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**MEASURING CRIME VICTIMS' PATHWAYS TO JUSTICE:
DEVELOPING INDICATORS FOR COSTS AND QUALITY OF ACCESS TO
JUSTICE**

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ABSTRACT

Notwithstanding an abundance of data on and empirical evidence about the experiences of victims during justice proceedings, there is a lack of a more systematic approach which quantitatively assesses these experiences. This study is aimed at operationalising such experiences by means of measuring the costs, the quality of the procedure as well as the quality of the outcome. Empirical evidence and normative literature in the fields of law and victimology point to the most relevant indicators of high quality justice. The measurement tool or framework may be applied to victims in all justice settings, whether involved in criminal, civil, or restorative proceedings or other forms of resolution. In addition, researchers, policymakers and court personnel can utilise the outcomes of the study to compile descriptive and comparative analyses of victims' access to justice, as well as to gain the necessary insight with regard to possible improvement.

INTRODUCTION

Notwithstanding abundant research on victims' experiences and the obstacles they encounter in their attempts to obtain justice, there is a lack of a more systematic approach which attempts to measure all aspects of victims' experiences at every stage of their journey. This journey may consist of contact with the police, the prosecutor and/or the judge, and it is not only the decision-making phase, but also the actual procedure that may impact on the victim's level of satisfaction. Furthermore, certain costs, both emotional and monetary, may be incurred along the way. Against this background the current paper focuses on how to measure victims' experiences during the process of obtaining justice first, by exposing the costs of justice; secondly, by indicating important aspects related to the procedure; and thirdly, specifying the characteristics that are required for a satisfactory outcome.²

The improved position of crime victims during criminal proceedings (Groenhuijsen, 2004) has been coupled with an increase in research exploring their experiences and subsequent level of satisfaction with justice proceedings (Boyle, 1999; Braithwaite, 2002; Buzawa & Austin, 1993; Coupe & Griffiths, 1999; Fleury, 2002; Horton, Simonidis, & Simonidis, 1987; Hotaling & Buzawa, 2003b; Orth, 2002; Shapland, Duff, & Willmore, 1985; Strang & Sherman, 2003). The application of a systematic approach in this paper offers further insights into the various factors that are related to the performance and quality of these procedures.

In addition to the criminal justice system, other pathways which crime victims may follow include civil proceedings, restorative justice proceedings (which are either independent or part of the criminal proceedings), or out-of-court settlements. The journey along a chosen pathway begins³ when the person first addresses the process and ends⁴ when a decision has been made by a neutral person or a decision-maker, or when an agreement is reached by the parties

concerned, or when one or both parties drop out of the process⁵. The pathway is assessed in terms of its costs, the quality of the procedure and the quality of the outcome.

Costs are further operationalised as monetary costs, time spent, money lost due to attending procedures, as well as stress and other emotional costs. The quality of the procedure is measured in terms of the user's perceptions of interpersonal, informational, procedural and restorative justice. The procedure itself (including opportunities to participate or to avoid the offender), as well as of the role played by the neutral person or decision-maker during the procedure (such as the extent of information provided or polite behaviour), is evaluated.⁶ The quality of the outcome consists of the victims' perceptions of distributive justice, corrective (or compensatory) justice, restorative justice, retributive justice, utilitarianism, informational justice, transformative justice, legal pragmatism, and formal justice.

The approach of this paper is twofold. The existing Measuring Access to Justice (MA2J) methodology is reviewed and adapted to suit victims of crime. A variety of needs as well as requirements of users has been found to be common to all types of legal problems. It is therefore possible to use comparable justice theories as a framework for the measurement of costs and the quality of access to justice in respect of both victims of crime and in other non-criminal matters. The MA2J methodology assesses the costs and quality of the procedure and outcome that users of justice face when traversing the most common pathways to justice. While this methodology does not focus on crime victims specifically, it provides a sound foundation. The framework, which is based on the methodology, is outlined in several texts and will be elaborated on further in this paper (Gramatikov, 2008a; Klaming & Giesen, 2008; Verdonschot et al., 2008).

The method underlying the analysis begins with an examination of what justice *should* be, based on the normative literature, and by reviewing the factors that past research has found to be vital to crime victims. The output will lead to a measurement tool which will facilitate an analytical and comparative examination of the existing pathways a victim may follow. In a structured manner, each element faced by the victim – whether it be related to costs, the actual procedure or the outcome – is included.

First, this article will justify the need for an extended analysis of crime victims. A review of empirical studies on victim experiences during various phases of the justice proceeding is provided. The practical use of the measurement tool is also examined. Thereafter, by building on the Access to Justice Framework referred to above, the paper delves into the cost elements, the quality of the procedure as well as the quality of the outcome in order to measure the victim's experience.

This analysis is based on the various justice indicators which are discussed throughout the paper. Other variables are also reviewed to indicate that additional qualities related to the procedure, the offence, or the participants may play a role. Finally, the discussion and concluding remarks review the practical measurement of the instrument, primarily focusing on the ability to compare different pathways within one jurisdiction as well as similar pathways across jurisdictions.

Defining characteristics of victims of crime

Offences of a sudden, violent nature can take away the normal sense of order victims knew before the crime occurred (Achilles & Zehr, 2001; Janoff-Bulman, 1985). Normal coping mechanisms are harder to carry out, making it difficult to process impending events.

Furthermore, victims experience a feeling of powerlessness during and after the crime has occurred, in some cases for prolonged periods of time. Isolation, distrust and issues of safety come to the forefront. These feelings may also surface among victims of ongoing abuse, for example domestic violence victims. While much research has been conducted to distinguish different categories of crime (i.e. rape, incest, burglary), evidence does exist that certain reactions are common to all instances of victimisation, for example confusion, disruption and shock (Janoff-Bulman, 1985). In this state of uncertainty and despair, victims often embark on their search for justice.

On a victim's pathway to justice, he or she will have many experiences that are similar to those of others who traverse the legal path outside the criminal sector. Many similarities exist between the two groups⁷. However, victims of crime can also be distinguished from non-criminal litigants in several ways. First, crime victims face emotions that are experienced to a lesser extent or not at all by other users. These emotions may be intensified by the nature of criminal proceedings. Secondly, victims are represented by the state in criminal proceedings. Thirdly, the nature of the victimisation may seriously impact on the recovery of the victim, suggesting a long-term concern and a need to emphasise the future. Fourthly, the issue of privacy for victims of crime surfaces during court procedures. Finally, specific categories of vulnerable victims may suffer severe consequences due to the structure of criminal proceedings.

Emotions resulting from victimisation include anger, fear, frustration, confusion, guilt, self-blame, shame and sorrow (Young, 1993). These emotions continue during justice proceedings. Fear during the court procedure is often the result of a fear of retaliation (Felson, Messner, Hoskin, & Deane, 2002; Singer, 1988) or a fear of confronting the offender, both in and around the court (Ellison, 1999). Emotions may also arise due to the nature of court proceedings which result in victim-offender confrontation. Furthermore, feelings of stress, anger, frustration, shame, disappointment and self-blame may all arise or intensify during the procedure. While non-criminal litigants will also experience many of these emotions, this is likely to occur to a lesser extent.

Representation by the state has consequences for victims. In some cases, a lack of involvement arises which has repercussions on the victim's feelings of control and understanding of the proceedings. The victim was referred to as the "forgotten party" (Dickson, 1983), although this status has been improving, for example through the use of victim-impact statements (Wemmers, 2005). Furthermore, as the crime is committed against the state, recognition of the harm done to the victim may be lost. State representation may provide less room for the victim's wishes to come to the forefront and for the validation of his or her worth within the community. At the same time, the involvement of the authorities also has positive implications, as the responsibility and burden then do not lie with the victim alone.

Owing to the nature of the crime, victims often face difficulties with their recovery and ability to move forward. The criminal procedure, through a process of re-victimisation, may further hinder this recovery. As a result, criminal proceedings must take the issue of coping and adjustability into account, understanding that long-term, life-altering factors do exist. Restorative justice, as will be discussed, has made significant improvements to this predicament, as it deals with "the aftermath of the offence and its implications for the future" (Marshall, 1999).

With regard to victim privacy, the publicity of the offence itself may have implications for the victim. In sexual offences, victims cite a fear of attached stigma as a reason for non-reporting (Bachman, 1998). In addition to family and friends, this stigma may extend to the larger community and the media. Additionally, the set-up of the procedure may not fully respect the victim's private life, i.e. (cross)examination in sexual offences⁸. The personal nature, and sometimes seriousness, of the offence requires a sensitive attitude towards victims of crime.

Specific victims of crime, namely victims of sexual offences and domestic violence, may face several intricacies due to the set up of the procedure and the victim-offender relationship. For example, rape victims must deal with the issue of victim consent (Wallach, 1996). In truth-finding processes, inappropriate means by one party may be used to extract this information from the other party. Additionally, the complexity of the victim-offender relationship in domestic violence cases may have consequences for the quality of family life (i.e. loss of the breadwinner if the offender is incapacitated).

The final theme fundamental to this analysis is the diversity of victim needs and desires. While this concern will be reflected upon throughout the paper, general emphasis should be placed on the issue. The lack of uniformity can be linked to the inability to make wide generalisations concerning victims of crime and their desire for justice. Victims of domestic violence could again serve as an example. As will become evident, some practices in restorative justice settings, such as apologies, the community's role, and gaining information are often inappropriate for domestic violence victims (Hopkins, Koss, & Bachar, 2004).

Existing studies

Victims report positive experiences with the police in a variety of circumstances. This first contact is an opportunity to receive support, information and to relate one's story (Shapland, 1983), and are important factors to victims when interacting with the police. Coupe and Griffiths (1999) focused on the police and victim satisfaction during burglary investigations. In this instance, it was found that when the police take down a statement properly and make a serious effort to apprehend the offender, this results in a more positive evaluation of police encounters (Coupe & Griffiths, 1999; Shapland, Duff, & Willmore, 1985). Focusing on rape, victims may have negative experiences when they feel that the police or other legal authorities do not believe them or that the victim is somehow blamed for the crime (Campbell & Raja, 1999; Holmstrom & Burgess, 1983; Regan & Kelly, 2003; Spohn, Beichner, & Davis-Frenzel, 2001). In a study examining police concern, Norris and Thompson (1993) found that feelings of alienation was a likely consequence when criminal justice authorities displayed low levels of concern towards victims. Sharing of information by the police can also lead to higher levels of satisfaction (Allen, Edmonds, Patterson, & Smith, 2006; Ten Boom & Kuijpers, 2007).

Research indicates that victims tend to be less satisfied with the prosecutor in comparison with the police (Frazier & Haney, 1996; Koolen, Van der Heide, & Ziegelaar, 2005). Similar to their experiences with the police, victims are more satisfied when they are treated with respect, when there are no victim-blaming attitudes displayed and when someone actually listens to them (Campbell, Wasco, Ahrens, Sefl, & Barnes, 2001; Mills, 1999).

Once again, the common themes of participation and information are found to be present in research on prosecutors and victim satisfaction (Ten Boom & Kuijpers, 2007). As prosecutors may often be the final decision-makers with regard to dropping or pursuing a case, their sensitivity towards victim desires may affect satisfaction with the outcome. Making biased

decisions based on factors embodying the “ideal” rape victim may cause dissatisfaction (Spohn et al., 2001). Other research which supported the above insights included that of Fleury (2002), who studied victims on a more systematic level, measuring both the process and the outcome, including the police response, handling by the prosecutor, the court process and the court outcome.

Campbell and Raja (1999) researched rape victims via the perspective of mental health employees, offering insights into one particular phenomenon, namely secondary victimisation. Other revictimising attitudes with regard to medical professionals were measured by interviewing rape victim advocates (Maier, 2008). Apportioning of victim blame among these professionals has also been cited as traumatising behaviour by victims (Campbell, 2005).

In research which focused on restorative justice methods, the factors affecting victims’ overall perceptions included a lack of fear, telling one’s own story, avoiding direct confrontation and social acknowledgment and support (Herman, 2005; Koss, 2006). The conditions surrounding the outcome of a given procedure can also be rated as favourable or unfavourable. In some cases, victims wish to have control of these decisions while at other times they prefer to play a more passive role (Konradi & Burger, 2000). When studying victim desires regarding the outcome of the judicial process with regard to apprehended offenders, it was found that victims are also concerned about recidivism of offenders, the recovery of compensation, and the reintegration of the offender (Strang & Sherman, 2003).

Thus far the characteristics of crime victims that distinguish them from non-criminal users of the justice system have been identified, while the existing research on crime victims and their experiences has been examined. Hereafter, the analysis will focus on the actual measurement instrument and its framework.

COST VARIABLES

Gramatikov (2008) outlined a framework for measuring the costs of justice. When reviewing the research on barriers to justice, individual costs were aggregated into three larger groups: Monetary, opportunity and intangible costs. Costs are often weighed against perceived probability of success and, in the case of high costs, may often dissuade a user from entering into a legal dispute.

Monetary costs may take the form of legal fees, but also include indirect expenses such as transportation and day-care costs. When attending procedures, users may lose money as a result of missing work. Time spent is also a cost category which may increase as a result of court delays, particularly in more serious criminal cases. Finally, emotional or intangible costs such as stress can result from justice proceedings. These costs will differ largely depending on the specific legal problem and the consequent procedure.

Table 1
Cost Indicators (Existing Framework)

Monetary, out-of-pocket costs
Money lost due to attending process
Time
Stress and other emotional costs

Cost indicators for victims

Victims of crime are subject to similar costs as those mentioned above. While in some cases (i.e. in criminal court with no private legal representation) monetary costs are not a primary concern, the out-of-pocket expenses may still hamper certain individuals. Time spent and money lost due to attending the judicial procedure are also applicable in the case of victims. Schwartz (1975) distinguished two types of costs associated with delay, namely losses occasioned by the delay (value foregone through idleness), and degradation (implications for the self as a result of being kept idle). In a comprehensive study on rape victims and their court experiences, delay directly gave rise to both types of costs (Holmstrom & Burgess, 1983). The costs or losses in these cases included the physical energy consumed, which wore the victim down, and caused memory loss of the incident, as well as actual monetary and time costs for the victim and family or friends. Degradation included a sense of loss of the self, and this was voiced more explicitly by the victims. Additionally, delaying of cases may lead to further violence, as may be the case in non-emergency protection orders, or even cause the victim to drop the case.

Emotions which may arise (also as a result of court delays) include, for example, fear, frustration or disappointment, self-blame and anxiety. As was mentioned earlier, the emotional costs that result from the victimisation persist during the procedure and may be heightened as a result of the process. These emotions are experienced as a “secondary victimisation”.

Secondary victimisation, defined as the “unjust violations of entitlements claimed by victims after having suffered a primary harm or loss,” focuses on negative social or societal reactions, often by means of the criminal justice system (Montada, 1994). According to Montada, within each of the three broad fields of justice (distributive, retributive and fairness), principles of justice and principles of fair procedures emerged during decision-making processes. When one of these principles is violated, victimisation may occur.

Secondary victimisation may be associated with inappropriate questioning or comments and other responses by legal institutions or role-players (Brienen, Hoegen, & Global Law Association, 2000; Campbell & Raja, 1999). This issue has already received attention in the framework with the inclusion of indicators measuring interpersonal justice. However, other factors may also play a role. With regard to the outcome, a disproportionate punishment or the acquittal of an offender may result in re-victimisation by the criminal justice system.

To operationalise this phenomenon, five questions from Uli Orth’s study (2002) examining crime victims’ experiences in the criminal justice system, will be employed. These indicators will measure the effect of the proceedings on the respondent’s ability to cope⁹, self-esteem¹⁰, optimism¹¹, trust in the system¹² and belief in a just world¹³. The psychological changes that are recorded will therefore indicate the impact of criminal proceedings on victims.

Table 2

Secondary Victimisation

Indicator

Ability to cope

Self-esteem

Optimism

Trust in the legal system

Faith in a just world

Source: Adapted from Uli Orth (2002)

In addition to costs that are generally applicable to all victims, several specific costs may arise for certain categories of crime. For example, domestic violence victims may face wrongful arrest, loss of partner income which they may rely on and/or separation from children. Dual arrest rates are increasing both as a result of the actions of victims themselves and as a result of mandatory arrest policies. In a number of jurisdictions, the criminal justice system sometimes fails to properly distinguish between the motivation, such as self-defence, and the consequences of the arrest of domestic violence victims. Although guidelines are being established in certain jurisdictions requiring police to arrest only the primary batterer, research suggests that this is not always the case (Miller, 2001). Another issue dealing with domestic violence victims, primarily those belonging to the lower economic classes, is the loss of income when the offender is arrested. When a victim solely requires immediate protection, she (or he) is often faced with a new dilemma when the only source of income is taken away. Finally, domestic violence victims also have to face the possibility of losing their children. The different rules found in jurisdictions will play a role in the likeliness of mother and child separation, for example removing the abuser rather than the child as is the practice in some courts. Note should also be taken of deceitful custody tactics that are employed by the abuser as a form of retaliation (Reichler & Erickson, 2003).

QUALITY OF THE PROCEDURE VARIABLES

The complexities related to the cost of justice, both immaterial and material, have been demonstrated above. Turning to the procedure, the perceptions users have of their encounters with legal proceedings are formed as a result of how they are treated and whether or not a procedure is perceived to be fair. The second pillar of the framework – the quality of the procedure – is perceived as fair and satisfactory if it meets certain criteria. Klaming and Giesen (2008) developed a measurement for the quality of the procedure under the Access to Justice Framework by reviewing the literature on procedural fairness.

People are interested in the procedure which is used to obtain the solution, not solely the solution itself (Lind & Tyler, 1988). Procedural justice holds that in order for users to view a procedure as fair, the following criteria must be met: Decision and process control (being given a voice),¹⁴ consistency, bias suppression, accuracy, correctability, ethicality¹⁵ and trustworthiness (Leventhal, Karuza, & Fry, 1980). Informational justice, i.e. the extent to which users are provided with explanations and given justifications regarding the procedure and outcome, is operationalised as honesty, justification of the procedure, reasonable justification, timely justification, and clarification of the justification if necessary.¹⁶ Interpersonal justice is attained when people are treated with politeness, propriety and respect, which comprise the three indicators measuring interpersonal justice.¹⁷ The relevant indicators are reflected in Table 3.

Table 3
Quality of the Procedural Indicators (Existing Framework)

Justice Type	Indicator
Procedural Justice	Process control
Procedural Justice	Decision control
Procedural Justice	Consistency
Procedural Justice	Bias suppression
Procedural Justice	Accuracy
Procedural Justice	Correctability
Informational Justice	Honesty
Informational Justice	Justification of procedure
Interpersonal Justice	Politeness
Interpersonal Justice	Propriety
Interpersonal Justice	Respect

Procedural justice indicators for victims

There is a significant body of research on procedural justice for victims with regard to their experiences with the police, prosecutors and judges (Erez & Tontodonato, 1992; Paternoster, Bachman, Brame, & Sherman, 1997; Tyler, 1988; Tyler & Folger, 1980; Wemmers, Van der Leeden, & Steensma, 1995). It has been found that negative outcomes are often still agreeable when they are the result of fair procedures. Victims who perceive treatment by criminal justice authorities to be fair are more satisfied than those who believe the opposite (Tyler & Folger, 1980; Wemmers, 1998).

This assessment of fair treatment is the result of the procedural indicators referred to above. For example, process control has been identified as being largely significant to crime victims. Having a voice (i.e. through victim impact statements), gives recognition to victims and makes them feel less like the passive party to the proceedings. At the same time, there are other relevant factors which influence a victim's experiences with the procedure, such as being able to avoid the offender and ensuring a victim's privacy – from both the offender and the public or the media – during the process.

In some situations, the victimisation may be of such a serious nature that it would be indefensible to require a victim to face the offender. Unwanted confrontation with the offender may be perceived as unethical and could lead to higher levels of secondary victimisation. Therefore, in the case of victims of serious crimes, ethicality may further be operationalised to include giving the victim the opportunity to avoid his or her offender. A number of countries provide for this via the use of separate waiting rooms or having the offender leave the courtroom during the victim's testimony (Brienen et al., 2000).

Bies (1993) argued for the relevance of privacy to procedural justice theory, stating that privacy is an issue where "people's moral expectations about control over their personal information are violated". He identified the following seven factors that are pertinent to procedural justice in organisations: Authorization of information disclosure;¹⁸ advance notice of information gathering;¹⁹ types of selection procedure used for information gathering;²⁰ relevancy of information used in decision-making;²¹ intrusiveness of the information-gathering procedure;²² the target of information disclosure;²³ and the outcome of information disclosure.²⁴ In legal settings, the following privacy factors are applicable to victims of crime: Authorization of information, intrusiveness of the information-gathering procedure²⁵ and the target of information disclosure.

When victims report a crime, they are risking the chance of the case becoming a public matter. Authorisation of information disclosure is a concern during court proceedings when files are public and personal information is shared during testimonies. The principle of governing publicity during trial proceedings and the administration of a fair trial for the accused, however, are essential factors. Alternatives do exist when additional suffering should be prevented (i.e. secondary victimisation) or if the publication of personal information may endanger the victim's safety, such as *in camera* proceedings (Brienen et al., 2000). Disclosing information to the media and other members of the public is consistent with the concept of "target of information disclosure", which asserts that the disclosure of information to strangers or outsiders may be considered an invasion of privacy when compared to insiders. Providing privacy from the offender is also important in crimes of a serious nature and can be distinguished from privacy from the public, as a victim may have one but not the other. In both cases, however, authorisation of information disclosure is relevant.

Interpersonal justice indicators for victims

Interpersonal justice refers to victim experiences in terms of the respect, politeness and propriety (i.e. a lack of inappropriate questions or comments), afforded to them. Paramount to achieving this type of treatment is a lack of victim blaming. Victim blaming has implications for secondary victimisation and the victim's ability to cope; in this regard research has found that negative societal reactions can harm the victim's adjustment (Campbell, Ahrens, Sefl, Wasco, & Barnes, 2001; Davis, Brickman, & Baker, 1991; Ullman, 1996b).

Particularly in respect of violent offences against women, victim-blaming attitudes exist not only among the general public (Bell, Kuriloff, & Lottes, 1994; Luginbuhl & Mullin, 1981), but also within the criminal justice system (Campbell, 1995; Feldman-Summers & Palmer, 1980; Stewart & Maddren, 1997). The latter obviously has implications regarding the quality of the procedure. Comments by the police, prosecutor or judiciary that insinuate victim fault do not provide victims with a feeling of justice. Furthermore, both groups' negative behaviours may have a detrimental effect on the adjustment and healing of the victim (Ullman, 1996a).

Restorative justice indicators for victims

Restorative justice, which is relevant to both the procedure and the outcome, emphasises the reparation of the harm that was caused by criminal behaviour. Dialogue is a central component of restorative justice, suggesting that some elements may overlap with procedural justice. Christie's (1977) well-known classification of conflict as property asserts that victims have lost their right to participate and that restorative justice methods can remedy this problem.²⁶

The difficulty experienced with restorative justice is that its place in the process is less clear cut than, for example, retributive justice which solely focuses on the outcome. Many of the goals of restorative justice are achieved through the actual procedure, rather than the outcome, as is often found in methods such as victim-offender mediation or family group conferencing, suggesting a *process* of restoration (Morris & Young, 2001).²⁷ During this process, victims have several desires which resort under restorative principles and need to be addressed. These include recognition, the opportunity to receive an explanation and to voice feelings towards the offender.

Recognition as a harmed individual is an important element of restorative justice and a significant goal of restorative proceedings (Achilles & Zehr, 2001). Although a desire for victim status can by no means be generalised to the entire population, as many victims want precisely the opposite and wish to remain anonymous, there are many other individuals who prefer that the harm done to them by the offender be made known.²⁸ Young (1993) discusses validation, or recognition, of the harm as the starting point for the procedure.

Uncertainty surrounding the crime – whether or not it was random, why the offender acted as he or she did and other details – can leave victims frustrated and in search of closure and understanding (Winje, 1998). Under these circumstances, a face to face encounter with the offender may lead to insights surrounding the criminal act, including why it was carried out. This particular restorative indicator of having the opportunity to ask the offender for an explanation of what happened may lead to higher levels of victim satisfaction (Umbreit, 1994). The opposite may, however, also be true: Receiving an explanation (or an excuse) may lead to lower levels of satisfaction (Allan, Allan, Kaminer, & Stein, 2006; Pemberton, Winkel, & Groenhuisen, 2007).

Restorative justice, in an effort to repair the harm done and place victim needs in a central position, makes a distinction between voice towards the various criminal justice agents and voice towards the offender. The expression of feelings and views towards the legal procedure and role-players is covered by procedural justice. Attention must, however, also be given to address the expression of feelings towards the offender. This notion of victim expression towards the offender is an underlying principle of restorative justice, as dialogue is essential and expression may be therapeutic (Umbreit, 1994). An evaluation of restorative justice conferences in Australia known as RISE (Reintegrative Shaming Experiments), found that almost two-thirds of the victims felt that the ability to express feelings directly towards the offender was important (Strang & Sherman, 2003). The variables that are characteristic to crime victims are summarised in Table 4.

Table 4
Additional Procedural Indicators for Crime Victims

Justice Type	Indicator
Procedural Justice	Privacy from Public/Media
Procedural Justice	Privacy from Offender
Procedural Justice	Ethicality – Avoiding Offender
Interpersonal Justice	Victim blaming
Restorative Justice	Voice towards offender
Restorative Justice	Recognition
Restorative Justice	Victim Opportunity to Receive Explanation

Four justice theories encompassing the quality of the procedure were thus identified: Procedural justice measuring fairness; interpersonal justice measuring police treatment; informational justice measuring offered information and explanation; and restorative justice measuring restoration of harm.

The article will now focus on an exploration of the relevant outcome variables of crime.

QUALITY OF THE OUTCOME VARIABLES

After analysing the pertinent research and literature, Verdonschot et al. (2008) found several outcome-oriented theories which encompass a user’s perception of the quality of the outcome. These theories are briefly discussed below and serve as the basis for further development within the realm of criminal proceedings.

Distributive justice addresses the way in which a society should allocate its resources among individuals with competing needs. While distributive justice has varying views and can be interpreted as an umbrella theory for all outcome theories, this study operationalises distributive justice in terms of needs (resources should be allocated according to people’s needs),²⁹ egalitarianism (resources should be allocated equally among people while needs are disregarded), and equity (an outcome should reflect one’s efforts). The following criteria have therefore been deduced to measure outcome satisfaction in respect of distributive justice: Equity, equality and need.

As previously mentioned, *restorative justice* is also relevant to the quality of the outcome. In this case, important measures include reparation of monetary³⁰ and emotional harm as well as reintegration.

Similar to restorative justice, *informational justice* elements are applicable to both the procedure and the outcome. Informational justice indicators provide a justification of the outcome and indicate satisfaction with that explanation.

Another theory which is akin to restorative justice is *transformative justice*, which extends past the criminal justice system and has improved relationships and outcome favourability as its indicators.

Formal justice, which stipulates that adjudicative bodies must afford similar cases the same treatment, is another indicator of the quality of the outcome. These indicators are based upon formal equality, which encompasses the ideas of transparency and comparability. Formal justice indicators are the ability of users to compare their cases with comparable other cases and the similarity of these outcomes as a result of clear legal directives.

Finally, *legal pragmatism*, rather than looking at theory of truth or theory of meaning, focuses on facts and consequences. While the framework of the study is based on theory, the outcome can be evaluated in terms of both justice and pragmatism. The functional aspect of the outcome is also vital in the analysis (i.e. whether an outcome is enforceable may not deal with justice *per se*, but is important for pragmatic purposes). Legal pragmatism indicators include a pragmatic outcome and the fact that consequences were taken into account (Verdonschot et al., 2008).

The indicators relevant to the quality of the outcome are summarised in Table 5.

Table 5
Quality of the Outcome Indicators (Existing Framework)

Justice Type	Indicator
Distributive Justice	Equity
Distributive Justice	Equality
Distributive Justice	Needs
Restorative Justice	Reparation of monetary harms
Restorative Justice	Reparation of emotional harms
Restorative Justice	Reintegration
Informational Justice	Outcome justification
Transformative Justice	Improved relationships
Transformative Justice	Outcome favourability
Legal Pragmatism	Outcome-solved problem
Legal Pragmatism	Instrumentalism – enforceability
Formal Justice	Formal equality

Distributive justice indicators for victims

Distributive justice has been linked to corrective and retributive justice (Fletcher, 1999), and can also be seen as a comprehensive theory explaining outcome fairness. This framework utilises the equality dimension of distributive justice, i.e. an evenly distributed punishment. A possible conflict in this regard may, for example, be the use of plea bargaining or when justice officials apply the expediency principle. In such instances, there is likely to be some divergence with similar cases.

Retributive justice indicators for victims

Retributive justice aims to avenge the harm that was caused and is not concerned with the future consequences of punishment. The concept of retribution is related to equity and the “confirmation of societal values violated by the crime” (Orth, 2003). The notion of proportionality and “just deserts” suggests that the appropriate punishment must be inflicted on the perpetrators for their wrongdoing in causing the original harm (Wenzel & Thielmann, 2006).

When an offender commits a crime, the balance between the offender, the victim and community is disturbed. The offender has taken advantage of the victim and society and has assumed a stance of superiority. To restore the balance, punishment is required. In this way, the transgression will be reversed. This is achieved by a degradation of the offender relative to the victim and society (Wenzel & Thielmann, 2006). Research on retribution and crime victims is divergent, showing that victims may or may not desire retribution, which often depends on a variety of factors such as emotional proximity and the intent of the offender (Gromet & Darley, 2009; Strang & Sherman, 2003; Van Prooijen, 2009).

Utilitarian indicators for victims

The notion of deterrence within the utilitarian theory contributes to the framework. A distinction can be made between the just deserts perspective and the utilitarian perspective (Carlsmith, Darley, & Robinson, 2002). While the “deservingness” approach punishes the offender in a proportionate way and is not future-oriented, the utilitarian method asserts that social harmony can be attained via the prevention of future harm. Therefore, punishment is justified if it minimises the possibility of future offences. However, it is also held that based on a cost-benefit analysis, the idea of pleasure exceeding pain will often result in criminal acts (Bentham, 1843).

In addition to the deterrence theory, the incapacitation theory is also concerned with the prevention of crime (Carlsmith et al., 2002). After a crime has been committed, the simplest option for achieving prevention of future crimes is incapacitation. The main goal is to restrain a person who has proved himself dangerous as a result of past crime from carrying out any subsequent criminal acts. While this restraint is often in the form of prison sentences, one could also view a restraining order for domestic violence and stalking victims as a form of incapacitation.

Protection from the offender is an often-cited victim need and subsequently a reason why victims contact the police (Shapland et al., 1985; Skogan, Davis, & Lurigio, 1990). It is also a by-product of deterring (Hart, 1996) and incapacitation measures. In the case of domestic violence, obtaining a restraining order as opposed to the police not pressing charges could account for the large discrepancy with regard to satisfaction with the outcome of the relevant processes. At the same time, however, victims often prefer immediate protection above sentencing the offender to jail or intervention programmes, as they would no longer be able to support the family (Hotaling & Buzawa, 2003a). In these cases, incapacitation will not lead to victim satisfaction with the outcome. In the United States, for example, mandatory arrest laws and no-drop policies provide feelings of safety, but disagreement that arises later in the process (e.g. a desire by the victim to drop charges) may lead to dissatisfaction (Finn & National Criminal Justice Reference, 2004).

Restorative justice indicators for victims

In addition to the process-oriented principles of restorative justice, several outcome indicators are equally relevant for crime victims. The first part of the paper discussed the need for a procedure to be focused on the future, as victims may have experienced traumatising events and emotional injury. The reparation of harm has been found to be significant to victims of crime (Strang & Sherman, 2003), and in this respect the restorative justice process has proven to be efficient in restoring the emotional harm caused to victims (Umbreit, 1994). Additionally, restorative justice emphasises the need for offender reintegration when formulating an appropriate outcome (Braithwaite & Mugford, 1994). In addition to those indicators explained earlier (see Table 3), several principles of restorative justice are applicable to the outcome: Receiving an apology or offender remorse, alleviation of fear, acknowledgment of harm, offender accountability, and closure or the ability to move forward.

Emotional repair may be enhanced if the procedure is conducive to the offering of an apology or the expression of remorse. The offer and acceptance of an apology may help to produce a restored state and begin the reparation of emotional harm (Strang & Sherman, 2003), although this is not always necessary (Struthers, Eaton, Santelli, Uchiyama, & Shirvani, 2008). This outcome – offender apology – can assist with attaining restorative goals. Apologies allow the offender to communicate “moral inferiority”, and if the victim chooses to do so, he or she may accept the effort made by the offender, which leads to the restoring of the balance between the two (Petrucci, 2002). As a result, control is now in the hands of the victim, offering a form of empowerment to the proceedings.

Emotions experienced as a result of the process are assessed as a cost variable. The respondent, however, is requested to disregard the outcome in this evaluation. Certain pathways have a direct effect on mitigating negative emotions; therefore, an outcome variable of this alleviation is significant. One in particular is of interest in a comparison between restorative and criminal justice settings for victims of serious crimes, namely fear. A sense of security, restored by the alleviation of fear, is argued to be one main element of restorative justice (Braithwaite & Parker, 1999). In the RISE programme mentioned earlier, fear was assessed at a comparative level between the criminal justice system and the restorative conference (Strang & Sherman, 2003). A significant number of victims who were afraid and felt a sense of insecurity experienced a reduction in fear after the conference (38% before the conference as opposed to 14% after the conference). In a minority of cases, fear is also likely to decrease if the victim has the opportunity to hear that he or she was not specifically targeted by the offender and that the criminal act was of a random nature. This alleviation of fear is possibly the result of the opportunity a victim has been given to ask the offender about the details of the crime – an essential restorative indicator.

Similar to the recognition indicator discussed earlier, acknowledgment of the harm done may also be reflected in the outcome. Social acknowledgment has been defined as “a victim’s experience of positive reactions from society that show appreciation for the victim’s unique state and acknowledge the victim’s current difficult situation” (Maercker & Müller, 2004). These reactions can be extended to the responses of criminal justice authorities and the measures taken by them. The outcome itself may signify an appreciation of the victim as someone who is suffering. For example, restraining orders may be a violation of an offender’s right to his or her property. In this case, however, the outcome recognises the victim’s current situation and puts his or her safety before the offender’s property rights (The Advocates for Human Rights, 2008). Even for retributive measures within the criminal justice system, punishment can serve as a form of recognition of victim status (Orth, 2003).

A final objective of restorative justice is that the outcome provides both the victim and the offender with a sense of closure (Zehr, 2002). Restorative justice procedures are beneficial in reaching this goal, offering victims a means of moving forward with their lives. Other justice procedures may also provide closure, particularly when the outcome meets the desires of the victim.

Table 6
Additional Outcome Indicators for Crime Victims

Justice Type	Indicator
Retributive Justice	Just deserts
Utilitarian	Deterrence
Utilitarian	Incapacitation (protection)
Restorative Justice	Opportunity for remorse/apology
Restorative Justice	Alleviation of fear
Restorative Justice	Opportunity to hold offender accountable
Restorative Justice	Closure/forgiveness

CHARACTERISTICS OF THE CRIME, THE PROCEDURE AND THE VICTIM

In addition to the cost, procedure and outcome variables, the A2J Framework must also give consideration to other characteristics which affect the way in which victims experience their search for justice. Descriptive conclusions can be made regarding the costs and quality of a given pathway solely on the information discussed above. Accounting for the following variables, however, may provide valuable insights into other factors influencing victim experiences on the pathway to justice. These variables are summarised in Table 7.

The framework includes an evaluation of the defence attorney, primarily his or her levels of interpersonal justice. The medical professional may also have an impact on overall satisfaction with the procedure (Holmstrom & Burgess, 1978, 1983). Procedural qualities are reflected in the concepts which measure whether victim preferences with regard to charges and going to court were adhered to (Buzawa & Austin, 1993; Hoyle & Sanders, 2000; O'Sullivan, Davis, Farole, & Rempel, 2007); these are regarded as decision and process control indicators. The presence of victim assistance is also examined for its relevance to all three pillars (Davis, Kunreuther, & Connick, 1984; Forst & Herson, 1985), for example, less stress (costs), respectful treatment (procedure) and more information (procedure and outcome). Other important variables are the victim-offender relationship (Simon, 1996; Spohn & Holleran, 2001; Whatley, 1996) and the seriousness of the offense (Frazier & Haney, 1996). Both of these factors have implications for the treatment victims receive, for example, treatment may vary as a result of credibility, or the idea that the crime is of a private nature, or the trivialisation of the crime due to the lack of an “ideal” victim. These factors may have an impact on performance in respect of interpersonal and procedural justice indicators. The framework is also dependent upon other variables concerning past experiences of the victim – previous victimisation (Hotaling & Buzawa, 2003b) and previous contact with the justice system. Previous contact with the system elicits certain expectations which, in turn, will be met or not, leading to (dis)satisfaction.³¹ Furthermore, at a societal level, the influence of culture cannot be ignored.

Table 7
Characteristics of the Crime, the Procedure and the Victim

Indicator
Defence attorney acting appropriately (if applicable)
Satisfaction with medical professional (if applicable)
Victim preferences
Satisfaction with assistance (if applicable)
Victim-offender relationship
Seriousness of the offence
Previous victimisation
Previous contact with system
Societal level factors

DISCUSSION

Different procedures have different advantages and disadvantages. Similar paths in different jurisdictions each display their own strengths and weaknesses as a result of local legislation. This section aims to outline the practical use of the methodology in terms of these two comparisons (two paths, one jurisdiction; and one path, two jurisdictions).³²

Comparison between possible pathways within one jurisdiction

Several pathways exist for crime victims to resolve their problems. Each option, however, comes with several advantages and disadvantages. For example, in civil court, the victim may be more involved, which leads to greater levels of empowerment, while liability may not be as difficult to prove in order to win a case when compared to criminal court. Certain costs may arise, such as the possibility of partial blame due to the outcome (Bublick, 1999) and higher out-of-pocket expenses.

In a restorative justice process such as victim-offender mediation, or when a restorative procedure complements traditional criminal proceedings, several positive outcomes may result. Research has found that victims are more likely to receive an apology, understand what happened and gain closure, or feel more secure and be involved to a greater extent when compared to the sole path followed in the criminal justice system (Strang & Sherman, 2003). However, there are limitations and restorative methods may not be applied in all cases, for example domestic violence. Some restrictions include that outcomes may lack proportionality, offenders may not be genuine and there is no true fact-finding phase (Daly, 2006). While various procedures exist, each can be individually evaluated in order to uncover which pathway is most likely to adequately meet a victim's needs. The indicators must, however, be treated similarly in order to make such a comparison possible; that is, restorative indicators should also be examined against purely criminal court proceedings in order to derive comparable conclusions.

Comparison of similar pathways in different jurisdictions

In addition to drawing comparisons between similar pathways for victims within one jurisdiction, comparisons can also be made between pathways in one jurisdiction and equivalent pathways in another jurisdiction. Existing legislation in given jurisdictions plays a part in determining the levels of quality. More advanced victim rights or the existence of support programmes and higher subsequent levels of satisfaction can also illustrate these advantages to other countries. The methodology used for this comparison can indicate where

access to justice is insufficient or rated lower, thereby helping other countries and justice providers.

Aggregation of the data

Overall satisfaction is measured in terms of the factors victims believe to be the most important as well as by the extent to which indicators are regarded as important. For example, are victims likely to want both rehabilitation for the offender and a severe punishment included in the outcome? Do victims wish to avoid offenders in the courtroom or do they wish to face them during victim-offender mediation in order to obtain information about the criminal act? Is information regarding the procedure more important than participation?

Devising the classification of victim needs is not an easy task, and because of exceptions, overall generalisation is impossible. While the literature summarises the factors which lead to victim satisfaction, the reader must be wary of oversimplification. There will always be cases where an apology is futile (Allan et al., 2006), or where receiving an explanation from the offender can only be detrimental. There are also other considerations, for example cultural influences, particularly with regard to procedural justice perceptions (Klaming & Giesen, 2008), that play a role in what is most important to individuals.³³

CONCLUSION

The framework discussed in this paper has attempted to capture all the emotions and behaviours that may affect satisfaction with a given pathway to justice. It is important to note that these theories do not only overlap but also contrast with one another. The existing literature may categorise a given indicator differently than has been done in this paper; however, this would also be acceptable (for example, giving voice to the victim could belong to both procedural and restorative justice). The current instrument is hypothesised to effectively measure the costs and quality of a procedure as well as the outcome.

At the outset the paper identified several attributes of crime victims' experiences, including the emotions they face, the involvement of the state, their sometimes difficult recovery and the dilemma they face with regard to privacy. The methodology employed was briefly outlined before delving into the structure of the Access to Justice Framework for Victims of Crime. When defining a victim's experience, three pillars, namely cost, the quality of the procedure and the quality of the outcome, are operationalised. Costs are categorised into monetary, time and intangible costs while the quality of the procedure and the quality of the outcome are operationalised in terms of various relevant justice theories and their indicators. The additional indicators applied to crime victims centre on restoration, utilitarianism, privacy and protection and more specific aspects of interpersonal justice.

Finally, additional variables are deemed necessary to evaluate procedures that have been documented in the past as affecting overall satisfaction. Offering a more systemic explanation of the theoretical framework is likely to result in a more accurate evaluation of victim confrontations with justice proceedings.

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² This research forms part of a larger project, *Measuring Access to Justice (MA2J)*, which uncovers the legal needs of people who require justice ("users"). The primary goal of the project is to develop, validate and disseminate an Access to Justice framework and a measurement tool to determine costs as well as quality issues that individuals may encounter on the pathway to justice (Barendrecht, Kamminga, & Verdonschot, 2008; Gramatikov, 2008b; Klaming & Giesen, 2008; Verdonschot, Barendrecht, Klaming, & Kamminga, 2008).

³ Examples include contacting the police, contacting victim support, an NGO or searching for a lawyer.

⁴ While the outcome may in fact be a restraining order, compensation, or an apology, to name a few, there is a high probability that other possible “outcomes” have occurred along the way. For example, pre-trial detention may influence the victims’ feelings of safety. Or, informational justice is required at all stages, i.e. when the prosecutor decides to proceed as well as when the final verdict of a case is given.

⁵ This definition is adjusted for crime victims. For these users of justice, the neutral person or decision-maker may be the police, a prosecutor or the judge. While these actors may not be the final decision-makers in given case, their performance is still evaluated as they are representative of the criminal justice system and other justice proceedings. Furthermore, even if the victim voluntarily drops the charges or refuses to cooperate, this may be a direct result of a poor quality of justice, and even if there is no decision-maker directly involved, contact has still occurred.

⁶ The indicators that will measure satisfaction are applied for each relevant legal actor – the police, prosecutor and judge. While some research has supported the possibility of victims distinguishing between each stage or legal actor (see Fleury, 2002), other findings suggest there is much difficulty for victims to make this distinction (see Klerx & Pemberton, 2009). This research will assume that it is possible to do so to some extent, based on the specificity of the questionnaire items.

⁷ Research has found that users in civil and administrative matters face stress-related ill health, loss of income, failed confidence and relationship breakdowns (Pleasence, Balmer, Buck, Smith, & Patel, 2007), suggesting that remedies to these conflicts may also be detrimental. In a study of civil litigation harms, delay, adversarialisation, re-traumatisation loss of privacy and a violation of boundaries were all mentioned as issues a litigant may face when accessing justice (Gutheil, Bursztajn, Brodsky, & Strasburger, 2000). A study of personal injury victims maintains that desires and experiences of these individuals include concepts such as recognition, the need to know what happened, acknowledgment of the other party and secondary victimisation, suggesting experiences are very comparable (Akkermans & Van Wees, 2007).

⁸ Cross-examination is characteristic of adversarial systems. Therefore, this cannot be generalised to all jurisdictions.

⁹ How the proceedings affected the victim’s ability to cope with the crime.

¹⁰ How the victim’s self-esteem was impacted by the proceedings.

¹¹ How the proceedings affected the optimism with which the victim views the future.

¹² How the proceedings impacted the victim’s trust in the legal system.

¹³ How the victim’s belief in a just world was influenced by the proceedings

¹⁴ As the state is against the offender rather than the victim, victim participation is sometimes diminished and may have consequences for satisfaction. Methods such as auxiliary prosecution and victim-impact statements do provide victims with more decision and process control (Erez & Bienkowska, 1993; Wemmers, 1998; 2005).

¹⁵ The ethicality indicator has been removed for practical reasons, particularly the difficulty of sufficiently operationalising the indicator at a level which respondents can understand.

¹⁶ Victims often have little access to information, leading to dissatisfaction (Joanna Shapland et al., 1985). The measure for informational justice has been reduced to items investigating received information on rights and the procedure.

¹⁷ Improper questioning or comments and disrespect is often a problem for crime victims (see (Holmstrom & Burgess, 1978; Martin & Powell, 1994).

¹⁸ Degree to which one controls the access of others to personal information.

¹⁹ Advance notice prior to any decision or testing procedure gives individuals more opportunity to control information.

²⁰ Whether or not the selection procedure is random.

²¹ Information that appears unrelated or indirectly related to the outcome.

²² The extent to which the information-gathering procedure is intrusive or invasive to individuals.

²³ Persons receiving the information.

²⁴ Cost-benefit analysis in assessing outcomes as the result of providing intimate information.

²⁵ Intrusiveness of the information-gathering procedure is covered in the current interpersonal indicator of propriety, which examines the extent to which victims were asked improper questions.

²⁶ Since this time, however, other modes of participation have emerged in the criminal justice system, such as victim-impact statements.

²⁷ There is an ongoing debate on restorative justice and process vs. outcome (see Crawford & Newburn, 2003).

²⁸ Recognition is reflected in many of the other indicators. For example, recognising victim status involves respectful treatment, and other attitudes that relay to the victim that his or her situation is understood, i.e. refraining from victim blaming.

²⁹ While “equality” can also be interpreted as equality between people in comparable cases, here it is seen as equality between parties. The former is included in the formal justice indicator as formal equality.

³⁰ Reparation of monetary harm inflicted is comparable with the principles of compensatory justice, which involves the extent to which victims should be compensated.

³¹ Other extra-legal factors may influence the behaviour of legal authorities (thereby influencing victim perceptions), for example, perceptions of victim lifestyle, victim conduct or the evidence in the case (see (Buzawa & Austin, 1993; Spohn & Holleran, 2001). These factors, however, often cannot be uncovered from the victim perspective.

³² Often, a pathway is not as straightforward as “the criminal justice procedure” or “civil court”. Rather, paths often coincide. For example, when victim-offender mediation is not used as a method of diversion, the path may fall within criminal proceedings. As a result, the victim’s “path to justice” is redefined and caution must be taken when making conclusions based on any comparable findings.

³³ For the current solution to this “weighting” issue, see Gramatikov & Laxminarayan, 2009.)