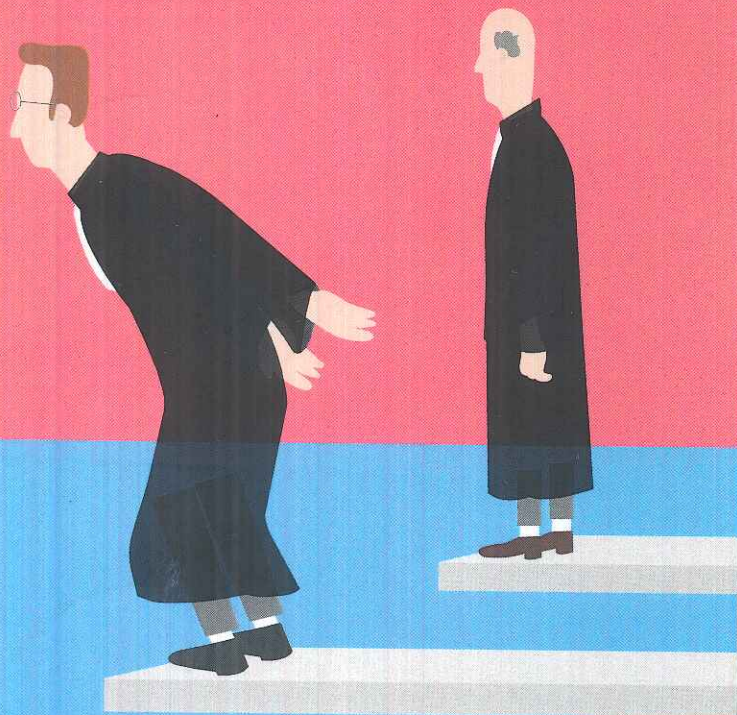


EMOTIVE JUSTICE

Laypersons' and legal professionals' evaluations of emotional victims within the just world paradigm



ALICE BOSMA

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ISBN: 978-94-6240-520-2

Published by Wolf Legal Publishers

Wolf Legal Publishers (WLP)
Talent Square 13
5038 LX Tilburg
Tel. +31 (0)13 - 582 13 66
Fax +31 (0)84 - 837 67 00
E-Mail: info@wolfpublishers.nl
www.wolfpublishers.nl

Cover image: Studio Vuurdorn
Cover design: Martijn Beks

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Proefschrift

ter verkrijging van de graad van doctor aan Tilburg University
op gezag van de rector magnificus, prof.dr. E.H.L. Aarts, in het
openbaar te verdedigen ten overstaan van een door het college
voor promoties aangewezen commissie in de Aula van de
Universiteit op vrijdag 8 februari 2019 om 13.30 uur

door

Alice Kirsten Bosma

geboren te Leiderdorp

2. Belief in a just world: the state of the art

Everyone believes that the world is a just place, where people get what they deserve, where good people get good outcomes and bad people bad outcomes. This sounds like a statement that cannot be true. One would only have to watch the daily news and one would be expected to lose one's faith almost immediately. However, a large and robust body of research reveals that everyone, at least to a certain extent, is motivated to believe that the world is generally a just place (M. J. Lerner, 1980; Rubin & Peplau, 1975). Even though BJW research has mainly been done in Western countries, the belief has more recently been established beyond WEIRD⁷ research samples (Bai, Liu, & Kou, 2014; Çırak Karadağ & Akgün, 2016; Furnham, 2003; Tepe et al., 2017; Wu et al., 2011). Lastly, the belief is stable over time (Furnham, 2003).

The problem of the idea that everyone "believes" that the world is a just place seems to be at least partially caused by the term *believing*. The belief in a just world is not like the faith that one has in a deity. M. J. Lerner (1980) wrote that:

"The 'belief in a just world' is an attempt to capture in a phrase one of the ways, if not the way, that people come to terms with – make sense out of – find meaning in, their experiences". We do not believe that things just happen in our world; there is a pattern to events which conveys not only a sense of orderliness or predictability, but also the compelling experience of appropriateness expressed in the typically implicit judgment, "Yes, that is the way it should be". (p. vii)

The belief in a just world thus refers to the motivated but implicit choice that people make to think and behave as if the world were a just place: the ability to assume that the world is a just place (Ellard, Harvey, & Callan, 2016). It is a motivated worldview, which dictates the rules of the distribution of good and

7 Referring to samples relying only on participants from societies that could be characterized as Western, Industrialized, Educated, Rich and Democratic (Henrich, Heine, & Norenzayan, 2010). The exclusive use of samples that are characterized by these backgrounds raises the question whether the results are generalizable to a larger public.

bad outcomes. Adhering cognitively and behaviorally to a set of rules that make the world an orderly and predictable place does not only provide meaning in life, it also provides for psychological well-being and allows people to invest in long term goals. Appreciating the growing body of research into the adaptive characteristics of BJW (Dalbert & Donat, 2015) reduces the surprise about the fact that BJW is a worldview that people defend even in the face of counter-evidence such as the television news.

Currently, BJW research can be divided into two different strands. On the one hand, correlational research is conducted to inquire to what extent individuals "believe" that the world is generally a just place (e.g., Dalbert, Montada, & Schmitt, 1987; Lipkus, Dalbert, & Siegler, 1996; Rubin & Peplau, 1975). This type of research heavily focuses on the development and validation of scales capable of measuring the individual BJW as well as the links to other types of personality traits and other human characteristics (e.g., extraversion, religiousness, gender, voting preferences etc.) that might explain individual differences. On the other hand, the field of experimental research examines to what extent and in which way people defend their BJW under different circumstances that confront them with a *threat* to their BJW, i.e. a violation of the just world. This chapter is concerned with the state of the art of the latter strand in BJW research, and so addresses the justice motivation:

"Experimental just world research typically does not assess individual differences, however, but interprets experimental reactions in the light of just world reasoning. Such research thus addresses justice motivation, and not the justice motive as an individual differences disposition. Motivation can be defined as a person's orientation toward a specific goal in a specific situational state; thus, justice motivation means the orientation toward justice in a given situation. Justice motivation is triggered by specific situational circumstances in interaction with personal dispositions." (Dalbert, 2012, p. 79) [underlining by AB]

More specifically, this chapter focuses on two elements of justice motivation: the triggering of the justice motivation (the identification of the *threat*) and the reaction that follows from this, especially reactions that focus on the victim.

The first part of this chapter reviews the way in which the justice motivation is normally triggered in experimental research by elaborating on the conceptualization of (in)justice in the BJW paradigm. In sections 1 and 2, I will discuss the scope of different BJW strategies and what is currently known about the proportional or relative use of these strategies. In section 3, I will then

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2.1 A frame

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argue that the conceptualization of injustice in the current BJW literature is incomplete. Prior to considering reactions to victims' threat to the BJW (which is one of the main aims of this dissertation), an accurate description of the threat or the injustice is necessary. Most importantly, the conceptualization of injustice in the current state of the art lacks any reference to the normative appraisal of the situation by the observer. The chapter closes with a summary in section 4.

2.1 A framework of victim-oriented BJW strategies

In current BJW research the confrontation with a threat of injustice is most likely brought about by a vignette (for further information on vignette technique, see chapter 4 and Alexander & Becker, 1978; Finch, 1987). The vignette mostly exists of a short, written scenario⁸ in which the participant is confronted with injustice by learning that someone was victimized and is suffering due to this victimization. If the situation that is depicted in the scenario is indeed perceived as a threat to the BJW, the observer is likely to be motivated to restore his BJW, in one way or the other, using a BJW strategy. In this dissertation, I mainly focus on strategies that are oriented towards the victim. However, that is but one element of a larger framework of strategies. This framework will be discussed, as well as how some of the strategies that are part of the framework comprise secondary victimization.

A framework of BJW strategies

The BJW strategies can be directed at either party: the observer, the perpetrator, and the victim (M. J. Lerner, 1980). Strategies directed at the self (the observer) are called *protective strategies*, in which the worldview of the observer is fragmented in order to protect the current and own world. For example, an observer can split the world in two: one (just) world for himself and one (unjust) world for the victim. In this way, it is still possible for the observer to maintain a high level of personal well-being and invest in long term goals, because in his own world, the observer will get what he deserves. Another strategy directed at the self is the *penultimate strategy*: deceiving oneself by falsely rationalizing that one actually didn't believe that the world was a just world from the beginning, so that there is nothing that can be "hurt" or "violated" by the threat that the injustice poses.

⁸ Sometimes, audio- or audio-visual vignettes are used (e.g., Hafer & Gosse, 2011), but this is less common. For an overview of used stimuli formats in BJW research, see (Hafer & Bègue, 2005).

A strategy towards the perpetrator is punishment. When punishing the perpetrator, one gives the perpetrator what he deserves: for doing something bad (victimizing the victim), he gets something bad in return (the punishment). This strategy is part of the *rational* responses to victimization, meaning that these strategies stem from an “eminently ‘sensible’ way of dealing with this ‘reality’” (Lerner, 1980, p. 19) in which the injustice is not denied and that these strategies are upheld after rational deliberation.

Rational strategies directed at the victim work in similar fashion: when believing that the victim is actually an innocent person and thus should be treated fairly, one can help a victim to “undo” the harm, and relieve the stress caused by the injustice, by compensating the victim monetarily or helping the victim. One could support the victim in many other ways, and Lerner does not specifically describe these ways.

Alternatively, rather than being the result of sensible deliberation, the response towards a victim could be quick and implicit. One can take the victimization (event) rather than the victim (person) as a starting point and infer that this negative event was the deserved outcome of being a bad person in the first place. The victim must either have behaved in such a way that the victimization was deserved (text book example: since the victim drank too much alcohol and flirted with the guy, she must have wanted to have sex with him) or the victimization must have been caused by a related character trait (the victim always is so careless, no wonder his purse was stolen). Both of these examples can be described as *blaming the victim*, the first irrational victim-oriented strategy that is distinguished in the BJW framework. Blaming the victim refers to the extent to which the victim caused the victimizing event is exaggerated (Callan, Sutton, Harvey, & Dawtry, 2014; Furnham & Boston, 1996).

The second irrational strategy is *derogation*, which also results from reinterpreting the (indirect) cause of the victimization. The difference with (characterological) victim blame is that the cause of the victimization is found in character traits of the victim that, at least at first glance, are *unrelated* to the victimization, such as the attractiveness or friendliness of the victim. Even though these character traits seem to be unrelated to the victimization, observers of the victim could still implicitly link them to deservingness of the victimization. When an observer derogates, he evaluates these unrelated character traits more negatively than for non-victims or other victims. By derogating the victim, the observer dissociates himself from the “threatening entity”, the victim (Correia et al., 2012).

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Both in blaming the victim and in derogation, the BJW strategy follows the logic of reinterpreting the behavior or character of the victim in such a way that the victimizing event can be interpreted as if the victim deserved the victimization. These two types of BJW strategies receive the most attention in the BJW literature, but they are not always clearly distinguished. Some authors see blame and derogation as two types of blame: behavioral blame and characterological blame (e.g., Bell, Kuriloff, & Lottes, 1994; Karuza & Carey, 1984), or they see blame as an umbrella term for negative irrational victim-oriented strategies (e.g., Goldenberg & Forgas, 2012).

The third and fourth irrational strategies are *distancing* and *reinterpretation*, whereby the observer, to some extent, tries to eliminate the idea of injustice, so that his worldview is no longer threatened. Distancing refers to increasing the psychological or physical distance that the observer has to the victim. People might want to see their victimized friend less often so that they are not confronted with injustice on a regular basis, or might want to think of themselves as dissimilar to the victim to decrease the distress that follows from the idea that persons similar to themselves run a similar risk of becoming victimized. On the other hand, people could also reinterpret the outcome of the event in a more positive light so that victimization doesn't seem so bad after all. When engaging in reinterpretation of the victimization, sometimes also called *minimization of the suffering* (Correia et al., 2001) or *benefit finding*, the observer attempts to reduce the perceived extent of the wrongdoing, and so reduce the severity of the threat that is posed to the BJW. One could for example think that "a burglary is not so very bad, because one can buy a lot of new stuff from insurance money", thereby denying the impact the burglary might have had on the rest of one's life.

Irrational victim-oriented strategies leading to secondary victimization

The employment of strategies, including the irrational victim-oriented strategies, can help to restore the belief in a just world in the eyes of the observer. For observers, the employment of a strategy is therefore beneficial. For rational strategies (compensation, support), we can readily agree that these have the potential to help the victim, or at least show positive intentions.

As said, the employment of strategies can be beneficial to the observer. Callan, Harvey, and Sutton (2014) have shown that participants who derogated a victim of misfortune that they were confronted with, were better able to put aside immediate rewards in return for larger later rewards, suggesting that participants who used a BJW strategy were better able to set long term goals, one of the primary advantages that BJW brings. Despite the benefits that the

employment of a negative strategy has for the observer, for the victim this response is clearly less positive.

In this dissertation, I label the irrational victim-oriented BJW strategy as an important source of secondary victimization. Secondary victimization is defined as the "negative social or societal reaction in consequence of the primary victimization [which] is experienced as further violation of legitimate rights or entitlements by the victim" (Montada, 1994; Orth, 2002, p. 314). As I will later show in greater detail (chapter 5) strategies are understood as cognitive rather than behavioral, meaning that the strategies refer to the way the observer frames the situation. However, this observer does not necessarily have to share his thoughts. For a strategy to become either real acknowledgment, support or secondary victimization, an extra step is necessary. First, the observer could directly confront the victim with his thoughts. Second, the observer could share his thoughts with others. As observers can influence each other (Brown & Testa, 2008), sharing a positive or negative thought about the victim by observer X could influence the attitude of observer Y towards the victim. Third, depending on the relative use of strategies (see below), the use of one strategy may impair the other, which may or may not influence consequent behavior. Whether or not negative strategies move beyond mere thoughts, they seem to be an important source of secondary victimization and thus worth exploring.

Furthermore, the definition of secondary victimization puts emphasis on the experience of the victim. I will not be able to take into account the first-person victim perspective in all four of the irrational oriented BJW strategies (blaming, derogation, distancing and reinterpretation). However, these have characteristics that most likely result in secondary victimization, even if the primary intention of the observer who is employing irrational victim-oriented strategies is not to harm the victim. Furthermore, interpersonal justice, an important part of procedural justice, has previously been described as refraining from blaming, minimalizing the suffering, derogation and making insensitive remarks (Weijers & de Boer, 2010).

2.2 The relative use of positive and negative strategies

All the strategies that were discussed up until now had one common goal: maintaining the implicit assumption that the world is a just place. Although most of the studies in experimental BJW research focus on the employment of a single strategy under different circumstances, a growing body of research examines the principle of *equifinality*, the idea that BJW restoration can be reached through various routes or a combination of routes (Ellard et al., 2016). The employment of one strategy does not preclude the using of other strategies

(Warner et al., 2012), which is predictive of subsequent behavior within the broad framework of the offender-focused strategies. Positive, rational victim-oriented strategies, such as those described by Haynes & Olson (2006), and negative strategies, such as those described by Warner et al. (2012), end up with the feeling of justice. Most research reveals that under most conditions (Alexander & Ben-David, & Ben-David, 2006), for measuring positive and negative extensive research has been done from the perspective of the victim, which outweighs the benefits of the observer. Moreover, from the perspective of the observer, they are not mutually exclusive. They are not preferred. This section will elaborate on the different strategies.

Helping versus second victimization

If people have the opportunity to help the victim (Haynes & Olson, 2006; Lin, 2006), they will help the victim. However, if they are skeptical about their own ability to help (Lin et al., 2008). Moreover, if the observer does not reach the goal of helping the victim, they will use strategies (M. J. Leuninger, 2008). If the observer has towards the victim a negative mood (Cialdini & Cialdini, 1988), they will use strategies towards the victim. There are different schemes for the victim (Ross, 2008). Relief, empathy towards the victim, and so on.

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(Warner et al., 2012), but the employment of specific strategies seems to be predictive of subsequent use of other strategies. When taking into account the broad framework of strategies, observers seem to have a preference for offender-focused strategies (Pemberton, 2012). When narrowing down to positive, rational victim-oriented BJW strategies and negative, irrational victim-oriented strategies, the literature suggests that people prefer positive strategies (Haynes & Olson, 2006). In current research there is an overemphasis on negative strategies. When one gets acquainted with BJW literature, one might end up with the feeling that all victims get blamed or derogated. However, most research reveals low levels of blame and derogation across experimental conditions (Alexander, 1980; Dawtry, Callan, Harvey, & Olson, 2018; Idisis, Ben-David, & Ben-Nachum, 2007). Leaving the methodological discussion for measuring positive strategies to chapter 5, here it suffices to note that extensive research into negative reactions is nevertheless important because from the perspective of the victim, the detrimental effect of negative reactions outweighs the beneficial effect of support (Baumeister et al., 2001). What is more, from the perspective of the observer, positive and negative strategies are not mutually exclusive. They do not succeed equally in restoring the BJW and they are not preferred in the same situations (Haynes & Olson, 2006). This section will elaborate the state of the art of the relative preference in the use of strategies.

Helping versus secondarily victimizing the victim

If people have the opportunity, they will try to help victims of injustice (Haynes & Olson, 2006; Lincoln & Levinger, 1972) rather than react in a negative way to the victim. However, the opportunity to help is not enough. When people feel skeptical about their ability to help, they employ irrational strategies (Sutton et al., 2008). Moreover, also when they believe that their help (e.g., compensation) does not reach the victim properly, people will not engage in these positive strategies (M. J. Lerner & Simmons, 1966). Furthermore, the feelings that the observer has towards the victim seem to matter too. If people have a positive mood (Cialdini & Kenrick, 1976; Goldenberg & Forgas, 2012) or feel positive towards the victim, they are more inclined to help or support compensatory schemes for the victim, even if this compensation is rather costly (Starzyk & Ross, 2008). Relieving the victims' distress is the top priority when they feel empathic towards the victim.

Although people thus are inclined to help when possible, this is still mostly done to bolster their own self-esteem. They need sufficient resources to self-regulate the threat that the victim's experience poses to their BJW to

help the victim (Loseman & van den Bos, 2012). When the observer himself feels distressed, relieving this own distress will be more important than helping the victim (Batson, O'Quin, Fultz, Vanderplas, & Isen, 1983). Lastly, Lotz, Okimoto, Schlösser, and Fetchenhauer (2011) found that compensation can have a strategic element to it. The possibility that the victim can benefit the compensator after the fact is an incentive to adopt this role.

As said, positive and negative strategies are not mutually exclusive (Haynes & Olson, 2006), at least in research examining the strategies of derogation and compensation. If an observer has derogated the victim in order to restore his BJW, he is probably still likely to compensate the victim as a second response towards the victim as well, if such compensation is possible. However, the other way around: if an observer first compensates the victim, further negative responses like derogation are unlikely, so that Kenrick, Reich, and Cialdini (1976) suggest that "derogation does not, in itself, function as an equity restoration device" (p. 657). This means that some strategies could be seen as addressing the injustice, while others could be characterized as mere "palliative efforts to reduce the aversive arousal" (Proulx, Inzlicht, & Harmon-Jones, 2012, p. 288) that is the result of the threat to the BJW.

Incentivizing positive reactions

Following up on the conclusion that positive strategies are better both for the victim and for the observer himself, it is important to consider how positive BJW strategies could be incentivized over negative strategies. The current body of research only offers scant insights into approaches to steer people in the direction of employing positive strategies rather than irrational ones.

First, literally rationalizing the strategy seems to work, as well as stressing the perspective of the other. People who consciously consider their reactions towards victims (Montada, 1998), with the prospect of having to discuss their reaction with others (Stokols & Schopler, 1973), or the response being made public (Lincoln & Levinger, 1972), will respond more positively. These results could thus also be explained in the light of social norms: people may shape their reaction in compliance with social norms that condemn derogatory strategies, while they privately might still hold prejudices (Dawtry et al., 2018).

Second, knowledge about the theoretical framework that underpins the different types of reactions discourages the employment of negative strategies. Fox and Cook (2011) found that students who completed victimology course displayed significantly lower levels of victim blaming than students in other

courses, including those in which victim blaming were relevant.

Third, incentives towards the victim can enhance empathy. Those who paid attention to a victim displayed higher empathy than those who displayed higher victim blaming. Especially incentives to position the victim as an interesting person

2.3 Conceptualization

The above all refer to the just world. They suggest that their deserved status and an outcome is perceived heavily relies on

This period of early development that era, new perspectives a focus on processes primarily occupying currently dominant in the conceptualization of some important

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Justice, conceptualized easily violated.

2012). When the observer himself will be more important than helping (Plas, & Isen, 1983). Lastly, Lotz, (11) found that compensation can certify that the victim can benefit the adopt this role.

Strategies are not mutually exclusive. Research examining the strategies of a person who has derogated the victim in order to compensate the victim as a way to feel better, if such compensation is possible. Researcher first compensates the victim, then the victim is unlikely, so that Kenrick, Reich, and others does not, in itself, function as an incentive. It means that some strategies could be characterized as mere "rational" (Proulx, Inzlicht, & Harmon-Jones, 2008) threat to the BJW.

These strategies are better both for the victim and important to consider how positive or negative strategies. The current research is into approaches to steer people in the direction of rational rather than irrational ones.

A strategy seems to work, as well as people who consciously consider their response (8), with the prospect of having to respond (8) & Schopler, 1973), or the response (972), will respond more positively. In the light of social norms: people with social norms that condemn might still hold prejudices (Dawtry, 1972).

Theoretical framework that underpins the employment of negative strategies. People who completed victimology course showed more blaming than students in other

courses, including criminology courses, and that these lower levels of victim blaming were related to their increased knowledge about victimology.

Third, in relation to the aforementioned importance of mindset towards the victim, Stel, Sim, Van den Bos, and Rispens (2013) found a way to enhance empathy and reduce blaming attitudes through mimicking. Observers who paid attention to the movement of eyes, eyebrows, mouth and head of a victim displayed in a video and were then asked to mimic these behaviors displayed higher levels of empathy towards the victim and lower levels of blaming. Especially the fact that even this *conscious* form of mimicking helps to incentivize positive reactions by inducing empathy might classify mimicking as an interesting potential preventive measure against secondary victimization.

2.3 Conceptualization of (in)justice

The above all rested on one key principle: deservingness. People believe in a just world. They believe that the world is an orderly place, where everyone gets their deserved share. The deservingness principle thus determines whether an outcome is perceived as just or unjust. This conceptualization of (in)justice heavily relies on a *homo economicus* orientation of fairness (Skitka, 2009).

This perspective represents the dominant mode of thinking during the early development of BJW theory (late '60s, beginning '70s). However, since that era, new perspectives have been developed, such as the *homo socialis*, with a focus on procedural justice, and *homo moralis*, which means that people are primarily occupied with conceptions of ought and should. Especially the latter, currently dominant, perspective has not yet been sufficiently incorporated in the conceptualization of injustice in the BJW paradigm, while it might add some important information to the equation of deservingness.

Skitka (2009) explains that people are most likely to take a *homo economicus* perspective on fairness when their basic material needs and goals are not being met or under threat – which would fit the victim's situation – or when material losses or gains are explicitly mentioned – which would to some extent fit the situation of the third party observer in a vignette study. However, people are likely to adopt a *homo socialis* orientation when their material and social needs are minimally satisfied, witness an intentional and undeserved harm or when their moral emotions are aroused. The latter seems a much better fit with the perspective of the third party observer like the participant in a BJW scenario, as will become apparent below.

Justice, conceptualized according to the deservingness principle, seems to be easily violated. Injustice could be the result of undeserved gains just as well

as to undeserved losses. Fortuitous positive outcomes have been described as “low-threat” (Dawtry et al., 2018). Furthermore, these undeserved gains or losses may be appraised as unjust even when they are very small. This means that a lot of situations are potentially interpreted as a *threat* to the worldview that BJW provides. For example, a situation in which someone has a small gain or loss that was technically not deserved by previous behavior or character, but which was caused by simply good or bad luck. Even though research suggests that people use a compensatory defense strategy in a variety of domains (Proulx et al., 2012), including situations of the experience of an undeserved small gain or loss (Gaucher, Hafer, Kay, & Davidenko, 2010), the threat is of a qualitatively different magnitude than larger negative outcomes that largely disadvantage the victim, such as life-threatening illnesses or serious crimes. The question thus arises: is every violation of the deservingness principle a threat? I will argue that the BJW threat that invokes the use of BJW strategies should be a large, wrongful violation of the victim’s deservingness, and that this violation should be normatively perceived as inappropriate by the observer.

Large losses as meaningful threats

In an interview, German philosopher Flasspöhler once strikingly described doing injustice as “*mangel einpflanzen*”, which literally translates into “to plant a shortage” (Flasspöhler, S.: *Die Kunst des Verzeihens*, 2016). In this dissertation, I will focus on large underserved losses as meaningful violations of justice, therefore posing a threat to BJW, and stimulating cognition and behavior that seeks to remedy this threat.

The first reason is practical: the main area of application that I will consider in this dissertation is that of the criminal justice setting. Criminal law is an *ultimum remedium*, and therefore, this contextual delineation calls for the exclusion of gains and minor underserved losses or simply “bad luck”, since the criminal justice system is concerned with wrongful violations of the law that lead to (the risk of) harm (see criminalisation principles, Buisman, 2017; De Roos, 1987; Feinberg, 1984; Haenen, 2014; Simester & von Hirsch, 2011).

A second and more important reason, which is of theoretical nature, is that “bad is stronger than good” (Baumeister et al., 2001). Bad outcomes of equivalent objective magnitude as good outcomes, will nevertheless be perceived as more important. Although people will attempt to minimize bad outcomes for themselves, or distance themselves from the source of others’ misfortune, when they encounter information about negative outcomes, this information has more impact than positive information. In an extensive review, Baumeister and colleagues have shown that the positive-negative asymmetry is established

in many different areas, particularly in communication with others. A loss is perceived as more threatening than a positive event. People are more likely to seek positive information. Even a small loss carries more weight about others. In similar situations, people employ BJW strategies more often than by a gain. The larger the loss, the more BJW.

Wrongfulness and appropriateness

The above conveys the idea that a violation should comprise a meaningful loss and should be substantial and wrongful. M. J. Lerner (1980) explains: “Yes, that is the way it should be, an (objective) negative element needs a subjective, element need to be therefore threatening to the observer should believe in the situation as perceived the situation as a threat.”

First, given the fact that the non-appropriateness of a *crime* suffers not only a harm. Even though the harm is not the element of wrongfulness, it should be done. The harm that is not an accident, but an “invasive” human action which is inappropriate.

Second, the crux is that observers not only think about justice, but with that when presenting a situation also look at the other settings, the specific context of interest. This element of descriptions of deservingness

as to undeserved losses. Fortuitous positive outcomes have been described as “low-threat” (Dawtry et al., 2018). Furthermore, these undeserved gains or losses may be appraised as unjust even when they are very small. This means that a lot of situations are potentially interpreted as a *threat* to the worldview that BJW provides. For example, a situation in which someone has a small gain or loss that was technically not deserved by previous behavior or character, but which was caused by simply good or bad luck. Even though research suggests that people use a compensatory defense strategy in a variety of domains (Proulx et al., 2012), including situations of the experience of an undeserved small gain or loss (Gaucher, Hafer, Kay, & Davidenko, 2010), the threat is of a qualitatively different magnitude than larger negative outcomes that largely disadvantage the victim, such as life-threatening illnesses or serious crimes. The question thus arises: is every violation of the deservingness principle a threat? I will argue that the BJW threat that invokes the use of BJW strategies should be a large, wrongful violation of the victim’s deservingness, and that this violation should be normatively perceived as inappropriate by the observer.

Large losses as meaningful threats

In an interview, German philosopher Flasspöhler once strikingly described doing injustice as “*mangel einpflanzen*”, which literally translates into “to plant a shortage” (Flasspöhler, S.: *Die Kunst des Verzeihens*, 2016). In this dissertation, I will focus on large underserved losses as meaningful violations of justice, therefore posing a threat to BJW, and stimulating cognition and behavior that seeks to remedy this threat

The first reason is practical: the main area of application that I will consider in this dissertation is that of the criminal justice setting. Criminal law is an *ultimum remedium*, and therefore, this contextual delineation calls for the exclusion of gains and minor underserved losses or simply “bad luck”, since the criminal justice system is concerned with wrongful violations of the law that lead to (the risk of) harm (see criminalisation principles, Buisman, 2017; De Roos, 1987; Feinberg, 1984; Haenen, 2014; Simester & von Hirsch, 2011).

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Wrongfulness and ap

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Second, that observers not about justice, but that when presented also look at the settings, the specific interest. This element descriptions of de

sitive outcomes have been described. Furthermore, these undeserved gains or losses when they are very small. This means they can be interpreted as a *threat* to the worldview in which someone has a small gain or loss by previous behavior or character, but not by luck. Even though research suggests that the use of B JW strategies in a variety of domains is a function of the experience of an undeserved loss (e.g., & Davidenko, 2010), the threat is of larger negative outcomes that largely threaten illnesses or serious crimes. The question is whether the deservingness principle is a threat? I suggest that the use of B JW strategies should be based on deservingness, and that this violation is appropriate by the observer.

Klasspöhlner once strikingly described the concept of *Kunst des Verzeihens*, which literally translates into "to the art of forgiveness" (2016). In this context, undeserved losses as meaningful violations of B JW, and stimulating cognition and

the main area of application that I will focus on is the criminal justice setting. Criminal law is a contextual delineation calls for the distinction between undeserved losses or simply "bad luck", since these are not the result of wrongful violations of the law. In line with wrongful violations of the law, the distinction between undeserved losses and wrongful violations of the law is a function of the law's justification principles, Buisman, 2017; Simester & von Hirsch, 2011). Reason, which is of theoretical nature, is not a justification principle (Baumeister et al., 2001). Bad outcomes of undeserved losses, will nevertheless be perceived as a threat to the deservingness principle. An attempt to minimize bad outcomes by blaming the source of others' misfortune, is not a justification principle. In negative outcomes, this information is not a justification principle. In an extensive review, Baumeister (2001) has established that a negative asymmetry is established

in many different areas, pertaining to the self and to impression formation and communication with others. People adjust less quickly following negative event than a positive event. People take longer to process negative information than positive information. Events involving negative emotions remain more salient than events triggering positive emotions. Negative information about others carries more weight about scoring their likeability than positive information about others. In similar vein, I suggest that people will have a greater need to employ B JW strategies when the deservingness principle is violated by a loss than by a gain. The larger the loss, the higher the need for the restoration of the B JW.

Wrongfulness and appropriateness

The above conveys the idea that a violation of deservingness *alone* does not comprise a meaningful B JW threat that invokes B JW strategies. The violation should be substantial and should have a negative rather than a positive outcome. M. J. Lerner (1980) explains that when the world is just, people perceive it as: "Yes, that is the way it should be" (p. viii; italics added). I suggest that, besides an (objective) negative violation of deservingness, another important, more subjective, element needs to be present before we label a situation as unjust and therefore threatening to the B JW: the inappropriateness of that situation. The observer should believe that the situation is *not* the way it should be in order to perceive the situation as unjust.

First, given the area in which the B JW is applied in this dissertation, the non-appropriateness of the situation manifests in the fact that the victim of *crime* suffers not only a large harm, but that this harm is the result of a wrong. Even though the harm and the wrong co-occur (Pemberton, 2014), it is clearly the element of wrongfulness that shows that the harm should normatively not be done. The harm that results from a wrong was not merely an (unforeseeable) accident, but an "invasion" of the victims' interests: harm caused by illegitimate human action which is morally indefensible (Duff, 2001, pp. 17-18), and thus inappropriate.

Second, the criterion of non-appropriateness is satisfied in the sense that observers not only prefer the world to be in accordance with their ideas about justice, but with their larger worldviews (Proulx et al., 2012). This means that when presenting an observer with a situation of injustice, one should also look at the other beliefs that might play a role in this setting. In B JW settings, the specific characteristics of the identifiable victim are of particular interest. This element has, to my knowledge, largely been neglected in current descriptions of deservingness that rely on the recipient of the (un)deserved loss

alone, rather than on the broader appraisal of the observer. However, taking appropriateness in all its facets into account allows for a better analysis of the underlying reasons that third parties might use to label a certain situation as consistent or inconsistent with their worldview, and consequently, their use of BJW(-related) strategies. It also offers an opportunity to include victim stereotypes within BJW research.

Thus, victim stereotypes are very important to the extent to which people perceive a situation as unjust, because these stereotypes shape whom we see as deserving (Viki & Abrams, 2002). When people can easily recognize someone as a victim, it is likely that they will perceive the situation as unjust. Here, we see that we can thus also use the *who*-question⁹ to elaborate the conceptualization of injustice. Additionally, when the victim violates the normative ideas of the observer of how a victim should present himself (in terms of behavior, looks, emotions, etc.), this may also call for the employment of strategies to bring the situation in accordance with the observers' general worldviews.

Christie (1986) developed the idea of the "ideal victim", the "person or category of individuals who – when hit by crime – most readily are given the complete and legitimate status of being a victim" (p. 18). He assumed that the most important reasons for perceiving a victim as legitimate and blameless are specific character traits of the victim and of the relation between victim and offender: the victim is weak, carrying out a respectable project, in a place that she couldn't be blamed for being and in no personal relationship with the offender, who is big and bad (p. 19).

The exact interpretation of the characteristics of the ideal victim is highly contextual and dependent on the *zeitgeist*. The ideal victim of a rape is probably different from the ideal victim of robbery. The ideal victim of robbery, according to Christie, is the elderly lady doing the groceries for her older and sick sister. The ideal victim of rape, however, would rather be a young girl running through the park in daytime and is attacked by a stranger. Furthermore, in 1986, the victim of domestic violence could not yet be categorized as an ideal victim. At that time, the culture of beliefs was not amendable to the idea that people could be victimized by their own close relatives, including intimate partners. However, Christie already foresaw that this might change over time: "Wives are not "ideal victims". Not yet. But they are approaching that status. They are more ideal today than yesterday" (1986, p. 20).

9 In addition to the *what*-question (what type of victimization could lead to labeling someone as a victim) the *who*-question distinguishes between persons (who would be seen as a victim because he specifically didn't deserve this?).

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Even though interpretation of the characteristics that Christie put forward might differ per type of crime and over time, the fact that victimhood is associated with certain stereotypes has been confirmed in later research as well (Papendick & Bohnner, 2017). For example, the Stereotype Content Model (SCM) (Fiske, Cuddy, Glick, & Xu, 2002) shows that any person or group of people can be described using a combination of levels of *warmth* and *competence*, which are seen as dimensions of "*stereotypicality*" (Fiske, Cuddy, & Glick, 2007; but also Spence & Helmreich, 1980 for analogous concepts). In turn, these descriptions predict emotional and behavioral tendencies observers have towards these individuals or groups.

A combination of both high levels of warmth and high levels of competence trigger feelings of admiration, while individuals who are perceived as neither of those (e.g., homeless people or drug addicts), generally elicit feelings of disgust and contempt. Different combinations of the two dimensions are possible. However, as I argued more extensively in Bosma, Mulder, and Pemberton (2018), most relevant for the appraisal of victims of crime is paternalistic prejudice. Paternalistic prejudice is triggered by individuals perceived as low in competence but high in warmth. Someone who has been victimized is generally perceived as non-threatening and therefore warm, but also perceived as lacking competence because of the inability to avoid being victimized. High levels of competence would generally not co-occur with high warmth in victims because, as Christie states, "sufficient strength to threaten others would not be a good base for creating the type of general and public sympathy that is associated with the status of being a victim" (1986, p. 23). Taking the SCM into consideration, expressions of agency by a victim could be perceived as inappropriate by observers, because these expressions do not fit the ideal victim stereotype. Consequently, the perceived injustice could be attenuated. Indeed, van Dijk (2009) provided various examples of victims displaying agency (e.g. by the expression of anger) receiving negative reactions from others. In another study, Mulder and I have also shown that a victim that breaks with stereotypes generally receives more negative reactions (Mulder & Bosma, 2018). In chapter 3, I will elaborate further how emotions can further play a role in portraying injustice.

The eye of the beholder: the third person observer

The idea that "being a victim" is neither a fixed nor an objective phenomenon (Christie, 1986; Daly, 2014; Rock, 2002) emphasizes that victim(ization) characteristics alone are insufficient explanation of the construction of victim status. Indeed, it shows that *appropriateness* should be added as a parameter for

assessing injustice and broader worldview violations. The perception of (in) justice is "in the eye of the beholder". From what perspective then, should we assess the injustice? In this dissertation, the perspective of the third person, observer of the potentially unjust situation will be taken. This could mean that an observer would label a situation as unjust and recognize a victim in one of the parties in this situation, while this person himself would not label the situation as victimizing, or that an observer would not label a situation as unjust, while someone within the situation feels victimized. The reason for this choice is in the core of the aim of this dissertation: to critically assess reactions towards victimization by third persons (laypersons and legal professionals) in terms of BJW strategies.

To reiterate, I conceptualize a BJW threat, which invokes the use of BJW strategies, as a large and wrongful violation of the deservingness principle that leads to a loss on the part of the victim, and this violation should be perceived as inappropriate by the observer.

2.4 Conclusion

This chapter was concerned with the state of the art of the field of experimental Belief in a Just World research. People's Belief in a Just world refers to the motivated but implicit choice that people make to think and behave as if the world is a just place. Research that is concerned with the BJW motivation examines under which circumstances, and to what extent, people employ strategies to uphold their motivation. Knowledge about the employment of these strategies might help us understand why, even though we might expect people to approach an innocent victim positively, observers under some circumstances instead secondarily victimize the victim because they either reinterpret the cause of the victimization or the consequences of the victimization.

The chapter started by describing the threat that triggers the individual justice motive, and argued that for the purposes of the current research, the conceptualization of this threat is currently incomplete. A threat is normally defined as a violation of the deservingness principle, which captures the idea that everyone gets what he deserves, meaning that good people get good outcomes and bad people get bad outcomes. Adhering to this definition of a threat would have the potential of including violations that would not qualify as situations that observers would identify as a threat: for example, when the violation would mean that some good person would get *more* than his deserved share, or when the violation is only very small and could be considered as

just "good or bad luck" that are *losses* could be mind specific context argued that only wrong taken into consideration does not significantly play in the observer's appropriateness of the of research (e.g., more a much larger extent reactions towards (n in the next chapter.

violations. The perception of (in) what perspective then, should we take the perspective of the third person, or will be taken. This could mean unjust and recognize a victim in a person himself would not label a situation as a victimized. The reason for this is: to critically assess reactions of persons and legal professionals) in

which invokes the use of BJW of the deservingness principle that this violation should be perceived

the art of the field of experimental psychology in a Just world refers to the tendency to think and behave as if the world is just. BJW motivation is to what extent, people employ knowledge about the employment situation and why, even though we might not know positively, observers underestimate the victim because they focus on the consequences of the

threat that triggers the individual reactions of the current research, the concept is complete. A threat is normally defined as a principle, which captures the idea that good people get good things and bad people get bad things. According to this definition of a threat, violations that would not qualify as a threat: for example, when the victim would get *more* than his deserved reward and could be considered as

just "good or bad luck". I therefore argued that only substantial injustices that are *losses* could constitute a threat to the BJW. Furthermore, bearing in mind specific context of this dissertation, namely the criminal justice setting, I argued that only wrongful violations of the deservingness principle would be taken into consideration as a threat. Lastly, the current state of the art in BJW does not significantly take into account the role that victim stereotypes could play in the observer's perceptions. I therefore recommend adding normative appropriateness of the situation as a factor to assess the injustice. Other fields of research (e.g., mock jury research or victim credibility research) do this to a much larger extent. Findings from these fields may suggest a direction for reactions towards (non-)stereotypical victims. These insights will be discussed in the next chapter.

8. Judges' articulated thoughts about emotional victims of crime

In the Netherlands, broadly characterized as a civil law country (see for a comparison of classifications of legal systems Spencer, 2016), the judge actively manages the proceedings that concern both the decision about guilt and the sentencing decision. The judge, positioned as a leading authority in the fact-finding process and responsible for a complete and careful trial, is not only deciding on the case, but is in charge of communication and has to be responsive to the parties (Groenhuijsen, 2012). Additionally, the judge has a high level of discretion with regard to the sentencing, as there are no minimum sentences per criminal offence, nor strict sentencing guidelines.

"A judge in criminal law doesn't have an easy job. Nowadays, he is charged with multiple explicit societal expectations" (De Keijser & Elffers, 2004, p. 16 translation AKB). This includes the increased interaction with victims in the courtroom, the responsibility to grant the victim voice and the duty to treat these victims respectfully. The frame of interaction with the victim is thus shaped by professional requirements that are based on avoiding secondary victimization.

The attention for the victim has emerged on the basis of national and international developments. Nationally, the Victim Support Act (*Wet Terwee*, 1995) was an important milestone, in which the possibilities to claim compensation were significantly extended (Corstens, 2012). Another major step forward was the research project *Strafvordering 2001*, the basis for the development of other victim-oriented rights, as this project emphasized the (then novel) assumption that victims (and witnesses) need specific protection.

"The novel element here is that victims and witnesses were also depicted as individuals with needs and interests of their own, which need to be served and protected during the course of the proceedings. Some of these needs can be acknowledged by awarding them procedural rights of their own. Hence the idea of creating separate chapters in the Code [Dutch Criminal Code of Procedure] detailing the rights and obligations of these 'third parties'" (Groenhuijsen, 2012, p. 56)

A third important development is that since 2005, victims of serious crimes²⁷ are eligible to deliver a VIS orally or in writing (at. 51e CCP). The Dutch Supreme court has ruled that that the written version can be regarded as evidence as long as it meets the standards of evidence (ECLI:NL:HR:2011:BR2359).²⁸ Judges may restrictively take the VIS into account in their verdict; the VIS may be used to "accentuate" the case (ECLI:NL:HR:2012:BR1149).

Most victims who decide to deliver an oral VIS also hand in a written version (Booth et al., 2018; Lens et al., 2010). As per 2016 (*Stb.* 2016, 210), the requirement to restrict the VIS to the consequences of the crime has been dropped, so that victims are free to design their VIS. In practice, VISs are often written with help from victim support workers.

My initial expectation for the current research project was that judges employ fewer negative strategies than laypersons when they are confronted with an emotional victim. First, they possess the skills and experience to work with emotions. Second, they have a legal responsibility to avoid secondary victimization. As the previous chapter has shown that direct negative reactions by laypersons are scarce, I expect similar results for judges. This is in line with findings from previous quantitative research in a population of Norwegian professional judges. This revealed that their ratings of the credibility of victims were not dependent on the victims' emotional expression (congruent: negative emotions; neutral; or incongruent: positive emotions) of the victim:

The average lay person does not seem to have such a liberal concept of normal behavior, but is governed by social stereotypes (...) court judges do not seem to host a similar stereotype. The results of the study show that the emotions displayed by a rape victim do not determine the judges' credibility judgments" (Wessel et al., 2006, p. 227)

In this chapter, I will explore judges' strategies when confronted with the threat of injustice that an emotional (angry/sad) victim may present. The qualitative nature of the study allows for an in-depth analysis of their justice motivations.

27 Crimes that carry a maximum sentence of 8 years or higher and those crimes specifically named by the legislator (typically considered as serious crimes, such as assault or child pornography).

28 As Reijntjes argues in his note (NJ 2011/558), this could for example require the victim to deliver the written VIS before trial starts, so that adequate defense is possible. Victims who deliver their VIS orally and hand in their statement afterwards during trial, as is common in the Netherlands, thus do not benefit from this ruling.

8.1 Method

Participants

Participants ($N = 26$, $SD_{age} = 9.58$) were recruited from a list of workshop participants (judiciary) in January 2016 and legal decision makers (academics) and academic presenters (participants for the court newsletters of the Supreme Court and courts of appeal). The recruitment was done through a convenience snowball sampling method in the district courts (wave 3) in November 2015.

Participants were selected based on their experience in the criminal justice system and bench panels with three or more judges and a single judge.

Procedure and coding

Participants first received a brief introduction to the study. The procedure was presented in a video. The study presented in chapter 2 was an emotional Victim Impact Statement (ATSS) paradigm (Davis, 1986). The video automatically paused at the end of the video break. Participants were then asked to deliver their VIS. Participants were left to deliver their VIS freely, but the whole process was recorded.

The video material was divided into four conditions. See Appendix E for the distribution of participants across conditions.

All articulated thoughts were transcribed using F4audiotranskription (F4audiotranskription, 2016) on the basis of the theoretical framework after an initial review of the transcripts.

8.1 Method

Participants

Participants ($N = 26$, 69% women, ages ranged from 34 to 64 with $M_{\text{age}} = 54.46$, $SD_{\text{age}} = 9.58$) were recruited in three waves. The first wave ($n = 15$) consisted of workshop participants at the SSR (Dutch training and study centre for the judiciary) in January 2017. The theme of the workshop was “judges on victims and legal decision making”. The workshop that included both discussion panels and academic presentations was organized with the purpose of collecting participants for the current research. The workshop was advertised through newsletters of the SSR and invitations were e-mailed to all district courts and courts of appeal. The second ($n = 7$) and third ($n = 4$) waves consisted of convenience snowball-samples: previous participants recruited colleagues in the district courts in the Hague (wave 2) in March 2017 and Oost-Brabant (wave 3) in November 2017.

Participants were highly experienced judges, with $M = 9.12$ years of experience in the criminal law sector ($SD = 6.60$). They mostly work in full bench panels with three judges ($M = 65\%$ of their time), and additionally as a single judge.

Procedure and coding ATSS

Participants first received a short introduction about the nature of the study. The procedure of the study was identical to the procedure of the study presented in chapter 7. In short, participants watched a movie about an emotional Victim Impact Statement (VIS) in court. Consistent with the ATSS paradigm (Davison et al., 1983; Zanov & Davison, 2010), the video was automatically paused multiple times, and promptly restarted at the end of the break. Participants were asked to articulate their thoughts during these breaks. Participants were left alone in the room during the procedure to be able to talk freely, but the whole procedure was taped for later transcription.

The video material was identical to that used in chapter 7, so that there were four conditions: angry/male, angry/female, sad/male and sad/female. See Appendix E for the full scenario for the vignette and Appendix F for the distribution of participants over conditions.

All articulated thoughts were transcribed using the software tools F4audiotranskription and MaxQDA. The coding scheme, that was developed on the basis of the theoretical framework laid out in chapter 2 to 5, and updated after an initial review of the transcripts, is the same as chapter 7.

All transcripts were independently coded by two coders. Codes were then compared and possible disagreements resolved. Comparison showed great overlap between the two coders.²⁹ The codes were used to compare between subjects (e.g., did participant X use certain strategies (more often) than Y and Z?) and within subjects (e.g., what different strategies did participant X use and in what sequence). I translated all quotes in this chapter myself; the original quotes from the transcripts can be found in Appendix G, using the participant number and quote number.

Procedure questionnaires

Although the current research concerns observers' justice *motivation* (reactions in the light of just world reasoning) rather than the individuals' justice *motive* (their individual disposition to believe that the world is a just place – see also chapter 2), the individual justice motive can explain the extent to which their justice motivation is triggered (Hafer & Bègue, 2005; M. J. Lerner, 1980). To my knowledge, the extent to which Dutch legal professionals believe that the world is generally a just place has never been measured. However, it is an interesting question that could lead to two competing hypotheses. On the one hand, one could argue that judges are confronted with injustice on a daily basis, which may lead them to internalize the idea that the world generally is not very just. On the other hand, who would continue being a judge without ultimately believing that the world is eventually be, a just place?

Similarly, legal professionals' justice sensitivity, or the individuals' disposition to frame a certain (ambiguous) situation as justice-related, could play a role in their recognition of the threat that the vignette presents. On the one hand, one could again argue that because they have judged the most heinous crimes, their "level of tolerance" to injustice has probably increased. On the other hand, because of their frequent exposure to conflict situations, they might be especially sensitive to injustice.

Even though small samples don't allow for sophisticated quantitative analysis, in this chapter, I will explore judges' BJW and JS. I will also confront them with the same VIS as the laypersons in the previous chapter to explore their strategies to deal with the vignette. Therefore, after participants finished

²⁹ A measure of inter rater reliability, such as Cohen's κ , is (again) not provided. As explained in chapter 7, such measures are based on ratings of agreement and disagreement on both *coded* and *non-coded* segments. Because there are no pre-defined or given units in the transcripts, coded segments could include overlapping codes and the number of non-coded segments could not be computed (Krippendorff et al., 2016). In total, 696 codes were assigned to the 26 transcripts. Of these codes, 67 codes were initially coded by only one coder, but were included in the analysis, while 19 codes were coded by one of the coders but were dropped after discussion.

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8.2 Results and

Questionnaires

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watching the movie, they filled out the translated General Belief in a Just World (GBJW) scale (Dalbert et al., 1987), Cronbach's $\alpha = .85$, and Short Justice Sensitivity (SJS) scale (Baumert et al., 2014). The subscales of the SJS again varied in reliability, and reliability for JS-O and JS-B were particularly low: JS-V: $\rho = .60$; JS-O: $\rho = .29$; JS-B: $\rho = .16$; JS-P: $\rho = .69$. For this reason, JS scores will not be interpreted.

Additionally, in an open-ended questionnaire, participants were asked whether they thought the VIS contributes to the victims' recovery, and whether they thought the VIS is informative to the judge. The purpose of this questionnaire was to establish whether participants did not have a general negative view of the VIS that might influence victim-oriented responses in this study. This was considered to be especially important in the light of the heated debate about the merits of the VIS in the criminal justice system.

8.2 Results and discussion

Questionnaires

Scores on the GBJW-scale ranged from 1.67 to 4.50, $M = 3.30$, $SD = .83$, indicating that like laypersons, judges widely varied in their individual belief that the world generally is a just place. Closer examination of the distribution of the data revealed that 42% scored 3.0 (midpoint scale) or lower, 39% scored between 3.0 and 4.0 and only 19% scored higher than 4. This indicates that the scores of the judges are a little lower than that of the laypersons. However, this difference is not statistically significant. Because of the low reliability scores for the SJS subscales, the results of these questionnaires will not be discussed any further.

The open questions were answered fairly consistently between participants. In response to the question whether the VIS holds any informational value for the judge, only two participants answered negatively. However, they stated that the VIS could hold information for the offender or could balance the attention to different parties in the criminal justice procedure. All other participants indicated that they believe the VIS holds informational value, although some clearly stated that the value of the VIS depends on the richness of information in the case files.

Moreover, the response to the question whether the VIS is beneficial to the victims' well-being was predominantly positive. In total, 8 participants indicated that they thought that giving a VIS would have positive effects on the victims' recovery. Only one participant thought that it would not help (clinical) recovery, but giving a VIS might give the victim a positive feeling. All other

participants argued that the VIS could be helpful, but could also have an adverse effect, depending on: the expectations by the victim ($n = 6$), whether the victim felt heard by the court or received feedback ($n = 5$), whether the victim would take a victim-role or move beyond the victimization ($n = 3$), the defendant's response to the VIS ($n = 2$) or whether the victim made a conscious choice to give a VIS ($n = 1$).

The answers to the open-ended questionnaires hint at a slight positive bias towards the VIS. This could be the result of a self-selection bias of professionals who have an affinity with the development of victims' rights, and were therefore interested to participate in the study.

Articulated thoughts

ATSS procedure

First, the total amount of codes is much higher than the total amount of codes assigned to the laypersons' transcripts. During the breaks, judges generally spoke a lot. Transcripts show long paragraphs of thoughts.³⁰ First, this suggests that the study design indeed fit the judges' approach to the case. Judges articulated their thoughts relatively effortlessly. Moreover, it is likely that much information or nuance might be lost if participants would have responded to Likert scales. As van Oorschot (2018) has argued, for judges, a case is first and foremost "a narrative thing" (see also Frankenberg, 2014). As will become clear throughout this chapter, judges used their articulated thoughts to narrate about the case. They articulate thoughts beyond quick and quantitative evaluations. They rationalize their first thoughts and they link their evaluations to the times, places, event and characters that are linked to the case. In contrast, it would not be possible to relate answers on Likert scales to separate aspects of the situation.

Furthermore, there were little comments about the length of the breaks (only one participant, J-8, commented multiple times on feeling uneasy with the long breaks). All but two participants articulated their thoughts in all breaks. The remaining two participants were either silent in only one or two of the five breaks. In contrast, seven participants ran short of time to finalize articulating all of their thoughts in up to two breaks per participant.

30 On average, judges used 666 words ($SD = 198$) in total. Laypersons on average used 446 words ($SD = 244$) over the five breaks and public prosecutors used 841 words ($SD = 165$). These differences are statistically significant, $F(2,63) = 19.01$, $p < .001$, $\eta_p^2 = .38$. Tukey tests revealed that prosecutors used significantly more words than judges, $p = .01$, who in turn used more words than laypersons, $p = .01$.

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No less than ten participants commented on the act(ors) in the movie, stating that something was staged or acted out. The numbers are equally distributed over the four conditions. As judges are generally familiar with training through role playing in their training program (SSR, 2010), they were probably able to imagine themselves in the situation nonetheless (Jarvis, Odell, & Troiano, 2002). This is also supported by their articulated thoughts. Only one participant mentioned the limitation more than once and knew the actor. The rest quickly moved on with the task after identifying an actor. Others specifically missed the entourage of the courtroom, rather than that they were distracted by the actor.

"At first, I wondered: is this real or is this acted out? Well, what strikes me is that... [moves on to talking about the content of the movie]" [J-2-1]

"The first thing I wonder about is that this apparently seems to be staged, not in a real courtroom. Well... that's what I take it to be. So that is the first thing. Um... But besides that, ... [moves on to talking about the content of the movie] [J-19-2]

A last observation with regard to the way participants reacted to the ATSS procedure is that judges often referred to real actions they would take or would expect their colleagues to take. Articulated thoughts do often include worlds like "would" or "should", as will become clear in the citations below. This means that relatively more segments were coded with [!!] than in the study of laypersons' articulated thoughts.

Type of victimization

Participants rarely identified the exact type of victimization in the vignette. Five participants wondered what the exact type of victimization was in break 1. Two of them did not refer to it in terms of specified criminal offences [J-20], [J-26]. The three others qualify the acts as "robbery, kicked" [J-14-1], "robbery and the use of violence" [J-4-1] and "His bike, the bracelet and his phone were stolen" [J-16-2]. Even from those descriptions, it is clear that the judges described the actual behavioral they perceived to be occurring, rather than offering an opinion as to the way this should be translated into legal terminology. Other participants remained even more superficial on this point by using descriptions like "the event" [J-26-2] to refer to what happened. Others simply copied the words in the vignette to describe criminal behavior.

Emotion

In contrast to the minimal attention that was paid to labelling the act in terms of legally defined criminal offences, identifying and evaluating the victims' emotional display made up the majority of the participants' articulated thoughts, together with comments on the way the victim presents the VIS, which partly overlaps with evaluating the victims' emotion. Two participants did not mention the emotionality of the victim at all, but rather commented on the role of the judges [J-24] and the general way of presentation of the VIS (length, details, content) [J-23]. The participants who did not comment on the emotion ($n = 2$) or commented on the emotions only in one break ($n = 2$) had all been confronted with a male victim (evenly spread over the sad and anger condition).

Judges, like laypersons, used multiple terms for the emotions expressed by the victim. For the sad victims, the following terms were used to describe the experienced or expressed emotion: "grief" [J-21-1], "visibly affected" [J-4-4], "very tense" [J-15-1], "insecure and nervous and also emotional" [J-10-1], "nervous, emotional, bit shaky" [J-26-3], "with emotion" [J-18-2], "mortal fear" [J-3-2]. For the angry victim, "angry" and "frustrated" were very common. Other terms that participants used were: "curt" [J-6-2], "aggressive" [J-8-1], "reproachful" [J-9-1], "feisty" [J-25-1]. A word like "feisty", signals the agency or power that is linked to anger. A lot of judges found the angry victim clear and in control.

"It is a woman who is very angry and besides that, uhm... very assertive, at the same time." [J-20-2]

The manipulated anger is perceived to be very intense. Of course, it was designed to vividly and clearly present the emotion, and in that sense, it could be labeled intense. However, there are no (deliberate) differences in intensity between the angry and sad vignette. The descriptions participants gave to sadness, such as "very tense" or even "mortal fear" suggest that the emotion in the other condition could be perceived to be equally intense. Yet, comments about intense sadness are relatively infrequent – which could be part of an expectancy violation (see below). Rather, respondents are quite content with the way the victim expresses their emotions.

"That makes her very insecure, and that leads to the emotions that, now, during the procedure, again show, and she brings that in a very appropriate way." [J-3-3]

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"From the start, she assumes that she'll not be believed by us, the judges. (...) Uhm, yes, that bothers me. And I would want to say: "we have access to the photos, and I hope that we have shown, during this procedure, before you gave this VIS, that we accept the facts as they are in the files." She doesn't need to go over that again." [J-7-1]

8. JUDGES' ARTICULATED THOUGHTS ABOUT EMOTIONAL VICTIMS OF CRIME

"The way he says "I trust they will be appropriately punished" is almost a threat to the court. Poor man, it rather has a comical effect!" [J-16-3]

Expectancy violations

From the various ways participants described the angry victim, it appears that they experienced a violation of their expectations. Their descriptions made clear that they were surprised or even shocked by the victim's emotional display. Moreover, some don't seem to label anger as an emotion, as they equate the term "emotional" with sadness (as have participants in the sadness condition, see above). The detachment however, is not positively related to the detached ideal of the criminal justice system. Rather, anger is seen as an unfamiliar expression that shocks participants.

"But that anger (...) I find that really shocking" [J-12-1]"

"He doesn't talk about pain. He doesn't talk about grief. He talks with some detachment." [J-14-2]

"Now this victim was not emotional, not crying for example, but she was very angry." [J-25-2]

"You would expect that if she would start reading the statement she would first be nervous, and then maybe a little angry and that the anger then wanes, but with this woman the anger seems to, uhm... stay at the same level, unrestrained, I find that very striking." [J-20-3]

In contrast, respondents who did not expect a victim to be (only) sad are much more accepting of the display of anger. In fact, some even missed the expression of anger in the sad victim vignette.

"It is a victim that I like, he tells it as it is. And is not miserable. (...) You don't have to be miserable as a victim. [J-22-1]

"I don't see any anger here, and that is what I actually see with the most victims. It often is a struggle between anger and grief." [J-5-1]

The expectancy violation might stem from adherence to stereotypes about the ideal victim and associated passivity that feeds into the expectations about the emotional demeanor of the victim. Additionally, the ideas that legal

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professionals have, might have been informed by the reality of the courtroom. Despite the debates in the media about the disruptive character of angry VISs (Beunders, 2018), the courtroom seems to be fairly free from (intensely) angry victims (see also Booth et al., 2018). An explanation could be that filtering (the review and subsequent editing or amending of the VIS) of content that is deemed too emotionally intense has already taken place. VISs could be filtered before they reach the courtroom for example by victim support organizations, as they assist victims in writing a VIS. As anger is not seen as an appropriate emotional display in court, the victim could be advised to leave expressions of anger out of the VIS. The consequence of this pre-trial filtering is that judges are not confronted with the filtered part, i.e. the anger in the statement.

"Well, further... it is actually... she now tells about some things that are fairly common in victim statements, you hear them more often, and also the consequences, that she still is... but that anger, that I still find really striking, you actually never see that this intense, also not... you do see that there are problems of course at work, that is very recognizable." [J-20-1]

"I seldomly encountered... actually never encountered, a victim who gave such an angry VIS. It is more that... normally it is much more reserved and sadder. This is very accusing." [J-8-2]

"The good thing about victim statements written with help of Victim Support is that these kinds of extremes are filtered out (...). You rarely encounter victims who become angry. You do see sad victims though." [J-16-4]

"She also names a victim support worker. Probably that person helped her, wrote the statement together with her in this scenario, and then removed everything that was too direct, too intense." [J-5-2].

The role of the judge

Despite the various opinions about the emotions, most participants explicitly stressed that there should be room for the emotions, because this touches upon the core goal of the VIS: exercising voice. Doing so is likely to include a particular emotional tone.

"In this case it is good to give this man the room to peacefully – calmly or not, no objections – there should be attention for his emotions." [J-15-2]

"I actually don't have much to say about this. The VIS is meant to express emotions. And we, as judges, should find a way to handle those later." [J-11-1]

However, articulated thoughts revealed clear awareness of the judges' task to perform emotional labor in relation to a VIS. They mention two key tasks: 1) to make sure the victim is sufficiently at ease to deliver the VIS and 2) to be ready to interrupt as soon as the victim crosses a boundary. The latter obtains when the victim's statement conflicts with other core values of the criminal justice system. This is the case when the VIS takes up too much time or when the victim speaks directly to the defendant in accusing or otherwise inappropriate language. Any factual additions the VIS may contain could necessitate calling them as a witness. Acknowledgment of their victimhood might be in conflict with the presumption of innocence.

"I even think sometimes – if you see a pile of paper bound together with a staple – oh dear, how long is this going to take?" [J-19-3]

"Sometimes it is difficult to have [victims] in court. But this woman tells it in a fine way. I don't feel the urge to interrupt to... to steer her story in a different direction, which could be the case if people start addressing the defendant very directly, or are swearing at them, or something like that." [J-4-5].

"Yes, but the question is, the one who is sitting over there, whether that is the offender" (...) Yes, the question is, uhm, to what extent you should let this victim speak. Or whether you, uhm, should say something about that. At the moment that you... I assume she is talking about the perpetrators. About bastards, and not necessarily about the defendant that is in front of me. But yes, I would have let it go." [J-8-3]

Three judges further articulated that they should perform emotional labor in the sense of suppressing own emotions and expressions of empathy. These judges had been confronted with a sad victim.

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“You cannot, so to speak, start crying together with the victim.” [J-19-4].

“And sometimes that is a little... you would like to, as a person, you would like to say more. But you should stay in your role as a judge and you should protect your impartiality. And thus, you cannot say too much. I needed to get used to that again. Because as a judge in a civil court, you could have said something.” [J-6-1]³¹

“It could be difficult for the court to be confronted with such an emotional story without showing that you are affected by it, when someone stands in front of you, clearly feeling so much grief.” [J-21-2]

This resonates with Dutch judges’ narratives collected by M. van Kleef and van Kleef (2011), such as Van de Ven: “But there are days that my emotional armor is not strong enough” (p. 52).

One might see a tension or contradiction between the two tasks of making the victim at ease and protecting the criminal justice proceedings. The first might encourage empathy, which by definition involves taking the perspective of the victim. The latter demands the opposite: not to take the perspective of the victim, because the judge should be impartial and focus on his own task of managing the proceedings. Maintaining a balance between the two seems to involve *active listening*:

“That attention could also exist in listening very carefully. If there are occasional pauses, the judge could actively listen by trying to summarize the essence.” [J-15-3]

Seven participants explicitly reflected on the question whether or not to interrupt the victim. Only one [J-13] decided that it was a good idea to interrupt the victim, to urge the victim to shorten the VIS and stay close to the essence of the story. The essence of the story, according to participant [J-13] is to narrate about the what happened to the victim and how this impacted the victim. Information about what happened during the day leading up to the victimization is, in these participant’s view, irrelevant.

³¹ In the Netherlands, trainee judicial officers get trained in different sections of the court: criminal, civil, administrative (SSR, 2010). It is common practice that judges switch between different sections of the court after a couple of years. Apparently, this participant recently switched from civil to criminal law.

The six other participants decided not to interrupt. Interestingly, explicit reflections on interruptions were made when the victim was angry ($n = 5$) and when the victim was sad ($n = 2$)

Rather than interrupting, eight judges mentioned that there should be more dialogue with the victim, so that their VIS would be acknowledged. This refers to the *voice – to be heard* (to be distinguished from voice - to speak, see chapter 4 and Booth et al., 2018). Most of them refer to the tension with other core values of the criminal justice system, but nevertheless think that the attitude of the court portrayed in the vignette was too uninvolved. The majority of the judges who mentioned that there should be more acknowledgment of the victim had been confronted with a sad, female victim (sad, female: $n = 5$; sad, male: $n = 2$; angry, female $n = 1$). Two participants who had been confronted with a sad male victim, thought that the judges had been considerate of the victims' circumstances to a sufficient extent.

"The court ends the VIS and thanks him for his comments, and shows neutrality again, but also a kind of involvement. It doesn't leave the court untouched, they are involved. Yes, I think it is a nice balance that they show. Business-like, but involved." [J-17-2]

"I think the reaction of the judges is appropriate, that is just part of our role. I wouldn't have said more than that myself." [J-24-1]

One judge emphasized the importance of active listening as a means of acknowledging the victim. But based on the participation in this research, this judge wondered whether or not active listening is actually enough to show acknowledgment. The judge suggests that it might be well-intended on the part of the judge to actively listen, but the victim would still feel a lack of acknowledgment due to the lack of explicit feedback (*voice – to be heard*).

"Yes, well... that is actually quite striking. Normally, you are part of the court and you actively listen, so I don't really experience it as if there is a lack of feedback. But now that I watch this movie... uhm... I could imagine that from the perspective from the victims who give a VIS this is experienced in a different way." [J-19-5]³²

³² During the debriefing, this participant repeated this comment, including the intention to making this active listening more visible for the victim, e.g., through commenting on the active listening and giving the victim more acknowledgment.

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However, a lot of judges indicated ways to show the victim that their story was heard without risking crossing the boundary of harming the fair trial, the presumption of innocence or their own impartiality. This could be providing a glass of water, explaining that emotions were noticed, and/or asking the defendant to react to create a dialogue. Another possibility is to adjourn the session for a couple of minutes. As discussed in chapter 5, one can debate whether forms of "cooling-out" either acknowledge the victims' emotions or distances the observers from the victims' emotions.

"Also, that you wonder, hey, shouldn't the judges give him a glass of water, or a bag of tissues? On the other hand, that could be interrupting. Could intervene in someone's story, you never know whether this person would like that, so these are difficult questions." [J-17-1]

Using the VIS for informational purposes

Apart from an evaluation of the VIS in relation to the emotion expressed, a lot of judges evaluated the VIS in the light of its usefulness. The answers to the open-ended questionnaire showed that a large majority of judges in this sample viewed the VIS, under specific circumstances, as a useful instrument to contribute to the victim's recovery. The specific requirements they mentioned were that the victim has the correct expectations about the VIS and its effects and that the victim experiences the feeling of being heard, the latter of which was discussed above.

Moreover, the answers to the open-ended questionnaires also suggested that almost all judges found the VIS useful in terms of gaining more information about the impact of the victimization on the victim's life. This finding is in line with the evaluation of the VIS in the ATSS procedure.

"Myself, I like it when a VIS is not too long but really is reflective of the core of the experiences of the speaker, not too many digressions." [J-1-2]

"In a lot of cases, the oral VIS is valuable for me, because you get a better feeling of the severity of what happened, and so that you can better articulate that. We quite often use that in the motivation of the sentencing decision, especially to bring the crime severity to the attention." [J-1-1]

"Consequences are clear, and... very useful when deciding on... in any case the punishment, and I would say also when judging the claim for compensation." [J-26-4]

The question whether the VIS influences the outcome of the criminal procedure, most importantly the sentence, is highly contentious (Ashworth, 1993; Booth, 2016; Edwards, 2009; Sarat, 1997). The reason for this controversy is multifaceted. First, bringing an emotional tone to the courtroom could infringe the grand majesty of the court by inviting embarrassment and confrontation. Related, people fear that judges would be overly affected by the emotional tone of the victim. Second, emotionality could harm the defendant in various ways: by detracting attention and, when the trial is not bifurcated, by infringing the presumption of innocence. This is related to the fear of vindictive victims. Lastly, arbitrariness and inconsistency might arise because not in every case a VIS is delivered, leading to disproportionate sentences. In the Netherlands, the Supreme Court has ruled that the VIS may impact the sentencing, but the value of the VIS should be reduced to accentuating the case as it stands from the proceeding (*ECLI:NL:HR:2012:BR1149*).

The results of this research confirm that judges not only value the information that a VIS could add to the case files, but – in the last two quotes – suggest that some of them would actually use the VIS in their decision-making process. Whether this is influenced by the emotional tone of the VIS is still speculation. Both participant [J-1] and [J-26] were assigned the sad-victim condition. One other participant remarks the following:

"If someone cries a lot, whether that influences my decision, I'm not sure, I would have to reflect on that." [J-4-6]

Moreover, with regard to levels of punishment, the victim in the vignette made a vague comment about the preferred outcome of the procedure: "I hope that you, your honor, will come to the right decision" (sad victim) or "I trust they will be appropriately punished" (angry victim). Although these statements differ (in hindsight: might differ too much) in the direction of the desired outcome, both statements leave ample room for discretion with regard to what the appropriate punishment could be. In the sad condition, the participants seem to appreciate this view, as it opposes the stereotype of the vengeful victim.

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...of the vengeful victim.

"The victim clearly explains that he indeed would like to have his damages compensated, but from what he is saying, it appears that that is not the most important thing." [J-15-4]

"Uhm, "I hope that you will come to the right decision", from the perspective of the judge, that is of course an exemplary victim. She's not demanding that they should get the highest possible sentence, and even the highest sentence is not fair. So, in that regard, this victim makes our job very easy, she stays within the given limits of the VIS, doesn't overstep those limits. For a judge, that is very pleasant to see a victim who explains that a sentence might give her some feeling of justice, but that the sentence doesn't have to be insanely high." [J-18-3]

In contrast, participants in one of the two angry-victim conditions interpreted the ambiguous statement regarding the desired punishment by the victim as a demand for a high sentence.

"She's urgently requesting an appropriate sentence. Is there room for a nuanced reaction from our side?" [J-7-2]

"Because he phrases it as an "appropriate punishment", but it is clear that he actually means a very severe punishment." [J-16-1]

The issue here is thus that differences in the interpretation of such an ambiguous statement by the victim can be related to the victims' emotional demeanor. Given that they also value the more open suggestion they interpret in the sad condition, but interpret the statement in the angry condition in a different way, this could mean that they value these statements in different ways. An explanation could be that anger is commonly associated with more certainty and punitiveness, as explained in chapter 4 (J. S. Lerner et al., 1998; Yzermans, 2012).

To return to the topic of the usefulness of the VIS in the criminal justice sentence, it is important to notice that while on the one hand judges value information about the consequences of the crime and the crime severity, they are impatient with information that they deem irrelevant to the criminal justice procedure on the other hand. More frequently ($n = 15$, all conditions) and more strongly than the laypersons, they complain about the lengthy introduction and factual information that is provided in the VIS, thereby imposing their own frame on the VIS. This reveals a tendency to desire sterilizing the VIS:

to let the victim speak, but quickly translate the material in the VIS to a legally relevant story, in which certain elements will lose their importance. Even more strongly, some participants may desire filtering: (pre-trial) amendments of the VIS so that the irrelevant parts are left out. Sterilizing hampers voice – *to be heard*, while the latter would impair the victim's voice – *to speak*.

"First, he is going to say what his motives are to tell this story and then he is going to lecture about the facts. A lot of side issues, and actually, he isn't speaking about the criminal act that is central here. So, in that regard, our attention is diverted and someone should calmly point out to this man that he should be more concise." [J-13-1]

Strategies

In the themes discussed above, the use of some strategies that are directly related to the criminal justice procedure could be discerned, such as sterilizing. Furthermore, I discussed why judges value the *to speak* pillar of voice, but may struggle to extend this to *voice – to be heard*, because providing acknowledgment and feedback might be in tension with some core values of the criminal procedure. I would categorize the most prominent forms of acknowledgment that they suggest, such as providing a glass of water or thanking the victim for giving the VIS as *indirect* forms of acknowledgment. In contrast, the use of the VIS in the motivation of the sentencing decision, is much more direct. This direct form of acknowledgment is exceptional.

The use of the conventional BJW strategies and the broadened scope of strategies is just as rare. One participant is an exception in the use of negative strategies, that mostly seem to be related to this participant's feelings in regard to the anger of the victim: "I feel a certain embarrassment for these emotions." [J-16-5]. This participant feels insulted by the anger and it appears to mock the victim. Not only in the quote that I put forward above, "(...) Poor man, it rather has a comical effect!" [J-16-3], but also in statements like: "The knife he isn't sure about" [J-16-6] and "And yeah, if he doesn't report, of course no one will be arrested..." [J-16-7]. Participant J-16 furthermore lowers the victim's credibility displays great difficulty in empathizing with the victim. Yet, like the laypersons there is an ambiguity in this participants comments, for instance in not minimizing the suffering.

"For me that anger... is the purest form of overkill. In one way or the other, it raises more irritation than sympathy, while this man experienced something serious. But he evokes resistance, as if

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"No, I regret it, but... I don't get to feel compassion, because of the
presentation, the intense anger that he displays." [J-16-8]

Participant J-18 also shows an ambiguous reaction, following immediate (gut)
reactions that tend to be negative and rationalized with professional thoughts,
being more balanced and positive. Furthermore, the frequent and stretched out
"uhm's" reveal some hesitation with regard to the negative reactions.

"Uhm... Uhhhm... At the moment she said she didn't go the police
immediately, I instantly thought: Well, that's very stupid!!! Uhm...
primary reaction! And then (...) so, yeah, more professional thoughts
come up later when she tells her story." [J-18-4]

"Now I started to think... uhm... yes, this is actually what victims go
through. Not all exactly the same, not all to the same extent, but this,
uhm... In our job, it is very easy to... well, very easy... but you are
inclined to treat it with a little more distance and you won't experience
the same emotions as the victims. But now I hear her tell this story and
then I think: yes... this is what a relatively... well... uhhhhm... well,
violent robbery could do to someone. And that is invasive, so I start
to empathize with the victim because of the way she presents it (...)
She tells her story, and that means I will also go through it with her."
[J-18-1]

An interesting comparison can be made between participant 16 and 18. Both
cases show that witnessing the display of specific emotions may alter one's
tendency to empathize, despite prior motivations to take the perspective of
the other. Previously, I showed that people are less likely to empathize with
angry victims. Judge [J-16] doesn't succeed in empathizing with the angry
victim, despite actively trying to do so. In contrast, I have shown that people
more easily empathize with a sad victim. Judge [J-18] intended to distance from
the victim, but ends up taking the sad victims' perspective. Judge [J-16] and
judge [J-18] have different starting points, and each end up doing the opposite
of what they had intended. They attribute their experience to the presentation
style of the victim, more specifically the communicated emotion.

Another interesting finding in relation to empathy is that judges seem
to empathize with the judges in the vignette more than with the victim. As

already noted, participants have a lot of comments on the role of the judge in the movie. One participant explicitly states that:

"And then, along the way, if you hear her speak and the emotions start to show, I can really take the perspective of my own role as a judge."
[J-18-5]

Another participant even seems to expect that victims would take the judges' perspective when they prepare their VIS:

"She doesn't realize at all that we see a lot of these stories quite regularly." [J-7-4]

Help

Whereas laypersons mostly mention help in the context of overcoming the trauma or the emotional consequences of the trauma, judges mostly refer to help in the context of the legal procedure. This happens more often when the victim is sad ($n = 9$; spread evenly over male/female condition) than when the victim is angry ($n = 4$; only male victims). Partly, this could be explained by the emphasis on voice *to be heard* as contributing to the victims' well-being – I already commented on the fact that participants stressed the necessity of response from the courts more often in case of a sad victim. This kind of "help" would be exercised by the judges themselves. They also note that other people's assistance could be useful, both as social support in the courtroom as well as legal support for the design of the VIS and expectation management.

"What of course stands out is that the man is alone and I always find that a little sad, because as a judge... you cannot really respond to the emotions of the man other than just acknowledging them. But I think I would like it for someone, for this man... it would be nice to have a supportive person next to him." [J-19-6]

However, receiving aid from victim support to make sure that the VIS is in line with what judges expect and could use – that extremes are filtered out, that details and other "irrelevant" information is left out, etc. – also puts the victim at risk of secondary victimization, because it might harm the victim's credibility.

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"Sometimes we wonder whether that is their own, genuine experience, or whether it is due to the help of victim support or other people. So, I call that... that it seems that it is made more emotional. And for me, as a judge, that works counterproductive." [J-7-3]

"Authenticity of a VIS is very important to me, so I really think it is a shame if it is clearly written by a victim support worker." [J-5-3]

The victim seems to be left with a conundrum here. On the one hand, judges' attention seems to be diverted by too much details or presentation styles that they do not normally encounter and/or do not appreciate. In that sense, judges seem to like a standardized VIS with particular "blocks" of information. On the other hand, if the VIS includes blocks that seem (too) familiar, the perceived authenticity of the VIS is in danger. This finding offers support for the idea that similar stories may be understood in contradictory ways depending on the presentation of the story: "the same stories may be seen as unique and special versus idiosyncratic and unrepresentative; universal and of interest to us all versus mundane and uninteresting; authentic versus deceptive and manipulative; and as an expression of potency versus an expression of powerlessness" (Pemberton, 2016, p. 128, referring to Polletta, 2006).

8.3 Conclusion

Participants referred relatively little to the type of victimization in all breaks. Furthermore, they employed little direct victim-oriented strategies – both negative (in line with the hypothesis) and positive. In contrast, the expressed emotion, the way of presentation of the VIS and the legal profession of judging were major themes. Comments on the expressed emotion and the presentation of the VIS indirectly gave some insights on their thoughts about the victim, whereas thoughts on the profession of judging gave some insights in how judges would understand their task to minimize secondary victimization.

Although the latter may seem a much more indirect way to understanding victim-oriented responses than the direct strategies such as lowering credibility and derogation versus support and compensation – which were more prevalent in the articulated thoughts of laypersons – it stood out that the thoughts of the judges were more direct in the sense that they were often marked with [!!]. This means that the judges indicated that they would actually take action or say something to the victim, if they were judging. This was particularly apparent for their efforts to enhance their response to sad victims.

Another topic worth mentioning is that the judges were quite consistent in the concepts they addressed in the five breaks. As mentioned, emotions, presentation style and professional judging were key topics in the judges' articulated thoughts. More than half the participants mentioned the emotion of the victims in three or more breaks. If participants commented on the role of the judge, they would also do that in more than one break, etc.

The most important implication of the results is that victims seem to be treated differently depending on the emotion they express. This may be explained by the expectancy violation they often experience with regard to the angry victim, but not the sad victim. Anger is more often seen as (overly) intense and is interpreted as an insult to the court or the criminal justice authorities or a demand for harsh sentences. Judges seem to empathize more easily with the sad victim, which does not only follow from their comments about empathy, but also their own emotional reaction to the sad VIS, their frequent emphasis on help for the sad victim and their efforts to instigate a dialogue with the sad VIS. In contrast, they are much more alert and consider interrupting in the VIS much more often when the victim is angry.

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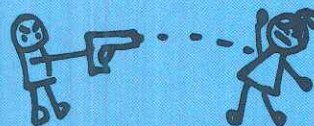
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EMOTIVE JUSTICE concerns reactions of laypersons and legal professionals to emotional victims of serious crime. Although we would expect victims to receive acknowledgment and support, even the most well-meaning individuals might react in ways that enhance rather than alleviate the suffering of victims, causing secondary victimization.

The Belief in a Just World Theory (BJW) is a suitable research framework to explain why people, motivated to behave as if the world is a just place where everyone gets what they deserve, react in either positive or negative ways when they get confronted with counter-evidence, such as the victimization of an innocent victim. However, BJW theory has up until now insufficiently focused on the observers' normative evaluation of the injustice as well as the emotionality of the victim. Moreover, while negative reactions to victims are particularly harmful in institutional environments such as the criminal justice system, the theory has not sufficiently been applied in this context.

Exploring reactions to victims in different settings calls for innovative research methods adapted to the context. Both qualitative (Articulated Thoughts in Simulated Situations) and quantitative measures are employed to investigate how legal professionals (Dutch judges and prosecutors), tasked with managing the emotionality in the courtroom, as well as avoiding secondary victimization, differ from laypersons in their reactions to emotional victim narratives.



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