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Victims' needs and participation in justice: is there a role for vengeance?

Bas van Stokkom*

Abstract

This article begins with a critical examination of populist phrases such as ‘victims have a natural right to revenge’; it also discusses the ‘zero sum rhetoric’ in populist discourse (‘his suffering is my healing’). Are there any plausible arguments supporting this claim? The article goes on to deal with the question whether victims of serious crimes might benefit from expressing revenge feelings in two types of justice proceedings: victim impact statement schemes (VIS) and restorative justice conferences (RJC). Could the expression of vindictive feelings contribute to the wellbeing of victims (raise their moral status; bring therapeutic relief)? It is argued that advocates of both types of justice proceedings sometimes raise expectations that cannot be met. VIS-proponents tend to ‘privatise’ justice, whereas RJ-proponents tend to neglect retributive needs. It is concluded that a civilised expression of vindictive feelings should have a legitimate place in justice proceedings because it communicates the victim’s worth (‘not deserving to be harmed’). However, the question is whether justice proceedings should explicitly promote therapeutic benefits at all.

Introduction

In the recent past there has been considerable political pressure to reassess the revenge feelings of victims. Many populist politicians, lawyers and victim supporters claim that—in the case of serious offences—one function of punishment is to offer psychological redress. Punishment should help victims to cope with their injuries. Many crime fighters and victim advocates argue that only tough penalties will show victims that they are being taken seriously by the criminal justice system. The failure to sentence a particular offender to a

* Senior researcher, Criminological Institute, Radboud University Nijmegen (The Netherlands), b.vanstokkom@jur.ru.nl. This article is partly based on ‘Victim needs, self-respect and “closure”: does revenge satisfy?’ (Van Stokkom, 2011).

long-prison term is often experienced as a devaluation of the worth of the victim's life and an infliction of pain on the victim's family (Pratt, 2007; Zimring, 2003).

In populist discourse it is often assumed that any enhancement of the rights or interests of the defendant is at the expense of the victim, and vice versa (Elias, 1986). Victim and offender, it is suggested, are involved in a zero sum contest. Any protection of the offender's rights implies a diminution in the rights of the victim, and, by extension, anything that harms or hurts offenders helps victims. The more punishment is meted out on offenders, the greater the benefit to victims. This belief suggests that punishment could heal wounds ('his suffering is my healing').

Remarkably, the rise of penal populism and the advance of victims' rights have coincided. An unfortunate intertwining emerged between the victim's movements, victimology and appeal for tough punishment. Of course victimologists do not ask for stiff sentences, but many say that victims' interests, expectations and emotions are in need of more attention. Some victimologists argue that victims should express vindictive feelings; they have a 'natural right' to be enraged (Van Dijk, 2009). The criminal justice system should take this need for revenge seriously and try to absorb it in its proceedings. An expression of vengeful feelings would lessen the victim's anger and contribute to a renewed sense of social standing.¹

Nowadays, pleas for full victim rights find widespread support. By contrast, restorative justice procedures are often criticised as idealistic. Victims should not engage in dialogue with offenders and develop an understanding of their difficulties; the latter are simply in need of tough sentences. In many respects, restorative justice stands opposed to the populist opinion that empathy, understanding and reconciliation are go against the interests of the victim.

Both victim impact statement schemes (VIS) and restorative justice conferences (RJC)² offer victims opportunities to participate and express their views on the crime and their hurtful experiences. Protagonists of both VIS and RJC believe that expressing angry and vindictive feelings in civilised ways might contribute to diminished feelings of fear and to recovery.

¹ Elsewhere (Van Stokkom, 2012) I have criticised Jan Van Dijk's rash defence of a 'right to revenge', although I am sympathetic to his proposal to strengthen the position of the victim.

² These terms and abbreviations oversimplify the plural practices that have been implemented in many different jurisdictions. Sometimes the terminology deviates (victim personal statements in England and Wales); as is well known, restorative justice practices are characterised by various methods and have varying relationships to the criminal justice system.

There are also differences. Some VIS-protagonists believe that victims are free to say what they want. Others plead for victim involvement in the sentencing of their offender. This means that victims may recommend lengthy sentences, believing that such sentences would benefit them.³ It seems that many VIS-protagonists do not reflect much on the question of how to moderate victims' punitive desires. By contrast, many protagonists of RJC have substantial difficulties with the expression of punitive desires. They believe that people's natural retributive urges are not healthy things to perseverate on (Braithwaite, 2003: 406) and hope that the urge for retribution can be transcended so that people can move on.⁴ They also believe that conferences have the potential to influence participants towards win/win outcomes for both parties (Strang, 2002: 191). Restorative justice conferences in particular have the power to allay victims' desire for revenge, and this desire might be replaced by more positive emotions (Sherman & Strang, 2011).

This article deals with the question whether victims might benefit from expressing revenge feelings (raise their moral status; bring therapeutic relief). At the same time, this article aims to offer some critical insights. First, the zero sum rhetoric is critically examined. Are there any plausible arguments supporting this claim? Could meting out severe punishment contribute to the wellbeing of victims of serious crimes? Secondly, I will deal with the question whether expressing vindictive feelings in both VIS and RJC is a reasonable practice. I will argue that advocates of these two justice proceedings sometimes raise expectations that cannot be met. Both positions are criticised: VIS-proponents tend to 'privatise' justice, whereas RJC-proponents tend to neglect retributive needs. It is concluded that a civilised expression of vindictive feelings should have a legitimate place in justice proceedings because it communicates the victim's worth ('not deserving to be harmed'). However, the question is whether justice proceedings should explicitly promote therapeutic benefits at all.

The first section of this study deals with various meanings of revenge. What are the moral functions of revenge? How is revenge related to justice? Subsequently I will discuss the supposition that 'his suffering will contribute to my healing' (the zero sum logic) (section 2). In section 3 it is argued that the desire to restore the 'balance of suffering' might be connected

³ For an overview of the debate see Erez (1999), Roberts & Erez (2004) and Hoyle (2011).

⁴ Although the culture of restorative justice is generally non-punitive, there have always been restorative justice theorists who recognise that for the most serious crimes punishment is needed to underscore the community's denunciation of crime and the vindication of the victim: see for example Cragg, 1992; Daly, 2003; London, 2011. For an overview see Van Stokkom, 2008.

to personal disposition. Next, I will go on to discuss some relevant research findings concerning victim-participants in VIS and RJC proceedings (section 4). Section 5 is devoted to discussion: some theoretical suppositions phrased by proponents of victim-participation seem to be inadequate.

This paper brings together widely divergent perspectives and research findings concerning vengeance, punitive desires and victims' needs. It uses both social scientific findings and moral-philosophical viewpoints. This interdisciplinary approach does not come close to an in-depth analysis of participation in justice practices; the paper has mainly reflective and critical functions.

1. Ambivalent views on revenge

In Western cultures, people are ambivalent about revenge: although we may feel that taking revenge is justified in certain circumstances, we also often find it petty and unethical. Revenge has been discredited as crazed, uncontrolled, subjective, and lacking any rule of limitation. Western legal systems have sought to weed out and silence revenge in the search for more rational forms of justice. In literature, drama and film, though, we celebrate as heroes those who do not allow themselves to be walked over when harm is done to them. Indeed, the less mindful of the risks they incur in doing so, the more heroic they become to us (French, 2001). People delight in revenge fantasies, and the revenge theme has a powerful appeal in mass entertainment. While few people would admit that they approve of revenge, they clearly enjoy watching and hearing revenge stories. Nevertheless, in public we pretend that justice and vengeance have nothing to do with each other.

In fact, revenge and retribution do share many social and psychological mechanisms. Retributive punishment might be called 'cold' and vengeance 'warm' (French, 2001). Nevertheless, there are important differences (Nozick, 1981: 366–8). Retribution is committed to general principles and sets internal limits on the amount of punishment that is meted out. The agent of retribution does not have a special or personal tie to the victim of the wrong. Revenge, however, is personal and depends on how one feels at the time about meting out appropriate injuries. Moreover, revenge involves (anticipatory) pleasure in the suffering of another, while retribution involves no emotional tone, or involves only the pleasure attached

to justice being done. Therefore, someone who pursues revenge will often want to experience the infliction of suffering.⁵

Many consider revenge the opposite of justice: the antithesis of detached, impersonal, proportionate and rule-bound acts. But according to the philosopher Robert Solomon there is an irreducible connection between the emotional dimensions of revenge and punishment:

[T]o seek vengeance for a grievous wrong, to revenge oneself against evil: that seems to lie at the very foundation of our sense of justice, indeed, at the heart of ourselves, our dignity and our sense of right and wrong Vengeance is the “undoing of evil”, “getting even” for wrong. (Solomon, 1990: 40–44)

According to Solomon, the victim’s desire for revenge should be respected and acknowledged. Vengeance may be primitive, but it is still the conceptual core of justice. We have an almost instinctive sense that we should not be violated, and when we are violated we naturally feel a desire to ‘get even’ (see also Miller, 2006).

Many scholars stress that revenge has moral functions and serves to restore the victim’s self-image. ‘The failure to respond to a perceived injustice can actually further diminish the victim, both in his or her own eyes, as the eyes of others’ (Miller, 2001). In a similar way, philosopher Trudy Govier (2002) defines revenge as a way to reassert oneself, to attempt to get relief from the hurt and humiliation of being wronged.

We can distinguish three moral goals that may potentially underlie revenge motivations (McCullough et al., 2001; Miller, 2001; Orth, 2004; Tripp & Bies, 1997). First, revenge is the desire to ‘get even’, or ‘balance the scales’. Revenge is intended to re-equilibrate gains and losses caused by an assault, or to re-equilibrate power. It is linked to the norm of reciprocity expressed by the *lex talionis*. Second, revenge is intended to restore the victim’s self-esteem; through revenge one can present oneself as a strong person who does not tolerate unjust treatment by others. Revenge is ‘saving face’: an attempt to change the belief of the offender and others that the victim is not worthy of better treatment. Third, revenge can have an

⁵ For a critique, see Zaibert, 2004 (arguing that retribution and revenge are not at all easy to distinguish; both the revenge-seeker and the retributive punisher feel indignation and outrage).

educative mission: the desire to teach the offender a lesson. Vengeance in this way is moral instruction, designed to convince the offender that his behaviour will not be tolerated or go unpunished. This preventive motivation may also have a purely instrumental aim: deterrence.

It seems that revenge does indeed have morally worthy effects. Nevertheless, most people regard vengefulness as neither attractive nor sympathetic. Trudy Govier says:

One reason for doubts about the merits of revenge is that people often become obsessed with thoughts of revenge and may bring great harm to themselves and others in their quest for it. Another is that campaigns for revenge often escalate. (Govier, 2002: 8)

Revenge behaviour is indeed poorly modulated and can easily lapse into excessive mutual retaliation, partly due to such things as an exaggerated evaluation of the harm done to oneself (Newberg et al., 2000). Avengers may also make mistakes about the identity and motives of perceived offenders, direct their anger at innocent third parties, or fail to understand injuries to themselves in context (Tripp & Bies, 1997).

Is there anything wrong with the desire for revenge as such, considered apart from its consequences? According to Govier, revenge is morally objectionable because it consists of a deliberate effort to damage and diminish another person. The offender is made to suffer in order that the victim may take satisfaction in that result. Using the suffering of others to satisfy oneself means that wrongdoers are treated as a means only, failing to respect their human worth and dignity. The argument in favour of restoring a kind of moral balance cannot change that: the victim puts herself on the same level as the offender, making him an instrument for her own satisfaction. Govier concludes that since morality is based on obligations to respect other persons and to limit human suffering, the quest for revenge is fundamentally immoral. What is wrong with revenge is that 'to act as agents of revenge, we have to indulge and cultivate something evil in ourselves' (Govier, 2002: 12). Respectable persons should not feel joy in the fact that we cause another person to suffer.

In spite of this ethical interpretation, Govier and many other philosophers acknowledge that feelings of revenge cannot be eliminated from human behaviour. No matter how upsetting,

they are a vital part of our emotional life. The harm caused by those who break basic rules arouses moral indignation, anger and revenge. It is for this reason that ‘punitive symbols’ are so important in serious criminal justice cases: the condemnation of offenders is needed to tone down public rage. Censuring redirects destructive emotions in possibly morally acceptable and social constructive ways. In other words, the task of retributive justice is to ‘tame’ vengeance and canalise vengeful desires in a legal framework of just deserts and proportionality.

2. The zero sum logic: plausible?

In a context of penal populism it is not strange that revenge receives wide support. Dominant scripts like ‘revenge is natural’ and ‘a harsh punishment will make him feel better’ are taken as truths, not presuppositions or delusions. These misunderstandings set up expectations, such as that ‘people should feel vengeful’ and ‘proponents of mild punishment do not have respect for the victim’.

As mentioned, revenge is often expressed in terms of a zero sum contest. Anything that harms or hurts offenders will by extension help victims. The harsher the punishment meted out on the offender, the greater the benefit to victims. Within this logic the interests of victim and offender are diametrically opposed. For example, expression of concern for the offender signals a disregard for the victim and her suffering. Conversely, reducing this concern would bring benefits to the victim. Meting out a harsh punishment would bring about therapeutic effects and strengthen the position of the victim; ‘closure’ might even be seen as a real aim of the procedure.⁶

Many critics stress that this rhetoric does victims and victims’ right groups a disservice. It could easily lead to political exploitation (Elias, 1986; Workman, 2010). Moreover, many victims do not seek revenge and are far less punitive than is often thought (Van Dijk, 2009). Many victims try to get over their nasty experiences and move on; joining a punitive single-issue organisation does not strike them as a particularly productive way to do so. Apparently,

⁶ See Daems (2010); Franklin Zimring discussed this zero sum contest in the context of US capital punishment (Zimring, 2003: 55).

victims are not a monolithic group with similar preferences and needs.⁷ Victims' responses about how to deal with grief and loss vary widely. Some victims may over-generalise the offence and as a consequence perceive the world as a place filled with evil offenders; others may attribute the victimisation to the individual offender's character ('the offender is a bad person'). These sets of attributions seem to be associated with higher levels of distress in victims. Still other victims attribute their victimisation to the offender's behaviour ('the offender did a bad thing'). This set of attributions can be assumed to be the most adaptive (Pemberton et al., 2008).

Many research findings point out that the experience of victimisation does not automatically increase support for punitive answers (Maruna & King, 2004). Nevertheless, if the emotional impact of the crime persists, victims do have more hostile and revengeful feelings (Pemberton, 2012b). Research findings also show that victims of serious crime who experience high levels of post-traumatic stress, are often disappointed when the judge announces the sentence (Pemberton, 2011). The more serious the crime, the more weight is placed on the punishment that should be imposed. Victimologist Antony Pemberton (2012b: 117–18) points out that insufficient punishment might have a negative impact in terms of the message it sends out. Indeed, many victims regard punishment as an important device for restoring self-worth and social status (Bilz, 2007). In their eyes, the sentence functions as a public judgement about their social standing and worth. For this reason they tend to view a too lenient sentence—or a failure to punish—as a signal that they do not deserve respect.

Does this mean that the zero sum relationship is correct: that the wellbeing of the victim is dependent on inflicting pain on the offender? If this is true, revenge would bring about therapeutic benefits. Is this really the case? Is the suffering of the offender a necessary precondition of positive self-understanding and regained social standing?

Psychologist Nico Frijda points out that feelings of vengeance can help to restore ego strength and self-esteem and deter potential offenders; repression of these feelings is therapeutically counterproductive. In his view, revenge may restore 'the balance of suffering'. This means

⁷ It is often pointed out that the connection between the impact of crime and needs is problematic. 'Those suffering the worst harm or loss do not necessarily have correspondingly high needs. They may enjoy a supportive environment, be innately resilient, or otherwise able to overcome the effects of victimisation. Victims suffering objectively less serious crimes may require greater support if they are vulnerable or isolated' (Zedner, 2002: 431).

that hurting someone who has hurt us may diminish our own suffering. Our feelings, he states, depend on how one's fortunes or misfortunes compare with the fortunes or misfortunes of others (Frijda, 1994: 274). It is the contrast between happiness and sorrow that matters: 'he is happy and I am suffering'. This contrast is what vengeance is meant to remedy. Frijda's explanation is of special interest because it resembles the zero sum expectations within the rhetoric of penal populism (put simply: 'his suffering is my healing').

Psychological research does not confirm this thesis (Carlsmith et al., 2008; Crombag et al., 2003; Gollwitzer & Denzler, 2009; Gollwitzer et al., 2011). Revenge is not so much directed at rebalancing pleasure and pain (getting even in suffering), nor is revenge merely about paying back. Revenge has more to do with delivering a message, such as 'never do this to me again'. Vengeful victims want to make offenders feel bad because they want them to learn a lesson. Revenge is a means to achieve higher-order goals such as demonstrating power and asserting the victim's identity/reaffirming his or her status (Crombag et al., 2003; Gollwitzer et al., 2011). Although the zero sum logic does play a role, the rebalancing of moral respect appears to be the most important factor ('tell the truth to the aggressor'; 'not letting yourself be walked over').

For this reason, the meting out of punishment might be important for the victim, not in terms of therapeutic benefits but in terms of social standing and worth. Psychologist Ulrich Orth (2004) found that punishment does satisfy feelings of revenge among victims of violent crimes, but only partially, and moreover only transitorily, and that in the long run feelings of revenge are not influenced by severity of punishment. Length of time since victimisation (in Orth's study: four years) had no influence on the intensity of feelings of revenge. The reason is that the ruminative thinking about the offence and the corresponding anger feelings do not stop. As long as rumination continues, offering retributive justice—the infliction of pain—is not enough. Thus, the imposition of punishment brings only temporary satisfaction or relief and in the long run the imposed punishment cannot change the way victims deal with pain, grief and loss. In another study, Orth and colleagues (2006) conclude that revenge must presumably be regarded as a maladaptive coping reaction to experienced injustice, but not in the first period after victimisation (see also Crombag et al., 2003).

A preliminary conclusion is that the zero sum assumption is not plausible. Punishment does not succeed in unburdening the victim or contributing to his or her wellbeing, but it may reaffirm his or her social status and self-worth. However, some of the research findings

discussed here are not based on the experiences of victims of serious crime. Perhaps this group is more prone to the conviction that 'his suffering is my healing'. Another possibility is that victims who tend to have a predisposition to revenge are more receptive to the zero sum language.

3. Revenge as a personal disposition

As stated above, victims react very diversely to injustices that are inflicted upon them. Some try to forget the crime and want to pick up their normal lives; others cannot free themselves from the violating event and harbour revenge feelings.

Many psychologists stress that vengeance is a personal disposition (McCullough et al., 2001; Worthington, 2006). Some people might simply be more vengeful than others and thus less likely to be sympathetic, lenient or forgiving in the aftermath of transgressions.

Michael McCullough and colleagues (2001) found that some people are more amenable to 'anger rumination' and also maintain their motivation to seek revenge over time. They also tend to experience greater levels of negative affect and lower levels of life satisfaction. Rather than proceeding with their own life and projects, and enjoying relationships for their own sake, they concentrate their energies on past grievances, rage, hatred of the offender, and destructive plots.

These findings are not new. Psychoanalysts distinguish non-psychotic elaborations of mourning, in which the pain of mourning can be endured with the confidence that it can eventually be overcome, from psychotic elaborations of mourning which are based on the projection of blame onto the enemy. If victims avoid mourning over loss or humiliation and if they do not acknowledge their potential destructiveness, they are tempted to displace it by engaging in hostility (Mitscherlich & Mitscherlich, 1967).⁸

Nevertheless, McCullough says, it is possible that 'vengeful people' do maintain their desire for revenge rather out of principled moral reasoning that convinces them that seeking revenge is a morally justifiable response to having been injured (2001: 609). Victims who are more oriented toward concerns for justice (eg rules, fairness) than relational concerns (eg harmony,

⁸ Victims who project blame often experience unacknowledged feelings of guilt or shame (Scheff, 1994).

empathy, mercy) are likely to resist expressions of forgiveness if they are not satisfied that justice has been served (Exline & Baumeister, 2000). If justice standards are retributive ('guilty persons deserve to suffer'), forgiveness and other empathic options are generally obstructed. Pardoning an offender's debt (forgiveness) and judging offenders with (some) charity often imply a willingness to bypass immediate self-interest and loosen justice-oriented rules in favour of mercy. In other words: when victims rely on standards of justice that dictate a reciprocity-based approach (be it retributive or restitutive), they tend to be reluctant to release a perpetrator without demanding punishment or repayment. In this context, expressions of forgiveness might be viewed as morally defective.

There is some evidence that a greater commitment to rules and obligations causes greater punitive responses to offenders (Vidmar, 2000: 24–26). The same is true for persons scoring high on measures of authoritarianism. These 'high authoritarians' tend to view offenders as personally responsible for their actions, whereas low authoritarians stress environmental factors as a cause of criminal behaviour (Vidmar, 2000; see also Gaubatz, 1995). They are more likely to perceive minor infractions as intentional and deliberate actions (attributing blame). Persons who easily blame offenders, even if they themselves partially initiated the sequence of events, are more likely to contemplate revenge and to enact revenge behaviours (Hennesy & Wiesenenthal, 2005; Stuckless & Goranson, 1992).⁹ A host of research shows that individuals with 'high trait hostility' display biased social information processing (ie over-attribute a bad character to offenders) and are more likely to respond with aggression.

The above suggests that revenge is always related to personal predispositions. This is doubtful. Many psychologists point out that feelings of revenge are significantly linked to post-traumatic stress reactions in crime victims. If the emotional impact of the crime persists, victims keep on experiencing high levels of fear and anger. These persistent traumatic symptoms could explain the 'conservative shift' in victim-preferences: the desire to punish and retaliate (Bonanno & Jost, 2006; Pemberton, 2011).

⁹ Studies that have developed a Vengeance Scale (Stuckless & Goranson, 1992; Vidmar, 2000; Hennesy & Wiesenenthal, 2005) indicate that women consistently score lower than men. These studies also show that vengeance is a motivational factor that is implicated in a wide variety of antisocial and illicit acts including theft, vandalism, assault and rape.

4. Expressing revenge feelings in justice procedures

Many protagonists of VIS and RJC believe that we should take the victim's need for revenge seriously and try to absorb it in the justice proceedings. An expression of vengeful feelings would deflate anger and contribute to the generation of more positive feelings. Revenge feelings could be transformed and sublimated (Van Dijk, 2009). Others think that the expression of angry feelings should have a legitimate place in these proceedings because they communicate the victim's worth (deserving not to be harmed). The victim's justified resentment and the reasons for it may also provide significant information to both the community and the wrongdoer, especially about the human impact of the crime (Whiteley, 1998). In this section I will discuss some relevant research findings related to both VIS and RJC. Are the victims satisfied with the outcome of the proceedings?

Victim impact statements and revenge feelings

In many common law jurisdictions that have introduced VIS, victims are encouraged to recommend a sentence. VIS-research shows that participants generally favour severe punishments. As most citizens are unfamiliar with sentencing practices, victims assume that courts have greater powers to punish than is in fact the case.¹⁰ In an extensive review, criminologist Julian Roberts specifies that victims are likely to recommend a sentence that is disproportionate to the perceived seriousness of the crime, and disappointment will ensue when the court imposes a significantly less punitive sanction (Roberts, 2009: 359; see also Hoyle, 2011: 257).

One of the most robust findings in the victim impact literature is that victims who expect their statement to have a direct influence on sentencing react with disappointment and anger once it becomes clear that their sentencing "submission" will not be followed. (Roberts, 2009: 360)

¹⁰ Public opinion research (Roberts & Hough, 2005, ch. 4) makes clear that people tend to assume that unprincipled leniency—rather than conformity to sentencing guidelines and judicial precedents—accounts for the sentences imposed in court.

Most victims, says Roberts, have unrealistic expectations of the role of an impact statement at sentencing. They expect that submitting a statement will result in a harsher sentence. Victims assume that, because they were given an opportunity to say something, to be heard and have a voice, their words will make a difference. Many feel frustrated at their lack of any real control over the procedure (see Edwards, 2004).

However, it is clear that VIS seldom influence sentencing decisions handed down by the courts. Researchers, both advocates and critics, agree that aggregate sentencing practices appear unaffected by the introduction of victim impact statement regimes (Erez, 1999; Roberts, 2009). Generally, judges appear to be unaffected by appeals for severity from the victim. Criminal justice professionals apparently have the firm intention of protecting the sentencing process.

Nevertheless, victim-participants are likely to believe that their statements will make a difference to sentencing. The results of a recent Dutch evaluation of oral and written victim impact statements—which focused on the question of the extent to which VIS might contribute to the victim’s emotional recovery—confirm this (Lens et al., 2010). One of the findings is that nearly half of the participating victims (within the oral VIS-group) wanted to influence the sentencing decision. Although sentencing recommendations are not allowed, Dutch victims in fact gave their opinions on length of sentencing, often unconsciously.¹¹ Other findings indicate that most victims—all victims of serious crimes, with strong aggrieved feelings—believe that sentences are much too lenient (Lens et al., 2010: 85). The researchers ascertain that opinions about sentencing decision are strongly related to outcome-satisfaction. Around two-thirds of those who described the punishment as ‘very lenient’ were very dissatisfied (Lens et al., 2010: 61).¹² However, the victim-participants thought—surprisingly—that the statements contributed to their emotional recovery.

In sum, a considerable number of victims of serious personal injury offences expect lengthy sentences. Many deem punishments to be too lenient; in these cases they might believe that they are treated with disrespect.

¹¹ As Roberts (2009) says, victims intuitively expect to make a recommendation.

¹² Likewise, other researchers have noted that victims who expect that the statement will have a perceptible impact on sentence report lower levels of satisfaction (Roberts, 2009: 371).

Restorative justice and revenge feelings

Dutch VIS-participants generally suffer from high (and chronic) post-traumatic stress disorders (Lens et al., 2010; Pemberton, 2011). This was not the case with the main group of victim-participants in Dutch restorative justice proceedings: prior to the meeting they exhibited much lower levels of fear, anger and posttraumatic stress. Partly for this reason, these victim-participants were generally (very) satisfied with the procedure; feelings of fear and anger were further reduced after the meeting (Zebel, 2012). These findings are in accordance with many international research findings: most victim-participants in RJC are satisfied with the handling of their cases; they prefer compensation over retribution; and many tend to see the apology of offenders as credible and want to help offenders learn from the procedure and to change their lives away from offending (Shapland et al., 2007; Sherman & Strang, 2007).

Victim-participants in RJC generally faced less serious crimes and experience low average levels of fear and anger. For many, the expression of vindictive feelings is not really an issue. However, in many serious cases participants cannot escape the thorny issues of revenge and retribution. In these cases victims have the opportunity to express vindictive feelings, so that these feelings might be made ‘productive’.¹³

Australia and many other jurisdictions have experience of restorative justice proceedings in which serious forms of crime are dealt with. Criminologists Lawrence Sherman and Heather Strang (2011) point out—based on experiments in London and Canberra—that the desire for revenge among these victim-participants was considerably reduced after the meetings. Many victims in this study doubted whether they should take part in the proceedings because they thought they could not manage their emotions. Still, they wanted to take the opportunity to confront their offenders and some welcomed the chance to ‘let the bastard have a piece of my mind’ (Sherman & Strang, 2011: 156).

The victims enter the event focused on their own feelings and vent their stories of pain and suffering caused by the crime. However, during the meeting revenge feelings give way to more neutral emotions and some understanding of the offender’s situation. The cases discussed in Sherman and Strang’s study show that victims might even develop feelings of

¹³ See Daly (2003). In this context Lode Walgrave (2008) uses the term ‘constructive retribution’.

sympathy or pity, after hearing the often miserable life histories of the offenders (child abuse, drug addicted parents and other severe problems).

According to Sherman and Strang, this transformational process of vengefulness into empathy might be explained by a change in status rankings. The crime demonstrated the offender's power: it became a symbol of the offender's ability to dominate the victim. The researchers suggest that if the victim does not confront him, this hierarchy remains a symbol of submission. Only when the offender grovels on his knees to acknowledge his wrongdoing and spontaneously apologises is the moral inferiority of the victim undone (see also Walgrave, 2008: 117).¹⁴

Sherman and Strang's findings are not merely anecdotal. The reduction of revenge feelings in restorative justice proceedings is a statistically significant pattern, in minor as well as serious cases. Restorative justice contributes to the victims' recovery process. Based on her research findings in South Australia, Kathleen Daly (2004) offers other interpretations and draws other conclusions. In the bulk of conference cases she studied, victims were not significantly harmed. Many wanted to help the young offenders. However, this helping attitude changes when victims are deeply affected by victimisation, such as in the aftermath of a violent offence. These highly distressed victims are far less engaged in restorative behaviour during the encounter and remain frightened of the offender after the encounter (Daly, 2004). Most of these distressed victims take the view that it is more important to be treated fairly, than to find common ground with offenders. Non-distressed victims who are only 'lightly touched' by a crime tend to reason the other way around. For this group it is easier to be other-regarding and empathetic towards offenders. They orient themselves easily to peace-making.

A striking fact revealed by Daly's data is that after the conferences ended, highly distressed victims were far more likely to remain angry and fearful of offenders. They were inclined to continue to see the offender as a 'bad person'. Listening to the offender caused renewed revenge feelings, rather than personal recognition or emotional recovery from the injury.

These findings are more or less in accordance with the feelings of VIS-participants discussed above: a positive view of the offender seems to be beyond reach, often because angry and bitter feelings have not been weakened. The restorative justice studies discussed offer

¹⁴ The authors also suggest that the pain of imprisonment does not really relieve the victim from the perceived status inferiority.

diverging interpretations. More thorough research is needed to get to grips with the feelings of victim-participants who have been seriously hurt.

5. Discussion

In the remainder of this article I want to discuss three issues. First, I will criticise RJ-protagonists who do not pay attention to punishment as a core victim-need. Secondly, I want to offer some counterarguments to VIS-proponents who tend to ‘privatise’ justice. Thirdly, I will argue that both VIS and RJ protagonists expect too much from therapeutic benefits. Both proceedings should primarily be seen as a ‘justice experience’. In this section I refer now and then to the theoretical views of Antony Pemberton; in many publications he modified and nuanced several claims of restorative justice theorists.

Punishment-needs

Sherman and Strang (2007) found compelling evidence for the benefits of restorative justice over criminal justice. They see this as indication of the general superiority of restorative justice procedures. However, a problem is that the comparison with the criminal justice system is difficult. It is not the task of RJC to assign guilt and impose a punishment. Another problem is that we cannot really compare victim-participants in VIS and RJC. RJ-participants do have a different profile: whilst all kinds of victims seem to participate in VIS, victim-participants in RJ generally have more nuanced views of the offender. There are fewer RJ-participants who have to face the consequences of severe crime and who are struggling with posttraumatic stress (Pemberton et al., 2008; Pemberton, 2008). Moreover, victims participating in RJ tend to have different responses to injustice. According to Tyler Okimoto and colleagues (2012), victims with a restorative orientation view justice as achieving a renewed consensus regarding the shared values that have been violated by the offender. These victims are less egocentric (having an ‘interdependent self-construal’) and want to reinforce values toward the offender and to a lesser extent toward the public. By contrast, victims with a retributive orientation conceptualise justice as the unilateral imposition of just deserts against the offender. Within this group, victims want to restore their status and power,

disempower or degrade the offender, and make the public aware of the values violated by the offender (Okimoto et al., 2012).¹⁵

Many victims of severe crime do not want to participate in restorative justice schemes. This is a reality that RJ-proponents have to take into account. They also have to take into account the fact that a large group of victims want punishment. Remarkably, in many restorative justice theories this need is denied. In *Repair or revenge: victims and restorative justice* (2002) Heather Strang identifies the following victim concerns: a less formal process where their views count, more information, participation in their cases, fair and respectful treatment, and material and emotional restoration. Strangely, punishment is absent from this list. Evidently, the need for punishment seems to play an important role in reactions to serious offences. Many studies have shown that a desire for just deserts and retribution strongly influence the sentences that victims of severe crime have in mind (Darley & Pittman, 2003; Gromet & Darley, 2006).¹⁶

Some wrongs are such serious violations of victims' rights that reparation does not suffice. Philosopher Jean Hampton says: 'it is natural for the victim to demand punishment because it is a way to restore his moral status after it has been damaged by his assailant' (cited in Johnstone, 2002: 68). Generally, victims of serious crime think that punishment is the only route to moral vindication and security on offer (Johnstone, 2002); nevertheless, many are not aware of more restorative ways of responding to crime.

Pemberton points out that imposing a punishment can be a necessary part of emotional recovery. Imposing a punishment does not automatically exclude restoration. Punishment may even clear the way for possible activities directed at reparation (often after sentencing) (Pemberton, 2012a).¹⁷ But, as regards victims of serious crime, Pemberton thinks that there is only limited space for restorative justice. He argues that these victims cannot really be convinced to forgo retribution for a setting in which victims can move to a more 'healthy attitude'. These victims tend to judge the behaviour of offenders in negative ways, even their

¹⁵ The researchers specify that the two orientations are not mutually exclusive. Victims could have strong preferences for both responses to injustice (see also Gromet & Darley, 2006).

¹⁶ Gromet and Darley (2006) found that in cases of less serious crime people prefer to send the offender to a restorative process. In another study, Darley and Pittman found that if perpetrators are judged to have committed the harm unintentionally, compensation suffices. However, when harm is thought to have been committed intentionally, people see punishment as necessary (Darley & Pittman, 2003: 331).

¹⁷ Many people want to see both restoration and punishment: a restorative justice procedure that has a retributive component (i.e. a prison sentence) (Gromet & Darley, 2006).

sympathetic acts (Pemberton, 2012a: 54).¹⁸ Generally, traumatised victims not only experience high levels of fear, they are also outraged at what happened to them. This rage contributes to limiting the chances that they will participate in a RJ scheme (see also Gromet & Darley, 2009).

Unsurprisingly, Pemberton (2012a) is critical of the claim that victims of severe crime would benefit the most by participating in restorative justice schemes. Sherman and Strang (2007) claim that restorative justice seems to reduce crime more effectively with more, rather than less, serious crimes.¹⁹ According to Pemberton, these authors should revise their claims and develop a more modest position.

Although Pemberton's arguments are in many respects compelling, I believe that this last argument is rather one-sided. Victims of serious crime might very well have a restorative orientation, in the sense that they have a self-transcendent attitude, willing to achieve a renewed consensus (Okimoto et al., 2012). Moreover, many victims of violent crimes are often assiduously looking for answers to personal and existential questions ('why me?') and may be prepared to seek emotional recovery.

'Private' justice

As mentioned above, many victims regard punishment as an important device for restoring self-worth (Bilz, 2007; Pemberton, 2012b: 117–18). They tend to view a too lenient sentence—or a failure to punish—as a signal that they do not deserve respect. In other words, punishment is interpreted by the victim as a marker of value and social standing. This subjective lack of acknowledgment, Pemberton says, might have negative consequences for victims' recovery and mental health functioning.

Although this might be true, I think it is a tricky way of reasoning. We should reckon with the fact that victims of serious crime often prefer a stiff penalty. But it is another thing to claim that this desire should be fulfilled. Justice considerations (for example, the acquittal of an

¹⁸ Persons preoccupied by ruminative revenge feelings do not seem to be susceptible to mitigating factors (such as convincing excuses, sincere apologies or compensation) (for these factors see Miller, 2001).

¹⁹ Sherman and Strang (2007: 8) suggest that that RJ works better with crimes involving personal victims than crimes without them, and that it works better with violent crimes more consistently than with property crimes. 'These findings run counter to conventional wisdom, and could become the basis for substantial inroads in demarcating when it is "in the public interest" to seek RJ rather than CJ.'

innocent suspect or imposing a lenient sentence in a case of duress) should take priority over victim interests. A mild punishment might be interpreted as a 'poor outcome for the victim', but this is considered only from his/her private retributivist stance, which might be prejudiced or contain fantasies, even revenge fantasies. There is no reason to admit or acknowledge victim delusions.

Pemberton and many victim support advocates seem to place the needs of victims above public interests. However, in justice proceedings victims should not always get what they want. The victim's desires are not sacred and there is more than the victim's wishes to consider. Many victims' rights protagonists seem to go too far in the direction of 'privatising' crime (Johnstone, 2002). Criminologist David Garland points out that expressing revenge feelings has led to a 're-personalisation' of criminal justice and 'recasts sentencing not as a finding of law, but as an expression of loyalty ... Crime victims are led to regard the severity of punishments as a test of this loyalty and a mark of personal respect' (Garland 2002: 459; MacCormick & Garland, 1998).

How to moderate victims' demands? This question seems to be more or less taboo within the victim movement and victim service groups. Of course, it is difficult to oppose victims' punitive desires. We cannot expect that victims of serious crimes will have mild opinions about their offender. 'Emotional conviction' is often the only weapon victims have available to fight back. Unfortunately, this engenders a reluctance to engage with them in debate. Still, I think it is the task of victim services and juridical professionals to say that victims cannot always have what they want (see also Johnstone, 2002: 83).

Therapeutic benefits or a justice experience?

Pemberton (2012a) is critical of Strang's suggestion that restorative justice is superior to criminal justice in terms of therapeutic benefits. Strang tries to convince us that victim-participants in RJ would achieve a substantial degree of emotional restoration. Two-thirds of the victims participating in conferences reported that the conference experience had given them a sense of closure concerning the offence (Strang, 2002: 198). However, Pemberton says, the deep-seated impact of a violent crime will not be resolved by participating in a single conference, a magical instance of experiencing justice. The therapeutic formula 'revealing is

healing' is a myth. It is by no means so simple to eradicate emotional pain (Pemberton, 2008; 2012a).

I think this criticism compels us to nuance the deeply ingrained expectation that participation in justice procedures will bring indisputable therapeutic benefits in the form of reduced levels of anger and anxiety.²⁰ For the sake of discussion I want to go one step further: it should not be the explicit purpose of justice procedures to promote therapeutic benefits and to actively contribute to 'emotional restoration' or 'emotional redress'.

Introducing 'therapeutic discourses' into justice procedures may be risky when concepts such as 'healing' and 'closure' gain the upper hand and start to outstrip discussions of the crime and its aftermath (Daems, 2010). I think that giving victims the opportunity to express their views has a proper and independent meaning, unconnected with therapeutic aims. The 'victim's voice' is constitutive of regaining trust and self-respect as a citizen, someone who deserves to be treated well, who has equal rights, and who is owed public censure of the unlawful behaviour of the offender.

Therapeutic aims seem to be incompatible with such core values of restorative justice as reciprocal communication and reaching an agreement. The primary aim of restorative justice is to offer a safe dialogue wherein the participants can express their personal experiences of the conflict. Of course, victim-offender dialogues can have unintended positive psychological effects, for example because victims learn that the crime did not occur because of something they did. But if one were to expect these effects, unnecessary extra pressure would be brought to bear on all participants (for example, offenders should feel a sense of regret for their behaviour in order to appease their victims). Besides that, in moral terms the victim-offender dialogue is not primarily a case of coping with negative feelings, but rather of accepting responsibilities. For the victim this means telling his/her story and pursuing integrity. In sum, communicating the victim's worth and doing justice should be the primary goals. Unexpected therapeutic benefits constitute a bonus.²¹

²⁰ One of the purposes of Dutch victim impact statements is as follows: 'Making a statement during the process should provide a contribution to the restoration of emotional harm caused by the crime' (Aanwijzing spreekrecht en schriftelijke slachtofferverklaring, http://wetten.overheid.nl/BWBR0021138/geldigheidsdatum_09-03-2010).

²¹ Doak (2011) proposes to maximise the therapeutic potential of restorative justice but does not address the question whether a justice institution should consider this. Elsewhere (Van Stokkom, 2011) I have argued extensively that both forms of victim participation (VIS and RJC) should aim to promote voice, respect and justice, not therapeutic benefits.

Neither do therapeutic aims fit within criminal justice procedures. The aim that VIS should contribute to the victim's healing process compromises the interests of justice (Hoyle, 2011). Moreover, it burdens all parties, including the victims themselves: they might mistakenly think that the parties in the procedure will naturally sympathise with their ill fate. Victims should receive adequate direction regarding the aims and functions of the justice process (Roberts, 2009). This means that victims should be aware that they are performing as citizens in a public forum, having rights, but also complying with legal duties (Van Stokkom, 2012). This does not mean that victim impact statements cannot be justified. VIS can be justified adequately on public justice grounds: they provide information to the judge, explain the crime's harm to the wrongdoer and the public, and ensure that the sentencing process is viewed as fair by the broader public.²² The victim has the opportunity to defy openly and publicly the wrongdoer's attack on his/her value as a person. Indeed, victims may feel emotionally relieved after expressing their views, and this might bring unexpected therapeutic benefits.

Conclusions

I have argued that revenge is problematic from a moral perspective. Those seeking revenge are forced to cultivate something evil in themselves. It may be suggested that revenge is not so much linked with justice and is more connected with reclaiming honour and prestige, and exerting superiority (Meyer, 2005). Doing justice (conceived as a willingness to consider all relevant factors to determine guilt and imposing a suitable sanction) and revenge are generally at odds with each other. Revenge seeks private justice and cannot allow open-mindedness.

When studying victims' feelings of revenge, two other paradoxical conclusions emerge. First, feelings of revenge should be considered as a comprehensible emotional reaction to the injustice suffered. Second, when long-term rumination is concerned, it is plausible to view revenge as irrational: by brooding and impatiently waiting for our chance, we deprive ourselves of more rewarding and productive activities. The irony of vengeance is that rumination may actually perpetuate the emotional distress that vengeance is intended to dissipate.

²² VIS-advocates like Cassell (2009) do not problematise pursuing both public justice and therapeutic interests.

The research findings discussed in this article show that revenge motives are primarily related to teaching the offender a lesson ('never do this to me again'). Revenge is a means of reaffirming moral status. It is likely that the expectation that revenge will restore 'the balance of suffering' plays only a minor role. Nevertheless, revenge may help victims to reassert themselves and restore their self-image. Therefore, a civilised expression of vindictive feelings should have a legitimate place in justice proceedings because they communicate the victim's worth ('not deserving to be harmed').

Retributive punishment offers only temporary satisfaction; it is not an adequate means to stimulate the long-term ability of victims to cope with loss. For this reason it is unacceptable to let victims believe that severe punishments will contribute to their wellbeing. The populist slogan that tough penalties lead to 'closure' is a myth. The fact that many traumatised victims are in favour of severe punishment is no reason to accept 'emotionalised convictions'.

On the other hand, many restorative justice advocates have made sweeping claims about the capacity of restorative justice to benefit all victims, thereby ignoring punishment needs. Restorative justice will move closer to reality if it pays attention to the presence of retributive feelings in cases of serious crime. At the same time, restorative processes (if they are carried out well) may open a pathway towards rediscovering self-respect for victims. Conferences may be more successful at achieving this than VIS, but by no means all victims of violent crime will prefer that option.

For a long time revenge was a somewhat neglected psychological phenomenon, but recently there has been a host of (moral) psychological research on this subject. I am grateful for these findings and insights, which I have made use of. However, many of the hypotheses and argumentations formulated in this paper are in dire need of further elaboration.

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