and defendants, as well as the wider public. The purpose, mode, and impact of any new process need to be self-evident and fit with the lived experience of victims and other key actors. It needs to be easily marketable, to dislodge the deep prejudices and myths prevalent in professional and public discourse about victims.

3. *Affordability*: the criminal justice system is already bursting at the seams with the volume of cases it is required to resolve with shrinking public resources (Laster and Kornhauser 2017). This reality is unlikely to change. New measures should therefore minimize any extra time and cost burden on the state, if they are to be viable.

4. *Testability*: the effectiveness of any new approach needs to be able to be measured. The experiences of victims both individually and collectively need to be evaluated to assess whether the new model/intervention is an improvement on previous efforts to accommodate victims' needs and interests. The approach needs to be capable of generating and capturing data not only for evaluation but also to serve as the basis for continuous improvement in the system's responsiveness to victims.

5. *Accountability*: the new model should hold the whole of the criminal justice system to account for its treatment and responsiveness to victims. Individual demonstrations of empathy and goodwill towards victims need to be generalized and standardized with criminal justice personnel held to account for any breaches or failings. Through this open approach, the public can engage with, understand, and clearly support reforms which politicians are then obliged to follow.

A number of alternative approaches to overcome some of the limitations of the adversarial system for all parties, including victims, have emerged in the last few decades. Each has its own set of advantages and disadvantages but have not, to date, reshaped the underlying attitudes to victims.

Alternative Models of Victim-Friendly Criminal Justice

Some legal scholars, conscious of the limits of adversarial approaches, have advocated for a 'victim model of criminal justice' (Beloof 1999) to complement the two main approaches of 'crime control' and 'due process' (Packer 1964). The 'third model', it is suggested, would embody important victim participation rights in criminal proceedings including fairness and respect for the dignity of victims (Beloof 1999). This third model is a variant of the 'add on' approach but with a shift in the orientation of court proceedings toward victim rights. This approach is likely to be ineffective for much the same reasons as all previous efforts to recalibrate the balance of rights between victims and defendants.

Other scholars have gone further, proposing a system of 'Parallel Justice' for victims which mirrors the rights accorded to offenders (see Herman 2010). In the United States, for example, a movement to enact a constitutional amendment to provide victims with legal standing is gaining momentum with its first victory in California, thorough the passage of Marsy's Law (Richardson 2013). Other states, including Illinois, Montana, and South Dakota followed, and efforts are currently being made to pass similar laws elsewhere.

Another variant of this approach is procedural justice, which contends that principles of respect, voice, transparency, and neutrality of decision makers will increase satisfaction and cooperation of litigants, or citizens in general, with authorities (Tyler 2003).

The major problem each of these approaches face is that they add yet another layer to what is already a highly complex system. They also reinforce the bifurcation between offenders' and victims' rights. Neither model addresses the critical issue of how to change the hearts and minds of key actors in the system about victim participation.

A relatively recent influential school of thought though has directly addressed attitudinal shift. The broad church of Therapeutic Jurisprudence (TJ) has reinvigorated traditional courts by reframing the thinking of key court actors to recognize the 'therapeutic' dimensions of court adjudication (Wexler 1993). The philosophy of TJ initially sought to transform the interactions between court officers and criminal offenders. The

approach directly led to the development of specialist ‘therapeutic’ courts to deal with particular kinds of intractable offending behavior such as drug addiction and mental illness (Winick and Wexler 2001). Envisioning law as an instrument of healing and rehabilitation, TJ has been particularly attentive to the emotional well-being of all parties caught up in the system, including victims. For victims, TJ holds the promise of ameliorating secondary victimization at all levels and stages of the criminal justice process (Winick 2011).

A key strength of the TJ model is that it is conservative: working from within the system to reshape the attitudes of traditional court actors. Applied in ordinary court hearings, TJ approaches require minimal additional resources beyond better education and training of practitioners and judicial officers in basic therapeutic principles. The professional development is designed to improve court personnel’s understanding of social interaction and the impact of behavior on the parties and the problems that regularly come before the courts. For judges in particular, TJ has provided a new philosophical *raison d’être* beyond merely the ‘processing’ of an ever-increasing array of difficult cases (King et al. 2009; Spencer 2017).

However, TJ’s ‘insider’ status is simultaneously its weakness. It is a judge or professional-centric approach; the individual judicial officer is allowed to be the self-defined arbiter of what is ‘therapeutic’ in a given instance for individual offenders and others, including victims. TJ may lead to greater empathy for victims and so improve individual victims’ experience of proceedings (Erez et al. 2011), but TJ does not make judicial officers, court processes, or the system itself any more accountable for the treatment of victims individually or as a class. It bypasses a critical requirement of victim participation—active, evidence-based, systematic engagement of victims as a matter of right rather than of discretion.

The most radical response to the shortcomings of the adversarial system has been to side-step courts altogether. Arising from the critique of the failure of the formal adversarial adjudication process and its limited rehabilitative outcomes for offenders (Daly 2017), John Braithwaite’s theory of ‘Re-Integrative Shaming’ (Braithwaite 1989) has seen the development of various alternative ‘restorative justice’ fora (Strang and Braithwaite 2001). These settings are designed to provide a structured,

respectful meeting between victims and their offenders in the presence of supporters, facilitated by a trained mediator (McCold 2006). For some offenders and victims, these settings are a major improvement on formal court adjudication.

Although we still lack a large body of high-quality, methodologically rigorous research into the effect of restorative justice (RJ) practices on recidivism, indications to date are, on the whole, generally positive (Wilson et al. 2017). At the very least, RJ interventions perform just as well as 'traditional' court processes in terms of reducing re-offending (Piggott and Wood 2019).

Perhaps more importantly for present purposes, the evidence suggests positive victim participant outcomes. In their meta-analysis of evaluations of juvenile justice RJ programs, Wilson et al. (2017: 35) reported that victims had improved perceptions of fairness, greater satisfaction, improved attitudes toward the offender, were more likely to feel that the outcome was just, and felt their opinions and views were considered and the offender held to account.

A recent evaluation of the restorative justice conferencing program in the Australian Capital Territory, for example, found between 98% and 99% of victims who participated in the process felt it was fair and they were treated with respect, and 96% would recommend participation to others (Broadhurst et al. 2018).

Critics of RJ, however, contend that as a system, it is costly and offers little beyond that already available via existing diversionary schemes (Morris 2002). Empirically, despite the apparent rapprochement between offenders and victims during the mediation session itself, recidivism rates are hardly better than for traditional court determinations (Daly 2017). For victim rights advocates, the major concern is that RJ for a place victims in an invidious position because, directly or indirectly, they are pressured into confronting their offenders and, in some instances, 'forgiving' them (Peterson Armour and Umbreit 2006). At the very least, victims' advocates contend that restorative justice is unsuitable for particular kinds of relationships and/or to more serious types of offending (Hudson 2002).

The criteria for success outlined above suggest that a sweeping (and resource-intensive) refashioning of the formal criminal justice system

probably will not work. To be effective, change, in the first instance, needs to be conceptual. How do we change hearts and minds about victims and their status in our criminal justice system? Below we outline our own arguments in support of conceptual change (see Chapter 14 in this volume for a different conceptualization that has similarities to RJ).

Reimagining Victims as Consumers of the Justice System

We argue that construing victims as ‘consumers of the justice system’ provides an alternative, theoretical, and practical framework which avoids casting victims as the problematic ‘third wheel’ in the adversarial dyad of the State vs. the Offender. It clarifies their role by providing a direct connection between the public and the courts.

The concept ‘victims as consumers’ is a metaphor, but powerful nonetheless. As Lakoff and Johnson (1980) so cogently established, metaphor is integral, rather than peripheral to language and abstract thought. Metaphors determine how we perceive and experience the world. Just as the image of victims as Cinderellas served as the initial catalyst for fundamental changes to the position of victims, so a reframing of victims as ‘consumers of the justice system’ provides a way of burying unhelpful stereotypes about victims. It should also resolve the ambivalence and confusion about victims’ role in criminal justice proceedings.

The metaphor also provides a way to bypass the perennial competition in the balancing of rights between victims and offenders.

To be sure, we have been here before. In one sense, construing victims as ‘consumers’ of the criminal justice system and its associated services is not new. Victims (and even at one time ‘prisoners’) have been envisioned as consumers since the 1980s (Goodey 2005: 131). Williams (1999a) describes, for example, the UK’s 1996 Victim’s Charter—a ‘statement of service standards for victims of crime’—as being framed in terms of consumer rights.

At the time, the construction of victims as consumers failed to empower victims and meet their needs. Nor were the victim rights that this construction promised to afford ever fully realized.

Central to this failure was the treatment of the victim-consumer as a 'passive' or 'mere' consumer of criminal justice services, and denied victims the status of 'active citizens' with enforceable and substantive rights (Tapley 2005; Williams 1999b). Victims were treated as consumers of services, 'with very little recourse to justice should these services fail' to meet expectations (Goodey 2005: 131). Writing about the construction of citizens as consumers of public services more generally, Ryan (2001: 107) argues that:

a central problem associated with the language of citizen as consumer is that it implies a passive role for citizens rather than a participatory engagement. Consumers have less responsibility in decision-making and implementation processes than do citizens.

Viewing victim services as part of a market, consumer-based economy also imported notions of purchasing power and access to knowledge, serving to only advantage the least marginalized victims (Goodey 2005: 136–138; Ryan 2001), and failed one of the basic requirements of consumer sovereignty: a competitive market which provides consumer choice (Ryan 2001).

Since these constructions of victim as consumer, however, the consumer movement has progressed markedly, resulting in an unprecedented degree of consumer empowerment. Consumers no longer engage in the 'passive' consumption of goods and services. Increasingly, the balance of power is shifting away from the supplier, as the consumer movement has proven to be a powerful social and political force, especially in the Digital Age.

We suggest that recasting victims as 'consumers of the justice system'—in the sense of the contemporary, empowered consumer with which we are today familiar—provides an effective framework for enhancing victims' participatory rights in the criminal justice system. A short history of consumer power is probably in order to understand the changing connotations of this conceptual framework. Despite its apparent lack of success in the 1980s, the longer view suggests that at various times, it has been a transformative force in social relations and power.

The Rise of Consumer Power

Adam Smith first coined the term ‘consumer sovereignty’ in the eighteenth century (Finch 1985: 23), but it was not until the Great Depression that a grass roots social movement, intent on protecting ordinary people from exploitation by manufacturers and sellers, came into its own. The Consumers’ Union was established in 1936 in the US. Initially, consumer activism was denigrated as ‘consumerism’ by retailers and manufacturers. It met with hostility as an allegedly communist-inspired attempt to derail capitalism.

By the 1950s, the movement acquired legitimacy with housewives leading public campaigns to improve product value and safety for the benefit of women and children (Storrs 2006). One immediate effect was the widespread introduction of ‘product testing’ (Warne 1973). Innovations in retail, such as self-service stores and large supermarkets, also gave consumers a new level of freedom and control (including ‘pre-purchase evaluation’ of products) and choice (Davies and Elliot 2006); consumers described ‘no longer [waiting] “dutifully” to be served’, but taking active responsibility for their own purchasing decisions (Davies and Elliot 2006: 1113).

The growing power of the consumer movement was formally acknowledged in President Kennedy’s Consumer Rights Bill of 1962, which declared that consumers were entitled to four core rights—the Right to Safety, the Right to be Informed, the Right to Choose, and the Right to be Heard (Kennedy 1962: 2). In the same set of sweeping consumer reforms, President Kennedy also announced the creation of a Consumers Advisory Council and mandated that heads of 22 nominated Federal agencies appoint special assistants to review consumer interests and concerns in the delivery of their services (Werner 1962).

During this period of social change, the consumer movement formed part of the wider critique of the professions with ordinary people insisting on better information, greater consultation and improved service delivery by manufacturers, sellers, professionals, and by government itself (Laster and Kornhauser 2017). The heyday of the consumer movement came in the 1980s and 1990s, mirroring again the rise of the victim rights

movement. Reports critical of the lack of consumer protection led to extensive legislative reforms to better protect the health and welfare of consumers. For instance, in 1987, the Organisation for Economic Co-operation and Development published a report (Organisation for Economic Co-operation and Development 1987) calling on public services to be more responsive to users and the US Federal Bureau of Consumer Affairs was established with a mandate to protect the rights of consumers and prevent ‘unfair, deceptive and fraudulent business practices’ (Smith n.d.).

The application of consumer rights thinking to victims was less successful during this period probably because it was not robust enough to reshape traditional institutions grounded in protecting an individual defendant from being overborne by the overwhelming power and resources of the state. The 1980s consumer model assumed that a civil law model could reshape criminal justice ideology without a method for achieving such transformative change.

However, the Digital Age consumers have acquired a more powerful tool kit. Technology has provided platforms which readily aggregate comparative data about services of all kinds, providing consumers with hitherto unprecedented information and choice, and with consumers being able to take full advantage of alternative value propositions (Harrison et al. 2006: 975; Pires et al. 2006: 939).

Both commercial and government services are now dealing with increasingly demanding and connected consumers, who are able to navigate complex decision-making processes and ‘pull’ the information they need, rather than have it ‘pushed’ to them by suppliers (Deloitte LLP 2014).

Providers of goods and services—and least in the commercial space—were quick to respond and exploit the new technology for their own marketing and other ends. In a highly competitive environment, they have harnessed technology to better inform themselves about individualized service and product needs in a consumer-centric market place. Business seeks to personalize their interactions with individual consumers, and gain earlier and better information about what they are and are not interested in (Pires et al. 2006: 944).

Digital 'department stores' have become crucial to satisfying a key objective of consumer law to enhance informed decision-making, leading to a fairer market (Van Loo 2017). Social media has given new power to consumers to broadcast their concerns in real time. Business (and government) ignores negative reviews at their peril (Busby 2018; Fogel and Murphy 2018). Empowered consumers are more willing to reject value propositions of unsatisfactory quality (Pires et al. 2006: 940).

Social and economic inequalities do, to be sure, leave many from marginalized and vulnerable groups unable to fully assert their consumer rights. Too-great an emphasis on the self-directed victim-consumer risks leaving some behind (Laster and Kornhauser 2017), particularly if it presupposes a level of digital inclusion or literacy are lacking.

While opportunities for empowerment are rapidly increasing as these groups, too, access easily available information, it is incumbent on criminal justice services to recognize barriers and engage with such people in an appropriately targeted way.

For example, in Australia, a website aimed at delivering information to homeless youth about their legal rights was designed having regard to user research which identified a lack of access to information as a barrier to seeking help, but a high level of internet-accessible smartphone ownership (Paper Giant 2014). The result was a plain-language, low-bandwidth, mobile-responsive website produced by a youth legal service which is co-located with a youth homeless service (Youthlaw 2015). And in the UK, the National Health Service publishes information for local health and care organizations to support digital inclusion among consumers of health and care services so as to make digital health services and information more widely accessible and also more accountable (National Health Service 2018).

We have come a long way since Henry Ford's now apocryphal quip when asked about the color choices available to buyers of his (then) new Model T Ford, 'Any color as long as it's black' (Betton and Hench 2002). These days there is no doubting that consumer experience matters and attitudes toward them have changed dramatically. For both consumers and providers, new tools and technologies have proven to be an efficient, and relatively inexpensive, way of meeting changing consumer expectations and needs. Such approaches might be more effectively adopted in

the criminal justice system to satisfy many of the criteria noted above for successful victim integration.

Tools and Techniques for Victim Engagement

Technology now provides the justice system with ready and affordable tools to systematically and meaningfully monitor and evaluate victims' experience of justice.

Victim Surveys and Customer Focus

The pioneer of TJ, David Wexler, has argued that victims should be asked to fill out customer satisfaction surveys or 'criminal justice impact statements' at the conclusion of a case (Wexler 2008). The aim of the feedback is to evaluate victims' experiences of the process. Just as victims in many adversarial systems are routinely permitted and expected to submit VIS, detailing the impact of their primary victimization (i.e. the crime), a 'criminal justice impact statement', according to Wexler, would document any secondary victimization they encountered through their involvement in the criminal justice system. Victims' feedback could include details about how proceedings and practitioners' actions, utterances, gestures, or (extra-legal) decisions have impacted them. Feedback would provide court professionals (in addition to victim support services: see Hall, Chapter 10 in this volume) with insights to modify their practice in the future.

'Customer satisfaction' reports would also be an effective accountability mechanism. They could, for instance, be considered in administrative decision-making about professional rewards or promotions, and potentially, as the basis of disciplinary action. While controversial in some quarters—such as student evaluations in higher education (Díaz-Méndez et al. 2017; Pounder 2007)—the use of evaluative 'customer' feedback has nevertheless proven to be an effective tool for changing behavior and attitudes in the public, business, and education spheres.

User feedback instruments have already proven to be effective in civil justice. The Civil Review Tribunal (CRT) in British Columbia, Canada, the first fully online civil dispute resolution jurisdiction in the world, for instance, regularly conducts ‘participant satisfaction surveys’ and publishes the aggregate results every six months (Rosteck 2018). The data are used for quality control, service improvements, and to monitor ‘customer’ (parties to disputes) satisfaction. The data also provide an accountability mechanism for government and the public alike. The consistently positive survey results have been a key factor supporting the expansion of the jurisdiction of the tribunal to cover all civil disputes less than \$5000, strata property disputes of any amount and, in April 2019, motor vehicle injury claims up to \$50,000 (Civil Resolution Tribunal 2019).

On a much smaller scale, Australia’s Fair Work Commission, the tribunal charged with determination of industrial disputes, was one of the first legal entities to engage a public value consultancy group to conduct ‘user-experience research’ in 2017 to ‘examine client experiences and ... improve case management practices’ (Fair Work Commission 2018). The subsequent report measured user experience and used the data to compile several recommendations for the improvement of the Fair Work Commission’s services (Cube Group 2018).

In criminal justice, systematizing the use of evaluative feedback would send a message that victims’ sensibilities matter and that decisions and behaviors are being monitored. Potentially, the use of such tools could have a transformation effect on legal culture without, importantly, disrupting any of the existing criminal justice protections afforded to defendants. At a minimum, a new emphasis on finding out what victims want and need should encourage provision of better information including explanations about complex matters such as evidentiary and practical constraints on prosecutors and sentencing guidelines and practices. Victims, in turn, might then readjust their expectations, avoiding some of their current frustrations and unhappiness with the process (Erez and Tontodonato 1992).

An even more effective way of ensuring that victims’ perspectives are taken into account though is to actively involve them in the design of system reform.

User-Centered Design

User-Centered Design (UCD) involves users at every stage in the creation and development of services of all kinds. UCD is effectively a co-design process between the intended user/recipient and service provider (van Velsen et al. 2009). Commercial enterprises, like technology companies and banks, have relied on UCD processes for many years, where the emphasis is shifting from ‘Customer Relationship Management’ to ‘Customer Management of Relationships’ (Pires et al. 2006: 944).

More recently, government has begun adopting UCD to reform outdated services. For example, the social support e-Service in the Netherlands (van Velsen et al. 2009) and the Australian Taxation Office (Martin et al. 2008) have applied UCD principles to great effect. British Columbia’s CRT employed UCD in the development of its online portal to ensure that the new jurisdiction ‘puts the user first’ (Salter and Thompson 2016–2017: 123).

Leading law and innovation theorist, Margaret Hagan, suggests that legal professionals should embrace a designer’s approach to reform of the legal system to focus on ‘real, lived human problems to help us think more ambitiously and creatively about how we could address the many frustrations, confusions, and frictions in law’ (Hagan 2018). We argue this approach be extended to victims as ‘consumers’ of the justice system.

Re-orienting conservative professions, like medicine, to put patients at the center of the system has, after initial resistance, ultimately succeeded in changing conservative attitudes. This gives some hope that a ‘victim as consumer’ mindset could reshape traditional attitudes currently thwarting the acceptance of victim inclusion reforms.

Changing Conservative Cultures and Systems: The Healthcare Experience

As part of the health consumer movement, from the 1980s onwards, the medical profession was persuaded to adopt patient-centered care (PCC) approaches, with decision-making shared between doctors and patients (Gorin et al. 2017). Ethical considerations (Gorin et al. 2017), as well as

consistent empirical findings showing significantly improved health outcomes through the new collaborative approach, supported its gradual uptake (for examples, see Greenfield et al. 1985).

Initially, PCC met with strong resistance from practitioners. In health care, paternalism was seemingly ingrained into the system. ‘Doctor knows best’ was the mantra and patients were regarded as passive participants in their own treatment (Adams and Drake 2006: 89).

Some doctors reasoned that patients do not really want to be involved (Strull et al. 1984) and that sick patients lacked the knowledge and independence to make informed choices (Sherlock 1986). Even those who supported PCC in theory, found it difficult to implement in practice (Adams and Drake 2006; Gwyn and Elwyn 1999). There was significant cultural resistance to change (Gollop et al. 2004) from a traditional and conservative profession.

As the body of evidence about the health benefits, both mental and physical, grew (Bertakis and Azari 2011; Delaney 2018; Herman 2005; Lee et al. 2018; Roumie et al. 2011; Thompson and McCabe 2012)—including in relation to postsurgical outcomes (Lee et al. 2018), better patient adherence to treatment plans (Roumie et al. 2011; Thompson and McCabe 2012), and reduced stress and increased empowerment in diabetes patients (Hermanns et al. 2013)—PCC secured its place as standard policy and practice across the healthcare sector in Australia (Better Health Victoria 2015), America (American Medical Association 2017), the UK (National Health Service n.d.), and elsewhere. Actively involving patients in decision-making is now unequivocally regarded as ‘best practice’.

There is no need to labour the parallels between the consumer movement, including the dramatic changes in the healthcare system through the application of PCC approaches.

The success of the consumer movement though does suggest that it is probably time to move beyond legal centrism in our thinking about victim reform. Reimagining victims as ‘consumers of justice’ is likely to bring significant systemic change not only to benefit victims but also the criminal justice system as a whole.

Conclusion: Relegitimizing the Criminal Justice System?

Despite concerted legislative reform efforts over the last four decades to integrate victims into the criminal justice system, there is still marked resistance to full victim participation. Many victims continue to feel disempowered and disillusioned, or worse, as they experience the 'law in action'. A new approach is required to transform traditional attitudes and disrupt adversarial culture to make room for victim participation.

We now know that there are major benefits of victim inclusion in criminal justice processes, not only for victims but also for the system as a whole.

In reviewing the empirical evidence, Erez and Roberts (2013) and Roberts (2009) summarize diverse findings to the effect that;

- active consumer participation throughout the whole process of decision-making (i.e. bail to parole) makes victims feel safer;
- appropriate sentencing (facilitated by VIS) assists defendants secure appropriate treatment;
- increases in (net) victim satisfaction with justice grounded in perceptions of procedural fairness constitutes a significant element in litigant satisfaction;
- victims experience of justice services significantly increase when principles of customer care (respect, transparency, consultation, explanation of options, rules, constraints, outcomes) are applied; and
- victim advocates do effectively assist with social support, empowerment, and enhanced quality of life for individual victims, thereby reducing reliance on (generally more expensive) community services.

Reconceptualizing victims as consumers of the criminal justice system, could, we suggest, provide this powerful metaphoric shift in thinking. The victim rights movement has not typically aligned itself with the broader consumer rights movement, even if some reform measures, from time to time, have employed the rhetoric of 'consumer rights'. However, we contend that the victims' rights activists have much to gain by

associating themselves with the growing power of the consumer movement, especially the enhanced status of the 'consumer' in the Digital Age.

Recasting victims as 'consumers of the justice system' meets the five criteria we have identified as necessary for a fundamental change to criminal justice theory and practice. The model is presently conceptual but could be put into practice and become transformational: the concept is easily understood by everyone and so easily 'marketed'. It imposes little or no additional costs on the system. Consumerist consciousness also affords its own mechanisms for testing/measuring attitudes, including the impact of any changes. Regarding victims as consumers of the justice system does not, in itself, displace defendants' rights. But perhaps most significantly, the new incarnation of the victim as a consumer of justice could provide greater transparency and accountability, not just for victims but for the wider community about the criminal justice system.

At the moment, all institutions in Western democracies, including the courts, are experiencing a crisis of confidence. Observers have noted a steep decline in institutional trust since the 1960s (Blind 2007). The legitimacy of public institutions derives from the extent to which the public trusts them (Hakhverdian and Mayne 2012). 'Institutional trust' is formed when citizens have reliable and affirmative experiences of using societal systems (Blunsdon and Reed 2010). The RAND Corporation, in a comprehensive report on the state of institutional trust in Western democracies, identified lack of transparency as a major contributing factor in the loss of confidence in public institutions. The report suggests institutions that have traditionally taken a conservative approach to information sharing have been slow to meet the expectations of a digitally literate public that treats opacity with skepticism and distrust (Ries et al. 2018). The antidote, according to 'Open Government' and 'Crowd Law' theorist and advocate, Beth Noveck, is for courts to embrace transparency, participation, and collaboration with the community as core values (Noveck 2015).

How victims are treated is, at one level, a barometer of the health of the justice system itself as victims are effectively the proxy for 'the community'. The continuing legitimacy of courts and the criminal justice system as a whole may well depend on how well they learn to accommodate the proxy citizen, the 'victim consumer', in their processes and thinking.

Notes

1. In the US, major pieces of legislation providing victims with various rights include: the Victim and Witness Protection Act of 1982, Pub. L. 97-291; the Victims of Crime Act [VOCA] of 1984, Pub. L. 98-473; the Victims' Rights and Restitution Act of 1990, Pub. L. 101-647; the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322; and the Crime Victims' Rights Act of 2004, Pub. L. 108-405. The Crime Victims' Rights Act (CVRA) was signed into US federal law in 2004 with the expressed purpose of empowering crime victims, expanding the role of the victim in federal criminal prosecutions, and providing more clearly defined roles for victims in court proceedings.
2. There is no doubt that victim rights have been captured and used by conservatives to bolster their political agenda. Victim rights have been caught up in countervailing ideologies of late modern capitalism: neoliberalism, neo-rationality, and neoconservatism. Each of these ideologies has exploited particular rhetoric about victims to further their distinct political agendas (Laster and Erez 2000).
3. But even for those who have become victims in the course of committing crime—the 'viminals' as victim advocates refer to them (Globokar et al. 2019)—they too, as these advocates have reminded us, have a mother, sister or significant other, who need and deserve help as secondary victims.

References

- Adams, J. R., & Drake, R. E. (2006). Shared Decision-Making and Evidence-Based Practice. *Community Mental Health Journal*, 42(1), 87–105.
- American Medical Association. (2017). *AMA to Unleash a New Era of Patient Care* [Online]. Retrieved January 16, 2019, from <https://www.ama-assn.org/press-center/press-releases/ama-unleash-new-era-patient-care>.
- Ashworth, A. (1993). Victim Impact Statements and Sentencing. *Criminal Law Review*, 1993, 498–518.
- Bandes, S. A. (1996). Empathy, Narrative, and Victim Impact Statements. *The University of Chicago Law Review*, 63(2), 361–412.
- Beloof, D. E. (1999). The Third Model of Criminal Process: The Victim Participation Model. *Utah Law Review*, 1999, 289–330.

- Bertakis, K. D., & Azari, R. (2011). Patient-Centered Care Is Associated with Decreased Health Care Utilization. *Journal of the American Board of Family Medicine*, 24(3), 229–239.
- Better Health Victoria. (2015). *Patient-Centred Care Explained* [Online]. Retrieved January 16, 2019, from <https://www.betterhealth.vic.gov.au/health/servicesandsupport/patient-centred-care-explained>.
- Betton, J., & Hench, T. J. (2002). “Any Color as Long as It’s Black”: Henry Ford and the Ethics of Business. *Journal of Genocide Research*, 4(4), 533–541.
- Blind, P. K. (2007). *Building Trust in Government in the Twenty-First Century: Review of Literature and Emerging Issues*. Vienna: United Nations Department of Economic and Social Affairs.
- Blunsdon, B., & Reed, K. (2010). The Effects of Technical and Social Conditions on Workplace Trust. *The International Journal of Human Resource Management*, 14(1), 12–27.
- Boateng, F. D., & Abess, G. (2017). Victims’ Role in the Criminal Justice System: A Statutory Analysis of Victims’ Rights in the U.S. *International Journal of Police and Management*, 19(4), 221–228.
- Braithwaite, J. (1989). *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.
- Broadhurst, R., Morgan, A., Payne, J., & Maller, R. (2018). *Australian Capital Territory Restorative Justice Evaluation: An Observational Outcome Evaluation*. Canberra: Australian National University and the Australian Institute of Criminology.
- Busby, C. (2018). *Ignoring Negative Reviews Bad for Business Says ServiceSeeking* [Online]. Retrieved January 24, 2019, from <https://www.kochiesbusinessbuilders.com.au/ignoring-negative-reviews-bad-for-business-says-servicesseeking/>.
- Cassell, P. G., & Erez, E. (2011). Victim Impact Statements and Ancillary Harm: The American Perspective. *Canadian Law Review*, 15(2), 150–204.
- Christie, N. (1977). Conflicts as Property. *The British Journal of Criminology*, 17(1), 1–15.
- Christie, N. (1986). The Ideal Victim. In E. A. Fattah (Ed.), *From Crime Policy to Victim Policy* (pp. 17–30). London: Palgrave Macmillan.
- Civil Resolution Tribunal. (2019). *Welcome to the Civil Resolution Tribunal* [Online]. Retrieved January 24, 2019, from <https://civilresolutionbc.ca/>.
- Corns, C. (2000). Police Summary Prosecutions in Australia and New Zealand. *University of Tasmania Law Review*, 19(2), 280–310.

- Cube Group. (2018). *Unfair Dismissal: User-Experience Research*. Melbourne: Fair Work Commission.
- Daly, K. (2017). Restorative Justice: The Real Story. In *Restorative Justice* (pp. 85–109). New York: Routledge.
- Davies, A., & Elliot, R. (2006). The Evolution of the Empowered Consumer. *European Journal of Marketing*, 40(9), 1106–1121.
- Davis, R. C., Kunreuther, F., & Connick, E. (1984). Expanding the Victim's Role in the Criminal Court Dispositional Process: The Results of an Experiment. *Journal of Criminology and Criminal Law*, 75(2), 491–506.
- Delaney, L. J. (2018). Patient-Centred Care as an Approach to Improving Health Care in Australia. *Collegian*, 25(1), 119–123.
- Deloitte, L. L. P. (2014). *The Deloitte Consumer Review: The Growing Power of Consumers*. London: Deloitte LLP.
- Delong, C., & Reichert, J. (2019). *The Victim-Offender Overlap: Examining the Relationship Between Victimization and Offending* [Online]. Retrieved January 29, 2019, from <http://www.icjia.state.il.us/articles/the-victim-offender-overlap-examining-the-relationship-between-victimization-and-offending>.
- Díaz-Méndez, M., Saren, M., & Gummesson, E. (2017). Considering Pollution in the Higher Education (HE) Service Ecosystem: The Role of Students' Evaluation Surveys. *TQM Journal*, 29(6), 767–782.
- van Dijk, J. (1988). Ideological Trends Within the Victims Movement: An International Perspective. In M. Maguire & J. Pointing (Eds.), *Victims of Crime: A New Deal?* (pp. 115–126). Milton Keynes: Open University Press.
- Doak, J., & O'Mahony, D. (2006). The Vengeful Victim? Assessing the Attitudes of Victims Participating in Restorative Youth Conferencing. *International Review of Victimology*, 13(2), 157–177.
- Duff, P. (1988). The "Victim Movement" and Legal Reform. In M. Maguire & J. Pointing (Eds.), *Victims of Crime: A New Deal?* (pp. 147–155). Milton Keynes: Open University Press.
- Eisenstein, J., & Jacob, H. (1977). *Felony Justice: An Organizational Analysis of Criminal Courts*. Boston: Little, Brown.
- Erez, E. (1990). Victim Participation in Sentencing: Rhetoric and Reality. *Journal of Criminal Justice*, 18(1), 19–31.
- Erez, E. (1994). Victim Participation in Sentencing: And the Debate Goes On.... *International Review of Victimology*, 3(1–2), 17–32.
- Erez, E. (1999, July). Who's Afraid of the Big Bad Victim: Victim Impact Statements as Victim Empowerment and Enhancement of Justice. *Criminal Law Review*, 1999, 545–556.

- Erez, E., & King, T. A. (2000). Patriarchal Terrorism or Common Couple Violence: Attorneys' Views of Prosecuting and Defending Woman Batterers. *International Review of Victimology*, 7(1–3), 207–226.
- Erez, E., & Roberts, J. V. (2013). Victim Participation in Criminal Justice. In R. C. Davis, A. J. Lurigio, & S. Herman (Eds.), *Victims of Crime* (4th ed., pp. 251–270). SAGE: Thousand Oaks.
- Erez, E., & Rogers, L. (1999). Victim Impact Statements and Sentencing Outcomes and Processes: The Perspectives of Legal Professionals. *British Journal of Criminology*, 39(2), 216–239.
- Erez, E., & Tontodonato, P. (1992). Victim Participation in Justice and Satisfaction with Justice. *Justice Quarterly*, 9(3), 393–427.
- Erez, E., Ibarra, P. R., & Downs, D. M. (2011). Victim Participation Reforms in the United States and Victim Welfare: A Therapeutic Jurisdiction Perspective. In E. Erez, M. Kilchling, & J. Wemmers (Eds.), *Victim Participation in Proceedings and Therapeutic Jurisprudence* (pp. 15–40). Durham: North Carolina Press.
- Erez, E., Globokar, J. L., & Ibarra, P. R. (2014). Outsiders Inside: Victim Management in an Era of Participatory Reforms. *International Review of Victimology*, 20(1), 169–188.
- Fair Work Commission. (2018). *Client Experience Feedback & Research* [Online]. Retrieved January 11, 2019, from <https://www.fwc.gov.au/about-us/consultation/client-experience-feedback-research>.
- Feeley, M. M. (1979). *The Process Is the Punishment: Handling Cases in a Lower Criminal Court*. New York: Russell Sage Foundation.
- Fenwick, H. (1997). Procedural Rights of Victims of Crime: Public or Private Ordering of the Criminal Justice Process. *Modern Law Review*, 60(3), 317–333.
- Finch, J. E. (1985). A History of the Consumer Movement in the United States: Its Literature and Legislation. *Journal of Consumer Studies and Home Economics*, 9(1), 23–33.
- Fletcher, G. P. (1999). The Place of Victims in the Theory of Retribution. *Buffalo Criminal Law Review*, 3(1), 51–63.
- Fogel, J., & Murphy, K. (2018). Intentions to Use the TripAdvisor Review Website and Purchase Behavior After Reading Reviews. *Human IT*, 14(1), 59–100.
- Frohmann, L. (1991). Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections. *Social Problems*, 38(2), 213–226.
- Garland, D. (2001). *The Culture of Control: Crime and Social Order in a Contemporary Society*. Chicago: University of Chicago Press.
- Giant, P. (2014). *Youthlaw Mobile: User Research*. Melbourne: Paper Giant.

- Globokar, J. L. & Erez, E. (2019). Conscience and Convenience: American Victim Work in Organizational Context. *International Review of Victimology*, 25(3), 341–357.
- Globokar, J. L., Erez, E., & Gregory, C. R. (2019). Beyond Advocacy: Mapping the Contours of Victim Work. *Journal of Interpersonal Violence*, 34(6), 1198–1223.
- Gollop, R., Whitby, E., Buchanan, D., & Ketley, D. (2004). Influencing Sceptical Staff to Become Supporters of Service Improvement: A Qualitative Study of Doctors' and Managers' Views. *Quality and Safety in Health Care*, 13(2), 108–114.
- Goodey, J. (2005). *Victims and Victimology: Research, Police and Practice*. Essex: Pearson Education Limited.
- Gorin, M., Joffe, S., Dickert, N., & Halpern, S. (2017). Justifying Clinical Nudges. *Hastings Center Report*, 47(2), 32–38.
- Greenfield, S., Kaplan, S., & Ware, J. E. (1985). Expanding Patient Involvement in Care: Effects on Patient Outcomes. *Annals of Internal Medicine*, 102(4), 520–528.
- Greer, C. (2017). News Media, Victims and Crime. In P. Davies, P. Francis, & C. Greer (Eds.), *Victims, Crime and Society* (pp. 20–49). London: Sage.
- Gwyn, R., & Elwyn, G. (1999). When Is a Shared Decision Not (Quite) a Shared Decision? Negotiating Preferences in a General Practice Encounter. *Social Science and Medicine*, 49(4), 437–447.
- Hagan, M. (2018). *Law by Design* [Online]. Retrieved June 22, 2019, from <http://www.lawbydesign.co/en/home/>.
- Hakhverdian, A., & Mayne, Q. (2012). Institutional Trust, Education and Corruption: A Micro-Macro Interactive Approach. *Journal of Politics*, 74(3), 739–750.
- Hall, M. (2010). *Victims and Policy Making: A Comparative Perspective*. New York: Willan Publishing.
- Harrison, T., Waite, K., & Hunter, G. (2006). The Internet, Information and Empowerment. *European Journal of Marketing*, 40(9/10), 972–993.
- Herman, J. L. (2005). Justice from the Victim's Perspective. *Violence Against Women*, 11(5), 571–602.
- Herman, S. (2010). *Parallel Justice for Victims of Crime*. Washington, DC: National Center for Victims of Crime.
- Hermanns, N., et al. (2013). The Effect of a Diabetes Education Programme (PRIMAS) for People with Type 1 Diabetes: Results of a Randomized Trial. *Diabetes Research and Clinical Practice*, 102(3), 149–157.

- Hudson, B. (2002). 'Restorative Justice and Gendered Violence: Diversion or Effective Justice?' *British Journal of Criminology*, 42(3), 616–634.
- Jackson, J. (2003). Justice for All: Putting Victims at the Heart of Criminal Justice? *Journal of Law and Society*, 30(2), 309–326.
- Kennedy, J. F. (1962). *Special Message to Congress on Protecting Consumer Interest* [Online]. Retrieved January 24, 2019, from <https://www.jfklibrary.org/asset-viewer/archives/JFKPOF/037/JFKPOF-037-028>.
- Kidd, R. F., & Chayet, E. F. (1984). Why Do Victims Fail to Report? The Psychology of Criminal Victimization. *Journal of Social Issues*, 40(1), 39–50.
- King, M., Frieberg, A., Batagol, B., & Hyams, R. (2009). *Non-Adversarial Justice*. Sydney: Federation Press.
- Kirchengast, T. (2006). *The Victim in Criminal Law and Justice*. Basingstoke, UK: Palgrave Macmillan.
- Kirchengast, T. (2010). *The Criminal Trial in Law and Discourse*. Basingstoke, UK: Palgrave Macmillan.
- Kirchengast, T. (2016). *Victims and the Criminal Trial*. Basingstoke, UK: Palgrave Macmillan.
- Lakoff, G., & Johnson, M. (1980). *Metaphors We Live By*. Chicago; London: The University of Chicago Press.
- Laster, K. (2018, 1 June). Designing Digital Justice. *Law Institute Journal*, 92(6), 20–21.
- Laster, K., & Erez, E. (2000). The Oprah Dilemma: The Use and Abuse of Victims. In D. Chappell & P. Wilson (Eds.), *Crime and the Criminal Justice System in Australia: 2000 and Beyond*. Sydney: Butterworths.
- Laster, K., & Kornhauser, R. (2017). The Rise of 'DIY' Law: Implications for Legal Aid. In A. Flynn & J. Hodgson (Eds.), *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* (pp. 123–140). Portland: Hart Publishing.
- Lee, J., Seo, E., Choi, J., & Min, J. (2018). Effects of Patient Participation in the Management of Daily Nursing Goals on Function Recovery and Resilience in Surgical Patients. *Journal of Clinical Nursing*, 27(13), 2795–2803.
- Lonsway, K. A., & Fitzgerald, L. F. (1994). Rape Myths: In Review. *Psychology of Women Quarterly*, 18(2), 133–164.
- Loseke, D. R., & Cahill, S. E. (1984). The Social Construction of Deviance: Experts on Battered Women. *Social Problems*, 31(3), 296–310.
- Martin, N., Gregor, S., & Rice, J. (2008). User Centred Information Design Practices and Processes at the Australian Taxation Office. *Information Design Journal*, 16(1), 53–67.

- McCold, P. (2006). The Recent History of Restorative Justice: Mediation, Circles, and Conferencing. In D. Sullivan & L. Tifft (Eds.), *Handbook of Restorative Justice: A Global Perspective* (pp. 23–51). New York: Routledge.
- Morris, A. (2002). Critiquing the Critics: A Brief Response to Critics of Restorative Justice. *British Journal of Criminology*, 42(3), 596–615.
- National Health Service. (2018). *Digital Inclusion Guide for Health and Social Care*. NHS Digital.
- National Health Service. (n.d.). *Developing Patient Centred Care* [Online]. Retrieved January 16, 2019, from <https://www.england.nhs.uk/integrated-care-pioneers/resources/patient-care/>.
- Noveck, B. (2015). *Smart Citizens, Smarter State: The Technologies of Expertise and the Future of Governing*. Cambridge: Harvard University Press.
- O'Connor, S. D. (2003). *The Majesty of the Law: Reflections of a Supreme Court Justice*. New York: Random House.
- O'Hara, E. A. (2005). Victim Participation in the Criminal Process. *Journal of Law and Policy*, 13(1), 229–247.
- Organisation for Economic Co-operation and Development. (1987). *Administration as a Service: The Public as Client*. Paris: OECD Publications.
- Packer, H. L. (1964). Two Models of the Criminal Process. *University of Pennsylvania Law Review*, 113(1), 1–68.
- Pear, R. (2010). If Only Laws Were Like Sausages. *New York Times*. Retrieved September 4, 2010, from <https://www.nytimes.com/2010/12/05/weekinreview/05pear.html>.
- Peterson Armour, M., & Umbreit, M. S. (2006). Victim Forgiveness in Restorative Justice Dialogue. *Victims and Offenders*, 1(2), 123–140.
- Piggott, E., & Wood, W. (2019). Does Restorative Justice Reduce Recidivism: Assessing Evidence and Claims About Restorative Justice and Reoffending. In T. Gavrielides (Ed.), *Routledge International Handbook of Restorative Justice* (pp. 387–404). New York: Routledge.
- Pires, G., Stanton, J., & Rita, P. (2006). The Internet, Consumer Empowerment and Marketing Strategies. *European Journal of Marketing*, 40(9/10), 936–949.
- Pounder, J. S. (2007). Is Student Evaluation of Teaching Worthwhile? An Analytical Framework for Answering the Question. *Quality Assurance in Education*, 15(2), 178–191.
- Regehr, C., & Alaggia, R. (2006). Perspectives of Justice for Victims of Sexual Violence. *Victims and Offenders*, 1(1), 33–46.
- Richardson, L. L. (2013). Impact of Marsy's Law on Parole in California. *Criminal Law Bulletin*, 49, 1091, 1115–1116, 1119–1120.

- Ries, T. E., et al. (2018). *2018 Trust Barometer: Global Report*. Sydney: Edelman Australia.
- Roberts, J. V. (2009). Listening to Crime Victims: Evaluating Victim Input at Sentencing and Parole. *Crime and Justice*, 38(1), 347–412.
- Roberts, J. V., Crutcher, N., & Verbrugge, P. (2007). Public Attitudes to Sentencing in Canada: Exploring Recent Findings. *Canadian Journal of Criminology and Criminal Justice*, 49(1), 75–107.
- Rosteck, T. (2018). *Participant Satisfaction Survey – April to November 2018* [Online]. Retrieved January 11, 2019, from <https://civilresolutionbc.ca/participant-satisfaction-survey-april-november-2018/>.
- Roumie, C. L., et al. (2011). Patient Centered Primary Care Is Associated with Patient Hypertension Medication Adherence. *Journal of Behavioural Medicine*, 34(4), 244–253.
- Ryan, N. (2001). Reconstructing Citizens as Consumers: Implications for New Modes of Governance. *Australian Journal of Public Administration*, 30(3), 104–109.
- Salter, S., & Thompson, D. (2016–2017). Public-Centred Civil Justice Redesign: A Case Study of the British Columbia Civil Resolution Tribunal. *McGill Journal of Dispute Resolution*, 3, 113–136.
- Schafer, S. (1960). *Restitution to Victims of Crime*. London: Stevens and Sons.
- Schuster, M. L., & Proppen, A. (2011). Degrees of Emotion: Judicial Responses to Victim Impact Statements. *Law, Culture and the Humanities*, 6(1), 75–104.
- Sherlock, R. (1986). Reasonable Men and Sick Human Beings. *The American Journal of Medicine*, 80(1), 2–4.
- Smith, A. (n.d.). *About the Bureau of Consumer Protection* [Online]. Retrieved January 24, 2019, from <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection/about-bureau-consumer-protection>.
- Spencer, P. (2017). A View from the Bench: A Judicial Perspective on legal Representation, Court Excellence and Therapeutic Justice. In A. Flynn & J. Hodgson (Eds.), *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* (pp. 87–102). Portland, OR: Hart Publishing.
- Starkweather, D. A. (1992). The Retributive Theory of “Just Deserts” and Victim Participation in Plea Bargaining. *Indiana Law Review*, 67(3), 853–878.
- Storrs, L. R. Y. (2006). Left-Feminism, the Consumer Movement, and Red Scare Politics in the United States, 1935–1960. *Journal of Women's History*, 18(3), 40–67.
- Strang, H., & Braithwaite, J. (2001). *Restorative Justice and Civil Society*. Cambridge: Cambridge University Press.

- Strull, W., Lo, B., & Charles, G. (1984). Do Patients Want to Participate in Medical Decision Making? *Journal of the American Medical Association*, 252(21), 2990–2994.
- Sudnow, D. (1965). Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office. *Social Problems*, 12(3), 255–276.
- Tapley, J. (2005). Public Confidence Costs – Criminal Justice from a Victim's Perspective. *British Journal of Criminal Justice*, 3(2), 25–37.
- Thompson, L., & McCabe, R. (2012). The Effect of Clinician-Patient Alliance and Communication on Treatment Adherence in Mental Health Care: A Systematic Review. *BMC Psychiatry*, 12(87), 1–12.
- Tyler, T. R. (2003). Procedural Justice, Legitimacy, and the Effective Rule of Law. *Crime and Justice*, 30(1), 283–357.
- U.S. Department of Justice. (2012). *Victimizations not Reported to the Police 2006–2010: Special Report*. Washington, DC: Office of Justice Programs Bureau of Justice Statistics.
- Ullman, S. E. (2010). *Talking About Sexual Assault: Society's Response to Survivors*. Washington, DC: American Psychological Association.
- Van Camp, T., & Wemmers, J.-A. (2013). Victim Satisfaction with Restorative Justice: More Than Simply Procedural Justice. *International Review of Victimology*, 19(2), 117–143.
- Van Loo, R. (2017). Rise of the Digital Regulator. *Duke Law Journal*, 66(6), 1267–1329.
- Vanfraechem, I., Pemberton, A., & Ndahinda, F. M. (2014). *Justice for Victims: Perspectives on Rights, Transition and Reconciliation*. New York: Routledge.
- van Velsen, L., van der Geest, T., ter Hedde, M., & Derks, W. (2009). Requirements Engineering for e-Government Services: A Citizen-Centric Approach and Case Study. *Government Information Quarterly*, 26(3), 477–486.
- Warne, C. L. (1973). The Consumer Movement and the Labor Movement. *Journal of Economic Issues*, 7(2), 307–316.
- Wemmers, J.-A., & Cyr, K. (2004). Victims' Perspectives on Restorative Justice: How Much Involvement Are Victims Looking For? *International Review of Victimology*, 11(2–3), 259–274.
- Werner, R. O. (1962). Regulation of Product Characteristics. *Journal of Marketing*, 26(3), 84–86.
- Wexler, D. B. (1993). Therapeutic Jurisprudence and the Criminal Courts. *William and Mary Law Review*, 35(1), 279–299.
- Wexler, D. B. (2008). Crime Victims, Law Students, and Therapeutic Jurisprudence Training. In D. B. Wexler (Ed.), *Rehabilitating Lawyers: Principles of Therapeutic Jurisprudence for Criminal Law Practice* (pp. 323–326). Durham: Carolina Academic Press.

- Williams, B. (1999a). The Victim's Charter: Citizens as Consumers of Criminal Justice Services. *The Howard Journal*, 38(4), 384–396.
- Williams, B. (1999b). *Working with Victims of Crime: Policies, Politics and Practice*. London: Jessica Kingsley Publishers.
- Wilson, D., Olaghere, A., & Kimbrell, C. (2017). *Effectiveness of Restorative Justice Principles in Juvenile Justice: A Meta-Analysis*. Washington, DC: US Department of Justice Office of Justice Programs.
- Winick, B. J. (2011). Therapeutic Jurisprudence and Victims of Crime. In E. Erez, M. Kilchling, & J. Wemmers (Eds.), *Victim Participation in Proceedings and Therapeutic Jurisprudence* (pp. 3–14). Durham: Carolina Academic Press.
- Winick, B. J., & Wexler, D. B. (2001). Drug Treatment Court: Therapeutic Jurisprudence Applied. *Touro Law Review*, 18(3), 479–486.
- Youthlaw. (2015). *Street Smart* [Online]. Retrieved June 22, 2019, from <https://streetsmartvic.com.au/>.
- Zweig, J. M., & Yahner, J. (2013). Providing Services to Victims of Crime. In R. C. Davis, A. J. Lurigio, & S. Herman (Eds.), *Victims of Crime* (4th ed., pp. 325–348). Thousand Oaks, CA: Sage Publications.